

CITY OF LOS ANGELES

INTER-DEPARTMENTAL CORRESPONDENCE

DATE: April 2, 2013

TO: City Clerk
c/o Michael Espinosa, Trade, Commerce and Tourism Committee Clerk
City Hall, Mail Stop 160

FROM: Aaron Gross, Legislative Representative 
Harbor Department, Mail Stop 260

**SUBJECT: SETTLEMENT AND RELEASE AGREEMENT WITH KINDER MORGAN
LIQUIDS TERMINALS LLC AND FIRST AMENDMENT TO PERMIT 708
WITH KINDERMORGAN TANK STORAGE TERMINALS LLC**

The attached transmittal is intended to supersede the previous transmittal from the Board of Harbor Commissioners. The original transmittal inadvertently left off one of the Harbor Commission's recommendations by way of a clerical error.



425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

Antonio R. Villaraigosa

Mayor, City of Los Angeles

Board of Harbor
Commissioners

Cindy Miscikowski
President

David Arian
Vice President

Robin M. Kramer

Douglas P. Krause

Sung Won Sohn, Ph.D.

Geraldine Knatz, Ph.D.

Executive Director

March 29, 2013

Honorable Members of the
City Council of the
City of Los Angeles

CD No. 15

Attention: Mr. Michael Espinosa, City Clerk's Office

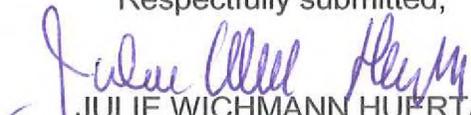
SUBJECT: ORDER NO. 13-7124 – SETTLEMENT AND RELEASE AGREEMENT WITH
KINDER MORGAN LIQUIDS TERMINALS LLC FIRST AMENDMENT TO
PERMIT 708 WITH KINDER MORGAN TANK STORAGE TERMINALS LLC

Pursuant to Section 273(c) and Section 606 of the City Charter, enclosed for your approval are the Settlement and Release Agreement with Kinder Morgan Liquids Terminals LLC and the First Amendment to Permit 708 with Kinder Morgan Tank Storage Terminals LLC. The Settlement and Release Agreement and the First Amendment were approved by the Board of Harbor Commissioners at its meeting of March 7, 2013. Please note that the Mayor's office is waiving Executive Directive No. 4 review for this item; therefore, no CAO report is attached.

RECOMMENDATION:

1. Approve in accordance with Section 273(c) of the Los Angeles City Charter the Settlement and Release Agreement with Kinder Morgan Liquids Terminals LLC;
2. Approve in accordance with Section 606 of the Los Angeles City Charter the First Amendment to Permit 708 with Kinder Morgan Tank Storage Terminals LLC;
3. Adopt the determination by the Los Angeles Harbor Department that the proposed action is exempt from the requirements of the Environmental Quality Act (CEQA) in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines; and
4. Return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,


JULIE WICHMANN HUERTA
Commission Secretary

cc: Trade, Commerce & Tourism Committee
Councilman Rosendahl, encs.
Councilman LaBonge, encs.
Councilman Buscaino, encs.
Christine Yee Hollis, CLA, encs.

Alvin Newman, CAO, encs.
Lisa Schechter, CD4, encs.
Aaron Gross Government Affairs, encs.
Robert Henry, encs.
Mandy Morales, Mayor's office, encs.

HARBOR DIVISION

425 S. PALOS VERDES ST.

P.O. BOX 151

SAN PEDRO, CA 90733-0151

FACSIMILE

(310) 831-9778

(310) 732-3750



OFFICE OF THE CITY ATTORNEY

CARMEN A. TRUTANICH
CITY ATTORNEY

THOMAS A. RUSSELL
GENERAL COUNSEL

JOY M. CROSE
ASSISTANT GENERAL COUNSEL

CHRISTOPHER B. BOBO
ESTELLE M. BRAAF
JOHN T. DRISCOLL
TIMOTHY A. HOGAN
JUSTIN HOUTERMAN
SIMON M. KANN
JANET KARKANEN
KENNETH F. MATTFELD
HEATHER M. MCCLOSKEY
ESTHER S. OLSEN
STEVEN Y. OTERA
MINAH PARK

DATE: FEBRUARY 26, 2013

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: ORDER NO. 13-7124 APPROVE FIRST AMENDMENT TO PERMIT
708 WITH KINDER MORGAN TANK STORAGE TERMINALS LLC

SUMMARY:

Kinder Morgan Tank Storage Terminals' permit to operate the marine oil terminal at Berths 118-119 expires on April 13th. The proposed amendment extends the permit for 5 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. The two terminals are identified on the attached aerial photo.

RECOMMENDATION:

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

1. Subject to your concurrent approval of a proposed settlement in City v. Kinder Morgan Liquids Terminals *et al.*, Los Angeles Superior Court Case No. NC 041463, approve and authorize the Executive Director to execute the First Amendment to Permit 708 extending its term from twenty-five to thirty years.
2. Direct the Board Secretary to transmit the Settlement Agreement and the First Amendment to City Council for its approval pursuant to Section 273(c) and Section 606 of the Charter respectively.
3. Authorize the Executive Director to execute and the Board Secretary to attest to the permit amendment upon approval of the City Council; and
4. Adopt Order No. 13-7124.

DATE: FEBRUARY 26, 2013

PAGE 2 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

DISCUSSION:

Amendment and Extension of Permit 708 - Effective in 1988, Permit 708 granted GATX Tank Storage Terminals Corp. (GATX) the use of approximately 10 acres of land at Berths 118-119 including nearly 100,000 square feet of subsurface pipeline right-of-way that facilitates connections to inland refineries and tank farms. GATX was the third tenant to operate this liquid bulk terminal originally constructed in 1922. The facility contains eighteen above-ground storage tanks with a combined capacity of over 500,000 barrels. The terminal has handled crude oil, fuel oil, naphtha, gas oil, gasoline, toluene, and methyl tertiary butyl ether (MTBE). In 2000, Kinder Morgan Energy Partners acquired GATX Tank Storage Terminals Corp. and continues to operate the terminal as Kinder Morgan Tank Storage Terminals LLC (Kinder Morgan).

Permit 708 has a twenty-five year term, expiring in April this year. In 2009, the City of Los Angeles (City) gave notice that Permit 708 would not be renewed. Kinder Morgan has made plans to move its operations to the Port of Long Beach, but due to construction delays would like to continue limited operations at Berths 118-119, in particular, to make use of the vapor recovery system that captures fumes from vessels as they are loaded.

Under the proposed amendment, Kinder Morgan could continue to import and export product at Berths 118-119 until April 2017. Demolition of most of the storage tanks and dike walls would begin in 2013 upon issuance of an engineering permit by the City. Remediation of the demolished portions of the site will follow, and remediated portions of the site will be surrendered back to the City and the rent reduced accordingly. One storage tank, with sufficient capacity to fill the pipeline connection to Kinder Morgan's Carson tank farm, will be needed for continued operations. Demolition and remediation of the site were previously analyzed as required by the California Environmental Quality Act in the *GAXT Lease Renewal Berths 118-119 Facility Final Environmental Impact Report* (ADP No. 880413-056, SCH # 90010710) certified by the Board in 1995.

The Berths 118-119 site is under a Cleanup and Abatement Order issued by the Regional Water Quality Control Board in 1997. Under the proposed amendment, Kinder Morgan will undertake a dig-and-haul remediation of the site that meets the City's and Water Board's standards.

Other key provisions of the amendment include:

- The rent is reset to \$32 per square foot per year for the term of the extension, up from the current rate of \$29 per square foot per year. The 75% discount for subsurface right-of-ways is continued.

DATE: FEBRUARY 26, 2013

PAGE 3 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

- A fixed deadline of December 31, 2015 is established for surrender of the eastern portion of the tank farm.
- Should Kinder Morgan hold over on any parcels without prior authorization, including partial surrender of the east portion of the terminal, the rent changes to 250% of the original.
- Kinder Morgan becomes responsible for any engineering analysis and any wharf upgrades needed to satisfy the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) imposed by the State Lands Commission.
- The remedial action plan must, at a minimum, provide for the excavation of all soil within and above the intertidal zone that has a total petroleum hydrocarbon concentration in excess of 1,000 mg/kg (the same remedial scheme being implemented by the City at Berth 171-173).
- Kinder Morgan Energy Partners LP will guarantee the obligations of Kinder Morgan Tank Storage Terminals LLC.

The Office of the City Attorney will provide the Board with periodic updates on the progress of Kinder Morgan's sequential retreat from Berth 118-119 site.

Litigation Settlement Regarding Harbor Terminal at Berths 171-173 - The aforementioned lease extension is proposed in consideration of sister company Kinder Morgan Liquids Terminals LLC's offer to settle ongoing litigation over another marine oil terminal at Berths 171-173 on Mormon Island. The proposed settlement agreement can be discussed in closed session if any board member has questions.

