	AGENDA ITEM EXECUTIVE SUMMARY		Agenda Item number: 6.a
	Title:	Recommendation to approve a license agreement between the City of St. Charles and STC Riverside LLC. to allow an outdoor patio on public property adjacent to 106 S. Riverside Avenue.	
	Presenter:	Rita Tungare	
Meeting: Government Services Committee		Date: May 28, 2019	
Proposed Cost: \$		Budgeted Amount: \$	Not Budgeted: <input type="checkbox"/>
Executive Summary <i>(if not budgeted please explain):</i> <p>Polyanna Brewery will be occupying the southern portion of the 106 S. Riverside Avenue building (formerly known as the Chord On Blues Building). The building owner, STC Riverside LLC. has requested use of City-owned property to accommodate an outdoor patio for Polyanna. As indicated on the attached site plan, the proposed patio will occupy a landscape island in the parking lot as well as a portion of the sidewalk along Riverside Ave.</p> <p>The City will need to enter into a license agreement with STC Riverside LLC to authorize the use of such public property for construction and maintenance of the outdoor patio. Staff has worked with the City Attorney to review the agreement.</p> <p>The Licensee will be responsible for compliance with all applicable provisions of Section 12.04.102 related to sidewalk café permits, as included in the agreement.</p> <p>The City has the right to terminate the agreement with 60 days written notice of intent to terminate. The Licensee shall remove the patio within 30 days of termination and restore the area to its existing condition, unless otherwise agreed to by the City.</p> <p>Polyanna Brewery and the building owner are working with the Liquor Control Commission and City Council on a site plan modification to their liquor license for the outdoor patio.</p> <p>Final engineering and grading plans are currently being prepared. It is anticipated that the final version of the license agreement will be ready for City Council consideration on June 3rd.</p>			
Attachments <i>(please list):</i> License agreement; site plan			
Recommendation/Suggested Action <i>(briefly explain):</i> Recommendation to approve a license agreement between the City of St. Charles and STC Riverside LLC. to allow an outdoor patio on public property adjacent to 106 S. Riverside Avenue.			

City of St. Charles
2 E. Main St.
St. Charles, IL 60174

LICENSE AGREEMENT

WITNESSETH:

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the Parties hereto hereby stipulate, the Parties hereby agree as follows:

1. The Recitals hereinabove are hereby incorporated into and made a substantive part of this Agreement as though they were fully set forth in this Paragraph.

2. The City, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid to City, the receipt and sufficiency of which is hereby acknowledged, hereby grants to the Licensee, its successors, grantees and assigns, an exclusive restricted license (hereinafter the "License") for the purpose of constructing and maintaining the Outdoor Patio solely within the limited area in the Riverside Avenue ROW and City Parking Lot, pursuant to the plans illustrated on the attached Exhibit "C," subject to the terms, conditions and limitations herein specified together with any exhibits attached hereto and incorporated herein by reference.

3. Licensee must construct and maintain the Outdoor Patio in full compliance with the permit and all conditions contained herein or attached hereto by reference.

4. The Outdoor Patio shall not in any manner be expanded, added to or enlarged beyond the extent of described herein and shown in Exhibit "C."

5. The Outdoor Patio shall not in any manner be constructed, reconstructed, modified or improved without prior written consent of the City.

6. This Agreement shall terminate in the event that any of the following occur:

- a. The primary structure located on 106 S. Riverside Ave. is ever damaged or destroyed, to the extent that its value is less than 25% of the cost to replace the primary structure, and the Licensee shall has failed to repair the primary structure within one hundred and eighty (180) days of said damage;
- b. The Outdoor Patio is removed by the Licensee;
- c. The City provides a sixty (60) day written notice of intent to terminate the license.
- d. The Agreement otherwise terminates pursuant to any other provision of this Agreement.

Prior to termination of this Agreement, Licensors shall provide Licensee with a written Notice of Termination ten (10) days prior to the date of said termination.

7. Licensee understands and agrees that the Outdoor Patio shall remain in good condition at all times and that the use and enjoyment of the Riverside Avenue ROW and City Parking Lot shall not be compromised in any unsafe or adverse manner, at all times complying with all local codes and ordinances, including the following requirements:

- a) The Outdoor Patio shall not unreasonably interfere with pedestrian or vehicular traffic or with access to parked vehicles, and in no event shall the Outdoor Patio reduce the open portion of any sidewalk or walkway to less than five feet (5') in width.
- b) Prior to modification of the Outdoor Patio, the Licensee shall furnish a dimensioned plan showing the sidewalk or other public space and all existing public improvements and encroachments such as light posts, benches, planters, trash receptacles, fences, trees and tree grates in the area, bicycle racks and newspaper boxes. The diagram shall also include

the location of the curb relative to the building and the proposed location of all café furniture, food carts, and other equipment to be placed on the sidewalk.

