

**66-R-18**

**A RESOLUTION**

**Authorizing the City Manager to Negotiate and Execute an Easement Agreement with Northwestern University for the Replacement of the Underground Water Storage Reservoir at Lincoln Street and Campus Drive**

**WHEREAS**, Northwestern is the owner of certain real property at the southwest corner of Lincoln Street and Campus Drive, east of Sheridan Road, Evanston, Illinois, which is legally described in Exhibit 1 to Easement Agreement attached to this Resolution as Exhibit A (the "Property"); and

**WHEREAS**, The Property is approximately 1.15 acres and is improved with an underground reservoir that stores up to 5 Million gallons of water (the "Existing Reservoir"), which was constructed in 1934 pursuant to that certain easement agreement between the parties dated January 22, 1934 and recorded at Book 31189, Page 483 in the Office of the Cook County Recorder of Deeds (the "1934 Easement"); and

**WHEREAS**, City desires to dismantle and reconstruct the Existing Reservoir and replace the same with a new reinforced concrete reservoir (the "New Reservoir") for storage of water (such removal of the Existing Reservoir and construction of the New Reservoir, the "Project"); and

**WHEREAS**, City operates a water utility service and a water plant directly north of the Property; and

**WHEREAS**, City wishes to obtain (i) a temporary easement for the Project for removal of the Existing Reservoir and the construction and installation of the New

Reservoir (the "Construction Easement"), and (ii) an easement on and under the Property for the purpose of use, maintenance and repair of the New Reservoir, all on the terms set forth in the attached agreement as Exhibit A hereof; and

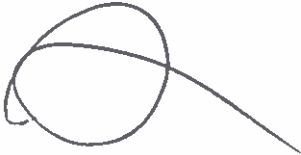
**WHEREAS**, the City Council hereby finds that the best interests of Evanston are served by entering into the attached easement agreement with Northwestern University to ensure that the City can continue to provide water to its residents and customers for many years to come,

**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 University, attached hereto as Exhibit A, the terms are incorporated herein by reference.

**SECTION 2:** The City Manager is hereby authorized 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 66-R-18 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

Attest:   
\_\_\_\_\_  
Devon Reid, City Clerk

  
\_\_\_\_\_  
Stephen H. Hagerly, Mayor

Approved as to form:  
  
\_\_\_\_\_  
Michelle L. Masoncup, Corporation Counsel

Adopted: September 17, 2018

**EXHIBIT A**  
**Easement Agreement**

MAIL TO:  
CITY OF EVANSTON  
ATTN: CORPORATION COUNSEL  
2100 RIDGE AVENUE  
EVANSTON, IL 60201

*This space reserved for Recorder's use only.*

## RESERVOIR EASEMENT AGREEMENT

THIS RESERVOIR EASEMENT AGREEMENT (“**Easement Agreement**”) is made as of \_\_\_\_\_, 2018 (the “**Effective Date**”), by and between NORTHWESTERN UNIVERSITY (“**Northwestern**”) and CITY OF EVANSTON (“**City**”) (each referred to herein as “**Party**” or, collectively, as “**the Parties**”).

### RECITALS

A. Northwestern is the owner of certain real property at the southwest corner of Lincoln Street and Campus Drive, east of Sheridan Road, Evanston, Illinois, which is legally described in the Plat of Easement attached as Exhibit 1 and incorporated herein (the “**Property**”). The Property is approximately 1.15 acres and is improved with an underground reservoir that stores up to 5 Million gallons of water (the “**Existing Reservoir**”), which was constructed in 1934 pursuant to that certain easement agreement between the parties dated January 22, 1934 and recorded at Book 31189, Page 483 in the Office of the Cook County Recorder of Deeds (the “**1934 Easement**”).

B. City desires to dismantle and reconstruct the Existing Reservoir and replace the same with a new reinforced concrete reservoir (the “**New Reservoir**”) for storage of water (such removal of the Existing Reservoir and construction of the New Reservoir, the “**Project**”).

C. City operates a water utility service and a water plant directly north of the Property.

D. City wishes to obtain (i) a temporary easement for the Project in the area crosshatched on Exhibit 2 attached hereto (the “**Construction Easement Area**”) for removal of the Existing Reservoir and the construction and installation of the New Reservoir (the “**Construction Easement**”), and (ii) an easement on and under the Property crosshatched on Exhibit 1 attached hereto (the “**Continuing Easement Area**”, and together with the Construction Easement Area, the “**Easement Areas**”) for the purpose of use, maintenance and repair of the

New Reservoir (the “**Continuing Easement**”, and together with the Construction Easement, the “**Easements**”), all on the terms set forth in Section I hereof.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated in and made a part of this Easement 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. Construction Easement.

a. From the Commencement Date until the Completion Date (each as hereinafter defined) (the “**Construction Period**”), Northwestern hereby grants to City the temporary non-exclusive right to enter the Construction Easement Area to, dismantle, disassemble and remove the Existing Reservoir (the “**Removal Work**”), and construct and install the New Reservoir and all underground and surface appurtenances thereto, including electric and other related control systems, underground pipes, and vaults (the “**Installation Work**”, and together with the Removal Work, the “**Construction Activities**”) on the terms set forth in this Easement Agreement. The Construction Easement includes and confers upon City the (i) right to bring any materials and equipment upon the Construction Easement Area reasonably necessary, in accordance with generally accepted construction industry standards then in effect with respect to similar projects, to perform the Construction Activities, and (ii) right of access for construction vehicles over street, roadways, driveways and parking areas located within the Construction Easement Area on the terms set forth in this Easement Agreement. Northwestern shall have the right to enter the Construction Easement Area in the event of an emergency during the Construction Period.

b. City shall commence the Construction Activities within twenty-four (24) months of the Effective Date. The date on which the Construction Activities begin shall hereinafter be referred to as the “**Commencement Date**”. The Construction Activities within the easement will be completed within twenty-one (21) months of the Commencement Date (such date, the “**Completion Date**”, and the period between the Commencement Date and the Completion Date, the “**Construction Period**”). The City’s agreement with the contractor will include provisions for liquidated damages if construction within the easement continues for more than 21 months, and incentive payments if construction is completed early.

