

City of Key West Art in Public Places Purchase Agreement

This AGREEMENT dated the 28th day of January, 2019, is entered into by and between the CITY OF KEY WEST, hereinafter "City"/CITY OF KEY WEST, and MARLENE KOENIG, hereinafter "Artist."

WHEREAS, the Art in Public Places Ordinance (AIPP Ordinance), codified at City of Key West Code of Ordinances Section 2-481 through 2-487, authorizes the allocation of one percent (1%) of the Public and Private construction costs for new construction exceeding \$500,000.00 and renovations exceeding \$100,000.00 to be set aside in a fund and used for acquisition, commission, installation and maintenance of works of art to be used in, upon, or around the City of Key West; and

WHEREAS, the AIPP Ordinance establishes an Art in Public Places Board to review responses to Requests for Proposals for art to be acquired, commissioned, installed, and maintained in public construction projects and to advise the CITY OF KEY WEST on such responses; and

WHEREAS, the CITY OF KEY WEST desires to promote understanding and awareness of the visual arts and to enrich the public environment for residents and visitors; and

WHEREAS, the CITY OF KEY WEST desires to acquire public artwork to be installed, placed, and/or located at TRUMAN WATERFRONT PARK, City of Key West, Florida; and

WHEREAS, in conformity with the AIPP Ordinance and RFP # 005-19, the Artist was selected by the AIPP Board to provide public artwork for this location; and

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 a period of ninety (90) days after issuance of a notice to proceed to execute and complete the work. 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 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 perform all services, and provide and furnish all supplies, materials, and equipment as necessary for transportation, creation and installation of artwork as follows:

THREE COLORFUL, EXPRESSIVE, HAND-PAINTED OUTDOOR MURALS FOR THE EXTERIOR WALLS OF THE BUILDING HOUSING THE PUBLIC RESTROOMS. USING THE INSPIRATION OF THE CURVED LINES IN THE PATHWAYS, ROUNDABOUT AND AMPHITHEATER, I'VE INCORPORATED CIRCLES INTO THE DESIGN OF THE MURALS, CREATING A SENSE OF COHESIVENESS AND RELATIONSHIP. MY DESIGN IS BASED AROUND THE SUN AND THE MOON, AND THE NATURAL BEAUTY OF OUR TROPICAL PARADISE.

Artist shall confer with and coordinate activities with Executive Director, Florida Keys Council of the Arts, Elizabeth Young, in to insure there is as much cooperation and cohesiveness in the incorporation of the art in or around the building so that there shall be the least amount of interference between the Artist and the building personnel.

3. AMOUNT OF AGREEMENT AND PAYMENT: The City shall provide an amount not to exceed SEVEN Thousand, and 00/100 (\$7,000.00) Dollars for materials and services used to create and install the project.

The Board of City of Key West assumes no liability to fund this agreement for an amount in excess of this award. City of Key West's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the CITY OF KEY WEST. Pursuant to Florida's Prompt Payment Act, upon receipt by City of an Invoice for each of 2 phases and documentation to satisfy the finance director that the appropriate phase has been completed, payment shall be made as follows:

**PAYMENT TERMS TO BE NEGOTIATED ON A PROJECT BY PROJECT BASIS
CONSIDERING OVERALL SCOPE AND NATURE OF THE PROJECT.**

Final payment shall be due when installation is deemed complete and contractual agreement specifications are verified by the City of Key West or its Designee.

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

A. Artist's design fee. **B.** Labor, materials, contracted services required for production and installation. **C.** Artist's operating expenses related to the project. **D.** Travel related to this project, pursuant to statutory limitations (see above paragraph 3,). **E.** Transportation of the work to the site (see above paragraph 3,). **F.** Installation to the site. **G.** Permits and fees necessary for the installation (applicable for exterior projects which may also require HARC or Historic Preservation Commission review, if applicable). **H.** Insurance costs of artist.

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

Final payment request must be submitted no later than sixty (60) days after the completion of the project.

4. OWNERSHIP and RIGHTS: Upon the installation of the artwork and acceptance by the City, the City shall own the artwork and title to the artwork shall pass to the City. This Article 4 and the Artist's signature on this Agreement shall constitute and be construed as the Artist's express waiver of rights as provided in 17 U.S.C. §106A, et. al., to the extent that the artwork may be removed, adjusted, replaced, and/or relocated, as deemed necessary by the City without obtaining a waiver or permission from the Artist, and that modification to the artwork resulting from conservation or public presentation involving lighting and placement is not prohibited modification or considered alteration, distortion or mutilation of the artwork. Artist agrees that the City as owner of the building and/or property that includes the artwork may, without the consent or permission of the Artist, make or authorize the making of alterations and/or destruction of such building and/or property. Artist agrees that where the artwork may be created or conceived in any fashion by more than one author, the Artist's signature and waiver binds the entire group of authors/artists.

5. RECORDS: The Artist shall keep such records as are necessary to document performance of the agreement and give access to these records at the request of the City, the State of Florida, or authorized agents and representatives of said governmental 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, or the City of Key West, or their agents and representatives. For Public Records requirements see paragraph 21 below.

6. MODIFICATIONS AND AMENDMENTS: Any and all modifications of the terms of this Agreement shall in writing and approved by the CITY OF KEY WEST. Extensions of time to complete any terms or conditions of this Agreement must be made in writing and may be approved only by the CITY OF KEY WEST.