- c) The consumption and possession of alcoholic beverages within the Outdoor Patio shall only be allowed pursuant to a liquor license granted under Title 5, "Business Licenses and Regulations," Chapter 5.08, "Alcoholic Beverages," of the St. Charles Municipal Code.
- d) All applicable County Health Department sanitation requirements shall be followed for outdoor food handling. The permittee shall be responsible for posting the outdoor seating area as to any special Health Department requirements.
- e) The Outdoor Patio shall be maintained in a sanitary manner at all times. Food scraps and containers shall be disposed of in appropriate refuse containers on a regular basis during the day by the Licensee. Sweeping of refuse or food scraps into tree grates is not permitted.
- f) Licensee is responsible for emptying the public trash containers placed by the City if they should become full prior to the next regular pickup time.
- g) Licensee shall see that the Outdoor Patio is clean at the end of each business day, so as not to have any food or drink leftovers remaining which would pose an attraction to animals or insects. Licensee shall wash, as needed, the Outdoor Patio to remove any food or drink residue that may attract animals and/or create a pedestrian slip hazard.
- h) Design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act and the Illinois Accessibility Act.
- i) No tables, umbrellas, enclosure fencing, or other equipment shall be attached or affixed to poles or any other public facilities.

8. To the fullest extent permitted by law, Licensee hereby agrees to defend, indemnify and hold harmless the City, its officials, agents, and employee, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, specifically including but not limited to, any claim or damages caused by or to the Outdoor patio or caused by work performed by the City, or its agents, which may in anywise accrue against the City, its officials, agents, and employees, arising in whole or in part or in consequence of the performance of this Agreement by the Licensee, their agents, invitees, employees, contractors or subcontractors, or which may in anyway result therefrom, except that arising out of the sole legal cause of the City, its agents or employees, the Licensee shall, at their own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against the City, its officials, agents and employees, in any such action, the Licensee shall, at its own expense, satisfy and discharge the same. Upon completion and occupancy, the Licensee shall furnish to the City a certificate of insurance evidencing commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 general aggregate limits and otherwise reasonably satisfactory to the City.

The insurance policy shall be in conformance to the requirements described herein attached Exhibit "D". The insurance policy shall be expressly endorsed to include the City as an additional insured, Such certification of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the City in the event of any cancellation, non-renewal or change in the policy limits, terms or conditions which would cause them to fail to meet the foregoing requirements. Such insurance shall be fully maintained during the term of the License.

9. The City shall have the right, in its sole and absolute discretion, to promulgate and enforce rules and regulations regarding the use of the Outdoor Patio to protect the health, safety and welfare of the public utilizing the Riverside Avenue ROW and City Parking Lot. The Licensee will provide, at its expense (and the City shall have no obligation to provide or pay for), any and all improvements and/or modifications to the Outdoor Patio to comply with this provision.

10. Licensee understands and agrees that various third party utility, telecommunication, and T.V. cable companies, including but not limited to Commonwealth Edison, NICOR and AT&T and their successors and assigns ("Utility Companies"), may have certain rights arising in the Riverside Avenue ROW, and that this Agreement does not in any way affect or diminish the rights of those Utility Companies. Licensee hereby acknowledges and agrees that the Utility Companies have no obligation or responsibility to Licensee or the Encroachment.

11. If this Agreement is terminated under any of the provisions contained herein, Licensee shall remove the Outdoor Patio within thirty (30) days of termination. The site shall be restored to the same general condition as existed before the Outdoor Patio was installed (sidewalk in Riverside Avenue ROW and a landscaped island within the City Parking Lot), unless otherwise agreed to by the City. If the required work is not performed or completed to the City's satisfaction, the City shall have the right to perform or complete such work. Licensee agrees to reimburse the City for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the 106 S. Riverside Ave. property.

12. The Outdoor Patio when installed does not become a part of or an interest in the Riverside Avenue ROW or the City Parking Lot, the air rights above and below or the underlying property. This Agreement shall not be construed to grant any interest in realty or any other possessory interest beyond the irrevocable, permanent and exclusive license to the Licensee, as provided herein.

13. Licensee is responsible for the cost of installation, maintenance, and removal of such the Outdoor Patio and is responsible for any damage caused to the Riverside Avenue ROW and City Parking Lot resulting from such installation, maintenance, and removal.

14. The terms of this Agreement are covenants running with 106 S. Riverside Ave. and shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns.

15. The parties acknowledge that the licensed area is part of the City Parking Lot and that the City Parking Lot is owned by the City and is currently exempt from any tax assessment for real estate or any other taxes. In the event that the City Property or any part thereof becomes subject to real estate or other taxes arising out of this License Agreement, the Licensee shall be liable for those real estate or other taxes and will pay said taxes as they become due and owing.

