

VILLAGE OF BRADLEY

RESOLUTION NO. R-3-21-3

A RESOLUTION AUTHORIZING AN ACCESS AGREEMENT BY AND BETWEEN THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS, AND TAKE 5 PROPERTIES SPV, LLC, ALONG WITH AN APPLICATION INTO THE IEPA SITE REMEDIATION PROGRAM FOR CERTAIN VILLAGE-OWNED PROPERTY LOCATED WITHIN THE VILLAGE

ADOPTED BY THE
BOARD OF TRUSTEES OF THE
VILLAGE OF BRADLEY

THIS 17th DAY OF March, 2021

Published in pamphlet form by the authority of the Board of Trustees of the Village of Bradley, Kankakee County, Illinois this 17 day of March, 2021

RESOLUTION NO. R-3-213

A RESOLUTION AUTHORIZING AN ACCESS AGREEMENT BY AND BETWEEN THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS, AND TAKE 5 PROPERTIES SPV, LLC, ALONG WITH AN APPLICATION INTO THE IEPA SITE REMEDIATION PROGRAM FOR CERTAIN VILLAGE-OWNED PROPERTY LOCATED WITHIN THE VILLAGE

WHEREAS, the Corporate Authorities of the Village of Bradley, Kankakee County, Illinois, have the authority to adopt resolutions and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety, and welfare of its citizens; and

WHEREAS, pursuant to Section 2-3-8 of the Illinois Municipal Code (65 ILCS 5/2-3-8) the Corporate Authorities of the Village are authorized to enter into contracts on behalf of the Village that serve the Village's legitimate corporate purposes; and

WHEREAS, Take 5 Properties SPV, LLC ("Take 5"), is the owner of certain real property located within the corporate boundaries of the Village of Bradley (the "Take 5 Property"), which property lies adjacent to a property that is presently owned by the Village (the "Bradley Property"); and

WHEREAS, in or around July of 2020, the Village Fire Inspector and the IEPA determined that there had been a spill or leak of chemical contaminants from the Take 5 Property, which spill/leak had encroached upon and otherwise affected the Bradley Property; and

WHEREAS, Take 5 is presently working in cooperation with the IEPA to remediate any and all environmental effects and damage cause by the aforementioned spill/leak, on both the Take 5 Property and the Bradley Property; and

WHEREAS, in order to perform necessary environmental remediation work on the Bradley Property, Take 5 has requested that the Village enter into an access agreement in relation to said property; and

WHEREAS, Take 5 and the Village have negotiated an access agreement for the Bradley Property, on terms and conditions that are reasonable and acceptable to the Village (the "Agreement") (a copy of the Agreement is attached hereto as Exhibit A and fully incorporated herein); and

WHEREAS, the Corporate Authorities of the Village have determined that executing the Agreement between the Village and Take 5 is in the best interests of the Village and its citizens; and

WHEREAS, Take 5 has also requested that the Village authorize Take 5 to enter the Bradley Property into the IEPA's site remediation program for the purposes of ridding the property of any chemical contaminants caused by the spill and thereafter securing a focused no further remediation letter; and

WHEREAS, in order to enter the Bradley Property into the IEPA's site remediation program, Take 5 needs the Village to sign the Site Remediation Program Application and Services Agreement (DRM-1) (the "SRP Application"), attached hereto as Exhibit B and fully incorporated herein; and

WHEREAS, the Corporate Authorities of the Village have determined that executing the SRP Application is in the best interests of the Village and its citizens.

NOW THEREFORE, BE IT RESOLVED BY THE CORPORATE AUTHORITIES OF THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS, PURSUANT TO ITS STATUTORY AUTHORITY, AS FOLLOWS:

SECTION 1. The Corporate Authorities hereby find that all of the recitals contained in the preamble to this Resolution are true, correct, and complete and are hereby incorporated by reference hereto and made a part hereof.

SECTION 2. The Corporate Authorities of the Village hereby find that the Agreement, attached hereto as Exhibit A is reasonable and acceptable to the Village. The Village President is hereby authorized and directed to execute said agreement on behalf of the Village, as well as to take any and all other actions, including but not limited to the execution of any other documents, necessary to effectuate the Agreement between the Village and Take 5.

SECTION 3. The Corporate Authorities of the Village hereby find that it is in the best interests of the Village and its citizens to authorize Take 5 to enroll the Bradley Property in the IEPA's site remediation program for the purposes of securing a focused no further remediation letter. To that end, the Village President is hereby authorized and directed to execute the SRP Application, attached hereto as Exhibit B and fully incorporated herein, as well as to take any and all other actions, including but not limited to the execution of any other documents, necessary to effectuate the intent of this Resolution, which is to authorize Take 5 to perform testing and site remediation on the Bradley Property.

SECTION 4. In the event that any provision or provisions, portion or portions, or clause or clauses of this Resolution shall be declared to be invalid or unenforceable by a Court of competent jurisdiction, such adjudication shall in no way affect or impair the validity or enforceability of any of the remaining provisions, portions, or clauses of this Resolution that may be given effect without such invalid or unenforceable provision or provisions, portion or portions, or clause or clauses.

SECTION 5. All ordinances, resolutions, motions, or parts thereof, conflicting with any of the provisions of this Resolution, are hereby repealed to the extent of the conflict.

SECTION 6. The Village Clerk is hereby directed to publish this Resolution in pamphlet form.

SECTION 7. This Resolution shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED by the Board of Trustees on a roll call vote on the 17 day of March, 2021.

TRUSTEES:

ROBERT REDMOND	Aye - <u>X</u>	Nay - _____	Absent - _____
MICHAEL WATSON	Aye - <u>X</u>	Nay - _____	Absent - _____
RYAN LEBRAN	Aye - <u>X</u>	Nay - _____	Absent - _____
BRIAN BILLINGSLEY	Aye - <u>X</u>	Nay - _____	Absent - _____
DARREN WESTPHAL	Aye - <u>X</u>	Nay - _____	Absent - _____
BRIAN TIERI	Aye - <u>X</u>	Nay - _____	Absent - _____

ACTING VILLAGE PRESIDENT:

MICHAEL WATSON Non-Voting - X

TOTALS: Aye - 6 Nay - Ø Absent - Ø

ATTEST:

Julie Tambling
JULIE TAMBLING, VILLAGE CLERK

APPROVED this 17 day of March, 2021.

