

CITY OF WARRENVILLE MEMORANDUM

TO: Mayor, City Council, and City Administrator White
FROM: Senior Civil Engineer Hocking *KH*
SUBJECT: OTRS #2 PROJECT STATUS AND FINAL ENGINEERING AND
CONSTRUCTION INSPECTION CONTRACT
DATE: August 7, 2023

The purpose of this memorandum is to *i.*) provide a status on the project, *ii.*) summarize the engineering contract that needs to be approved and executed in order to move forward with final engineering and construction inspection for the project, and *iii.*) staff's recommendation to approve a contract with Engineering Resource Associates (ERA).

Project Status

The City's civil engineering consultant completed the Preliminary Engineering plans for the Old Town Redevelopment Site #2 based upon the preferred conceptual site plan. This identified proposed grading, compensatory storage, required permits and estimates of construction costs. A 3-d rendering was created by our other consultant that is available on the City's website. Also, the City's environmental consultant identified areas of remediation work on the former Phillips 66 gas station site (see attached exhibit). The next step is to prepare final engineering and construction documents that incorporate the City's preferred site plan and remediation areas. The scope of the engineering is to prepare plans and specifications to complete the required remediation on the site, add sidewalk along the street frontages, reconstruct or resurface the access driveway between the City's property and Voegtle's, add some additional parking spaces, and create a small open space amenity. The City would then look to market the property to developers. In the meantime, the City could use the space for community events.

Voegtle's

The City is continuing to coordinate with the Voegtle ownership to identify land exchange and property improvements. The draft terms will be presented at an upcoming Council closed session.

Estimated Project Costs and City Funding Source

Preliminary engineering construction costs including remediation are approximately \$500,000. This would address the site remediation activities including the Leaking Underground Storage Tank (LUST) and Site Remediation Program (SRP – Non-LUST) related contamination on the site as well as site specific improvements including sidewalks and parking. LUST program reimbursements, the RLF Loan, TIF #3 and Developer – Park donations are anticipated to be used for this construction.

Selection of Engineering Services

Final engineering and construction inspection for this project cannot be performed in-house as the project is far too large to be handled by City staff. ERA has performed preliminary engineering services for the City on this project in a professional manner. On past projects, they have demonstrated they are qualified to handle the final engineering and construction inspection services. Their involvement in the preliminary design of this project results in intimate knowledge of the various project elements.

Final Engineering Contract

In order to move ahead with the final engineering of this project, the contract needs to be approved and executed by the City. The proposal included as Exhibit B describes the scope of work and fees for ERA to perform the final engineering and construction inspection for the project. These costs were reviewed by staff and are reasonable and appropriate for the scope and status of the project.

Staff Recommendation

Staff is requesting the Committee recommend the City Council approve an engineering agreement with Engineering Resource Associates, Inc., for the final engineering and construction services, in an amount of \$41,900.

RESOLUTION NO. R2023-__

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT
WITH ENGINEERING RESOURCE ASSOCIATES, INC. FOR FINAL ENGINEERING AND
CONSTRUCTION SERVICES FOR OLD TOWN REDEVELOPEMENT SITE #2**

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the City has budgeted sufficient funds in the 2024 fiscal year for the procurement of final engineering and construction services for the Old Town Redevelopment Site #2 (“Services”); and

WHEREAS, pursuant to the City’s Qualification Based Selection (QBS) Process, as amended March 19, 2018 (“**QBS Policy**”), City staff requested a proposal for the Services from Engineering Resource Associates, Inc. (“**Consultant**”) because Consultant provided engineering services for the City in the past to the City’s satisfaction; and

WHEREAS, Consultant submitted a proposal to perform the Services (“**Proposal**”) in the amount of \$41,900 plus reimbursable expenses as provided in the Proposal; and

WHEREAS, the City desires to enter into a professional services agreement with Consultant for the performance of the Services (“**Agreement**”); and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Agreement with Consultant for the Services at the price proposed;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

SECTION 2: Approval of Agreement. The Agreement with Consultant in the amount of \$41,900 is hereby approved in the form attached to this Resolution as Exhibit A.

SECTION 3: Execution. The City Council hereby authorizes and directs the City Administrator to execute, on behalf of the City, the final Agreement only after receipt by the City Administrator of at least two executed copies of the Agreement from Consultant; provided, however, that if the City Administrator does not receive such executed copies of the Agreement from Consultant within 60 days after the date of adoption of this Resolution, then this authority to execute and seal the Agreement shall, at the option of the City Council, be null and void.

