

AUTHORIZATION, ACKNOWLEDGMENT AND
INDEMNIFICATION FOR TESTING
WORK AND TEMPORARY ACCESS AGREEMENT

This Authorization, Acknowledgment and Indemnification for Testing Work and Temporary Access Agreement ("Agreement") is entered into this ____ day of _____, 2017, by and between the VILLAGE OF ORLAND PARK, Cook and Will Counties, Illinois, (hereinafter "VILLAGE"), and BRADFORD ORLAND PARK 4 LLC, an Illinois limited liability company ("BRADFORD").

WHEREAS, the VILLAGE owns, operates, maintains or otherwise controls a certain real property located within the VILLAGE's boundaries having an area of approximately 1.69 acres located at the southeast corner of 142nd Street and Crescent Park Circle, Village of Orland Park, Cook County, Illinois, which is legally described on Exhibit A attached hereto and made a part hereof commonly known as 14600 Ravinia Avenue, Orland Park, Illinois (the "VILLAGE's Property"); and

WHEREAS, BRADFORD seeks the VILLAGE's permission for BRADFORD, its employees, agents and/or independent contractors to enter upon, inspect and/or conduct testing activities and applications concerning the VILLAGE's Property pursuant to the terms contained in this Agreement (the "Work"); and

WHEREAS, the VILLAGE is willing to grant BRADFORD a limited right of access to the VILLAGE's Property to perform the Work upon the terms and conditions set forth in this Agreement.

Now, Therefore, in consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

1. VILLAGE agrees that BRADFORD and its employees, agents and independent contractors (collectively, "BRADFORD's Representatives") shall have the right to enter upon the VILLAGE's Property to (i) inspect the VILLAGE's Property, including conducting a Phase I environmental site assessment; and (ii) conduct reasonable tests thereon, and to make such other examinations with respect thereto as BRADFORD, or its counsel, licensed engineers, surveyors or other representatives may deem reasonably necessary; provided, however, BRADFORD shall not conduct any subsurface or environmental investigations of the VILLAGE's Property (excepting only a non-invasive Phase I environmental assessment) without VILLAGE's prior written consent, which consent shall not be unreasonably withheld. Any tests, examinations or inspections of the VILLAGE's Property by BRADFORD and all costs and expenses in connection with such testing, examination, and inspection of the VILLAGE's Property shall be at the sole cost of BRADFORD.

BRADFORD may engage only qualified, independent contractors, subcontractors or consultants to assist with any environmental investigation of the VILLAGE's Property (Phase I and/or Phase II) and/or other Work on the VILLAGE's Property; however, no contractual, legal or other relationship will be created between VILLAGE and any such contractor, subcontractor or consultant as a result. The inspection shall not create any obligation on the part of VILLAGE to pay or to see that the payment of any sum is made to any such contractor, subcontractor or consultant.

In the event BRADFORD elects to perform any environmental study (such as a Phase I or Phase II environmental study) with respect to the VILLAGE's Property and/or other Work on the VILLAGE's Property, BRADFORD agrees that:

(i) BRADFORD shall provide VILLAGE with a copy of the proposed scope of work in connection with any such work and any and all modifications thereof, which scope of work shall be subject to the reasonable approval of VILLAGE;

(ii) BRADFORD shall provide VILLAGE with a verbal report of the consultant's site visit and a copy of the test data as soon as it is available;

(iii) BRADFORD shall provide VILLAGE with copies of the report in draft form in order to review it and provide comments before such report is finalized;

(iv) BRADFORD shall provide VILLAGE with a copy of the final reports (Phase I and/or Phase II);

(v) BRADFORD agrees that any reporting or disclosure obligation shall be performed by VILLAGE; and

(vi) BRADFORD shall notify VILLAGE at least five (5) business days prior to such tests, specifying a time and date when such tests will be performed so that VILLAGE's designee(s) may, at its option, be available during the taking of such tests and, at VILLAGE's option and expense, VILLAGE may take split samples of any test borings. Any tests, examinations or inspections of the VILLAGE's Property by BRADFORD and all costs and expenses in connection with such inspection of the VILLAGE's Property (or any part thereof) shall be at the sole cost of BRADFORD shall be performed in a manner not to interfere with VILLAGE's or any other person's use of the VILLAGE's Property and shall not violate any law or regulation of any governmental authority.

To the extent BRADFORD's inspections or tests disclose the presence of any existing contamination on the VILLAGE's Property in violation of applicable law, then upon becoming aware of any hazardous substance, BRADFORD shall immediately cease any further testing and shall notify VILLAGE of the existence of such hazardous substance and provide such reasonable information as VILLAGE may request in connection therewith.

