



**Forest Preserve District
of DuPage County**

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Wheaton, IL 60189

630.933.7200
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dupageforest.org

Sent Via Hand Delivery

May 16, 2017

Steve Maney
Executive Director
Wheaton Sanitary District
15649 Shaffner Road,
Wheaton, Illinois 60187

RE: License Agreement – Access and Soil Borings at Lincoln Marsh Forest Preserve

Dear Steve,

Enclosed please find one original copy of the License Agreement for access and soil borings at Lincoln Marsh Forest Preserve. The original copy has been signed by the Forest Preserve District of DuPage County. It is requested that the Wheaton Sanitary District sign the original copy and transmit it to Michael Benard, Executive Director, Wheaton Park District, 102 E. Wesley Street, Wheaton, IL 60187 for signature. When the original copy of the License Agreement is signed by all parties, the original copy should be kept by you and one copy sent to me and one copy sent to the Wheaton Park District. Please feel free to call me at 630-933-7235 with any questions.

Best Regards,

Kevin Stough
Land Preservation Manager

C: Ed Stevenson, Acting Executive Director

**A LICENSE AGREEMENT FOR TEMPORARY ACCESS AND SOIL BORINGS
WITHIN LINCOLN MARSH FOREST PRESERVE**

THIS LICENSE AGREEMENT (hereinafter referred to as the “Agreement”) is effective upon being signed by all parties and is made and entered into by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter referred to as the "FOREST PRESERVE DISTRICT"), the Wheaton Park District, a body politic and corporate (hereinafter referred to as the “PARK DISTRICT”) and the Wheaton Sanitary District, a body politic and corporate (hereinafter referred to as the "SANITARY DISTRICT").

WITNESSETH:

WHEREAS, the FOREST PRESERVE DISTRICT and PARK DISTRICT each have a one-half interest as tenants in common in certain portions of the Lincoln Marsh Forest Preserve (hereinafter referred to as “Lincoln Marsh”); and

WHEREAS, the SANITARY DISTRICT has an existing sanitary interceptor within previously granted permanent easements located within certain portions of Lincoln Marsh (and areas adjacent to Lincoln Marsh); and

WHEREAS, the SANITARY DISTRICT was issued a License on January 3, 2017 for access and work activities for the installation of a new sanitary interceptor within the SANITARY DISTRICT’s permanent easements; and

WHEREAS, the SANITARY DISTRICT requests the granting of a temporary license on a portion of Lincoln Marsh in the vicinity of their permanent easements to allow for soil borings associated with the installation of the new sanitary interceptor, and said temporary license area hereafter referred to as “License Area” and depicted on the attached **Exhibit A**; and

WHEREAS, the FOREST PRESERVE DISTRICT, pursuant to Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, is empowered to grant licenses for public services; and

WHEREAS, the PARK DISTRICT, pursuant to Section 8-11 of the Park District Code, 70 ILCS 1205, is empowered to grant licenses for public services; and

WHEREAS, the FOREST PRESERVE DISTRICT and PARK DISTRICT have determined that it is reasonable, necessary and in the public interest and welfare to grant the SANITARY DISTRICT a temporary

license for conducting soil borings in the License Area, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing preambles and the promises, terms and conditions set forth herein, the parties agree as follows:

1.0 INCORPORATION OF RECITALS

1.1 The recitals set forth above are incorporated herein and made a part of this Agreement.

2.0 LICENSE GRANTED

2.1 The FOREST PRESERVE DISTRICT and PARK DISTRICT hereby grant the SANITARY DISTRICT a temporary license for soil borings on the License Area within Lincoln Marsh on the terms and conditions as provided for in this Agreement.

2.2 The license granted herein shall expire upon completion of the soil boring work and any restoration work on the License Area.

2.4 The SANITARY DISTRICT shall notify the FOREST PRESERVE DISTRICT'S designated project representative (Kevin Stough, 630-933-7235) no less than five (5) business days prior to the first access to the License Area. SANITARY DISTRICT shall make any independent contractor accessing the License Area aware of the terms and conditions of this Agreement.

2.5 The SANITARY DISTRICT shall notify the FOREST PRESERVE DISTRICT'S designated project representative within two (2) days after the completion of the soil boring work.