SECTION 4: Change Orders. The City Administrator, or his designee, is authorized to execute one or more Change Orders to the Agreement for additional work consisting of additional unforeseen items of work related to, or arising from other work contemplated by, the scope of work of the Engineering Services in an amount not to exceed \$15,000, subject to the City Administrator making the necessary determination that the work contemplated by the Change Order complies with Section 33E-9 of Article 33E of the Criminal Code of 2012 and placing a copy of such determinations in the contract file.

SECTION 5: Effective Date. This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

PASSED THIS ____ day of _____, 2023.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS ____ day of _____, 2023.

MAYOR

ATTEST:

CITY CLERK

EXHIBIT A
AGREEMENT

**CITY OF WARRENVILLE
PROFESSIONAL SERVICES AGREEMENT
FOR FINAL ENGINEERING AND CONSTRUCTION SERVICES FOR OLD TOWN
REDEVELOPMENT SITE #2**

THIS AGREEMENT is dated as of the ____ day of _____, 2023 (“**Agreement**”) and is by and between the **CITY OF WARRENVILLE**, an Illinois home rule municipal corporation (“**City**”) and the Consultant identified in Subsection 1A below.

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in the Agreement, and pursuant to the City’s statutory and home rule powers, the parties agree as follows:

SECTION 1. CONSULTANT.

A. Engagement of Consultant. The City desires to engage the Consultant identified below to provide all necessary professional consulting services and to perform the work in connection with the project identified below:

ENGINEERING RESOURCE ASSOCIATES, INC. (“Consultant”)
3s701 WEST AVENUE, SUITE 150
WARRENVILLE, ILLINOIS 60555
Telephone: 630.393.3060
Email: akustus@eraconsultants.com

B. Project Description. The scope of work consists of providing final engineering and construction services for the Old Town Redevelopment Site #2 which includes incorporating remediation work, grading, sidewalk, pavements, and open space.

C. Representations of Consultant. The Consultant has submitted to the City a description of the services to be provided by the Consultant, a copy of which is attached as Exhibit A to this Agreement (“**Services**”). The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently experienced and competent to perform and complete the professional consulting services set forth in Exhibit A in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature.

D. Commencement: Time of Performance. The Consultant shall commence the Services immediately upon receipt of written notice from the City that this Agreement has been fully executed by the Parties on the date specified in Exhibit A (the “**Commencement Date**”). The Consultant shall diligently and continuously prosecute the Services until the completion of the Services, but in no event later than the date of this Agreement.

E. Reporting. The Consultant shall regularly report to the City Administrator, or his designee, regarding the progress of the Services during the term of this Agreement. The City Administrator’s designee shall be the person identified in Section 7.D to receive notice, unless the City Administrator otherwise designates in writing.

SECTION 2. COMPENSATION AND METHOD OF PAYMENT.

A. Agreement Amount. The total amount billed by the Consultant for the Services under this Agreement shall not exceed **\$41,900** as outlined in **Exhibit A**, including reimbursable expenses as identified in **Exhibit A**, unless amended pursuant Section 7.A of this Agreement or pursuant to a Change Order in accordance with Section 2.D of this Agreement.

B. Invoices and Payment. The Consultant shall be paid as provided in Exhibit A upon final acceptance of each Task by the City. The Consultant shall submit invoices to the City in an approved format for those portions of the Services performed and completed by the Consultant. The amount billed in any such invoice shall be based on the completion of each task set forth in Exhibit A. The City shall pay to the Consultant the amount billed in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505.

In an effort to expedite invoices and reduce paper waste, Consultant submits invoices via email in an Adobe PDF format. Consultant will provide a paper copy via regular mail if requested. The City shall include the Consultant's invoice number and project number with all payments.

Consultant invoices shall be submitted to the following City staff members:

Finance Mailbox: finance@warrenville.il.us

CC Senior Civil Engineer: [Kristine Hocking, khocking@warrenville.il.us](mailto:Kristine.Hocking@warrenville.il.us)

C. Records. The Consultant shall maintain records showing actual time devoted and costs incurred, and shall permit the City or its authorized representative to inspect and audit all data and records of the Consultant for work done under the Agreement. The records shall be made available to the City at reasonable times during the Agreement period, and for three years after the termination of the Agreement.

D. Change Orders.

1. Change Orders Generally. The City, from time to time, may issue a written order modifying or otherwise changing the scope of the Services ("**Change Order**") provided, however, that any Change Order in an amount exceeding \$15,000 must be approved by the City Council. The Change Order will be generally in the form attached to and by this reference incorporated into this Agreement as **Exhibit C**. The Consultant may request a Change Order based on a material change to the Project or Services required as part of a Project. A Change Order may include additions to and deletions from the Services and will include any equitable increases or decreases to the Compensation for the Project.

