

**95-R-14**

**A RESOLUTION**

**Authorizing the City Manager to Execute the Local Agency Agreement with the Illinois Department of Transportation and the Construction Engineering Services Agreement with Stanley Consultants, for Traffic Signal Modernization at Sheridan Road and Forest Avenue**

**WHEREAS**, the City of Evanston ("City") and the Illinois Department of Transportation ("IDOT"), in the interest to promote safe and efficient roadway system, desire to modernize the traffic signals at Sheridan Road at Main Street and Forest Avenue from Burnham Place to Dempster Street (See map, attached hereto as Exhibit A, said services to be identified as State Section: 13-00271-00-TL, State Job: C-91-066-14, and Project Number: M-4003(238) (hereinafter, the "PROJECT"); and

**WHEREAS**, the parties hereto are desirous of said PROJECT in that same will be of immediate benefit to the residents of the area and will be permanent in nature; and

**WHEREAS**, the State of Illinois and the City wish to avail themselves of Federal funds committed to improve this PROJECT; and

**WHEREAS**, the City would like to enter into an Agreement with consultants Stanley Consultants, to provide construction engineering services; and

**WHEREAS**, the City Council of the City of Evanston has determined it is in the best interests of the City to enter into said Agreements,

**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 to execute and the City Clerk hereby authorized to attest to the Local Agency Agreement for Federal

Participation made with IDOT, attached hereto as Exhibit B, and the Professional Services Agreement with Stanley Consultants, attached hereto as Exhibit C, and all made a part hereof.

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

**SECTION 3:** That this Resolution 95-R-14 shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

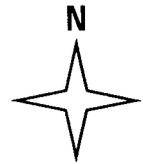
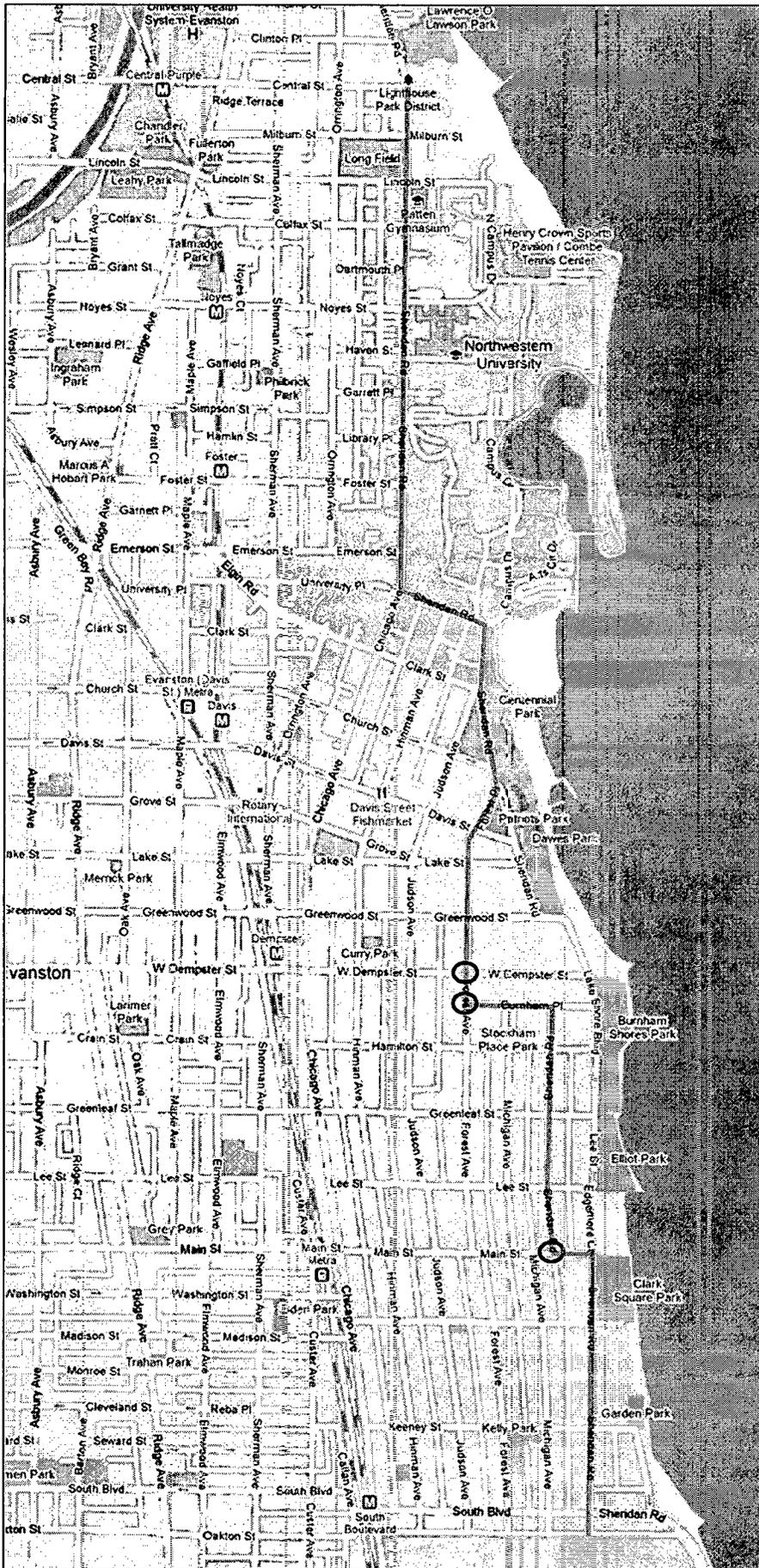
Attest:

