

EXHIBIT A

REMEDATION AND ACCESS AGREEMENT

This Remediation and Access Agreement ("Agreement") is made and entered into this _____ day of _____, 2016, by and between **Commonwealth Edison Company** ("ComEd") and the **City of Aurora**, a municipal corporation (the "City").

WHEREAS, the City holds title to certain property located in Aurora, Kane County, Illinois ("Site" and/or "City's Property"), which Site is generally located at 330 N. Broadway, Aurora, Illinois 60505. Exhibit 1 is the legal description of the Site. Exhibit 2 shows the Site location and Exhibit 3 sets out the SRP remediation site boundary.

The Site is also referred to in part as "Aurora Excelsior Manufactured Gas Plant Site A" in documents filed with the Illinois Environmental Protection Agency ("IEPA") as part of the Illinois Site Remediation Program, 415 ILCS 5/58, et seq. (the "SRP");

WHEREAS, ComEd has discovered that a manufactured gas plant ("MGP") formerly was located on land at or near the Site;

WHEREAS, ComEd has previously conducted environmental investigations at the Site and has investigated and remediated adjoining city property which is also referred to as "Aurora Excelsior Manufactured Gas Plant Site B" in documents filed with IEPA as part of the SRP;

WHEREAS, ComEd has hired and employed an environmental consultant to evaluate the nature and scope of contamination that may exist on the Site;

WHEREAS, the Site has been entered into the SRP;

WHEREAS, ComEd has prepared and filed with the IEPA a Focused Site Investigation Work Plan (2008) and a Supplemental Site Investigation Work Plan (2015);

WHEREAS, ComEd has prepared the Comprehensive Site Investigation Report/Remediation Objectives Report/Remedial Action Plan (CSIR/ROR/RAP), Aurora Excelsior Site A which has been approved by the City and submitted to the IEPA for review and approval. As used in this Agreement CSIR/ROR/RAP includes subsequent addenda which have also been approved by the City. The Remedial Action Plan portion of the CSIR/ROR/RAP ("RAP") calls for the Site to be remediated by ComEd under the SRP and be restored to appropriate condition pursuant to a RAP that has been approved by the City and IEPA; and all such remediation and restoration conducted consistent with the RAP collectively referred to hereafter as "Remediation" or "Work". The RAP further contemplates that the Remediation will be complete when the parties seek a Comprehensive No Further Remediation letter as set forth in Paragraph 6 below in favor of the City and ComEd under the SRP;

WHEREAS, after the Remediation is complete, ComEd and the City will submit to the IEPA for its review and approval a Remedial Action Completion Report (“RACR”) and request that the IEPA issue a Comprehensive No Further Remediation (“NFR”) letter for the Site; and

WHEREAS, the Site is part of the redevelopment of various parcels into RiverEdge Park–Music Garden (“RiverEdge Park”) which is depicted on Exhibit 4. RiverEdge Park includes a public amphitheater, a community playground, open space areas, including both hard-scape and green-scape improvements and a pedestrian boardwalk and bike path along the eastern bank of the Fox River.

NOW, THEREFORE, the City grants to ComEd permission to enter onto the City's Property to perform the Remediation in accordance with the following terms and conditions:

1. **RECITALS.** The above Recitals are incorporated as part of this Agreement as though fully set forth herein. All terms used in this Agreement which are defined in the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., or the regulations promulgated thereunder will, unless otherwise defined herein, have the meanings provided in the Act and regulations.

2. **REMEDICATION.** The City authorizes and grants a license to ComEd and its agents, contractors, subcontractors and employees to perform the Remediation at the Site in compliance with the RAP and in accordance with this Agreement. For the purposes of this Agreement, ComEd and its duly authorized agents, contractors and subcontractors shall be jointly and collectively referred to as the “Workers.” Each, however, shall independently be considered a Worker under this Agreement.

3. **REMEDICATION WORK AREA.** The City authorizes and grants a license to the Workers to access the “Remediation Work Area” shown on Exhibit 5, (including the Site, the areas surrounding the Site and a staging area south of the Site), for site access, equipment staging, and other necessary activities to support and conduct the Remediation pursuant to the Remediation Work Area General Conditions included in Exhibit 6. The Workers shall provide written Notice to the City at least seven (7) days prior to initial entry upon the City’s Property and the parties shall reasonably agree to a plan in advance of any Work to minimize any disruption to City’s construction, operations or activities conducted or to be conducted on RiverEdge Park or on the properties commonly known as 310 N. Broadway Avenue and/or 330 N. Broadway Avenue, Aurora, Illinois (with the properties commonly known as 310 and 330 N. Broadway Avenue properties hereafter collectively referred to as the “Broadway Avenue Properties”). In developing such a plan, the parties agree they shall use reasonable efforts to avoid any undue burden or extraordinary costs for either party, however, the parties also understand and agree that while the City will make a good faith effort to accommodate the staging needs of ComEd, all equipment will need to be mobile and that semi-permanent storage (i.e., port-o-lets, storage barrels) will need to be staged in a pre-determined area and that any staging that is to be located on the Broadway Avenue Properties will be determined by the City

