



**CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WI
GENERAL GOVERNMENT AND
FINANCE COMMITTEE MEETING
TUESDAY, FEBRUARY 20, 2024 AT 6:15 P.M.
Port Washington City Hall, 100 W. Grand Avenue, Port Washington, WI 53074
Council Chambers Side Conference Room**

AGENDA

- 1. Roll Call**
- 2. Approve Minutes of the Previous Meeting**
- 3. Consideration and Possible Action on Two Agreements with Port Washington Main Street, Inc. to Paint Murals on the Jackson Street Retaining Wall at N. Wisconsin St. and on Lift Station 3, Located at 310 N. Lake St.**
- 4. Chairman's Business**
- 5. Member's Business**
- 6. Public Comments/Appearances**
- 7. Adjournment**

Committee Members- Alderpersons- Jonathan Pleitner, Dan Benning, Deborah Postl

Persons with disabilities requiring special accommodations for attendance at the meeting should contact the City Clerk at least one (1) business day prior to the meeting. Notice is hereby given that Common Council members or members of other governmental bodies who are not members of this board, commission or committee may be present at this meeting to gather information about a subject over which they have decision-making authority. In that event this meeting may also constitute a simultaneous meeting of the Council or of such other governmental bodies. Whether a simultaneous meeting is occurring depends on whether the presence of one or more Council members or members of such other governmental bodies results in a quorum of the Council or of such other governmental bodies and, if there is a quorum, whether any agenda items listed above involve matters within the Council's or the other governmental bodies' jurisdiction. If a simultaneous meeting is occurring, no action other than information gathering will be taken at the simultaneous meeting. [State ex rel. Badke vs. Greendale Village Board, 173 Wis. 2d 553 (1993).]



CITY OF PORT WASHINGTON, OZAUKEE COUNTY, WI
GENERAL GOVERNMENT AND
FINANCE COMMITTEE MEETING
TUESDAY, FEBRUARY 6, 2024 AT 5:45 P.M.
Port Washington City Hall, 100 W. Grand Avenue, Port
Washington, WI 53074
Council Chambers Side Conference Room

MINUTES

- 1. Roll Call-** Members present were Alderpersons Jonathan Pleitner, Dan Benning, and Deborah Postl. Also present was Interim City Administrator/City Clerk Susan Westerbeke, and ACA/HR Director Emily Blakeslee.
- 2. Approve Minutes of the Previous Meeting-** MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO APPROVE THE MINUTES OF THE PREVIOUS MEETING AS PRESENTED. Motion carried unanimously.
- 3. Consideration and Possible Action on an Amendment to the Fire Services Contract with the Town of Port Washington-** Finance Director/Treasurer Mark Emanuelson was present to review the annual contract amendment. The City of Port Washington provides fire services to the Town of Port Washington. This agreement is amended annually to continue these services for a calendar year. The proposed written amendment, along with the calculation for the base charge for the 2024 contract year were provided. The 2024 base charge is \$117,011.44. This represents a \$20,387 or 14.8% decrease from 2023. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO RECOMMEND APPROVAL OF THE AMENDMENT TO THE FIRE SERVICES CONTRACT WITH THE TOWN OF PORT WASHINGTON AS PRESENTED. Motion carried unanimously.
- 4. Consideration and Possible Action on Revolving Loan Fund for Cavalier Wine Bar-** The Director of Planning and Development Bob Harris was present to review the application for a \$25,000 Revolving Loan Fund (RLF) loan for the purpose of assisting in the financing for the Cavalier Wine Bar located at 324 Lake Street, Suite 3. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO RECOMMEND APPROVAL OF THE REVOLVING LOAN FUND FOR THE CAVELIER WINE BAR AS PRESENTED. Motion carried unanimously.
- 5. Consideration and Possible Action on Original “Class B” Liquor and Class “B” Beer License for Cavalier Wine Bar LLC (324 Lake Street, Suite 3)-** The City Clerk reviewed and approved the application and required supporting documentation. All required fees have been paid and the background record check was completed and approved by Police Chief Hingiss. MOTION MADE BY ALD. POSTL, SECONDED BY ALD. BENNING TO RECOMMEND APPROVAL OF THE ORIGINAL “CLASS B” LIQUOR AND CLASS “B” BEER LICENSE FOR CAVELIER WINE BAR LLC (324 LAKE STREET, SUITE 3 AND KELLY BROWN-AGENT AS PRESENTED. Motion carried unanimously.
- 6. Consideration and Possible Action on Original “Class A” Liquor and Class “A” Beer License for Shree Umiyakrupa LLC (Grand Ave Mobil, 223 W. Grand Avenue)-** The City Clerk reviewed and approved the application and required supporting documentation. All required fees have been paid and the background record check was completed and approved by Police Chief Hingiss. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO RECOMMEND APPROVAL OF THE ORIGINAL “CLASS A” LIQUOR AND “CLASS A” BEER LICENSE FOR SHREE UMIYAKRUPA LLC (GRAND AVE MOBIL, 223 W GRAND AVE AND MOHAMMAD SIDDIQUIE-AGENT AS PRESENTED. Motion approved unanimously.
- 7. Consideration and Possible Action on the Approval of a Contract for Services from Bray Associates – Architects Inc. Related to the Contemplated New Public Safety Complex-** The Finance Director/Treasurer reviewed the information related to the contract. Public Works Director Rob Vanden Noven and Bray Associates - Architects Inc. staff Matt Wolfert were both present to answer the committee’s questions during discussion. At the June 20, 2023, meeting of the Common Council, the Council approved the appropriation of \$75,000 to conduct a space needs analysis, site

