

AGREEMENT FOR PARTICIPATION IN THE CANYON MAIN STREET MURAL PROGRAM

1. Parties:

(a) Canyon Main Street, a Texas nonprofit organization (“CMS”) 1605 4th Ave. Canyon, Texas.

(b) _____ property owner and lessee (if any).

Address: _____

(c) _____, artist, author or creator of artwork or other intellectual property with full authority to transfer and assign ownership of the artwork or other intellectual property right.

Address: _____

Legal Description: _____

2. Recitals:

(a) CMS is undertaking a program to work with building owners, lessees and artists to create murals in the City of Canyon under the guidelines set forth in Paragraph 4 below:

(b) The purpose of the CMS Mural Project is to enhance the appearance and aesthetic appeal of the area of Canyon suitable for murals.

(c) Upon approval of the design, layout and content of the mural CMS will ask the owner, lessee and artist to execute this agreement. CMS will determine the location of the mural, the identity of the parties and the manner of compensation.

3. Covenants and Agreements:

(a) The building owner/lessee has agreed to make space available for a mural to be arranged by CMS under the guidelines set forth in Paragraph 4 below. Restrictive covenants will be signed by the owner upon approval of funding by CMS to reflect the ownership and related rights in the Mural Project by CMS which shall run with the land and be binding upon the present owner(s) and any successor in title.

(b) The artistic creator named in Paragraph 1(c) above has agreed to provide a mural to be placed upon the location specified by CMS and the owner/lessee named in Paragraph 1 above.

(c) CMS has agreed to provide funds for creation of the mural to be painted by the artist named in Paragraph 1(c) above in an amount and upon terms set by the board.

- (d) The parties have agreed that in consideration of the payment by CMS, the artist transfers and assigns to CMS the intellectual property rights in the mural including without limitation all rights, legal, equitable or moral at common law or by statute to include the “VISUAL ARTISTS RIGHTS ACT OF 1990” 17USC §106A, all copyrights and rights of attribution. CMS may credit the artist by name for creation of the mural without waiving or otherwise affecting its ownership and control of the mural.
- (e) CMS may at any time refresh or maintain the mural to preserve its appearance as an attractive work and in such event shall use its best efforts to engage artist to complete such maintenance whenever possible. CMS may remove the mural if its appearance is no longer an attractive visual enhancement to the City of Canyon without consulting any of the other parties or in the event the building is to be demolished.

4. **Mural Guidelines:**

Design and Review Criteria for Murals

Definition: A mural is a painting, mosaic, fresco, or other permanent artwork attached or applied directly to the outside of a structure.

General Guidelines

These guidelines provide anyone who wants to install a mural with a reasonable process that safeguards both the interests of the community and those of the individual building/property owner. The guidelines are designed to assure that murals within the City of Canyon enhance the community’s appearance, without confusing drivers and/or pedestrians or causing any other negative impact on public safety or welfare.

In reviewing proposals for public (outdoor) murals all of the following criteria will be considered:

Is the location appropriate?

Some locations may simply be inappropriate for murals, due to safety issues, potential maintenance problems, or complicated building geometry.

Too many murals?

To avoid the appearance of blight, the number of murals may have to be limited. If your area already has several murals, chances are, your mural proposal will not be approved.

How big is too big?

By their very nature, murals are large artworks. But, when murals become so large as to overwhelm the local streetscape and/or become a visual distraction, they are not likely to gain approval.

No logos or advertising, please!

Murals are considered public art, not billboards or signs. Therefore company logos or advertising are not a part of the mural program. Murals containing logos, slogans, or advertising messages of any kind are considered signs and must comply with §5.10 of the

CODE OF ORDINANCES as amended. Commercial content will not be paid for through CMS funding.

