

## **MONROE COUNTY ARTS IN PUBLIC PLACES ADMINISTRATIVE AGREEMENT**

This AGREEMENT dated the 20<sup>th</sup> day of July, 2016, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, ("County"), and the Florida Keys Council of the Arts ("FKCA").

WHEREAS, the Art in Public Places Ordinance #022-2001, codified at MCC §2-233, provides for an appropriation of 1% of the construction costs for new construction exceeding \$500,000.00 and renovations exceeding \$100,000.00 for the acquisition, commission, installation, and maintenance of works of art in said buildings; and

WHEREAS, the ordinance establishes an Arts in Public Places Committee (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 elected to utilize 10% of the art funding for each project for certain reimbursements of administrative expenses incurred by the FKCA; and

WHEREAS, an Administrative Agreement for the FKCA to utilize 10% of the art funding for administrative expenses has been continuously in effect since the first BOCC action on October 15, 2008;

WHEREAS, the current Administrative Agreement will expire on September 30, 2016 with no additional options available to renew the Agreement; and

WHEREAS, the FKCA has authorized its Executive Director to request to enter into a new Administrative Agreement to utilize 10% of the art funding for administrative expenses effective October 1, 2016 and expiring on September 30, 2019; and

NOW THEREFORE, in consideration of the mutual covenants and payment contained herein, the parties have entered in to this Agreement on the terms and conditions as set forth below:

1. **REIMBURSABLE ADMINISTRATIVE EXPENSES:** The County shall reimburse up to 10% of the funds allocated for each project to the FKCA for expenditures directly related to each project. Expenses shall be reimbursed only after properly invoiced by the FKCA with supporting receipts and documents.  
Reimbursable expenses shall include:
  - a. The FKCA may be reimbursed for personnel (as listed below) for their time spent associated with a project, at their hourly rate, including but not limited to issuance of

RFQ's and RFP's, collating and distributing responses, providing administrative support during evaluation meetings, and preparation and processing of contracts:

| <u>NAME</u>     | <u>FUNCTION</u> | <u>HOURLY RATE</u> |
|-----------------|-----------------|--------------------|
| Elizabeth Young | Administration  | \$30.00            |
| Allison Carroll | Administration  | \$25.00            |
| Shannon Lynch   | Administration  | \$20.00            |

The services performed by the above personnel shall be reimbursed at their hourly rate. A schedule of services must be approved by the Director of Project Management.

- b. Expense of transportation and living expenses, but only to the extent and in the amounts authorized by Section 112.061, Florida Statutes.
  - c. Postage and handling of documents associated with the project.
  - d. Costs for printing, binding, copying costs associated with the project.
2. **MODIFICATIONS AND AMENDMENTS:** Any and all modifications of the terms of this Agreement shall be amended in writing and approved by the Board of County Commissioners of Monroe County.
3. **AGREEMENT PERIOD:** This Agreement is for the period of three years beginning October 1, 2016 and ending September 30, 2019. There will be 1 option to renew this Agreement for one additional three-year term. Renewal must be requested in writing by the FKCA and approved by the Board of County Commissioners of Monroe County.
4. **SEPARATE ENTITY:** At all times and for all purposes hereunder, the FKCA is a separate entity 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 FKCA or any of its employees, contractors, servants, or agents to be 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.
5. **HOLD HARMLESS/INDEMNIFICATION:** The FKCA hereby agrees to indemnify and hold harmless the BOCC, 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 FKCA 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.

6. **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.
7. **ETHICS CLAUSE:** The FKCA warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee in violation of Section 2 of 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, 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.
8. **PUBLIC ENTITY CRIME STATEMENT:** A person or affiliate who has been placed on the convicted 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 an 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 an 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 represents that Artist in not on the Convicted Vendor list.
9. **NOTICE:** Any written notice to be given to either party under this Agreement or related hereto shall be addressed and delivered as follows:

For AIPP & FKCA

Executive Director  
Florida Keys Council of the Arts  
1100 Simonton Street  
Key West, FL 33040

For County

Monroe County Project Management  
1100 Simonton Street Rm 2-216  
Key West, FL 33040  
&  
Monroe County Attorney  
1111 12<sup>th</sup> Street, Suite 408  
Key West, FL 33040

10. The parties further agree as follows:

- a. **Public Records Compliance.** FKCA must comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of article I of the Constitution of Florida. The County and FKCA shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters or other "public record" materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and FKCA in conjunction with this contract and related to contract performance. The County shall have the right to unilaterally cancel this contract upon violation of this provision by the FKCA. Failure of the FKCA to abide by the terms of this provision shall be deemed a material breach of this contract and the County may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney's fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the contract.

The FKCA is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision.

Pursuant to F.S. 119.0701 and the terms and conditions of this contract, the FKCA is required to:

- (1) Keep and maintain public records that would be required by the County to perform the service.
- (2) Upon receipt from the County's custodian of 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 this chapter or as otherwise provided by law.
- (3) 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 contract if the FKCA does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the FKCA or keep and maintain public records that would be required by the County to perform the service. If the FKCA transfers all public records to the County upon completion of the contract, the FKCA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the FKCA keeps and maintains public records upon completion of the contract, the FKCA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of records, in a format that is compatible with the information technology systems of the County.
- (5) A request to inspect or copy public records relating to a County contract must be made directly to the County, but if the County does not possess the requested records, the County shall immediately notify the FKCA of the request, and the FKCA must

provide the records to the County or allow the records to be inspected or copied within a reasonable time.

