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# ART DONATION AGREEMENT

THIS AGREEMENT is made this 18th day of May, 2015, by and between Thornton Family Foundation ("Donor"), Fort Collins Area Swim Team ("Donating Entity") and CITY OF FORT COLLINS, a Colorado municipal corporation ("City").

WHEREAS, the Donor, Donating Entity, and the City believe public art is a tremendous asset to the community; and

WHEREAS, the Donor desires to commission an artist to create a work of art ("Project") which he/she wishes to donate through Donating Entity to the City for use as public art and which is more specifically described or depicted on EXHIBIT A hereto attached; and

WHEREAS, Donor is anticipated to enter into an agreement with Donating Entity for coordinating commission of the Project with an artist and facilitate donation of the Project to the City, a copy of which is attached hereto as EXHIBIT B; and

WHEREAS, Donor and/or Donating Entity are anticipated to enter into an agreement with an artist for the Project, with such agreement to substantially conform to the requirements of this Agreement; a copy of an acknowledgment by the selected artist with regard to that alignment of agreements is attached hereto as EXHIBIT C; and

WHEREAS, the City is willing to accept the donation for the City's Art in Public Places (APP) program, under the terms and conditions herein set forth.

NOW THEREFORE, the parties agree as follows:

1. Donor through Donating Entity, has or shall acquire commitments from the selected artist as set forth in this Section 1, and Donor and Donating Entity irrevocably, assign, transfer and convey to the City the Project described or depicted on EXHIBIT A attached hereto and all such associated rights and assurances.

The donation is for use as public art within the City and shall be effective as of the date above.

a. Project is Unique. Artist shall represent and warrant the Project is artistically unique. The design must be picture-based, not word-based. Any text included in the design should be incidental to the design and not the focal point of the design. Text cannot be over 3" in height. The City will not accept designs that include logos; copyrighted or trademarked images; advertisements; or political, commercial, religious, or sexual symbols, themes or messages.

b. Copyright. Artist shall assign, transfer, and convey to Donor through Donating Entity all right, title and interest in and to the Project, together with the copyright therein in accordance with Title 17 of the United States Code, the Copyright Law of the United States. This assignment, transfer and conveyance shall include, without limitation, any and all features, sections, and components of the Project, any and all works derived therefrom, the United States and worldwide copyrights therein, and any renewals or extensions thereof, and any and all other rights the artist has or to which the artist may become entitled under existing or subsequently enacted federal, state, or foreign laws, including, but not limited to the following rights: to reproduce, publish, and display the Project publicly, to prepare derivative works of and from the Project, to combine the Project with other materials, and to otherwise exploit and control the use of the Project.

c. Project Preservation. The Project will be placed, subject to approval by the

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City Art in Public Places Board, outside the Eudora Pool and Ice Center (EPIC), located at 1801 Riverside, Fort Collins, Colorado. The Donor acknowledges the City has discretion over the ultimate location and duration of the Project's display at the site. To the extent the use or removal of the Project, at EPIC or otherwise, affect any rights the commissioned artist may have under the provisions of federal or state law, including the 1990 Visual Artists' Rights Act, the Donor through Donating Entity shall secure knowing waiver by the artist of any rights of preservation of the Project provided by those laws.

d. Attribution. As consideration for assignment of these rights and waivers, the City agrees that any two-dimensional reproduction of the Project by the City shall credit the Donor, Donating Entity, and artist.

e. Third-party Reproduction. With the exception of the rights to be granted back the artist in Section 6 below, Donor through Donating Entity shall secure commitment from the artist that he/she shall not make or knowingly permit others to make reproductions of any size of the Project for any purposes without the written permission of the City.

2. City agrees and does hereby accept the donation, conditioned on the conditions described in this Section 2, and further agrees the donated work of art will be displayed pursuant to the City's Public Art Program guidelines.

a. The Donor and Donating Entity shall notify the City and request review and approval of each i) a maquette of the artwork, if created, ii) the full-sized clay sculpture of the work prior to bronze casting, and iii) the final bronze, stone and glass artwork prior to installation.

