

12/10/97  
1/05/98

94-R-97

**A RESOLUTION**

**Authorizing the City Manager to Enter  
Into an Agreement with EVMARK**

WHEREAS, the City of Evanston established Special Service Area No. 4 pursuant to Ordinance 45-O-87, and renewed for five years through Ordinance 49-O-92; and

WHEREAS, the City of Evanston has extended the duration of Special Service Area No. 4 for ten (10) additional years pursuant to Ordinance 52-O-92; and

WHEREAS, Evanston Special Service Area No. 4 has been established and extended in order to provide certain public services which will supplement services currently or customarily provided by the City to the area and to assist the promotion, marketing, and advertisement of the area in order to attract businesses and consumers; and

WHEREAS, it is in the best interest of the City that the City retain EVMARK, an Illinois not-for-profit corporation to provide planning, administration and management for Special Service Area No. 4.

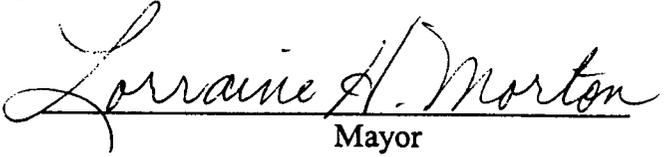
NOW, THEREFORE, BE IT RESOLVED:

SECTION 1: That the City Manager of the City of Evanston is hereby authorized and directed to negotiate and enter into an exclusive administration agreement with EVMARK, an Illinois not-for-profit corporation, to provide planning, administration and management services for Evanston Special Service Area No. 4.

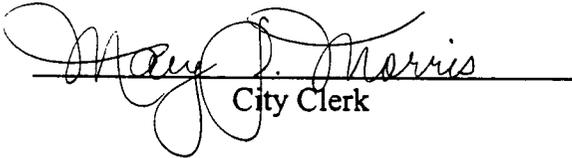
SECTION 2: That an exclusive administration agreement shall be in substantial conformance with the proposed agreement attached hereto and incorporated herein by reference as Exhibit A.

SECTION 3: The City Manager is hereby authorized and directed to negotiate any additional terms and conditions on said agreement as may be determined to be in the best interests of the City.

SECTION 4: This resolution shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Adopted: January 12, 1998

EXCLUSIVE IMPLEMENTATION AGREEMENT  
FOR EVANSTON SPECIAL SERVICE AREA NO. 4

The City of Evanston (“City”), and EVMARK, an Illinois not-for-profit corporation (“Corporation”) agree as set forth in this Exclusive Implementation Agreement for Evanston Special Service Area No. 4 (the “Agreement”).

R E C I T A L S

A. The City established the City of Evanston Special Service Area No. 4, pursuant to Ordinance No. 45-O-87 (the “Ordinance”), and renewed such Service Area through Ordinance No. 49-O-92 and Ordinance 52-O-97, enacted by the City Council of the City of Evanston (the “City Council”) in the exercise of the City’s home rule powers and pursuant to the provisions of Chapter 120, Paragraph 1301 et seq. of the Illinois Revised Statutes.

B. Evanston Special Service Area No. 4 is a contiguous area within the City outlined on the attached map and commonly referred to as the Evanston Central Business District. The territory of Evanston Special Service Area No. 4 (the “Territory”) is legally described in Exhibit A, which is attached to and made a part of this Agreement.

C. Evanston Special Service Area No. 4 has been established in order to provide certain marketing, advertisement and economic activities on behalf of the Territory in order to attract businesses and consumers; and also to provide certain public services which supplement services which are currently or customarily provided by the City to the Territory.

D. The Corporation is an Illinois not-for-profit corporation organized for the purpose of enhancing and promoting downtown Evanston, Illinois.

E. It is in the public interest that the Corporation participate in the planning, implementation and management of Evanston Special Service Area No. 4.

