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RECOMMENDATION APPROVED;  
RESOLUTION NO. 17-8094 (PERMIT 708) ADOPTED  
BY THE BOARD OF HARBOR COMMISSIONERS

MAY 18, 2017

*Amber M. Klesges*  
AMBER M. KLESGES  
Board Secretary



**DATE:** MAY 2, 2017  
**FROM:** WATERFRONT & COMMERCIAL REAL ESTATE  
**SUBJECT:** RESOLUTION NO. 17-8094 - APPROVE SECOND AMENDMENT TO PERMIT NO. 708 WITH KINDER MORGAN TANK STORAGE TERMINALS, LLC

**SUMMARY:**

Staff requests approval of the Second Amendment to Permit No. 708 (Permit 708) with Kinder Morgan Tank Storage Terminals LLC (Kinder Morgan) to allow for the continued operation of the marine oil terminal at Berths 118-119 until October 13, 2023. Kinder Morgan is required by the terms of the First Amendment to Permit 708 to cease operations by April 13, 2017. The extension is contingent upon Kinder Morgan gaining approval of the California State Lands Commission (CSLC) to continue to operate at Berths 118-119 after April 13, 2017 by October 13, 2017. The five-year extension is to allow Kinder Morgan time to move to a new facility in the Port of Los Angeles. Should approval by CSLC be delayed, the Executive Director may grant one additional six-month extension to April 13, 2018 under the Second Amendment for good cause. The proposed Second Amendment also includes a provision that adjusts compensation for land rent annually based upon the Consumer Price Index (CPI). Compensation for land rent is currently set at \$32 per square foot per year (\$1,225,469.60 per year). During calendar year 2016, Permit 708 compensation including land rent, wharfage and dockage was \$2,376,994.

The First Amendment extended Permit 708 for five years to allow for limited continued operations, demolition, and cleanup in consideration of a settlement in litigation involving cleanup of the former marine oil terminal at Berths 171-173. Kinder Morgan has completed the first phase of demolition and cleanup, as required in the First Amendment. Permit termination and complete site restoration remains. All maintenance and repair costs associated with the terminal and wharf will be borne by Kinder Morgan during the term of Permit 708. Kinder Morgan will assume all liability for operating the marine terminal at Berths 118-119.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Class 1(14) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;

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2. Approve the Second Amendment to Permit No. 708 with Kinder Morgan Tank Storage Terminals LLC;
3. Direct the Board Secretary to transmit the Second Amendment to the City Council for approval pursuant to the Charter Section 606 of the City Charter;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Second Amendment to Permit No. 708 with Kinder Morgan Tank Storage Terminals LLC upon approval by City Council; and
5. Adopt Resolution No. 17-8094.

**DISCUSSION:**

Background - Kinder Morgan acquired GATX Tank Storage Terminals Corp in 2000 under Permit 708, which granted the use of approximately 10 acres of land at Berths 118-119, including nearly 100,000 square feet of subsurface pipeline right-of-way. Permit 708 was initially a 25-year term permit with an expiration date of April 13, 2013. The First Amendment extended the term of Permit 708 for five years to allow for limited continued operations, demolition and cleanup in consideration of a settlement in litigation involving cleanup of the former GATX marine oil terminal at Berths 171-173. The First Amendment also required Kinder Morgan to cease operations by April 13, 2017.

In 2013, Kinder Morgan made plans to move its operations to the Port of Long Beach. However, upon completion of the construction at the terminal in Long Beach, Kinder Morgan found itself in a vessel scheduling conflict with the primary tenant, which made the move impractical. Kinder Morgan then proposed to lease a vacant Harbor Department parcel and utilize the berth and marine oil terminal as a customer of Phillips 66. Until Kinder Morgan is able to move to a new facility, they requested to extend Permit 708 for five years for completion of the environmental assessment, a new permit, and construction at a new location.

In order to extend Permit 708 for another five years, the Harbor Department requested Kinder Morgan to obtain CSLC approval to continue its operations at Berths 118-119. To obtain such approval, Kinder Morgan has agreed with CSLC to conduct a full audit of the wharf and produce a mutually agreeable repair plan. To allow Kinder Morgan time to conduct a full audit and to come to a mutual agreement with CSLC, Permit 708 needs to be amended. The Second Amendment (Transmittal 1) will allow Kinder Morgan until October 13, 2017 to obtain the agreement with the CSLC as to the scope of wharf repairs and/or improvements. This deadline can be extended one time for six months at the sole discretion of the Executive Director for good cause. If Kinder Morgan is unable to reach an agreement with CSLC, the Second Amendment would require cessation of the operations within 30 days following the applicable deadline and completion of the site restoration within 12 months from the cessation date.

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Under the Second Amendment, Kinder Morgan would continue to import and export product at Berths 118-119. As agreed in the First Amendment, most of the storage tanks, dike walls, and dig-and-haul soil remediation have been completed and the parcels returned to the Harbor Department. All costs associated with maintenance of the entire premises, including wharf structure, dredging, and maintenance of the slope, will become Kinder Morgan's responsibility. Kinder Morgan will also be required to meet all of CSLC's wharf requirements at their cost (Transmittal 2). The Harbor Department will not be responsible for any costs associated with the terminal at Berths 118-119 (Transmittal 3).

The proposed Second Amendment also introduces CPI adjustment into the Permit, consistent with the Harbor Department's Leasing Policy. The first CPI adjustment shall occur on April 14, 2017, for an adjustment period of April 14, 2017 through April 13, 2018, and annually each year thereafter starting on April 14, 2019 based on the month of February which precedes the annual compensation adjustment date for the remaining agreement term. Compensation for 2018-2019 will be adjusted by the five year reset process. All other terms of Permit 708 and the First Amendment will remain unchanged.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of a Second Amendment to Permit 708 with Kinder Morgan to allow a temporary extension for continued operations at Berths 118-119, while Kinder Morgan conducts an audit and develops a repair plan pursuant to consultation with CSLC. As an activity involving an amendment of a permit to use an existing facility involving negligible or no expansion of use, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Kinder Morgan's financial terms as outlined in the Permit 708 and the First Amendment will be increased by the CPI adjustment (2.7%) effective April 14, 2017 from 306,367.40 to \$314,639.32 and annually thereafter starting on April 14, 2019. The compensation for 2018-2019 will be adjusted pursuant to the Los Angeles City Charter for the five-year period from April 14, 2018 to April 13, 2023. The financial details of which will be brought before the Board at that time in a separate action.

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**CITY ATTORNEY:**

The Second Amendment has been reviewed and approved as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

1. Second Amendment
2. CSLC extension letter
3. Site Map



MICHAEL J. GALVIN  
Director of Waterfront & Commercial Real Estate

FIS Approval: MB (initials)

CA Approval: MD (initials)



MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA  
Executive Director

*FOR*

ES:MD:MG:KK:cb  
Author: Kevin Kim  
BL638cb Kinder Morgan 2<sup>nd</sup> Amendment