

PUBLIC ART AGREEMENT BETWEEN ARTIST AND OWNER

This agreement made this _____ day of _____, 2__ and between OTTAWA VISITOR'S CENTER (hereinafter referred to as the "Center") and _____, Address: _____ (hereinafter referred to as "Artist").

WHEREAS, the Center is a not-for-profit organization created for the purpose of attracting tourism to the town of Ottawa by, but not limited to, developing a tourist attraction by the use of murals, paintings and related artistic creations; and

WHEREAS, the Center requires the services of an artist to create a work of art on the building located at Ottawa, Illinois (herein referred to as the "Building") which is owned by (hereinafter referred to as the "Building Owner").

WHEREAS, the Center has determined that Artist is qualified to create the art work desired based upon the skill, reputation and creativity of Artist, and the Artist is willing and able to perform under the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the foregoing and the covenants set forth below and other good and valuable consideration, the parties agree as follows:

1. PRELIMINARY DESIGN

Artist shall present a preliminary design (strike-off or maquette) to the Center on or before May 16, 2004 for approval by the Center prior to commencement of the creation of the artwork. The preliminary design will include the artwork's dimensions, description of materials used, considerations for longevity and conservation and maintenance requirements.

2. CREATION AND INSTALLATION

(a) Artist represents and warrants that the art work to be created will be an original work of art by Artist and that the art work will be a faithful rendition of the preliminary design submitted by Artist and approved by the Center. All changes to the artwork shall be first approved by the Center.

(b) Artist shall create and be responsible for installation of the artwork. Artist agrees to start the artwork no later than _____ 2004. Artist agrees to have the artwork completely installed including all touch-up work by _____, 2004 and be present for the dedication ceremony. Upon completion of installation, the Center shall acknowledge its completion in writing, and will not unreasonably withhold approval.

(c) Except as set forth in this agreement, the costs for installation, including painting tools, laborer wages, workers compensation insurance and any other costs necessary for installation, shall be paid by Artist.

(d) Except as set forth in this agreement, the scaffolding expense up to \$400.00, cherry picker, required paint, priming and housing for the Artist shall be provided by the Center. The Artist agrees to be responsible for any paint usage beyond the materials specifications presented under paragraph 1 above.

(e) If work on the artwork is delayed by adverse weather conditions, or any other cause beyond the Artist's reasonable control, then the completion date shall be extended for such reasonable time as the parties may agree.

(f) If work on the art work is delayed by any fault, neglect, act or failure of Artist, then Artist shall take all reasonable steps to complete the art work within the agreed upon time. In the event that Artist is unable to complete the art work within the agreed upon time, Artist shall be required to pay all costs caused by the delay plus \$100 a day as a fine to be deducted from Artist's fee.

(g) If the work on the art work is delayed by any fault, neglect, act or failure of the Center, then the Center shall take all reasonable steps to enable the Artist to complete the art work and shall pay all costs associated therewith including paying for additional scaffolding, laborers, additional insurance costs and any other costs necessary to complete the art work.

3. COMMUNITY PARTICIPATION

Upon request by the Center, Artist agrees to participate in community activities which involve and enlighten the community about mural painting and related artistic creations.

4. PROTECTIVE COATING

The Center agrees to notify Artist of any subsequent restoration treatments or graffiti guard or other anti-graffiti coating, which shall be applied by and paid for by the Center. The Center agrees to consult with Artist prior to doing said work and cooperate in determining solutions; but if Artist is unavailable or unwilling to cooperate, the Center shall secure and pay for restoration and graffiti guard and/or graffiti guard alone in a manner that conforms with currently accepted standards of restoration and anti-graffiti coating application

5. PERMITS

The Center agrees to procure at its own cost all necessary permits including any easements, encroachment permits, signage permits, scaffolding permits, alley closure permits or otherwise.

6. COMPLIANCE WITH ALL LAWS

Artist agrees to comply with all federal and state laws, and local ordinances that pertain to the creation and installation of the artwork.

7. WALL PREPARATION

The Center shall be responsible for preparing the wall for the artwork at its own cost, pursuant to Artist's written specifications submitted at the time the preliminary design is submitted.