ARTICLE I: SCOPE OF CORPORATION'S SERVICE

101 Corporation to Implement Evanston Special Service Area No. 4. The City retains and the Corporation agrees to be retained by the City for the purpose of planning, implementing, and managing Evanston Special Service Area No. 4. The services to be performed by the Corporation shall include:

A. Promotional Services - promoting, advertising, recruitment, and pursuing other economic development activities on behalf of the Territory ("Promotional Services") for the purpose of attracting businesses and consumers to the Territory. Promotional Services may include, but not be limited to, marketing and advertising the Territory in print and electronic media, specific recruitment of new businesses, listing and hosting of events, and such other actions that in the judgment of the Corporation, will foster and promote the Territory. All Promotional Services will be directed toward marketing the Territory as a whole, and will not be used to exclusively advertise any particular business or property owner within the Territory.

B. Supplemental Services - providing certain public services ("Supplemental Services") to the Territory that will supplement the services currently or customarily provided by the City to the Territory. The Supplemental Services to be provided by the Corporation shall be those that the Territory needs and the City is not available to perform on as timely, economical, and efficient basis as an independent provider of such services. Supplemental Services shall be those which are determined by the Corporation through agreement by the Board of Directors, which includes representation from the City. The Corporation shall provide those services to the territory which are set forth in Exhibit A.

102 Corporation Contracts for Supplemental Services. The Corporation shall enter into contract negotiations with potential providers of the Supplemental Services. After receiving any approval from the City Manager of the City of Evanston, or his designate, (the "City Manager") necessary under Section 302, the Corporation will enter into contracts for the performance of each Supplemental Services.

103 Corporation to Provide Promotional Services. The Corporation shall provide such Promotional Services for the Territory as the Corporation shall, from time to time, determine as beneficial for the Territory. The Corporation may also enter into contracts with providers of Promotional Services to perform Promotional Services for the Territory.

104 Additional Services. In addition to the services set forth in Sections 101 through 103 of this Agreement, the Corporation may engage in such other services ("Additional Services") in connection with Evanston Special Service Area No. 4 as the Corporation Board of Directors may determine.

105 Program Reports. The Corporation shall prepare a program report ("Program Report") for each of the fiscal years of the City ("Fiscal Year") which occur during the term of this Agreement. The Program Report shall describe the Corporation's activities during that Fiscal Year and shall be submitted to the City Council and the City Manager no later than 60 days prior to the beginning of the next Fiscal Year. The Program Report shall, in addition, specify the Supplemental Services and Promotional Services which the Corporation desires to have performed in the upcoming Fiscal Year and an estimate of the cost of providing the proposed Promotional Services and Supplemental Services.

106 Exclusive Provider of Services. During the term of this Agreement, the Corporation shall be the exclusive provider of all services set forth in this Article I, and the City covenants and

agrees not to enter into any agreement for the provision of such services with any other person, corporation, partnership or other legal entity during the term of this Agreement without obtaining the prior written consent of the Corporation.

ARTICLE II: RESPONSIBILITIES OF CORPORATION

201 Special Service Area Budget and Tax Levy Recommendations.

A. Budget - The Corporation shall prepare a budget (“Special Service Area Budget”) for each Fiscal Year during the term of this Agreement. The Special Service Area Budget shall be submitted to the City Council and City Manager no later than 60 days prior to the beginning of the Fiscal Year to which it applied. The Special Service Area Budget shall set forth as accurate an estimate as possible of the following items:

1. amounts expected to be needed in the Fiscal Year to pay the direct program costs (the “Program Costs”) for providing:

- (a) Promotional Services to the Territory,
- (b) Supplemental Services to the Territory,
- (c) Additional Services to the Territory, and
- (d) City Services (defined in Section 301) to the Territory.

2. amounts expected to be needed in the Fiscal Year to pay for administrative and operating expenses incurred by the Corporation in connection with its performance under the Agreement (the “Corporation Expenses”).