c. The removal of the Existing Reservoir and the construction and installation of the New Reservoir shall be performed and completed in accordance with Plans and Specifications (as hereinafter defined) prepared by or at the direction of City, at City’s sole expense, a preliminary version of which (the “**Preliminary Plans and Specifications Requirements**”) shall be provided to Northwestern for its review and approval no less than one hundred eighty (180) days prior to the Commencement Date (as hereinafter defined), and the Preliminary Plans and Specifications shall set forth on the attached Exhibit 3.

d. Northwestern may review and consider in connection therewith all matters involved with the Preliminary Plans and Specifications, including, without limitation, engineering and design characteristics, aesthetic considerations, and potential impact on its Evanston, IL campus. Within thirty (30) days after submission of all required Preliminary Plans

and Specifications to Northwestern, Northwestern shall notify City in writing of any comments and proposed revisions to the Preliminary Plans and Specifications. The Parties will work together to achieve a solution with respect to any issues with the Preliminary Plans. The University will not unreasonably withhold approval and, with respect to the engineering and design characteristics of the reservoir itself, final approval rests with the City of Evanston. Any disapproval shall set forth the general reason or reasons for such disapproval and any conditional approval shall specifically state the conditions that must be satisfied in order to procure Northwestern's approval. No Construction Activities shall be commenced until the receipt of Northwestern's written approval of the Preliminary Plans and Specifications (as so approved in full, the "**Plans and Specifications**"). Notwithstanding the foregoing, in no event shall Northwestern be required to review particular piecemeal submissions.

e. If Northwestern provides comments and requests revisions to any part of the Preliminary Plans and Specifications, City will consider revisions to the Preliminary Plans and Specifications to incorporate Northwestern's required changes and shall deliver two (2) sets of the revised Preliminary Plans and Specifications to Northwestern. The City will provide any updated plans to Northwestern for further review of the revised Preliminary Plans and Specifications and provided an opportunity to provide additional feedback and review. .

f. Neither Northwestern nor its past, present or future agents, attorneys, tenants, partners, employees, trustees, directors, administrators, affiliates, successors or assigns (the "**Northwestern Parties**") shall have any liability whatsoever to any person or City (i) as a result of the review of any Preliminary Plans or Specifications as provided herein, or with respect to any defects, omissions, inconsistencies, or shortcomings contained in the Preliminary Plans and Specifications, in the Plans and Specifications, in the removal of the Existing Reservoir, or in the New Reservoir or other improvements removed or constructed or made in accordance with the Plans or Specifications; (ii) in connection with the performance of the duties or rights of Northwestern as provided herein.

g. City shall cause the Construction Activities to be (i) completed in accordance with the Plans and Specifications approved by Northwestern as set forth above, and performed in a good and workman like manner, and in compliance with all applicable governmental authorities, public bodies and other entities having jurisdiction, and all applicable laws, codes, ordinances, rules and regulations of such authorities, including all zoning laws and building codes, and including the Americans with Disabilities Act of 1990 (collectively, "**Applicable Laws**"), and (ii) completed in accordance with Northwestern's fencing and signage standards, to be provided to the City by Northwestern prior to execution of this Agreement. City shall not place any signage on any property owned by Northwestern, including the Easement Areas, without Northwestern's prior written approval of the substance, design, and location of the signs. City's Contractor will secure all licenses and permits from governmental authorities, public bodies and other entities necessary for the Project, and no Construction Activities shall be commenced on the Property unless and until City delivers to Northwestern a true and correct copy of the building permits therefor evidencing compliance with Applicable Laws. City shall, at all times, require that the contractor or subcontractors take any and all safety measures required under good construction practices to protect the Property and City's employees, agents, licensees, and invitees (the "**City Parties**") and City's contractors and subcontractors of all tiers working on the Project (the "**City's Contractors**") from injury or damage caused by or resulting

from the performance of the Construction Activities or any other work. The City will require that the Contractor maintain a comprehensive Health and Safety Program meeting the requirements of the Safety, Health, and Emergency Response section of the Specifications.

h. City shall ensure that the City's Contractors keep the Easement Areas and the Property and every part thereof free and clear of any and all liens and encumbrances for work performed by City, or on City's behalf, on the Easement Area, provided that the City's Contractors may contest any such liens in good faith using appropriate legal proceedings.

i. City shall minimize any disruption or inconvenience to Northwestern (or the area of its campus surrounding the Property) caused by the Construction Activities, and shall provide for the safety and convenience of Northwestern's employees, students, visitors, licensees and invitees. City agrees not to conduct any Construction Activities within the construction easement prior to 8:00 a.m. Chicago time. During academic breaks set forth on Exhibit 4, the Parties agree that construction may commence at 7:00 a.m. Chicago Time and continue overnight with the approval of Northwestern. Northwestern acknowledges that the west lane of Campus Drive will be closed during construction and cannot be opened for any of the events outlined on Exhibit 4. The Parties will also meet and confer to develop workouts for unique circumstances during the Project and handle on case by case basis. These circumstances include but not limited to items set forth on Exhibit 4 such as: graduation and critical parts of the Project in which overnight work is necessary. In the event that any of the City Parties or the City's Contractors unreasonably interferes with Northwestern's ability to conduct its business in the area surrounding the Property, Northwestern shall have the right to require that City immediately replace any such disruptive City Parties or City's Contractors. Notwithstanding the foregoing but subject to the terms of this Section 1(i), Northwestern agrees that (i) the western lane of North Campus Drive immediately adjacent to the Construction Easement Area shall be impacted during the entire Construction Period, including the need to close the westernmost (inbound) lane and restrict traffic patterns to one lane, and (ii) North Campus Drive shall be fully closed between 7 p.m. and 5 a.m. during critical construction activities, provided, however, that all full closures shall be coordinated with Northwestern no less than ten (10) business days prior to any such full closure to accommodate the academic schedule, other University activities, and other constraints such as emergency response vehicle access to the campus, (iii) North Campus Drive will be fully closed for up to a 5-day period for up to 5 occurrences during critical construction activities (examples of work requiring extended shutdown include: sheetpile installation, connection to existing water main on Lincoln, electrical ductbank, and repaving curb and gutter), provided, however, that no such full closures shall occur prior to June 1, 2019 and all such full closures shall be coordinated with Northwestern no less than ten (10) business days prior to any such full closure to accommodate the academic schedule, other University activities, and other constraints such as emergency response vehicle access to the campus, and (iv) in no event shall any Construction Activities occur, on the days (or during the time periods, as applicable) set forth on Exhibit 4 attached hereto and made a part hereof, and such additional dates as provided by Northwestern. During the Construction Period, City will cause City's Contractor's to provide adequate flaggers at the construction site along North Campus Drive, at the intersection of Lincoln and Sheridan and, when it opens in Spring 2019, flaggers at the East and West ends of North Tech Drive. The City will cause Contractor flaggers to provide a safe and orderly traffic and walking environment for motorists, pedestrians, and bikers throughout the entire Construction Period. The City agrees to meet and confer with the University to develop