assessment, and concept plan for a public safety complex. Staff engaged Bray Associates – Architects Inc. to provide those services. The attached agreement identifies a cost of \$11,900 for the space needs assessment and concept plan. If the concept plan is approved at an upcoming meeting, the next steps would be to perform site surveying and additional site geotechnical, environmental, and wetland evaluation. The estimated costs for those services are \$31,000. Absent specific Common Council approval to move forward with design, the impact of this agreement will be limited to the \$42,900 as identified in the documentation. If the Common Council approves moving forward the formal facility design in preparation for construction, this agreement will engage Bray Associates – Architects Inc. for those services as delineated in the contract agreement at an anticipated rate of 5.7% of construction costs. In addition, staff has engaged CD Smith as the City’s project construction manager to provide various cost analysis on behalf of the city and identify potential project savings opportunities and alternatives in construction and design for the council to consider as the project moves forward. Mr. Wolfert provided information and answered further questions related to the project itself, and the construction management firm CD Smith. The City Attorney reviewed and recommended approval of the contract as presented. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO RECOMMEND APPROVAL OF THE CONTRACT FOR SERVICES FROM BRAY ASSOCIATES – ARCHITECTS INC. RELATED TO THE CONTEMPLATED NEW PUBLIC SAFETY COMPLEX AS PRESENTED. Motion carried unanimously.

8. Consideration and Possible Action to Grant Wisconsin Bell Inc. Doing Business As AT&T a Utility Easement at 305 E. Washington Street, Inventors Brewpub and Edison Hall- The Public Works Director reviewed the information related to granting the utility easement to AT&T to install below ground conduit and cables to transmit signals used in the provision of communication, video, and information services to Inventors Brewpub and Edison Hall at 305 E Washington Street. The City Attorney reviewed and recommended approval of this easement as presented. MOTION MADE BY ALD. POSTL, SECONDED BY ALD. BENNING TO RECOMMEND APPROVAL TO GRANT WISCONSIN BELL INC. DOING BUSINESS AS AT&T A UTILITY EASEMENT AT 305 E. WASHINGTON STREET, INVENTORS BREWPUB AND EDISON HALL AS PRESENTED. Motion carried unanimously.

9. Consideration and Possible Action on Developers Agreement with TBF Development LLC for WEDC Grant- City Attorney Eric Eberhardt was present to review the information related to the Developers Agreement and the WEDC-EDI Grant process. The City Attorney, in consultation with the City Treasurer, the Developer’s attorney, and representatives of Ehlers’ Inc. (City’s financial advisor), drafted the Developer’s Agreement. The Development Agreement builds in protections for the city if the project defaults. MOTION MADE BY ALD. BENNING, SECONDED BY ALD. POSTL TO RECOMMEND APPROVAL OF THE DEVELOPERS AGREEMENT WITH TBF DEVELOPMENT LLC FOR WEDC GRANT AS PRESENTED. Motion carried unanimously.

10. Chairman’s Business- None.

11. Member’s Business- None.

12. Public Comments/Appearances- None.

13. Adjournment- MOTION MADE BY ALD. POSTL, SECONDED BY ALD. BENNING TO ADJOURN THE MEETING AT 6:20 P.M. Motion carried unanimously.

Respectfully submitted,
Susan L. Westerbeke, City Clerk

AGENDA ITEM MEMORANDUM

City of Port Washington

TO: Common Council

FROM: Rob Vanden Noven, Director of Public Works

DATE: February 20, 2024

SUBJECT: Consideration and Possible Action on Two Agreements with Port Washington Main Street, Inc. to Paint Murals on the Jackson St Retaining Wall at N. Wisconsin St. and on Lift Station 3, Located at 310 N. Lake St.

ISSUE: Should the City enter into two separate agreements to paint murals on the Jackson St. retaining wall at N. Wisconsin St. and on Lift Station 3, located at 310 N. Lake St.?

STAFF RECOMMENDATION: Staff recommends approval of the two agreements to place murals on the Jackson St. retaining wall and on Lift Station 3.

RECOMMENDED MOTION: I move to approve the two mural agreements as presented.

BACKGROUND/DISCUSSION: Port Washington Main Street, Inc., has a program titled, "Paint on Port", by which murals and mosaics have been placed on private property for public viewing at several locations in the community. Now, Paint on Port is proposing two locations that are on public property: the Jackson St. retaining wall at N. Wisconsin St., and at Lift Station 3, located at 310 N. Lake St. There are two separate agreements being proposed for these two locations which have been prepared by Main Street and reviewed and edited by the City Attorney.

