

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, ACCEPTING A DONATION OF THE STEEL SCULPTURE "PHILOSOPHER" AS A GIFT OF ART BY ARTIST KEVIN AU WITHOUT TERMS, CONDITIONS OR RESTRICTIONS.**

**WHEREAS**, artist Kevin Au has offered to donate and convey to the City of Olympia a gift of art titled "Philosopher," which is a steel sculpture measuring 72" x 17" x 16"; and

**WHEREAS**, the Olympia Arts Commission reviewed the proposed gift of art and unanimously recommended the gift and donation of "Philosopher" for approval and acceptance by the Olympia City Council; and

**WHEREAS**, pursuant to RCW 35.21.100, every city and town by ordinance may accept any property donated if within its powers granted by law; and

**WHEREAS**, the Olympia City Council has considered the recommendation of the Olympia Arts Commission (OAC), in addition to the recommendation of the Olympia Parks Arts and Recreation Department (OPARD), to accept the donation of "Philosopher" from Kevin Au; and

**WHEREAS**, the Olympia City Council finds this gift and donation of the steel sculpture "Philosopher" is in the public interest and serves the public welfare;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Acceptance of Donation.** As recommended by the OAC and OPARD and under the terms and conditions contained in the Agreement attached hereto as Exhibit "A," the Olympia City Council, pursuant to RCW 35.21.100, hereby accepts the gift and donation from Kevin Au of "Philosopher" as herein described.

**Section 2. Authorization.** The City Manager is authorized to execute all documents necessary to effect the transfer of the gift and donation of "Philosopher" to the City of Olympia, and to make any modifications or to correct any scrivener's errors in said documents that are consistent with the acceptance of the gift and donation by Kevin Au to the City of Olympia.

**Section 3. Terms, Conditions and Restrictions.** The gift and donation of "Philosopher" is without terms, conditions or restrictions attached to it, and the City of Olympia may expend or use said gift and donation for any municipal purpose as stated in RCW 35.21.100.

**Section 4. Corrections.** The City Clerk and codifiers of this Ordinance are authorized to make necessary technical corrections to this Ordinance to include the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 5. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 6. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 7. Effective Date.** This Ordinance shall take effect thirty (30) days after publication, as provided by law.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
DEPUTY CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**

**CITY OF OLYMPIA ART PROGRAM**  
*Gift of Artwork Agreement*

**THIS AGREEMENT**, dated and effective as of the last signature affixed below, is between the **CITY OF OLYMPIA**, with a business address of 601 4<sup>th</sup> Ave E, Olympia, WA 98501, hereinafter referred to as the "CITY" and **KEVIN AU**, with an address of 9202 SE 33rd Place, Mercer Island WA 98040-3200, hereinafter referred to as the "ARTIST".

**WHEREAS**, the ARTIST proposed to donate to the CITY a sculpture titled "Philosopher," a picture of which is attached as **Exhibit "A,"** which is a steel sculpture measuring 72" x 17" x 16" and hereinafter called the ARTWORK; and

**WHEREAS**, the proposal has been approved through the Olympia Arts Commission gift policy; and

**WHEREAS**, the Olympia City Council wishes to accept the ARTIST'S donation pursuant to the terms and conditions of this Agreement;