on a day-to-day basis and that general parking of all passenger vehicles shall be prohibited. If any future Work will materially deviate from the RAP or any other previously submitted and City-approved description of Work (“Change of Work”), ComEd shall, at least forty-eight (48) hours prior to the implementation of such Change of Work, submit to the City a reasonably satisfactory description of the proposed Change of Work or an amended description of the proposed Change of Work, as appropriate. The proposed Change of Work must be approved by the City, with approval not to be unreasonably withheld; without limitation such approval may be reasonably conditioned on whether the Change of Work will unreasonably disrupt the City’s use and development of RiverEdge Park and/or the Broadway Avenue Properties. The City will approve or disapprove the proposed Change of Work with stated reasons for any disapproval, within twenty-four (24) hours of receiving the Change of Work. ComEd shall coordinate any activities on the City’s Property in connection with any Work with the City in order to avoid unreasonable disruption of any construction or other activity then occurring or to be occurring on RiverEdge Park and/or the Broadway Avenue Properties. ComEd shall consult with the local utility companies prior to beginning Work to determine the existence and location of electrical, gas, water, telephone and cable services on the City’s Property and shall coordinate with the City regarding any part of the Work that may need to occur outside the Remediation Work Area.

4. **PERMITS.** ComEd shall obtain all necessary permits to perform the Remediation.

5. **SITE RESTORATION.** Restoration of the Remediation Work Area shall be performed pursuant to Exhibit 6. Upon certification to ComEd of the completion of the restoration work by the City and presentation of invoices to ComEd, ComEd will reimburse the City for all reasonable costs and expenses associated with restoration work performed by the City pursuant to this Paragraph 5 within the Remediation Work Area. The restoration work shall be pursuant to the RiverEdge Park Expansion – Phase 1 Plans. ComEd’s obligation to reimburse the City for restoration work hereunder shall not exceed the total of \$8,000 plus a 5% contingency. The restoration work to be performed by the City and reimbursed for by ComEd hereunder shall include:

Backfill, topsoil, final grading and sod - procurement, import and placement of the geotextile fabric, CA-16 backfill, topsoil, sod and installation of erosion blankets, as appropriate. City shall coordinate with ComEd prior to the importing of any fill materials from areas outside the Remediation Work Area once the Work has commenced and until Recording of the NFR letter for the Site. The City shall sample and test topsoil or other earth materials brought onto the Site as required for the determination of conformance with the ROR/RAP and this Agreement.

6. **NO FURTHER REMEDIATION LETTER.** Upon completion of the Remediation, ComEd shall take any remaining steps necessary to permit the IEPA to issue and to request that IEPA issue a Comprehensive Residential NFR letter (“NFR”) for the Site with no restrictions other than a restriction on uses of groundwater from the Site and any requirement

that existing buildings or any future buildings constructed on the Site must contain a full concrete slab-on-grade floor or full concrete basement floor and walls with no sumps. City covenants and agrees that it shall cooperate as necessary with ComEd's efforts to secure and record an NFR, including, without limitation, providing any required certifications and executing any required documentation necessary for the issuance and recordation of the NFR. The Parties hereby covenant that neither ComEd and its Workers nor the City shall conduct or allow any activities or uses on or of the City's Property that would interfere with the City or ComEd obtaining, or that would thereafter void any NFR obtained for the Site.

7. **HAZARDOUS WASTE.** In the course of performing the Remediation, ComEd shall not conduct any activity on the City's Property or use the City's Property in any manner (i) which would cause the City's Property to become a hazardous waste treatment, storage or disposal facility or cause the City to become a hazardous waste generator, (ii) so as to cause a release or threat of a release of hazardous waste from the City's Property, or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, except as otherwise provided in this Agreement or expressly allowed pursuant to any permit from a government authority with jurisdiction over the Site.

8. **COSTS AND EXPENSES.** Except as otherwise provided in this Agreement, ComEd shall bear all costs and expenses of the Remediation under the Agreement, including the cost of providing any needed utilities for the Remediation and restoring the Remediation Work Area to the satisfaction of the City. ComEd agrees to assume all health and safety risks resulting directly or indirectly from its performance of the Remediation, excluding those caused by or arising from the any negligence, or willful misconduct of the City or any City Affiliates (as hereinafter defined). Except as expressly set forth herein, the City shall bear its own costs and expenses with respect to the Remediation. ComEd shall furnish and maintain, at its own cost and risk, all tools, apparatus and appliances, hoists and/or cranes and power for same, scaffolding, runways, ladders, temporary supports and bracing and all other similar work or materials and utilities necessary to ensure speed, convenience and safety in the execution of this Agreement. All such items shall comply with OSHA regulations and other applicable codes and statutes. ComEd shall provide all drains, ditches, swales, pumping apparatus, and tankage to accomplish the Work.

9. **INDEMNIFICATION.** In consideration for the City's agreement to permit ComEd to enter the City's Property to perform the Remediation, ComEd agrees as follows: ComEd shall defend, indemnify, and hold harmless the City, its officers, City Council members, servants, employees, agents and successors and assigns (collectively, "City Affiliates") both in their individual and official capacities, from and against all claims, demands, losses, damages and costs incurred by the City that arise or are alleged to arise from the acts, errors, omissions or willful misconduct of ComEd or its consultants and Workers in performing the activities under this Agreement or which the City may incur from or on account of such acts, errors, omissions or willful misconduct in the performance of the Remediation hereunder, except

to the extent that such claims, demands, losses, damages or costs result from the negligence or willful misconduct of the City or any City Affiliates.

10. **CITY APPROVAL OF DOCUMENTS.** Any document arising out of the Work authorized under this Agreement that is required to be submitted to the IEPA by ComEd will first be submitted to the City for review and approval. Copies of all final reports arising out of the Work authorized under this Agreement and submitted to IEPA will be provided to the City.