Detailed mural guidelines and criteria

In addition to the general guidelines above, the Canyon Main Street (“CMS”) Design Committee or Canyon Main Street Advisory Board, appointed by the City Council, will evaluate mural proposals based on the following:

Design and content

- Relevance of the piece to the building or city, its values, culture, and people – murals within the City of Canyon should be based on one or more of the following themes: natural beauty; local history, local agriculture or other relevant themes.
- Suitability of the work for outdoor display, including its maintenance and conservation requirements.
- Relationship of the work to the site and the community, especially how it serves to activate or enhance public space.
- Appropriateness of the scale of the artwork.

Site selection

In order to ensure that public art is fairly and equitably distributed throughout the city, and that it is sited in such a way as to enhance and activate public spaces, sites where murals are to be displayed should:

- Experience high levels of pedestrian traffic and be part of the city’s circulation paths.
- Be easily visible and accessible to the public.
- Serve to anchor and activate its site.
- Enhance the overall public environment and pedestrian streetscape experience.
- Help to create a place of congregation and activity.
- Establish landmarks and neighborhood gateways.

Placement

The following are guidelines for mural placement:

- Mural art should be publicly accessible 24 hours per day or during the normal hours of operation if in a park.
- It should not obscure windows or entranceways, nor disrupt normal pedestrian circulation unless that is the purpose of the artwork.
- It should not be placed in a given site if it disrupts the site’s landscaping and maintenance requirements.
- It should not be so large as to overwhelm adjacent architecture or become a visual distraction.

- It should not detract from its surroundings nor create “blind” spots where illegal activity can take place.
- It should be located in a site where it will enhance and activate the pedestrian and the streetscape experience.

Construction and Maintenance

- (a) Murals shall be well designed and incorporate high-quality materials that enhance the overall appearance of the site and not adversely affect safe and efficient movement of vehicles and pedestrians. Materials may include paint or other media appropriate for exterior use, such as tile or mosaic. Materials shall be long-lasting and graffiti-resistant to the greatest extent possible. The artist shall prepare the mural site or shall direct the preparation of same.
- (b) Colors, though vibrant, should be complimentary and harmonious with exterior colors of the building structure, as well as consistent with the chosen theme. Neon, fluorescent, reflective-type colors or materials are discouraged.
- (c) The mural shall be designed and painted by a qualified artist/muralist, one with sufficient knowledge and experience with the application of mural materials.
- (d) Mural size shall be determined by the wall surface to be covered. Smaller walls may be completely covered. On large walls, murals should be large enough to dominate the wall surface, but not so large as to overwhelm the local streetscape. Generally, one mural will be permitted per structure.
- (e) The mural artist’s signature may appear on the mural, provided that it is not so prominent as to detract from the mural display.
- (f) The proposed mural, by its design, construction, and location, shall not obscure or detract from the significant architectural features of the building structure; nor should the building’s architecture be altered to accommodate the mural.
- (g) The proposed mural, by its design, construction, and location, shall not have an adverse impact on adjacent properties or permitted uses. If the mural requires special lighting or other related construction, all applicable permits will be required as part of installation.
- (h) Routine maintenance of an artwork becomes the responsibility of the building owner where the artwork is located. However, CMS will maintain funding to assist with associated costs to be agreed upon by the parties. CMS will contribute an amount toward maintenance costs as set by the board. As part of the contractual requirements, the artist should develop a maintenance program in cooperation with the building owner or manager for the proper long-term care of the artwork.
- (i) In the event of damage to the mural through casualty loss not the fault of the building owner the mural shall be restored to its former condition if feasible using insurance proceeds payable as a result of the loss and funds provided by CMS. If

it is not feasible to restore the mural, the Owner shall consult the CMS advisory board regarding removal of the mural.

- (j) In the event the Owner desires to alter the building after the mural is placed on the building in such a manner that the mural would be affected or altered, consent of CMS will be required and such alteration will proceed only in accordance with the terms of such approval. In the event the consent of CMS is not obtained by the Owner or if the alteration is not made in accordance the terms of approval, the Owner will be required to repay the full amount expended by CMS for creation of the mural, payable immediately upon demand.

