



## Out-of-Doors Temporary Public Art Display Agreement

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

**Applicant (Owner or Owner’s Agent):** \_\_\_\_\_

Address: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_

Other Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**City:** City of San Angelo, Texas  
P.O. Box 1751  
72 W. College Ave.  
San Angelo, Texas 76902  
(325) 657-4279

The Applicant agrees to loan the described art pieces to the City and the City agrees to accept the exhibit material and each art piece described in **Exhibit A** attached hereto, for purposes of temporary out-of-doors public display, for the mutual benefit of the parties and the community. In consideration of the mutual terms, conditions and covenants herein set forth the parties agree as follows:

1. **Definitions.**

- a. “Applicant” is the owner of the subject exhibit material and art pieces, and the owner’s, employees and agents.
- b. “Artist” is the creator of the artwork or piece selected by the San Angelo Public Art Commission and approved for out-of-doors public display by the City Council, and may or may not be the owner or Applicant.
- c. “Artwork” or “Art Piece” includes all artwork selected by the San Angelo Public Art Commission and approved for out-of-doors public display by the City Council.
- d. “City” means the City of San Angelo, Texas and includes all of its departments, employees, officials, boards, commissions, council members and agents,
- e. “Owner” is the legal owner of the exhibit material and art pieces selected by the San Angelo Public Art Commission and approved for out-of-doors public display by the City Council, and may or may not be the Artist.

2. **Purpose.** The City seeks to provide public access to artwork through out-of-doors exhibition and display for educational, informational, and cultural purposes. The City seeks to encourage the artistic and cultural interests of the community by providing a showcase for art created by community and regional artists. The Applicant desires to display the artwork(s) at an out-of doors location(s) open to the public and acknowledges a benefit to the Applicant therein through public exposure of the artwork.

3. **Selection of Art Pieces for Display.** The San Angelo Public Art Commission met publicly and has recommended that the art pieces described on **Exhibit A**, submitted by Applicant on written application dated

\_\_\_\_\_, 20\_\_\_\_, be accepted by the City for outdoor display or exhibition accessible for

public viewing at, \_\_\_\_\_, or at

such other location as may be determined from time to time by City. Final approval over any recommendation of the Public Art Commission in the selection of art pieces for public display and the terms and location for display are reserved to the City Council.

4. **Warranties of Applicant.** Applicant hereby warrants to City that Applicant is the lawful owner of the art pieces described in Exhibit A, and that Applicant has the legal right and authority to enter into and commit to each of the terms of this Agreement.
5. **Out-of-Doors Public Display Locations.** The out-of doors public display locations for art pieces within the City of San Angelo are listed on **Exhibit B** attached. The City retains first priority as to the out-of doors public display locations, reserves the right to cancel or change an Applicant's date(s) or term of showing, and reserves the right to re-locate or remove any art piece on public display at any time without notice to the Applicant, Artist or Owner.
6. **Delivery and Initial Term for Loan of Art Pieces.** Applicant agrees to loan the art pieces to the City from the delivery date of \_\_\_\_\_, 20\_\_\_\_, through \_\_\_\_\_, 20\_\_\_\_, the Initial Term. On or before the delivery date, Applicant, at Applicant's sole cost, shall deliver the artwork to the location for public display designated by City or to such other location within the City of San Angelo as may be designated by City, in a condition that is prepared for installation and display. The Applicant shall assume full responsibility for the transportation of the art pieces to and from the designated site for delivery. Except as otherwise agreed to in writing by the City, the Applicant shall be responsible to furnish the materials necessary for proper display or exhibition of the art pieces. Unless otherwise agreed to in writing, Applicant shall be responsible for labor relating to installation of the art pieces at the designated municipal location. Applicant shall remain available to City, upon request and at no cost to City, to provide consultation or direction regarding installation and display of the art pieces.
7. **Automatic Renewal and Termination.** Upon expiration of the Initial Term, this Agreement shall automatically renew once for a like term, subject to the right of either the Applicant or City to terminate this Agreement upon sixty (60) days written notice of termination to the other party. Upon termination of this Agreement, Applicant shall comply with the provisions herein for removal of exhibit material and art pieces.
8. **Removal Procedures.**