Michael Watson
MICHAEL WATSON, ACTING VILLAGE PRESIDENT


ATTEST:

Julie Tambling
JULIE TAMBLING, VILLAGE CLERK

STATE OF ILLINOIS)
)
) §§
COUNTY OF KANKAKEE)

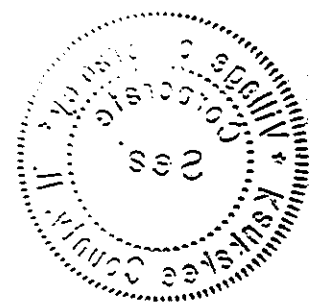
I, Julie Tambling, Village Clerk of the Village of Bradley, County of Kankakee and State of Illinois, DO HEREBY CERTIFY that the attached is a true, perfect, and complete copy of Resolution number R-3213, "A RESOLUTION AUTHORIZING AN ACCESS AGREEMENT BY AND BETWEEN THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS, AND TAKE 5 PROPERTIES SPV, LLC, ALONG WITH AN APPLICATION INTO THE IEPA SITE REMEDIATION PROGRAM FOR CERTAIN VILLAGE-OWNED PROPERTY LOCATED WITHIN THE VILLAGE," which was adopted by the Village Corporate Authorities at a meeting held on the 17 day of March, 2021.

IN WITNESS WHEREOF, I have hereunto set my hand in the Village of Bradley, County of Kankakee and State of Illinois, on this 17 day of March, 2021.



JULIE TAMBLING, VILLAGE CLERK







Agenda Cover Memorandum

Meeting Date:
2/22/21
Fiscal Year: 2021

Internal Review
Initials
Date

Agenda Item: A Resolution to Approve access to Village owned property for the purpose of conducting remedial investigations or activities.

Item Type: Ordinance Resolution Other

Action Requested: Approval First Reading For Discussion Informational

Staff Contact:
Name: Bruce Page
Phone: 815 936-5111
Email: bepage@bradleyil.org

Summary:

In July of 2021 The business known as Take 5 oil change had an oil leak that also leaked onto Village of Bradley owned property at the corner of Rt.50 and Larry Power Rd. Take 5 has already performed some remedial investigations and work on their own property, but now the IEPA is requiring them to perform remedial investigations and work on the affected Village property. To complete this work, Take 5 requires access to the site. The purpose of the work is to secure a no further remediation letter from the IPEA, which will be to the Village's benefit.

Recommendation:

A Resolution to Approve an Agreement for access to the property to complete any remediation and or investigation.

Supporting Documents:

Signed permission sheets

Financial (if applicable)

Is this a budgeted item? Yes No Requires Budget Amendment

Line Item: Title:

Amount Budgeted:

Estimated Cost:

EXHIBIT A

**Bradley Property
Legal Description**

A TRACT OF LAND DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY OF U.S. ROUTE 54 AT THE INTERSECTION OF SAID LINE WITH THE NORTH LINE OF THE SOUTH 10 ACRES OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 31 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KANKAKEE COUNTY, ILLINOIS, SAID POINT BEING 45.8 FEET EAST OF THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 9, THENCE EAST ALONG THE NORTH LINE OF THE SOUTH 10 ACRES OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 9, 218.1 FEET TO A POINT; THENCE SOUTH ON A LINE PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, 185.4 FEET TO A POINT; THENCE WEST ON A LINE PARALLEL WITH THE SOUTH LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 9, 110.0 FEET TO A POINT; THENCE SOUTH ON A LINE PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, 110.0 FEET TO A POINT; THENCE WEST ON A LINE PARALLEL WITH THE SOUTH LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 9, 71.6 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF U.S. ROUTE 54; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY LINE, 84.7 FEET TO A POINT; THENCE NORTH ALONG THE EAST RIGHT OF WAY LINE OF SAID U.S. ROUTE 54, 219.0 FEET TO THE PLACE OF BEGINNING.

Bearing the present PIN: 17-09-09-303-020

Property Map



EXHIBIT B



Illinois Environmental Protection Agency

Bureau of Land • 1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276

Instructions for the Site Remediation Program (SRP) Application and Services Agreement (Form DRM-1)

General Information

Completion of this Application and services Agreement is required of a person requesting enrollment in the Site Remediation Program (SRP). Please read these directions carefully. All information should be typed or legibly printed in ink. The letters "NA" may be used, but only if the requested information is not applicable. Justification must be stated for any failure to provide requested information.

Submit the original and one copy of all information requested in this application to:

Illinois Environmental Protection Agency
Bureau of Land
Remedial Project Management Section
Site Remediation Program
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Hand carried documents may be delivered during normal business hours, 8:30 a.m. - 5 p.m., weekdays, to the above address.

We recommend you keep a copy of every submittal and any relevant correspondence sent to the Illinois EPA.

Please fill out sections in this section that apply to the services requested. The information required is described in the directions on the following pages.

If a request is being made for the Illinois EPA to determine the advance partial payment for anticipated services (see Section V of this application), then Form DRM-3 must be included.

If the application contains plans and reports for review and evaluation by the Illinois EPA, Form DRM-2 must also accompany the submittal.

I. Remediation Site Identification:

The remediation site is the single location, place, tract of land, or parcel or portion of any parcel of property, including contiguous property separated by a public right-of-way, for which review, evaluation, and approval of any plan or report is requested by the Remediation Applicant ("RA") in this application. A remediation site also includes, but is not limited to, all buildings and improvements present at that location, place, or tract of land.

Include the remediation site name, street address, city, ZIP code, county, approximate size of remediation site (acres), Illinois Inventory ID (if assigned), USEPA ID number (if assigned), remediation site base map (attached), and any Illinois Environmental Protection Agency permit(s) or LUST/IEMA Incident Number(s) for the remediation site. An Illinois Inventory ID Number (if one does not exist) will be assigned by the Illinois EPA.

A remediation site base map must accompany the Application. Failure to include a remediation site base map will result in denial of the Application. The remediation site base map must be of sufficient detail and accuracy to show all of the following:

- A. A distance of at least 1,000 feet around the remediation site at a scale no smaller than one inch equal to 200 feet:
- B. Map scale, north arrow orientation, date, and location of the remediation site with respect to township, range and section;
- C. Approximate boundary lines of the remediation site, with the owners of adjacent properties clearly indicated, if reasonably identifiable;
- D. Surrounding land uses (e.g., residential property, industrial/commercial property, agricultural property, and conservation property).

II. Remediation Applicant ("RA") Identification:

An RA is any person seeking to perform or performing investigative or remedial activities under the SRP. The RA may be the owner or operator of the site or any other person authorized by law or consent to act on behalf of the owner or operator of the remediation site.

Include the full legal name, title, company, street address, city, state, ZIP code, telephone number, and Federal Employee Identification Number ("FEIN") or Social Security Number ("SSN") of the RA. The RA or the authorized agent of the RA must certify, by original signature, the statement appearing in Section II of this application form.

III. Project Objectives:

- A. Three (3) types of release letters are available under the SRP: A comprehensive No Further Remediation ("NFR") Letter, a focused NFR Letter, and a 4(y) Letter.

