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Lincoln County, Oregon  
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\$70.00 \$11.00 \$60.00 \$10.00 \$7.00 - Total =\$158.00

2022-04629  
Cnt=1 Pgs=14 Stn=12

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I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



After recording, return to:

City Recorder's Office  
City of Newport  
169 SW Coast Highway  
Newport, Oregon 97365  
541.574.0613

## CITY OF NEWPORT

### ART EASEMENT

THIS AGREEMENT, effective on March 16, 2022, is between Newport News, Inc., (Grantor), and the City of Newport, an Oregon municipal corporation (City).

### RECITALS

- A. The City has a Public Arts Committee that works to incorporate art throughout the community in public and private locations.
- B. Grantor owns the property at 831 NE Avery Street, in the City of Newport, and is willing to make a wall on the building on said property available to the City for the placement of a mural. The artwork is described in Exhibit A, attached hereto and incorporated herein.

IN CONSIDERATION of the mutual promises and performances set forth below, the parties agree as follows:

1. **Grant of Easement.** Grantor conveys, grants, and warrants to the City, its successors, and assigns, an easement for the purpose of installing, maintaining, repairing, restoring, operating, and exhibiting the Artwork described in Exhibit A on and in the real property located on a building wall at 831 NE Avery Street, in the City of Newport, Oregon. See attached Exhibit B for the legal description.
2. **Term of Easement.** This easement shall be for a period of ten (10) years from the date of execution. Unless terminated as provided in section 3, below, the easement shall automatically renew for successive ten year periods thereafter, and shall remain in full force and effect unless and until terminated.



### 3. **Termination.**

- a. Within the initial ten-year easement term, or at any time thereafter, the easement may be terminated by Grantor with the City's consent in writing upon Grantor's showing of any of the following: (i) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or (ii) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or (iii) that the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Artwork; or (iv) that circumstances have materially changed and the continued existence of the easement or maintenance of the Artwork substantially impedes Grantor's reasonable use and enjoyment of the Property. The City shall not unreasonably withhold consent to termination upon Grantor's satisfactory demonstration of any of the foregoing conditions of termination.
- b. The City may terminate the easement at any time at its sole discretion upon 30 days written notice to Grantor, should Grantor fail to substantially perform Grantor's obligations under Section 4, below. Should the City elect to exercise this right of termination, Grantor expressly agrees and warrants that the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.

4. **Maintenance and Removal of Artwork.** The City may enter upon the property to maintain, restore, or repair the Artwork after 30 days written notice from the City that the Artwork requires maintenance or repair. The City may remove the Artwork from the property after 30 days written notice from the City, if, in the sole judgment of the City, the Artwork is being excessively damaged. The City shall have the right to perform maintenance, or remove the Artwork during normal business hours, and at all other times with advance approval of the Grantor.
5. **Binding Effect.** The easement granted in this agreement shall run with the land and be binding upon and inure to the benefit of the Grantor and the City, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property.
6. **Contractual Relationships. Assignment.** This agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner whatsoever. The parties shall not assign this agreement without the prior written consent of the other.
7. **Notice.** Notice shall be made to the following addresses, unless otherwise provided for in writing:





**City of Newport**  
City Manager's Office  
169 SW Coast Highway  
Newport, Oregon 97365

**Grantor**  
Newport News, Inc.  
831 NE Avery Street  
Newport, Oregon 97365

8. **Amendments.** The parties expressly reserve the right to modify this agreement, from time to time, by mutual agreement. No modification or amendment of the provisions of this agreement shall be effective unless in writing and signed by authorized representatives of the parties.
9. **Remedies.** The parties acknowledge that breaches of this Agreement will effect substantial harm to the public interest which harm is difficult or impossible to prove as actual damages in an action hereunder. The parties agree that the prevailing party in an action for the breach of this agreement shall be entitled to (a) reasonable attorney's fees; and (b) any other remedies available at law or in equity. The failure to exercise a right on any occasion shall not forfeit the right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.
10. **Invalidity of Particular Provisions.** Should any term, provision condition, or other portion of this agreement, or the application thereof, be held to be inoperative, invalid, or unenforceable, the remainder of this agreement or the application of the term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.
11. **No Waiver.** No waiver of full performance by any party shall be construed, or operate, as a waiver of any subsequent default or breach of any terms, covenants, or conditions of this agreement.
12. **VARA Waiver.** The artist has waived his/her rights under the Visual Artists Rights Act as described in the attached Exhibit C.

IN WITNESS WHEREOF, the City of Newport, Oregon has executed this easement on March 16, 2022.