Rules for a Successful Mural Project (per the Texas Main Street Resource Library in conjunction with the Texas Historical Commission)

- (a) Do NOT paint on unpainted masonry. Use a paneling system instead.
- (b) If the surface is stucco, go ahead and paint directly on the surface, but prepare the surface first.
- (c) Do not paint over historically significant murals, even if they are faded or a new business is going into the building. New signage can be incorporated without damaging the ghost sign.
- (d) Do not “over restore” historic wall signs.

Application Review and Approval Process

An applicant desiring to install a mural on a building in Canyon funded in part by CMS is required to submit a formal application, a scaled color rendering of the proposed project, and a photograph showing the building location of the proposed mural.

Mural proposals that do not meet all of the design criteria/guidelines may be denied by the CMS Design Committee or CMS Advisory Board or accepted with required modifications.

Schedule

Mural installation must begin within 60 days of approval and must be completed within six-months of the start date unless extended upon application (submitted by artist) made prior to the end of the six month period. If these dates are not met, the CMS Advisory Board, may at its discretion, cancel the mural funding. A one-time extension on the start date for an additional 60 days may be granted if the request is submitted in writing prior to the end of the initial 60-day period

5. **Binding Effect.** This agreement binds, benefits, and may be enforced by the successors in interest to the parties.
6. **Choice of Law.** This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules in any jurisdiction. Venue is in Randall County, Texas.
7. **Severability.** If a provision in this agreement is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the

unenforceability does not affect any other provision of this agreement, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement.

8. **Remedies Cumulative.** Except as otherwise provided herein, all rights, privileges, and remedies afforded the parties by this agreement will be deemed cumulative and not exclusive and the exercise of any remedy will not be deemed to be a waiver of any other right, remedy, or privilege provided for herein or available at law or in equity. It is expressly understood that a recovery in damages may not be an adequate remedy for a violation of the provisions of this agreement and that the granting of equitable remedies may, and probably will, be necessary.
9. **Number and Gender.** The use of the singular will be deemed to mean the plural, the masculine to mean the feminine or neuter, and the neuter to mean the masculine or feminine when context requires.
10. **Captions.** Captions used in this agreement are for convenience only and will not be considered as a limitation on or an expansion of the terms of the agreement.
11. **Construction of Agreement.** The terms and provisions of this agreement are the result of negotiation between the parties, each of which has been represented by counsel of its selection, and neither of which has acted under duress or compulsion, legal, economic, or otherwise. Consequently, the terms and provisions of this agreement will be interpreted and construed in accordance with their usual and customary meanings, and the parties expressly waive and disclaim any rule of law or procedure interpreting or construing this agreement otherwise, including, without limitation, any rule of law to the effect that ambiguous or conflicting terms or provisions in this agreement must be interpreted or construed against the party whose attorney prepared this agreement or any draft hereof.
12. **Entire Agreement.** This agreement and any exhibits are the entire agreement of the parties concerning the Subject Property and the Restricted Uses of the Subject Property. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement and any exhibits.
13. **Notices.** Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.
14. **No Third-Party Beneficiaries.** Nothing in this agreement, expressed or implied, is intended or may be construed to confer on any person or entity, other than the parties and their respective heirs, successors, and assigns, any right, remedy, or claim by reason of this

agreement. This agreement is intended for the sole and exclusive benefit of the parties and their respective heirs, successors, and assigns.

15. **Time.** Time is of the essence with respect to each covenant, agreement, and obligation of the parties set forth in this agreement.
16. **Counterparts.** If this agreement is executed in multiple counterparts, all counterparts taken together will constitute this agreement.

Effective Date: _____

CANYON MAIN STREET

By: _____

Owner: _____

Name: _____

By: _____

Title: _____

Lessee: _____

By: _____

Artist: _____