In no event shall the Special Service Area Budget exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any Fiscal Year. Also, no less than fifty percent (50%) of the Special Service Area Budget in any fiscal year shall be allocated to Promotional Services, additional, and Corporate Expenses. The Corporation has prepared the Special Service Area

Budget for the initial Fiscal Year of this Agreement which is attached to and made a part of this Agreement as Schedule 1.

B. Tax Levy - At the same time the Corporation submits the Special Service Area Budget to the City Council and City Manager, the Corporation will also submit as accurate as possible an estimate for the amount of the tax which must be levied during the Fiscal Year to fund the costs and expenditures set forth in the Special Service Area Budget ("Corporation's Tax Recommendations"). In no event shall the Corporation's Tax Recommendations exceed the maximum rate of taxes authorized to be extended in any one year by the Ordinance.

C. Revisions - The Corporation agrees that at the request of the City Council or City Manager, it will consider revising the Special Service Area Budget and the Corporation's Tax Recommendations as the City Council or City Manager may deem necessary.

202 Corporation's Representative - The Corporation shall designate a person to act as its representative in connection with all its communications and dealings with the City Manager and City Council under this Agreement. The Corporation may appoint a different representative only with prior written notice to the City Manager and City Council.

203 Corporation's Contractual Liability. The Corporation shall be solely liable for:

A. the cost of Supplemental Services, Promotional Services, Additional Services, and Corporation's Expenses that exceed the amounts allocated for such items in the City's Special Service Area Budget (defined in Section 303).

B. contracts which were entered into by the Corporation without first obtaining the approval of the City Manager or his designate required under Section 302.1

204 Corporation's Liability Insurance. The Corporation shall obtain general liability insurance in such form and in such amounts as will be approved by the City Manager or his

designate. In connection with providing Supplemental Services and Additional Services, if any, to the Territory, as practical, the Corporation will enter into contracts only with providers of such services that have procured general liability insurance, and the Corporation shall require, as practical, such providers to furnish certificates of general liability insurance to the City Manager or his designate, and the Corporation, which certificates shall name the City as an additional insured, and shall provide coverage in amounts to be approved by the City.

### ARTICLE III: RESPONSIBILITY OF CITY COUNCIL AND CITY MANAGER

301 City Services. The City shall provide those services to the Territory (“City Services”) as set forth in the City Budget. To the extent that the City and the Corporation have agreed that any or all of these services require reimbursement by the Corporation, no later than 30 days prior to the beginning of each Fiscal Year, the City Manager shall provide to the Corporation as accurate an estimate as possible of the costs of providing City Services. To the extent that the Corporation has agreed that such City Services are reimbursable, the amounts due and owing for City Services shall be paid with a portion of the proceeds of the taxes levied to fund Evanston Special Service Area No. 4. Also, the City and the Corporation may determine that some services normally provided by the City are better provided by the Corporation. A mutually agreeable schedule of reimbursement to the Corporation will be finalized no later than 30 days prior to the beginning of the Fiscal Year.

302 City Manager Approval. Prior to entering into any contracts for performance of Supplemental Services, the Corporation shall submit to the City Manger:

A. the name of any potential provider of Supplemental Services, unless the City Manager has given his previous approval of such provider under this Agreement, and

B. a description of any proposed physical improvements to be made within the Territory as part of any Supplemental Services and the manner and technique to be used in performing such improvements. The City Manager, or his designate, shall have ten (10) business days after receiving the name of a provider of Supplemental Services or description of physical improvements, as the case may be, to inform the Corporation in writing of his approval or objection. If the City Manager's objection or approval is not received by the Corporation within ten (10) business days, his approval shall be deemed granted, and in such circumstances, the Corporation is authorized to contract and undertake such service or improvement, as the case may be.

