

11/08/2007

1-R-08

A RESOLUTION

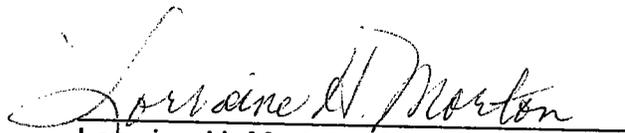
**Authorizing the City Manager to
Sign an Agreement Between the City of Evanston
and Robert Smart for Public Art at Fire Station #5**

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

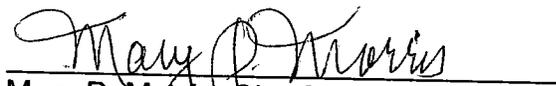
SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, an Agreement Between the City of Evanston and Robert Smart for Public Art at Fire Station #5 attached hereto as Exhibit A.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the said Agreement as determined to be in the best interests of the citizens of Evanston.

SECTION 3: That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Lorraine H. Morton, Mayor

Attest:


Mary P. Morris, City Clerk

Adopted: April 28, 2008

EXHIBIT A

**Agreement Between the City of Evanston and Robert Smart for
Public Art at Fire Station #5**

**AGREEMENT BETWEEN THE CITY OF EVANSTON AND ROBERT SMART
FOR PUBLIC ART AT FIRE STATION #5**

THIS AGREEMENT is entered into this 10th day of March, 2008 by and between the City of Evanston (hereinafter, "City"), an Illinois municipal corporation, 2100 Ridge Avenue, Evanston, Illinois, and Robert Smart (hereinafter "Artist"), an individual, 20 Grove Street #68, Minneapolis, MN 55401 (address).

RECITALS

WHEREAS, the City has implemented a public art program pursuant to Ordinance 112-O-89 by providing a mechanism for funding the acquisition of works of art in public places; and

WHEREAS, Fire Station #5 is an appropriate place for exhibition of Emitting Waves; and

WHEREAS, the Artist was selected by the City Council upon recommendations from the Arts Council and the Public Art Committee to design, execute, fabricate, and install Emitting Waves (the "Work") as specified in attachment A to this document, at Fire Station #5, 2820 Central Street; and

NOW, THEREFORE, the City and the Artist, in consideration of the mutual covenants set forth below, hereby agree as follows; having first found the foregoing recitals as fact:

AGREEMENT

ARTICLE 1. RECITALS

The above recitals are incorporated into this Agreement as if fully set forth herein.

ARTICLE 2. DESCRIPTION OF WORK

2.1 The Artist shall design, fabricate and install the following Work of art:

(a) Emitting Waves

The Work, entitled Emitting Waves, is depicted in Exhibit A, attached hereto and made a part hereof.

2.2 The Work is commissioned for placement on/in the windows above the engine bays at Fire Station #5, 2830 Central Street, Evanston, (hereinafter "Site") more particularly described in Exhibit B, attached hereto and made a part hereof. Artist understands and agrees that the City, as owner of the Work and the copyright, is not required to display the Work nor is the City required to display the Work on/in the Site. Additionally, the City may display the Work in any other location of its choosing.

Exhibit A. The Work shall not be shipped without the City having notified the Artist in writing that it is satisfied that the Work conforms to all specifications applicable to date, *i.e.*, prior to shipment and installation. In the absence of such approval, the City shall state the deficiencies in writing and Artist shall promptly correct same. The completed Work shall be delivered and installed in accordance with the Schedule (set forth in Exhibit C), without interference of normal business operation. The City shall be responsible for all expenses, labor, and equipment to prepare the Site for timely installation of the Work. The Artist will supervise installation of the Work and will be on-site during substantially all installation times. Artist will, upon the City's written request therefore, promptly provide the City with all documentation and information the City determines appropriate for installation of the Work. Artist is solely responsible for correcting at Artist's cost any damage to the Work which occurs between shipping and the completion of installation. The City will waive, or, at its sole cost, obtain, all required permits.

