

3/6/2015

**33-R-15**

**A RESOLUTION**

**Authorizing the City Manager to Execute the Lincoln Street  
Resurfacing Project Agreement with Northwestern University**

WHEREAS, the City of Evanston (the "City") owns and operates the public streets throughout the City; and

WHEREAS, the City and Northwestern University ("Northwestern") wish to increase the load bearing capacity and resurface a portion of Lincoln Street in Evanston at their equal expense (the "Resurfacing Project"); and

WHEREAS, the City and Northwestern wish to enter into an agreement to cooperate in the planning and the execution of the Resurfacing Project and to equally share and allocate the costs,

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

**SECTION 1:** 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, the Resurfacing Project Agreement ("Agreement"), attached hereto as Exhibit A, by and between the City of Evanston and Northwestern.

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional conditions or terms of the Agreement as may be determined to be in the best interest of the City.

**SECTION 3:** 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.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: March 23, 2015

**EXHIBIT 1**

**Lincoln Street Resurfacing Project Agreement Between the City of Evanston and  
Northwestern University**

**LINCOLN STREET RESURFACING PROJECT**  
**AGREEMENT BETWEEN THE CITY OF EVANSTON AND**  
**NORTHWESTERN UNIVERSITY**

THIS AGREEMENT ("Agreement") is made as of March \_\_\_\_, 2015, by and between THE CITY OF EVANSTON, a municipal corporation (the "City") and NORTHWESTERN UNIVERSITY, an Illinois corporation (the "University") (collectively, "the Parties").

**RECITALS**

- A. The City owns and operates the public streets throughout the City.
- B. The City and the University wish to increase the load bearing capacity and resurface a portion of Lincoln Street in Evanston at their equal expense ("the Resurfacing Project"). The Resurfacing Project is described in Exhibit A, attached hereto and incorporated herein.
- C. So the City and the University may increase the load bearing capacity and resurface a portion of Lincoln Street, the City and the University agree, as specified herein, to cooperate in the planning and execution of the Resurfacing Project and to equally share costs.

NOW THEREFORE, in consideration of the mutual promises, undertakings, covenants and agreements of the parties, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by and between the parties as follows:

1. Term. The term of this Agreement ("Term") shall commence March \_\_, 2015 and shall expire upon completion and dedication of the Resurfacing Project which is intended to provide additional load bearing capacity and resurfacing of a portion of Lincoln Street.
2. Costs. The City and the University agree, subject to the terms of this Agreement, to share equally the costs of the Resurfacing Project. Expenses associated with design and construction work prepared by third parties shall be shared equally; however, each party shall be responsible for any internal costs the party may incur, such as costs associated with conducting internal design reviews or participating in project meetings.
3. Developing Plans and Specifications; Engaging Resurfacing Project Contractor. The University, in consultation with the City, will be responsible for developing plans and specifications. The Construction Documents will be reviewed and approved by the City prior to bidding. After plans and specifications have been mutually agreed to by the Parties, the University will bid the construction project to qualified contractors in accordance with University procedures. The selection of the contractor will be based upon experience and cost. The University shall negotiate the construction contract for the Resurfacing Project work with the selected contractor. Any material changes to the

construction contract, including those which may increase costs associated with the work, shall be by mutual agreement of the Parties.

4. Specific Insurance and Third Party Beneficiary Requirements of Construction Contract for Resurfacing Project. Any agreement for Resurfacing Project work the University enters into, including relating to any prime contractor or subcontractor, shall include the minimum insurance requirements as set forth the attached Exhibit B. It is hereby agreed and understood that all insurance shall be in full force prior to commencing work and remain in force until the entire project is completed. In addition, the contract between the University and contractor shall name the City as additional insured and shall identify the City as third party beneficiary with respect to the prime contract and any subcontract that the prime contractor may enter into with respect to the Resurfacing Project.
5. Compliance with Law; Permits. All Resurfacing Project work shall be conducted in accordance with applicable law. The University shall obtain, or shall have its contractor obtain, all necessary permits as required by the City and any other regulatory entity as may be required for this project. The City and the University shall be equally responsible for any fees associated with the permitting process.
6. Cost Sharing for Resurfacing Project. The University shall invoice the City for 50% of all incurred costs related to the design and construction of the Resurfacing Project. The City shall pay any uncontested amounts within [60] days of invoice.
7. Completion and Dedication. Upon completion of work as determined by the Engineer of Record, the City will inspect the work performed and sign-off on the work, which sign-off shall not be unreasonably delayed or denied. The University will provide the City with proof of releases of lien-waivers, and like documentation as customary in the industry, from the contractor showing that all payments have been made with respect to the Resurfacing Project. Upon the City's sign-off, the Lincoln Street improvements shall be, by operation of this agreement, transferred to the City and deemed to be incorporated into the City's system.

Contractor solely responsible for construction. The City and University agree and acknowledge that any warranties with respect to the construction work performed by the contractor under this Agreement shall solely be made by the contractor, and not any other party. Each party disclaims any warranties with respect to the construction work performed. Each party's performance under this Agreement shall be performed on an "as is" basis, without warranties of any kind.

