

**REIMBURSEMENT AGREEMENT
WITH
CITGO PRODUCTS PIPELINE COMPANY
FOR
THE PEGGY DRIVE DRAINAGE PROJECT**

THIS REIMBURSEMENT AGREEMENT (hereafter referred to as the "Agreement") is made, entered into and effective as of the last date of execution by either of the Parties (hereafter referred to as the "Effective Date"), as reflected by the second and final signature to this Agreement, by and between CITGO Products Pipeline Company (hereafter referred to as "CITGO"), whose mailing address is 1293 Eldridge Parkway, Houston, TX 77077 and the City of San Antonio (hereafter referred to as the "City"), a Municipal Corporation in the State of Texas, whose mailing address is P.O. Box 839966, San Antonio, TX 78283-3966. Provider and City are hereafter collectively referred to as "the Parties".

BACKGROUND

A. City desires to build/construct a roadway known as Peggy Drive Area Drainage over and across the pipeline easement (the "Servitude") owned by CITGO (hereafter referred to as "the Project"). CITGO owns and operates a pipeline within the aforementioned property and has the legal authority to execute such an Agreement; and

B. In order to accommodate City's work on the Project, it is necessary for CITGO to both evaluate and lower its pipeline (hereafter referred to as "the Work"), in accordance with and as more particularly described in the attached **Exhibit A** (hereafter referred to as the "Scope of Work"), which is incorporated herein; and

C. The City roadway reconstruction work near the CITGO Pipeline (the "Road Work") for the construction, installation, and operation of City's pavement, driveways, curbs and sidewalks (the "Proposed Road Work").

D. City agrees to reimburse CITGO the amount of Two Hundred Eighty Five Thousand, Seven Hundred Dollars and No/100 (\$285,700.00), reflecting one hundred percent (100%) of the direct and indirect costs incurred by CITGO relating to the work CITGO performed or caused to be performed regarding the necessary pipeline relocation engineering work, including, but not limited to, engineering, design, environmental, temporary workspace, and acquisition of temporary workspace rights. City further agrees to reimburse CITGO the amount of Two Hundred Eighty Five Thousand, Seven Hundred Dollars and No/100 (\$285,700.00), reflecting one hundred percent (100%) of the direct and indirect costs incurred by CITGO relating to the work CITGO performed or caused to be performed regarding the necessary construction work required to perform the necessary pipeline relocation in order to lower its pipeline in order to accommodate City's Project.

E. CITGO, under the terms of this Agreement, hereby agrees to lower in place the

pipeline to accommodate City's anticipated work on the Project.

AGREEMENT

In consideration of the promises and mutual covenants herein contained, and subject to the other terms and conditions of this Agreement, CITGO and the City hereby agree as follows:

- 1) Contingent upon receipt of the reimbursement funds described below CITGO hereby accepts full responsibility for the performance of all services and activities.
- 2) CITGO will perform the necessary pipeline relocation engineering work, including, but not limited to, engineering, design, environmental, temporary workspace, and acquisition of temporary workspace rights (hereafter referred to as "the Pipeline design and preconstruction Work") in accordance with **Exhibit A** hereto, subject to the terms and provisions of this Agreement.
- 3) City will pay, in accordance herewith, one hundred percent (100%) of the direct and indirect costs incurred by CITGO relating to the Work, including design, preconstruction, and construction work. The estimated total cost of the Work is Two Hundred Eighty Five Thousand, Seven Hundred Dollars and No/100 (\$285,700.00), including for design and preconstruction work, and for construction work. The final actual costs may be more or less than said estimate. If CITGO's total actual costs will exceed \$285,700.00, CITGO shall provide notice to City when CITGO's costs reach or near \$285,700.00. The total costs for the Pipeline Relocation Work shall not exceed \$285,700.00 without prior approval from City.
- 4) City agrees to coordinate with CITGO as to dates and timing of any and all construction work.
- 5) Within a reasonable period of time after CITGO pays all of the invoices associated with design of the Project and the City reviews and approves CITGO's final construction drawings and construction schedule ("Plans"), CITGO will furnish an accounting of final actual costs CITGO incurred and provide City an invoice of the same. Upon acceptance of CITGO's accounting of the final actual costs incurred, City will pay the full amount of such invoice within thirty (30) days after receipt of the invoice.
- 6) All payments made by the City shall be made by check and/or ACH, payable to CITGO Products Pipeline Company, and mailed to the following address:

CITGO Products Pipeline Company
ATTN: Asher Rosen – Corporate Real Estate
1293 Eldridge Parkway
Houston, Texas 7707712)

