

11/25/2008

71-R-08

A RESOLUTION

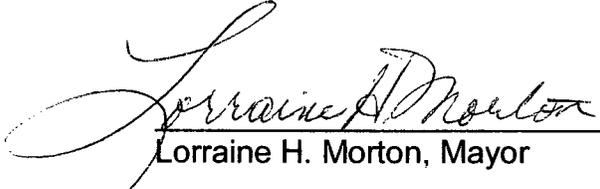
Authorizing the City Manager to Sign an Agreement between the City of Evanston and the Open Studio Project for Construction of a Bricolage Mural on the CTA Retaining Wall just South of Main Street

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 a Community Public Art Program Grant Agreement between the City of Evanston and the Open Studio Project for construction of a Bricolage Mural on the CTA retaining wall just south of Main Street, attached hereto as Exhibit A and incorporated herein by reference.

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 71-R-08 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

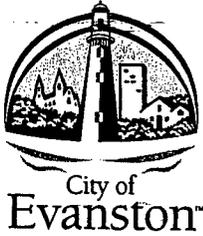
Attest:


Mayre Press, Deputy City Clerk

Adopted: December 8, 2008

EXHIBIT A

**Community Public Art Program Grant Agreement between
the City of Evanston and the Open Studio Project for Construction of a
Bricolage Mural on the CTA Retaining Wall just South of Main Street**



Cultural Arts Division
927 Noyes Street
Evanston, Illinois 60201
T 847.448.8260
TTY 847.328.4080
www.cityofevanston.org

CITY OF EVANSTON COMMUNITY PUBLIC ART PROGRAM GRANT AGREEMENT

THIS AGREEMENT is entered into this 9th day of December, 2008 by and between the City of Evanston (hereinafter, "City"), an Illinois municipal corporation, 2100 Ridge Avenue, Evanston, Illinois, and Open Studio Project (hereinafter, "Grantee"), an individual or organization, 901 Sherman Avenue, Evanston IL, 60202.

RECITALS

WHEREAS, the City has implemented a Community Public Art grant program supported by the City; and

WHEREAS, the Grantee has submitted an application for support from the Community Public Art grant program; and

WHEREAS, the Grantee was selected the Evanston Public Art Committee to conduct the project as specified in attachment A to this document; and

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

AGREEMENT

ARTICLE 1: SCOPE/COMPENSATION/TERM

- A. **Scope/Compensation.** The City agrees to make a grant in the amount of \$ 22,500 to Grantee for the following described project (the "Project"):

Design, fabrication, and installation of a bricolage mural with community participants under the direction of artist Sonata Kazimieraitiene or another artist designated by Grantee and approved by the City, on a concrete wall on the west side of the CTA tracks just south of Main Street.

Grantee acknowledges that the City does not own or control said concrete wall on the west side of the CTA tracks just south of Main Street. Grantee bears the responsibility for securing written authorization to undertake work on the Project and any necessary maintenance referenced in Article 2. Paragraph B from the individual(s) or entity(ies) with the legal authority to provide such authorization. Grantee shall provide the City with a copy of an executed agreement setting forth such authorization.

- B. **Term of Agreement.** All monies granted for this project will be expended by Grantee between January 1, 2009, or the date that a copy of the written authorization referenced in Article 1, Paragraph A is received by the City (whichever is later) and September 30, 2009. The project shall be completed by September 30, 2009. If additional time is needed for the project, the request for a time extension must be made in writing to the Public Art Committee before the closing date of the project. If no extension is requested or approved by the Public Art Committee, grant monies remaining after the termination date must be refunded to the City.

ARTICLE 2: PROJECT COSTS, FINANCIAL RECORDS AND REPORTING REQUIREMENTS

- A. **Execution of Work.** Grantee agrees that all funds received for the Project will be expended only for the Project as described above and in the originally approved application. In the event Grantee changes the Project without the prior consent of the City, all grant funds shall be refunded to the City.

