

**AGREEMENT FOR  
MURAL DESIGN, INSTALLATION, AND APPLICATION  
IN THE CITY OF ANGLETON, TEXAS**

**This Agreement for Mural Design, Installation, and Application in the City of Angleton, Texas** (the “**Contract**”) is made between the **City of Angleton, Texas**, a Texas municipal corporation (the “**City**”), and Sam Welty, (the “**Artist**”), providing for the **design, installation, and application of one (1) wall-sized murals to be used on display, in the public, within the City**. The foregoing parties are herein collectively referred to as the “**Parties**” and individually referred to as a “**Party**.”

The purpose of this Contract is to set forth the terms and conditions for the design, installation, and application to be used on display, in the public, and in particular for one (1) wall-sized murals in the City. For good and valuable consideration, the sufficiency of which is acknowledged by all Parties, the Parties hereby agree to as follows:

**1. Definitions.** In this Contract:

*Work* means, both independently and together, as the context requires, the art and design for two (2) wall-sized murals, the design to be created by the Artist and, after approval by the City, the installation and application of such murals by the Artist, as described in the proposal provided by the Artist, which has been attached and incorporated as *Exhibit A* (hereinafter, the “**Proposal**”), within the City.

*Mural* means a painting or other work of art, executed directly on a wall displaying the Work, that has been designed, installed, and applied by the Artist with the permission or and through partnership with the City.

**2. Effective Date.** This Contract will be effective as of the latest of the dates signed by the Parties (“**Effective Date**”).

**3. Artist’s Obligations.**

- a. The Artist will create and provide to the City the Work described in this Contract, in conformity with the Proposal and the terms of this Contract.
- b. Artist will provide the Work to the City in a digital format.
- c. Artist grants an irrevocable license for the use of the Work to the City, and to make reproductions of the Work for any municipal or public purpose, including but not limited to any publicity the City deems appropriate or beneficial (“**License**”). This License shall allow the City to establish the Work as a tourism feature of the City of Angleton, Texas, and shall be granted and belong to the City for the life of the Work. The License shall also extend to any reproductions of the Work made by the City or on behalf of the City, during and after the life of the Work, in furtherance of the public

purposes of and benefits to the City.

#### 4. City's Obligations.

- a. So that the Artist may complete the application and installation of the Work, the City shall provide, at the City's sole cost and expense, a drivable scissor or boom lift (the "Drivable Lift") for the operation and use of the Artist during those days on which the Artist is completing the Work. The Parties agree and acknowledge that the provision of this Drivable Lift is essential to the completion of the Work and that the performance of the Work will be affected if the Artist does not have access to the Drivable Lift on those days which the Artist is performing the Work.
- b. The City will provide credit to the Artist substantially in the following form: "Mural by: [Sam Welty] [2022]." This credit may be included on the City website next to a digital copy of the Mural. Any reproductions of the Work made by the City will credit the Artist and contain a copyright notice.

#### 5. Compensation.

- a. The City will pay the Artist **Twelve-Thousand Dollars (\$12,000.00), with the total amount contemplated under this Contract not to exceed Twelve Thousand Dollars (\$12,000.00) for one (1) Mural**, in accordance with the following payment schedule:
  - (i) Upon the Effective Date of this Contract, the City shall pay the Artist Six Thousand, Dollars (\$6,000.00) to serve as a deposit for the Work to be performed by the Artist, to reserve the time necessary for the completion of the Work, and to start the Mural design process.
  - (ii) Upon completion of the Work, which shall be evidenced by the written acceptance of the Work by the City, the City shall pay the Artist the remaining Six Thousand Dollars (\$6,000.00).
- b. In addition to the amount specified in Subsection 5(a), above, **the City shall provide to the Artist** lodging while the Artist remains in residence on location to perform and complete the application and installation of the Murals, as a part of the Work contemplated in this Contract **not to exceed twenty (20) days**.
- c. These amounts, as specified in Subsections 5(a) and 5(b) above, is the only compensation to be paid by the City, and the payment is intended to cover all of Artist's costs associated with the Work including, but not limited to, Artist's design fee, project documentation, and any other costs associated with the creation of the Work, including the irrevocable license granted to the City.

#### 6. Final Design.

- a. The Artist submitted her Proposal pursuant to a request seeking to commission wall-sized mural design, installation, and application to be used on display, in the public, within the City. The Proposal included a proposed concept or concepts for the Mural(s) instrumental in the City selecting the Artist for this project.
- b. Upon execution of this Contract, the Artist will undertake the preparation of the final concept for the Work (the "Final Design").
- c. Artist will provide the Final Design to the City for review within fifteen (15) business days of the Effective Date of this Contract.
- d. Within three (3) business days after receipt of the Final Design from the Artist, the City will notify the Artist, in writing, if the City requires any revision to the Final Design in order to comply with the Proposal or any other reasons. If agreed upon by all Parties, such revisions will become a part of the Final Design.
- e. Upon his or her receipt of the Final Design, the owner of the property on which a Mural will be located shall have five (5) business days to review and provide final approval and acceptance of the Final Design. The owner of the property on which a Mural will be located shall use his or her best efforts to partner with the City and the Artist to provide final approval and acceptance of the Final Design. If agreed upon by the City, the Artist, and the owner of the property on which a Mural will be located, any revisions suggested or proffered by the owner of the property on which the Mural will be located will become a part of the Final Design.
- f. Within ten (10) business days after final approval and acceptance of the Final Design by the owner of the property on which the Mural will be located, the City will notify the Artist, in writing of the City's approval and acceptance of the Final Design.
- g. Upon the City's approval and acceptance of the Final Design, the Final Design, and license for its use, will immediately be conveyed to the City, and is subject to any Copyright rights retained by Artist.

