



CITY COUNCIL STAFF REPORT

DATE: April 3, 2013

Consent Calendar

SUBJECT: APPROVE THE PUBLIC ARTS COMMISSION RECOMMENDATION TO ENTER INTO A GIFT AGREEMENT FOR DONATION OF ARTWORK BETWEEN THE CITY OF PALM SPRINGS AND KAREN AND TONY BARONE FOR THE SCULPTURE "R. HERO" VALUED AT \$16,500 TO BE PLACED IN FRONT OF FIRE STATION NO. 3 AT 590 EAST RACQUET CLUB ROAD.

FROM: David H. Ready, City Manager

BY: Community & Economic Development

SUMMARY

This action is to approve the recommendation by the Public Arts Commission to enter into a gift agreement with Karen and Tony Barone for the donation of the sculpture "R. HERO" valued at \$16,500 USD to be placed at Fire Station No. 3.

RECOMMENDATION:

1. Approve a Gift Agreement for Donation of Artwork between the City of Palm Springs and Karen and Tony Barone for the sculpture "R. HERO" in a form acceptable to the City Attorney;
2. Approve the recommendation to install the donated sculpture "R. HERO" at Fire Station No. 3, 590 East Racquet Club Road;
3. Authorize City Manager to execute all necessary documents.

STAFF ANALYSIS:

On September 13, 2012 at the Public Arts Commission meeting, Staff presented an Application for Donation of Artwork submitted by Karen and Tony Barone for the sculpture "R. HERO". The artwork is fabricated from solid aluminum with a clear-coat finish, painted blue with signature black Dalmatian spots, and is 6'-2" in size. The proposed sculpture donation is part of a series of aluminum Dalmatian puppy dog sculptures created to honor firefighters. Each Dalmatian is executed in a different brightly colored iridescent paint, finished with signature black Dalmatian spots and the name "R. HERO" on its collar. This unique series of sculptures have been created for installation at public sites (parks, museums, municipal buildings, fire stations, hospitals, schools, and other

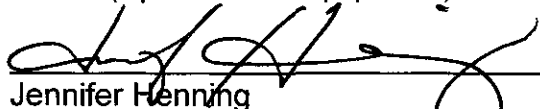
not-for-profits) as a means of honoring and bringing recognition to our valiant firefighters who save and rescue humans and animals alike.

The artists have "restricted" the purchase of the sculpture "R. HERO" to only those acquiring the work for donation for the "public good" and installation at an art-in-public-places site. The Artists have secured private funding for the donation of the sculpture with the cost of delivery, installation, and future maintenance costs to be paid for by the Public Arts Fund.


On October 11, 2012 the Commission voted on a resolution to recommend accepting the sculpture donation by Karen and Tony Barone, with the Public Arts Fund being responsible for delivery, installation and maintenance of the sculpture; and, installation of the sculpture "R. HERO" be located at Fire Station No. 3. After discussion a motion was made to accept the sculpture donation from artists Karen and Tony Barone as recommended in the resolution, motion carried unanimously with a 5/0 vote.

FISCAL IMPACT:

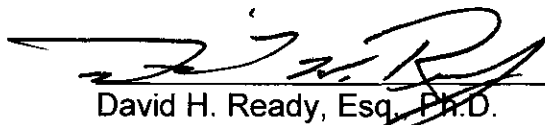
There is no impact to the General Fund. The estimated cost to install the sculpture is approximately \$8,000 which includes site preparation, artwork delivery and installation by an arts preparator. The costs shall be paid from Public Arts Account #150-30-4408-50015 (Specialized Equipment).