An NFR Letter signifies a release from further responsibilities for the conduct of approved remedial actions and provides *prima facie* evidence that environmental conditions at the remediation site do not constitute a significant threat to human health and the environment. An NFR Letter applies in favor of the RA and to other persons with ownership interest in the property. There are two types of NFR Letters issued by the Illinois EPA under the SRP:

- 1. A comprehensive NFR Letter signifies a release for all recognized environmental conditions and all contaminants of concern. An RA must investigate and remediate all media (i.e., soil and groundwater) for all contaminants of concern at the remediation site.
- 2. A focused NFR Letter signifies a release for only those limited recognized environmental conditions or contaminants of concern specified by the RA. An RA must investigate and remediate all media (i.e., soil and groundwater) at the remediation site, but **only** for those contaminants of concern specified by the RA.

A 4(y) Letter provides a limited release under Section 4(y) of the Illinois Environmental Protection Act to a person who successfully completes preventive or corrective action at the remediation site. The 4(y) Letter only applies to the RA and not to other persons. Preventive and corrective actions may be limited to activities (e.g., drum removals, spill response, etc.), specific media (e.g., soil), or specific contaminants of concern.

Identify in Section III of his application whether a comprehensive NFR Letter, a focused NFR Letter or a 4(y) Letter is requested. If a focused NFR Letter is requested, identify contaminants of concern in the space provided. If a 4(y) Letter is requested, identify the situation (i.e., the media and remedial actions to be taken) and identify contaminants of concern and/or media to be investigated and remediated in the space provided.

- B. Identify any support services requested from the Illinois EPA in addition to the review and evaluation services (e.g., sample collection and analyses, assistance with community relations, coordination and communication between the RA and other governmental entities, etc.).
- C. Indicate the approximate dates that the Illinois EPA should expect receipt of each of the following documents: Site Investigation Report; Remediation Objectives Report; Remedial Action Plan; and Remedial Action Completion Report. Attach a detail anticipated project schedule (e.g., Gantt charts), if available.
- D. Identify the current and post-remediation uses of the remediation site

IV. Written Permission from the Property Owner:

Indicate whether or not the RA is the owner of the remediation site. If the RA is not the property owner of the remediation site, include the full legal name, title, the company, the street address, the city, state, ZIP code, and telephone number of the property owner in Section IV of this application form. For multiple property owners, attach additional sheets containing all the information required under this section along with a signed, dated certification for each. The property owner or the authorized agent of the property owner must certify, by original signature, the statement appearing in Section IV of this application form.

V. Advance Partial Payment:

Please select an advance partial payment plan and mark the appropriate box in Section V. An RA may:

- 1. Submit a \$500 advance partial payment with the application. Please make the check payable (in the amount of \$500) to "Illinois Environmental Protection Agency" with "For Deposit in the Hazardous Waste Fund" and include the RA's FEIN or SSN on the check; or
- 2. Request that the Illinois EPA assess an advance partial payment specific to the project and include a completed Form DRM-3 ("Request for Assessment of Advance Partial Payment for Anticipated Services"). The information reported on Form DRM-3 will be used by the Illinois EPA to determine the appropriate advance partial payment (i.e., approximately one-half (1/2) of the total anticipated costs of the Illinois EPA, not to exceed \$5,000). The amount of the advance partial payment will be requested in writing by the Illinois EPA from the RA listed on the application. The application will not be considered complete and the site will not be enrolled in the SRP until the advance partial payment has been received by the Illinois EPA.

VI. Billing

Once the project costs incurred by the Illinois EPA have exceeded the advance partial payment amount, quarterly invoices will be sent to the RA. Payment to the Illinois EPA is due within 45 days of receipt of the invoice.

In addition to the fees applicable under this Services Agreement, the recipient of an NFR Letter must pay to the Illinois EPA an NFR Assessment in the amount of the lesser of \$2500 or an amount equal to the costs incurred by the Illinois EPA under this Agreement (35 IAC 740.615).

What Happens Next for the New Remediation Sites?

The Illinois EPA will initially review the application and accompanying documents to make certain the application is complete. Should the application be deficient or if the Illinois EPA is unable to provide the services requested, the RA will be promptly notified of the application denial and the reasons.

Upon receipt of the proper application, a project manager will be assigned. Confirmation concerning receipt of money, the name of the project manager and an Illinois Inventory ID number will be sent to the RA and the RA's consultant, if identified.

All information submitted is available to the public except where specifically designated by the RA to be treated confidentially in accordance with the Illinois Compiled Statutes, Section 7(a) of the Environmental Protection Act, applicable Rules and Regulations of the Illinois Pollution Control Board and applicable Illinois EPA rules and guidelines.



Illinois Environmental Protection Agency

Bureau of Land • 1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276

Site Remediation Program (SRP) Application and Services Agreement (DRM-1) Form

For Illinois EPA Use: Log No. _____
_____ \$500 Advance Partial Payment Included
_____ DRM-2 SRP Form Included
_____ DR--3 Request for Assessment Included

This fillable form may be completed online, a copy saved locally, printed and signed before it is submitted to the Remedial Project Management Section at the above address.

I. Site Identification:

Site Name:	<u>Bradley/ Take 5 Oil Change</u>	County:	<u>Kankakee</u>				
Street Address:	<u>1413 E. Larry Power Road</u>	P.O. Box:	_____				
City:	<u>Bradley</u>	State:	<u>IL</u>	Zip Code:	<u>60915</u>	Approx. site size (acres)	<u>0.25</u>
Illinois Inventory ID Number:	<u>0910205076</u>	USEPA ID Number	_____				
Site Base Map Attached:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Illinois EPA Permit(s):	_____				
LUST/IEMA Incident Number(s), if applicable:	_____						

II. Remediation Applicant ("RA"):

RA's Name:	<u>Mr./Ms. Scott O'Melia</u>	Title:	<u>EVP, General Counsel</u>				
Company:	<u>Take 5 Properties SPV LLC</u>						
Street Address:	<u>440 South Church St., Ste. 700</u>	P.O. Box:	_____				
City:	<u>Charlotte</u>	State:	<u>NC</u>	Zip Code:	<u>28202</u>	Phone:	_____
FEIN or SSN:	<u>82-5147973</u>						

I hereby certify that I am authorized to sign this application and services agreement. I certify that the proposed project meets the eligibility criteria set forth in Section 58.1(a)(2) of the Environmental Protection Act (415 ILCS 5/58.1(1)(2)) and regulations promulgated thereunder and that this submittal and all attachments were prepared at my direction. In consideration for the Illinois EPA's agreement to provide (subject to applicable law, available resources, and receipt of the advance partial payment) review and evaluation services for activities carried out pursuant to Title 17 of the Illinois Environmental Protection Act (415 ILCS 5/58-58.12), I agree to:

- (1) Conform with the procedures of Title 17 of the Illinois Environmental Protection Act (415 ILCS 5/58 - 58.12) and implementing regulations;
- (2) Allow for or otherwise arrange site visits or other site evaluations by the Illinois EPA when requested;
- (3) Pay any reasonable costs incurred and documented by the Illinois EPA in providing such services; and
- (4) Make an advance partial payment to the Illinois EPA for such anticipated services provided in Section V of this application.