  
Rodney Greene, City Clerk

Adopted: December 8, 2014

EXHIBIT A

**Project Location Map**



○ Signalized Intersection Location

City of Evanston  
Cook County  
Sheridan Road  
Signal Improvements  
**PROJECT LOCATION MAP**

Not to Scale

Date: 11/24/2014

EXHIBIT B

**Local Agency Agreement for Federal Participation**

 <b>Illinois Department of Transportation</b> <b>Local Agency Agreement for Federal Participation</b>	Local Agency City of Evanston	State Contract X	Day Labor	Local Contract	RR Force Account
	Section 13-00271-00-TL	Fund Type STU	ITEP and/or SRTS Number		
Construction		Engineering		Right-of-Way	
Job Number	Project Number	Job Number	Project Number	Job Number	Project Number
C-91-066-14	M-4003(238)				

This Agreement is made and entered into between the above local agency hereinafter referred to as the "LA" and the state of Illinois, acting by and through its Department of Transportation, hereinafter referred to as "STATE". The STATE and LA jointly propose to improve the designated location as described below. The improvement shall be constructed in accordance with plans prepared by, or on behalf of the LA, approved by the STATE and the STATE's policies and procedures approved and/or required by the Federal Highway Administration hereinafter referred to as "FHWA".

**Location**

Local Name 1) Sheridan Road 2) Forest Avenue Route 1) FAU 2865A 2) OR 0312 Length N/A  
 Termini 1) At Main Street 2) Dempster Street to Burnham Place

Current Jurisdiction LA TIP Number 02-08-0005 Existing Structure No N/A

**Project Description**

Traffic signal modernization at three intersections

**Division of Cost**

Type of Work	STU	%	%	LA	%	Total
Participating Construction	475,860	( * )	( )	203,940	( BAL )	679,800
Non-Participating Construction	( )	( )	( )	( )	( )	
Preliminary Engineering	( )	( )	( )	( )	( )	
Construction Engineering	( )	( )	( )	( )	( )	
Right of Way	( )	( )	( )	( )	( )	
Railroads	( )	( )	( )	( )	( )	
Utilities	( )	( )	( )	( )	( )	
Materials	( )	( )	( )	( )	( )	
<b>TOTAL</b>	<b>\$ 475,860</b>			<b>\$ 203,940</b>		<b>\$ 679,800</b>

\*Maximum FHWA (STU) participation 70% not to exceed \$475,860.

**NOTE:** The costs shown in the Division of Cost table are approximate and subject to change. The final LA share is dependent on the final Federal and State participation. The actual costs will be used in the final division of cost for billing and reimbursement.

If funding is not a percentage of the total, place an asterisk in the space provided for the percentage and explain above.

**Local Agency Appropriation**

By execution of this Agreement, the LA attests that sufficient moneys have been appropriated or reserved by resolution or ordinance to fund the LA share of project costs. A copy of the resolution or ordinance is attached as an addendum.

**Method of Financing (State Contract Work)**

METHOD A---Lump Sum (80% of LA Obligation) \_\_\_\_\_  
 METHOD B--- \_\_\_\_\_ Monthly Payments of \_\_\_\_\_ due by the \_\_\_\_\_ of each successive month.  
 METHOD C---LA's Share Balance \_\_\_\_\_ divided by estimated total cost multiplied by actual progress payment.

(See page two for details of the above methods and the financing of Day Labor and Local Contracts)