- City shall examine the artwork at the artist's studio and issue approval as appropriate within twenty (20) days of receiving notice.
- City approval shall not be deemed granted upon delay in City scheduling examination or issuing approval of any portion of the artwork.

b. Upon completing fabrication of the artwork, Donor and Donating Entity shall submit to the City for approval a copy of engineered footing drawings. Installation of the Project shall not proceed until the City has issued approval of the engineered footing drawings.

- Within thirty (30) days after receiving the engineered drawings for review, the City will arrange an on-site meeting with the Donor, the Donor's consulting engineer with specialty in soils and foundations, and City staff to examine the proposed installation site and determine the steps to prepare the site for installing the artwork. A proposed drawing of the installation site is included in EXHIBIT A.
- After the meeting specified in this Subsection 2.b., the Donor shall submit a revised drawing of the installation site, incorporating City requirements. Updated final engineered drawings as approved by City shall be incorporated into EXHIBIT A.

c. Within thirty (30) days after the on-site meeting described in Subsection 2. b., the City will authorize Donor to schedule installation of the Project as permitted under local codes and weather conditions.

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d. The Donor and/or Donating Entity must notify the City when the Project is fully installed and complete. No more than thirty (30) days after receiving such notice, the City will provide the Donor and Donating Entity with a written response, informing the Donor and/or Donating Entity that either:

- the City agrees the Project is complete consistent with the terms of this Agreement, all other related work is completed in accordance with this Agreement, and the City formally accepts the Project as completed ("Letter of Acceptance"); OR
- the City does not consider the Project to be completed due to unresolved issues or defects that remain, and describing the outstanding issues or defects which the Donor and/or artist must then cure before the City will issue a Letter of Acceptance.

e. The Project is not finally complete for purposes of this Agreement until the City has issued a Letter of Acceptance. Once the City has issued a Letter of Acceptance the City will be the sole owner of the Project, and the Donor and Donating Entity will have no further obligations under this Agreement, except as to maintenance, as set forth in Section 4.

3. City shall not sell or otherwise dispose of the Project without providing Donor through Donating Entity with a right of first refusal to reacquire the Project pursuant to terms and conditions as may be established by the City.

4. For a period of ten (10) years, the Donor through Donating Entity shall perform regular, ordinary maintenance on the Project at Donor's or Donating Entity's sole expense, including annual cleaning and waxing by the artist and his assistant. All such cleaning shall be coordinated in advance and subject to APP approval, prior to commencement of the work.

5. After the 10-year period specified in Section 4 above, annual maintenance will be performed by the City at the City's expense. City will provide the same care to the Project that the City provides for comparable property of its own. Precautions will be taken to protect objects from vandalism, fire, theft, mishandling, dirt, and insects. It is understood by the Donor, Donating Entity and the City that all tangible objects are subject to gradual inherent deterioration for which neither party is responsible.

6. City will grant to the artist the following rights in and to the Project:

a. the non-exclusive right to make two-dimensional reproductions of the Project for non-commercial, promotional purposes, provided that any such reproduction includes a clear statement approved by the City identifying the location of the Project, acknowledges the City and the Art in Public Places Program, and contains a copyright notice; and

b. the exclusive right to create and reproduce derivative artworks depicting characters, images and/or themes that are similar, but not identical, or on a smaller scale to those depicted in the Project, in any form and for any purpose except to the extent prohibited by paragraph 1, above.

7. City, in accepting the donated art work, has made no determination of the value of the Project, and makes no representations or assurances as to the value of the Project, for tax purposes or otherwise.

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8. This Agreement, when executed, shall be fully binding upon and inure to the benefit of the respective parties, their heirs, successors and assigns.