As the RA, I understand that I may terminate this services agreement at any time, by notifying the Illinois EPA in writing that services previously requested under the services agreement are no longer wanted. Within 180 days of receipt of the notice, the Illinois EPA shall provide me with a final invoice for services provided until the date of receipt of such notification.

To the best of my knowledge and belief, this request and all attachments are true, accurate and complete. I hereby certify that I have the authority to enter into this agreement.

Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Illinois EPA commits a Class 4 felony. A second or subsequent conviction is a Class 3 felony. (415 ILCS 5/44(h)).

RA's Signature:

Date:

***In addition to the fees applicable under this Services Agreement, the recipient of a No Further Remediation (NFR) Letter must pay to the Illinois EPA an NFR Assessment in the amount of the lesser of \$2500 or an amount equal to the costs incurred by the Illinois EPA under this Agreement (35 IAC 740.615)**

III. Project Objectives:


A.	Release Letter Requested. Please complete one of the subsections by checking applicable boxes and including other information (if necessary, additional information may be attached to this application form):	
<input type="checkbox"/>	Comprehensive No Further Remediation ("NFR") Letter	
<input checked="" type="checkbox"/>	Focused NFR Letter Identify the focused contaminants of concern by checking the applicable box(es): <input type="checkbox"/> Volatiles <input checked="" type="checkbox"/> BTEX <input type="checkbox"/> PCBs <input type="checkbox"/> Metals <input type="checkbox"/> Semivolatiles <input type="checkbox"/> PNAs <input type="checkbox"/> Pesticides <input type="checkbox"/> Other (identify) _____	
<input type="checkbox"/>	4(y) Letter Identify the focused contaminants of concern by checking the applicable box(es): <input type="checkbox"/> Volatiles <input type="checkbox"/> BTEX <input type="checkbox"/> PCBs <input type="checkbox"/> Metals <input type="checkbox"/> Semivolatiles <input type="checkbox"/> PNAs <input type="checkbox"/> Pesticides <input type="checkbox"/> Other (identify) _____ Identify the media of concern by checking the applicable box(es): <input type="checkbox"/> Soil <input type="checkbox"/> Sediments <input type="checkbox"/> Other: _____ Identify the actions (e.g. drum removal, spill response, etc.): _____ _____ _____ _____	
B.	Identify any support services being sought from the Illinois EPA in addition to the review and evaluation services. If necessary, additional information may be attached to this application form.	
	<input checked="" type="checkbox"/> No additional support services are being sought <input type="checkbox"/> Assistance with community relations <input type="checkbox"/> Sample collection and analyses <input type="checkbox"/> Other (identify): _____	
C.	Anticipated Schedule	
	SRP Document	Projected Date of Receipt by Illinois EPA
	Site Investigation Report	May 28, 2021
	Remediation Objectives Report	August 31, 2021
	Remedial Action Plan	August 31, 2021
	Remedial Action Completion Report	March 1, 2022
D.	Identify the current and post-remedation uses of the remediation site. If necessary, additional information may be attached to this application form.	
	Current Use: <u>Take 5 Oil change (for portion owned by Store Master Funding VIII, LLC) and vacant land (for Village of Bradley property)</u>	
	Post-Remediation Use: <u>Take 5 Oil Change (for portion owned by Store Master Funding VIII, LLC) and vacant land (for Village of Bradley property)</u>	




Legend

Estimated Groundwater Flow Direction  approximately 100 feet

Approximate Property Boundary 

 OWS  Remediation Site boundary

Proposed sampling:
Soil Boring/Monitoring Well 


Surficial Soil Sample 



Figure 2: Proposed Sample Locations

1413 Larry Power Road, Bradley, Illinois
Project Number: 430400





Legend
--- Remediation site boundary
--- Approximate Property Boundary
 Scale (1"=350')



Figure – Site Base Map

1413 E. Larry Power Road, Bradley, Illinois (Township 31N, Range 12E, Section 9)
 Project Number: 430400



Illinois Environmental Protection Agency

Bureau of Land • 1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276

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General Information

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Submit the original and one copy of all information requested in this application to:

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If the application contains plans and reports for review and evaluation by the Illinois EPA, Form DRM-2 must also accompany the submittal.

I. Remediation Site Identification:

The remediation site is the single location, place, tract of land, or parcel or portion of any parcel of property, including contiguous property separated by a public right-of-way, for which review, evaluation, and approval of any plan or report is requested by the Remediation Applicant ("RA") in this application. A remediation site also includes, but is not limited to, all buildings and improvements present at that location, place, or tract of land.

Include the remediation site name, street address, city, ZIP code, county, approximate size of remediation site (acres), Illinois Inventory ID (if assigned), USEPA ID number (if assigned), remediation site base map (attached), and any Illinois Environmental Protection Agency permit(s) or LUST/IEMA incident Number(s) for the remediation site. An Illinois Inventory ID Number (if one does not exist) will be assigned by the Illinois EPA.

A remediation site base map must accompany the Application. Failure to include a remediation site base map will result in denial of the Application. The remediation site base map must be of sufficient detail and accuracy to show all of the following:

- A. A distance of at least 1,000 feet around the remediation site at a scale no smaller than one inch equal to 200 feet:
- B. Map scale, north arrow orientation, date, and location of the remediation site with respect to township, range and section;
- C. Approximate boundary lines of the remediation site, with the owners of adjacent properties clearly indicated, if reasonably identifiable;
- D. Surrounding land uses (e.g., residential property, industrial/commercial property, agricultural property, and conservation property).

II. Remediation Applicant ("RA") Identification:

An RA is any person seeking to perform or performing investigative or remedial activities under the SRP. The RA may be the owner or operator of the site or any other person authorized by law or consent to act on behalf of the owner or operator of the remediation site.

Include the full legal name, title, company, street address, city, state, ZIP code, telephone number, and Federal Employee Identification Number ("FEIN") or Social Security Number ("SSN") of the RA. The RA or the authorized agent of the RA must certify, by original signature, the statement appearing in Section II of this application form.

III. Project Objectives:

- A. Three (3) types of release letters are available under the SRP: A comprehensive No Further Remediation ("NFR") Letter, a focused NFR Letter, and a 4(y) Letter.