Use of Grant Funds. Grantee agrees that no monies from this grant will be used for the purchase of permanent equipment, capital improvements or construction, payment of any previous year's deficit, activities outside of the Evanston community, or subsidy for an individual's academic study. Grant monies shall be used only for: **Design, fabrication, and installation of a bricolage mural under the direction of artist Sonata Kazimieraitiene, or another artist designated by Grantee and approved by the City, on a concrete wall on the west side of the CTA tracks south of Main Street.**

- B. **Maintenance.** Grantee accepts full responsibility for ongoing maintenance of the Project for a period of three (3) years following the completion thereof (the "Maintenance Period"), and Grantee agrees to respond promptly to a written request from the City, weather permitting, when a need for maintenance, repair, or removal is indicated.
- C. **Total Income.** Grantee agrees that in the event the total income as set forth in the financial evaluation report submitted by Grantee exceeds the total expenses of the Project, the amount of such excess to the extent of the grant shall be refunded by September 30, 2009, to the City.
- D. **Billing and Payment.** Grant monies will not be paid out more than 45 days before the start of the project. No funds will be paid to Grantee until the City has received a copy of the written authorization referenced in Article 1, Paragraph A and the signed Grant Agreement and required attachments. Grant monies will be paid according to the following schedule:
1. A fifteen percent (\$3,375) payment within forty-five (45) days of receipt of the documents referenced in the preceding sentence.
 2. Fifty percent (\$11,250) 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 Grantee may be requested in lieu of a site visit.
 3. Thirty-five percent (\$7,875) after completion of installation and submission of final report on project by the Grantee.
- E. **Financial Records.** Grantee agrees upon request to make available to the City its financial records for the year in which the grant was received and to allow access promptly upon request to financial documents that pertain to information stated in the previously approved application for funding.
- F. **Reporting/Consultation.** Grantee agrees to submit a final report including a financial summary to the City within one month after termination of the project period.

ARTICLE 3: COMPLIANCE REQUIREMENTS AND CERTIFICATIONS/ ASSURANCES

- A. **Grant Acknowledgement/Recognition.** Grantee agrees that credit will be given to the City/Public Art Committee on all public notices, publicity, printed projects, etc. The following language shall be used in such notices: "This project is partially supported by a grant from the City of Evanston's Community Public Art Program."
- B. **Non-Sponsorship.** Grantee agrees that the City, in making this grant, does not in any way act as sponsor of the Project as outlined in Paragraph 1 except if so agreed upon in writing in advance by both the Grantee and the City.
- C. **Non-Discrimination.** Grantee agrees that no person shall on the grounds of race, color, religion, national origin, sex, handicap, sexual orientation, or age, while otherwise qualified, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any project or activity including employment supported in whole or in part by funds provided under this grant.

ARTICLE 4: INSURANCE AND INDEMNIFICATION

A. **Indemnification.** Grantee hereby assumes liability for and agrees to protect, hold harmless and indemnify the City and its elected officials, assigns, officers, directors, employees, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, judgments, settlements, claims, actions, suits, proceedings, costs, expenses and disbursements, including legal fees and expenses, of whatever kind and nature, imposed on, incurred by or asserted against the City, its successors, assigns, officers, directors, employees, agents and servants, in any way relating to or arising out of any of the following or allegations, claims or charges of any of the following:

1. The use or application of the Grant proceeds;
2. The violation by the Grantee of any of its covenants or agreements under the Agreement;
3. Any tort or other action or failure to act done in connection with the performance or operation of the Project;
4. Any act or failure to act of any officer, employee, agent or servant of the Grantee;
5. Any injury to any person, loss of life, or loss or destruction of property in any way arising out of or relating to the performance or operation of the Project;

The City agrees to notify the Grantee in writing of any claim or liability which the City believes to be covered under this paragraph. The City shall tender, and Grantee shall promptly accept tender of, defense in connection with any claim or liability in respect of which Grantee has agreed in writing that based on the claim or liability the City is entitled to indemnification under this paragraph; provided, however, that the counsel retained by Grantee to defend the City shall be satisfactory to the City; and that the City shall be kept fully informed in writing of the status of the proceeding. In the event that the Grantee, within ten (10) days after the receipt of notice from the City of a claim or liability which the City believes to be covered under this paragraph, fails to advise the City in writing that the Grantee agrees that the City is entitled to indemnification under this paragraph based on the claim or liability, the City, without waiving or prejudicing any claim or right it may have to indemnification, under this paragraph (including the recovery of legal fees and expenses), may retain its own counsel and present its own defense in connection with such claim or liability.

The City shall not settle or compromise any claim, suit, action or proceeding in respect of which the Grantee has agreed in writing that the City is entitled to indemnification under this paragraph. Notwithstanding anything in this Agreement to the contrary, the indemnities contained in this paragraph shall survive the termination of the Agreement.

