

ORDINANCE NO. 24-059

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH GREETINGS TOUR INC., OF PASADENA, CALIFORNIA, FOR PROFESSIONAL SERVICES TO RE-CREATE THE “GREETINGS FROM SANDUSKY” MURAL AT THE MYLANDER PAVILION; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, in 2017 the Sandusky Bicentennial Commission hired Victor Ving and Lisa Beggs of the Greetings From Tour to design and create a “Greetings from Sandusky” Mural on the Sandusky State Theatre and the mural became one of the iconic photo opportunities for residents including wedding parties, homecoming and prom photos, graduation pics and visitors to the area; and

WHEREAS, in June of 2020 the Sandusky State Theatre was damaged by a major storm and eventually the mural wall was demolished during efforts to rebuild the theatre; and

WHEREAS, a new location on the east exterior wall of the Mylander Pavilion at the Jackson Street Pier was selected by staff as the best and most prominent location to re-create the mural due to the high pedestrian traffic on the pier and the Sandusky Bay Pathway as well as the constant ferry traffic; and

WHEREAS, Greetings Tour Inc. will be providing professional services exempt from the requirement of competitive bidding for the re-creation of the “Greetings From Sandusky” mural at the Mylander Pavilion and these services are more fully described in the Scope of Services, which is attached to this Ordinance and marked Exhibit “A” and specifically incorporated herein; and

WHEREAS, the estimated cost for the professional services is \$30,125.00 of which \$10,000.00 has been pledged from the City’s Public Arts and Culture Commission, \$7,500.00 from the Sandusky State Theatre, and the remaining \$12,625.00 will be paid with Mylander Foundation grant fund; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to allow the work to begin and possibly completed during the Total Eclipse of SUNdusky festival from April 5-8, 2024, and by the completion date of June 1, 2024; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Division of Parks and Recreation, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into an agreement with Greetings Tour Inc., of Pasadena, California, for Professional

PAGE 2 - ORDINANCE NO. 24-059

Services for the re-creation of the "Greetings From Sandusky" mural at the Mylander Pavilion, substantially in the same form as attached to this Ordinance, marked Exhibit "1", and specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with the objectives and requirements of this Ordinance at an amount **not to exceed** Thirty Thousand One Hundred Twenty-Five and 00/100 Dollars (\$30,125.00).

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: March 11, 2024



THIS AGREEMENT ("Agreement") is made as of _____, 2024, by and between **Greetings Tour Inc.**, a California state company ("Artist"), and **City of Sandusky** ("Client") as set forth on the signature page below:

Artist has certain valuable experience and expertise in matters related to the creation of various types of murals/design and Client desires to engage Artist with respect to such services under the following terms and conditions.

1. Description of the Work

The "Artwork" to be created by the Artist shall be:

Greetings from Sandusky Mural (recreation) by Greetings Tour (Victor Ving & Lisa Beggs)

- Design scaled to 10' ft H x 20' W
- To be created off-site on custom built framed out dibond panels
- Client to provide an indoor location to setup & paint the panels prior to installation (use of spray paint allowed)
- Includes all labor, supplies & equipment

2. Obligations of the Artist

- a) Artist shall purchase all materials necessary for the creation of the Artwork with the exception of supplies provided by Client noted in "Description of the Work" above.
- b) Artist shall create the Artwork, or, at its sole discretion, oversee the work of a hired sub-contractor/assistant.
- c) Unless otherwise indicated above, Artist shall determine the artistic expression, scope, design, color, size, material, texture, and placement of the Artwork, subject to review and acceptance by Client, as set forth in this Agreement.

3. Obligations of the Client

- a) If Client shall provide the canvas or wall space, Client shall be responsible for hiring and compensating the labor services for the preparation of the surface for the Artwork. The surface shall be properly primed with enough time to cure prior to Artist commencement of preparation of the Artwork. Artist is not responsible for existing structural and surface issues that may affect the quality, appearance or the life of the Artwork.
- b) Before Artist can begin working, Client shall secure any building permits and ensure compliance with all applicable statutes, ordinances or regulations of any governmental or regulatory Artist having jurisdiction over the location and which are necessary for the lawful creation and execution of the Artwork.
- c) For time sensitive installations (such as live art at events), any minor changes Artist deems necessary to enhance the composition or color in the Artwork will be deemed for the good of the painting and at no additional charge to Client.
- d) Artist shall not be responsible for any delay in commencement of preparation and application of the Artwork to the surface arising from Client's failure to comply with the obligations set forth in this Section 3.

