

RESOLUTION NO. 17-286

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "KEY WEST CITY ART IN PUBLIC PLACES ADMINISTRATIVE AGREEMENT" BETWEEN THE CITY OF KEY WEST AND THE MONROE COUNCIL OF THE ARTS CORPORATION (MCAC); AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS ON BEHALF OF THE CITY, UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West Art In Public Places Board (AIPP) recommended approval of an agreement for administrative services funded through AIPP; and

WHEREAS, City staff recommends approval of the attached "Key West City Art in Public Places Administrative Agreement;" and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "Key West City Art in Public Places Administrative Agreement" between the City and MCAC is hereby approved.

Section 2: That the City Manager is authorized to execute necessary documents on behalf of the City, upon consent of the City Attorney.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 21 day of November, 2017.

Authenticated by the Presiding Officer and Clerk of the Commission on 22 day of November, 2017.

Filed with the Clerk on November 22, 2017.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

**KEY WEST CITY ART IN PUBLIC PLACES
ADMINISTRATIVE AGREEMENT**

THIS AGREEMENT dated this 21 day of November, 2017, is entered into by and between the City of Key West, Florida ("CITY") and Monroe Council of the Arts Corporation ("MCAC"), a not-for-profit corporation incorporated in the State of Florida.

WHEREAS, the Art in Public Places Ordinance #22-01, codified at Key West Code of Ordinances section 2-481, provides for an appropriation of 1% of the construction costs for new construction exceeding \$500,000.00 and renovations exceeding \$100,000.00, which qualify as major development plans under chapter 108 of the City of Key West Code of Ordinances, for the acquisition, commission, installation, and maintenance of works of art in said buildings, or elsewhere in the City in the case of in-kind contributions; and

WHEREAS, the ordinance establishes an Art in Public Places Board (AIPP) to advise the City Commission regarding art to be acquired and installed pursuant to a project, or projects, subject to the AIPP allocation; and

WHEREAS, the AIPP Board has elected to utilize 10% of the art funding for each project for certain reimbursements of administrative expenses incurred by the MCAC; and

WHEREAS, the MCAC has authorized its Executive Director to enter into this Administrative Agreement; 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 CITY shall reimburse up to 10% of the funds allocated for each project to the MCAC for expenditures directly related to each project. Expenses shall be reimbursed only after properly invoiced by the MCAC with supporting receipts and documents.

Reimbursable expenses shall include:

- a. The MCAC 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 S. Young	Administration	\$30.00
Martha Resk	Administration	\$25.00
Cynthia Page	Administration	\$25.00

The services performed by the above personnel shall be reimbursed at their hourly rate. A schedule of services must be approved by the City of Key West Planning Director and Finance Director.

- 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 Key West City Commission.
 3. **AGREEMENT PERIOD:** This Agreement is for a period of two (2) years, commencing upon approval by the City Commission. There will be one (1) option to renew this Agreement for one additional two-year term. Renewal must be requested in writing by the MCAC and approved by the Key West City Commission.
 4. **SEPARATE ENTITY:** At all times and for all purposes hereunder, the MCAC is a separate entity and not an employee of the CITY. No statement contained in this Agreement shall be construed as to find the MCAC or any of its employees, contractors, servants, or agents to be employees of the CITY, and they shall be entitled to none of the rights, privileges or benefits of employees of CITY.
 5. **INDEMNIFICATION:** To the fullest extent permitted by law, MCAC expressly agrees to indemnify and hold harmless the City of Key West, their 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 MCAC 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 MCAC or its subcontractors, material men or agents of any tier or their respective employees.