303 Adoption of City's Special Service Area Budget and Tax Levy Ordinance. The City Council covenants and agrees to consider in good faith the Special Service Area Budget and the Corporation's Tax Recommendations, but in no event shall the City Council be obligated to adopt the Special Service Area Budget or approve the Corporation's Tax Recommendations. For purposes of this Agreement, the budget adopted by the City Council for Evanston Special Service Area No. 4 shall be known as the "City's Special Service Area Budget" and the ordinance adopted for the levy of taxes to fund Evanston Special Service Area No. 4 shall be known as the "Tax Levy Ordinance". The City Council covenants and agrees that in approving the City's Special Service Area Budget and Tax Levy Ordinance, it will at all times comply with the requirements set forth in Chapter 120, Paragraph 1301 et. seq. of the Illinois Revised Statutes, including that it will not enact a tax levy ordinance that would exceed the maximum rate of taxes authorized to be extended in any one year by the Ordinance.

304 Delivery of City's Special Service Area Budget and Tax Levy Ordinance. Within five (5) business days after the adoption of the City's Special Service Area Budget and Tax Levy

Ordinance, the City Manager will deliver a complete and accurate copy of the city's Special Service Area Budget and Tax Levy Ordinance to the Corporation, and any other documents which the Corporation shall reasonably request as necessary to carry out its duties under this Agreement.

305 City's Limited Liability. The City shall have no liability for:

A. the cost of Supplemental Services, Promotional Services, Additional Services and Corporation's Expenses that exceed the amounts allocated for such items in the City's Special Service Area Budget.

B. Contracts which were entered into by the Corporation without first obtaining the approval of the City Manager required under Section 302.

306 City's Representative. The City designates the City Manager to act as its representative in connection with all its communications and dealings with the Corporation under this Agreement.

#### ARTICLE IV: PAYMENT TO CORPORATION

401 Payment to the Corporation

The City shall pay the Corporation its Program Costs, exclusive of those with respect to City Services, and Corporation Expenses in each case, as set forth in and provided for in the City Special Service Area Budget. Payments to the Corporation shall be made from the proceeds of each annual tax levied for the purpose of funding Evanston Special Service Area No. 4 (the "Tax Proceeds").

All Tax Proceeds shall, as soon as collected, be placed by the City in an account which will be physically segregated from all other funds of the City. Upon receipt of an invoice from the Corporation, the City shall pay to the Corporation all of the Tax Proceeds received to date,

minus an amount of the Tax Proceeds to be retained by the City to pay for City Services, if a written agreement in this regard is in place. The amount to be retained by the City shall be the percentage of the total Tax Proceeds received during such month which is the same percentage as the percentage of the City Special Service Area Budget for that Fiscal Year which was allocated for the payment of City Services, if applicable.

402 Corporation Segregates Payments. The Corporation shall place all Tax Proceeds paid to it by the City Council in an account known as the “Evanston Special Service Area Tax Levy Fund” which will be physically segregated from all other funds of the Corporation. The Corporation shall use the Tax Proceeds placed in the Evanston Special Service Area Tax Levy Fund exclusively for the following purposes:

- A. payment of Program Costs for Supplemental, Promotional or Additional Services to the Territory, and
- B. payment of Corporation Expenses.

403 Inspection of Accounts. The Corporation shall keep accurate accounts of all its activities and of all its receipts and expenditures in connection with Evanston-Special Service Area No. 4, and shall keep such accounts open for inspection by the City Manger and City Council at the offices of the Corporation during normal business hours.

404 Financial Statements of Corporation. The Corporation shall submit to the City Manager and City Council an audited financial statement of the Corporation during the terms of this Agreement.

#### ARTICLE V. TERM

501 Term. The initial term of this Agreement shall be one the one year period with the first anniversary of the date of this Agreement. Thereafter, this Agreement may be renewed annually

by a written agreement of the City and the Corporation for additional terms of not more than one (1) year each, provided that no renewal may extend beyond the termination date of the Evanston Special Service Area No. 4. It is the intention of both the City and Corporation that this Agreement will be renewed until the termination of Evanston Special Service Area No. 4.

#### ARTICLE VI. GENERAL PROVISIONS

601 Warrants. The Corporation warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement, on behalf of the Corporation, upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of the Corporation.

