

**TEMPORARY LICENSE AGREEMENT
BETWEEN WHEATON PARK DISTRICT AND WHEATON SANITARY DISTRICT
TO PROVIDE ACCESS ACROSS LINCOLN MARSH AND NORTHSIDE PARK**

This Temporary License Agreement ("Agreement") is made and executed this 18 day of February, 2015 by and between the Wheaton Park District, an Illinois unit of local government ("Licensor") and the Wheaton Sanitary District, an Illinois unit of local government ("Licensee"). Licensor and Licensee are sometimes referred to herein as a "Party" and collectively are referred to as the "Parties."

RECITALS

1. Licensor owns certain real property commonly known as "Lincoln Marsh and Northside Park" and legally described in Exhibit 1 attached hereto and incorporated herein by this reference (the "Subject Property"); and
2. Licensee has requested temporary access across portions of the Subject Property along a proposed utility easement corridor to perform soil borings; and
3. Licensor has determined that it is in the public interest to grant Licensee access to the Subject Property to enable Licensee to conduct said soil borings pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Licensor and Licensee agree as follows:

1. **Recitals.** The above recitals are incorporated herein by reference as though fully set forth in this Section one.
2. **License Granted.** Licensor hereby grants to the Licensee a non-exclusive temporary license to enter upon and use that portion of the Subject Property as depicted in Exhibit 2, attached to and incorporated as part of this Agreement by reference ("Licensed Area"), for the sole and limited purpose of conducting soil boring work. Proposed soil borings are identified as numbers 337, 338, 339, 342, 343, 345, 346, 347, and 348 in Exhibit 2 and access to the boring locations is limited to the routes described in Exhibit 3, attached to and incorporated as part of this Agreement by reference. All of Licensee's activities on the Licensed Area shall be at Licensee's sole cost and expense.
3. **Expiration.** This license granted hereunder shall, unless extended in writing by the Licensor, expire, without any action by either Party, on December 31, 2015.
4. **Licensee's Use.** Licensee shall notify Licensor no less than five (5) business days prior to commencing work on the Licensed Area. Licensee shall use the Licensed Area at its own risk. Licensee acknowledges that Licensor shall not provide any security or protection in connection with Licensee's use of the Licensed Area. To the extent permitted by the laws of the State of Illinois, Licensee hereby waives any and all rights or claims Licensee may have at any time against Licensor Indemnitees, for injury to or the death of any person or for damage to or destruction of any property, sustained or incurred by Licensee or any person claiming by, through or under Licensee, in connection with the exercise by such persons of the rights and privileges granted to Licensee hereunder, except to the extent that such loss or damage is caused by the willful and wanton conduct of Licensor or Licensor's agents, employees or contractors.
5. **Indemnification.** To the extent permitted by law, Licensee hereby indemnifies and holds harmless Licensor, its Park Commissioners, officers, employees, agents, successors and assigns ("Licensor Indemnitees"), and shall defend the Licensor Indemnitees, from and against all liabilities, claims,

demands, causes of action, costs and expenses (including attorneys' fees and paralegals' fees and costs and court costs for defense thereof) arising out of or related to any injury to or death of any person or damage to property (the "Injuries") to the extent caused by Licensee or any of Licensee's officers, employees, agents, consultants, contractors, subcontractors, successors or assigns ("Licensee's Indemnitors") or from Licensee's Indemnitors' use of the Licensed Area. Licensee further defends, indemnifies and holds harmless Licensor Indemnitees from and against any and all mechanics' or materialmen's liens, or claims therefor, including attorneys' fees and paralegals' fees and costs and court costs for defense thereof, arising out of or in connection with work of any character performed or claimed to have been performed on the Licensed Area at the direction or sufferance of the Licensee.

6. **Prevailing Wage Act.** If the work to be performed by or through the Licensee hereunder is subject to the Illinois Prevailing Wage Act, Licensee shall be solely responsible to insure that prevailing wages are paid to all workers to whom the requirement applies, certified payrolls are obtained from the Licensee's contractors, and delivered to the Licensor immediately upon receipt thereof, and that the Licensee's contractor fully complies all other requirements of the Illinois Prevailing Wage Act. Licensee shall save, hold harmless, defend and indemnify Licensor from and against any and all claims, demands, causes of action, losses, injuries, damages arising from Licensee's Indemnitors' failure to perform the work in accordance with all applicable ordinances, laws, rules, regulations, and orders. Licensee shall conduct its operations on the Licensed Area entirely at its own risk.

