

6/26/2008

**45-R-08**

**A RESOLUTION**

**Authorizing the City Manager to  
Sign an Agreement Between the City of Evanston  
and Clauss Bros., Inc. for Renovation of the Jens Jensen Grotto**

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 hereby authorized and directed to attest on behalf of the City of Evanston, an Agreement Between the City of Evanston and Clauss Bros., Inc. for Renovation of the Jens Jensen Grotto attached hereto as Exhibit A.

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

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

  
\_\_\_\_\_  
Lorraine H. Morton, Mayor

Attest:

  
\_\_\_\_\_  
Rodney Greene, City Clerk

Adopted: July 28, 2008

**AGREEMENT BETWEEN THE CITY OF EVANSTON  
AND CLAUSS BROTHERS, INC.  
FOR RENOVATION OF JENS JENSEN GROTTO**

THIS AGREEMENT is entered into this 11<sup>th</sup> day of September, 2008 by and between the City of Evanston (hereinafter, "City"), an Illinois municipal corporation, 2100 Ridge Avenue, Evanston, Illinois, and Clauss Brothers, Inc. (hereinafter "Contractor"), a corporation, 360 W. Schaumburg Road, Streamwood, IL 60107 (address).

**RECITALS**

WHEREAS, James and Pamela Elesh have donated funds to the City of Evanston for the renovation of Jens Jensen Grotto; and

WHEREAS, the Contractor was selected by the donors to renovate the Jens Jensen Grotto as specified in attachment A to this document, at the Evanston Art Center, 2603 Sheridan Road, Evanston; and

NOW, THEREFORE, the City and the Contractor, in consideration of the mutual covenants set forth below, hereby agree as follows; having first found the foregoing recitals as fact:

**AGREEMENT**

**ARTICLE 1. RECITALS**

The above recitals are incorporated into this Agreement as if fully set forth herein.

**ARTICLE 2. DESCRIPTION OF WORK**

2.1 The Contractor shall inspect, investigate, and Restore the following:

- (a) Jens Jensen Grotto adjacent to the Evanston Art Center

The Work is commissioned for renovation on/surrounding the south side of The Evanston Art Center, 2603 Sheridan Road, Evanston, (hereinafter "Site") more particularly described in Exhibit B, attached hereto and made a part hereof.

the terms of this Agreement, the City shall give Contractor written notice of any breach and an opportunity to cure said breach. The period allowed for cure shall be no greater than fifteen (15) calendar days. The City, in its sole option, may grant the Contractor additional time to cure.

- 3.7 Ownership of Documents, Models. Upon final acceptance, all preparatory drawings, studies, designs, and models prepared and submitted under this Agreement shall become the property of the City, except as may otherwise be agreed to by the Contractor and the City.
- 3.8 Post/Shipping and Transit. The Contractor shall be responsible for the payment of all mailing or shipping charges for submissions to the City, the costs of transporting the all materials to the site and insuring it, as provided for in this Agreement, until renovation is completed and final acceptance has been given by the City, the costs of removal of the work from the site if the City refuses final acceptance, and the costs of all travel by the Contractor and the Contractor's agents and employees necessary for the proper performance of the services required under this Agreement.

#### **ARTICLE 4. PRICE AND PAYMENT SCHEDULE**

As payment for the services of the Contractor and the work, subject to the conditions set forth herein, the City shall pay the Contractor the total sum not to exceed \$44,965 as follows:

- 4.1 Phase 1 amount (\$8,165.00) upon completion of the initial inspection and investigation.
- 4.2 The total balance (up to \$36,800) owed upon final acceptance of the Work by the City.
- 4.4 All payments to Contractor will be mailed to Contractor within five (5) days after City Council approval of said payment at a regularly scheduled meeting.

#### **ARTICLE 5. SALES TAX**

The City's Illinois sales tax exempt number is E 9998-1750-04. The sale to the City is exempt from Illinois state tax. Any other taxes which may be imposed on the Work, or which Contractor may be subject to as a result of the granting of this Agreement, are the sole responsibility of the Contractor.