9. Any notice or other communication required or permitted hereunder shall be in writing, including email, and shall be deemed to have been given if placed in the United States mail, registered or certified, postage prepaid, or electronically transmitted, addressed as follows:

To DONOR:
George C. Thornton III
Thornton Family Foundation
Address: 1304 Steeplechase Dr.
Fort Collins, CO 80524
Telephone: (970) 482-1818

To CITY:
Ellen Martin
Lincoln Center
417 W. Magnolia Rd,
PO Box 580 Fort Collins, CO 80521
(970) 416-2789

To DONATING ENTITY:
Lance J. Holter
Fort Collins Area Swim Team
Address: 1112 Oakridge Dr. Suite 104 – PMB #270
Fort Collins, CO 80525
Telephone: (970) 372-2744

Any changes to the above addresses should be made in writing, in accordance with the terms of this provision.

10. This Agreement shall be governed by and construed pursuant to the laws of the State of Colorado and the parties agree that venue with respect to any dispute or litigation shall be in Larimer County, Colorado.

11. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein and the same shall be enforceable to the fullest extent permitted by law.

12. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as transmission of an original.

13. This Agreement may be executed in several counterparts, including exhibits, and all documents so executed shall constitute one agreement which shall be binding on all parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

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14. This Agreement contains the entire understanding among the parties. All prior negotiations have been merged into this Agreement and there are no understandings, representations, or agreements, oral or written, express or implied, other than those set forth herein. This Agreement shall not be modified or amended except by an agreement in writing signed by the parties.

15. No consent or waiver, express or implied, by either party, to or of any breach or default by the other in the performance by the other of its obligations hereunder, shall be deemed or construed to be a consent or waiver to, or of, any other breach or default in the performance by such other party hereunder. Failure on the part of either party to complain of any act or failure to act of any other party, or to declare any other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

16. Should any litigation be commenced between the parties to this Agreement, the prevailing party in such litigation shall be entitled, in addition to such other relief as my be granted, to a reasonable sum as and for its attorneys fee in such litigation, including it actual costs and out of pocket expenses, which shall be determined by the court in such litigation brought for that purpose.

17. The parties hereto agree to execute and deliver any additional document that may be reasonably required to complete and execute the responsibilities of the parties as set forth herein.

[Signatures appear on the following page]

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IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CITY OF FORT COLLINS, COLORADO
a Colorado municipal corporation

DocuSigned by:
Gerry Paul
A9D0A054C8CB45D...

By: _____
Gerry Paul
Director of Purchasing & Risk Management

ATTEST:

DocuSigned by:
Wanda K. Nelson
90AD7570EFE74BC...

_____
City Clerk

Approved as to form:

DocuSigned by:
Cyril Vidergar
0F52A89A45EB481...

_____
Assistant City Attorney

DONOR:
Thornton Family Foundation

DocuSigned by:
George Thornton
3F8216065BD5461...

By: _____
George C. Thornton III
Trustee
1304 Steeplechase, Dr.
Fort Collins, CO 80524

DONATING ENTITY:
Fort Collins Area Swim Team (FAST)

DocuSigned by:
E2141589C416430...

By: _____
Lance J. Holter
FAST Board President
2718 Rochdale Ct.
Fort Collins, CO 80525

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**EXHIBIT A**
Description of Project

EPIC Art Donation

# "Master Swimmer" by Sutton Betti

Donation by the Thornton Family Foundation through FAST

Concept Drawing for "*Master Swimmer* " by Artist Sutton Betti

The drawing depicts the proposed sculpture of a life-sized swimmer to be located near the front entrance of EPIC. The bronze sculpture will be supported by sandstone slabs with a one-inch layer of glass to depict the water level. The slabs will be mounted on a concrete base. The sculpture is approximately 6' tall by 9' wide. (See rendering by artist Sutton Betti above)

The sculpture will be an inspiration to recreational and competitive swimmers and promote swimming in the Fort Collins community. Swim teams visiting Fort Collins from Denver, Wyoming, South Dakota, Nebraska and other states will be able to view the sculpture as they attend swim meets at EPIC.