Prior to its demolition in 2003, the site contained 19 above-ground storage tanks, truck loading racks, pumping stations, a wharf with loading booms, utility sheds and an office building. Over the course of its 75-year history, the 14-acre terminal became heavily oiled as a result of tank leaks. The City filed a complaint in July 2005 asserting causes of action for nuisance, negligence, breach of contract, and contribution pursuant to the Water Code against Kinder Morgan Liquids Terminals (the successor of GATX), which operated the terminal from 1982 to 1999, ConocoPhillips, which operated the terminal from 1968 to 1982, and Texaco which operated the terminal from 1923 to 1968. Neighboring marine terminal operator Shell Oil Company and neighboring pipeline operator Equilon Enterprises LLC were subsequently added as defendants due to the presence of MTBE and diisopropyl ether (DIPE) in groundwater at the site. The site is

DATE: FEBRUARY 26, 2013

PAGE 4 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

under a Cleanup and Abatement Order issued by the Regional Water Quality Control Board in March 2008.

Trial in this matter was repeatedly postponed by the Superior Court and eventually put under a stay order halting all litigation until the Regional Water Quality Control Board approved a final remedial action plan. Those final approvals were finally received last September but are still subject to an administrative petition filed by Kinder Morgan asking the State Water Resources Board to review the cleanup goals set by the Regional Water Quality Control Board.

In 2008, settlements were concluded with Texaco and ConocoPhillips wherein they agreed to reimburse 25% and 15%, respectively, of the City's costs to investigate, monitor, and remediate the terminal, subject only to a ten-year sunset clause. Shell Oil Company, Equilon Enterprises LLC and Kinder Morgan remain as defendants. The litigation stay was recently lifted but still no trial date is set. The City is currently preparing a bid specification package to implement the approved remedial action plan and expects to commence the remediation project this summer. The remediation plan calls for excavation and disposal of roughly 256,000 tons of soil at a cost of approximately \$18 million.

CONCLUSION:

Subject to approval of the concurrent litigation settlement, approval of the proposed amendment and Permit extension is recommended as it commits Kinder Morgan to a City-approved remedial plan, imposes a schedule for execution of the remedial plan, allows the City to continue to collect rent and wharfage on a property for which there are no current redevelopment plans, and facilitates settlement of the Berths 171-173 litigation.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an Amendment to Permit No. 708 with Kinder Morgan to allow continued operation of a portion of the leasehold for five years. The operations will be limited to loading and offloading of ships and will not expand that operation beyond existing conditions. Overall, the operations of the leasehold will decrease, as a portion of the site will cease operation upon the expiration of the original Permit term in April of 2013. Therefore, as an activity involving the 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 the Environmental Quality Act (CEQA) in accordance with Article III Class 1 (14) of the Los Angeles City CEQA Guidelines.

DATE: FEBRUARY 26, 2013

PAGE 5 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

ECONOMIC IMPACT:

Approval of the proposed First Amendment will have no employment impact. Demolition and remediation associated with this Amendment is anticipated to support positive construction jobs. At this time, it is premature to evaluate economic benefit without any knowledge of the construction cost.

FINANCIAL IMPACT:

Approval of the proposed First Amendment with Kinder Morgan Tank Storage Terminals resets the rent based on a land value of \$32 per square foot and extends the term allowing for the collection of approximately \$1.8 million per year in rent plus undetermined wharfage fees for the first two and one-half years and approximately \$800,000 per year in rent plus undetermined wharfage for the last two and one-half years.

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DATE: FEBRUARY 26, 2013

PAGE 6 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the proposed First Amendment as to form and legality.

TRANSMITTAL:

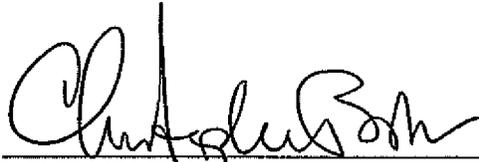
1. First Amendment to Permit 708 extending its term from twenty-five to thirty years
2. Order No. 13-7124

FIS Approval: VF (initials)

CA Approval: CPB (initials)



KENNETH F. MATTFELD
Deputy City Attorney



CHRISTOPHER B. BOBO
Assistant City Attorney

APPROVED:

By Geraldine Knatz
GERALDINE KNATZ, Ph.D.
Executive Director

SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (this "Agreement") is made and entered into by and between Kinder Morgan Liquids Terminals LLC (hereafter referred to as "Kinder Morgan"), and City of Los Angeles ("City") (collectively referred to as "the Parties" as defined below).

RECITALS

WHEREAS, the City, as trustee for the people of the state of California, alleges that it is vested with the authority and responsibility to control, manage, protect and conserve the tidelands and waters of Los Angeles Harbor, including the submerged lands and the waters of the East Basin Channel of Los Angeles Harbor;

WHEREAS, the City owns and formerly leased to Kinder Morgan (or predecessors thereto) and others three parcels of property, commonly known as Tank Farms 1, 2 and 3, collectively comprising approximately 13 acres on the East Basin Channel of the Port of Los Angeles, including approximately 1,500 linear feet of wharf designated as Berths 171-173, and pipelines in adjacent rights of way (the "Site" as further defined below);

WHEREAS, Kinder Morgan and other tenants of the City formerly operated equipment at the Site for the purpose of, *inter alia*, handling, storing and transporting petroleum and products and compounds thereof;

WHEREAS, on or about July 21, 2005, the City filed suit in Los Angeles Superior Court, Case No. NC041463 (the "Action"), against its former tenants at the Site, and later amended its complaint in the Action to add as defendants Chevron Corporation and Texaco. The City

amended its complaint for a second time, changing the causes of action. In this Second Amended Complaint, the City pled claims for private continuing nuisance, equitable indemnity, contractual indemnity, breach of contract (cleanup obligation, past rent due re failure to clean up site, and past rent due based on continued occupancy of the site), liability under Water Code section 13304(c)(1), and declaratory relief (future rent due based on failure to clean up the site, future rent due based on continued site occupancy, and breach of Permit 708). The City pled all of the claims against **Kinder Morgan**.

WHEREAS, a settlement was reached with **Kinder Morgan** regarding the cause of action for breach of contract regarding past rent due and related cause of action for declaratory relief. The City amended its complaint for a third time, removing the cause of action for declaratory relief and changing the cause of action for breach of contract to only allege breach of contract for failing to clean up the Site while also adding Shell Oil Company as a defendant. (Said settlement agreement is attached hereto and incorporated herein by reference as Exhibit A).

WHEREAS, there is disagreement, dispute and controversy with reference to the validity of the City's claims in the Action, as well as to the legal and equitable liability of **Kinder Morgan** for any damages or justification for legal relief therein, and there is further doubt, disagreement, uncertainty and confusion as to the amount of said liability, if any.

WHEREAS, on or about April 9, 2008, a revised Cleanup and Abatement Order No. R4-2008-006 (Order) was issued by the California Regional Water Quality Control Board, Los Angeles Region ("RWQCB") to Kinder Morgan, Inc. Chevron Corporation, ConocoPhillips, and the City of Los Angeles Harbor Department (a.k.a. Port of Los Angeles) directing them to undertake an assessment and cleanup of the Site. The RWQCB issued a subsequent Amendment to the Order on or about January 28, 2010.

WHEREAS, on or about March 1, 2010 Kinder Morgan, Inc., Kinder Morgan Energy Partners, L.P., and Kinder Morgan Liquids Terminals LLC pursuant to Section 13320 of the California Water Code and Section 2050 of Title 23 of the California Code of Regulations filed a Petition for Review and Request for Stay to the State Water Resources Control Board to review the Order issued and action taken by RWQCB (hereinafter the "PETITION").

WHEREAS, on or about September 4, 2012, the RWQCB approved the Revised Remedial Action Plan ("RRAP") prepared by City for the Site and established the reporting requirements.

WHEREAS, after discovery and litigation in the pending proceedings, and following arm's length negotiations and advice by their respective legal counsel, the Parties desire to once and for all, fully and finally, resolve all disputes as to Kinder Morgan arising out of, or in any way relating to, the Site;

WHEREAS, without admitting any issues of fact or law, the Parties agree that the settlement memorialized in this Agreement is intended to and does resolve all claims that were made or could have been made in the Action and in the Petition on behalf of Kinder Morgan; and

WHEREAS, the Parties also desire to set forth the respective rights and obligations of the Parties relating to the City's Past Costs (as defined herein), Future Costs (as defined herein) and Post-Remediation Costs (as defined herein) relating to Contamination (as defined herein) at the Site;

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

AGREEMENT

1. Definitions.

- a. “**Action**” shall refer to the lawsuit filed by the City on July 21, 2005 in the California Superior Court for the County of Los Angeles, captioned *City of Los Angeles v. Kinder Morgan, Inc., et al.*, Case No. NC 041463 (including any amendments thereto).
- b. “**Contamination**” shall refer to any hazardous waste or hazardous substance as defined in any federal, state or local statute, ordinance, rule, or regulation including without limitation: hazardous wastes or constituents as defined in the Resource Conservation and Recovery Act, as amended, including the comparable California state regulations (“**RCRA**”); hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, including comparable California state regulations (“**CERCLA**”); toxic substances as defined in the Toxic Substances Control Act, as amended, including comparable California state regulations (“**TSCA**”); toxic or other pollutants as defined in the Clean Water Act (also known as the Federal Water Pollution Control Act); oil or petroleum products (and any fraction or component thereof, including without limitation, benzene, toluene, xylene, ethylbenzene, and MTBE); polychlorinated biphenyls (“**PCBs**”); dioxins; and asbestos.
- c. “**Effective Date**” shall refer to the date when all Parties have executed this Agreement.