LIFT STATION MURAL

Main Street has engaged Ansay and the condo association in the process and reports that everyone is in support of a mural on the lift station. Their idea would be a historical piece with a nod to the history of the land and the Gilson family (the original owners). They are looking at using a Luxembourg artist to do the mural.

They don't have any designs yet but will share them once they have them. It is intended to be "a beautiful classic piece".

The artist wants to extend the design to cover the two metal doors on the building. It wouldn't interfere with the functioning of the doors. The windows would not be painted.

The selection of any mural design would be by a Jury committee that has yet to be selected for 2024. Last year they had 7 people ages 20-70+, representing a cross section of city residents. They also had a city alderman and a city staff member as part of the Jury. The owner of the wall proposed for any mural site is also on the Jury for discussions of the mural designs for their wall.

JACKSON ST. RETAINING WALL

Per Eileen Grace, the Project Manager of the Paint On Port Mural Program:

"The planning for the Branching Out Community Mural is underway. It is at the Jackson Street retaining wall between N. Wisconsin Ave and 32. It is the first 100 linear feet (first 4 panels of wall) across from Lake Financial and just east of the Police station. The schools are very excited

about this collaboration with artists and students. We are also in the process of meeting with each school's parent groups.

We will be creating a 3-5 min. video on the process for a legacy piece for the schools and the city. So don't be surprised if you may be videotaped for some of the prep work. (smile)

I have met with Lake Financial and they are aware of the project and I will also be sharing the timeline with them."

Paint on Port is asking the City to provide:

- cut back/ clean up weeds at the top and base of the wall. They will work the City as some plantings may be incorporated into the design as well as some new plantings. They can provide volunteer support under City direction. End of March. (prior to power washing of wall)
- Power wash concrete walls and the base of the wall where it meets the sidewalk April 8-April 20
- stabilize any loose concrete on the first panel adjacent to stairs. April 8-April 20
- seal the first panel of concrete as there is some seepage on that piece. April 8-20
- JD will discuss the type of sealant with Clay (Paint on Port) and get back to them to insure compatibility with primer and paint. They need to know early in February to purchase primer/paints.
- Prime all four panels, they can provide Luxon concrete primer or other primer recommended by Sherwin Williams due to sealant April 8-April 20
- Adhere Mosaic Panels to the wall (one tree design in the central portion of wall). They will be on site for this. Target the first week of June
- New Plantings above wall May/June
- City will lend scaffolding
- Would like to block off part of the street when students are painting for safety.

Timeline:

January Mural Design completed by Artists and Students, classroom activity

February 1 Mosaic and polytab designs begin, classroom activities. Need to know sealant the city will use on the wall.

March In classroom work continues with artists, art teachers and students to create Mural pieces.

Plantings/weed clean up above wall and at base (prior to power washing of wall)

April 8-20 Wall prep by City, allowing for weather

May Mural Team will begin design work and painting at the wall

May 2-3 Design Projection on wall and student work. 10am-1pm **Block off street need to confirm projection time based on weather**

May 9-10 Students working at the wall. 10am -1pm **Block off street**

May 16 Students working at the wall 10am -1 pm. **Block off street**

June 1-7 Adhere Mosaic panel to wall (prior to June 15)

June 1-10 New Plantings above wall

June 15 Project completion date

June 22-29 Paint Week and public reveal of community mural titled "Branching Out"

They are all very excited about this mural and the collaboration they are seeing with many artists, teachers and the 5 district schools. Sherri Kultgen, long time Port resident and art teacher at TJ is the lead artist and has done a phenomenal job on coordination of the participants and scheduling the schools, art teachers and the artist teams to make this happen."

STRATEGIC PLAN:

Strategic Direction:

Impact on Strategic Direction:

LEGAL:

City Attorney Review: Yes

Legal Comments & Conclusions:

Statutory References:

FISCAL IMPACT:

Amount of Recommendation/Cost of Project:

Total Project Costs to Date: minimal staff time

Source of Funding: Operating Budget

Operating and Maintenance Cost:

BOARD/COMMITTEE/COMMISSION RECOMMENDATION:

PUBLIC OUTREACH:

IF APPROVED, NEXT STEPS:

ATTACHMENTS:

- Agreement for Retaining Wall Mural
- Agreement for Pump Station Mural

Port Washington MURAL INSTALLATION AND MAINTENANCE AGREEMENT

This MURAL INSTALLATION AND MAINTENANCE AGREEMENT (this “Agreement”) is made between Port Main Street, Inc., a Wisconsin non-stock corporation (“MAIN STREET”), with its principal office at 222 E. Main Street, Ste. #222, Port Washington, Wisconsin, and the City of Port Washington, Wisconsin, a municipal corporation (“Owner”), (hereinafter referred to separately as a Party, or collectively as the Parties). This Agreement shall be effective as of the last date of execution by a Party below (the “Effective Date”).

