

May 03, 2012

Mayor Campbell & City Council Members  
515 Clark Ave. PO Box 811  
Ames, IA 50010

Re: Priscilla Sage Artwork - *Topographical Illusion II*

Dear Mayor Campbell and City Council Members:

On behalf of the Public Art Commission, I am writing to inform you about the status of an agreement that was made with Priscilla Sage in 2009, for the acquisition of the art pieces entitled *Topographical Illusion I* and *Topographical Illusion II*, which are currently displayed within the foyer of City Auditorium as a matched pair.

The first piece of art was paid for in 2009. In accordance with the agreement between the PAC and Ms. Sage, dated September 26, 2009, *Topographical Illusion II* was to be "on loan" from the artist with the understanding that payment in the amount of \$8,000 would be made to her by January, 2012.

Since September, 2009, the Public Art Commission has only been able to fundraise \$1,500 of the needed \$8,000. The contract with the artist has now expired, and Ms. Sage has indicated that she would like to have the piece of art returned to her residence by May 15, 2012.

Because the PAC has been unable to raise the needed funds and because we feel that removal of this artwork from City Auditorium would be aesthetically detrimental, The Public Art Commission formally requests the use of unspent PAC funds from the 2009/2010 and 2010/2011 fiscal years, in the amount of \$6,500, in order to complete the purchase of *Topographical Illusion II*.

I am available for questions, should any arise. Thank you for your consideration in this matter.

Sincerely,

Chad J. West  
Public Art Commission - Co-Chair

Enclosures:

- Agreement for Sale of Artwork - *Topographical Illusion I* and *Topographical Illusion II* by Priscilla Sage
- Letter from Priscilla Sage, dated April 12, 2012
- Staff Report illustrating availability of funds

## Staff Report

Public Art Commission Request to Purchase *Topographical Illusion II*

May 8, 2012

**BACKGROUND:**

The attached letter from the Public Art Commission (PAC) asks that Council approve the use of unspent PAC appropriations from the past two fiscal years to purchase *Topographical Illusion II* by Priscilla Sage.

By way of background, the Commission annually receives an appropriation from the local option tax (LOT) fund to carry out its approved work plan. During most years, the PAC does not utilize the entire annual appropriation. With Council's approval, portions of those unspent allocations are sometimes carried over from year to year to fund future projects. This was the case with both the Patrick Dougherty and Peter Irniq sculpture projects at Ada Hayden Heritage Park. In other years, unspent allocations simply revert back to the LOT fund balance.

The table below summarizes the unspent allocations, approved carry-overs, and remaining balances for the 2009/10 and 2010/11 fiscal years:

Fiscal Year	Unspent Allocation	Approved Carry-over	Balance Reverted to Fund
2009/10	\$14,785	\$5,700	\$9,085
2010/11	\$25,457	\$16,877	<u>\$8,580</u>
			\$17,665

Through the years the PAC has periodically embarked on fund-raising efforts to augment the Council appropriations. That was the original source intended to fund the purchase of this artwork. While inadequate donations have been collected to make this purchase, it should be noted that the PAC's previous fund-raising efforts have resulted in a donations balance of slightly over \$1,500. Should Council desire to use the LOT fund balance to purchase this artwork, the required amount would be \$6,500.

During the May 2<sup>nd</sup> PAC meeting, the Commission discussed the possibility of funding this short-fall from what may be unspent from its 2011/12 appropriation. Reallocating a portion of the 2012/13 appropriation might be another option. However, the Commission opted to request that previous years' savings be utilized, in order to preserve 2011/12 and 2012/13 funding for other PAC initiatives already planned or underway.

*Topographical Illusion II* has been on display in the auditorium lobby alongside *Topographical Illusion I* since 2009. Should Council or others desire to view this artwork prior to the Council meeting, staff will be available before the meeting Tuesday night to open up the auditorium lobby.

### **OPTIONS FOR THE CITY COUNCIL TO CONSIDER:**

#### **Option 1**

The City Council can appropriate \$6,500 from the available balance in the Local Option Sales Tax Fund for the purchase of *Topographical Illusion II*.

This amount, coupled with the \$1,500 that has been raised from private donations, will allow the City to purchase the piece of artwork and allow it to remain in the City Auditorium. (This is the option preferred by the Public Art Commission.)

#### **Option 2**

The City Council can ask the Public Art Commission members to modify their FY 2011-12 budget and direct \$6,500 from this year's budget towards the purchase of this art piece.

This amount, coupled with the \$1,500 that has been raised from private donations, will allow the City to purchase the piece of artwork and allow it to remain in the City Auditorium.

#### **Option 3**

The City Council can ask the Public Art Commission members to modify their FY 2012-13 budget and direct \$6,500 from next year's budget towards the purchase of this art piece.

