

TOWN COUNCIL ACTION REPORT

January 3, 2019

Resolution Waiving the Formal Bid Process and Authorizing the City Manager to Negotiate an Agreement Through The Farnsworth Group for the Removal and Relocation of the Mural from 104 E. Beaufort Street and to Seek Indemnification for Any Associated Costs

PREPARED BY: Brian Day, Corporation Counsel

REVIEWED BY: Pamela S. Reece, City Manager

BUDGET IMPACT: The cost of relocating the mural is projected to be \$56,200 to \$81,560 plus transportation costs. The Town may seek to recover these costs from the former tenants of 104 E. Beaufort

STAFF RECOMMENDATION: Approval

ATTACHMENTS: Proposed Resolution; Proposal from the Farnsworth Group

BACKGROUND

In 2006, the Town bought buildings along East Beaufort Avenue in anticipation of future redevelopment as part of the Uptown Renewal Plan. These buildings included 102 and 104 E. Beaufort, which were two attached buildings. The building at 102 East Beaufort was formerly occupied by the Illinois Construction Company and was razed in 2007 due to its dilapidated condition.

In 2011, the Town granted a license for 104 E. Beaufort to The Pod for use as a retail establishment. The lease was intended to allow an interim use of the building until such time that it would be demolished for the planned redevelopment.

The 2011 Pod lease contains an indemnification provision. The tenant must indemnify and defend the Town against any claim or loss resulting from the tenant's use of the property, including trademark, copyright, and similar claims. This provision specifically states that it survives the expiration or termination of the license.

Shortly after the lease began, the Pod coordinated the painting of a mural on the west exterior wall of the building. Prior to the demolition of 102 E. Beaufort, that west wall of 104 E. Beaufort had never been exposed to the elements but rather functioned as an interior wall between adjacent buildings. The mural was organized exclusively by the tenant, it was not a Town project.

The tenant left the property in 2017, and it has been vacant since.

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In 2018, the Town authorized the redevelopment agreement with Bush Development LLC to develop a multi-use property along the northeast quadrant of the roundabout, between Beaufort and College. After that Council action, the Town was notified that some of the mural painters were interested in asserting rights under the federal Visual Artists Rights Act (“VARA”). That statute is part of federal copyright law, and it prevents one from altering or demolishing a work of visual art in a manner that would discredit the artist.

The nature and extent of any VARA rights are less than certain, given the fact that the mural was painted on a wall that was intended to be temporary, that both the mural and the wall that it is painted on are in disrepair. The brick requires tuck-pointing, and some of the mural paint is peeling. The brick wall is not in proper condition to support the mural remaining intact for much longer. As such, if the building were to remain intact, the wall would be tuck-pointed resulting in the loss of the mural.

Town Staff are looking at various options for resolving this matter. One such option is for the Town to move the mural. VARA contains no rights of display in a particular location or of ownership. The Town can move the mural without any penalty.

The Town has obtained a proposal from the Farnsworth Group for the mural to be separated in the demolition process and moved to a different location. The cost for this process is \$56,200 - \$81,560 plus transportation cost. Any costs incurred to prepare a new site to accept the mural are excluded from this proposal.

With this proposal, the Town can reserve this as an option to avoid any unnecessary delay in the development project.

DISCUSSION/ANALYSIS

The proposed resolution authorizes the City Manager to negotiate and execute a contract for the removal of the mural based on Farnsworth’s proposal. Moving the mural would be done only if the City Manager determines that it is the most effective option available for the redevelopment project. Over the next few months, staff will continue working closely with Bush Development LLC to finalize the project details and approval processes. In addition, Town legal counsel will be coordinating the future of the mural to ensure no obligations or property rights are overlooked.

The proposed resolution also authorizes Town staff to institute any appropriate action to recover costs under the provisions of the 2011 Pod license. Because the mural was organized by the tenant, the Town does not have a comprehensive list of who painted the mural, nor does it know whether the tenant obtained any waivers or releases as part of its mural project. If the tenant encumbered Town property by failing to get the necessary waivers, then it would be appropriate to invoke the indemnification provisions that the tenant agreed to in the license contract.

The Town would not seek to move the mural unless the demolition of the mural would subject the Town to unacceptable liability or unnecessary delay in the redevelopment project. Providing for this option now will allow for the appropriate planning and scheduling of the redevelopment project.