workouts and solutions should issues arise during the Project and will direct its Contractor to address as agreed between the Parties.

j. Except for the utilities shown to be removed in the Plans and Specifications, the City agrees to ensure that the City's Contractors protect all existing utility and other facilities within and serving the Property, including, but not limited to, water system and appurtenances, sewer system and appurtenances, street light and traffic signal systems and appurtenances, and fiber optic system and appurtenances. Notwithstanding the foregoing, if City shall relocate, damage, or remove any utilities belonging to Northwestern within or serving the Property (or cause any of the foregoing to be done), it shall restore and, on or before the Completion Date, replace such utilities at no cost to Northwestern. Prior to the removal of any utilities, City shall notify Northwestern no less than ten (10) business days prior to such removal, and shall, at Northwestern's request, during the period that such utilities are removed or damaged and not fully restored, provide to Northwestern an alternative source for the subject utility.

k. Following the Installation Work but prior to the Completion Date, and at City's sole cost and expense, City shall (i) ensure that the City Parties and the City's Contractors remove all debris and rubbish from and about the Property caused by the Construction Activities, as well as their tools, construction equipment, machinery, surplus materials, and leave the Property free of such materials, (ii) grade the Property pursuant to the Plans and Specifications, (iii) fully restore the top of the Property in accordance with the Plans and Specifications, and (iv) provide evidence to Northwestern, at City's cost, that the Construction Activities have been performed and paid for by the City, which evidence shall include executed lien waivers, architect's certificates, contractor's statements (including, if applicable, AIA Form G702 and G703), and owner's statements covering the Construction Activities, and such other documentation as may be reasonably requested by Northwestern. Northwestern may order, at Northwestern's sole cost and expense, a date down endorsement to Northwestern's title policy for the Construction Easement Area showing no exceptions for liens or other matters relating to the Construction Activities. The foregoing cleaning, grading and restoration shall be deemed part of the Construction Activities.

l. Prior to commencing any Construction Activities, City shall (a) provide to Northwestern evidence (in the form of the City's Capital Improvement Budget, copy of City Council action approving the contract with the contractor, and any other supporting documentation requested by Northwestern) of City's funding for and ability to pay for the full cost of the Construction Activities, and (b) the City will require the contractor to obtain a performance bond for 110% of the cost of the Project (the "Performance Bond") covering the faithful performance and completion of the Construction Activities. The Performance Bond shall be issued from a surety licensed in Illinois, and approved by the City. The Performance Bond obligees will be Northwestern and the City. If the cost of the Construction Activities increases, City shall mandate that the contractor increase the Performance Bond accordingly and shall provide proof to Northwestern of such adjustment. Notwithstanding any notice and cure periods set forth in Section 10, in the event that City has not completed the Construction Activities within twenty-one (21) months following the Commencement Date, City agrees that such failure will be a default under this Easement Agreement, which shall allow Northwestern to require the surety under the Performance Bond to promptly complete the Construction Activities; provided, however that Northwestern will not, during the Contractor Cure Period (as defined



below) only, exercise its rights under the Performance Bond to require the surety to complete the Construction Activities if the City has, within five (5) business days following the date that is twenty-one (21) months after the Commencement Date, issued a notice of default to the Contractor (with a copy to Northwestern) and the Contractor does not complete the Construction Activities within sixty (60) days following the date of the city's notice of default (the "Contractor Cure Period"). With respect to Northwestern's election to require the surety under the Performance Bond to promptly complete the Construction Activities pursuant to the terms of this Easement Agreement, (i) Northwestern shall meet and confer with the City prior to issuing notice of such election, (ii) no notice to the surety shall be required under this Easement Agreement or the Performance Bond (other than a demand for performance by the surety), (ii) no payment shall be required from Northwestern, (iii) neither this Easement Agreement nor the Performance Bond shall require any additional conference or meeting, and (iv) the termination of the contract for construction by City shall not be required. If Northwestern exercises such right, the surety under the Performance Bond shall be obligated to complete or to pay for the completion of the Construction Activities whether or not the City is in default under, or makes all payments required by, the construction agreement for the Construction Activities.

2. Continuing Easement.

a. From and after the Completion Date until the last day of the ninety-fifth (95<sup>th</sup>) year thereafter (the period between the Completion Date and the end of such 95<sup>th</sup> year, the "Continuing Easement Period"), Northwestern hereby grants to City the non-exclusive right to enter, the Continuing Easement Area to inspect, maintain, repair, and operate the New Reservoir (the "Use Activities") and all underground and surface appurtenances thereto, including electric and other related control systems, underground pipes, and vaults. By way of example and not by way of limitation, the parties intend to include within the term "pipelines" and "appurtenances" the following: overflow structure, pumping facilities, groundwater control system, instrumentation, water mains and conduit valves, vaults, manholes, control systems, ventilators, in the Continuing Easement Area.

b. Nothing herein shall be construed to give to City any right in and/or to the title to the Property, but must only be construed to give it the right to use and operate said New Reservoir for the storage of water, upon the terms and provisions herein set forth; and nothing in this Easement Agreement contained can be construed to prevent Northwestern from making use of the land, in conformance with the parameters set forth in Section 5.

c. Excluding minor repairs, non-disruptive activities and emergency repairs, the City shall notify Northwestern no less than fourteen (14) days' prior to its entry onto the Property for any of the Use Activities; provided, however, that in the event of an emergency, City shall have the right to enter the Property to remedy such emergency without notice to Northwestern but shall notify Northwestern as soon as reasonably possible thereafter. The City will provide Northwestern with a typical maintenance plan and the estimated frequency of the maintenance activities following construction of the Project.

d. In the event that the Property is damaged or disturbed during City's performance of any of the Use Activities, City shall promptly restore the Property to its condition prior to the Use Activities. Any modifications or repairs made to the New Reservoir will be

promptly completed by City, at its sole cost, in a manner that maintains the integrity of the structure and membrane coating system.

