

4/15/2008

34-R-08

A RESOLUTION

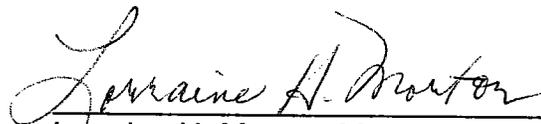
**Authorizing the City Manager to
Sign an Agreement Between the City of Evanston
and Indra Freitas Johnson for Public Art at Raymond Park**

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 Indra Freitas Johnson for Public Art at Raymond Park 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 Indira Freitas
Johnson for Public Art at Raymond Park**

**AGREEMENT BETWEEN THE CITY OF EVANSTON
AND INDIRA FREITAS JOHNSON
FOR PUBLIC ART AT RAYMOND PARK**

THIS AGREEMENT is entered into this 21 day of April, 2008 by and between the City of Evanston (hereinafter, "City"), an Illinois municipal corporation, 2100 Ridge Avenue, Evanston, Illinois, and Indira Freitas Johnson (hereinafter "Artist"), an individual, 917 Fowler Avenue, Evanston, IL 60202 (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, Raymond Park is an appropriate place for exhibition of a bronze sculpture; 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 Conversations: Here and Now (the "Work") as specified in attachment A to this document, at Raymond Park, 1489 Chicago Avenue, Evanston; 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) Conversations: Here and Now at Raymond Park

The (untitled) Work is depicted in Exhibit A, attached hereto and made a part hereof.

2.2 The Work is commissioned for placement on/surrounding the northwest corner of Raymond Park, 1489 Chicago Avenue, 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.

beginning at the foundry. In the absence of such approval, the City shall state the deficiencies in writing and Artist shall promptly correct same. The Artist shall notify the City twenty (20) business days in advance in writing when fabrication of the Work and any other services to be performed prior to shipping are completed. Upon receipt of written confirmation from the City, 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 this Work and receipt by 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 City to give final acceptance. After final acceptance, City shall pay Artist the final installment.
- (b) The City shall give written notice to the Artist 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.
- (c) 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 breach of its terms by the Artist, the Artist shall retain all rights of ownership of the Work and copyright and shall have sole right to complete, exhibit, and sell the Work, provided that he shall first have made a full refund to the City of any monies paid to Artist for and in connection with the Work, full refund of all expenditures of any kind made by the City in enforcing this Agreement, preparing the Site, and full refund of any and all shipping, storage, and insurance costs and expenses the City may have incurred in connection with this Agreement or the Work, including payment of all costs and expenses of the City's removal of the Work from the Site and restoration to its original condition.

- 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 \$256,000 as follows:

- 5.1 One third (\$85,333.33) upon the signing of this agreement.
- 5.2 One third (\$85,333.33) upon mid-point 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 third (\$85,333.34) 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. **TIME IS OF THE ESSENCE OF THIS AGREEMENT.** If Artist fails to fully perform all of his obligations under this Agreement by the agreed upon date of completion or any approved extensions thereof, Artist will, upon the City's written demand therefore,

- (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) 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 her 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 ten (10) 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. 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, at the City's request, provide other insurance in types and limits deemed appropriate to the project by the City and including, but not limited to unemployment compensation, workers compensation, and valuable papers insurance.
- 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 writing at least forty-five (45) days prior to the effective date of the change or cancellation.
- 9.4 Commencement of Work/Notice of Cancellation of Insurance. The Artist shall not commence work herein until Artist has obtained the required insurance and has received

including but not limited to, reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications.

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. The City shall also endeavor to credit the Artist on any photos or publications in which the Work is included.
- 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, may 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

the Artist can complete and supervise the installation of the Work within four months after Artist becomes incapacitated. Upon written request of the City, the Artist shall provide the City with written statements from Artist's physician attesting to his/her ability or inability to complete the Work within four months of the date of notification to the City of his incapacitation. If the Artist cannot complete the Work and the installation within four 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 Sam Choi 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.

Exhibit A
Insert Proposal

Community Participation.

Evanston is a community with a long history that reaches back to its first inhabitants, the Pottawattamie Indians and forward through time with a continual back and forth of new residents, European, African American, and the current influx of immigrants from Latin America and Asia. In order to represent these different voices, *Conversations: Here and Now* will begin with a civic dialog that involves the community in a series of three public meetings held in geographically dispersed neighborhoods of Evanston. Meetings will be designed to facilitate the listening to and telling of stories and sharing of memories thus building an understanding of what is important to each of us so that together we can identify and project our collective hopes for our community.

These community conversations would shape and inform the selection of symbols, stories and words which will be carved into the surface of each chair and the bronze inlays embedded into the platform thus giving community members a stake in *Conversations: Here and Now* making it a place of living memory and raising awareness of the diverse racial and cultural histories that have influenced Evanston.

Artistic Qualifications

I am an Indian born immigrant, practicing artist, sculptor and community activist who for more than twenty five years have called Evanston home. I have been working on community and public art projects for over a decade. Each public art project brings its own challenges. The most important part of any project I believe is developing the concept; being able to come up with an idea that keeps engaging the public audience long after the project is first installed.

My work reflects familiarity with a number of different materials, clay, which was my primary medium for over two decades, applied and cast concrete, cast iron welded steel, wood, mosaic and fiber. In addition, when projects require technical support, beyond my own knowledge I use the services of a wide range of technical experts, engineers, architects and other professionals. This was brought home to me during my residency at the Kohler Factory in Kohler, Wisconsin. I used the knowledge and skills of both pottery and foundry personnel to successfully create works, far beyond my normal range.