4.6 Final Acceptance.

- (a) "Final Acceptance" is the phase of this Agreement which occurs after installation of the Work and receipt by the City of all documents Artist is required to provide and performance of all obligations by Artist. City's approval given as a condition precedent to shipping of the Work does not obligate the City to give final acceptance. After final acceptance, City shall pay the Artist the final installment. Title to the Work shall pass upon final acceptance and final payment to Artist.
- (b) If the City disputes that all the services have been performed, the City shall notify the Artist in writing of those services the Artist has failed to perform within five (5) business days of discovery thereof of any and all Artist's failure(s) to perform under this Agreement which prevent City's final acceptance of the Work. Unless Artist disputes the City's determination, pursuant to paragraph (c) below, Artist shall promptly perform those services indicated by the City.
- (c) If the Artist disputes the City's determination that not all services have been performed, the Artist shall submit reasons in writing to the City within five (5) business days of Artist's receipt of the City's notification pursuant to paragraph (b) above. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the City.
- (d) Upon the resolution of any disputes that arise under paragraphs (b) and (c) of this section, the City shall notify the Artist of its final acceptance of the Work.
- (e) The City's final acceptance of the Work, if given, shall be made in writing to the Artist within ten (10) business days of its decision. Submission to the City of lien waivers from Artist's subcontractors is a prerequisite to City's final acceptance of the Work.

4.7 Risk of Loss. The risk of loss or damage to the Work shall be borne by the Artist until final acceptance by the City, and the Artist shall take such measures as are necessary to protect the Work from loss or damage until final acceptance. Such measures shall include, but not be limited to, providing and maintaining insurance as provided for in Article 9.

4.8 Title. Title to the Work shall pass to the City upon final acceptance by the City and full payment to the Artist. In the event of termination of this Agreement by the City for material

the Artist's name or the name of the Work in connection therewith. If a plaque is installed identifying the Artist and the Work, as provided in Article 11.1, it shall be removed at the Artist's option.

- 4.13 Post/Shipping and Transit. 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 insuring it, as provided for in this Agreement, until installation is completed and final acceptance has been given by the City, the costs of removal of the work from the site if the City refuses final acceptance, 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 5. PRICE AND PAYMENT SCHEDULE

As payment for the services of the Artist and the work, subject to the conditions set forth herein, the City shall pay the Artist the total sum not to exceed \$40,000 as follows:

- 5.1 One-quarter (\$10,000) upon the signing of this agreement.
- 5.2 One-quarter (\$10,000) upon 75 percent of completion, as evidenced by site visit by City. At the City's discretion, visual documentation and a sworn written statement from the Artist may be requested in lieu of a site visit.
- 5.3 One-half (\$20,000) after completion of installation, transfer of copyright to the City, Final Acceptance by the City, and completion of all acts required of Artist by this written Agreement.
- 5.4 All payments to Artist will be mailed to Artist within five (5) days after City Council approval of said payment at a regularly scheduled meeting. A schedule of these meetings and payment request due dates is attached as Exhibit D.

ARTICLE 6. SALES TAX

The City's Illinois sales tax exempt number is E 9998-1750-04. The sale to the City is exempt from Illinois state tax. Any other taxes which may be imposed on the Work, or which Artist may be subject to as a result of the granting of this Agreement, are the sole responsibility of the Artist.

ARTICLE 7. TIME OF PERFORMANCE

- 7.1 Duration. The services required of the Artist as set forth in this Agreement shall be completed in accordance with the completion schedule of the Work as proposed by the Artist and approved by the City in Exhibit C, provided that such time limits may be extended or otherwise modified by mutual written agreement between the Artist and the City. Notwithstanding provision of this mechanism for extension or other modification, the City is under no obligation to agree to extension or other modification, except as provided for in Subparagraph 12.3 as it relates to incapacity of the Artist or for delays in building

