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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 04/06/2017 02:09 PM PG: 1 OF 28

STATE OF ILLINOIS)
)
COUNTY OF COOK)

EASEMENT AGREEMENT

PIN: 19-07-100-018-0000
ADDRESS: 4811 South Harlem Avenue, Forest View, IL
Main Channel Parcel 37.01

Prepared by and return recorded document:

Lisa Krenz
BP Pipelines (North America) Inc.
30 South Wacker Drive, Suite 900
Chicago, IL 60606
832-619-4323

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EASEMENT AGREEMENT *(Annual Increase-Environmental)*

THIS AGREEMENT ("Agreement"), made and entered into this 7th day of July, 2016, by and between the METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, a body corporate and politic organized and existing under the laws of the State of Illinois, hereinafter called the "District" and BP Pipelines (North America) Inc., hereinafter called the "Grantee."

WHEREAS, the Grantee desires a 25-year (i) 50-foot-wide non-exclusive pipeline easement, (ii) surface site easement for related above-ground piping, fixtures, appurtenances and other improvements incidental to the operation of said pipeline, and (iii) related rights of ingress and egress across, under, over and through the real estate legally described and depicted in Exhibit A which is attached hereto and made a part hereof and commonly referred to as 4811 South Harlem Avenue in Forest View, IL and known as a part of Main Channel Parcel 37.01;

WHEREAS, Main Channel Parcel 37.01 is under lease to KM Phoenix Holdings, LLC under that certain agreement on 16.58 acres that commenced January 15, 1940, and expires January 14, 2039;

WHEREAS, this Agreement is subject to the written consent of KM Phoenix Holdings, LLC; and

WHEREAS, the District is willing to grant to the Grantee the easement aforesaid upon the conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the representations, covenants, conditions, undertakings, and agreements herein made, the parties hereto agree as follows:

ARTICLE ONE

1.01 The District hereby grants unto the Grantee a non-exclusive easement, right, privilege and authority for 25 years commencing on August 1, 2016, and terminating on July 31, 2041, for a (i) 50-foot-wide pipeline easement, consisting of approximately 21,707 square feet (0.50 acres more or less), as more particularly depicted on Exhibit B-1 attached hereto and made a part hereof, and (ii) surface site easement containing 12,734 square feet (0.29 acres more or less), as more particularly depicted on Exhibit B-2 attached hereto and made a part hereof ((i) and (ii) hereinafter collectively called, the "Easement Premises"), all for the sole and exclusive purpose to construct, reconstruct, operate, maintain, repair, replace and remove an 8-inch petroleum pipeline and the related above ground piping, fixtures, appurtenances and other improvements incidental to the operation of said pipeline, hereinafter for convenience sometimes called "Improvements and Facilities", and related rights of ingress and egress across, under, over and through the real estate

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legally described and depicted in Exhibit A which is attached hereto and made a part hereof.

1.02 The District reserves the right of access to and use of the surface of the Easement Premises; provided, such access does not unreasonably interfere with Grantee's exercise of the rights herein granted to Grantee.

1.03 The Grantee covenants and agrees in consideration of the grant of said easement to pay to the District an initial annual easement fee in the amount of Seventeen Thousand Two Hundred Twenty AND NO/100 DOLLARS (\$17,220.00) which is payable contemporaneously with Grantee's execution and delivery hereof. This amount represents the annual easement fee for the period from August 1, 2016 through July 31, 2017.

1.04 INTERIM ANNUAL EASEMENT FEE ADJUSTMENTS. On the anniversary of the effective date of this Agreement, the annual fee to be paid by Grantee to the District shall be adjusted by multiplying the initial annual fee or the fee in effect for the previous one-year period by the percentage of change in the Consumer Price Index for the Chicago Metropolitan Area, more specifically the "Chicago All Items Consumer Price Index for All urban Consumers (CPIU) published by the United States Department of Labor, Bureau of Labor Statistics, as established for the month of October immediately preceding the term of this Agreement (in the case of the first annual fee adjustment hereunder) and every October thereafter during the term hereof. In the event the Consumer Price Index is discontinued, the Board of Commissioners of the Lessor shall, in its sole discretion select and utilize any other economic activity index of the United States government which reasonably reflects economic activity in the Metropolitan Chicago Area. If the percentage of change in the CPI decreases to an amount less than zero for any given year, then the change will be treated as zero percent for that year and in no event shall the annual fee decrease from the rental fee in effect for the previous one year term.

1.05 In addition to the aforesaid, the Grantee shall also pay, when due, all real estate taxes and assessments attributable to Grantee's interests that may be levied, charged or imposed upon or against the Easement Premises described in Exhibit B-1 and B-2 and submit to the District evidence of such payment within 30 days thereafter.

ARTICLE TWO

2.01 The construction and installation of the Improvements and Facilities of the Grantee on the Easement Premises shall be in accordance with plans and specifications therefor prepared at Grantee's expense and supplied to the District by the Grantee. No work shall commence until said plans and specifications have been approved in writing by the Executive Director of the District, which approval shall not be unreasonably withheld, conditioned or delayed.

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2.02 The construction and installation of the Improvements and Facilities by the Grantee on the Easement Premises shall be done to the reasonable satisfaction of the Executive Director of the District.

2.03 Grantee shall construct, install, operate, maintain and remove the "Improvements and Facilities", in a good and workmanlike manner at its sole cost, risk and expense.

2.04 The Grantee shall compensate the District for any additional actual costs that the District may sustain in any future construction of sewers, reservoirs or any other surface or underground structures caused by the presence of the Improvements and Facilities of the Grantee on the Easement Premises. District, to the extent possible, shall endeavor to provide Grantee with sixty (60) days' prior written notice of such work incurring actual costs. Grantee acknowledges that in the event the District incurs costs due to emergency work, then such 60 day notice provision shall not apply. Upon Grantee's request, District shall provide Grantee copies of the paid bills,, invoices supporting such actual costs or other reasonable forms of proof of costs in the event copies of paid bills or invoices are not available. The District, in some cases, may seek upfront payment of costs from Grantee, and in such cases, shall provide Grantee with written good faith estimates or quotes for such costs in lieu of paid bills or invoices.

2.05 The Grantee shall relocate or remove the Improvements and Facilities existing or constructed upon the Easement Premises at no cost to the District:

- A.** In the event that the subject premises are adjacent to any channel, waterway or reservoir, and said channel, waterway or reservoir is to be widened by the District or any other governmental agency; or
- B.** In the event that any agency of government, having jurisdiction over said channel, waterway or reservoir requires the relocation or removal of said improvements; or
- C.** In the event that said relocation or removal is required for the corporate purposes of the District.

ARTICLE THREE

3.01 The District expressly retains its interest in and rights to the use and occupation of the Easement Premises subject to the easement rights herein granted, and the District may grant further easements, assign, sell or lease the same to other parties subject to the Grantee's right of use and a reasonable means of access to said Improvements and Facilities for construction, reconstruction, operation, maintenance, repair, replacement or removal thereof.