RECITALS

WHEREAS, MAIN STREET understands and values the importance of public art, and the role murals play in the development of identity, tourism, preservation of culture, and beautification of the City of Port Washington, and in advancing the arts; and

WHEREAS, Owner recognizes that the purpose of this mural project, which is to enhance the community and encourage tourism and commerce in the City of Port Washington, is mutually beneficial to the City, MAIN STREET and Owner, and therefore desires to have a mural painted on the side(s) of Owner’s property at the location identified hereinbelow; and

WHEREAS, Owner recognizes that the Mural shall not be designed in such a manner as to constitute a “sign,” but rather an art installation; and Owner further recognizes that the Mural cannot be used to advertise a business or entity, and is subject to the other restrictions set forth in Sections 5.2. and 5.3, below; and

WHEREAS, Owner and MAIN STREET desire to execute an agreement establishing each Party’s rights and responsibilities with respect to site preparation, installation, maintenance, and ownership of the Mural on Owner’s property,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

Article 1 Definitions

- 1.1 **“Artist”** means the person who, as a profession or hobby, designs and oversees the production of the Mural to be installed on the Permitted Site.
- 1.2 **“Jury Committee”** means the appointed group of community representatives who review mural submissions and decide on the final mural design and placement on the Permitted Site.
- 1.3 **“Materials”** means the equipment, medium, or other supplies needed to construct and/or create the Mural on the Permitted Site.
- 1.4 **“Mural”** means the agreed upon design concept to be installed on the Permitted Site.
- 1.5 **“Permitted Site”** means 100 linear feet of the Owner’s concrete retaining wall located on the north side of West Jackson Street, between the east curblines of N. Wisconsin Street extended northward and the west curblines of N. Franklin Street, and north of the property at 102 E. Pier Street, in Port Washington, Wisconsin.

- 1.6 “Term” means, except as otherwise provided herein, the period beginning on the Effective Date of this Agreement and ending on that date which is five (5) years after the Effective Date.

Article 2

Agreements and Authorizations

- 2.1 Owner authorizes MAIN STREET to permit the Artist to install the Mural on Owner’s property at the Permitted Site. MAIN STREET and the Jury Committee shall have authority to choose the artist, subject matter, and design of the Mural through an art jurying process. One of Owner’s representatives (or one Owner’s designee) may be a member of the Jury Committee for purposes of discussing mural designs submitted for installation on the Owner’s property at the Permitted Site. Notwithstanding anything to the contrary in this Agreement, Owner shall have the right, in its sole discretion, to refuse the final design for the Permitted Site at which time a new site for the Mural, not located on Owner’s public property, will be discussed.
- 2.2 Owner agrees to allow the Mural to remain displayed on the Permitted Site for a period of not less than five (5) years from the date of the Mural’s substantial completion unless such period is earlier terminated pursuant to Section 3.4. of this Agreement, or unless such period is modified by the Parties in writing.
- 2.3 Owner grants MAIN STREET permission to: a) allow Artist or a qualified contractor selected and paid by Artist and approved by the City to prepare the Permitted Site for installation; and b) inspect, and hire and pay a contractor approved by the City to repair, the Permitted Site of any structural damage and potential hazards. As used in this Section 2.3., structural damage and potential hazards include, but are not limited to, the following:
- Loose or peeling paint.
 - Loose or broken concrete.
 - Cracked stucco material.
 - Signs of water leaks (new or existing).
 - Staining or rusting.
 - Metal screws, anchors, or nails.
 - Foreign material, such as plant or synthetic material growing through or being deposited from an abutting or adjacent source.
 - Bird or bat droppings, insects, etc.
 - Electrical wiring or other nearby safety or access hazards.
- 2.4 During the Term of this Agreement, Owner agrees to allow the general public reasonable access, at no cost, to view the Mural from the adjacent public sidewalks, unless Owner determines that public access should be restricted through physical means such as a gate, or through use of specified viewing times. At no time shall any persons be allowed to view the Mural by standing, stopping or parking on or within the public street or right-of-way, except in lawfully designated parking spaces.

- 2.5 During the Term of this Agreement, Owner hereby reserves the right to temporarily close public access to and viewing of the Mural as Owner, in its sole discretion, deems reasonably necessary in connection with the construction, demolition, maintenance, replacement or repair of the Owner's property. Except in the case of an emergency, such closure shall be initiated only after Owner gives at least five (5) business days' prior written notice to MAIN STREET, describing the reason(s) for such closure and indicating the dates for the start and termination of such closure.
- 2.6 Artist shall be responsible for and pay the costs of all materials to design, produce and install the Mural. MAIN STREET will award an artist's stipend to install the Mural at the Permitted Site. MAIN STREET shall undertake reasonable efforts to ensure that the Mural will be installed using the appropriate materials and technology so that the Mural retains its original appearance as long as reasonably possible following installation.
- 2.7 Installation Equipment. Owner shall provide scaffolding for use by MAIN STREET and Artist during the Mural installation process; *provided, however*, that MAIN STREET and Artist, and not the Owner, shall be jointly responsible for the safe placement, assembly, use, movement, maintenance, repair, and disassembly of such scaffolding throughout the period of Mural installation, including overseeing and supervising such activities for the protection of any persons present or performing work during the Mural installation process, whether such persons are employees, volunteers, or otherwise present.
- 2.8 Barricades. During the term of the Mural project, Owner shall provide and maintain barricades for purposes of restricting access to or closing the public sidewalks adjacent to the Permitted Site. Such barricades shall meet the standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD).