ComEd shall deliver to City within two (2) business days after receipt, copies of all environmental documents, reports and correspondence submitted by IEPA to ComEd.

ComEd shall not object to IEPA transmitting copies of environmental documents, reports and correspondence with respect to the City's Property to City simultaneously with the transmittal of same to ComEd.

Copies of all environmental reports and data that are subject to review and approval by IEPA produced by ComEd or its Workers with respect to the City Property shall be promptly delivered to City; the City will approve or disapprove the proposed reports or data with stated reasons for any disapproval, within forty-eight (48) hours of receiving such reports. Notwithstanding the foregoing, City shall have in the case of reviewing the RACR ten (10) business days to approve or disapprove the RACR with stated reasons for any disapproval. City shall have the right to access the City Property during the performance of the Remediation to observe same and to take split samples, provided, however, City shall not unreasonably interfere with the performance of the Work or the security of the Remediation Work Area.

City shall have the right to participate in substantive meetings or discussions with respect to the Remediation held among ComEd's consultants, agents and the IEPA.

11. **WORK REQUIREMENTS.** ComEd shall, and shall cause the Workers to, perform the Remediation in a safe and professional manner in accordance with all applicable federal, state and local regulations, including without limitation, IEPA and federal regulations applicable to soil remediation and all health and safety requirements and all permits issued for RiverEdge Park that are applicable to and appropriate for the Work. ComEd shall, and shall cause the Workers to, take reasonable precautions to minimize damage to the City's Property from the installation of any equipment and the Remediation. ComEd shall at all times conduct the Work in such a manner as to minimize hazards to those using or on the City's Property and RiverEdge Park.

12. **GENERATOR STATUS.** ComEd shall be solely responsible for the testing, storage, treatment and disposal of all material removed from the soil boring, groundwater monitoring well and/or which result from the Remediation. The City will not be identified at any

time, in any place, document, record or manifest as the owner, generator or transporter of materials (including water) or soil taken from the City's Property as a result of the Remediation.

13. **HEALTH AND SAFETY.** ComEd shall be responsible for the safety of persons and property, on or adjacent to the Work Site, and in the transportation of material and equipment to and from the Work Site. ComEd shall keep the City's Property free from unprotected safety and health hazards and require that the Workers are competent and adequately trained in the required safety and health aspects of the Work performed on the City's Property under this Agreement. ComEd is responsible for providing, at its own expense, all training, personal protective clothing and equipment required for the Workers to perform Work in a safe manner and in compliance with all applicable local, state, and federal laws and regulations. Remediation will be conducted pursuant to a Health and Safety Plan and an Ambient Air Monitoring Plan approved by the City and the attached "Ambient Air Monitoring Plan and Communication Plan" as Exhibit 7.

14. **SCHEDULING AND SUBMITTALS.** ComEd shall utilize best efforts to adhere to the submitted schedule and undertake and complete the Work as outlined below, subject to other provisions of the Agreement:

- A. Begin Work in the SBA-2 and SBA-16 Areas as depicted in Exhibit 8 on or before March 31, 2016;
- B. Complete Site Remediation Work and backfill (less topsoil cover or pavement) related to SBA-2 and SBA-16 Areas on or before April 15.
- C. Begin Work in the SBA-5, SBA-12 and SBA-19 Areas as depicted in Exhibit 8 on or before April 30, 2016, assuming timely approval of the RAP by IEPA.
- D. Complete Site Remediation Work and backfill (less topsoil cover or pavement) related to SBA-5, SBA-12 and SBA-19 Areas as depicted in Exhibit 8 on or before May 6, 2016.
- E. Prepare and submit a draft RACR for review by the City by July 15, 2016. Upon City's review and approval, ComEd shall finalize the RACR and make all best efforts to obtain a Comprehensive No Further Remediation Letter from the IEPA in accordance with Paragraph 6.

15. **INDEPENDENT CONTRACTOR.** In performing the Work hereunder, it is understood that ComEd is acting as an independent contractor and that its employees, agents, and representatives and those of any and all subcontractors and other Workers which they retain for the Work hereunder shall not be deemed, for any purpose, to be agents, servants, and/or employees of the City. No Worker shall represent or hold himself/herself out as an employee, representative or agent of the City. This Agreement does not create any legal relationship between ComEd and the City (such as joint venture or partnership). The City is not undertaking by virtue of this Agreement any responsibility or liability for compliance with any laws, rules or

regulations relating to contamination or the depositing, storage or control of any wastes within the Remedial Work Area. Prior to performing the Work hereunder, ComEd shall provide to the City the following information:

- A. The name, address and telephone number and other pertinent information of each person who can be contacted in the event of an emergency situation at or related to the Work;
- B. Identification of an acceptable construction manager and overall project manager with emergency contact numbers;
- C. Identification of major equipment and materials to be stored onsite;
- D. List and copies of all required permits; and
- E. Certificates of insurance will be provided to the City by all ComEd contractors and their major subcontractors working within the Site. Certificates of insurance will also be provided by any transportation company hauling waste from the Site.