7. **Waiver of Claims.** To the fullest extent permitted by the laws of the State of Illinois, Licensee hereby forever waives, relinquishes and discharges and holds harmless Licensor, its commissioners, officers, employees, agents and assigns, from any and all claims of every nature whatsoever, which the Licensee may have at any time against the Licensor, its commissioners, officers, employees, agents and assigns, including without limitation claims for personal injury or property damage sustained or incurred by Licensee, or any person claiming by, through or under the Licensee, relating directly or indirectly to the Licensee's use of the Licensed Area.

8. **Insurance.** Licensee shall maintain commercial general liability insurance which includes coverage for liability assumed under an insured contract (including the tort liability of another assumed in a contract) covering all occurrences on the Licensed Area, and any other property owned or controlled by the Licensor, and shall name Licensor, its commissioners, officers, officials, agents, employees and volunteers, as additional insureds under such policies, in forms and amounts acceptable to Licensor. Licensee shall also require and consultant, contractor, subconsultant or any other person or entity performing work of any kind, nature or description on the Licensed Area under the direction or at the sufferance of the Licensee, to maintain commercial general liability and property damage insurance, which insurance shall name Licensor, its commissioners, officials, agents, employees and volunteers, as additional insureds thereon in such forms and amounts described in Exhibit 4 attached hereto, and evidence of insurance shall be provided as described in said Exhibit. Licensee shall require Contractor to indemnify Licensor as specified in Exhibit 4.

9. **Restoration.** Licensee, at its sole cost and expense, shall restore the affected portions of the Licensed Area to the same or better condition as when first entered, including but not limited to: (a) replacing and grading all topsoil removed and re-grading and replacing as necessary all topsoil disturbed and properly compacting same to prevent subsidence; (b) restoring or replacing as reasonably deemed appropriate by Licensor, all plantings, landscaping and other improvements; and (c) replacing all sod and natural grass removed with sod of like quality or other quality acceptable to Licensor and the proper compaction of the ground to prevent subsidence, erosion or both conditions. All restoration and replacement shall be completed to the reasonable satisfaction of Licensor after the completion of Licensee's activity on the Licensed Area, or within such later time period as Licensor reasonably shall require. If Licensee fails to so restore, Licensor shall have the right, but not the obligation, to perform such restoration and Licensee shall pay Licensor's costs therefor promptly upon demand.

10. License Fees. The Parties hereby agree that no additional consideration is needed for the license granted pursuant to the Amendment.

11. No Lease. The Parties agree that this Agreement confers upon Licensors only a non-exclusive temporary license and right to use the Licensed Area upon the terms and conditions set forth herein, and that nothing contained herein is intended to confer upon the Licensors a leasehold interest in the Subject Property, Licensed Area or any portion thereof. In the event of default by the Licensors, the Licensee shall not be obligated to bring a forcible entry and detainer action to terminate Licensors' rights hereunder.

12. Uses and Actions.

A. Licensee shall keep the Licensed Area in a clean, safe, and sanitary condition. Licensee shall abide by any and all applicable laws, ordinances, statutes, codes, and regulations of the City of Wheaton, the Wheaton Park District, DuPage County, the State of Illinois and United States of America and enforcement and regulatory agencies thereof, which regulate or control the Licensee's use of the Licensed Area.

B. Licensee shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (i) the public, including the Licensors' invitees, licensees, and any individuals providing labor, materials or professional services on the Licensed Area. Licensee shall post danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities; and (ii) any other property on the Licensed Area such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

C. Licensee shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

D. No hazardous materials or equipment or unusual methods of any kind, nature or description shall be used by Licensee or any third party under Licensee's control on the Licensed Area at any time.

E. Licensee shall not permit any part of the Licensed Area to be constructed so as to cause damage or create an unsafe condition. Licensee shall designate a responsible member of Licensee's organization or other agent of the Licensee whose duty shall be the prevention of accidents.

13. Miscellaneous.

- a. This License and the Exhibits hereto represent the entire agreement of the Parties with respect to the subject matter herein contained, and supersede all prior or contemporaneous agreements, oral or written, with respect to said subject matter.
- b. This License may be amended only by a writing executed by both of the Parties subsequent to the date hereof, and authorized by the Parties' respective governing boards or its governing partners.
- c. This License is entered into solely for the benefit of the contracting Parties and nothing in this License is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity not a Party to this License, or to acknowledge, establish or impose any legal duty to any third party. Nothing contained herein shall constitute a waiver by the Licensors of any right, privilege or defense which it has under statutory or common law,

including but not limited to the Illinois Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10.