2. The proposed Work shall be located and constructed as agreed by the parties. BRADFORD's Representatives shall at all times conduct the Work in such a manner as to minimize hazards to those using the VILLAGE's Property. BRADFORD agrees to assume all health and safety risks associated directly or indirectly with the Work. All signs required for safety purposes shall be furnished by BRADFORD's Representatives. No revisions or additions shall be made to the proposed Work on the VILLAGE's Property without the written permission of the VILLAGE Manager. BRADFORD's Representatives and its contractors and agents shall not interfere with the VILLAGE's operations during the course of the installation, testing or other operations authorized by this Agreement. BRADFORD's Representatives shall take all steps necessary to keep the VILLAGE's Property available for its intended purposes. BRADFORD's Representatives shall schedule the Work on days and times acceptable to the VILLAGE Manager. BRADFORD's Representatives acknowledge and agree that the VILLAGE may require, at any time, BRADFORD's Representatives to vacate all or part of the VILLAGE's Property. The VILLAGE shall not be held responsible in any way for any losses, damages or expenses suffered by BRADFORD's Representatives in BRADFORD's Representatives' vacating the VILLAGE's Property. The VILLAGE is not responsible for any damage caused by the VILLAGE or otherwise to BRADFORD's Representatives' equipment, property or Work. BRADFORD's Representatives shall bear the sole and entire risk of its property or equipment being located on the VILLAGE's Property.

3. BRADFORD's Representatives shall consult with the local utility companies to determine the existence and location of electrical, gas, water, cable and telephone service on the VILLAGE's Property. BRADFORD's Representatives shall be solely responsible for selecting the location for the ground penetration work provided, however, that any proposed soil borings shall be located and constructed to the satisfaction of the VILLAGE Manager or his duly authorized representatives. BRADFORD shall indemnify and hold the VILLAGE, its officers, Trustees, servants, employees, agents and successors and assigns both in their individual and official capacities (collectively, "VILLAGE Affiliates") harmless from any and all liability that may be incurred by damage or repair to utilities caused by the acts of BRADFORD's Representatives, its employees, servants, subcontractors and agents.

4. BRADFORD's Representatives shall not trim, cut or in any way disturb any trees or shrubbery on the VILLAGE's Property without the written approval of the VILLAGE Manager or his duly authorized representative. BRADFORD's Representatives will not do or permit any act or thing which may impair the value of the VILLAGE's Property or that materially increases the dangers or poses an unreasonable risk of harm to persons on or off the VILLAGE's Property arising from activities thereon, or that constitutes a public or private nuisance or waste to the VILLAGE's Property or any part thereof. BRADFORD's Representatives shall ensure the VILLAGE's Property is free from all accumulations of waste material or rubbish caused directly or indirectly by the Work. Neither BRADFORD's Representatives nor its contractors shall represent or hold themselves out as employees or agents of the VILLAGE. This Agreement does not create any legal relationship such as a joint venture or partnership between the VILLAGE and BRADFORD's Representatives. In performing the Work hereunder, it is understood that BRADFORD's Representatives are acting as independent contractors and that any workers and any and all employees, agents, and representatives of such workers retained for the Work hereunder shall not be deemed, for any purpose, to be agents, servants, and/or employees of the VILLAGE. The VILLAGE is not undertaking by virtue of this Agreement any responsibility or liability for compliance with any laws, rules or regulations relating to contamination or the depositing, transporting, storage or control of any wastes within the area of the Property; nor shall the VILLAGE undertake any responsibility or liability for the testing, remediation, depositing, transporting, storing or disposing of any hazardous materials whatsoever. The VILLAGE shall not undertake any responsibility or liability for the means or methods used by BRADFORD's Representatives, or any worker in any construction, testing, remediation, depositing, transporting, storing or disposing of any material from the Property. The VILLAGE will not be identified at any time, in any place, document or manifest as the owner, operator or transporter of material, soil, water or liquid taken from Property. Prior to performing Work hereunder, BRADFORD shall provide to the VILLAGE the following information:

- (a) a list and key contacts of all workers that will be used to perform the Work. BRADFORD's Representatives shall immediately notify the VILLAGE of any changes to that list;
- (b) the name, address and telephone numbers and other pertinent information of each person who can be contacted in the event of an emergency situation at or related to the Work;
- (c) identification of equipment and materials to be used or stored on the VILLAGE's Property which must be approved by the VILLAGE Manager;
- (d) list and copies of all required permits; and
- (e) a project schedule.

5. In the course of performing the Work, BRADFORD's Representatives shall not use the VILLAGE's Property for any activities involving the use, generation, treatment, storage or disposal of

any hazardous or toxic chemical, material, substance or waste. BRADFORD's Representatives shall not conduct any activity on the VILLAGE's Property or use the VILLAGE's Property in any manner (i) which would cause the VILLAGE's Property to become a hazardous waste treatment, storage or disposal facility, (ii) so as to cause a release or threat of a release of hazardous waste from the VILLAGE's Property, or (iii) so as to cause a discharge of pollutants or effluents into any water source or system.