4. Sketch Process

- a) Artist is to provide an initial lettering/layout placement for Client approval.
- b) Upon lettering/layout approval, Artist will deliver the first sketch layout image references within the lettering in full color. This is considered the first sketch. Artist will utilize Client feedback to provide **up to 2 additional rounds of revisions** inclusive in the price set forth in section 5, herein. Any additional Sketches after the 2nd round will be charged at **\$150/per hour**. Client shall thereafter notify the Artist in writing whether it approves or disapproves the Sketch. If the Client still determines that further Sketches are disapproved, it shall provide the Artist with a statement in writing of its reasons for disapproval, whereupon Artist will have the option to (i) continue work and submit an additional Sketch, or (ii) to terminate this Agreement and keep any fees already paid.
- c) In the event of termination of this Agreement pursuant to paragraph (b), Artist shall retain the Sketches and all compensation previously paid and neither party shall be under any further obligation to the other in respect of the subject matter thereof.
- d) Sketches are meant as blueprints for an installation and NOT fully rendered artwork on a smaller scale. In particular, colors, texture, dimensions, materials and scale of the finished Artwork may depart significantly from those indicated in the Sketch. Artist will make all final decisions regarding the aesthetics of the composition of the Artwork, and is to use its discretion when matching the approved design colors.



- e) Sketches do not include a fully rendered digital design or small-scale painting, and in some cases, such work may not be possible. If Client requests a fully rendered digital design or small-scale painting, the fee for such work will be separately negotiated.
- f) Any additional work done by the Artist not within the original scope shall be negotiated and compensated in writing separately from this Agreement. If after the execution of this Agreement, Client requests Artist (i) create additional artwork which is not covered by the price quoted below, or (ii) Client requests changes to the Artwork which in Artist's sole discretion substantially changes the scope of the Artwork or requires Artist to engage a different artist to create the Artwork, Client agrees that Artist shall have a right to retain half of the Deposit set forth in Section 5(b), and Client and Artist will seek to negotiate a revised Project scope and fee for the revised Project.

5. Fees and schedule of payment

- a) Price of Artwork): \$30,125
- b) A non-refundable 50% deposit of \$15,062.50 is due at time of contract sign off.
- c) **Deposits serve the dual purpose of a Kill Fee if the Client cancels the project.**
- d) Any balance shall be due upon Final Acceptance as described in Paragraph 6(c), below.
- e) Please note that any credit card payments will be charged an additional 3.5% convenience fee. Deposits are valid for up to one year upon receipt. Accounts not paid within 60 days of the date of the invoice are subject to a 3% monthly finance charge.

6. Start and completion dates, and Artwork Final Acceptance

- a) Artist will use reasonable efforts to complete the Artwork by 6/1/2024 ("Completion Date"). Please note that Client delays in which Artist has no control including but not limited to, Client's failure to meet its obligations in Section 3, creative feedback, failure of Client to obtain necessary approvals and permits, failure to properly prime the Artwork surface, and failure to timely complete any necessary construction, will extend the Completion Date as necessary to account for any delays.
- b) Artist shall advise Client in writing when all Artwork has been completed in substantial conformity with the proposal for the Artwork as set forth in Section 1.
- c) Final Acceptance shall be deemed to have occurred, and any remaining fee balance shall be due as of the earlier of: (i) the date of the Client's notification of acceptance of the Artwork or (ii) 10 days after the Artist has sent the written notice to the Client required under Section 6(b) that the Artwork is completed, unless the Client, prior to the expiration of the 10-day period, gives the Artist written notice specifying and describing the services which have not been completed.

7. Exploitation of the Work

Notwithstanding the written assignment of any advertising/promotion rights to the Client, the Artist shall retain all copyrights of the Artwork. Artist reserves all rights to the reproduction of the Artwork for any commercial purpose. Client shall not make any commercial use of the Artwork, except that Client may use the Artwork in licensing terms listed under description of work. Client shall not otherwise make any reproduction of the Artwork available for sale without the prior written authorization of Artist. Both during the Term of this Agreement and thereafter, Client will assist Artist and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering the Artwork. Artist will sign any such applications, upon request and Client's expense, and deliver them to Artist. Except as noted herein, Artist will bear all expenses that it causes to be incurred in connection with such copyright, trademark, and/or patent protection.

