

## LEASE AGREEMENT

Lease Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between, Kinder Morgan/Milwaukee Bulk Terminals, Inc., a Wisconsin corporation, (hereinafter referred to as "Tenant"), and the CITY OF MILWAUKEE, a Wisconsin corporation, by and through its Board of Harbor Commissioners (hereinafter collectively referred to as the "City").

### W I T N E S S E T H :

City hereby leases, demises and lets unto Tenant the real property comprised of approximately .808 acres (hereinafter referred to as the "Property"), located on the South Harbor Tract of the City of Milwaukee. The Property is more particularly described in Exhibit A, which is affixed hereto and incorporated into this document by this reference.

This Lease is entered into by the parties under the following terms and conditions:

1. **Term.** The Lease shall be effective on February 1, 2015, and terminate on December 31, 2025.

2. **Rent.** Tenant shall pay to City an annual "Base Rental" of Fourteen Thousand Five Hundred-Nineteen and Seventy-Six 100<sup>th</sup>/Dollars (\$14,519.76) payable quarterly in the amount of Three Thousand Six Hundred Twenty-Nine and Ninety-Four 100<sup>th</sup>/Dollars (\$3,629.94). Quarterly installments shall be due and payable on the first business day of each April, July, and October and on the last business day of each December during the term of this Lease.

3. **Escalation of Base Rent.** On the fifth (5<sup>th</sup>) anniversary of the effective date of this Lease (February 1, 2020), the annual Base Rent of the Property shall be increased by an amount determined by applying the percentage increase, if any, in the "All Urban Consumers" line of the seasonally adjusted "Consumer Price Indexes" published by the United States of Bureau of Labor Statistics (or its successor organization) for the five- (5) year period immediately preceding the 5<sup>th</sup> anniversary date. In no event shall the new base rent figure be less than that paid in the prior five- (5) year period.

4. **Extension of the Lease Term.** Tenant shall have the option of renewing this Lease for one additional five- (5) year term. Said Extended Term shall automatically take effect unless Tenant shall deliver to City a written notice of termination at least six months prior to the expiration of the Initial Term.

5. **Participation Charge.** Commencing on the date five years after the Effective Date of this Lease, Tenant shall also pay City a participation charge based on the volume of tonnage, calculated on net ton (net ton = 2000 pounds) basis, received by or delivered to the Property on an annual basis. The participation charge due City under this Lease shall be based on the following rates:

- a. 0-45,000 net tons – \$ 0.18
- b. Over 45,000 net tons - \$ 0.11

The participation charge shall be payable quarterly in arrears on the first business days of each January, April, July, and October during the term of this Lease. Each participation charge payment shall be for the immediately preceding quarter. The first participation will be pro-rated for partial quarter.

On the fifth (5<sup>th</sup>) anniversary of the effective date of this Lease (February 1, 2020), the annual Base Rent of the Property shall be increased by an amount determined by applying the percentage increase, if any, in the “All Urban Consumers” line of the seasonally adjusted “Consumer Price Indexes” published by the United States of Bureau of Labor Statistics (or its successor organization) for the five- (5) year period immediately preceding the 5<sup>th</sup> anniversary date. In no event shall the new base rent figure be less than that paid in the prior five- (5) year period.

6. **Wharfage.** In addition to the Base Rent and Participation Charge, during the Initial Term and any extended term of this Lease, for bulk cargo received from or delivered to ships by Tenant using docks, Tenant shall also pay City a wharfage charge as determined by reference to the provision of the Municipal Port Tariff in effect at the time the charge is made as said Municipal Port Tariff shall be subject to change. Wharfage charges shall be paid on the 15<sup>th</sup> day of every month following the month in which they are incurred.

