

CITY OF WARRENVILLE

MEMO

TO: Mayor, City Council, and City Administrator Coakley
FROM: Ronald Mentzer, Director of Community and Economic Development^{RM}
SUBJECT: STATUS OF FORMER CITGO GAS STATION ACQUISITION AND
STAFF RECOMMENDED FOLLOW UP ACTIONS
DATE: July 7, 2020

Property Acquisition Status

The City closed on the acquisition of the former Citgo gas station property located at 28W244 Warrenville Road (hence forth entitled *Old Town Redevelopment Site #2 or OTRS #2*) on Wednesday, July 1, 2020. As part of the closing process, all delinquent property taxes and related penalties were paid.

Staff Recommended Follow Up Actions

1. *Approve the July 6, 2020, Terracon Consultants (Terracon) Task Order attached as Exhibit A.* Terracon would provide the following environmental consulting assistance under this task order:
 - a. Coordinate preparation, submittal, and State of Illinois approval of the paperwork required to document the City's ownership of OTRS #2 and legal control of the existing underground storage tanks (UST's) located on it. This paperwork must be completed properly in order to ensure State records are accurate and the City has access to the various State environmental remediation programs it expects to receive funding assistance from.
 - b. Coordinate preparation, submittal, and Illinois Environmental Protection Agency (IEPA) approval of a Compressive Site Investigation Report, Remedial Objective Report, Remediation Action Plan (CSIR/ROR/RAP) and related supporting forms and documents. This is the same documentation the City submitted to the IEPA for Civic Center Redevelopment Site #1. IEPA approval of these documents enables the City to (i) finalize a no interest, partially forgivable, Brownfields Revolving Loan Funding Agreement with the IEPA Office of Brownfields Assistance and (ii) secure a "No Further Remediation" (NFR) letter from the IEPA.
 - c. Prepare and file the various reports necessary to receive State approval to remove the existing UST's on OTRS #2 and access IEPA Leaking Underground Storage Tank (LUST) Program reimbursement for the majority of the costs associated with this work.
 - d. Prepare a bid package, review bids, and coordinate contractor selection and permitting for the removal of the existing UST's on OTRS #2.

The total cost of this consulting assistance is estimated to be \$22,000. The FY 2021 budget includes sufficient funding for this work.

2. ***Authorize staff and the City’s environmental attorney to negotiate a final liability transfer agreement with Phillips 66 (P66) substantially consistent with the P66 Company Term Sheet attached as Exhibit B.*** City and P66 representatives jointly developed this non-binding term sheet during the City due diligence and decision process that culminated in its acquisition of OTRS #2. According to the term sheet, the City would coordinate the close-out P66’s 1997 “open” leaking UST incident in exchange for a \$90,000 payment from P66. It is important to note that the term sheet specifically limits the indemnification, defense, and hold harmless protections the City would provide to Phillips 66. These protections would only be provided for the on-site contamination the City is already planning to remediate to a more stringent standard than what the IEPA would have required P66 to satisfy. Most importantly, these protections would NOT apply “*to any contamination (actual or alleged) that is off-site and outside the legal boundaries of the property prior to the date it is acquired by the City, regardless of whether such contamination migrated off site from the property prior to the date it is acquired by the City*”. P66 would continue to be responsible for off-site contamination issues.

The total cost of this legal assistance is estimated to be less than \$5,000. The FY 2021 budget includes sufficient funding for this important legal assistance.

3. ***Authorize staff to develop and begin implementing an ongoing process to solicit public, nearby business/property owner, and key stakeholder input on the environmental clean-up and future redevelopment plans for OTRS #2.*** Key stakeholders include the Warrenville Park District, the Forest Preserve District of DuPage County, and the Friends of Warrenville Parks, the Environmental Advisory Commission and the Plan Commission.

EXHIBIT A
Terracon Consulting July 6, 2020 Task Order



Reference Number: 11197222

MASTER SERVICES AGREEMENT

TASK ORDER

This **TASK ORDER** is issued under the **MASTER SERVICES AGREEMENT** dated 11/14/2014 between City of Warrenville IL ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Citgas Task Order July 2020 project ("Project"), as described in the Project Information section of the Consultant's Task Order Proposal dated 07/06/2020 ("Task Order Proposal") unless the Project is otherwise described below or in Exhibit A to this Task Order (which section or Exhibit are incorporated into this Task Order). This Task Order is incorporated into and part of the Master Services Agreement.

1. Project Information

Citgas Property.
28W244 Warrenville Road
Warrenville, IL 60555

2. Scope of Services The scope of Services to be provided under this Task Order are described in the *Scope of Services* section of the Consultant's Task Order Proposal, unless Services are otherwise described below or in Exhibit B to this Task Order.

See attached Scope of Work and Fee

3. Compensation Client shall pay compensation for the Services performed at the fees stated in the Task Order Proposal unless fees are otherwise stated below or in Exhibit C to this Task Order.

See attached Scope of Work and Fee

All terms and conditions of the **Master Services Agreement** shall continue in full force and effect. This Task Order is accepted and Consultant is authorized to proceed.

