

RESOLUTION R-28-08

**A RESOLUTION APPROVING A TEMPORARY
CONSTRUCTION ACCESS AGREEMENT
WITH THE WHEATON PARK DISTRICT
(Wesley Street Bridge)**

WHEREAS, the City of Wheaton is desirous of improving Manchester Road as part of the Wesley Street Bridge Replacement Project; and,

WHEREAS, the City has requested permission from the Wheaton Park District to enter upon and use a portion of the Park District's property located at 1000 Manchester Road for a period of up to thirty-six (36) months in order to construct the improvement to Manchester Road; and,

WHEREAS, it is necessary for the City and Park District to enter into a Temporary Construction Access License Agreement to establish the terms of the license of the City's temporary use of the Park District's property.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Temporary Construction Access License Agreement between the City of Wheaton and Wheaton Park District dated May 19, 2008 is hereby approved.

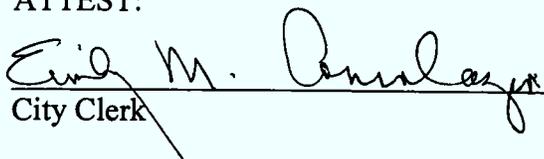
IT IS FURTHER RESOLVED that the Mayor is authorized to sign the approval form and the City Clerk is authorized and directed to attest to the signature of the Mayor and attach a certified copy of this resolution to the Temporary Construction Access License Agreement.

Adopted this 19th day of May, 2008.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilman Mouhelis
Councilman Prendiville
Councilman Suess
Councilman Johnson
Councilman Levine
Mayor Gresk

Nays: None

Absent: Councilwoman Corry

Motion Carried Unanimously

**TEMPORARY CONSTRUCTION ACCESS
LICENSE AGREEMENT**

THIS TEMPORARY CONSTRUCTION ACCESS LICENSE (the "Agreement") is made and entered into as of this 19th day of MAY, 2008, by and between the WHEATON PARK DISTRICT an Illinois park district and unit of local government (the "Licensor"), and the CITY OF WHEATON, an Illinois municipality (the "Licensee"). Licensor and Licensee are hereinafter collectively referred to as a "Party" and together referred to as the "Parties."

RECITALS

- A. Licensor owns certain real property in the City of Wheaton, DuPage County Illinois, legally described in **Exhibit A** attached to and incorporated by reference in this Agreement, which is commonly known as the Wheaton Park District Park Services Center, 1000 Manchester Road (the "Park Property").
- B. Licensee owns certain real property immediately adjacent and to the north of the Park Property which is improved with a roadway commonly known as Manchester Road (the "Roadway").
- C. Licensee desires to repair and otherwise improve the Roadway (the "Project") over a period of approximately thirty-six (36) months and has requested permission from Licensor to enter upon and use a portion of the Park Property located between the City sidewalk running along the Roadway and a landscaped berm located on the Park Property that screens from view from the Roadway the parking lot located on the Park Property adjacent to the Services Center building, being approximately twelve feet wide and thirty-eight feet long, and legally described and depicted on **Exhibit B** attached to and incorporated by reference in this Agreement (the "Licensed Premises"), for the sole purpose of transporting materials and equipment to and from and otherwise gaining access to and performing work on the Roadway in connection with the execution of the Project and Licensee's performance of its restoration and other obligations under this Agreement (the "Licensed Activities").
- D. In view of the circumstances, and in the interest of intergovernmental cooperation, Licensor is willing to grant permission to Licensee to use the Licensed Premises for the Licensed Activities, upon and subject to the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above recitals are hereby incorporated in their entirety by reference in this Agreement.
2. Licensor hereby grants to Licensee a temporary license (the "License") to use the Licensed Premises for the Licensed Activities, upon and subject to the terms and conditions set forth in this Agreement.
3. The License shall commence on June 1, 2008 and shall expire (the "Expiration Date") on the earlier of (a) the date of final completion of the Project and fulfillment by the City of its restoration obligations as provided in this Agreement or (b) thirty-six (36) months, unless extended in writing by Licensor or unless sooner terminated by Licensor in accordance with paragraph 17, below (the "License Term"). The obligations of Licensee under this Agreement shall survive the expiration or

termination of the License and under no circumstances shall any such obligation be deemed discharged until fully performed in accordance with the provisions of this Agreement.

4. The License shall be used and enjoyed solely by Lormsee and its duly authorized employees, agents and contractors for the Licensed Activities, and Licensee shall not assign its License rights in whole or in part or grant permission to traverse, enter upon or otherwise use the Licensed Premises to any other person.

5. No equipment, machinery or materials shall be brought or permitted to come onto or remain on any portion of the Park Property other than the Licensed Premises, and then subject to such reasonable restrictions, if any, as shall be specified by Licensee.

6. No explosives or flammable or hazard materials of any kind shall be transported across, brought upon, or stored or deposited on, the Park Property. As used in this Agreement, "hazardous materials" means any hazardous toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto or such substances, materials, and wastes regulated under any applicable local, state or federal law including, without limitation, any municipal, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as "Hazardous substances" pursuant to Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601) or any other applicable environmental law.