- d. **“Future Costs”** shall refer to any and all costs and expenses (exclusive of attorney’s fees, overhead and City staff time) incurred by the City after the **Effective Date** in planning, implementing, and/or reporting to the California Regional Water Quality Control Board (“**RWQCB**”) on activities required by either the Interim Remedial Action Plan (“**IRAP**”) or the Remedial Action Plan (“**RAP**”) as ultimately approved by the **RWQCB** for remediation of the **Site** which as of the date of this **Agreement** is referred to as the **Revised Remedial Action Plan (“RRAP”)** in the letter dated September 4, 2012 from the **RWQCB**. For purposes of this **Agreement**, a cost shall be deemed “incurred” on the date when services are performed and shall not include any costs and expenses incurred after **Remediation Completion** except for such costs as are necessarily incurred to meet potential **RWQCB** requirements for long term monitoring, maintenance or operation of the **IRAP**, or the **RAP**, or the **RRAP** and except for **Post-Remediation Costs**.
- e. **“Order”** shall refer to Clean-up and Abatement Order No. R4-2008-006 (Order) issued by the **RWQCB** to Kinder Morgan, Inc. Chevron Corporation, ConocoPhillips, and the City of Los Angeles Harbor Department (a.k.a. Port of Los Angeles) directing them to undertake an assessment and cleanup of the **Site**.
- f. **“Parties”** shall refer collectively to Kinder Morgan Liquids Terminals LLC and the **City**.

- g. **"Past Costs"** shall refer to those costs and expenses (exclusive of attorneys fees, overhead and City staff time) incurred by the City from July 21, 2004 to the **Effective Date** for investigation or remediation of **Contamination** at the **Site**.
- h. **"Petition"** shall refer to the Kinder Morgan, Inc., Kinder Morgan Energy Partners, L.P., and Kinder Morgan Liquids Terminals LLC Petition for Review and Request for Stay to the State Water Resources Control Board filed on or about March 1, 2010 pursuant to Section 13320 of the California Water Code and Section 2050 of Title 23 of the California Code of Regulations to the State Water Resources Control Board to review the **Order** issued and action taken by **RWQCB**.
- i. **"Post-Remediation Costs"** shall refer to the marginal increment of cost added to the cost of improvements or construction at the **Site** after **Remediation Completion**, which cost is incurred by the City as a direct result of the presence of historic **Contamination** at the **Site**. The City's internal staff costs or the costs of either internal legal staff or Special Counsel shall not be included as **"Post-Remediation Costs"**.
- j. **"Remediation Completion"** shall refer to either (1) written notification from the **RWQCB** confirming that the requirements of the **RWQCB**-approved **RAP** have been fully completed, except for any long-term operation, maintenance and monitoring activities or (2) written agreement between the **Parties** that the requirements of the **RWQCB**-approved

RRAP have been fully completed, except for any long-term operation, maintenance and monitoring activities.

- k. "Settling Defendant" shall refer to any defendant that has settled or reached a settlement with the City in the Action.
- l. "Site" shall refer to the approximately 13 acres on the East Basin Channel of the Port of Los Angeles, including approximately 1,500 linear feet of wharf designated as Berths 171-173 and pipelines in adjacent rights of way, as specifically defined in the following: Order 830, Order 846, Order 1039, Order 1614, Order 2151, Order 2418, Order 2174, Order 2443, Order 2458, Order 3793, Permit No. 162, and Permit No. 260.

2. Amendment of Permit 708 As A Condition. In conjunction with the approval and execution of this Agreement, City and Kinder Morgan will execute an Amendment to Harbor Department Permit 708 with Kinder Morgan Tank Storage Terminals LLC on agreed terms. Execution of the Amendment is a precondition of this Agreement and the absence of an Amendment renders this Agreement null and void.

3. Settlement Payment. Within fifteen (15) business days of the later to occur of the Effective Date and the Court's grant of the good faith settlement motion to be filed by Kinder Morgan, the City shall transmit to Kinder Morgan a statement of its Past Costs to be paid pursuant to Paragraph 6(b) hereof.

4. Dismissal of Claims and Motion for Good Faith Settlement. Within fifteen (15) days of the full execution of the Agreement by the Parties, Kinder Morgan shall file with the Los Angeles Superior Court a Motion for Good Faith Settlement. Once this settlement agreement is fully executed and the Court grants the good faith settlement motion, the Parties

shall file a stipulated request for dismissal with prejudice of all claims asserted by City against **Kinder Morgan** and by **Kinder Morgan** against City in the Action. All rights and obligations of the Parties under this Agreement are contingent upon the Court's grant of the good faith settlement motion and entry of the proposed order and dismissal.

5. Releases And Covenants Not To Sue.

(a) Release Of Kinder Morgan By City: Except as specifically set forth herein, the City hereby completely, irrevocably and unconditionally releases and forever discharges and covenants not to sue **Kinder Morgan** (including each and every one of its parents, subsidiaries, predecessors, and other related entities, as well as each and every one of their past, present and future principals, agents, trustees, managers, partners, officers, directors, employees, attorneys, contractors, representatives, members, shareholders, affiliates, successors and assignees) from and for all responsibilities, obligations, liabilities, claims and causes of action, whether known or unknown, of whatever nature whether in contract, statute, equity, or common law, arising out of or relating in any way to:

(i) any actual, alleged or suspected **Contamination at the Site**, whether known or unknown, including but not limited to all past, current, future and contingent costs (including without limitation damages, punitive damages, fines, losses, and/or reasonable attorney's fees and expenses, consultant fees and expert's fees), including without limitation, such costs resulting from or by reason of any conduct, cause or course of action whatsoever which has been done or omitted by **Kinder Morgan** or any **Settling Defendant** prior to the **Effective Date**, regardless of whether any of the foregoing matters arose from the sole, joint or concurrent negligence, negligence per se, gross negligence, intentional and/or other torts, willful acts,

reckless indifference, strict liability, statutory liability and/or other fault of **Kinder Morgan** or any other **Settling Defendant**; and

(ii) all claims that were made or could have been made in the **Action** and/or relate to the subject matter of said **Action**; and all claims that were made or could have been made in the **Petition** and/or relate to the subject matter of said **Petition**.

(b) Release Of City By Kinder Morgan: Except as specifically set forth herein, **Kinder Morgan** for itself and its parent companies, predecessors, affiliates, subsidiaries and their successors and assigns, hereby completely, irrevocably and unconditionally releases and forever discharges and covenants not to sue **City** from all responsibilities, obligations, liabilities, claims and causes of action, whether known or unknown, of whatever nature whether in contract, statute, equity, or common law, arising out of or relating in any way to any actual, alleged or suspected **Contamination** at the **Site**, whether known or unknown, including but not limited to all past, current, future and contingent costs (including without limitation damages, punitive damages, fines, losses, and/or reasonable attorney's fees and expenses, consultant fees and expert's fees), including without limitation, such costs resulting from or by reason of any conduct, cause or course of action whatsoever which has been done or omitted by **City** prior to the **Effective Date**, regardless of whether any of the foregoing matters arose from the sole, joint or concurrent negligence, negligence per se, gross negligence, intentional and/or other torts, willful acts, reckless indifference, strict liability, statutory liability and/or other fault of **City**. This release includes but is not limited to all claims that were made or could have been made in the **Action** and/or relate to the subject matter of said **Action**; and includes all claims that were made or could have been made in the **Petition** and/or relate to the subject matter of said **Petition**.

(c) Limitation of Release by Parties. The Parties retain any and all claims and causes of action (at law and/or in equity) that each may have against each other related to the responsibilities, obligations and liabilities under this Agreement.

6. Waiver of Unknown Claims. In giving the releases provided in Paragraph 4 in this Agreement, the Parties hereby expressly waive the benefits of any statute limiting the waiver of unknown claims, including without limitation section 1542 of the California Civil Code ("Section 1542"), which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Parties understand and acknowledge the significance and consequence of the specific waiver of Section 1542 and hereby assume full responsibility for any injury, loss, damage or liability that may be incurred by reason of or related to the releases provided herein and/or by the waiver of Section 1542.

7. Agreed-Upon Percentage Share Allocation. The Parties have negotiated and agree upon the percentage share allocation of Past Costs, Future Costs and Post-Remediation Costs to be borne by Kinder Morgan, such that Kinder Morgan, except as set forth herein, shall pay sixty (60) percent share of Past Costs, Future Costs and Post Remediation Costs.

(a) Limitation on Costs Owed by Kinder Morgan. Kinder Morgan's obligation to reimburse City for any and all costs and/or damages, including, but not limited to Past Costs, Future Costs and Post Remediation Costs is subject to a combined limit of \$15 million.

