

25-R-97
Amending the 1997-2002
Capital Improvement Program
of the City of Evanston

WHEREAS, the City Council adopted the 1997-2002 Capital Improvement Program and approved the 1997-98 Capital Budget; and

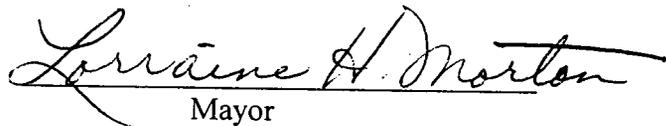
WHEREAS, the 1997-98 Capital Budget in the amount of \$46,045,979 requires modification to reflect more accurate revenues and expenditures; and

WHEREAS, the modifications will not affect the programs and projects as outlined in the 1997-98 Capital Budget which was reviewed and approved by the City Council;

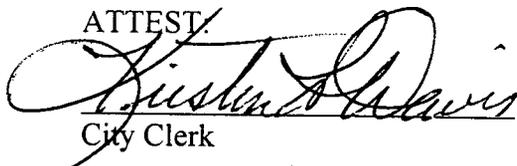
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City of Evanston's 1997-2002 Capital Improvement Program is hereby amended to reflect a revised 1997-98 Capital Budget in the amount of \$45, 675,979.

SECTION 2: That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner required by law.


Mayor

ATTEST:


City Clerk

Adopted: April 8, 1997

AGREEMENT BETWEEN THE CITY OF EVANSTON AND GREAT LAKES ART STUDIO, INC. FOR COMMISSION OF PUBLIC ART WORK AT FIRE STATION #1

THIS AGREEMENT is entered into this 3rd day of July, 1997, by and between the City of Evanston, Illinois (hereinafter called the "City"), acting by and through the Evanston Arts Council (hereinafter called the "Arts Council") and Great Lakes Art Studio, Inc. (hereinafter called the "Artist".)

WHEREAS, the City implemented a public art program pursuant to Ordinance 112-0-89 by providing funds for the establishment of works of art in public places and authorizing the making of payments for the design, execution, fabrication, transportation and installation of works of art and the support of an artist-selection process; and

WHEREAS, percent-for-art funds have been allocated for the selection, purchase and placement of a work of art at the new Fire Station #1; and

WHEREAS, the Artist was selected by the City through the procedures duly adopted by City Council, the Arts Council and the Public Art Committee in accordance with the policies and procedures drafted for implementation of Ordinance 112-0-89, to design, execute, fabricate and install a **three-dimensional work of art (the "Work") on the grounds of Fire Station #1 at the southeast corner of Emerson Street and Wesley Avenue** described as set forth in Exhibit A (proposal) hereto; and

WHEREAS, both parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work;

NOW, THEREFORE, the City and the Artist, for the consideration and under the conditions hereinafter set forth, agree as follows:

Article 1: Scope of Services.

1.1 General.

The Artist shall perform all services and furnish all supplies, material and equipment as necessary for the design, execution, fabrication, transportation and installation of the Work at the Site.

The parties agree that all reasonable efforts will be made for installation of the wave/flame forms and cast bronze elements on the berm in the fall of 1997; but that required plantings and patio work may not occur until the spring of 1998. It is agreed that the payments contemplated by section 2.1a-c shall be made as provided in these paragraphs, regardless of completion dates provided

in Exhibit B, and that these payments will not be delayed if the planting and patio work does not occur until the spring of 1998.

1.2. Description of Work.

a. The Artist shall create, transport and install the following Work:

Title: *Untitled*

Dimensions: *30 ft. x 15 ft. x 8 ft.*

Medium: *earth, bronze, and concrete*

b. The Artist shall create the Work in accordance with the approved design Proposal, attached as Exhibit A. Recognizing that the shift in scale from model to full-scale requires artistic adjustment, the Artist reserves the right to make minor changes in the final Work as deemed aesthetically or structurally necessary. However, should the Artist propose major changes in the final work she shall notify the City and the City shall have ten working days to approve or disapprove such changes. The Artist shall have discretion to determine whether changes are minor or major. All minor changes and major changes approved by the City shall become part of the proposal, Exhibit A, and be incorporated as part of this Agreement. Should any major changes not be approved by the City, the Artist shall have ten working days to modify the changes, making all reasonable efforts to comply with the City's concerns. If the parties still cannot agree, the decision as to whether or not the changes shall become part of this Agreement shall be submitted to the Selection Panel for final decision.

