

**TIERED APPROACH TO CORRECTIVE ACTION
SUPPLEMENTAL RIGHT-OF-WAY AGREEMENT**

This Agreement is entered into this ____ day of _____, 20__ pursuant to the Municipal Code of the City of Chicago Section 2-30-030 ("Code") by and among _____ ("Owner") and _____ ("Operator"), together referred to herein as "Owner/Operator," and the City of Chicago ("City"), as follows:

WHEREAS, Owner/Operator is pursuing corrective action at a site and in the right-of-way adjacent to the site located at _____ ("Site") and legally described in Attachment A; and

WHEREAS, attached as Attachment B is a site map showing the known and probable area(s) of contaminant impacted soil and groundwater in the right-of-way where, at the time of this Agreement, contaminants exceed the Tier 1 residential remediation objectives under 35 Ill. Admin. Code Section 742; and

WHEREAS, also attached as Attachment C is a table showing the concentration of contaminants in soil and/or groundwater within the area described in Attachment B and showing the applicable Tier 1 soil and groundwater remediation objectives for residential property that are exceeded; and

WHEREAS, under 35 Ill. Admin. Code 742.1020, the use of risk-based, site-specific remediation objectives in the right-of-way require entry of the City into a Highway Authority Agreement Memorandum of Agreement ("Highway Authority Agreement"), in lieu of active remediation of the contaminant-impacted soil and/or groundwater; and

WHEREAS, the Owner/Operator has requested that the City enter into a Highway Authority Agreement in the form prescribed by the Illinois Environmental Protection Agency, set forth in Attachment D; and

WHEREAS, the City, as a condition of entering into the Highway Authority Agreement, requires certain covenants on the part of the Owner/Operator in exchange for its agreement to execute that form;

NOW, THEREFORE, the parties agree as follows:

1. The City agrees that it will prohibit by ordinance the use of groundwater as required by Paragraph 8 of the Highway Authority Agreement. This prohibition is ensured in Code Section 11-8-390. The City further agrees that it will limit access to soil as required by Paragraph 9 of the Highway Authority Agreement. This prohibition is ensured through operation of Code Section 10-20-100 et seq., and by requiring applicants for a public way work permit in the right-of-way described in Attachment B to consult the City and complete Form No.

DOE.ROW.01 (or successor document), Attachment E, before obtaining a permit.

- a. Where the pavement in the right-of-way is to be considered an engineered barrier, the Owner/Operator agrees to reimburse the City for maintenance activities requested by Owner/Operator. Except for ordinary maintenance performed on City roadways, the City does not agree to maintain the right-of-way, nor does it guarantee that the right-of-way will continue as a roadway or that the right-of-way will always be maintained as an engineered barrier.
 - b. This agreement does not in any way limit the City's authority to construct, reconstruct, repair or maintain and operate a right-of-way upon the property identified in the Highway Authority Agreement or to allow others to do the same. To that extent, the City reserves the right to identify, investigate, and remove contaminated soil and/or groundwater above Tier 1 residential remediation objectives from the right-of-way identified in the Highway Authority Agreement and to dispose of them as it deems appropriate in accordance with applicable environmental regulations so as to avoid causing a further release of the contaminants and to protect human health and the environment. The Owner/Operator shall reimburse the actual costs incurred by the City or others in so identifying, investigating, removing, storing, handling or disposing of contaminated soil and/or groundwater, and it shall not be a defense for Owner/Operator that those costs were not consistent with or required by Illinois Pollution Control Board or United States Environmental Protection Agency regulations, guidelines or policies. Prior to incurring any such costs, and unless there is an urgent reason otherwise, the City shall first give Owner/Operator thirty days notice and an opportunity to remove or dispose of contaminated soil and/or groundwater, at Owner/Operator's cost, to the extent necessary for the City's work. Such removal and disposal shall be in accordance with all applicable laws and regulations. Failure to give this opportunity to Owner/Operator shall not be a defense to a claim for reimbursement or that the work should not have been done. There is a rebuttable presumption that the contamination found in the right-of-way described in Attachment B arose from the release of contaminants at the Site. Should Owner/Operator not reimburse the costs identified here, this Agreement shall be null and void in addition to such other remedies as may be available to the City by law, and the City shall void the Highway Authority Agreement.
2. The Owner/Operator agrees to indemnify and hold harmless the City, its agents and employees, and other entities using the right-of-way by a permit issued by the City, for all obligations asserted against or costs incurred by them associated with the release of contaminants of concern as described in Attachment C.

3. Violation of the terms of this Agreement by Owner/Operator, or its successor(s) in interest, may be grounds for avoidance of this Agreement, and avoidance by the City of the Highway Authority Agreement.
4. No violation of a permit by a third party shall constitute a breach of this Agreement by the City. Owner/Operator also agrees that its personnel, if any, at the Site will exercise due diligence in notifying those accessing contaminated soil in the right-of-way of their rights and responsibilities under this Agreement.
5. Should the City breach this Agreement, Owner/Operator's sole remedy is for an action for damages in the Circuit Court of Cook County. Any and all claims for damages against the City, its agents, contractors, employees or its successors in interest or others under permit from the City arising at any time are limited to an aggregate maximum of \$20,000.00. No other breach by the City, its successors in interest or others under permit, of a provision of this Agreement is actionable in either law or equity by Owner/Operator against the City or them and Owner/Operator hereby releases the City, its agents, contractors, employees and its successors in interest, or others under permit from the City for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement or environmental laws, regulations or common law governing the contaminated soil or groundwater in the right-of-way. Should the City convey, vacate or transfer jurisdiction of that right-of-way, Owner/Operator may pursue an action under this Agreement against the successors in interest, other than the City, or any of its departments, or State agency, in a court of law.
6. This Agreement (including attachments, addendums, and amendments) shall run with the land and be binding upon all assigns and successors in interest to the Owner/Operator of the Site. The Owner/Operator shall cause copies of this agreement and the executed Highway Authority Agreement to be recorded in the office of the Cook County Recorder of Deeds in the chain of title for the Site within 30 days of execution.
7. This Agreement is not binding on the City until it is executed by a duly authorized representative of the City, and prior to execution, this Agreement constitutes an offer by Owner/Operator. The duly authorized representatives of Owner and Operator have signed this Agreement, and this Agreement is binding upon them, their successors and assigns.
8. Written notice and other communications relating to this agreement directed to the City shall be sent to:

Raul Valdivia, Ph.D.
Chief Engineer, UST/LUST Section
Department of Public Health
333 S. State Street
Room 200
Chicago, IL 60604

9. Written notice and other communications relating to this agreement directed to Owner/Operator shall be sent to:

[CONTACT INFORMATION FOR OWNER/OPERATOR]

IN WITNESS WHEREOF, the City of Chicago has caused this Agreement to be signed by its duly authorized representative:

BY: _____ Date: _____
Raul Valdivia
Chief Engineer, UST/LUST Section
Department of Public Health

IN WITNESS WHEREOF, Owner, _____ has caused this Agreement to be signed by its duly authorized representative:

BY: _____ Date: _____

IN WITNESS WHEREOF, Operator, _____ has caused this Agreement to be signed by its duly authorized representative:

BY: _____ Date: _____

Revised October 26, 2006