

SECOND AMENDMENT TO PERMIT NO 708

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 requires 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 Tank Storage Terminals intends to relocate its operations to Berths 148 - 150 in the Port of Los Angeles where it will operate as a sub-tenant of Phillips66, however the move is contingent upon Phillips66 gaining a new permit from the City which will include provisions for the construction of a new wharf,

and the environmental review process and negotiation of the Phillips66 permit has been delayed;

WHEREAS, Kinder Morgan wishes to continue operating at Berth 118 and the City has 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 is the subject of ongoing negotiation and study;

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, is replaced with the following:

(a) Length. The term of this Agreement shall be for a period of thirty (35) 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 new Drawing 1-3285:

- Operations Cease by April 13, 2022, subject to the early termination provision below.
- 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, 2023 ("Surrender Date").

(b) Early Termination. The extended term created by this Second Amendment is contingent upon Tenant gaining 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, a Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS") audit for submission to the CSLC. The audit 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. On or before October 13, 2017, Tenant shall gain the agreement of the CSLC, in writing, as to the scope of wharf repairs and/or improvements (the "Audit Completion Deadline").

The Executive Director may extend the Audit Completion Deadline by six months upon written request and a showing by Tenant of good cause for its failure to comply.

- (ii) Tenant, at its own expense, must complete the required wharf repairs and/or improvements within twenty-four months, or sooner if required by the CSLC, following the Audit Completion Deadline ("the Repair Completion Deadline").
- (iii) Should Tenant fail to meet either the Audit Completion Deadline or the Repair Completion Deadline, or at any time thereafter 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 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. 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.

(d) Post Surrender Ground Water Treatment & Monitoring. Upon written request, Tenant shall be granted reasonable access to the Premises on an as-needed basis after any and all Surrender Dates free of rent or any other charges for the purpose of monitoring or treating ground water as required by the RWQCB. Such monitoring and treatment shall occur through wells installed and maintained at Tenants sole cost and expense.

2. Section 4, Rent, Subsection (a), Amount Payable, is replaced by the following:

(a) Amount Payable

- (i) Base Rent: As of April 14, 2017, the quarterly rent due to the City for use of the Premises not yet surrendered is \$314,639.32 plus all tolls and charges pursuant to Port of Los Angeles Tariff No. 4 for use of the wharf. Said rental shall be due and payable, in advance, on or before the first day of each calendar quarter without abatement, deduction or offset, except as provided herein, and whether or not an invoice for same has been received. Tolls and other charges assessed pursuant to Tariff No. 4 are due and payable as set forth therein. Tenant shall

render its payments at City's Harbor Department Administration Building or any other place that City from time to time may designate in writing. Payment shall be made in U.S. Dollars, either in the form of a check (drawn on a bank located in the State of California) or via electronically transmitted funds.

If any payment by Tenant is for a period shorter than one calendar quarter, the compensation for that fractional calendar quarter shall accrue on a daily basis for each day of that quarter at a daily rate equal to 1/90 of the total quarterly compensation. All other payments or adjustments that are required to be made under the terms of this Agreement and that require proration on a time basis shall be prorated on the same basis.

- (ii) Annual CPI Adjustment: The Base Rent shall be adjusted annually in accordance with the following procedure:

Effective on the April 14, 2019, and annually thereafter, the Base Rent shall be adjusted automatically without further notice to reflect the percentage increase (but in no event decrease), if any, in the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California area, 1982-84=100 as published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI-U"), or a successor index selected by the Executive Director in the Executive Director's sole reasonable discretion ("Annual Adjustments"). Such adjusted Base Rent shall be equal to the product obtained by multiplying the Base Rent amount in effect on the Annual Adjustment Date by a fraction, the numerator of which is the CPI-U index for the second month immediately preceding the Annual Adjustment Date, (the "Adjustment Index") and the denominator of which is the CPI-U index as it stood on the same month of the prior

year (the "Base Index"). For accounting purposes, the Annual Adjustment shall be rounded to the nearest thousandth.

The formula illustrating the adjustment computation is as follows:

$$\text{Annual Adjusted Rent} = \frac{\text{Base Rent as of Annual Adjustment Date} \times \text{Adjustment Index}}{\text{Base Index}}$$

(iii) Reconciliation of Base Rent for Final Measurements: The Parties agree that the Rent shall be adjusted to reflect any changes in the final measurement of the Premises, or any improvements thereon, without further action of the Board or the Council. City shall inform Tenant of the revised Rent by written notice and affix such notice as an Attachment to this Agreement.

3. The second paragraph of Section 5, Uses, subsection (a), Permitted Uses, is stricken:

~~Parcel No. 2 of Drawing 2-2151-1 together with wharves constructed thereon designated Berths 118-119 shall be operated and maintained by Board as municipally owned and controlled wharves. Right to use said wharves by Tenant is nonexclusive and preferential.~~

4. Section 8, Maintenance and Restoration, subsection (a), Maintenance, is replaced by the following:

(a) Maintenance. Tenant, at its sole cost and expense, shall keep and maintain the Premises, and all buildings, wharf structures (including the fenders, mooring hardware and other components), works and improvements of any kind thereon, including, without limitation, the paving and the improvements existing on the Premises, in good and substantial repair and condition, whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements, or the age of such portion of the Premises or improvements thereon. Tenant shall be responsible for and shall perform all necessary inspection,

maintenance and repair thereof, including preventive maintenance, using materials and workmanship of similar quality to the original improvements, or updated to current standards for such improvements. Tenant shall obtain any permits necessary for such maintenance and repair, including, but not limited to those issued to City.

(i) MOTEMS. Notwithstanding the provisions of Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS") or this Agreement to the contrary, and in consideration of the provisions of this Agreement (including, but not limited to the use and compensation provisions), as between City and Tenant, as to the improvements, Tenant shall be solely responsible for compliance with the MOTEMS and shall bear all costs and expenses arising from or related to compliance with the MOTEMS (including, but not limited to, the costs of any engineering studies, audits, wharf modifications, reinforcements or upgrades), and any successor laws, rules or regulations regarding engineering and/or maintenance standards for marine oil terminal facilities, including, without limitation, such facilities' wharves. Tenant acknowledges and agrees that any demands, orders, penalties or other liability for MOTEMS compliance to which the City may become subject, shall be Tenant's responsibility.

(ii) Dredging. The City shall not be responsible for maintaining the depth at Berths 118-119 or its approach. Any dredging required to increase or maintain water depths at Berth 118-120 or its approach shall be the responsibility of Tenant, including the design, permitting, dredging, and disposal of dredged material.

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5. The effective date of this Second Amendment shall be upon execution by the Executive Director following approval by the Los Angeles City Council.
6. Except as amended herein, all remaining terms and conditions of Permit No. 708 as revised by its First Amendment, shall remain the same.

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

THE CITY OF LOS ANGELES
HARBOR DEPARTMENT

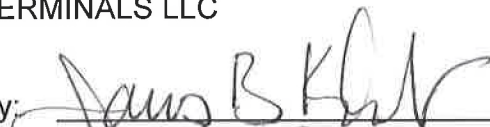
Dated: _____

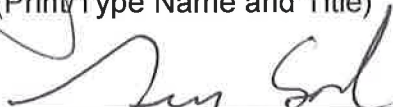
By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

KINDER MORGAN TANK STORAGE
TERMINALS LLC

Dated: 4/17/2017

By: 
JAMES B. KEHLET VP-MARKETING
(Print/Type Name and Title)

Attest: 
GREGG COOKE DIRECTOR B.I.D.
(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY

May 1, 2017
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: 
KENNETH F. MATTFELD, Deputy