

Emergency Declaration



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

EMERGENCY DECLARATION

To: James K. Scholl, City Manager

From: Chris Bridger, Assistant City Attorney

Date: October 30, 2014

Action Statement:

Requesting approval of James K. Scholl, City Manager, to award the contract for the manufacture of the Bishop Kee statue to American Bronze Foundry, Inc. in the amount of \$34,600.00 and payment of 50% of the contract in the amount of \$17,300.00 be approved.

Ordinance:

Pursuant to Section 2-797 of the City of Key West Code of Ordinances, the Emergency Procurement procedure, the City Manager may make emergency procurement to approve contractual services where the cost exceeds \$20,000.00 when there exists a present threat to public health, property, safety, of other substantial loss to the City.

Justification:

The Bishop Kee statue was approved on November 5, 2003 (Resolution 03-372). A subsequent resolution authorized the placement of the statue on November 16, 2010 (Resolution 10-328). This project then went dormant and no significant work was performed to move the project forward largely due to the restriction that no City funds were to be used.

Recently, Resolution 14-211 was passed by the City Commission on August 5, 2014 to authorize the expenditure of City funds collected for the purpose of Art in Public Places to provide funding for this very important community project.

Now that the project has gained much needed momentum, it is planned for the statue to be completed prior to the 53rd Annual Conch Shell Blowing Contest on March 7, 2015. The conch shell blowing contest was selected as the event that is most significant to the unveiling of the Bishop Kee statue due to Bishop Kee's legacy of conch shell blowing at the Southernmost Point and greeting of the tourists, family and friends as they passed by.

In order to maintain the production schedule to meet the March 7th timeframe, 50% of the contract amount or \$17,300.00 is due to the American Bronze Foundry on November 1, 2014.

If this payment is not made on time, production and installation of the statue will be delayed past the March 7th timeframe.

Two additional bids were received:

Carolina Bronze Sculptures Inc	\$58,940.00
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Modern Art Foundry	\$90,000.00
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Recommendation:

Staff recommends James K. Scholl, City Manager, award American Bronze Foundry, Inc. the contract for the manufacture of the Bishop Kee statue to American Bronze Foundry, Inc. in the amount of \$34,600.00 and approve payment of 50% of the contract in the amount of \$17,300.00.

Approved:



James K. Scholl, City Manager

30 OCT 2014

Date

Contract

**AGREEMENT FOR MANUFACTURE AND INSTALLATION
OF BISHOP KEE SCULPTURE**

THIS AGREEMENT is made and entered into this 30th day of October, 2014, by and between the **CITY OF KEY WEST, FLORIDA**, a municipal corporation of the State of Florida, with an address of P.O. Box 1409, Key West, Florida 33041, hereinafter referred to as the "CITY", and American Bronze Foundry, with an address of 1650 E. Lake Mary Blvd., Sanford, FL 32773, Florida 33040, hereinafter "FOUNDRY."

WHEREAS, the CITY seeks to construct and install a bronze statue of Bishop Kee near the Southernmost Point; and

WHEREAS, in accordance with its adopted Guidelines, the CITY's Art in Public Places Board ("AIPP Board") selected the submission of TOM JORIS; and

WHEREAS, the Key West City Commission has determined, upon the recommendation of the AIPP Board, to enlarge the submission and install a bronze statue of Bishop Kee; and

WHEREAS, after receiving bids for completion and installation of the statue, City of Key West wishes to contract with FOUNDRY for completion of the statue.

NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION 1. RECITALS

1.1 The parties agree that the foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2. SCOPE OF SERVICES

2.1 The CITY engages the FOUNDRY, and the FOUNDRY agrees to perform services hereinafter described related to the Project.

2.2 The FOUNDRY'S addendum, attached hereto and made a part of this Agreement as Exhibit "A," is hereby accepted by CITY to be incorporated into the Project. The scope of work is generally described as enlarging TOM JORIS's sculpture, casting the statue in bronze, delivering the completed statue and installing it in Key West.

2.3 The FOUNDRY agrees to advise and consult with the manager for the Project, Kevin Bond, Staff Liaison for the AIPP Board, as required to ensure timely completion by FOUNDRY in accordance with design as submitted to and approved by the AIPP Board, and in accordance with the directives of the manager for the Project. FOUNDRY will make all reasonable efforts to complete the Project by the 1st day of March, 2015.

