

RESOLUTION NO. 2019-12

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE ARTWORK PURCHASE AGREEMENT WITH SILAS EDUCATION

WHEREAS, the City Council of the City of Benton City adopted a policy for the public display of works of art within City facilities via Resolution 2016-16; and

WHEREAS, the art policy requires that the City determine, in its sole discretion, which artwork shall be displayed within a City facility; and

WHEREAS, the City has determined that the artwork presented by SILAS Education, an orbital marker for the planet Uranus, is consistent with the goals of the City and the art policy evaluation criteria; and

WHEREAS, the art policy requires that the City enter into an agreement with an artist before artwork is placed within a City facility; and

WHEREAS, the City has modified the sample Artwork Use Agreement attached to Resolution 2016-16 to set forth the terms and conditions as mutually agreed to by the City and SILAS Education as the Artwork Purchase Agreement, attached hereto as Exhibit A; and

WHEREAS, the City Council of the City of Benton City desires to enter into the Artwork Purchase Agreement with SILAS Education. NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the Artwork Purchase Agreement between the City of Benton City and SILAS Education; a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and to take all necessary steps required to complete this transaction.

ADOPTED this 2nd day of July 2019, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 2nd day of July 2019.

Resolution 2019-12 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 2nd day of July 2019.



Linda Lehman, Mayor

Attest:

Approved as to Form:



Stephanie Haug, MMC
City Clerk/Treasurer



Kerr Ferguson Law, PLLC
City Attorney

ARTWORK PURCHASE AGREEMENT

THIS ARTWORK PURCHASE AGREEMENT ("Agreement") is made this 3rd day of July, 2019, by and between SILAS Education, a Washington nonprofit corporation ("Artist") and the City of Benton City, a Washington municipal corporation ("City").

WHEREAS, the City desires to purchase and display artwork created by the Artist for use as part of the City park space; and

WHEREAS, Artist desires to allow the City the purchase of certain artwork ("Artwork"), and the City desires to accept such Artwork from Artist, pursuant to the City's policy regarding the display of Artwork on property controlled by the City; and

WHEREAS, the parties desire to set forth the terms and conditions of the Artwork in this Agreement.

NOW, THEREFORE, for and in good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **The Artwork.** Artist agrees to sell, and the City agrees to purchase, a certain piece of art as is described and identified in Exhibit A to this Agreement.
2. **Placement of Artwork.** Artist agrees to construct, install, and place the following described pieces of art for display pursuant to Parties' intentions as expressed in the Recitals of this Agreement. The actual location of the Artwork is to be determined by separate arrangement. The Artist will also perform all work necessary to prepare the site for the construction, installation and display of the Artwork.

The artwork subject to this Agreement is described as follows:

Title/Description of Artwork

An orbital marker for the planet Uranus, consisting of steel components over a basalt column, further described in Exhibit A.

3. **Value of Artwork.** The Artist claims that a reasonable estimate of the total value of the Artwork, including all materials attached to or part of said Artwork, is estimated to be \$ 1,742.80. The City makes no representations, warranties or guaranties relating to the value of such Artwork.

4. **Consideration.** In exchange for both the purchase of the Artwork and Artist's performance of services pursuant to this Agreement, the City agrees to pay Artist the sum of Four Thousand, Three Hundred and Forty-Four Dollars and 00/100 cents (\$4,344.00). This sum shall be payable to Artist within 30 days of a timely-submitted invoice after the completion of those services pursuant to this Agreement. Artist agrees that this sum is the total payment for all

Artwork and all services completed pursuant to this Agreement, and that the parties may only modify the contract price pursuant to Section 13 of this Agreement.

5. **Term.** The term of this Agreement shall commence effective July 3, 2019, and shall terminate upon completion of the Artwork installation, except as provided in Section 16 of this Agreement.

6. **Warranty: Title.** The Artist warrants that the Artwork is an original and that the work does not infringe upon any copyright. Artist further warrants that it solely owns title and all rights to the Artwork. After acceptance, exclusive title and all of the Artist's rights to the Artwork that is the subject of this Agreement shall be the exclusive property of the City.

7. **Liability Release.** Artist acknowledges that the Artwork will be displayed in an area open to the public and will be subject to inherent risks associated therewith. The City shall not be liable for any injury to Artist, their personnel, agents or employees, equipment or other personal property, at any time, including during the installation, mounting, and/or any other activities involved in the preparation and/or presentation of the Artwork. Artist agrees to assume all risk of damage to or loss of the Artwork from whatever cause until the Artwork is accepted by the City. Artist further agrees to release and to hold harmless the City, its officers, directors, employees, volunteers and agents from any and all liabilities and damages to Artwork, property, and/or persons as a result of any part of City's use of Art.