#### **ARTICLE 6. TIME OF PERFORMANCE**

- 6.1 Duration. The services required of the Contractor as set forth in this Agreement shall be completed in accordance with the completion schedule of the Work as proposed by the Contractor and approved by the City, provided that such time limits may be extended or otherwise modified by mutual written agreement between the Contractor and the City. Notwithstanding provision of this mechanism for extension or other modification, the City is under no obligation to agree to extension or other modification. **TIME IS OF THE ESSENCE OF THIS AGREEMENT.** If Contractor fails to fully perform all of his obligations under this Agreement by the agreed upon date of completion or any approved extensions thereof, Contractor will, upon the City's written demand

- (e) Contractor will be solely responsible for all costs incurred by the City or Contractor enforcing the warranty. The City requires as a condition to final payment, that Contractor will provide City with her written assignment and the receipts from the purchase of warranted products.

## ARTICLE 8. INSURANCE AND INDEMNITY

- 8.1 Contractor's Property Insurance. The Contractor shall maintain all-risk property insurance including the risk of earth movement on the Work for its full value, and understands and agrees that said insurance, and not the City, shall be the source of compensation in the event of damage to the Work from any cause prior to final acceptance by the City of the Work.
- 8.2 Other Insurance. Contractor shall, at the City's request, provide other insurance in types and limits deemed appropriate to the project by the City and including, but not limited to unemployment compensation, workers compensation, and valuable papers insurance.
- 8.3 Policy Limits. Contractor shall obtain an insurance policy covering the period of this Agreement, from execution through Final Acceptance by the City, including coverage of comprehensive general liability insurance and other appropriate coverage for location of the Work on a public property, in the amount of two million dollars (\$2,000,000.00) per occurrence and one million dollars (\$1,000,000.00) per person. The City is to be named as an additional insured on the face of the certificate with an insurance company an A- rating or better. Any changes or cancellations shall require that the City be notified in writing at least forty-five (45) days prior to the effective date of the change or cancellation.
- 8.4 Commencement of Work/Notice of Cancellation of Insurance. The Contractor shall not commence work herein until Contractor has obtained the required insurance and has received written approval of such insurance by the City's Safety/Risk Management Officer. Contractor shall not allow any subcontractor to commence work without said subcontractor(s) first complying with this Article 9 in its entirety. The Contractor shall furnish a certified copy of the policy(s) to the City. The policy(s) shall provide, that in the event the insurance should be changed or cancelled, such change or cancellation shall not be effective until forty-five (45) days after the City has received written notice from the insurance company(s). Such notice shall be mailed to the City in care of the Safety/Risk Management Officer, Law Department, 2100 Ridge Avenue, Evanston, Illinois 60201. An insurance company having less than an A- Policyholders Rating by the Alfred M. Best and Company, Inc. will not be considered acceptable.
- 8.5 Indemnity. The Contractor shall insure the following indemnity agreement:
- Contractor shall indemnify, keep and save harmless the City, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent, trademark, and copyright claims, suits, liabilities, judgments, costs, and expenses, except those attributable to the negligence of the City, its officers and employees, which may in anywise accrue against the City in consequence of the granting of this Agreement or which may in anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through negligence or omission of Contractor, or Contractor employees, of a subcontractor

9.5 Assignment or Transfer of Interest. The Contractor shall not assign or otherwise transfer his/her interest in this Agreement.

9.7 Subcontracting by the Contractor. The Contractor may subcontract portions of the services to be provided hereunder at the Contractor's expense provided that said subcontractors obtain all insurance required of the Contractor under this Agreement and that said subcontracting shall not affect the design, appearance, visual quality, or overall quality of the Work and shall be carried out under the personal supervision of the Contractor. Contractor shall, as a condition precedent to payment of the final installment pursuant to Article 4, submit a notarized statement to the City listing all persons or entities who provided services and/or products to Contractor in connection with this Agreement and shall provide lien waivers from all such persons and entities.