3.02 The Grantee shall be solely responsible for and shall defend, indemnify, keep and save harmless the District, its Commissioners, officers, agents and employees, against all injuries, deaths, losses, damages, claims, patent claims, liens,

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suits, liabilities, judgments, costs and expenses (collectively, "Losses") which may in any wise accrue, directly or indirectly, against the District, its Commissioners, officers, agents or employees, in consequence of the granting of this easement, or which may in anywise result therefrom or from any work done hereunder, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Grantee or Grantee's contracts, subcontractors or their agents, and the Grantee shall, at Grantee's sole expense, appear, defend and pay all charges of Attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the District, its Commissioners, officers, agents or employees, in any such action, the Grantee shall, at the Grantee's sole expense, satisfy and discharge the same provided that Grantee shall first have been given prior notice of the suit in which judgment has been or shall be rendered, Grantee shall have been given an opportunity to defend the same and the District shall have given Grantee its full cooperation. Grantee expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by Grantee, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the District as herein provided.

3.03 The Grantee, prior to entering upon said premises and using the same for the purposes for which this easement is granted, shall procure, maintain and keep in force, at Grantee's expense, the following public liability and property damage insurance in which the District, its Commissioners, officers, agents and employees, are a named insured as well as fire and extended coverage, and all-risk property insurance ("CLAIMS MADE" policies are unacceptable) in which the District is named loss payee from a company to be approved by the District, each aforementioned policy shall have limits of not less than the following:

COMPREHENSIVE GENERAL LIABILITY
Combined Single Limit Bodily Injury Liability
Property Damage Liability (Including Liability for Environmental Contamination of
Adjacent Properties)
in the amount of not less than \$4,000,000.00
per Occurrence

and

ALL RISK PROPERTY INSURANCE
(Including Coverage for Environmental Contamination
of Easement Premises)
in the amount of not less than \$4,000,000.00
per Occurrence

Prior to entering upon said premises, and thereafter on the anniversary date of such policies, the Grantee shall furnish to the District certificates of such insurance or other suitable evidence that such insurance coverage has been procured and is maintained in full force and effect. Upon District's written request, Grantee shall provide District with copies of the actual insurance policies within ten (10) days of

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District's request for same. Such certificates and insurance policies shall clearly identify the premises and shall provide that no change, modification in or cancellation of any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the District. The provisions of this paragraph shall in no wise limit the liability of the Grantee as set forth in the provisions of paragraph 3.02 above.

ARTICLE FOUR

4.01 In the event of any default on the part of the Grantee to faithfully keep and perform all singular the covenants, agreements and undertakings herein agreed by it to be kept and performed, or if said Improvements and Facilities are abandoned, the District shall give the Grantee notice in writing of such default or abandonment; and if such default or abandonment shall not have been rectified within thirty (30) days after receipt of such notice by the Grantee, all rights and privileges granted herein by the District to the Grantee may be terminated by the District; and upon such termination, the Grantee shall immediately vacate the Easement Premises and remove its Improvements and Facilities from said real estate and restore the land to its condition prior to Grantee's entry thereon, all at the sole cost of the Grantee.

4.02 The Grantee shall have the right to give the District written notice to cease and terminate all rights and privileges under this agreement. In the event of such termination, the Grantee shall have a period of one-hundred twenty (120) days from and after such termination date to remove the Improvements and Facilities and to restore the land to its original condition at no cost to the District.

The expiration of said removal and restoration date shall in no event extend beyond the expiration date of this Agreement.

4.03 The Grantee understands and agrees that upon the expiration of this Agreement, Grantee shall have removed or caused to be removed its Improvements and Facilities and any other things which Grantee has erected or placed upon said Easement Premises. Grantee further agrees to yield up said Easement Premises in a condition as when the same was entered upon by the Grantee. Upon Grantee's failure to do so, the District may do so at the sole expense and cost of Grantee.

4.04 The Grantee, prior to entering into possession, shall execute and lodge with the District its performance bond in the sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) conditioned upon the performance of each and every condition of this Agreement, such bond shall be in a form reasonably satisfactory to the Attorney for the District. The furnishing of the bond required in this Article shall in no wise limit or affect the liability of the Grantee or its insurance carrier under any other provision of this easement.

4.05 Grantee expressly understands and agrees that any insurance protection or bond required by this Agreement, or otherwise provided by Grantee, shall in

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no way limit the responsibility to defend, indemnify, keep and save harmless the District, as hereinabove provided.

ARTICLE FIVE

5.01 The Grantee also agrees that if the District incurs any additional actual expense for additional work which the District would not have had to incur if this Agreement had not been executed, then, in that event, the Grantee agrees to pay to the District such additional actual expense as determined by the Executive Director of the District, promptly upon rendition of bills therefor to the Grantee.

5.02 The Grantee covenants and agrees that it will reimburse the District, make all necessary repairs at its sole cost and expense and otherwise keep and save harmless the District from any loss, cost or expense arising out of the granting of this easement suffered to property of the District by way of damage to or destruction thereof, caused by any act or omission of the Grantee, Grantee's agents, employees, contractors, subcontractors, or anyone else acting through or on behalf of Grantee, its agents, employees, contractors, or subcontractors.

5.03 During the term of this Agreement, the District shall not be liable to the Grantee for any loss, cost or expense which the Grantee shall sustain by reason of any damage to its property or business caused by or growing out of the construction, repair, reconstruction, maintenance, existence, operation or failure of any of the sewers, structures, channels or other works or equipment of the District now located or to be constructed on said Easement Premises, or on the land of the District adjacent to said Easement Premises.

ARTICLE SIX

6.01 Detailed plans of subsequent construction or material alteration of the Grantee's Improvements and Facilities shall first be submitted to the Executive Director of the District for approval, which approval shall not be unreasonably withheld, conditioned or delayed. Construction work shall not begin until such approval is given to Grantee in writing.

6.02 On or before the commencement of the last five-year period of the Agreement term hereunder, Grantee shall lodge with the District its Environmental Site Restoration/Remediation Bond in the penal sum of \$5,000.00, secured either by cash, irrevocable letter of credit, or a commercial bond with surety to secure Grantee's performance of and compliance with the provisions and intent of Article 9 of this Agreement. A cash payment securing the bond hereunder will be placed in an interest bearing account established by the District specifically for this purpose. Any interest paid on account of said deposit shall be the property of and payable periodically to the Grantee. Such account shall be drawable only by the District upon its unilateral act. At no time shall the amount on deposit in said account be less than the penal sum of this Bond. Any commercial bond with surety shall be fully prepaid by the Grantee and documented as such at the time it is lodged with the District. Said Bond shall be in a form approved by the District and shall be main-

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tained in full force and effect until such time as Grantee has demonstrated and documented to the reasonable satisfaction of the District (and the District has executed its written release thereof to the issuer), full compliance with all Environmental laws relating to Grantee's use or occupancy of the Demised Premises and its environmental restoration or remediation. This provision shall survive the termination/expiration of this Agreement.