- 3) 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.
- (c) 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 or by his enforcement of any warranties of his vendors and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Work).
- (d) Upon completion of the project, Artist will assign to the City Artist's vendors' warranties for products used in the Work. The Work will be fabricated in accordance with manufacturer's(s) recommendations. If the manufacturer(s) fail to honor the warranty by reason of its assignment, City may make a warranty claim against Artist and Artist must pursue a warranty claim against manufacturer as though the assignment had not occurred. Artist grants to the City a lien on any warranty proceeds he receives from the manufacturer(s).
- (e) Artist will be solely responsible for all costs incurred by the City or Artist enforcing the warranty. The City requires as a condition to final payment, that Artist will provide City with his written assignment and the receipts from the purchase of warranted products.
- (f) The warranties described in this Article 8 shall survive the completion of this Agreement for a period of three (3) years. If a breach of a warranty under Article 8 is not reasonably and promptly curable by the Artist, the Artist is responsible for reimbursing the City for damages, expenses and loss incurred by the City as a result of a breach of or inaccuracy in a warranty or representation by the Artist. The City shall give notice to the Artist of any observed breach with reasonable promptness.

ARTICLE 9. INSURANCE AND INDEMNITY

- 9.1 Artist's Property Insurance. The Artist shall maintain all-risk property insurance including the risk of earth movement on the Work for its full value, and understands and agrees that said insurance, and not the City, shall be the source of compensation in the event of damage to the Work from any cause prior to final acceptance by the City of the Work.
- 9.2 Other Insurance. Artist shall provide comprehensive general liability insurance and valuable papers insurance in limits deemed appropriate to the project by the City.
- 9.3 Policy Limits. Artist shall obtain an insurance policy covering the period of this Agreement, from execution through Final Acceptance by the City, including coverage of comprehensive general liability insurance and other appropriate coverage for location of the Work on a public property, in the amount of two million dollars (\$2,000,000.00) per occurrence and one million dollars (\$1,000,000.00) per person. The City is to be named as an additional insured on the face of the certificate with an insurance company an A-rating or better. Any changes or cancellations shall require that the City be notified in

ARTICLE 11. ARTIST'S RIGHTS

- 11.1 Identification and Maintenance. The City shall, at its expense, prepare and install at the Site, at street level, a plaque identifying the Artist, the title of the Work, and the year of completion. The Artist may submit suggestions to the City for design and content of the plaque. The City shall maintain the plaque for as long as the Work is displayed.
- 11.2 Repairs and Restoration. The City shall have the sole right to determine when and if, it will undertake repair, restoration, and/or maintenance of the Work, and if so, the nature and extent of such repair, restoration, and/or maintenance. The Artist shall provide maintenance instructions in writing and be reasonably available to consult with the City on maintenance issues and depending on the extent of the Artist's services, shall be paid a fee for such services as are agreed to in advance by the City and the Artist and set forth in writing. At the City's sole option, the Artist shall personally supervise repairs and/or restorations, and if so, shall be paid a fee for any such services agreed to in advance by the City and Artist and set forth in writing. Notwithstanding the foregoing, and pursuant to Article 8 of this Agreement, no fee will be paid to the Artist for any services Artist may render in connection with curing a breach of warranty. If the City declines to follow the Artist's recommendations for repair, restoration, or maintenance, the Artist's sole remedy will be to dissociate Artist name from the Work, and the City agrees that it will no longer use the Artist's name or the name of the Work in connection therewith. If a plaque is installed identifying the Artist and the Work, as provided in Article 11.1, it shall be removed or modified at the Artist's option, with final approval of any modification to rest with the City.
- 11.3 Artist's Address. The Artist shall notify the City in writing of change(s) in Artist's 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 this Agreement that require the express approval of the Artist or notice to Artist.
- 11.4 Additional Rights and Remedies. Nothing contained in this Article 11 shall be construed as a limitation on such other rights and remedies available to the Artist or the City under the law which may now or in the future be applicable.
- 11.5 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 supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City.
- 11.6 Assignment or Transfer of Interest. The Artist shall not assign or otherwise transfer his/her interest in this Agreement.
- 11.7 Subcontracting by the Artist. The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontractors obtain all insurance required of the Artist under this Agreement and that said subcontracting shall not affect the design, appearance, visual quality, or overall quality of the Work and shall be carried out under the personal supervision of the Artist. Artist shall, as a condition precedent to payment of the final installment pursuant to Article 5, submit a notarized statement to the City listing all persons or entities who provided services and/or products to

months of date of notification to the City by the Artist of his incapacitation, then the provisions of Article 12.4 below apply.