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2. A focused NFR Letter signifies a release for only those limited recognized environmental conditions or contaminants of concern specified by the RA. An RA must investigate and remediate all media (i.e., soil and groundwater) at the remediation site, but **only** for those contaminants of concern specified by the RA.

A 4(y) Letter provides a limited release under Section 4(y) of the Illinois Environmental Protection Act to a person who successfully completes preventive or corrective action at the remediation site. The 4(y) Letter only applies to the RA and not to other persons. Preventive and corrective actions may be limited to activities (e.g., drum removals, spill response, etc.), specific media (e.g., soil), or specific contaminants of concern.

Identify in Section III of his application whether a comprehensive NFR Letter, a focused NFR Letter or a 4(y) Letter is requested. If a focused NFR Letter is requested, identify contaminants of concern in the space provided. If a 4(y) Letter is requested, identify the situation (i.e., the media and remedial actions to be taken) and identify contaminants of concern and/or media to be investigated and remediated in the space provided.

- B. Identify any support services requested from the Illinois EPA in addition to the review and evaluation services (e.g., sample collection and analyses, assistance with community relations, coordination and communication between the RA and other governmental entities, etc.).
- C. Indicate the approximate dates that the Illinois EPA should expect receipt of each of the following documents: Site Investigation Report; Remediation Objectives Report; Remedial Action Plan; and Remedial Action Completion Report. Attach a detail anticipated project schedule (e.g., Gantt charts), if available.
- D. Identify the current and post-remediation uses of the remediation site

IV. Written Permission from the Property Owner:

Indicate whether or not the RA is the owner of the remediation site. If the RA is not the property owner of the remediation site, include the full legal name, title, the company, the street address, the city, state, ZIP code, and telephone number of the property owner in Section IV of this application form. For multiple property owners, attach additional sheets containing all the information required under this section along with a signed, dated certification for each. The property owner or the authorized agent of the property owner must certify, by original signature, the statement appearing in Section IV of this application form.

V. Advance Partial Payment:

Please select an advance partial payment plan and mark the appropriate box in Section V. An RA may:

- 1. Submit a \$500 advance partial payment with the application. Please make the check payable (in the amount of \$500) to "Illinois Environmental Protection Agency" with "For Deposit in the Hazardous Waste Fund" and include the RA's FEIN or SSN on the check; or
- 2. Request that the Illinois EPA assess an advance partial payment specific to the project and include a completed Form DRM-3 ("Request for Assessment of Advance Partial Payment for Anticipated Services"). The information reported on Form DRM-3 will be used by the Illinois EPA to determine the appropriate advance partial payment (i.e., approximately one-half (1/2) of the total anticipated costs of the Illinois EPA, not to exceed \$5,000). The amount of the advance partial payment will be requested in writing by the Illinois EPA from the RA listed on the application. The application will not be considered complete and the site will not be enrolled in the SRP until the advance partial payment has been received by the Illinois EPA.

VI. Billing

Once the project costs incurred by the Illinois EPA have exceeded the advance partial payment amount, quarterly invoices will be sent to the RA. Payment to the Illinois EPA is due within 45 days of receipt of the invoice.

In addition to the fees applicable under this Services Agreement, the recipient of an NFR Letter must pay to the Illinois EPA an NFR Assessment in the amount of the lesser of \$2500 or an amount equal to the costs incurred by the Illinois EPA under this Agreement (35 IAC 740.615).

What Happens Next for the New Remediation Sites?

The Illinois EPA will initially review the application and accompanying documents to make certain the application is complete. Should the application be deficient or if the Illinois EPA is unable to provide the services requested, the RA will be promptly notified of the application denial and the reasons.

Upon receipt of the proper application, a project manager will be assigned. Confirmation concerning receipt of money, the name of the project manager and an Illinois Inventory ID number will be sent to the RA and the RA's consultant, if identified.

All information submitted is available to the public except where specifically designated by the RA to be treated confidentially in accordance with the Illinois Compiled Statutes, Section 7(a) of the Environmental Protection Act, applicable Rules and Regulations of the Illinois Pollution Control Board and applicable Illinois EPA rules and guidelines.



Illinois Environmental Protection Agency

Bureau of Land • 1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276

Site Remediation Program (SRP) Application and Services Agreement (DRM-1) Form

For Illinois EPA Use: Log No. _____
_____ \$500 Advance Partial Payment Included
_____ DRM-2 SRP Form Included
_____ DR-3 Request for Assessment Included

This fillable form may be completed online, a copy saved locally, printed and signed before it is submitted to the Remedial Project Management Section at the above address.

I. Site Identification:

Site Name:	<u>Bradley/ Take 5 Oil Change</u>	County:	<u>Kankakee</u>
Street Address:	<u>1413 E. Larry Power Road</u>	P.O. Box:	_____
City:	<u>Bradley</u>	State:	<u>IL</u> Zip Code: <u>60915</u> Approx. site size (acres) <u>0.25</u>
Illinois Inventory ID Number:	<u>0910205076</u>	USEPA ID Number	_____
Site Base Map Attached:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Illinois EPA Permit(s):	_____
LUST/IEMA Incident Number(s), if applicable:	_____		

II. Remediation Applicant ("RA"):

RA's Name:	<u>Mr./Ms. Scott O'Melia</u>	Title:	<u>EVP, General Counsel</u>
Company:	<u>Take 5 Properties SPV LLC</u>		
Street Address:	<u>440 South Church St., Ste. 700</u>	P.O. Box:	_____
City:	<u>Charlotte</u>	State:	<u>NC</u> Zip Code: <u>28202</u> Phone: _____
FEIN or SSN:	<u>82-5147973</u>		

I hereby certify that I am authorized to sign this application and services agreement. I certify that the proposed project meets the eligibility criteria set forth in Section 58.1(a)(2) of the Environmental Protection Act (415 ILCS 5/58.1(1)(2)) and regulations promulgated thereunder and that this submittal and all attachments were prepared at my direction. In consideration for the Illinois EPA's agreement to provide (subject to applicable law, available resources, and receipt of the advance partial payment) review and evaluation services for activities carried out pursuant to Title 17 of the Illinois Environmental Protection Act (415 ILCS 5/58-58.12), I agree to:

- (1) Conform with the procedures of Title 17 of the Illinois Environmental Protection Act (415 ILCS 5/58 - 58.12) and implementing regulations;
- (2) Allow for or otherwise arrange site visits or other site evaluations by the Illinois EPA when requested;
- (3) Pay any reasonable costs incurred and documented by the Illinois EPA in providing such services; and
- (4) Make an advance partial payment to the Illinois EPA for such anticipated services provided in Section V of this application.

