

CITY OF WARRENVILLE

MEMORANDUM

TO: Mayor, City Council, and City Administrator Coakley
 FROM: Ronald Mentzer, Director of Community and Economic Development RM
 SUBJECT: INFORMATIONAL UPDATE ON OLD TOWN REDEVELOPMENT
 SITE #2
 DATE: September 9, 2021

The following actions have been undertaken on or related to Old Town Redevelopment Site #2 since staff's last update at the May 10, 2020, Community Development Committee of the Whole meeting.

Underground Fuel Storage Tanks

- Obtained Illinois Environmental Protection Agency (IEPA) Leaking Underground Storage Tank (LUST) Program approval of the underground storage tank removal work the City completed on the site earlier this year.
- Submitted a reimbursement request to the IEPA LUST Program for the construction and consulting costs associated with the underground storage tank removal work the City completed on the site earlier this year.
- Obtained IEPA LUST Program approval of the scope and cost of the next phase of LUST related site investigation and reporting that needs to be performed on the site. By receiving IEPA LUST approval in advance, the City will be reimbursed for the majority of the cost associated with this additional work.
- Secured a consulting proposal/task agreement from the City's environmental engineering consultant to perform the next phase of LUST related site investigation and reporting required on the site. This proposal will be discussed as a separate agenda item at the September 13, 2021, Community Development Committee of the Whole Meeting.

IEPA Brownfields Assistance Revolving Loan Fund Agreement

Negotiated the final draft of the IEPA Brownfield Revolving Loan Fund (RLF) Intergovernmental Agreement (IGA) for OTRS #2 staff intends to present for final City Council approval at the September 20, 2021, City Council meeting. A copy of the updated draft agreement with the final proposed final version of the Promissory Note the City will need to execute is attached as Exhibit A for review and reference. With the exception of the following revisions requested by City staff and the City's legal team, the terms contained in the attached version of the agreement are substantially consistent with the terms reflected in the pre-final IEPA RLF IGA presented at the May 10, 2021, Community Development Committee of the Whole meeting:

- The maximum amount of the no interest loan has been increased from \$690,000 to \$775,000 to cover anticipated increased asbestos remediation related costs and to include 10% unallocated contingency funding.

September 9, 2021

Informational Update on OTRS #2

- The insurance requirements language has been revised to clarify that the City's contractors, not the City, must provide the pollution liability insurance coverage required in the agreement.
- The agreement now more clearly states that the lesser of 30% or \$200,000 of the final loan amount will be dismissed by the State if the City complies with the terms of the agreement.
- Additional notice responsibilities for the IEPA and cure rights for the City have been incorporated to protect the City.

Preliminary Site Planning Efforts

- The City's traffic engineer, James J. Benes and Associates, completed its analysis of (i) current traffic operations in the Batavia Road, River Road/Warrenville Road intersection area and (ii) the feasibility of potential future new on-street parking along the existing street frontages of OTRS #2. The conclusions and recommendations contained in this analysis are important as they have a significant impact on how much of the OTRS #2 property could be redeveloped with new, private, mixed-use improvements and how much of the property will be used for parking. This information is being used to help guide the ongoing development of a realistic preliminary site redevelopment plan for the property. A copy of the James J. Benes and Associates' analysis is attached for reference purposes as Exhibit B.
- Continued to work closely with the City planning consultant, Kimley Horn, a recently formed preliminary site planning task force, DuPage County Division of Transportation, and adjacent property owners on the development of a proposed realistic preliminary site redevelopment plan for the property that will be presented for public input at an upcoming October meeting and then for City Council endorsement in late October or early November.

Building/Canopy Demolition

Executed a consulting proposal/task agreement with the City's environmental engineering consultant and began work on the preparation of a detailed bid package for the asbestos remediation and building demolition activities the City plans to conduct on the site before the end of calendar year 2021.

EXHIBIT A

BROWNFIELD REVOLVING LOAN FUND INTERGOVERNMENTAL AGREEMENT BETWEEN THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AND THE CITY OF WARRENVILLE (FORMER CITGAS SITE)

BROWNFIELDS COOPERATIVE AGREEMENT (U.S. EPA FUNDS)

This Brownfield Revolving Loan Fund Intergovernmental Agreement (“Agreement”) is entered into this ____ day of _____, 2021, between the City of Warrenville, an Illinois municipality with offices at 3S258 Manning Avenue, Warrenville, Illinois, 60555 (“City” or “Borrower”) and the Illinois Environmental Protection Agency (“Agency” or “Illinois EPA”) (collectively, “Parties”).

WHEREAS, Borrower desires to conduct corrective action activities at the former Citgas site located at the property commonly known as 28W244 Warrenville Road, Warrenville, DuPage County, Illinois (PIN: 04-35-403-021), legally described on Exhibit A and depicted on Exhibit B, copies of which are attached hereto and incorporated herein (“Site”), including removal and disposal of contaminated soils, asbestos mitigation, building demolition, and construction of an engineered barrier at the Site to exclude exposure pathways (“Engineered Barrier”) and placement of the Site back into productive use;

WHEREAS, Borrower is the fee simple owner of the Site and has enrolled the Site into the Agency’s Site Remediation Program (“SRP”);

WHEREAS, Borrower also has performed investigation and remediation of the Site under the Agency’s leaking underground storage tank (“LUST”) Program and Office of the State Fire Marshall (“OSFM”) relative to certain leaking underground storage tanks (“USTs”) owned and/or operated by Phillip 66 Company identified at the Site (LUST Incident Nos. 972502, 20200871, and 20210036), and Borrower will obtain a no further remediation (“NFR”) letter relative to said LUST incidents (“LUST Work”);

WHEREAS, costs attributable to the LUST incidents, including but not limited to investigation and remediation of the Site are reimbursed under the UST fund (415 ILCS 5/57.2) in accordance with 35 Ill. Adm. Code Part 734, Subpart F, and Title XVI of the Environmental Protection Act (415 ILCS 5/57) and are not eligible for payment or reimbursement under this Agreement;

WHEREAS, the Site will be redeveloped as public open space with trail improvements, and a portion of the Site could potentially be redeveloped as mixed use/residential redevelopment as provided in the City’s Old Town/Civic Center and TIF No. 3 Plans (the “Improvements”);

WHEREAS, although the Improvements will promote economic development and job creation within the City and cause the Site to be put back into productive use, all funds provided hereunder by Illinois EPA are strictly limited to the investigation and remediation of the Site under the Agency's SRP that are necessary to protect human health and the environment as herein provided and not for construction of the Improvements other than construction of the above described Engineered Barrier and other Project Work (as defined below);

WHEREAS, the Agency has received Brownfields Revolving Loan Fund (RLF) capitalization Grants awarded under CERCLA §104(k) from the United States Environmental Protection Agency ("U.S. EPA") pursuant to a Brownfields Cooperative Agreement to assist municipalities and other entities in the performance of brownfield remediation, including remediation activities and site redevelopment ("U.S. EPA Funds" or "Funds");

WHEREAS, Section 104(k)(3)(B) of CERCLA authorizes Illinois EPA to loan U.S. EPA Funds to eligible entities, site owners, site developers, and other persons for remediation of brownfield sites;

WHEREAS, Borrower is the owner of the Site and will use the U.S. EPA Funds solely for remediation of said Site;

WHEREAS, Borrower is not a potentially responsible party under Section 107 of CERCLA for the Site and is not, and has never been, subject to any penalties resulting from environmental non-compliance at the Site;

WHEREAS, U.S. EPA has determined that the Site is a "brownfield site" within the meaning of Section 101(39) of CERCLA;

WHEREAS, the Agency desires to award Borrower a portion of the U.S. EPA Funds in the form of a loan to pay for remediation and corrective action at the Site as herein provided; and

WHEREAS, the purpose of this Agreement is to protect human health and the environment and to redevelop the Site so that it can be placed back into productive use by the performance of said remediation and corrective action;

NOW, THEREFORE, in consideration of the declarations and the covenants set forth herein, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated into this Agreement by reference and made a part hereof.
2. Compliance with Federal, State, and Local Laws. Borrower will carry out all activities under this Agreement in accordance with requirements of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 104(k) (42 U.S.C. § 9604(k)); 2 CFR 200; 2 CFR 1500; the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 C.F.R. Part 300; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4 relating to federally-assisted construction contracts.

Borrower agrees to comply with Executive Order 13302 (Feb. 22, 2001, 66 Fed. Reg. 11255) of February 17, 2001, entitled “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally-funded Construction Projects,” as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled “Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government contractors’ Relations on Federal and Federally Funded Construction Projects. Borrower agrees to comply with federal cross-cutting requirements including, but not limited to MBE/WBE requirements found at 40 C.F.R. 33.44(b); OSHA worker Health & Safety Standards 29 C.F.R. § 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60-4; Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 327-333); the Anti-Kickback Act (40 U.S.C. § 276c); and Section 504 of the Rehabilitation Act of 1973, as implemented by Executive Orders 11914 and 11250.

Any and all terms in this Agreement, which are defined in CERCLA and the National Contingency Plan (NCP), shall have the same meaning as in CERCLA and the NCP.

Borrower has submitted a Comprehensive Site Investigation Report (“CSIR”), Remediation Objectives Report (“ROR”) and Remedial Action Plan (“RAP”) to the Agency and has received conditional approval of said Reports and Plan. Borrower shall submit revised plans for the Asbestos Mitigation (defined below), a performance schedule, and a budget to the Agency for approval. Notwithstanding any provision herein to the contrary, this Agreement and Illinois EPA’s payment(s) of any Funds hereunder are expressly contingent upon Borrower obtaining all permits and approvals and providing all notices relative to the Project Work required by law or as otherwise required hereunder, including but not limited to notices and permits and approvals required relative to asbestos mitigation. The Remedial Action Plan approved by the Agency and any amendments thereto (including amendments following the execution of this Agreement) that are approved or required by the Agency, is hereinafter referred to as the “RAP”.

Borrower understands and agrees that the Agency’s review and approval of the RAP are based on the Agency’s determination that the RAP will result in compliance with Title XVII of the Environmental Protection Act (415 ILCS 5/58) and 35 Ill. Adm. Code Part 740, including but not limited to i) the likelihood that the RAP will result in the attainment of the applicable remediation objectives; ii) whether the activities proposed are consistent with generally accepted engineering practices; and iii) the management of risk relative to any remaining contamination, including, but not limited to, provisions for the long-term enforcement, operation, and maintenance of institutional and engineering controls as more fully set forth in 35 Ill. Adm. Code 740.520.

The Agency’s review of the Engineered Barrier is limited to an evaluation of the adequacy of said Engineered Barrier in excluding applicable routes of exposure of the contaminants in question. In reviewing and approving the CSIR, ROR, RAP, RACR and any other reports, plans or other documents submitted relative to the Site, Project Work, and/or required for the Agency to issue the NFR Letter (defined below) for the Site and/or otherwise required hereunder, the

Agency does not make any representations, warranties, or guaranties of any kind, express or implied, regarding the integrity, adequacy, or fitness of the Engineered Barrier, other engineering controls, or any other improvements constructed or to be constructed on the Site. Borrower is relying exclusively on the advice, recommendations, drawings (including but not limited to engineering drawings), specifications, plans, studies, reports, and other documents prepared and/or provided by Borrower's engineer(s) and consultant(s).

Borrower will use its best efforts to obtain a comprehensive NFR letter. In the event that Borrower is unable to remediate iron to applicable cleanup objectives despite using its best efforts, then Borrower may obtain a focused NFR letter with an exclusion only for iron. In such event, Borrower may be required to adopt a groundwater ordinance acceptable to the Agency meeting the requirements of 35 Ill. Adm. Code 742.1015 to address said iron exceedances in the groundwater. "NFR Letter" as used throughout this Agreement and in the below defined Promissory Note shall have the meaning as set forth in this paragraph (other than the NFR letter for the LUST Work).

Borrower shall perform the Project Work (defined below) in accordance with the RAP (where applicable), the terms and conditions of this Agreement (including all Agreements, exhibits, guidelines and other documents attached to or referenced herein), and all applicable federal, state and local laws, rules, regulations, statutes, codes, and ordinances, including but not limited to the Clean Air Act (CAA), including the National Emissions Standards of Hazardous Air Pollutants (NESHAP) (including 40 CFR Part 61, Subpart M), the Asbestos Hazard Emergency Response Act (AHERA), the Asbestos Information Act (AIA), the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), the Safe Water Drinking Act (SDWA), the Toxic Substances Control Act, 40 CFR Part 763, 40 CFR Part 61 including Sections 61.145 and 61.150, OSHA rules and regulations, including but not limited to 29 CFR Sections 1910 and 1926, 35 Ill. Adm. Code Parts 740 and 742, the Environmental Protection Act (415 ILCS 5/1 *et seq.*), the Commercial and Public Building Asbestos Abatement Act (225 ILCS 207/5 *et seq.*), 77 Ill. Adm. Code Part 855, 35 Ill Adm. Code Part 228, the Illinois Municipal Code, the Warrenville City Code, including but not limited to Title 8 (Building Regulations), all permit requirements, and plans approved by the Agency and/or the Illinois Department of Public Health ("IDPH"). In the event of any conflict between the RAP, the terms and conditions of this Agreement, any permit conditions and requirements, plans approved by the Agency and/or IDPH, and any applicable laws, rules, regulations, statutes, codes, or ordinances, the most stringent requirements shall control.

3. Eligibility to Receive Funds. Borrower represents, warrants, and certifies that Borrower, its officials, officers, employees, and authorized representatives, and, to its knowledge, any and all of its contractors, subcontractors, suppliers, and any entity performing or involved in the Project Work (defined below) or receiving U.S. EPA Funds hereunder:

- a) Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state, municipal, or other governmental (hereafter "public") transactions and/or otherwise prohibited from receiving federal, state and/or other public funds;

- b) Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or State antitrust laws, (iii) embezzlement, theft, bribery, bid rigging, forgery, falsification or destruction of records, making false statements or receiving stolen property, or (iv) a felony;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated above;
- d) Have not within the preceding three years had a public transaction terminated for cause of default;
- e) Are not potentially liable, or affiliated with any other person or entity that is potentially liable for response costs at the Site through any direct or indirect familial relationship; or any contractual, corporate, or financial relationships; or a reorganized business entity that was potentially liable or otherwise liable under CERCLA §107(a) (42 U.S.C. §9607(a)) as a prior owner, operator, generator, or transporter of hazardous substances to the Site and/or otherwise potentially liable under CERCLA §107;
- f) Shall use Funds only for eligible activities and in strict compliance with the requirements of CERCLA 104(k) (42 U.S.C. § 9604(k)) and applicable Federal and State laws and regulations;
- g) Is not now, and has not in the past, been subject to any penalties resulting from environmental non-compliance at the Site;
- h) Shall ensure that the cleanup protects human health and the environment; and
- i) Shall document how Funds are used in accordance with the terms and conditions of this Agreement.

