MEMO

TO: President Reed and Members of Council

FROM: Town Manager

SUBJECT: Reimbursement Agreement

DATE: September 30, 2016

Background

In the center of the intersection of Schreiber Drive and River Drive is a large Sanitary Manhole, through which an 18" BP pipeline is located approx. 4' below grade. There are 5 other pipes that utilize this same manhole. There are 3 other manholes located within this intersection and a nearby combination sanitary/storm vault in a neighboring yard that appeared clogged. Many of the manholes down River Drive are very deep and some appear non-functioning, all point to the complexity of this system. BP is in the process of assessing their pressurized crude oil lines through a device inserted into the pipeline that measures thickness and other pipe conditions and discovered that the section of their pipe that runs through our manhole has deteriorated.

The pipeline was installed in 1941. The concrete sewer vault structure was built over and around the 18"pipeline sometime thereafter. There are five large open pipes leading into and from the vault (three metal pipes and two concrete pipes), all discharging at approximately the same elevation as the pipeline. The pipes carry both sanitary and storm water (combination system).

Visually from the surface it evidences rust.

The total cost of repairing their deteriorated pipe – including the relocation of the sewer vault structure – is projected to be $229,750. The costs break down as follows:

Pipeline Repair	$171,000.00
Vault Relocation	$53,750.00
Design	$5,000.00

The Town originally took the position that BP should shoulder complete financial responsibility in any proposed improvement, as this is a being done with presumed regulatory oversight. Further research yielded information that conclusively demonstrated that the Town was indeed within the BP easement without permission.

The Town has successfully negotiated to share in 50% of the vault relocation and design costs. The Agreement memorializing this cost sharing understanding in included at the conclusion of this memorandum. Because this is a contract of sorts, Council must approve its terms.

Recommendation:

Allow the Town to enter into a cost sharing agreement with BP to relocate a Town of Munster combined sewer vault currently in BP's easement for a cost not to exceed $29,375.

REIMBURSEMENT AGREEMENT

PIPELINE: University Park to Whiting No. 1 System
PROJECT: Pipeline Repair
LOCATION: Schreiber Drive and River Drive, Munster, IN
BP FILE REFERENCE:

THIS REIMBURSEMENT AGREEMENT, (the "Agreement") made and entered into this _____ day of September, 2016, by and between, BP Pipelines (North America) Inc., a Maine corporation, whose address is 30 South Wacker Drive, Suite 900, Chicago, Illinois, 60606, (hereinafter referred to as "BP") and Town of Munster, whose address is 1005 Ridge Road, Munster, IN 46321 (hereinafter referred to as the "Town").

WITNESSETH:

WHEREAS, BP has the need to make certain pipeline inspections and potential repairs to the University Park to Whiting Pipeline near the intersection of Schreiber Drive and River Drive in Munster. In order to accomplish the pipeline inspection and potential repairs, it will be necessary to relocate and modify certain sanitary and storm sewer facilities (hereinafter referred to as "Sewer Facilities") owned and maintained by the Town;

WHEREAS, the Town desires that BP arrange to have the relocation and modification of the Sewer Facilities completed in accordance with plans prepared by Robinson Engineering and submitted to BP on September 20, 2016;

WHEREAS, it is in the best interests of the Town and BP for BP to coordinate the necessary relocation and modification of the Town's affected Sewer Facilities using the Town's designated engineering consultant, Robinson Engineering (hereinafter referred to as "Robinson"), and the Town's designated plumbing contractor, Gatlin Plumbing (hereinafter referred to as "Gatlin"), in order that the work be done in compliance with the Town's specifications and requirements for such work; and

WHEREAS, the Town shall reimburse BP for the Town's agreed upon portion of the Robinson and Gatlin expenses incurred in the relocation and modification of the Town's Sewer Facilities, whether incurred directly by BP or others on behalf of BP.