## Agreement Provisions

### THE LA AGREES:

- (1) To acquire in its name, or in the name of the state if on the state highway system, all right-of-way necessary for this project in accordance with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and established state policies and procedures. Prior to advertising for bids, the **LA** shall certify to the **STATE** that all requirements of Titles II and III of said Uniform Act have been satisfied. The disposition of encroachments, if any, will be cooperatively determined by representatives of the **LA**, and **STATE** and the **FHWA**, if required.
- (2) To provide for all utility adjustments, and to regulate the use of the right-of-way of this improvement by utilities, public and private, in accordance with the current Utility Accommodation Policy for Local Agency Highway and Street Systems.
- (3) To provide for surveys and the preparation of plans for the proposed improvement and engineering supervision during construction of the proposed improvement.
- (4) To retain jurisdiction of the completed improvement unless specified otherwise by addendum (addendum should be accompanied by a location map). If the improvement location is currently under road district jurisdiction, an addendum is required.
- (5) To maintain or cause to be maintained, in a manner satisfactory to the **STATE** and **FHWA**, the completed improvement, or that portion of the completed improvement within its jurisdiction as established by addendum referred to in item 4 above.
- (6) To comply with all applicable Executive Orders and Federal Highway Acts pursuant to the Equal Employment Opportunity and Nondiscrimination Regulations required by the U.S. Department of Transportation.
- (7) To maintain, for a minimum of 3 years after the completion of the contract, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records and supporting documents related to the contract shall be available for review and audit by the Auditor General and the department; and the **LA** agrees to cooperate fully with any audit conducted by the Auditor General and the department; and to provide full access to all relevant materials. Failure to maintain the books, records and supporting documents required by this section shall establish a presumption in favor of the **STATE** for the recovery of any funds paid by the **STATE** under the contract for which adequate books, records and supporting documentation are not available to support their purported disbursement.
- (8) To provide if required, for the improvement of any railroad-highway grade crossing and rail crossing protection within the limits of the proposed improvement.
- (9) To comply with Federal requirements or possibly lose (partial or total) Federal participation as determined by the **FHWA**.
- (10) (State Contracts Only) That the method of payment designated on page one will be as follows:
  - Method A - Lump Sum Payment. Upon award of the contract for this improvement, the **LA** will pay to the **STATE** within thirty (30) calendar days of billing, in lump sum, an amount equal to 80% of the **LA**'s estimated obligation incurred under this Agreement. The **LA** will pay to the **STATE** the remainder of the **LA**'s obligation (including any nonparticipating costs) within thirty (30) calendar days of billing in a lump sum, upon completion of the project based upon final costs.
  - Method B - Monthly Payments. Upon award of the contract for this improvement, the **LA** will pay to the **STATE**, a specified amount each month for an estimated period of months, or until 80% of the **LA**'s estimated obligation under the provisions of the Agreement has been paid, and will pay to the **STATE** the remainder of the **LA**'s obligation (including any nonparticipating costs) in a lump sum, upon completion of the project based upon final costs.
  - Method C - Progress Payments. Upon receipt of the contractor's first and subsequent progressive bills for this improvement, the **LA** will pay to the **STATE** within thirty (30) calendar days of receipt, an amount equal to the **LA**'s share of the construction cost divided by the estimated total cost, multiplied by the actual payment (appropriately adjusted for nonparticipating costs) made to the contractor until the entire obligation incurred under this Agreement has been paid.

Failure to remit the payment(s) in a timely manner as required under Methods A, B, or C, shall allow the **STATE** to internally offset, reduce, or deduct the arrearage from any payment or reimbursement due or about to become due and payable from the **STATE** to **LA** on this or any other contract. The **STATE**, at its sole option, upon notice to the **LA**, may place the debt into the the Illinois Comptroller's Offset System (30 ILCS 105/10.05) or take such other and further action as may be required to recover the debt.
- (11) (Day Labor or Local Contracts) To provide or cause to be provided all of the initial funding, equipment, labor, material and services necessary to construct the complete project.
- (12) (Preliminary Engineering) In the event that right-of-way acquisition for, or actual construction of the project for which this preliminary engineering is undertaken with Federal participation is not started by the close of the tenth fiscal year following the fiscal year in which this agreement is executed, the **LA** will repay the **STATE** any Federal funds received under the terms of this Agreement.
- (13) (Right-of-Way Acquisition) In the event that the actual construction of the project on this right-of-way is not undertaken by the close of the twentieth fiscal year following the fiscal year in which this Agreement is executed, the **LA** will repay the **STATE** any Federal Funds received under the terms of this Agreement.

- (14) (Railroad Related Work Only) The estimates and general layout plans for at-grade crossing improvements should be forwarded to the Rail Safety and Project Engineer, Room 204, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. Approval of the estimates and general layout plans should be obtained prior to the commencement of railroad related work. All railroad related work is also subject to approval by the Illinois Commerce Commission (ICC). Final inspection for railroad related work should be coordinated through appropriate IDOT District Bureau of Local Roads and Streets office.
- Plans and preemption times for signal related work that will be interconnected with traffic signals shall be submitted to the ICC for review and approval prior to the commencement of work. Signal related work involving interconnects with state maintained traffic signals should also be coordinated with the IDOT's District Bureau of Operations.
- The LA is responsible for the payment of the railroad related expenses in accordance with the LA/railroad agreement prior to requesting reimbursement from IDOT. Requests for reimbursement should be sent to the appropriate IDOT District Bureau of Local Roads and Streets office.
- Engineer's Payment Estimates in accordance with the Division of Cost on page one.
- (15) And certifies to the best of its knowledge and belief its officials:
- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements receiving stolen property;
  - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, local) with commission of any of the offenses enumerated in item (b) of this certification; and
  - (d) have not within a three-year period preceding the Agreement had one or more public transactions (Federal, State, local) terminated for cause or default.
- (16) To include the certifications, listed in item 15 above and all other certifications required by State statutes, in every contract, including procurement of materials and leases of equipment.
- (17) (State Contracts) That execution of this agreement constitutes the LA's concurrence in the award of the construction contract to the responsible low bidder as determined by the STATE.
- (18) That for agreements exceeding \$100,000 in federal funds, execution of this Agreement constitutes the LA's certification that:
- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement;
  - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress, in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions;
  - (c) The LA shall require that the language of this certification be included in the award documents for all subawards at all ties (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- (19) To regulate parking and traffic in accordance with the approved project report.
- (20) To regulate encroachments on public right-of-way in accordance with current Illinois Compiled Statutes.
- (21) To regulate the discharge of sanitary sewage into any storm water drainage system constructed with this improvement in accordance with current Illinois Compiled Statutes.
- (22) That the LA may invoice the STATE monthly for the FHWA and/or STATE share of the costs incurred for this phase of the improvement. The LA will submit supporting documentation with each request for reimbursement from the STATE. Supporting documentation is defined as verification of payment, certified time sheets, vendor invoices, vendor receipts, and other documentation supporting the requested reimbursement amount.
- (23) To complete this phase of the project within three years from the date this agreement is approved by the STATE if this portion of the project described in the Project Description does not exceed \$1,000,000 (five years if the project costs exceed \$1,000,000).
- (24) Upon completion of this phase of the improvement, the LA will submit to the STATE a complete and detailed final invoice with all applicable supporting supporting documentation of all incurred costs, less previous payments, no later than one year from the date of completion of this phase of the improvement. If a final invoice is not received within one year of completion of this phase of the improvement, the most recent invoice may be considered the final invoice and the obligation of the funds closed.