16. **THE CITY REPRESENTATIVES.**

A. The City shall have authorized representatives at the Site which may include but not be limited to environmental consultants, engineers, various City staff members and other consultants (collectively "City's Representatives"). The City's Representatives may be present during implementation of the Work only after adequate Notice by City to ComEd such that ComEd may arrange to have any City Representatives escorted by a ComEd Site representative. The City's Representatives shall at all times have access to the Work subject to the requirements of this Agreement. Notwithstanding the foregoing, City Representatives shall not unreasonably interfere with ComEd or its Workers' conducting and implementation of the Work.

B. As the authorized representative of the City, a City Representative may at City's sole expense, accompany and observe, upon Notice to ComEd, in the inspection, sampling and testing that is intended for inclusion in the Work as required for the determination of conformance with the RAP and this Agreement.

C. The City's Representatives are authorized, at City's sole expense, to observe all Work performed and inspect any materials brought to the Site by ComEd in furtherance of the Work. Such observation and/or inspection may extend to all or any part of the Work and to the preparation or manufacture of materials to be used or facilities to be utilized in meeting the requirements of the RAP and this Agreement.

D. The City's Representatives at City's sole expense, shall be authorized to continually monitor air emissions in the vicinity of the Work, inspect health and safety procedures implemented during construction, and to assess conformance with the requirements

of the RAP and this Agreement. The City's Representatives are also authorized to require ComEd to implement reasonable procedures for the protection of ComEd's and ComEd's contractors' construction workers and others in RiverEdge Park, Broadway Avenue Properties and the general public in each case necessitated by any activities related to Work performed by ComEd at the Site.

E. In the case of any good faith dispute arising between ComEd and a City's Representative as to materials furnished or in the manner of performing the Work by ComEd, including any applicable safety requirements or health and safety procedures, the City's Representative shall have the authority to reject material or suspend the Work until the question at issue can be referred to and decided by the City and ComEd in a good faith. An authorized representative of the City and ComEd shall be available at all times to meet and resolve such issues.

17. **AIR EMISSION CONTROL.** ComEd will conduct real time air monitoring of the Site. All air monitoring will follow and be in conformance with the Ambient Air Monitoring and Communication Plan approved by the City and in accordance with Exhibit 8.

18. **ODOR CONTROL.** ComEd shall take any steps necessary to minimize odor emissions that may result from the remediation or removal of impacted soils at the Site.

19. **EROSION, SEDIMENTATION AND STORMWATER CONTROL AND PROTECTION.** ComEd shall provide the materials and labor for implementing and maintaining an Erosion, Sediment and Stormwater Control Plan approved by the City and consistent with applicable permit requirements.

20. **FUGITIVE DUST EMISSIONS AND AIRBORNE PARTICULATE MATTER CONTROL.**

A. ComEd shall implement a fugitive dust control program to prevent the offsite migration of potentially contaminated particulate matter or dust. It shall be ComEd's responsibility to supervise fugitive dust control measures and to monitor airborne particulate matter.

B. ComEd shall provide all instrumentation to accomplish the required fugitive dust monitoring program. ComEd shall ensure that fugitive dust concentrations do not exceed the action level established by the RAP or applicable law for this project.

C. Neighboring properties and public streets shall be kept free from dirt, dust, contaminated materials, or other building materials resulting from the Work. If such materials are deposited, spilled, or spread on a public street, such material shall be removed and properly disposed of within eight hours, if possible, or at the end of each working day.

21. **SECURITY.**

A. ComEd shall post warning signs adjacent to all Work areas following applicable local, state and federal laws, regulations or requirements.

B. ComEd shall provide necessary temporary lighting, wiring, globes, guard lights, barricades, utilities or any other items required by regulations, standards, or to facilitate the Work.

C. ComEd shall maintain Site security during Work hours for the Site with the Remediation Work Area. ComEd shall provide a private Site security guard during after-hours as needed during the Remediation. ComEd shall ensure control of Site access, deliveries, etc., during normal hours of work and shall protect the Work area at all times until completion of the Work.

22. **HOURS OF WORK.** The hours of Work for this Agreement shall be 6 a.m. through 9 p.m., Monday through Saturday. Extended hours may be permitted as approved by the City. The City reserves the right to limit work hours in connection with scheduled community events in close proximity to RiverEdge Park or the downtown area. In emergency situations or matters involving health and safety, ComEd acknowledges and agrees that the City may require ComEd to vacate all or part of the City's Property.

23. **CLEANING UP.**

A. ComEd will regularly and at all times keep the Site free from accumulations of waste material or rubbish caused by its Workers, except as is consistent in the ordinary course with the Remediation and the RAP. ComEd shall provide appropriate waste containers for all wastes generated during and from the Work.

B. Upon completion of the Remediation, ComEd will remove all rubbish caused by the Work from and about the Site, and all temporary structures, tools, scaffolding, surplus materials and equipment that ComEd or any of the Workers may have used in the performance of the Site Remediation.

C. ComEd shall dispose of all waste materials generated by the Work in accordance with applicable State and Federal regulations.

D. ComEd shall at its own cost and expense relocate, add or remove or dispose of the City's existing fencing at the Site and will make any temporary fence modification or removal reasonably required by the City's Representatives to protect human health or the environment or the public safety. If the existing temporary chain link fence impedes the Remediation Work, it can be rolled back out of the way by ComEd but should not be cut or damaged. If ComEd finds it necessary to remove or cut the chain link fence to facilitate the Work, ComEd shall restore or install comparable new fencing at no cost to the City. If the

existing wood board fence impedes the remediation work, with oversight by the City, specific sections of the fence can be removed by ComEd and then replaced after the Work is completed.