2.4 The FOUNDRY agrees to maintain the installation site in a clear, neat, and safe manner.

SECTION 3. CITY'S RESPONSIBILITIES

The CITY shall do the following in a timely manner so as not to delay the services of the FOUNDRY:

- 3.1 Provide all information regarding the schedule for the Project.

SECTION 4. COMPENSATION; TERMS OF PAYMENT; EXPENSES

- 4.1 CITY agrees to pay FOUNDRY the lump sum amount of thirty-four thousand six hundred dollars and No/100 cents (\$34,600.00) for all fees and expenses for the enlargement, casting, materials, delivery and installation of the statue by the FOUNDRY.
- 4.2 FOUNDRY will be paid by the City of Key West, and only City of Key West in two installments as follows:
 1. Upon CITY's approval of this Agreement - \$17,300.00
 2. Upon completion of casting - \$17,300.00
- 4.3 FOUNDRY shall request each payment by sending an accurate invoice to the City of Key West Planning Department, to the attention of project manager Kevin Bond. FOUNDRY shall invoice the CITY by February 1, 2015 to ensure timely payment and installation. The CITY shall make its best efforts to make payment to FOUNDRY within thirty (30) days of the receipt of such invoice.
- 4.4 Parties agree that City of Key West and FOUNDRY are the only parties to this contract.

SECTION 5. INDEMNIFICATION

5.1 Indemnification: To the fullest extent permitted by law, FOUNDRY expressly agrees to indemnify and hold harmless the City of Key West and their respective officers, directors, agents, and employees (herein called the "indemnitees") from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this paragraph, to persons or property caused in whole or in part by any act, omission, or default by FOUNDRY or its subcontractors, material men or agents of any tier or their employees, arising out of this Agreement or its performance, including any such damages caused in whole or in part by any act, omission, or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton, or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of FOUNDRY or its subcontractors, material men, or agents of any tier or their respective employees.

- 5.2 Indemnification by FOUNDRY for Professional Acts: FOUNDRY hereby agrees to

indemnify the City of Key West and each of its parent and subsidiary companies and the directors, officers and employees of each of them (collectively, the “indemnitees”), and hold each of the indemnitees harmless, against all losses, liabilities, penalties (civil or criminal), fines and expenses (including reasonable attorneys’ fees and expenses)(collectively, “Claims”) to the extent resulting from the performance of FOUNDRY’s negligent acts, errors or omissions or intentional acts in the performance of FOUNDRY’s services, or any of their respective affiliates, under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of the City of Key West and FOUNDRY, they shall be borne by each party in proportion to its negligence.

The indemnification obligations under this Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for FOUNDRY under workers’ compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any action brought by or in the name of any employee of FOUNDRY or of any third party to whom FOUNDRY may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

SECTION 6. NOTICES

6.1 Notices, requests, or authorizations provided for herein shall be in writing and shall be delivered, mailed or emailed addressed as follows:

To the CITY:	City of Key West Attn: Kevin Bond, Planning Dept. P.O. Box 1409 Key West FL 33041-1409 kbond@cityofkeywest-fl.gov cc: javastudios@gmail.com cc: cbridger@keywestcity.com
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To the FOUNDRY:	Charles Wambold III 1650 E. Lake Mary Blvd. Sanford FL 32773
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or addressed to either party at such other address as such party shall hereinafter furnish to the other party in writing. Each such notice, request, or authorization shall be deemed to have been duly given when so delivered, or, if mailed, when deposited in the U.S. mail, registered or certified, return receipt requested, postage pre paid.

SECTION 7. GENERAL CONSIDERATIONS

7.1 All finished or unfinished documents, either provided by the CITY or generated by the FOUNDRY pursuant to this Agreement, including reproducible copies of original drawings, estimates, specifications, field notes, maps, models, photographs, reports, and design data are and remain the property of the CITY.

7.2 The CITY may terminate this Agreement, with or without cause, immediately upon written notice to the FOUNDRY. In the event of termination, FOUNDRY shall immediately cease work. The CITY shall then pay FOUNDRY for all services rendered incurred to date of termination. FOUNDRY may terminate this Agreement upon written notice to the CITY in the event of default by the CITY for nonpayment under Section 4 of this Agreement; provided, however, that upon receipt of such termination notice, the CITY shall have seven (7) business days to cure its default of non-payment.

7.3 This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

7.4 The FOUNDRY shall not assign, sublet or transfer any rights under, or interest in this Agreement without the written consent of the CITY.

7.5 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the CITY and FOUNDRY, and all duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of the CITY and FOUNDRY and not for the benefit of any other party.