7. **Landborne Receipts Charge.** In addition to the Base Rent, Participation Charge, and Wharfage, during the Initial Term of this Lease, and also during any extended term of this Lease, Tenant shall also pay City a landborne receipts charge for all landborne receipts of bulk commodities, shipments made by truck, rail, or any other land conveyance onto the Property leased by Tenant. The landborne receipts charge payable by Tenant to City shall be equal to the wharfage charge as determined by reference to the appropriate provision of the Municipal Port Tariff in effect at the time the charge is made as said Municipal Port Tariff shall be subject to

change. Landborne receipts charges shall be paid on the 15<sup>th</sup> day of every month following the month in which they are incurred.

8. **Records.** Tenant shall maintain completed, accurate and verifiable books and records of its business conducted on the property relative thereto, the form of such books and records to be subject to the approval of the Board of Harbor Commissioners and the City Comptroller and to be made available to properly accredited representatives of the Board of Harbor Commissioners and of the City of Milwaukee, at any reasonable time after request at Tenant's office, for audit or for such other inspection as may be deemed desirable by City. Tenant shall maintain adequate books and records for determination of all amounts due City under this Lease; such books and records shall be kept in accordance with generally-accepted accounting principles. Tenant's books and records are its private property, and the City shall endeavor to keep confidential all information which it derives therefrom to the fullest extent allowed by law.

9. **Financial Guarantee.** Upon the commencement of the term of this Lease and annually thereafter, Tenant shall furnish either a Bond or a standby Bank Letter of Credit or an equivalent financial guarantee instrument in a form and amount approved by City, in an amount sufficient to fully cover one year's total estimated leasehold rental, projected throughput fees, and other financial obligations of Tenant payable to City. In the event Tenant is unable, after exercising every reasonable effort, to procure such instrument, Tenant, at the sole option of City, may furnish to City written personal guarantees of its shareholders in a form and amount approved by City. In the event that the City ever draws upon any financial guarantee instrument furnished under this Section, Tenant shall immediately post a new or equivalent financial guarantee instrument in the form and amount specified by this Section.

10. **Use of the Property.** Tenant shall use the Property for the purpose of receiving, handling, storing, packaging, and delivery of salt, coal, crushed rock and other dry commodities. Additional uses of the Property are not permitted without the prior written approval of the Municipal Port Director. Tenant acknowledges the suitability of the Property for its intended uses and bears sole responsibility for making any determination with respect thereto.

Tenant agrees that storage of piled materials shall be restricted to locations designated by City. Tenant further agrees to provide suitable protection to any existing water lines, power lines or other underground installations, which are now in place so as to protect them from damage.

Tenant further agrees that all commodities stored on the property shall be handled and stored in compliance with all federal, state, and local statutes, ordinances and regulations.

11. **Occupancy Subject to Existing Easements and Restrictions.** Tenant's occupancy of the Property is subject to any recorded easements and restrictions of record.

12. **Termination and Vacation.**

A) **Termination and Vacation Date.** At the time of vacation, the Property shall either, at City's sole option: (1) be returned to City as level bare ground in substantially the same condition as that existing as of the date of commencement of this Lease; or (2) be returned to City together with any infrastructure and improvements that have been added during the term of this Lease. In the event that Tenant fails to vacate the Property in a timely fashion, City shall have the options to (1) cause the Property to be vacated; (2) charge Tenant twice (2x) the rent set forth in Section 2 of this Lease for all periods subsequent to the date of expiration of this Lease or of any agreed extension thereof; and (3) to assess and recover against Tenant the actual costs of such vacation and any damages sustained by City as a consequence of Tenant's failure to timely vacate the Property.

B) **Property to be Vacated Clear of all Materials.** Tenant shall vacate the Property free and clear of all materials and equipment and of all improvements in accordance with Section 9. In the event that Tenant fails to vacate the Property in the prescribed state of clearance, as determined by City, after ten (10) days' written notice to Tenant, City shall have the option to have such clearance and clean-up conducted as in its reasonable judgment is necessary in order to bring the Property to the prescribed state of clearance and to assess the costs of such action against Tenant.

C) This Lease may be terminated prior to the date of its stated expiration date only by the mutual written consent of the Port Director and Tenant.