Jennifer Henning
Public Arts & Special Projects Coordinator



John Raymond
Director, Community and Economic
Development



David H. Ready, Esq., Ph.D.
City Manager

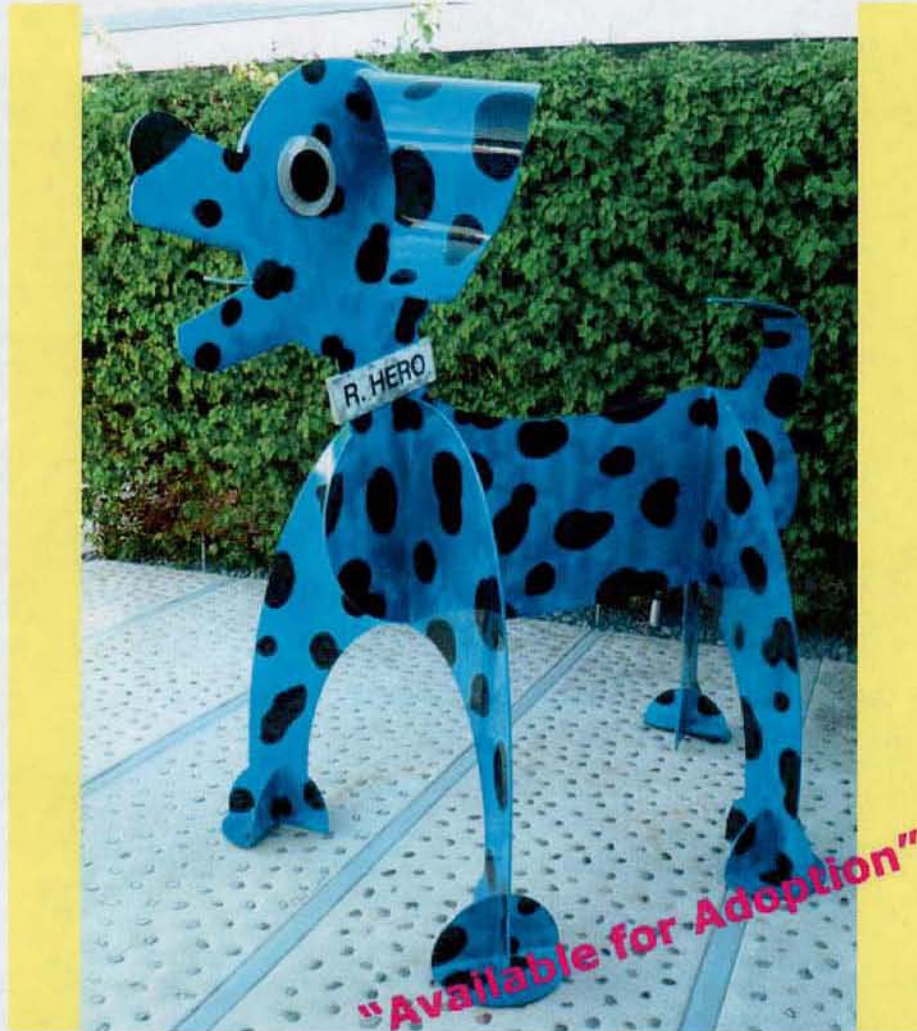
Attachments:

Donation Application

Memorandum to Chief Ventura

Transfer of Artwork Agreement

ARTWORK
"R. HERO"



RESPONSE TO:
CITY OF PALM SPRINGS PUBLIC ARTS PROGRAM
APPLICATION FOR DONATION OF ARTWORK

Application Procedures

(a) Sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork, to be donated.

Response: Proposed work was completed 2012 – photos attached.

(b) Additional samples of artist's work other than the proposed donation.

Response: A valid example of the artists' work can be seen installed at the Palm Springs Animal Shelter – photos of "Monsieur Pompadour" (pink poodle) and "Mademoiselle Coco" (Blueprint Siamese Cat) are attached as well as two Afghan sculptures, "Monsieur D'Or" and "Mademoiselle D'Argent", which were introduced at Fashion Week El Paseo 2012 and will be installed at the 2013/2014 El Paseo Invitational Exhibition in Palm Desert.

(c) Background information about the Artist who created the proposed donation.