This amount, coupled with the \$1,500 that has been raised from private donations, will allow the City to purchase the piece of artwork and allow it to remain in the City Auditorium.

#### **Option 4**

The City Council can decide not to appropriate any additional funds for the purchase of *Topographical Illusion II*. This action will result in removing this art piece from the City Auditorium and returning it to the owner.

**CITY OF AMES  
PUBLIC ART PROGRAM**

**AGREEMENT FOR SALE OF ARTWORK**

**“Topographical Illusion I” and “Topographical Illusion II”  
by Priscilla Sage**

**THIS AGREEMENT** is made effective this 26<sup>th</sup> day of September, 2009, between the City of Ames, Iowa, hereinafter called the OWNER, and Priscilla Sage, hereinafter called the ARTIST. The Owner’s Representative shall be the Assistant City Manager.

1. **CONDITIONAL PURCHASE.** ARTIST does hereby sell to OWNER the works of art in the form of the wall hanging reliefs entitled “Topographical Illusion I” and “Topographical Illusion II” (ARTWORK) for and in consideration of the payment by OWNER to ARTIST of the sum of **\$8,000 for each wall hanging relief** subject to and in accordance with the terms of this Agreement.
2. **INSTALLATION.** The OWNER shall install this ARTWORK at the site selected by the OWNER. The OWNER shall be responsible for site preparation work, including installation of the ARTWORK.
  - a. The ARTIST shall notify the OWNER’s Representative in writing when the ARTIST is ready for delivery and installation of the ARTWORK at the site. Delivery and installation is to occur by October 1, 2009.
  - b. The ARTIST shall deliver and assist in installation of the ARTWORK at the site.
  - c. The ARTIST shall be responsible for mounting devices. The OWNER shall provide ladders and assistance from City staff during installation.
3. **MAINTENANCE INSTRUCTION.** The ARTIST shall provide to the Owner’s Representative complete written instructions for appropriate maintenance and preservation of the ARTWORK.
4. **ARTIST’S STATEMENT.** The ARTIST shall provide to the Owner’s Representative a written ARTIST’S statement regarding the ARTWORK that may be used for publication and exhibition purposes.
5. **COMPLETION.** The ARTIST shall advise the Owner’s Representative in writing when all services required under this Agreement have been completed. Within twenty (20) working days after receipt of this notification, the Owner’s Representative shall notify the ARTIST in writing of the OWNER’s final acceptance or non-acceptance of the ARTWORK. Failure to provide written notification of acceptance or non-acceptance after

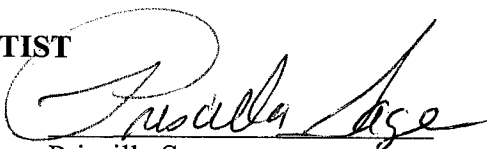
- twenty working days shall constitute final acceptance on the part of the OWNER.
6. **RISK OF LOSS.** The risk of loss or damage to the ARTWORK shall be borne by the ARTIST until the ARTWORK is installed and is accepted by the Owner's Representative, and the ARTIST shall take such measures as are necessary to protect the ARTWORK from loss or damage through all phases of installation until accepted by the Owner's Representative.
  7. **INDEMNITY.** The ARTIST agrees to indemnify and hold harmless the OWNER from any claims, liabilities, willful or non-willful acts of negligence by the ARTIST, by the ARTIST'S subcontractors or agents, and by volunteers assisting the ARTIST in installation of the ARTWORK, for any loss, theft, mutilation, vandalism or other damage (including that caused by acts of God) that may befall the ARTWORK during any activities related to the delivery and installation of the ARTWORK, or for any failure of warranty as hereinafter stated.
  8. **CONVEYANCE OF TITLE.** Title to the ARTWORK shall pass to the OWNER upon OWNER'S payment for and final acceptance of each completely installed ARTWORK. Upon final acceptance of the ARTWORK, and to the extent permitted by Iowa law, the OWNER shall indemnify and hold harmless the ARTIST against any and all claims or liabilities arising thereafter in connection with the ARTWORK, the site, the project or this Agreement, caused by the OWNER'S negligence.
  9. **PAYMENT.** The OWNER shall pay the ARTIST \$8,000 for each piece of the ARTWORK, which shall constitute full compensation for all services furnished by the ARTIST under this Agreement. Payment for "Topological Illusion I" is due to the ARTIST in January, 2010. Payment for "Topological Illusion II" is due to the ARTIST in January 2012, and is contingent upon the Public Art Commission having raised \$8,000 in donations for this purpose. Prior to these respective two payment dates, "Topological Illusion I" and "Topological Illusion II" shall be on loan from the ARTIST to the OWNER. During that time, the OWNER shall be responsible for the security and maintenance of both pieces of artwork.
  10. **WARRANTIES.** The ARTIST represents and warrants that:
    - a) the ARTWORK is solely the result of the artistic effort of the ARTIST;
    - b) except as otherwise disclosed in writing to the Owner's Representative, the ARTWORK is unique and original and does not infringe upon any copyright;
    - c) the ARTWORK, or a duplicate thereof, has not been accepted for sale elsewhere;
    - d) the ARTWORK is free and clear of any liens from any source whatever;
    - e) the ARTWORK, as fabricated and installed, will be free of defects in material and workmanship, including any "inherent defect" or qualities which cause or accelerate deterioration of the ARTWORK; and
    - f) reasonable maintenance of the ARTWORK will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the ARTIST to the Owner's Representative hereunder.

