

6/9/2015

64-R-15

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute an Easement Agreement with Northwestern University

WHEREAS, The City is the owner of two right-of-way sections of alley between (1) North of Haven, East of Orrington ("H" alley, eastern north/south leg); (2) North of Garrett Place, East of Orrington Avenue ("H" alley, western north/south leg) (collectively referred to as the "Property"), which are adjacent to Northwestern University's ("Northwestern") campus; and

WHEREAS, Northwestern seeks to demolish the existing alley street and construct a "green alley" with porous concrete alleys on the Property that services Northwestern's campus community, the City will waive the right-of-way permit fees and all remaining costs of construction will be paid for by Northwestern (the "Project"); and

WHEREAS, Northwestern has requested that the City grant to Northwestern a Temporary Construction Easement for the Project ("Easement Agreement") to conduct construction activities on the Property and the City has agreed to grant said easement and the City will maintain and repair the green alley following construction at its expense,

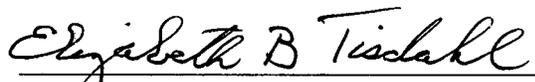
NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The City Manager is hereby authorized to execute the Easement Agreement with Northwestern, the agreement is attached hereto as Exhibit

1, the terms are incorporated herein by reference. The City is responsible for maintaining and repairing the Property after completion of the Project.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Easement Agreement as he may determine to be in the best interests of the City and in a form acceptable to the Corporation Counsel.

SECTION 3: That this Resolution 64-R-15 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: June 22, 2015

EXHIBIT 1

Easement Agreement

PROJECT AGREEMENT

THIS PROJECT AGREEMENT ("**Project Agreement**") is made as of _____, 2015 by and between THE CITY OF EVANSTON ("**City**") and NORTHWESTERN UNIVERSITY, an Illinois corporation ("**Northwestern**") (each referred to herein as "a Party" or, collectively, as "the Parties").

R E C I T A L S

A. The City is the owner of two right-of-way sections of alley between (1) North of Haven, East of Orrington ("H" alley, eastern north/south leg); (2) North of Garrett Place, East of Orrington Avenue ("H" alley, western north/south leg) (collectively referred to as the "**Property**"), which are adjacent to Northwestern's property commonly known as Northwestern University Evanston Campus.

B. Northwestern seeks to demolish the existing alley street and construct porous concrete alleys on the Property that service Northwestern's campus community (the "**Project**").

C. Northwestern has requested that the City grant to Northwestern a Temporary Construction Easement to use and access that portion of the Property identified in Exhibit 1 ("**Temporary Easement Area**") to conduct construction activities on the Property, solely for purposes of supporting construction on the Property, including staging, pouring of concrete, demolition and hauling away of broken concrete and other associated construction activities for the alley construction project. The City has agreed to grant such Temporary Construction Easement, subject to the terms and conditions of this Project Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated in and made a part of this Project Agreement as if fully set forth below, the mutual agreement of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Temporary Construction Easement. Subject to the terms of this Project Agreement, City will grant to Northwestern, its invitees, employees, agents, contractors and subcontractors, a Temporary Construction Easement for access over, upon, through and across the Property for construction of the porous concrete alleys on the Property and for no other purposes, the easement area is depicted on Exhibit 1 and incorporated herein by reference ("**Temporary Construction Easement**"). The Temporary Construct Easement shall commence ("**Project Term**"), after the Right-of-Way permit is issued by the City and expires November 15, 2015. The parties anticipate that the construction schedule is July 2015 – September 2015 to construct the alleys and Northwestern will complete punch list items for the Alleys in October and November 2015.

Northwestern is responsible for all construction staging, traffic control, and signage for the Project.

Together with the right of the Grantee, its successors and assigns, to go on said Temporary Construction Easement area with necessary labor, equipment, vehicles and material at any and all times for the purposes of facilitating the construction of the alleys on City Property, the City hereby grants and conveys to Northwestern contractors, subcontractors, agents, employees and representatives, a temporary construction easement ("**Temporary Construction Easement**") to enter in, upon, under and across the Property for the Project. Notwithstanding the terms stated in the project agreement between the parties (the "**Project Agreement**") which governs the demolition and construction of the Project in the alleys, said Temporary Construction Easement shall include the right and obligation to removal of existing of alley pavement, replacement of alley pavement and minor drainage improvements and restoring the Property to its condition that existed prior to the Northwestern's entry.

