

0150-08589-0004

TRANSMITTAL

TO
Eugene D. Seroka, Executive Director
Harbor Department

DATE

JUL 20 2017

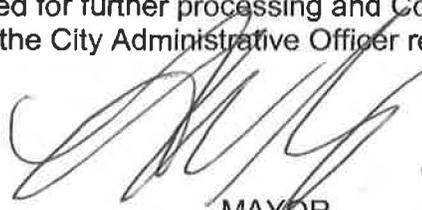
COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT
15

**PROPOSED SECOND AMENDMENT TO PERMIT NO. 708 WITH
KINDER MORGAN TANK STORAGE TERMINAL, LLC**

Transmitted for further processing and Council consideration.
See the City Administrative Officer report attached.



Ana Guerrero

MAYOR

RHL:ABN:101701401

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: July 19, 2017

CAO File No. 0150-08589-0004

Council File No.

Council District: 15

To: The Mayor

From: Richard H. Llewellyn, Jr., Interim City Administrative Officer

Reference: Correspondence from the Harbor Department dated May 31, 2017; referred by the Mayor for report dated June 1, 2017

Subject: **PROPOSED SECOND AMENDMENT TO PERMIT NO. 708 WITH KINDER MORGAN TANK STORAGE TERMINAL, LLC**

RECOMMENDATIONS

That the Mayor:

1. Approve the Harbor Department (Port) Resolution No. 17-0894 to authorize a proposed Second Amendment to Permit No. 708 with Kinder Morgan Tank Storage Terminal, LLC; and,
2. Return the document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 17-0894 authorizing a proposed Second Amendment (Amendment) to Permit No. 708 (Permit) with Kinder Morgan Tank Storage Terminal, LLC (Kinder Morgan) to continue operation of its marine oil terminal (marine terminal) at Berths 118 and 119 in the Port of Los Angeles (POLA). The proposed Amendment extension is contingent upon Kinder Morgan receiving an agreed upon approval by the California State Lands Commission (CSLS) to cleanup and restore a marine terminal site by April 2018. The CSLS provides oversight of lands, waterways, and resources through the preservation, restoration, and protection of public health, safety and the environment, including marine terminal sites. The Amendment will extend the Permit by five years, to October 2023, if approved by the CSLS, to allow Kinder Morgan to move to a new facility and to include an annual Consumer Price Index (CPI) in the compensation amount. The Port states that in 2016 compensation from Kinder Morgan for land rent, and wharfage (charges to move cargo) and dockage fees (charges to berth ships) was a total of approximately \$2.4 million.

The First Amendment extended the Permit by five years, to April 2018. The Port has allowed Kinder Morgan to continue limited operations, but instructed the firm to begin demolition and cleanup of the marine terminal as a result of a litigation settlement. Kinder Morgan has completed the first phase of the demolition and cleanup, but has not completely restored the site. The Port has instructed Kinder Morgan to cease operations thereafter without approval from the CSLS. Kinder Morgan will be responsible for all liability, maintenance and repair costs associated with the terminal and wharf to operate the marine terminals and wharf at Berths 118 and 119.

DISCUSSION

In 2000, Kinder Morgan acquired the terminal from GATX Tank Storage Terminal Corporation. The original Permit was for 25 years, with an expiration date in April 2013. In 1997, a division of the CSLC issued a cleanup and soil abatement order to the former owner. As a result of the acquisition of the Port property, Kinder Morgan became responsible for engineering analysis, cleanup and upgrades imposed by the CSLC. In 2009, the City of Los Angeles (City) and Port notified Kinder Morgan that they would not renew the Permit. Kinder Morgan made plans to move its operations to the Port of Long Beach, but asked the Port if it could continue limited operations at the POLA for completion of an environmental assessment, a new permit, and construction at the new location. The Port extended the Permit with Kinder Morgan, subject to: an offer to settle ongoing litigation; the demolition, cleanup and remediation of certain POLA property sites (i.e., marine terminals and tanks); and, future approval by CSLC. Kinder Morgan committed to the City-approved remediation plan and schedule.

The Port requested Kinder Morgan to obtain approval from CSLC to extend the Permit for five years. CSLC instructed Kinder Morgan to conduct a full audit of the wharf and develop a repair plan agreed to by all involved parties. The Port is requesting to extend the Permit by five years to allow Kinder Morgan the time required to conduct a full audit and finalize the agreement with CSLC. The proposed Amendment will allow Kinder Morgan to complete the agreement with CSLC by October 2017, subject to approval by the Port Executive Director for an optional six month extension (to April 2018). If Kinder Morgan is unable to reach an agreement with CSLC, the proposed Amendment will be considered invalid and require all operations to end within a prescribed 30 days and following the completion of the cleanup and site restoration within 12 months of the deadline.

If an agreement is approved, Kinder Morgan would be able to continue its operations at Berths 118 and 119 in accordance with the provisions of the First Amendment. As stated above, Kinder Morgan will be responsible for all costs associated with maintenance and cleanup of the property, including wharf structure and dredging, required by the Port and CSLC. The Port states that it will not be responsible for any costs associated with the terminals at Berths 118 and 119. The proposed Amendment also will include annual CPI adjustments consistent with the Leasing Policy of the Port. If the Permit continues, the Port states that compensation will be adjusted for reset every five years. All other terms of the Permit, including the provisions in the First Amendment, will remain unchanged.

The City Attorney has reviewed and approved the proposed Amendment as to form and legality. The proposed action is a temporary extension of the lease for continued operations by Kinder Morgan. The Port Director of Environmental Management has determined that the action is exempt from the relevant requirements of CEQA and the City's CEQA Guidelines.

FISCAL IMPACT STATEMENT

The proposed Second Amendment includes compensation from Kinder Morgan to the Port for land rent, and wharfage and dockage fees of approximately \$2.4 million in 2016. Compensation will be adjusted every five years and will include an annual CPI adjustment. All other terms of the Permit, including the provisions in the First Amendment, will remain unchanged.