Article 3 Termination; Extension

- 3.1 Owner may, in its sole discretion, elect to terminate this Agreement without any liability to Artist or MAIN STREET if Artist: a) fails to install the Mural as specified in this Agreement; or b) fails to complete the installation of the Mural by the designated completion date of July 31, 2024.
- 3.2 MAIN STREET may, in its sole discretion, elect to terminate this Agreement without any liability to the Owner. However, in that event Owner shall have the right, without any liability or notice to MAIN STREET or Artist, to immediately remove the Mural from the Permitted Site using any means Owner deems reasonable, whether said Mural is complete or incomplete.
- 3.3 The Parties may mutually agree in writing to extend the Term of this Agreement. Any such agreement shall not be valid until approved and signed by authorized representatives of both Parties.
- 3.4 In the event the Mural, whether in complete or incomplete form, is destroyed by fire, rain, flood, explosion, collapse, landslide, earthquake, tornado or other adverse weather, terrorism, vandalism, riot, war, or Act of God beyond the reasonable control of either Party, this Agreement shall terminate.

Article 4 Maintenance and Repairs, Alteration, Removal

- 4.1 Owner shall be responsible for reporting to MAIN STREET any major or minor damage to the Mural from any cause. Owner shall be responsible for removal of graffiti written, drawn, marked or etched onto that portion of the Owner's retaining wall which is outside of that portion of the

Permitted Site upon which the Mural has been installed. MAIN STREET shall be responsible for and pay the costs of any other maintenance or repairs needed to be performed on the Mural to maintain its original appearance and condition for the Term, or any extended term, of this Agreement.

- 4.2 Owner may remove the Mural at Owner's expense if Owner reasonably determines that the Mural is causing harm to the Permitted Site or is limiting Owner's ability to use the Permitted Site for the purpose(s) for which it was intended.
- 4.3 MAIN STREET shall be responsible for arranging for and compensating the Artist for performing any work required to complete necessary repairs to the Mural or to maintain its original appearance and condition as long as reasonably possible.

Article 5 Mural Specifications

- 5.1 MAIN STREET will select the Artist to paint the Mural through an art Jury Committee process. The Parties understand and agree that the Mural shall not be of a commercial, offensive, indecent, political, or obscene (as construed in accordance with contemporary community standards) nature.
- 5.2 The Mural shall not include an advertisement or be commercial in nature or be designed as to constitute a "sign." Mural shall not contain copy, lettering, symbols or references relating directly to the promotion of any product, business, brand, organization, service, or cause. Mural may contain limited commercial elements so long as they are not included for the purpose of promoting a commercial transaction. Wording must be approved by MAIN STREET and its Mural Committee.
- 5.3 Mural shall not contain iconography, or allude to activity that displays or promotes offensive, indecent, or obscene subject matter. As used in this Article 5, the terms "iconography," "offensive," and "indecent" shall be construed by Owner and MAIN STREET according to their plain or ordinary meanings, consistent with what a reasonable person would understand the words to mean under the circumstances, and the term "obscene" shall be construed by Owner and MAIN STREET in accordance with contemporary community standards.

Article 6 Intellectual Property

- 6.1 MAIN STREET, its successors and assigns, shall own and control all necessary rights in the Mural, except as specified hereinbelow or as provided in MAIN STREET's agreement with the Artist.
- 6.2 Copyright. Subject to the restrictions and usage rights and licenses granted to MAIN STREET under this Agreement, and unless otherwise agreed to by the Parties in writing, or agreed to in MAIN STREET's agreement with Artist, the Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Mural.
- 6.3 MAIN STREET hereby grants Owner, and Owner's agents, officers, employees, authorized contractors and assigns, a limited and revocable license to do the following with respect to the Mural:

(i) Use and display the Mural on the Permitted Site only.

(ii) Make, display, distribute, and authorize the making, displaying, and distribution of photographs and other reproductions of the Mural only in connection with, and incidental to, other promotional or advertising activity undertaken by the Owner. Owner and MAIN STREET shall ensure that any such photographs and reproductions are made in a professional manner. Owner shall make reasonable efforts to ensure that any recognizable photograph or reproduction of all or part of the Mural includes appropriate credit, where practicable, to the Artist, also indicating that the copyright is held by the Artist. Failure to include such credit line and notice in any photograph or reproduction shall not constitute a breach of this Agreement, unless such failure is not corrected following written notice of such failure being provided to the Owner. Owner may not grant or sublicense the rights granted in this Section 6.3(ii) for any private or commercial purpose. Notwithstanding the foregoing, the license granted Owner in this Section 6.3(ii) does not include the right to sell photographs or reproductions of the Mural or to market such photographs or reproductions as standalone items for sale to or use by others.