4. Davis-Bacon Act. Borrower and its contractors and subcontractors of every tier shall carry out all activities performed under this Agreement in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). The Davis-Bacon Act requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with federal funds in contracts in excess of \$2,000. Borrower must obtain recent and applicable wage rates from the U.S. Department of Labor (DOL) and incorporate them into all contracts stemming from this Agreement, and provide contractors with Division of Labor form WH-347 to use for payroll records and obtain completed WH-347 forms weekly (for each week in which Project Work is performed) from all contractors and subcontractors performing Project Work in strict compliance with 29 CFR

3.3 and 5.5(a)(3), including but not limited to Statements of Compliance signed by the respective contractor or subcontractor in accordance with 29 CFR 5.5(a)(3)(ii)(B). Borrower must post the DOL Employee Fair Compensation Notice at the work Site, along with a list of locally prevailing wage rates. Borrower must perform on-site interviews with workers; use US Government Services Administration Standard Form 1445 for recording interviews and compare payroll records to employee interviews to confirm and document compliance with the Davis-Bacon Act requirements.

More detailed requirements are set forth in Exhibit C attached hereto and incorporated herein. As set forth below, the Project Work required hereunder for which reimbursement is made by the Agency is funded entirely with federal funds provided by U.S. EPA. Compliance with the Davis Bacon Act is required for said Project Work pursuant to 29 CFR 5.5, Section 104 of CERCLA, and the below defined U.S. EPA Agreement. Other public works not required under the RAP or otherwise required under this Agreement and not funded or reimbursed hereunder are subject to the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*) ("Prevailing Wage Act").

5. Assessments, Plans, and Reports. Borrower will provide the Agency with the final RAP, as provided above, and a copy of a Remedial Action Completion Report (RACR) upon completion of the RAP all in accordance with 35 Ill. Adm. Code Part 740 for the Site and Project Work as herein provided. The assessments shall include, but are not limited to, Site background, the threat posed by the contaminant(s) to human health, welfare and the environment, all past enforcement activities conducted by any governmental agency, and Site testing to define the nature and extent of contamination, and other requirements imposed under 35 Ill. Adm. Code Part 740. Borrower shall be responsible for the payment of all costs and expenses related to these assessments, investigations, plans, studies and reports. (See the applicable Sections below regarding ineligible and eligible costs for reimbursement hereunder).

6. Community Relations Plan and Public Involvement. Borrower will prepare a Community Relations Plan (CRP) with the assistance and cooperation of the Agency. Borrower represents, warrants and certifies that it will provide reasonable notice, opportunity for public involvement and comment, response to comments, and administrative records that are available to the public prior to preparing the CRP.

The Parties agree to clearly reference U.S. EPA investments in the project during all phases of community outreach which may include the development of any post-project summary or success materials that highlight achievements to which the project contributed.

If any documents, fact sheets, and/or web materials are developed as part of this Agreement, then they shall include the following statement: "Though this project has been funded, wholly or in part, by U.S. EPA, the contents of this document do not necessarily reflect the views and policies of U.S. EPA." (See Section 30 below regarding signage requirements).

7. Remedial Action Plan. Borrower agrees to accept advice and suggestions from the Agency, and to incorporate those suggestions or requests for revisions into the RAP and other documents relative to the Project Work. The Agency is authorized to change cleanup

activities based on comments from the public, any new information required by the Agency, or as otherwise determined by the Agency to be appropriate to protect human health or the environment or to comply with applicable law.

8. Schedule and Budget. Borrower shall submit to the Agency a performance schedule and budget of estimated costs for all corrective action activities funded by this Agreement. Borrower shall pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source, approved by the Agency and U.S. EPA, and in accordance with 2 CFR 200.306 and other applicable law and U.S. EPA guidelines, of at least 20 percent) (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable hereunder and under the terms and conditions of the U.S. EPA Agreement and must be supported by adequate documentation. Illinois EPA will not reimburse Borrower for costs that exceed the respective amounts set forth in the budget or amended budget approved in writing by Illinois EPA. Borrower's performance schedule and budget (and any amended performance schedule and/or amended budget) must be approved by Illinois EPA in writing.

9. Public Comment. Borrower has made or will make the Alternative Brownfields Clean-up Assessment (ABCA), CSIR, ROR, and RAP available for review and public comment for a period of not less than thirty (30) days from the date of publication of public notice. After the public comment period, Borrower shall prepare a response to the public comments and provide a copy of the response to the Agency. No Funds shall be disbursed hereunder until this Section has been complied with.

10. Action Memorandum. An Action Memorandum shall be prepared by the Agency documenting the basis for the corrective action activity. At the request of the Agency, Borrower shall submit all information relative to public comments to the Agency in a form prescribed by the Agency, which will enable the Agency to prepare the Action Memorandum.

11. Funds. The Agency agrees to reimburse Borrower for eligible remediation costs in an amount not to exceed \$775,500 ("Funds") from the U.S. EPA Funds for the Project Work, subject to the terms and conditions herein (which include the terms and conditions of the U.S. EPA Agreement as set forth below), and the availability and appropriation of sufficient funds, including sufficient funding by U.S. EPA. All Funds paid to Borrower hereunder are considered a loan to be repaid in accordance with the terms and conditions herein and applicable State and federal law. All Funds paid to Borrower hereunder have been or are being provided by U.S. EPA pursuant to the U.S. EPA Agreement.

12. Payment Procedures. Payment of the Funds will be made by reimbursement to Borrower for eligible costs incurred to perform the Project Work pursuant to the following:

- a) The Agency shall disburse Funds to Borrower for eligible costs incurred by Borrower, provided those costs are within the scope of work set forth in Section 15 below, the RAP (other than for Asbestos Mitigation defined in Section 13 below which is not part of the RAP but is Project Work funded hereunder) , and subject to the terms and conditions of this Agreement, the

U.S. EPA Agreement, and all applicable federal and State law, including but not limited to 2 CFR Part 200 and 2 CFR Part 1500.

- b) To receive Funds, Borrower shall submit to the Agency a written request for a disbursement, with documentation, including the activities performed and a breakdown of the costs, sufficient to demonstrate that the costs for which a disbursement is sought are reasonable and eligible, have been incurred by Borrower, and were necessary to complete the Project Work in accordance with the RAP (other than Asbestos Mitigation costs) and the terms and conditions herein. Documentation provided shall include, but not be limited to, the following:
- 1) An identification of the time period for which the activities/services were performed and the costs were incurred;
 - 2) A description of the work performed;
 - 3) A breakdown of the activities/services performed cross-referenced to tasks set forth in the RAP (where applicable) and/or the Scope of Work set forth below;
 - 4) The names and titles of individuals performing activities/services and the dates and hours worked;
 - 5) Copies of invoices;
 - 6) A list of expenses and/or costs incurred in connection with the activities/services performed;
 - 7) An Owner's Sworn Statement in form customarily used by Chicago Title and Trust Company (CTT) or in form otherwise acceptable to the Agency;
 - 8) Copies of Borrower's general contractor's itemized Application for payment for operations and Continuation Sheet using AIA G702 and G703 forms supported by such data to substantiate payment made by Borrower to said contractor;
 - 9) A general Contractor's Sworn Statement in form customarily used by CTT or in form otherwise acceptable to the Agency;
 - 10) Current partial and final (as applicable) lien waivers from Borrower's general contractor, and all subcontractors of every tier who furnished labor, materials, and/or equipment in connection with the Project Work and from all material suppliers that supplied material in connection with the Project Work. Final

lien waivers from the general contractor and all such subcontractors and suppliers will be required prior to the final payment by the Agency. All documents referenced in subparagraphs 7 through 10 shall be signed and notarized;

- 11) Soil volume calculations, based upon lateral and vertical extent of contaminated soil as supported by data provided in the CSIR, sufficient for the Agency to verify that said removal, and any transportation, disposal or other costs attributable thereto, were necessary for the remediation of the Site and in accordance with the RAP;
- 12) Such additional documentation and/or information as required by the Agency or U.S. EPA, including but not limited to copies of contracts relative to the Project Work; and
- 13) The payment request documents submitted by Borrower to the Agency hereunder must provide sufficient detail regarding all labor, material and costs that are attributable to the remediation required under the RAP or otherwise required hereunder (i.e., broken down separately from costs incurred for construction of the Improvements or LUST Work and other costs not required for the Project Work required under the RAP or otherwise required hereunder) in order for the Agency to determine whether the costs are eligible Project Work costs and whether such costs are within approved itemized budget (or amended budget) amounts and otherwise comply with the requirements herein. It is Borrower's obligation to obtain such payment request documents from its contractors (including all consultants), and all subcontractors of every tier performing Project Work, from all such contractors, subcontractors and suppliers supplying materials hereunder, and from all landfill and other disposal facilities accepting soils, sediments, debris, materials, and other waste hereunder. Borrower's failure to obtain and submit such documentation and supporting data to the Agency will result in rejection by the Agency of Borrower's payment requests.

Borrower shall submit a certification from its engineer certifying that all of the Project Work for which reimbursement is being requested is required under the RAP (other than Asbestos Mitigation) and was performed in accordance with the RAP (other than Asbestos Mitigation) and that the Asbestos Mitigation was performed in accordance with the plans approved by the Agency and IDPH, all permit requirements, and applicable laws.

Borrower understands and acknowledges that any person who knowingly makes a false, fictitious, or fraudulent material statement

to Illinois EPA, either orally or in writing, commits a Class 4 felony. A second or subsequent offense after conviction is Class 3 felony. Borrower shall inform all contractors, subcontractors, suppliers and other persons and entities providing any document, information, or statement that will be submitted to Illinois EPA regarding same.

- c) Borrower may submit an initial request for disbursement of Funds at any time after the costs for which payment is sought have been incurred, provided all of the following has occurred: 1) the Agency has approved the performance schedule, budget, and any revised or amended RAP, and plans regarding the Asbestos Mitigation, 2) Borrower has obtained all required permits for the Project Work, 3) Borrower has delivered the Promissory Note and Resolution to the Agency in accordance with Section 39 below, and 4) Borrower has provided the Agency with any required or requested documentation, including but not limited to, all payment request documents, insurance documents, and copies of Surety Bonds. Subsequent requests for disbursements of Funds must be spaced at least 60 days apart, except that Borrower may submit a final disbursement request no more than 60 days after the date of the final SRP invoice from the Agency for its oversight and final NFR letter assessment fees;
- d) Subject to subparagraph (f) of this Section, the Agency shall send a voucher for payment of an approved request for disbursement of Funds to the Comptroller's office no more than 60 days after receipt of the request. Notwithstanding the foregoing, the Agency shall not be responsible for any delays in the Comptroller making any payment or payments hereunder;
- e) Following a review of Borrower's request for a disbursement of Funds, the Agency shall have the authority to deny a request, or any portion of a request for Funds that does not meet all of the requirements of this Section or as otherwise provided under this Agreement or the U.S. EPA Agreement. The Agency shall notify Borrower in writing of its denial of a request for a disbursement of Funds within 60 days of its receipt of a request, and the written notification shall include a statement of specific reasons why the request is being denied in whole or in part;
- f) Funds awarded as part of this Agreement must be used, and all approved corrective action activities shall be completed in accordance with the RAP (where applicable) and the terms and conditions of this Agreement within 730 days from the execution of this Agreement by both Parties or within such extended date as approved by the Agency in writing, provided however, that the Agency will not unreasonably withhold its approval of a request by Borrower to extend the time to complete said corrective action work and/or obtain the NFR Letter;

- g) It shall be a condition precedent to any payment hereunder that the Project Work for which payment is being requested has been performed in strict compliance with the RAP (where applicable) and the terms and conditions of this Agreement and is free from any defects; and
- h) Notwithstanding any provision herein to the contrary, all payments hereunder are subject to approval by the Agency and U.S. EPA as herein provided, and the availability and appropriation of sufficient funding, including sufficient funding by U.S. EPA.

13. Cost Criteria. The Agency shall consider for payment to Borrower, under the terms set forth below, only actual, eligible costs that have been incurred by Borrower and that meet all the following criteria:

- a) Costs within the scope of the Project Work for which Funds were awarded. For purposes of cost reimbursement hereunder, the Project Work is the work described herein that is necessary to remediate the Site in accordance with the RAP and the terms and conditions herein and also includes the below defined Asbestos Mitigation work, but expressly excludes: i) any additional or increased costs incurred by Borrower to construct the Improvements (e.g., additional earth work; removal, transportation, or disposal of non-contaminated soils; an enhanced or otherwise more expensive Engineered Barrier required for the Improvements and/or the operation of the Improvements beyond what are otherwise required to remediate the Site, etc.) and ii) the LUST Work.

The Project Work also includes the removal, transportation, and disposal of asbestos from the Site, including professional services required there with, in accordance with the plans submitted by Borrower and approved by the Agency and/or IDPH (or amended plans approved by the Agency and/or IDPH), all permit requirements and conditions, such other conditions imposed by the Agency or IDPH, and applicable federal, State, and local laws, subject to the terms and conditions herein (“Asbestos Mitigation”). Asbestos Mitigation shall be performed by contractors licensed by IDPH to perform said work.

- b) Costs that are reasonable and necessary to complete the Project Work, including, but are not limited to:
 - 1) Costs associated with the Agency’s oversight;
 - 2) Costs associated with environmental consultant oversight services;
 - 3) Costs associated with response planning activities necessary to establish corrective action objectives and conduct corrective action;

- 4) Costs associated with laboratory services necessary to analyze post assessment environmental samples required to refine or improve the remedial approach and/or to establish corrective action objectives;
- 5) Costs associated with removing, mitigating or preventing further release, threatened release or suspected release of hazardous substances, pollutants or contaminants;
- 6) Costs associated with corrective action monitoring activities, including confirmation sampling and analysis that are reasonable and necessary during the Site corrective action activity and in compliance with 2 CFR 1500.11;
- 7) Costs associated with meeting public participation, worker health and safety, and programmatic management requirements;
- 8) Direct costs by the Borrower for progress reporting to the Agency; and
- 9) Under the U.S. EPA Agreement, Borrower may use up to 5% of the amount of the Funds loaned from Illinois EPA to Borrower hereunder for loan administration costs.

Eligible direct costs for loan administration hereunder include expenses for:

- i. preparing revisions and changes to the budget, workplans, and other documents required under this Agreement;
- ii. maintaining and operating financial management and personnel systems;
- iii. preparing payment requests and handling payments; and
- iv. audits including non-federal audits required under 2 CFR Part 200, Subpart F.

Notwithstanding the forgoing, Borrower may not use loan funds for indirect costs even if the Borrower has an indirect cost rate approved by a cognizant Federal or State agency.