6.03 Any notice herein provided to be given shall be deemed properly served if delivered in writing personally or mailed by registered or certified mail, postage prepaid, return receipt requested to the District in care of the Executive Director, 100 East Erie Street, Chicago, Illinois 60611, or to the Grantee in care of:

BP Pipelines (North America) Inc.,
Land and Right of Way Department,
30 South Wacker Drive, Suite 900,
Chicago, Illinois 60606,
Attn: David M. Sommerfeld
Telephone: (832) 664-3175
Fax: (312) 594-2133
Email: david.sommerfeld@bp.com

or to such other persons or addresses as either party may from time to time designate.

ARTICLE SEVEN

7.01 The Grantee, prior to entering upon said premises and using the same for the purposes for which this easement is granted, shall, at Grantee's sole cost and expense, obtain all permits, consents and licenses which may be required under any and all statutes, laws, ordinances and regulations of the District, the United States of America, the State of Illinois, the county, or the city, village, town or municipality in which the subject property is located, and furnish to the District suitable evidence thereof.

7.02 The Grantee covenants and agrees that it shall strictly comply with any and all statutes, laws, ordinances and regulations of the District, the United States of America, the State of Illinois, the county and the city, village, town or municipality in which the subject property is located, which in any manner affects this easement, any work done hereunder or control or limit in any way the actions of Grantee, its agents, servants and employees, or of any contractor or subcontractor of Grantee, or their employees.

7.03 The Grantee agrees to protect all existing District facilities within the Easement Premises, including, but not limited to, intercepting sewers, sludge lines, utility lines, dropshafts, connecting structures, siphons and manholes.

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7.04 No blockage or restriction of flow in the water will be tolerated at any time. No construction or improvements of any kind can project into the waterway during construction or after permanent repairs are completed.

7.05 Grantee agrees to abide by and implement the District's Waterway Strategy Resolution as adopted by the District's Board of Commissioners, and attached hereto as Exhibit C and made a part hereof.

ARTICLE EIGHT

8.01 The Grantee shall not voluntarily or by operation of law assign, or otherwise transfer or encumber all or any part of Grantees' interest in this easement or in the Premises to any other governmental agency, individual, partnership, joint venture, corporation, land trust or other entity without prior written consent of the District.

8.02 A change in the control of the Grantee shall constitute an assignment requiring the District's consent. The transfer of a cumulative basis of the twenty-five percent (25%) or more of the cumulative voting control of Grantee shall constitute a change in control for this purpose.

8.03 Grantee shall notify the District in writing not less than sixty (60) days prior to any proposed assignment or transfer of interest in this Agreement. Grantee shall identify the name and address of the proposed assignee/transferee and deliver to the District original or certified copies of the proposed assignment, a recital of assignee's personal and financial ability to comply with all the terms and conditions of the Agreement and any other information or documentation requested by the District. The District shall not unreasonably withhold, condition or delay the consent to assignment or transfer.

8.04 Any attempted assignment or transfer of any type not in compliance with these sections shall be void and without force and effect.

ARTICLE NINE

GENERAL ENVIRONMENTAL PROVISIONS

9.01 DEFINITIONS

- A. "Environmental Laws" shall mean all present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, state and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, orders, notices or demands relating to industrial hygiene, and the protection of human health or safety from exposure to Hazardous Materials, or the protection of the environment in any respect, including without limitation:**

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- (1) all requirements, including, without limitation, those pertaining to notification, warning, reporting, licensing, permitting, investigation, and remediation of the presence, creation, manufacture, processing, use, management, distribution, transportation, treatment, storage, disposal, handling, or release of Hazardous Materials;
- (2) all requirements pertaining to the protection of employees or the public from exposure to Hazardous Materials or injuries or harm associated therewith; and
- (3) the Comprehensive Environmental Response, Compensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 et seq.), the Resource Conservation and Recovery Act (Solid Waste Disposal Act or RCRA) (42 U.S.C. Sec. 6901 et seq.), Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), the Rivers and Harbors Act of 1988 (33 U.S.C. Sec. 401 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Safe Drinking Water Act (42 U.S.C. Sec. 300 (f) et seq.), the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and all rules, regulations and guidance documents promulgated or published thereunder, Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.) and all similar state, local and municipal laws relating to public health, safety or the environment.

B. "Hazardous Materials" shall mean:

- (1) any and all asbestos, natural gas, synthetic gas, liquefied natural gas, gasoline, diesel fuel, petroleum, petroleum products, petroleum hydrocarbons, petroleum by-products, petroleum derivatives, crude oil and any fraction of it, polychlorinated biphenyls (PCBs), trichloroethylene, ureaformaldehyde and radon gas;

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- (2) any substance (whether solid, liquid or gaseous in nature), the presence of which (without regard to action level, concentration or quantity threshold requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law;
- (3) any substance (whether solid, liquid or gaseous in nature) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or dangerous;
- (4) any substance (whether solid, liquid or gaseous in nature) the presence of which could cause or threaten to cause a nuisance upon the area subject to easement or to adjacent properties or pose or threaten to pose a hazardous threat to the health or safety of persons on or about such properties;
- (5) any substance (whether solid, liquid or gaseous in nature) the presence of which on adjacent properties could constitute trespass by or against Grantee or District;
- (6) any materials, waste, chemicals and substances, whether solid, liquid or gaseous in nature, now or hereafter defined, listed, characterized or referred to in any Environmental Laws as "hazardous substances," "hazardous waste," "infectious waste," "medical waste," "extremely hazardous waste," "hazardous materials," "toxic chemicals," "toxic substances," "toxic waste," "toxic materials," "contaminants," "pollutants," "carcinogens," "reproductive toxicants," or any variant or similar designations;
- (7) any other substance (whether solid, liquid or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the action levels, concentrations or quantity thresholds specified herein); or
- (8) any result of the mixing or addition of any of the substances described in this Subsection B with or to other materials.

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C. "Phase I Environmental Assessment" shall mean:

- (1) an assessment of the Easement Premises and a reasonable area of the adjacent premises owned by the District performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Easement Premises, a review of the utilization and maintenance of hazardous materials on the Easement Premises review of the Easement Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Easement Premises, site interviews and site history evaluations, basic engineering analyses of the risks to human health and the environment of any areas of identified concerns, and preparation of a written report which discusses history, site land use, apparent regulatory compliance or lack thereof and which includes historical summary, proximity to and location of USTs, LUSTs, TSDFs, CERCLA site flood plain, maps, photograph log references, conclusions and recommendations.

D. "Phase II Environmental Assessment" shall mean:

- (1) an assessment of the Easement Premises and a reasonable area of the adjacent property owned by the District performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to, extensive sampling of soils, ground waters and structures, followed by laboratory analysis of these samples and interpretation of the results, and preparation of a written report with boring logs, photograph logs, maps, investigative procedures, results, conclusions and recommendations.