All the public art projects that I have worked on include some level of participation from local communities, use a variety of different materials and share sufficient commonalities that qualify me for this project.

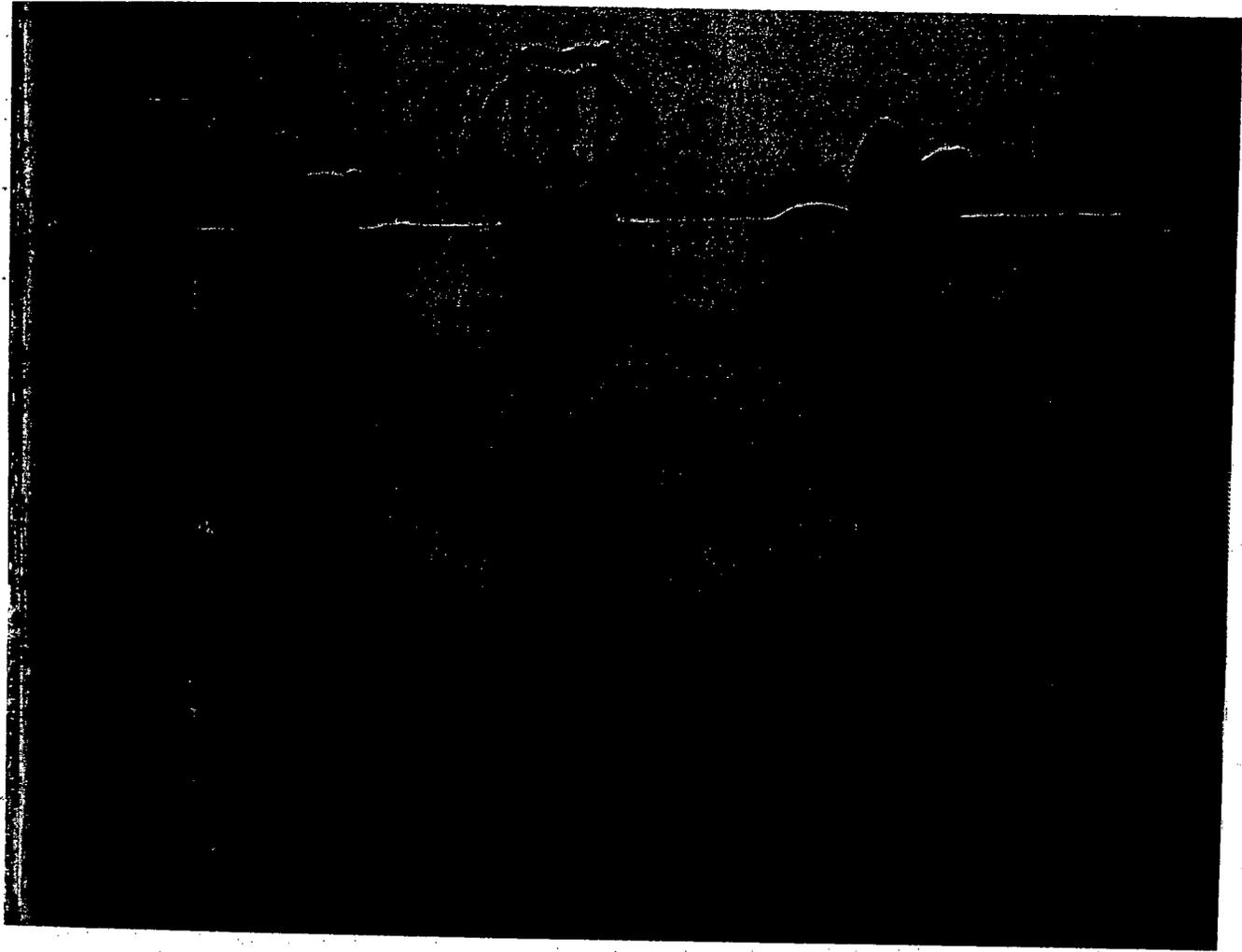


Exhibit B

Site Plan

See attached map.

Exhibit C
Project Schedule

Research and Planning:

- 3 community meetings to solicit stories, anecdotes, words from Evanston residents to be incorporated in design of chairs: proposed sites- Evanston Public Library, Fleetwood Jourdain Center and St. Nicks Church Meeting Hall. (2 weeks)
Public meetings scheduled after contract is signed, weeks of May 5 and May 12.
- Design of 7 chairs and floor inserts incorporating text and symbols from community- artist and assistant. (2 weeks)
May 23

Fabrication:

- 7 chairs- clay and wax models, relief carved and sculpted artist and assistant. (8 1/2 weeks)
July 3
- Fabrication of floor inserts- clay relief slabs- artist and assistant. (2 ½ weeks)
July 18
- Packing and shipping of clay models and relief slabs from artist studio to foundry (1 week)
To arrive at foundry July 25
- Mold making and casting in Bronze and application of patina at Walla Walla Foundry in Washington State, 7 chairs plus floor inserts. Application of wax sealant. (16 weeks)
November 14
- Packing and shipping of clay models and relief slabs from foundry.
Arrive back in Chicago November 21

Installation:

- Installation to be done by Methods and Materials. Pour steel reinforced colored concrete slab. Insert bronze elements flush with surface of slab and secure to steel rebar. After slab is poured and cured, surface to be mechanically ground level and sealed with protective coating.
- Install 7 cast bronze chairs secured onto previously poured concrete slabs, with cast pins on bottom surfaces of castings set with epoxy concrete adhesive.
Installation complete December 5

Estimated time frame: 35-36 weeks. *(It's possible that might be ready in a shorter time as I've used the higher time estimates provided by everyone involved in the project).*