602 Ownership of Documents. All documents developed by the corporation under this Agreement are and shall remain the property of both this Corporation and the City.

603 Equal Employment Opportunities. The Corporation will not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under this Agreement. The Corporation agrees to comply with all provisions of the City of Evanston Fair Employment Practices Ordinance. The Corporation further agrees that it will make a good faith effort to assure that qualified minority business enterprises are solicited to provide Supplemental Services, Promotional Services and Additional Services, if any, in connection with Evanston Special Service Area No. 4.

604 Force Majeure. The Corporation shall not be in default under this Agreement to the extent that it is prevented from or delayed in performance of its obligations under this Agreement by any event or condition beyond its reasonable control, including, but not limited to, strikes or other work stoppages, war, acts of civil or military authorities, earthquakes, tornados, and acts of the City.

605 Notices. All notices under this Agreement shall be in writing except in case of emergency and shall be delivered or mailed by first class mail, if to the Corporation at:

EVMARK Corporation  
1560 Sherman Avenue  
Suite 860  
Evanston, Illinois 60201

Attention EVMARK: Executive Director

and if to the City at:

EVANSTON CIVIC CENTER  
2100 Ridge Avenue  
Evanston, Illinois 60201

Attention: City Manager

or such other address as either the Corporation or the City shall designate by notice to the other.

Notices shall be considered given when delivered or three (3) days after being deposited in the mail.

606 Miscellaneous.

A. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Notwithstanding the foregoing, the rights and benefits of the Corporation under this Agreement are personal to the Corporation and may not be assigned to any other party or entity.

B. This Agreement, including all Exhibits attached hereto, constitutes the entire agreement between the parties with respect to the transactions contemplated by this Agreement, there is not another agreement between the parties except as herein specifically set forth, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, made by the Corporation and the City or their respective employees or agents, respecting

any aspects of the transactions contemplated by this Agreement are merged into the terms of this Agreement.

C. This Agreement shall be interpreted, applied and enforced in accordance with the laws of the State of Illinois. If any provision hereof is in conflict with any statute or rule of law of the State of Illinois, or is otherwise enforceable, such provision shall be deemed null and void only to the extent of such conflict or unenforceability, and shall be deemed separate from and shall not invalidate any other provision of this Agreement.

D. If the date for performance of the obligations of either the Corporation or the City under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding business day.

E. The captions contained in this Agreement are for convenience of reference only, and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

F. For convenience, this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts when taken together shall constitute but one and the same document which shall be sufficiently evidenced by any such executed counterpart.

G. As used in this Agreement, the term "person" shall include corporations or other organizations, partnerships, or other entities, or individuals; the singular shall include the plural, whenever appropriate; and all necessary grammatical changes required to make the provisions of this Agreement applicable as herein described shall in all cases be assumed as though in each case fully expressed.

## Exhibit A

The provision of a downtown maintenance person for 25 to 35 hours per week from March 15 through December 15 each year. From December 15 to March 15, Evmark maintenance will be provided only on an "as needed" basis. The downtown maintenance person will:

- Operate the "green machine," the sidewalk cleaning vehicle, on a daily basis for the entire downtown.
- Assist in picking up trash and in dumping trash receptacles
- Assist in graffiti removal
- Assist in general weeding throughout downtown
- Assist in painting of some public and private structures in need of paint
- Operate the maintenance vehicle owned by Evmark
- Provide wood chips in downtown flower beds, as necessary
- Assist with the company to be retained for sidewalk gum removal power washing
- Assist with the downtown holiday lighting
- Utilize the manual gum removal equipment which Evmark has purchased
- Assist, as necessary, with ancillary snow removal (supporting the City of Evanston)
- Other duties as assigned by mutual agreement with the City
- Assist in the clean up with entrances to downtown alleys by Evmark
- Assist in the supervision of temporary help, as necessary, hired by Evmark to perform the above requirements