CITY OF NEWPORT

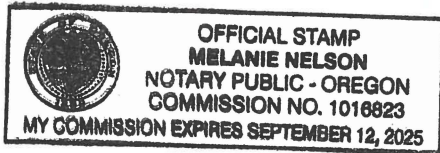
By: Spencer R. Nebel, City Manager





State of Oregon                     )  
  )ss.  
Lincoln County                     )

This instrument was acknowledged before me on March 14, 2022, by  
Spencer R. Nebel, as City Manager of the City of Newport, Oregon.



Melanie Nelson  
Notary Public of the State of Oregon

IN WITNESS WHEREOF, Grantor, has caused this instrument to be executed by its  
duly authorized representative on March 31<sup>st</sup>, 2022.

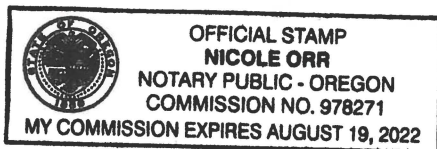
GRANTOR

By:

[Signature]  
Signature of Grantor

State of Oregon                     )  
  )ss.  
Lincoln County                     )

This instrument was acknowledged before me on March 31, 2022, by  
Newport News, Inc., as Grantor.



[Signature]  
Notary Public of the State of Oregon

APPROVED AS TO FORM:

David N. Allen  
David N. Allen, City Attorney



## **EXHIBIT A**

See attached description of artwork to be installed on the building wall at 831 NE Avery Street, Newport, Oregon.







## REQUEST TO PUBLIC ARTS COMMITTEE

Name of Artist: Casey McEneny

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Type of Artwork: Mural

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Title of Artwork: Spirit of the Coast

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*The Request to the Public Arts Committee Form shall be used by a member of the public seeking the endorsement of artwork.*

*Any individual or organization interested in creating any public art in the City of Newport is encouraged to apply for approval/endorsement through the Public Arts Committee regardless of whether funding is being requested from the City of Newport.*

### **Funding Criteria and Restrictions**

*Applicants are encouraged to provide a match that may be all cash or a combination of cash and in-kind contributions. This match, if any, must be reflected in the required project budget.*

- 1. Funds may be awarded based on need.*
- 2. Applicants are encouraged to provide a monetary or in-kind match for funds requested from the Public Arts Committee.*
- 3. No per diem shall be considered.*
- 4. Rental of painting equipment, or the purchase of painting supplies, are fundable expenses.*



5. *City of Newport funds may not be used to pay for a staff position, however, paying an artist(s) to design and paint a mural, or other project, may be a fundable expense.*

### **Selection Criteria**

*Projects will be considered for approval based on one or more of the following criteria:*

1. *Accessibility - is viewable by the public.*
2. *Artist Quality - strength of the artist's concept and demonstrated craftsmanship.*
3. *Contemporary Relevance - appropriateness for the time.*
4. *Context - architectural, geographical, socio-cultural, and historical.*
5. *Feasibility - budget, timeline, experience, etc.*
6. *Originality - uniqueness.*
7. *Permanence - will last a minimum of ten years, resistance to vandalism and weather.*
8. *Scale - appropriateness of scale to the surrounding environment.*
9. *Suitability - appropriateness to surrounding neighborhood.*
10. *Technical proficiency - technical skills and artistic experience.*

### **Proposal Overview**

1. What are you requesting from the Public Arts Committee:

We are asking for approval to paint a large mural on the west facing wall of the Newport News Times building. We are fundraising half the cost of the mural and we are asking to be matched by the Public Arts committee.

2. Why do you want to do this project:

I have done public art in Lincoln County since I was 16 years old. Art is my passion and I have always been drawn towards public art because of the impact it can have on the public. Throughout my time creating murals, I have experience incredible human connection to the creation and spirit of public art. People truly appreciate the interactive experience of randomly walking past a mural while exploring our beautiful community. I believe public art is especially important in Newport to bring attention to our community.



3. What do you want to communicate through this work:

I want to show the unique qualities of Lincoln County that mesh together to create a special place ideal for vacation or raising a family.

4. Describe any proposed assistance sought from the city or other public agencies in connection with the fabrication, development, installation, maintenance, and siting of the artwork. Financial assistance is subject to budgetary considerations.

We are asking for \$12,500 from the City of Newport. This will be half the funding for the labor and material cost.

**Proposal Details**

5. What is the estimated project schedule:  
2 months from the start date.

6. Estimated finished value:  
\$25,000

7. Provide a description of the materials comprising the artwork, its approximate dimensions, approximate weight, finish, color, and any special treatments, coatings, or protective coatings applied to the artwork.