RESOLUTION NO. _____

RESOLUTION WAIVING THE FORMAL BID PROCESS AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT THROUGH THE FARNSWORTH GROUP FOR THE REMOVAL AND RELOCATION OF THE MURAL FROM 104 E. BEAUFORT STREET AND TO SEEK INDEMNIFICATION FOR ANY ASSOCIATED COSTS

WHEREAS, the Town of Normal is a home rule unit of local government with authority to legislate in matters concerning its local government and affairs; and

WHEREAS, the Town has entered into a redevelopment agreement for the Trail East Project, which includes the demolition of the vacant building located at 104 E. Beaufort Street, which the Town owns; and

WHEREAS, a prior tenant of the 104 E. Beaufort Street organized a mural, painted on the side of the building by various painters, possibly without obtaining appropriate waivers under federal copyright law; and

WHEREAS, to avoid any unnecessary delay in the Trail East Project, the Town may consider removing and relocating the mural to avoid any potential copyright claims; and

WHEREAS, the Town obtained a proposal through the Farnsworth Group for the removal and relocation of the mural; and

WHEREAS, it is in the best interests of the health, safety, and welfare of the citizens of Normal to waive the formal bid requirement and authorize the City Manager to execute a contract for the removal and relocation of the mural, as necessary, and to authorize Town Staff to pursue any appropriate remedy for any inappropriate encumbrances placed on Town property.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SECTION ONE: That the formal bidding process is waived, and if the City Manager determines that the removal and relocation of the mural is in the best interest of the furtherance of the Trail East Project, then the City Manager is authorized to negotiate and execute a contract based on the proposal by The Farnsworth Group LLC that was presented before the meeting of the Mayor and Board of Trustees at which this resolution is approved.

SECTION TWO: That Town Staff is authorized and directed to pursue indemnification and other appropriate remedies to reimburse the Town for costs associated with the placement of the mural on 104 E. Beaufort.

SECTION THREE: That, upon execution thereof, any contract executed under Section 1 shall be attached as an exhibit to this resolution, but any failure to so attach does not abrogate, diminish, or impair the effect of the contract as executed.

ADOPTED this ____ day of _____, 2019.

APPROVED:

President of the Board of Trustees
of the Town of Normal, Illinois

ATTEST:

Town Clerk
(Seal)

Proposal

Town of Normal

Moving the Uptown Mural

December 19, 2018

December 19, 2018

Town of Normal
1 Uptown Circle – Second Floor
Town of Normal, Illinois 61761

Re: Proposal to Move the Uptown Mural

Town of Normal:

FARNSWORTH GROUP, Inc. is pleased for your consideration of this proposed form of agreement for architectural services. If you need additional information or have any questions, please don't hesitate to call. Once again, thank you for the opportunity to be of continued service to the Town of Normal with regard to moving the Uptown Mural.

Project Description

We understand that this project is intended to make a clear proposal for a study of the existing condition of the masonry wall and potential moving of the mural. We understand the Town's desire to keep the mural intact and relocate the piece in its entirety. This proposal accommodates two (2) scopes of work—a physical examination of the existing condition of the masonry and a proposal to stabilize and move the section of the masonry wall including the Uptown mural.

Scopes of Services

The initial phase of work is focused on a general field study followed by a more detailed evaluation of measures recommended to address issues related to the condition of the masonry wall. It is understood that subsequent phases of moving the masonry wall are anticipated as a potential extension to this project.

- 1. Field Study-** Field study of the masonry wall by architecture and structural engineering disciplines from Farnsworth Group. This may be extended to include invasive testing of the wall by a sub-contractor with expertise in existing building masonry at additional cost.

Scope of Work:

- Review existing drawings and applicable documents
- Existing structures inspection by architecture and historic preservation specialist team
- Structural inspection of the masonry wall
- Photo documentation of findings and direction for repair

Subsequent Scopes of Services

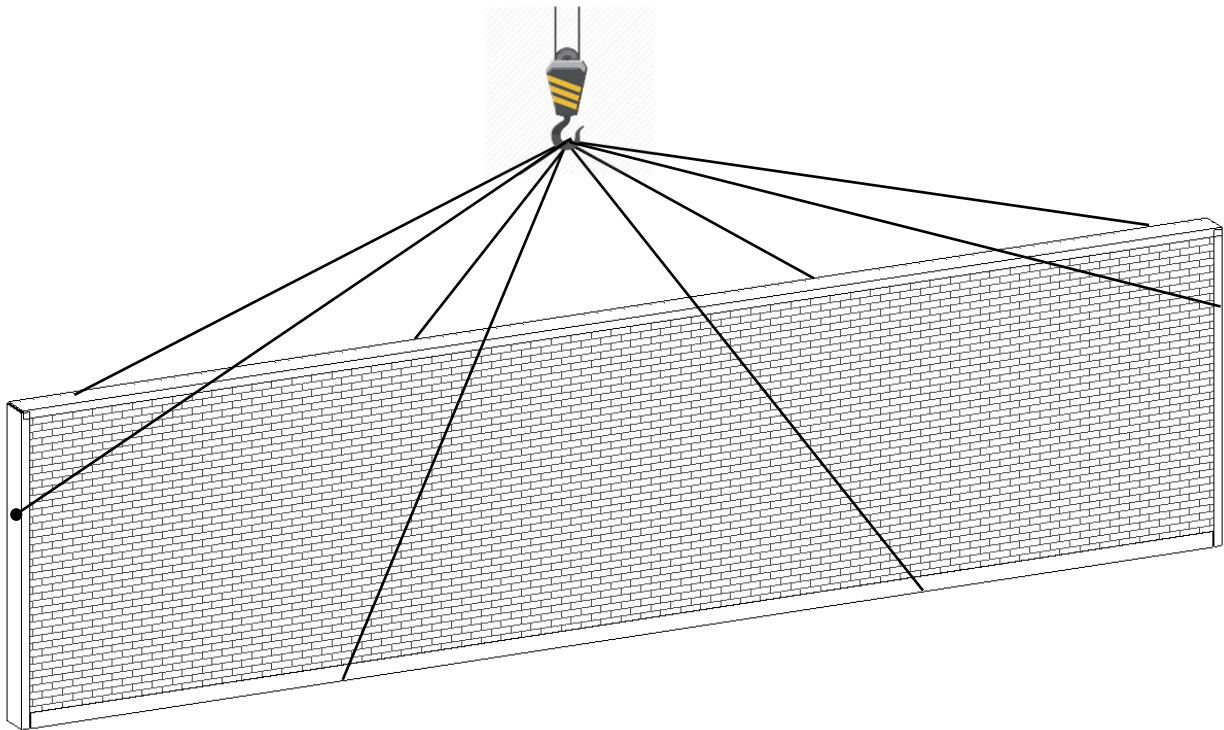
Upon completion of the initial phase of evaluation, work to move the portion of the masonry wall that contains the mural may be conducted. This work will likely include tuckpointing and stabilization that will not detriment the mural. The items under this scope will be directed by Farnsworth Group, Inc. and conducted by a contractor who is familiar with existing building masonry repair and the moving of existing buildings.