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9.02 MANUFACTURE, USE, STORAGE, TRANSFER OR DISTRIBUTION OF HAZARDOUS MATERIALS UPON OR WITHIN THE EASEMENT

Grantee, for itself, its heirs, executors, administrators, and successors covenants that to the extent that any Hazardous Materials are manufactured, brought upon, placed, stored, transferred, conveyed or distributed upon or within the Easement Premises, by Grantee or its subtenant or assigns, or any of its agents, servants, employees, contractors or subcontractors, same shall be done in strict compliance with all Environmental Laws.

Construction or installation of new or reconstruction of any underground interconnecting conveyance facilities for any material or substance is not permitted without the advance written consent of the Executive Director of the District, which shall not be unreasonably withheld, conditioned or delayed.

9.03 USE OF PREMISES (RESTRICTIONS - ENVIRONMENTAL)

Grantee shall use the Easement Premises only for purposes expressly authorized by Article 1.01 of this Agreement. Grantee will not do or permit any act that may impair the value of the Easement Premises or any part thereof or that could materially increase the dangers, or pose an unreasonable risk of harm, to the health or safety of persons to third parties (on or off the Easement Premises) arising from activities thereon, or that could cause or threaten to cause a public or private nuisance on the Easement Premises or use Easement Premises in any manner (i) which could cause the Easement Premises to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Easement Premises within the ambit of the Resource Conservation and Recovery Act of 1976, Section 6901 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance, (ii) so as to cause a release or threat of release of Hazardous Materials from the Easement Premises within the meaning of, or otherwise bring the Easement Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 9601 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance or any other Environmental Law or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions which would require a permit under the Federal Water Pollution Control Act, Section 1251 of Title 33 of the United States Code, or the Clean Air Act, Section 741 of Title 42 of the United States Code, or any similar state law or local ordinance.

9.04 CONDITION OF PROPERTY (ENVIRONMENTAL)

- A. Grantee has used the Easement Premises under a prior lease agreement, and Grantee represents that the Easement Premises and improvements thereon, including all personal property, contain contamination of Hazardous Materials, and that there have been thereon releases, discharges, or emissions, of Haz-

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ardous Materials during its and its predecessor's occupancy of the Easement Premises as defined by any Environmental Laws.

- B. As a result, to address the release, emission, discharge, or disposal of Hazardous Materials in, on, under, or about the Easement Premises or the improvements thereon, Grantee will take all appropriate response actions, including any removal and remedial action after the execution date of this Agreement.

9.05 INDEMNIFICATION (ENVIRONMENTAL)

- A. In consideration of the execution and delivery of this Agreement, the Grantee indemnifies, exonerates, and holds the District and its officers, officials, Commissioners, employees, and agents ("Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages and expenses incurred in connection with any of these (irrespective of whether any such Indemnified Party is a party to the action for which indemnification is here sought), including reasonable Attorney's fees, costs and disbursements incurred by the Indemnified Parties as a result of or arising out of or relating to (i) the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of Grantee's activities, or (ii) any investigation, litigation, or proceeding related to any environmental response, audit, compliance, or (iii) the release or threatened release by Grantee, its subsidiaries, or its parent company of any Hazardous Materials or the presence of Hazardous Materials on or under the Easement Premises or any property to which the Grantee, its parent company, or any of its subsidiaries has sent Hazardous Materials (including any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under any Environmental Law) regardless of whether caused by or within the control of the Grantee, its parent company, or its subsidiaries provided that, to the extent District is strictly liable under any Environmental Laws, Grantee's obligation to District under this indemnity shall be without regard to fault on the part of the Grantee with respect to the violation of law which results in liability to District.

9.06 ENVIRONMENTAL COVENANTS

Grantee agrees to and covenants as follows:

- A. Grantee covenants and agrees that throughout the term of the Agreement all Hazardous Materials which may be used upon the Easement Premises shall be used or stored thereon only in a

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safe, approved manner in accordance with all generally accepted industrial standards and all Environmental Laws.

- B. Grantee has been issued and is in compliance with all permits, certificates, approvals, licenses, and other authorizations relating to environmental matters and necessary for its business, if any.
- C. Grantee, to the best of its knowledge, is not a potentially responsible party with respect to any other facility receiving waste of the Grantee (from the Easement Premises) under CERCLA or under any statute providing for financial responsibility of private parties for cleanup or other actions with respect to the release or threatened release of any Hazardous Materials.
- D. Grantee will take all reasonable steps to prevent a violation of any Environmental Laws. There will be no spill, discharge, leaks, emission, injection, escape, dumping, or release of any toxic or Hazardous Materials by any persons on the area to be used and under the Agreement.
- E. Grantee will not allow the installation of asbestos on the area described in Exhibit A or any item, article, container or electrical equipment including but not limited to transformers, capacitors, circuit breakers, reclosers, voltage regulators, switches, electromagnets and cable, containing FCCs.
- F. In conjunction with any future trenching or excavation related activities, Grantee shall be responsible to install "plugs" of compacted impermeable soil material at intervals of no greater than 100 feet between such plugs along utility trenches which have been backfilled with compacted granular materials in order to minimize cross-site and off-site environmental contaminant migration. The spacing of these plugs should be based on the characteristics of the site, the configuration of the trench or trenches, the characteristics (nature and extent) of the site environmental contamination, and/or the potential for site contamination should a surface of subsurface chemical release occur. Special emphasis should be placed on locating these plugs at all utility trenches where they cross: other utility trenches, containment berms or walls, property boundaries, and lease boundaries.
- G. The aforesaid representations and warranties shall survive the expiration or termination of the Agreement.

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9.07 COVENANTS (ENVIRONMENTAL)

Grantee shall cause its parent company and each of its respective subsidiaries, contractors, subcontractors, employees and agents to:

- A. (1) Use and operate all of the Easement Premises in compliance with all applicable Environmental Laws, keep all material permits, approvals, certificates, and licenses in effect and remain in material compliance with them;
- (2) undertake reasonable and cost-effective measures to minimize any immediate environmental impact of any spill or leak of any Hazardous Materials;
- B. Notify District by telephone within two hours of the release of Hazardous Materials, including the extent to which the identity of the Hazardous Materials is known, the quantity thereof and the cause(s) of the release, and provide the District within 72 hours of the event with copies of all written notices by Grantee, its parent, and its subsidiaries that are reported to government regulators or received from the government regulators.
- C. Provide such information that the District may reasonably request from time to time to determine compliance by the Grantee with this Article.
- D. Grantee covenants and agrees to cooperate with the District in any inspection, assessment, monitoring, or remediation instituted by the District during the Agreement.

9.08 COMPLIANCE (ENVIRONMENTAL)

The Grantee will cause its parent company and each of its subsidiaries, if any, to exercise due diligence to comply with all applicable treaties, laws, rules, regulations, and orders of any government authority.