B. **Insurance.**

1. **Policy Limits.** Grantee 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) aggregate and one million dollars (\$1,000,000.00) per occurrence. 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.
2. **Commencement of Work/Notice of Cancellation of Insurance.** The Grantee shall not commence work herein until the organization has obtained the required insurance and has received written approval of such insurance by the City's Safety/Risk Management Officer. The Grantee shall furnish, when requested, a certified copy of the policy(s) to the City. The policy(s) shall provide that in the event the insurance should be changed or cancelled, such change or cancellation shall not be effective until forty-five (45) days after the City has received written notice from the insurance company(s). Such notice shall be mailed to the City in care of the Safety/Risk Management Officer, Law Department, 2100 Ridge Avenue, Evanston, Illinois 60201. An insurance company having less than an A- Policyholders Rating by the Alfred M. Best and Company, Inc. will not be considered acceptable.

3. The Grantee has designated:

Sarah Laing

as its contact person for all issues relating to insurance and indemnity and actual or potential claims arising out of this Agreement.

ARTICLE 5: PROJECT TERMINATION

- A. **Termination.** The City may unilaterally rescind this Grant Agreement or the Grantee may rescind this Agreement at any time prior to the commencement of the herein referenced Project by written notification to the other party. After project commencement, this Agreement may be amended by mutual written agreement between the parties. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation after execution of this Agreement in furtherance of this project.
- B. **Discontinuation of Work/Outstanding Obligations.** In the event of termination by the City, the Grantee shall halt all work under this Agreement and cancel all outstanding obligations if so directed by the City and the City shall pay a proportion of the grant amount based on the percentage of eligible project costs incurred by Grantee in accordance with this Agreement up to the date of termination, provided, however, that if termination is for material breach by Grantee, the City shall provide no such payment.
- C. **Terms for Termination.** Failure by the Grantee to comply with any of the above cited Grant Agreement terms shall be cause for the suspension or termination of all grant assistance obligations hereunder, unless, in the judgment of the City, such failure was not due to the fault of the Grantee.
- D. **Terms for Cure.** The parties agree that in the event of a breach of this Agreement by the Grantee and notification from the City, the Grantee shall have thirty (30) days to cure or correct the breach, except that in the event of failure to observe all applicable insurance requirements, the City may terminate this Agreement upon two days' written notice. The City may, but is not obligated to, give a period of two days to cure, which it may renew with conditions, including, but not limited to, suspension of the project. If the breach is not cured or corrected, (1) the City shall thereafter have full right and authority to terminate this Agreement, to take such action as it deems necessary to enforce the provisions of this Agreement, to prevent the continued breach or violation thereof by the Grantee, or to seek other remedy that may be available by law and (2) the City reserves the right to demand return of any City or state funds awarded under this Agreement.
- E. In the event the Project is not completed as provided for herein by the due date and any extensions thereof, Grantee shall upon written demand therefore by the City, promptly return all grant funds.

ARTICLE 6: NOTICES

- A. 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 delivery, if delivered personally, or on the fifth (5th) day after mailing if sent by registered or certified mail, return receipt requested, first-class postage prepaid, as set forth below. Faxed communications are a convenience to the parties, and not a substitute for personal or mailed delivery.
1. if the City, to:
- Director of Cultural Arts Division
City of Evanston
927 Noyes Street
Evanston, Illinois 60201
Phone: (847) 448-8260
Fax: (847) 328-1340

with a copy to:

Law Department
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
Phone (847) 866-2937
Fax (847) 448-8093

2. if the Grantee, at the address first above written to the attention of Sarah Laing, with a copy to (attorney):

Larry S. Goldberg
DLA Piper LLP (US)
203 N. LaSalle Street, Suite 1900
Chicago, Illinois 60601
Phone (312) 368-8550
Fax (312) 236-7516

or otherwise by notice served in accordance with this Article.