2. Revision Notices. Within ten (10) business days after the date of a Change Order, and in any event before the Consultant begins work on any changed Services, the Consultant must notify the City in writing if the Consultant desires a revision to the Change Order ("**Revision Notice**"). The Revision Notice must clearly state the Consultant's requested revisions and the reasons for the revisions. If the City agrees to any revision, then the City will issue a revised Change Order in a form acceptable to the Parties. If the Consultant does not submit a Revision Notice within the ten (10)-day period, then the Consultant will be deemed to have accepted the Change Order and the Change Order will be final.

3. No Change in Absence of Change Order. No claim for an adjustment in Agreement Amount or project schedule will be made or allowed unless it is embodied in a Change Order signed by the City and the Consultant. If the Consultant believes it is entitled to an adjustment in the Agreement Amount or project schedule terms that has not been included, or fully included, in a Change Order, then the Consultant may submit to the City a written request for the issuance of, or revision of, a Change Order including the desired adjustment. The Consultant's request must be

submitted before the Consultant proceeds with any Services for which an adjustment is desired. Regardless of the decision of the City relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the work required to complete the Services under this Agreement as determined by the City without interruption.

E. Taxes, Benefits and Royalties. The Agreement Amount includes all applicable federal, state, and local taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Consultant.

F. Final Acceptance. The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by the City of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed.

SECTION 3. PERSONNEL: SUBCONTRACTORS.

A. Key Project Personnel. The Key Project Personnel identified in Exhibit A shall be primarily responsible for carrying out the Services on behalf of the Consultant. Consultant shall notify the City as soon as practicable following resignation or termination of Key Project Personnel. No new Key Project Personnel shall be reassigned or added without the City's prior written approval.

B. Availability of Personnel. The Consultant shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in this Agreement. The Consultant shall notify the City as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Consultant shall have no claim for damages and shall not bill the City for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of the Time of Performance as a result of any such termination, reassigning, or resignation.

C. Approval and Use of Subcontractors. The Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by the City in writing. All subcontractors and subcontracts used by the Consultant shall be acceptable to, and approved in advance by, the City. The City's approval of any subcontractor or subcontract shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by the Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Consultant. For purposes of this Agreement, the term "Consultant" shall be deemed also to refer to all subcontractors of the Consultant, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

D. Removal of Personnel and Subcontractors. If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the City, the Consultant shall immediately upon notice from the City remove and replace such personnel or subcontractor. The Consultant shall have no claim for damages, for compensation in excess of the amount contained in this

Agreement or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

SECTION 4. CONFIDENTIAL INFORMATION.

A. Confidential Information. The term “*Confidential Information*” shall mean information in the possession or under the control of the City relating to the technical, business or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of the Consultant from a source other than the City prior to the time of disclosure of said information to the Consultant under this Agreement (“*Time of Disclosure*”); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the City; or (iv) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

B. No Disclosure of Confidential Information by the Consultant. The Consultant acknowledges that it shall, in performing the Services for the City under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without express prior written consent of the City. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

SECTION 5. STANDARD OF CARE: INDEMNIFICATION: INSURANCE.

A. Standard of Care for Services. The Consultant represents and certifies that the Services shall be performed in accordance with the highest standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the Time of Performance. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

B. Indemnification. The Consultant shall, without regard to the availability or unavailability of any insurance, either of the City or the Consultant, indemnify, save harmless, and defend the City, and its officials, employees, agents, and attorneys against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that arise, or may be alleged to have arisen, out of or in connection with, the Consultant's performance of, or failure to perform, the Services or any part thereof, or any failure to meet the representations and certifications pursuant to Subsection 5.A of this Agreement (but not the performance or failure of a contractor not retained by Consultant), whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the Consultant, except to the extent caused by the sole negligence of the City.

C. Insurance. Contemporaneous with the Consultant's execution of this Agreement, the Consultant shall provide certificates and policies of insurance, all with coverages and limits

acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth in Exhibit B to this Agreement. For good cause shown, the City Administrator may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as the City Administrator may impose in the exercise of his sole discretion. Such certificates and policies shall be in a form acceptable to the City and from companies with a general rating of A minus, and a financial size category of Class X or better, in Best's Insurance Guide. Such insurance policies shall provide that no change, modification in, or cancellation of, any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to the City. The Consultant shall, at all times during the term of this Agreement, maintain and keep in force, at the Consultant's expense, the insurance coverages provided above, including, without limitation, at all times while correcting any failure to meet the warranty requirements of Subsection 6A, Warranty of Services, of this Agreement.

D. No Personal Liability. No elected or appointed official, or employee of the City shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement.

SECTION 6. CONSULTANT AGREEMENT GENERAL PROVISIONS.