The warranties described in this Section shall survive for a period of ten years after the final acceptance of the ARTWORK. The OWNER shall give notice to the ARTIST of any observed breach with reasonable promptness. The ARTIST shall, at the request of the OWNER, and at no cost to the OWNER, cure reasonably and promptly the breach of any such warranty which is curable by the ARTIST and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the ARTWORK).

11. **ARTIST INDEPENDENT CONTRACTOR.** It is understood and agreed that the ARTIST is an independent contractor and not an employee of the OWNER; and that the OWNER shall not have any worker's compensation liability to the ARTIST or the ARTIST'S employees, volunteers or subcontractors. It is further understood that the ARTIST'S subcontractors shall have no recourse for payment of costs of labor and materials against the OWNER. Further, in consideration of this contract, ARTIST does hereby indemnify and hold the City harmless from any and all claims arising from the negligence of the ARTIST or the ARTIST'S employees, volunteers and subcontractors.
12. **REPRODUCTION RIGHTS.** The ARTIST grants to the OWNER and its assigns an irrevocable license to make two dimensional reproductions of the ARTWORK for any purpose including commercial purposes, and by way of specification but not limitation, reproductions used in advertising, calendars, posters, brochures, media, publicity, catalogues, or other similar publications.
13. **MAINTENANCE:** The OWNER recognizes that maintenance of the ART WORK on a regular basis is essential to the integrity of the ART WORK. The OWNER shall reasonably assure that the ART WORK is properly maintained and protected, taking into account the instructions of the ARTIST provided in accordance with Section 3.
14. **RELOCATION OR REMOVAL.** The OWNER reserves the right to alter the location of the ART WORK; relocate the ART WORK to another site; and remove the ART WORK from public display.
15. **ENTIRE AGREEMENT.** This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the OWNER.

**ARTIST**

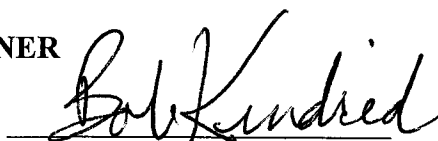
By:



Priscilla Sage  
435 Welch Avenue

**OWNER**

By:



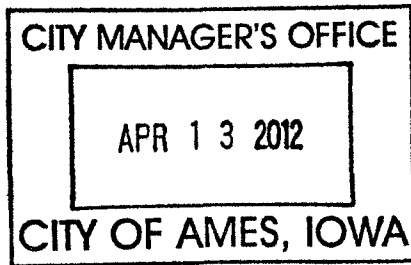
Bob Kindred, Assistant City Manager  
P. O. Box 811

Ames, IA 50014  
515.292-8245  
pksage@iastate.edu

Date: Oct 2, 2009

Ames, IA 50010  
515.239.5101  
bkindred@city.ames.ia.us

Date: Oct. 2, 2009



435 Welch Ave  
Ames, IA 50014  
(515) 292-8245  
pksage@iastate.edu

April 12, 2012

Ames Public Art Commission  
City of Ames  
515 Clark Avenue  
Ames, IA 50010

Dear Commission Members:

In 2009, members of the Public Art Commission (PAC) contacted me and subsequently selected Topographical Illusion I & II to be placed as a pair on either side of the Kiosk in the foyer of city auditorium. In accordance with the September 26, 2009 contract, I received payment for Topographical Illusion I and was asked to loan Topographical Illusion II to the city until payment could be made in January 2012.

All of the artwork in the foyer was to be carefully placed and installed by PAC and Town and Gown members. Without Topographical Illusion II, the installation would be considerably weakened and incomplete, which is why I agreed to the loan – trusting that the funds would be raised.

Allison Sheridan's March 27, 2012, e-mail has informed me of the PAC's failure to raise funds to cover payment for Topographical Illusion II.

Since you were unable to complete your part of the contract, please return Topographical Illusion II to me at my residence by May 15, 2012.

If you have any questions or concerns, I can be reached at the address, telephone, or e-mail listed above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Priscilla K. Sage".

Priscilla K. Sage

cc: Bob Kindred, Assistant City Manager