6.4 MAIN STREET represents and affirms to Owner that, with respect to the Mural, Artist shall be required to waive any and all claims, arising at any time and under any circumstances, which Artist has or may have against Owner and/or MAIN STREET pursuant to the federal Visual Artists Rights Act (VARA), 17 U.S.C. §§106A and 113(d), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, or any other type of moral right possessed or claimable by Artist protecting the integrity of works of art.

Article 7 Indemnification; Insurance

7.1 The Owner agrees to indemnify and hold MAIN STREET harmless from any damages that may arise out of any injury connected to the viewing by the general public of the Mural under this Agreement, for which injury Owner or Owner's officers, employees, or agents are adjudged causally negligent by a court of competent jurisdiction, and only to the extent of such negligence. MAIN STREET agrees to indemnify and hold the Owner harmless from any damages that may arise out of any injury connected to the creation, installation, maintenance or repair of the Mural under this Agreement, for which injury MAIN STREET or MAIN STREET's officers, employees, or agents are adjudged causally negligent by a court of competent jurisdiction, and only to the extent of such negligence.

7.2 MAIN STREET shall obtain and maintain, at its expense, a policy of commercial general liability insurance, naming Owner and Owner's officers, employees, agents, and volunteers as additional insureds thereon. Said liability insurance policy shall include the following types and limits of coverage:

- (i) \$1,000,000 each occurrence limit for bodily injury and property damage.
- (ii) \$1,000,000 general aggregate.

Claims-made form of general liability coverage is not acceptable. The \$1,000,000 general aggregate limit must apply separately to the Mural project. The insurance required hereunder shall be primary coverage for incidents which may occur on Owner's property, and any insurance or self-insurance maintained by the Owner will not contribute to a loss. All insurance required hereunder shall be in full force prior to commencing any work at the Permitted Site or on Owner's property adjacent thereto, and shall remain in force throughout the Mural project, including the

PORT MAIN STREET, INC.

(Name/Title)

Date

For informational purposes only.

Visual Artist Rights Act <https://www.congress.gov/bill/101st-congress/house-bill/2690>

Port Washington MURAL INSTALLATION AND MAINTENANCE AGREEMENT

This **MURAL INSTALLATION AND MAINTENANCE AGREEMENT** (this “Agreement”) is made between Port Main Street, Inc., a Wisconsin non-stock corporation (“MAIN STREET”), with its principal office at 222 E. Main Street, Ste. #222, Port Washington, Wisconsin, and the City of Port Washington, Wisconsin, a municipal corporation (“Owner”), (hereinafter referred to separately as a Party, or collectively as the Parties). This Agreement shall be effective as of the last date of execution by a Party below (the “Effective Date”).

RECITALS

WHEREAS, MAIN STREET understands and values the importance of public art, and the role murals play in the development of identity, tourism, preservation of culture, and beautification of the City of Port Washington, and in advancing the arts; and

WHEREAS, Owner recognizes that the purpose of this mural project, which is to enhance the community and encourage tourism and commerce in the City of Port Washington, is mutually beneficial to the City, MAIN STREET and Owner, and therefore desires to have a mural painted on the side(s) of Owner’s property at the location identified hereinbelow; and

WHEREAS, Owner recognizes that the Mural shall not be designed in such a manner as to constitute a “sign,” but rather an art installation; and Owner further recognizes that the Mural cannot be used to advertise a business or entity, and is subject to the other restrictions set forth in Sections 5.2. and 5.3, below; and

WHEREAS, Owner and MAIN STREET desire to execute an agreement establishing each Party’s rights and responsibilities with respect to site preparation, installation, maintenance, and ownership of the Mural on Owner’s property,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

Article 1 Definitions

- 1.1 **“Artist”** means the person who, as a profession or hobby, designs and oversees the production of the Mural to be installed on the Permitted Site.
- 1.2 **“Jury Committee”** means the appointed group of community representatives who review mural submissions and decide on the final mural design and placement on the Permitted Site.
- 1.3 **“Materials”** means the equipment, medium, or other supplies needed to construct and/or create the Mural on the Permitted Site.
- 1.4 **“Mural”** means the agreed upon design concept to be installed on the Permitted Site.
- 1.5 **“Permitted Site”** means the Owner’s Lift Station No. 3 building located immediately east of and adjacent to the intersection of E. Pier Street and N. Lake Street, in Port Washington, Wisconsin.
- 1.6 **“Term”** means, except as otherwise provided herein, the period beginning on the Effective Date of this Agreement and ending on that date which is five (5) years after the Effective Date.