Response: A one-page bio-overview of artists attached. For more background info, visit the artists' website: BaroneArt.com

(d) An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs, if available.

Response: Like size and quality pieces recently have been installed at two public sites in the valley: in the median strip adjacent to Historical Society of Palm Desert (\$15,000.) City installed - and in front of the Children's Discovery Museum of the Desert in Rancho Mirage (\$15,000.). Price a part of the public record.

(e) Provide a description of maintenance procedures to maintain first class appearance and permanence of the artwork.

Response: The work is solid aluminum with clear-coat finishes over automotive paints. The sculpture is to be cleaned with a mild soap and water and waxed periodically, very much like an automobile.

(f) 8" X 10" photographs, 35 mm slides, digital pdf or jpg formats, graphics, or illustrations depicting several views of the artwork.

Response: Multiple 8 ½ X 11 photographic views attached. Jpg available upon email request.

(g) Provide evidence that (i) the Art is original; (ii) at the time of transfer hereunder, Donor is the sole owner of the Art and of all rights it possesses therein including copyright, trademark, and other proprietary rights; (iii) Donor has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (iv) Donor is not under any obligation to transfer or sell any of the Art to any third party; (v) the Art has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark, or other proprietary rights therein; and (vi) the Art does not and will not infringe any patent, copyright, trademark, or other proprietary rights, privacy rights, or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Donor (or, insofar as Donor is aware, against any entity from which Donor has obtained any rights).

Response: (i) the work is hand-signed by the artists and conceptually consistent with other well published works by the artists (ii) there are 3 donors, each possessing a one-third "fractional participation" ownership valued at \$5,000. each (total value \$15,000.), having purchased the work directly from the artists. As a condition of the sale, the artists retain all copyrights.

A donor plaque acknowledging the generosity of the donors who are making this gift to the City of Palm Springs Public Arts Program is required to be installed in the vicinity of the artwork. In addition, the donors are to receive a letter that acknowledges the donation of this artwork.

Approval Criteria

(b) Artwork shall be a one-of-a-kind piece.

Response: The artwork is a one-of-a-kind hand-made original sculpture from a series created by the artists to honor firefighters. Each work is of a unique color and has unique physical properties.

(c) Artwork shall be appropriate in scale, material, form and content for the immediate, general, social and physical environments with which they relate. Consideration shall be given to structural and surface integrity, permanence, and protection against theft, vandalism, weathering, excessive maintenance and repair costs.

Response: The artists have studied and photographed the proposed site (fire station #4, and have deemed it appropriate in relevance, scale and visibility. The artists are impressed with the favorable site-lines afforded the work when it is placed in the center of the open space created by the street intersection and the firehouse.

Approval Procedures

- (a) The proposed donation will be considered at a monthly public meeting of the Palm Springs Public Arts Commission. A subcommittee may be designated to consider all details of the proposed artwork, if necessary.

Response: This Dalmatian sculpture can be installed in the same manner as the two Barone sculptures at the Palm Springs Animal Shelter. Both of those sculptures were installed on small individual concrete cylindrical pads – one for each paw. Each paw plate currently contains a single bolt-down hole (4 total). One or two additional holes may be added to each paw, rendering a total of 8 or 12 bolts securing the sculpture.

ABOUT THE ARTISTS

Karen & Tony Barone are a legendary artist couple working side by side in the execution of their very large-scale sculpture and paintings. This extraordinarily creative husband and wife team, whose works have been exhibited and acquired by individuals & corporate collections & museums worldwide, took a sequitous route before settling into their current studio in Rancho Mirage.

The Barones met in Chicago (where they were both born & raised) and achieved a high level of success: "Chicago was very good to us," exclaim the Barones. The next stop on their artistic and romantic journey took them to New York City where, as the Barones put it: "we got our stripes." Working out of their sprawling 4th floor loft, they were known as "Soho pioneers." A hillside studio on their horse farm in East Tennessee became their next artistic environ before heading west to become a powerful artistic presence disseminating art from their massive canal-side studio in Los Angeles' artist community of Venice Beach. Early in the new millennium, they moved their high voltage creativity to the Palm Springs California desert community of Rancho Mirage.