8. **Insurance.** Artist shall be solely and exclusively responsible to properly and accurately obtain insurance for their property prior to acceptance by the City. Artist may obtain such insurance at their own discretion. City shall in no way be responsible to obtain insurance for Artwork. Artist shall not be designated as an additional insured of any policy of the City.

9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, and all of which together will constitute one and the same instrument.

10. **Governing Law.** This Agreement is governed by and shall be construed according to the laws of the State of Washington. Venue for any dispute arising hereunder shall be in Benton County, Washington.

11. **Dispute Resolution.** In the event of a dispute regarding the enforcement, breach, default or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by binding arbitration pursuant to RCW 7.04A, as amended, and the Court Rules of Mandatory Arbitration (MAR), with both parties waiving the right of a jury trial upon trial de novo, with venue placed in Benton County, Washington. The substantially prevailing party shall be entitled to its reasonable attorney fees and costs as additional award and judgment against the other.

12. **Assignment.** Neither Party shall assign or transfer any of its rights or obligations under this Agreement nor any attempt to do so shall be void and of no effect.

13. **Entire Agreement; Amendment.** This Agreement sets forth the final and entire Agreement between the parties hereto and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. No amendment or modification of this Agreement will be effective unless in writing and signed by the City and Artist. Claims by Artist pursuant to this Agreement must be submitted to the City within thirty (30) days after the loss or claim suffered by Artist arises; otherwise, the claim is deemed waived.

14. **Display.** Artist agrees to construct, install, pack, and transport the Artwork at its own risk and expense.

15. *Reserved.*

16. **Indemnification.** Artist shall protect, defend, indemnify and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, liabilities, judgments or awards of damages, including attorney's fees, arising out of or in any way resulting from Artist's and/or Artist's officers' agents', employees', and subcontractors' performance of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

17. **Public Art Display Policy.** By execution of this Agreement, both Parties agree to comply with all provisions of the City's Public Art Display Policy. Artist contractually agrees to abide by all provisions within the Public Art Display Policy, including those that refer to the types of content that are prohibited from display within certain City facilities, due in part to the presence of certain age-specific audiences (children). Artist further agrees, that the City's agreement to the display of Artist's Artwork within City facilities, does in no way constitute the creation of a public forum.

18. **Notices.** All notices required or allowed to be given pursuant to this Agreement shall be in writing, and either (i) delivered in person to the party; or (ii) delivered by U.S. Mail or private courier, postage prepaid; or (iii) transmitted by email to the email address of the receiving party (if any) stated in this Agreement. Notices will be deemed received the earlier of: (a) when actually delivered, if personally delivered; (b) when transmitted if sent by email; or (c) three days after placement in the U.S. Mail or delivery to private courier, property addressed to the recipient.

If to Artist:

SILAS Education
P.O. Box 5078
Pasco WA 99302

Email: frever@silaseducation.org

If to City:

City of Benton City
Attn: City Clerk
1009 Dale Avenue, Suite A/PO Box 70
Benton City WA 99320

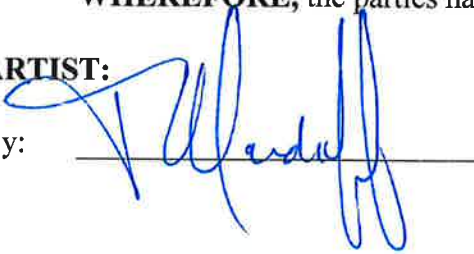
Email: shaug@ci.benton-city.wa.us

Either party may, by like written notice, designate a new address and/or addresses to which such notices shall be directed.

WHEREFORE, the parties have executed this Agreement as of the date stated above.

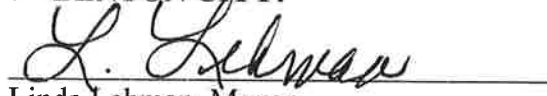
ARTIST:

By:



CITY OF BENTON CITY:

By:



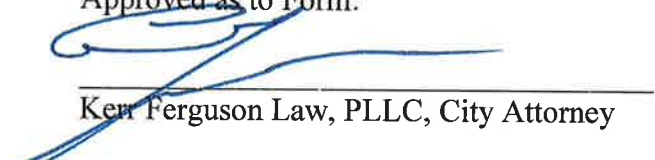
Linda Lehman, Mayor

Attest:



Stephanie Haug, City Clerk

Approved as to Form:



Ken Ferguson Law, PLLC, City Attorney