

Smart City Brokerage Agreement

This Agreement (“Agreement”) is entered into by and between Peoria Innovation Hub NFP, an Illinois not-for-profit corporation dba Distillery Labs (“BROKER”) and the City of Peoria, Illinois, an Illinois municipal corporation, (“CITY”) effective as of September 28, 2022, (the “Effective Date”).

In consideration of the covenants contained herein, CITY and BROKER hereby mutually agree as follows:

1. PURPOSE

It is the intention of the BROKER and CITY to create a smart technology network within the CITY’s roadway rights-of-way. This “Living Laboratory” would give technology startups and technology companies (the “BROKER’s USERS” or the “USERS”) the opportunity to beta test products and solutions that will eventually be brought to market. BROKER’s programs are focused on encouraging economic development through entrepreneurship, and this business incubator specifically relates to smart city and smart mobility technologies and services. The purpose of this Agreement is to confirm the approval of the terms and conditions related to the installation and maintenance of smart city improvements in the public right-of-way, set out in Exhibit A, attached hereto. This Agreement authorizes BROKER and its USERS to install smart city/technology focused improvements including, but not limited to: cellular communication network hardware, smart street light control nodes, shared use or multi-modal mobility hubs, Wi-Fi hotspots, electric vehicle charging stations, digital kiosks, cameras and environmental sensors on behalf of CITY in the public right-of-way and on CITY-owned property, subject to the approval of CITY as more specifically described in Exhibit A, attached hereto (hereinafter referred to as "Living Laboratory Project"). The area for the deployment of these improvements is depicted in Exhibit A. This Agreement shall be interpreted as in compliance with, and not in conflict with, Illinois’ Small Wireless Facilities Deployment Act (50 ILCS 840/1 *et seq.*). The parties acknowledge that the Small Wireless Facilities Deployment Act is scheduled to be repealed January 31, 2023, and any amendments or continuation of said Act or versions of said Act will require parties to revise this Agreement. In the event of a conflict between provisions of this Agreement and the Small Wireless Facilities Deployment Act, the provisions of the Small Wireless Facilities Deployment Act shall govern.

2. BROKER RESPONSIBILITIES

- A. BROKER will serve as the intermediary between the CITY and USERS for the USER’S use of the CITY’s right-of-way and infrastructure. Any costs associated with such brokering would be borne by BROKER or its USERS.
- B. Prior to installation, BROKER will provide a written proposal to the CITY that states what USER will install, including any proposed telecommunication technologies to be

deployed and their frequency bands, the duration of operation and how public safety, privacy, and existing accessibility of CITY's right-of-way will be preserved. The proposal will also include a plan for avoiding interruptions in or interference with the CITY's existing telecommunications services (including the CITY's emergency communications for public safety) and a plan for immediate response in the event of an interruption or interference.

- C. BROKER will coordinate the installation timeline with the CITY.
- D. BROKER will notify private utilities known to be within the CITY's right-of-way when installation and maintenance of USER's improvements may affect the private utility. BROKER acknowledges the CITY is a party to existing franchise agreements that dictate the terms and use of certain utilities in the right-of-way.
- E. BROKER will ensure USERS install their improvements with minimal effort from the CITY.
- F. BROKER or its USERS will be responsible for the cost of installing any improvements and damages to the CITY's property, if any.
- G. BROKER or its USERS will be responsible for maintenance of any improvements and damages to the CITY's property, if any, and will reimburse the CITY for any documented operational costs above a *de minimis* amount.
- H. BROKER will ensure that the USERS comply with the insurance requirements as attached in Exhibit B to this Agreement.
- I. Otherwise comply with the terms of this Agreement.
- J. It is further understood that the BROKER does have any obligations or responsibilities under Section 2 of this Agreement until it has secured at least one Agreement with a USER."

