

RESOLUTION NO. 2016-16

**A RESOLUTION OF THE CITY OF BENTON CITY,
WASHINGTON, CREATING A POLICY FOR THE
DISPLAY OF PUBLIC WORKS OF ART WITHIN CITY
FACILITIES**

WHEREAS, the City of Benton City recognizes the value to a quality environment that works of art may add; and

WHEREAS, the establishment of policy setting guidelines governing the display of public works of art within City facilities is necessary to give both the City and potential artists guidance regarding all aspects of such display; NOW, THEREFORE,

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

Section 1. The City shall enter into agreements with certain artists in order to facilitate the display of certain artwork within City facilities. Such display shall be subject both to said Agreement and the City's Public Art Display Policy attached hereto as Exhibit A.

Section 2. The attached Public Art Display Policy is hereby adopted as the Public Art Display Policy of the City of Benton City.

ADOPTED this 18 day of October, 2016, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 18 day of October, 2016.

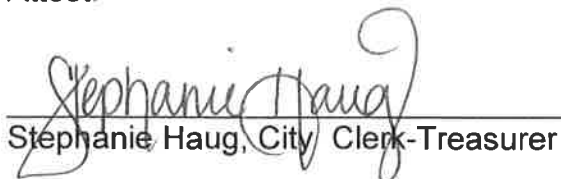
Resolution 2016-16 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 18 day of October, 2016.



Linda Lehman, Mayor

Attest:

Approved as to Form:



Stephanie Haug, City Clerk-Treasurer



Leland B. Kerr, City Attorney

CITY OF BENTON CITY PUBLIC ART DISPLAY POLICY

The City of Benton City recognizes the value to a quality environment that works of art may add. The City also recognizes the broad range of patrons, including children, that enter or use the City's facilities which may make it inappropriate for certain subject matter, medium, and content to be displayed therein. This may result in the limitation of certain pieces of art within the City's facilities that may be inappropriate for certain audiences. As a result, specific guidelines are necessary to assist the City in determining, within their sole discretion, which artwork shall be displayed within a designated facility.

The City's goal is to maintain a venue for presentation of public art of exceptional quality and diversity which may be inspiring and pleasing to all those who participate in the activities at the City's facilities. The City in no way wishes to censor the subject matter, medium, or content of the artwork displayed in its facilities, so long as the art does not contain any of the items listed in (C) below, which items may be inappropriate for certain age groups or individuals with varying levels of sensitivity. By entering into agreements with certain artists to display their artwork within City facilities, the City in no way intends to create a public forum in a certain City-owned facility that is not already established as a traditional public forum. The City does not own any facilities, including City Hall, that has a primary purpose as an art exhibit. Individuals of the public visit City of Benton City facilities for varying purposes depending on the facility, none of which are for the primary purpose of viewing artwork. As such, the City does not intend to create within any of its facilities a non-restricted public forum for free expression through the display of artwork.

Selection Procedure. Any proposed placement, gifts, loans or displays of artwork within the City shall be presented to the City for determination of whether such artwork is consistent with the goals of the City and a determination of placement based on the following evaluation criteria:

- A. The quality of artwork.

- B. Context of the artwork with other artwork within the facilities.
- C. The subject matter, medium and presentation does not display human nudity, violence, depictions of oppressive, discriminatory or unlawful behavior.
- D. Availability of an appropriate site.
- E. Artist conditions or requests.
- F. Condition of the artwork.
- G. Durability of the artwork.
- H. Ability of Artist to maintain the artwork.

All artwork shall be placed only after an Art Use Agreement has been signed by the Parties setting forth the length of the use term and such other terms and conditions as may be required by the City.

Siting decisions will be made by the City. This Policy shall be adopted by the City Council of the City of Benton City by Resolution.

ARTWORK USE AGREEMENT

THIS ARTWORK USE AGREEMENT ("Agreement") is made this ____ day of _____, 2016, by and between _____ ("Artist") and the City of Benton City, Washington, a Municipal Corporation ("City").

WHEREAS, the City desires to display artwork created by the Artist for use as part of the interior furnishings of its City Hall; and

WHEREAS, Artist desires to allow the City the temporary use 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 City property; 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 allow the City to use for display purposes, and the City agrees to accept from Artist, a certain piece of art as is described and identified in Exhibit A to this Agreement, and the exclusive and full rights to display such artwork for the term of this Agreement.

2. **Placement of Artwork.** During the term of this Agreement, Artist may place the following described pieces of art for display within the City's facility at _____ located at _____, Benton City, Washington.

The artwork subject to this Agreement is described as follows:

Title/Description of Artwork

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 \$ _____. The City makes no representations, warranties or guaranties relating to the value of such Artwork.

4. **Consideration.** The parties agree that there shall be no consideration given to the Artist by the City. The Artist agrees to loan the City the use of the Artwork to display in its facilities for the term defined below.

5. **Term.** The term of this Agreement shall commence effective _____, 20____, and shall continue unless terminated with the thirty (30) day written notice of either party.

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 he/she solely owns title and all rights to the Artwork. Exclusive title and all of the Artist's rights to the Artwork that is the subject of this Agreement shall remain 100% with the Artist, except as provided in Section 16.

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. Artist acknowledges that the City is not responsible for any damage, loss, theft, vandalism, or other natural or manmade events that may alter, damage, or destroy the Artwork. The City shall use reasonable efforts to maintain and protect the Artwork during the period of its possession. 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 mounting and/or any other activities involved in the preparation and/or presentation of the Art. Artist agrees to assume all risk of damage to or loss of the Artwork from whatever cause. 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. 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 to 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 for 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.

14. **Display.** The City shall use this Artwork to display in the interior of its facility described in Section 2 above. Artist agrees to display, pack, transport and provide for the return of his/her Artwork at his/her own risk and expense. If Artist is not available on-site to display, re-pack or re-transport his/her work, he/she gives permission to the City to do so on his/her behalf at his/her own risk and expense. Risk of loss shall be borne by the Artist.

15. **Abandonment.** In the case that Artwork is left within City facilities over ninety (90) days after the termination of this Agreement, after reasonable attempt by the City to make contact with Artist, such Artwork shall be determined abandoned the property of the City.

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.

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 facsimile machine to the facsimile number 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 facsimile or 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:

If to City:

City of Benton City
Attn: City Clerk
708 East 9th Street/PO Box 70
Benton City WA 99320

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:

THE CITY:
CITY OF BENTON CITY

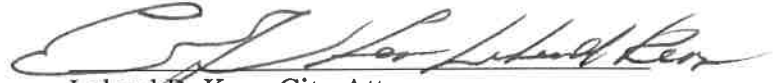
By: _____

Linda Lehman, Mayor

Attest:

Stephanie Haug, City Clerk

Approved as to Form:



Leland B. Kerr, City Attorney