- c) Costs that do not exceed the total amount of Funds awarded hereunder;
- d) Costs that do not exceed the total budget amount, or respective individual

budget or amended budget amounts, approved by the Agency in writing (reimbursement is based on actual, eligible costs incurred by Borrower necessary for the remediation work and approved by the Agency; the total budget amount and the respective itemized budget or amended budget amounts serve as a cap on any reimbursement hereunder);

- e) Costs incurred on or after the date this Agreement is executed by both Parties, but no later than the date of the final SRP invoice from the Agency for its oversight and final NFR letter assessment fees; and
- f) Costs that are permitted to be reimbursed under federal and State law, the terms and conditions herein, the terms and conditions of the U.S. EPA Agreement, and that are not Ineligible Costs (defined below).

14. Ineligible Costs.

- 1. Costs that are not eligible for reimbursement hereunder include, but are not limited to, the following:
 - A. Costs that are not necessary for the completion of the Project Work in accordance with the RAP (or plans approved by the Agency and/or IDPH, permit conditions, and applicable laws with respect to the Asbestos Mitigation) or otherwise approved by the Agency in writing, including, but not limited to:
 - 1) Costs or losses resulting from business interruption in connection with the Project Work;
 - 2) Costs associated with improperly collected, transported or analyzed laboratory samples, including samples analyzed by non-accredited laboratories;
 - 3) Cost associated with expedited sample analysis, unless approved in advance and in writing by the Agency;
 - 4) Interest or finance costs;
 - 5) Insurance costs (other than the purchase of environmental insurance for remediation of the Site, provided such coverage is not for an ineligible use under the U.S. EPA Agreement or hereunder);
 - 6) Costs associated with land acquisition;
 - 7) Payment of any penalty or fine;
 - 8) Costs outside the scope of the RAP and/or this Agreement or

otherwise not required to remediate the Site as provided herein;

- 9) Costs associated with the ordinary operating expenses of Borrower;
 - 10) Costs associated with ordinary Site maintenance;
 - 11) Costs associated with personal injury compensation or damages arising out of the Project Work;
 - 12) Costs incurred prior to the execution of this Agreement by both Parties or after the date of the final SRP invoice from the Agency for its oversight and final NFR letter assessment fees;
 - 13) Costs associated with the construction of buildings and other structures located upon the Site (other than the Engineered Barrier required under the RAP and as herein provided);
 - 14) Pre-corrective action response activities such as Site assessment and general Site characterization;
 - 15) Activities that are not corrective action activities;
 - 16) Activities and costs covered by a U.S. EPA Assessment Grant, U.S. EPA Cleanup Grant, and/or other federal and/or State funds, including but not limited to payments received under the UST Fund (i.e., LUST Work is not eligible for reimbursement under this Agreement but is reimbursed under the UST fund (415 ILCS 5/57.2) in accordance with 35 Ill. Adm. Code Part 734, Subpart F, and Title XVI of the Environmental Protection Act (415 ILCS 5/57);
 - 17) Costs incurred by the Borrower attributable to the construction or operation of the Improvements, including but not limited to earth work, transportation or disposal of non-contaminated soil, or improvements, enhancements or additions to the Engineered Barrier(s) beyond what is required for Site remediation, etc. (e.g., costs for excavation, transportation and grading of contaminated soils as set forth in the RAP are eligible costs; but costs for additional earth work, including additional earth work required to construct or operate the Improvements beyond what is required for remediation under the RAP are ineligible costs); and
 - 18) Lobbying or fundraising.
- B. Costs for which payment or reimbursement is not allowed under the U.S. EPA Agreement, any applicable federal or State law, including but not

limited to 2 CFR Part 200, 2 CFR Part 1500, and Section 104(k) of CERCLA, including, but not limited to, the following:

- 1) Pursuant to the terms of the U.S. EPA Agreement:
 - a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and State laws, unless such a permit is required as a component of the cleanup action.
 - c. Construction, demolition, and development activities that are not integral to the cleanup actions (e.g., marketing of property, construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use). Notwithstanding the forgoing, the asbestos mitigation and demolition of the onsite building and kiosk as set forth in the RAP are eligible costs subject to the terms and conditions of this Agreement.
 - d. Job training unrelated to performing specific cleanup at the Site.
 - e. To pay a federal cost share requirement.
 - f. To pay a response cost for which Borrower or any of its affiliates, subsidiaries, or parent company is potentially liable under Section 107 of CERCLA.
 - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup hereunder.
 - h. Unallowable or ineligible costs under applicable federal or State law (e.g., lobbying, fund raising, or otherwise unallowable under 2 CFR 200, Subpart E).
 - i. Management fees or similar charges in excess of direct costs or as otherwise prohibited, limited, or restricted under the U.S. EPA Agreement or applicable law.
 - j. Consulting fees in excess of the applicable limits set forth in 2 CFR 1500.9 or as otherwise prohibited, limited, or restricted under the U.S. EPA Agreement or applicable law.

2) Under CERCLA §104(k)(5)(E) reimbursement for Borrower's administrative costs shall not to exceed five percent (5%) of the Funds loaned to Borrower by Illinois EPA hereunder. Only administrative costs that are in a budget or amended budget approved by Illinois EPA in writing that are allowed hereunder are eligible for reimbursement not to exceed said 5% cap.

C. Costs attributable to any of the following properties:

- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
- b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decree issued to or entered by parties under CERCLA.
- c. Facilities that are subject to the jurisdiction, custody or control of the United States government, except land held in trust by the United States government for an Indian tribe; or
- d. A site excluded from the definition of a brownfields site for which U.S. EPA has not made a property-specific funding determination.

D. Costs incurred in violation of this Agreement, the U.S. EPA Agreement, or any applicable, federal, State or local law.

E. Costs attributable to or otherwise incurred in violation of the conflict of interest provisions herein or otherwise in violation of this Agreement, including but not limited to the procurement requirements herein (see Section 17).

15. Scope of Work.

a) The work and activities required under the RAP, the following scope of work related thereto, and any other work or activities required under this Agreement or approved or authorized by the Agency or funded by Illinois EPA or U.S. EPA to remediate the Site (excluding LUST Work) are referred to herein as the "Project Work". The scope of work for this project includes the following work performed in accordance with the RAP (unless indicated herein to the contrary):

- 1) Mobilization and Site preparation;
- 2) Removal, excavation, transportation, and proper disposal of

- contaminated soils, sediments, and debris;
- 3) Asbestos Mitigation as defined in paragraph 13(a) above and demolition of the on-site building and kiosk;
 - 4) Site security (i.e., fencing, barricades, signage and monitoring of Site and construction equipment necessary for the remediation work);
 - 5) Construction of the Engineered Barrier necessary for the remediation of the Site as required in the RAP and provided herein, but excluding any additional or increased costs necessary for the construction or operation of any Improvements;
 - 6) Engineering/consulting services as necessary to properly implement the Project Work subject to the provisions and limitations herein;
 - 7) Site monitoring activities, including sampling and analysis, that are reasonable and necessary during the cleanup/mitigation process, including determination of the effectiveness of a cleanup;
 - 8) Assessment costs required to refine or otherwise modify the RAP, if approved by the Agency; and
 - 9) Preparation of the RACR.
- b) Borrower will ensure that all work is performed in accordance with the RAP (where applicable) and the other terms and condition herein;
 - c) Borrower shall develop a health and safety plan to address possible worker exposure. Any excavation within the contaminated soil will require implementation of a health and safety plan consistent with NIOSH Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, OSHA regulations (particularly 29 CFR 1910 and 1926), other applicable federal laws and regulations, and State and local regulations, and U.S. EPA and OSHA guidance. The health and safety plan shall at a minimum reduce potential risks to site workers from exposure to impacted subsurface soil by specifying the use of engineered controls such as dust monitoring or suppression, and/or protective equipment for workers such as gloves or masks.
 - d) Borrower shall notify all persons removing any material or modifying any groundcover within the Site that the soil and groundwater beneath it is or may be contaminated and shall require such persons to don the appropriate personal protective equipment for the contaminants of concern and/or

potentially contaminated soil. All such activities, including the handling and/or disposal of any contaminated material, shall be performed in accordance with 40 CFR Part 261 and other applicable laws and regulations to reduce the possibility of human contact with contaminated soil and/or groundwater.

16. Report.

a) Borrower shall submit quarterly progress reports to the Agency detailing the work performed at the Site during the term of this Agreement. Each progress report shall provide a short narrative of the activities performed and the dates they were performed during that quarter and include, but are not limited to, the following:

- 1) A discussion of all actions taken to prevent further releases of hazardous substances into the environment and any corrective action activities;
- 2) A discussion of the confirmation sampling activities carried out to measure for the presence of a release of a hazardous substance;
- 3) A summary of activities performed during the reporting quarter, including but not limited to environmental results achieved by Borrower, outputs/outcomes achieved during the reporting quarter, a comparison of actual accomplishments to anticipated outputs/outcomes specified in the RAP, reasons anticipated outcomes were not met (if applicable), any program income, an explanation of any discrepancies with the Illinois EPA approved budget or amended budget, a description of the program, project, or use and the expenditure of the Funds related thereto, a description of any problems encountered during said quarter that could affect the project schedule and/or completion of any of the Project Work;
- 4) An update on project schedules and milestones, including any discrepancies with the RAP or approved plans and/or permit conditions with respect to the Asbestos Mitigation;
- 5) A budget recap summary including but not limited to current approved project budget, costs incurred during the reporting quarter, costs incurred to date (cumulative expenditures), cost share updates, and total remaining Funds;
- 6) Photographs of excavation and construction activities; and

- 7) Financial and programmatic reports.
- b) Borrower shall prepare a RACR upon completion of the RAP and shall submit the RACR to Illinois EPA within sixty (60) days of completion of the RAP. The RACR shall contain certification or documentation necessary to establish the following:
 - 1) The corrective action activities and objectives established in the RAP were completed in accordance with procedures and tasks identified therein;
 - 2) The Project Work funded hereunder was conducted in accordance with the requirements herein and applicable federal, State and local law, and are eligible for payment with the Funds;
 - 3) All Funds were expended for eligible project costs; and
 - 4) Such other information, documentation, affirmation, and other requirements applicable to RACRs under 35 Ill Adm. Code Part 740, including but not limited to, affirmation by original signature by the licensed professional engineer responsible for the site investigations, remedial activities, and preparation of plans and reports in accordance with 35 Ill. Adm. Code 740.410 and 740.455.
- c) Borrower must inform the Agency as soon as possible regarding any problems, delays, or adverse conditions that will materially impair its ability to meet outputs/outcomes specified in the approved RAP or otherwise required hereunder in order for Illinois EPA to provide notice to U.S. EPA.

17. Contracting and Subcontracting. Borrower will ensure all contracts and subcontracts are entered into subject to the following conditions and limitations:

- a) Borrower will use an open bidding process in contracting and will comply with all applicable federal, State and local procurement laws and regulations, including but not limited to 65 ILCS 5/8-9-1, the Local Government Professional Services Selection Act (50 ILCS 510/0.01 *et seq.*), and applicable City Ordinances provided that the procurements conform to applicable federal laws, including but not limited to 40 CFR Part 33, 40 CFR Part 35, Subpart O, 2 CFR Part 200, and 2 CFR 1500. The City shall require all contractors to comply with all applicable laws and regulations in subcontracting;
- b) Borrower will use an open, competitive bidding process in contracting and

will comply with all applicable federal, State and local procurement laws and regulations. In the event of any conflict or conflicts between any such laws and regulations, the most stringent laws and regulations shall be applicable. Project Work that is procured without advertising for bids (e.g., as authorized by a vote of two-thirds of all aldermen holding office under Section 8-9-1 of the Illinois Municipal Code) or not in accordance with public bidding requirements and applicable law will result in the costs for such work being ineligible for payment hereunder. Project Work that is not awarded to the lowest responsible and responsive bidder will result in the costs for such work being ineligible for payments hereunder. Notwithstanding the forgoing, Borrower's selection of and award of contracts for engineering, architectural, and land surveying services relative to the Project Work shall be awarded in accordance with the Local Government Professional Services Selection Act;

- c) Borrower will allow only fair and reasonable compensation to be earned by contractors and subcontractors. Factors to be considered in determining a fair and reasonable compensation shall include project-related material acquisition costs, labor costs, management costs, contract risks, capital investments, degree of independent development, and cost control and record keeping efforts. The determination of a fair and reasonable compensation shall not be based upon the application of a predetermined percentage factor;
- d) Borrower assumes responsibility for the administration and successful accomplishment of all the Project Work. Borrower also assumes responsibility for the settlement and satisfaction of all contractual and administrative issues arising out of contracts and subcontracts for such Work. This responsibility includes, but is not limited to, issuance of invitations for bids or requests for proposals or qualifications, selection of contractors, award of contracts, protest of award, claims, disputes and other procurement matters;
- e) Borrower will ensure that any contract or subcontract includes a provision allowing access to the Site as required under this Agreement;
- f) Borrower will ensure that any contract or subcontract provides the Agency, U.S. EPA, the Illinois Auditor General, the Illinois and US Inspector Generals, the US Comptroller General, the Illinois Attorney General, and their respective officers, officials, employees, authorized representatives and agents, and authorized representatives of the Federal government with access to any books, documents, papers, and records, including computer-generated documents, of the contractor or subcontractor that are related to the Project Work, the program or use for which Funds have been provided hereunder and the expenditure of such Funds or other public funds for the purpose of making an audit, examination, excerpts, and transcriptions

thereof and as further provided herein;

- g) Borrower may use a time and materials type contract only after a determination that no other contract is suitable. Time and materials type contract means a contract whose cost to Borrower is the sum of: (i) the actual cost of materials; and (ii) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each time and materials contract must set a ceiling price that the contractor exceeds at its own risk in accordance with 2 CFR 200.318(j). If the actual condition changes which warrants a new ceiling price of certain tasks, the contractor/consultant will discuss with Borrower and seek approval prior to continuing the work.

Further, Borrower must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. Borrower must obtain the prior written approval of the Illinois EPA of said ceiling price and any revision thereto. In the event the scope of work changes after a contractor agrees to a ceiling price, the Borrower, Illinois EPA and the contractor shall attempt in good faith to agree on the additional fees to be paid to contractor in accordance with the same payment methodology, and if necessary, any adjustment to the ceiling price to accommodate the change in scope of work. However, nothing herein obligates the Agency to agree to raise the ceiling price.

Notwithstanding the foregoing, Borrower shall remain obligated to comply with the terms and conditions of this Agreement and the Promissory Note, including but not limited to obtaining the NFR Letter and repaying all loans to the Agency as herein provided.