7. The Park Property, including the Licensed Premises, at all times shall be kept free of accumulations of debris, waste and garbage resulting from the Licensed Activities.

8. Licensee shall have the right at any time to:

- (a) impose weight and load restrictions which Licensor reasonably determines are necessary or advisable under the circumstances; and
- (b) suspend the License for safety or health reasons in the event of a breach by Licensee of any of its obligations under this Agreement, without waiving Licensor's right to terminate the License as provided in paragraph 17, below.

9. Licensor's reservation of such rights or its failure to exercise same shall not impose or create any responsibility or liability on Licensor or affect, reduce or nullify in any way Licensee's obligations under this Agreement, including without limitation its obligations under paragraphs 13, 14 and 15, below.

10. Licensor shall have the right to use the Park Property at any time for any purpose which does not unreasonably interfere with the License. Licensee shall have the right to enter upon the Licensed Premises at any time(s) to inspect, maintain or repair the Property including the Licensed Premises and improvements thereon, to determine Licensee's compliance with the terms and conditions of this Agreement, and for any other lawful purpose(s).

11. Licensee shall conduct and shall require its employees, agents and contractors to conduct the Licensed Activities at all times in a safe manner and in compliance with all applicable federal, state and local laws, rules and regulations.

12. Upon termination of the License by expiration or otherwise, Licensee at its sole cost and expense shall restore the Licensed Premises and any other affected portion(s) of the Property to the

same or better condition as existed immediately prior to the commencement of any activity thereon by Licensee. Additionally, Licensee at its sole cost and expense shall repair all damage to the Licensed Premises, any improvements located thereon and any other affected portion(s) of the Property and replace all lost or destroyed items. All restoration, repair and replacement shall be completed to the reasonable satisfaction of Licensor within thirty (30) days after the end of the License Term or, if due to weather conditions or other circumstances which, in Lessor's opinion, would make any such restoration, repair and replacement inadvisable, then within such latent time period as Licensor reasonably shall request.

13. Licensee shall conduct its operations on this Property entirely at its own risk. 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 park commissioners, officers, employees and agents from, and all claims of every nature whatsoever, which Licensee may have at any time against Licensor, its park commissioners, officers, employees and/or agents, including without limitation claims for personal injury or property damage sustained or incurred by Licensee or any person claiming by, through or under Licensee, relating directly or indirectly to this Project.

14. Licensee shall defend, indemnify and hold harmless Licensor, its park commissioners, officers, employees and agents against and from any and all liabilities, claims, losses, costs, damages and expenses of every nature whatsoever, including without limitation reasonable attorneys' and paralegal fees, suffered, incurred or sustained by any such indemnified persons, including without limitation liabilities for the death of or injury to any person or the loss, destruction or theft of or damage to any property, relating directly or indirectly to, arising directly or indirectly to, or arising directly or indirectly from, the exercise by Licensee, its employees, agents, or contractor's or any other person acting on its or their behalf or with its or their authority or permission, of the rights and privileges granted Licensee under this Agreement. Licensee shall defend, indemnify and hold harmless Licensor against and from any and all claims, losses, costs, damages and expenses, including without limitation reasonable attorneys' and paralegal fees, suffered, sustained or incurred by Licensor as a result of Licensee's breach of any provision of this Agreement or otherwise incurred by Licensor in enforcing the terms of this Agreement.

15. In addition to, and in fulfillment and not in limitation of, Licensee's obligations in paragraphs 13 and 14, above, and at no cost to Licensor, Licensee shall require its contractor(s) performing any work on the Project to (a) waive and relinquish claims against Licensor and to defend, hold harmless and indemnify Licensor from and against claims, using substantially the same language as provided in paragraphs 13 and 14, above and (b) to obtain and keep in full force and effect for so long as any claim relating to the Project legally may be asserted, comprehensive general liability and property damage insurance written to include the coverages and for not less than the minimum limits of coverage required by law, as provided in **Exhibit C** attached to and incorporated by reference in this Agreement.

16. Licensee shall not cause or suffer or permit to be created any mechanics' or materialman's liens or claims against the property. Licensee shall defend, indemnify and hold harmless Licensor from and against any such claims or liens.

17. The License granted Licensee hereunder may be terminated prior to its expiration date:

- (a) immediately upon written notice to Licensee in the event Licensee or its contractor(s) shall fail to procure or maintain the insurance required, or shall fail to provide evidence of such insurance coverage as required, under paragraph
- (b) immediately upon Licensee's failure to remedy or obtain remedy by its contractor(s) of any breach of any term or condition of this License Agreement (other than paragraph 15 regarding insurance) within ten (10) days after written notice of such breach is delivered to Licensee; or

(c) immediately upon abandonment of the Project by Licensee or its contractor(s). For purposes of this subparagraph, abandonment shall be deemed to have occurred in the event no activity is conducted on the Project for a period of 30 consecutive days so long as the work is not suspended in conformance with Section 108.7 of the IDOT Standard Specifications in which case the Standard Specifications shall apply.

