

Mural Site Agreement

This Agreement is made and entered into on August _____, 2021, by and between the City of West Allis, a Wisconsin body politic (the "City") and Thomas Andrew Madalena (the "Owner").

RECITALS

Whereas, the City has developed a mural project the purpose of which is to display a series of original artistic murals on buildings in the City; and

Whereas, the Owner recognizes that the purpose of the City's mural project is to enhance the community, encourage tourism and encourage commerce; and

Whereas, the Owner owns certain land situated in West Allis, Wisconsin more particularly described in Exhibit A (the "Property") consisting of a commercial building located within the City; and

Whereas, the City wishes to have a mural painted on the exterior building wall particularly described in Exhibit A; and

Whereas, the Owner understands that the City will be selecting one or more artists to paint the mural (individually and collectively, the "Artist"); and

Whereas, the City wishes to have the general public to have access for viewing the mural; and

Whereas, the City wishes to enter into an Agreement with the Owner to set forth the parties' respective rights and obligations with regard to the City's mural project;

Now, THEREFORE, for good and valuable consideration, that the parties hereby deem sufficient, it is mutually agreed between the parties as follows:

1. The Owner hereby agrees to allow the City to paint a mural on the exterior wall of the Property as described in Exhibit A. The dimensions of the mural are based on the design of the Artist as approved by the City. Owner and the City understand and agree to the following:
 - a. The City shall choose the artist, subject matter and design of the mural based on a jurying process that includes representative community stakeholders, City committee members, and professional art facilitators.
 - b. The Owner shall have power to veto the design that the City presents. The City will present a second option. Should the Owner choose to veto both options, this agreement will be declared null and void and the City will choose another property for a mural installation.
 - c. The City shall be solely responsible for the payment of fees to the Artist through Kasten Design, LLC and arranging for paint, paint supplies, and equipment necessary for the creation of the mural.
 - d. The parties shall work with the Artist to maintain the quality of the mural for the duration of this Agreement.

- e. The Owner agrees to allow the general public free and unimpeded access for the purposes of viewing the mural during the Term of this Agreement unless the City has agreed with the Owner to restrict access through physical means such as a gate or through specific viewing times.
 - f. City shall not be responsible for maintaining or removing the mural.
- 2. The Owner shall allow each mural to remain on the Property for no less than five years after each mural has been completed (the "Display Period"). The City will notify the Owner as soon as possible after each mural has been completed.
- 3. The Owner agrees to cooperate with the City and other owners of property adjacent to the Property to address lighting and safety issues and to provide unrestricted access by the general public during the term of this Agreement. The Owner and City will cooperate on other maintenance issues to create a unique and visually stimulating atmosphere.
- 4. The Owner agrees to indemnify and hold the City harmless from any actions or causes of action that arise out of any injury or other harm connected to the viewing by the general public of the mural under this Agreement. The City agrees to indemnify and hold the Owner harmless from any actions or causes of action that arise out of any injury or other harm connected to the creation of the mural under this Agreement.
- 5. The Owner hereby reserves the right to temporarily close down access to the mural as may be reasonably necessary in connection with the construction, maintenance or repair of the Property from time to time. Except in the case of emergency, any such closure shall be initiated after at least five business days' advance written notice to the City which indicates the dates for the start and termination of such closure.
- 6. At such time during the Display Period as the Property is being demolished or expanded and the mural will be destroyed as a direct result of that demolition or expansion, the Owner shall have the right to cancel this Agreement upon six months' written notice to the City.
- 7. The parties understand and agree that the execution of the mural will be done under a contract between Kasten Design, LLC and the City. The Owner shall grant the City, Kasten Design, LLC and the Artist all access to the Property that may be reasonably necessary to execute and maintain the mural during the term of this Agreement. If is necessary to maintain or repair a mural, the parties will work together to develop a way to accomplish that maintenance.
- 8. The City shall endeavor to assure that the mural will be applied using the current state of the art painting materials with long-lasting pigments, so that the mural retains its original look for as long as possible.
- 9. The Owner understands that the City will own all right, title and interest in the copyright of the mural.
- 10. The City hereby grants the Owner a license to use images of the mural on the Owner's property for the purposes of promoting its business, its tenants' businesses, and/or promoting the mural project as a whole. This license does not extend to the reproduction of the artwork on any merchandise, or for any other for-profit pursuit. The Owner may not charge anyone for photographs of the image.

11. The term of this agreement shall be five years from the date written above. In the event the mural is destroyed by *force majeure*, this Agreement shall terminate.
12. This Agreement shall be subject to and governed by the laws of Wisconsin. Any action seeking enforcement of this Agreement shall be brought in the circuit court of Milwaukee County, Wisconsin or the federal district court in the Eastern District of Wisconsin.
13. Any notices required under this Agreement shall be served at the following addresses:

City of West Allis
7525 W. Greenfield Ave
West Allis, WI 53219

Thomas Andrew Madalena
17219 Holiday Dr.
Morgan Hill, CA 95037

14. This Agreement represents the complete understanding between the parties with respect to the matters set forth herein. No amendment or modification of the Agreement shall be valid unless evidenced in writing and executed by the parties hereto.

In witness whereof, the City and the Owner have executed this Agreement on the date and year first set forth above.

City of West Allis

Property Owner name

Dan Devine
Mayor

Thomas Andrew Madalena
Owner

Mural Site Agreement

Exhibit A

The property is a commercial building at 5901 W. Burnham St., West Allis, WI 53219

The mural will be painted on the east facing exterior wall of the property identified above.