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

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 City to terminate this agreement immediately upon delivery of written notice of termination to the Artist.

9. HOLD HARMLESS/INDEMNIFICATION: The Artist hereby agrees to indemnify and hold harmless the , Florida Keys Council of the Arts, AIPP Board and City of Key West and any of their 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 City of any suit, claim or action made against the City that is related to the activity under this agreement, and will cooperate with the City 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 City has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the City 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 City may terminate this agreement without cause upon giving ninety (90) days written notice of termination to Artist. The City 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 City 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 City 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 City 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 City of Key West.

16. ETHICS CLAUSE: Artist warrants that he has not employed, retained or otherwise had act on his behalf any former City officer or employee in violation of Section 2 of Ordinance No. 101990 or any City officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the City 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 City 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 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 Artist, supplier, sub-Artist, 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 thirty-six (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 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, City or County.

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 City from any suits, claims or actions brought by any person or persons and from all costs and expenses 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 the agreement and for one (1) year after acceptance of the project, Artist shall maintain on file with the City 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 City 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 City of Key West Board of City 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 City form titled "Request for Waiver of Insurance Requirements" and must be approved by City of Key West 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 throughout 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 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 City.

21. PUBLIC RECORDS COMPLIANCE: Artist 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 City and Artist 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 City and Artist in conjunction with this contract and related to contract performance. The City shall have the right to unilaterally cancel this contract upon violation of this provision by the Artist. Failure of the Artist to abide by the terms of this provision shall be deemed a material breach of this contract and the City 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 Artist 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 Artist is required to: (1) Keep and maintain public records that would be required by the City to perform the service. (2) Upon receipt from the City's custodian of records, provide the City 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 Artist does not transfer the records to the City. (4) Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Artist or keep and maintain public records that would be required by the City to perform the service. If the Artist transfers all public records to the City upon completion of the contract, the Artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Artist keeps and maintains public records upon completion of the contract, the Artist shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City upon request from the City's custodian of records, in a format that is compatible with the information technology systems of

the City. (5) A request to inspect or copy public records relating to a City contract must be made directly to the City, but if the City does not possess the records requested, the City shall immediately notify the Artist of the request, and the Artist must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

If the Artist does not comply with the City's request for records, the City shall enforce the public records contract provisions in accordance with the contract, notwithstanding the City's option and right to unilaterally cancel this contract upon violation of this provision by the Artist. An Artist who fails to provide the public records to the City or pursuant to a valid public records request within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

The Artist 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 ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CHERI SMITH CSMITH@CITYOFKEYWEST-FL.GOV , 1300 WHITE STREET, KEY WEST, FL 33040.

22. RISK OF LOSS: Risk of loss or damage to the artwork shall be borne by the Artist until acceptance of the artwork by the City as indicated after the final payment has been made. The Artist shall carry insurance sufficient to cover the purchase price of the artwork to cover risk of loss or damage to the artwork until final acceptance by the City.

23. WARRANTIES OF QUALITY AND CONDITION: Artist represents and warrants that the artwork, as fabricated and installed, will be free from defects in material and workmanship which cause or accelerate deterioration of the artwork and that reasonable maintenance of the artwork will not require procedures substantially in excess of those described in the Artist's maintenance recommendations or proposal. The warranties described in this Article shall survive for a period of five (5) years after final acceptance of the artwork, with periodic required maintenance by the City according to instructions provided by the Artist. The City shall give written notice to the Artist of any breach of this warranty during the five (5) year period. The Artist shall, at no cost to the City, cure reasonably and promptly the breach of warranty by means of repair, restoration, refurbishing, re-creation, or replacing the artwork.

24. REPAIRS AND RESTORATION: The City reserves the right to determine when and if repairs and restorations to the artwork will be made after final acceptance. Repairs and restorations to the artwork occurring five (5) years after the City's final acceptance of the artwork will be the responsibility and at the expense of the City.

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

For Artist

Marlene Koenig
801 Virginia Street
Key West, FL 33040

For City

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

and City Manager
PO Box 1409, 1300 White Street, Key West, FL 33041

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK SIGNATURE PAGE TO FOLLOW ON PAGE 8

Execution by the Artist must be by a person with authority to bind the entity. Signature of the person executing the document must be notarized and witnessed by another officer of the entity, or by two other witnesses.

(SEAL)

ATTEST: Cheri Smith, CLERK

CITY OF KEY WEST, FLORIDA

By: _____
City Clerk

By: _____
Mayor/Chairman

WITNESSES:

ARTIST:

1) Cynthia Page
Signature

M. Koenig
Signature

Cynthia Page
Print Name

Marlene T Koenig
Print Name

DATE: 1-28-19

DATE: 1/28/2019

2) [Signature]
Signature

ELIZABETH S. TOVING
Print Name
DATE: 1/28/2019

STATE OF Florida

CITY OF Key West

On this 28th day of January, 2019, before me, the undersigned notary public, personally appeared Marlene Koenig, known to me to be the person whose name is subscribed above or who produced _____ as identification, and acknowledged that he/she is the person who executed the above contract with City of Key West for the artwork at the City Park for the purposes therein contained.

Notary Public

Name Tammy L Sweeting My Commission Expires: 7/16/21

(SEAL)