6. In consideration for the VILLAGE's agreement to permit BRADFORD's Representatives to enter the VILLAGE's Property to perform the Work contemplated by this Agreement, BRADFORD agrees as follows:

A. BRADFORD shall defend, indemnify and hold harmless the VILLAGE and the VILLAGE Affiliates and each of them, from and against any and all civil liabilities, actions, responsibilities, obligations, losses, damages, and claims, and all costs and expenses, including but not limited to attorney's fees and expenses (collectively, "Losses") pursuant to any federal, state and local laws (including the common law), statutes, ordinances, rules, regulations and other requirements relating to or which the VILLAGE and/or the VILLAGE Affiliates may incur from or on account of (either directly or indirectly) the Work performed hereunder, including but not limited to any Losses incurred which are based on tort law, wrongful death, and/or a personal injury claim, suit or action and/or any Losses relating to environmental investigation, cleanup, or abatement, whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future, and in any manner whatsoever incurred relating to (i) any condition of the VILLAGE's Property (including the groundwater there under) or the existence of Hazardous Substances (herein defined as that term is defined in 42 U.S.C. §9601(14), Hazardous Waste (herein defined as that term is defined in 42 U.S.C. §6903(5)) or Petroleum (herein defined as that term is defined in 42 U.S.C. §6991(8)), on or emanating from the VILLAGE's Property (including the groundwater there under); (ii) the violation or claimed violation on the VILLAGE's Property (including the groundwater there under) of any environmental law or regulation (including civil penalties sought to be imposed by governmental authorities for such violations); (iii) any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release (as defined by 42 U.S.C. §9601(22)) or threatened release (as defined by 42 U.S.C. §9601 (22)) of Hazardous Substances, Hazardous Waste, or Petroleum on or from the VILLAGE's Property (including the groundwater there under); and the imposition of any lien for the recovery of any costs related to the migration, release, or threatened release of Hazardous Substances, Hazardous Waste, or Petroleum (or allegations of the same) on or from the VILLAGE's Property (including the groundwater there under).

B. BRADFORD hereby agrees to release, waive, covenant not to sue and forever discharge the VILLAGE and the VILLAGE Affiliates, and each of them, for any claim, suit, or action, whether or not well founded in fact or in law, which BRADFORD's Representatives, their contractors, agents or employees have, or may have, arising out of any evaluation, examination, testing, sampling or environmental appraisal or the Work conducted by BRADFORD's Representatives, their contractors, agents or employees at or on the VILLAGE's Property. Notwithstanding any other provision of this Agreement, as between the VILLAGE and the VILLAGE Affiliates on one hand, and BRADFORD on the other hand, under no circumstances shall the VILLAGE and the VILLAGE Affiliates be liable for Losses arising from any condition on the VILLAGE's Property or Hazardous Substances, Hazardous Waste, or Petroleum emanating from or contained in the VILLAGE's Property (including the groundwater there under), and the duty to defend, hold harmless and indemnify under this Paragraph 6 shall apply to all such Losses.

C. BRADFORD shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. In the event that the VILLAGE or any of the

VILLAGE Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Agreement, the VILLAGE and/or any of the VILLAGE Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by BRADFORD pursuant to the indemnification provisions herein.

D. The VILLAGE agrees to cooperate with BRADFORD's Representatives with respect to providing BRADFORD's Representatives reasonable access to complete the site investigation on the Property. Any and all actual out-of-pocket costs incurred by the VILLAGE in order to provide the foregoing cooperation shall be reimbursed to the VILLAGE within thirty (30) days of written notice of same and submission of sufficient evidence of such actual expenses from the VILLAGE.

E. BRADFORD shall also indemnify the VILLAGE for any costs, including reasonable attorney's fees, which the VILLAGE may incur in enforcing the provisions of this Agreement.

7. BRADFORD shall cause BRADFORD's Representatives to immediately deliver to the VILLAGE any and all records, documents (including writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form), or reports of any kind (including all written, printed, recorded or graphic matter however produced or reproduced and all copies, drafts and versions thereof not identical in each respect to the original) which relate or refer to the environmental matters and/or conditions associated either directly or indirectly with the VILLAGE's Property, including but not limited to written reports of a site assessment, environmental audits, soil test reports, water test reports, laboratory analysis and documents, reports or writings relating or referring to the Work.