As the RA, I understand that I may terminate this services agreement at any time, by notifying the Illinois EPA in writing that services previously requested under the services agreement are no longer wanted. Within 180 days of receipt of the notice, the Illinois EPA shall provide me with a final invoice for services provided until the date of receipt of such notification.

To the best of my knowledge and belief, this request and all attachments are true, accurate and complete. I hereby certify that I have the authority to enter into this agreement.

Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Illinois EPA commits a Class 4 felony. A second or subsequent conviction is a Class 3 felony. (415 ILCS 5/44(h)).

RA's Signature:

Date:

***In addition to the fees applicable under this Services Agreement, the recipient of a No Further Remediation (NFR) Letter must pay to the Illinois EPA an NFR Assessment in the amount of the lesser of \$2500 or an amount equal to the costs incurred by the Illinois EPA under this Agreement (35 IAC 740.615)**

III. Project Objectives:

A. Release Letter Requested.
Please complete one of the subsections by checking applicable boxes and including other information (if necessary, additional information may be attached to this application form):

Comprehensive No Further Remediation ("NFR") Letter

Focused NFR Letter
Identify the focused contaminants of concern by checking the applicable box(es):

Volatiles BTEX PCBs Metals Semivolatiles PNAs
 Pesticides Other (identify) _____

4(y) Letter
Identify the focused contaminants of concern by checking the applicable box(es):

Volatiles BTEX PCBs Metals Semivolatiles PNAs
 Pesticides Other (identify) _____

Identify the media of concern by checking the applicable box(es):

Soil Sediments Other: _____

Identify the actions (e.g. drum removal, spill response, etc.):

B. Identify any support services being sought from the Illinois EPA in addition to the review and evaluation services. If necessary, additional information may be attached to this application form.

No additional support services are being sought
 Assistance with community relations
 Sample collection and analyses
 Other (identify): _____

C. Anticipated Schedule

SRP Document	Projected Date of Receipt by Illinois EPA
Site Investigation Report	May 28, 2021
Remediation Objectives Report	August 31, 2021
Remedial Action Plan	August 31, 2021
Remedial Action Completion Report	March 1, 2022

D. Identify the current and post-remedation uses of the remediation site. If necessary, additional information may be attached to this application form.

Current Use:
Take 5 Oil change (for portion owned by Store Master Funding VIII, LLC) and vacant land (for Village of Bradley property)

Post-Remediation Use:
Take 5 Oil Change (for portion owned by Store Master Funding VIII, LLC) and vacant land (for Village of Bradley property)

IV. Written Permission from the Property Owner (check one of the applicable boxes and provide additional information):

RA is the property owner of the remediation site identified in Section 1 of this application

RA is **not** the property owner of the remediation site identified in Section 1 of this application

Property Owner's Name: Mr./Ms. Mr. Michael Watson Title: Acting Village President
Company: The Village of Bradley, Illinois
Street Address: 147 S. Michigan P.O. Box: _____
City: Bradley State: IL Zip Code: 60915 Phone: 815-936-5100

I hereby certify that the RA has my permission to enroll the site identified in Section 1 of this application into the Illinois EPA Site Remediation Program. I certify that the RA and designated representatives have permission to enter the indicated premises for the purpose of conducting remedial investigations or activities.

Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Illinois EPA commits a Class 4 felony. A second or subsequent conviction is a Class 3 felony. (415 ILCS 5/44(h)).

Michael Watson
Owner's Signature:

03/17/21
Date:

For multiple property owners, attach additional sheets containing all the information above along with a signed, dated certification for each.

V. Advance Partial Payment:

The RA shall select one of the following advance partial payment plans:

Plan 1: A \$500 advance partial payment is included with this application. Please make the check payable to: Illinois Environmental Protection Agency". Please include "For Deposit in the Hazardous Waste Fund" and the Remediation Applicant's FEIN or SSN on the check; or

Plan 2: Request that the Illinois EPA determine the appropriate partial payment (i.e., approximately one-half of the total anticipated costs of the Illinois EPA, not to exceed \$5,000). A completed DRM-3 form ("Request for Assessment of Advance Partial Payment for Anticipated Services") must accompany this application so that the Illinois EPA may determine the appropriate advance partial payment specific to the services requested.

If this application contains plans and reports for review and evaluation by the Illinois EPA, a completed DRM-2 Form must also accompany this submittal.

IV. Written Permission from the Property Owner (check one of the applicable boxes and provide additional information):

RA is the property owner of the remediation site identified in Section 1 of this application

RA is **not** the property owner of the remediation site identified in Section 1 of this application

Property Owner's Name: Mr./Ms. Mr. Michael Watson Title: Acting Village President
Company: The Village of Bradley, Illinois
Street Address: 147 S. Michigan P.O. Box: _____
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I hereby certify that the RA has my permission to enroll the site identified in Section 1 of this application into the Illinois EPA Site Remediation Program. I certify that the RA and designated representatives have permission to enter the indicated premises for the purpose of conducting remedial investigations or activities.

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Michael Watson
Owner's Signature:

03/17/21
Date:

For multiple property owners, attach additional sheets containing all the information above along with a signed, dated certification for each.

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Plan 1: A \$500 advance partial payment is included with this application. Please make the check payable to: Illinois Environmental Protection Agency". Please include "For Deposit in the Hazardous Waste Fund" and the Remediation Applicant's FEIN or SSN on the check; or

Plan 2: Request that the Illinois EPA determine the appropriate partial payment (i.e., approximately one-half of the total anticipated costs of the Illinois EPA, not to exceed \$5,000). A completed DRM-3 form ("Request for Assessment of Advance Partial Payment for Anticipated Services") must accompany this application so that the Illinois EPA may determine the appropriate advance partial payment specific to the services requested.

If this application contains plans and reports for review and evaluation by the Illinois EPA, a completed DRM-2 Form must also accompany this submittal.