- h) The Parties agree that neither the Agency, U.S. EPA, nor the State of Illinois will be a party to any contract or subcontract, solicitation, or request for proposals;
- i) Borrower agrees to comply with all applicable federal and State laws prohibiting civil rights violations, including but not limited to the Illinois Human Rights Act (775 ILCS 5), Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX, 40 CFR Parts 5 and 7, and all civil rights obligations set forth in the attached EPA General Terms and Conditions (effective November 12, 2020) (“General Terms and Conditions”), and will require the same from all contractors and subcontractors of every tier performing Project Work hereunder. Borrower and its contractors and subcontractors of every tier shall not discriminate against any person because of his or her

race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service or other protected status. In addition, Borrower shall undertake good faith efforts in compliance with 40 CFR Parts 33 and 35 to give opportunities to qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE), Women-Owned Business Enterprises (WBE), and Disadvantaged Business Enterprises (DBE) to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. Borrower shall submit all reports of such efforts to the Agency in accordance with 40 CFR Parts 33 and 35 and provide such additional documentation as required by the Agency and/or U.S. EPA;

- j) Borrower will ensure that contracts and subcontracts are awarded to persons and organizations that:
- 1) Have adequate financial resources, experience, organization, technical qualifications and resources, and facilities for performance of the contract or subcontract, and possesses the ability to successfully perform the Project Work;
 - 2) Have staffing sufficient to comply with the completion schedule for the project;
 - 3) Have a demonstrated record of integrity, good judgment, compliance with public policy, and past performance, including any prior performance under grants or contracts with federal, State, or local government;
 - 4) Have an established financial management system and audit procedure;
 - 5) Maintain a property management system that provides procedures for the acquisition, maintenance, safeguarding and disposition of all project-related property; and
 - 6) Conform to the civil rights law, equal employment opportunity law, and labor law requirements, as well as all other federal and State laws and regulations.
- k) Borrower shall ensure that all procurement transactions will be conducted in a manner that provides full and open competition with the standards imposed under federal and State law, including but not limited to prohibiting the use of statutorily or administratively imposed State or local geographical preferences in the evaluation of bids or proposals (except where federal statutes expressly mandate or encourage geographic

preference);

- l) Borrower shall maintain written standards of conduct that address the conflicts of interest provisions set forth in 2 CFR 200.318, including but not limited to the selection, award and administration of contracts and organizational conflicts of interest, the disclosure requirements set forth in Section 22 of the General Terms and Conditions, and U.S. EPA's most recent Financial Assistance Conflict of Interest Policy;
- m) Any person, contractor, or other entity that develops or drafts, or assists in the developing or drafting of any specifications, requirements, statement of the work, qualifications, invitations for bids, requests for proposals (RFP), requests for qualifications (RFQ), or other bid or procurement document(s) must be excluded from competing for such procurement(s);
- n) Pursuant to 2 CFR 1500.9, in the event any consulting services for which Borrower is requesting reimbursement hereunder have not been procured in accordance with 2 CFR 200.317 through 200.326, then any applicable salary rates and limits on compensation referenced in said Section 1500.9 shall be applicable to reimbursement for such consulting services notwithstanding any provision in this Agreement to the contrary;
- o) Management fees are subject to the U.S. EPA General Terms and Conditions. Management fees or similar charges in excess of direct costs are not allowable hereunder; and
- p) Borrower must comply with the Federal Funding Accountability and Transparency Act ("FFATA"), including but not limited to the "Reporting Subawards and Executive Compensation" requirements therein.

18. Ownership. Borrower shall retain ownership of the Site throughout the period of this Agreement and the performance of all Project Work. For the purpose of this Agreement, the term "owns" means being the sole holder of fee simple title unless U.S. EPA approves a different arrangement.

19. Access to the Site and Records.

- a) Site Access. Borrower shall provide the Agency, U.S. EPA, and their respective officials, officers, employees, auditors, authorized representatives, and agents with unrestricted access to the Site throughout this Agreement and the performance of the Project Work. The Agency and U.S. EPA shall have full authority to enter the Site and inspect the work at all times during the execution of the Project Work. Borrower recognizes the Agency and U.S. EPA have the right to stop the Project Work immediately and take reasonable and necessary action in the event that the Project Work is unsatisfactory or is not substantially in accordance with the approved

RAP or other requirements herein, or that a condition exists which creates an imminent or substantial threat to human health, welfare or the environment. Notwithstanding the forgoing, it shall remain Borrower's obligation to perform and complete the Project Work and to properly secure the Site in a safe manner in strict compliance with the requirements herein. Nothing herein shall be construed as imposing any obligation on the Agency, U.S. EPA, or their respective officials, officers, employees, authorized representatives, or agents to identify any defects in the Project Work or unsafe conditions, to complete the Project Work, or to otherwise assume any liability or obligation of Borrower or any other person or entity.

b) Records Access.

1) The Agency, U.S. EPA, the Illinois Auditor General, the Illinois and US Inspector Generals, the US Comptroller General, the Illinois Attorney General, and their respective officers, officials, employees, authorized representatives and agents, and other authorized representatives of the Federal government shall have access to and the right to inspect all books, documents, papers, and records, including computer-generated documents that are related to the Project Work, the use of Funds, payment requests, and the expenditure of such Funds or other public funds for the purpose of making an audit, examination, excerpts, and transcriptions thereof and as further provided herein. The right also includes timely and reasonable access to personnel for the purpose of interview and discussion related to such documents.

2) The Parties acknowledge and agree that this Agreement and all pay request documents, payments, expenditures, audit of funds, and all other records, reports, data and/or other written material (including but not limited to electronic data, records and communications) relative thereto that have been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of the Agency or Borrower may be subject to inspection and copying pursuant to the Freedom of Information Act (5 ILCS 140/1 et seq.). Such records, data, and files of the Agency may also be subject to inspection and copying pursuant to Section 7 of the Act (415 ILCS 5/7).

20. Audit and Records. Borrower will ensure all books, records, documents, reports and other evidentiary material are maintained using accounting procedures and practices that conform to generally accepted accounting principles to account properly for the receipt and disposition of all Funds.

a) Audit and Internal Control Requirements: Borrower shall comply with the

internal control requirements specified in 2 CFR 200.303 and the audit requirements set forth in 2 CFR 200, Subpart F, as applicable.

Notwithstanding any provision herein to the contrary, Borrower's failure to comply with said internal control requirements specified in 2 CFR 200.303 or any applicable audit requirement imposed under said 2 CFR 200, Subpart F, or other applicable law shall constitute an Event of Default in which case the Agency shall be entitled to all rights and remedies provided herein or otherwise provided in law or equity.

- b) Record Retention Requirements: Borrower will ensure records are preserved and made available for inspection and copying as required hereunder:
- 1) For a minimum of three years following completion of the Project Work and the Agency's approval of the RACR;
 - 2) If the Funds are revoked by the Agency, for a period of three years from the date of the revocation notice;
 - 3) For records relating to disputes and/or appeals, litigation or the settlement of claims arising out of the work, or costs and expenses of work to which exception has been taken by the Agency or any of its duly authorized representatives, until three years after disposition of such appeals, litigation, claims or exceptions or for the three years specified in paragraphs a or b above, whichever is longest;
 - 4) For such longer period required by applicable federal or State law, including but not limited to, the Local Records Act (50 ILCS 205/1 *et seq.*); and
 - 5) Notwithstanding the forgoing, Borrower shall obtain written approval from the Agency prior to disposal of any records required hereunder or otherwise related to the Project Work and/or the use or expenditure of the Funds and obtain such other approvals as required by law.

21. Default and Remedies.

- a) EVENTS OF DEFAULT. Borrower shall be in default under this Agreement if any one or more of the following events (each an Event of Default) shall have occurred; provided, however, that if the nature of Borrower's default is such that more than thirty (30) days are reasonably required for its cure, then Borrower shall not be deemed to be in default if it commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion and

further provided that Borrower shall complete said cure of said default within sixty (60) days of commencing said cure (except Borrower must cure any monetary default within five (5) business days after notice from the Agency):

- 1) Borrower fails to pay any amount under this Agreement, the Promissory Note, or any other indebtedness to the Agency when due;
- 2) Borrower fails to perform any obligation in accordance with any provision, term or condition, covenant, warranty, representation or certification hereunder or under the Promissory Note, or Borrower breaches any warranty, covenant, representation, certification, term or condition contained in this Agreement or the U.S. EPA Agreement, or Borrower is otherwise in default hereunder or under the Promissory Note;
- 3) Borrower provides or causes any false or misleading information to be provided to the Agency;
- 4) Borrower fails to sign and issue the Promissory Note and/or to deliver said Promissory Note and Resolution adopted by the City Council to the Agency in accordance with Section 39 below or any default by Borrower under the terms and conditions of said Promissory Note.
- 5) Borrower fails to comply with any applicable federal, State, or local code, ordinance, statute, regulation or other law or fails to complete the Project Work in compliance with the RAP (where applicable) or other requirements herein, including but not limited to the Agency and/or IDPH approved plans and/or any permit requirements with respect to the Asbestos Mitigation;
- 6) Project Work is not completed on or before any of the completion dates set forth on the performance schedule or an amended performance schedule approved by the Agency in writing or as otherwise required hereunder or Project Work stops for thirty (30) consecutive days;
- 7) Any attachment or lien entered or served against Borrower, the Surety Bond or Bonds, or the Site remains unpaid for more than thirty (30) days;
- 8) Borrower allows any party other than Borrower to assume or undertake any obligation without the written consent of Agency;
- 9) Borrower allows goods to be used, transported or stored on the Site, the possession, transportation, or use of which is illegal;

- 10) Funds are being or have been misspent or improperly held by Borrower;
 - 11) Borrower or the Surety under the Surety Bonds causes the Agency to deem itself insecure, in good faith, for any reason; or
 - 12) Borrower fails to obtain the NFR Letter for the Site from the Agency in accordance with 35 Ill. Adm. Code Part 740 on or before March 1, 2023 or such extended date as approved by the Agency in writing; provided, however, that the Agency will not unreasonably withhold its approval of Borrower's request to extend the date required by Borrower to obtain the NFR Letter.
- b) RIGHTS OF THE AGENCY IN THE EVENT OF DEFAULT. Upon the occurrence of an Event of Default under this Agreement, the Agency shall be entitled to exercise one or more of the following remedies without notice or demand:
- 1) To exercise any of the remedies described in this Agreement or Promissory Note or any remedies provided by law or in equity;
 - 2) To declare all payments required hereunder or under the Promissory Note from Borrower to become forthwith due and payable without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby expressly waived by Borrower;
 - 3) To terminate this Agreement, whereupon the commitment and obligation of the Agency to make reimbursements or loans hereunder or under the Promissory Note shall terminate;
 - 4) To require repayment of all Funds received by Borrower hereunder;
 - 5) To exercise all rights that the Agency has under the Promissory Note and as otherwise provided hereunder; and
 - 6) To exercise all other rights available to the Agency at law or in equity, including seeking specific performance to enforce Borrower's obligations hereunder or under the Promissory Note.

The Agency's rights are cumulative and may be exercised together, separately, and in any order.

In addition to the foregoing, Borrower acknowledges that Section 104(k)(8)(C) of CERCLA expressly authorizes the Administrator of U.S. EPA to terminate any loan, require repayment of all funds received, and to seek any other legal remedies available to said Administrator in the event of any violation of any condition of a

loan or applicable federal law.

22. Covenant Against Contingent Fees. Borrower warrants that no person has been employed or retained to solicit or secure Funds upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee. If this warranty is breached or violated, the Agency may, in addition to any other remedies provided in this Agreement or by law, revoke this Agreement without liability or, in its sole discretion, deduct from the Funds awarded, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

23. Repayment of Loan.

- a) After the Agency conducts its final review of the fund disbursements hereunder to establish the final loan principal amount, the Agency shall consider principal of the loan to consist of all disbursements made by the Agency hereunder (“Full Loan Principal Amount”), which shall not exceed \$775,500.
- b) At the time of the Agency's final review, the Full Loan Principal Amount shall be discounted by 30%, provided however that in no event shall the total amount of the loan principal forgiven/discounted exceed \$200,000 (the discounted Full Loan Principal Amount is hereinafter referred to as the “Reduced Loan Principal Amount”); said loan discount/forgiveness being expressly contingent upon: i) Borrower obtaining the NFR Letter on or before March 1, 2023 (or such later date approved by the Agency in writing); and ii) the Borrower not being in default under or breach of any of the term or condition of this Agreement or the Promissory Note (beyond any applicable cure period). In the event that Borrower does not obtain the NFR Letter on or before March 1, 2023 (or such later date approved by the Agency in writing); or ii) the Borrower is in default or breach of any of the terms or conditions of this Agreement or the Promissory Note (beyond any applicable cure period), then Borrower shall pay the Full Loan Principal Amount as set forth in Section 23 (a) above. The Agency shall give its written determination to Borrower of the Reduced Loan Principal Amount.
- c) Borrower agrees to repay Illinois EPA the Full or Reduced Loan Principal Amount, as determined in accordance with paragraphs (a) and (b) of this Section 23, in seven (7) equal annual payments that shall commence on the Start Date (as defined below). The Start Date shall be the earlier of: i) three (3) years from the Agency’s issuance of the NFR Letter applicable to the Site as provided in 35 Ill. Adm. Code Part 740 (or such extended time as agreed to by the Agency in writing); and ii) four (4) years from the signing of this Agreement by both Parties (or such extended date as agreed to by the

Agency in writing) (the Agency shall notify the Borrower of the earlier of such dates, being the “Start Date”). Interest on the unpaid Loan Principal Amount shall accrue at the rate of zero percent (0%) per annum. Borrower has the right to prepay the Loan Principal Amount at any time without penalty.

24. Covenants Against Liability. Borrower warrants, represents and covenants that it has not caused or contributed to the release or threatened release of a hazardous substance at the Site and is not otherwise potentially liable for a response cost under Section 107 or CERCLA.

25. Indemnification and Insurance.

- a) Indemnification. To the fullest extent permitted by law, (i) Borrower assumes the entire risk, responsibility and liability for any and all loss or damage to property owned by the Borrower, the Agency, or third persons, and any injury to or death of any persons (including employees of Borrower) caused by or arising out of, or occurring in connection with, this Agreement, the execution of any work, contract or subcontract arising out of this Agreement or otherwise attributable to the Project Work, the use or expenditure of any Funds, or the remediation, redevelopment, or use of the Site; and (ii) Borrower will indemnify, save, hold harmless and defend the State of Illinois, the Agency, U.S. EPA, and their respective officials, officers, employees and authorized representatives from all claims for any such loss, damage, injury or death. However, Borrower’s execution of this Agreement, or implementation of work under this Agreement does not, in itself, render Borrower an owner or operator for purposes of 415 ILCS 5/22.2(h)(2), under regulations promulgated pursuant to 415 ILCS 55/8, or under Section 101(20) of CERCLA except as expressly provided therein to the contrary. Borrower will require any contractor or subcontractor engaged by Borrower to agree in writing to look solely to Borrower for performance of its contract or subcontract with Borrower and for satisfaction of any and all claims arising thereunder. This obligation shall survive the expiration or termination of this Agreement.
- b) Insurance. Borrower shall maintain the types and amounts of coverages set forth in Exhibit G throughout the duration of the Project Work. For purposes of this Agreement, Borrower is not obligated to obtain additional insurance coverages for the City (or its officials, officers, and/or employees) beyond the types and amounts of coverages set forth on Exhibit G which Borrower agrees to maintain throughout the duration of the Project Work.