- 12.4 If the Artist dies, and the design of the Work has been completed, this Agreement will be fulfilled at no additional cost, over the amount set forth in Article 5, by JAN SMARR and the Artist shall receive the appropriate credit for the Work. If the design for the Work has not been completed, the representative of the Artist shall determine whether the Work and installation can be completed. If the Work and installation cannot be completed, the Artist's estate shall refund any monies paid by the City to the Artist under this Agreement.

ARTICLE 13. TERMINATION

If either party to this Agreement shall substantially fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations in 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 fifteen business (15) days after the receipt of the notice to cure default. The non-defaulting party may, but is under no obligation whatsoever to do so, give the defaulting party an additional specified time period in which to cure the default, notice of which shall be provided in writing. If the default is not cured, then, at the option of the non-defaulting party, this Agreement shall terminate. Notwithstanding anything in the foregoing to the contrary, City may terminate this Agreement without prior notice in the event the City reasonably and for good and sufficient cause determines that continuation of the Agreement presents an emergency or threat to life, safety, or welfare. In the event of default by the City, without the fault of the Artist, the City shall compensate the Artist for all services performed and reasonable costs incurred under this Agreement by the Artist prior to termination, subject to offset of any monies which Artist may owe City. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall, at the City's option, become the City's property, the right to fabricate or execute the Work shall pass to the City, and the Artist shall assign the copyright, if obtained at the time of default, to the City. If the copyright has not been obtained at the time of default, Artist shall waive any such rights Artist may have had in the Work and shall release, indemnify and hold the City harmless from any claims of copyright infringement. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for actual damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may withhold payments due to the Artist but not yet paid to the Artist until such time as the exact amount of such damages due the City from the Artist is determined. Artist will promptly, upon demand, return any funds advanced to him by City but not earned.

ARTICLE 14. MISCELLANEOUS

- 14.1 Applicable Law. The law of Illinois, including its conflicts of law provisions, shall apply to interpretation and enforcement of this Agreement. Venue shall be within Cook County, Illinois. The parties waive trial by jury.

Exhibit A
Insert Proposal

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Concept:

“Emitting Waves”

As an essential element to all known forms of life, water, when used respectfully helps maintain a balance between the earth, wind and fire.

A series of glass and cell-cast acrylic panels will be carved with images depicting the flow of water. Viewed from both the interior and exterior of the building, the images will appear to “float” as they will be lit internally by low-voltage, computer programmable, light-emitting diodes. Providing light refraction and focused edge-illumination, subtle transitions in light within each panel will create “breathing” movement, emulating the flow of water.



Physical Description of Artwork:

Materials: light emitting diodes, glass, cell-cast acrylic, aluminum/steel, electrical hardware, power supplies

Dimensions: length: 45' x width: 3" x height: 3.5'-4'