13. **Default.** The occurrence of one or more of the following events shall be considered events of default under the terms of this Lease:

A) Tenant shall be adjudged a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of Tenant under Federal Bankruptcy Laws as now or hereafter amended, or under the laws of this State, shall be entered, and any such decree, judgment or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; City may at its sole option extend the Lease term on a

month-to-month basis in the event additional time is required for Tenant to vacate Property under this Section; or

B) Tenant shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or Tenant shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, or reorganization; or

C) Tenant shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Tenant; or

D) Tenant shall abandon the Property for a period of thirty (30) days.

E) Tenant shall be delinquent in any rental or other payments due under this Lease and such delinquency shall continue for five (5) days after notice thereof in writing to Tenant; or

F) Tenant shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for ten (10) days after notice thereof in writing to Tenant; or

G) Tenant shall make any assignment, sublease, transfer, conveyance or other disposition of its interest in the Property without the express written consent of City.

Upon occurrence of any one or more of such events of default, it shall be lawful for City, at its election in the manner and terms herein provided, to declare this Lease ended, and to recover possession of the Property, either with or without process of law, to enter and to expel, and remove Tenant and all agents, employees and representatives of Tenant engaged in operating the Property or occupying the Property, using such force as may be necessary in so doing. If default shall be made in any covenants, agreements, conditions or undertakings herein contained, to be observed and performed by Tenant, which cannot with due diligence be cured within a period of ten (10) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of said ten (10) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default, then City shall not have the right to declare the term of the Lease as ended; however, that the curing of any default in such manner shall not be construed to limit or restrict the right of

City to declare this Lease ended and terminated, and to enforce all of City's rights and remedies hereunder for any other default not so cured.

14. **Maintenance and Housekeeping.**

A) Tenant's Repairs & Maintenance. Tenant shall keep the Property in a clean and sanitary condition, and shall keep the common parking areas, driveways free of Tenant's debris, and shall control weeds and maintain landscaping. Tenant shall not store materials, waste or pallets outside of the Property. Maintenance and housekeeping of the property shall be the sole responsibility of the Tenant. City retains the right to have any of its officers, agents, officers, or employees inspect the property at such times. Such improvements, repairs and maintenance shall be in compliance with all governmental laws, ordinances, and regulations.

B) Tenant shall at all times keep the Property and all improvements thereon in a clean, neat, orderly and well-maintained appearance. Tenant shall, without limitation by reason of enumeration, undertake the following measures:

C) Tenant acknowledges the current condition of the two storage domes located on the property are in unacceptable condition and will refurbish the exterior to a clean and professional condition within 3 years of the effective date of the Lease.

D) Upon the expiration or earlier termination of this Lease, Tenant shall return the Property to City as level bare ground in substantially the same condition as when received, reasonable wear and tear accepted. Tenant shall perform all repairs and maintenance in a good and workmanlike manner, using materials and labor of the same character, kind and quality as originally employed within the Property; and all such repairs and maintenance shall be in compliance with all governmental and quasi-governmental laws, ordinances and regulations, as well as all requirements of City's insurance carrier. In the event Tenant fails to properly perform any such repairs or maintenance within a reasonable period of time, City shall have the option to perform any such repairs on behalf of Tenant, in which event Tenant shall reimburse to City, as Additional Rent, the costs thereof within thirty (30) days after receipt of City's invoice for same.

15. **Utilities.** Tenant shall be solely responsible for the installation and purchase of all utility services required by Tenant during the term of this Lease.

16. **Assignment and Subleasing.** Tenant shall not assign or sublet the Property or any portion thereof, nor allow the same to be used or occupied by any other person or for any other use than herein specified, without the prior written consent of City. For purposes of this Section,

the transfer of any majority interest in any corporation or partnership shall be deemed to be an assignment of this Lease. In the event City consents to any sublease or assignment, the same shall not constitute a release of Tenant from the full performance of Tenant's obligations under this Lease. Further, in the event of any such sublease or assignment, Tenant shall reimburse City for all reasonable attorneys' fees in connection with reviewing and/or drafting any appropriate documents to effect such transfer of Tenant's interests. Further, Tenant shall pay to City as Additional Rent under this Lease, 50% of any profit, rental or other compensation received in excess of the rental specified in Section 2 of this Lease by Tenant as a consequence of any assignment or sublease hereunder.