24. **SIGNS**. ComEd shall not display any signs, posters, or other advertising matter in, on or around the Site thereof without the specified approval by the City, with the exception of those signs or posters required by local, state, or federal laws or regulations or requirements.

25. **TRAFFIC PLAN**. ComEd will implement and maintain a traffic control plan that is reasonably acceptable to the City.

26. **ASSIGNMENT OF RIGHTS**. This Agreement shall be binding upon the Parties and their successors and assigns. No transfer of ComEd's rights or obligations hereunder shall be made without the prior written approval of the City, which approval shall be within its reasonable discretion.

27. **PUBLIC PARTICIPATION**. If reasonably requested by the City, ComEd will hold public meetings to update the community regarding the identification and scheduling of Remediation items.

28. **COMMUNITY RELATIONS**. The Parties recognize the importance of the City being informed of any complaints received by ComEd from any source concerning the Work by ComEd. ComEd agrees to report to the City any complaint related to or arising from the Work received from any governmental entity other than the City within 24 hours of receipt of said complaint. ComEd further agrees to meet with the City's Representative at that Representative's request as is reasonably necessary to keep the City apprised of any matter related to such complaints or other community issue related to the Work. ComEd agrees to use its best efforts to investigate and resolve said complaints in consultation with the City's Representative. ComEd shall also provide the City with copies of all governmental notices, reports, complaints, inspection reports or other documents that relate to compliance with any or all governmental regulations respecting the Work or ComEd's activities at the Site within seven (7) days of receipt of same by ComEd. ComEd will undertake project communications to the local community as set forth on the attached Exhibit 9 of the "Project Communication to Local Community."

29. **LIMITATION OF LIABILITY REGARDING GOVERNMENTAL OFFICIALS**. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the corporate authorities, any elected official, officer, member, agent, employee or attorney of the City, in his or her individual capacity, and no elected official, officer, member, agent, employee or attorney of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

30. **TIME**. Time is of the essence with respect to this Agreement.

31. **FORCE MAJEURE**. Notwithstanding anything to the contrary contained herein, in the event of delays caused by war, terrorism, civil unrest, unforeseeable adverse weather, reasonable restrictions on work, labor strikes, material shortages, governmental inaction or unreasonableness, any law, regulation, rule, order, demand or administrative inaction imposing additional obligations that prolong the Remediation or other similar events beyond the reasonable control of ComEd or the City or their respective consultants, contractors, agents or representatives (collectively, "Force Majeure Events"), the dates set forth herein by which such parties are to perform their respective obligations shall be reasonably extended as a result of such delay.

32. **ADDITIONAL REMEDIATION CRITERIA**. All underground structures associated with past MGP-related operations, if any, to the extent encountered within the limits of the proposed excavation areas as set forth in the RAP, will be removed from the excavation areas by ComEd.

33. **OTHER AREAS**. ComEd represents, covenants and warrants to the City that, except to the extent of information that ComEd has provided to the City or its environmental consultants in writing to date, ComEd has no knowledge of the existence of MGP byproducts, waste or residuals that have been placed, held, located or disposed of on, under, at or within the corporate limits of the City of Aurora from or associated with this MGP.

34. **CONTRACTOR MEETINGS**. ComEd will provide Notice to the City of contractor status and Work planning meetings and will invite the City representatives to attend on-Site daily safety briefing meetings and weekly progress meetings during the implementation of the Work. ComEd shall make available at all times while Work is in progress a competent representative.

35. **INSURANCE**. ComEd is self-insured. ComEd shall require that each of its contractors engaged in the performance of the Remediation obtain and maintain at its own expense during the term of this Agreement the following insurance coverages:

(a) Worker's Compensation and Employer's Liability insurance at statutory limits.

(b) Commercial General Liability Insurance for bodily injury and property damage to include completed operations, explosion, collapse and underground hazard coverage, with a limit of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate. All such insurance policies shall provide (unless by specific statute applicable thereto it is otherwise provided) coverage for: (a) damage to above-ground or underground property; (b) collapse of structures; and (c) damage to completed operations.

(c) Automobile Liability Insurance covering owned, non-owned, and hired vehicles used in connection with the Remediation with a limit of not less than \$1,000,000 per accident combined single limit.

(d) If the Remediation involves the handling or use of chemicals or contaminants or Work areas containing pollutants or hazardous materials or intrusive (subsurface) Work on environmentally sensitive sites, Pollution Liability with a limit of not less than \$1,000,000 per claim, \$1,000,000 aggregate to coverage damage or losses for bodily and property damage resulting from such handling or use.

Such policies shall be underwritten by insurance carriers that are reasonably acceptable to the City, and shall be provided on a primary and noncontributory basis with regard to the activities to be performed under this Agreement and any insurance carried by the City of City Affiliates. The coverages required under (b), (c) and (d) shall name the City of Aurora and the City Affiliates as additional insureds. Certificates of insurance listing the City as Certificate Holder shall be provided as proof that the required insurance is in force and such certificates of insurance shall provide for advance notice to the City of cancellation thereof. The Certificates of Insurance and endorsements required hereunder shall be submitted to and approved by the City before the Remediation is permitted to be started. The City understands and acknowledges that ComEd, for the purposes of fulfilling its insurance requirements and not its contractors, may fulfill the requirements of this paragraph by providing a Letter of Self-Insurance in an amount greater than One Million Dollars.