3. CITY RESPONSIBILITIES

- A. If the Small Wireless Facilities Deployment Act applies, the CITY will review and respond to all BROKER's proposals within ninety (90) days of submission. If the Small Wireless Facilities Deployment Act does not apply, the CITY will review and respond to all BROKER's proposals within fourteen (14) days of submission.
- B. The CITY will only be able to refuse BROKER projects for public safety concerns or privacy infringement concerns (e.g., facial recognition) or accessibility concerns under the most recent version of the Public Rights-of-Way Access Guidelines (PROWAG) at www.access-board.gov/prowag.
- C. If the CITY needs to make repairs or improvements within the right-of-way, it will work with BROKER to relocate any USER improvements at the BROKER's expense.
- D. If the CITY is aware of a private utility repairs or improvements, the CITY will attempt to notify BROKER so that BROKER can coordinate with the private utility.
- E. Coordinate CITY activities related to the Living Laboratory Project.

F. Otherwise comply with the terms of this Agreement.

4. TERM

The term of this Agreement (Term) shall commence on the Effective Date and shall extend for three (3) years from the Effective Date but can be extended on a year-to-year basis thereafter by written agreement of the parties unless sooner terminated at an earlier date in accordance with the terms of this Agreement.

5. TERMINATION

It is understood and agreed that either party may terminate this Agreement without cause ninety (90) days after delivering to the other party notice in writing of its intention to terminate. In addition, in the event that BROKER shall breach (whether by failure to perform, keep or observe) any of the terms, covenants and conditions of the Agreement, that shall constitute a default and the CITY may terminate the Agreement for cause by giving BROKER twenty (20) days written notice of such default, during which time BROKER may attempt to cure such breach. Notwithstanding the foregoing, CITY may terminate this Agreement without any advance notice if CITY finds that the public interest, safety, health, or welfare requires it.

Upon termination or expiration of the Term of this Agreement, BROKER or its USERS will remove all equipment installed pursuant to this Agreement at BROKER's or USER's cost and will return the right-of-way area to its previous or better condition within ninety (90) days.

6. COMPLIANCE WITH LAWS AND REGULATIONS

This Agreement is entered into subject to and controlled by all applicable ordinances of the City of Peoria and all applicable State and Federal laws, rules, and regulations.

The CITY represents, acknowledges and agrees that (a) the CITY's receipt of the services described herein and participation in the Living Laboratory Project does not violate any applicable procurement rules in effect as of the Effective Date; (b) physical equipment or other tangible personal property being left with the CITY at the conclusion of the Term (if any) does not violate any applicable procurement rules in effect as of the Effective Date; and/or (c) the provisions of this Agreement will not disqualify BROKER or any USER from any future procurements with the CITY.

7. INSURANCE AND INDEMNIFICATION

- A. BROKER must provide USER's certificate of insurance evidencing proof of general liability, automobile, cyber liability and workers compensation/employer's liability and excess/umbrella insurance coverages as described in Exhibit B. The CITY will be provided a waiver of subrogation waiving rights of recovery against CITY on the workers' compensation/employer's liability policy. The CITY will be shown as the

certificate holder. This insurance must stay in force for the duration of the USER's use of the CITY's right-of-way.

- B. In its agreement with its USERS, BROKER shall ensure that the USER agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by USER's installation and maintenance of its improvements and its use of the CITY's right-of-way, except that the indemnity provided for in this paragraph shall not apply to liability to the extent caused by the negligence or fault of CITY, its officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the CITY and the BROKER's USERS hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

8. LIMITATION OF AGREEMENT

The CITY and BROKER agree and acknowledge that this Agreement is entered into by and between the CITY and BROKER only and is not intended to inure to the benefit of any other party. No party other than the CITY and BROKER may claim a benefit pursuant to this Agreement.

9. ASSIGNMENT

BROKER and CITY shall not sell, assign, transfer, or convey this Agreement, in whole or in part, without the prior written consent of the other party.

10. VENUE

The obligations of the parties to this Agreement shall be performed in Peoria County, Illinois, and if legal action is necessary in connection with or to enforce rights under this Agreement, exclusive venue shall lie in Peoria County, Illinois.

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Illinois, without regard to conflict of law or choice of law principles of Illinois or of any other state.

12. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

13. CONFLICT OF INTEREST

A. BROKER shall direct USER and its agents and associates to make regular, timely, continual, and full disclosures to the CITY of all significant outside interests and responsibilities that may give rise to a direct or indirect conflict of interest, including, but not limited to, any and all significant outside interests and responsibilities that could reasonably be expected to impair independence of judgment in CITY's or its officials and employees and USER's performances of all of the services under this Agreement. A potential or actual conflict of interest exists when commitments and obligations to the CITY or widely recognized professional norms are likely to be compromised in USER's performance of its duties under this Agreement by the existence of USER'S other professional relationships, contracts, obligations, or commitments. Failure to disclose such a conflict of interest may result in the CITY's immediate termination of this Agreement.

B. The following section of the Peoria, Illinois Code of Ordinances shall apply to this Agreement, to wit:

"Article IV. Sec. 10-108. City officers, etc., not to have interest.

No officer or employee of the department of public works shall be interested, directly or indirectly, in any contract made and entered into under the provisions of this article, for any work to be done, or for any materials to be furnished; and all contracts so made in which such officer or employee, or the city manager or comptroller of the city shall be so interested shall, at the option of the city, be declared unlawful and void, and of no binding effect whatsoever; and such officer or employee interested in any contract shall thereby forfeit his office, and be removed therefrom on proof of such delinquency."

14. GIFT TO PUBLIC SERVANT

A. CITY may terminate this Agreement immediately if BROKER or a USER has offered or agreed to confer any benefit upon a CITY employee or official that the CITY employee or official is prohibited by law from accepting.

B. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

C. Notwithstanding any other legal remedies, CITY may require BROKER or a USER to remove any employee from the Living Laboratory Project who has violated the restrictions of this section or any similar state or federal law and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a CITY employee or official.

15. NONDISCRIMINATION

As a condition of this Agreement, BROKER covenants that BROKER will take all necessary actions to ensure that, in connection with any operations under this Agreement, BROKER, its officers, employees and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance, either directly, indirectly or through contractual or other arrangements. BROKER shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, BROKER shall keep, retain, and safeguard all records relating to this Agreement or work performed hereunder for a minimum period of three (3) years from Agreement completion, with full access allowed to authorized representatives of CITY, upon request, for purposes of evaluating compliance with this and other provisions of the Agreement.

16. WAIVER

No waiver of any term or condition of this Agreement by either party shall be deemed to imply or constitute a further waiver of the same term or condition or of any other term or condition. Any such waiver must be in writing and signed by the party granting such waiver.

17. CONSTRUCTION

Each party agrees that any court interpreting or considering this Agreement shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who prepared it.

18. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

19. INDEPENDENT CONTRACTOR

BROKER's and CITY's status shall be that of an independent contractor and not an agent, servant, employee, or representative of the other in the performance of the Agreement. BROKER and CITY shall each exercise independent judgment in performing duties under this Agreement and each is solely responsible for setting working hours, scheduling, or prioritizing the workflow and determining how the work is to be performed under this Agreement for their respective organizations. No term or provision of this Agreement or act of BROKER or CITY in the performance of this Agreement shall be construed as making BROKER or CITY the agent, servant, or employee of the other, or making BROKER or CITY or any of their employees eligible for the

fringe benefits, such as retirement, insurance, and worker's compensation, which each party provides to its own employees.

20. ADVICE OF COUNSEL

Both parties acknowledge that this Agreement is a legal document and that they have been advised and given the opportunity to seek the advice of legal counsel of their own choosing as to its contents, obligations, and effect.

21. ENTIRE AGREEMENT

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written supplemental agreement executed by both parties.

22. SIGNATORY APPROVAL

The undersigned parties bind themselves to performance of this Agreement. It is mutually understood that this Agreement shall not become effective until approved by governing bodies or authorized officials of all parties.

23. DATA

During the Term, BROKER will provide CITY access to certain data generated with respect to the Project (the "Data"). Data will be provided by BROKER or its USERS in the form of access to a web-based data portal used in the standard course of business with the Project. The web-based data portal will be used only for storage of raw data and not for hosting any derivative work, additional analysis, or any intellectual property. Subject to the terms and conditions herein, as between the parties, certain Data are and shall remain the property of BROKER or its USERS during and after the Term. To be included in USER's proposal, USER will grant to CITY a non-exclusive, worldwide, non-transferable, full paid-up, royalty free license to use certain USER Data. Upon expiration of the Term, Data will no longer be provided to the CITY.