18. This Agreement and the License granted hereunder does not create any title to or interest in the Park Property, in whole or in part, in favor of Licensee, or any property rights appurtenant to the Roadway.

19. No waiver of any rights which Licensor has in the event of any default or breach by Licensee under this Agreement shall be implied from failure by Licensor to take any action on account of such breach or default, and no express waiver shall affect any breach or default other than the breach or default specified in the express waiver and then only for the time and to the extent therein stated.

20. Nothing contained in this Agreement shall be construed or deemed to diminish or constitute a waiver or relinquishment by either Party of the rights, privileges, defenses and immunities available or afforded to Licensee under the Illinois Local Governmental and Governmental Employee's Tort Immunity Act or under other State statutes affording similar protections.

21. There are no third party beneficiaries to this Agreement, intended or otherwise and no claim as a third party beneficiary under this Agreement may or shall be made, or be valid against either Party.

22. Notices shall be deemed properly given hereunder if in writing and either hand delivered or sent by registered or certified mail, return receipt requested, to the Parties at their respect addressed provided below, or as either party may otherwise direct in writing to the other party from time to time. Notices sent by mail shall be deemed delivered the second day after deposit in the mail.

If to Licensor:

Wheaton Park District
1000 Manchester Road
Wheaton, Illinois 60187-0727
Attention: Director of Planning

If to Licensee:

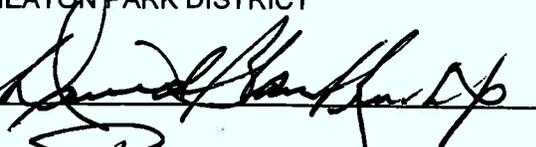
City of Wheaton
303 W. Wesley Street
Wheaton, IL 60189-0727
Attn: City Engineer

23. This Agreement contains the entire agreement between the Parties with respect to the use of the Park Property by Licensee in connection with the Project and cannot be modified except by writing, dated subsequent to the date hereof and signed by both Parties.

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

LICENSOR:

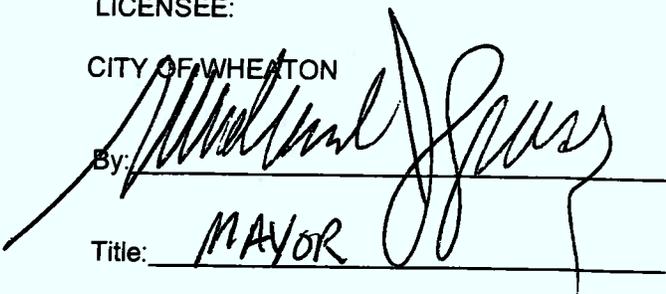
WHEATON PARK DISTRICT

By: 

Title: PRESIDENT

LICENSEE:

CITY OF WHEATON

By: 

Title: MAYOR

EXHIBIT B**LICENSED PREMISES**

That part of Lot 1 in Wheaton Park District Maintenance Facility Plat of Consolidation, being a subdivision of part of Section 17, Township 39 North, Range 10 East of the Third Principal Meridian, according to said plat recorded July 27, 2006 as document 2006-145004, in DuPage County, Illinois, described as follows:

Beginning at the most easterly corner of said Lot 1; thence on an assumed bearing South 22 degrees 51 minutes 31 seconds West, on the southeasterly line of said Lot 1, a distance of 12.05 feet; thence North 59 degrees 04 minutes 35 seconds West, 28.29 feet; then North 14 Degrees 04 minutes 35 seconds West, 16.76 feet to the northeasterly line of said Lot 1, thence South 59 degrees 12 minutes 11 seconds east, on said northeasterly line, 38.45 feet to the Point of Beginning.

Portion of permanent index number 05-17-120-026

INSURANCE REQUIREMENTS

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

A. Commercial General and Umbrella Liability Insurance

Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$3,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this contract/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 and advertising injury, and liability assumed under insured contract (including the tort liability of another assumed in a business contract).

District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 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 District.

B. Business Auto and Umbrella Liability Insurance

If applicable, business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$3,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired, and non-owned autos.

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.

If District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against District and its officers, offices, employees, volunteers, and agents for recovery of damages arising out of or incident to the Contractor's services.

C. Workers Compensation Insurance

If applicable, workers compensation 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.

D. General Insurance Provisions

1. Evidence of Insurance

At least fifteen (15) days prior to the commencement of the contract or commencement of services whichever first occurs, Contractor shall furnish District 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 certificates shall provide for thirty (30) days' written notice to District prior to the cancellation or material change of any insurance referred to therein. Written notice to District shall be by certified mail, return receipt requested.

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

District shall have the right, but not the obligation, of prohibiting Contractor from beginning work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of this Contract at District's option.

Contractor shall provide certified copies of all insurance policies required above within ten (10) days of Districts' written request for said copies.

2. Acceptability of Insurers

For insurance companies with 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 District has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insured's 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 District. At the option of the District, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the District, 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 Contractor to purchase and maintain insurance of the type specified above. When requested by the District, Contractor shall furnish copies of the certificates of insurance evidencing coverage for each subcontractor.