36. **RELEASE.** Upon ComEd's performance of all of its obligations under this Agreement (including, without limitation, the receipt of an NFR as set forth in Paragraph 6), and except for and subject to any other rights and remedies the City has under this Agreement, the City hereby releases and discharges ComEd and its past, present and future agents, representatives, shareholders, principals, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, and assigns, from all claims, causes of actions, demands, rights, liabilities, suits, set offs, damages, attorneys' or consultants' fees, costs, and expenses, including without limitation claims for diminution in property value, in each case whether past or future, asserted or unasserted, known or unknown, in law or in equity (collectively "Losses"), which the City has or may have against ComEd, arising from or related to environmental conditions related to former MGP operations at the Site. Provided however, that notwithstanding anything else in this Agreement to the contrary, the City does not release ComEd for Losses arising from third party contribution claims which specifically allege Losses asserted against the City resulting or arising from, or alleged to arise from, or caused by, in whole or in part, the presence of Hazardous Materials (as that term is defined below) on, in or from the Site which have been caused by or alleged to have been caused by, the migration, transportation, release or threatened release originating at or proximate to the Site or from any other property, or from any actions or omissions of ComEd or its employees, Workers,

representatives, contractors, subcontractors or agents first occurring after the NFR Letter has been issued by IEPA. Hazardous Materials shall include each and every element, compound, chemical mixture, contaminant, pollutant, material waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws or the release of which is regulated under Environmental Laws. "Environmental Laws" collectively means and includes any present and future local, state, or federal law, statute, ordinance, order, decree, rule, or regulation relating to public health, safety or the environment (including those laws relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage, disposal, treatment, transportation or management of Hazardous Materials) and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated there under.

37. **NOTICE**. All notices under this Agreement (each individually a "Notice" or collectively "Notices") shall be made by first class US Mail or by electronic mail and shall be made to:

ComEd:

Gail MacMillan
Commonwealth Edison Company
Environmental Services Department
Two Lincoln Centre, 7th Floor
Oakbrook Terrace, IL 60181-4260
gail.macmillan@comed.com

With a copy to:

Exelon Business Services Company
Law Department
10 S. Dearborn, 49th Floor
Chicago, Illinois 60680-5379
Attn: Assistant General Counsel – Environmental Safety & Health
Yesenia.Villasenor@exeloncorp.com

City:

City of Aurora
44 East Downer Place
Aurora, Illinois 60507
Attn: Alayne Weingartz, Esq.
AWeingartz@aurora-il.org

With a copy to:

Dennis G. Walsh, Esq.
Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive – Suite 1660
Chicago, Illinois 60606
dgwalsh@ktjlaw.com

38. **EFFECT OF AGREEMENT.** This Agreement shall inure to the benefit of, and shall be binding upon the heirs, administrators, executors, and/or successors in interest of any kind whatsoever, of the parties hereto.

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

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

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

42. **NO DRAFTING ASSUMPTION.** In construing this Agreement and/or determining the rights of the parties hereunder, no party shall be deemed to have drafted or created this Agreement, or any portion thereof.

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

44. **LIST OF EXHIBITS.**

- Exhibit 1 – Site Legal Description
- Exhibit 2 – Site Location Map
- Exhibit 3 - SRP Remediation Site Boundary
- Exhibit 4 – RiverEdge Park
- Exhibit 5 – Remediation Work Area
- Exhibit 6 – Remediation Work Area General Conditions

Exhibit 7 – Ambient Air Monitoring Program and Communication Plan
Exhibit 8 – Proposed Remediation Areas
Exhibit 9 – Project Communication to Local Community

IN WITNESS WHEREOF, this Agreement has been executed as of the date specified above.

COMMONWEALTH EDISON COMPANY

By: _____

Its _____

ATTEST:

Its _____

CITY OF AURORA, Illinois

By: _____

Its _____

ATTEST:

Its _____

Exhibit 1 – Site Legal Description

PART OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1 IN RIVEREDGE PARK, ACCORDING TO THE RIVEREDGE PARK PLAT OF RESUBDIVISION AS PLATTED AND RECORDED AS DOCUMENT NUMBER 2010K034343, THENCE ALONG THE EASTERLY LINE OF SAID LOT 1 FOR THE FOLLOWING TWO (2) COURSES; 1) THENCE SOUTH 12 DEGREES 22 MINUTES 01 SECOND WEST, A DISTANCE OF 868.95 FEET; 2) THENCE SOUTH 13 DEGREES 50 MINUTES 04 SECONDS WEST, A DISTANCE OF 158.46 FEET; THENCE WESTERLY ALONG SAID EASTERLY LINE, AND THE WESTERLY EXTENSION THEREOF BEARING NORTH 78 DEGREES 39 MINUTES 53 SECONDS WEST, A DISTANCE OF 122.08 FEET; THENCE SOUTH 04 DEGREES 56 MINUTES 08 SECONDS WEST, A DISTANCE OF 52.81 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 80 DEGREES 39 MINUTES 54 SECONDS EAST, A DISTANCE OF 114.14 FEET TO THE WESTERLY LINE OF NORTH BROADWAY BY COMMON REPORT; THENCE ALONG SAID WESTERLY LINE SOUTH 13 DEGREES 50 MINUTES 04 SECONDS WEST, A DISTANCE OF 63.19 FEET; THENCE NORTH 80 DEGREES 39 MINUTES 54 SECONDS WEST, A DISTANCE OF 103.80 FEET; THENCE NORTH 01 DEGREES 42 MINUTES 47 SECONDS EAST, A DISTANCE OF 9.44 FEET; THENCE NORTH 04 DEGREES 56 MINUTES 08 SECONDS EAST, A DISTANCE OF 53.81 FEET TO THE POINT OF BEGINNING.

