

RESOLUTION NO. 2015-02

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE LIBRARY PERGOLA DONATION AGREEMENT BETWEEN THE CITY OF BENTON CITY AND THE LORZ FOUNDATION

WHEREAS, the City owns the property located at 810 Horne Drive, Benton City, Benton County, Washington, called the "Library"; and

WHEREAS, the Lorz Foundation desires to donate to the City a sum of Ten Thousand Dollars (\$10,000.00), to the City to contribute to the construction of a pergola shade structure at the Library and the City desires to accept such Donation from Donor; 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 original Library Pergola Donation Agreement between the City of Benton City and the Lorz Foundation, a copy of which is attached hereto and incorporated herein by this reference as Exhibit A; and to take all necessary steps required to complete this transaction.

ADOPTED this 3 day of March, 2015, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 3 day of March, 2015.

Resolution 2015-02 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 3 day of March, 2015.



Lloyd R. Carnahan
Mayor

Attest:



Stephanie Haug, CMC
City Clerk/Treasurer

Approved as to Form:



Kerr Law Group
City Attorney

LIBRARY PERGOLA DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement") is made this 3 day of March, 2015, by and between the LORZ FOUNDATION ("Donor") and the CITY OF BENTON CITY, WASHINGTON, a Municipal Corporation (the "City").

Recitals

WHEREAS, the City owns the property located at 810 Horne Drive, Benton City, Benton County, Washington, called the "Library";

WHEREAS, Donor desires to donate to the City a sum of Ten Thousand Dollars (\$10,000.00), as set forth more fully below (the "Donation"). The City desires to accept such Donation from Donor; and

WHEREAS, the parties desire to set forth the terms and conditions of the Donation 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 Donation.** Donor agrees to donate to the City, and the City agrees to accept from Donor, a sum of Ten Thousand Dollars (\$10,000) to be used to construct upon the area within the Library property, a full shade pergola. The Donation shall consist of the sum of \$10,000 due on or before construction of the project begins.

The City shall use these monies to construct a pergola only, and will satisfy all the applicable Federal, State, and local laws and regulations pertaining to the design and construction of the pergola and related amenities.

2. **Value of Donation.** The parties agree that a reasonable estimate of the total value of the Donation, including the donated materials, labor and services, is TEN THOUSAND DOLLARS AND NO/100THS (\$10,000.00). If Donor elects to claim tax benefits associated with the Donation, the City agrees, upon request, to provide Donor reasonable written verification of the City's receipt of the Donation and the value thereof, provided, the City makes no representations, warranties or guaranties relating to the tax implications of such Donation.

3. **Indemnification.**

3.1 **By Donor.** Donor shall protect, defend, indemnify and hold harmless the City, its officers, employees, and agents (collectively, the "Indemnified Parties") from any and all costs, claims, liabilities, judgments or awards of damages, including attorney's fees (collectively, the "Claims") arising out of or in any way resulting from Donor's and/or Donor's officers' agents', employees', and subcontractors' performance of this Agreement, except that the City shall be liable for any Claim(s) caused solely by the negligence or willful misconduct of the Indemnified Parties. The foregoing duty is specifically and expressly intended to constitute a waiver of

Donor's immunity under Washington Industrial Insurance Act, RCW Title 51, as respects the City with a full and complete indemnity and defense of claims made by Donor's employees. The parties acknowledge that these provisions were mutually negotiated upon by them.

3.2 By the City. The City shall protect, defend, indemnify and hold harmless the Donor, its officers, employees and agents (collectively, the "Indemnified Parties") from any and all costs, claims, liabilities, judgments or awards of damages, including attorney's fees (collectively, the "Claims") arising out of or in any way resulting from the City's and/or the City's officers', agents', employees' and subcontractors' performance of this Agreement, except that Donor shall be liable for any Claim(s) caused solely by the negligence of willful misconduct of the Indemnified Parties. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects Donor with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated upon by them.

4. 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.

5. 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.

6. 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 arbitration pursuant to RCW 7.04A, as amended, 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.

7. Binding Effect. This Agreement is binding on the City, Donor, and their respective successors, assigns and legal representatives.

8. Assignment. This Agreement may not be assigned without the express written consent of the parties, which consent shall not be unreasonably withheld.

9. 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 Donor.

10. **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 Donor:

Virginia D. McKenna
43202 N Reiner Rd
Benton City, WA 99320

If to City:

City of Benton City
Attn: City Clerk
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.

DONOR:

LORZ FOUNDATION

By:

Virginia D. McKenna

THE CITY:

CITY OF BENTON CITY

Lloyd Carnahan
Lloyd Carnahan, Mayor

Attest:

Stephanie Haug
Stephanie Haug, City Clerk

Approved as to Form:

[Signature]
Kerr Law Group, City Attorney