- d. The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the DuPage County Circuit Court, Wheaton, Illinois.
- e. Invalidity by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.
- f. The Licensee shall be solely responsible to obtain and pay for any and all permits, certifications, or other required reviews, approvals, authorizations, or studies required in connection with its activities on the Licensed Area.
- g. This Agreement shall not be recorded in the real estate records of DuPage County, Illinois, and is terminable at the will of Licensors.
- h. The rule of contract law that any ambiguity in an agreement shall be construed against the party drafting the Agreement shall not be applicable to construction of this Agreement, as the Parties acknowledge they have been represented by counsel in regard to the negotiation and finalizing of this Agreement. This Agreement is non-assignable in whole or in part by Licensee, and any assignment shall be void without the prior written consent of Licensors.
- i. Any rights to the Licensed Area not specifically granted to Licensee in this Agreement are reserved to the Licensors, its successors and assigns.
- j. Whenever a party to this Agreement by proper authority waives the other party's performance in any respect or waives a requirement or condition to performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver for subsequent instances of the performance, requirement, or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the performance, requirement, or condition may have been waived.
- k. The Licensee covenants, represents, and warrants that: (i) it has full authority to execute, deliver, and perform or cause to be performed this Agreement, and the Licensee's Board of Commissioners has taken all actions necessary to approve this Agreement and to authorize execution hereof by its officers; (ii) the individuals signing this Agreement and all other documents executed on behalf of the Licensee are duly authorized to sign same on behalf of and to bind the Licensee; and (iii) the execution and delivery of this Agreement, consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in any breach of any of the terms or provisions of or constitute a default under any agreement of the Licensee or any instrument to which the Licensee is bound or any judgment, decree, or order of any court or governmental body or any applicable law, rule, or regulation.
- l. Each party agrees to execute and deliver all further documents, and take all further action reasonably necessary to effectuate the purpose of this Agreement. Immediately upon the expiration of the License, Licensee shall provide Licensors with all studies, reports, findings, memoranda, or other summaries of the investigations conducted on the Licensed Area during the License Term regardless of form.

- IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by a duly authorized officer thereof as of the day and year first above written.

WHEATON PARK DISTRICT

By: Joe Kelly
President

Attest: _____
By: _____
Secretary

WHEATON SANITARY DISTRICT

By: Max Huet
President → District Engineer

Attest: _____
By: *Diana M. Soltes*
Secretary

EXHIBIT 1
SUBJECT PROPERTY LEGAL DESCRIPTION

EXHIBIT 2A
LICENSED AREA AND SOIL BORING LOCATIONS

EXHIBIT B
ROUTE ACCESS TO SOIL BORINGS

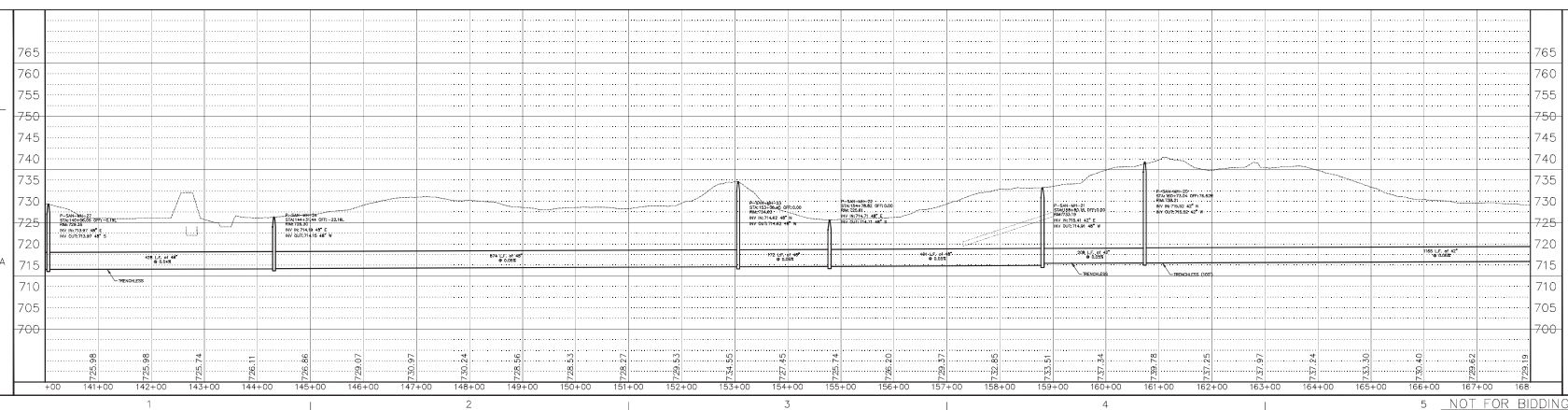


EXHIBIT B



TESTING SERVICE CORPORATION

Local Office
January 15, 2015

Local Office:

457 E. Gundersen Drive, Carol Stream, IL 60188-2492
630.653.3920 • Fax 630.653.2726

Corporate Office:

360 S. Main Place, Carol Stream, IL 60188-2404
630.462.2600 • Fax 630.653.2988

Mr. Tyler Ferguson
City of Wheaton
P.O. Box
Wheaton, Illinois 60187

RE: L-82,497
Geotechnical Exploration
Third Round of Drilling
Northside Interceptor Sewer
Wheaton Sanitary District
Wheaton, Illinois

Dear Mr. Ferguson:

This letter is written to address the drilling of soil borings in environmentally sensitive areas (i.e., floodplains, floodway and wetlands). A total of fifteen (15) borings are planned in environmentally sensitive areas. The following table lists the borings and describes the field procedure ("means and methods") to be employed to perform them.

Boring Number	Access Route	Drill Rig
319	This boring is located south of S. Hazelton Avenue, access by skirting trees at the edge of canary grass in Firefighter's Park.	This boring will be drilled using a drill rig mounted on a rubber tracked carrier (Morooka or CME 300 Carrier).
337	This boring will be drilled in Lincoln Marsh. It can be accessed off Lincoln Marsh office driveway.	This boring will be drilled using a drill rig mounted on a rubber tracked carrier (Morooka or CME 300 Carrier).
338 - 341, 373 & 374	These borings are located in Lincoln Marsh. They can be accessed off the cul-de-sac of N. Carlton Street north of W. Madison Street. B-338 will be accessed winding through trees, cutting dead limbs, dead trees and a few scrub saplings.	These borings will be drilled using a drill rig mounted on a rubber tracked carrier (Morooka or CME 300 Carrier).

Boring Number	Access Route	Drill Rig
342, 343 & 345	These borings are located in Lincoln Marsh. They can be accessed off W. Harrison Avenue just east of N. Gary Avenue, winding through trees and cutting several scrub saplings.	These borings will be drilled using a drill rig mounted on a rubber tracked carrier (Morooka or CME 300 Carrier).
346 & 347	These borings are located in Northside Park. They can be accessed off parking lot north of tennis courts.	These borings will be drilled using a drill rig mounted on a rubber tracked carrier (Morooka or CME 300 Carrier).
348 & 359	These borings are located in Northside Park. They can be accessed off the south end of Ellis Avenue via a gravel path.	These borings will be drilled using a drill rig mounted on a rubber tracked carrier (Morooka or CME 300 Carrier).

CME 300 Carrier - This CME Carrier has two rubber tracks that distribute the weight of the carrier over a large area. Contact pressure below the tracks is in the range of 6 to 8 psi. For comparison, a truck-mounted drill rig has ground bearing pressure of approximately 35 psi. A picture of this carrier with a CME 55 drill rig mounted on it is included with this correspondence.

Morooka Carrier - The Morooka Carrier has two rubber tracks that distribute the weight of the carrier over a large area. Contact pressure below the tracks is in the range of 4 to 6 psi. A picture of this carrier with a Diedrich D50 drill rig mounted on it is included with this correspondence.

It is understood that the work in these sensitive areas will have to comply with criteria required by the City of Wheaton for these (Special Management Areas) which are listed below along with our responses.

Special Management Areas

1) In addition to the standard restrictions for work that disturbs the soil, the work must follow the requirements for work within a Special Management area (floodplain, wetland or riparian) and must comply with requirements of the Countywide Storm water Management and Floodplain Ordinance. These requirements include but are not limited to the following:

- a) The work shall be done on a day when precipitation is not within the forecast or within 48-hours of the proposed work. The work will be performed when rain is not expected. These borings will be performed when favorable weather conditions are predicted.
- b) All excavated material shall be protected by silt fencing and shall be removed by the end of the work day. Our drilling process is expected to yield a limited amount of spoil. Depending on the depth of the borings, the amount may vary from a minimum of one

five-gallon bucket to a couple of wheel barrow loads. The excess material will be transported to our shop where it will be disposed of in our dumpster.