1.3. Meetings.

After execution of this Agreement, the Artist shall attend up to four meetings (after signing of this agreement) with City officials, Arts Council members, sub-committee members and Arts Council staff, and community members, provided the Artist is given seven (7) days written notice of said meetings. Expenses incurred by the Artist for four meetings (4) will not be reimbursed by the City or Arts Council. Expenses incurred for any additional meetings will be fully reimbursed by the City.

1.4. Post-Contract Structural Alterations.

a. The City may require the Artist to make revisions to the Proposal after signing of this Agreement as necessary for the Work to comply with applicable statutes, ordinances or regulations of any governmental regulatory agency having jurisdiction over the project, or for other practical, nonaesthetic reasons.

b. Costs incurred by the Artist to accommodate necessary revisions as described in Section 1.4(a) will be reimbursed to the Artist. The City shall advise the Artist of any such necessary revisions in writing. The Artist must respond with a detailed description of all alterations, including any aesthetic and budgetary changes, within ten(10) working days.

c. Within ten (10) working days after its receipt of the Artist's response pursuant to Section 1.4 (b), the City shall notify the Artist of its approval or disapproval of such response and of all revisions made in the Proposal as a result thereof. Accepted revisions made pursuant to this Section 1.4 (a) and (b) become part of the proposal, attached as Exhibit A and incorporated as part of this Agreement.

d. The Artist shall complete the fabrication and installation of the Work in substantial conformity with the Proposal. If the Artist decides to significantly change the scope, design, color, size, material or texture of the Work, the Artist shall present the proposed changes to the City in writing for further review and approval. The City shall respond to the Artist's request(s) within ten(10) working days. If the parties cannot agree, the decision as to whether or not the changes shall become part of this Agreement shall be submitted to the Selection Panel for final decision.

1.5. Execution and Delivery of the Work.

a. Installation of the Work shall be completed by the Artist as noted on Exhibit B attached and incorporated as part of this Agreement (Completion Schedule). Such schedule may be amended only by written agreement between the City and the Artist, pursuant to Section 3.1.

b. In the event that either the Work or the installation are not completed within sixty (60) days of the end dates shown on Exhibit B, the Artist shall incur a penalty of 1% of the remaining balance which would be due the Artist upon completion and installation under Section 2.1 for each day after the end date shown on said Exhibit B. Separate completion dates may be provided by the Artist for different portions of the project, and under no circumstances shall penalties be invoked because the planting or patio work does not occur until the spring of 1998. The Artist shall not be responsible for delays attributable in any respect to the City, including but not limited to those contemplated in Article 3, conditions beyond the Artist's control, or acts of God.

c. The City shall have the right to review the Work at reasonable times during the fabrication process as stated on Exhibit B (Completion Schedule) or at a time that substantial alteration of the Work occurs due to a request from the City or the Artist's deviation from the Proposal. The City shall give no less than 7 days written notice to the Artist, when scheduling a review unless the Artist otherwise agrees to schedule a review with less than 7 days notice. In all cases, the Artist shall make all reasonable

attempts to comply within 48 hours.

d. The Artist shall submit to the City progress reports in accordance with the schedule provided for in Section 1.5 (a).

e. The City shall be responsible for preparation of the Site for the timely installation of the Work, provided the Artist includes necessary site preparations in the Proposal and completion schedule. All site preparations will be approved prior to signing of this Agreement by Facilities Management, Parks/Forestry, Public Works or any other City departments which may be directly responsible for site preparations. The term preparations includes all necessary alterations to the site.

