

6/20/00

65-R-00

A RESOLUTION

**Authorizing the City Manager to Execute an
Intergovernmental Agreement with the
City of Chicago for the Revitalization
Of the Howard Street Streetscape**

WHEREAS, the City of Evanston and the City of Chicago ("Parties") have initiated a joint improvement effort for the revitalization of the West Howard Street streetscape from North Ridge Avenue to the CTA Tracks (the "Project"), which is located partially in Chicago and partially in Evanston; and

WHEREAS, the Project may include elements such as new street lighting, sidewalks, curbs and gutters, trees, area identifiers and street furniture such as kiosks, planters, benches and trash receptacles; and

WHEREAS, upon the terms and conditions herein, the Parties will contribute funds for the Project and the City of Chicago will award a contract or contracts for the Project; and

WHEREAS, Chicago 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,

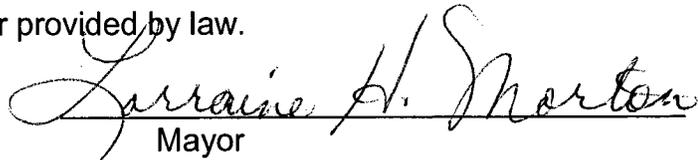
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign, and

the City Clerk is hereby authorized and directed to attest on behalf of the City of Evanston, an Intergovernmental Agreement by and between the City of Evanston and the City of Chicago for the revitalization of the Howard Street Streetscape, attached hereto as Exhibit A and made a part hereof.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms of the Agreement as may be determined to be in the best interests of the City.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.



Mayor

ATTEST:


City Clerk

Adopted: June 26, 2000

**Howard Street Streetscape
INDIVIDUAL PROJECT AGREEMENT**

This individual project agreement (the "Agreement"), made and entered into this _____ day of _____, 2000 by and between the City of Chicago, a municipal corporation and home rule unit of local government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois (the "City"), by and through its Department of Transportation (the "Department"), and the City of Evanston, a municipal corporation ("Evanston").

RECITALS

WHEREAS, Evanston and the City (the "Parties") have initiated a joint improvement effort for the revitalization of the West Howard Street streetscape from North Ridge Avenue to the CTA Tracks (the "Project"), which is located partially in the City and partially in Evanston; and

WHEREAS, the Project may include elements such as new street lighting, sidewalks, curbs and gutters, trees, area identifiers and street furniture such as kiosks, planters, benches and trash receptacles; and

WHEREAS, upon the terms and conditions herein, the Parties will contribute funds for the Project and the City will award a contract or contracts for the Project; 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;

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

ARTICLE ONE: INCORPORATION OF RECITALS

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

ARTICLE TWO: WORK

2.1 Subject to the terms and conditions of this Agreement, the City shall award contracts for the Project. Upon the award by the City of a contract to a contractor or contractors for construction of the improvements as set forth in the Plans (the "Work"), the City shall give notice to Evanston. Every contract for the Work shall name Evanston as a third party beneficiary of the Work to be performed in furtherance of the Project. Evanston shall have no recourse against the City for all or any contractor's failure to perform the Work or for deficiencies in the Work. Evanston's sole remedy for failure to perform the Work or for deficiencies in the Work shall be against said contractor(s) and/or subcontractor(s), if any. Every contract awarded by the City for the Work shall provide that title to any materials installed on the portion of the Property that legally belongs to Evanston ("Evanston's Property") shall pass to Evanston upon its acceptance of the Work, and that risk of loss of such materials shall pass from the contractor to Evanston at the time of Evanston's acceptance of the Work.

2.2 The City shall require every contractor, before commencing Work on any of Evanston's Property, or Work preparatory thereto, to notify the authorized representative of Evanston for the occupancy and use of Evanston's Property and to comply with its recommendations regarding requirements for general safety and/or work procedure regulations. The City shall require its contractor(s) to indemnify and hold harmless Evanston from and against any and all liability, damages, costs and expenses for loss or damage to any property whatsoever and injury to or death of any persons whomsoever arising or growing, in whole or in part, out of or in connection with the performance of any of the Work on the Project. The City shall insert the necessary clause or clauses into all contracts for the Work.

The City further agrees to provide or require its contractor(s) to provide Evanston with such insurance as is approved by Evanston and the City.

2.3 The City, and its duly authorized representatives, agents, and contractors, shall have the right to enter into Evanston's Property for purposes of performing the Work or inspection in connection with the Work.

2.4 The City shall not be obligated to perform, or cause to be performed, any of the Work if the City is precluded from doing so by 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.