(b) Payments by Kinder Morgan. Payments owed by Kinder Morgan under this Paragraph shall be subject to the following terms and conditions:

(1) The City shall submit invoices to Kinder Morgan with detailed accounting information documenting its Past Costs, Future Costs and/or Post-Remediation Costs.

(2) Kinder Morgan shall not be obligated to make payments under this Paragraph unless and until it receives the documentation described in this Paragraph.

(3) Kinder Morgan shall pay its agreed upon percentage share of the City's documented invoices within thirty (30) days of receipt of such invoices unless there is a dispute as to the invoice(s).

(4) If Kinder Morgan disputes any invoice and/or the sufficiency of the City's documentation of such invoice, Kinder Morgan shall provide written notice of such dispute to the other Parties within ten (10) days of receipt of the invoice. The Parties shall meet and confer telephonically or in person within five (5) days in an informal attempt to resolve the dispute. Any dispute that cannot be resolved informally shall be subject to the dispute resolution procedures set forth in Paragraph 11 herein.

8. Remediation of the Site.

(a) The City shall continue to contract with its contractor, Tetra Tech, or another contractor as may be mutually agreed upon by the Parties for investigation and remediation at the Site. The RRAP and reporting schedule are addressed in the September 4, 2012 letter sent by the RWQCB.

(b) The Parties agree that any amendments to the RRAP shall provide that the City shall accept a use-restrictive covenant to be recorded against the title to the property that

would limit use of the Site to commercial or industrial uses, subject to revision at the City's request and sole cost. Should the City elect to revise the use-restrictive covenant to use the Site for other than commercial or industrial uses, it shall bear all the costs associated with and/or in any way related to such revision, including any costs of remediation associated with or in any way related to use of the Site for other than commercial or industrial uses.

(1) Any amendments to the RRAP or any RAP submitted on behalf of the City to the RWQCB shall provide for resolution of Contamination as required by the RWQCB in its September 4, 2012 letter.

(2) The City and its consultants shall make every reasonable effort to include comments, suggestions and revisions from the technical representatives of the other Party prior to submitting any amendments to the RRAP or any RAP submitted on behalf of the City to the RWQCB. The Parties will strive to ensure that any amendments to the RRAP or any RAP submitted on behalf of the City to the RWQCB is a collaborative and consensual product that they all support and endorse.

(3) Kinder Morgan shall provide written confirmation of its support for any amendments to the RRAP or any RAP submitted on behalf of the City to the RWQCB and further agrees not to contest or object to its provisions, so long as it is consistent with this Agreement.

9. Post-Remediation Costs.

(a) As a result of the Parties' acceptance of the RRAP in which regulated materials are left on Site, the City may incur incrementally higher costs in connection with construction and/or excavation projects at the Site after Remediation Completion.

(b) The City agrees that it shall give the Parties one hundred twenty (120) days notice in advance of beginning construction and/or excavation at the Site after **Remediation Completion**.

(c) Kinder Morgan shall participate in Post Remediation Costs as set forth in Paragraph 6 herein, subject to the terms and limitations of said Paragraph.

10. Waiver of Fees, Costs, and Interest. The Parties hereby release each other from any and all claims for attorneys' fees, costs and interest arising from or relating to the **Action** and/or the negotiation of this **Agreement**.

11. No Admission. This **Agreement** does not include or constitute an admission of any fact, or of liability or fault by any Party regarding any fact, claim, allegation, issue of law or violation of law; nor will compliance with this **Agreement** constitute or be deemed an admission by any Party of any fact, claim, allegation, issue of law or violation of law. This **Agreement** is strictly a settlement and compromise of disputed claims. This **Agreement** may not be used as evidence of any wrongdoing, misconduct or liability by any Party or anyone else. The Parties agree that neither the fact of execution nor any of the terms of this **Agreement** shall be admissible in any pending or future proceeding involving the Parties, or any of them, except in a proceeding among the Parties to enforce the terms of this **Agreement**.

12. Arbitration. Except as set forth in Paragraph 6 of this **Agreement**, any controversy or claim, whether based on contract, tort, statute or other legal or equitable theory (including but not limited to any claim of fraud, misrepresentation or fraudulent inducement or any question of validity or effect of this **Agreement** including this provision) arising out of or relating to this **Agreement** (including any amendments or extensions), or the breach or termination thereof, including but not limited to any controversy or claims arising out of or

relating to any **Contamination** and/or to any other matter covered by this **Agreement**, shall be resolved as follows:

(a) First, by mediation and/or consultations between the **Parties** initiated by written notice of any **Party**. Within sixty (60) days after such notice, the **Parties** involved shall meet in person to attempt to settle the dispute. If any **Party** requests the services of a neutral mediator to participate in such in-person discussions, then the **Parties** shall agree on a mediator and shall evenly split the cost of such mediator. In the event of failure of such mediation or consultation, then the dispute shall be settled as set forth in this paragraph.

(b) Second, by non-binding arbitration before a tribunal of three independent and impartial arbitrators. **City** shall appoint one arbitrator, and **Settling Defendant(s)** shall appoint one arbitrator, and the arbitrators so appointed shall jointly appoint the third arbitrator. **CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration** in effect on the **Effective Date** shall govern such arbitration.

(c) The venue for such arbitration shall be Los Angeles, California.

(d) The arbitrator shall order the **Parties** to promptly exchange copies of all exhibits and witness lists and, if requested by a **Party**, to produce other relevant documents, to answer up to ten (10) interrogatories (including subparts), to respond to up to ten (10) requests for admissions (which shall be deemed admitted if not denied) and to produce for deposition all witnesses that such **Party** has listed and up to four (4) other persons within such **Party's** control. Any additional discovery shall only occur by agreement of the **Parties** or as ordered by the arbitrators upon a finding of good cause.

(e) Third, if non-binding arbitration is not successful, any Party may seek redress to the appropriate legal venue. The time spent in informal dispute resolution processes will be deemed to toll the statute of limitations in such an instance including the statute of limitations applicable to the filing of any Government Code claim

13. Consultation with Legal Counsel – Absence of Reliance. Each Party hereto warrants that it has reviewed this Agreement in detail with the counsel of their choice and hereby affirms that the Agreement represents their true intent. Each Party hereby represents that the persons who have executed this Agreement have read it, have sought counsel as necessary to interpret it, and are relying solely upon their counsel and their own investigation in entering into this Agreement and not in reliance upon any representation, statement, omission to state, warranty or other utterance or proposition to enter into the Agreement, and any reliance on which is hereby expressly disclaimed by all Parties hereto. Each Party acknowledges that this Agreement arises out of contested legal proceedings and that neither Party has negotiated or documented this Agreement while laboring under a fiduciary duty to any other. Further, the Parties acknowledge that each of them have been advised that if the Action and/or the Petition continued, each or all of them may have been entitled to additional documents or due diligence into the background facts and the value of their respective claims that may have materially changed their perception of them, but that they have agreed to forego such additional litigation rights to buy their full and final peace. Each Party finally expressly represents that their respective legal counsel has read and explained to each Party the entire contents of this Agreement in full, as well as the legal consequences of this Agreement.

14. Confidentiality. The Parties cannot agree to maintain the confidentiality of this Agreement and its terms, given the dictates of the Public Records Act, but the substance and

wording of any public communication concerning this **Agreement** shall be approved in advance by each of the **Parties**. A **Party** required by court order or otherwise compelled by law to disclose information concerning this **Agreement** must give the other **Parties** to the **Agreement** reasonable advance (at minimum, ten (10) days) notice in writing of its intention to disclose such information so that the other **Parties** may take appropriate action, if necessary.

15. Notice. Any notice provided for by this **Agreement** shall be made in writing to the following individuals:

To **Kinder Morgan**: Nancy E. Van Burgel, Esq.
Assistant General Counsel
Kinder Morgan, Inc.
Kinder Morgan Energy Partners, L.P.
Kinder Morgan Liquids Terminals, LLC.
370 Van Gordon St.
Lakewood, CO 80228

With a copy to: John Lynn Smith, Esq.
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

To **City**: CITY ATTORNEY, CITY OF LOS ANGELES
Kenneth Mattfeld, Deputy
425 S. Palos Verdes Street
P.O. Box 51
San Pedro, California 90733-0151

The **Parties** may change the individuals to whom notice shall be provided under this **Agreement** by sending the other **Parties** a written notice in accordance with this paragraph.

16. Entireties: This **Agreement** embodies the entirety of the agreement of the **Parties** regarding the subject matter hereof. There are no other **Agreements**, oral or written, between or among the **Parties** that relate in any way to the matters discussed herein that are not specifically referenced herein, and each **Party** acknowledges that no representations have been made to it

that could in any manner or form be inconsistent with the express written covenants contained herein. Any and every representation of any kind, made by any **Party**, is merged into this **Agreement**. This **Agreement** may not be modified, altered, or discharged except by written agreement signed by each of the **Parties** hereto.

17. Assignment. The **Parties** may not transfer or assign any of their rights or obligations under this **Agreement** without the prior written consent of all **Parties**.

18. Choice of Law. This **Agreement** shall be construed in accordance with and governed by the laws of the State of California, without regard to the choice of law provisions of California or any other jurisdiction.