In recent years, **Karen & Tony Barone** have focused their indefatigable energy & passion on creating very large brightly painted metal sculptures which include puppy dogs, poodles & kitty cats, many of which are 6 to 9 feet tall, for placement in front of animal shelters and other public sites.

One of their special puppy dog projects is "**R. Hero**", a 6'-2" tall uniquely painted Dalmatian puppy sculpture honoring firefighters.

Karen & Tony Barone possess a formidable wit. They create mind-boggling larger-than-life works of art that challenge our sense of scale and spatial reality. They place us in an Alice-In-Wonderland state of mind.

For more about the art of Karen & Tony Barone: BaroneArt.com

©MMXII Karen & Tony Barone all rights reserved

**Application for Donation of Artwork
Proposed Artwork**

Proposed Donation: Giant blue Dalmatian puppy dog sculpture

Artists: KAREN & TONY BARONE

Address: Karen & Tony Barone - P. O. Box 2042 – Rancho Mirage, CA 92270
(Mailing address: 37081 Ferber Drive, Rancho Mirage, CA 92270)

Artist Phone: 760.333.8953

Artist Email: kt@baroneart.com

Title of Artwork: "R. HERO"

Media: The work is solid aluminum with clear-coat finishes over automotive paints.

Description of Artwork: 6'-2" tall Giant aluminum puppy dog sculpture painted bright blue with signature black Dalmatian spots.

Approximate Weight: 150#

Dimensions: 6'-2"H X 3'-7"W X 6'-10"L

Approximate Cost: \$15,000. plus \$1,162.50 sales tax. Total cost \$16,162.50

Location of Identification Plaque: In the vicinity of the artwork.

Description of Foundation: to be installed by the City in the same manner as the two Barone sculptures at the Palm Springs Animal Shelter. Both of those sculptures were bolted onto small individual concrete cylindrical pads – one for each paw.

Date of Installation: to be determined.

Landscape Plans: by the City

Special Problems: none

Maintenance and Conservation Plans: by the City

AGREEMENT FOR TRANSFER OF ARTWORK OWNERSHIP
City of Palm Springs Public Art Program

THIS AGREEMENT FOR TRANSFER OF ARTWORK OWNERSHIP AND ASSIGNMENT OF ALL RIGHTS IN ARTISTIC WORK (the "Agreement") is made and entered into as of this ____ day of _____ 20__, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation ("City"), and KAREN AND TONY BARONE ("Donor"). City and Donor are sometimes hereinafter referred to as "Party" and are hereinafter referred to collectively as the "Parties."

RECITALS

A. Donor desires to transfer ownership of artwork ("Art") to the City, and have such Art initially placed at the location of 590 East Racquet Club Road, Palm Springs, California, in accordance with this Agreement, and the City of Palm Springs Public Art Program as established by Chapters 2.24 and 3.37 of the Palm Springs Municipal Code ("Public Art Ordinance").

B. The City desires to accept the transfer of ownership of the Art in accordance with the terms of this Agreement and the Public Art Ordinance.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Description of Art.

The Art is described as follows: the sculpture titled "R. HERO" is fabricated from solid aluminum with a clear-coat finish, painted blue with signature black Dalmatian spots, and is 6'-2" in size, and is depicted in Exhibit "A", attached hereto and incorporated herein by reference.

Section 2. Initial Location of Art.

The Art will initially be placed at 590 East Racquet Club Road, Palm Springs, California, as shown on Exhibit "B", attached hereto and incorporated herein by reference. The City may, in its sole discretion, move the Art from its initial location at any time for any reason.

Section 3. City Representative.

For purposes of this Agreement, the contract administrator and City representative shall be the City Manager (hereinafter the "City Representative"). Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative.

Section 4. Transfer of Rights of Reproduction.

