

City of Chicago Highway Authority Agreement

The highway authority agreement, also known as a "right-of-way agreement," is entered into by a site owner/applicant to the Illinois EPA's Site Remediation Program and the City of Chicago. The site owner analyzes and documents contamination from his or her site that has affected the public right-of-way. With the highway authority agreement, the City in turn agrees to use its permitting process to limit access to the contamination. When road and utility workers and others need to access the soil or groundwater in the right-of-way, appropriate safety measures and proper disposal of any contaminated material must be arranged.

A description of the criteria that must be met in order to use the City's highway authority agreement can be found in Section 35, Part 742.1020 of the Illinois Administrative Code (35 IAC 742.1020), reproduced on pages 2 and 3 of this document.

The City of Chicago "Tiered Approach To Corrective Action Right-Of-Way Agreement" (highway authority agreement) form begins on page 4 of this document.

ILLINOIS ADMINISTRATIVE CODE
TITLE 35: ENVIRONMENTAL PROTECTION
PART 742 TIERED APPROACH TO CORRECTIVE ACTION OBJECTIVES
CHAPTER I: POLLUTION CONTROL BOARD
SECTION 742.1020 HIGHWAY AUTHORITY AGREEMENTS

Section 742.1020 Highway Authority Agreements

- a) An agreement with a highway authority may be used as an institutional control where the requirements of this Section are met and the Agency has determined that no further remediation is required as to the property(ies) to which the agreement is to apply.
- b) As part of the agreement the highway authority shall agree to:
 - 1) Prohibit the use of groundwater under the highway right of way that is contaminated above residential Tier 1 remediation objectives from the release as a potable supply of water; and
 - 2) Limit access to soil contamination under the highway right of way that is contaminated above residential Tier 1 remediation objectives from the release. Access to soil contamination may be allowed if, during and after any access, public health and the environment are protected.
- c) The agreement shall provide the following:
 - 1) Fully executed signature blocks by the highway authority and the owner of the property (or, in the case of a petroleum leaking underground storage tank, the owner or operator of the tank) from which the release occurred;
 - 2) A scaled map delineating the area and extent of soil and groundwater contamination above the applicable Tier 1 remediation objectives or a statement that either soil or groundwater is not contaminated above the applicable Tier 1 residential remediation objectives;
 - 3) Information showing the concentration of contaminants of concern within the zone in which the applicable Tier 1 remediation objectives are exceeded;
 - 4) A stipulation of the information required by subsections (c)(2) and (3) of this Section in the agreement if it is not practical to obtain the information by sampling the highway right-of-way; and
 - 5) Information identifying the highway authority having jurisdiction.

- d) Highway Authority Agreements must be referenced in the instrument that is to be recorded on the chain of title for the remediation property.
- e) Violation of the terms of an Agreement approved by the Agency as an institutional control under this Section shall be grounds for voidance of the Agreement as an institutional control and the instrument memorializing the Agency's no further remediation determination.
- f) Failure to provide all of the information required in subsections (b) and (c) of this Section will be grounds for denial of the Highway Authority Agreement as an institutional control.

(Source: Amended at 25 Ill. Reg. 10374, effective August 15, 2001)

Site PIN _____

**Tiered Approach To Corrective Action
Right-Of-Way Agreement**

This Agreement is entered into this _____ day of _____, 200____ pursuant to the Environmental Protection Act ("Act"), 35 IL Admin. Code Section 742.1020 and 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:

1. 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.
2. Owner/Operator stipulates:
 - a. Owner/Operator is pursuing corrective action at a Site and in the right-of-way adjacent to the Site located at _____ ("Site"). Site is legally described in Attachment A.
 - b. The right-of-way adjacent to the Site, described or depicted in Attachment B, is subject to this Agreement and is possibly impacted with contaminants from a release at the Site.
 - c. Attached as Attachment C is a site map showing the known and probable area(s) 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 the Act and 35 Ill. Admin. Code Section 742. Also attached as Attachment D 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.
 - d. The corrective action is for a confirmed release of petroleum from an underground storage tank at the Site.
 - e. The Illinois Emergency Management Agency has assigned incident number _____ to the Site.
 - f. Owner/Operator has requested risk-based, site-specific soil and/or groundwater remediation objectives from the Illinois Environmental Protection Agency ("Illinois EPA") under the Act and 35 Ill. Admin. Code Section 742.

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 Attachment B 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 Attachment B 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 Board or States Environmental Protection Agency regulations, guidelines or policies. Prior to incurring any such costs, and unless there is an urgent reason otherwise, 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.
6. 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 Attachments C and D.
7. Violation of the terms of this Agreement by Owner/Operator, or its successor(s) in interest, may be grounds for voidance of this Agreement as a Highway Authority Agreement.
8. 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.

9. 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.
10. This Agreement is entered into by the City in recognition of laws passed by the General Assembly and regulations adopted by the Board which encourage a tiered-approach to remediating environmental contamination. This Agreement is entered into by the City in the spirit of those laws. Should any provision of this Agreement be determined to exceed the authority of the City, however, this Agreement shall be null and void.
11. 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.
12. The City will limit access to the Site and rights-of-way as follows:
 - a. Normal Access: The City will limit access to the Site and rights-of-way via the City Department of Transportation or its successor agency, by which persons seeking authorization to perform subsurface work in a City right-of-way will be informed of the nature and extent of the contamination, and will be informed that they should take appropriate steps to ensure the health and safety of people working at the Site and rights-of-way.
 - b. Emergency Access: The City Board of Underground, the City Department of Buildings, and the Chicago Fire Department or their successor agencies will be notified of the contamination at this Site and adjacent rights-of-way and will be provided with all available environmental data regarding the Site and adjacent rights-of-way. Such information will be provided to utilities in the area.
13. This Agreement shall continue in effect from the date of the Agreement until contaminant concentrations in the soil and groundwater are subsequently reduced through active remediation or through natural attenuation to Tier 1 residential levels as approved by the

Illinois EPA and Board regulations, such that the right-of-way identified in Attachment B is demonstrated to be suitable for tier one residential use and there is no longer a need for this Agreement, and the Illinois EPA has, upon written request to the Illinois EPA and notice to the City, amended the "No Further Remediation" determination for the Site to reflect unencumbered future use of that right-of-way.

14. Written notice and other communications relating to this agreement directed to the City shall be sent to:

Commissioner
Department of Environment
30 N. LaSalle Street-25th Floor
Chicago, IL 60602

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

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

BY: _____ Date: _____
Nancy Marcia Jiménez
Commissioner
Department of Environment

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

BY: _____ Date: _____
(Print Name Here)

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

BY: _____ Date: _____
(Print Name Here)