- A. In the event of a spill, leak or release of hazardous waste carried by Grantee, its employees, or its agents Grantee shall conduct a Phase I Environmental Assessment, at its own expense, with respect to the Easement Premises and a reasonable area of the adjacent property owned by the District and submit the written report to the District within 90 days after the spill, leak or discharge. After review of each Phase I Environmental Assessment, District, at its sole discretion, may require Grantee, at Grantee's expense, to obtain a Phase II Environmental Assessment with respect to the premises used under the Agreement. The written report of the Phase II Environmental Assessment

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shall be submitted to District within 120 days of District's request for same. If the Phase II Assessment discloses the presence of any Hazardous Materials contamination on the Easement Premises or adjacent premises, Grantee shall take immediate action to remediate the contamination and to restore the Easement Premises described in Exhibit B-1 and B-2 and adjacent premises owned by the District to a clean and sanitary condition and to the extent required by any and all Environmental Laws.

- B. Capacitors, transformers, or other environmentally sensitive installations or improvements shall be removed by Grantee prior to the end of the Agreement unless directed to the contrary in writing by the District.
- C. If any Environmental Assessment reveals, or District otherwise becomes aware of, the existence of any violation of any Environmental Laws that either Grantee is unwilling to remediate or that District is unwilling to accept, District shall have the right and option to terminate this Agreement and to declare it null and void.
- D. In the event Grantee should receive a Notice of Environmental Problem, Grantee shall promptly provide a copy to the District, and in no event later than seventy-two (72) hours from Grantee's and any tenant's receipt or submission thereof. "Notice of Environmental Problem" shall mean any notice, letter, citation, order, warning, complaint, inquiry, claim, or demand that: (i) the Grantee has violated, or is about to violate, any Environmental Laws; (ii) there has been a release, or there is a threat of release, of Hazardous Materials, on the Easement Premises, or any improvements thereon; (iii) the Grantee will be liable, in whole or in part, for the costs of cleaning up, remediating, removing, or responding to a release of Hazardous Materials; (iv) any part of the Easement Premises or any improvements thereon is subject to a lien in favor of any governmental entity for any liability, costs, or damages, under any Environmental Laws, arising from or costs incurred by such government entity in response to a release of Hazardous Material, Grantee shall promptly provide a copy to the District, and in no event later than seventy-two (72) hours from Grantee's and any tenant's receipt or submission thereof.
- E. Not less than one (1) year prior to the expiration of the Agreement, Grantee shall have caused to be prepared and submitted to the District a written report of a site assessment in scope, form and substance, and prepared by an independent, competent and qualified professional and engineer, registered in the State of Illinois, satisfactory to the District, and dated not more

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than eighteen (18) months prior to the expiration of the Agreement, showing that:

- (1) the Grantee has not caused the Easement Premises and any improvements thereon to materially deviate from any requirements of the Environmental Laws, including any licenses, permits or certificates required thereunder;
- (2) the Grantee has not caused the Easement Premises and any improvements thereon to contain: (i) asbestos in any form; (ii) urea formaldehyde; (iii) items, articles, containers, or equipment which contain fluid containing polychlorinated bi-phenyls (PCBs); or (iv) underground storage tanks which do not comply with Environmental Laws;
- (3) the engineer has identified, and then describes, any Hazardous Materials utilized, maintained or conveyed on or within the property, the exposure to which is prohibited, limited, or regulated by any Environmental Laws;
- (4) if any Hazardous Materials were utilized, maintained or conveyed on the Easement Premises, the engineer has conducted and submitted a Phase II Environmental Assessment of the Easement Premises, which documents that the Easement Premises and improvements are free of contamination by Hazardous Materials;
- (5) the engineer has identified and then describes, the subject matter of any past, existing, or threatened investigation, inquiry, or proceeding concerning environmental matters by any federal, state, county, regional or local authority, (the Authorities"), and describing any submission by Grantee concerning said environmental matter which has been given or should be given with regard to the Easement Premises to the Authorities; and
- (6) the engineer includes copies of the submissions made pursuant to the requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 11001 et seq. of Title 42 of the United States Code.

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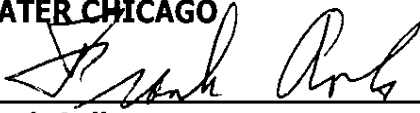
9.09 INSPECTION AND RIGHT OF INSPECTION (ENVIRONMENTAL)

- A.** In the event Grantee gives notice pursuant to the provisions of Notice of Environmental Problem, within ninety (90) days Grantee shall submit to District a written report of a site assessment and environmental audit, in scope, form and substance, and prepared by an independent, competent and qualified, professional, registered engineer, satisfactory to the District, showing that the engineer made all appropriate inquiry consistent with good commercial and customary practice, such that consistent with generally accepted engineering practice and procedure, no evidence or indication came to light which would suggest there was a release of substances on the Site or Property which could necessitate an environmental response action, and which demonstrates that the Site and Property complies with, and does not deviate from all applicable environmental statutes, laws, ordinances, rules, and regulations, including licenses, permits, or certificates required thereunder, and that the Grantee is in compliance with, and has not deviated from, the representations and warranties previously set forth.
- B.** District hereby expressly reserves to itself, its agents, Attorneys, employees, consultants, and contractors, an irrevocable license and authorization to enter upon and inspect the Easement Premises and improvements thereon, and perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and other tests which may physically invade the Easement Premises or improvements thereon as the District, in its sole discretion, determines is necessary to protect its interests.

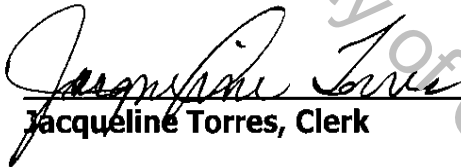
UNOFFICIAL COPY

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have caused these presents, including Riders and Exhibits, if any, to be duly executed, duly attested and their corporate seals to be hereunto affixed.

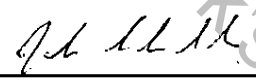
**METROPOLITAN WATER RECLAMATION DISTRICT
OF GREATER CHICAGO**

By: 
Frank Avila
Chairman of Committee on Finance


ATTEST:


Jacqueline Torres, Clerk

BP PIPELINES (NORTH AMERICA) INC.

By: 
Title: Attorney-in-Fact

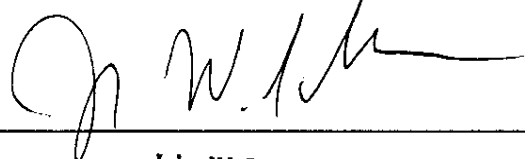
ATTEST:

By: 
Title: R/W Team Leader

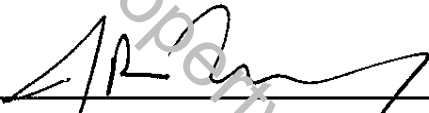
UNOFFICIAL COPY

Consented to by:

KM PHOENIX HOLDINGS, LLC

By: 
 Title: John W. Schlosser
President

ATTEST:

By: 
 Title: Assistant General Counsel

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Lisa A. Krenz, a Notary Public in and for said County,
(Name)
in the State aforesaid, DO HEREBY CERTIFY that John Chandler,
(Name)
personally known to me to be the Attorney-in-Fact
(Title)
of BP Pipelines (North America) Inc., a corporation, and
(Corporation Name),
David M. Sommerfeld personally known to me to be the
(Name)
R/W Team Leader of said corporation are the same persons
(Title)
whose names are subscribed to the foregoing instrument, appeared before me this
day in person and severally acknowledged that as such Attorney-in-Fact
(Title)
and R/W Team Leader of said corporation, duly executed said instrument
(Title)
in behalf of said corporation pursuant to authority given by the Board of Directors
of said corporation, as their free and voluntary act and as the free and voluntary act
and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12th day of July,
A.D. 2016.