3. Covenant. This grant shall constitute a covenant, which runs with the land, and shall be binding upon successors and assigns of Northwestern. City shall have the right to maintain and use the New Reservoir for the storage of water in connection with its water plant, so long as the same is owned by the City of Evanston supply system. If City sells or otherwise disposes of its water works system, or defaults under the terms of this Easement Agreement beyond any applicable notice and cure periods and Northwestern terminates this Easement Agreement, the right of the City of Evanston to further maintain and use the New Reservoir must cease and City will fill in said reservoir within six (6) months (or such longer period as may be directed by Northwestern) with suitable material and restore site conditions disturbed in doing so, in accordance with plans approved by Northwestern. City shall keep the reservoir structure in good repair and safe.

4. Easement Fee. In consideration of City providing safe and reliable water service to Northwestern and its users, Northwestern will not assess an easement fee for use of the Easement Areas. City shall be solely responsible for any cost and expenditure associated in any way with the Project and the New Reservoir during the duration of this Easement Agreement.

5. Northwestern's Use of Property. Northwestern shall have the continuing right to use the Continuing Easement Area, subject to the terms of this Section 5. Northwestern shall not construct or place any structure or building, retaining walls, street light, or power pole, on any part of the Continuing Easement Area. The structural design of the New Reservoir will allow up to 480 psf soil dead load plus uniform live load of 100 psf or HS20 truck, placed so as to induce worst case loading effects. Therefore, Northwestern shall not do any of the following:

a. contingent upon the City permanently reducing the number of required parking spots that Northwestern must maintain on the Evanston Campus by altering City code, Northwestern will agree to disallow parking in the Continuing Easement Area except if a vehicle is temporarily parked in the Continuing Easement Area for emergency response or maintenance of the Property;

b. use pesticides or fertilizers on surfaces in the Continuing Easement Area without prior notice to and approval from City;

c. use chloride salts on paved surfaces in the Continuing Easement Area without prior notice to and approval from City;

d. alter the New Reservoir, penetrate the New Reservoir (including the roof, walls, or any ancillary structures) or penetrate membrane coatings without approval from the City of Evanston;

e. perform any construction, renovations, and/or repair beyond the scope of normal maintenance to the Continuing Easement Area without submitting plans to the City for review and comment for its potential impact on the Reservoir (as part of the zoning and building permit process outlined in the City Code); and

f. make any changes to the Property that would violate any regulations set forth by the National and State bodies of the Environmental Protection Agency;

g. allow changes in surrounding elevations that would cause overland stormwater flow to be directed toward the New Reservoir.

2. Environmental.

a. The Parties 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 or under the Property, and shall not engage in or permit any other person or entity to engage in any activity, operation or business in the Easement Areas that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of Hazardous Substances, except as needed for the proper operation of the New Reservoir, including but not limited to City's use of chlorine for the disinfection of the New Reservoir. If any such Hazardous Substances are spilled, leaked, discharged or otherwise released at the Property, City shall notify Northwestern of the release within twenty-four (24) hours, and City shall be solely responsible, at its sole cost and expense, for any other notification and response actions, and for any remediation, each as required by Applicable Law. Any such required remediation shall be completed as promptly as reasonably possible.

b. "**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 Easement 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 Easement 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 the 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, the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), comparable state and local laws, and any and all rules and regulations that are effective as of the date of this Easement Agreement, or become effective after the date of this Easement Agreement under any and all of the aforementioned laws.

c. Notwithstanding any other provision in this Easement Agreement, City shall defend, indemnify, and hold harmless the Northwestern Parties 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, (collectively "Claims") resulting from or arising out of any violation of Environmental Law and/or release of Hazardous Substances by the City Parties or the City's Contractors during the performance of the demolition, construction, repair or operation of the Project or New Reservoir. This provision shall survive completion, expiration, or termination of this Easement Agreement.

3. Covenants and Conditions. City covenants, warrants and agrees that with respect to the activities contemplated under this Easement Agreement that: (i) no waste or damage shall be committed upon or to the Easement Areas; (ii) the Easement Areas shall be used for only the purposes set forth herein; (iii) the Easement Areas shall not be used for any unlawful purpose and no violations of Applicable Laws or duly constituted authority shall be committed thereon; and (iv) City shall not do or permit to be done anything under the Easement Areas that may subject Northwestern to any liability for injury or damage to person or property, or result in a violation of any Applicable Laws. The Parties cannot assign or transfer its interest in or rights under this Easement Agreement without the prior, written consent of other party, said consent shall not be unreasonably withheld. Northwestern shall notify the City in writing not less than sixty (60) days following any assignment or transfer of Northwestern's interest in this Easement Agreement.

4. Indemnification. City shall defend, indemnify, and hold harmless the Northwestern Parties from any and all Losses as a result of Claims resulting from or arising out of (i) any act or omission on the part of the City Parties (or any of them) during the Removal Activities, the Installation Activities, or the Use Activities, or (ii) any breach of the terms of this Easement Agreement by the City Parties (or any of them). 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 Easement Agreement. This indemnification does not apply if the liability, loss or damage arises out of the gross negligence or willful act by Northwestern, its employees, contractors, and agents.