ARTICLE 7: MISCELLANEOUS

- A. **Applicable Law.** The law of Illinois, including its conflicts of law provisions, shall apply to interpretation and enforcement of this Agreement. The venue shall be within Cook County, Illinois.
- B. **Litigation.** In the event of litigation or claims(s) against the City arising out of this Agreement by anyone other than the Grantee, the Grantee shall cooperate fully with the City, and the Grantee shall provide five (5) days of its time to the City at no charge to prepare for and defend the litigation. Thereafter, the City will compensate Grantee at a mutually agreeable rate, not to exceed \$300 per diem.
- C. **Severability.** In the event any provision(s) of this Agreement are found by a court of competent jurisdiction to be in violation of applicable law, provision(s) unaffected thereby shall be in effect.
- D. **Entire Agreement.** This document represents the entire Agreement between the City and Grantee. Any and all prior agreements, undertakings written and oral, are hereby superseded.

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

CITY:

GRANTEE:

By: _____
Rolanda B. Russell, Interim City Manager

By: Sarah Laing, Associate Director
Printed Name and Title

Witness

[Signature]
Witness

Printed Name of Witness

Eric Mooney
Printed Name of Witness

Address of Witness

903 Sherman Ave Evanston, IL 60202
Address of Witness

002/005



Mural Agreement

This Agreement (hereinafter referred to as the "Mural Agreement" or the "Agreement") is between the Chicago Transit Authority, a municipal corporation of the State of Illinois (the "CTA") with its principal office at 567 West Lake Street, Chicago, Illinois 60661-1498 and the not-for-profit corporation Open Studio Project, Inc., located at 903 Sherman Avenue, Evanston, IL 60202 (hereinafter referred to as the "Requestor") and is effective as of October 27, 2008.

The Requestor has requested that the CTA permit a mural (the Open Studio Project mural hereinafter referred to as the "Mural") to be painted and/or installed on a concrete wall located on the west side of the CTA tracks south of Main Street in Evanston, IL, which is property owned by the CTA (the "Property"). The Property subject to this Agreement is a part of the CTA's Main Street Purple Line Station, and is further depicted in the picture attached hereto and incorporated herein as Exhibit "A."

The CTA will permit the painting of the Mural on the Property under the terms and conditions set forth in this Agreement. In consideration of the promises contained herein and the benefits which accrue to the Requestor and the CTA from the Requestor's participation in the CTA's Mural Program, the sufficiency of which is hereby acknowledged, the parties are entering into this Mural Agreement under the following terms and conditions:

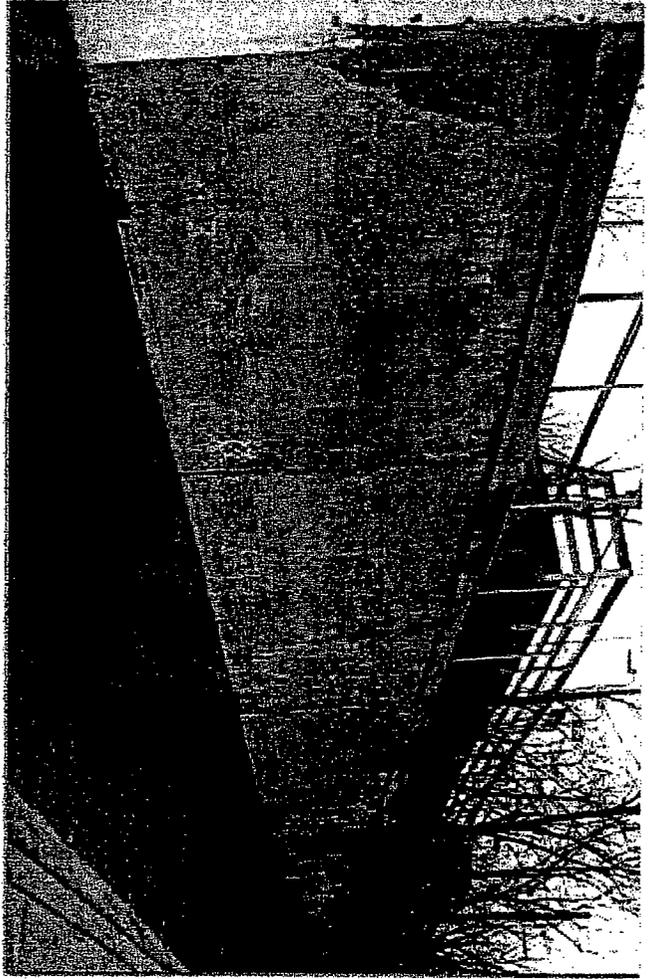
1. **Right of Entry.** CTA hereby grants to Requestor, including its volunteers, a temporary right to enter and access the Property for the purpose described in its correspondence to CTA dated September 30, 2008, which is attached hereto as Exhibit B and incorporated herein, subject to the following conditions:
 - a. Requestor shall supply all tools and equipment necessary for its volunteers to perform garbage and other refuse removal at the Property and shall provide garbage collection services at the Property during the Event at no cost to CTA.
 - b. Requestor agrees that it will conduct all activity on the Premises so that it will not impede passenger traffic flow, delay service, or affect the safety of CTA, its employees, or customers.
 - c. Requestor acknowledges that any and all permission granted to it by CTA, in connection with this Agreement, is subordinate to CTA's obligations to its passengers and employees and to the general public.
 - d. Requestor, its officers, employees and agents, including its volunteers, shall, while on the Property, fully and immediately comply with any requests, directions, or instructions by CTA personnel.
 - e. The Requestor shall not allow any persons to participate in the painting, installation, maintenance or removal of Mural program materials and work at a CTA facility if such persons possess, consume, use or are under the influence of alcoholic beverages or have any amount of a controlled substance in his/her system.
 - f. This Agreement is not a lease or easement, and does not convey any interest in the proposed site to the Requestor.