Exhibit 4 – RiverEdge Park (City to provide)



Exhibit 6 – Remediation Work Area General Conditions

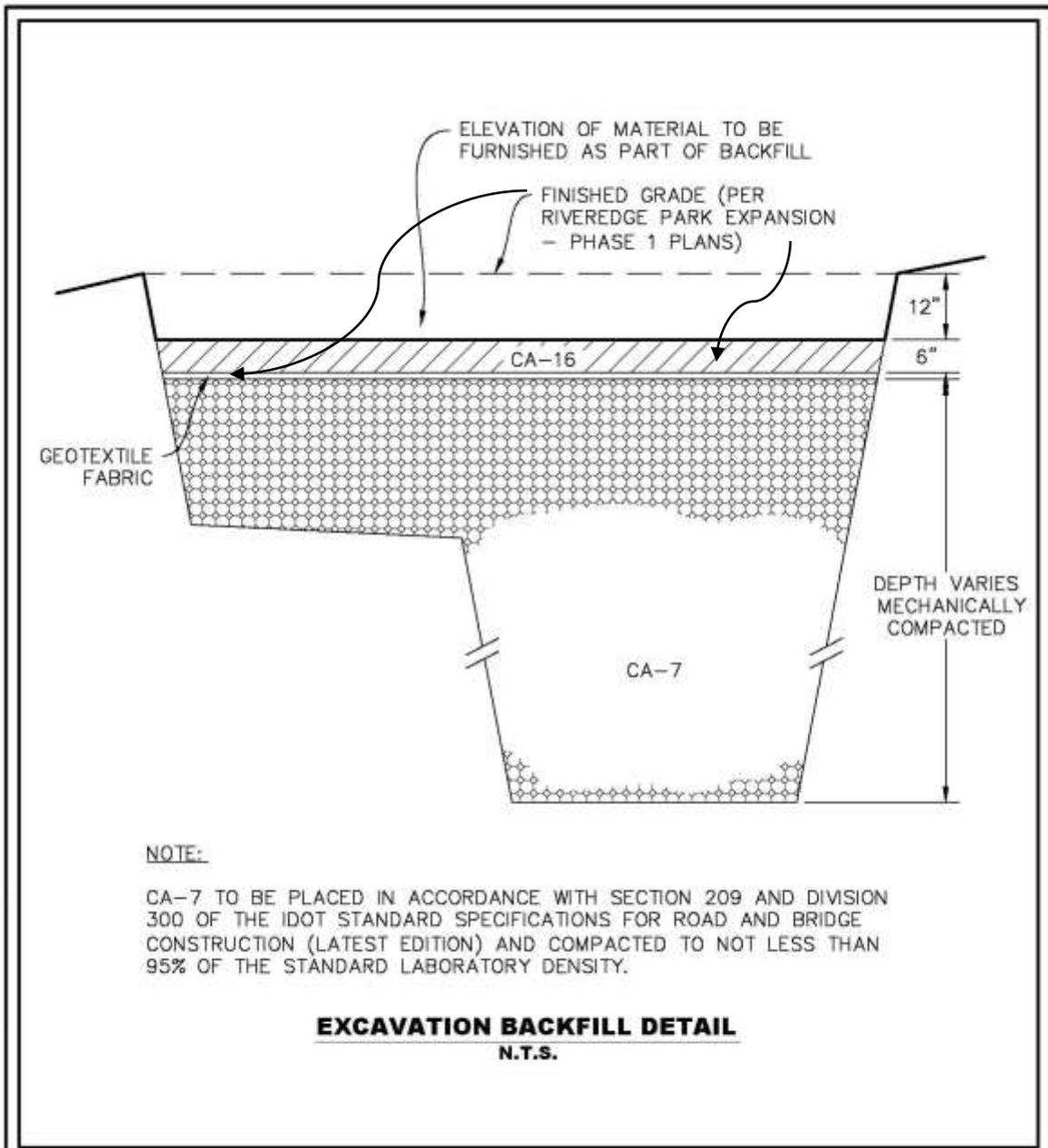
ComEd's access to the Site shall be subject to the following general conditions:

1. ComEd's access to the Remediation Work Area shall be limited to the area shown on Exhibit 5.
2. The access point shown on the Remediation Work Area Exhibit 5 shall be a shared access point, accessible by the City at all times, subject to any additional requirements set forth in the Access and Remediation Agreement.
3. Any utilities required by the Workers shall be the sole responsibility of ComEd or its Workers to obtain.
4. All work done on Site shall be performed in a manner not to impact the approval or receipt of a No Further Remediation letter on the balance of RiverEdge Park.
5. Besides the daily summary of real-time data mentioned below and in Exhibit 7, the City's Representative may request, and ComEd shall grant, more immediate access to real-time sampling data. This data can be evaluated by the City's Representative and directives may be issued to ComEd for the control of air missions. The City and ComEd will engage in a good-faith collaborative process to arrive at a consensus approach as to how to resolve any air emissions concerns. As specified in Exhibit 7, a brief summary report (one page) of real-time monitoring data and, if applicable, applied abatement actions will be provided on a daily basis the following work day to the City's designated representative.
6. ComEd and its Workers shall coordinate any work to be done within the SBA-16 Area in the vicinity of the sewer line with the Fox Metro Water Reclamation District ("Fox Metro").
7. All backfill material imported by ComEd to the Site must be certified clean and meet all cleanup objectives. The City shall have the right to reject any backfill that is not certified clean and/or does not meet applicable cleanup objectives. The sampling frequency for the soil backfill materials shall be one sample required every 500 cy of material. This requirement is to ensure that the material meets the applicable Tier 1 screening values, and that the material meets the physical characteristics required for landscaping. Non-soil, (i.e. granular or stone aggregate) backfill materials need not be tested for contaminants according to the above described sampling frequency, however, documentation shall be provided to the City which clearly identifies the source of imported backfill materials, and a certification statement from the backfill provider that the materials provided are virgin in origin, and not recycled materials.
8. Excavated areas will be restored such that the surface elevation is one foot below the City's planned final surface elevation as shown in the Grading and Restoration Plan Site

provided as Exhibit 6B herein. Backfill materials for said restoration shall be installed pursuant to the Cross Section Exhibit 6A herein.

9. Any existing improvements on the site shall be protected by the Workers. Any damage shall be replaced or repaired to preconstruction condition.

10. ComEd will make its best efforts to eliminate the need for any institutional control under 35 IAC 742.1000(a)(9) for future Site buildings.



NOTE:

CA-7 TO BE PLACED IN ACCORDANCE WITH SECTION 209 AND DIVISION 300 OF THE IDOT STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION (LATEST EDITION) AND COMPACTED TO NOT LESS THAN 95% OF THE STANDARD LABORATORY DENSITY.

EXCAVATION BACKFILL DETAIL

N.T.S.

W:\Projects\151515002-RiverEdge\NE-Excavation\CA-7\1515002-24aug15\DWG\ERH_20160318_9_15:03 AM.dwg

| | | | | | |
|---|---|-----------------|-----|-------|--|
| CLIENT CITY OF AURORA 44 E. DOWNER PLACE AURORA, ILLINOIS 60507 630-264-4636 | TITLE AURORA EXCELSIOR MGP SITE A | DWN. | LJL | CHKD. | PDK |
| | | JOB# 15-0202 | | |  N |
|  WILLS BURKE KELSEY ASSOCIATES LTD. 8 East Galena Blvd., Suite 402 Aurora, Illinois 60506 630-701-2245 | CROSS-SECTION WITHIN SOURCE AND NON-SOURCE AREA EXCAVATION | DATE | | | EXHIBIT 6A |
| | | 2/26/2016 | | | |

Exhibit 7 Ambient Air Monitoring Program and Communication Plan

- Project Ambient Air Monitoring Plan is provided as an Attachment to the Remedial Action Plan
- The ambient air monitoring plan is designed to monitor and document potential off-site emissions associated with the remedial work to be performed to protect off-site workers and other members of the public. On-site worker safety is addressed separately by a Project Health and Safety Plan.
- To facilitate the efficacy of the management of potential emission of air-borne MGP associated constituents, real-time ambient air monitoring will be performed.
 - Real-time monitoring is designed to facilitate field management and allow for timely response to potentially elevated levels of air-borne constituents. Abatement actions will be implemented as appropriate in consideration of field conditions.
 - Real-time monitoring is accomplished by using portable instruments based on prescribed action levels, e.g., aerosol meter for monitoring dust or air-borne particulates and mercury vapor analyzer for monitoring mercury vapor. Real-time monitoring will be performed periodically during work days only. Real-time monitoring measurements will be recorded in 15-minute time-weighted average readings.
 - A number of emission abatement action options (e.g., use of water mist) are available to be implemented. In general, abatement action(s) will be implemented based on real-time monitoring results, i.e., exceedance of prescribed action levels. However, any or combination of abatement options or engineered controls may be applied as preventative measures when appropriate.

Ambient Air Monitoring Data Communication and Reporting

- A field communication channel will be established between ComEd's Consultant and City's designated representative to promote effective field communication of real-time monitoring results. City's designated representative is invited to attend the daily project on-site safety briefing at the beginning of each work day. If a real-time action level is exceeded, ComEd's Consultant will notify the City's designated point-contact to keep him/her informed regarding the abatement measures being used, and the subsequent real-time monitoring results. In addition, if needed, the City's designated representative can contact the representative of ComEd's Consultant in charge of field operations to request any specific real-time monitoring data of interest.
- A brief summary report (one page) of real-time monitoring data and, if applicable, applied abatement actions will be reported on a daily basis on the following workday.

Exhibit 8 - Project Communication to Local Community

- A Fact Sheet describing the remediation project will be developed to support the communication with the local community. This Fact Sheet will contain contact information for ComEd and IEPA. The draft Fact Sheet will be submitted to the City for review.
- Copies of this Fact Sheet will be made available at the local public library and distributed prior to the start of remediation to the Aurora Civic Center Authority and businesses in the vicinity of the remediation site including a cafe (Jake's Bagel), a hotel (Comfort Suites), and a restaurant (Two Brothers).
- As necessary, ComEd will meet with neighboring businesses to provide project overview and answer questions regarding the remediation.
- A document repository has been established at the Aurora Public Library. Copies of IEPA approved project documents will be provided through the repository for public review.