19. Binding Effect. This **Agreement** shall be binding on and inure to the benefit of the **Parties** and their respective successors and assigns.

20. Counterparts. The **Parties** may execute and deliver this **Agreement** in any number of counterparts or copies, and each counterpart shall be deemed an original and taken together shall be considered to be the entire **Agreement**.

21. Severability. If any term of this **Agreement** is held or declared invalid by a final judgment of a court or entity of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this **Agreement**; and the **Parties** declare that they would have executed the remaining portions of this **Agreement** without inclusion of such term.

It is also the intent of the **Parties** that in lieu of any term held or declared invalid, there shall be added a new substitute term that is in substance as similar as possible to the invalid term, but written so as to be legal, valid and enforceable (the "**Substitute Term**").

The **Parties** shall first attempt to negotiate the content of the **Substitute Term** for fifteen (15) business days after entry of a final judgment or decision. If the **Parties** are unable to agree

upon the **Substitute Term** within the fifteen (15) business day period, the Parties agree to submit the dispute to Arbitration in accordance with this **Agreement**; thereby allowing the arbitrators to determine the content of the **Substitute Term**.

21. Third Party Beneficiary. This **Agreement** is intended to inure to the benefit of all persons and entities released as set out in Paragraph 4 above, but is not intended to, nor shall it, inure to the benefit of any other person or entity.

22. Verification Of Authority. City, and Kinder Morgan each represent and warrant to each other that on and as of the **Effective Date** hereof:

a) Each is duly formed and validly existing and in good standing under the laws of its state of jurisdiction or formation, with full power and authority to carry on the business in which it is engaged and to perform its respective obligations under this **Agreement**;

b) The execution and delivery of this **Agreement** by it have been duly authorized and approved by all requisite corporate, partnership or similar action;

c) Each has the requisite corporate, partnership or similar power and authority to enter into this **Agreement** and to perform its obligations hereunder; and

d) The execution and delivery of this **Agreement** is for the consideration recited herein, that it is intended to effect a full and final release and discharge of the **Parties** released herein and that a consummation of the transactions contemplated herein will not violate any of the provisions of each signatory's organizational documents, any agreements pursuant to which it or its property is bound, or to its knowledge, any applicable laws.

Dated: March 1, 2013

Kinder Morgan Liquids Terminals LLC

By: [Signature]

Its: [Signature]

Dated: _____, 2013

CITY OF LOS ANGELES

By: _____

Its: _____

Approved as to form and legality

_____, 2013

CARMEN A. TRUTANICH, City Attorney

By KENNETH F. MATTFELD, Deputy

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into effective December __, 2007 by and between the City of Los Angeles (the "City"), on the one hand, and Kinder Morgan Energy Partners, LP ("KMEP"), Kinder Morgan Liquids Terminals, LLC ("KMLT"), and Kinder Morgan Tank Storage Terminals LLC ("KMTST") (collectively, the "Kinder Morgan Defendants"), on the other hand.

RECITALS

A. The City and the Kinder Morgan Defendants are parties to the lawsuit styled as *The City of Los Angeles v. Kinder Morgan Energy Partners, L.P., et al.*, Case No. NC 041463 (the "Action"), pending in Los Angeles Superior Court.

B. On November 6, 2007, the City and the Kinder Morgan Defendants entered into an Interim Settlement Agreement, which provided that its terms were to be memorialized in a final Settlement Agreement.

C. The Interim Settlement Agreement was contingent upon the Court's entry of a Good Faith Settlement Determination as to the subject matter of the settlement.

D. On December 3, 2007, the Court entered an Order granting the Kinder Morgan Defendants' Motion for Good Faith Settlement Determination.

E. The City and the Kinder Morgan Defendants desire to settle certain disputes in the Action") between the City and the Kinder Morgan Defendants concerning the Kinder Morgan Defendants' alleged obligations to pay rent or rent-related damages to the City associated with the City's real property in the Port of Los Angeles commonly described as Berths 171-173, and more particularly described in Permit 260 (the "Site"), on the terms and conditions set forth below.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Payment by One or More of the Kinder Morgan Defendants. The Kinder Morgan Defendants, or one of them, shall pay the sum of \$3.25 million to the City. Such payment shall be made on or before December 13, 2007.
2. Dismissal of Sixth through Tenth Causes of Action with Prejudice. Within five business days after the payment of \$3.25 million by one or more of the Kinder Morgan Defendants, the City shall dismiss with prejudice the Sixth through Tenth Causes of Action of the Second Amended Complaint.
3. Dismissal of Second Amended Complaint as Against KMEP and KMTST with Prejudice. Within five business days after the payment of \$3.25 million by one or more of the Kinder Morgan Defendants, the City shall dismiss with prejudice the Second Amended Complaint as against KMEP and KMTST.
4. Payment by KMEP. In the event that KMLT fails to pay any amount agreed to in settlement, or imposed upon it by judgment, with regard to the contamination phase of this Action, KMEP will pay such amount.
5. Release by the City. The City releases the Kinder Morgan Defendants and their past and present partners (limited and general), officers, directors, shareholders, members, managers, parents, affiliates, successors, representatives, agents, servants, employees, attorneys, accountants, and insurers (collectively, the "Kinder Morgan-Related Parties"), of and from any and all claims for all past and future rent or rent-related damages (collectively "Rent") for the Site ("Rent Claims"), known or unknown, regardless of the legal theory upon which such claims are based, and whether arising from past or future rent. In particular, but without limitation, the City shall no longer have or pursue any Rent Claims against any of the Kinder Morgan

Defendants pursuant to any of the remaining causes of action asserted in its Second Amended Complaint, including, but not limited to, its First Cause of Action for continuing nuisance. However, the City is not releasing its non-Rent claims against KMLT seeking to recover damages based upon alleged contamination at the Site.

6. Section 1542 Waiver. As further consideration and inducement for this compromise settlement, the Parties understand and agree that the releases contained in this Agreement apply to all unknown and unanticipated claims or demands of the type identified in paragraph 5 above, as well as those claims or demands of the type identified in paragraph 5 above that are now known to them, and hereby expressly waive the benefits of California Civil Code § 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The City hereby abandons, releases, waives, and relinquishes all rights and benefits that it has or may have against any of the Kinder Morgan-Related Parties under California Civil Code § 1542 with respect to the claims released herein. The City hereby acknowledges that it may hereafter discover facts in addition to, or different from, those that it now believes to be true, including but not limited to the nature or extent of its damages, but that, notwithstanding the foregoing, it is the City's intention hereby to fully, finally, completely, and forever settle and release each, every, and all claims released herein. In furtherance of such intention, the releases herein given shall remain in effect according to their express terms notwithstanding the discovery or existence of any such additional or different facts.

7. Withdrawal of Pending Motions for Summary Adjudication. On or before December 13, 2007, the City and the Kinder Morgan Defendants shall submit a stipulation to the Court withdrawing the following pending motions filed by the parties on May 1, 2007 and heard by the Court on July 31, 2007: (a) the Kinder Morgan Defendants' Motion for Summary Adjudication Based Upon Statute of Limitations and Lack of Responsibility for Third-Party Contamination [Fourth And Fifth Causes of Action]; (b) the Kinder Morgan Defendants' Motion for Summary Adjudication on Rent Issues [Sixth Through Ninth Causes of Action] and Eighth Affirmative Defense of Set-Off; and (c) the City's Motion for Summary Adjudication as to Its Seventh and Ninth Causes of Action Against Defendant Kinder Morgan Liquids Terminals LLC. Such stipulation will instruct the Court not to rule or enter judgments on the matters in those motions.

8. No Effect on the City's Claims Against Other Defendants. This Settlement Agreement shall have no effect on any claims or damages recoverable by the City in the underlying action against defendants other than the Kinder Morgan Defendants.

9. No Effect on Remaining Claims or Defenses as Between the City and KMLT. Other than as provided herein, this Settlement Agreement shall have no effect on any remaining claims and defenses in this Action as between the City and KMLT.

10. No Attorneys' Fees or Costs Based upon Claims Disposed of by Settlement Agreement. No party shall claim a right to attorneys' fees or costs based upon the disposition of any claims through the Settlement Agreement.

11. Attorneys' Fees and Costs for Future Disputes. In the event of a dispute concerning the terms of or enforcement of this Settlement Agreement, the substantially

prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, and expenses incurred as a result of such dispute.

12. No Admission. This Agreement is a compromise of disputed claims. It is not and shall not be interpreted as or deemed to be an admission of any sort by any Party.

13. Integration. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written negotiations or agreements with regard to the matters set forth herein. No Party has made any promise, statement, or representation to any other Party that is not expressly set forth in this Agreement. The Parties are not entering into this Agreement on the basis of any promise, statement, or representation, express or implied, that is not expressly set forth in this Agreement.

14. Independent Counsel. Each Party acknowledges that it has been represented by independent counsel of its own choice throughout all negotiations pertaining to its execution of this Agreement. Each Party further acknowledges that it has received and relied upon advice from its independent counsel with respect to: (a) the meaning and effect of each of the terms and conditions of this Agreement including, but not limited to, the releases and the waiver of rights under California Civil Code § 1542; and (b) the advisability of entering into this Agreement.