A. Relationship of the Parties. The Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed (i) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the City and Consultant; or (ii) to create any relationship between the City and any subcontractor of the Consultant.

B. Conflict of Interest. The Consultant represents and certifies that, to the best of its knowledge, (1) no elected or appointed City official, employee or agent is interested in the business of the Consultant or in this Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement neither the Consultant nor any person employed or associated with the Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Consultant nor any person employed by or associated with the Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

C. No Collusion. The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

D. Sexual Harassment Policy. The Consultant certifies that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act,

E. Patriot Act Compliance. The Consultant represents and warrants to the City that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Consultant further represents and warrants to the City that the Consultant and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Consultant hereby agrees to defend, indemnify and hold harmless the City, its corporate authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

F. Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement at any time upon 15 days prior written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred or reasonable expenses that Consultant is legally obligated to pay, if any, prior to termination, not exceeding the value of the Services completed as determined as provided in Exhibit A.

G. Term. The Time of Performance of this Agreement, unless terminated pursuant to the terms of this Agreement, shall expire on the date the City Administrator determines that all of the Services under this Agreement, including warranty services, are completed. A determination of completion shall not constitute a waiver of any rights or claims which the City may have or thereafter acquire with respect to any breach hereof by the Consultant or any right of indemnification of the City by the Consultant.

H. Compliance with Laws and Grants. Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* Consultant shall also comply with all conditions of any federal, state, or local grant received by Owner or Consultant with respect to this Contract or the Services.

Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Consultant's, or its subcontractors', performance of, or failure to perform, the Services or any part thereof.

Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

I. **Default.** If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("**Event of Default**"), and fails to cure any such Event of Default within ten business days after the Consultant's receipt of written notice of such Event of Default from the City, then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Consultant.** The City may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. **Termination of Agreement by City.** The City may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement.

3. **Withholding of Payment by City.** The City may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Consultant or as a result of actions taken by the City in response to any Event of Default by the Consultant.

J. **No Additional Obligation.** The Parties acknowledge and agree that the City is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Consultant, or with any vendor solicited or recommended by the Consultant.

K. **City Council Authority.** Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by the Consultant to vendors shall be subject to the approval of the City Council. The City shall not be liable to any vendor or other third party for any agreements made by the Consultant, purportedly on behalf of the City, without the knowledge and approval of the City Council.

L. **Mutual Cooperation.** The City agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing the Consultant with such non-confidential information that the City may have that may be relevant and helpful to the Consultant's performance of the Services. The Consultant agrees to cooperate with the City in the performance of the Services to complete the Work and with any other consultants engaged by the City.

M. **News Releases.** The Consultant shall not issue any news releases or other public statements regarding the Services without prior written approval from the City Administrator.

N. **Ownership.** Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other documents, data, or information, in any form, prepared, collected, or received by the Consultant in connection with any or all of the Services to be performed under this Agreement ("**Documents**") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the City.

O. City Data. The City has developed various types of data and information, such as digital map information through Geographic Information Systems Technology and through Auto CAD and other methods (collectively "**City Data**") concerning the real property located within the City. If requested to do so by the Consultant, the City agrees to supply the Consultant with a digital copy of the City Data, subject to the following conditions:

1. **Limited Access to City Data.** The City Data provided by the City shall be limited to the scope of the Work that the Consultant is to provide for the City;

2. **Purpose of City Data.** The Consultant shall limit its use of the City Data to its intended purpose of furtherance of the Work; and

3. **Agreement with Respect to City Data.** The Consultant does hereby acknowledge and agree that:

a. **Trade Secrets of the City.** The City Data constitutes proprietary materials and trade secrets of the City and, shall remain the property of the City;

b. **Consent of City Required.** The Consultant will not provide or make available the City Data in any form to anyone without the prior written consent of the City Administrator;

c. **Supply to City.** At the request of the City, the Consultant shall supply the City with any and all information that may have been developed by the Consultant based on the City Data;

d. **No Guarantee of Accuracy.** The City makes no guarantee as to the accuracy, completeness, or suitability of the City Data in regard to the Consultant's intended use thereof; and

e. **Discontinuation of Use.** At such time as the Services have been completed to the satisfaction of the City, the Consultant shall cease its use of the City Data for any purpose whatsoever; and, upon request, an authorized representative of the City shall be afforded sufficient access to the Consultant's premises and data processing equipment to verify that all use of the City Data has been discontinued.

SECTION 7. GENERAL PROVISIONS.

A. Amendment. No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

B. Assignment. This Agreement may not be assigned by the City or by the Consultant without the prior written consent of the other party.

C. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors, and assigns.

D. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom

addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three business days thereafter at the appropriate address set forth below. Email notices shall be deemed valid and received by the addressee thereof when delivered by email and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Warrenville
3S258 Manning Avenue
Warrenville, Illinois 60555
Attention: Kristine Hocking
Email: khocking@warrenville.il.us

With a copy to:

Elrod Friedman LLP
325 N. LaSalle Dr., Suite 450
Chicago, Illinois 60654
Attention: Brooke Lenneman

Notices and communications to the Consultant shall be addressed to, and delivered at, the following address:

Engineering Resource Associates, Inc.
3s701 West Avenue, Suite 150
Warrenville, IL 60555
Attention: Mr. Andrew Kustus
Facsimile: 630.393.2152
Email: akustus@eraconsultants.com

E. Third Party Beneficiary. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation other than the Consultant shall be made or be valid against the City.

F. Provisions Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

G. Time. Time is of the essence in the performance of this Agreement.

H. Governing Laws. This Agreement shall be interpreted according to the internal

laws, but not the conflict of laws rules, of the State of Illinois.

I. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all previous or contemporaneous oral or written agreements and negotiations between the City and the Consultant with respect to the Proposal and the Services.

J. Waiver. No waiver of any provision of this Agreement shall be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

K. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

L. Grammatical Usage and Construction. In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

M. Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

N. Exhibits. Exhibits A, B, and C are attached hereto, and by this reference incorporated in and made a part of this Agreement. In the event of a conflict between the Exhibit and the text of this Agreement, the text of this Agreement shall control.

O. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.

P. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[SIGNATURES FOLLOW ON NEXT PAGE]

CITY OF WARRENVILLE

By: _____
Cristina White, City Administrator

ATTEST/WITNESS

ENGINEERING RESOURCE ASSOCIATES, INC.

By: _____

By: _

Title: _____

Its: _____

#55032402_v3

EXHIBIT A

SCOPE OF SERVICES

Sent via email khocking@warrenville.il.us

July 27, 2023

Kristine Hocking, PE, CFM
Senior Civil Engineer
City of Warrenville
3S258 Manning Avenue
Warrenville, IL 60555
P: 630-836-3066
khocking@warrenville.il.us

Subject: Proposal for Final Engineering and Permitting Services
Old Town Redevelopment Site #2

Dear Kristine:

Engineering Resource Associates, Inc. (ERA) is pleased to submit this proposal for final engineering and permitting services for the subject site. The proposal is based upon your request for proposal, our knowledge of the project, and our experience on similar projects.

Project Understanding

In July 2020, the City of Warrenville purchased the property at the northeast corner of the intersection of Warrenville Road and Batavia after four years of negotiations. Historically, the property has been a commercial property and most recently was a gas station. The project site is located within the historic Old Town area of the city. The City of Warrenville wishes to redevelop and enhance this property in conjunction with several adjacent properties in order to revitalize this major city block. The anticipated use of the property will be partially a private mixed-use development with on-street, angled parking and extension of the sidewalk along Batavia Road to Warrenville Grove parking lot, with the remainder of the property being a community open space with pathways, gathering areas, and native areas.

ERA understands the City of Warrenville is now desiring to proceed with a portion of the improvements as identified in the preliminary engineering design phase for the Old Town Redevelopment Site #2. The initial improvements will remove existing features and establish parking pavement, walkways, utility removals and improvements, floodplain storage, and parking lot lighting. The improvements will also incorporate the environmental site remediation requirements as identified by Terracon. These improvements will be limited to the portion of the master plan located on the 28W244 Warrenville Road property as well as resurfacing and entrance improvements on the Voegtle's property. The City desires to bid the work in late fall 2023 in order to have the environmental remediation/capping completed by September 2024 in accordance with the EPA RLF Loan requirements.

WARRENVILLE

3S701 WEST AVENUE, SUITE 150
WARRENVILLE, IL 60555
P 630.393.3060

CHICAGO

10 SOUTH RIVERSIDE PLAZA, SUITE 875
CHICAGO, IL 60606
P 312.474.7841

CHAMPAIGN

2416 GALEN DRIVE
CHAMPAIGN, IL 61821
P 217.351.6268

Scope of Work

The proposed scope of work consists of the following tasks:

1. **Project Meetings/Project Administration** – This task includes coordination between the project team such as the environmental consultant and City to review the project, present project information, and obtain feedback. This task will include initial coordination with permitting agencies. Two (2) meetings are included in this task. This task also includes internal QA/QC of the plans and administrative effort that is required for this project for all phases.
2. **Wetland Determination/Delineation Report** – The wetland determination performed for the project will review the areas within the project limits in addition to 100 feet beyond the project limits. If present, wetland areas will be staked by pin flag and/or marking tape labeled “wetland”. The wetland delineation task will include preparation of a delineation report containing:
 - a. Army Corps of Engineers (ACOE) data forms;
 - b. Documentation of verification of threatened and endangered species consultation with appropriate federal and state agencies
 - c. Documentation of verification of wetland boundary through consultation with a City of Warrenville wetland specialist;
 - d. Aerial map exhibit of site showing approximate locations of data sampling points and wetland boundaries;
 - e. Floristic Quality Assessment;
 - f. Identification of off-site wetlands within 100’ of the property;
 - g. Submittal of a Jurisdictional Determination request to USACE
3. **75% Construction Documents** - ERA will prepare a complete set of permit-level (75%) plans for the project. The plans will include the parking lot, walkways, ramps, driveways, storm utilities, and floodplain compensatory storage, along with applicable construction and erosion control notes and details. The building pad will be required to be set at the Flood Protection Elevation, which is one foot above the Base Flood Elevation. Detention, BMPs, and wetland mitigation are not anticipated to be required. Plans for the proposed improvements will include the following sheets:
 - a. Cover sheet and location map
 - b. General notes
 - c. Existing conditions and demolition plan
 - d. Geometry & utilities plan
 - e. Grading plan
 - f. Erosion control plan
 - g. Construction Details

Draft specifications will be prepared in City of Warrenville standard format. The specifications will reference City municipal standards and IDOT Standard Specifications. The specifications will include specifications for environmental remediation/protection as provided by a separate environmental consultant. The specifications will also include FEMA elevation and compaction requirements so that a LOMR can be successfully completed post-construction. A 75% engineering opinion of cost will also be included. The 75% plans will be used for initial permit application submittals.

Please note that this task does not include any improvements to Warrenville Road aside from the entrance improvements to the site.

4. **95% Construction Documents** – Upon receipt of 75% plans and specifications comments from the City as well as comments from permit agencies, ERA will complete a set of prefinal plans and specifications, along with an updated cost opinion.
5. **100% Construction Documents** – Upon receipt of pre-final PS&E review comments from the City and permit agencies, ERA will prepare a complete set of 100% construction documents to accommodate bidding and construction of the proposed improvements. A final engineer’s opinion of cost will be prepared.
6. **Stormwater Management Report** – ERA will prepare a stormwater management report in the standard DuPage County tabbed format for the improvements. The stormwater management report will discuss the future buildings, flood protection, floodplain compensatory storage, drainage, detention, and impervious area items of the project. Standard County exhibits will be prepared. The report will be used for permitting the construction through the City of Warrenville. The report will describe how the design will meet flood protection requirements in the areas of the future buildings.
7. **Permitting** – This task includes the preparation and submittal of permit applications for approvals that may be required for the project. One initial submittal and one resubmittal to each of these agencies is included in this task. It is anticipated that the following submittals will be included in this task:
 - a. IEPA – NPDES ILR10
 - b. City of Warrenville – Building Permit
 - c. City of Warrenville – Stormwater Certification
 - d. US Army Corps of Engineers – Nationwide Permit
 - e. Kane DuPage Soil & Water Conservation District – Erosion Control Certification
 - f. Public and private utility companies – permits and resolution of facility conflicts.

Please note that a Letter of Map Revision preparation and submittal to FEMA are not included in this scope of services. It is assumed that the City will coordinate the compensatory storage banking documentation with DuPage County.

8. **Bidding Assistance** - ERA will provide bidding assistance for the project. This work will include answering bidder questions, attendance at a pre-bid meeting, preparation of addenda as required, tabulation of bids, reference checks and recommendations for award of the construction contract.
 - a. Provide a digital package with plan sheets in PDF format to be submitted as bid documents.
 - b. Assist City in responding to bidder questions and preparing addenda.
 - c. Attend Pre-Bid meeting.
 - d. Call contractor references, review bid submittal and provide a recommendation
 - e. Provide summary of quantity sheet listing each contractor’s submitted price per pay item for verification of low bidder (Bid Tab)
9. **Construction Assistance** – ERA will provide limited part-time construction services in accordance with the following work plan:
 - Material reviews – Reviews of civil related submittals from the contractor.
 - Contractor RFIs – Response to contractor civil-related questions.
 - Construction observation (six visits) – Upon award of a contract, ERA staff will make six total sites visits, of which one will be a punch list visit.
 - Complete as-built survey and record drawings are not included in this task.
 - Letter of Map Revision survey and submittal to FEMA is not included in this task.