ARTICLE THREE: FUNDING

3.1 The total cost of the Project has been estimated to be \$3,000,000. Given the inability to construct the entire project due to the time required for construction exceeding the available time remaining this year for construction activity, the project will be phased. The first phase will be completed in 2000 and includes the area from Damen/Custer (including both the east and west sides of the intersection) to the Metra tracks. This phase is estimated to cost about \$1,000,000, with half of the cost borne by each municipality. The intent of both parties is to complete the remainder of this project in 2001. This includes the section between Ridge Avenue and Damen/Custer and the section from the Metra tracks to the CTA tracks.

3.2 Within fifteen (15) days after the execution of this Agreement, Evanston shall provide funds to the City not to exceed \$500,000 to be used for the first phase of this Project. Evanston acknowledges that, if it fails to meet its obligation in the foregoing section, the City shall have no obligations under this Agreement. For the remainder of the project (the portion scheduled for completion in 2001), Evanston will deliver the remaining \$1,000,000 fifteen days prior to the award of the contract for that phase, with the understanding that the \$1,000,000 figure may be adjusted based on revised cost estimates developed prior to the contract award.

3.3 If, prior to the award of a contract or contracts for the Project, it is ascertained that the costs of construction for the first phase will exceed \$1,000,000, the Parties agree to review the Project to narrow the scope of work or to ascertain funding alternatives. However, if the Parties cannot reach an agreement on how to narrow the scope of work or cannot identify additional funding sources, either party may terminate this Agreement by providing written notice to the other party.

3.4. In the event that the total project cost exceeds \$3,000,000, subject to each party's appropriation of funds, the City and Evanston may agree to share the costs over that amount or may mutually agree, subject to any limitations of any contract then effective, to reduce the scope of the Project or to terminate the Agreement.

3.5. The City, upon completion of the first phase of the project, shall promptly render to Evanston a detailed statement of the actual costs incurred by the City. After Evanston's representative has checked the final statement and agreed that the costs were expended by the City for the Project, the City shall reimburse Evanston for the excess, if any, of the funds paid by Evanston over the actual costs of its share of the Project.

ARTICLE FOUR: TERM

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

ARTICLE FIVE: CONSENT

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

ARTICLE SIX: NOTICE OF CLAIM OR SUIT

Upon receipt of a notice of claim or suit which in any manner results from, arises out of, or is connected with performance by the City pursuant to this Agreement, Evanston shall use its best efforts to provide timely notice of same to the City and shall fully cooperate in the investigation of said claim or suit. Likewise, the City agrees that upon receipt of notice of claim or suit which in any manner results from, arises out of, or is connected with performance by the City pursuant to this Agreement, the City shall use its best efforts to provide timely notice of same to the Evanston and shall fully cooperate in the investigation of said claim or suit.

ARTICLE SEVEN: NOTICE

Notice to Evanston shall be addressed to: David Jennings
Director of Public Works
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

With a copy to: Law Department
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

Notice to the City shall be addressed to:

Judith C. Rice
Department of Transportation
30 North LaSalle Street, Room 1100
Chicago, Illinois 60602-2570
Attention: Commissioner

With a copy to: 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) electronic 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 name 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 clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

ARTICLE EIGHT: ASSIGNMENT; BINDING EFFECT

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

8.2 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 NINE: MODIFICATION

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

ARTICLE TEN: COMPLIANCE WITH LAWS

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

ARTICLE ELEVEN: GOVERNING LAW AND SEVERABILITY

This Agreement shall be governed by the laws of the State of Illinois. If any provisions 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 TWELVE: COUNTERPARTS

This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original.

ARTICLE THIRTEEN: 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 FOURTEEN: AUTHORITY

Execution of this agreement by the City is authorized by an ordinance passed by the City Council of the City on February 16, 2000. Execution of this Agreement by Evanston is authorized by the Evanston City Council on _____, 2000. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

ARTICLE FIFTEEN: HEADINGS

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

ARTICLE SIXTEEN: DISCLAIMER OF RELATIONSHIP

Nothing contained in this Agreement nor any act of the City of 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 of Evanston.

ARTICLE SEVENTEEN: 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 EIGHTEEN: 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:

David Jennings
Director of Public Works
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
(847) 866-2922

For the City:

John Albrecht
Department of Transportation
30 North LaSalle Street, Room 400
Chicago, Illinois 60602
(312) 744-3613

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.

IN WITNESS WHEREOF, the City and Evanston have caused this Agreement to be executed by their respective officials and approved on the date hereinafter listed.

Executed by the CITY OF CHICAGO

This _____ day of _____, 2000

By: _____
Commissioner
Chicago Department of
Transportation

REVIEWED AS TO FORM AND LEGALITY
(Subject to proper execution):

Assistant Corporation Counsel

APPROVED:

By: _____
Budget Director

Executed by the CITY OF EVANSTON

This _____ day of _____, 2000

By _____
City Manager

Attested by:

City Clerk

Approved as to form:

Corporation Counsel