15. Independent Investigation by Parties. Each Party acknowledges that it has fully investigated the subject matter of this Agreement and that it is entering into this Agreement voluntarily, knowingly, and of its own free will.

16. Successors. This Agreement shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of each of the Parties.

17. Modification of Agreement. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all of the Parties.

18. Execution of Additional Documents. The Parties will execute, or cause to be executed, in a timely manner all other, further, and additional documents as shall be reasonable, convenient, necessary, or desirable to carry out the provisions of this Agreement.

19. Construction of Agreement. The Parties and their counsel have read and reviewed this Agreement, and all have participated and cooperated in the drafting and preparation of this Agreement. The Parties thus agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

20. Counterparts. This Agreement may be executed in counterparts. When each party has signed and delivered at least one such counterpart in original or facsimile form, each counterpart shall be deemed an original, and, when taken together with the other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to the Parties, as well as their successors and assigns.

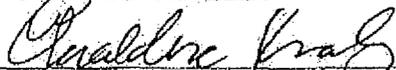
21. Headings. The headings within this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms or provisions of this Agreement.

22. Choice of Law. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

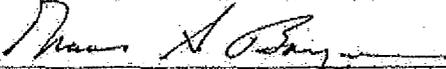
23. Authority. The Parties each warrant and represent to and in favor of each of the other Parties that the person executing this Agreement on its behalf has the full power and authority to bind it to each and every provision of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed by them effective as of the date first set forth above.

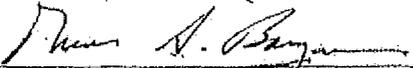
CITY OF LOS ANGELES


By: GERALDINE KNATZ
Title: EXECUTIVE DIRECTOR

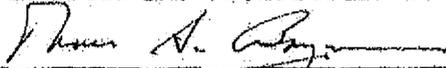
KINDER MORGAN ENERGY PARTNERS, LLP


By: Thomas A. Benjamin
Title: Vice President, Risk

KINDER MORGAN LIQUIDS TERMINALS, LLC


By: Thomas A. Benjamin
Title: Vice President

KINDER MORGAN TANK STORAGE TERMINALS, LLC


By: Thomas A. Benjamin
Title: Vice President

APPROVED AS TO FORM:

OPPER & VARCO, LLP

Richard G. Opper
Linda C. Beresford

STANZLER FUNDERBURK & CASTELLON LLP

William Funderburk
Ruben Castellon

ROCKARD J. DELGADILLO, CITY ATTORNEY

Thomas A. Russell, General Counsel
Kenneth F. Mattfeld, Deputy



Attorneys for the City of Los Angeles

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

John A. Moe II
Laura J. Carroll
Jeffrey D. Wexler

Attorneys for Kinder Morgan Energy Partners,
LLP, Kinder Morgan Liquids Terminals, LLC,
and Kinder Morgan Tank Storage Terminals,
LLC

201011487.1

FIRST 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, on September 16, 1997, the Los Angeles Regional Water Quality Control Board issued Cleanup and Abatement Order No. 97-119 requiring, among other things, that GATX Tank Storage Terminals Corporation "cleanup and abate the on-site and off-site soil and ground water contamination originating from the terminal at berths 118-119 in the Port of Los Angeles, California;"

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

WHEREAS, Permit 708 has a twenty-five (25) year term expiring on April 13, 2013, however Kinder Morgan Tank Storage Terminals desires to extend the term in order to:

- a) continue product export operations using wharf and the portion of the marine oil terminal occupied by the vapor recovery system,
- b) continue product import operations using wharf and the portion of the marine oil terminal occupied by the vapor recovery system, and
- c) fulfill its demolition, remediation and restoration obligations under the Permit;

WHEREAS, the City desires to clarify Kinder Morgan Tank Storage Terminals' obligations with respect to the scheduling and the nature of the soil and groundwater remediation effort;

WHEREAS, this Amendment is made pursuant to, and in consideration of, a litigation settlement in *City of Los Angeles v. Kinder Morgan Liquids Terminals LLC et al.*, Los Angeles County Superior Court case number NC041463.

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 2, Premises, is revised as follows:

(a) A new sketch is attached reflecting an anticipated subdivision of Parcel 1 on Harbor Engineer drawing 2-2151-2 into Parcels 1a and 1b. The sketch is provided for the purpose of illustrating the stepwise process of demolition and remediation contemplated herein. Following the first phase of demolition and remediation and upon Kinder Morgan's surrender of Parcel 1b, a new Harbor Engineer drawing 2-2151-3 will be prepared to reflect the actual subdivision lines and square footage for the purpose of adjusting rent.

(b) Parcel 9 (a subsurface pipeline right-of-way) on drawing 1-1214-1 is deleted from the Premises contingent upon execution of an amendment adding the same subsurface right-of-way to existing Revocable Permit 07-18 with Paramount Petroleum. *(The GX-130 line that occupies Parcel 9 was sold by Kinder Morgan to Paramount and R/P 07-18 was issued to Paramount in 2007 in connection with that sale).*

(c) Harbor Engineers drawing 2-2267-1, formerly associated with Revocable Permit 88-05, is appended to the Permit and Parcels 1a, 1c, 3, 7 and 7a on drawing 2-2267-1 are added to the Premises. *(Kinder Morgan took RP 88-05 by assignment from BP. Remaining parcels 1b, 4, 5 and 6 on drawing 2-2267-1 are within, and subsumed by, the Permit 708 premises.)*

2. Section 3, Term, subsections (a), Length, and (b) Holdover, are replaced by the following:

(a) Length. The term of this Agreement shall be for a period of thirty (30) 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) Tank Farm, Parcel 1b on the attached sketch (*East tank farm area except Tanks 55734 or 10735 and 5742*) and *Parcels 3 (surface manifold) and 5 (pipeline right-of-way on Drawing 2-2151-2)*; *Parcels 1c, 3, 7 and 7a on Drawing 2-2267-1*:

- Operations Cease by April 14, 2013.
- Demolition commences within thirty (30) days of receipt by Kinder Morgan of all necessary and required permits and approvals.
- Soil and groundwater remediation commences by following the completion of demolition and within 10 (ten) days of the issuance of an approved Remedial Action Plan by the Regional Water Quality Board and the receipt by Kinder Morgan of any other permits and/or approvals necessary to implement soil and groundwater remediation.
- Surrendered to City within 12 months of commencement of remediation but in no case later than December 31, 2015, provided timely receipt of demolition permit from City.

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(ii) Office and Vapor Recovery Unit, Parcel 1a on attached sketch (incl. Tanks 55734 and 10735) and Parcels 2 (wharf) and 4 (pipeline right-of-way) on Drawing 2-2151-2); Parcel 1a on Drawing 2-2267-1; 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:

- Operations cease by April 13, 2017.
- Demolition commences within thirty (30) days of receipt by Kinder Morgan of all necessary and required permits and approvals.
- Soil and groundwater remediation commences within 10 (ten) days following completion of demolition and the receipt by Kinder Morgan of any other permits and/or approvals necessary to implement soil and groundwater remediation.
- Surrendered to City on or before April 14, 2018.

(b) Holdover. Tenant shall not hold over any part of the Premises after the Surrender Date for that part as set forth above unless it submits a written request to hold over to the Executive Director of City's Harbor Department ("Executive Director"), 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 Expiration Date, has not provided written approval of a written request from Tenant to hold over, the Rent (as defined in Section 4) applicable to each part of the Premises 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 for that part before such holdover commenced. If Executive Director has provided written approval of a written request from Tenant to hold over prior to the

Expiration 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 applicable to that part; and (b) City expressly reserves the right to require Tenant to surrender possession of each part of the Premises to City as provided in this Agreement on the applicable 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.

(c) Post Surrender Ground Water Treatment & Monitoring. Tenant shall be granted access to the Premises 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.

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

During the last five-year period of the term of this Agreement, from April 14, 2013 through April 14, 2018, Tenant shall pay, in advance to City as rental for the use of each part of the Premises not yet surrendered to City, one fourth of the following sums each and every calendar quarter, plus all tolls and charges pursuant to Port of Los Angeles Tariff No. 4 for use of the wharf. Annual rent is computed at \$3.20 per square foot, with the rent for subsurface rights-of-way discounted by 75%.

Said rental shall be due and payable on or before the first day of each quarter. 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 month at a daily rate equal to 1/xxx of the total annual 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.

Upon the surrender of any Parcel or portion of a Parcel the rent shall be reduced in accordance with the square footage surrendered.