2.6 It has been documented by FOREST PRESERVE DISTRICT staff that the Illinois State Endangered Blanding's Turtle (*Emydoidea blandingii*) is present at Lincoln Marsh. As such, the SANITARY DISTRICT will be responsible for obtaining all applicable and necessary federal, state and, local permits pertaining to the presence of any and all endangered and threatened plant and wildlife species.

2.7 To avoid or minimize adverse impacts to protected resources, SANITARY DISTRICT shall notify FOREST PRESERVE DISTRICT no less than five (5) business days prior to accessing the License Area for the soil boring work. Upon notification, the FOREST PRESERVE DISTRICT shall survey the License Area for presence of State Endangered Blanding's Turtles and relocate any turtles to suitable habitat outside of the License Area and within the individual turtle's home range. The FOREST

PRESERVE DISTRICT shall train SANITARY DISTRICT and their contractors to identify Blanding's Turtles and their habitats. SANITARY DISTRICT and their contractors shall conduct daily inspections and immediately notify FOREST PRESERVE DISTRICT if a Blanding's Turtle is observed.

3.0 FEES AND COSTS

3.1 The fee for the temporary license is waived.

4.0 INSURANCE

4.1 Before commencing with access to and soil boring work within the License Area, the soil boring consultant engaged to perform the work on the License Area shall obtain the following insurance coverages, which shall be maintained in force until soil boring work is completed within the License Area:

- (a) Workers' Compensation Insurance with limits as required by the applicable statutes of the State of Illinois.
- (b) Employer's Liability Insurance with limits as required by the applicable statutes of the State of Illinois.
- (c) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence bodily injury/ property damage combined single limit; \$2,000,000 aggregate bodily injury/property damage combined single limit. The Commercial General Liability policy shall include, but not be limited to, the following:
 - (i) premises/operations coverage;
 - (ii) products/completed operations coverage;
 - (iii) contractual liability coverage (specifically covering the indemnification obligations referred to in paragraph 15);
 - (iv) personal injury coverage (with the employment exclusion deleted);
 - (v) broad form property damage coverage;
 - (vi) explosion, collapse and underground coverage; and
 - (vii) independent contractor liability coverage.

- (d) Comprehensive Motor Vehicle Liability Insurance with limits of not less than \$2,000,000 each accident bodily injury/property damage combined single limit.

The policy of Commercial General Liability Insurance shall provide “occurrence” based coverage and shall include an endorsement naming the FOREST PRESERVE DISTRICT and PARK DISTRICT as additional insured.

- 4.2 The SANITARY DISTRICT shall provide the FOREST PRESERVE DISTRICT and PARK DISTRICT with a Certificate of Insurance for the soil boring consultant prior to the commencement of any work on the License Area. Each certificate and policy shall provide that no cancellation or modification of the policy will occur without at least 30 days’ prior written notice to the FOREST PRESERVE DISTRICT and PARK DISTRICT.
- 4.3 The SANITARY DISTRICT shall procure and maintain during the term of this Agreement a policy of Commercial General Liability Insurance providing coverage for bodily injury and property damage claims arising on or from the use of the License Area. The policy shall (a) provide “occurrence” based coverage; (b) be issued by a company authorized to transact business in this State of Illinois and with a Best rating of “A” or higher; (c) include an endorsement naming the FOREST PRESERVE DISTRICT and PARK DISTRICT as an additional insured; (d) include contractual liability coverage; and (e) not be subject to cancellation or modification without at least 30 days’ written notice to the FOREST PRESERVE DISTRICT and PARK DISTRICT, unless otherwise agreed to in writing between the SANITARY DISTRICT, FOREST PRESERVE DISTRICT and PARK DISTRICT. The SANITARY DISTRICT shall provide evidence of said insurance coverage throughout the term of this Agreement by furnishing the FOREST PRESERVE DISTRICT and PARK DISTRICT with a current Certificate of Insurance and, if requested, a certified copy of the policy issued by the insurer.

5.0 RESTORATION

- 5.1 Following completion of the soil boring work, all areas affected or disturbed by the soil boring work shall be restored to the acceptance of the FOREST PRESERVE DISTRICT’s Executive Director.
- 5.2 If the SANITARY DISTRICT fails to properly restore the License Area or fails to restore any damage

occurring outside the boundaries thereof as required herein within 30 days of service of the FOREST PRESERVE DISTRICT's written demand for the restoration work, the FOREST PRESERVE DISTRICT shall have the right to take such action as it deems necessary to perform the restoration or corrective work, which shall include the authority to (a) perform the work with its own personnel and/or; (b) engage the services of an independent contractor to perform the work. The SANITARY DISTRICT shall reimburse the FOREST PRESERVE DISTRICT for costs associated with said restoration or corrective work within 30 days of service of the FOREST PRESERVE DISTRICT's written demand for payment.