f. The City shall give to the Artist seven days advance written notice of the siting and pouring of the footing which will provide the support for the wave/flame forms. The parties recognize that the Artist must be present when these services occur. The City shall provide all footing, with reinforcement to a height of 6 inches below the top of the berm, including but not limited to all cement work, sufficient to support the wave/flame forms, at no cost to the Artist. The City shall install the metal work to support the wave/flame forms.

g. The City shall give to the Artist 14 days advance written notice of the placement by the City of the soil necessary to form the landscape berms as indicated in Exhibit A. The City will provide manpower for one eight hour day and the equipment to move the soil at the Artist's direction at no cost to the Artist. The parties recognize that the Artist must be present when the final location of the soil is to be determined. The soil must be of sufficient planting quality to nurture and support all plantings contemplated in the project.

h. Approximately six weeks before the pouring of the patio concrete, the City shall give the Artist written notice that the patio concrete will be poured. The Artist is responsible for the cost of labor and materials for the base pour. The City is responsible for the cost of labor and materials for the overpour.

i. The City will provide up to \$754.25 for the plants and other landscape materials necessary for the project.

j. The City shall provide and deliver to the site all mulch necessary to the project at no cost to the Artist.

k. The City will reimburse the Artist up to one thousand dollars (\$1,000) so that the Artist may provide for the necessary manpower to assist the Artist with the soil and concrete work. This sum shall be in addition to the manpower to be provided by the City in section 1.5.g. and may be applied at the Artist's discretion to the base pour contem-

plated in section 1.5.h.

1.6. Post-Installation.

a. Within thirty (30) days after the installation of the Work, the Artist shall furnish the City with the following photographs of the Work as installed:

(i) six (6) professional quality 35mm color slides of the completed Work, one taken from each of six (6) different viewpoints; and (ii) two sets of three different 8" x 10" glossy black and white prints of the Work and negatives.

b. The Artist shall make all reasonable efforts to be available at such time or times as may be agreed between the City and the Artist to attend any inauguration, dedication or presentation ceremonies relating to the transfer of the Work to the City. The City shall not be responsible for any inaugural-related transportation costs incurred by the Artist, but the City shall reimburse all other reasonable costs incurred by the Artist. The City shall use its best efforts to arrange for publicity for the completed Work in publications including but not limited to area newspapers and magazines, and national art publications.

c. Upon installation of the Work, and prior to final payment to the Artist, the Artist shall provide to the City written instruction for appropriate maintenance and preservation of the work.

1.7. Final Acceptance.

a. The Artist shall advise the City in writing when all services required prior to those described in Section 1.6(a) have been completed in substantial conformity with the Proposal. The City shall receive the letter at the Office of the Evanston Arts Council within 72 hours after the project completion date. If the City does not receive the letter within 72 hours after the contract-stipulated completion date, which shall be the last completion date if more than one is provided by the Artist in Exhibit B, and if 57 additional days lapse without completion of the services and delivery of the letter, the project will be considered tardy and the penalties provided in section 1.5.b will be levied.

b. The City shall notify the Artist in writing of its final acceptance of the Work.

c. Final acceptance shall be effective as of the earlier to occur of (1) the date of the City's notification of final acceptance, or (2) the 30th day after the Artist has sent the written notice to the City required under Section 1.7(a) unless the City, upon receipt of such notice and prior to the expiration of the 30-day period, gives the Artist written

notice specifying and describing the services which have not been completed.

1.8. Risk of Loss.

The risk of loss or damage to the Work shall be borne by the Artist until installation of each portion of the project as it occurs, and the Artist shall take such reasonable measures as are necessary to protect the Work from loss or damage until installation. Upon installation of each portion of the project as it occurs the risk of loss or damage for that portion of the project shall be borne by the City. Also, the risk of loss or damage shall be borne by the City prior to installation during such periods of time as the partially or wholly completed work is in the custody, control or supervision of the City or its agents for the purposes of transporting, storing, installing or performing any other ancillary services to the work.

