

THIRD AMENDMENT TO PERMIT NO. 708
GRANTED BY THE CITY OF LOS ANGELES
TO KINDER MORGAN TANK STORAGE TERMINALS LLC

THIS THIRD AMENDMENT to Permit No. 708 is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and KINDER MORGAN TANK STORAGE TERMINALS LLC, a Delaware limited liability company, 1001 Louisiana Street, Suite 1000, Houston, Texas 77002 ("Tenant") as follows:

Recitals

WHEREAS, effective April 14, 1988, the City of Los Angeles granted Permit No. 708 to GATX Tank Storage Terminals Corporation for the operation of a marine oil terminal at Berths 118-119 and various subsurface pipelines throughout the Harbor District;

WHEREAS, Kinder Morgan Tank Storage Terminals LLC is the successor of GATX Tank Storage Terminals Corporation;

WHEREAS, on May 10, 2013, the City Council approved a First Amendment to Permit 708 that, among other things, extended the term of the permit by five years to April 13, 2018;

WHEREAS, as required by the First Amendment to Permit 708, Kinder Morgan Tank Storage Terminals LLC has removed improvements from a portion of the site, has begun to cleanup and abate soil contamination from that portion of the site as required by Los Angeles Regional Water Quality Control Board Order No. 97-119, and has surrendered a portion of the site back to the City;

WHEREAS the First Amendment to Permit 708 required that Kinder Morgan Tank Storage Terminals cease operations on April 13, 2017, in order to commence demolition of the remaining improvements and to continue with cleanup and abatement of soil and groundwater contamination;

WHEREAS, Kinder Morgan wished to continue operating at Berth 118 and the City had no immediate need for property, however the condition of the Berth 118 wharf and its ability to meet the structural standards imposed by the California State Lands Condition was and continues to be the subject of ongoing negotiation and study;

WHEREAS, on August 23, 2018, the City Council approved a Second Amendment to Permit 708 that, among other things, extended the term of the permit by five additional years to April 13, 2023;

WHEREAS Kinder Morgan Tank Storage Terminals has yet to find a suitable

location to relocate its operations and wishes to continue operating at Berths 118-119 and to conduct a feasibility study regarding the construction of a new wharf at Berth 120 in the Port of Los Angeles, and the City has no immediate need for the property;

NOW, THEREFORE, in consideration of the foregoing Recitals, and in exchange for the promises contained herein and other good and valuable consideration the adequacy of which is hereby acknowledged, the Parties agree as follows:

Amendment

1. Section 3, Term, subsection (a) Length, (b) Early Termination and (c) Holdover, as previously amended, are replaced with the following:

(a) Length. The term of this Agreement shall be for a period of thirty-seven (37) years, commencing on April 14, 1988, but subject to the following milestones for cessation of operations, demolition, and the completion of soil and groundwater remediation and surrender of the premises. Tenant's failure to meet any of these milestones shall subject Tenant to the default and termination provisions in Section 6 of the Permit.

(i) East tank farm area except for Tanks 55734 or 10735 and 5742 and Parcels 3 (surface manifold) and 5 (pipeline right-of-way on Drawing 2-2151-3); Parcels 2, 3, 7 and 7a on Harbor Engineer Drawing 2-2267-1:

- These parcels were surrendered to the City on December 30, 2015, after demolition, pipeline removal and completion of an Interim Remedial Action Plan. Additional remedial action, including further soil removal, groundwater monitoring, and/or groundwater treatment may be required by the Regional Water Quality Control Board.
- Pursuant to subsection (d) below, upon written request, Tenant shall be granted reasonable access to the surrendered parcels on an as-needed basis, subject to the terms and conditions of this Permit, to conduct additional remedial activities.
- The surrender of said premises does not constitute a waiver nor release of the City's claims for restoration of the property and remediation of soil and groundwater contamination. Tenant's obligations with respect to soil and groundwater remediation of these parcels is ongoing and remain a part of this contract and survive surrender of the parcels, as set forth in section 4(v).

(ii) Office and Vapor Recovery Unit, Tanks 55734 and 10735, Parcels 2 (wharf) and 4 (pipeline right-of-way) on Drawing 2-2151-3; Parcel 1 on Drawing 2-2237-1; Parcels 1-5 on Drawing 2-2085-1; Parcel 1 on Drawing 5-7085-1; Parcels 1-8,10, 11A, 11B on Drawing 1-1214-1; all of which are reflected on Drawing 1-3285:

- Operations Cease by April 13, 2024, subject to the early termination provision below ("Cessation Date").
- Demolition commences within thirty (30) days thereafter provided Kinder Morgan has received all necessary and required permits and approvals needed from the City.
- Soil and groundwater remediation commences within 10 (ten) days after completion of demolition and the receipt by Kinder Morgan of any other permits and/or approvals issued by the City to implement soil and groundwater remediation.
- Surrendered to City on or before April 13, 2025 ("Surrender Date").