6.0 INDEMNIFICATION

6.1 To the extent permitted by law, the SANITARY DISTRICT shall defend, save, and hold harmless the FOREST PRESERVE DISTRICT and PARK DISTRICT, its elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses and damages that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner connected with, directly or indirectly, the soil boring work, when such bodily injury, sickness, death, property damage or other claim is allegedly caused by a negligent or intentional act or omission on the part of the SANITARY DISTRICT or its contractors, subcontractors, engineers, consultants, employees, or agents. In the event any person or entity obtains a judgment or settlement against the FOREST PRESERVE DISTRICT and PARK DISTRICT or any of its elected officials, officers, employees or agents, by reason of any negligent or intentional act or omission on the part of the SANITARY DISTRICT or its contractors, subcontractors, consultants, employees or agents, the SANITARY DISTRICT shall promptly, to the extent allowed by law, indemnify the FOREST PRESERVE DISTRICT and PARK DISTRICT or the elected official, officer, employee or agent, as the case may be, in the amount of said judgment or settlement and for all costs and expenses related thereto, including, without limitation, reasonable attorney and expert witness fees.

6.2 To the extent permitted by law, the SANITARY DISTRICT shall also defend, save, hold harmless and indemnify the FOREST PRESERVE DISTRICT and PARK DISTRICT from any and all claims,

liabilities, causes of action, losses and damages that may arise or be claimed by any person or entity for bodily injury, sickness, death or property damage, or for any other claim or suit of any nature whatsoever, arising from or in any manner connected with, directly or indirectly, any defect in the new sanitary interceptor caused by defective materials, workmanship or construction methods.

- 6.3 The SANITARY DISTRICT shall require each contractor who performs any work on the License Area, to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT and PARK DISTRICT to the same extent as required of the SANITARY DISTRICT under paragraph 6, and the SANITARY DISTRICT shall include in all of its contracts a statement expressly declaring the FOREST PRESERVE DISTRICT and PARK DISTRICT to be a third-party beneficiary of the indemnification provision.
- 6.4 The SANITARY DISTRICT shall promptly pay all costs and expenses relating to the soil boring work and shall not allow any liens on FOREST PRESERVE DISTRICT and PARK DISTRICT property as a result of the work. To the extent permitted by law, the SANITARY DISTRICT shall defend, indemnify and hold the FOREST PRESERVE DISTRICT and PARK DISTRICT harmless from any and all liens, costs and expenses arising from any work performed under this Agreement.

7.0 MISCELLANEOUS TERMS

- 7.1 The FOREST PRESERVE DISTRICT and PARK DISTRICT hereby reserve the right to use, or permit to be used, the License Area in any manner that will not prevent or materially interfere with the exercise by the SANITARY DISTRICT of the rights granted herein.
- 7.2 If any party initiates any legal proceeding or action, whether at law or in equity, to enforce any provision of this Agreement, the prevailing party (as determined by the court) shall be entitled to recover its reasonable costs and expenses incurred in connection with said proceeding or action, including, but not limited to, reasonable expert witness and attorney fees.
- 7.3 This Agreement or any memorandum or other document referring hereto shall not be recorded without the written consent of the FOREST PRESERVE DISTRICT and PARK DISTRICT.
- 7.4 The provisions set forth herein represent the entire agreement between the parties and supersede any previous oral or written agreements, as it is the intent of the parties to provide for a complete integration

within the terms of this Agreement. No provision may be modified in any respect unless such modification is in writing, duly approved and signed by all parties.

7.5 This Agreement shall be construed in accordance with the laws of the State of Illinois.

7.6 This Agreement shall be executed in triplicate, and each party shall retain a fully executed original, all of which shall be deemed to be one Agreement.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the dates stated below.