Artist Sutton Betti has completed similar figurative bronze sculptures. He is internationally known and has sculptures in Loveland and around the country.

This art donation is from the Thornton Family Foundation through Fort Collins Family Swim Team (FAST). Donor will sculpt, fabricate, install, and maintain the sculpture for ten years.

Estimated value of $35,000 with an additional $5,000 for maintenance/cleaning of bronze

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FAST Organization logo image will be added to swimmers swim cap, but will not include any text. Will not include the word FAST.

Proposed dimensions for *Master Swimmer*

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# EXHIBIT B

Donor/Donating Entity Contract

## Agreement for Commissioned Artwork
## (Revised by Thornton 12/24/2015)

This agreement is made effective this 20th of March, 2015 between **Sutton Betti** ("the **Artist**") PO Box 7635, Loveland, CO 80537 and **Fort Collins Area Swim Team**, also known as **FAST**, ("the **Purchaser**"), https://fortcollinsareaswimteam.org/, and the **Thornton Family Foundation** ("the **Donor**), % George Thornton, 1304 Steeplechase Drive, Fort Collins, CO 80524.

In this agreement, the Artist agrees to *design and create* the sculpture called "Master Swimmer" (hereinafter called "the Sculpture") for the Purchaser to be installed at EPIC in the city of Fort Collins, CO. The Sculpture will consist of a life size bronze swimmer, held up by two 6 feet tall sandstone blocks. The (2) sandstone blocks will each have a permanently mounted 1 inch thick glass sandwiched between the top and bottom portions. It will be the artists responsibility to: A) create the life size swimmer and cast in bronze with all the necessary stainless steel reinforcements, B) create the two sandstone blocks, C) create the 1 inch thick glass that will represent the water D) assist in the installation process and E) work with a structural engineer to create the necessary drawings for reinforcements for the Sculpture. The Artist will clean the sculpture once each year for years one and two. For the work listed the Purchaser will pay the Artist a total of $35,000.

Also, in this agreement, the Purchaser agrees to pay for the *pouring of the concrete* pad that will hold the Sculpture (measurement is yet to be determined). The Purchaser will be billed for this directly through the person doing the concrete work. The pouring of the concrete will be done between the dates of September 21-November 6, 2015, and the Artist agrees to oversee and manage this process. The cost of the concrete work will be approximately $1000.

The Purchaser agrees to pay for the *installation process* of the Sculpture and will be billed for this directly through the person or company handling the installation service. The cost of this service will be no more than $1800. The Sculpture will be installed no later than mid-December

The Purchaser agrees to pay for the cleaning of the sculpture once each year for years three through ten according to the following maintenance schedule:

---maintenance schedule---
2016-cold wax (Sutton)
2017-cold wax (Sutton)
2018-cold wax ($300 Debbie)
2019-cold wax ($300 Debbie)
2020-hot wax ($500 Debbie)
2021-cold wax ($300 Debbie)
2022-cold wax ($300 Debbie)
2023-cold wax ($300 Debbie)
2024-cold wax ($300 Debbie)

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3. **Date of Delivery.** The Artist agrees to have the completed Sculpture ready for installation no later than mid-December, 2015

4. **Authenticity.** It is understood by all parties that there will be no additional bronze castings made of the Sculpture. The Sculpture will be a one-of-a-kind.

5. **Ownership.** The Purchaser will donate the Sculpture to the City of Fort Collins and the Sculpture will be installed at EPIC. At this point, the Sculpture will be owned by the city of Fort Collins. The City of Fort Collins will own the Sculpture and may use the Sculpture and all images of the Sculpture for any promotion and advertising as deemed necessary or appropriate.