Exhibit B

**ACCESS AGREEMENT
VILLAGE OF BRADLEY, ILLINOIS, PROPERTY**

THIS ACCESS AGREEMENT FOR THE VILLAGE OF BRADLEY, ILLINOIS, PROPERTY (the “Agreement”), effective as of February __, 2021 (the “Effective Date”), is made among **Take 5 Properties SPV LLC**, a Delaware limited liability company (“Take 5”), and the **Village of Bradley, Illinois** (“Bradley”). Take 5 and Bradley are individually referred to herein as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, Bradley is the owner of certain real property described in **Exhibit “A”** attached hereto and made a part hereof, with a property index number of 17-09-09-303-020 (the “Bradley Property”);

WHEREAS, Take 5 operates a Take 5 oil change facility on property leased from Store Master Funding VIII, LLC with an address of 1413 E. Larry Powers Road, Bradley, Illinois and a property index number of 17-09-09-303-021, which is located to the south and east of the Bradley Property;

WHEREAS, in July 2020, the Illinois Environmental Protection Agency (“Illinois EPA”) and the Fire Inspector for the Village of Bradley, Illinois conducted an investigation of the Take 5 oil change facility and the Bradley Property;

WHEREAS, at the request of Illinois EPA, Take 5 removed approximately 18 tons of soil from the Bradley Property in July 2020;

WHEREAS, Illinois EPA has requested that Take 5 conduct further soil and groundwater investigations of the Bradley Property, Take 5 and Illinois EPA are in the process of negotiating a Compliance Commitment Agreement (“CCA”), and such CCA is expected to require that Take 5 enter the Bradley Property into the Site Remediation Program (“SRP”) pursuant to 45 ILCS 5/58;

WHEREAS, Take 5 has retained qualified personnel and contractors in anticipation of undertaking at the Bradley Property the activities necessary to complete any and all investigations and/or site remediations that Illinois EPA may require in connection with the SRP (the “Work”);

WHEREAS, Bradley will provide Take 5 access to the Bradley Property to facilitate the Work in exchange for the commitments and obligations of Take 5 as stated herein; and

WHEREAS, Take 5 is authorized to enter into this Agreement, and hereby acknowledges its consent to be bound by the terms of this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree the foregoing Recitals are true and correct and hereby incorporate them into this Agreement by reference and further agree as follows:

AGREEMENT

1. Access

Bradley specifically authorizes Take 5 and its authorized agents, representatives, and contractors, as well as the Illinois EPA and their authorized agents, representatives, and contractors (collectively, the "Entrants"), to enter upon the Bradley Property, as provided in this Agreement, to conduct all activities as may be necessary to complete the Work. In exchange, Take 5 agrees to (i) perform the Work in full compliance with any and all applicable laws, rules, and regulations, including but not limited to any and all regulations, policies, and standards now or hereinafter promulgated by the Illinois IEPA and (ii) secure a No Further Remediation Letter from the Illinois EPA with respect to the Bradley Property.

2. Term

This Agreement will commence upon the execution hereof and, except as otherwise provided in this Agreement, will remain in effect until (i) the Illinois EPA has issued a No Further Remediation Letter with respect to the Bradley Property and (ii) all property restoration required under Paragraph 3 has been performed in full compliance with all Illinois EPA standards and requirements. Except as otherwise provided in this Agreement, this Agreement will automatically terminate as of the earliest date on which both of the foregoing requirements are met.

3. Property Restoration

Upon completion of the Work and the issuance of an Illinois EPA No Further Remediation Letter with respect to the Bradley Property, Take 5 shall restore the Bradley Property to a condition as close as reasonably possible to the condition existing prior to the Work. Take 5 may either remove or permanently abandon-in-place any remaining groundwater monitoring wells and other remediation, investigation, and monitoring structures, equipment or facilities on the Bradley Property, provided that any such abandonment must (i) be in accordance with applicable law, (ii) not create any dangerous condition on the Bradley Property, and (iii) be approved in writing by the Illinois EPA as to each facility, structure, or improvement so abandoned. Any and all such removal or abandonment must occur within six months after approval by Illinois EPA to do so.

4. Regulatory Compliance

Take 5 will ensure that the Work is performed in compliance with all applicable laws, rules and regulations, including but not limited to any and all Illinois EPA regulations, policies, and standards, and will obtain any and all permits necessary for the conduct of the Work. Take 5 will locate utilities on the Bradley Property prior to any invasive work on the Bradley Property. Take 5 will ensure that all investigative or remediation-derived materials resulting from the Work will be handled and disposed of in accordance with applicable laws, regulations and procedures. Any staging of such investigative or remediation-derived materials shall be in accordance with applicable regulations.

5. Indemnification

Take 5 shall fully indemnify, defend and hold harmless Bradley from and against any and all claims, suits, damages, liabilities, judgments, fines, attorneys' fees, penalties, losses, costs or expenses ("Claim") arising out of or caused by the Work, provided that Take 5 shall have no obligation to indemnify or hold harmless Bradley against that portion of any Claim to the extent caused by, resulting from, or arising out of the negligence or willful misconduct of Bradley for the Work ("Indemnified Matters").

6. Assumption of Defense

In connection with any indemnity by Take 5, Take 5 shall have the right to assume and take over the defense of any claim against Bradley and engage attorneys approved by Bradley, which approval shall not be unreasonably delayed or withheld, to represent both parties in connection therewith, at Take 5's sole cost and expense.

7. Insurance

Take 5 has secured and provided Bradley with a certificate of liability insurance (the "Certificate") (attached hereto as **Exhibit B** and fully incorporated herein), which the Village has determined to be acceptable to the Village. Take 5 agrees that it will not terminate, cancel, or change the insurance coverages on the Certificate without first giving Bradley thirty (30) days written notice and securing Bradley's written consent to any such termination, cancellation, or change. Further, for the purposes of providing insurance coverage to Bradley against any and all claims that may arise out of or result from the Work, Take 5 will ensure that (i) all prime contractors performing Work on the Bradley Property purchase and maintain comprehensive general liability, contractors pollution liability, workers compensation insurance, and any other insurance coverage(s) necessary to ensure that each such contractor possesses the same or better coverage than Take 5 under the Certificate in the same or greater amounts (*see Exhibit B*) and (ii) all subcontractors performing Work on the Bradley Property purchase and maintain comprehensive general liability, contractors pollution liability, workers compensation insurance, and any other insurance coverage(s) necessary to ensure that each such contractor possesses the same or better coverage than Take 5 under the Certificate in amounts no less than fifty (50) percent of the amounts shown on the Certificate (*see Exhibit B*). No such policy shall be terminated, cancelled, or changed without notice to and written approval of Bradley as provided in this paragraph, above. All such insurance policies must be acquired from a company or companies authorized to do business in the State of Illinois and having current ratings from A.M. Best Company of A-VIII or higher. Bradley shall be named as an additional insured on each such insurance policy and each such policy shall specify that its coverage is primary and noncontributory. In the event that any contractor employed by Take 5 fails to purchase and maintain any and all insurance coverages required by this paragraph, Take 5 shall be responsible for, shall pay, and shall indemnify and hold harmless the Village against any and all losses, costs, and/or damages, however occasioned, as may be suffered on account of said failure.