10. As-Constructed Grading Plan – ERA will complete field work and topographic measurement after completion of the project to prepare an as-constructed drawing showing final elevations in the future building area and compensatory storage area. The plan will need to document that the building footprints will be out of the mapped floodplain and provide a metes and bounds legal description. ERA will then calculate the as-built floodplain fill and storage volumes to document that required compensatory storage is provided. No supplemental survey or calculations are included in this task should the volume be insufficient.

**These tasks do not include any revisions, changes, or modifications of the plan. Due to the nature of the governmental review process, the exact scope of the preliminary engineering services is unknown until the Village completes their review of the submitted documents. Time relating to revisions of engineering plans based on regulatory agency review is unknown and uncertain at this time and, if any are required, will be invoiced extra on an hourly basis based on actual work performed on the project. The initial submittals of the preliminary engineering documents are included in the base services.*

Schedule

The work described in this agreement will be performed as expeditiously as weather and other physical conditions permit. The Engineer shall not be liable to the Owner, if delayed in, or prevented from performing the work as specified herein through any cause or causes beyond the control of the Engineer and not caused by his own fault or negligence including acts of God, or the public enemy, inclement weather conditions, acts of the government after the effective date of this agreement, fires, floods, epidemics, strikes, jurisdictional disputes, lockouts, and freight embargoes.

Services Not Included

Only services specifically described in this proposal are included in our scope of work. The following are specifically excluded, although they may be added as a contract amendment at a future date for an agreed additional fee.

- Soil Borings & Geotechnical Engineering
- Topographic Survey
- Plat Preparation
- Land Transfer Assistance
- Tree Inventory or Tree Replacement Plan
- Landscape Architecture
- Wetland Mitigation Design
- Hydraulic & Hydrologic Modeling
- FEMA Floodplain/Floodway mapping revisions (except as noted)
- Stormwater Detention Design
- Environmental Testing
- Special Hazardous Waste Removal
- Structural Design
- Sanitary and Water Design
- Traffic Impact Study
- Warrenville Road Modifications Design & Permitting
- Design Modifications outside of scope
- Meetings not specified above
- City Zoning/Entitlement Assistance
- Material Testing
- LOMA/FEMA Submittals and Permitting



Fees

ERA proposes to provide engineering services described in this proposal on an hourly, not to exceed basis according to the attached engineering fees. Our proposed multiplier rate for this project is 2.85 times direct hourly payroll rates. Direct costs will be charged at the actual cost incurred with no markup.

Scope of Work – Fee by Task:

1. Project Meetings/Project Administration	\$ 2,200
2. Wetland Determination/Delineation	\$ 2,500
3. 75% Construction Documents	\$ 6,000
4. 95% Construction Documents	\$ 4,100
5. 100% Construction Documents	\$ 3,400
6. Stormwater Management Report	\$ 3,600
7. Permitting	\$ 5,500
8. Bidding Assistance	\$ 2,800
9. Construction Assistance	\$ 7,800
10. As-Constructed Grading Plan	\$ 3,800
11. Direct Costs (Printing, Mileage, and Shipping)	<u>\$ 200</u>
Base Bid Total:	\$41,900

Direct costs/reimbursables including printing costs, mileage and postage will be charged at the actual rate incurred.

Additional services, not included in this proposal, will be added to the contract through a change work order submitted to the client for approval, prior to beginning work. The contract limit will be adjusted to include the cost for the additional services in the change work order.

Invoices will be issued monthly reflecting the percent of the project completed as of the “services through” date on the invoice. Any unpaid ERA invoices over 60 days old must be paid in full prior to our release of the project’s final deliverable.

Please send payment with invoice number included to:
3s701 West Ave., Suite #150, Warrenville IL 60555

We appreciate the opportunity to submit this proposal and trust that it meets with your approval. If acceptable, please sign the proposal where indicated below (Exhibit 1) and return one (1) copy for our files. Receipt of executed proposal will serve as authorization to proceed with the project to the full extent of the contract. The attached General Terms and Conditions are expressly incorporated into and are an integral part of this proposal for civil engineering and land surveying services.

If you have any questions, please contact me at 630-393-3060 or akustus@eraconsultants.com.



Sincerely,
ENGINEERING RESOURCE ASSOCIATES, INC.
WARRENVILLE



Andrew R. Kustus, PE
Project Manager

ARK/jan
Attachments/Enclosure



Exhibit 1

Acceptance & Authorization Form – July 27, 2023 Proposal
Old Town Redevelopment Site #2 / Final Engineering & Permitting Assistance

Engineering Resource Associates, Inc.