Within \_\_\_\_\_ days of expiration or termination of the time period for exhibition or public display, Applicant shall, at Applicant's sole cost, remove and transport the art pieces from the location at which they are displayed or from such other location within the City at which they are located, as designated by City. The Applicant shall return the exhibition or display area to its prior condition. The City may dismantle, relocate or store any exhibit or art piece that is not timely retrieved by the Applicant. If Applicant fails to remove any exhibit material or art piece in accordance with the provisions hereof, City shall have the right, but not the obligation, to remove or store the exhibit material and art pieces, and Applicant shall be obligated to reimburse City the costs of such removal or storage. Any exhibit or art piece not removed or retrieved by the Applicant within 90 days of expiration or termination of the time period for exhibition or public display shall be deemed to be abandoned and shall become the property of the City of San Angelo. In such event, the City may elect, in its discretion, to retain for its use or dispose of the exhibit or art pieces without further notice or compensation to the Applicant, owner or artist.
9. **Maintenance of Artwork.** City assumes no responsibility for the maintenance of any exhibit or art piece. Applicant shall be solely responsible for maintenance of all exhibits and art pieces provided by Applicant for public display pursuant to this Agreement.
10. **Insurance of Art Pieces.** Applicant understands that City shall not maintain any insurance coverage for Applicant's exhibit materials, art pieces or other personal property of Applicant. Applicant shall secure and maintain such personal property insurance coverage as Applicant deems desirable, in Applicant's sole discretion, for Applicant's exhibit materials, art pieces or other personal property.
11. **Security and Risk of Loss.** Applicant acknowledges that the City does not staff or otherwise secure public display areas and will not provide for the security of exhibits or art pieces provided by Applicant for public display pursuant to this Agreement. The City shall not be responsible for damage to or loss of any exhibit or art piece. At all times pertinent to this Agreement, Applicant shall bear the risk of loss or damage to any exhibit or art piece that is the subject of this

Agreement. The Applicant acknowledges that exhibits and art pieces will not be secured from being photographed or otherwise subject to image reproduction by the public for which the City shall not be held responsible.

