

3/22/99

23-R-99

A RESOLUTION

**Authorizing the City Manager to Enter Into
an Agreement With the City of Chicago for
Improvement of Howard Street West of Ridge Avenue**

WHEREAS, the City of Evanston and the City of Chicago have initiated a joint improvement effort for the Howard Street corridor west of Ridge Avenue to the Evanston City limits ("the Property"); and

WHEREAS, the Property is partially in Evanston and partially in Chicago; and

WHEREAS, the City of Evanston and the City of Chicago have identified a need to improve the Property, said improvement to include pavement, resurfacing, new curbs and gutters, new sidewalks, drainage repair, traffic signals, and street lighting (collectively, "the Improvements"); and

WHEREAS, in order to implement the improvements, the City of Evanston and the City of Chicago will procure services relating to the development of a conceptual design and engineering plans (collectively, "design services") for the Property; and

WHEREAS, the City of Evanston and the City of Chicago have identified MTA, Inc. ("the Contractor") to perform the design services; and

WHEREAS, the City of Chicago has an existing agreement with the Contractor; and

WHEREAS, the City of Chicago and the City of Evanston have agreed ("the Evanston-Chicago Agreement") that the City of Chicago will issue a task order under that existing agreement for the Contractor to provide the design services; and

WHEREAS, the Contractor has agreed to provide the design services in an amount not to exceed a total of \$300,000.00 subject to the terms and conditions of the existing agreement between the City of Chicago and the contractor and the Evanston-Chicago Agreement, execution of the latter of which is authorized by this Resolution; and

WHEREAS, the Evanston-Chicago Agreement allocates the costs of design services between the City of Evanston and the City of Chicago;

WHEREAS, the City of Evanston and the City of Chicago are separate and independent municipal corporations authorized to enter into the aforesaid Agreement in accordance with the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.; and

WHEREAS, it is desirable for the Howard Street improvement project to be coordinated between the City of Evanston and the City of Chicago; and

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

SECTION 1: That the foregoing recitals are hereby found as facts and incorporated herein.

SECTION 2: 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, an Agreement with the City of Chicago for Improvement of Howard Street west of Ridge Avenue to the western Evanston City limits, attached hereto as Exhibit A and incorporated herein by reference.

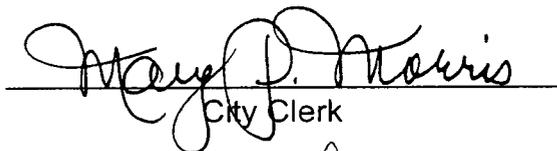
SECTION 3: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the said Agreement as may be determined to be in the best interests of the City of Evanston.

SECTION 4: That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner required by law.



Mayor pro tem

ATTEST:



City Clerk

Adopted: April 5, 1999

23-R-99

A:\kedzie3.agr (March 19, 1999)

**AGREEMENT BETWEEN
THE CITY OF CHICAGO, BY AND THROUGH
ITS DEPARTMENT OF TRANSPORTATION,
AND THE CITY OF EVANSTON**

This Agreement (the "Agreement"), made and entered into this _____ day of _____, 1999 by and between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Transportation (the "Department"), and the City of Evanston ("Evanston"), a municipal corporation.

RECITALS

WHEREAS, Evanston and the City have initiated a joint improvement effort for the Howard Street corridor from Kedzie Avenue to Ridge Avenue (the "Property") which is depicted on Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Property is partially in Evanston and partially in the City; and

WHEREAS, Evanston and the City have identified a need to improve the Property, said improvement to include pavement resurfacing, new curb and gutter, new sidewalk, drainage repair, traffic signals and street lighting (collectively, the "Improvements"); and

WHEREAS, in order to implement the Improvements, the parties wish to procure services relating to the development of a conceptual design and engineering plans for the Property (collectively, the "Design Services"), as more specifically described in Exhibit B attached hereto and incorporated herein; and