2. Porous Concrete Alley Construction. Northwestern shall adhere to all approved engineering plans and specifications that were approved by the City for this Project. The City and Northwestern agree that the Project shall be at the sole cost and expense of Northwestern, including any and all permit fees for the construction and the survey for the Project. Northwestern shall comply with all local, state and federal regulations during the Project Term for the Project improvements and obtain all necessary permits for construction. The City has agreed to waive the right-of-way permit fee for this Project. Notwithstanding the right-of-way permit fee, all costs associated with this Project shall be paid by Northwestern with no right of reimbursement by the City. Following completion of the Project, the City is responsible for performance and costs associated with maintenance and repair of the Property.

3. Environmental. Northwestern shall comply with all Environmental Laws (hereinafter defined) and shall not cause or permit any Hazardous Substances (hereinafter defined) to be brought, kept or stored on the Property, and shall not engage in or permit any other person or entity to engage in any activity, operation or business on the Property that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of Hazardous Substances. In the event that any work performed by or on behalf of Northwestern on or to the Property exposes, uncovers or results in the presence of Hazardous Substances on the Property (including presence in soils excavated in conjunction with the Project), Northwestern, at its sole cost and expense, shall be responsible for the remediation of such Hazardous Substances in accordance with Environmental Laws, except to the extent caused by City.

As used in this Project Agreement, "**Hazardous Substances**" means all hazardous or toxic materials, substances, pollutants, contaminants, or wastes currently identified as a hazardous substance or waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), as amended, the Superfund Amendments and Reauthorization Act ("**SARA**"), the Resource Conservation and Recovery Act ("**RCRA**"), or any other federal, state or local legislation or ordinances applicable to the Property. As used in this Project Agreement, "**Environmental Laws**" means all federal, state and local environmental laws, rules, statutes, directives, binding

written interpretations, binding written policies, ordinances and regulations issued by any governmental authority and in effect on or after the date of this Project Agreement with respect to or that otherwise pertain to or affect the Property, or any portion of the Property, the use, ownership, occupancy or operation of the Property, or any portion of the Property, or any owner of the Property, and as same have been amended, modified, or supplemented from time to time, including but not limited to CERCLA, the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), RCRA, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), SARA, comparable state and local laws, and any and all rules and regulations that are effective as of the date of this Project Agreement, or become effective after the date of this Project Agreement under any and all of the aforementioned laws.

4. Covenants and Conditions. Northwestern covenants, warrants and agrees that with respect to the activities contemplated under this Project Agreement that: (i) no waste or damage shall be committed upon or to the Property; (ii) the Property shall be used for only the purposes set forth herein; (iii) the Property shall not be used for any unlawful purpose and no violations of Laws (hereinafter defined) or duly constituted authority shall be committed thereon; (iv) Northwestern shall keep the Property in a clean and sanitary condition; (v) Northwestern shall not do or permit to be done anything upon the Property that may subject City to any liability for injury or damage to person or property, or result in a violation of any Laws and (vi) the work performed on or to the Property pursuant to this Project Agreement or the Construction and Site Plan shall not adversely affect the City's ability to use the Property, except as previously agreed to by the City and reflected in plan descriptions as previously represented to the City.

5. Insurance and Indemnification. Northwestern, or its contractors or subcontractors, shall procure and maintain for the duration of the Project Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Project by Northwestern, its agents, subcontractors, representatives and employees. Northwestern must give to the City Certificates of Insurance identifying City to be an Additional Insured for all Work done pursuant to this Project Agreement before City staff recommends award of the contract to City Council. Any limitations or modifications on the Certificate(s) 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 to this Section.

Such insurance will not be canceled or reduced without sixty (60) days prior written notice (hand delivered or registered mail) to City. Northwestern or its contractors or subcontractors shall promptly forward new certificate(s) of insurance evidencing the coverage(s) required herein upon annual renewal of the subject policies.