The mural will be painted directly on the side of the building. The exterior painting surface of the wall is wood siding. I will be using exterior nova color acrylic paint which is specifically created for outdoor murals. To seal the wall I use two coats of a UV resistant clearcoat and two coats of a wax based graffiti resistant coating. The paint integrity will hold up well over time. I have had murals in the community that have withstood the costal elements for over 20 years.

**Installation Details**

8. Describe the method for mounting or displaying the artwork, with a description of the materials and appearance of the base, fixtures, or other physical features used to display the artwork, if visible.

The mural will be painted directly on the wall.

9. Who is responsible for the installation of the artwork?

No instillation needed

10. Estimated Installation cost.

N/A Painted directly on the wall.





11. Provide a physical address and/or specific location at which the artwork would be installed.

Newport News Times 831 NE Avery St.

12. Do you have the consent of the property owner(s) to site the artwork, and if so, what are the terms of consent? Additional information may be required.

We do have permission to complete a mural on the outside west facing wall.

Building Owner:

News Media Corporate-building

### **Maintenance Details**

13. What is the anticipated life of the artwork in the proposed location?

15-20 years without maintenance. Maintenance can be assessed after 10 years or if needed.

- 14.A. Is the appearance of the artwork intended to change over time?

The Art work appearance will not change over time.

- B. Describe how the artwork will be maintained, including the methods and techniques of maintenance, the maintenance plan, the estimated cost of maintenance, and how the maintenance will be financed.

Maintenance may only be needed to refinish the seal coat. This can be assessed in 10 years plus.

*Please include a project budget with this request along with a mock-up, sketch, photographs, and examples of prior work.*

*Artists and/or donors planning to place artwork on city-owned property will be required to execute a contract which has been reviewed by the City Manager and City Attorney, and approved by the City Council, and which protects and serves the fiscal and other interest of the city in connection with the acquisition, donation, or placement of artwork on city-owned property.*

*Artists planning to place artwork on private property, utilizing City of Newport funding, are required to have the approval/recommendation of the City of Newport Public Arts/*



*Committee, and an art easement with the property owner, and a waiver of rights under the federal Visual Artist Rights Act.*

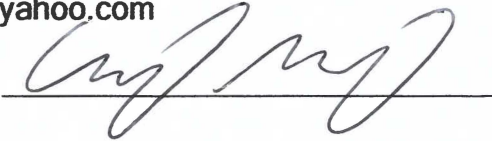
Submitted by: Casey McEneny and Jeremy Burke

Address: 276 SE 119th St. South Beach OR 97366

Phone: (541) 961-8596

E-Mail: caseymcenenyart@yahoo.com

Signature: Casey McEneny

A handwritten signature in black ink, appearing to read 'Casey McEneny', written over a horizontal line.

Date: 07/17/21

**Materials:**

Nova Color Paint and brushes: \$3,500

Mural Guard: \$1,500

Mural Shield: \$1,500

TOTAL: \$6,500



**EXHIBIT B**

Real Property located at 831 NE Avery Street, Newport, Oregon

PHELPS ADDN.-NEWPORT, BLOCK 24, LOT 8-11,PTN 12 & VAC ST, DOC200613769





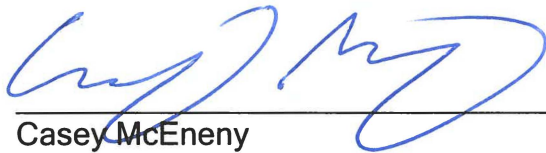
## EXHIBIT C

See attached description of the Visual Artists Rights Act.

ARTIST, Casey McEneny, agrees to the terms of this Artwork Easement, and expressly waives any rights under the federal Visual Artists Rights Act that would interfere with the performance of any rights under the Artwork Easement or that are otherwise contrary to the terms of the Artwork Easement.

ARTIST:

Casey McEneny  
276 SE 119<sup>th</sup> Street  
South Beach, Oregon 97366  
541.961.8596  
[caseymcenenyart@yahoo.com](mailto:caseymcenenyart@yahoo.com)

  
\_\_\_\_\_  
Casey McEneny

3-30-22

  
\_\_\_\_\_  
Date



**a) RIGHTS OF ATTRIBUTION AND INTEGRITY.**—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

(1) shall have the right—

(A) to claim authorship of that work, and

(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section 113(d), shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

**(b) SCOPE AND EXERCISE OF RIGHTS.**—

Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.

**(c) EXCEPTIONS.**—

(1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of "work of visual art" in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

**(d) DURATION OF RIGHTS.**—

(1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.



Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546; Pub. L. 101–650, title VI, § 607, Dec. 1, 1990, 104 Stat. 5132; Pub. L. 102–492, Oct. 24, 1992, 106 Stat. 3145.)