8. Maintenance of the Work

Client shall notify Artist promptly in the event of the need for any maintenance or restoration services so that the Artist may have a reasonable opportunity to perform such work itself or to supervise or consult in its performance. Artist shall be reasonably compensated by the Client for future maintenance and/or restoration services rendered on terms agreeable to Client, and Client understands that such maintenance or restoration is not included as part of the Artist's services under this Agreement. In absence of any need for restoration or maintenance, the Artwork shall remain free of alteration by the Client. Client shall take reasonable precautions to protect the Artwork against damage or destruction by external forces, including but not limited to weather and normal wear and tear. In the event of a restoration or voluntary complete or partial removal of the Artwork, Client agrees to provide Artist written ten (10) day notice of any removal or disposal of the Artwork and to provide Artist with the opportunity to keep or salvage the Artwork, if possible. Client shall inform Artist if Client intends to move the Artwork, and shall keep Artist informed of the location of the Artwork if it is moved.

9. Title of Ownership



Physical title of ownership in the Artwork shall pass from the Artist to the Client upon the completion of the Artwork and payment in full of Artist, except as otherwise detailed in this Agreement.

10. Efforts

Artist agrees that, for so long as this Agreement continues in effect, Artist shall devote such of its time and energies to the services requested by Client hereunder as Artist deems reasonably necessary and appropriate to perform the services required hereunder.

11. Termination

Artist may terminate this agreement immediately without notice upon the reasonable determination of cause. Cause shall include, but not be limited to Client's failure to obtain necessary permits, or any other breaches of Client's obligations under section 3(b) above, or failure to pay the deposit set forth in section 5 above. If this Agreement is terminated, Artist shall have no liability whatsoever to Client and Artist shall retain all legal and equitable rights and remedies.

12. Warranty

Artist warrants that the completed Artwork will be fit and suitable for display in the manner (and to the extent/and for the duration) for which it is to be created, but this warranty is conditioned upon the Client's compliance with the provisions hereof relating to the installation and maintenance. Further, Artist hereby warrants that it created all of the Artwork produced pursuant to this Agreement and that the Artist possesses all legal rights in them.

13. Entire Agreement; Amendments and Waivers

This Agreement, together with all exhibits, deal memos, and schedules hereto, constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. The Parties waive the right to amend this Agreement by any means other than a writing signed by all Parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

14. Binding Effect

This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their representatives, heirs, permitted assigns, and successors in interest.

15. Publicity

Client hereby grants to Artist the right to use final images or photographs of the Artwork, and Client's name, likeness, image, and biography in connection with Artist's portfolio, advertising, marketing, social media, promotion, sale, and distribution of Artist's promotional materials.

16. Execution

This Agreement shall be executed in multiple copies and each executed copy shall constitute an original, but the copies shall be deemed one and the same instrument.

17. Assignment

This Agreement provides for the performance of personal services by Artist and Artist may assign this Agreement or any of its interest hereunder or delegate any duty or responsibility incurred by it hereunder to another. Client may not assign this agreement without the prior written consent of Artist.

18. Relationship of Parties being Independent Contractor:

- a) It is acknowledged and agreed that Artist shall at all times be an independent contractor, rather than an employee, co-venture, agent, partner, or representative of Client. In accordance with this independent contractor status, Artist shall have no authority to act for or on behalf of Client or to bind Client without its express written consent. It is understood that Client does not agree to use Artist exclusively. It is further understood that Artist is free to perform similar services for others while under contract with Client, so long as Artist is able to perform the obligations under the Agreement.
- b) The services and the hours the Artist is to work on a given day will be entirely within the Artist's control and Client is relying on the Artist to put in such number of hours as is reasonably necessary to fulfill the spirit and purposes of this Agreement.
- c) Client understands that (i) Artist shall not be considered as having employee status for the purpose of any employee benefit plan applicable to Client's employees generally; (ii) Client is not required to provide Artist with workers'



compensation; and (iii) Artist is responsible for Artist's federal and state income, social security, unemployment, and disability taxes and any governmental assessment with respect thereto.