8. AMOUNT OF PAYMENT

The Center agrees to pay Artist a total of _____ within fifteen (30) days of receipt of invoice, which shall be submitted at the end of each phase of the project as set forth below:

- (a) 10% upon approval of Preliminary Design;
- (b) 40% when Mural is one-half complete;
- (c) 50% or remaining balance, whichever is less, upon completion of the artwork, as determined by Artist and approved by the Center.

9. INCREASE IN PAYMENT

If additions or deletions are approved by the Center and Artist and made to the art work which result in an increase in cost, such increased costs shall be agreed to in writing and paid by the Center to Artist within thirty (30) days of receipt by the Center of an invoice.

10. TIMELY PAYMENT

If the Center fails to make any payment within (30) days of the date it is due, Artist may cease all work until such time as payment is made and the completion date of the project shall be adjusted accordingly.

11. MURAL MAINTENANCE

The Center recognizes that the maintenance of the artwork on a regular basis is essential to the integrity of the artwork. Therefore, for the length of time that the art work is on the site, the Center shall be responsible, at its own cost, for maintaining and repairing the art work, pursuant to the conservation and maintenance standards presented by Artist to the Center at the time of the preliminary design, which standards shall be in conformance with recognized principles of conservation. If Artist fails or refuses to provide guidance on maintenance and repairs, the Center shall have the right to proceed alone. All maintenance, repairs and restorations shall be made in accordance with recognized principles of conservation.

12. INDEPENDENT CONTRACTOR

Artist is an independent contractor and not an employee, agent or other representative of the Center. Artist shall have the right to select the means, manner and method of performing the services described herein and has complete artistic discretion and control over the execution of the artwork. Artist understands and agrees that he/she is not authorized to incur any expenses or any liability whatsoever on behalf of the Center and has no authority, expressed or implied, to obligate or make representations on behalf of the Center.

13. COPYRIGHT

Upon final payment by the Center to Artist, Artist will assign his or her copyright interests in the art work to the Center and the Center will become copyright holder for all purposes, with the following exceptions:

- (a) Artist retains the right to reproduce the art work for all noncommercial purposes such as reproducing the image for Artist's portfolio.

(b) The Center agrees to notify the Artist should the Center ever desire to use the Artist's work in an individual (i.e., not coupled with the works of other Artists as in a calendar or book) sale that amounts to \$300 or more for a single piece. Artist agrees to cooperate in the development of such a piece (i.e., autograph of piece, oversee production art work, participation in public announcements, etc.). In exchange for this cooperation, the Center will provide Artist with a 50% royalty on the profit from the sale, payable on a quarterly basis.

(c) Artist retains usage for purposes that do not compete with the Center's fundraising efforts as long as the artwork is identified as being a part of the Ottawa, Illinois outdoor mural gallery. Artist agrees to contact the Center for permission for such non-competing formats, and the Center agrees not to withhold permission for any unreasonable purpose.

14. THE CENTER'S INSURANCE

The Center shall obtain and keep in force a comprehensive general liability insurance policy, in standard form, protecting the Center against any and all liabilities rising out of or related to the installation and maintenance of the art work in a combined single limit amount of one million dollars (\$1,000,000) per occurrence in respect of injuries to or death of any person or persons and destruction of or damage to any property. Such policy of insurance (i) shall be issued by an insurance company with general policy holder's ratings of not less than "A" and financial ratings of not less than "B plus" as rated in the most current Bests insurance reports, (ii) shall list Artist as an additional insured, and (iii) shall provide that it may not be canceled by the insurer or lapse of its own accord without proper notice to the insured and the additional insureds. Such policy shall also be written as a primary policy not contributing with any other coverage, which Artist may carry. Artist may, at Artist's option, delay installation of artwork until receipt of evidence from the Center establishing the Center's coverage under an insurance policy, which meets the requirements of the paragraph.

