

**28-R-12**

**A RESOLUTION**

**Authorizing the City Manager to Sign a  
City of Evanston Community Public Art Program Agreement with  
Krivanek + Breaux / Art + Design LLC for Artwork at the  
Sherman Plaza Garage**

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 Agreement with Krivanek + Breaux / Art + Design LLC for artwork at the Sherman Plaza Garage, a copy of which is 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 28-R-12 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: June 25, 2012

**EXHIBIT A**

**City of Evanston Community Public Art Program Agreement with  
Krivanek + Breaux / Art + Design LLC for Artwork at the  
Sherman Plaza Garage**

## ATTACHMENT A

*Important note: Please review the following pages, as this agreement will be used between the selected artist(s) and the City of Evanston.*

### AGREEMENT BETWEEN THE CITY OF EVANSTON AND Krivanek+Breaux/ Art+Design, LLC FOR PUBLIC ART FOR WASHINGTON NATIONAL TIF #4

THIS AGREEMENT is entered into this 21st day of August, 2012 by and between the City of Evanston (hereinafter, "City"), an Illinois municipal corporation, 2100 Ridge Avenue, Evanston, Illinois, and Krivanek+Breaux/ Art+Design, LLC (hereinafter, "Artist"), a limited liability company, 5322 N. Spaulding Avenue, Chicago, IL 60625 (address); and

### 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, Washington National TIF #4 is an appropriate place for exhibition of Search & Effect; 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 Search & Effect (the "Work") as specified in attachment A to this document, on the elevator lobby and cars of the Sherman Plaza Garage; 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. DESCRIPTION OF WORK:

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

(a) Search & Effect, an artwork consisting of words, abstract symbols, and lighting elements

The Work, entitled Search & Effect, is depicted in Exhibit A, attached hereto and made a part hereof.

1.2 The Work is commissioned for placement on/in Sherman Plaza Garage, Davis St. at Benson Avenue, more particularly described in Exhibit C, attached hereto and made a part hereof. Artist understands and agrees that as owner of the Work and the copyright, the City is not required to display the Work nor is the City required to display the Work on/in the Sherman Plaza Garage.

#### ARTICLE 2. STRUCTURAL ENGINEER'S REPORT ("ENGINEER'S REPORT")

**CONDITION PRECEDENT:** At the Artist's sole cost, Artist will provide information acceptable to the City that the City may use to obtain a report from a licensed structural engineer evidencing that the Work can be safely attached and safely supported on the elevator cars, windows, walls, and/or beams of the Sherman Plaza Garage during all weather conditions, if applicable. The Artist is also responsible, at the Artist's sole cost, for producing drawings and specifications of structural details as needed for obtaining required permits for completing the installation. The City's acceptance of the structural report is a condition precedent to execution of this Agreement. Artist understands that his/her expenditures for compiling information to be used by the City in obtaining the structural report will not be reimbursed by the City.

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**ATTACHMENT A**

*Important note: Please review the following pages, as this agreement will be used between the selected artist(s) and the City of Evanston.*

**AGREEMENT BETWEEN THE CITY OF EVANSTON AND \_\_\_\_\_  
FOR PUBLIC ART FOR WASHINGTON NATIONAL TIF #4**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Evanston (hereinafter, "City"), an Illinois municipal corporation, 2100 Ridge Avenue, Evanston, Illinois, and \_\_\_\_\_ (hereinafter, "Artist"), an individual, \_\_\_\_\_ (address); and

**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, Washington National TIF #4 is an appropriate place for exhibition of \_\_\_\_\_; 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 a \_\_\_\_\_ (the "Work") as specified in attachment A to this document, on the \_\_\_\_\_ of the \_\_\_\_\_; 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. DESCRIPTION OF WORK:**

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

(a) \_\_\_\_\_

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

1.2 The Work is commissioned for placement on/in \_\_\_\_\_ more particularly described in Exhibit C, attached hereto and made a part hereof. Artist understands and agrees that as owner of the Work and the copyright, the City is not required to display the Work nor is the City required to display the Work on/in \_\_\_\_\_.

**ARTICLE 2. STRUCTURAL ENGINEER'S REPORT ("ENGINEER'S REPORT")**

**CONDITION PRECEDENT:** At the Artist's sole cost, Artist will present a report acceptable to the City from a licensed structural engineer acceptable to the City evidencing that the Work can be safely attached and safely supported on the \_\_\_\_\_ of the \_\_\_\_\_ during all weather conditions, if applicable. The City's acceptance of the structural report is a condition precedent to execution of this Agreement. Artist understands that his/her expenditures for the structured report will not be reimbursed by the City.