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<u>Drawing</u>	<u>Parcel</u>		<u>Area</u>	<u>Annual Rent</u>
1-1214-1	1	Subsurface	27,739	22,191.20
	2A	Subsurface	5,604	4,483.20
	2B	Subsurface	14,089	11,271.20
	3A	Subsurface	5,467	4,373.60
	3B	Subsurface	12,942	10,353.60
	4A	Subsurface	681	544.80
	4B	Subsurface	1,000	800.00
	5A	Subsurface	906	724.80
	5B	Subsurface	696	556.80
	6	Surface	260	832.00
	7	Surface	173	553.60
	8	Subsurface	458	366.40
	10	Surface	1,539	4,924.80
11A	Subsurface	34	27.20	
11B	Subsurface	173	138.40	
2-2151-2	1	Surface	538,040	1,721,728.00
	2	Wharf		Charges per Tariff
	3	Surface	525	1,680.00
	4	Subsurface	725	580.00
	5	Subsurface	405	324.00
5-7085-1	1	Subsurface	500	400.00
2-2085-1	1	Subsurface	5,200	4,160.00
	2	Subsurface	12,891	10,312.80
	3	Subsurface	528	1,689.60
	4	Subsurface	200	160.00
	5	Subsurface	23	18.40
2-2267-1	1a	Subsurface	25,209	20,167.20
	1c	Subsurface	2,042	1,633.60
	3	Subsurface	365	292.00
	7	Subsurface	369	295.20
	7a	Subsurface	164	131.20
Total, before surrender and excluding Tariff				1,825,713.60

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4. Section 8, Maintenance and Restoration, subsections (b), Restoration and Surrender of Premises, and (c), Hazardous Material, are replaced by the following:

(b) Restoration and Surrender of Premises.

(i) Tenant's Obligation To Prepare Required Documents and Reports to the Los Angeles Regional Water Quality Control Board

Tenant shall submit all future required environmental documents to City, the sufficiency of which is subject to City's reasonable approval. Tenant, at its sole cost and expense, shall conduct any additional assessment of existing Contamination in ground water, soil and soil gas at the Premises as required by the RWQCB to address same. Tenant shall provide a draft of the required project environmental documents and reports ("Reports") to the City prior to submittal to the RWQCB. City shall have thirty (30) calendar days from receipt of a Report to review and approve or disapprove of same. City's approval of any Report shall not be unreasonably withheld. If City does not disapprove of a Report in writing to Tenant within thirty (30) calendar days of receipt of such Report, the Report shall be deemed approved by City. The Parties shall make a good faith effort to reach agreement on the content of the Reports.

In order to gain City's approval, the Remedial Action Plan must, at a minimum, provide for:

- The removal of any soil with within and above the intertidal zone that has total petroleum hydrocarbon concentration equal to or greater than 1,000 mg/kg.
- The extension of remedial actions beyond the Premises boundaries where contamination of adjacent property is determined to be the result of Tenant's marine terminal or pipeline operations, and where the City determines that remedial actions will not disrupt other operations in the harbor area.

- The installation of permanent groundwater monitoring / treatment wells following soil remediation.
- The monitoring and/or treatment at Tenant's sole cost as needed following the Surrender Date and Expiration Date of this Agreement.

Tenant is free to negotiate soil, soil gas and ground water cleanup levels with the RWQCB, however: a) City is not obligated to support Tenant in such negotiations and may take a position adverse to Tenant in negotiations and proceedings before the RWQCB; and b) Neither Tenant's failure to reach agreement on cleanup goals nor any administrative or legal proceedings initiated by Tenant with respect to cleanup goals shall relieve Tenant of its obligations to meet the milestones set forth in Section 3.

(ii) Tenant's Restoration Obligation. On or before the surrender date associated with each part of the Premises, or any sooner termination of this Agreement, including termination pursuant to Section 6, Default and Termination, unless otherwise excused in writing by Executive Director, Tenant shall quit and surrender possession of each part of the Premises to Board.

Tenant agrees to remove all debris and sunken hulks from channels, slips and water areas within or fronting upon Premises not solely caused by City. Tenant expressly waives the benefits of the "Wreck Act" (Act of March 3, 1899) 33 U.S.C. Section 401 et seq. and the Limitation of Liability Acts (March 3, 1851, c. 43, 9 Stat. 635) (June 26, 1884, c. 121, Sec. 18, 23 Stat. 57) 46 U.S.C. 189 (Feb. 13, 1893, c. 105, 27 Stat. 445) 46 U.S.C. Sec. 190-196 and any amendments to these Acts if it is entitled to claim the benefits of such Acts.

Tenant shall obtain any permits necessary and shall perform the Remedial Action Plan and prepare any manifests or waste profiles necessary for the disposal of soil or water generated as a result of the Remedial Action Plan.

All permits, manifests and waste profiles necessary for the Remedial Action Plan shall list Tenant as the permittee or generator and shall be signed by or on behalf of Tenant.

Tenant shall Restore the Premises at its sole cost and expense, which restoration shall include demolition and the investigation, removal, remediation, mitigation or other response to contamination of ground water, soil and soil gas on the Premises to the satisfaction of the RWQCB and the City, including payment of all applicable RWQCB oversight costs related thereto. Restoration means that Tenant, on the Surrender Date associated with each part of the Premises, will return that that part to the City:

- Unless excused by the City, free of all above- and below-ground works, structures, improvements, trade fixtures and pipelines of any kind (collectively referred to as "Structures"); and
- Free of any encumbrances including but not limited to deed or land use restrictions as a result of any Contamination and/or any liens (UCC, federal or state tax or otherwise) on the Premises or on fixtures or equipment, or personal property left on the Premises; and
- With all soil removal or treatment required by the Remediation Action Plan completed as confirmed by a written report certified by the contractor or consultant(s) performing the remediation.
- In a clean, level, graded and compacted condition with no excavations or holes resulting from Structures removed.
- With necessary ground water monitoring and treatment wells installed.

In order not to disrupt other operations in the harbor area, or for any other reason, City may request that certain sections of Tenant's subsurface pipelines be abandoned in place, thus waiving the removal requirement stated herein. Abandonment in place will require that the pipelines be flushed and slurry filled in accordance with the requirements of an engineering permit issued by the City, and require the delivery of as-built drawings reflecting the precise size, locations and end points of abandoned lines. City, in its sole

discretion and as a pre-condition to approval of abandonment in place, may require, that Tenant perform soil investigations to assure that pipeline leaks have not contaminated the right-of-way.

(iii) City's Option To Perform Restoration. If Tenant fails to fulfill the obligations of this Section 8(b), Restoration and Surrender of Premises, in the manner and on the schedule required, City shall have the right to perform such obligations at Tenant's cost. In that event, Tenant agrees to reimburse City for its reasonable costs, upon demand. Notwithstanding the foregoing, City reserves the right to accept any works, buildings or other improvements upon the Premises, including a change in the grade thereof in lieu of Restoration.

(iv) Restoration Indemnity. In addition to and not as a substitute for any remedies provided by this Agreement or at law or equity, Tenant shall defend, indemnify and hold harmless City from any and all claims and/or causes of action brought against City and from all damages and costs which arise out of or are related to:

- Claims brought by holders of liens on the Premises, Structures, and/or on fixtures and/or equipment or property left on the Premises following the Expiration Date; and
- Claims, causes of action, orders or enforcement actions pending against or in connection with the Premises, the Permitted Uses and/or this Agreement.
- Such indemnity is intended to and shall survive the expiration or earlier termination of this Agreement.

(v) Post Restoration Obligations. Tenant's obligations with regard to remediation of the premises shall survive expiration or earlier termination of this Permit. Tenant shall remain responsible for contamination of any and all soil, soil vapor, or ground water until a site closure or no further action letter is obtained from the RWQCB. Tenant shall take and analyze soil and ground

water samples as necessary to fulfill its obligations. Tenant shall be responsible for installing and maintaining ground water monitoring and treatment wells as necessary. Tenant shall replace wells at its own cost should existing wells be damaged or destroyed during construction or redevelopment of the Premises by the City.

(vi) No Relocation Assistance. Nothing contained in this Agreement shall create any right in Tenant or any sublessees of Tenant for relocation assistance or payment from City upon expiration or termination of this Agreement (whether by lapse of time or otherwise). Tenant acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of any state or federal law, including Title 1, Division 7, Chapter 16 of the California Government Code (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover.

5. A new subsection is added to Section 11, Miscellaneous, as follows:

(t) Guarantee of Permit Obligations Prior to the execution of any amendment, Tenant shall furnish a corporate guarantee issued by Kinder Morgan Energy Partners LLP in a form satisfactory to the City Attorney of all of Tenant's obligations under this Permit.

6. A new subsection is added to Section 11, Miscellaneous, as follows:

(u) MOTEMS Compliance Notwithstanding the City's obligation to maintain the wharf as set forth in Section 8(a), the City makes no representations nor warranties regarding the ability of the wharf to meet the Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS") issued by the California State Lands Commission. Tenant shall be responsible for the cost of any

engineering studies, audits, wharf modifications, reinforcements or upgrades required to meet MOTEMS.

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

Except as amended herein, all remaining terms and conditions of Permit No. 708, shall remain the same.