All insurance policies shall be written with insurance companies licensed or authorized to do business in the State of Illinois and having a rating of not less than A-XIII or better as published within the prior twelve months, or if none, the most recent edition of Best's Key Rating Guide, Property-Casualty Edition, or otherwise acceptable to City, which approval shall not be unreasonably withheld.

Any deductibles or self-insured retentions must be declared to and approved by City.

5.1.2 Commercial general liability coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a limit of not less than \$2,000,000 per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this Project Agreement or it shall be at least twice the required per occurrence limit. Deductibles shall be commensurate with industry practice.

Northwestern understands that the acceptance of Certificates of Insurance, policies, and any other documents by the City in no way releases the Contractor and its subcontractors from the requirements set forth herein.

5.1.3 Northwestern's, or contractor's or subcontractors', insurance and any insurance provided in compliance with these specifications shall be primary with respect to any insurance or self-insurance programs covering the City, its City Council and any officer, agent or employee of City.

In the event Northwestern, or contractor or subcontractor, fails to purchase or procure insurance as required above, the parties expressly agree that Northwestern 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 Northwestern.

5.1.4 All liability coverage required above shall name the City, its City Council and every officer, agent and employee of the City as an additional insured.

5.1.5 Where available, the insurer shall agree to waive all rights of subrogation against the City, its City Council and every officer, agent and employee of City.

In the event any insurance required to be maintained herein becomes unavailable or is not available on commercially reasonable terms, Northwestern shall maintain or shall cause to be maintained the best that is available on commercially reasonable terms as agreed to by the City in writing.

5.2 Indemnity

Northwestern shall defend, indemnify and hold harmless City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages ("Losses") as a result of claims, demands, suits, actions, or proceedings of

any kind or nature, including without limitation 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 Northwestern or Northwestern'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 Project Agreement.

Northwestern agrees to cooperate in the event any litigation is brought against the City by any party seeking to enjoin, restrain, or stop the Work contemplated by this Agreement. Nothing contained herein shall be construed as prohibiting 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. Northwestern 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 City and employees and agents, including without limitation the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.

At the City Corporation Counsel's option, Northwestern 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 Northwestern of any of its obligations under this Project Agreement. Any settlement of any claim or suit related to activities conducted under this Project by Northwestern 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 greatest extent permissible by law, Northwestern 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 Northwestern 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 without limitation, *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. All provisions of this section shall survive completion, expiration, or termination of this Agreement.

6. Compliance with Laws. Northwestern, at its cost and expense, shall be responsible for obtaining any and all permits, leases and other governmental approvals, leases, consents and authorizations which may be required for the use of the Property and exercise of its rights pursuant to this Project Agreement. Northwestern shall at all times comply with all applicable legal or governmental statutes, laws, codes, orders, requirements, regulations, ordinances and rules (collectively, "**Laws**").

7. Default. It shall be considered a "**Default**" under this Project Agreement if Northwestern fails to substantially comply with any provision of this Project Agreement

and does not cure such failure within 30 days after notice, except where the default cannot reasonably be cured in 30 days, in which case if Northwestern has begun and continues efforts to remedy the default as soon as practicable, then such additional time shall be given to remedy the default. In the event of a Default, the City may terminate this Project Agreement by written notice to Northwestern. Such termination right shall be in addition to all rights and remedies available to the City at law or in equity.

8. Third Party Beneficiaries; No Effect on Other Rights of the Parties. This Project Agreement is not intended to and in no way confers any rights upon third parties. This Project Agreement is not intended to and in no way confers any rights of access or use by the Parties, or any other third party, to either Party's property except as specifically described herein.

9. Attorneys' Fees, Jurisdiction for Disputes, and Governing Law. Should a party incur costs, charges and expenses, including court costs and attorneys' fees, to enforce rights or obligations under this Project Agreement, then such costs, charges, and expenses shall be recoverable from the other party. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois, excluding its choice of law rules. In the event of a dispute hereunder, the parties agree to submit to the exclusive jurisdiction of the state courts of, and federal courts sitting in, Cook County, Illinois.

