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Doc# 2301733403 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 01/17/2023 03:15 PM PG: 1 OF 7

## SUPPLEMENT TO HIGHWAY AUTHORITY AGREEMENT

Property of Cook County Clerk's Office

After Recording Mail to:  
Chuhak & Tecson, P.C.  
Attention: Mitchell D. Weinstein  
120 Riverside Plaza, Suite 1700  
Chicago, IL 60606

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## Supplement to Highway Authority Agreement

This Supplement to Highway Authority Agreement ("Agreement") is entered into this 10 day of Nov, 2022 pursuant to 35 Illinois Administrative Code (IAC) 742.1020: Highway Authority Agreements and Highway Authority Agreement Memoranda of Agreement by and between Chester R. Rozny Declaration of Trust, dated April 5, 2000 ("Owner") and the City of Park Ridge ("City"), collectively known as the "Parties."

**Whereas**, Chester R. Rozny Declaration of Trust, dated April 5, 2000 is the owner of one (1) or more leaking underground storage tanks presently or formerly located at 316 Higgins Road, Park Ridge, Illinois ("the Site");

**Whereas**, as a result of one (1) or more releases of contaminants from the above referenced underground storage tanks ("the Release(s)"), soil and/or groundwater contamination within specific areas at the Site exceeds the Tier 1 residential remediation objectives of 35 IAC 742;

**Whereas**, the soil and/or groundwater contamination exceeding the Tier 1 residential remediation objectives extends or may theoretically extend into the City's Right-of-Way for (a) the public alley located northeasterly of the site, and (b) North Ashland Avenue (collectively, the "Right-of-Way");

**Whereas**, the owner is conducting corrective action in response to the above referenced release(s);

**Whereas**, the Parties desire 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;

**Whereas**, the Parties have entered into a separate Highway Authority Agreement, dated even date herewith ("HAA"), which will be submitted to the Illinois Environmental Protection Agency ("Agency") as part of a process to obtain a no further remediation letter ("NFR");

**Whereas**, the Parties desire to enter into an agreement which supplements the HAA, as between the Parties, but which is not a part of the NFR process, and which will not be provided to the Agency, but shall be recorded in the public records of the Site;

**Now, Therefore, in consideration of** the mutual covenants and promises herein described, and other good and valuable consideration, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein.
2. The Illinois Emergency Management Agency (IEMA) has assigned Incident Number 20180678 to the Release(s) associated with the 316 Higgins Road property.
3. Attached as Exhibit A is the HAA which is supplemented by this Agreement. The terms of the HAA are incorporated herein by reference. All defined terms used in the HAA shall have the same meaning in this Agreement.

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4. This Agreement is null and void if the Agency, in its sole discretion, declares the HAA null and void if any of the Parties or any transferee violates any term of the HAA.

5. This Agreement shall be null and void if a court of competent jurisdiction strikes down any part or provision of the HAA or this Agreement.

6. Except as to the HAA to which this Agreement is supplementing, 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.

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

Owner  
Chester R. Rozni, Declaration of Trust,  
Dated April 5, 2000  
412 Seminary Avenue  
Park Ridge, IL 60068

City of Park Ridge  
City Manager  
505 Butler Place  
Park Ridge, IL 60068

8. This Agreement is not binding upon the City until it is executed by the undersigned representative of the City. Prior to execution by the undersigned representative of the City, this Agreement constitutes an offer by Owner. The duly authorized representatives of Owner have signed this Agreement and this Agreement is binding upon them, their successors and assigns.

9. The City must review and approve this Agreement, but this Agreement shall not be referenced in the IEPA's - No Further Remediation (NFR) determination. This Agreement will be in the Chain of Title for the Site in the county where the Site is located. This Agreement shall be null and void should the City not approve it.

10. The Owner agrees to defend, indemnify and hold harmless the City, and other highway authorities, if any, maintaining the Right-of-Way by an agreement with the City and the City agents, contractors or employees for all obligations asserted against or costs incurred by them, including reasonable attorney's fees and court costs, associated with the release of Contaminants from the Site related to Incident Number 20180678, unless said obligations or costs were caused by their gross negligence.

11. As an additional consideration, and subject to all of the provisions of Section 13 below (including notice to Owner, and contingent cap on damages), Owner agrees to reimburse the City for reasonable costs to protect human health and the environment, including, but not limited to, identifying, investigating, handling, storing and disposing of contaminated soil and/or groundwater in the Right-of-Way as a result of the release of contaminants at the Site related to

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Incident Numbers 20180678. It has been determined that except for negotiating this Agreement the City has not incurred any reimbursable costs at the time this Agreement is executed by the undersigned representative of the City. If future costs are incurred, payment shall be tendered to the City upon demand by the City. If any payment is refused or dishonored, the City may demand all future payments are made by certified or cashier's check.

12. This Agreement is in settlement of claims the City may have arising from the release of contaminants into the Right-of-Way associated with Incident Number 20180678.

13. Prior to accessing or granting access to the soil and/or groundwater as provided in Paragraphs 7 of the HAA, and Paragraph 11 herein, the City will first give Owner written notice (unless there is an immediate threat to the health or safety to any individual or to the public, unless there is an immediate threat to the health or safety to any individual or to the public) that it intends to perform a site investigation in the Right-of-Way and remove or dispose of contaminated soil and/or groundwater to the extent necessary for its work.

The removal or disposal shall be based upon the site investigation (which may be modified by field conditions during excavation). A copy of the site investigation report and estimated costs to: (a) perform site investigation and (b) to remove and dispose of contaminated soil and groundwater; will be provided to the Owner. If practicable, as reasonably determined by the City, the City may provide Owner with an opportunity to perform the site investigation and to remove and dispose of the contaminated soils and/or groundwater necessary for the City work in advance of that work.

The Owner shall reimburse the reasonable costs incurred by the City to perform the site investigation and to dispose of any contaminated soil and/or groundwater associated with Incident Number 20180678 provided, however, that if notice to Owner has not been given and there was no immediate threat to human health or safety, reimbursement for those costs associated with the releases associated with Incident Number 20180678 shall be limited to \$20,000.00. Should Owner not reimburse the reasonable costs under the conditions set forth herein, this Agreement shall be null and void, at the City's option, upon written notice to Owner by the City that those costs have not been reimbursed. Owner may cure that problem within twenty (20) working days by making payment, or may seek to enjoin that result.

14. The City's sole responsibility under this Agreement with respect to others using the Highway Right-of-Way under permit from the City is to include the following, or similar language, in the future standard permit provisions and to make an effort to notify its current permit holders of the following:

"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 Agreement governs access to soil and/or groundwater that exceeds Tier 1 remediation objectives of 35 IAC 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 and/or groundwater."

The Owner hereby releases the City from liability for breach of this Agreement or the HAA by the City, or others under permit, and agrees to defend and indemnify the City against claims that may arise from others under permit causing a breach of the HAA or this Agreement. Owner agrees that

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its personnel, if any, at the Site who are aware of the HAA or this Agreement will notify anyone they know is excavating in the Right-of-Way about the HAA and this Agreement.

15. Should the City breach this Agreement or the HAA, Owner'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 at any time for a breach of paragraphs 7 of the HAA are limited to an aggregate maximum of \$20,000.00. No other provision of this Agreement or the HAA is actionable in either law or equity by Owner against the City and Owner hereby releases the City, its agents, contractors, employees and its successors in interest for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement, the HAA, or environmental laws, regulations or common law governing the contaminated soil and/or groundwater in the highway Right-of-Way. Should the City convey, vacate or transfer jurisdiction of that Right-of-Way, Owner may pursue an action under this Agreement against the successors in interest, other than a State agency, in a court of law.

16. This Agreement is entered into by the City in recognition of laws passed by the General Assembly and regulations adopted by the Pollution Control Board which encourage a tiered approach to remediating environmental contamination. This Agreement is entered into by the City in the spirit of those laws and under its right and obligations as a highway authority.

Should any provisions of the Agreement be struck down as beyond the authority of the City, the remaining provisions of this Agreement shall remain in full force and effect.

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

representatives.

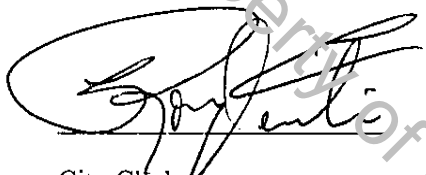
CITY OF PARK RIDGE

Date: 11/10/22

By: 

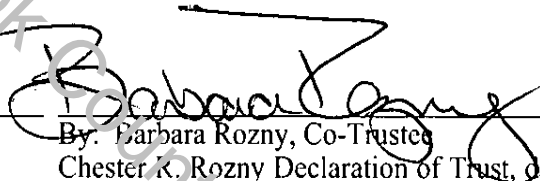
Its:

ATTEST:

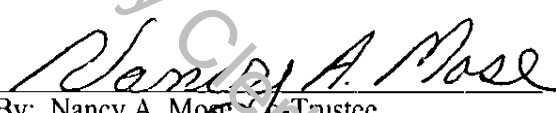
  
City Clerk

OWNER

Date: 10-28-2022

By:   
By: Barbara Rozny, Co-Trustee  
Chester K. Rozny Declaration of Trust, dated April 5, 2000, Owner

Date: 10-28-2022

By:   
By: Nancy A. Rose, Co-Trustee  
Chester R. Rozny Declaration of Trust, dated April 5, 2000, Owner

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## EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 1:

LOTS 12 AND 13 IN BLOCK 7 IN KINSEY'S PARK RIDGE SUBDIVISION OF PART OF SECTIONS 1 AND 2, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOTS 14, 15 AND 16 IN BLOCK 7 IN KINSEY'S RESUBDIVISION OF BLOCK 7 IN KINSEY'S PARK RIDGE SUBDIVISION OF PART OF SECTIONS 1 AND 2, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 21, 1925 AS DOCUMENT NO. 9040413, IN COOK COUNTY, ILLINOIS

Permanent Real Estate Index Numbers: 12-02-411-017-0000, 12-02-411-018-0000,  
12-02-411-022-0000 and 12-02-411-023-0000

Property Address: 316 Higgins Road, Park Ridge, IL 60068