7.6 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be impaired thereby, but such remaining provisions shall be interpreted and enforced so to achieve, as near as may be possible, the purpose of this Agreement, to the extent permitted by law.

7.7 This Agreement constitutes the full and complete Agreement between the CITY and FOUNDRY and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument of the same formality and dignity hereof.

7.8 FOUNDRY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the FOUNDRY 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 the FOUNDRY any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

7.9 In the carrying out of this Agreement, FOUNDRY shall not discriminate against any employee or applicant for employment because of sex, race, creed, color, handicap, national origin, gender identity or expression, ancestry, sexual orientation, or marital status. In carrying out this Agreement, FOUNDRY will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to the above classifications.

7.10 This Agreement shall be governed by the laws of the State of Florida. Venue for any claims, actions, or suits shall be Monroe County, Florida.

7.11 In the event FOUNDRY is unable to complete the work contemplated under this Agreement, CITY may engage other personnel to complete the work, attributing the portion done by FOUNDRY to the FOUNDRY.

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



Attest:

Susan Harrison
Cheryl Smith, City Clerk
SUSAN P. HARRISON
Senior Deputy City Clerk

City of Key West, Florida

By:

James Scholl
James Scholl, City Manager

American Bronze Foundry

Witness:

Print Name:

Angela Bedde
Angela Bedde

By:

Charles L. Warbold III PRES.
Charles L. Warbold III, President

ADENDUM

1. The charge for ABF artist assistance on a sculpture is \$100.00 per hour. Rework on a sculpture is a minimum of \$150.00. If possible, an estimate for any rework will be provided before it begun.
2. Each original sculpture will be documented by photographs taken of it by ABF. These photographs will be used for reference when the piece is transposed in wax. The artist must understand that ABF can only duplicate in metal what the artist gives ABF in the original.
3. Any refinement (s) or artist requested alterations on the original sculpture by ABF, i.e. smoothing of skin surface (lumps), detailing (eyes, fingers, nose etc. on figures) will incur an extra charge, approvals conditioned on work beyond the scope of the original project will be billed an additional amount determined by ABF.
4. Artist requesting to approve work (wax or metal) will be expected to provide the approvals on a timely basis, with the understanding that failure to do so can adversely affect production schedules, All work approved by the artist will be considered finished to the artist's satisfaction and accepted. Any piece approved by the artist at any point in the "lost wax" bronze casting process, and subsequently brought for additional work, will be charged a rework fee (unless waived by ABF at its own discretion).
5. Any piece (s) needed on a "rush" basis (faster than the normal production time being currently quoted by ABF) will require an extra charge accordingly.
6. Clay originals or pieces brought to ABF in fragile mediums may need a transfer mold, to be determined by ABF. There will be an additional charge for the transfer mold if it is required. A wax or plaster will be cast from the transfer mold and reworked by the artist. There will be a charge if ABF does this rework instead of the artist. Afterwards, a production mold can be made.
7. Production schedules will be determined and adhered to by the artist and ABF. Neither will incur any liability or penalties for delay due to causes beyond the control of the artist or ABF, such acts of God, action (s) of government or civil authority, a state of war, riot, civil disorder, fire, labor trouble, control. Where the artist does not adhere to the production schedule (s), final delivery date (s) will be adjusted at the discretion of ABF.
8. Alterations represent work performed in additional to the original quote specifications. This additional work will be billed at the current rates for time and materials as determined by ABF.
9. ABF will store artist's molds for 6 months at its option. If no casting activity occurs, the artist will pick up the mold (s) or pay for packaging and shipping of the mold (s) to the artist for storage or disposal. The foundry assumes no responsibility for any reason for any molds stored over 6 months from the date last used. New castings requires return of the mold (s) to ABF.

I have read and agree to the above policies:

Signature

JK Seball

Date

30 OCT 2014

AMERICAN BRONZE FOUNDRY, INC.

SANFORD, FL 32773

407-328-8090 FAX 407-328-7010

PROGRESSIVE INV.