Regarding Data:

- A. The CITY agrees to share certain Data generated by its facilities within the prescribed area (i.e., traffic data, signal timings, etc.) within thirty (30) days of request from BROKER or its USERS. Such requests will be limited to no more than two (2) per week and one hundred (100) per year.
- B. BROKER's USERS will agree to share certain Data gathered by their projects, and not directly related to their intellectual property, on the Project's web-based data portal.

- C. The CITY shall have no rights to own Data or intellectual property created by USERS nor will CITY demand payment or ownership in any product or service developed within the USER's Living Laboratory Project.
- D. BROKER and USER acknowledge that the CITY is subject to the Illinois Freedom of Information Act, 5 ILCS 140 *et. seq.* and the requirements for disclosure and retention contained therein.

24. LIMITATION OF LIABILITY

Neither BROKER nor the USERS will be liable to CITY for any indirect, incidental, consequential, punitive, reliance or special damages, including, without limitation, damages for lost profits, advantage, savings, or revenues or for increased cost of operations arising in connection with this Agreement or the Living Laboratory Project in any way. This Section will apply (a) regardless of the form of action, whether in contract, warranty, strict liability, tort (including, without limitation, negligence of any kind, whether active or passive) or otherwise, and (b) whether or not damages were foreseeable. With respect to proven, direct damages, BROKER's and each USER's liability under this Agreement will not exceed FIFTY THOUSAND DOLLARS (\$50,000.00) on a per claim or aggregate basis.

25. INTELLECTUAL PROPERTY

Any inventions, improvements, developments or innovations resulting or derived from the Project that are made, conceived or devised by BROKER and/or any BROKER Party prior to, in the course of, and/or after the Project, including all rights to patents, copyrights, trademarks and trade secrets related thereto, are and will be the sole and exclusive property of the applicable USER, including but not limited to any and all inventions, ideas, and know how. Neither ownership of, nor title to, nor license under any invention, improvement, development, or innovation (including all rights to patents, copyrights, trademarks, and trade secrets related thereto) provided or made available to CITY by BROKER or any USER in the course of the Living Laboratory Project will pass to CITY.

26. WARRANTY EXCLUSIONS

THE CITY UNDERSTANDS THAT THE LIVING LABORATORY PROJECT INVOLVES EXPERIMENTAL SERVICES AND IS OFFERED ON AN "AS IS" BASIS, AND BROKER AND IT'S USERS MAKE NO WARRANTY, GUARANTEE, OR REPRESENTATION, EXPRESS OR IMPLIED, RELATING TO THE RELIABILITY, EFFECTIVENESS, ACCURACY, COMPLETENESS, PERFORMANCE, OR OPERATION OF THE LIVING LABORATORY PROJECT, OR OF THE EQUIPMENT, SERVICES, AND DATA FURNISHED TO CITY FOR PURPOSES OF THE PROJECT OR THIS AGREEMENT, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

27. OWNERSHIP OF CONFIDENTIAL INFORMATION

All information identified by the disclosing party as confidential or proprietary or which the receiving party in the exercise of reasonable judgment should recognize as proprietary or confidential to the disclosing party (collectively "Confidential Information") shall be protected and kept confidential by the receiving party, shall remain the property of the disclosing party, and shall be returned upon written request or upon the receiving party's determination that it no longer has a need for such Confidential Information. Upon expiration or termination of this Agreement, each party will return to the disclosing party, or, if agreed to by the disclosing party, destroy, all Confidential Information supplied by the disclosing party, and all copies of Confidential Information. Receiving party shall not be obligated to destroy and/or delete any Confidential Information contained in its automatic electronic backup systems. For the avoidance of doubt and without limitation, the parties consider the Data to be Confidential Information subject to the confidentiality obligations of this Agreement, and to be owned by BROKER (or the applicable USER). Because CITY is an Illinois municipality, these obligations are subject to the provisions of the Illinois Freedom of Information Act and public record keeping obligations and nothing herein is intended to conflict with those obligations.

28. APPLICATION OF EXISTING CONTRACTS

Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that the Agreement does not modify or otherwise affect any existing contract between BROKER and the CITY and/or between any USER and the CITY, each, and all of which remain in full force and effect.