- (25) (Single Audit Requirements) That if the LA expends \$500,000 or more a year in federal financial assistance they shall have an audit made in accordance with the Office of Management and Budget (OMB) Circular No. A-133. LA's that expend less than \$500,000 a year shall be exempt from compliance. A copy of the audit report must be submitted to the STATE (Office of Finance and Administration, Audit Coordination Section, 2300 South Dirksen Parkway, Springfield, Illinois, 62764), within 30 days after the completion of the audit, but no later than one year after the end of the LA's fiscal year. The CFDA number for all highway planning and construction activities is 20.205.
- (26) That the LA is required to register with the System for Award Management or SAM (formerly Central Contractor Registration (CCR)), which is a web-enabled government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract award and the electronic payment processes. To register or renew, please use the following website: <https://www.sam.gov/portal/public/SAM/#1>.

#### THE STATE AGREES:

- (1) To provide such guidance, assistance and supervision and to monitor and perform audits to the extent necessary to assure validity of the LA's certification of compliance with Titles II and III requirements.
- (2) (State Contracts) To receive bids for the construction of the proposed improvement when the plans have been approved by the STATE (and FHWA, if required) and to award a contract for construction of the proposed improvement, after receipt of a satisfactory bid.
- (3) (Day Labor) To authorize the LA to proceed with the construction of the improvement when Agreed Unit Prices are approved and to reimburse the LA for that portion of the cost payable from Federal and/or State funds based on the Agreed Unit Prices and Engineer's Payment Estimates in accordance with the Division of Cost on page one.
- (4) (Local Contracts) That for agreements with Federal and/or State funds in engineering, right-of-way, utility work and/or construction work:
- (a) To reimburse the LA for the Federal and/or State share on the basis of periodic billings, provided said billings contain sufficient cost information and show evidence of payment by the LA;
- (b) To provide independent assurance sampling, to furnish off-site material inspection and testing at sources normally visited by STATE inspectors of steel, cement, aggregate, structural steel and other materials customarily tested by the STATE.

#### IT IS MUTUALLY AGREED:

- (1) Construction of the project will utilize domestic steel as required by Section 106.01 of the current edition of the Standard Specifications for Road and Bridge Construction.
- (2) That this Agreement and the covenants contained herein shall become null and void in the event that the FHWA does not approve the proposed improvement for Federal-aid participation or the contract covering the construction work contemplated herein is not awarded within three years of the date of execution of this Agreement.
- (3) This Agreement shall be binding upon the parties, their successors and assigns.
- (4) For contracts awarded by the LA, the LA shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any USDOT – assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The LA shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT – assisted contracts. The LA's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31U.S.C. 3801 et seq.). In the absence of a USDOT – approved LA DBE Program or on State awarded contracts, this Agreement shall be administered under the provisions of the STATE's USDOT approved Disadvantaged Business Enterprise Program.
- (5) In cases where the STATE is reimbursing the LA, obligations of the STATE shall cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or applicable Federal Funding source fails to appropriate or otherwise make available funds for the work contemplated herein.
- (6) All projects for the construction of fixed works which are financed in whole or in part with funds provided by this Agreement and/or amendment shall be subject to the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) unless the provisions of that Act exempt its application

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**ADDENDA**

Additional information and/or stipulations are hereby attached and identified below as being a part of this Agreement.

Number 1- Location Map, Number 2 – Local Appropriation Resolution.

(Insert addendum numbers and titles as applicable)

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The LA further agrees, as a condition of payment, that it accepts and will comply with the applicable provisions set forth in this Agreement and all exhibits indicated above.

**APPROVED**

Local Agency

Wally Bobkiewicz

\_\_\_\_\_  
Name of Official (Print or Type Name)

City Manager

\_\_\_\_\_  
Title (County Board Chairperson/Mayor/Village President/etc.)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

The above signature certifies the agency's TIN number is  
36-6005870 conducting business as a Governmental  
Entity.

DUNS Number 074390907

**APPROVED**

State of Illinois  
Department of Transportation

\_\_\_\_\_  
Erica J. Borggren, Acting Secretary

\_\_\_\_\_  
Date

By:

\_\_\_\_\_  
Aaron A. Weatherholt, Deputy Director of Highways

\_\_\_\_\_  
Date

\_\_\_\_\_  
Omer Osman, Director of Highways/Chief Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael A. Forti, Chief Counsel

\_\_\_\_\_  
Date

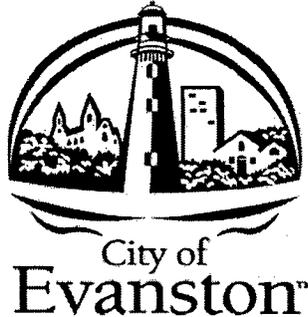
\_\_\_\_\_  
Tony Small, Director of Finance and Administration

\_\_\_\_\_  
Date

**NOTE:** If signature is by an APPOINTED official, a resolution authorizing said appointed official to execute this agreement is required.