17. **Indemnification**. Tenant hereby agrees to indemnify and save harmless City from and against all liabilities, claims, demands, judgments, losses and all suits at law or in equity, costs and expenses, including reasonable attorney's fees, for injury to and/or death of any person or persons and/or loss and/or damage to the property of any person, firm or corporation whomsoever, including both parties hereto and their employees, arising from the construction, maintenance or operation of Tenant's improvements and equipment, or in the carrying on of its business as hereinbefore set forth, except when such liability, claim, demand, judgment or loss arises solely from a negligent act of City, its agents, contractors or employees.

18. **Insurance**. Tenant shall maintain in full force and effect throughout the currency of this Lease, the following insurance covering any and all liability or obligations which may result from operations by Tenant, Tenant's employees, agents, contractors or subcontractors as aforesaid in this Lease:

A) Property insurance coverage protecting against physical damage (including but not limited to fire, lightning, extended coverage perils, vandalism, sprinkler leakage, water damage, collapse and other special extended perils) to the extent of the replacement cost of Tenant's personal property and improvements as well as goods or property in Tenant's care, custody and/or control.

B) Comprehensive General Liability Insurance (including but not limited to Products and Completed Operations and Contractual Liability, as applicable to Tenant's obligations under this Lease) with limits not less than:

Each Occurrence Limit:	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000
General Policy Aggregate:	\$2,000,000

- C) Automotive Liability Insurance with Limits not less than:
- |   |                            |
|---|----------------------------|
| Bodily Injury and Property Damage<br>Combined Single Limit: | \$1,000,000 per occurrence |
|---|----------------------------|
- D) Worker's Compensation Insurance in accordance with Chapter 102, Wisconsin Statutes and any applicable Federal law.
- E) Umbrella Coverage: \$10,000,000 in aggregate
- F) Environmental Impairment Liability Coverage to be continued for a period of 4 years after Lease expiration.
- |                       |             |
|-----------------------|-------------|
| Each Occurrence Limit | \$2,000,000 |
| Aggregate Coverage    | \$4,000,000 |

All such policies shall be of a form and content satisfactory to City. In addition, the Board of Harbor Commissioners of the City of Milwaukee and the City of Milwaukee will be designated on the General Liability, Property Insurance, Automobile and Umbrella policies as Additional Named Insureds. All policies shall be with companies licensed to do business in the State of Wisconsin and rated A or better in the most current issue of Best's Key Rating Guide. Tenant shall furnish City with certificates of insurance for all policies showing that insurance has been written as required. Such evidence shall be provided by Tenant at least thirty (30) days prior to occupancy; and further, such policies shall provide that no less than thirty (30) days written notice be given to City before any such policies are cancelled or substantially changed to reduce the insurance provided thereby. Said certificates of insurance shall remain in effect for the duration of this. Tenant shall not act in any manner that may make void or voidable any insurance required herein. Upon written demand, Tenant shall provide City full, complete and accurate copies of the insurance policies required by this Lease. Once in every three (3)-year period during the term of this Lease, City shall review the extent and limits of the insurance coverage required herein. After said review, should City determine an increase in the extent and/or limits of insurance coverage is required, Tenant shall be so notified in writing and Tenant shall cause such increases to be placed in effect within thirty (30) days of receiving such notice. In no event shall the extent and limits of insurance coverage be reduced from the amounts shown herein.



The attorney in fact or agent of any insurance company furnishing any policy of insurance shall sign and furnish an affidavit setting forth that no City official or employee has any interest, direct or indirect, or has received any premium, commission, fee or other thing of value on account of furnishing said policy of insurance.