City agrees to cooperate in the event any litigation is brought against Northwestern by any party seeking to enjoin, restrain, or stop the Removal Activities, Construction Activities or Use Activities, as 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. City shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits.

5. Insurance.

a. From and after the Effective Date and during the Construction Period, the City will require its contractor to carry and maintain at their own cost with such companies as are reasonably acceptable to the City with review by Northwestern, the following insurance:

- (i) Comprehensive General Liability Insurance including (i) broad form contractual liability, (ii) completed operations/product liability with a two year extension beyond completion and acceptance of such contract work, (iii) broad form

property damage including completed operations, (iv) X C & U exclusion deleted where applicable, and (v) bodily injury, including death.

- (ii) Comprehensive Automobile Liability Insurance including the ownership, maintenance and operations of any automotive equipment owned, hired and non-owned, including loading and unloading of any automobile, which insurance shall insure the City Parties against any and all claims for bodily injury, including death resulting therefrom and damage to the property of others arising from its operations under its contract with the City, whether such operations are performed by City's Contractors or by anyone directly or indirectly employed by any of them,
- (iii) Owner's Protective Liability Insurance insuring the City against any and all liability to third parties for damage because of bodily injury liability including death resulting therefrom, which may arise from the Construction Activities, and any other liability for damages which the City's Contractors are required to insure under any provisions herein.
- (iv) Worker's compensation insurance covering City employees in an amount in conformance with statutory requirements, and employer's liability insurance in the amount of \$500,000.

All liability insurance required in (i), (ii) and (iii) above, shall have combined single limits of at least \$5,000,000.00 and shall name the City and Northwestern as an additional insured. Such limits may be met with a combination of primary and excess (umbrella) policies. The coverage afforded the additional insureds shall be primary, non-contributory insurance for the additional insureds with respect to claims arising out of operations performed by or on behalf of City, and any other insurance maintained by such additional insureds shall be on an excess or contingent basis. All physical damage insurance shall be in amounts at least equal to the full replacement cost of the covered items and shall not be subject to the application of any coinsurance clauses or requirements. All policies shall waive rights of subrogation and recovery against Northwestern.

Following completion of construction and for the Continuing Easement Period referenced in 2(a), the City of Evanston is self-insured up to \$1.25 Million and has excess coverage up to \$20 Million. The City will issue a certificate of insurance, with these policy limits and policy numbers naming Northwestern University as additional insured. If the coverage limits change, the City will provide notification to Northwestern and issue a new Certificate of Insurance.

b. Prior to the Effective Date, and from time to time upon request by Northwestern, City will provide copies of the policies of insurance evidencing the coverage and amounts set forth in this Section. The City's contractor 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 Northwestern. City understands that the acceptance of certificates, policies and any other documents by the Northwestern in no way releases the City Parties or the City's Contractors from the requirements set forth herein.

c. The City's Contractors shall maintain, and, prior to the Commencement Date, shall provide to Northwestern insurance certificates evidencing, insurance coverage of the types and in the amounts set forth on Exhibit 5 attached hereto and made a part hereof or such other amounts and types reasonably requested by Northwestern and/or City. In the event that City's Contractors (or any of them) fail to provide the required insurance, the City shall promptly purchase such insurance coverage for City's Contractors. The City's Contractors will include Northwestern and such other persons or entities as Northwestern may request as additional insureds on the City's Contractors' commercial general liability insurance policy, automobile liability insurance policy, and umbrella excess liability insurance policy covering the Project. The coverage afforded the additional insureds shall be primary insurance for the additional insureds with respect to claims arising out of operations performed by or on behalf of the City's Contractors, and any other insurance maintained by such additional insureds shall be on an excess or contingent basis. Any insurance maintained by City Contractors shall waive rights of subrogation and recovery against Northwestern.

6. Default. It shall be considered a "Default" under this Easement Agreement if either party fails to comply with any provision of this Easement Agreement and does not cure such failure within thirty (30) days following notice of such failure from the other party, except where such failure cannot reasonably be cured within such 30-day period, in which case if such party has begun and continues efforts to remedy the same within such 30-day period, then such additional time shall be given to remedy the failure (but not to exceed ninety (90) days). In the event of a Default, then, in addition to any other remedies set forth herein, the non-defaulting party may terminate this Easement Agreement by written notice to other party. In the event of a Default by City and upon notice from Northwestern, City will fill in the then existing reservoir (either the Existing Reservoir or the New Reservoir) located in the Easement Areas pursuant to plans approved by Northwestern. Such termination right shall be in addition to all rights and remedies available to either party at law or in equity.

7. Termination of 1934 Easement. The 1934 Easement is hereby terminated as of the Effective Date, and is of no further force or effect.

8. Third Party Beneficiaries; No Effect on Other Rights of the Parties. This Easement Agreement is not intended to and in no way confers any rights upon third parties. This Easement Agreement is not intended to and in no way confers any rights of access or use by the City to the Easement Areas 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 Easement 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) overnight

courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Northwestern: Northwestern University  
Attn: Office of General Counsel  
633 N. Clark Street  
Evanston, IL 60208  
Phone: (847)491-5605

If to the City: City of Evanston  
Attn: City Manager  
2100 Ridge Avenue  
Evanston, Illinois 60201  
Phone: 847.448.8175

With a copy to: City of Evanston  
Attn: Corporation Counsel  
2100 Ridge Avenue  
Evanston, IL 60201  
Phone: 847.866.2937

11. Entire Agreement. This Easement 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 Easement Area to City. No modification, waiver or amendment of this Easement Agreement or any provision hereof shall be valid unless the same is in writing, and signed by both parties hereto.