8. Indemnification; Hold Harmless. To the extent permitted by law, each party ("Indemnifying Party") shall indemnify and hold harmless the other party and the other party's affiliates, parents, subsidiaries, trustees, directors, officers, agents, employees, invitees, and guests (collectively, "Indemnified Party") from and against any and all damages, claims, demands, suits, judgments, penalties, and costs (including reasonable attorneys' fees and expenses) and all liability imposed by law, including for or on account of damage to property or death of or injury to any person or persons (including

property and employees of the Indemnified Party), arising from the negligent or wrongful actions of the Indemnifying Party, its employees, agents, invitees, guests, or subcontractors pursuant to this Agreement. This provision is not intended to exculpate or indemnify the Indemnified Party against its own negligence or that of its agents, servants or employees. Notwithstanding the foregoing, to the extent that any damage, claim, demand, suit, judgment, penalty, cost, or liability (i) relates to the construction design or specifications agreed to by the Parties or (ii) arises out of actions taken by a contractor engaged on the Resurfacing Project, each party agrees to hold the other harmless and to seek recovery for any damages, claims, demands, suits, judgments, penalties, and costs from contractors engaged to perform Resurfacing Project work. In the event action is taken by either Party against a contractor relating to the Resurfacing Project, the Parties agree to cooperate in any such action; however, nothing in this Agreement shall require a Party to initiate any legal action against a third party. The obligations under this indemnification and hold harmless section shall survive termination of the Agreement.

9. Successors and Assigns. The rights and obligations of the parties hereto shall inure to the benefit of each of their successors and assigns; provided, however, any assignment shall only be by mutual agreement of the Parties.
10. No Real Estate Interest Transferred; Responsibility for Condition. This Agreement does not create an interest in real estate and the University acknowledges that the University does not and shall not claim at any time any interest of estate of any kind or extent whatsoever in any of the City's property by virtue of this Agreement or the University's Resurfacing Project. This Agreement is neither intended to, nor has the effect of, transferring either Party's interests in real property. Likewise, each Party will retain responsibility for the preexisting condition of such property and any costs associated with addressing such condition.
11. Independent Contractor/No Joint Venture. This Agreement shall not be deemed or construed to create or establish any relationship of partnership or joint venture or similar relationship or arrangement between the City and University.
12. Anti-Discrimination, Minority Business Enterprises, Etc. While University does not require minimum percentages of participation, University is committed to the goal of enhancing opportunities for minority/women/disadvantaged/local business enterprises. University requires bidders to submit a diversity plan, as part of the bidding process that governs the activities of the Contractor, Subcontractors, Sub-sub-contractors and Suppliers. University also tracks the utilization of M/W/D/LBEs through forms attached to payment requests.

AGREED TO BY:

**CITY OF EVANSTON**

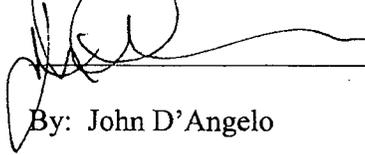
\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**NORTHWESTERN UNIVERSITY**

  
\_\_\_\_\_

By: John D'Angelo

Its: Vice President, Facilities Management

Date: 2 MAR 15

## **Exhibit A**

### **Project for design, documentation, and construction administration for the reconstruction of Lincoln Street east of Sheridan Road**

The project consists of the mill and hot mix asphalt surface overlay of approximately 380 linear feet of roadway for the entire width of Lincoln Street and the City of Evanston's driveway entrance on the north side of the street. Approximately 450 linear feet of full-depth removal of existing asphalt pavement section will be removed and replaced with a heavy-duty concrete base and hot mix asphalt overlay for the entire width of Lincoln Street east of Sheridan Road.

The project also consists of the removal and replacement of the existing sidewalk on the north side and the curb on both sides of Lincoln Street. The concrete band on the south side of Lincoln Street will be removed and all curb ramps and incidental sidewalk within the Lincoln Street right-of-way will be removed and replaced in compliance with the Illinois Accessibility Code. The Resurfacing Project will restore any adjacent landscaping that is impacted as a direct result of construction activities associated with the project.

The crosswalks, turn lanes, and centerlines of Lincoln Street will be restriped appropriate roadway signage will also be specified.

The project will include the installation of three to four light pole foundations, associated conduit, wiring and tie-ins on the north side of Lincoln Street. The poles and fixtures will be furnished and installed by the City of Evanston.

The project construction will be phased such that one lane of traffic is open at all times to allow access to the Northwestern University's Campus Drive. The project may consist of other incidental items to complete the work in the City of Evanston, as mutually agreed by the parties.

## Exhibit B: Minimum Insurance Requirements

### Contractor Insurance Requirements for Lincoln Street Resurfacing Project

#### Insurance Requirements

The contractor shall not commence work under this contract until all insurance required herein is obtained and approved by the University's Director of Risk Management. Nor shall the contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.

The contractor shall furnish the University's Project Manager with two (2) original Certificates of Insurance, with Northwestern University named as an additional insured, showing the following minimum coverage with an insurance company acceptable to the Director of Risk Management. Further, the Certificate of Insurance shall state that coverage provided is primary to any other coverage available to Northwestern University. The foregoing Certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days prior written notice has been given to Northwestern University.

Type of Insurance	Minimum Insurance Coverage Combined Single Limit Per Occurrence / Aggregate
<b>Commercial General Liability including:</b> <ol style="list-style-type: none"> <li>1. Premises - Operations</li> <li>2. Explosion, Underground and Collapse Hazard</li> <li>3. Products / Completed Operations</li> <li>4. Contractual Insurance</li> <li>5. Broad Form Property Damage</li> <li>6. Independent Contractors</li> <li>7. Bodily Injury</li> </ol>	\$10,000,000 / \$10,000,000
<b>Automobile Liability</b>  Owned, Non-owned, or Rented	\$10,000,000 / \$10,000,000
<b>Workers' Compensation and Occupational Diseases</b>	As Required by Applicable Laws
<b>Employer's Liability</b>	\$3,000,000

#### Indemnification

Contractor agrees to indemnify, save harmless and defend Northwestern University, its agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorneys' fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this contract, except to the extent that such loss results from the sole negligent act of Northwestern University.