10. Notices. Any notice, demand, request or other communication which any party may desire or may be required to give to any other party hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communication, by facsimile together with confirmation of transmission; (c) overnight courier; or (d) registered or certified United States mail, postage prepaid, return receipt requested.

If to Grantee: Northwestern University
Attn: Executive Vice President
633 Clark Street
Evanston, Illinois 60208

With a copy to: Northwestern University
Attn: Office of General Counsel
633 Clark Street
Evanston, Illinois 60208

If to the Grantor: City of Evanston
Attn: City Manager
2100 Ridge Avenue
Evanston, Illinois 60201

With a copy to: City of Evanston Law Department
Attn: Corporation Counsel
2100 Ridge Avenue

Evanston, IL 60201

11. Entire Agreement. This Project Agreement shall constitute the entire contract between the parties and shall supersede any and all prior agreements between the parties hereto with respect to the granting use of the Property to Northwestern. No modification, waiver or amendment of this Lease Agreement or any provision hereof shall be valid unless the same is in writing, and signed by both parties hereto.

12. Counterparts. This Project Agreement may be executed in any one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one Project Agreement.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

NORTHWESTERN

CITY:

NORTHWESTERN UNIVERSITY, an Illinois corporation

CITY OF EVANSTON, a municipal corporation in the State of Illinois

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT 1

Temporary Easement Area

2015 ALLEY RECONSTRUCTION

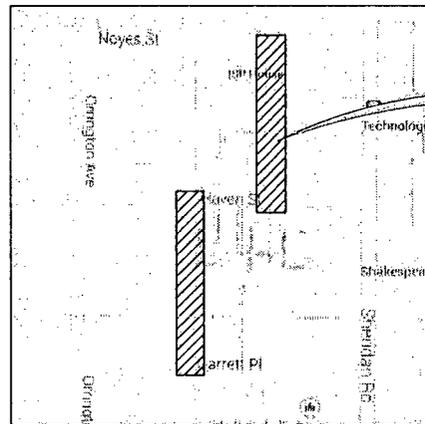
NORTHWESTERN UNIVERSITY

CITY OF EVANSTON, ILLINOIS

STANDARD SYMBOLS

FEATURE	EXISTING	PROPOSED
BUFFALO BOX		
BUSH/SHRUB		
CATCH BASIN		
CLEANOUT		
COMBINE SEWER LINE		
CONTOUR		
CULVERT		
DITCH/SWALE		
ELECTRIC LINE		
ELECTRIC MANHOLE		
FENCE		
FIRE HYDRANT		
FLARED END SECTION		
GAS LINE		
GAS MANHOLE		
GAS VALVE		
WELT		
LIGHT POLE		
OVERHEAD WIRES		
POWER POLE		
P.O.W. LINE		
P.O.W. MARKER		
SANITARY FORCEMAIN LINE		
SANITARY SEWER LINE		
SANITARY SEWER MANHOLE		
SHOW		
SPOT ELEVATION		
STORM SEWER LINE		
STORM SEWER MANHOLE		
TELEPHONE LINE		
TELEPHONE MANHOLE		
TELEPHONE BOX/PEDESTAL		
TREE-CONIFEROUS (SIZE/TAG#)		
TREE-DECIDUOUS (SIZE/TAG#)		
VALVE BOX		
VALVE VAULT		
WATER VALVE		
WATERMAIN LINE		

LOCATION MAP



PROJECT LOCATION

VARIOUS ALLEYS
NORTHWESTERN UNIVERSITY
EVANSTON, ILLINOIS

OWNER:
Northwestern University
1881 Sheridan Road
Evanston, Illinois 60208

NOTE: SHERMAN AVENUE IS THE NEAREST CITY TRUCK ROUTE. TRUCKS ARE PROHIBITED ON SHERIDAN ROAD.