The Artist retains the rights to promote and advertise images of the Sculpture (through website, print, media, etc.) for the benefit of promoting his work. The Artist will affix his signature to the Sculpture in a location mutually agreeable to all parties.

**Artist Timeline for Master Swimmer**

| | |
|---|---|
| March 20, 2015 | Contract signed and dated, start armature and clay blockout (¼ payment due to Artist) |
| April 17-24 | Roughed in figure (recommended studio visit to make changes to pose, if necessary, and discuss musculature and details) |
| May 15-29 | 95% completion of figure. (recommended studio visit to make necessary changes to musculature, details, anatomy, face, etc.) |
| June 1-12 | Completion of clay original (recommended studio visit for approval) |
| June 15-26 | Deliver clay original to mold maker (¼ payment due to Artist) |
| July 6-17 | Molds delivered to foundry, order sandstone columns |
| July 17-November 6 | Foundry casting of figure, carve sandstone columns edges, glasswork |
| November 6-November 27 | Patina date |
| mid- December, 2015 | Installation (½ payment due to Artist) |

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**Delivery and Installation**

The bronze statue, sandstone columns and glass will be delivered by a qualified and insured entity, chosen by the Artist and Purchaser and installed on the same day as of delivery. The Artist and delivery/installation contractor will coordinate with the George Thornton and Ellen Martin and representatives she designates from the City of Fort Collins for placement of Sculpture. The delivery/installation contractor will carry his own installation insurance. The installation of the Sculpture will take place between late November and early December, 2015.

**Maintenance**

The Artist agrees to voluntarily clean and cold wax the Sculpture for the years 2016 and 2017 at no charge to the Purchaser or any entity. The following eight (8) years (from 2018-2025) the Purchaser will work directly with a specialist and independent contractor designated by the Artist for the annual maintenance of the Sculpture. The specialist will bill the Purchaser directly.

6. **Contract Acceptance**: By signing below, the parties agree to the terms and conditions of this agreement:

Artist Print Name ___ Sutton Betti

Artist Signature ____Sutton Betti

Date _____ March 20, 2015

Purchaser Print Name Lance J Holter – FAST Board President

Purchaser Signature Lance J Holter

Date 3/24/2015

Donor Print Name GEORGE THORNTON

Donor Signature [illegible]

Date 4/2/2015

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**EXHIBIT C**
Artist Acknowledgement

As the artist selected by Donor and Donating Entity, I ("Artist") acknowledge the Donor and Donating Entity have/will have entered into the foregoing agreement with the City regarding the donated artwork.

I acknowledge the requirements of that agreement, including those provisions in Section 1 a-e, as summarized below:

1. Project is Unique. The Project must be artistically unique, picture-based, any text included in the design should be incidental to the design and not the focal point of the design.

2. Copyright. Donor and Donating Entity shall be expected to be able to transfer all right, title and interest in and to the Project, together with the copyright therein to the City, including any and all features, sections, and components of the Project, any and all works derived therefrom, along with the following rights: to reproduce, publish, and display the Project publicly, to prepare derivative works of and from the Project, to combine the Project with other materials, and to otherwise exploit and control the use of the Project.

3. Visual Artists' Rights Act. To the extent the uses or removal of the Project under this Contract affect any rights Artist may have under the provisions of federal or state law, including the 1990 Visual Artists' Rights Act, the Artist hereby knowingly waives any rights of preservation of the Project provided by those laws.

4. Attribution. The City agrees that any reproduction of the Project by the City shall credit the Donor, Donating Entity, and artist.

5. Third-party Reproduction. With the exception of rights otherwise granted back to the artist, the artist shall not make or knowingly permit others to make reproductions of the Project for any purposes without the written permission of the City.

ARTIST:

DocuSigned by:

By: Sutton Betti
DCE44B1B9B8541D...

Name: Sutton Betti

Address: PO Box 7635
Loveland, CO 80537