12. Counterparts. This Easement 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 Easement Agreement.

[REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK]







---

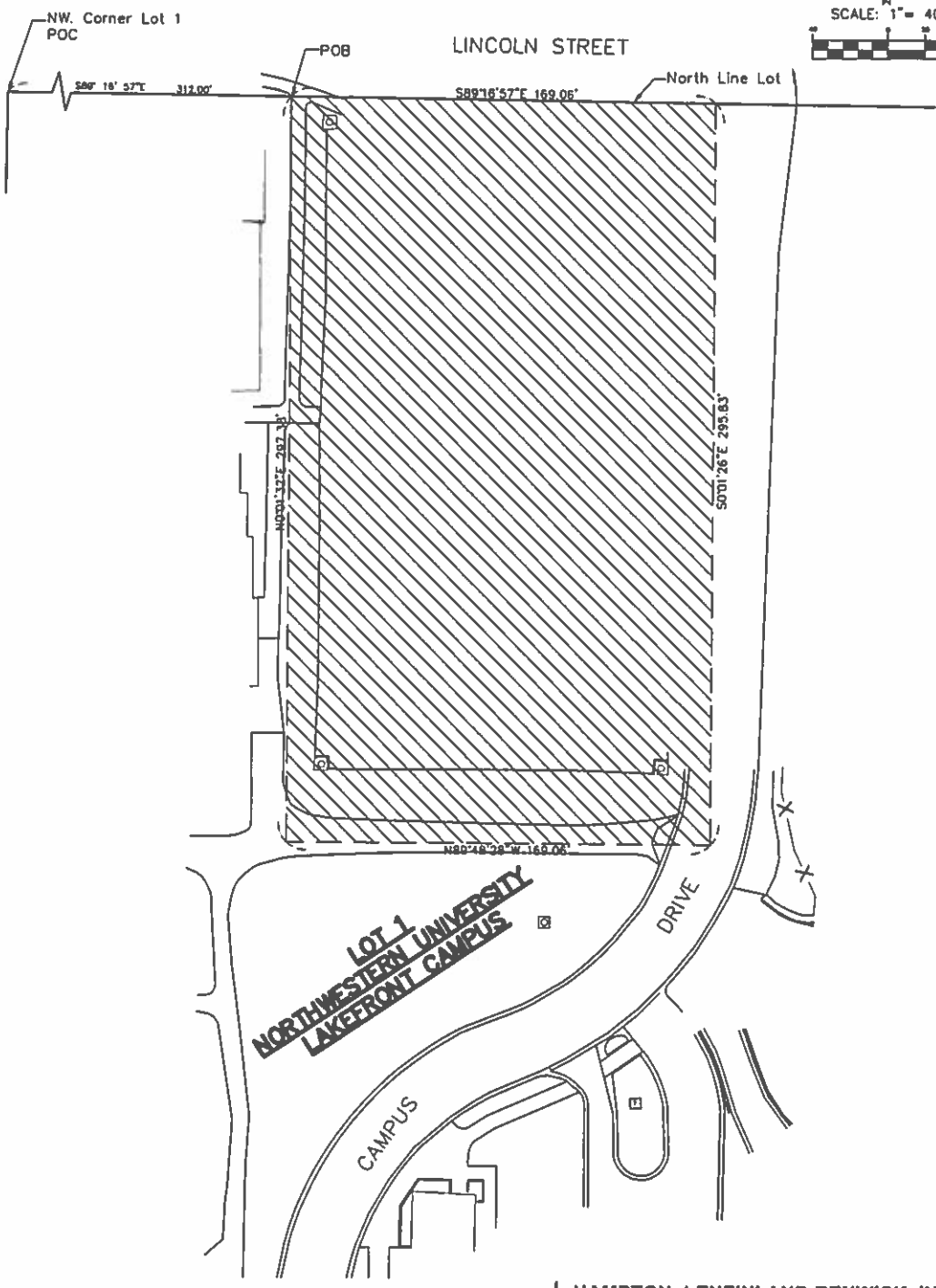
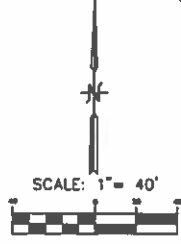
**EXHIBIT 1**  
**PERMANENT EASEMENT AREA**

EXHIBIT 1  
PROPOSED EASEMENT

THAT PART OF LOT 1 IN NORTHWESTERN UNIVERSITY LAKEFRONT CAMPUS SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 7 AND 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED SEPTEMBER 25, 2015 AS DOCUMENT NUMBER 1526829056 IN COOK COUNTY, ILLINOIS, BEARINGS BASED ON ILLINOIS STATE PLANE COORDINATES, EAST ZONE, NAD 83 (2011 ADJUSTMENT), DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE S 89°16'57" E ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 312.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S 89°16'57" E ALONG SAID NORTH LINE, A DISTANCE 169.06 FEET; THENCE S 0°01'26" E, A DISTANCE OF 295.83 FEET; THENCE N 89°48'28" W, A DISTANCE OF 169.06 FEET; THENCE N 0°01'32" E, A DISTANCE OF 297.38 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS. CONTAINING 50,142 SQUARE FEET OR 1.151 ACRES.

# EXHIBIT



 PROPOSED EASEMENT

**HAMPTON, LENZINI AND RENWICK, INC.**  
CIVIL ENGINEERS • STRUCTURAL ENGINEERS • LAND SURVEYORS  
**HLR** 380 SHEPARD DRIVE  
ELGIN, ILLINOIS 60123  
847.697.6700 www.hltrengineering.com  
184.000959  
PROFESSIONAL DESIGN FIRM & STRUCTURAL ENGINEERING CORP.