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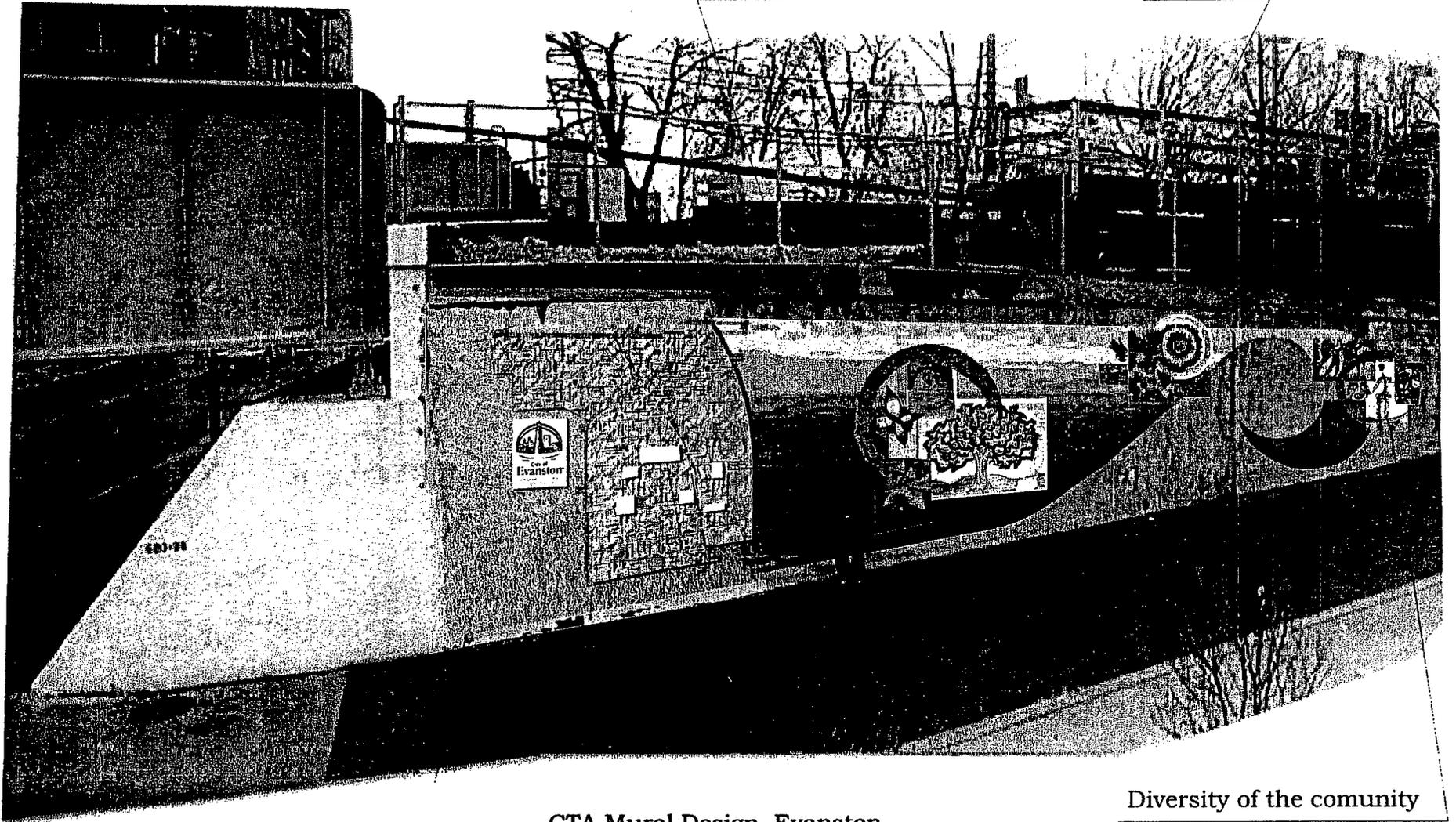
the Mural, provided that CTA Intellectual Property will be used for no other purpose than the promotion of the CTA Mural Program and the Mural.