29. ACCESS RIGHT

The CITY will coordinate with the BROKER and the USERS to furnish BROKER and the USERS with timely access to any CITY-owned conduit holes, wireways, wiring, plans, equipment, space, power/utilities, and other property as BROKER and the USERS reasonably require for the Project. To effectuate such access, the CITY will coordinate with the BROKER and the USERS timely obtain or provide, at no cost, any necessary licenses, permits and consents (including easements and rights-of-way) necessary for the Living Laboratory Project, including licenses, permits and consents for property controlled by third parties such as any of the CITY's landlord(s).

30. NON-EXCLUSIVITY

Nothing within this Agreement precludes the CITY from conducting its own projects within the designated area, but the CITY will make its best efforts to coordinate any such projects with BROKER. The BROKER expressly acknowledge that this Agreement does not create an exclusive relationship. The CITY is free to engage others to perform services of the same or similar nature as to those provided by BROKER or USER. It is further understood and agreed that the CITY may solicit potential USERS and recruit new USERS on its own.

[Remainder of this page left intentionally blank. Signatures appear on the following page.]

EXECUTED THIS 28th day of September, 2022 by CITY, duly authorized to execute same by a majority vote of the Peoria City Council approved on September 27, 2022 and by BROKER, acting through its duly authorized officials.

APPROVED AS TO FORM:

CITY OF PEORIA, ILLINOIS, A
MUNICIPAL CORPORATION

BY: Christina L. Kapuska
Corporation Counsel

BY: [Signature]
City Manager

DISTILLERY LABS
BY: [Signature]
TITLE: Interim Executive Director

Exhibit A

Description of Project

The description below offers background information, primary objective, general geographic scope, and a non-exhaustive list of prospective experiments for the Living Lab Project planned for the Heart of Peoria. This agreement will apply without limitation to the below General Geographic Scope, as well as any mutually agreeable expansion or modification of scope in geography or projects over the course of the agreement.

Background:

The Living Lab Project is part of Distillery Labs, a regional innovation hub – and 1 of 15 Illinois Innovation Network Hubs – created to leverage a network of higher education institutions and partner agencies to drive region-specific economic development. The Living Lab Project aims to create a real-world testing environment for advancing Smart and Connected Communities (S&CC) technologies and business models. The Living Lab Project will identify and develop foundational S&CC infrastructure within the public rights-of-way in the Heart of Peoria in order to host experimentation of processes, products, digital platforms, and physical environments that will help improve quality of life for residents. The Living Lab Project will support experiments developed through partnerships and collaborations with public agencies, private companies, universities, and community organizations. Use case experiments will be developed and evaluated through a diversity, equity, and inclusion (DEI) lens and performance will be measured against community-informed outcomes and benchmarked standards for mobility and accessibility, economic opportunity, public safety, environmental sustainability, community health and wellbeing, and civic innovation. Initial Living Lab Project planning funding was provided by an Illinois Department of Transportation (IDOT) Statewide Planning and Research (SPR) Grant with local matching contributions from Peoria County and the City of Peoria.

Objective:

The Living Lab Project aims to create a real-world testing environment for advancing Smart and Connected Communities (S&CC) technologies and business models that can expand economic opportunity and improve quality of life for residents of the Peoria region.

General Geographic Scope:

The Living Lab Project is located within the CITY-designated Heart of Peoria area. A preliminary loop and two (2) transects of roadway right-of-way have been identified for the Living Lab Project for the initial smart technology network development and exploration of smart city project use cases. The roadway loop includes West Main Street to Main Street to Southwest Adams Street to South Western Avenue to North Western Avenue and back to West Main Street. The transects include roadway sections of North University Street to North MacArthur Highway to South MacArthur Highway between West Columbia Terrace and Southwest Washington Street and

roadway sections of West Martin Luther King Junior Drive to West John H Gwynn Junior Avenue between South Western Avenue and North William Kumpf Boulevard.

