

## RELOCATION AND REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made as of \_\_\_\_\_, 2009 between the City of Milwaukee (hereinafter referred to as "City") having an office at the Zeidler Municipal Building, 841 North Broadway, Room 710, Milwaukee, WI 53202 and CH2M HILL, Inc. (herein referred to as "CH2M HILL") having a mailing address at 135 South 84<sup>th</sup> Street, Suite 325, Milwaukee, Wisconsin 53214 ("Agreement");

Whereas Common Council resolution file # \_\_\_\_\_, adopted \_\_\_\_\_, 2009 authorizes this agreement.

Whereas the City owns and operates an 8-duct communications conduit system consisting of both fiber optic and copper cables (hereinafter described as "communications package") along the western side of the Kinnickinnic Avenue Bridge, and bridge operating control cables for the Kinnickinnic Avenue and S. 1<sup>st</sup> Street bridges over the Kinnickinnic River in the City of Milwaukee, Wisconsin;

Whereas CH2M HILL is proposing to dredge the river and construct new sheet piling along the river banks, and is in direct conflict with the communications package and road bridge operating control cables for Kinnickinnic Avenue and S. 1<sup>st</sup> Street;

Whereas the City is willing to relocate the communications package and road bridge operating control cables (hereinafter described as "Work"), to avoid conflict with the dredging and sheet piling, subject to reimbursement by CH2M HILL for costs incurred;

Whereas the City and CH2M HILL wish to set forth the terms and responsibilities regarding their respective obligations toward completion of the Work;

NOW, THEREFORE, in consideration of the mutual promises and conditions set forth below, the parties agree as follows:

1. The City shall be responsible for managing the construction of the Work and ensuring that said Work is completed in accordance with the requirements set forth in **Exhibit 'A'** attached hereto and incorporated herein by reference.
2. The City shall be solely responsible for obtaining any necessary rights-of-way, encroachment permits, licenses, approvals or any other authority required for the City to maintain its occupancy and use of the right-of-way during and after completion of the construction.
3. CH2M HILL agrees to pay a deposit of \$520,000 USD, equivalent to approximately fifty (50%) percent of the estimated total costs of \$1,041,400 for the Work within seven (7) days following CH2M HILL receiving reimbursement from USEPA Region 5 for these costs. CH2M HILL further agrees to reimburse the City within seven (7) days following CH2M HILL receiving reimbursement from USEPA Region 5 for the

balance of obligations toward the design, materials, and construction described in the estimate, attached as **Exhibit 'B'**, following completion of the Work. If CH2M HILL has overpaid the cost for the City will reimburse CH2M HILL for such amounts already paid within forty-five (45) days. The City agrees to provide a detailed breakdown of project costs to CH2M HILL upon completion of the Work and before the balance of obligations is paid.

4. In no event shall either party hereunder be liable to the other for any indirect, consequential, special, punitive, economic or incidental damages, including, without limitation, loss of CH2M HILL's profits arising from this Agreement and the performance or non-performance of obligations hereunder. Limitations of liability provided herein will apply whether the liability arises in contract, tort, including negligence, strict liability, statutory liability, or any other cause of action.
5. The parties shall indemnify, defend and hold harmless each other, their employees and assigns from any loss, damage and injuries, including death, to any person, arising out of this Agreement (including the breach hereof by the indemnifying party) to the extent caused by any negligent act or omission of the indemnifying party, its agents, contractors or employees. The foregoing indemnification includes indemnification by the City for acts or omissions of its contractors.
6. The City warrants that the work hereunder shall be performed in a good and workmanlike manner and shall comply with all applicable federal, state and/or provincial and/or municipal and/or local laws and ordinances and will strictly comply with the provisions of this Agreement and with all specifications and drawings referred to in this Agreement. The City makes no other representation or warranty except as expressly set forth herein.
7. The City shall obtain and comply with, or cause to be obtained and complied with, all permits, certificates and licenses required by any governmental authority for the work hereunder. The City (or its subcontractor) shall comply with all federal, state, provincial, municipal and/or local rules and regulations which may apply during the performance of the Work.
8. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The City agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.
9. This Agreement may be executed by the parties in separate counterparts, each of which shall be deemed to be an original copy, but all of which, together, shall constitute only one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below written, but effective as of the day and year first set forth above.

CH2MHill

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

City of Milwaukee

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

The following are project requirements for relocation of the City of Milwaukee's utilities for the Kinnickinnic River Sediment Remediation Project:

- Removal/rerouting of all utilities from the communications package conduit shall be accomplished preferably by May 29, 2009, but certainly no later than June 30, 2009.
- Final installation depth for utilities installed before dredging has occurred in the area shall be at least three feet below the final dredge elevation of 556.5 ft MSL IGLD85; alternatively, the City can install utilities after dredging has been completed in the area at any depth.
- If utilities have been relocated before the completion of dredging, the City shall clearly mark their locations at both shores either by use of stakes and spray paint, or by spray painting on permanent structures such as bridge piers and abutments. Additionally, the City shall provide a drawing showing precise locations of the new facilities to both CH2M HILL and the dredging subcontractor.
- The City and CH2M HILL shall maintain open communications to facilitate execution of the Work described within this agreement and execution of the dredging work to minimize impact to the City and the public at large.

## Exhibit B

**Estimated Cost for City Services  
Kinnickinnic River Sediment Remediation Project  
May 5, 2009**

<b>Item/Description</b>	<b>Estimated Cost</b>	<b>Notes</b>
Barricading during bridge closure -S 1st Street Bridge	\$ 5,000.00	
Barricading during bridge closure -KK Ave. Bridge	\$ 5,000.00	
Communications package west of KK Ave. -design, materials, & installation	\$ 500,000.00	
Bridge control cables for KK Ave. -materials	\$ 143,400.00	There are four submarine cables at this bridge
Bridge control cables for KK Ave. -installation	\$ 176,000.00	
Bridge control cables for S 1st St. -materials	\$ 77,000.00	There are two submarine cables at this bridge
Bridge control cables for S 1st St. -installation	\$ 135,000.00	
<b>TOTAL</b>	<b>\$ 1,041,400.00</b>	