**NOW, THEREFORE**, the CITY and the ARTIST, for sufficient, good, and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. The ARTIST represents and warrants to the CITY that it is free to enter into this Agreement and that the ARTWORK is a unique and original work that is clear of any claims or encumbrances and does not infringe on the rights, including but not limited to the copyright, of any third parties. The ARTIST agrees to defend, indemnify, and hold the CITY, its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against the CITY based on a breach by the ARTIST of any representation and warranty made in this Agreement. The ARTIST agrees to fully cooperate with the CITY in the prosecution of any such suit.
2. The ARTIST hereby assigns and transfers to the CITY the entire right, title, and interest in and to the ARTWORK and to all U.S. and foreign copyrights therefor, with no terms, conditions or restrictions on its use or display by the CITY.
3. The CITY agrees that the ARTIST may graphically reproduce the ARTWORK for the limited purposes of inclusion in the ARTIST's portfolio of works solely for the purposes of documenting the ARTIST's work in a factual manner. The CITY also agrees that the ARTIST has a limited, revocable license to reproduce the ARTWORK for the ARTIST's own commercial purposes so long as such uses do not compete with the CITY's efforts or use of the ARTWORK. The ARTIST shall use his or her best effort to provide a credit to the CITY in any reproduction of the ARTWORK, with such credit reading "The subject of this photograph [or other graphic or electronic reproduction] is an original work of art owned by the City of Olympia, Washington."
4. The CITY agrees to use its best effort to provide proper credit including the ARTIST'S name, the title of the ARTWORK, and the date acquired by the CITY in any of the CITY's graphic reproductions.

5. The CITY has the right to display or not display the ARTWORK and to move or rearrange individual pieces of multiple piece ARTWORK.
6. Should the ARTWORK be intentionally or accidentally destroyed, altered, modified or changed subsequent to its transfer to the CITY, the CITY is under the obligation to make only reasonable effort to restore the artwork to its original form.
7. This Agreement shall be binding upon the parties, their heirs, successors, assigns, and personal representatives. This Agreement constitutes the entire understanding of the parties. Its terms can be modified only by an instrument in writing signed by both parties. A waiver or a breach of any provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions. If any provision in this Agreement is found to be illegal, invalid, or unenforceable in any jurisdiction for any reason, then, to the full extent permitted by law all other provisions will remain in full force and effect and will be liberally construed in order to carry out the intent of the parties. A party will not be liable to the other should its performance or display of the ARTWORK be prevented, restricted, or interfered with by circumstances or events beyond its reasonable control ("Force Majeure Event").
8. Any notice or demand to be given under this Agreement shall be in writing and will be effective upon receipt if delivered in person or if sent by electronic mail, or one day after deposit prepaid with a national overnight express delivery service, or three days after deposit in the United States mail (registered or certified mail, postage prepaid, return receipt requested), if sent to the parties at the addresses noted above. Either party may change its address for receipt of notices by written notice to the other party.
9. This Agreement shall be governed by the laws of the State of Washington and courts of such state shall have exclusive jurisdiction and venue. The parties will negotiate in good faith to resolve expeditiously on a mutually acceptable negotiated basis between appropriate management personnel for each party any dispute between them that may arise. The parties may, by mutual consent, retain a mediator to aid in their attempt to informally negotiate resolution of any dispute, although any opinion expressed by a mediator will be strictly advisory and will not be binding on the parties, nor will any opinion, statement or proposed resolution expressed by the mediator or the parties be admissible in any proceeding. Costs of the mediation will be borne equally by the parties, except that each party will be responsible for its own expenses. Should any dispute not be resolved pursuant to this paragraph of this Agreement, the parties hereby irrevocably submit themselves to the non-exclusive jurisdiction of the Thurston County Superior Court and the federal court sitting in Tacoma, Washington.
10. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous oral or written communications understanding or agreements between the parties with respect to such subject matter are hereby superseded in their entirety. This Agreement may not be amended, supplemented or modified except by a written agreement which identifies this Agreement and is signed by an authorized representative of each party.
11. This Agreement may be executed by the parties in any number of separate counterparts, each of which counterparts, when executed and delivered, shall be deemed to be an original, and all of which taken together shall constitute a single instrument.

IN WITNESS thereof, the parties hereto executed this Agreement on the day and year first written above.

**ARTIST**

**CITY OF OLYMPIA**

\_\_\_\_\_  
Kevin Au  
9202 SE 33<sup>rd</sup> Place  
Mercer Island WA 98040-3200  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Steven R. Hall, City Manager  
601 – 4<sup>th</sup> Avenue E.  
PO Box 1967  
Olympia WA 98507-1967  
Telephone: 360.753.8447

Date: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

## Exhibit A