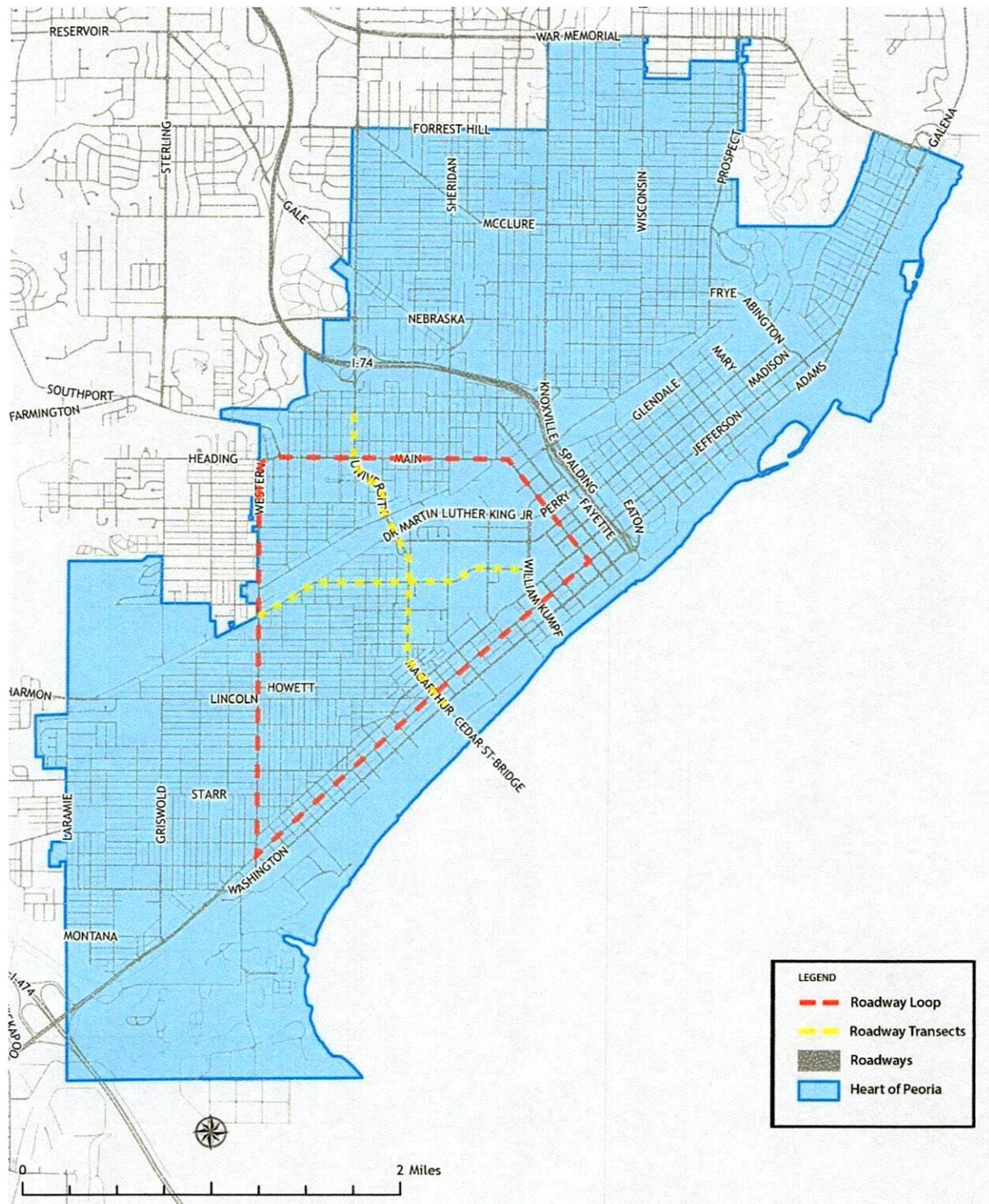


Figure 1 Living Lab Project area (Heart of Peoria) with preliminary roadway right-of-way loop and transects shown.

Proposed Use Cases for Living Lab Project:

It is anticipated that use cases and associated experiments within the Living Lab Project will change over time, however, below are several initial use cases that have been identified with prospective USERS that may be included.