1.9. Title.

Title to the Work shall pass to the City upon final acceptance from the City.

1.10. Ownership of Documents, Models.

Upon final acceptance, all studies, drawings, designs and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist. The City may select and the Artist shall convey to the City one (1) original drawing from the original Proposal materials, if such materials were submitted as part of the original Proposal. The City represents that the drawing will be used solely for exhibition and held by it in permanent safekeeping.

Article 2. Compensation and Payment Schedule

2.1. Fixed Fee.

The City shall pay the Artist a fixed fee of \$17,000, which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement, except as otherwise provided in this Agreement. The fee shall be paid in the following installments expressed as percentages of such fixed fee, each installment to represent full and final, nonrefundable payment for all services and materials provided prior to the due date thereof:

- a. \$6,000 upon execution of this Agreement.
- b. \$6,000 ninety days after execution of this Agreement and concurrent with the site visit as shown on Exhibit B.

- c. \$4,500 upon completion of the metal and cement patio work, but no later than October 25, 1997.
- d. \$500 at final acceptance by the City of the Work pursuant to 1.7.c of this Agreement.

2.2. Sales Taxes.

Any sales, use or excise taxes, or similar charges relating to services and materials shall be paid by the Artist.

2.3. Artist's Expenses

The Artist shall be responsible for the payment of all mailing or shipping charges for submissions to the City, the costs of transporting the Work to the Site and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

Article 3. Time of Performance.

3.1. Duration.

The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for completion of the Work as proposed by the Artist and approved by the City pursuant Section 1.5.(a), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2. Construction Delays.

If, when the Artist completes fabrication or procurement of the Work in accordance with the approved schedule and notifies the City that the Work is ready for installation, the Artist is delayed from installing the Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to permit installation of the Work therein, the City shall promptly reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and that date upon which the Site is sufficiently complete reasonably to permit installation of the Work.

3.3. Early Completion of Artist Services.

The Artist shall bear any transportation and storage costs resulting from the completion of his services hereunder prior to the time provided in the schedule for installation.

3.4. Time Extensions.

The City shall grant all reasonable extensions of time to the Artist in the event that there is a delay on the part of the City in performing its obligations under this Agreement or in completing the underlying capital project, which is completion of Fire Station No. 1, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions. However, in such cases that timely performance of the Artist's services is not hindered by conditions beyond the control of either the Artist or the City, or Acts of God, penalties pursuant to Section 1.5(b) of this Agreement will apply, as will the obligation of the City to compensate the Artist for reasonable transportation and storage costs.

Article 4. Warranties.

4.1. Warranties of Title.

The Artist represents and warrants that: (a) the Work is solely the result of the artistic effort of the Artist; (b) that the Work, or a duplicate thereof, has not been accepted for sale elsewhere; and (c) the Work is free and clear of any liens from any source whatever. The Artist represents that to the best of her knowledge, the work does not infringe upon any copyright.

4.2. Warranties of Quality and Condition.

The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with submission of the Proposal, that: (a) the execution, fabrication, and installation of the Work will be performed in a workmanlike manner; and (b) reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to the City hereunder. It is agreed that the City shall be responsible for ensuring that the footing will be sufficient to fully support the wave/flame forms as contemplated by section 1.5.f.

The warranties described in this Section shall survive for a period of one year after the final acceptance of the Work. The City shall give written notice to the Artist of any observed breach of warranty within 30 days of observation. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with workmanlike standards, including cure by means of reasonable repair or refabrication of the Work. If a breach of a warranty is not curable by the Artist, the Artist may then be responsible for reimbursing the City for damages and expenses, other than attorney's

fees incurred by the City as a result of a breach of warranty.

Article 5. Insurance.