Donor hereby transfers all rights that Donor possesses of reproduction, as that term is defined in California Civil Code Section 982, in the Art, including but not limited to the right to claim statutory copyright in the Art and the right to reproduce the Art in any manner whatsoever for commercial and non-commercial purposes. Hereinafter, Donor shall not acquire or claim any rights in or to the Art, any uses, reproductions, or derivatives thereof or any proceeds therefrom. Moreover, Donor acknowledges and agrees that City, in its sole and exclusive discretion, may, among other acts, temporarily or permanently modify, alter, change, or destroy the Art, sell the Art, or relocate the Art from its initial location.

Section 5. City's Sole and Exclusive Ownership Rights.

Donor shall not retain ownership of or any right, title, or interest in any of the Art, including, but not limited to, in any related trademarks, copyrights, or other proprietary rights. The Parties agree that the Art and all such rights, title, and interest in or to the Art shall belong to and are being transferred and assigned in their entirety to the City for whatever use it desires, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all right, title, and interest in and to the Art worldwide, any modifications thereto and any derivative works based thereon (including, but not limited to, all patent, copyright, trademark, service mark, and trade secret rights held by Donor). Nothing contained herein shall be deemed to constitute a mere license or franchise in City. The Parties further agree that City will be free to use, modify, distribute, sell, license, or otherwise exploit all such Art and any modifications to or derivative works based thereon without any restrictions or limitations or any obligations or payments to Donor and that Donor shall have no such rights.

Section 6. Originality of Art.

Donor hereby represents and warrants that (i) the Art is original; (ii) at the time of transfer hereunder, Donor is the sole owner of the Art and of all rights it possesses therein including copyright, trademark, and other proprietary rights; (iii) Donor has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (iv) Donor is not under any obligation to transfer or sell any of the Art to any third party; (v) the Art has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark, or other proprietary rights therein; and (vi) the Art does not and will not infringe any patent, copyright, trademark, or other proprietary rights, privacy rights, or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Donor (or, insofar as Donor is aware, against any entity from which Donor has obtained any rights).

Section 7. Risk of Loss.

Donor bears the sole risk of damage to or loss of the Art until such Art is delivered to the City and installed to the satisfaction of the City.

Section 8. Attorneys' Fees.

In the event either Party shall commence any action against the other Party relating to this Agreement, or for the breach of any obligation contained herein, the prevailing Party shall be entitled to recover from the losing Party reasonable attorneys' fees, expenses, and court costs.

Section 9. Successors and Assigns.

The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest, and assigns of the Parties hereto.

Section 10. Entire Agreement.

This Agreement represents the entire integrated agreement between the City and the Donor, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both the City and the Donor.

Section 11. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Section 12. Governing Law; Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the Parties, venue in State trial courts shall be exclusively in Riverside County, California. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California.

Section 13. Execution.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

Section 14. Authority.

Each of the undersigned individuals represent and warrant that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not

violate any provision of any other agreement to which the Party for which he or she is signing is bound.

Section 15. Recitals.

The recitals above are hereby incorporated by reference in the Agreement as though fully set forth herein, and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

"CITY"
CITY OF PALM SPRINGS,
a California charter city and a municipal
corporation

DAVID H. READY, Esq., PhD.
City Manager

ATTEST:

JAMES THOMPSON
City Clerk

APPROVED AS TO FORM:

DOUGLAS C. HOLLAND
City Attorney

"DONOR"

Karen Barone

Tony Barone

EXHIBIT "A"
(ARTWORK)



EXHIBIT "B"
(THE SITE)

The recommended installation site for the sculpture "R. Hero" is at Palm Springs Fire Station Number 3 at the northwest corner of Racquet Club Drive and Via Miraleste.

EXHIBIT "B" (SITE)

The recommended installation site for the sculpture "R. Hero" is at Palm Springs Fire Station Number 3 at the northwest corner of Racquet Club Drive and Via Miraleste as indicated in the image below.