WHEREAS, the parties have identified MTA, Inc. (the "Contractor") to perform the Design Services; and

WHEREAS, the City has an existing term agreement (the "Contract") with the Contractor (Spec. No. B59064603), and Evanston and the City desire the City to issue a task order under that Contract for the Contractor to provide the Design Services; and

WHEREAS, the Contractor has agreed to provide the Design Services in an amount not to exceed \$300,000 subject to the terms and conditions of the Contract and this Agreement; and

WHEREAS, the Contractor has provided the City and Evanston with a line item budget (the "Budget"), which is attached hereto and incorporated herein as Exhibit C, for the Design Services totaling \$299,999.59; and

EXHIBIT A

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WHEREAS, the Budget specifies a maximum cost per each line item of the Design Services; and

WHEREAS, these line items may be grouped into two categories: (i) fees for the design of common elements, such as but not limited to soils, survey, phase I traffic, hydraulics and sewers, preliminary roadway, public meetings, prefinal and final plans and review and agency coordination (the "Shared Elements") and (ii) fees for the design of City elements or enhancements of Shared Elements uniquely benefitting the City, such as but not limited to sewer televising, phase I lighting, streetscaping, and the lighting component of prefinal and final plans (the "City Elements"); and

WHEREAS, the parties wish to allocate the costs of the Design Services as follows: (i) the City and Evanston will share equally the costs of the Design Services for the Shared Elements and; (ii) the City will bear the costs of the Design Services for the City Elements; and

WHEREAS, the City and Evanston are separate and independent municipal corporations authorized to enter into this Agreement under the Constitution and the laws of the State of Illinois in accordance with the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., as amended; and

WHEREAS, it is desirable for this project to be undertaken in a coordinated and comprehensive manner;

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein set forth, the parties hereto agree as follows:

ARTICLE ONE: INCORPORATION OF RECITALS

The recitals set forth above are incorporated herein by reference and made a part hereof.

ARTICLE TWO: SERVICES AND FUNDING

A. Design Services

1 Subject to the terms and conditions of this Agreement, the City will issue a task order to the Contractor under the Contract to require the Contractor to perform the Design Services. The City shall require a written acknowledgment from the Contractor that the Budget sets forth the maximum cost per line item that the Contractor may charge for the Design Services, inclusive of all fees and expenses, including labor, burden, overhead, profit, and reimbursable expenses for itself and for any consultants retained by it. Upon issuance of the task order for the Design Services, the City shall give notice of said issuance to Evanston. The City

will require the Contractor to complete the Design Services within six (6) months after issuance of the task order.

2 Within fifteen (15) days after the execution of this Agreement, or at the time of issuance of the task order for the Design Services, whichever is earlier, Evanston shall provide the City the amount of \$117,914.51, which is one-half of the maximum cost of the Shared Elements to fund the performance of the Design Services. Evanston acknowledges that, if it fails to meet its obligation in the foregoing sentence, the City shall have no obligations under this Agreement.

3 If Contractor does not begin work within 45 days of the execution of this Agreement, the City will consult with Evanston to determine if this Agreement should be terminated. If the parties agree to terminate this Agreement, the City will return to Evanston all funds advanced by Evanston to the City for the Design Services, and this Agreement will terminate.

4 Upon completion of the Design Services, the City shall require the Contractor to provide the City and Evanston with one copy each of the plans and specifications for the improvement of the property.

5 The maximum aggregate amount that the City may pay for the Design Services is \$182,085.08, which includes the costs of (i) the City's share of the Shared Elements and (ii) the City Elements. The maximum aggregate amount that Evanston may pay for the Design Services is \$117,914.51, which is the cost of Evanston's share of the Shared Elements.