- d) Notwithstanding anything to the contrary herein, Artist shall be responsible, at its own cost and expense, for insuring Artist's own business and personal property, inclusive of any equipment, gear, or vehicles that Artist brings on site.

19. Trademarks

Each Party agrees that it has no right, title or interest in or to any trademark, trade name, slogan, logo or other identification of the other Party (except the right to use the same in accordance with the terms and conditions of this Agreement) (collectively, the "Trademark Properties"), and further agrees that any such Trademark Properties are and shall remain the sole property of their respective owner. Any goodwill engendered by either Party's use of one or more of the other's Trademark Properties in accordance with the terms and conditions of this Agreement shall inure solely to the owner of those Trademark Properties. Neither Party shall challenge in any forum the validity of the other's Trademark Properties. Neither Party shall acquire or attempt to acquire any rights (common law, statutory, or otherwise) in and to any trademark, trade name, slogan, logo, or other identification that is similar to, and/or likely to cause consumer confusion with, any of the other Party's Trademark Properties.

20. Disability

In the event of an incapacitation, illness, or injury of a subcontractor engaged by Artist to create the Artwork and a delay arising there from in the execution of the Artwork, the Artist shall notify the Client of such delay and use best efforts to engage another subcontractor to complete the Artwork. Such delay will not be a basis for Client to withhold Artist's fees due under this Agreement.

21. Force Majeure

The Parties shall not be liable to one another for any failure to perform as required under this Agreement if such failure is due to any Act of God such as fire, earthquake or natural disaster, war, terrorism, rebellion, insurrection, civil war, military action, government regulation, black-out, strike, or otherwise beyond the Parties' reasonable anticipation or control.

22. Independent Counsel

The Parties hereto represent that they have had the opportunity to obtain independent legal counsel before entering this agreement.

23. Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules by a single arbitrator mutually agreed upon by both parties. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any mediation or arbitration hearings shall take place in New York, New York.

24. Construction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles thereof.

25. Attorney Fees

In the event of any arbitration or litigation arising from this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

26. Notice

Any notice required or permitted to be given hereunder shall be in writing and will be effective upon (i) delivery, if provided by personal delivery or nationally recognized express courier service (with confirmation of receipt), or confirmed facsimile or email or (ii) Two (2) business days after mailing if by U.S. registered or certified mail, postage prepaid, return receipt requested, to the relevant Party at their respective addresses given herein or at such other address designated by written notice.

27. Headings

The paragraph headings utilized herein are for convenience only, and the same shall not affect the construction of any provision contained herein.

28. Unenforceability of Provisions



If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

29. Terms and Conditions:

By signing this Agreement, Client acknowledges that it has received, read, and accepted this Agreement, inclusive of Exhibits, which are incorporated herein and made a part of this Agreement.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

Greetings Tour Inc / by Victor Fung / Artist | Phone: 718-350-7671 | Email: greetingstour@gmail.com

_____ Title: President Date: _____

City of Sandusky / by Jason Werling | Phone: 419-239-4822 | Email: JWerling@ci.sandusky.oh.us

_____ Title: _____ Date: _____

EXHIBIT "A"

GREETINGS TOUR

SANDUSKY, OH CREATIVE BRIEF

v 1.0 1/25/2024

CANVAS / WALL

MURAL LOCATION

- Location:** Mylander Pavilion
223 W Shoreline Dr, Sandusky, OH 44870
- Canvas:** 10' H x 20' W
- Surface:** Framed out dibond panels (install on wood)
- Facing:** East
- Notes:** Lights & obstructions to be relocated



Greetings from SANDUSKY (new location)

ADDITIONAL WALL VIEWS

MURAL LOCATION



ORIGINAL MURAL DESIGN

STATE THEATRE



Do we remove this?

NEW SCALE LAYOUT

SANDUSKY 2024



10' ft H

20' ft W (4 panels)

UPDATED DESIGN NOTES

SANDUSKY 2024

- Need updated reference of State Theatre Marquee
- Adjust Cedar Point skyline to one color (blue)

EXHIBIT "A"



EMAIL

info@greetingstour.com

WEBSITE

greetingstour.com

PHONE

718-350-7671

SOCIAL

@greetingstour