ARTICLE 3. SCOPE OF WORK:

- 3.1 Scope of Services. The Artist shall perform all services and furnish supplies, material, and equipment as necessary for the design, execution, fabrication, transportation, and installation of the Work at the Site, all as described in this Agreement and the Exhibits hereto, collectively, "the Agreement."
- 3.2 Artist's Abilities. The Artist represents and warrants that Artist has the ability, skill, and capability to complete the obligations he/she hereby undertakes and to do so in accordance with the schedule agreed upon and made a part hereof.
- 3.3 Meetings.
- (a) The Artist will attend meetings (after signing of this Agreement) at the City's request with City Officials, Arts Council Members, Staff, community members, and others regarding the Work. The City will attempt to give Artist ten (10) days advance notice of said meetings. Expenses incurred by the Artist for these meetings will not be reimbursable from any City source.
  - (b) The City shall have the right to make at mutually agreeable times on-site visits to inspect the Work at intervals it deems appropriate.
- 3.4 Execution of Work. The Artist's schedule for completion of fabrication and installation of the Work with associated payments is set forth in Exhibit D, attached hereto and made a part hereof. After written approval of the Schedule by the City, the Artist shall fabricate, transport, and cause and supervise installation of the Work in accordance with such Schedule, except as it may be amended and mutually agreed to from time to time by the Artist and the City.
- 3.5 Delivery and Installation. 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. The Work shall not be shipped without the City having first made an on-site inspection within ten (10) business days after receiving this written notification from the Artist to determine whether the Work is in compliance with the specifications set forth in Exhibit A. No shipment shall be made until after the City notifies the Artist in writing 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 the operation of the businesses adjacent to the site. 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.
- 3.6 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. The City's approval given as a condition precedent to shipping of the Work does not obligate City to give final acceptance. After final acceptance, the 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 the City's final acceptance of the Work.

- 3.7 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, *infra*.
- 3.8 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 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 afore described Site and restoration.
- 3.9 Material Breach. Shall include, but not be limited to, the Artist's failure to fully perform by the agreed upon time or any extensions thereof or failure to maintain directly or indirectly through the date of the City's final acceptance of the Work all insurance required hereby and to provide satisfactory evidence of same to the City within one (1) business day of the City's written request to do so. The City may, but is not required to, provide Artist an opportunity to cure any failure to observe the insurance requirements of this Agreement. Except as provided above for insurance requirements, prior to declaring the Artist in default of the terms of this Agreement, the City shall give Artist written notice of any breach and an opportunity to cure said breach. The period allowed for cure shall be no greater than fifteen (15) calendar days. The City, in its sole option, may grant the Artist additional time to cure.
- 3.10 Ownership of Documents, Models. Upon final acceptance, all preparatory drawings, studies, designs, maquettes, and models prepared and submitted under this Agreement shall become the property of the City, except as may otherwise be agreed to by the Artist and the City.
- 3.11 Copyright Ownership. The City shall own the copyright to the Work upon full payment to the Artist as provided in Article 4.
- 3.12 Alteration of the Work or of the Site. The City has the unconditional right (1) to remove the Work from public display, (2) to move the Work to another location, (3) to sell, donate, trade, or exercise any and all other ownership rights over the Work, including but not limited to the right to not maintain or repair the work or (4) to destroy the Work. If the City shall at any time decide to destroy the Work, it shall by notice to the Artist offer the Artist a reasonable opportunity to recover the work at no cost to the Artist, except for an obligation of the Artist to indemnify and reimburse the City for the amount by which the cost to the City of such recovery exceeds the costs to the City of the proposed destruction as determined solely by the City.
- (a) The Artist understands and agrees that, as to his or her rights in the Work, the provisions of this Agreement shall supersede the provisions of the Visual Artists Rights Act of 1990 ("VARA"), including but not limited to §106A and §113, as to the Work, and that execution of this Agreement by the Artist shall constitute a waiver by the Artist, as permitted in 17 U.S.C. §106(A)(e), as amended, of any and all rights or protections in the Work, and any uses of the Work whatsoever, set out in or otherwise granted by VARA including but not limited to §106A or §113, or otherwise in the nature of "Droit Moral" under which artists claim an interest in their work. The Artist's waived rights as described herein are, insofar as such rights are transferable, assigned to the City.
- (b) Artist understands and agrees that installation, maintenance, and removal of the Work may subject it to destruction, distortion, mutilation, or other modification. The Artist hereby, pursuant to VARA 17 USC 106A(e) as it may be amended, waives any and all rights conferred or which may have been conferred by VARA upon the Artist and/or the Work.
- (c) The City agrees that it will not intentionally alter, modify or change the Work, except as may be incidental to installation, maintenance, and removal of the work. If the City fails to observe this Subparagraph 3.12. (c), the Artist's sole remedy will be to dissociate his 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 10.1, it shall be removed at the Artist's option.