EXHIBIT C

**Professional Services Agreement**



**CITY OF EVANSTON  
PROFESSIONAL SERVICES AGREEMENT**

The parties referenced herein desire to enter into an agreement for professional services for

**Sherdian Road Signal Improvements**

Sherdian Road at Main Street and Forest Avenue from Burnham Place to Dempster Street  
**RFP 10-91**

THIS AGREEMENT (hereinafter referred to as the "Agreement") entered into this day of \_\_\_\_\_, 2014, between the City of Evanston, an Illinois municipal corporation with offices located at 2100 Ridge Avenue, Evanston Illinois 60201 (hereinafter referred to as the "City"), and **Stanley Consultants**, with offices located at 8501 Higgins Rd, Chicago, IL (hereinafter referred to as the "Consultant"). Compensation for all basic Services ("the Services") provided by the Consultant pursuant to the terms of this Agreement shall not exceed \$ \$95,993.69 .

**I. COMMENCEMENT DATE**

**Consultant shall commence the Services on August 2, 2015 or no later than **(3) DAYS AFTER** City executes and delivers this Agreement to Consultant.**

**II. COMPLETION DATE**

Consultant shall complete the Services by October 30, 2015. If this Agreement provides for renewals after an initial term, no renewal shall begin until agreed to in writing by both parties prior to the completion date of this Agreement.

**III. PAYMENTS**

**City shall pay Consultant those fees as provided here: Payment shall be made upon the completion of each task for a project, as set forth in Exhibit A – Project Milestones and Deliverables. Any expenses in addition to those set forth here must be specifically approved by the City in writing in advance.**

#### **IV. DESCRIPTION OF SERVICES**

Consultant shall perform the services (the “Services”) set forth here: Services are those as defined in Exhibit A, the City’s Request for Proposal No. 10-91 (Exhibit B) and Consultant’s Response to the Proposal (Exhibit C). Services may include, if any, other documented discussions and agreements regarding scope of work and cost (Exhibit D).

#### **V. GENERAL PROVISIONS**

**A. Services.** Consultant shall perform the Services in a professional and workmanlike manner. All Services performed and documentation (regardless of format) provided by Consultant shall be in accordance with the standards of reasonable care and skill of the profession, free from errors or omissions, ambiguities, coordination problems, and other defects. Consultant shall take into account any and all applicable plans and/or specifications furnished by City, or by others at City’s direction or request, to Consultant during the term of this Agreement. All materials, buildings, structures, or equipment designed or selected by Consultant shall be workable and fit for the intended use thereof, and will comply with all applicable governmental requirements. Consultant shall require its employees to observe the working hours, rules, security regulations and holiday schedules of City while working and to perform its Services in a manner which does not unreasonably interfere with the City’s business and operations, or the business and operations of other tenants and occupants in the City which may be affected by the work relative to this Agreement. Consultant shall take all necessary precautions to assure the safety of its employees who are engaged in the performance of the Services, all equipment and supplies used in connection therewith, and all property of City or other parties that may be affected in connection therewith. If requested by City, Consultant shall promptly replace any employee or agent performing the Services if, in the opinion of the City, the performance of the employee or agent is unsatisfactory.

Consultant is responsible for conforming its final work product to generally accepted professional standards for all work performed pursuant to this Agreement. Consultant is an independent Consultant and is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to, Worker’s Compensation Insurance. Nothing in this Agreement accords any third-party beneficiary rights whatsoever to any non-party to this Agreement that any non-party may seek to enforce. Consultant acknowledges and agrees that should Consultant or its subconsultants provide false information, or fail to be or remain in compliance with this Agreement, the City may void this Agreement. The Consultant warrants and states that it has read the Contract Documents, and agrees to be bound thereby, including all performance guarantees as respects Consultant’s work and all indemnity and insurance requirements.

The Consultant shall obtain prior approval from the City prior to subcontracting with any entity or person to perform any of the work required under this Agreement. If the Consultant subcontracts any of the services to be performed under this Agreement, the subconsultant agreement shall provide that the services to be performed under any such agreement shall not be sublet, sold, transferred, assigned or otherwise disposed of to another entity or person without the City's prior written consent. The Consultant shall be responsible for the accuracy and quality of any subconsultant's work.

All subconsultant agreements shall include verbatim or by reference the provisions in this Agreement binding upon Consultant as to all Services provided by this Agreement, such that it is binding upon each and every subconsultant that does work or provides Services under this Agreement.

The Consultant shall cooperate fully with the City, other City contractors, other municipalities and local government officials, public utility companies, and others, as may be directed by the City. This shall include attendance at meetings, discussions and hearings as requested by the City. This cooperation shall extend to any investigation, hearings or meetings convened or instituted by OSHA relative to this Project, as necessary. Consultant shall cooperate with the City in scheduling and performing its Work to avoid conflict, delay in or interference with the work of others, if any, at the Project.

Except as otherwise provided herein, the nature and scope of Services specified in this Agreement may only be modified by a writing approved by both parties. This Agreement may be modified or amended from time to time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representatives of the parties.

**B. Representation and Warranties.** Consultant represents and warrants that: (1) Consultant possesses and will keep in force all required licenses to perform the Services, (2) the employees of Consultant performing the Services are fully qualified, licensed as required, and skilled to perform the Services.