Weight: ~ 250lbs per 3.5' x 7'4.5" panel Total:1750lbs

Color: variable based on transitions in programmable light

Finish: refractive, translucent

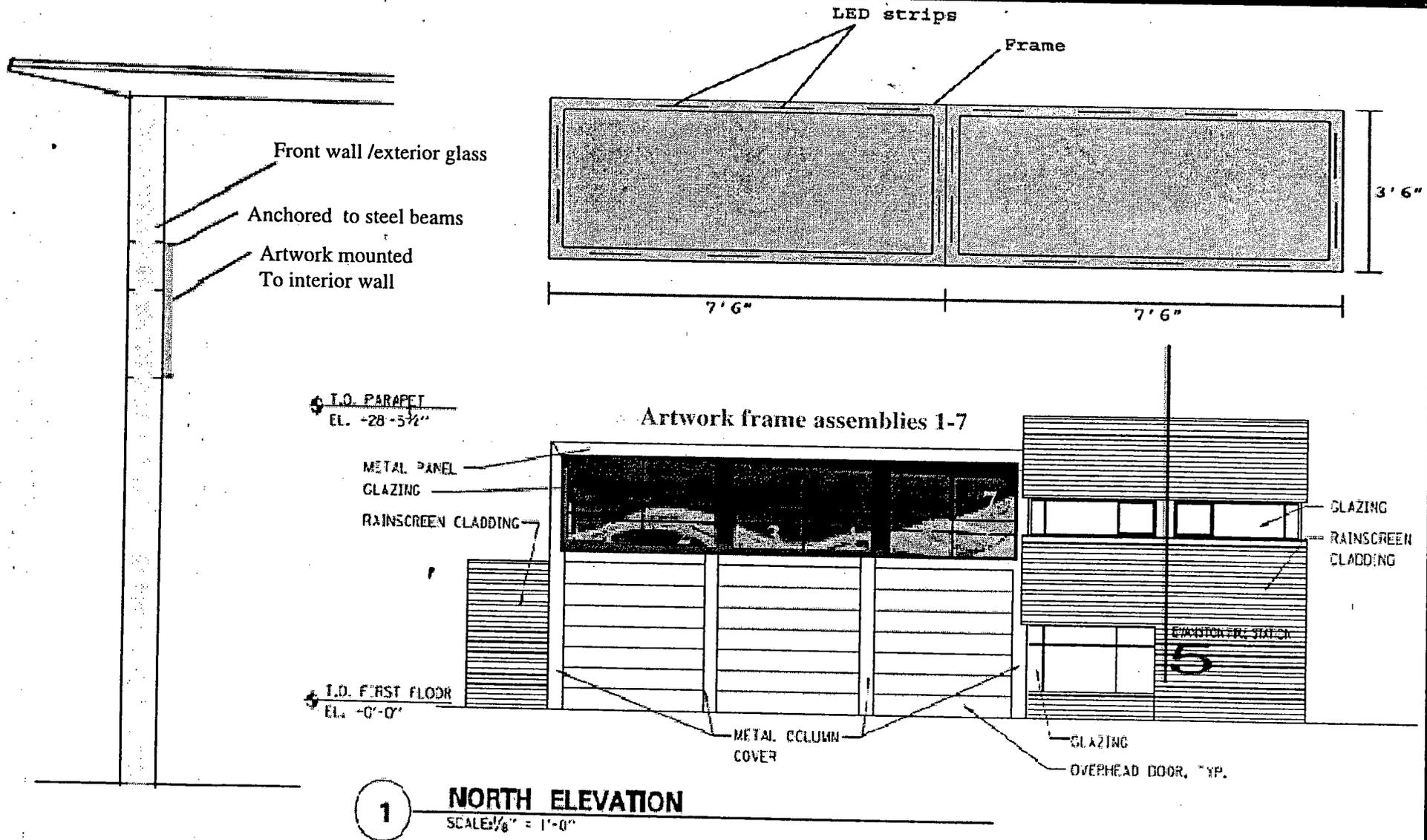
Site Preparation: electrical supplied to panels, orientation and mounting of anchors to steel beams.

Lighting: The work will be lit internally, and require no external sources. The natural ambient light during daylight will illuminate the glass-green finish of the panels.

Installation Method: (please see attached drawings) the work will be constructed in modular sections, and installed in stages.

Preliminary maintenance recommendations: The work will require virtually no maintenance, and the light fixtures have an estimated 60,000-80,000 hours of life at full power/ low voltage. The piece, therefore, is estimated to require no maintenance in the first 15-20 years. Fixtures will be accessible for maintenance after installation.