- 3.13 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 4. 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 of \$\_\_\_\_\_ as follows:

- 4.1 \$\_\_\_\_\_ One quarter (25%) upon the execution of this agreement.
- 4.2 \$\_\_\_\_\_ One quarter (25%) upon 50 percent of completion, as evidenced by a sworn written statement from the Artist, in form and content satisfactory to the City.
- 4.3 \$\_\_\_\_\_ One half (50%) after final acceptance by the City, completion of installation, transfer of title to the City and completion of all acts required of Artist by this written Agreement.
- 4.4 All payments to Artist will be mailed to Artist within thirty (30) days of receipt of invoices from Artist for above referenced amounts, pending 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 E.

**ARTICLE 5. 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 Artist.

**ARTICLE 6. TIME OF PERFORMANCE:**

- 6.1 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 11.3 as it relates to incapacity of the Artist. If Artist fails to fully perform all of his obligations under this Agreement by the agreed upon date of completion or any extensions thereof, Artist will, upon the City's written demand therefore, promptly refund all monies paid hereunder. Artist will not be entitled to keep any monies whatsoever for work performed or expenditures made.
- 6.2 Early Completion of Artist Services. The Artist shall bear any transportation, storage, and other costs resulting from the completion of his services hereunder prior to the time provided in the schedule for installation.

**ARTICLE 7. WARRANTIES:**

- 7.1 Warranties of Title. The Artist represents and warrants that: (a) prior to final acceptance by the City, the Artist will have obtained federal copyright protection for the Work; (b) the Work is solely the result of the artistic effort of the Artist; (c) the Work is unique and original and does not infringe upon any copyright or trademark; (d) that the Work, or a duplicate thereof, has not been accepted for sale elsewhere; and (e) prior to final acceptance by the City, the Work will be free and clear of any liens from any source whatsoever.
- 7.2 Warranties of Quality and Condition.
- (a) The Artist represents and warrants, that: the physical quality of the Work, as fabricated and installed, will be as described and depicted in the design accepted by the City, commensurate with the Artist's reputation and be substantially of the same physical quality of other public sculpture designed and produced by the Artist, the Artist not making any warranty as to the artistic merit of the design; and

- (b) The Artist represents and warrants that:
- 1) the execution and fabrication of the Work will be performed in a workmanlike manner;
  - 2) the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and
  - 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 request of the City, Artist will assign to the City Artist's vendors' warranties for products used in the Work. A copy of the warranty(s) is attached hereto as Exhibit E, and made a part hereof. 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. If requested by the City as a condition to final payment, Artist will provide City with his written assignment and the receipts from the purchase of warranted products.
- (f) The warranties described in this Article 7 shall survive the completion of this Agreement for a period of ten (10) years. If a breach of a warranty under Article 7 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 8. INSURANCE AND INDEMNITY:

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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 written approval of such insurance by the City's Safety/Risk Management Officer. Artist shall not allow any subcontractor to commence work without said subcontractor(s) first complying with this Article 8 in its entirety. The Artist shall furnish 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.

8.5 Indemnity. The Artist shall insure the following indemnity agreement:

Artist shall indemnify, keep and save harmless the City, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent, trademark, and copyright claims, suits, liabilities, judgments, costs, and expenses, except those attributable to the negligence of the City, its officers and employees, which may in anywise accrue against the City in consequence of the granting of this Agreement or which may in anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through negligence or omission of Artist, or Artist employees, of a subcontractor or its employees, if any, and Artist shall, at Artist own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the City in any such action, Artist shall at Artist own expense, satisfy, and discharge the same. Artist expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by Artist, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as herein provided. The insurance policy shall contain this language: "In the event of a conflict between this language and the language of any other insurance policy, this Indemnity Language shall control."