B. Further Provisions Relating to the Design Services

6 The City shall require the Contractor, before commencing work on the Property, or work preparatory thereto, to notify the authorized representative of Evanston for the purpose of gaining authorized access to the portion of the Property in Evanston and to comply with his/her recommendations relative to the requirements for general safety regulations. The City shall require the Contractor to name Evanston as an additional insured with respect to the Design Services.

7 Evanston acknowledges and agrees that the City, and its duly authorized representatives and agents, and, subject to the requirements of paragraph 6 above, the Contractor, shall have the right to enter the Property for the purpose of performing the Design Services.

8 The City shall not be obligated to perform or cause to be performed the Design Services if the City is precluded therefrom for reasons beyond the City's reasonable control. If at any point the Commissioner of the Department determines that the City is precluded from performing this Agreement, the City shall provide a refund to Evanston of funds previously

provided by Evanston to the City under this Agreement that are not needed to pay the Contractor for services already provided by the Contractor up to the date of termination of the Agreement.

9 During the performance of the Design Services, the City shall provide, or cause the Contractor to provide, Evanston with monthly written status reports.

10 The City, upon completion of the Design Services, shall promptly render to Evanston a detailed statement of the actual costs as incurred by the City for the Design Services. After Evanston's representative has checked the final statement and agreed that the costs were expended by the City in conformance with the Contract, the City shall reimburse Evanston for the excess, if any, of the funds paid by Evanston over the actual costs of Evanston's share of the Shared Elements.

11 In the event that the cost of the Design Services for the Shared Elements exceeds \$117,914.51, subject to each party's appropriation of funds, the City and Evanston agree to share equally the costs over that amount. The Commissioner of the Department shall negotiate a payment schedule with Evanston for its payment to the City of all required additional funds.

12 In the event that funds paid to the City by Evanston are insufficient to cover the costs of Evanston's share of the Design Services, the City and Evanston may mutually agree, subject to any limitations of the Contract if then effective, to reduce the scope of said services or to terminate the Agreement.

ARTICLE THREE: TERM

The term of the Agreement shall commence on the date of its execution and shall expire upon completion of the authorized Design Services or termination of the Agreement according to its terms, whichever occurs first.

ARTICLE FOUR: CONSENT

Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval shall not be unreasonably withheld.

ARTICLE FIVE: NOTICE

Notice to Evanston shall be addressed to:

James Tonkinson
City Engineer
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

With a Copy To: Law Department
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

Notice to the City shall be addressed to:

Commissioner
Department of Transportation
30 North LaSalle Street Rm 1100
Chicago, Illinois 60602-2570

and

Corporation Counsel
City Hall, Room 600
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Deputy, Finance and Economic
Development Division

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above, by any of the following means: (a) personal service; (b) electric communications, whether by telex, telegram, telecopy or facsimile (FAX) machine; (c) overnight courier; (d) registered or certified mail, return receipt requested.

Such addresses may be changed when notice is given to the other party in the same manner as provided above. Provided, any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

ARTICLE SIX: ASSIGNMENT; BINDING EFFECT

This Agreement, or any portion thereof, shall not be assigned by either party without the prior written consent of the other.

This Agreement shall inure to the benefit of and shall be binding upon the City, Evanston and their respective successors and assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and such successors and assigns.

ARTICLE SEVEN: MODIFICATION

This Agreement may not be altered, modified or amended except by written instrument signed by all of the parties hereto.

ARTICLE EIGHT: COMPLIANCE WITH LAWS

The parties hereto shall comply with all federal, state and municipal laws, ordinances, rules and regulations relating to this Agreement.

ARTICLE NINE: GOVERNING LAW AND SEVERABILITY

This Agreement shall be governed by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

ARTICLE TEN: COUNTERPARTS

This Agreement may be executed in two counterparts, each of which shall be deemed an original.

ARTICLE ELEVEN: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and cannot be modified or amended except by mutual written agreement of the parties.

