

SLEEVE DESIGN ENGINEERING REIMBURSEMENT AGREEMENT

THIS SLEEVE DESIGN ENGINEERING REIMBURSEMENT AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 2023 (“**Effective Date**”), by and between, the City of Naperville, an Illinois municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois (the “**City**”), acting on behalf of the Road Authority as defined herein, and Enbridge Energy, Limited Partnership, licensed to do business in the State of Illinois, with offices at 1500 West Main Street, Griffith, Indiana 46319 (“**Enbridge**”). Enbridge and the City may be referred to in this Agreement as a “**Party**,” or collectively as the “**Parties**.”

For and in consideration of the premises and mutual covenants herein contained, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Introductory Matters.

- a. The City and its public entity partners, the City of Aurora and Naperville Township (together referenced herein as the “**Road Authority**”), desire to expand the existing right-of-way (“**ROW**”) of North Aurora Road to the west of the proposed Canadian National Railroad (“**CN**”). The City of Naperville is Lead Local Agency for said project. Enbridge owns, operates, and maintains a 34-inch pipeline that runs north to south, perpendicular to the roadway, within Commonwealth Edison (“**ComEd**”) property (the “**Pipeline**”). The existing above-ground valve and fence, on the north side of North Aurora Road, roughly aligns with the location of Enbridge’s pipeline.
- b. On May 19, 2021, the City and Enbridge entered into a reimbursement agreement for Enbridge to perform a Class 4 Estimate which explored the conceptual feasibility of two options to relocate the Pipeline and removing the hand-operated main line valve MLV-406.83-6-V. The Class 4 Estimate has been completed and a preliminary Pipeline relocation design was agreed upon by the Parties.

- c. On June 15, 2022, the City and Enbridge entered into a reimbursement agreement for Enbridge to perform Phase 2 Design Engineering to support and progress towards a full engineering design of the agreed upon option selected as part of the Class 4 Estimate.
- d. On September 21, 2022, the City informed Enbridge that a third-party assessment of the Enbridge relocation design/constructability option was to be performed (“**Constructability Options Analysis Report**”) prior to Enbridge moving ahead with the agreed upon option selected as part of the Class 4 Estimate.
- e. On July 14, 2023, the City provided Enbridge the Constructability Options Analysis Report that was performed by Burns and McDonnell (“**B&M**”) for review and consideration of an alternative pipeline relocation design.
- f. In response to the Constructability Options Analysis Report, Enbridge proposed an alternative construction option and rough order of magnitude cost estimate (the “**Sleeve Option**”).
- g. The City now desires for Enbridge to perform the design engineering for design of the Sleeve Option.
- h. To perform the Sleeve Design Engineering, the City desires for Enbridge to perform the work detailed in **Exhibit A** attached hereto and made part hereof, (the “**Enbridge Sleeve Design Engineering Work**”), and Enbridge is amenable to commencing the Enbridge Sleeve Design Engineering Work subject to reimbursement by the City as specified in this Agreement.

2. Performance of the Enbridge Sleeve Design Engineering Work.

Enbridge shall commence performing the Enbridge Sleeve Design Engineering Work as described in **Exhibit A** as soon as practicable after the date hereof.

3. Reimbursement Obligation for Enbridge Sleeve Design Engineering Work

- a. The City shall reimburse Enbridge for the Enbridge Sleeve Design Engineering Work as set forth on **Exhibit A** at the estimate set forth on **Exhibit B**. If Enbridge determines that the estimate on **Exhibit B** is insufficient to perform the Sleeve Design Engineering set forth on **Exhibit A**, Enbridge shall notify the City in writing as to what additional costs are anticipated to be necessary to complete said work. Enbridge and the City shall collaborate to agree upon any additional cost necessary to perform said work within fourteen (14) days of receipt of the notice. If agreement is not reached, the City may notify Enbridge not to proceed with the work.
- b. Enbridge, shall provide the City with a monthly Project Status and Cost Report that will specify: (1) the hours of Enbridge Sleeve Design Engineering Work performed to date by individual, type of work, and hourly rates; (2) other costs related to the Enbridge Sleeve Design Engineering Work incurred to date (e.g. materials, equipment, and testing); (3) the overall percentage of Enbridge Sleeve Design Engineering Work completed to date; and (4) the anticipated time needed to complete the remaining Enbridge Sleeve Design Engineering Work. Enbridge will submit an invoice to the City every other month for the Enbridge Sleeve Design Engineering Work for costs billed to date. Finally, contingency funding shall not be used without the prior written approval of the City Engineer. Invoices for Enbridge Sleeve Design Engineering Work performed shall be sent by email to:

Matthew Calpin,
Project Engineer/ City of Naperville
calpinm@naperville.il.us

With a copy to:

Andy Hynes
Engineer Manager/ City of Naperville
ahynes@naperville.il.us

- c. If the City determines that termination of this Agreement is necessary, Enbridge shall be reimbursed for Enbridge Sleeve Design Engineering Work it has performed to the date of receipt of the Notice of Termination (as defined in Section 12 herein).

4. Construction Agreement for Relocation of the Pipeline.

The Parties agree to negotiate in good faith a construction agreement for relocation of the Pipeline so long as the City determines to proceed with the project.

5. Non-Binding Effect for Future Obligations.

This Agreement indicates the future intentions of the Parties and any future intentions shall not be legally binding on either Party. Any future obligations hereunder shall not become legally binding until such time as the Parties have agreed to and executed a Sleeve Project Reimbursement Agreement, as defined above.

6. Confidentiality.

This Agreement, the matters discussed herein, information provided by one Party to the other in connection herewith, information gathered from the Enbridge Work and information derived from any of the foregoing, shall be confidential and shall not be disclosed by the receiving Party without the written consent of the other, except to the extent that disclosure is required by law. When disclosure is required, the Party making the disclosure shall provide notice of the intended disclosure to the other Party and shall take all reasonable steps to limit the extent of the disclosure to the minimum required to comply with its legal obligations. Notwithstanding the foregoing, Enbridge acknowledges that entities which comprise the Road Authority will be provided with this Agreement and information relative thereto, and that this Agreement will be required to be included on a public agenda for approval pursuant to the Illinois Open Meetings Act.

7. Indemnification.

Enbridge shall indemnify, hold harmless and defend the City, its officials, officers, employees, and agents from and against all liabilities, claims, suits, demands, proceedings, and actions, including costs and expenses of defense, arising from or related to, any loss, damage, injury, death, or damage to property resulting from, or connected to the performance of the Enbridge Work to the extent caused by Enbridge's substantial negligence or willful misconduct.

The provisions of this Section 7 of this Agreement shall survive completion of the Enbridge Work and shall continue to remain in full force and effect upon termination of this Agreement.

8. Assignment.

This Agreement shall be binding upon the Parties, their successors, and assigns.

9. Entire Agreement.

This Agreement constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the Parties, with respect to the subject matter of this Agreement. This Agreement may not be amended except by an agreement in writing signed by authorized representatives of both Parties.

10. Severability.

If any term or provision of this Agreement shall be found to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement.

11. Governing Law.

This Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to such state's conflicts of law rules. Any dispute arising out of or based upon this Agreement or related to the enforcement thereof shall be brought in a state court in DuPage County, Illinois, which shall be the exclusive venue for any such action.

12. Termination.

The City may terminate (“**Terminate**” or “**Termination**”) this Agreement by written notification (“**Notice of Termination**”) to Enbridge with notice being given in the manner provided for in Section 13 below.

Upon Termination, the City shall be responsible for paying Enbridge for the amount of Enbridge Sleeve Design Engineering work performed as set forth in the most recent Project Status and Cost Report as updated by Enbridge to the date of receipt of Notice of Termination and approved by the City.

13. Notices.

Unless otherwise expressly specified or permitted by the terms hereof, every request, demand, notice or other communication provided for herein will be made in writing and any such request, demand, notice or other communication shall become effective: (a) upon personal delivery thereof, including by overnight mail or courier service; (b) in the case of notice by mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof; (c) in the case of notice by facsimile, upon receipt thereof; or (d) electronic mail (with written confirmation of receipt); provided that such transmission is promptly confirmed by either the methods set forth in clauses (a) or (b) above, in each case addressed to each Party at its address set forth below or at such other address as such Party may from time to time designate by written notice.

The City of Naperville

Andy Hynes
Engineer Manager/ City of Naperville
hynesa@naperville.il.us

with a copy to:

Matthew Calpin,
Project Engineer/ City of Naperville
calpinm@naperville.il.us

With email copies to:
lordp@naperville.il.us
and disantom@naperville.il.us

Enbridge Energy, Limited Partnership

1500 West Main Street
Griffith, IN 46319
Attention: David Bareham, Manager - Griffith Area

With a copy to:

Enbridge Energy, Limited Partnership
119 N. 25th Street East
Superior, WI 5488
Attention: Lands & ROW

With email copies to:

kelly.khuu@enbridge.com
and
legalnotices@enbridge.com

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto separately and severally have caused this Agreement to be executed in their respective names by and through their duly authorized representatives, as of the day and year first above written.

Enbridge Energy, Limited Partnership

By: Enbridge Pipelines (Lakehead) L.L.C.,
Its Managing General Partner

By: _____

Typed: _____

Title: _____

Date: _____

City of Naperville

Douglas A. Krieger
City Manager

Attest

By: _____
Nancy Bright, Interim City Clerk

Date: _____

EXHIBIT A

Enbridge Sleeve Design Engineering Work

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Enbridge Sleeve Design Engineering Work

1. Scope

- A. The Parties have agreed on the option to relocate the Line 6A pipeline (sleeve, cut out and lowering) within the same alignment and to fully remove all de-activated assets.
- B. Provide an Issued for Construction (IFC) design package that will support permitting and regulatory activities, and construction contract bidding for the pipeline relocation.
- C. Prepare a Construction Contract and request competitive proposals from a list of Enbridge approved Construction Contractors. Review such construction contractor proposals and remit a recommendation based on Enbridge criteria.

2. Clarifications

- A. The IFC design scope will include the following activities:
 - a. Analyzing installation and operation loads and stresses for pipeline.
 - b. Designing a sleeve, cut out and tie-ins to successfully relocate the installed pipeline with the existing Line 6A.
 - c. Creating general sheets and civil details.
 - d. Evaluating and providing details on the cathodic protection needed for the ground bed relocations.
 - e. Creating a bill-of-materials (BOM) for the replaced pipe, sleeve, bends, and stopples.
 - f. Updating datasheets for the components on the bill-of-materials (BOM).
 - g. Providing a draft design basis memo (DBM) documenting the design analysis and assumptions.
 - h. Providing a Construction Scope of Work (SOW) and Hydrostatic Test Plan.
 - i. Providing preliminary oil drain-up plan.
- B. The IFC design package will support the permitting for Construction and Environmental clearances that includes communication with the impacted public and private entities. Progress of this package is tied to the allocated funds in this interim agreement.
- C. Enbridge reserves the right to select the Construction Contractor.
- D. Contractor mobilization, pipeline relocation or oil evacuation activities are not considered as part of this initial agreement.

3. Cost Items

- A. Project Development: Project Development Lead
- B. Project Management: Project Controls Team, Construction Manager, Project Execution Manager
- C. Engineering: Engineering Lead, Technical Advisors, Third Party Consultant to provide the IFC Design Package.
- D. Primary Support Groups: Operations, Pipeline Maintenance, Environmental (e.g. permits), Lands & Right of Way (ROW), Legal, Regulatory & Compliance, Public Affairs and Communication Services (PACS), Supply Chain Management (SCM)

Exhibit B

Enbridge Sleeve Design Engineering Work Estimate

Exhibit B

Enbridge Sleeve Design Engineering Work Estimate

ROM Estimate: Cashflow	15-May-2024		Rationale
	To finalize Bid Evaluation	%	
Material			
Construction	\$ 67,602		Planning time charged by multiple parties: Project Management, Scheduler, Cost Control, PLM Supervisor.
Land	\$ 17,344		Planning time charged by Land Supervisor. This position is most active during the planning phase.
Enbridge Construction Management & Inspection	\$ 60,685		Construction Manager input through the planning stage.
Project Management & Support	\$ 299,009		Enbridge staff supporting the planning stage: Supply Chain, Legal, Government Relations, Engineering, ROW agents.
Engineering	\$ 107,211		Detail Design
Base Cost Estimate	\$ 551,851		
Contingency (30%)	\$ -		
Total Estimated CAPEX (excl. AFUDC)	\$ 551,851		