MCAC shall immediately give notice to the CITY of any suit, claim or action made against it that is related to any activity under this Agreement and will cooperate with the CITY in the investigation arising as a result of any suit, claim or action 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, Florida.
7. **ETHICS CLAUSE:** The MCAC warrants that it has not employed, retained or otherwise had act on its behalf any former CITY officer or employee not otherwise eligible for employment by the City of Key West. For breach or violation of this 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.
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. MCAC represents that MCAC, is not on the Convicted Vendor list.
9. **TERMINATION:**
 - a. The CITY may terminate this Agreement for cause with written notice to MCAC. Cause shall constitute a breach of the obligations of MCAC to perform the services enumerated under this Agreement.
 - b. Either of the parties hereto may terminate this Agreement without cause by giving the other party sixty (60) days written notice of its intention to do so.
10. **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 & MCAC
Executive Director
Florida Keys Council of the Arts
1100 Simonton Street
Key West, FL 33040

For CITY

Key West City Manager
1300 White Street
Key West, FL 33040 *and*

Key West City Attorney
1300 White Street
Key West, FL 33040

11. The parties further agree as follows:

- a. **Public Records Compliance.** MCAC 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 MCAC 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 MCAC 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 MCAC. Failure of MCAC 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 MCAC 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 MCAC 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 MCAC 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 MCAC or keep and maintain public records that would be required by the CITY to perform the service. If the MCAC transfers all public records to the CITY upon completion of the contract, the MCAC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the MCAC keeps and maintains public records upon completion of the contract, the MCAC 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 requested records, the CITY shall immediately notify the MCAC of the request, and the MCAC must provide the records to the CITY or allow the records to be inspected or copied within a reasonable time.

If the MCAC 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 MCAC. A contractor 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 19.10, Florida Statutes.

The MCAC 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 MCAC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MCAC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, KEY WEST CITY CLERK AT PHONE# 305-809-3835, CSMITH@CITYOFKEYWEST-FL.GOV, KEY WEST CITY CLERK 1300 WHITE STREET, KEY WEST, FL 33040.

- b. Interpretation, Costs, and Fees. The CITY and MCAC 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 CITY and MCAC 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 CITY and MCAC 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 CITY and MCAC 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 CITY and corporate action, as required by law.
- f. Claims for Federal or State Aid. MCAC and CITY 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. CITY and MCAC 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 CITY 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, CITY and MCAC 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. CITY and MCAC specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

- i. Nondiscrimination. CITY and MCAC 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. CITY or MCAC 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. CITY and MCAC 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. CITY agrees that officers and employees of the CITY 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.

1. **No Solicitation/Payment.** The CITY and MCAC 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, MCAC agrees that the CITY 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 CITY and MCAC 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 CITY 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 CITY, when performing their respective functions under this Agreement within the territorial limits of the CITY 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 CITY.

- 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 CITY, except to the extent permitted by the Florida constitution, state statute, and case law.

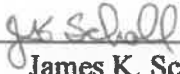
- p. **Non-Reliance by Non-Parties.** No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the CITY and MCAC agree that neither the CITY nor MCAC or any agent, officer, or employee of either shall have the authority to inform, counsel, or

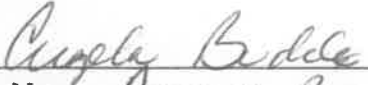
otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

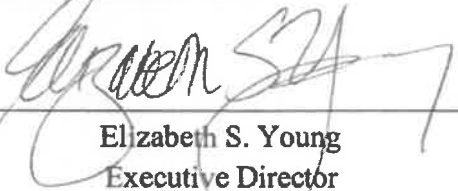
- q. Attestations. MCAC agrees to execute such documents as the CITY may reasonably require, to include a Public Entity Crime Statement, and Ethics Statement, and a Drug-Free Workplace Statement
- r. No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of CITY in his or her individual capacity, and no member, officer, agent or employee of CITY 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.

Attest:
By: 
Cheryl Smith, City Clerk

CITY OF KEY WEST, FLORIDA
By: 
James K. Scholl, City Manager

Witness:
By: 
Print Name: ANGELA BUDDE
Title: Deputy City Clerk
Date: 11-17-17

MONROE COUNCIL OF THE ARTS CORPORATION
By: 
Elizabeth S. Young
Executive Director
Date: November 17, 2017