**C. Termination.** City may, at any time, with or without cause, terminate this Agreement upon seven (7) days written notice to Consultant. If the City terminates this agreement, the City will make payment to Consultant for Services performed prior to termination. Payments made by the City pursuant to this Agreement are subject to sufficient appropriations made by the City of Evanston City Council. In the event of termination resulting from non-appropriation or insufficient appropriation by the City Council, the City's obligations hereunder shall cease and there shall be no penalty or further payment required. In the event of an emergency or threat to the life, safety or welfare of the citizens of the City, the City shall have the right terminate this Agreement without prior written notice. Within thirty (30) days of termination of this Agreement, the Consultant shall turn over to the City any documents, drafts, and materials, including but not limited to, outstanding work product, data, studies, test results, source documents, AutoCad Version 2007, PDF, ArtView, Word, Excel

spreadsheets, technical specifications and calculations, and any other such items specifically identified by the City related to the Services herein.

**D. Independent Consultant.** Consultant's status shall be that of an independent Consultant and not that of a servant, agent, or employee of City. Consultant shall not hold Consultant out, nor claim to be acting, as a servant, agent or employee of City. Consultant is not authorized to, and shall not, make or undertake any agreement, understanding, waiver or representation on behalf of City. Consultant shall at its own expense comply with all applicable workers compensation, unemployment insurance, employer's liability, tax withholding, minimum wage and hour, and other federal, state, county and municipal laws, ordinances, rules, regulations and orders. Consultant agrees to abide by the Occupational Safety & Health Act of 1970 (OSHA), and as the same may be amended from time to time, applicable state and municipal safety and health laws and all regulations pursuant thereto.

**E. Conflict of Interest.** Consultant represents and warrants that no prior or present services provided by Consultant to third parties conflict with the interests of City in respect to the Services being provided hereunder except as shall have been expressly disclosed in writing by Consultant to City and consented to in writing to City.

**F. Ownership of Documents and Other Materials.** All originals, duplicates and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, AutoCad Version 2007, Excel spreadsheets, PDF, and other documents or materials required to be furnished by Consultant hereunder, including drafts and reproduction copies thereof, shall be and remain the exclusive property of City, and City shall have the unlimited right to publish and use all or any part of the same without payment of any additional royalty, charge, or other compensation to Consultant. Upon the termination of this Agreement, or upon request of City, during any stage of the Services, Consultant shall promptly deliver all such materials to City. Consultant shall not publish, transfer, license or, except in connection with carrying out obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working pages, without the prior written approval of City, provided, however, that Consultant may retain copies of the same for Consultant's own general reference.

**G. Payment.** Invoices for payment shall be submitted by Consultant to City at the address set forth above, together with reasonable supporting documentation, City may require such additional supporting documentation as City reasonably deems necessary or desirable. Payment shall be made in accordance with the Illinois Local Government Prompt Payment Act, after City's receipt of an invoice and all such supporting documentation.

**H. Right to Audit.** Consultant shall for a period of three years following performance of the Services, keep and make available for the inspection, examination and audit by City or City's authorized employees, agents or representatives, at all reasonable time, all records respecting the services and expenses incurred by Consultant, including without limitation, all book, accounts, memoranda, receipts, ledgers, canceled checks, and any other documents indicating,

documenting, verifying or substantiating the cost and appropriateness of any and all expenses. If any invoice submitted by Consultant is found to have been overstated, Consultant shall provide City an immediate refund of the overpayment together with interest at the highest rate permitted by applicable law, and shall reimburse all of City's expenses for and in connection with the audit respecting such invoice.

**I. Indemnity.** Consultant shall defend, indemnify and hold harmless the City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including but not limited to costs, and fees, including attorney's fees, judgments or settlements, resulting from or arising out of any negligent or willful act or omission on the part of the Consultant or Consultant's subcontractors, employees, agents or subcontractors during the performance of this Agreement. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this Agreement.

Nothing contained herein shall be construed as prohibiting the City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. The Consultant shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits. Nothing herein shall be construed as a limitation or waiver of defenses available to the City and employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

At the City Corporation Counsel's option, Consultant must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Consultant of any of its obligations under this Agreement. Any settlement of any claim or suit related to this Agreement by Consultant must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

To the extent permissible by law, Consultant waives any limits to the amount of its obligations to indemnify, defend, or contribute to any sums due under any Losses, including any claim by any employee of Consultant that may be subject to the Illinois Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision, including but not limited to, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute.

Consultant shall be responsible for any losses and costs to repair or remedy work performed under this Agreement resulting from or arising out of any act or omission, neglect, or misconduct in the performance of its Work or its subConsultants' work. Acceptance of the work by the City will not relieve the Consultant of the responsibility for subsequent correction of any such error, omissions and/or negligent acts or of its liability for loss or damage resulting

therefrom. All provisions of this Section shall survive completion, expiration, or termination of this Agreement.