Article 2
Agreements and Authorizations

- 2.1 Owner authorizes MAIN STREET to permit the Artist to install the Mural on Owner's property at the Permitted Site. MAIN STREET and the Jury Committee shall have authority to choose the artist, subject matter, and design of the Mural through an art jurying process. One of Owner's representatives (or one Owner's designee) may be a member of the Jury Committee for purposes of discussing mural designs submitted for installation on the Owner's property at the Permitted Site. Notwithstanding anything to the contrary in this Agreement, Owner shall have the right, in its sole discretion, to refuse the final design for the Permitted Site at which time a new site for the Mural, not located on Owner's public property, will be discussed.
- 2.2 Owner agrees to allow the Mural to remain displayed on the Permitted Site for a period of not less than five (5) years from the date of the Mural's substantial completion unless such period is earlier terminated pursuant to Section 3.4. of this Agreement, or unless such period is modified by the Parties in writing.
- 2.3 Owner grants MAIN STREET permission to: a) allow Artist or a qualified contractor selected and paid by Artist and approved by the City to prepare the Permitted Site for installation; and b) inspect, and hire and pay a contractor approved by the City to repair, the Permitted Site of any structural damage and potential hazards. As used in this Section 2.3., structural damage and potential hazards include, but are not limited to, the following:
- Loose or peeling paint.
 - Loose or broken concrete.
 - Cracked stucco material.
 - Signs of water leaks (new or existing).
 - Staining or rusting.
 - Metal screws, anchors, or nails.
 - Foreign material, such as plant or synthetic material growing through or being deposited from an abutting or adjacent source.
 - Bird or bat droppings, insects, etc.
 - Electrical wiring or other nearby safety or access hazards.
- 2.4 Except as otherwise provided in Sections 2.4 and 2.5 hereof, during the Term of this Agreement the Owner agrees to allow the general public reasonable access, at no cost, to view the Mural from the adjacent public sidewalks, unless Owner determines that public access should be restricted through physical means such as a gate, or through use of specified viewing times. At no time shall any persons be allowed to view the Mural by standing, stopping or parking on or within the public street or right-of-way, except in lawfully designated parking spaces.

The Owner hereby notifies MAIN STREET, and MAIN STREET hereby expressly acknowledges, that the Permitted Site includes a working lift station with potential health

hazards, including, but not limited to, the presence and/or emission of substances such as methane gas and hydrogen sulfide gas, and electrical connections, which may cause injury of death to persons present on the Permitted Site while installing, maintaining, repairing or replacing the Mural. MAIN STREET further acknowledges that periodically, or in the event of emergency, during the Term of this Agreement, the Owner and Owner's agents, contractors, and employees may require access to and perform work on and within the lift station building at the Permitted Site to operate the generator, monitor lift station operations, perform landscape maintenance, clean the wet well, and carry out other maintenance and operational activities. Although Owner will make reasonable efforts to minimize the time required for such work and operational activities, MAIN STREET acknowledges that such access and work may last for minutes or hours, including during installation of the Mural and at other times during the Term of this Agreement, depending upon the nature of the work or operational activities.

- 2.5 During the Term of this Agreement, Owner hereby reserves the right to temporarily close public access to and viewing of the Mural as Owner, in its sole discretion, deems reasonably necessary in connection with the construction, demolition, maintenance, replacement or repair of the Owner's property. Except for the performance of operational activities or interior maintenance activities or in the event of an emergency, for which no prior notice to MAIN STREET shall be required, temporary closure of access to and viewing of the Mural shall be initiated by Owner only after Owner gives at least five (5) business days' prior written notice to MAIN STREET, describing the reason(s) for such closure and indicating the dates for the start and termination of such closure.
- 2.6 Artist shall be responsible for and pay the costs of all materials to design, produce and install the Mural. MAIN STREET will award an artist's stipend to install the Mural at the Permitted Site. MAIN STREET shall undertake reasonable efforts to ensure that the Mural will be installed using the appropriate materials and technology so that the Mural retains its original appearance as long as reasonably possible following installation.
- 2.7 Barricades. During the term of the Mural project, Owner shall provide and maintain barricades for purposes of restricting access to or closing the public sidewalks adjacent to the Permitted Site. Such barricades shall meet the standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD).

Article 3 Termination; Extension

- 3.1 Owner may, in its sole discretion, elect to terminate this Agreement without any liability to Artist or MAIN STREET if Artist: a) fails to install the Mural as specified in this Agreement; or b) fails to complete the installation of the Mural by the designated completion date of July 31, 2024.
- 3.2 MAIN STREET may, in its sole discretion, elect to terminate this Agreement without any liability to the Owner. However, in that event Owner shall have the right, without any liability or notice to MAIN STREET or Artist, to immediately remove the Mural from the Permitted Site using any means Owner deems reasonable, whether said Mural is complete or incomplete.
- 3.3 The Parties may mutually agree in writing to extend the Term of this Agreement. Any such agreement shall not be valid until approved and signed by authorized representatives of both Parties.
- 3.4 In the event the Mural, whether in complete or incomplete form, is destroyed by fire, rain, flood, explosion, collapse, landslide, earthquake, tornado or other adverse weather, terrorism, vandalism, riot, war, or Act of God beyond the reasonable control of either Party, this Agreement shall terminate.