**ARTICLE 9. REPRODUCTION RIGHTS:**

- 9.1. General. The Artist will obtain and assign all rights in the copyright to the City as a condition precedent to final acceptance by the City of the Work. The City retains all rights, including but not limited to, copyrights, under all applicable intellectual property legislation, and all other rights in and to the Work, except as provided in Article 3.12(c). In view of the intention that the Work in its final rendition shall be unique, and owned by the City, the Artist shall not make any additional exact duplicate, two- or three-dimensional reproductions of the final Work, nor shall the Artist knowingly allow or cause others to do so except with the prior written permission of the City. The Artist retains the right to make two-dimensional reproductions of the Work for non-commercial purposes, including but not limited to, reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications.

**ARTICLE 10. ARTIST'S RIGHTS:**

- 10.1 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.
- 10.2 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 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 be given the opportunity to make or personally supervise significant repairs or restorations and shall be paid a reasonable fee for any such services provided that the City and the Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services and subject to appropriation by the City of such fee. Notwithstanding the foregoing, and pursuant to Article 7 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 10.1, it shall be removed or modified at the Artist's option, with final approval of any modification to rest with the City.

- 10.3 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.
- 10.4 Additional Rights and Remedies. Nothing contained in this Article 10 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.
- 10.5 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.
- 10.6 Assignment or Transfer of Interest. The Artist shall not assign or otherwise transfer his/her interest in this Agreement.
- 10.7 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 4, submit a notarized statement to the City listing all persons or entities who provided services and/or products to Artist in connection with this Agreement and shall provide lien waivers from all such persons and entities.
- 10.8 Notices. All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery, if delivered personally, or on the fifth (5<sup>th</sup>) 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.

a. if the City, to: Director of Parks, Recreation & Community Services  
City of Evanston  
2100 Ridge Avenue  
Evanston, Illinois 60201  
Fax (847) 448-8051  
Phone (847) 866-2914

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

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

or otherwise by notice served in accordance with this Article.

#### ARTICLE 11. DEATH OR INCAPACITY OF THE ARTIST:

- 11.1 The Artist or Representative shall promptly notify the City if Artist becomes ill, disabled, injured, or otherwise incapacitated (collectively "incapacitated") at any time between the execution of this Agreement and the date of the final payment due to the Artist under Article 4.
- 11.2 If the Artist is incapacitated for fewer than two months, the performance schedules set forth in Exhibit C (Article 6.1) shall be modified accordingly.
- 11.3 If the Artist is incapacitated for more than three months, or it is reasonably inferable from the facts and circumstances that the Artist will be incapacitated for more than two months, the City in consultation with the Artist, or Artist representative, shall determine whether 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 11.4 below apply.
- 11.4. 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 4, by \_\_\_\_\_ 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, Artist's estate shall refund any monies paid by City to Artist(s) under this Agreement.

#### ARTICLE 12. 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 one (1) additional 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 its 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 13. MISCELLANEOUS:

- 13.1 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.
- 13.2 Litigation. In the event of litigation or claim(s) against the City arising out of this Agreement by anyone other than the Artist, the Artist shall cooperate fully with the City, and the Artist shall provide five (5) days of his time to the City at no charge. Thereafter, the City will compensate Artist at a mutually agreeable rate, not to exceed \$200 per diem.

13.3 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.

13.4 Entire Agreement. This document represents the entire Agreement between the City and Artist. 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:  
By: Wally Bobkiewicz  
Wally Bobkiewicz, City Manager

ARTIST:  
[Signature]