Lisa Krenz
Notary Public

My Commission expires:
05/04/2018



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STATE OF TEXAS)
) SS.
COUNTY OF HARRIS)

I, Corine J. Sanchez, a Notary Public in and for said County,
(Name)

in the State aforesaid, DO HEREBY CERTIFY that John W. Schlosser,
(Name)

personally known to me to be the President
(Title)

of KM PHOENIX HOLDINGS, LLC, a limited liability company, and
(Company Name),

John McCrory personally known to me to be the
(Name)

Assistant General Counsel of said limited liability company, are the same persons
(Title)

whose names are subscribed to the foregoing instrument, appeared before me this

day in person and severally acknowledged that as such President
(Title)

and Assistant General Counsel of said limited liability company, duly executed
(Title)

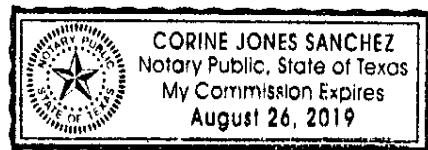
said instrument in behalf of said limited liability company, as their free and
voluntary act and as the free and voluntary act and deed of said limited liability
company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of November,
A.D. 2016.

Corine J. Sanchez
Notary Public

My Commission expires:

08-26-2019



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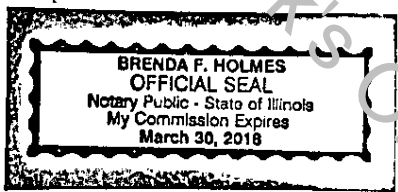
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Brenda F. Holmes Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Frank Avila, personally known to me to be the Chairman of the Committee on Finance of the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago, a body corporate and politic, and Jacqueline Torres, personally known to me to be the Clerk of said body corporate and politic, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Chairman of the Committee on Finance and such Clerk, they signed and delivered the said instrument as Chairman of the Committee on Finance of the Board of Commissioners and Clerk of said body corporate and politic, and caused the corporate seal of said body corporate and politic to be affixed thereto, pursuant to authority given by the Board of Commissioners of said body corporate and politic, as their free and voluntary act and as the free and voluntary act and deed of said body corporate and politic, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of March,
A.D. 20 17.

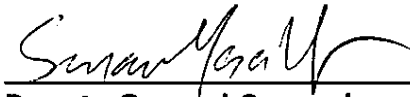
Brenda F. Holmes
Notary Public

My Commission expires:
3/30/18



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APPROVED AS TO FORM AND LEGALITY:

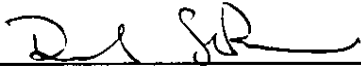


Deputy General Counsel



General Counsel

APPROVED:



Executive Director

Property of Cook County Clerk's Office

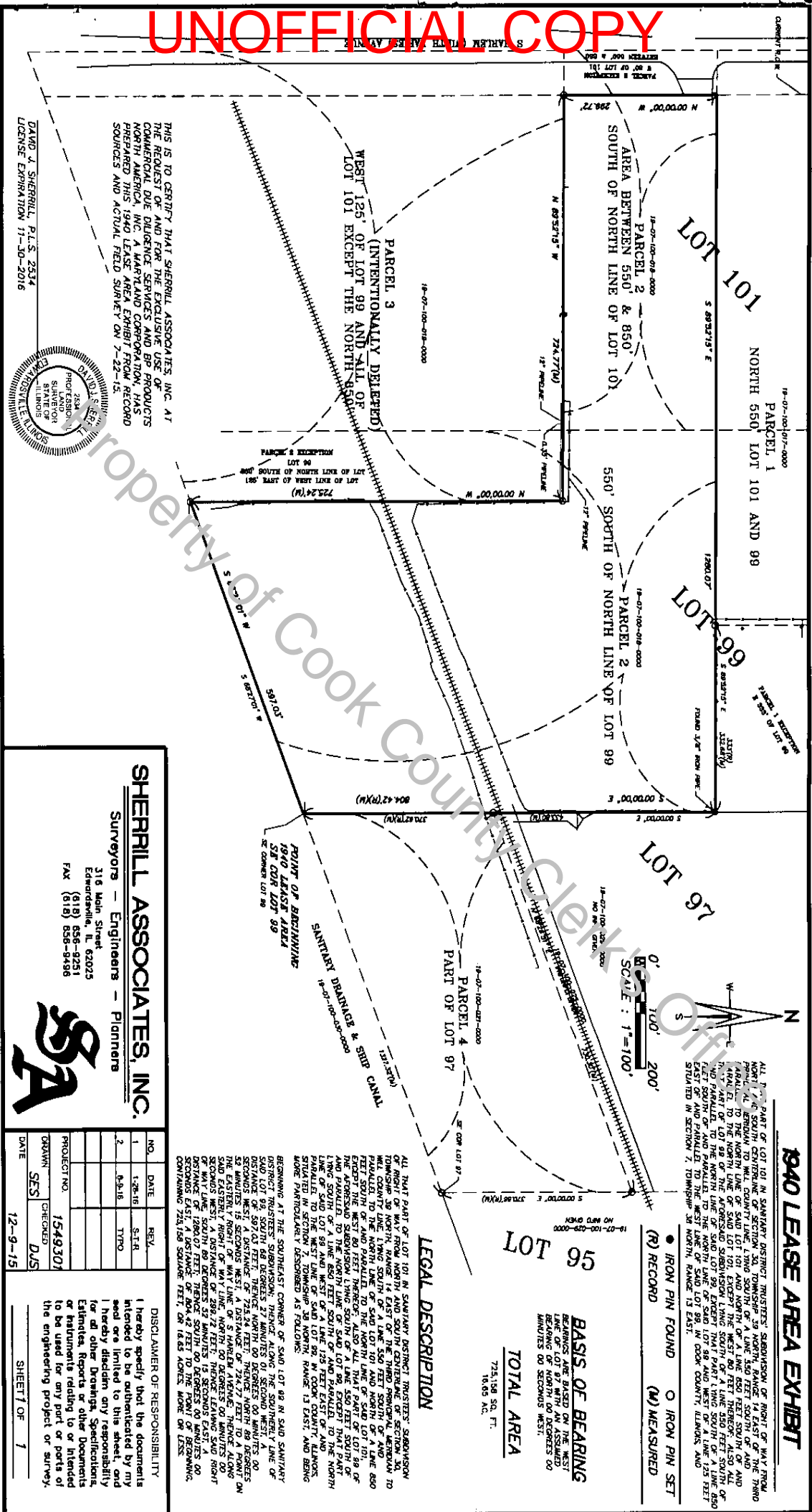
RECEIVED:

Fee _____

Insurance _____

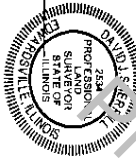
Bond _____

UNOFFICIAL COPY



THIS IS TO CERTIFY THAT SHERRILL ASSOCIATES, INC. AT THE REQUEST OF AND FOR THE EXCLUSIVE USE OF COMMERCIAL DUE DILIGENCE SERVICES AND BP PRODUCTS NORTH AMERICA, INC. A MARYLAND CORPORATION, HAS PREPARED THIS 1940 LEASE AREA EXHIBIT FROM RECORD SOURCES AND ACTUAL FIELD SURVEY ON 7-22-15.

DAVID J. SHERRILL, P.L.S. 2534
LICENSE EXPIRATION 11-30-2016



SHERRILL ASSOCIATES, INC.
Surveyors - Engineers - Planners

315 Main Street
Evanston, IL 60205
(818) 856-9251
FAX (818) 856-9456

S&A

NO.	DATE	REV.
1	1-26-15	S-L-R
2	8-2-15	T-P-O

PROJECT NO.	1549301
DRAWN	SES
CHECKED	DJS
DATE	12-9-15

DISCLAIMER OF RESPONSIBILITY

I hereby specify that the documents intended to be authenticated by my seal are limited to this sheet, and I hereby disclaim any responsibility for all other Drawings, Specifications, Estimates, Reports or other Documents or Instruments relating to or intended to be used for any part or parts of the engineering project or survey.

SHEET 7 OF 7

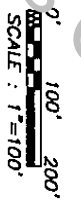
UNOFFICIAL COPY

EASEMENT EXHIBIT

PART OF LOT 99 OF THE FIRST SECTION, TOWNSHIP 10 N, RANGE 10 E, COOK COUNTY, ILLINOIS, BEING A PORTION OF THE TRACT DESCRIBED AS FOLLOWS:...

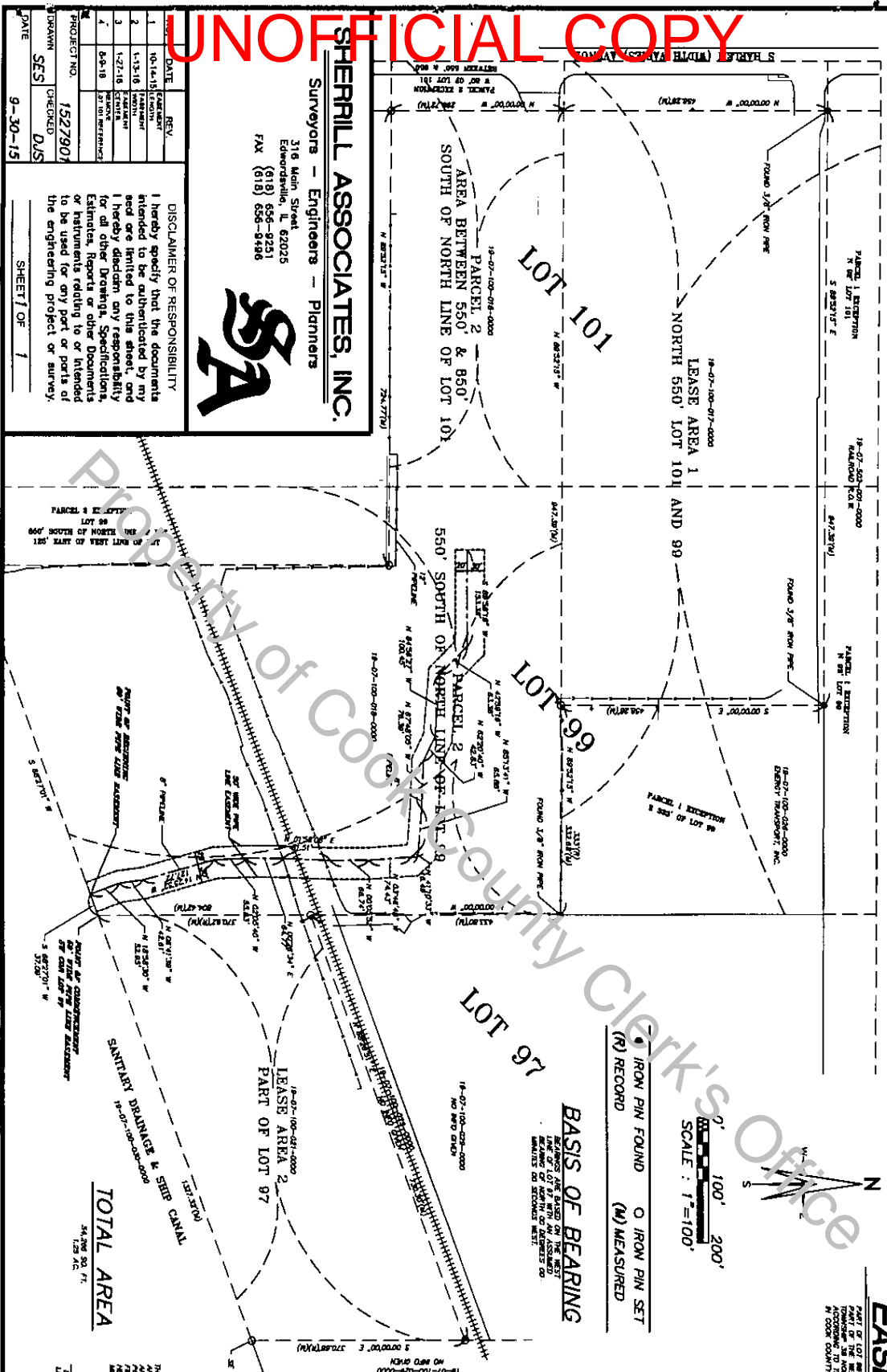
LEGAL DESCRIPTION

A TRACT OF LAND BEING PART OF LOT 99 OF SANITARY DISTRICT NO. 1, BEING A PART OF THE WEST HALF OF THE 13 EAST OF THE THIRD RANGE, TOWNSHIP 10 N, RANGE 10 E, COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF RECORD 45 OCCASION FOR LAYING OUT A SANITARY DISTRICT, BEING A PORTION OF THE TRACT DESCRIBED AS FOLLOWS:...



- IRON PIN FOUND (R) RECORD (M) MEASURED

BASIS OF BEARING ALL BEARINGS ARE BASED ON THE MEAN MAGNETIC MERIDIAN AS SHOWN ON THE NATIONAL MAGNETIC DECLINATION TABLES OF 1950.