Article 4
Maintenance and Repairs, Alteration, Removal

- 4.1 Owner shall be responsible for reporting to MAIN STREET any major or minor damage to the Mural from any cause. Owner shall be responsible for removal of graffiti written, drawn, marked or etched onto that portion of the Owner's retaining wall which is outside of that portion of the Permitted Site upon which the Mural has been installed. MAIN STREET shall be responsible for and pay the costs of any other maintenance or repairs needed to be performed on the Mural to maintain its original appearance and condition for the Term, or any extended term, of this Agreement.
- 4.2 Owner may remove the Mural at Owner's expense if Owner reasonably determines that the Mural is causing harm to the Permitted Site or is limiting Owner's ability to use the Permitted Site for the purpose(s) for which it was intended.
- 4.3 MAIN STREET shall be responsible for arranging for and compensating the Artist for performing any work required to complete necessary repairs to the Mural or to maintain its original appearance and condition as long as reasonably possible.

Article 5
Mural Specifications

- 5.1 MAIN STREET will select the Artist to paint the Mural through an art Jury Committee process. The Parties understand and agree that the Mural shall not be of a commercial, offensive, indecent, political, or obscene (as construed in accordance with contemporary community standards) nature.
- 5.2 The Mural shall not include an advertisement or be commercial in nature or be designed as to constitute a "sign." Mural shall not contain copy, lettering, symbols or references relating directly to the promotion of any product, business, brand, organization, service, or cause. Mural may contain limited commercial elements so long as they are not included for the purpose of promoting a commercial transaction. Wording must be approved by MAIN STREET and its Mural Committee.
- 5.3 Mural shall not contain iconography, or allude to activity that displays or promotes offensive, indecent, or obscene subject matter. As used in this Article 5, the terms "iconography," "offensive," and "indecent" shall be construed by Owner and MAIN STREET according to their plain or ordinary meanings, consistent with what a reasonable person would understand the words to mean under the circumstances, and the term "obscene" shall be construed by Owner and MAIN STREET in accordance with contemporary community standards.

Article 6
Intellectual Property

- 6.1 MAIN STREET, its successors and assigns, shall own and control all necessary rights in the Mural, except as specified hereinbelow or as provided in MAIN STREET's agreement with the Artist.
- 6.2 Copyright. Subject to the restrictions and usage rights and licenses granted to MAIN STREET under this Agreement, and unless otherwise agreed to by the Parties in writing, or agreed to in

MAIN STREET's agreement with Artist, the Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Mural.

6.3 MAIN STREET hereby grants Owner, and Owner's agents, officers, employees, authorized contractors and assigns, a limited and revocable license to do the following with respect to the Mural:

(i) Use and display the Mural on the Permitted Site only.

(ii) Make, display, distribute, and authorize the making, displaying, and distribution of photographs and other reproductions of the Mural only in connection with, and incidental to, other promotional or advertising activity undertaken by the Owner. Owner and MAIN STREET shall ensure that any such photographs and reproductions are made in a professional manner. Owner shall make reasonable efforts to ensure that any recognizable photograph or reproduction of all or part of the Mural includes appropriate credit, where practicable, to the Artist, also indicating that the copyright is held by the Artist. Failure to include such credit line and notice in any photograph or reproduction shall not constitute a breach of this Agreement, unless such failure is not corrected following written notice of such failure being provided to the Owner. Owner may not grant or sublicense the rights granted in this Section 6.3(ii) for any private or commercial purpose. Notwithstanding the foregoing, the license granted Owner in this Section 6.3(ii) does not include the right to sell photographs or reproductions of the Mural or to market such photographs or reproductions as standalone items for sale to or use by others.

6.4 MAIN STREET represents and affirms to Owner that, with respect to the Mural, Artist shall be required to waive any and all claims, arising at any time and under any circumstances, which Artist has or may have against Owner and/or MAIN STREET pursuant to the federal Visual Artists Rights Act (VARA), 17 U.S.C. §§106A and 113(d), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, or any other type of moral right possessed or claimable by Artist protecting the integrity of works of art.

Article 7 Indemnification; Insurance

7.1 The Owner agrees to indemnify and hold MAIN STREET harmless from any damages that may arise out of any injury connected to the viewing by the general public of the Mural under this Agreement, for which injury Owner or Owner's officers, employees, or agents are adjudged causally negligent by a court of competent jurisdiction, and only to the extent of such negligence. MAIN STREET agrees to indemnify and hold the Owner harmless from any damages that may arise out of any injury connected to the creation, installation, maintenance or repair of the Mural under this Agreement, for which injury MAIN STREET or MAIN STREET's officers, employees, or agents are adjudged causally negligent by a court of competent jurisdiction, and only to the extent of such negligence.

7.2 MAIN STREET shall obtain and maintain, at its expense, a policy of commercial general liability insurance, naming Owner and Owner's officers, employees, agents, and volunteers as additional insureds thereon. Said liability insurance policy shall include the following types and limits of coverage:

- (i) \$1,000,000 each occurrence limit for bodily injury and property damage.
- (ii) \$1,000,000 general aggregate.

Susan L. Westerbeke, City Clerk

Date

PORT MAIN STREET, INC.

(Name/Title)

Date

For informational purposes only.

Visual Artist Rights Act <https://www.congress.gov/bill/101st-congress/house-bill/2690>