[Signature]  
Witness

[Signature]  
Witness

CATHERINE TOO  
Printed Name of Witness

Holly Hutto  
Printed Name of Witness

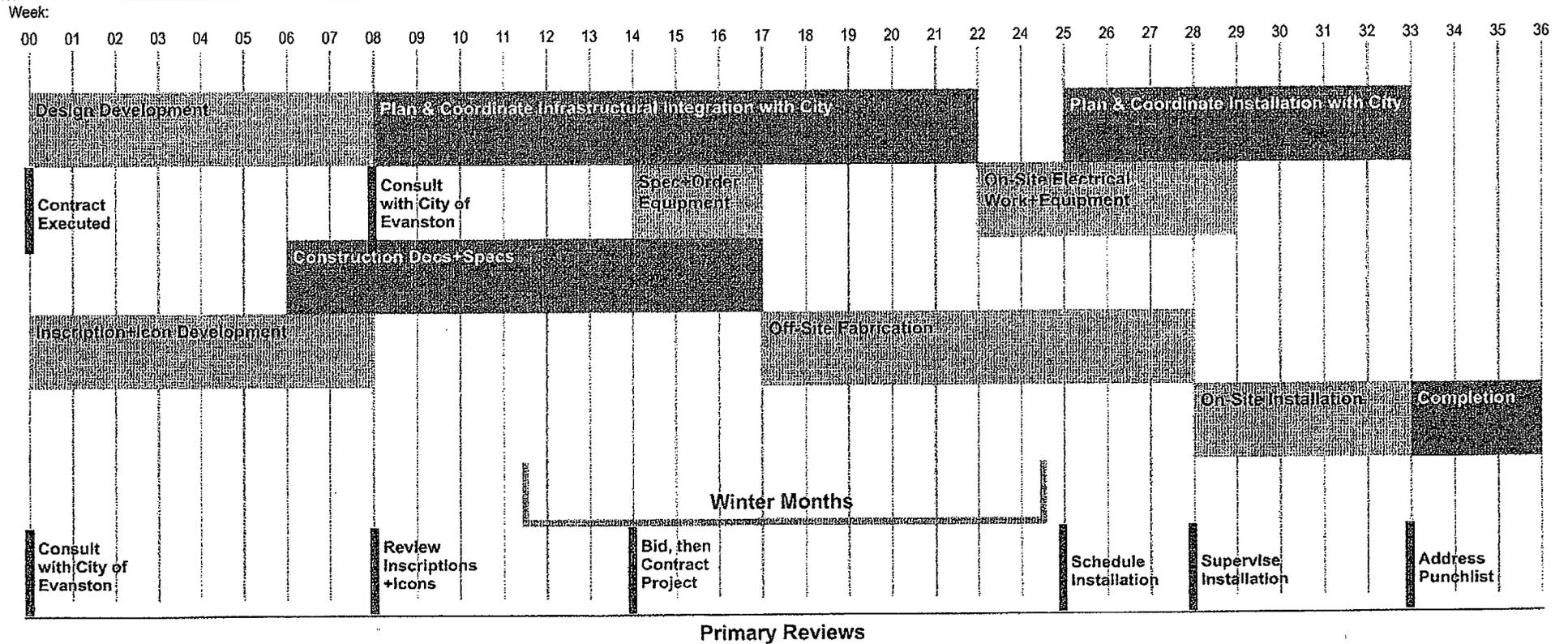
2139 Lincolnwood  
Address of Witness  
Evansville  
60201

4437 N. Maplewood, Chicago, IL 60625  
Address of Witness

Approved as to form:  
[Signature]  
W. Grant Farrar  
Corporation Counsel

# EXHIBIT C/D—PROJECT TIMELINE

## Public Art—Development and Implementation



## SEARCH & EFFECT

Incorporated into the Agreement between the City of Evanston and Krivank+Breaux/ Art+Design, LLC

This Project Timeline replaces and supercedes the timeline shown in Exhibit A



**Sherman Plaza Garage Public Art  
Exhibit E**

<u>Invoice Submission</u>	<u>Check Payment Date</u>
September 10, 2012	September 25, 2012
September 24, 2012	October 9, 2012
October 8, 2012	October 23, 2012
October 22, 2012	November 13, 2012
November 12, 2012	November 27, 2012
November 21, 2012	December 11, 2012
December 17, 2012	January 15, 2013
January 7, 2013	January 29, 2013
January 21, 2013	February 12, 2013
February 11, 2013	February 26, 2013
February 25, 2013	March 11, 2013
March 10, 2013	March 25, 2013
March 24, 2013	April 9, 2013
April 7, 2013	April 22, 2013
April 21, 2013	May 13, 2013
May 12, 2013	May 28, 2013
May 21 2013	June 10, 2013
June 9, 2013	June 24, 2013
June 23, 2013	July 8, 2013

The above schedule lists the City of Evanston's cutoff dates for submission of invoices and the corresponding anticipated date that checks will be cut and mailed. Please note that this schedule is subject to change. The Artist is encouraged to submit invoices in advance of the submission deadline whenever possible to assure timely payment.