16. This Agreement may be enforced either at law or in equity, with the non-breaching Party entitled to injunctive relief and/or monetary damages. If any action for enforcement of this Agreement is brought, the non-prevailing Party in such action shall reimburse the prevailing Party for its attorneys' fees and related costs in such action.

17. Licensee shall not assign this Agreement or its rights and duties under this License, without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion.

18. This Agreement may be modified or amended only by a written instrument executed by the Parties, or their respective permitted successors or assigns.

19. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated this ____ day of _____, 2019.

STC Riverside, LLC
an Illinois Limited Liability Corporation

By: _____

Subscribed and sworn to before me this ____ day of _____, 2019.

Notary Public

CITY OF ST. CHARLES,
an Illinois municipal corporation

By: _____
Mayor

Attest: _____
City Clerk

Exhibit A:

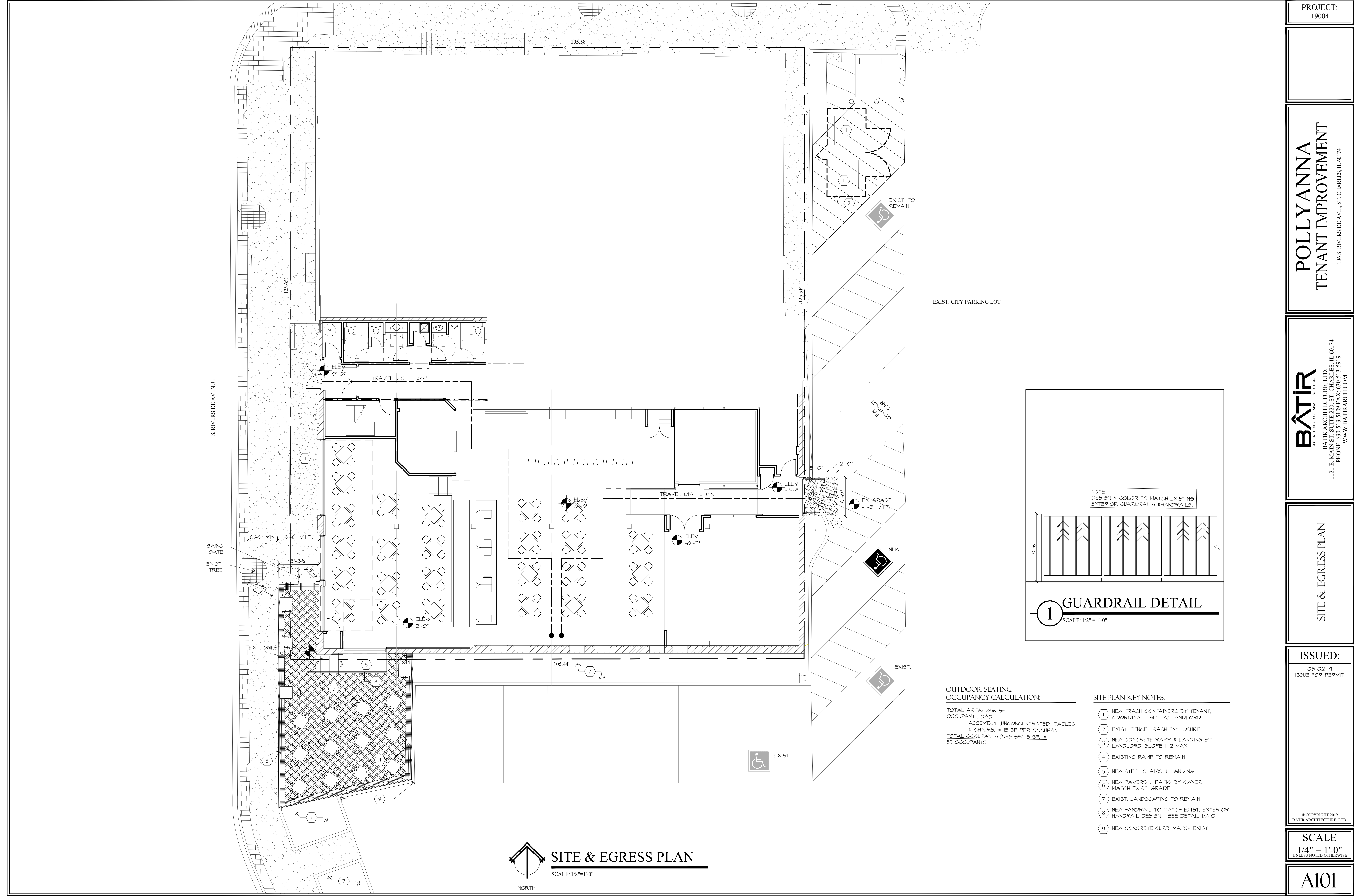
City Parking Lot Legal Description

Exhibit B:

106 S Riverside Ave. Legal Description

Exhibit C:

Outdoor Patio Plan



PROJECT:
19004

POLLYANNA
TENANT IMPROVEMENT
106 S. RIVERSIDE AVE., ST. CHARLES, IL 60174

BÂTIR
DESIGN • BUILD • SUSTAINABLE SOLUTIONS
BATIR ARCHITECTURE, LTD.
1121 E. MAIN ST. SUITE 220, ST. CHARLES, IL 60174
PHONE: 630-513-5109 FAX: 630-513-5919
WWW.BATIRARCH.COM

SITE & EGRESS PLAN

ISSUED:
05-02-19
ISSUE FOR PERMIT

© COPYRIGHT 2019
BATIR ARCHITECTURE, LTD.

SCALE
1/4" = 1'-0"
UNLESS NOTED OTHERWISE

A101

Exhibit D:

Certificate of Insurance Requirements



City of St. Charles
Certificate of Insurance Requirements

All Contractors, Manufacturers/Distributors, and Suppliers shall be required to carry and evidence insurance coverage with a standard Acord Certificate of Insurance with minimum limits applicable. Sample attached.

1. Minimum Insurance Requirements and Limits

	<i>Coverage</i>		<i>Limits</i>
A.	Automobile Liability	\$1,000,000	Combined single limit
B.	Commercial General Liability	\$1,000,000	Per occurrence
		\$2,000,000	General aggregate

All Commercial General Liability policies must include Blanket Contractual coverage and Broad Form Vendors' Liability coverage.

C.	Workers' Compensation	\$500,000	Per accident
	(Employers' Liability)	\$500,000	Disease limit
		\$500,000	Each Disease
D.	Umbrella Liability	\$5,000,000	Limit

2. Cancellation or Alteration

The policies of insurance required by this exhibit shall provide that they cannot be cancelled or altered in any way changing coverage except after 30 days' prior written notice by certified mail to owner.

3. Workers' Compensation and General Liability Waiver of Subrogation in favor of the City.

4. Insurance Certificates

- A. Must be submitted ten (10) days prior to any work being performed to allow review of certificates.
- B. Certificates not meeting requirements must be revised and resubmitted within fifteen (15) days or the subcontractor will not be allowed on the jobsite.

5. Additional Insured and Broad Form Vendors' Liability in favor of the City.

The City must be named as an Additional Insured with the following wording appearing on the Certificate of Insurance: "The City of St. Charles and any official, trustee, director, officer, or employee of the City (plus any holder or mortgage as designated by the City) as to any and all projects, as an Additional Insured for the Commercial General Liability as respects any and all projects for any work being performed and this coverage will be primary and noncontributory."

6. Minimum Insurance Carrier

All contractors, manufacturers/distributors, and suppliers' insurance carriers must comply with the minimum A.M Best rating of A-VI for all insurance carriers.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

PRODUCER

Arthur J. Gallagher & Co.
The Gallagher Centre
Two Pierce Place
Itasca, IL 60143-3141

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE**INSURED**

ABC Subcontractors
739 High Street
Small Town, IL 48970

INSURER A:

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$ 50,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
	<input type="checkbox"/> BROAD FORM VENDORS				PERSONAL & ADV INJURY	\$ 1,000,000
	<input checked="" type="checkbox"/> UNDERGROUND EXPLOSION AND				GENERAL AGGREGATE	\$ 2,000,000
	COLLAPSE HAZARD				PRODUCTS - COMP/OP AGG	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					\$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					\$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
	<input checked="" type="checkbox"/> NONOWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACCT	\$
					AGG	\$
	EXCESS LIABILITY				EACH OCCURRENCE	\$ 5,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 5,000,000
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTHER
					E.L. EACH ACCIDENT	\$ 500,000
					E.L. DISEASE - EA EMPLOYEE	\$ 500,000
					E.L. DISEASE - POLICY LIMIT	\$ 500,000
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

The City of St. Charles and any official, trustee, director, officer, or employee of the City (plus any holder or mortgage as designated by the City) as to any and all projects, as an Additional Insured for the Commercial General Liability as respects any and all projects for any work being performed and this coverage will be primary and noncontributory.

CERTIFICATE HOLDER**ADDITIONAL INSURED; INSURER LETTER:****CANCELLATION**

City of St. Charles
2 E. Main St.
St. Charles, IL 60174

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL endeavor to MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES

AUTHORIZED REPRESENTATIVE