Consultant: **Terracon Consultants, Inc.**
By: Linda Yang, DR, Linda Yang, Chen, ou@terracon.com Date: 7/6/2020
Name/Title: Chen Yang / Regional Manager
Address: 192 Exchange Blvd
Glendale Heights, IL 60139-2089
Phone: (630) 717-4263 Fax: (630) 357-9489
Email: Linda.Yang@terracon.com

Client: **City of Warrenville IL**
By: _____ Date: _____
Name/Title: Ronald Mentzer /
Address: 35528 Manning Ave.
Warrenville, IL 60555
Phone: (630) 393-5745 Fax: _____
Email: RMentzer@warrenville.il.us

Scope of Work and Fee
Citgas, Warrenville, IL
July 6, 2020

1. Coordination and preparation of the OSFM and IEPA paperwork on Citgas site UST ownership change.

Lump sum \$1,500

2. Preparation of SRP Comprehensive Site Investigation Report/Remedial Objective Report/Remediation Action Plan (CSIR/ROR/RAP), Form DRM-1 and associated site drawing for SRP enrollment, and Form DRM-2. The report will be prepared based on Terracon's Supplemental Phase II Site Investigation Report dated February 5, 2020, previous data and City's site preliminary conceptual design.

Lump sum \$10,000

\$500 enrollment fee will be paid by the City directly

3. 2nd Incident reporting, preparation of the 20-day and 45-day report, and/or UST Removal Summary Report.

\$5,500 time and materials

4. UST removal bid request preparation, bids evaluation, selection and permitting.

\$5,000 time and material

The Budget for the scope of work discussed above is \$22,000 (excluding the \$500 SRP enrollment fee).

EXHIBIT B Phillips 66 Term Sheet

FOR DISCUSSION PURPOSES ONLY. Phillips 66 Company (“Phillips 66”) submits this term sheet (the “Term Sheet”) to the City of Warrenville (the “City”) for discussion purposes only. This Term Sheet is not an offer and will not form the basis of a legally binding or enforceable agreement unless and until a definitive agreement is executed by authorized representatives of each party.

Phillips 66’s predecessor in interest, Phillips Petroleum Company, owned and/or operated two underground storage tanks (“USTs”) and associated dispensers at 28W244 Warrenville Road, Warrenville, Illinois 60555 (the “Property”). In December 1997, the USTs were removed from the Property and replaced. As a result of petroleum odors and soil staining encountered during the removal activities, an unleaded gasoline release was reported to the Illinois Environmental Protection Agency (“IEPA”) on December 30, 1997 and LUST Incident No. 972502 was assigned to the release. Beginning in 2002, Phillips 66’s predecessor in interest, ConocoPhillips Company, owned and/or operated the site until 2004, when the equipment and operations were sold to GasMart.

The City is considering purchasing the Property, and Phillips 66 and the City are considering entering into a Liability Transfer Agreement regarding certain liabilities related to the Property and which would become effective upon City acquisition of the Property.

Proposed terms of Liability Transfer Agreement:

- Phillips 66 to pay the City the sum of \$90,000 (ninety thousand dollars).
- The City to arrange for and effectuate IEPA transferring to the City open environmental case LUST Incident No. 972502, and provide to Phillips 66 documentation evidencing the same.
- Phillips 66 to transfer to the City ownership of all Phillips 66-owned monitoring wells associated with LUST Incident No. 972502 (including any wells offsite of the Property), and the City to assume all responsibility related to such wells including but not limited to proper abandonment.
- The City to investigate and/or remediate the soil and groundwater contamination related to LUST Incident No. 972502 until it achieves case closure to standards required by the appropriate environmental regulatory agencies, including IEPA, which shall include obligating the City to implement Environmental Land Use Controls (ELUCs) on any off site properties as necessary to achieve case closure.
 - If a standard other than a residential standard is used for closure, the City shall be responsible for further investigation and remediation to meet residential standards on the Property in the future if any environmental regulatory agency requires additional remediation to meet residential standards.
 - After case closure is achieved, the City shall be responsible for any future re-opening of LUST Incident No. 972502 for conditions within the legal boundaries of the Property at any and all times post-closure.

- The City to indemnify, defend and hold harmless Phillips 66 from all costs, losses and claims for investigation/remediation arising from or related to any cleanup or contamination (actual or alleged) within the legal boundaries of the Property, including but not limited to costs for removal of and any remediation related to any USTs and/or dispensers at the Property and costs for managing any asbestos containing materials or lead based paint that may exist in structures at the Property. For the avoidance of any doubt, the parties understand that the City agreement to indemnify, defend and hold harmless Phillips 66 does not include or apply to costs, losses and claims (including but not limited to costs of investigation/remediation, personal injury and property damage) arising from or related to any contamination (actual or alleged) that is off site and outside the legal boundaries of the Property at the time it is acquired by the City, regardless of whether such contamination migrated off site from the Property prior to the date it is acquired by the City. Provided, however, nothing in the foregoing shall degrade or otherwise modify the City's obligation to achieve case closure of LUST Incident No. 972502, including, as necessary to achieve case closure, the City's obligation to implement ELUCs on any off site properties, and the City's obligation to be liable for all costs associated with any such ELUCs.