Installation:



Examples: etched panels

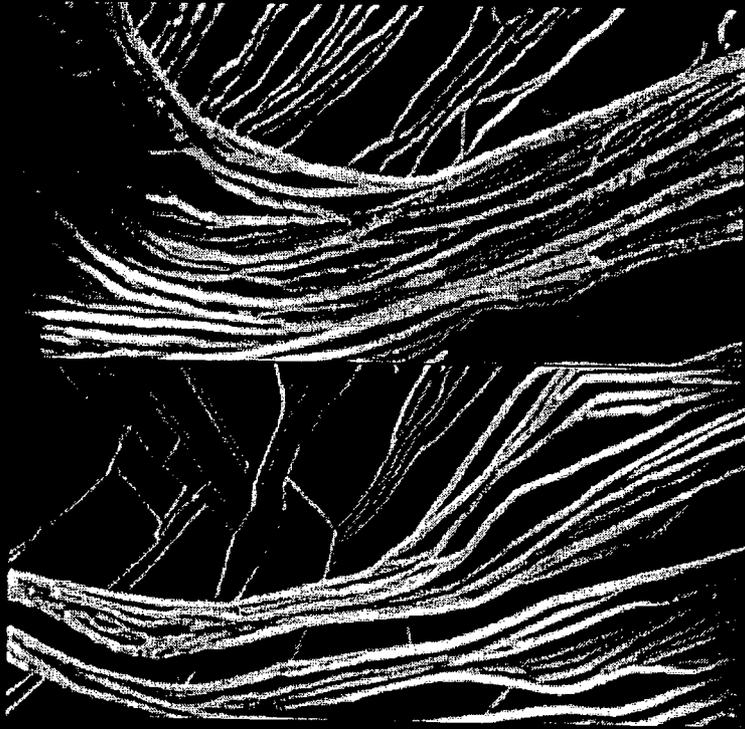


Table of Contents

Proposed Drawing

Concept

Advantages of Programmable Light

Physical Description of Artwork

Construction

Installation

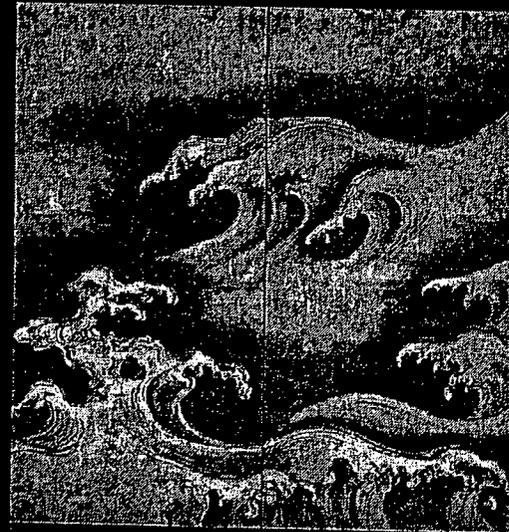
Alternate Location

Assembly Details

Materials

Examples

Timeline and Budget



pg. 1

pg. 2

pg. 3

pg. 4

pg. 5

pg. 6

pg. 7

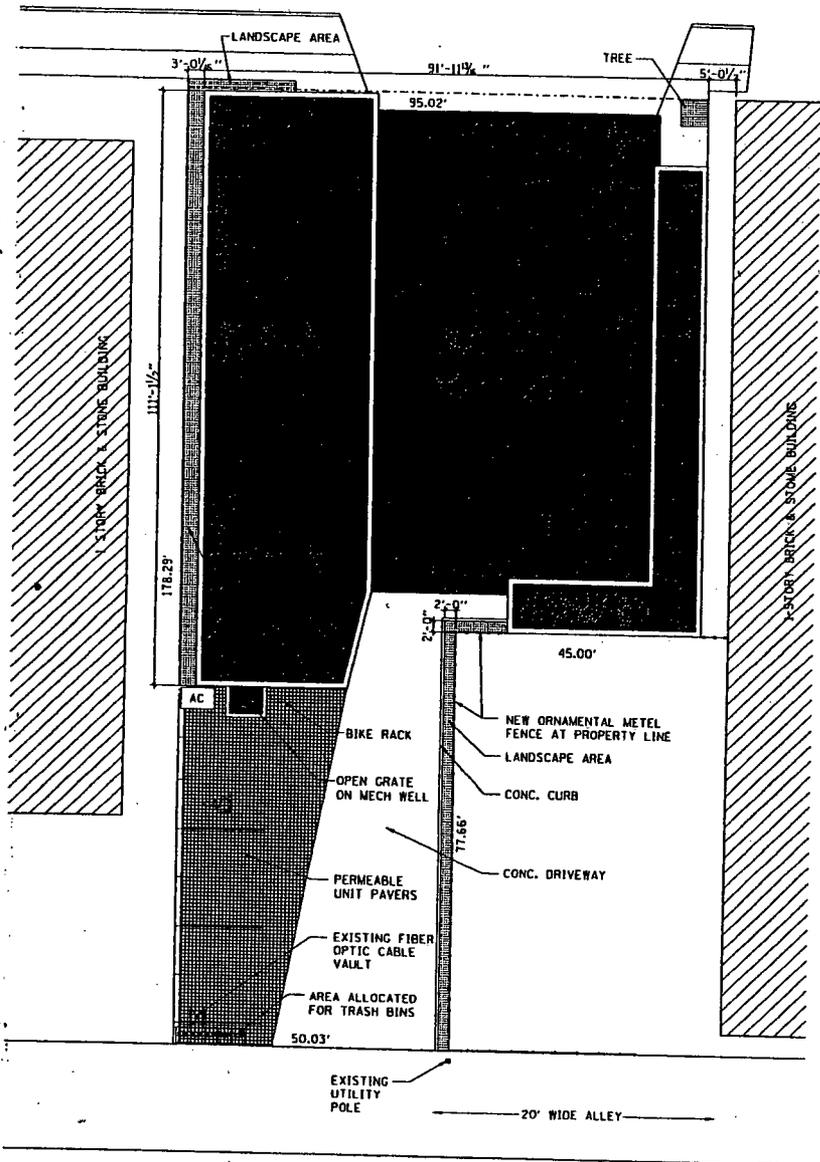
pg. 8

pg. 9

pg. 10

pg. 11

CENTRAL AVE



1 ARCHITECTURAL SITE PLAN
 SCALE: 1/8" = 1'-0"

Müller & Müller
 ARCHITECTS
 708 NORTH BANGAMON, CHICAGO, IL 60622