(b) Early Termination. The extended term created by this Third Amendment is contingent upon Tenant gaining and retaining approval of the California State Lands Commission ("CSLC") to continue use of the wharf as follows:

- (i) Tenant is to complete, at its own expense, any Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS") audits required by the CSLC. The audits may, or may not, identify repairs and/or improvements needed to bring the wharf up to the standards required by CSLC to allow the wharf to operate for the remaining term of this Permit. Tenant shall reach agreement with the CSLC, in writing, as to the scope of wharf repairs and/or improvements and the deadline for completing such repairs and/or improvements.
- (ii) Tenant, at its own expense, must complete the required wharf repairs and/or improvements required by the CSLC.
- (iii) Should Tenant fail to meet any deadlines imposed by the CSLC or at any time should Tenant fail to have the approval of the CSLC to continue to load or unload vessels at the wharf, the termination milestones set forth in section (a)(ii) shall be automatically advanced and Tenant shall:
 - Cease operations within thirty (30) days following the applicable deadline or the revocation of approval by the CSLC.
 - Commence demolition thirty (30) days after cessation of operations provided Tenant has received all necessary and required permits and approvals needed from the City.
 - Commence soil and groundwater remediation commences within ten (10) days after completion of demolition and the receipt by Tenant of any other permits and/or approvals issued by the City to implement soil and groundwater remediation.
 - Surrender the Premises to City within twelve (12) months after the cessation of operations unless extended pursuant to the holdover provisions of section (c) ("Surrender Date").

(c) Holdover. Tenant shall not continue its operations after the Cessation Date nor hold over any part of the Premises after the Surrender Date unless it submits a written request to the Executive Director of City's Harbor Department, and Executive Director thereafter approves such request in writing. Should the Executive Director approve extension of the Cessation Date, the Surrender Date shall be extended by the same period of time such that the twelve month interval between Cessation Date and Surrender Date is maintained, and such extension of the Surrender Date shall be considered a holdover under the terms of this section.

The City recognizes Tenant's right and ability to request such an approved holdover shall include, but not be limited to, that situation in which Tenant is making substantial progress toward the completion of its obligations under this Permit, as amended, but needs additional time beyond the expiration of the extended Lease term to complete said obligations. Under such circumstances, Tenant's request for an approved holdover tenancy shall not be unreasonably delayed or denied. Any holdover shall be deemed an extension of this Agreement on a month-to-month basis and on the same terms and conditions as set forth in this Agreement, except that, if Executive Director, prior to the Surrender Date, has not provided written approval of a written request from Tenant to hold over, the Rent (as defined in Section 4) at the commencement of such holdover, at the sole and absolute discretion of Executive Director, may be increased up to two hundred and fifty percent (250%) of the Rent last in effect before such holdover commenced. If Executive Director has provided written approval of a written request from Tenant to hold over prior to the Surrender Date, the Rent applicable at the commencement of such holdover shall be the Rent last in effect before such holdover commenced.

City and Tenant acknowledge and agree that: (a) this section shall neither be deemed nor treated as a limitation or waiver of any rights or remedies of City provided in this Agreement or at law (all of which are reserved, including, without limitation, an action for unlawful detainer), an option to extend the Agreement, express or implied commitment to pursue or issue any approvals or entitlements, or express or implied permission for Tenant to remain on any part the Premises after the Surrender Date; and (b) City expressly reserves the right to require Tenant to surrender possession of the Premises to City as provided in this Agreement on the Surrender Date or sooner termination of this Agreement. Notwithstanding the foregoing, Tenant shall be entitled to request that the City approve holdover tenancy as stated hereon.

2. The effective date of this Third Amendment shall be upon execution by the Executive Director following approval by the Los Angeles City Council.

3. Except as amended herein, all remaining terms and conditions of Permit No. 708 as revised by its First and Second Amendments, shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed this Third Amendment to Permit No. 708 on the date to the left of their signatures.

Dated: _____, 2021

THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

By _____
EUGENE D. SEROKA
Executive Director

Attest _____
AMBER M. KLESGES
Board Secretary

Dated: 7-22-21, 2021

KINDER MORGAN TANK STORAGE
TERMINALS LLC

By Michael Pitta
Michael Pitta V.P.
(Print/type name and title)

Attest [Signature]
Dominick J. Battistelli V.P.
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

[Signature], 2021
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By [Signature]
KENNETH F. MATTFELD, Deputy

KFM/ila 07/14/2021