9.8 Notices. All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery, if delivered personally, or on the fifth (5<sup>th</sup>) day after mailing if sent by registered or certified mail, return receipt requested, first-class postage prepaid, as set forth below. Faxed communications are a convenience to the parties, and not a substitute for personal or mailed delivery.

a. if the City, to:                    Director of Parks/ Forestry & Recreation  
   City of Evanston  
   2100 Ridge Avenue  
   Evanston, Illinois 60201  
   Fax (847) 448-8051  
   Phone (847) 866-2914

with a copy to:                    Law Department  
   City of Evanston  
   2100 Ridge Avenue  
   Evanston, Illinois 60201  
   Fax (847) 448-8093  
   Phone (847) 866-2937

b. if the Contractor, at the address first above written with a copy to (attorney):

or otherwise by notice served in accordance with this Article.

## ARTICLE 10. DEATH OR INCAPACITY OF THE CONTRACTOR

10.1 The Contractor or representative of the Contractor shall promptly notify the City if Contractor becomes ill, disabled, injured, or otherwise incapacitated (collectively "incapacitated") at any time between the execution of this Agreement and the date of the final payment due to the Contractor under Article 4.

- 12.2 Litigation. In the event of litigation or claim(s) against the City arising out of this Agreement by anyone other than the Contractor, the Contractor shall cooperate fully with the City, and the Contractor shall provide five (5) days of his time to the City at no charge. Thereafter, the City will compensate Contractor at a mutually agreeable rate, not to exceed \$100 per diem.
- 12.3 Severability. In the event any provision(s) of this Agreement is found by a court of competent jurisdiction to be in violation of applicable law, provision(s) unaffected thereby shall remain in effect.
- 12.4 Entire Agreement. This document represents the entire Agreement between the City and the Contractor. ~~Any and all prior agreements, undertakings written and oral, are hereby superceded.~~

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

CITY:  
 By: *Rolanda B. Russell*  
 Rolanda Russell, Acting City Manager

CONTRACTOR: *CLAUSS BROTHERS, INC*  
*James A. Statman*  
*Sec/Tres*

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Printed Name of Witness

\_\_\_\_\_  
 Address of Witness

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Printed Name of Witness

\_\_\_\_\_  
 Address of Witness

5/9/08

JOB NO:

PROJECT: Evanston Water feature- Pam Eelesh

ARCH/ENG: Jens Jensen

DUE DATE:

START: July 2008

COMP: July 2008

NOTES:

| PHASE   |        | DESCRIPTION                    | QTY  | SIZE | UNIT         | TOTAL        |
|---|--------|--------------------------------|------|------|--------------|--------------|
| 1   | Base   | dewatering & protection        | 1.00 | L.S. | \$ 1,785.00  | \$ 1,785.00  |
| 1   | Base   | remove existing gravel & clean | 1.00 | L.S. | \$ 3,980.00  | \$ 3,980.00  |
| 1   | Base   | investigate & site review      | 1.00 | L.S. | \$ 2,400.00  | \$ 2,400.00  |
|   |        | tuck-point and repair          | 1.00 | L.S. | \$ 12,300.00 | \$ 12,300.00 |
|   |        | repipe, repump                 | 1.00 | L.S. | \$ 7,565.00  | \$ 7,565.00  |
|   |        | makeup water system            | 1.00 | L.S. | \$ 4,415.00  | \$ 4,415.00  |
|   |        | restoration                    | 1.00 | L.S. | \$ 4,075.00  | \$ 4,075.00  |
|   |        |                                | 1.00 |      |              | \$ 36,520.00 |
|   | Alt. 1 | Drain / Overflow to CB         | 1.00 | L.S. | \$ 5,510.00  | \$ 5,510.00  |
|   |        | lawn restoration               | 1.00 | L.S. | \$ 2,040.00  | \$ 2,040.00  |
|   |        | asphalt restoration            | 1.00 | L.S. | \$ 895.00    | \$ 895.00    |
|   |        |                                | 1.00 |      |              | \$ 8,445.00  |
| All Labor to be Union at current union rates. A finalized amount will be determined at time all the water, gravel is removed and a thorough inspection can be made. |        |                                | 1.00 |      |              |              |
| The minimum billable amount for investigation and review is \$ 8,165.00   |        |                                | 1.00 |      |              |              |
|   |        |                                | 1.00 |      |              |              |