5.1. Artist's Liability Insurance.

a. The Artist shall not commence work under this contract until the Artist has obtained all insurance required herein and such insurance has been approved by the City's Director of Safety and Risk Management. Nor shall the Artist allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.

b. The Artist shall furnish two (2) copies of certificates, with the City named as a named insured, showing the following minimum coverage in an insurance company acceptable to the City's Director of Safety and Risk Management:

1. Commercial General Liability:

Bodily Injury and
Consequent Death

Each Occurrence
\$1,000,000

Property Damage

Each Occurrence
\$500,000

Aggregate
\$500,000

Must include:

- Comprehensive form
- Premises - Operations
- Explosion & Collapse Hazard
- Underground Hazard
- Products/Completed Operations Hazard
- Contractual Insurance - including an endorsement on the face of the certificate that it includes a statement of "Indemnity" - Broad Form Property Damage -construction projects only
- Independent Contractors
- Personal Injury

2. Automobile Liability Owned, Nonowner or Rented

Bodily Injury and
Consequent Death

Per Person
\$200,000

Each Occurrence
\$500,000

Property Damage

Each Occurrence
\$100,000

Aggregate
No Limit

3. Workmen's Compensation

- As required by applicable laws.

4. Employer's Liability, as applicable.

\$100,000

Thirty day notice of cancellation required on all certificates. The insurance certificate must state that the City of Evanston is a named insured.

c. In the event of accidents, or injuries, the Artist shall promptly furnish the City's Director of Safety and Risk Management with copies of all reports of such incidents.

5.2. Commencement of work/Notice of Cancellation of Insurance.

The Artist shall not commence work herein until the Artist has obtained the required insurance and has received approval of such insurance by the City's Director of Safety and Risk Management. The Artist shall furnish, when requested, a certified copy of the policy(s) to the City. The policy(s) shall provide, in the event the insurance should be changed or canceled, such change or cancellation shall not be effective until thirty (30) days after the City has received written notice from the insurance company(s). Such notice shall be mailed to City of Evanston, Safety & Risk, 2100 Ridge Avenue, Evanston, Illinois, 60201. An insurance company having less than a B+ Policyholders' Rating by the Alfred M. Best and Company, Inc. will not be considered acceptable.

5.3. Performance Bonds.

The Artist shall not be required by the City to post any performance bonds or similar undertakings, and any requirement of any other authority for performance bonds shall be the responsibility of the City.

Article 6. Reproduction Rights.

6.1. General.

The Artist retains all rights under the Copyright Act of 1976, Title 17 U.S.C., and all other rights in and to the Work except ownership and possession, except as such rights are limited by this Section. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any additional exact duplicate, or three-dimensional reproductions of the final Work, nor shall the Artist grant permission to others to do so except with the written permission of the City. Upon approval of the other party, each party grants to the other and its assigns an irrevocable license to make two-dimensional reproductions of the Work for noncommercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications, provided that these rights are exercised in a tasteful and professional manner.

It is agreed that the Artist shall be free in the future to use elements of the final work, so long as she does not create an exact duplicate of the final work, taken as a whole. Use of these elements in a way so as to result in a work which is an essential duplicate of the final work, with only minor deviations such as in size, shall not be done by the artist.

6.2. Notice.

All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: Copyright, Artist Donna Zarbin-Byrne, date of publication, fabricated at Great Lakes Art Studio.

6.3. Credit to the City.

The Artist shall give a credit reading, "An original work owned and commissioned by the City of Evanston, Illinois," in any public showing, under the Artist's control, of reproductions of the Work.

6.4. Registration.

The Artist may, at the Artist's expense, cause to be registered, with the United States Register of Copyrights, a copyright of the Work in the Artist's name.

Article 7. Artist's Rights.

7.1. Identification.

The City shall, at its expense, prepare and install at the Site, pursuant to the written instructions and subsequent approval of the Artist, including the location, a plaque identifying the Artist as Donna Zarbin-Byrne and giving credit to the Great Lakes Art

Studio for assisting in fabrication, title of the Work and the year of completion, and shall reasonably maintain such notice in good repair against the ravages of time, vandalism and the elements.