15. INDEMNIFICATION

The Center shall defend, indemnify and hold harmless Artist, his or her agents, and contractors from any and all claims, demands, damages, costs, expenses (including attorneys' fees), judgments or liabilities arising from the negligence or willful misconduct of the Center. Artist shall defend, indemnify and hold harmless the Center, from all claims, demands, damages, costs, expenses (including attorneys' fees), judgments or liabilities arising from the negligence or willful misconduct of Artist. With respect to any and all claims, demands, damages, costs, expenses (including attorneys' fees), judgments or liabilities arising from the joint or concurrent negligence of Artist and the Center, each party shall assume responsibility in proportion to the degree of its respective fault as determined by mediation as set forth in Section 18 below.

16. TERMINATION

Either party may terminate this Agreement for cause if the other party fails to perform any material obligation hereunder. In the event Artist abandons the art

work, defaults on any material term of this Agreement or otherwise causes it to be terminated without cause prior to completion of the work, Artist shall not be entitled to recover further compensation from the Center, and Artist shall be liable for any additional costs that the Center has to assume because Artist terminated without cause. If the Center fails to perform any material obligation hereunder, including failure to pay Artist, Artist may cease work and exercise any remedies available pursuant to Section 18 below.

17. ART PRESERVATION

(a) The Center agrees to preserve the integrity of the artwork and agrees to comply with applicable sections of the Visual Artists' Right Act of 1991 as codified by 17 U.S.C. §106A ("VARA").

(b) The Center further agrees to enter into a written agreement with the Building Owner located at _____, Ottawa, Illinois and in such agreement the Building Owner will agree to preserve the integrity of the wall and agree not to alter, damage, desecrate, obstruct or remove the art work in any manner. If the building owner determines that the building must be demolished, he shall notify the Center at least 90 days before the demolition of the structure.

18. GRIEVANCES

Any disputes arising from the project will be first grieved to the Director of the Ottawa Visitors Center. If the Director and Artist cannot agree on a resolution, the grievance may be brought to the Mural Committee of the Ottawa Visitors Center. The Artist may appeal the decision of the Mural Committee to arbitration by a panel consisting of three (3) members (one member of the Ottawa City Council selected by the Artist, one member of the Ottawa City Council selected by the Mural Committee, and one member of the public at large selected by the other selectees). The panel's decision will be final and binding.

19. MISCELLANEOUS TERMS AND CONDITIONS

(a) No Artist or employee or subcontractor of Artist shall be covered by Workers Compensation Insurance purchased by the Center.

(b) The Center agrees to acknowledge Artist in connection with this project in, but not limited to, publicity, presentations, exhibitions, reports, fundraising activities, etc.

(c) Any substantive change in the project, including but not limited to a major change in size, site, or sponsorship may void this contract or be cause for it to be renegotiated.

(d) Every effort will be made to lend support and technical assistance to Artist.

(e) Artist agrees to acknowledge sponsorship of the Center in the inscription of the resulting work of art and to the best of his/her ability acknowledge sponsorship of the Center in any publicity, reports, presentations, program notices, etc.

(f) Artist shall be responsible for supervising the Artist's employees with regard to all safety precautions and programs used in connection with the project or work.

(g) Artist shall also be responsible to take all reasonable precautions for the safety of and provide all reasonable protection to prevent damage, injury, or loss to (1) all employees on the project and other volunteers or persons who may be affected thereby; (2) all of the work and materials and equipment to be incorporated in the work or the project, whether stored on or off the site, under the care, custody, or control of Artist or any of the subcontractors; (3) other property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.

(h) Artists shall use the utmost care and shall exercise the utmost security measures to carry out the work necessary for the execution of the project.

20. NOTICE PROVISION

Any notices deemed necessary shall be given by either party to the other as follows:

Ottawa Visitor's Center Name: _____	Artist
Attention Bridget O'Brien Address: _____	
100 W. Lafayette Street	City, State,
Zip: _____	
Ottawa IL 61350	SSN:

21. SIGNATURE

The parties agree that a signature by facsimile is as valid as an original signature.

22. ENTIRE AGREEMENT

This agreement represents the entire agreement of the parties and may not be amended unless agreed to in writing by the parties.

**ARTIST:
CENTER:**

OTTAWA VISITORS

_____ By: _____