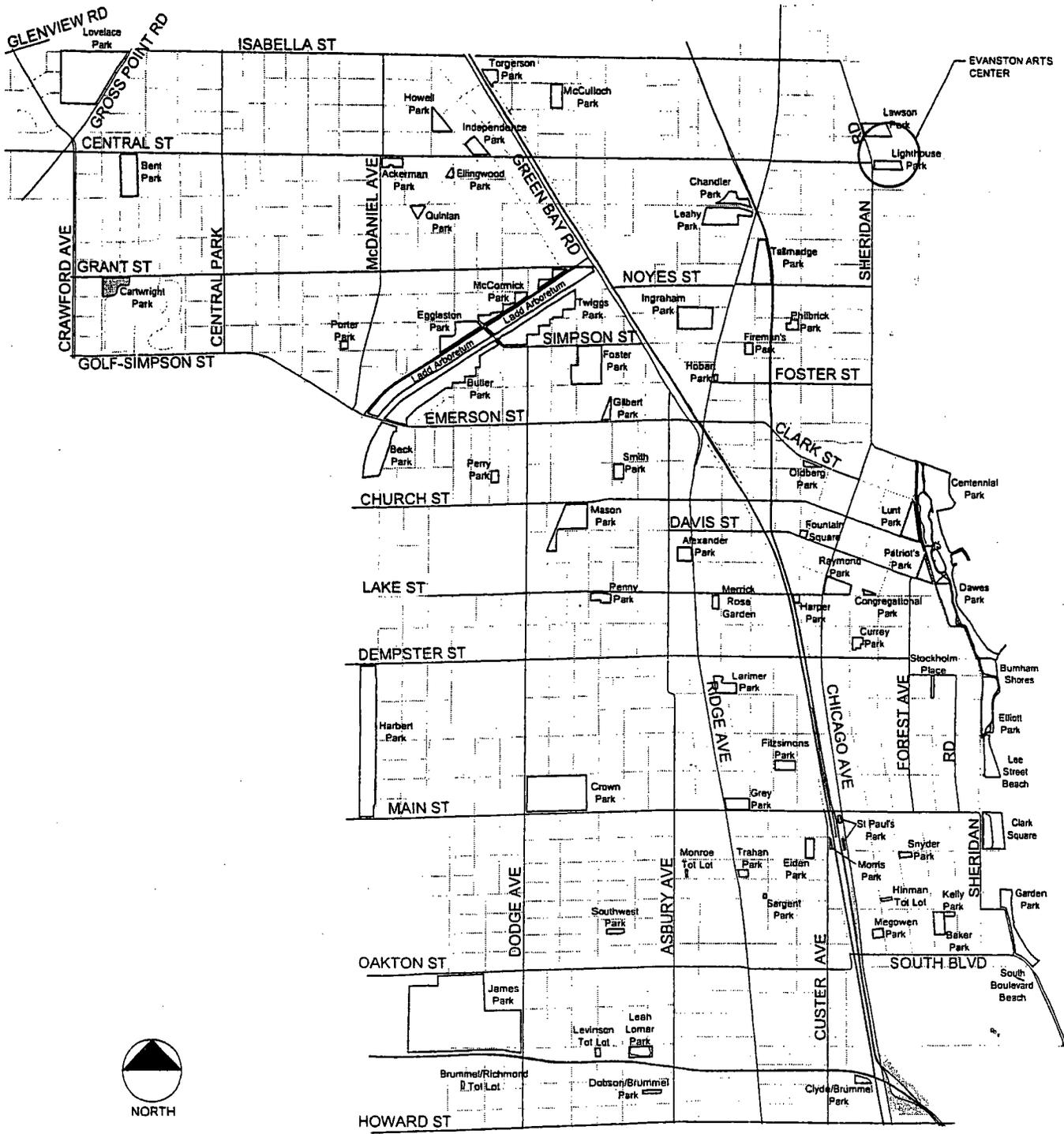
Approval for Inspection Phase By: \_\_\_\_\_

Date \_\_\_\_\_

Approved Phase 1 Amount \$ 8,165.00

Initial \_\_\_\_\_

Amount Due in 20 days from the date of the invoice



LOCATION MAP - JENS JENSEN GROTTA AT EVANSTON ARTS CENTER