**7. Installation and Application.** After approval of the Final Design, the Artist shall install and apply the Murals displaying the Work in substantial conformity with the Final Design and in accordance with the installation and application schedule as that schedule appears in the Final Design.

**8. Warranties of Title.** The Artist represents and warrants that:

- a. The Work is solely the result of the artistic effort of the Artist and the Artist is the sole author, as that term is used in the Copyright Laws of the United States, of the Work. The Artist further represents that it will be the sole author, as that term is used in the

Copyright Laws of the United States, of all artistic works created pursuant to this Contract, including any intermediate works created during the creation of the Work;

- b. Except as otherwise disclosed in writing to the City, the Work is unique and original and does not infringe upon any copyright or the rights of any person;
- c. The Work (or duplicate thereof) has not been accepted for use, license, or sale elsewhere;
- d. The Artist has not sold, assigned, transferred, licensed, granted, encumbered, or utilized the Work or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Contract;
- e. Upon payment to the Artist by, and delivery of the Work to, the City, that the title transferred to the Work is free and clear of any claims or encumbrances from any source whatsoever;
- f. All Work created or performed by the Artist under this Contract, including any intermediate works created during the creation of the Work, will be wholly with the Artist and will not infringe upon or violate the rights of any third party;
- g. The Artist has not and will not grant any licenses to the Work, including but not limited to the Work and any intermediate works created during the creation of the Work, other than the exclusive license granted herein to the City, its successors, and assigns; and
- h. The Artist has the full power to enter into and perform this Contract and to make the grant of rights contained in this Contract, and the Artist created the Work in accordance with all applicable laws, regulations, ordinances, and with all necessary care, skill, and diligence.

**9. Mural Duration; Repair, Removal, Replacement.** A Mural is expected, but not guaranteed, to have a lifespan of 10-15 years. A Mural may be removed by the City, depending on its condition, at the City's sole discretion. The City will have the right to remove, repair, or replace any Mural, as needed, at the City's sole discretion. The Artist acknowledges and the Parties agree that the City's ability to remove, repair, or replace any Mural, as needed, at the City's sole discretion does not violate the Artist's rights under the Visual Artists Rights Act, 17 U.S.C. § 106A, in which either the Artist's attribution right or the integrity right may be implicated.

**10. Mural Maintenance.** The City will be responsible for maintenance and conservation of any Mural, for so long as the Mural remains on display. The City will have the right, in its sole discretion, and without the Artist's input or approval, to determine the appropriate method of maintenance.

**11. Term of Contract; Survival of Obligations.** This Contract is effective as of the Effective Date and, unless terminated earlier pursuant to such provisions in the Contract, will extend until

the written acceptance of the Work and final payment to the Artist by the City, but in no event will it extend beyond a period of one (1) year. All provisions of this Contract that impose continuing obligations of the Parties, including but not limited to the Artist granting an irrevocable license to the City, warrant, indemnification, and limitation of liability shall survive the expiration or termination of this Contract.

**12. Termination.**

- a. The City may terminate this Contract at any time, for any reason, by giving written notice to the Artist not less than three (3) business days prior to the termination date.
- b. Termination of this Contract will not terminate the license or any other rights granted to City.

**13. Liability and Indemnity. ARTIST HEREBY RELEASES THE CITY AND THE CITY’S ELECTED OFFICIALS, THE RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, AND REPRESENTATIVES OF THE CITY AND ITS/THEIR SUCCESSORS AND ASSIGNS, IN BOTH THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, INDIVIDUALLY AND COLLECTIVELY, (COLLECTIVELY REFERRED TO AS THE “CITY-RELATED PARTIES”) FROM, AND SHALL INDEMNIFY, DEFEND, AND HOLD THE CITY-RELATED PARTIES HARMLESS AGAINST ALL ALLEGATIONS, CLAIMS (INCLUDING WITHOUT LIMITATION CLAIMS OF PERSONAL INJURY, ENVIRONMENTAL INJURY, BODILY INJURY, SICKNESS, DISEASE, DEATH, PROPERTY DAMAGE, CONSEQUENTIAL DAMAGES, DESTRUCTION, OR OTHER IMPAIRMENT), DEMANDS, LEGAL ACTIONS, EQUITABLE ACTIONS, AND COSTS (INCLUDING ALL COURT COSTS, REASONABLE ATTORNEYS’ FEES, EXPERTS’ FEES OR OTHER COSTS) INCURRED IN CONNECTION WITH ANY MATTER RELATING TO THE TERMS OF THIS CONTRACT, OR ARE ALLEGED TO HAVE ARISEN FROM, ANY OF THE FOLLOWING:**