Borrower’s contractors and subcontractors of every tier shall maintain the types and not less than the minimum amounts of insurance coverages throughout the duration of the Project Work as follows:

- 1) Commercial general liability (CGL) insurance (using ISO occurrence form CG 00 01 10 93, or a substitute occurrence form providing equivalent coverage) with a limit of not less than \$2,000,000 each occurrence (combined single limit for bodily injury and property damage) covering liability arising out of the Project Work, including but not limited to, claims for bodily injury, property damage, personal injury and advertising injury. By its terms or appropriate endorsements such insurance shall include the following coverage, to wit: Bodily Injury, Property Damage, Fire Legal Liability, Personal Injury, Blanket Contractual, Independent Contractors, Premises Operations, Products and Completed Operations (for a minimum of two (2) years following final completion of the Project Work). The policy cannot be endorsed to exclude the perils of explosion (x), collapse © and underground (u) exposures;
- 2) Business auto liability insurance with a combined single limit of not less than \$1,000,000 per accident for bodily injury and property damage. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned autos;
- 3) Workers' compensation as required by law, and employer's liability insurance with a limit of not less than \$500,000 each accident for bodily injury by accident; \$500,000 each employee for bodily injury by disease;
- 4) Pollution liability insurance in an amount not less than \$2,000,000 combined single limit per occurrence for bodily injury, property damage, and remediation costs. Pollution liability coverage for pollution incidents resulting from a claim for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured or destroyed), remediation costs, and defense (including costs and expenses incurred in the investigation, defense, or settlement of claims); all in connection with any loss arising from the Project Work, including from an incident at, on or migrating beyond the Site. Coverage shall be extended to non-owned disposal sites resulting from a pollution incident at, on or mitigating beyond the site; and provide coverage for incidents occurring during transportation of contaminated soils, sediments, debris, materials, and other pollutants, including hazardous and non-hazardous waste and materials, and shall apply to pollution releases resulting from such transportation. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants,

contaminants, or pollutants, including hazardous and non-hazardous waste and materials; and

- 5) Additional insured, primary coverage, and miscellaneous: The State of Illinois, the Agency, U.S. EPA, the City of Warrenville, and their respective officials, officers, employees, and authorized representatives shall be named as additional insured (collectively, "Additional Insured") under Borrower's contractor's and subcontractor's CGL insurance using ISO additional insured endorsement CG 20 10, or a substitute providing equivalent coverage, and as additional insured under said contractor's and subcontractor's commercial umbrella/excess liability insurance, business auto liability, and pollution liability coverages. ISO additional insured endorsement CG 20 37, or a substitute providing equivalent coverage, shall be used with respect to the above required continuing completed operations liability coverage regarding the Additional Insured.

Said coverages shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured and shall not require exhaustion of any other coverage or tender of any claim or action to any other insurer providing coverage to the Additional Insured, or any of them. Any insurance or self-insurance maintained by any of the Additional Insured shall be in excess of said insurance coverages and shall not contribute with them.

Insurance shall be placed with insurers licensed by the Illinois Department of Insurance to do business in the State of Illinois with a financial strength rating (FSR) of no less than A- and a financial size category (FSC) of no less than VII in the latest edition of the A.M. Best Insurance Reports. Borrower shall furnish the Agency with certificates of insurance evidencing such coverages not less than five (5) business days prior to the commencement of the Project Work and copies of insurance policies within five (5) business days of the Agency's request for said policies.

26. Surety Bonds. Borrower shall comply with the Public Construction Bond Act (30 ILCS 550). Borrower shall furnish the Agency with a copy of the payment and performance bonds required under the Public Construction Bond Act in form acceptable to the Agency signed by the City's general contractor as principal and co-signed by a surety meeting the requirements set forth in Section 1 of said Act (30 ILCS 550/1) ("Surety") naming the City as primary obligee under said bonds ("Surety Bonds") within five (5) business days of the Agency's request for said Surety Bonds.

The Surety shall be a company that is licensed by the Illinois Department of Insurance authorizing said Surety to execute surety bonds, and the Surety shall have a financial strength

rating of at least A- as rated by A.M. Best Company, Inc., Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency. The amount of the Surety Bonds shall be not less than the cost of the Project Work and shall, at a minimum, be conditioned upon the completion of the Project Work, the payment for material, apparatus, fixtures and machinery (as those terms are defined in 30 ILCS 550/1) used in the Project Work, and payment for all labor performed in said Project Work, whether by subcontractor or otherwise, including the payment of prevailing wages in accordance with Section 4 above. The Surety Bonds may cover both the Project Work and other public works performed for or on behalf of the City (i.e., separate surety bonds are not required for the Project Work and other City public works such as the Improvements and LUST Work). If the Surety Bonds cover all such work (i.e., the Project Work and other City public works), then the amount of the Surety Bonds shall be not less than the cost of all such work.

27. Availability of Funds. Notwithstanding any provision herein to the contrary, the Funds provided for hereunder and any payment obligations by the Agency herein are expressly contingent upon and subject to the availability of sufficient funds appropriated for this Agreement and the Project Work. The Agency may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if i) sufficient funds have not been appropriated to the Agency, ii) the Governor or the Agency reserves appropriated funds, iii) the Governor or the Agency determines that appropriated funds may not be available for payment, or iv) the Agency determines that there are otherwise insufficient funds available.

The Agency's obligations hereunder shall cease immediately, without penalty or further payment being required, if the U.S. EPA or other federal funding source fails to make an appropriation or distribution sufficient to pay such obligation and/or otherwise does not provide sufficient funding for the Project Work. The Agency shall determine whether amounts provided and appropriated are sufficient.

The Agency shall provide notice, in writing, to the Borrower of any election to terminate or suspend this Agreement as soon as practicable. Any suspension or termination pursuant to this Section will be effective upon the Borrower's receipt of said notice.

28. No Corrupt Practices. Borrower represents, warrants, and covenants that no law pertaining to fraud, bribery, graft, kickbacks, collusion, or conflict of interest has been violated or other unlawful or corrupt practice has taken place relating to or in connection with this award or the Project Work.

29. Entire Agreement. This Agreement, the Promissory Note, and all documents, Agreements, guidelines, exhibits, and terms and conditions attached hereto or referenced herein, represent the entire Agreement between the Agency and Borrower with respect to this Agreement and supersedes all previous communications or understandings, whether oral or written.

30. Signage. Borrower agrees to erect a sign on the Site, approved by Illinois EPA and U.S. EPA, stating that the work funded by this Agreement is being financed in part by the U.S.

EPA CERCLA Funds and providing the appropriate contacts for obtaining information on activities being conducted at the Site and for reporting suspected criminal activities. The sign erected on the Site shall comply with 40 CFR Part 35, Subpart O (Section 35.6105 (a) (2) (ii)). The sign must be placed in a visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The Borrower is required to comply with the sign specifications provided by the U.S. EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>. If the U.S. EPA logo is displayed along with the logos of other participating entities, the U.S. EPA logo must not be displayed in a manner that implies that U.S. EPA itself is conducting the Project Work. Instead, the U.S. EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from U.S. EPA for the Project Work. As provided in the sign specifications from OPA, the U.S. EPA logo is the preferred identifier for assistance agreement projects and use of the U.S. EPA seal requires prior approval from the U.S. EPA. To obtain the appropriate U.S. EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the U.S. EPA Project Officer in the communication. Instructions for contacting OPA are available on the Using the EPA Seal and Logo page.

Consistent with Section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.322, the Borrower is encouraged to use recycled or recovered materials when procuring signs. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the U.S. EPA logo or seal) into the appropriate non-English language(s).

31. U.S. EPA Agreement. The Agency entered a Cooperative Agreement with U.S. EPA titled the Illinois EPA Brownfields RLF dated September 14, 2015, as amended September 17, 2016, October 18, 2018, October 2, 2019, and September 30, 2020, which also includes the terms and conditions incorporated therein including but not limited to the EPA General Terms and Conditions effective November 12, 2020, copies of which are attached hereto as Exhibit D, and made a part hereof as though fully set forth herein (see U.S. EPA's website regarding additional terms and conditions and updates to terms and conditions at: <https://www.epa.gov/grants/grant-terms-and-conditions#public>) (collectively, "U.S. EPA Agreement"). Borrower understands and agrees that the U.S. EPA Agreement imposes terms, conditions, and obligations on Borrower and its contractors, sub-contractors of all tiers, engineers, architects, consultants, and other entities receiving Funds and/or performing work funded hereunder as well as to the Project Work. Borrower understands and agrees that a breach or violation of the U.S. EPA Agreement by Borrower, or any of its officials, officers, employees, representatives, contractors, subcontractors of any tier, architects, engineers, consultants, agents, or other person or entity performing work on behalf of Borrower hereunder or receiving Funds hereunder shall be considered a material breach of this Agreement by Borrower, in which case the Agency shall be entitled to all remedies at law and equity and as otherwise provided hereunder.

The U.S. EPA Agreement terms and conditions include, but are not limited to, the following:

- a) The Borrower shall use Funds only for eligible activities and in compliance with the requirements of CERCLA §104(k) and applicable Federal and State laws and regulations;
- b) The Borrower shall ensure that the cleanup protects human health and the environment;
- c) The Borrower shall document how Funds are used. If Funds are used for cleanup of a petroleum-contaminated brownfields site, the Borrower shall maintain separate records for those costs;
- d) The Borrower shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with the Funds unless one of the conditions described at 2 CFR 200.333 is present. The Borrower shall obtain written approval from the Agency prior to disposing of records. The Borrower shall also provide access to records relating to loans provided hereunder to authorized representatives of the Federal government (see Sections 17, 19, and 20 above for additional requirements);
- e) The Borrower certifies that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the Site;
- f) The Borrower certifies that it is not potentially liable under §107 of CERCLA for the Site;
- g) The Borrower shall conduct cleanup activities as required by the Agency;
- h) The Borrower must comply with the internal control requirements specified at 2 CFR 200.303 and is subject to the 2 CFR Subpart F Audit Requirements;
- i) The Borrower shall comply with all applicable Federal and State laws and requirements. In addition to CERCLA §104(k), Federal applicable laws and requirements include 2 CFR 200 and 2 CFR 1500;
- j) The Borrower must comply with the Davis-Bacon Act prevailing wage requirements for all construction, alteration, and repair contracts and subcontracts for the Project Work (see Section 4 above).
- k) Federal cross-cutting requirements include, but are not limited to, MBE/WBE and DBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard (29 CFR 1910.120); the Uniform Relocation Act (40 USC 61); National Historic Preservation Act (16 USC 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment

Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333); the Anti-Kickback Act (40 USC 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250; and

- 1) The U.S. EPA Agreement requires Illinois EPA to comply with the subrecipient oversight and monitoring requirements set forth in 2 CFR Sections 200.330 through 200.332 and provides that loan agreements may meet the requirements imposed under 2 CFR 200.331(a) through use of Appendix D (Subaward Agreement Template) of U.S. EPA's Subaward Policy (excluding the indirect cost provisions; Borrower may not use Funds for any indirect costs). Accordingly, the Subaward Agreement applicable to this RLF Agreement and the Project Work hereunder is attached hereto as Exhibit E and incorporated herein in accordance with Section III, paragraph C of the U.S. EPA Agreement as modified herein.

32. Notices. Any notice required under this Agreement shall be deemed properly given when personally delivered or mailed by certified mail, return receipt requested, to the addresses below. Either party may change its address for receiving notices by giving notice of such change in compliance with the terms of this Section.

For the Agency:

Michael J. Charles
Illinois Environmental Protection Agency
Remediation Project Management Section
Site Remediation Program
1021 N. Grand Ave. East
Springfield, Illinois 62794-9276

For Borrower:

City of Warrenville
3S258 Manning Avenue
Warrenville, Illinois, 60555
Attention: Ron Mentzer

33. Amendments or Modification. This Agreement may be amended or modified only by a written agreement signed by the Parties to this Agreement.

34. Parties Interest/No Third-Party Beneficiaries. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement (other than enforcement by the Illinois Attorney General on behalf of the Agency and enforcement and other rights by U.S. EPA). This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right (other than to U.S. EPA). Nothing contained in this Agreement, nor any act of the Agency or the State of Illinois, shall be deemed to confer or construed by any of the parties hereto, or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any other association or relationship involving the Agency or the State of Illinois. The employees of the Borrower are therefore not entitled to any benefits provided to employees of the State by virtue of this Agreement and/or any services or work performed hereunder.

35. Titles and Headings. Titles and headings to Sections herein are inserted for reference only and are not intended to be a part of, or affect the meaning or interpretation of, this Agreement.

36. Term. This Agreement shall become effective on the date of the signature of Illinois EPA and the City, whichever is later. The Agreement shall remain in effect until Borrower repays in full any and all outstanding amounts, completes the remediation work and obtains and records the NFR Letter for the Site from the Agency in accordance with 35 Ill. Adm. Code Part 740 as herein provided. Upon such issuance of the NFR Letter by the Agency for the Site (and recording of the NFR Letter by Borrower in accordance with 35 Ill. Adm. Code Part 740) and repayment by Borrower to the Agency in full, this Agreement shall terminate, and the Parties shall owe no further duties to each other.

37. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Unless applicable law provides otherwise, Borrower consents to the jurisdiction and venue of any court located in Illinois in the event of any legal proceeding under this Agreement by the Agency or the Illinois Attorney General on behalf of the Agency. Any and all claims and disputes arising out of this Agreement or the Project Work against the State, the Agency, or any of their respective officials, officers, employees, or authorized representatives must be filed exclusively with and shall be adjudicated in the Illinois Court of Claims and shall be governed by the Court of Claims Act (705 ILCS 505/1 *et seq.*).

38. Borrower Oath and Certification. Borrower certifies under oath that all information in this Agreement is true and correct to the best of its knowledge, information, and belief; that Funds shall be used only for the purposes described in this Agreement; and that the award of Funds is conditioned upon such certification.