2. Stabilization and Moving the Wall

Scope of Work:

- Tuckpointing deteriorated or unstable portions of the inside of the brick wall based upon Field Study findings. It may be possible to remove the back wythe of brick to reduce the weight and cost of moving the wall. The full wall is roughly 400 cubic feet but could be reduced to 260 cubic feet with the wythe removal upon assessment of its condition and structural stability.
- Once the portion of the wall that contains the mural is freestanding (following removal of the building not in this proposal), the wall will receive steel channels on the top and sides. The lower portion of the wall will be cut free and framed with steel angles. See image below. There is potential that more reinforcement is needed.
- Once framed the section of wall will be crane lifted to a flatbed truck and removed from the site. Transportation is not included in this proposal.

Masonry repair costs will be assessed on the basis of field study of conditions to determine the extents of stabilization efforts. These scopes of service are to be performed by a subcontractor with expertise in masonry repair and moving of masonry walls.



Optional Services

The following services are available from Farnsworth Group, however have not been included in this proposal:

- Multiple revisions or changes in scope of the project.
- Develop updated drawings to graphically convey assumptions made.
- A/E Design services beyond general or selected priority phases.
- Surveying/Civil design services.
- Development of renderings or presentations.
- Transportation of the masonry wall to a new location.

FARNSWORTH GROUP, Inc. will provide Optional services listed above, and other Additional Services not listed, as requested and approved by Owner's Representative on a Time & Materials basis.

Proposed Fees

Services are provided for the estimated fees below:

Field Study by Historic Preservation Specialist and Structural Engineer (Time and Material Not to Exceed)	\$5,000
Brick stabilization (\$2.50/SF-\$3.25/SF for 400 SF)	\$1,200-1,560
Moving of brick wall including steel, crane, labor to move 40,000-60,000 lbs of brick wall intact	\$50,000-75,000
TOTAL	\$56,200-81,560

Owner Responsibilities

The following services must be provided by Town of Normal to allow Farnsworth Group to complete to scope of services outlined above:

1. Provide timely response to requests for information.
2. Provide confirmation, when requested, for further testing or invasive work as required.

Schedule

We understand that, while no definitive schedule has been developed, this project is subject to the schedules of all parties involved. To that effect, we propose that the work commence in conjunction with the demolition of the 104 E. Beaufort Street Building in Uptown Normal.

Agreement

We understand that the Town of Normal may choose to only partake of the initial scope. Subsequent scopes may be completed at a later date for the fees agreed upon above. This Proposal will serve as form of Agreement effective this 19th day of December in the year 2018 between Farnsworth Group, Inc. hereinafter referred to as FGI, of Normal, IL and the Town of Normal hereinafter referred to as the CLIENT.

This signed proposal and the attached General Conditions, which include additional language tailored for architectural and planning projects, in conjunction with the Continual Service Agreement originally approved on January 3, 2011 and renewed on January 20, 2015 between FARNSWORTH GROUP, Inc. and the Town of Normal represent the entire and integrated Agreement between FARNSWORTH GROUP, Inc. and the Town of Normal. If the terms of this proposal are agreeable, please indicate your acceptance by returning a signed copy to my attention.

Sincerely,

FARNSWORTH GROUP, INC.



Signature

AnnaMarie R. Bliss, Assoc. AIA

Typed Name

Historic Preservation Specialist

Title

December 19, 2018

Date

FARNSWORTH GROUP, INC.



Signature

John E Bishop Jr., AIA, LEED AP

Typed Name

Senior Architectural Manager

Title

December 19, 2018

Date

Town of Normal



Signature

Typed Name

Title

Date