DATE

INVOICE #

10/21/2014

5167

BILL TO

CITY OF KEY WEST
3132 FLAGLER AVE.
KEY WEST, FL 33040

SHIP TO

PHONE	FAX	BILLING STATUS	TERMS	REP	SHIP VIA	TAX EXEMPT
		DEP EST 2275	50/50	JS	DELIVER	PENDING

ITEM	DESCRIPTION	PRIOR ...	BILL QTY	EACH	CURR %	TOTAL %	EST RA...	EST QTY	LINE TOT	AMOUNT
CKW1E	BISHOP KEE ENLARGEMENT		0.5	12,000.00	50.00%	50.00%	12000.00	1	12000.00	6000.00
CKW1...	BISHOP KEE MOLD		0.5	6,000.00	50.00%	50.00%	6000.00	1	6000.00	3000.00
CKW1	BISHOP KEE CASTING		0.5	13,000.00	50.00%	50.00%	13000.00	1	13000.00	6500.00
DEL	DELIVERY AND INSTALLATION		0.5	3,600.00	50.00%	50.00%	3600.00	1	3600.00	1800.00

Subtotal \$17,300.00

ITEMS HAVE BEEN RECEIVED AND ACCEPTED IN GOOD
CONDITION _____

Sales Tax (0.0%) \$0.00

DATE _____

Total \$17,300.00

Payments/Credits \$0.00

Balance Due \$17,300.00

American Bronze Foundry, Inc.
1650 E. Lake Mary Blvd.
Sanford, FL 32773

407-328-8090
407-328-7010 fax
sales@americanbronze.com

Agreement/Contract

This is a binding agreement between American Bronze Foundry, Inc. hereafter referred to as the Foundry and
CITY OF KEY WEST, address: 3132 FLAGLER AVE
KEY WEST FL 33040 hereafter referred to as the client.

The Foundry agrees to manufacture the following artwork under the terms and conditions set forth.

Artwork:	<u>BISHOP KEE</u>	Price each:	<u>\$13,000.00</u>	Qty:	<u>1</u>	Mold:	<u>\$6,000.00</u>
Additional Services:	<u>Enlargement \$12,000.00 Deliver and Install \$3,600.00</u>			Total Job:	<u>\$34,600.00</u>		
Terms: 50% down and the balance upon completion of the casting.							

This transaction is considered to be a sale of goods, therefore the Foundry may avail itself of all rights and remedies under the UCC as codified under Florida law.

Payment is due upon completion of the project as specified in the terms set above. If payment is not made timely, the Foundry will collect interest at the rate of 1.5% per month on the unpaid balance and will hold the artwork until the balance is paid in full. Acceptance of the artwork is unconditional. The Foundry cannot be held responsible for any unforeseeable mishap that would require it to miss a scheduled delivery date. We can only estimate a delivery date.

Insurance: The Foundry's insurance will only cover the actual materials used to create the artwork.

Clients' work shall be completed before being molded. Any artwork, repairs or modeling done in the Foundry by Foundry personnel will be charged to the client and paid by the client before being molded. Additional time for any changes may or may not delay original due date depending on the extent of the changes. Once approved by client, any changes to the casting will be billed to the client at time of final billing.

Any further projects between the parties are subject to the same conditions/terms of sale, as stated in this agreement. The Foundry assumes no responsibility for any reason for any molds stored over 6 months from the date of the last use.

Both parties agree that this is a binding contract and may not be cancelled for any reason. Should the client breach this agreement for any reason, the client will forfeit the deposit and the foundry will have the right to collect any out of pocket expenses incurred due to the cancellation. If it becomes necessary to collect payment because of default, or to enforce any terms of this agreement, the client agrees to pay all reasonable attorney fees, including but not limited to; court cost, interest and collection fees at the trial level and on appeal. The parties agree that if litigation is necessary, it will be conducted in Sanford, Seminole County, Florida.

This agreement accepted by:

Charles L. Wambold III, President
Date _____

Client Signature
Print Name _____
Date Accepted _____

SEE ADENDUM NEXT PAGE

City Purchase Order



CITY OF KEY WEST
P.O. BOX 1409
KEY WEST, FL 33041-1409
PHONE: 305-809-3700

PURCHASE ORDER	
P.O. #:	078059
DATE:	10/31/2014

VENDOR #: 10427
VENDOR : AMERICAN BRONZE FOUNDRY, INC
ADDRESS : 1650 E LAKE MARY BLVD
SANFORD, FL 32773

SHIP TO : PLANNING DEPARTMENT
3140 FLAGLER AVENUE
KEY WEST, FL 33040

VENDOR PHONE : (407)328-8090
VENDOR FAX : (407)328-7010

THE P.O. # MUST APPEAR ON ALL INVOICES, PACKAGES, AND CORRESPONDANCE

SPECIAL INSTRUCTIONS				
RENEEWAMBALD				
DELIVER BY	REQUISITION #	REQUISITION DATE	REQUISITIONED BY	
10/30/2014	0000093083	10/30/2014	JO BENNETT	
FOB	ACCOUNT NUMBER	PROJECT NUMBER	TERMS	
KEY WEST, FL	00159025596700		45 DAYS FROM RECEIPT OF INVOICE	
ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE	UNIT COST	EXTENDED COST

1		BRONZE CAST OF BISHOP KEE		
	34,600.00 /		1.0000	34,600.00
	DL			

TOTAL PURCHASE AMOUNT

\$34,600.00

AUTHORIZED SIGNATURE

Other Bids

October 27, 2014

Thank you for your email and phone call.