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN RECITED, THE TOWN AND BP DO HEREIN AGREE AS FOLLOWS:

Section I

BP with its regular construction or maintenance crew and personnel at its standard schedule of wages and working hours, or by a contractor or subcontractor, will make the necessary pipeline repairs as set forth by Exhibit "A" attached hereto and made a part hereof. The preliminary estimated cost of the pipeline repairs, including estimated cost associated with relocation and modification of the Town's Sewer Facilities, is **$229,750.00**, as set forth in Exhibit "A" which is attached hereto and made a part hereof.

Section II

a.) Pursuant to the terms of this Agreement, Town shall reimburse BP for 50% of Robinson estimated costs and for 50% of Gatlin estimated costs for the modification of certain sanitary and storm sewer facilities as specifically set forth in Exhibit "A". The total amount of the Town's reimbursement to BP shall not to exceed the total sum of **$29,375.00**. BP shall be responsible for any cost or expense for the relocation and modification of the sanitary and storm sewer facilities in excess of $58,750.

b.) BP will submit a final billing to the Town upon completion of the Work so that payment may be tendered. It is agreed that BP shall be reimbursed for the Work within sixty (60) days after receipt of billing by the Town.

Section III

BP shall hire Robinson and Gatlin to do the Work on the Town's Sewer Facilities in accordance with the plans prepared by Robinson, as set forth in Exhibit "B" which is attached hereto and made a part hereof. The Town, at no cost or expense to BP, shall provide inspection services to oversee, accept and approve the Work as having been completed in accordance with the Robinson Engineering plans and in compliance with the Town's specifications and requirements. The Town will acknowledge approval and acceptance of the Work in writing to BP, Gatlin and Robinson, which acknowledgement will not be unreasonably withheld. Acknowledgement will be deemed granted if the Town does not provide written acknowledgement within 60 calendar days following completion of the Work.

Section IV

FOLLOWING COMPLETION OF THE WORK, WITH RESPECT TO THE DESIGN, CONSTRUCTION AND PERFORMANCE OF THE MODIFIED SEWER FACILITIES, TOWN HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS BP, ITS AFFILIATED COMPANIES AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES AND CONTRACTORS FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, LOSSES, FINES, DAMAGES, COSTS AND EXPENSES (INCLUDING COSTS AND EXPENSES OF DEFENSE), IN CONNECTION WITH THE DESIGN, CONSTRUCTION AND PEFORMANCE OF THE MODIFIED SEWER FACILITIES.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF PRODUCTION OR OTHER DAMAGES ATTRIBUTABLE TO BUSINESS INTERRUPTION) ARISING IN CONNECTION WITH THIS AGREEMENT.

Section V

The provisions of Section IV of this Agreement shall survive any termination of this Agreement.

Section VI

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 be amended, modified, or supplemented but only in writing signed by an authorized representative of both BP and the Town.

Section VII

The provisions of this Agreement are solely for the benefit of the parties to this Agreement and no provision of this Agreement should be deemed to confer upon any other party any remedy, claim or right.

Section IX

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, but such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties as set forth herein.

Section X

This Agreement shall be construed in accordance with the laws of the United States and the state where the Work is to be performed, without regard to such state's conflicts of law rules.

IN WITNESS HEREOF, the parties hereto separately and severally have caused this **AGREEMENT** to be executed in their respective names by and through their duly authorized officers, as of the day and year first above written.

(SIGNATURE PAGE FOLLOWS)

WITNESS:

_____

BP Pipelines (North America) Inc.,

By: _____

Printed: _____

Title: _____

FEIN: _____

WITNESS:

_____

Town of Munster

By: _____

Printed: _____

Title: _____

FEIN: _____

EXHIBIT "A"