7.2. Maintenance.

The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City shall reasonably assure that the Work is properly maintained and protected, taking into account the instructions of the Artist provided in accordance with Section 1.6.(c), and shall reasonably protect and maintain the Work against the ravages of time, vandalism and the elements.

7.3. Repairs and Restoration.

a. The City shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work will be made. Thirty days advance written notice shall be given by the City to the Artist of an intention to make repairs or restorations. Such notice shall fully detail the repairs or restorations to be made. The Artist shall have 30 days after receipt of the notice to respond. During the Artist's lifetime, the Artist shall have the right to approve all repairs and restorations, provided, however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to approve any repair or restoration, the City shall have the right to make such repair or restoration. To the extent practical, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations and shall be paid a reasonable fee for any such services; provided that if the City and the Artist cannot agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services, the Artist shall be paid at her normal going rate for such services or, if such rate does not exist, at the ordinary rate for such services in the market as it exists in and around Evanston, Illinois.

b. All repairs and restorations shall be made in accordance with recognized principles of conservation.

7.4. Alteration of the Work or of the Site.

a. The City agrees that it will not intentionally damage, alter, modify or change the Work without the prior written approval of the Artist.

b. The City shall notify the Artist in writing at least 90 days in advance of any proposed alteration of the Site that would affect the intended character and appearance of the Work and shall consult with the Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work.

c. Nothing in this Section 7.4 shall preclude any right of the City (1) to remove the Work from public display or (2) to destroy the Work. If the City shall at any time decide to destroy the Work, it shall by 90 days advance written notice to the Artist offer the Artist a reasonable opportunity to recover the Work at no cost to the Artist except for an obligation of the Artist to indemnify and reimburse the City for the amount by which the cost to the City of such recovery exceeds the costs to the City of the proposed destruction.

7.5. Permanent Record.

The City shall maintain at the office of the Evanston Arts Council on permanent file a record of this Agreement and of the location and disposition of the Work.

7.6. Artist's Address.

The Artist shall notify the City of changes of address. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce those provisions of Article 7 that require the express approval of the Artist, but only until such time as the Artist provides a current address. Notwithstanding this provision, the City shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.

7.7. Surviving Covenants.

The covenants and obligations set forth in Article 7 shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the City's covenants do attach and run with the Work and shall be binding to and until (20) twenty years after the death of the Artist. However, the obligations imposed upon the City by Section 7.3.(a) and 7.6. shall terminate on the death of the Artist. The City shall give any subsequent owner of the Work notice in writing of the covenants herein, and shall cause each such owner to be bound thereby.

7.8. Additional Rights and Remedies.

Nothing contained in this Agreement shall be construed as a limitation on such other rights and remedies available to the Artist under the law which may now or in the future be applicable.

Article 8. Artist as Independent Contractor.

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be formally or consistently supervised by any employee or official of the City nor shall the Artist

exercise formal or consistent supervision over any employee or official of the City.

Article 9. Assignment or Transfer of Interest.

Neither the City nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other.

9.2. Subcontracting by the Artist.

The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance or visual quality of the Work and shall be carried out under the personal supervision of the Artist.

Article 10. Termination.

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of such notice to cure the default. If it is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination including drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist. The Artist shall be paid at her normal going rate for such services or, if such rate does not exist, at the ordinary rate for such services in the market as it exists in and around Evanston, IL. In addition, the Artist shall be compensated for all expenses incurred prior to termination. Under this Agreement, at the City's option, all materials prepared, submitted or not submitted, prior to termination, shall become the property of the City, provided that no right to fabricate or execute the Work shall pass to the City, and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

Article 11. Contract Administrator.

The Contract Administrator for this Agreement shall be the Director of the Evanston Arts Council for the City of Evanston. Wherever this Agreement requires any notice to be given to or by the City, or any determination or action to be made by the City, the

Director may charge one or more other members of the Evanston Arts Council staff with the authority to represent the City of Evanston and the Evanston Arts Council on behalf of the Director. Written notice of the designation of such authority listing all material information shall be provided to the Artist within ten (10) working days. This notice requirement shall apply only should any major portion of responsibility for the project be delegated from the director, or if a new director is appointed.