8. Bradley's Obligations

a. Bradley represents and warrants that it is the sole owner of the Bradley Property, that it is fully authorized to execute this Agreement, and that it will fully indemnify, protect, and indemnify Take 5 against any and all claims by persons who contest Bradley's ownership or authority as stated in this Paragraph 8(a). Bradley further represents and warrants that the Bradley Property is free and clear of any liens, mortgages, or encumbrances that could impair Bradley's ability to execute this Agreement.

b. Bradley shall notify Take 5 of any condition of the Bradley Property of which Bradley has actual knowledge that may threaten the Work on the Bradley Property, including the locations of any utilities known by Bradley.

c. Bradley will use all reasonable efforts to avoid taking any action on the Bradley Property that is likely to disrupt, interfere with, or alter the Work.

d. All equipment related to the Work remain the property of Take 5. Bradley agrees not to disturb, damage, abandon or destroy any such equipment related to the Work on the Bradley Property.

e. Bradley hereby authorizes Take 5 and its contractors to erect temporary signs, barricades or fences to prevent unauthorized persons from entering or drawing near areas where assessment or drilling activities or other activities are occurring that involve the use of equipment or that could be disturbed or interfered with by third parties.

f. Bradley hereby authorizes Take 5 and its contractors to temporarily cordon off an area in the vicinity of the equipment used to perform the Work as such equipment moves about the Bradley Property for purposes of excavating, handling and accumulating soil, water, spent supplies and waste materials.

g. Bradley understands and agrees that signs, notices, or placards may be placed indicating that the activities occurring or the substances present at the Bradley Property are dangerous, hazardous, or subject to regulation.

h. In the event Bradley sells the Bradley Property, Bradley shall notify the purchaser of the existence of this Agreement and of the obligations hereunder, and shall secure purchaser's written assent to abide by the terms of this Agreement, and shall provide a copy of purchaser's written assent to Take 5. As a condition to such assent, Take 5 agrees to be bound to the purchaser with respect to all of Take 5's obligations to Bradley under this Agreement.

9. No Admission of Liability

The Parties agree that nothing contained in this Agreement shall be construed as an admission of liability with respect to the matters set forth in this Agreement.

10. No Partnership

Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, or of partnership, or joint venture, or of any other association between Bradley and Take 5.

11. No Release or Waiver

Nothing contained in this Agreement is intended or shall be construed as releasing or waiving any claim(s) of liability that Bradley may have or hereinafter accrue against Take 5 from any source derived, including but not limited to any and all liability associated with Take 5's actions and/or negligence that lead to the release of chemical contaminants on the Bradley Property, as well as any and all liability associated with Take 5's actions or negligence, or the actions or negligence of any of the Entrants, their agents, or their contractors, in connection with the Work.

12. Notices

Any notice, request, direction, instruction, payment or other communication required or permitted to be made or given by any party hereto shall be in writing to the addresses set forth below or to such other address as the recipient may designate in writing to all parties and shall be (i) delivered in person, (ii) sent registered or certified mail, return receipt requested, (iii) sent Federal Express, USPS Express Mail, UPS or other overnight delivery service with delivery confirmation, or (iv) sent by email, in which case notice shall be deemed complete upon receipt of an electronic "read receipt" or a response from the recipient.

If to Bradley:

The Village of Bradley
147 S. Michigan
Bradley, Illinois 60915
Attn: Village President
(815) 932-2125

With a copy to:

Jeffrey Taylor
SPESIA & TAYLOR
1415 Black Road
Joliet, Illinois 60435
(815) 726-4311
jtaylor@spesia-taylor.com

If to Take 5:

Susan Mervine
Take 5 Properties SPV, LLC
440 South Church St., Ste. 700
Charlotte, North Carolina 28202
(980) 235-8337
susan.mervine@drivenbrands.com

With a copy to:

Jonathan Wells
Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street NE, Suite 900
Atlanta, GA 30309
(404) 812-0156
jwells@kmcllaw.com

13. Electronic Mail as Writing

The parties expressly acknowledge and agree that, notwithstanding any statutory or decisional law to the contrary, the receipt of electronic mail will be deemed to be “written” and a “writing” for all purposes of this Agreement.

14. Assignment

The rights of the parties under this Agreement are personal and, subject only to the provisions set forth in Paragraph 8(h) above, may not be assigned without the prior written consent of the other Parties hereto. Subject to the foregoing, this Agreement will be binding upon and enforceable against, and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors (including successors in title) and permitted assigns.

15. Headings

The use of headings, captions, and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and will in no event be considered otherwise in construing or interpreting any provision in this Agreement.

16. Severability

If any term, covenant, condition or provision of this Agreement, or the application thereof, to any person or circumstance, is ever held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstances (other than those to which it will be invalid or unenforceable) will not be hereby affected and each term, covenant, condition and provision hereof will remain valid and enforceable to the fullest extent permitted by law.

17. Non-Waiver

Failure by any Party to complain of any action, non-action or breach of any other Party will not constitute a waiver of any aggrieved Party’s rights hereunder. Waiver by any Party of any right arising from any breach of any other Party will not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

18. Rights Cumulative

All rights, remedies, powers and privileges conferred under this Agreement on the Parties will be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

19. Applicable Law; Forum Selection

This Agreement and its attachments will be governed by and construed under and in accordance with the laws of the State of Illinois. The Parties hereby agree and affirm that sole and exclusive jurisdiction over any and all disputes arising out of or in relation to this agreement shall be vested in the Circuit Court for the Twenty-First Judicial Circuit, Kankakee County, Illinois. The Parties hereby submit to the personal and subject matter of said court for all purposes related to this Agreement and further waive any right to challenge venue therein, including but not limited to by filing any motion forum *non conveniens*.

20. Entire Agreement

This Agreement contains the entire agreement of the Parties with respect to Take 5's access to the Bradley Property as provided herein.

21. Modifications

This Agreement will not be modified or amended in any respect except by written agreement by the Parties in the same a manner as this Agreement is executed.

22. Counterparts

This Agreement may be executed in several counterparts, each of which will be deemed an original, and all such counterparts together will constitute one and the same instrument.

23. Electronic Signatures

Electronic signatures, including signature pages transmitted via email, are binding upon all Parties and deemed as originals.

24. Authority

Each Party hereto warrants and represents that such Party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a Party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such Party and that such Party is bound by the signature of such representative.

25. Third Party Beneficiary

There are no intended or unintended third-party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first written above.

**[REMAINDER OF PAGE LEFT BLANK;
SIGNATURES FOLLOW ON PAGES 8-9]**

Bradley/Take 5 Access Agreement

Reviewed and Approved by Take 5 Properties SPV LLC:

Signature: DocuSigned by:
Scott O'Melia
BA4DA03F568D4D8...

Print Name: Scott O'Melia

Title: EVP, General Counsel

Reviewed and Approved by the Village of Bradley:

Village of Bradley, Illinois,
a municipal corporation

Michael Watson
Michael Watson, Acting Village President

03/17/21
Date