ESTIMATED INSPECTION/CONSTRUCTION COSTS

Gatlin Proposal Dated 9/1/16	**$53,750**	**BP and Town to split 50/50**
Robinson Engineering	**$ 5,000**	**BP and Town to split 50/50**
Inspection of Town of Munster's sewers	**$7,000**	**BP to Pay**
In-Line Inspection (ILI) and Repair	**$154,000**	**BP to Pay**
Site restoration contingency	**$10,000**	**BP to Pay**
Total Estimated Project Cost	**$229,750**	
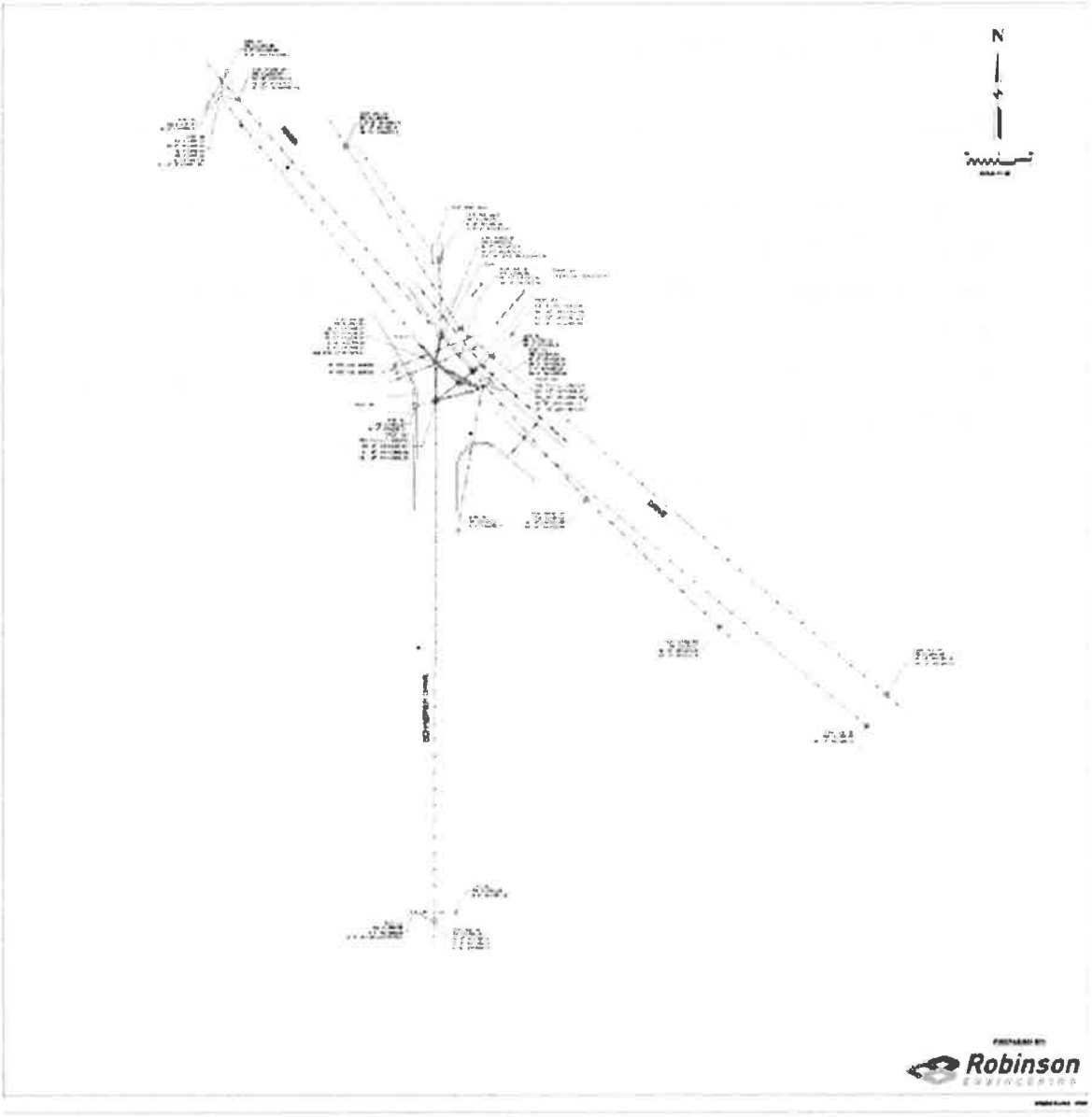
EXHIBIT "B"