BENCHMARK:

SOURCE BENCHMARK: NWU-010
LOCATED APPROX 100' E OF GARRETT PL AND SHERIDAN RD.
ON SOUTH SIDEWALK, APPROX 20' SOUTH OF CENTERLINE
GARRETT PL, 33.7' NW OF NW CORNER, 11.8' SE OF SIGN.
ELEVATION: 18.58 (EVANSTON DATUM)

SOURCE BENCHMARK: NWU-004
7" ON CONCRETE, ON LIGHT POLE BASE IN PARKING LOT AT
SW CORNER OF NOYES ST AND SHERIDAN RD, 21.0' S OF N
LIGHT POLE, 80.5' WEST OF NW CORNER OF CONCRETE LOT.
ELEVATION: 18.33 (EVANSTON DATUM)

CONTROL POINTS:

Point #	Northing	Easting	Elevation	Description
100	1984522.71	1182927.96	15.91	CP100-SIGN
101	1984385.47	1182194.39	15.00	WP102-SUR-WHT
102	1983963.31	1182970.33	18.23	WP104-SUR
103	1983838.08	1183018.44	18.91	WP105-SUR
104	1983725.57	1181991.38	15.87	WP106-SUR

JULIE
JOINT
UTILITY
LOCATION
INFORMATION
FOR
EXCAVATION
CALL 811

Know what's below.
Call before you dig.

NOTE: CONSTRUCTION MEANS, METHODS AND JOB
SITE SAFETY IS THE SOLE AND EXCLUSIVE
RESPONSIBILITY OF THE CONTRACTOR

EXISTING UTILITIES: WHEN THE PLANS OR SPECIAL PROVISIONS INCLUDE INFORMATION PERTAINING TO THE LOCATION OF UNDERGROUND UTILITY FACILITIES, SUCH INFORMATION REPRESENTS ONLY THE OPINION OF THE ENGINEER AS TO THE LOCATION OF SUCH UTILITIES AND IS ONLY INCLUDED FOR THE CONVENIENCE OF THE BIDDER. THE ENGINEER AND OWNER ASSUME NO RESPONSIBILITY WHATSOEVER IN RESPECT TO THE SUFFICIENCY OR ACCURACY OF THE INFORMATION SHOWN ON THE PLANS RELATIVE TO THE LOCATION OF UNDERGROUND UTILITY FACILITIES OR THE MANNER IN WHICH THEY ARE TO BE REMOVED OR ADJUSTED. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE ACTUAL LOCATION OF ALL SUCH FACILITIES. HE SHALL ALSO OBTAIN FROM THE RESPECTIVE UTILITY COMPANIES, DETAILED INFORMATION RELATIVE TO THE LOCATION OF THEIR FACILITIES AND THE WORKING SCHEDULES OF THE UTILITY COMPANIES FOR REMOVING OR ADJUSTING THEM.

CONTRACTOR IS RESPONSIBLE FOR CONTACTING JULIE AT 1-800-892-0123 AND MUST ACQUIRE A C.A. NUMBER A MINIMUM OF 72 HOURS PRIOR TO ANY WORK BEING DONE.

SHEET INDEX

1. TITLE SHEET
2. SUMMARY OF QUANTITIES
3. ALLEY IMPROVEMENTS
4. ALLEY IMPROVEMENTS
5. GENERAL NOTES
6. DETAILS

TOPOGRAPHIC SURVEY BY:
Geant! Hamilton Associates, Inc.
850 Forest Edge Drive
Vernon Hills, Illinois 60061
Telephone: 847-478-9700

COORDINATING/PERMITTING AGENCIES:

Northwestern University 847-487-2833
City of Evanston 847-968-2967

ISSUED FOR BIDDING

GHA GEWALT HAMILTON
ASSOCIATES, INC.
625 Forest Edge Drive • Vernon Hills, IL 60061
TEL 847.478.9700 • FAX 847.478.9701

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TITLE SHEET

2015 ALLEY RECONSTRUCTION
NORTHWESTERN UNIVERSITY
CITY OF EVANSTON, ILLINOIS

NO.	BY	DATE	REVISION	NO.	BY	DATE	REVISION

FILE: 4550.022 PR-1.dwg	SHEET NUMBER
DRAWN BY: BJM	CIA PROJECT #
DATE: 5/4/15	4550.022
CHECKED BY: SOB	SCALE:
DATE: 5/4/15	N.T.S.
	OF 6 SHEETS