 PHONE 312.482.4188 FAX 312.482.4184

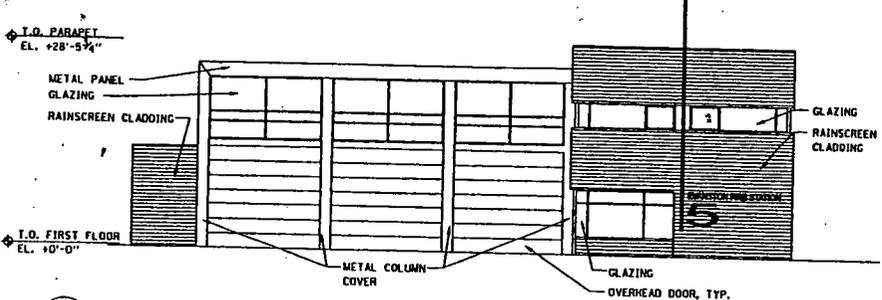
CHIEF: ARNOLD B. BORNHUES & ASSOCIATES, INC.
 1450 N. PULASKI
 CHICAGO, ILLINOIS 60610
 (312) 527-2000

UTM U.T. Mihajlovic, Ltd.
 804 Sherman Lane
 Buffalo Grove, IL 60089
 (847) 821-2000 ext. 100
 (847) 821-0842 fax

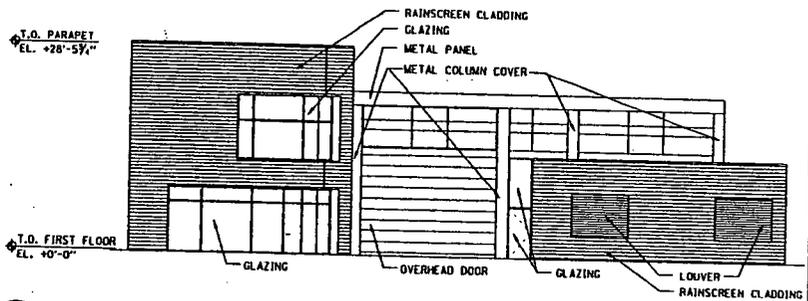
GENERAL NOTES

NO.	DATE	ISSUED FOR
01	07.17.08	DESIGN DEVELOPMENT
PROJECT		
FIRE STATION #8 2000 CENTRAL STREET EVANSTON, ILLINOIS		
SHEET TITLE		
ARCHITECTURAL SITE PLAN		
DRAWN	KAM	SHEET NO.
CHECKED	DS/TJS	A1.1
APPROVED	JM	
JOB NO. 10.01.04		