12. **DISCLAIMER OF LIABILITY AND WARRANTY.** Applicant represents and acknowledges that Applicant is fully informed and satisfied as to all matters relevant to the display of artwork on City property. **APPLICANT ACKNOWLEDGES THAT CITY GIVES NO EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE OF CITY PROPERTY OR DISPLAY AREA. ANY STATEMENT MADE OR INFORMATION HERETOFORE PROVIDED IN THE WAY OF EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OR CONDITION OF PUBLIC DISPLAY SPACE FOR ANY USE OR THE CIRCUMSTANCES OF DISPLAY IS HEREBY DISCLAIMED BY CITY. APPLICANT ACCEPTS THE PUBLIC DISPLAY AREAS AND CIRCUMSTANCES OF DISPLAY ON AN “AS IS,” “WHERE IS” AND “WITH ALL FAULTS” BASIS, INCLUDING, WITHOUT LIMITATION, ANY LATENT OR PATENT DEFECTS. APPLICANT AKNOWLEDGES THAT APPLICANT HAS HAD ALL OF THE OPPORTUNITY THAT APPLICANT DESIRES TO THOROUGHLY INSPECT AND EXAMINE THE PUBLIC DISPLAY AREAS ON CITY PROPERTY IN ORDER TO FULLY EVALUATE THE CONDITIONS THEREOF AND THE CIRCUMSTANCES OF DISPLAY, AND ANY RISKS INVOLVED. CITY SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY OR WARRANTY ASSOCIATED WITH THE EXHIBIT LOCATION AND SPACE TO BE UTILIZED FOR ART WORK PUBLIC DISPLAY. APPLICANT HEREBY ASSUMES FULL AND EXCLUSIVE LIABILITY FOR ANY LOSS OR DAMAGE TO ART WORKS OR DISPLAY MATERIALS.**
13. **Sovereign and Qualified Immunities.** The Applicant expressly acknowledges that the City is a political subdivision of the State of Texas, and that nothing in this Agreement shall be construed as a waiver or relinquishment by the City of its sovereign immunity or of the qualified immunity of its employees, officials and appointees.
1. **INDEMNIFICATION.** **APPLICANT AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS’ FEES AND EXPENSES ASSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF APPLICANT OR CITY, BY REASON OF DEATH OR INJURY TO PERSONS, OR LOSS OR DAMAGE TO TANGIBLE PROPERTY OR INFRINGEMENT OF COPYRIGHT OR INTANGIBLE PROPERTY INTEREST, RESULTING FROM OR ARISING OUT OF, THE VIOLATION OF ANY LAW, REGULATION, OR COPYRIGHT LAW, OR IN ANY MANNER ATTRIBUTABLE TO ANY ACT OF COMMISSION, OMISSION, NEGLIGENCE OR FAULT OF APPLICANT, ITS AGENTS OR EMPLOYEES, OR THE JOINT NEGLIGENCE OF APPLICANT AND ANY OTHER INDIVIDUAL OR ENTITY, AS A CONSEQUENCE OF ITS EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR SUSTAINED IN OR UPON CITY PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY APPLICANT HEREUNDER. THE DUTY TO INDEMNIFY WILL CONTINUE IN FULL FORCE AND EFFECT, NOT WITHSTANDING THE EXPIRATION OR EARLY CANCELLATION OF THIS AGREEMENT, WITH RESPECT TO ANY CLAIMS BASED ON FACTS OR CONDITIONS THAT OCCURRED PRIOR TO EXPIRATION OR CANCELLATION. NOTHING HEREIN SHALL REQUIRE APPLICANT TO INDEMNIFY, DEFEND OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY’S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT**
14. **Notices.** Any notice required or permitted to be given to a party under this Agreement, shall be in writing and shall be deemed given (i) on the day it is delivered personally (with receipt); or (ii) the day after it is deposited with a nationally-recognized courier service for next day delivery; or (iii) three (3) days after it is deposited in the U.S. certified mail, postage prepaid, return receipt requested, addressed to each party as hereinabove set forth, or at such other address as a party may provide the other in writing.
15. **Entire Agreement; Governing Law.** This document constitutes the entire Agreement between the parties. No modification or amendment of this Agreement will have any force or legal effect unless made in writing and executed by both the Applicant and the City. If any litigation arises hereunder, it is specifically stipulated that this

Agreement shall be interpreted and construed according to the laws of the State of Texas, without regard to conflicts-of-laws principles. The venue for any dispute concerning this Agreement will be in Tom Green County, Texas.

16. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never been a part of this Agreement. In such event, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be deemed added automatically as a part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
17. **Attorneys' Fees and Legal Expenses.** If either party sues to enforce this Agreement, the prevailing party is entitled to receive from the losing party all reasonable attorneys' fees, court costs, and litigation expenses incurred in connection with such proceeding.
18. **Construction.** Each party acknowledges reading and receiving a copy of this Agreement. Each party has had an opportunity to consult with legal counsel concerning the legal effect of this Agreement. Each party is voluntarily entering into this Agreement with full knowledge and understanding of the Agreement's contents and the legal consequences thereof. Therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement. When the context requires, singular nouns and pronouns include the plural.
19. **Time of the Essence.** Except as expressly stated otherwise herein, time is of the essence with respect to the performance of all obligations provided herein and the consummation of all transactions contemplated hereby.
20. **Assignment.** This Agreement is personal in nature, and the Applicant cannot assign this Agreement to any party without first obtaining the City's prior, written consent. Any purported assignment in violation of this provision is null and void *ab initio*. Any authorized assignment will not release the Applicant from any obligation or liability hereunder.
21. **Headings.** The headings contained herein are for purposes of convenient reference only. Headings will not be construed to alter the meaning of any provision of this Agreement.

**APPLICANT:**

**CITY OF SAN ANGELO:**

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Carl White  
Parks & Recreation Director

**Exhibit A**  
**Out-of-Doors Temporary Public Art Display**  
**Description of Exhibition Material and Art Pieces**

**Exhibit B**  
**Out-of-Doors Temporary Public Art Display**  
**Description of Location for Public Exhibition and Display**  
**of Described Art Pieces**