- 7) Any approvals given by the City do not relieve Grantee of the burden of obtaining all necessary governmental or lease approvals, including those provided by City through its relevant development departments and relevant boards and commissions and the State of Texas Commission on Environmental Quality. Nor does City's approval of the Plans release Grantee of the responsibility for the correction of Grantee's mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.
- 8) City shall have authority to inspect the Pipeline Relocation Work throughout the construction process to ensure compliance with the Scope and Plans and to request copies of construction inspections performed by CITGO and third parties. CITGO shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. CITGO shall submit said certification to the Director of PWD or designee at the completion of construction. CITGO shall notify City and City shall have the right to attend all scheduled construction meetings.
- 9) CITGO warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Pipeline Relocation Work.
- 10) Indemnity and Restoration. CITGO shall be responsible for, and shall indemnify the City against any third party claim or loss incurred, or physical damage to the affected landowners resulting from the pipeline work contemplated hereunder by CITGO to the extent caused by the negligence or wrong doing of CITGO or its contractors. The landowner's property upon which the pipeline work was performed shall be restored to a substantially similar condition that existed prior to the pipeline work, except to the extent that the affected landowner's properties has been maintained and improved as a result of the pipeline.
- 11) Nothing in this Agreement shall be construed to waive or limit City's rights and remedies pursuant to City's Right Of Way Ordinance 93319, San Antonio City Code, Chapter 29, Art. IV, Section 29-110, Section 29-161 and/or Section 29-162, nor shall it be construed to waive City's Governmental Immunity from a lawsuit, which Governmental Immunity expressly is retained to the extent it is not clearly and unambiguously waived by State law.
- 12) Within a reasonable period of time after CITGO pays all of the invoices associated with the Project and the final construction of the Pipeline Relocation Work is complete, CITGO shall furnish an accounting of final actual costs CITGO incurred and provide City an invoice of the same. Upon acceptance of CITGO's accounting of the final actual costs incurred, City shall pay the full amount of such invoice within thirty (30) days after receipt of the invoice.

- 13) At any time after CITGO begins the Work, if City decides not to proceed further with the Project, City shall pay for and reimburse CITGO for any and all costs and expenses incurred by CITGO for Work performed up to the date CITGO receives written notice from City of City's intention not to proceed with the Project, including, but not limited to labor, materials, and overhead incurred, purchased, or devoted to the performed Work.
- 14) CITGO shall solicit bids for the proposed construction of the Pipeline Relocation Work for all work not performed specifically by CITGO and shall provide the submitted bid amounts to City, after which City shall determine whether or not City shall proceed with and approve the Pipeline Relocation Work.
- 15) It expressly is understood by the Parties that CITGO, through this Agreement, is not abandoning or altering any right, title or interest it may have in the above-described land, with all such rights, title and interest belonging to CITGO being expressly reserved.
- 16) Unless written notification by CITGO to the contrary is received and approved by City, Mike Johnson, CASA PL Area Manager, (830) 445-0328 mjohs2@citgo.com shall be CITGO's designated representative responsible for the management of this Agreement. The Director of the Public Works Department ("PWD") shall be City's designated representative responsible for the management of this Agreement.
- 17) Except as otherwise set forth herein, it is further expressly understood and agreed by City and CITGO that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.
- 18) None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.
- 19) Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and CITGO under authority granted by formal action of the Parties' respective governing bodies.
- 20) This agreement is separate and apart from any current easement agreements in which CITGO owns and operates the pipeline under, and in no way shall change, alter or amend any rights it has in and to said easement agreements now or in the future. Any change or changes made to any existing easement agreements shall be done by means of an amendment to said agreements. For the avoidance of doubt, other than the terms specifically agreed to in this Agreement, any easement agreements in which CITGO owns and operates the pipeline under shall remain in full force and effect unless and until amended by the Parties.

- 21) CITGO shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City, which approval shall not be unreasonably withheld or delayed after construction of the Pipeline Relocation Work is completed. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.
- 22) Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.
- 23) This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.
- 24) If City or CITGO is delayed or prevented from performing any of their respective obligations under this Agreement by reason of strike, labor troubles, or any cause whatsoever beyond such party's reasonable control, the period of such delay or prevention shall be deemed added to the time herein provided for the performance of any such obligation by the delayed party.
- 25) This Agreement supersedes every antecedent or concurrent oral and/or written declaration and/or understanding pertaining to the Work described herein by and between the Parties.
- 26) The terms of this Agreement shall be binding and inure to the benefits of the Parties hereto and their respective successors and assigns.
- 27) This Agreement may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement. Faxed and/or digitally transmitted signatures shall be deemed original, effective and binding delivery of the signature hereto.
- 28) All exhibits referred to in this Agreement are incorporated hereto for all purposes.
- 29) The Parties have caused this Agreement to be executed by their proper duly authorized officials as of the dates indicated below.

(Signatures to follow)

CITY OF SAN ANTONIO

**CITGO PRODUCTS PIPELINE
COMPANY**

By: Razi Hosseini, P.E., R.P.L.S.
City Engineer/Director
Public Works Department

Karl Schmid

By: Karl D. Schmidt
President



Date:

Date:

APPROVED AS TO FORM:

Assistant City Attorney

Greg V. Luna

Legal Counsel for CITGO

EXHIBIT A Scope of Work