- b. The Requestor must contact CTA's Media Relations Department at (312) 681-3090 to obtain its approval no less than thirty (30) business days prior to issuing any press notices or releases or holding any conferences or interviews regarding Requestor's participation in the CTA Mural Program.
 - c. Requestor grants to CTA, and its successors, assigns, and licensees, the right to photograph, record, reproduce, or otherwise use images of the Mural, in whole or in part, in any and all media in perpetuity throughout the universe. Further, Requestor warrants that the consent of no other person or entity is required to enable CTA to the use of the Mural as described and that such use will not violate or infringe upon the trademarks, service marks, trade names, copyright, artistic, and/or other rights of any third parties, including the rights of publicity and/or privacy.
1. **Term of Agreement.** The term of this Agreement is two (2) years from the date of execution by the CTA. If the Requestor desires to terminate this Agreement before the end of two years, the Requestor shall submit a letter requesting to be released from this Mural Agreement. The Agreement shall then terminate if the CTA approves such request in writing. At the end of the term, the Requestor can apply to renew the Agreement. If the CTA does not renew the Agreement, the Requestor is responsible for the removal of the Mural within thirty (30) days of the Mural Agreement termination. Upon removal of the Mural, the concrete wall shall be restored by the Requestor to its condition prior to the painting and installation of the Mural at no cost to the CTA.
 2. **Termination.** If the Requestor fails to comply with any of the terms of this Agreement, the CTA may immediately terminate this Agreement. Specifically, the CTA may terminate the right of entry and/or license granted by this Agreement immediately if Requestor, including, without limitations, its employees, agents, or volunteers, fail to comply with instructions from CTA personnel relating to safety operational needs or emergency procedures. CTA's determination as to whether an instruction relates to safety, operational needs or emergency procedures will be final, conclusive, and binding.
 - a. Requestor must remove the Mural within thirty (30) days from termination at its sole expense. If Requestor fails to remove the Mural as required, CTA shall have the right, but not the obligation, to remove the Mural at the expense of the Requestor.
 3. **Force Majeure.** CTA's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, terrorist threats or acts, war, strikes, fires, floods, acts of God, power failures, or damage or destruction of any kind, shall not be deemed a breach of this Agreement.
 4. **Indemnification.** As a material consideration for entering into this Agreement, and without which the CTA would not enter into same, the Requestor covenants and agrees to indemnify, save harmless and protect the CTA, its officials, employees, and agents from and against any and all loss, damage, claim, actions, liability, judgments, demand, fine, lawsuit and/or liability, and any and all costs, expenses and attorneys' fees in connection therewith by reason of injuries to or death of persons and/or loss of or damage to property and/or violation of any law, ordinance or regulation arising or growing out of or connected with this Mural Program and Agreement, and/or (ii) any other person performing any work or service for or on behalf of the Requestor or about the CTA's property or arising out of their presence on the CTA's property. This section shall survive the termination of this Agreement.
 5. **Releases.** Requestor shall have sole responsibility for its employees and volunteers. Any volunteers of the Requestor working on the Mural must be at least 10 years of age. Individuals under the age of 18 must be supervised by an adult employee or adult volunteer of Requestor (1 adult per 5 youths).
 - a. Before beginning any work under this Agreement, Requestor shall obtain a release from all its volunteers, employees or agents entering the Property releasing CTA, its officers, employees, agents, contractors, successors and assigns from any and all claims, causes of action, liabilities,



Nature

Culture



CTA Mural Design, Evanston
2008
Muralist: Sonata Kazimieraitiene

Diversity of the community