- c) Any directional boring material, mud, debris, waste or discharge must be placed into an appropriate truck that limits leakage and hauled off site. All spoil material will be transported off site as was detailed under item "b".
- d) Any pumping to de-water directional boring pits must be filtered in accordance with IEPA regulations. Failure to filter muddy or contaminated water will cause a citation to be issued. TSC will not be pumping any water.
- e) No filling in any area will be allowed. As constructed, drawings prepared by a land surveyor or engineer must be submitted based on the City's request as a permit condition when the city's opinion grades have been modified or changed or filling has occurred. Since TSC will not be placing any fill soils, it is believed that this item does not apply to the soil borings.
- f) Any access to wetland land areas must be delineated and a plan created that minimizes disruption to ecologically sensitive areas. Access to the borings will be performed using drill rigs that have been selected to help reduce any distress to sensitive areas. In addition, travel routes have been selected that will minimize any damage to these areas.

In order to provide for the safety of motorists and our drill crews, borings performed either on the roadway or on the shoulder of the roadway will be performed according to criteria outlined by OSHA in their Manual on Uniform Traffic Control Devices (MUTCD).

In order to prevent the migration of water into the boreholes and also to provide for safety of the public the boreholes will be sealed with a gravel sized bentonite product (Holeplug). Spoil generated from the drilling process will be transported to our shop in buckets or drums where it will be disposed of in our contractors dumpster.

Respectfully submitted,

TESTING SERVICE CORPORATION



Alfredo J. Bermudez
Senior Geotechnical Engineer
Registered Professional Engineer
Illinois No. 062-046608



AJB:ab
Enc.



CME 55 DRILL RIG ON CME 300 CARRIER



DIEDRICH D50 DRILL RIG ON MOROOKA CARRIER

EXHIBIT 4
INSURANCE TO BE MAINTAINED BY CONSULTANTS,
SUB-CONSULTANTS, CONTRACTORS, AND SUBCONTRACTORS

As used in this Exhibit, "Contractor" or "Contractors" mean any person, firm or organization retained by Licensee to perform work relating to the License granted herein, "Agreement" means the applicable contract between the Licensee and said Contractor or Contractors, for said work. The substantive provisions of this Exhibit shall be incorporated into any Agreement. "Additional Insured" means Licensor. "Parties" means Licensor and Licensee.

Contractors shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractors shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence and a general aggregate limit of at least \$2,000,000. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, including death, property damage and advertising injury, liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and liability arising from the indemnity provisions of any Agreement. The CGL insurance shall also provide for Underground Hazard, and Broad Form Property Damage.

The Additional Insured shall be included as an Insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Continuing Completed Operations Liability Insurance

Contractors shall maintain commercial general liability (CGL) and, if required by the Additional Insured, commercial umbrella liability insurance with a limit of not less than \$5,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability Insurance

Contractors shall maintain business auto liability and commercial umbrella liability insurance with a limit of not less than \$2,000,000 for each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos, and mobile equipment to the extent it may be excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Contractors shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Additional Insured has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against the Additional Insured, its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, a Contractor shall furnish the Additional Insured with (a) certificate(s) of Insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Additional Insured prior to the cancellation of material change of any insurance referred to therein. Written notice to the Additional Insured shall be by certified mail, return receipt requested.

Failure of the Additional Insured to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Additional Insured to identify a deficiency from evidence that is provided shall not be construed as a waiver of a Contractor's obligation to maintain such insurance.

The Additional Insured shall have the right, but not the obligation, of prohibiting a Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Additional Insured.

Failure to maintain the required insurance may result in termination of the Agreement.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the Additional Insured whenever requested.

Contractors shall provide certified copies of all Insurance policies required above within 10 days of written request by the Additional Insured for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Additional Insured shall have the right to reject insurance written by an insurer it deems unacceptable. Such insurance companies must be qualified to do business in Illinois.

3. Cross-Liability Coverage

If a Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Additional Insured. At the option of the Parties, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Additional Insured, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by a Contractor to purchase and maintain insurance of the type specified above. When requested by the Additional Insured, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

6. Occurrence and Claims Made Policies

All insurance required herein shall be on an "occurrence" basis. If, after every diligent effort to procure such insurance has been made, and such insurance cannot be obtained, Contractor may provide insurance on a "claims made" basis, but such coverage must provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance required hereunder be cancelled.

F. Indemnification

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Parties, including the Additional Insured, their officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. The Contractor shall similarly protect, indemnify and hold and save harmless the Parties, including the Additional Insured, their officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Agreement.