ARTICLE TWELVE: AUTHORITY

Execution of this Agreement by the City is authorized by an ordinance passed by the City Council of the City on _____, 199_. Execution of this Agreement by Evanston is authorized by _____ on _____, 199_. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

ARTICLE THIRTEEN: HEADINGS

The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

ARTICLE FOURTEEN: DISCLAIMER OF RELATIONSHIP

Nothing contained in this Agreement, nor any act of the City or Evanston, shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City and Evanston.

ARTICLE FIFTEEN: CONSTRUCTION OF WORDS

The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, the masculine form shall include feminine and neuter, and the feminine form shall include masculine and neuter.

ARTICLE SIXTEEN: NO PERSONAL LIABILITY

No member, official, employee or agent of the City or Evanston shall be individually or personally liable in connection with this Agreement.

ARTICLE SEVENTEEN: REPRESENTATIVES

Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For Evanston: James Tonkinson
City Engineer
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
(847) 866-2924

For the City: Bruce Worthington
Department of Transportation
30 North LaSalle Street Rm 400
Chicago, Illinois 60602
(312) 744-3520

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

ARTICLE EIGHTEEN: EARLY TERMINATION

Either party may, by providing 30 days written notice to the other party, terminate this Agreement. The termination shall be effective on the date included in the notice of termination. The parties shall share the costs of the Design Services performed up to the effective date of termination based upon the cost-sharing provisions of this Agreement.

[Balance of page intentionally left blank.
Signature page follows.]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, ILLINOIS, by and through the
Department of Transportation

By: _____
Commissioner
Department of Transportation

CITY OF EVANSTON

By: _____
Roger D. Crum
City Manager

EXHIBIT B**SCOPE OF SERVICES FOR DESIGN SERVICES**

The purpose of the project is to provide for roadway rehabilitation of approximately 6,600 feet of Howard Street from the Kedzie intersection to Ridge, which generally includes pavement resurfacing, new curb and gutter, new sidewalk, drainage repair, traffic signals and street lighting.

The scope of services for the Design Services includes: soils testing, a survey of the location, a phase I traffic design, a hydraulic and sewers study, sewers televising, a phase I lighting design, preliminary roadway design, streetscape design, public meetings, prefinal plans and final plans (both with a lighting design component) and review and agency coordination.

BUDGET

ALLOCATION OF FEE					
MTA, INCORPORATED					
Howard Street Improvements - CDOT Project E-8-272					
PERCENT ALLOCATION					
		City of Chicago		City of Evanston	
TASK DESCRIPTION	TOTAL FEE	FEE ALLOCATION	FEE	FEE ALLOCATION	FEE
Sole	\$10,187.19	50%	\$5,183.60	50%	\$5,183.60
Survey	\$28,409.10	50%	\$14,204.55	50%	\$14,204.55
Phase I Traffic	\$20,120.54	50%	\$10,120.54	50%	\$10,120.54
Hydraulic Study and Sewers	\$7,856.41	50%	\$3,856.41	50%	\$3,856.41
Emergency Relocation	\$0.00	100%	\$0.00	0%	\$0.00
Phase I Lighting	\$0.00	100%	\$0.00	0%	\$0.00
Preliminary Roadway	\$19,859.16	50%	\$9,859.16	50%	\$9,859.16
Structural	\$0.00	100%	\$0.00	0%	\$0.00
Public Hearings	\$983.42	50%	\$491.71	50%	\$491.71
Preliminary Plans	\$17,175.10	50%	\$8,587.55	50%	\$8,587.55
Preliminary Plans - Lighting Component	\$0.00	100%	\$0.00	0%	\$0.00
Final Plans	\$28,738.41	50%	\$14,369.20	50%	\$14,369.20
Final Plans - Lighting Component	\$0.00	100%	\$0.00	0%	\$0.00
Review and Agency Coordination	\$3,592.82	50%	\$1,796.41	50%	\$1,796.41
TOTALS	\$299,999.99		\$182,085.68		\$117,914.51