Borrower further certifies, to the best of its knowledge and belief, that:

- a) No Federal appropriated funds have been or will be paid, by or on behalf of Borrower, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this loan or Agreement, Borrower shall complete and submit Standard Form -- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

- c) Borrower shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts and contracts) and that all contractors and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

39. Promissory Note. Borrower shall sign and issue the Promissory Note in the form attached hereto as Exhibit F concurrent with its execution of this Agreement. Borrower shall deliver to the Agency the original Promissory Note signed by its Mayor together with a Resolution adopted by the City Council approving of this Agreement and the Promissory Note and authorizing the Mayor to sign said Agreement and Promissory Note on behalf of Borrower and to perform such acts and execute such documents as necessary to carry out the terms of said Agreement and Promissory Note on behalf of Borrower. In the event of any conflict between the provisions of the Promissory Note and this Agreement, this Agreement shall control.

40. Non-assignability. Borrower shall not assign the whole or any part of this Agreement without the prior written consent of the Agency. Any such assignment shall be a material breach of this Agreement, and such assignment shall be null and void.

41. List of Exhibits.

- Exhibit A – Legal description of the Site
- Exhibit B – Depiction of the Site
- Exhibit C – Davis Bacon Act requirements
- Exhibit D – U.S. EPA Agreement
- Exhibit E – Subaward Agreement (Appendix D of U.S. EPA’s Subaward Policy)
- Exhibit F – Promissory Note
- Exhibit G – Borrower’s Insurance Coverages

42. Severability. If any section, paragraph, clause, provision or portion of this Agreement or the application thereof, to any person or under any circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair, or render invalid or unenforceable the remainder of this Agreement, nor shall it affect the application of any other section, paragraph, clause, phrase, provision, or portion hereof.

43. General Provisions.

- a) If a Party waives a breach of any provision of this Agreement by the other Party, that waiver shall not operate or be construed as a waiver of any subsequent breach by said Party or prevent the non-breaching Party from enforcing such provisions;

- b) This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute one and the same instrument;
- c) The Parties acknowledge that this Agreement was freely negotiated by each of the Parties hereto, each of whom was represented by separate counsel; accordingly, this Agreement shall be construed according to the fair meaning of its terms, and not against any Party; and
- d) Each of the undersigned signing as an officer, representative, or agent on behalf of the respective Party to this Agreement warrants and represents that he or she holds such capacity as is specified beneath his or her name and further warrants and represents that he or she is authorized to execute and effectuate this Agreement, and to bind the Party on whose behalf he or she is signing this Agreement to the terms and conditions herein, and that he or she does so voluntarily and in his or her official capacity.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS, WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date set forth below.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY:

CITY OF WARRENVILLE:

By: _____
John J. Kim, Director

By: _____
David Brummel, Mayor

Date: _____, 2021

Date: _____, 2021

By: _____
Charles Gunnarson, Chief Legal Counsel

Date: _____, 2021

By: _____
Jacob Poeschel, Chief Financial Officer

Date: _____, 2021

DRAFT

EXHIBIT F

**ILLINOIS
ENVIRONMENTAL
PROTECTION AGENCY**

BROWNFIELD RLF
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
“LENDER” OR “AGENCY”

PROMISSORY NOTE

Borrower
City of Warrenville, Illinois
Address
3S258 Manning Avenue, Warrenville, Illinois, 60555
Telephone Number Identification Number

INTEREST RATE	PRINCIPAL AMOUNT/CREDIT LIMIT	EXECUTION DATE	TERM OF LOAN	IEPA BOL NUMBER	
0.0%	See below	_____, 2021	7 years from the Start Date		

1. BROWNFIELD RLF AGREEMENT: Borrower and Lender have entered into a Brownfield Revolving Loan Fund (RLF) Agreement – Brownfields Cooperative Agreement (U.S. EPA Funds) dated _____, 2021, a copy of which is attached hereto and incorporated herein as Exhibit A (“RLF Agreement”). Pursuant to the terms of the RLF Agreement, Lender will reimburse Borrower for certain corrective action activities at the site owned by Borrower (the former Citgas site) commonly known as 28W244 Warrenville Road, Warrenville, DuPage County, Illinois (PIN: 04-35-403-021), legally described on Exhibit A and depicted on Exhibit B of the RLF Agreement (“Site”), including the removal and disposal of contaminated soils, asbestos mitigation, building demolition, and construction of an engineered barrier at the Site to exclude exposure pathways and placement of the Site back into productive use in accordance with the terms and conditions of the RLF Agreement. In the event of any conflict between the provisions of this Promissory Note and the RLF Agreement, the RLF Agreement shall control.

2. LOAN PRINCIPAL AMOUNT: After the Agency conducts its final review of the fund disbursements under the RLF Agreement to establish the final loan principal amount, the Agency shall consider principal of the loan to consist of all disbursements made by the Agency thereunder (“Full Loan Principal Amount”), which will not exceed \$775,500.

The Full Loan Principal Amount shall be discounted by 30%, provided however that in no event shall the total amount of the loan principal forgiven/discounted exceed \$200,000 (the Full Loan Principal Amount reduced by said loan principal forgiven/discounted is hereinafter referred to as “Reduced Loan Principal Amount”); said loan discount/forgiveness being expressly contingent upon: i) Borrower obtaining the NFR Letter (as defined in the RLF Agreement; hereinafter, “NFR Letter”) on or before March 1, 2023 (or such later date approved by the Agency in writing pursuant to the RLF Agreement); and ii) the Borrower not being in default under or breach of any of the terms or conditions of the RLF Agreement or this Promissory Note (beyond any applicable cure period). In the event that i) Borrower does not obtain the NFR Letter on or before March 1, 2023 (or such later date approved by the Agency in writing pursuant to the RLF Agreement); or ii) the Borrower is in default or breach of any of the terms or conditions of the RLF Agreement or this Promissory Note (beyond any applicable cure period), then Borrower shall pay the Full Loan Principal Amount as set forth above.

3. PROMISE TO PAY: For value received, Borrower promises to pay to the order of Lender the Full or Reduced Loan Principal Amount, as determined in accordance with Section 2 above, in seven (7) equal annual payments that shall commence on the Start Date (as defined below). The Start Date shall be the earlier of: i) three (3) years from the Agency’s issuance of the NFR Letter applicable to the Site as provided in 35 Ill. Adm. Code Part 740 (or such extended time as agreed to by the Agency in writing pursuant to the RLF Agreement); and ii) four (4) years from the signing of the RLF Agreement by both parties (or such extended date as agreed to by the Agency in writing pursuant to the RLF Agreement) (the Agency shall notify the Borrower of the earlier of such dates, being the “Start Date”). Interest on the unpaid Loan Principal Amount shall accrue at the rate of zero percent (0%) per annum. Borrower has the right to prepay the Loan Principal Amount at any time without penalty.

4. DEFINITIONS: All capitalized terms shall have the meaning as defined in the RLF Agreement unless otherwise defined herein.

5. INTEREST RATE: Interest on the unpaid Loan Principal Amount shall accrue at the rate of zero percent (0%) per annum.

6. PREPAYMENT: This Note may be prepaid in part or in full on or before its maturity date without premium or penalty. Any partial prepayment will not affect the due date or the amount of any subsequent installment, unless agreed to, in writing, by Borrower and Lender. If this Note is prepaid in full, there will be no minimum finance charge.

7. LATE CHARGE: If a payment is received more than 15 days late, Borrower will be charged a late charge of \$500.00. This late charge may be assessed for each 30-day period that the individual repayment

remains delinquent.

8. EVENTS OF DEFAULT: Borrower shall be in default under this Note if any one or more of the following events (each an Event of Default) shall have occurred:

- a) Borrower fails to pay any amount under the RLF Agreement, this Note, or any other indebtedness to the Agency when due within five (5) business days after notice from the Agency; or
- b) Borrower fails to perform any obligation in accordance with any provision, term or condition, covenant, warranty, representation or certification under the RLF Agreement or this Note, or Borrower breaches any warranty, covenant, representation, certification, term or condition contained in the RLF Agreement, this Note, or the U.S. EPA Agreement, or Borrower is otherwise in default under the RLF Agreement or this Note or any event of default by Borrower under the RLF Agreement; provided, however, that if the nature of Borrower's default is such that more than thirty (30) days are reasonably required for its cure, then Borrower shall not be deemed to be in default if it commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion and further provided that Borrower shall complete said cure of said default within sixty (60) days of commencing said cure.

9. RIGHTS OF THE LENDER ON EVENT OF DEFAULT: Upon the occurrence of an Event of Default under this Note, the Lender shall be entitled to exercise one or more of the following remedies without notice or demand:

- a) To exercise any of the remedies described in the RLF Agreement or this Note or any remedies provided by law or in equity;
- b) To declare all payments required hereunder to become forthwith due and payable without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby expressly waived by Borrower;
- c) To terminate the RLF Agreement, whereupon the commitment and obligation of the Agency to make reimbursements or loans thereunder (or hereunder) shall terminate;
- d) To require repayment of all Funds received by Borrower under the RLF Agreement;
- e) To exercise all rights that the Lender has under this Promissory Note and under the RLF Agreement; and
- f) To exercise all other rights available to the Lender at law or in equity, including seeking specific performance to enforce Borrower's obligations under the RLF Agreement and hereunder.

The Lender's rights are cumulative and may be exercised together, separately, and in any order.

In addition to the foregoing, Borrower acknowledges that Section 104(k)(8)(C) of CERCLA expressly

authorizes the Administrator of U.S. EPA to terminate any loan, require repayment of all funds received, and to seek any other legal remedies available to said Administrator in the event of any violation of any condition of a loan or applicable federal law.

10. FINANCIAL INFORMATION: Borrower will at all times keep proper books of record and account in which full, true and correct entries shall be made in accordance with generally accepted accounting principles and will deliver to Lender such financial statements and information of Borrower as required by Lender.

11. MODIFICATION AND WAIVER: The modification or waiver of any of Borrower's obligations or Lender's rights under this Note must be in writing signed by Lender. Lender may perform any of Borrower's obligations or delay or fail to exercise any of its rights without causing a waiver of those obligations or rights. A waiver on one occasion will not constitute a waiver on any other occasion.

12. SEVERABILITY: If any provision of this Note is invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13. ASSIGNMENT: Borrower shall not assign the whole or any part of this Promissory Note without the prior written consent of the Agency. Any such assignment shall be a default hereunder, and such assignment shall be null and void.

Borrower agrees that Lender is entitled to assign some or all of its rights and remedies described in this Note to U.S. EPA without notice to or the prior consent of Borrower provided that payments made to Lender hereunder (or under the RLF Agreement) shall be recognized under this Note and the RLF Agreement notwithstanding any rights of Lender's assignee (i.e., U.S. EPA) until Borrower shall have received written notice of such assignment and instructions regarding any change in the manner of making payments hereunder.

14. NOTICE: Any notice or other communication to be provided to Borrower or Lender under this Note shall be in writing and sent to the parties in accordance with Section 32 of the RLF Agreement.

15. APPLICABLE LAW AND VENUE: This Note shall be governed by the laws of Illinois. Unless applicable law provides otherwise, Borrower consents to the jurisdiction and venue of any court located in Illinois in the event of any legal proceeding under this Note by Lender or the Illinois Attorney General on behalf of Lender. Any claims or disputes arising out of this Note against the State, the Agency, or any of their respective officials, officers, employees, or authorized representatives shall be adjudicated in the Illinois Court of Claims and shall be governed by the Court of Claims Act (705 ILCS 505/1 *et seq.*).

16. MISCELLANEOUS: This Note is for commercial or business purposes. Borrower and Lender agree that time is of the essence. Borrower agrees to pay all payments to Lender at any address designated by Lender and in lawful United States currency. Borrower and any person who endorses this Note waives presentment, demand for payment, notice of dishonor and protest and further waives any right to require

Lender to proceed against anyone else before proceeding against Borrower or said person. All references to Borrower in this Note shall include all of the parties signing this Note, and this Note shall be binding upon the successors and assigns of Borrower and Lender. If there is more than one Borrower, their obligations under this Note shall be joint and several. Information concerning this Note may be reported to credit reporting agencies and will be made available when requested by proper legal process. This Note and the RLF Agreement (and all documents, Agreements, exhibits, and terms and conditions attached thereto or referenced therein) represent the complete and integrated understanding between Borrower and Lender regarding the terms hereof.

17. JURY TRIAL WAIVER: LENDER AND BORROWER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY CIVIL ACTION ARISING OUT OF, OR BASED UPON, THIS NOTE OR THE RLF AGREEMENT.

BORROWER ACKNOWLEDGES THAT BORROWER HAS READ, UNDERSTANDS AND AGREES TO THE TERMS AND CONDITIONS OF THIS NOTE.

DATED: _____, 2021

BORROWER:

City of Warrenville

By: _____
David Brummel, Mayor

ATTEST:

By: _____

Its: _____

EXHIBIT B



JAMES J. BENES AND ASSOCIATES, INC.

1011 Warrenville Road ▪ Suite 420 ▪ Lisle, Illinois ▪ 60532
Tel. (630) 719-7570 ▪ Fax (630) 719-7589

MEMORANDUM

Date: May 26, 2021

To: Ron Mentzer
Director of Community and Economic Development
City of Warrenville

From: Thomas Adomshick, PE, PTOE Grant Hicks, E.I.
President Project Engineer

Re: Old Town Redevelopment
Preliminary Traffic Study
Project No. 1614

At the request of the City, James J. Benes and Associates, Inc. performed a preliminary traffic and parking study for the proposed Old Town Redevelopment at the northeast corner of Batavia Road and Warrenville Road. As part of this study, the free flow right turn from Warrenville Road to Batavia Road would be eliminated, and all-way stop sign control would be implemented.

Warrenville Road west of River Road and Batavia Road are under City of Warrenville jurisdiction. River Road, its intersection with Warrenville Road, and Warrenville Road east of River Road are under DuPage County Division of Transportation (DuDOT) jurisdiction. A permit will be required for any work in DuDOT ROW.

Traffic Counts

Weekday peak hour traffic counts were conducted during the first week of March at the intersections of Warrenville Road & Batavia Road, Warrenville Road & River Road, and Warrenville Road & Winfield Road during the morning and evening peak hours.

Due to the impacts of COVID-19, current traffic volumes do not represent “normal” traffic conditions. The Institute of Transportation Engineers (ITE) Transportation Impact Analysis (TIA) Training webinar on November 24, 2020 suggests that traffic volumes on our roadways are about 80% of pre-pandemic traffic numbers. The traffic count data collected in March 2021 for this study have been adjusted by a factor of 1.25 to estimate how many vehicles would be on the study roadways under normal circumstances.

The ITE TIA course indicated that the “new normal” traffic conditions will likely occur when schools are back to in-person school full time. Some area schools currently have implemented partial in school and partial remote learning. Therefore, the “COVID adjustment” may be slightly conservative.

Site Traffic Generation

Peak hour traffic volumes generated by the proposed land uses were estimated using trip generation rates contained in Trip Generation Manual, 10th Edition, published by the Institute of Transportation Engineers (ITE). For the purpose of this analysis, the potential redevelopment of the northeast corner is assumed to be a maximum three story mixed-use building with 21 apartments located over

a mixture of first floor commercial uses that may include retail, restaurant/coffee shop, and professional service offices.