8. BRADFORD's Representatives and their agents, contractors, subcontractors and employees shall perform the Work in a workmen-like manner, and shall conduct all Work at the VILLAGE's Property in accordance with all applicable federal, state and local regulations, including without limitation Illinois Environmental Protection Agency and federal regulations applicable to soil borings and groundwater monitoring wells and all health and safety requirements. BRADFORD's Representatives and their agents, contractors, subcontractors and employees shall take all reasonable precautions to minimize damage to the VILLAGE's Property from the installation of any equipment and the Work on the VILLAGE's Property and shall restore the VILLAGE's Property to its original condition within twenty (20) days after completion of the Work or the termination of this Agreement. The restoration of the VILLAGE's Property must be to the VILLAGE Manager's reasonable satisfaction. In the event any equipment installed on the Property by the Authorized Parties is not timely removed by the end of the Term, the VILLAGE will have the right to remove such equipment and BRADFORD agrees to be responsible for the reasonable costs of such removal.

9. BRADFORD shall be solely responsible for the testing, storage, treatment and disposal of all material removed from the soil borings, groundwater monitoring wells and/or which result from the Work, and BRADFORD shall indemnify and hold the VILLAGE and the VILLAGE Affiliates, their officers, employees and agents harmless from and against any and all costs and liabilities and Losses relating to such materials. The VILLAGE will not be identified at any time, in any place, document, record or manifest as the owner, generator or transporter of materials or soil taken from the VILLAGE's Property as a result of the Work.

10. BRADFORD agrees to obtain and furnish at its own expense insurance policies that are acceptable to the VILLAGE, protecting the VILLAGE and the VILLAGE Affiliates from any and all damages, claims and losses on a primary and noncontributory basis. BRADFORD's Representatives further agrees to cause Contractual Liability Endorsements to be issued by the insurance companies (and

attached to the policies of insurance) to include under the coverage therein extended an obligation on the part of the insurers to insure against BRADFORD's Representative's liability hereunder and to identify the VILLAGE and the VILLAGE Affiliates against Losses, liability, costs, expenses, attorney's fees and court costs. Contractual Liability Endorsements to the policies shall include as named co-insured's the VILLAGE and the VILLAGE Affiliates. In addition, Certificates of Insurance adding the VILLAGE and the VILLAGE Affiliates as Additional Insured's on BRADFORD's Comprehensive General Liability Policy, Pollution Liability, Worker's Compensation, Auto Liability and Professional Errors and Omissions coverages shall be submitted to the VILLAGE. All such contracts of insurance shall provide for thirty (30) days advance notice to the VILLAGE of cancellation thereof. The Certificate of Insurance and policies and endorsements required hereunder shall be submitted to and approved by the VILLAGE before Work is permitted to be started.

11. This Agreement shall not be assigned by any party hereto.

12. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.

13. In the event any term or provision of this Agreement shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

14. This Agreement embodies the entire agreement between the parties hereto and supersedes any and all prior agreements and understandings, whether written or oral, and whether formal or informal. In addition, this Agreement embodies and merges the entire understanding between and among the parties hereto, and any and all prior correspondence, conversations, or memoranda relating the subject matter stated herein are being merged herein and replaced hereby. No change hereto shall be effective without the written consent and authorization of all of the parties hereto.

15. Notwithstanding anything to the contrary contained in this Agreement, the terms, provisions, conditions and indemnifications of this Agreement shall survive the termination of this Agreement.

16. This Agreement shall be governed by the laws of the State of Illinois. The provisions of this Agreement shall be enforceable in any action in law or in chancery. The parties hereto agree that any legal action to enforce any right or obligation contained in or arising out of this Agreement shall be brought in the Circuit Court of Cook County, Illinois.

17. In construing this Agreement and/or determining the rights of the parties hereunder, no party shall be deemed to have drafted or created this Agreement, or any portion thereof but BRADFORD acknowledges that it has requested this Agreement and shall fully comply with all of its terms.

18. All notices must be in writing and are effective five (5) days following deposit in the U.S. mail, certified and postage prepaid, or when sent via overnight delivery. Notices are to be sent to:

For the VILLAGE: Village Manager
Village of Orland Park
14700 S. Ravinia Avenue
Orland Park, Illinois 60462

with a copy to: E. Kenneth Friker, Esq. and
Dennis G. Walsh, Esq.
Klein, Thorpe & Jenkins, Ltd.
15010 S. Ravinia – Suite 10
Orland Park, Illinois 60462

For BRADFORD:

19. The VILLAGE does not waive or release any claims it has or may have in the future against BRADFORD. The failure of any party to this Agreement to enforce the provisions of this Agreement or require performance by another party under any of the Agreement provisions, shall not be construed as a waiver of such provision(s) or affect the right of the party to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement.

20. The term (“Term”) hereof shall be up to one hundred eighty (180) days from full execution of this Agreement and shall be revocable by either party at any time.

21. The executing representatives of the parties to this Agreement represent and certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.

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

VILLAGE OF ORLAND PARK,
an Illinois municipal corporation

BRADFORD ORLAND PARK 4 LLC,
an Illinois limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Contact Phone#: _____

Contact Phone#: _____