

RESOLUTION No. 2016-12-02

AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE FORT MORGAN HERITAGE FOUNDATION FOR THE PURCHASE OF ART

Whereas, The City has appropriated monies in 2016 for the purchase and/or development of art to enhance the downtown area of the City of Fort Morgan; and,

Whereas, the Heritage Foundation's mission statement is to preserve the history and culture of NE Colorado through collecting, interpreting, researching, and exhibiting materials reflecting the diverse history and traditions of the area; and,

Whereas, the City and Heritage Foundation have an opportunity to obtain sculpture artwork for installation at City Park; and,

Whereas, the City and Heritage Foundation understand that by partnering together to obtain art, their respective resources pooled together will provide for cost savings and the opportunity to obtain a larger collection of artwork; and,

Whereas, the City is limited by the Colorado Constitution which prohibits gifts from public entities to private entities, but does allow for public monies to be expended for public benefits; and,

Whereas, the City is agreeable to providing funding to the Heritage Foundation on the condition that specific artwork is purchase or otherwise procured within a specific timeframe to be located within the City of Fort Morgan as reflected in the AGREEMENT CONCERNING THE PURCHASE OF ART BETWEEN THE CITY OF FORT MORGAN AND THE FORT MORGAN HERITAGE FOUNDATION, attached hereto and incorporated herein as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

SECTION 1: The City Council hereby authorizes the Mayor to execute the **AGREEMENT CONCERNING THE PURCHASE OF ART BETWEEN THE CITY OF FORT MORGAN AND THE FORT MORGAN HERITAGE FOUNDATION.**

INTRODUCED, PASSED, APPROVED AND ADOPTED this 6th day of December 2016, the vote upon roll call being as follows:

Ayes: Mayor Ronald Shaver, Councilmembers Anderson, Howe, Lindell, Marler and Northrup.

Nays: None.

Absent /Abstain: Councilmember Castoe, Absent (Excused)



THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

BY: Ronald Shaver
Ronald Shaver, Mayor

ATTEST:

John Brennan
John Brennan, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

ss.

CERTIFICATE

I, John Brennan, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 6th day of December, 2016.

John Brennan
John Brennan, City Clerk

AGREEMENT CONCERNING THE PURCHASE OF ART BETWEEN THE CITY OF FORT MORGAN AND THE FORT MORGAN HERITAGE FOUNDATION

THIS CONTRACT is made and entered this 15th day of DEC., 2016, by and between **The Fort Morgan Heritage Foundation** (hereinafter the "Heritage Foundation"), and **The City of Fort Morgan, Colorado**, a Colorado municipal corporation and political subdivision of the State of Colorado, (hereinafter "City"), for the purchase of art to be displayed within the City of Fort Morgan upon the terms and conditions set forth in this **Contract**, to wit:

Whereas, The City has appropriated monies for the purchase and/or development of art to enhance the downtown area of the City of Fort Morgan; and,

Whereas, the Heritage Foundation's mission statement is to preserve the history and culture of NE Colorado through collecting, interpreting, researching, and exhibiting materials reflecting the diverse history and traditions of the area; and,

Whereas, the City and Heritage Foundation have been researching opportunities to obtain sculpture artwork by various artists with ties to the local area or sculpture artwork that will provide cultural enhancements to the downtown area of the City, specifically in City Park; and,

Whereas, the City and Heritage Foundation understand that by partnering together to obtain art, their respective resources pooled together will provide for cost savings and the opportunity to obtain a larger collection of artwork; and,

Whereas, the City is limited by the Colorado Constitution which prohibits gifts from public entities to private entities, but does allow for public monies to be expended for public benefits; and,

Whereas, the City is nearing its 2016 fiscal year end in which monies were appropriated for the procurement of artwork for the City; and,

Whereas, the City is agreeable to providing funding to the Heritage Foundation on the condition that specific artwork is purchased or otherwise procured within a specific timeframe to be located within the City of Fort Morgan as designated herein.

Therefore, the City and Heritage Foundation agree as follows:

1. **Terms:** Parties agree to the following terms:

- (a) **Responsibilities of the City:** The City shall, within ~~THIRTY~~ (30) days of this Agreement, provide the Heritage Foundation funding in the amount of One Hundred Thousand Dollars (\$100,000).

- (b) **Responsibilities of the Heritage Foundation:** The Heritage Foundation shall contract or procure pieces of art to be installed by the City in locations at City Park in accordance with the following:
- a. The Heritage Foundation shall work with the City in determining the artwork to be obtained pursuant to this Agreement. On or before June 30, 2017, the Heritage Foundation shall finalize a proposal for artwork to be purchased or otherwise procured. Such proposal shall be submitted to City Council for approval.
 - b. All artwork purchased or procured pursuant to this Agreement shall be delivered to the City for installation no later than December 31, 2019 unless otherwise agreed upon differently by the Parties in writing.
 - c. The Heritage Foundation shall not expend the monies provided pursuant to this Agreement until such time the Parties agree to the artwork to be purchased or procured.

2. Termination or Breach: In the event that Heritage Foundation is unable to:

- 1) submit a proposal by the deadline above, or
- 2) purchase or procure the artwork by the date specified above, or
- 3) if the Parties cannot agree to the artwork proposed to be acquired;

the Heritage Foundation shall return the monies paid by the City within 30 days written notice from the City.

3. Not Assignable: This Agreement shall not be assignable by the Heritage Foundation without the City's prior written consent. Except as so restricted, this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the Parties.

5. Ownership of Artwork: Once obtained and installed, the artwork obtained pursuant to this Agreement will belong to the City and the City shall be responsible for the maintenance, and insurance of the artwork in a matter to be determined solely by the City.

7. Recommendation of Legal Counsel: By signing this document, the Heritage Foundation and City acknowledge that this document has important legal consequences and that both have had the time to consult with legal counsel, if they so wished, before signing this Agreement.

8. Choice of Law: This Agreement shall be governed by Colorado Law, venue in Morgan County, Colorado. In the case of a dispute, Parties agree that they shall be responsible for their own attorney fees.

10. **Notice:** Any notice to the Heritage Foundation shall be effective when received by a Board Member. Any notice to City shall be effective when received by the City Manager or his appointed designee.

11. **Entire Agreement.** This Agreement constitutes the entire contract between the Parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. Any amendments hereto must be in writing signed by both parties.

City of Fort Morgan, Colorado

By: 
Ronald Shaver, Mayor

Fort Morgan Heritage Foundation

By: 
_____, Board President

REVIEWED BY CITY ATTORNEY