**J. Insurance.** Consultant shall carry and maintain at its own cost with such companies as are reasonably acceptable to City all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement, for damages caused or contributed to by Consultant, and insuring Consultant against claims which may arise out of or result from Consultant's performance or failure to perform the Services hereunder: (1) worker's compensation in statutory limits and employer's liability insurance in the amount of at least \$500,000, (2) comprehensive general liability coverage, and designating City as additional insured for not less than \$3,000,000 combined single limit for bodily injury, death and property damage, per occurrence, (3) comprehensive automobile liability insurance covering owned, non-owned and leased vehicles for not less than \$1,000,000 combined single limit for bodily injury, death or property damage, per occurrence, and (4) errors and omissions or professional liability insurance respecting any insurable professional services hereunder in the amount of at least \$1,000,000. Consultant shall give to the City certificates of insurance for all Services done pursuant to this Agreement before Consultant performs any Services, and, if requested by City, certified copies of the policies of insurance evidencing the coverage and amounts set forth in this Section. The City may also require Consultant to provide copies of the Additional Insured Endorsement to said policy(ies) which name the City as an Additional Insured for all of Consultant's Services and work under this Agreement. Any limitations or modification on the certificate of insurance issued to the City in compliance with this Section that conflict with the provisions of this Section shall have no force and effect. Consultant's certificate of insurance shall contain a provision that the coverage afforded under the policy(s) will not be canceled or reduced without thirty (30) days prior written notice (hand delivered or registered mail) to City. Consultant understands that the acceptance of certificates, policies and any other documents by the City in no way releases the Consultant and its subcontractors from the requirements set forth herein. Consultant expressly agrees to waive its rights, benefits and entitlements under the "Other Insurance" clause of its commercial general liability insurance policy as respects the City. In the event Consultant fails to purchase or procure insurance as required above, the parties expressly agree that Consultant shall be in default under this Agreement, and that the City may recover all losses, attorney's fees and costs expended in pursuing a remedy or reimbursement, at law or in equity, against Consultant.

Consultant acknowledges and agrees that if it fails to comply with all requirements of this Section, that the City may void this Agreement.

**K. Confidentiality.** In connection with this Agreement, City may provide Consultant with information to enable Consultant to render the Services hereunder, or Consultant may develop confidential information for City. Consultant agrees (i) to treat, and to obligate Consultant's employees to treat, as secret and confidential all such information whether or not identified by City as confidential, (ii) not to disclose any such information or make available any reports, recommendations and /or conclusions which Consultant may make for City to any person, firm or corporation or

use the same in any manner whatsoever without first obtaining City's written approval, and (iii) not to disclose to City any information obtained by Consultant on a confidential basis from any third party unless Consultant shall have first received written permission from such third party to disclose such information.

Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/7(2), records in the possession of others whom the City has contracted with to perform a governmental function are covered by the Act and subject to disclosure within limited statutory timeframes (five (5) working days with a possible five (5) working day extension). Upon notification from the City that it has received a Freedom of Information Act request that calls for records within the Consultant's control, the Consultant shall promptly provide all requested records to the City so that the City may comply with the request within the required timeframe. The City and the Consultant shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such records, or part thereof, is applicable. Vendor shall indemnify and defend the City from and against all claims arising from the City's exceptions to disclosing certain records which Vendor may designate as proprietary or confidential. Compliance by the City with an opinion or a directive from the Illinois Public Access Counselor or the Attorney General under FOIA, or with a decision or order of Court with jurisdiction over the City, shall not be a violation of this Section.

**L. Use of City's Name or Picture of Property.** Consultant shall not in the course of performance of this Agreement or thereafter use or permit the use of City's name nor the name of any affiliate of City, nor any picture of or reference to its Services in any advertising, promotional or other materials prepared by or on behalf of Consultant, nor disclose or transmit the same to any other party.

**M. No Assignments or Subcontracts.** Consultant shall not assign or subcontract all or any part or its rights or obligations hereunder without City's express prior written approval. Any attempt to do so without the City's prior consent shall, at City's option, be null and void and of no force or effect whatsoever. Consultant shall not employ, contract with, or use the services of any other architect, interior designer, engineer, consultant, special contractor, or other third party in connection with the performance of the Services without the prior written consent of City.

**N. Compliance with Applicable Statutes, Ordinances and Regulations.** In performing the Services, Consultant shall comply with all applicable federal, state, county, and municipal statutes, ordinances and regulations, at Consultant's sole cost and expense, except to the extent expressly provided to the contrary herein. Whenever the City deems it reasonably necessary for security reasons, the City may conduct at its own expense, criminal and driver history background checks of Consultant's officers, employees, subcontractors, or agents. Consultant shall immediately reassign any such individual who in the opinion of the City does not pass the background check.

**O. Liens and Encumbrances.** Consultant, for itself, and on behalf of all subcontractors, suppliers, materialmen and others claiming by, through or under Consultant, hereby waives and releases any and all statutory or common law

mechanics' materialmens' or other such lien claims, or rights to place a lien upon City property or any improvements thereon in connection with any Services performed under or in connection with this Agreement. Consultant further agrees, as and to the extent of payment made hereunder, to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and a release of lien respecting the Services at such time or times and in such form as may be reasonably requested by City. Consultant shall protect City from all liens for labor performed, material supplied or used by Consultant and/or any other person in connection with the Services undertaken by consultant hereunder, and shall not at any time suffer or permit any lien or attachment or encumbrance to be imposed by any subConsultant, supplier or materialmen, or other person, firm or corporation, upon City property or any improvements thereon, by reason or any claim or demand against Consultant or otherwise in connection with the Services.