City of Warrenville

Ash R Kuntel

Authorized Signature

Authorized Signature

Printed Name and Title

Printed Name and Title

3S701 West Avenue
Suite 150
Warrenville, Illinois 60555
630-393-3060 t, 630-393-2152 f

Date

Please Provide Contact Information:

Mailing Address:

(Please provide street address for UPS deliveries)

Telephone & Facsimile Numbers:

Email Address:

INVOICES will be sent via email to:

Invoice Email Address (if different than above):

Note any billing forms/procedures:

Invoice numbers must be included with payments. Payments received will be applied to oldest accounts receivable balances due first unless otherwise specifically noted and agreed.

M:\Proposals and Agreements\Governmental\WARRENVILLE\PL2303.38 OldTownParkingLotFinalDesign\2023.07.27 Proposal - Old Town Redevelopment Final Eng - Revised.docx



Exhibit 2

Engineering Resource Associates, Inc.
 2023-2024 Charges for Professional Services
 April 1, 2023 through March 31, 2024

Staff Category	Average Hourly Billing Rates
Professional Engineer VI	\$234.00
Professional Engineer V	\$206.00
Professional Engineer IV	\$187.00
Professional Engineer III	\$165.00
Professional Engineer II	\$144.00
Professional Engineer I	\$125.00
Structural Engineer IV	\$207.00
Structural Engineer III	\$250.00
Staff Engineer III	\$134.00
Staff Engineer II	\$110.00
Staff Engineer I	\$103.00
Engineering Technician VI	\$150.00
Engineering Technician V	\$134.00
Engineering Technician IV	\$111.00
Engineering Technician III	\$103.00
Engineering Technician II	\$79.00
Engineering Technician I	\$59.00
Engineering Intern III	\$80.00
Engineering Intern II	\$60.00
Engineering Intern I	\$51.00
Ecological Services Director	\$169.00
Environmental Specialist IV	\$172.00
Environmental Specialist II	\$114.00
Environmental Specialist I	\$91.00
Professional Surveyor II	\$177.00
Professional Surveyor I	\$155.00
Surveyor IV	\$135.00
Surveyor III	\$114.00
Surveyor II	\$91.00
Administrative Director	\$163.00
Administrative Staff IV	\$123.00
Administrative Staff III	\$91.00
Administrative Staff II	\$71.00
Administrative Staff I	\$66.00

Direct Costs will be invoiced per contract terms.

EXHIBIT B

INSURANCE COVERAGES

- A. Worker's Compensation and Employer's Liability with limits not less than: (1) Worker's Compensation: Statutory;
 - (2) Employer's Liability:
 - \$500,000 injury-per occurrence
 - \$500,000 disease-per employee
 - \$500,000 disease-policy limit

Such insurance shall evidence that coverage applies in the State of Illinois.

- B. Comprehensive Motor Vehicle Liability with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 for vehicles owned, non-owned, or rented.
 - All employees shall be included as insureds.

- C. Comprehensive General Liability with coverage written on an "occurrence" basis and with limits no less than:
 - \$1,000,000 Bodily Injury and Property Damage Combined Single Limit Coverage is to be written on an "occurrence" bases.
 - Coverages shall include:
 - Broad Form Property Damage Endorsement
 - Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)

- D. Professional Liability Insurance. With a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and covering Consultant against all sums that Consultant may be obligated to pay on account of any liability arising out of the Contract.

- E. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

- F. Owner as Additional Insured. Owner shall be named as an Additional Insured on all policies except for:
 - Worker's Compensation
 - Professional Liability

Each such additional Insured endorsement shall identify Owner as follows: City of Warrenville, including its City Council members and elected and appointed officials, its officers, employees, agents, attorneys, consultants, and representatives.

- G. Other Parties as Additional Insureds. In addition to Owner, the following parties shall be named as additional insured on the following policies:

<u>Additional Insured</u>	<u>Policy or Policies</u>
None	
_____	_____
_____	_____
_____	_____

EXHIBIT C

CHANGE ORDER NO. _____

In accordance with Section 2 of the Agreement dated _____, 20____ between the City of Warrenton (the "City") and Engineering Resource Associates, Inc. (the "Consultant"), the Parties agree to the following Change Order No. ____:

1. Change in Contracted Services:

2. Change in Project Schedule (attach schedule if appropriate):

3. Change in Project Completion Date:

All Contracted Services must be completed on or before _____, 20____

4. Change in Compensation:

5. Change in Project Specific Pricing (if applicable).

**ALL OTHER TERMS AND CONDITIONS
OF THE AGREEMENT REMAIN UNCHANGED**

[signature page follows]

CITY

CONSULTANT

—

Signature
Director of Community and
Economic Development

Signature
Name (Printed or Typed)

_____, 20____
Date

_____, 20____
Date

If compensation greater than \$15,000, then the City Council must approve the Task Order in advance and the City Administrator or Mayor's signature is required.

Signature
City Administrator

_____, 20____
Date