

PIPELINE MODIFICATION AND REIMBURSEMENT AGREEMENT

This Pipeline Modification and Reimbursement Agreement (“**Agreement**”), is hereby made and entered into as of the ____ day of _____, 2014 (the “**Effective Date**”), by and between SUNCOR ENERGY (U.S.A.) PIPELINE COMPANY, a Colorado corporation (“**Suncor**”), and THE CITY OF COMMERCE CITY, a Colorado home rule municipality (“**Commerce City**”), whose addresses are set forth in the notice Section 7 below. Suncor and Commerce City may be referred to collectively herein as “Parties.”

WITNESSETH:

WHEREAS, Suncor has an existing ten (10) inch diameter crude oil pipeline (“**Pipeline**”) located on the property illustrated on the attached Exhibit A (the “**Premises**”);

WHEREAS, Commerce City desires to install certain road and utility improvements within the Premises (the “**City Improvements**”), subject to the terms and conditions of this Agreement;

WHEREAS, in order to permit the construction and installation of the City Improvements, Suncor must make certain modifications to the Pipeline, and Suncor is willing to make such modifications to the Pipeline, at both Suncor’s and Commerce City’s shared expense, and to permit Commerce City to install the City Improvements on the Premises subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Description of the Relocation Work. Suncor agrees to perform, or cause to be performed, the following modifications to the Pipeline as more particularly set forth in this Agreement. Suncor’s modifications to the Pipeline shall consist of the following: lowering the Pipeline to a minimum depth of 2 feet by means of installing new sections of heavy wall thickness pipeline to meet or exceed Suncor, PHMSA and AREMA requirements and/or regulations. The lowering of the Pipeline will include, but shall not be limited to, the following activities: excavation, welding, NDT inspection, coating, hydrotesting, horizontal directional drilling, nitrogen purging of 13 miles of the Pipeline, cutting and fitting the new Pipeline sections, removal of the existing Pipeline, backfilling and compaction of excavations, surface rehabilitation and cleanup (collectively, “**Work**”).

2. Payment/Reimbursement for the Work. Commerce City agrees to pay Suncor for fifty percent (50%) of the costs Suncor incurs in connection with, or arising out of the Work, as well as the costs Suncor incurs in connection with, or arising out of, Suncor’s monitoring of the City Improvements as necessary near the Pipeline (the “**Monitoring**”). It is agreed that Suncor’s costs shall include, but not necessarily be limited to, all materials, contract labor, Suncor labor, engineering, surveying, permitting, supervision, equipment expense, measureable and demonstrated loss of crude oil resulting from the Work but not as a result of negligence, transportation expense, warehouse expense, and right-of-way costs.

a. Estimated Cost. Suncor has performed a preliminary estimate of the total cost for the Work and the Monitoring which estimated costs are projected to be \$667,217, (the “**Estimated Cost**”), as more fully set forth on the attached Exhibit B.

b. Payment of Estimated Cost. At least sixty (60) days in advance of the date upon which Suncor proposes to commence the Work (the “**Work Commencement Date**”), Suncor shall notify Commerce City in writing of the Work Commencement Date. Commerce City shall pay Suncor fifty percent (50%) of the full amount of the Estimated Cost, no later than thirty (30) days after receipt of such notice, by cashier’s check made payable to Suncor Energy (U.S.A.) Pipeline Company or by wire transfer.

c. Reconciliation. Within sixty (60) days after completion of the Work, Suncor shall provide a written invoice to Commerce City setting forth all of the actual costs incurred by Suncor’s performance of the Work and the Monitoring (collectively, the “**Total Cost of Work**”) together with reasonable evidence of same. If the Total Cost of Work is greater than the Estimated Costs, Commerce City shall reimburse Suncor, within thirty (30) days after the date of the invoice, fifty percent (50%) of the amount by which the Total Cost of Work exceeds the Estimated Costs paid by Commerce City. If the Total Cost of Work is less than the Estimated Cost, Suncor shall refund fifty percent (50%) of the difference between the Estimated Cost and Total Cost of Work to Commerce City within thirty (30) days following delivery of the invoice to Commerce City. Commerce City shall have the right to review Suncor’s records for the cost of the Work and the Monitoring within thirty (30) days after the later of completion of the Work and submission of any final invoice or accounting therefor.

3. Performance of the Work. Suncor shall use commercially reasonable efforts to complete the Work by December 31, 2014. Notwithstanding the foregoing, the Parties agree that Suncor must account for the throughput demand at Suncor Energy (U.S.A.) Inc.’s refinery located in Commerce City (the “**Refinery**”) in its undertaking and completion of the Work, as such throughput demand may affect the undertaking, commencement and completion of the Work. Commerce City acknowledges that the Work will only be undertaken by Suncor during scheduled down time for the Refinery (as determined by the Refinery in its sole discretion) and not before, and this scheduling will affect the Work Commencement Date. Suncor shall keep Commerce City apprised by a response e-mail as to the scheduled timing of the Work and any potential delays following each reasonable written e-mail request from Commerce City requesting such information (collectively, the “**E-mail Status Reports**”). Further, if any event, transaction, circumstances, or other occurrence affecting Suncor, which is beyond its reasonable control and which it has been unable to prevent, remedy, or provide against by the exercise of reasonable diligence at reasonable cost, including, without limitation, (a) acts of God, (b) acts of governmental and other regulatory authorities, (c) curtailments of supplies, (d) fires, (e) explosions, (f) equipment breakdown or failure of refining, production, or transportation facilities, (g) severe weather conditions, (h) acts of others such as riots, sabotages, insurrections, wars, and incidents of terrorism, (i) strike, lockout or other labor disruptions, (j) refinery delays, and delays in obtaining required permits and approvals from Commerce City or any other governmental agency having jurisdiction over the Work (hereinafter collectively referred to as “an **Act of Force Majeure**”), then Suncor shall complete the Work as soon as practicable thereafter; provided that any Act of Force Majeure, or any action of Commerce City which delays the Work, will be subject to the throughput demand at the Refinery and rescheduling based upon the demands of the Refinery’s schedule as determined by the Refinery in its sole discretion.

4. Responsibilities of Parties in Regard to Performance of Work.

a. Suncor shall cause all contractors performing the Work to have in full force and effect during the Work, Commerce City business and Contractor’s licenses, etc., liability insurance and Worker’s Compensation insurance in amounts which Suncor determines are reasonably sufficient to cover any damages arising out of the performance of the Work.

b. Suncor shall be responsible for making required notifications related to the Work pursuant to the CO One Call Statute. Suncor shall arrange for the presence of appropriate personnel of

utility companies identified through the One Call process during times when such utilities are affected by the Work.

c. Suncor shall be responsible for acquiring permits and approvals from any other governmental agency or entity having jurisdiction over the Work. Commerce City may choose to further notify those persons occupying improvements along the course of the Pipeline who will be affected by the performance of the Work and advise them that the Work will be performed and to what extent it will affect them and their property during other utility relocations or pre-construction meetings related to the greater City Improvements.

d. Commerce City shall be responsible for the payment of fifty percent (50%) of all costs and damages to landscaping and to structures and other engineering works which may be caused as a result of Suncor's performance of the Work, but not for damages arising from the negligence, intentional acts or willful misconduct of Suncor, its agents or contractors.

e. The parties and their respective contractors shall hold a pre-construction meeting at least two (2) weeks prior to the start of the Work to coordinate access, traffic control, work zones, communication, etc., to be initiated by Suncor based upon the Work schedule.

5. As-Built Survey. Upon completion of the Work, Suncor will cause a survey of the Pipeline location to be made. Commerce City shall pay fifty percent (50%) of the total cost of the survey as part of the Total Cost of Work.

6. Liability and Indemnity—Commerce City. So long as Suncor's contractors carry the insurance required pursuant to Paragraph 4 above, Commerce City, to the extent provided by Colorado law, shall indemnify, defend, and hold harmless Suncor, its parent, subsidiaries and affiliates and their respective officers, directors, employees or agents from and against any and all claims, demands, and causes of action for injury to or death of persons and loss or damage to property that arise out of or result from the Work, but expressly excluding such claims, demands, or causes of action resulting from the negligence, intentional acts or willful misconduct of Suncor or its contractor or third-party claims related to a release or spill of oil resulting from the relocation of the Pipeline during the course of the Work (unless such third-party claims result from the negligence, intentional acts or willful misconduct of Commerce City, its employees, or contractors, in which case Commerce City's foregoing obligation to indemnify, defend and hold harmless shall apply).

7. Liability and Indemnity—Suncor. Suncor shall indemnify, defend, and hold harmless Commerce City from third-party claims related to a release or spill of oil resulting from the relocation of the Pipeline during the course of the Work, but expressly excluding such claims, demands, or causes of action resulting from the negligence, intentional acts or willful misconduct of Commerce City, its employees, or contractors.

8. Notices. Any notices required or permitted hereunder shall be in writing and delivered either in person to the other party or the other party's authorized agent or by United States certified mail, return receipt requested, postage fully prepaid (except for e-mail notices for purposes of the E-mail Status Reports), to the addresses set forth hereinafter, or such other addresses as either party may designate in writing and delivered as herein provided.

Suncor: Suncor Energy (U.S.A.) Pipeline Company
1715 Fleischli Parkway
Cheyenne, WY 82001
Attn: Megan Romano

Telephone: 1-307-775-8100
E-mail Status Reports address: mromano@suncor.com

with a copy to:

Suncor Energy (U.S.A.) Pipeline Company
c/o SUNCOR ENERGY (U.S.A.) INC.
717 Seventeenth Street, 29th Floor
Denver, CO 80202
Attn: Legal Department
(No copy needed for E-mail Status Reports)

Commerce City: Public Works Director
City of Commerce City
8602 Rosemary St.
Commerce City, Colorado 80222
E-mail Status Reports address: mdandrea@c3gov.com

with a copy to:

City Attorney
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

8. Miscellaneous.

a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to conflict of laws principles of any jurisdiction. Each of the Parties to this Agreement irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of Colorado located in Adams County Colorado and the courts of the United States of America located in the City and County of Denver, Colorado for any actions, suits, or proceedings relating to this Agreement or the transactions contemplated hereby, and each Party further agrees not to commence any action, suit, or proceeding relating to such matters except in such courts.

b. Amendment and Waiver. This Agreement may be amended only by written instrument executed by both Parties. No waiver by a Party hereto of any provision, or the breach of any provision of this Agreement, shall be effective unless it is contained in a written instrument duly executed by the authorized officers or representatives of the Party hereto, and such written waiver shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.

c. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and permitted assigns.

d. Assignment. No Party hereto shall assign this Agreement, in whole or in part, to any other person or party without the prior written consent of the other Party, which consent may be withheld in the other Party's sole and absolute discretion, and any assignment without such consent shall be null and void.

e. Headings. The paragraph headings used in this Agreement are for convenience only and shall not be construed as a part of this Agreement.

f. Counterpart Execution. This Agreement may be executed and delivered in separate counterparts and delivered by one Party to the other by facsimile or e-mail, each of which when so executed and delivered shall be deemed an original and all such counterparts shall together constitute one and the same Agreement.

g. Authority. Each Party represents and warrants that it has the requisite corporate capacity, power and authority to execute this Agreement and to perform the obligations to which it thereby becomes subject.

h. Incorporation of Recitals and Exhibits. The first paragraph of this Agreement, the Recitals to this Agreement, and following Exhibits attached hereto are all, by this reference, expressly incorporated into and form a part of this Agreement:

- Exhibit A - Depiction of the Premises
- Exhibit B - Itemized Estimated Cost of the Work

i. Independent Contractors. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between Suncor and Commerce City shall be as independent contractors, and neither Suncor nor Commerce City shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other.

j. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person other than Suncor and Commerce City shall be deemed to be only an incidental beneficiary under this Agreement.

k. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

l. Open Records. Suncor hereby acknowledges that Commerce City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and as such, this Agreement may be subject to public disclosure thereunder.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereof have executed this Agreement as of the day and year first written above.

CITY OF COMMERCE CITY

Brian K. McBroom, City Manager

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for Approval:

Maria D' Andrea, P.E., Director
Department of Public Works

**SUNCOR ENERGY (U.S.A.) PIPELINE
COMPANY, a Colorado corporation**

By: _____

Name: _____

Title _____

Exhibit A

Depiction of the Premises

See attached.

Exhibit B

Itemized Estimate of Cost of the Work

Material	Vendor	Cost	QTY	Units	Total Cost

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