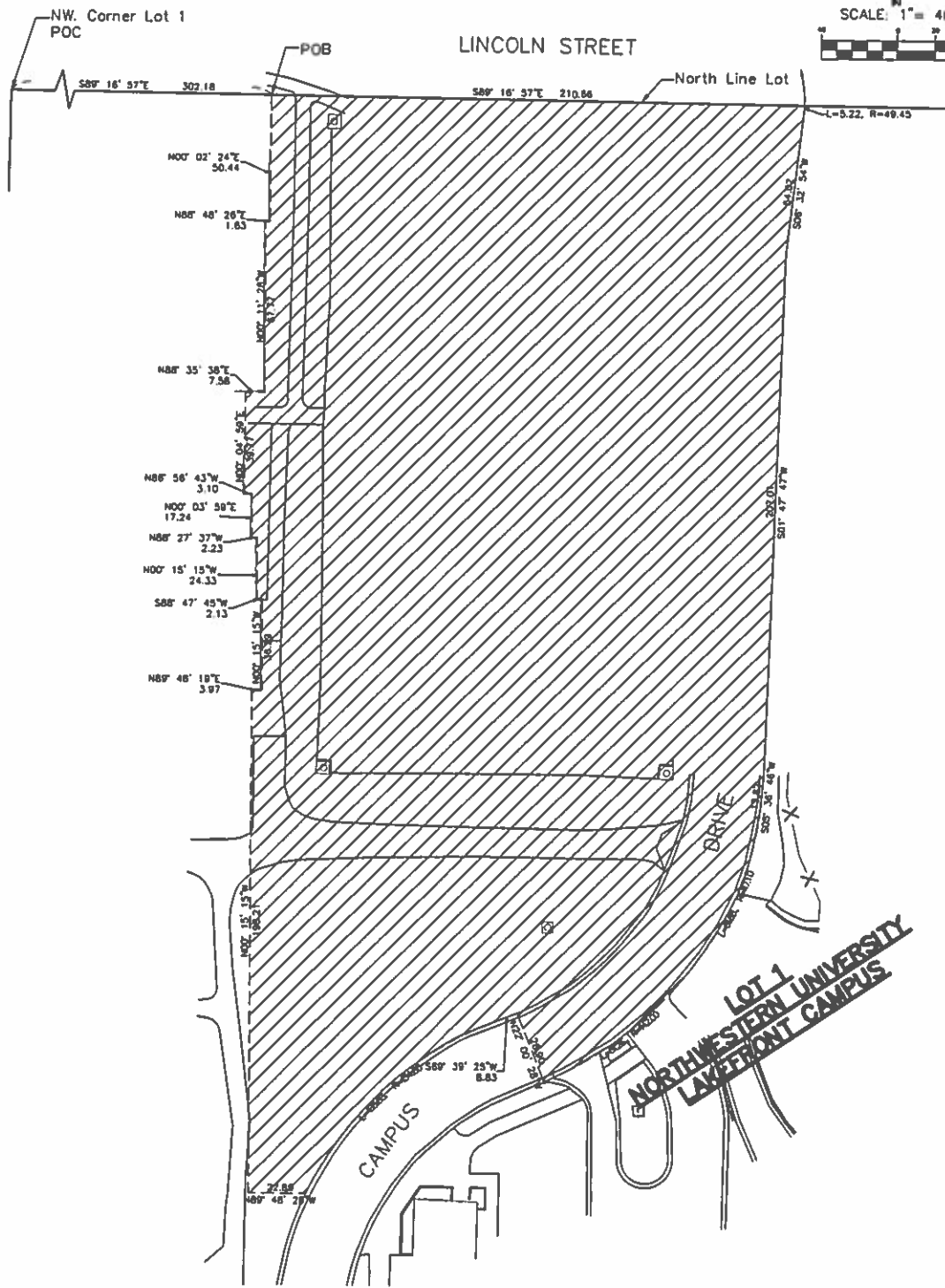
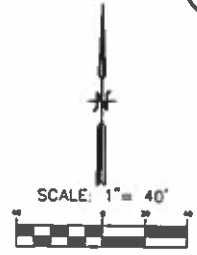
**EXHIBIT 2**  
**CONSTRUCTION EASEMENT AREA**

EXHIBIT 2  
PROPOSED TEMPORARY EASEMENT

THAT PART OF LOT 1 IN NORTHWESTERN UNIVERSITY LAKEFRONT CAMPUS SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 7 AND 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED SEPTEMBER 25, 2015 AS DOCUMENT NUMBER 1526829056 IN COOK COUNTY, ILLINOIS, BEARINGS BASED ON ILLINOIS STATE PLANE COORDINATES, EAST ZONE, NAD 83 (2011 ADJUSTMENT), DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE S 89°16'57" E ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 302.18 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S 89°16'57" E ALONG SAID NORTH LINE, A DISTANCE 210.66 FEET; THENCE SOUTHERLY ALONG A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 49.45 FEET, AN ARC DISTANCE OF 5.22 FEET TO A POINT OF NON TANGENCY, THE CHORD OF SAID CURVE, HAVING A LENGTH OF 5.22 FEET AND A BEARING OF S 4°51'25" W; THENCE S 6°32'54" W, A DISTANCE OF 54.02 FEET; THENCE S 1°47'47" W, A DISTANCE OF 207.01 FEET; THENCE S 5°36'46" W, A DISTANCE OF 13.82 FEET; THENCE SOUTHERLY ALONG A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 117.10 FEET, AN ARC DISTANCE OF 61.68 FEET TO A POINT OF COMPOUND CURVATURE, THE CHORD OF SAID CURVE HAVING A LENGTH OF 60.97 FEET AND A BEARING OF S 21°12'25" W; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 142.00 FEET, AN ARC DISTANCE OF 81.26 FEET TO A POINT OF NON TANGENCY, THE CHORD OF SAID CURVE HAVING A LENGTH OF 80.16 FEET AND A BEARING OF S 50°38'10" W; THENCE N 22°00'28" W, A DISTANCE OF 28.90 FEET; THENCE S 69°39'25" W, A DISTANCE OF 8.83 FEET; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 134.80 FEET, AN ARC DISTANCE OF 103.83 FEET TO A POINT OF NON TANGENCY, THE CHORD OF SAID ARC HAVING A LENGTH OF 101.28 FEET AND A BEARING OF S 47°30'36" W; THENCE N 89°48'28" W, A DISTANCE OF 22.85 FEET; THENCE N 0°15'15" W, A DISTANCE OF 198.21 FEET; THENCE N 89°48'19" E, A DISTANCE OF 3.97 FEET; THENCE N 0°15'15" W, A DISTANCE OF 36.29 FEET; THENCE S 88°47'45" W, A DISTANCE OF 2.13 FEET; THENCE N 0°15'15" W, A DISTANCE 24.33 FEET; THENCE N 88°27'37" W, A DISTANCE OF 2.23 FEET; THENCE N 0°03'59" E, A DISTANCE OF 17.24 FEET; THENCE N 86°56'43" W, A DISTANCE OF 3.10 FEET; THENCE N 0°04'59" E, A DISTANCE OF 39.77 FEET; THENCE N 88°35'38" E, A DISTANCE OF 7.58 FEET; THENCE N 0°11'28" W, 67.77 FEET; THENCE N 88° 48'26" E, A DISTANCE OF 1.63 FEET; THENCE N 0°02'24" E, A DISTANCE OF 50.44 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS. CONTAINING 77,285 SQUARE FEET OR 1.774 ACRES.

