

4/14/2009

25-R-09

A RESOLUTION

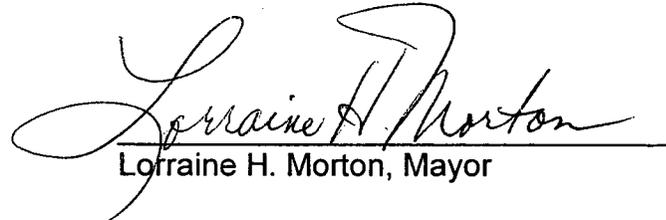
**Authorizing the Interim City Manager to Sign a City of Evanston
Community Public Art Program Grant Agreement with
Kiela Smith-Upton for Restoration of the
Wall of Struggle and Dreams Mural at Clyde-Brummel Park**

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

SECTION 1: That the Interim 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 with Kiela Smith-Upton for Restoration of the Wall of Struggle and Dreams Mural at Clyde-Brummel Park, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: That the Interim 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 25-R-09 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

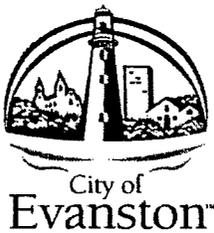
Attest:


Rodney Greene, City Clerk

Adopted: April 27, 2009

EXHIBIT A

**City of Evanston Community Public Art Program Grant Agreement
with Kiela Smith-Upton for Restoration of the
Wall of Struggle and Dreams Mural at Clyde-Brummel Park**



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 _____ day of _____, 2009 by and between the City of Evanston (hereinafter, "City"), an Illinois municipal corporation, 2100 Ridge Avenue, Evanston, Illinois, and Kiela Smith-Upton (hereinafter, "Grantee"), an individual, 629 W. Cermak #205, Chicago, IL 60616.

RECITALS

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

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

WHEREAS, the Grantee was selected by 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 of Evanston agrees to make a grant in the amount of **\$ 25,000** to Grantee for the following described project:

Restoration/renewal of *Wall of Struggle and Dreams* mural at Clyde-Brummel Park, located at Clyde Avenue and Brummel Street in Evanston. Artist Max Sansing and assistants will be guided by original artist Kiela Smith-Upton to complete the painting restoration (the "Project"). The Project is depicted in Exhibit A, attached hereto and made a part hereof.

B. **Term of Agreement.** All monies granted for this project will be expended by Grantee between May 1, 2009 and October 31, 2009. The project shall be completed by November 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 of Evanston.

ARTICLE 2: PROJECT COSTS, FINANCIAL RECORDS AND REPORTING REQUIREMENTS

A. **Execution of Work.** Grantee agrees that all funds received for this 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 of Evanston, all grant funds shall be refunded to the City of Evanston.

B. **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 the Project as provided herein.

- C. **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 may 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.
- D. **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 December 31, 2009, to the City of Evanston.
- E. **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 of Evanston has received the signed Grant Agreement and required attachments. Grant monies will be paid according to the following schedule:
1. Fifteen percent (\$3,750) upon the signing of this agreement.
 2. Fifty percent (\$12,500) 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 (\$8,750) after completion of installation and submission of final report on project by the Grantee.
- F. **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.
- G. **Reporting/Consultation.** Grantee agrees to submit a final report including a financial summary to the City of Evanston 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 of Evanston/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 of Evanston, 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 of Evanston 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 of Evanston, 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 of Evanston 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 of Evanston 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) 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.
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:

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 for its share based on the percentage of eligible project costs incurred up to the date of termination, provided, however, that if termination is for material breach, 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, 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. 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 with a copy to (attorney):

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 superceded.

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

CITY:

GRANTEE:

By: _____
Rolanda Russell, Interim City Manager

By: _____
Printed Name and Title

Witness

Witness

Printed Name of Witness

Printed Name of Witness

Address of Witness

Address of Witness

City of Evanston
Community Public Art
Application for Funding

MSJ.
Schedule

<p>Date of application January 24, 2008 Resubmitted 12-28-08</p>	<p>Applicant (Artist or Organization) Kiela Smith-Upton and Max Sansing</p>
<p>Location of the completed project Clyde-Brummel Park</p>	<p>Address 629 W. Cermak #205 Chicago, IL 60616</p>
<p>Ward <u> 8th </u></p>	<p>Phone 773-719-5160</p>
<p>Has permission been secured from the property owner? Y <u> </u> N <u> </u> Is it attached? Y <u> </u> N <u> </u></p>	<p>Email- kiela@songhaystudios.com and maxsansing@yahoo.com</p>
<p>Statement of intent/purpose for the project.</p> <p>Restoration of a 15 yr. old historic Evanston mural in Clyde-Brummel Park. Artist Max Sansing and assistant(s) will be guided by the original artist, Kiela Smith-Upton (formerly Kiela Songhay Smith), to complete the painting restoration.</p>	
<p>Description of successful outcomes. What anticipated results will occur?</p> <p>The successful outcome of this project is to increase the mural's lifespan, enhance its vibrant look, respect the community's past and restore a community landmark. The mural will be painted in Max Sansing's style which will give the mural a contemporary feel yet restore the original imagery, design and concept. The original artist, Kiela Smith-Upton, will consult on and offsite with Max Sansing throughout all stages to assure efficiency and accurate design restoration. Volunteer professional artists from Art Resources in Teaching-A.R.T will be invited to assist during the initial stages of the restoration.</p>	
<p>Evidence of Capacity For artist applicants, attach evidence of capacity to lead similar projects. Resume and labeled slides or digital images, photos, etc from projects in which the artist was the leader. <u>THESE ARE ATTACHED</u></p> <p>For organizational applicants, attach evidence of capacity for community engagement. Annual reports, press releases or publications, or photos.</p>	

Work plan with timeline and measurable benchmarks.
When will the major tasks be completed?

Present - May 2009	Project Planning & Management
Dec. 2008 - April 2009	Site planning & preparation
March 2009	Wood fence replacement
March or April 2009	Wall preparation
April- May 2009	Painting restoration
June 2009	Dedication

What materials will be used to create the work?
All 82 existing 3/4" exterior plywood panels will be removed, discarded and replaced with sealed and primed 3/4" exterior plywood panels by a licensed and insured contractor (see attached estimates). Painting will be done with Nova Color artist's acrylic, Nova Color gel medium/varnish and Montana Gold artist's aerosol paints.

What are the anticipated maintenance needs?
Inspection of paint every 3-5 yrs is recommended. Overall maintenance is projected to be low to none due to the wood panel and installation upgrades and upgraded paint materials.

Kiela Smith-Upton & Max Sansing (digital)_ Dec. 28,
2008 _____
Signed _____ date

Printed Name Kiela Smith-Upton & Max Sansing