1. *Smart Streetlight pilot project* (City of Peoria) – will use remote sensors, lighting controls, and/or cameras to monitor and develop strategies to address current challenges (e.g., illegal dumping, crimes against property, etc.) within targeted areas of the Heart of Peoria.
2. *Green Stormwater Infrastructure Remote Performance Monitoring pilot project* (City of Peoria) - will gather data on existing roadway right-of-way stormwater best management practice (BMP) installations to track performance and inform future combined sewer overflow (CSO) Long-Term Control Plan and/or public Stormwater Utility work (e.g., Complete Green Streets projects).
3. *Wastewater Infrastructure Remote Performance Monitoring and Automation pilot project* (Greater Peoria Sanitary District) – will gather data to improve the management of stormwater and/or wastewater treatment systems components and processes.
4. *Urban Core Microtransit pilot project* (Greater Peoria Mass Transit District) – will focus on leveraging mobile communications technology and mobile applications to enable on-demand, electrified transit services that help improve access to employment opportunities, food, and medical services for residents and visitors in downtown Peoria and surrounding urban core neighborhoods and districts (e.g., Downtown Peoria Microtransit Zone as defined in the October 2021 GPMTD Microtransit Study).

Exhibit B
Insurance Requirements

SECTION A. USERS shall procure, pay for, and maintain the following insurance written by companies that maintain a rating of "A minus" or better as established by A.M. Best and Company and acceptable to CITY. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY OR PERFORM UNDER THIS AGREEMENT UNTIL CERTIFICATES OF INSURANCE HAVE BEEN DELIVERED TO THE CITY and no officer or employee shall have authority to waive this requirement.

SECTION B. The CITY reserves the right to review the insurance requirements of this section during the Term of the Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY.

SECTION C. REQUIRED PROVISIONS

With respect to the below required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Peoria and its officers, employees, and elected representatives as additional insureds to all applicable coverages, with the exception of Workers' Compensation.
- b. State that coverage shall not be canceled except after thirty (30) days written notice to:

Corporation Counsel
419 Fulton Street, Room 403
Peoria, IL 61602

- c. Waive subrogation against the City of Peoria, its officers, and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the USER's insurance is primary insurance as respects the CITY, its officers, employees, and elected representatives.
- e. Ensure that all certificates of insurance identify the service or product being provided and name the CITY as the Certificate Holder.

SECTION D. INSURANCE COVERAGE REQUIRED

Subject to USER's right to maintain reasonable deductibles, USER shall obtain and maintain in full force and effect for the duration of its use of the CITY's right-of-way at USER's sole expense, insurance coverage in the following type(s) and amounts:

1. Workers' Compensation insurance as required by the State of Illinois, providing statutory benefits, and Employers' Liability of not less than the following:

Bodily Injury by Accident: \$1,000,000 Each Accident

Bodily Injury by Disease: \$1,000,000 Policy Limit

Bodily Injury by Disease: \$1,000,000 Each Employee

2. Cyber Insurance. USER shall maintain, at its own expense, cyber liability insurance coverage or a cyberliability rider in an Errors and Omissions policy providing coverage for unauthorized access, failure of security, breach of privacy, as well as notification costs and regulatory defense in an amount of not less than \$1,000,000. Such insurance shall be maintained in force at all times during the use of the City's right-of-way and for a period of two years thereafter for services completed during the term of the contract or brokerage agreement.

3. Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.

4. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations*, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, and \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate.

5. Excess/Umbrella Liability providing coverage excess of the Commercial General Liability, Business Automobile Liability and Employer's Liability insurance, in an amount of not less than \$2,000,000 each occurrence and \$2,000,000 annual aggregate.

SECTION E. (1) Without limiting any of the other obligations or liabilities of the USER, the USER shall require each of its contractors performing work related to the Living Laboratory Project, at the contractor's own expense, to maintain in full force and effect for the duration of its use of the CITY's right-of-way, levels of insurance that are necessary and appropriate for the work being performed, comply with all applicable laws and are consistent with industry standards. The contractor's liability insurance shall name the USER and CITY as additional insured parties. (2) The USER shall obtain and monitor the certificates of insurance from each contractor. The USER must retain the certificates of insurance for the duration of contractor's use of the CITY's right-of-way and shall have the responsibility of enforcing insurance requirements among its contractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION F. Approval, disapproval, or failure to act by the CITY regarding any insurance supplied by the USER or its contractors shall not relieve the USER of full responsibility or liability for damages and accidents as set forth in this Agreement. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the USER from liability.