# EXHIBIT



 PROPOSED TEMPORARY CONSTRUCTION EASEMENT

**HAMPTON, LENZINI AND RENWICK, INC.**  
 CIVIL ENGINEERS • STRUCTURAL ENGINEERS • LAND SURVEYORS  
 380 SHEPARD DRIVE  
 ELGIN, ILLINOIS 60123  
 847.697.6700 www.hlrengineering.com  
 184.000959  
 PROFESSIONAL DESIGN FIRM & STRUCTURAL ENGINEERING CORP.

**LOT 1  
 NORTHWESTERN UNIVERSITY  
 LAWFREONT CAMPUS**

### EXHIBIT 3

#### PRELIMINARY PLANS AND SPECIFICATIONS REQUIREMENTS

- Drawings depicting the Existing Reservoir and specifications setting forth the written requirements for materials, equipment, systems, standards and workmanship for the Removal Work and performance of related services, as prepared by an architect or engineer;
- Special project conditions and scope of Removal Work;
- A site plan showing, *inter alia*, the location and dimension of the New Reservoir, including access points for maintenance and repair thereof;
- Drawings of the New Reservoir to be installed and specifications setting forth the written requirements for materials, equipment, systems, standards and workmanship for the Installation Work and performance of related services, as prepared by an architect or engineer;
- Special project conditions and scope of Installation Work;
- Grading and drainage plans for the New Reservoir, including the invert elevation of all sanitary and storm sewer connections;
- Plans for the restoration of the Property (including, without limitation, the installation of a single, concrete cover);
- City's Contractors' (as hereinafter defined) sworn statement identifying by trade the names, addresses and telephone numbers of each subcontractor and supplier and the amount of each contract applicable to each such trade, and the total amount of the contracts between City and City's Contractors.
- All such other information as may be reasonably required by Northwestern to enable it to approve the Construction Activities and to determine the location, scale, design character, style, component materials, and appearance of the New Reservoir and other improvements, and other characteristics deemed important to Northwestern.



## **EXHIBIT 4**

### **CONSTRUCTION ACTIVITIES SCHEDULE**

Construction activity cannot occur at all on the following dates:

- 1) Commencement (including the day before and the day after Graduation ceremonies) – June
- 2) Wildcat Welcome/Move-In Dates – Mid-September (Begins September 16, 2019 but dates for 2020 and beyond are not known).
- 3) Dillo Day – End of May or Early June

The exact dates for each of these events is not set for the next several years and can be provided to the City by Northwestern for the relevant years upon request. Northwestern reserves the right to add additional dates to this list on which construction activity cannot occur consistent with the terms of the Reservoir Easement Agreement.

#### **DAYS IN WHICH CLASS IS IN SESSION**

Dates on which classes are in session can be found at the link below. When class is in session, construction activity cannot occur prior to 8am as states in 1(i) of the Agreement.

<https://www.registrar.northwestern.edu/calendars/planning-calendars.html>

**EXHIBIT 5**

**CITY CONTRACTOR INSURANCE REQUIREMENTS**

Any City's Contractor/s engaged for the Construction Activities shall purchase and maintain at such City's Contractor's sole expense such insurance outlined below. Such City's Contractor shall not commence any Construction Activities until all insurance required herein is obtained and proof is provided to City and Northwestern.

Northwestern University and its affiliates, officers, directors, trustees, agents, volunteers and employees shall be named as additional insureds on all policies of liability insurance required herein. General Liability coverage maintained by contractors and Subcontractors shall contain Additional Insured endorsement CG 2010 04/13, CG 2037 04/13 and CG 2038 04/13 or equivalent. The Commercial General Liability policy or policies and any excess or umbrella liability policy shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by the additional insureds will be excess only and will not contribute with City's Contractor's insurance.

Each City's Contractor shall furnish City 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 City. 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.

<b>TYPE OF INSURANCE COVERAGE</b>	<b>MINIMUM INSURANCE</b>
	Combined Single Limit Per Occurrence/Aggregate
<b>Commercial General Liability including:</b>	<b>\$10,000,000/\$10,000,000</b>
1. Premises - Operations	
2. Explosion, Underground and Collapse Hazard	
3. Products/Completed Operations, which shall be maintained for a minimum of three years after completion	
4. Contractual liability insuring the obligations assumed under this contract	
5. Broad Form Property Damage	
6. Independent Contractors	
7. Personal and Bodily Injury	

---

<b>Automobile Liability</b> Owned, Non-owned, or Rented	\$5,000,000/\$5,000,000
--	-------------------------

---

<b>Workers' Compensation and Occupational Diseases</b>	As Required by Applicable Laws
--	-----------------------------------

---

<b>Employer's Liability</b>	\$3,000,000
-----------------------------	-------------

---

<b>Professional Liability</b> If applicable based on scope of services To be maintained for 5 years following completion	\$5,000,000
--	-------------

---

<b>Contractor's Pollution Liability</b> If applicable based on scope of services	\$5,000,000
---	-------------

---

Insurance shall be placed with insurers which have an A.M. Best's rating of A- or higher and financial size category of VII or higher or which Northwestern deems acceptable. The general liability, automobile liability, workers' compensation and umbrella or excess liability insurers shall waive all rights of recovery by subrogation against Northwestern University and its affiliates, officers, directors, trustees, agents, volunteers and employees.

Northwestern reserves the right to require copies of any insurance policies, certificates of insurance or endorsements required herein at any time. Failure of Northwestern or City to notify any City's Contractor of any deficiencies in the required insurance policies or to request insurance policies or insurance certificates shall not relieve the City's Contractor from the responsibility to provide the specified insurance coverages.

---