This is an incredibly difficult deadline to meet. Everything will need to go according to plan. We believe we can achieve completion in this small window of time following the outline and costs below.

The model needs to arrive at our facility no later than Saturday November 15.

It will be enlarged following a traditional point up method (not computer generated) by an experienced sculptor and be ready for inspection on December 15. A few days will be allocated for corrections and approval.

Once approved Modern Art Foundry will make the rubber mold (one time use), bronze casting, finishing, patina, specific internal armature, and mounting pins.

The above work will be completed at Modern Art Foundry.

Modern Art Foundry will NOT be responsible for site preparation as outlined:

Stainless steel rods protruding from the feet/foundation plate will be drilled on site and epoxied into the concrete support structure. They are also requiring two stainless steel "J" bolts poured in the foundation to anchor the front of the statue base. That is how we came up with a 36"x36" base. The 2" thickness of the base should allow room to cover the "J" bolt nuts with some sort of a bronze plug.

Engineering calls for a 5' deep by 24" wide concrete pier with an 8" thick concrete sidewalk to support and anchor the statue.

Modern Art Foundry will coordinate delivery.

Modern Art Foundry will provide installation instructions but CANNOT be on site to install the work.

Projected Budget:

Enlargement \$35,000.00

Rubber Mold, Bronze Casting, Finishing, Patina \$45,000.00

Delivery March 5, 2015 \$10,000.00

A deposit of \$40,000.00 is requested to begin work.

A second payment of \$20,000.00 is requested on January 15, 2015.

A third payment \$20,000.00 upon approval at foundry.

Delivery payment \$10,000.00 upon delivery.

Once again this is a very demanding schedule and requires attention to all details.

Jeffrey Spring Modern Art Foundry



Please see our estimated figures below:

**CAROLINA BRONZE
SCULPTURES, INC.**

ESTIMATE GOOD UNTIL 11/24/14

6108 Maple Springs Road
Seagrove, NC 27341
PH (336) 873-8291
www.carolinabronze.com

CUSTOMER NAME	Key West Art in Public Places
DATE	10/24/2014
CUSTOMER EMAIL	director@kwhmt.org
CONTACT NUMBER	305-393-9777

Bishop Kee Project

Delivery Date:	March 5th
Ship/ Pick Up Date:	

DESCRIPTION	Price
Scan and Enlargement	\$9,350
Assemble and skim coat of clay	\$650
Mold Cost	\$14,160
Bronze Cost	\$24,780
Per Day/ per person for LABOR	\$1,800
3 nights, Hotel	\$1,500
Travel/ Gas	\$400
Bronze Plate	\$6,300
EST. CUSTOMER PRICE	\$58,940.00

Just a couple of things for you to know: There are a few things we could cut back on. First - understand that we do a very high definition enlargement. We have some examples we can send you pictures of if you need them. But every button, curve, expression, wrinkle, or almost anything else - is very distinguishable in our enlargements. This means that we only have to put a very thin coating of clay over the foam. It saves cost of clay, and it also saves time for the artist.

We can produce a less detailed piece for a little less money - but it would create more work for the sculptor.

And I'm not sure if you discussed this with Ed, but after reviewing everything - he does not think he will need to rent a fork lift to install it. He thinks he has something here he can use.

Also - the model shape base that is part of the sculpture in the picture - is that going to be part of the enlarged sculpture as well? Please let us know.

If you have any questions or need any other information from us, please don't hesitate to ask. I hope this has been helpful.

Thank you, and have a great weekend!!

(HEY! I made it by end of day, Friday as promised! ;)

A handwritten signature in black ink that reads "Catherine A. Britt". The script is cursive and fluid, with the first name being the most prominent.

Catherine Britt
Carolina Bronze Sculpture, Inc.
6108 Maple Springs Road
Seagrove, NC 27341
336-873-8291
catherine@carolinabronze.com