If the FKCA does not comply with the County's request for records, the County shall enforce the public records contract provisions in accordance with the contract, notwithstanding the County's option and right to unilaterally cancel this contract upon violation of this provision by the FKCA. A contractor who fails to provide the public records to the County or pursuant to a valid public records request within a reasonable time may be subject to penalties under section 19.10, Florida Statutes.

The FKCA shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

**IF THE FKCA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FKCA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BRIAN BRADLEY AT PHONE# 305-292-3470 BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY'S OFFICE 1111 12<sup>TH</sup> Street, SUITE 408, KEY WEST, FL 33040.**

- b. Interpretation, Costs, and Fees. The County and FKCA agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding. The County and FKCA agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County.
- c. Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the Agreement would prevent the accomplishment of the original intent of this

Agreement. The County and FKCA agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

- d. **Binding Effect.** The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and FKCA and their respective legal representatives, successors, and assigns.
- e. **Authority.** Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.
- f. **Claims for Federal or State Aid.** FKCA and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.
- g. **Adjudication of Disputes or Disagreements.** County and FKCA agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any part shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.
- h. **Cooperation.** In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and FKCA agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and FKCA specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.
- i. **Nondiscrimination.** County and FKCA agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or FKCA agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin;

2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

- j. **Covenant of No Interest.** County and FKCA covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.
- k. **Code of Ethics.** County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.
- l. **No Solicitation/Payment.** The County and FKCA warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, FKCA agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

- m. **Non-Waiver of Immunity.** Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the County and FKCA in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.
- n. **Privileges and Immunities.** All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.
- o. **Legal Obligations and Responsibilities. Non-Delegation of Constitutional or Statutory duties.** This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by a participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.
- p. **Non-Reliance by Non-Parties.** No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and FKCA agree that neither the County nor FKCA or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.
- q. **Attestations.** FKCA agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, and Ethics Statement, and a Drug-Free Workplace Statement
- r. **No Personal Liability.** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe

County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

- s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument any of the parties hereto may execute this Agreement by signing any such counterpart.
- t. Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in their respective names.



HEAVILIN, Clerk

Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

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

Mayor/Chairman

AIPP

Witness:

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

Print Name: Ann M. Riger

Title: Contract Administration

Date: 6/23/16

**FLORIDA KEYS COUNCIL OF THE ARTS**

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

Elizabeth S. Young  
Executive Director

Date: \_\_\_\_\_

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM

CHRIS AMBROSIO  
ASSISTANT COUNTY ATTORNEY

Date: \_\_\_\_\_

LOBBYING AND CONFLICT OF INTEREST CLAUSE

SWORN STATEMENT UNDER ORDINANCE NO. 010-1990  
MONROE COUNTY, FLORIDA

ETHICS CLAUSE

" FKCA " \_\_\_\_\_  
(Company)

"... warrants that he/it has not employed, retained or otherwise had act on his/its behalf any former County officer or employee in violation of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the County may, in its discretion, terminate this Agreement without liability and may also, in 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 County officer or employee".

[Signature]  
(Signature)

Date: June 23, 2016

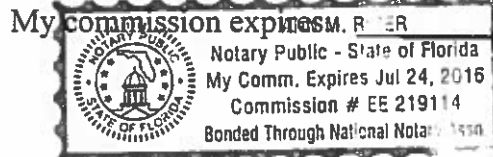
STATE OF: Florida

COUNTY OF: Monroe

Subscribed and sworn to (or affirmed) before me on 6/23/16

(date) by E. Elizabeth Young (name of affiant). He/She is  
personally known to me or has produced N/A  
as identification. (type of identification)

[Signature]  
NOTARY PUBLIC



## DRUG-FREE WORKPLACE FORM

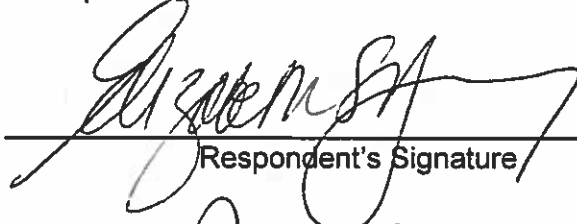
The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that:

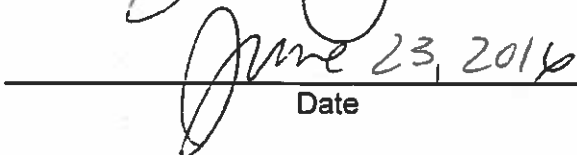
FLORIDA KEYS COUNCIL of the ARTS (FKCA)

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 (Florida Statutes) or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, or any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

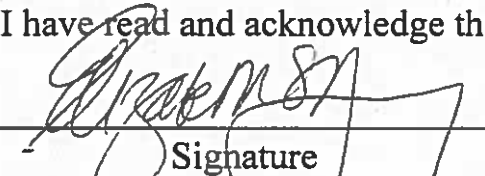
  
\_\_\_\_\_  
Respondent's Signature

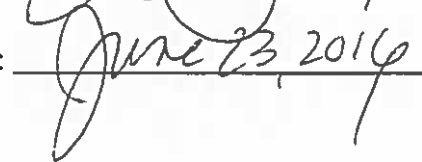
  
\_\_\_\_\_  
Date

## **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 a contract to provide any goods or services to a public entity, may not submit a bid on a contract 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, subcontractor, or consultant under a contract 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."

I have read and acknowledge the Public Entity Crime Statment

  
\_\_\_\_\_  
Signature

Date:   
\_\_\_\_\_