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

THE CITY OF LOS ANGELES
HARBOR DEPARTMENT

Dated: _____

By _____
Executive Director

KINDER MORGAN TANK STORAGE
TERMINALS LLC

Dated: _____

By Thomas A. Basnigon
Vice President
(Print/Type Name and Title)

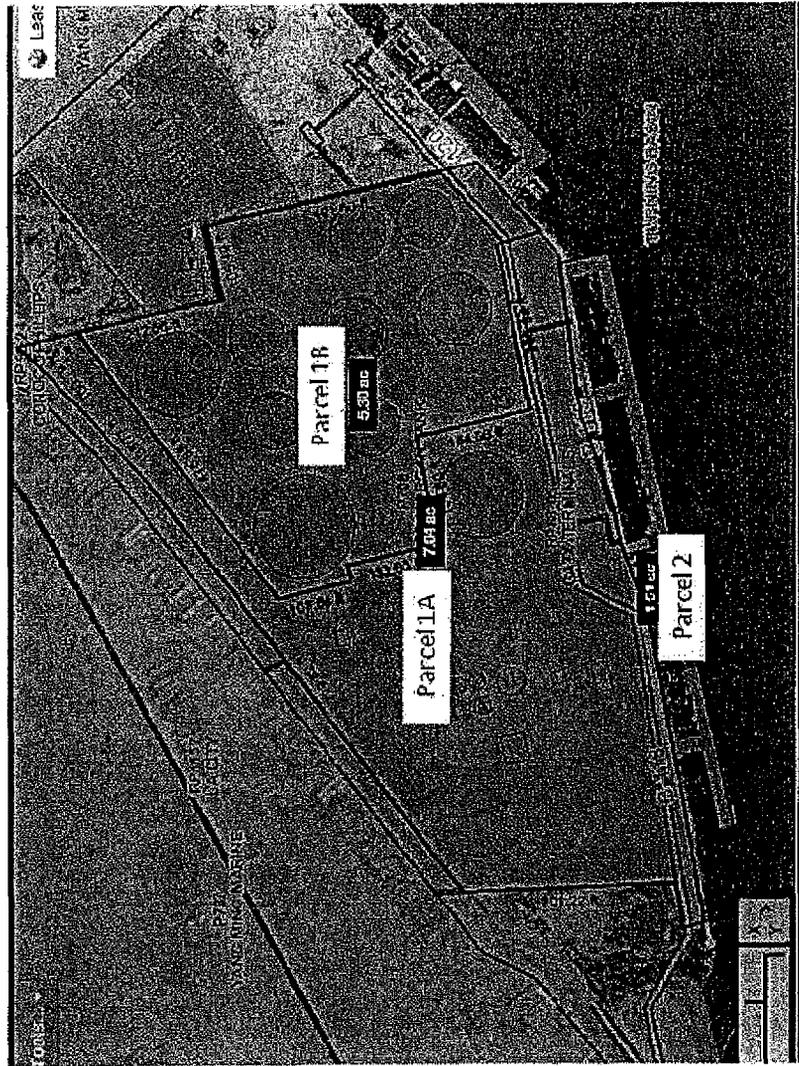
Attest _____
(Print/Type Name and Title)

Approved as to form and legality

_____, 2013
CARMEN A. TRUTANICH, City Attorney

By _____
KENNETH F. MATTFELD, Deputy

Kinder Morgan Permit 708 First Amendment Sketch



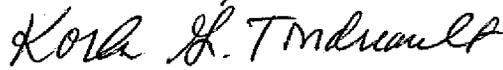
US_ACTIVE-112096043.1-JLSMTH

ORDER NO. 13-7124

IT IS HEREBY ORDERED by the Board of Harbor Commissioners that the FIRST AMENDMENT TO PERMIT NO. 708 granted by the City of Los Angeles, acting by and through its Board of Harbor Commissioners, to KINDER MORGAN TANK STORAGE TERMINALS LLC is hereby approved and the Executive Director and the Secretary of the Board are hereby authorized and directed to execute and attest to the same on behalf of the City of Los Angeles upon this Order being approved by the City Council as described below.

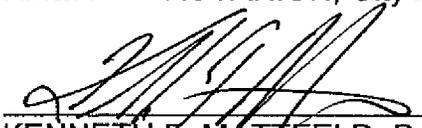
The Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners of the City of Los Angeles and shall cause a copy of the same to be presented to the City Council as provided in Section 606 of the Charter of the City of Los Angeles. If the Council shall approve this Order within 30 days after such Order shall have been presented to it, or if the Council shall fail to disapprove this Order within said 30 days, the Order shall be deemed approved and shall become effective upon such approval without publication. The Amendment approved by this Order shall become effective immediately upon execution by the City's Executive Director and Board Secretary after such Council approval of the Order.

I HEREBY CERTIFY that the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting of March 7, 2013.

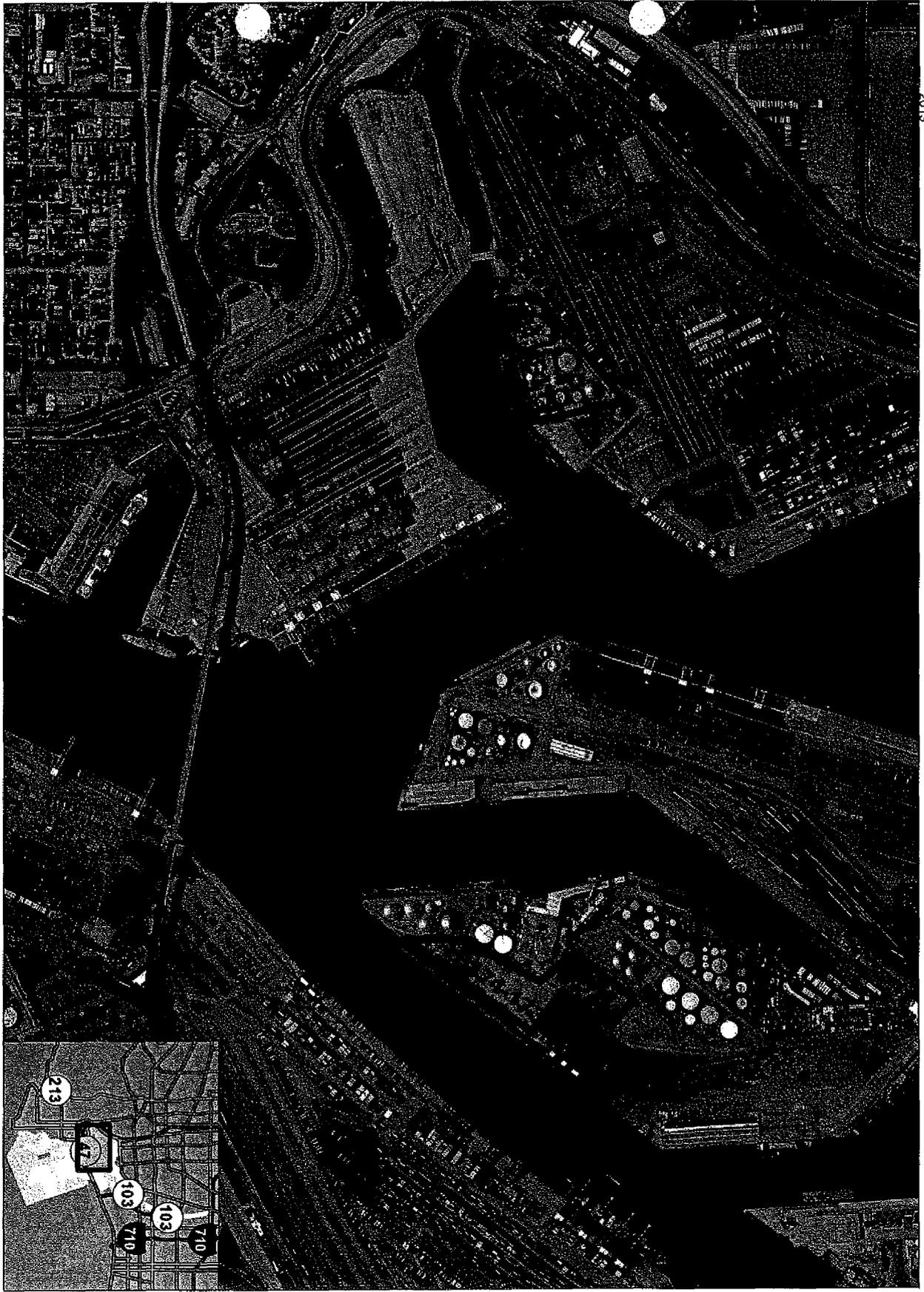

KORLA G. TONDREULT
Board Secretary

APPROVED AS TO FORM

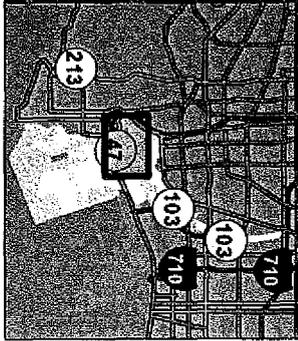

_____, 2013
CARMEN A. TRUTANICH, City Attorney

By 

KENNETH F. MATZFELD, Deputy



Legend



SCALE 1: 15,884
0 2,647.4 Feet

Projection: WGS_1984_Web_Mercator_Auxiliary_Sphere



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THIS MAP IS NOT TO BE USED FOR NAVIGATION