- a. ANY INFRINGEMENT OF PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER PROPRIETARY RIGHT CAUSED BY ARTIST.**

**14. Copyright Ownership.** Subject to the terms of this Contract, including any covenants herein prohibiting the creation of additional works, the license granted to the City, its successors and assigns, and the tangible ownership rights of the City in the Work, the Artist shall have and retain all rights to the Work afforded to Artist by the Copyright Laws of the United States. The Artist agrees to do and perform all acts necessary to effect and protect the copyright and renewals thereof. However, if necessary, the City, its successors, and assigns may take reasonable steps to conserve or maintain the Work in its original form upon prior consultation with the Artist.

**15. Covenant; License; Reproduction Rights.**

- a. In view of the intention that the final Work will be unique, Artist on behalf of itself and

its successors, assigns, and affiliates, covenants, warrants, and agrees that it will not knowingly aid, abet, participate in, assist, authorize, condone, or permit the making, copying, displaying, or selling of any exact duplicate, or two- or three-dimensional reproductions of the final Work, nor will the Artist grant permission to others to do so except with the written permission of the City. This covenant will survive termination or expiration of this Contract. However, nothing herein will prevent the Artist from creating future works in the Artist's manner and style of artistic expression, including works that include design elements similar to the Work, so long as such works do not replicate the composition of the Work in so much as not to reasonably cause confusion with the final Work.

- b. The Artist grants to the City, its successors and assigns, an irrevocable, fully transferable, fully sub-licensable, exclusive license to make unlimited two- and three-dimensional reproductions of the Work for non-commercial purposes, including, but not limited to, photographs and digital reproductions of the Work for inclusion in the City of Angleton's catalogues, books, brochures, website, postcards, posters, invitations, magazines, newspapers, journals, films, television programs, and other electronic or online media. The City may include information about the Work and Artist on other plaques or materials and in other information as determined by the City.
- c. If the City wishes to make reproductions of the Work for commercial purposes, including, but not limited to, t-shirts, post cards, and posters, the Parties will execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist will receive, if any.
- d. All reproductions by the City will contain a credit to the Artist in substantially the following form: "Mural by: [Sam Welty] [2022]."
- e. The Artist will use the Artist's best efforts in any public showing or résumé use of reproductions to give acknowledgment to the City in substantially the following form: "An original Work commissioned by and in the public art collection of the City of Angleton, Texas."
- f. The City is not responsible for any third-party infringement of Artist's intellectual property rights and is not responsible for protecting the intellectual property rights of Artist.

## **17. Assignment and Transfer.**

- a. Except as otherwise provided in this Contract, no Party has the right to assign this Contract without the prior written consent of the other Parties.

- b. The Work and services required of the Artist are sole and personal and will not be assigned, sublet, or transferred. Any attempt by Artist to assign any rights, duties, or obligations arising under this Contract will be void and of no effect unless prior written consent is given by the City.
- c. The City will have the right to assign or transfer the Contract, and any and all of the City's rights and obligations under the Contract, without Artist's consent, if the ownership of the property on which the Work is located is transferred.

**18. Entire Contract.** This Contract represents the entire Contract between the City and the Artist. This Contract may be amended only by written agreement signed by both Parties.

**19. Severability.** If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

**20. Waivers.** A waiver of any breach of any of the provisions of this Contract will not be construed as a continuing waiver of other breaches of the same or other provisions.

**21. Notices.** All notices will be in writing and may be delivered by mail, in person, or by email. Mailed notice is deemed received three (3) days after the date of deposit in the United States mail. Unless otherwise provided in this Contract, all notices will be delivered to the following addresses:

**To Artist:**                      **Sam Welty**  
Email: sweltyart@gmail.com

**To the City:**                      **City of Angleton**  
*Attn: Chris Whittaker, City Manager*  
121 S. Velasco Street  
Angleton, Texas 77515  
Email: cwhittaker@angleton.tx.us

If any Party changes its mailing or email address it will notify the other Parties in writing of the change, as provided for in this section.

**22. Law Governing and Venue.** This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Brazoria County, Texas.

**23. Compliance with Laws.** The Artist must comply with any federal, state, and local laws, rules, and regulations applicable to the Work and the Artist's services under this Contract.

**24. Additional Contract Documents.** The following documents attached to this Contract are part of this Contract:

Exhibit A: Artist's Design Proposal

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as follows:

**SAM WELTY**

**CITY OF ANGLETON, TEXAS**

By: \_\_\_\_\_  
**Sam Welty, Artist**

By: \_\_\_\_\_  
**Jason Perez, Mayor**

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

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

**ATTEST:**

By: \_\_\_\_\_  
**Michelle Perez, City Secretary**