- ITE land use type 220 “Multifamily Housing (Low-Rise)” most closely matches the proposed apartment use.
- ITE land use type 820 “Shopping Center” best matches the proposed 8,300 square feet of retail space that is available. The shopping center land use type includes a mix of retail and restaurant uses. It is our opinion that this land use type gives the best preliminary estimate of how many trips will be generated for a development of this size.

The projected site peak hour trips are summarized below.

PROJECTED SITE TRIPS						
ITE LAND-USE CODE	AM Peak Hour			PM Peak Hour		
	IN	OUT	TOTAL	IN	OUT	TOTAL
820 (Shopping Center)*	31	19	50	41	45	86
220 (Multi-family Housing Low Rise)	2	9	11	9	6	15
Total Site Trips	33	28	61	50	51	101

Traffic Control and On-Street Parking Modifications

In order to create an inviting pedestrian friendly neighborhood commercial center with convenient parking, the free flow right turn from Warrenville Road to Batavia Road would be removed and all-way stop sign control implemented. Left turns from eastbound Warrenville Road to Batavia Road would be permitted. Parking would be provided both on street and on-site.

The Concept #1 for the Old Town Redevelopment, in addition to the traffic control changes previously described, includes providing angle street parking along the Warrenville Road site frontage, and parallel parking along the Batavia Road site frontage. Due to the spacing of the intersecting streets and site driveways, angle parking along the north side of Warrenville Road can only be placed opposite River Road, and in the short stretch between Batavia Road and River Road. This potentially could be a concern, and DuDOT may not permit parking opposite River Road. For these reasons, we have developed a suggested alternate parking configuration.

Alternate Concept #2 would provide 18 angle parking spaces along the site’s Batavia Road frontage, and none along Warrenville Road, matching the total number of street parking spaces as the original plan, plus the potential to include a few parallel parking spaces on the north side of the site frontage along Warrenville Road. Concept #2 also includes extension of the existing 10 foot wide Batavia Road traffic lane widths from the north end of the development site to Warrenville Road. The striped lane narrowing is provided as a traffic calming measure. The additional pavement width outside of the 10 foot travel lanes acts as a shoulder. The alternate plan provides some benefits over the original plan which will be discussed as a part of the traffic analysis.

Traffic Analyses and Key Considerations

The existing traffic volumes were increased using traffic growth factors obtained from CMAP to provide estimated Year 2027 (Design Year) background traffic volumes. The estimated site trips were then added to the 2027 background traffic to obtain the design year Total Traffic Volumes.

Existing and Design Year 2027 traffic operations at the Warrenville Road intersections at Batavia Road and River Road were analyzed using Synchro/Sim Traffic analysis and modeling software.

Under both the existing and projected traffic conditions, the two intersections operate at acceptable Levels of Service (LOS).

- *Warrenville Road/Batavia Road Intersection:* All approaches to the Warrenville Road/Batavia Road operate at a very good Level of Service (LOS) grade B or better during the weekday morning and evening peak hour periods under both existing and projected 2027 traffic volumes with the conceptual development traffic, *except for the following movements:*
 - In the morning peak hour southbound Batavia Road approach just slips from LOS B to a good LOS C with 17.2 seconds of delay. (Total projected delay increase from existing conditions to the 2027 build scenario of 2.5 seconds per vehicle)
 - In the evening peak hour the westbound Warrenville Road approach just slips from LOS B to a good LOS C with 17.1 seconds of delay. (Total projected delay increase from existing conditions to the 2027 build scenario of 7.9 seconds per vehicle) The magnitude of the delay increase is due to elimination of the existing free flow right turn lane.

Level of Service	A	B	C	D	E	F
Delay (seconds)*	0 - 10	>10- 15	>15 - 25	>25 - 35	>35 - 50	>50

** The seconds of delay consists of the total elapsed time from a vehicle joining an queue until its departure from the stopped position at the head of the queue. It also includes the time required to decelerate to a stop and to accelerate to the free flow speed.*

The above described traffic movements represent the typical daily commute pattern in the study area; southbound Batavia Road to eastbound Warrenville Road is heaviest during the morning peak hour, and the reverse flow west to northbound are heaviest during the evening peak hour.

The elimination of the existing west to northbound free flow right turn has the greatest impact on traffic operations. Some drivers on northbound Winfield Road may find it more attractive to drive directly to Butterfield Road on Winfield Road instead of traveling to Butterfield Road via Warrenville Road and Batavia Road after removal of the free flow right turn lane..

- *Vehicular Queuing – Warrenville Road:* Under the 2027 build scenario, the 95th percentile** weekday peak hour queues on the westbound Warrenville Road approach to Batavia Road are projected to be about 65 feet and 140 feet east from Batavia Road during the morning and evening peak hours respectively. These queue lengths will impede access to Warrenville Road angle parking during the peak hours under the Concept #1.

Alternate parking Concept #2 eliminates parking along Warrenville Road west of River Road, and provides three parallel parking spaces on Warrenville Road opposite River Road. By year 2027, vehicle queues on the westbound approach to Batavia Road may temporarily impede access to/from the three parallel parking spaces during the evening peak hour if DuDOT were to approve the parking spaces. If the three parallel parking spaces are not permitted, street parking would be limited to the 18 angle parking spaces along Warrenville Road.

** The 95th percentile queue represents the length of vehicle queue on an intersection approach that is projected to not be exceeded during 95 percent of the hour.

- *Vehicular Queuing – Batavia Road:* On the Batavia Road approach to Warrenville Road, the traffic analyses indicate that the southbound weekday morning peak hour queue currently extends past the driveway at 3S528 Batavia Road, and would experience a small increase under the projected traffic conditions. The southbound queuing is not projected to reach the 3S520 Batavia Road driveway. Southbound projected weekday evening peak hour queues are shorter and are not projected to impact access to the two driveways.
- *Warrenville Road/River Road Intersection:* the stop sign controlled River Road approach operates at acceptable LOS C and D in the morning and evening peak hour periods respectively. The projected 95th percentile queues are less than one vehicle. Impacts to the intersection will be minimal.
- An AutoTurn analysis of the reconfigured intersection of Batavia Road and Warrenville Road was performed and confirmed that the proposed northeast corner intersection geometric modification can accommodate the Warrenville Fire Protection District's fire trucks. See the Alternate Concept #2 exhibit showing the Warrenville fire truck travel path.

Parking

The recommended 60° angle parking length is 25 feet in order to comply with IDOT design requirements. The 25 foot depth provides drivers backing out of an angle parking space to see oncoming traffic before encroaching onto the travel lane.

The Concept #1 angle parking along the north side Warrenville Road will require sidewalk relocation. There is ample space to accommodate the parallel parking along Batavia Road, leaving more space for pedestrian facilities and green space.

Under the Alternate Concept #2 parking scenario, more space is available to allow extension of the existing pathway on the north side of Warrenville Road to Batavia Road. Angle parking along Batavia Road, a minor arterial, would reduce potential green space along the east side. The north building may need to be shifted east to increase pedestrian or potential street furniture space.

The existing travel lanes on Batavia Road are 16 feet wide adjacent to the redevelopment study site. In combination with 25 foot parking spaces, the travel lane widths could be reduced to 10 feet wide to provide consistency with the travel lanes to the north and to increase pedestrian space along the front of the building.

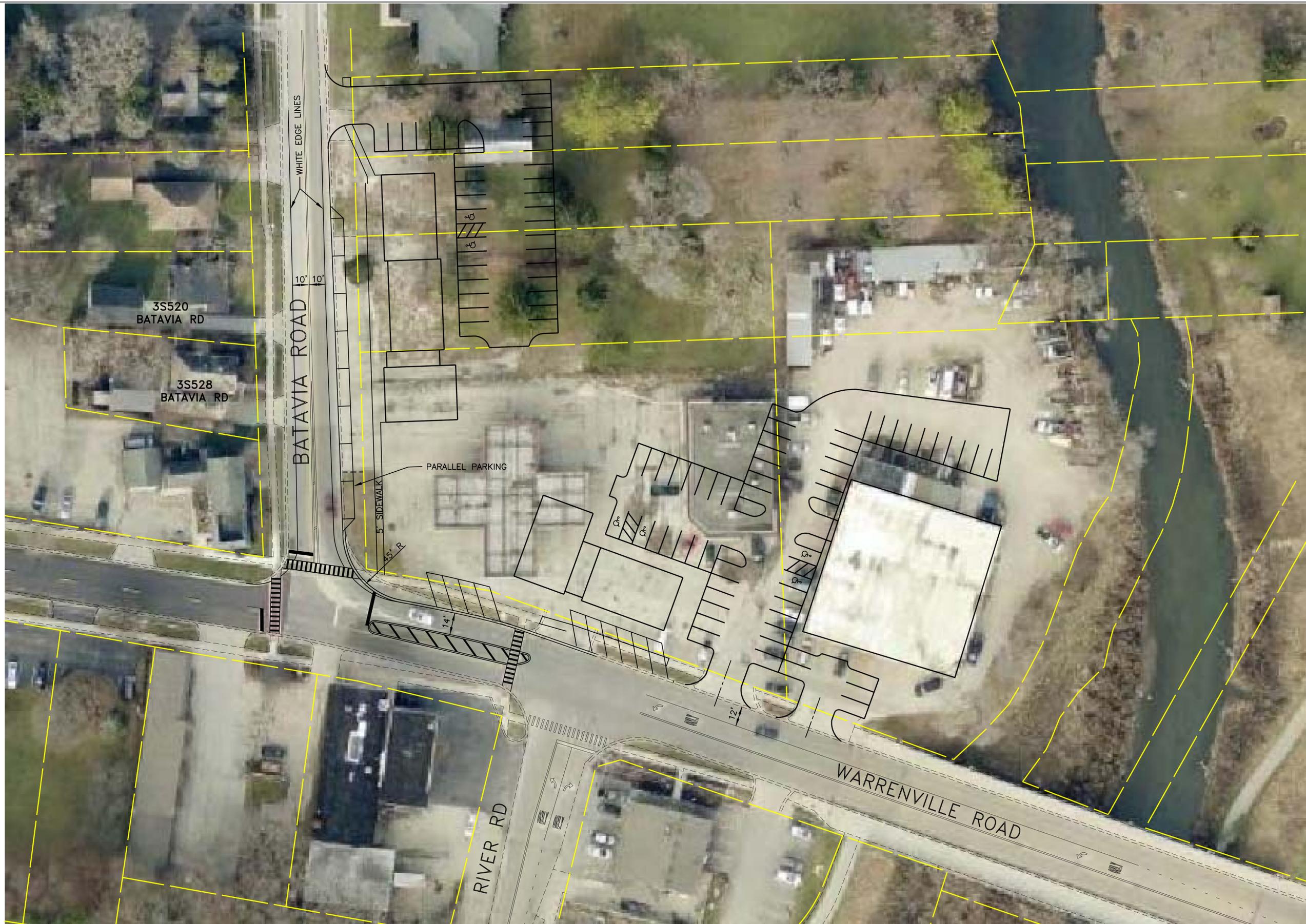
Pedestrian and Bicycle Enhancements

There is an existing multi-use path to the east adjacent to the north side of Warrenville Road ends 150 feet east of River Road. The redevelopment provides the opportunity to extend the multi-use path west to Batavia Road. If the path is extended, the gap in path continuity to on Batavia Road could be closed.

- end -

PLAN	SURVEYED	DATE
NOTE BOOK NO.	PLOTTED	BY
	CHECKED	
	AT	
	BY	
	FILE NAME	

PROFILE	SURVEYED	DATE
NOTE BOOK NO.	GRADES CHECKED	BY
	STRUCTURE NOTATIONS CHKD	



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DESIGNED	— GTH	REVISED	—
DRAWN	— SMP	REVISED	—
CHECKED	— TA	REVISED	—
DATE	— 5-12-2021	REVISED	—

CITY OF WARRENVILLE

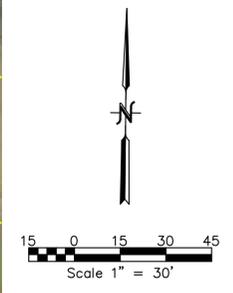
**OLD TOWN REDEVELOPMENT
 CONCEPT #1**

SCALE: 1"=30' SHEET NO. ___ OF ___ SHEETS STA. _____ TO STA. _____

F.A. RTE.	SECTION	COUNTY	TOTAL SHEETS	SHEET NO.
—	—	—	2	1
CONTRACT NO. _____			ILLINOIS FED. AID PROJECT	

PLAN	SURVEYED	DATE
NOTE BOOK NO.	PLOTTED	BY
	CHECKED	
	AT	
	PROJECT	
	FILE NAME	

PROFILE	SURVEYED	DATE
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	STRUCTURE	
	NOTATIONS CHKD	



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DRAWN — SMP	REVISED —
CHECKED — TA	REVISED —
DATE — 5-12-2021	REVISED —