**FOREST PRESERVE DISTRICT OF
DU PAGE COUNTY**

BY: Ed Stevenson
Ed Stevenson, Acting Executive Director

ATTEST: Christine Dawson
Assistant Secretary

Date signed: 5/16/17

WHEATON SANITARY DISTRICT

BY: Stephen R. Maney
Stephen R. Maney, P.E., Executive Director

ATTEST: Diana M. Soltes
Title: Assistant Clerk

Date signed: 5/18/17

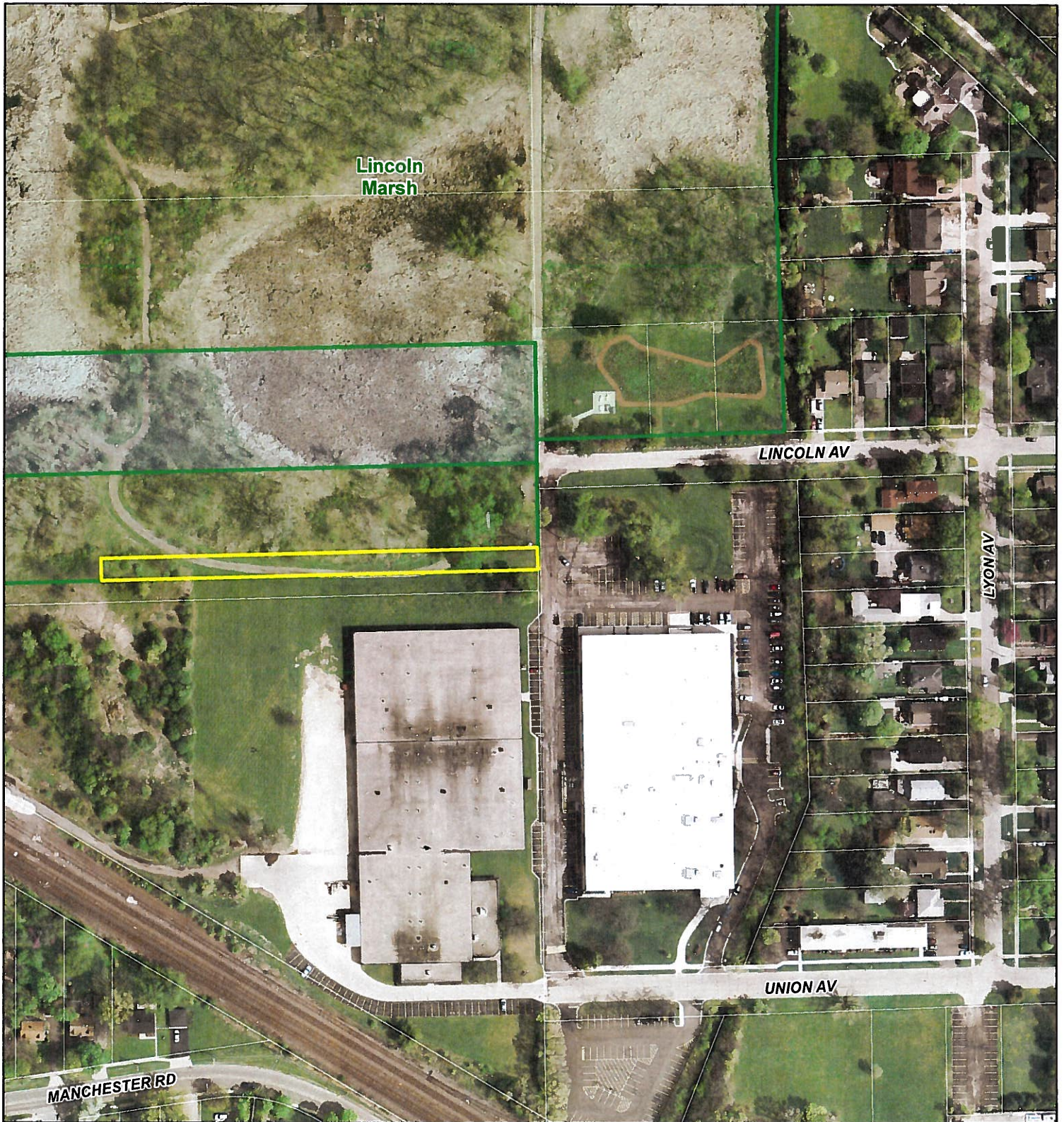
WHEATON PARK DISTRICT



BY: Michael J. Benard
Michael J. Benard, Executive Director

ATTEST: _____
Title: _____

Date signed: _____

LINCOLN MARSH WHEATON SANITARY DISTRICT LICENSE AREA



-  FPD Bounds
-  License Area - 30' x 587'

0 65 130 260 Feet
Land Preservation Department



EXHIBIT A