SHERILL ASSOCIATES, INC. Surveyors - Engineers - Planners 316 Main Street, Edwardsville, IL 62025 (618) 656-9251 FAX (618) 656-9496



DISCLAIMER OF RESPONSIBILITY I hereby specify that the documents attached to this sheet, and I hereby disclaim any responsibility for all other Drawings, Specifications, Estimates, Reports or other Documents or instruments relating to or intended to be used for any part or parts of the engineering project or survey.

Table with columns: DATE, REV., DESCRIPTION, DRAWN, CHECKED, DATE. Includes project no. 15227907 and date 9-30-15.

TOTAL AREA 54.96 AC. 129.17 AC.

THIS IS TO CERTIFY THAT SHERILL ASSOCIATES, INC. IS THE SURVEYOR OF RECORD FOR THE SANITARY DISTRICT NO. 1, BEING A PORTION OF THE TRACT DESCRIBED AS FOLLOWS:...



UNOFFICIAL COPY

PROJECT NO.	1549301
DATE	12-9-15
DRAWN BY	SES
CHECKED BY	DJS

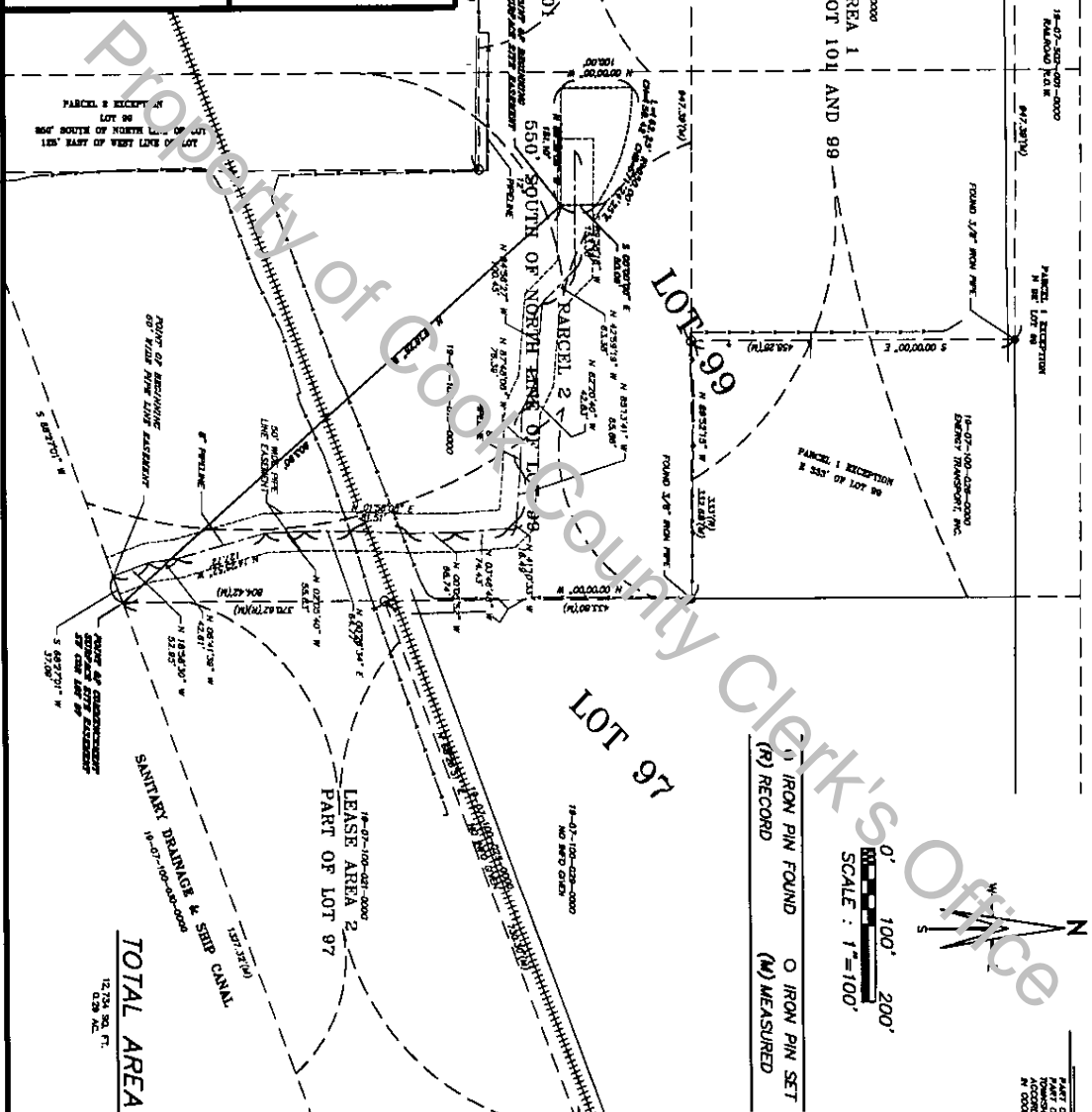
NO.	DATE	REV.
1	1-13-16	PRELIMINARY SUBMITTALS
2	8-4-16	REVISIONS

SHERILL ASSOCIATES, INC.
 Surveyors — Engineers — Planners

316 Main Street
 Edwardsville, IL 62025
 (618) 656-9231
 FAX (618) 656-9496



DISCLAIMER OF RESPONSIBILITY
 I hereby specify that the documents intended to be authenticated by my seal are limited to this sheet, and I hereby disclaim any responsibility for all other Drawings, Specifications, Estimates, Reports or other Documents or instruments relating to or intended to be used for any part or parts of the engineering project or survey.



0' 100' 200'
 SCALE: 1"=100'

0 IRON PIN FOUND (R) RECORD (M) MEASURED

SURFACE SITE EASEMENT EXHIBIT

LEGAL DESCRIPTION

A PORTION OF LAND BEING PART OF LOT 96 OF SAID SURVEY, BEARING THE SURVIVORSHIP OF SECTION 7, TOWNSHIP 33 NORTH, RANGE 13 EAST, COUNTY OF COOK COUNTY, ILLINOIS, AS SHOWN ON PLAT RECORD AT DEPARTMENT OF STATE RECORDS, NO. 41869, AS SHOWN IN COOK COUNTY CLERK'S OFFICE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING
 BEARINGS ARE BASED ON THE MERIDIAN OF LOT 92 WITH AN ASSUMED ERROR OF STEADY WEST



TOTAL AREA
 12,734 SQ. FT.
 0.29 AC.

THIS IS TO CERTIFY THAT SHERILL ASSOCIATES, INC. AT THE REQUEST OF THE CLIENT HAS CONDUCTED THIS SURFACE SITE EASEMENT EXHIBIT FROM SURVEY DATA AND ACTUAL FIELD SURVEY ON 7-23-14.

TONY J. SHERILL, P.L.S., REG.
 LICENSEd SURVEYOR NO. 11-51-2014