**P. Notices.** Every notice or other communication to be given by either party to the other with respect to this Agreement, shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by United States certified or registered mail, postage prepaid, addressed if to City as follows: City of Evanston, 2100 Ridge Avenue, Evanston, Illinois 60201, Attention: Purchasing Division and to Consultant at the address first above set forth, or at such other address or addresses as City or Consultant may from time to time designate by notice given as above provided.

**Q. Attorney's Fees.** In the event that the City commences any action, suit, or other proceeding to remedy, prevent, or obtain relief from a breach of this Agreement by Consultant, or arising out of a breach of this Agreement by Consultant, the City shall recover from the Consultant as part of the judgment against Consultant, its attorneys' fees and costs incurred in each and every such action, suit, or other proceeding.

**R. Waiver.** Any failure or delay by City to enforce the provisions of this Agreement shall in no way constitute a waiver by City of any contractual right hereunder, unless such waiver is in writing and signed by City.

**S. Severability.** In the event that any provision of this Agreement should be held void, or unenforceable, the remaining portions hereof shall remain in full force and effect.

**T. Choice of Law.** The rights and duties arising under this Agreement shall be governed by the laws of the State of Illinois. Venue for any action arising out or due to this Agreement shall be in Cook County, Illinois. The City shall not enter into binding arbitration to resolve any dispute under this Agreement. The City does not waive tort immunity by entering into this Agreement.

**U. Time.** Consultant agrees all time limits provided in this Agreement and any Addenda or Exhibits hereto are of essence to this Agreement. Consultant shall continue to perform its obligations while any dispute concerning the Agreement is being resolved, unless otherwise directed by the City.

**V. Survival.** Except as expressly provided to the contrary herein, all provisions of this Agreement shall survive all performances hereunder including the termination of the Consultant.

## **VI. EQUAL EMPLOYMENT OPPORTUNITY**

In the event of the Consultant's noncompliance with any provision of Section 1-12-5 of the Evanston City Code, the Illinois Human Rights Act or any other applicable law, the Consultant may be declared nonresponsible and therefore ineligible for future contracts or subcontracts with the City, and the contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

During the performance of the contract, the Consultant agrees as follows:

**A.** That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization. Consultant shall comply with all requirements of City of Evanston Code Section 1-12-5.

**B.** That, in all solicitations or advertisements for employees placed by it on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

## **VII. SEXUAL HARASSMENT POLICY**

The Consultant certifies pursuant to the Illinois Human Rights Act (775 ILCS 5/2105 *et. seq.*), that it has a written sexual harassment policy that includes, at a minimum, the following information:

**A.** The illegality of sexual harassment;

**B.** The definition of sexual harassment under State law;

**C.** A description of sexual harassment utilizing examples;

**D.** The Consultant's internal complaint process including penalties;

**E.** Legal recourse, investigation and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission, and directions on how to contact both; and

**F.** Protection against retaliation as provided to the Department of Human Rights.

## **VIII. CONSULTANT CERTIFICATIONS**

A. Consultant acknowledges and agrees that should Consultant or its subconsultant provide false information, or fail to be or remain in compliance with the Agreement, the City may void this Agreement.

B. Consultant certifies that it and its employees will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. Section 1201 et seq.) and applicable rules in performance under this Agreement.

C. If Consultant, or any officer, director, partner, or other managerial agent of Consultant, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Consultant certifies at least five years have passed since the date of the conviction.

D. Consultant certifies that it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State in the U.S., nor made any admission of guilt of such conduct that is a matter of record. (720 ILCS 5/33 E-3, E-4).

E. In accordance with the Steel Products Procurement Act, Consultant certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the U.S. unless the City grants an exemption.

F. Consultant certifies that it is properly formed and existing legal entity, and as applicable, has obtained an assumed name certificate from the appropriate authority, or has registered to conduct business in Illinois and is in good standing with the Illinois Secretary of State.

G. If more favorable terms are granted by Consultant to any similar governmental entity in any state in a contemporaneous agreement let under the same or similar financial terms and circumstances for comparable supplies or services, the more favorable terms shall be applicable under this Agreement.

H. Consultant certifies that it is not delinquent in the payment of any fees, fines, damages, or debts to the City of Evanston.

## IX. INTEGRATION

This Agreement, together with Exhibits A, B, C, and D sets forth all the covenants, conditions and promises between the parties with regard to the subject matter set forth herein. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement. This Agreement has been negotiated and entered into by each party with the opportunity to consult with its counsel regarding the terms therein. No portion of the Agreement shall be construed against a party due to the fact that one party drafted that particular portion as the rule of *contra proferentem* shall not apply.

In the event of any inconsistency between this Agreement, and any Exhibits, this



**EXHIBIT A – Project Milestones and Deliverables**

This EXHIBIT A to that certain Consulting Agreement dated \_\_\_\_\_ between the City of Evanston, 2100 Ridge Avenue, Evanston, Illinois, 60201 (“City”) and Stanley Consultants (“Consultant”) sets forth the Commencement and Completion Date, Services, Fees, and Reimbursable Expenses as follows:

I. **COMMENCEMENT DATE:** August 2, 2015

II. **COMPLETION DATE:** October 30, 2015

III. **FEES:** \$95,993.69

IV. **SERVICES/SCOPE OF WORK:**

As defined in RFP # 10-91 (Exhibit B) and Consultants Response to Proposal  
Exhibit C  
Dated: