

ENVIRONMENTAL INDEMNITY AGREEMENT

This ENVIRONMENTAL INDEMNITY AGREEMENT (the "Agreement") is entered into as of March 30, 2014, by **Phillips 66 Company** ("Indemnitor") and the **City of Aurora, Kane County, Illinois** (the "City"), Indemnitor and City, together, shall sometimes hereinafter be referred to as the "Parties".

RECITALS

A. **WHEREAS**, Indemnitor is the former owner of certain real property located at 1331 N. Farnsworth Avenue, Aurora, Illinois, further identified by the Kane County Assessor as Parcel No. 15-12-351-001 ("Indemnitor's Property"), and also referred to as the former Phillips 66 Marketing Site #6177/AOC #3918; and

B. **WHEREAS**, an underground storage tank system, as defined in 40 CFR Part 280 or supplanting federal regulations, owned by Indemnitor or its predecessor in interest ("UST System"), was present on Indemnitor's Property, but has since been removed; and

C. **WHEREAS**, a release to the environment of petroleum hydrocarbons, including gasoline additives, has occurred in the past at the Indemnitor's Property. Additionally, used oil, waste oil and hydraulic oil may be present on Indemnitor's Property. (All of the previously mentioned compounds, including Benzene, Ethylbenzene, Toluene, Xylene and Methyl Tertiary Butyl Ether (MTBE) and those identified in TACO modeling calculations for the groundwater contamination identified at Indemnitor's Property are hereby collectively referred to as "Compounds of Concern".) As a result of said release, the soil and groundwater at the Indemnitor's Property contains detectable concentrations of Compounds of Concern. The groundwater and soil impacted by Compounds of Concern extends beyond the Indemnitor's Property. The Illinois Emergency Management Agency has assigned incident number 20031363 to the release at the Indemnitor's Property.

NOW, THEREFORE, in consideration of the terms and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. This Agreement is not binding upon the Parties until it is executed by the undersigned representative of the City of Aurora and, prior to execution, this Agreement constitutes an offer by Indemnitor. The duly authorized representative of Indemnitor has signed this Agreement, and upon execution by the duly authorized representative of the City of Aurora, this Agreement is binding upon Indemnitor, its successors and assigns.

2. The City agrees that it will enter into a Highway Authority Agreement in the form attached as Exhibit A, and this Environmental Indemnity Agreement is intended to supplement the Parties' rights and obligations provided for in the Highway Authority Agreement provided, however, that if the City does not enter into a Highway Authority Agreement, this Agreement shall be deemed null and void, and Indemnitor shall have no other remedy against the City. No breach by the City, its agents, trustees, employees and its successors in interest of a provision of

this Agreement is actionable in law or equity by Indemnitor against the City, and Indemnitor hereby releases the City and City Affiliates (as defined below) from any cause of action it may have against them arising under this Agreement or Environmental Laws (as defined below), regulations or common law.

Specifically, Indemnitor knowingly waives and releases the City and/or City Affiliates from any and all claims, debts, dues and obligations of every kind and nature under the Illinois and United States Constitutions as well as under any federal or state statutes or laws, including but not limited to environmental laws related to the subject matter of this Agreement. Indemnitor further waives all remedies (including those which may be available under the Civil Rights Act) which are available to it for the violations of any of the terms of this Agreement, including but not limited to the equitable remedy of specific performance, and agrees not to seek injunctive relief of any sort. Indemnitor covenants not to sue the City and/or City Affiliates for a violation of any provision or terms of this Agreement.

As the pavement in the Right-of-Way's of North Farnsworth Avenue and Reckinger Road may be considered an engineered barrier, the Indemnitor agrees to reimburse the City for maintenance activities requested by Indemnitor in writing in order to maintain it as a barrier. The City does not agree to perform maintenance of the Right-of-Way, nor does it agree that the Right-of-Way will always remain a City highway or that it will maintain the Right-of-Way as an engineered barrier. In the event that the Right-of-Way will no longer remain a City highway Right-of-Way, Indemnitor shall take all steps necessary to have the IEPA issue a new no further remediation determination to reflect there is no longer a need for the Highway Authority Agreement. The Highway Authority Agreement and this Environmental Indemnity Agreement do not limit the City's ability to construct, reconstruct, demolish, improve, grade, excavate, repair, maintain and operate the property encompassed by the Highway Authority Agreement for any lawful purpose, nor to allow others to use or do work within the Highway Authority Agreement boundaries.

3. Indemnitor on behalf of itself, its successors and assigns does hereby covenant and agree, at its sole cost and expense, to indemnify, defend and hold the City and the City's former, current and future officials, council members, officers, servants, employees, agents, contractors, successors and assigns (collectively "City Affiliates"), both in their capacities as City representatives and as individuals, harmless from and against any loss, actions, responsibilities, obligations, liability, damage (whether direct or consequential), expenses, claims (whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future), penalties, fines, injunctions, suits (including but not limited to suits alleging or related to personal injury and/or death), proceedings, disbursements or expenses (including, without limitation, attorneys' and experts' fees and disbursements and court costs) (collectively, the "Liabilities"), to the extent not caused by the sole negligence, gross negligence or willful misconduct of the City Affiliates, arising under or relating to any Environmental Laws (as defined below), or any other Liabilities which may be incurred by or asserted against any of the City Affiliates resulting or arising from, alleged to arise from, or caused by, in whole or in part, from the presence of Hazardous Material (as defined below) on, in or from the Indemnitor's Property (including the groundwater thereunder) and/or any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release or threatened release of Hazardous Materials on or from the Indemnitor's Property.

Indemnitor shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. In the event that the City or any of the City Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Agreement, the City and/or any of the City Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the reasonable costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by Indemnitor pursuant to the indemnification provisions herein. Indemnitor shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Agreement and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Agreement. In the event that such payment is not made, the City or any City Affiliate, at their sole discretion, may proceed to file suit against the Indemnitor to compel such payment. Indemnitor also agrees that it will not settle or compromise any action, suit or proceeding with the City's prior written consent, which consent shall not be unreasonably withheld.

For purposes of this Agreement, "Hazardous Materials" means and includes Compounds of Concern, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials, and any items defined as hazardous, special or toxic materials, substances or waste under any Environmental Law, or any material which shall be removed from property located within the City of Aurora pursuant to any administrative order or enforcement proceeding or in order to place said property in a condition that is suitable for ordinary use. Hazardous Materials shall include each and every element, compound, chemical mixture, contaminant, pollutant, material waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Law or the release of which is regulated under Environmental Laws. "Environmental Laws" collectively means and includes any present and future local, state, federal or international law, statute, ordinance, order, decree, rule, regulation or treaty relating to public health, safety or the environment (including those laws relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage, disposal, treatment, transportation or management of Hazardous Materials) including, without limitation, the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, as amended, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §300f, et seq., the Occupational Safety and Health Act, 29 U.S.C. §655, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136, et seq., the National Environmental Policy Act, 42 U.S.C. §4321, et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001, et seq., and the Illinois Environmental Protection Act, and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder.

In addition to the indemnity provided above, if the City or City Affiliates encounter Hazardous Materials while working in, on or under, adjacent or near the Indemnitor's Property

(including but not limited to such areas as within municipal easements and/or Right-of-Ways) or on North Farnsworth Avenue or Reckinger Road, or encounter Hazardous Materials migrating from Indemnitor's Property, the City has the right to remove contaminated soil or groundwater from the area it is working and intends to do work and to dispose of them as it deems appropriate not inconsistent with applicable Environmental Laws. If Hazardous Materials are found anywhere within municipal easements and/or right-of-ways on North Farnsworth Avenue or Reckinger Road adjacent to the Indemnitor's Property, there is a presumption that the Hazardous Materials migrated from and are attributable to the Indemnitor's Property.

The removal or disposal shall be based upon the site investigation (which may be modified by field conditions during excavation), which Indemnitor may review or may perform, if requested to do so by the City. If practicable, as determined by the City, the City may request Indemnitor to remove and dispose of the contaminated soil and/or groundwater necessary for the City's work in advance of that work. In any event, Indemnitor shall reimburse the reasonable costs incurred by the City to perform the site investigation and to dispose of any contaminated soil or groundwater that arises as a consequence of Hazardous Materials that were released into the environment from the Indemnitor's Property. The Parties understand and agree that the City's soil and groundwater removal will be in conjunction and/or associated with other work being done by the City in, on, under or near the Indemnitor's Property, and part of the purpose of this paragraph is that if City Affiliate encounters contaminated soil and/or groundwater while working on its utilities, or on a municipal project or otherwise, it will not be responsible in any way for the cost associated with encountering, removing and/or disposing of the contaminated soil and/or groundwater. In addition, it is specifically understood and agreed between the Parties that the City Affiliate will not be identified at any time, in any place, document or manifest as the owner, generator or transporter of contaminated soil or groundwater taken from Indemnitor's Property. If asked, Indemnitor will cooperate with the City Affiliate in the removal and disposal of such soil and groundwater and will sign all necessary documents and manifests for the proper transportation and disposal of the soil and/or groundwater.

4. This Agreement is intended by the Parties hereto to be limited to claims, costs, expenses, causes of action, penalties, Liabilities, losses and damages actually sustained and incurred by the City Affiliates or for which the City Affiliates are found to be legally liable that arise as a consequence of Hazardous Materials that were released or alleged to be released into the environment from the Indemnitor's Property.

5. If requested by the City, Indemnitor shall , within thirty (30) days, deliver to the City any and all records, documents (including writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form), or reports of any kind (including all written, printed, recorded or graphic matter however produced or reproduced and all copies, drafts and versions thereof not identical in each respect to the original) which relate or refer (which means, in addition to their customary and usual meaning, assess or assessing, concern or concerning, constitute or constituting, describe or describing, discuss or discussing, embody or embodying, evidence or evidencing, mention or mentioning and reflect or reflecting) environmental matters and/or conditions associated directly or indirectly with the Indemnitor's Property (including the groundwater thereunder), including but not limited to written reports or a site assessment, environmental audits, soil test reports, water test reports, laboratory analysis and

documents, reports or writings relating or referring to the Indemnitor's Property provided, however, that nothing in this paragraph shall require the Indemnitor to deliver to the City those communications and documents that are encompassed by the attorney-client privilege and/or the attorney work product doctrine.

6. Any notice required or permitted to be given to either party shall be deemed to be received by such party (i) three (3) days after deposit in the United States Registered or Certified Mail, Return Receipt Requested, or (ii) one (1) business day after deposit with a nationally recognized overnight delivery service guaranteeing next business day delivery, or (iii) upon personal delivery to the party to whom addressed provided that a receipt of such delivery is obtained, or (iv) on the same business day as transmitted and confirmed by telecopy provided that a confirmation copy is concurrently deposited in United States Certified or Registered Mail, Return Receipt Requested. Such notices shall be addressed to the Parties at the following addresses:

If to Indemnitor: Phillips 66 Company
1708-01 Phillips Building
420 S. Keeler Avenue
Bartlesville, OK 74003-6670
Attn: Becky Hesslen, Program Manager
Health, Safety & Environment
Remediation Management
Facsimile No.: (918) 977-8157

With copies to Phillips 66 Company
1232 Park Street, Suite 300
Paso Robles, CA 93446
Attention: Colleen S. Hagemann
Telephone: (805) 226-2649
Facsimile: (805) 239-4410

If to the City: City of Aurora
44 E. Downer Place
Aurora, IL 60068
Attn: Alayne Weingartz, Corporation Counsel
Facsimile No.: (630) 256-3069

With copies to: Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive - Suite 1660
Chicago, Illinois 60606-2903
Attn: Dennis G. Walsh
Facsimile No.: (312) 984-6444

or to the Parties at such other addresses or telecopy numbers as they may designate by notice to the other party as herein provided.

7. This Agreement has been made and delivered in Illinois and shall be construed according to and governed by the internal laws of the State of Illinois without regard to its conflict of law rules. If any provision hereof shall be held invalid, prohibited or unenforceable under any applicable laws of any applicable jurisdiction, such invalidity, prohibition or unenforceability shall be limited to such provision and shall not affect or invalidate the other provisions hereof or affect the validity or enforceability of such provision in any other jurisdiction, and to that extent, the provisions hereof are severable. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law.

8. Failure of the City to require performance of any provision of this Agreement shall not affect the City's right to require full performance thereof at any time thereafter, and the waiver by the City of a breach of any provision of this Agreement shall not constitute or be deemed a waiver of a similar breach in the future, or any other breach, or nullify the effectiveness of such provisions of this Agreement. The rights and remedies of the City of this Agreement are cumulative. The exercise or use of any one or more thereof shall not bar the City from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise or use of any right or remedy by the City waive any other right or remedy. The parties are aware of 42 U.S.C. §9607(e), and waive any rights they may otherwise have to assert that such statute does not permit, or renders invalid, the waivers or indemnity provisions contained in this Agreement.

9. This Agreement shall be binding upon the Indemnitor and the successors and assigns for so long as any Highway Authority Agreement is required by Indemnitor as an institutional control as defined by the Environmental Laws. Provided, however, Indemnitor's duty to indemnify City shall survive if the Liabilities are incurred during the effective period of the Highway Authority Agreement. No transfer of Indemnitor's rights or obligations hereunder shall be made without the prior written approval of the City's Board of Trustees, which approval shall be with their reasonable discretion.

10. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended, modified, revised, supplemented or restated except by a writing signed by each of the Parties. In construing this Agreement or determining the rights of the Parties, no party shall be deemed to have drafted or created this Agreement or any portion thereof.

11. Indemnitor will pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by the City in enforcing the covenants and agreements of this Agreement.

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12. The executing representatives of the Parties represent and certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.

IN WITNESS WHEREOF, the parties have executed this Environmental Indemnity Agreement in two (2) duplicate originals on the dates set forth below.

City of Aurora

Phillips 66 Company

By: _____

By: Bill A. Hallett

Name: _____

Name: Bill A. Hallett

Title: _____

Title: Attorney-in-Fact