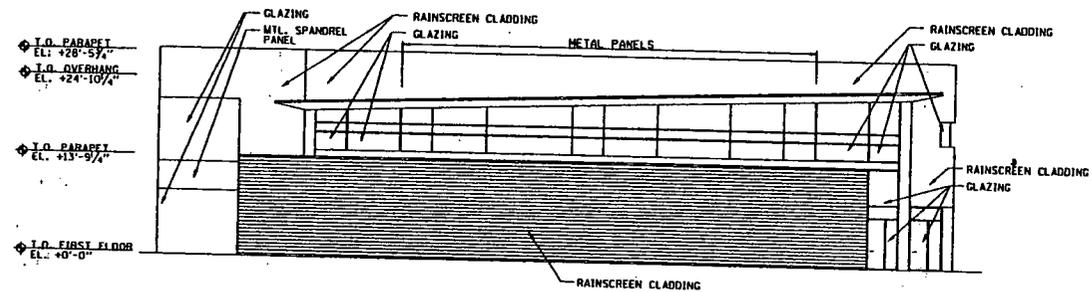
GENERAL NOTES



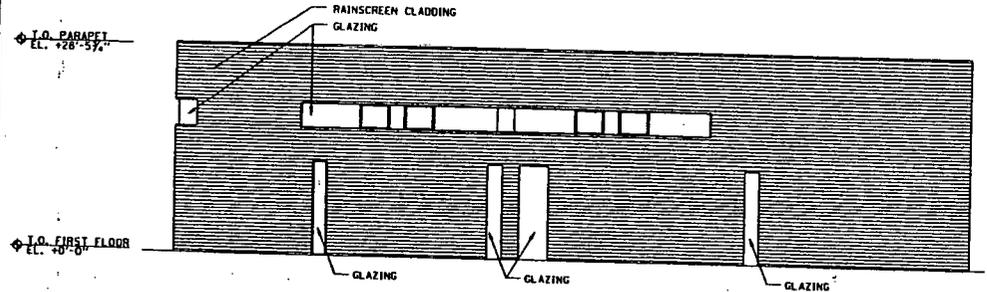
1 NORTH ELEVATION
SCALE: 1/4" = 1'-0"



2 SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



3 EAST ELEVATION
SCALE: 1/4" = 1'-0"



4 WEST ELEVATION
SCALE: 1/4" = 1'-0"

01.07.17.08	DESIGN DEVELOPMENT
NO.	DATE
PROJECT	ISSUED FOR
FIVE STATION #16 3230 CENTRAL STREET EVANSTON, ILLINOIS	
SHEET TITLE ELEVATIONS	
DRAWN EAM	SHEET NO.
CHECKED DS/TJS	A3.1
APPROVED J.M.	
JOB NO. 10.01.04	

Exhibit D

Schedule of Evanston City Council Meetings and Payment Request Due Dates

Invoice submission deadline

March 5, 2008
March 19, 2008
April 8, 2008
April 23, 2008
May 7, 2008
May 21, 2008
June 4, 2008
June 25, 2008
July 8, 2008
July 23, 2008
August 20, 2008
September 2, 2008
September 24, 2008
October 3, 2008
October 22, 2008
November 5, 2008
November 18, 2008

Council meeting approval

March 24, 2008
April 8, 2008
April 28, 2008
May 12, 2008
May 27, 2008
June 9, 2008
June 23, 2008
July 14, 2008
July 28, 2008
August 11, 2008
September 8, 2008
September 22, 2008
October 13, 2008
October 22, 2008
November 10, 2008
November 24, 2008
December 8, 2008

Please note: Schedule is subject to change.