

HIGHWAY AUTHORITY AGREEMENT MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered by and between the Illinois Environmental Protection Agency (“Agency”) and Name of Local Government (“Highway Authority”), collectively known as the “Parties.”

[Use this paragraph for sites with petroleum leaking underground storage tank(s)] **WHEREAS**, the Highway Authority is the owner or operator of one or more leaking underground storage tanks presently or formerly located at common address or description of Site location (“the Site”);

[Use this paragraph for sites where the highway authority is also the property owner] **WHEREAS**, the Highway Authority is the owner of the property located at common address or description of Site location (“the Site”);

WHEREAS, as a result of one or more releases of contaminants *[insert either “from the above referenced underground storage tanks” or “at the above referenced Site”]* (“the Release(s)”), soil and/or groundwater contamination at the Site exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742;

WHEREAS, the soil and/or groundwater contamination exceeding Tier 1 residential remediation objectives extends or may extend into the Highway Authority’s right-of-way adjacent to the Site;

WHEREAS, the Highway Authority is conducting corrective action in response to the Release(s);

WHEREAS, the Parties desire to prevent groundwater beneath the Highway Authority’s right-of-way that exceeds Tier 1 residential remediation objectives from use as a supply of potable or domestic water and to limit access to soil within the right-of-way that exceeds Tier 1 residential remediation objectives so that human health and the environment are protected during and after any access;

NOW, THEREFORE, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein.
2. *[Use this paragraph if IEMA has issued an incident number]* The Illinois Emergency Management Agency has assigned incident number(s) to the Release(s).
3. Attached as Exhibit A is a scaled map(s) prepared by the Highway Authority that shows the Site and surrounding area and delineates the current and estimated future extent of soil and groundwater contamination above the applicable Tier 1 residential remediation objectives as a result of

the Release(s). [Use the following sentence if either soil or groundwater is not contaminated above applicable Tier 1 residential remediation objectives: [Soil] [Groundwater] is not contaminated above the applicable Tier 1 residential remediation objectives.]

4. Attached as Exhibit B is a table(s) prepared by the Highway Authority that lists each contaminant of concern that exceeds its Tier 1 residential remediation objective, its Tier 1 residential remediation objective and its concentrations within the zone where Tier 1 residential remediation objectives are exceeded. The locations of the concentrations listed in Exhibit B are identified on the map(s) in Exhibit A.
5. Attached as Exhibit C is a scaled map prepared by the Highway Authority showing the area of the Highway Authority's right-of-way that is governed by this agreement ("Right-of-Way"). Because Exhibit C is not a surveyed plat, the Right-of-Way boundary may be an approximation of the actual Right-of-Way lines.
6. *[Use this paragraph if samples have not been collected within the Right-of-Way, sampling within the Right-of-Way is not practical, and contamination does not extend beyond the Right-of-Way].* Because the collection of samples within the Right-of-Way is not practical, the Parties stipulate that, based on modeling, soil and groundwater contamination exceeding Tier 1 residential remediation objectives does not and will not extend beyond the boundaries of the Right-of-Way.
7. The Highway Authority stipulates it has jurisdiction over the Right-of-Way that gives it sole control over the use of the groundwater and access to the soil located within or beneath the Right-of-Way.
8. The Highway Authority agrees to prohibit within the Right-of-Way all potable and domestic uses of groundwater exceeding Tier 1 residential remediation objectives.
9. The Highway Authority further agrees to limit access by itself and others to soil within the Right-of-Way exceeding Tier 1 residential remediation objectives. Access shall be allowed only if human health (including worker safety) and the environment are protected during and after any access. The Highway Authority may construct, reconstruct, improve, repair, maintain and operate a highway upon the Right-of-Way, or allow others to do the same by permit. In addition, the Highway Authority and others using or working in the Right-of-Way under permit have the right to remove soil or groundwater from the Right-of-Way and dispose of the same in accordance with applicable environmental laws and regulations. The Highway Authority agrees to issue all permits for work in the Right-

of-Way, and make all existing permits for work in the Right-of-Way, subject to the following or a substantially similar condition:

As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Memorandum of Agreement governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742. The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil.

10. This agreement shall be referenced in the Agency's no further remediation determination issued for the Release(s).
11. The Agency shall be notified of any transfer of jurisdiction over the Right-of-Way at least 30 days prior to the date the transfer takes effect. This agreement shall be null and void upon the transfer unless the transferee agrees to be bound by this agreement as if the transferee were an original party to this agreement. The transferee's agreement to be bound by the terms of this agreement shall be memorialized at the time of transfer in a writing ("Rider") that references this Highway Authority Memorandum of Agreement and is signed by the Highway Authority, or subsequent transferor, and the transferee.
12. This agreement shall become effective on the date the Agency issues a no further remediation determination for the Release(s). It shall remain effective until the Right-of-Way is demonstrated to be suitable for unrestricted use and the Agency issues a new no further remediation determination to reflect there is no longer a need for this agreement, or until the agreement is otherwise terminated or voided.
13. In addition to any other remedies that may be available, the Agency may bring suit to enforce the terms of this agreement or may, in its sole discretion, declare this agreement null and void if the Highway Authority or a transferee violates any term of this agreement. The Highway Authority or transferee shall be notified in writing of any such declaration.
14. This agreement shall be null and void if a court of competent jurisdiction strikes down any part or provision of the agreement.
15. This agreement supersedes any prior written or oral agreements or understandings between the Parties on the subject matter addressed herein. It may be altered, modified or amended only upon the written consent and agreement of the Parties.

16. Any notices or other correspondence regarding this agreement shall be sent to the Parties at following addresses:

Manager, Division of Remediation Management
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, IL 62974-9276

[Contact at Highway Authority]

[Address]

IN WITNESS WHEREOF, the Parties have caused this agreement to be signed by their duly authorized representatives.

[NAME OF LOCAL GOVERNMENT]

Date: _____

By: _____

Its: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Date: _____

By: _____

Director