CITY OF WARRENVILLE

**OLD TOWN REDEVELOPMENT
 CONCEPT #2**

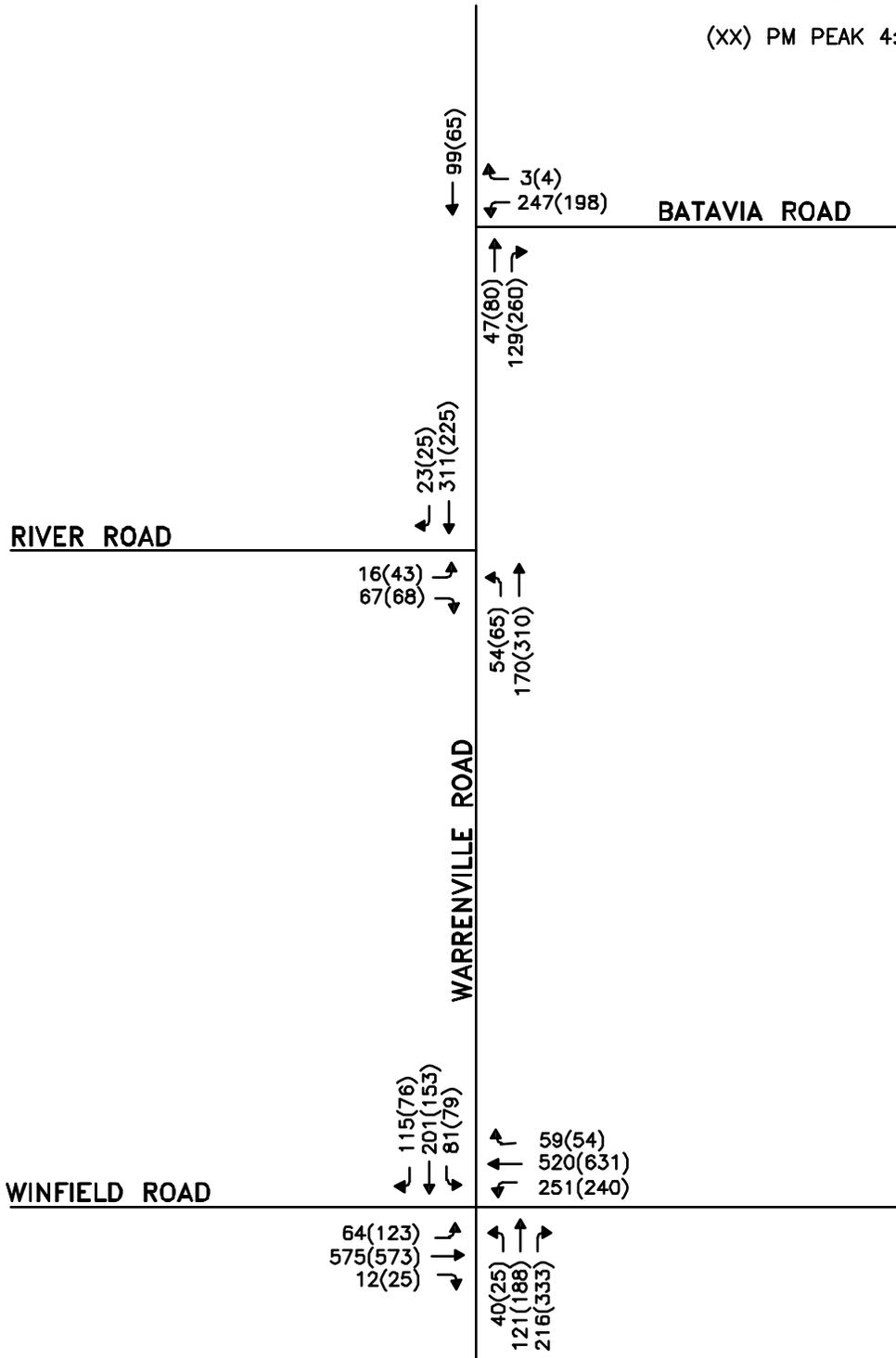
SCALE: 1"=30' SHEET NO. ___ OF ___ SHEETS STA. _____ TO STA. _____

F.A. RTE.	SECTION	COUNTY	TOTAL SHEETS	SHEET NO.
-	-	-	2	2
CONTRACT NO. _____			ILLINOIS FED. AID PROJECT	

SCALE: Not To Scale

LEGEND

XX AM PEAK 7:15-8:15 AM
 (XX) PM PEAK 4:15-5:15 PM



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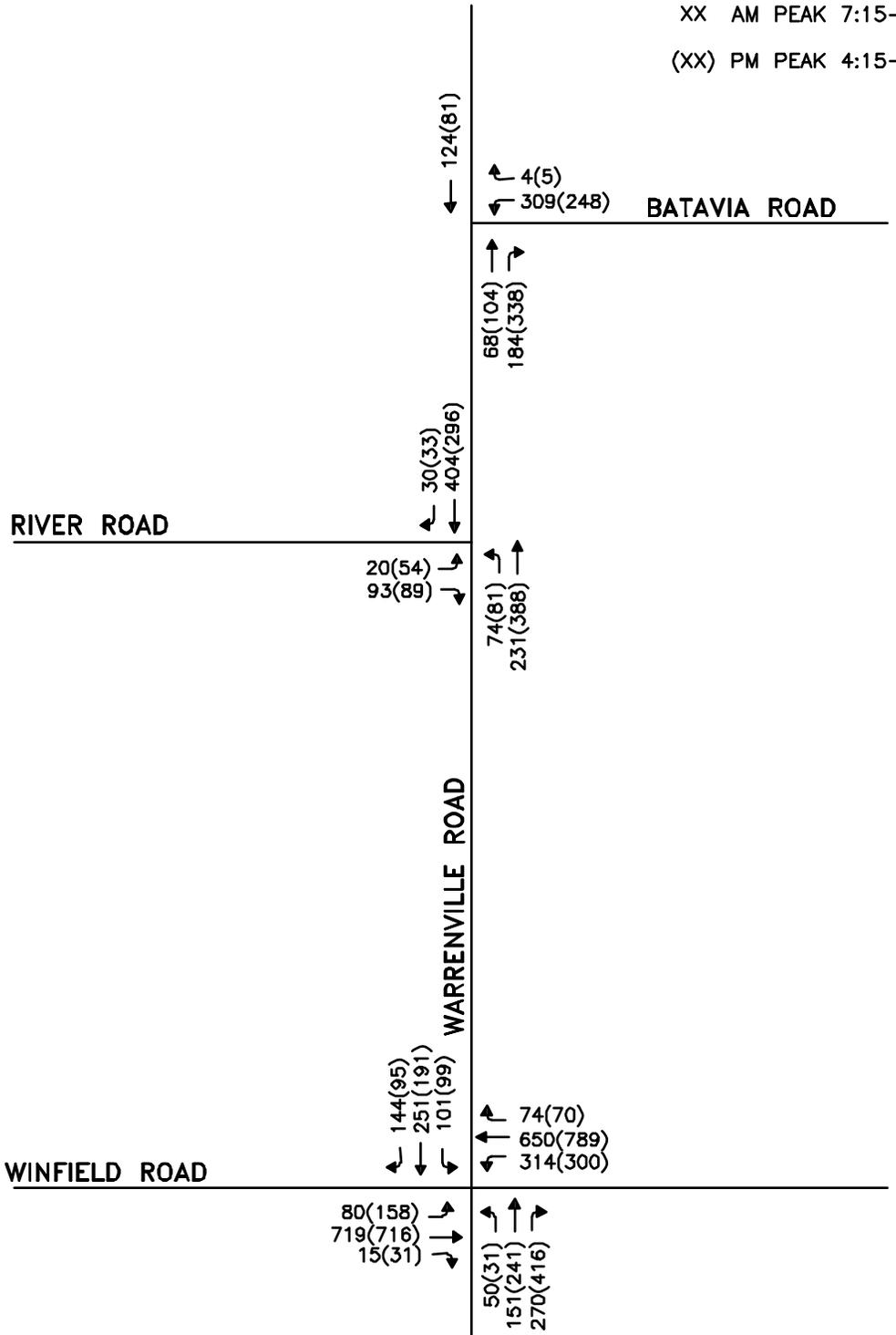
2021 EXISTING
 PEAK HOUR TRAFFIC VOLUMES

FIGURE 1

SCALE: Not To Scale

LEGEND

XX AM PEAK 7:15-8:15 AM
 (XX) PM PEAK 4:15-5:15 PM



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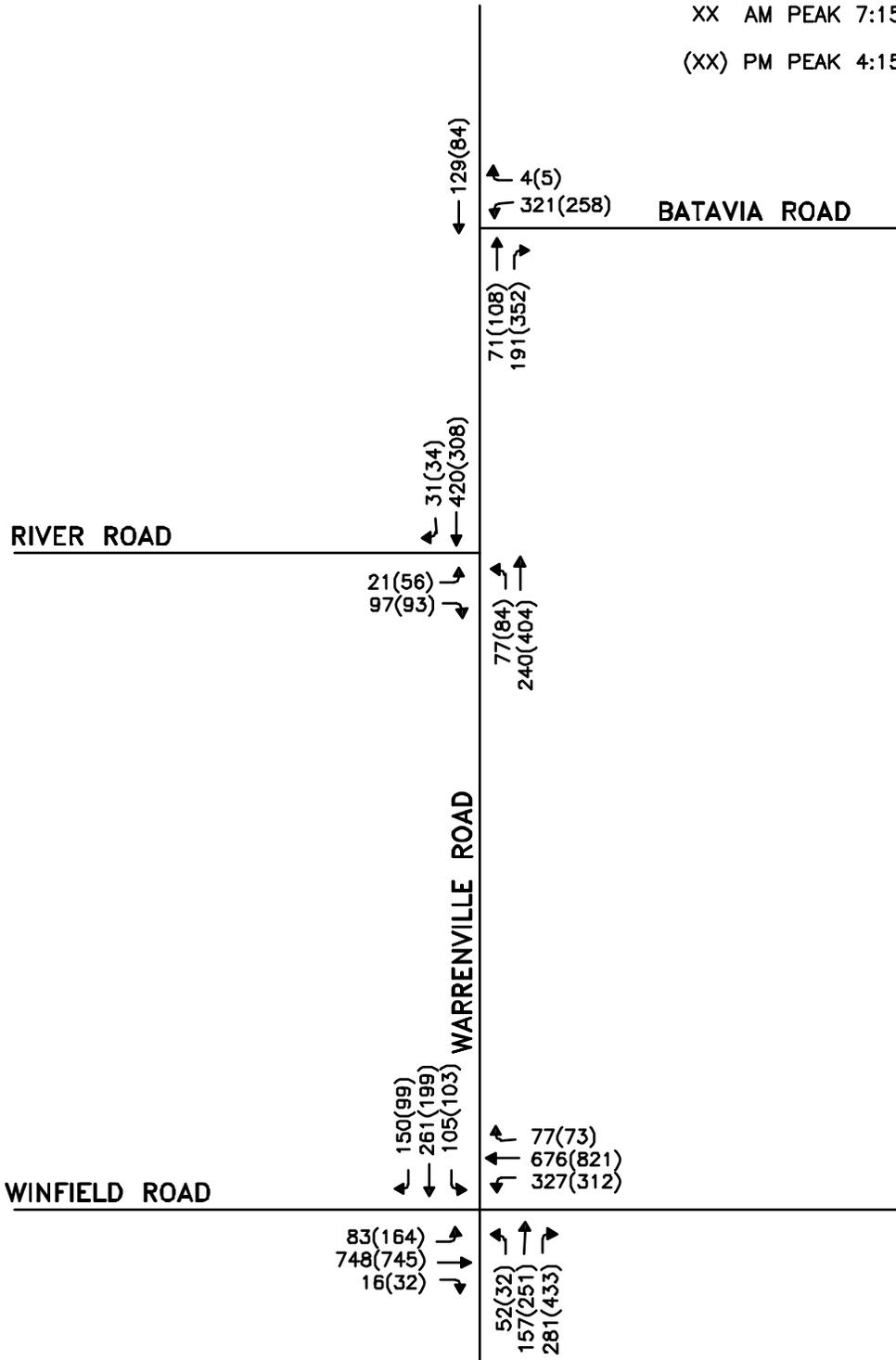
2021 TRAFFIC ADJUSTED
 20% FOR COVID-19

FIGURE 2

SCALE: Not To Scale

LEGEND

XX AM PEAK 7:15-8:15 AM
 (XX) PM PEAK 4:15-5:15 PM



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2027 PROJECTED TRAFFIC

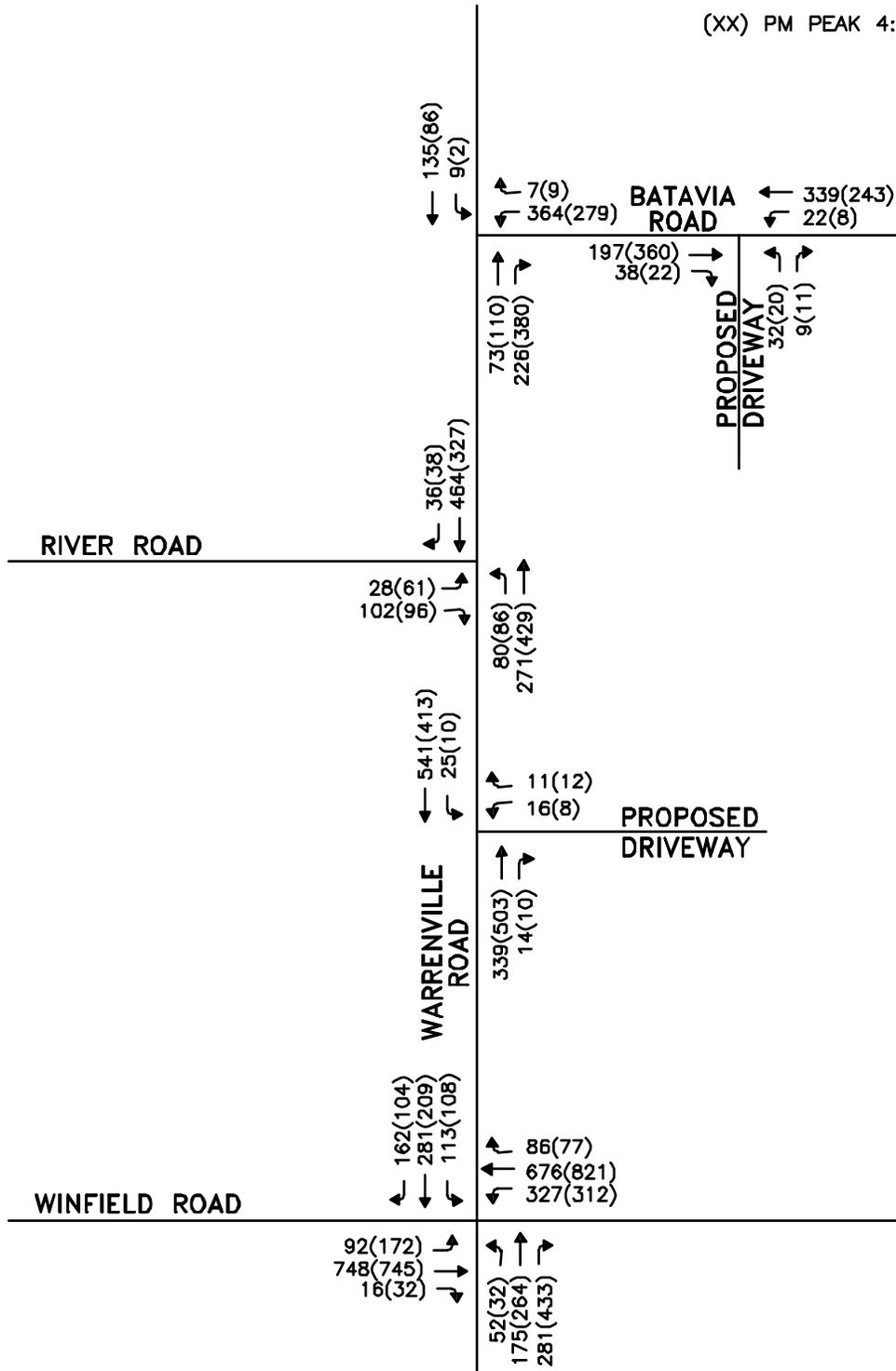
FIGURE 3

SCALE: Not To Scale

LEGEND

XX AM PEAK 7:15–8:15 AM

(XX) PM PEAK 4:15–5:15 PM



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2027 DESIGN YEAR
 PLUS SITE TRAFFIC

FIGURE 4