Article 12. Nondiscrimination.

In carrying out the performance of the services designated, the Artist shall not discriminate as to race, creed, religion, sex, age, sexual orientation, national origin or the presence of any physical, mental or sensory handicap, and the Artist shall comply with the equality or employment opportunity provisions of Sections 1-12-1 through 1-12-9 of the Evanston City Code, as amended.

Article 13. Compliance.

The Artist shall be required to comply with Federal, State and City statutes, ordinances and regulations applicable to the performance of the Artist's services under this Agreement.

Article 14. Entire Agreement.

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

Article 15. Modification.

No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the Evanston Arts Council, except the City Council shall approve any monetary change in the Agreement.

Article 16. Waiver.

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

Article 17. Governing Law.

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of Illinois.

Article 18. Heirs and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the City and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

Article 19. Notices.

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by regular, registered or certified mail, return receipt requested, postage prepaid, as follows:

a. if the City, to:

Jonathon Glus, Director, Arts Council
927 Noyes Street
Evanston, IL 60201

b: if the Artist, at the address first above written with a copy to: (attorney)

Donna Zarbin-Byrne
1928 Noyes St.
Evanston, IL 60201

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

Mary J. Morris
City Clerk

Cara M. Dunn
Witness

CITY:

[Signature]
Arts Council

ARTIST:

Donna Zarbin-Byrne
Name

[Signature]
Signature

Donna Zarbin-Byrne's Addendum

1997 Description

- July 3** Artist orders materials to be sculpting wave-flame form and other bronze elements.
- Sept. 2** Site is leveled and prepared adequately to begin work on location (see section 1.5e) including electrical work for the lighting of the sculpture (if the City elects to have this done). Location is determined for the placement of the wave-flame form in relation to landscaping of the site.
- Sept. 3** Footing to be poured and other support according to 1.5f for the wave-flame form.
- Sept. 4** Progress report will determine if artist needs assistance from the City in locating assistance with manpower (woman power) for the landscaping of the berms. City contractor will confirm with artist on the cost of the base pour.
- Sept. 8** Soil to be delivered and moved at the artist's discretion to form the landscape berms as indicated in Exhibit A for one eight hour day according to 1.5g.
- Sept. 10/12** Landscape berms will be shaped and refined with manpower either provided for by the City or artist (which will have previously been determined.)
- Sept. 15/19** Landscape cloth put on berms. Mulch delivered and placed in between berms.
- Oct. 7** (90 days after signing of contract) Site visit either to studio or at Firestation or both. To be determined by Jonathon.
- Late Sept.** Base pour (see 1.5A).
- Oct. 1, 2, 10, 11, 15, 16, 23, 24** - The artist will be unavailable to work on project on these dates.
- Oct. 13** Progress report given by artist. Update and artist will communicate if she ready for overpour.
- Oct. 20** Overpour if artist is ready.
- Oct. 21** Wave-flame form installed.
- Oct./Nov.** Artist continues working on cast-bronze elements. If they are completed and weather permits, they will be installed on berms before hard frost or during warm periods.
- Winter months** - Artist continues working on bronze elements.
If they are already not complete.

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- March 31** More mulch to be delivered.
- April 20** If either base pour, overpour, or both have not been completed in the fall, overpour should be completed by this date (weather permitting). However, the artist understands that, it is a priority to complete all pouring by early November.
- May** Final elements to be installed in berm if it has not already occurred in the fall.
- May 15** Concrete is cured and pigment applied (14-30 days to cure time is required before pigment can be applied). However, the artist understands that it is a priority to complete concert work by early November.
- May 24/28** Plants will be installed on berm and mulch will be laid in between plantings, as well as another layer in between the berms. Manpower to be supplied by artist or City. (Communication will be done on this matter).
- June 1** Project complete.