19. **Taxes.** Tenant shall pay and discharge when due all taxes, if any, assessments, levies and other charges, general and special, that are or may be during the term hereof levied, assessed, imposed or charged on the Property or the improvements thereon or hereafter placed thereon.

20. **Alterations & Improvements.** Tenant shall not make any alterations, additions, buildings or improvements to the Property or Property without the prior written consent of City. Notwithstanding the aforesaid, Tenant, at Tenant's sole cost and expense, may install such trade fixtures as Tenant may deem necessary. In compliance with all applicable governmental and quasi-governmental laws, ordinances and regulations, Tenant shall furnish, upon City's request, plans, specifications, drawings and/or renderings of any proposed alterations, additions, buildings or improvements.

On or before the date of the expiration or earlier termination of this Lease, Tenant shall remove all trade fixtures and any other alterations, additions, buildings or improvements installed by Tenant within the Property; and, upon such removal, Tenant shall restore the Property to a condition substantially similar to that condition when received by Tenant. However, notwithstanding the aforesaid, upon City's written election, such alterations, additions, buildings and improvements shall revert to City and shall remain within the Property. In no event shall City have any right to any of Tenant's trade fixtures; and, except as otherwise set forth in this Lease.

Tenant or its contractors agree to properly secure all necessary permits and licenses required by any state, federal or local departments or agencies for the construction and operation of Tenant's business and improvements. A copy of each such permit or license shall be sent to the Port of Milwaukee for its record file.

21. **Destruction.** If the improvements upon the Property are damaged in whole or in part by casualty so as to render the Property untenable, and if the damages cannot be repaired within one hundred eighty (180) days from the date of said casualty, this Lease shall terminate as of the date of such casualty. If the damages can be repaired within said one hundred eighty (180) days, and City does not elect within sixty (60) days after the date of such casualty to repair same,

then either party may terminate this Lease by written notice served upon the other. In the event of any such termination, the parties shall have no further obligations to the other, except for those obligations accrued through the effective date of such termination; and, upon such termination, Tenant shall immediately surrender possession of the Property to City. Should City elect to make such repairs, this Lease shall remain in full force and effect, and City shall proceed with all due diligence to repair and restore the improvements to a condition substantially similar to that condition which existed prior to such casualty. In the event the repair and restoration of the Property extends beyond one hundred eighty (180) days after the date of such casualty due to causes beyond the control of City, this Lease shall remain in full force and effect, and City shall not be liable therefore; but City shall continue to complete such repairs and restoration with all due diligence. Tenant shall not be required to pay any rent for any period in which the Property is untenantable. In the event only a portion of the Property is untenantable, Tenant's rent shall be equitably abated in proportion to that portion of the Property, which are so unfit. However, there shall be no rent abatement if said damage is due to fault or negligence of Tenant or Tenant's agents, employees or invitees.

22. **Site Development Agreements.** In the event that City and Tenant agree to a plan for the future development of the Property, said plan shall be embodied in a Site Development Agreement which shall be appended to this Lease as an Addendum and shall be incorporated into this Lease as though an integral part thereof. Tenant agrees to fully and continuously comply with all terms and condition of the Site Development Agreement and further agrees that any non-compliance on its part with any of these terms and conditions shall constitute an event of default under this Lease.

23. **Compliance with Laws and Orders.** Tenant agrees to observe fully and to comply with any laws, statutes, regulations, ordinances, rules, requirements or directives now in force or which shall emanate from any state, federal or local departments or agencies having jurisdiction. Tenant also agrees to be fully bound and to observe the provisions of the Municipal Port Tariff in effect as of the date of commencement of this Lease and of any successor or equivalent document issued by the Board of Harbor Commissioners of the City of Milwaukee during the term of this Lease.

24. **Security Compliance.** Tenant agrees to conform to all national security requirements imposed by the U.S. Department of Homeland Security, the Marine Transportation Security Act and its implementing regulations, as well as any applicable state and local security rules and regulations.

Tenant also agrees to comply with any measures and obligations imposed by a Port of Milwaukee tenant consortium formed to administer security requirements. Tenant will become a member of any such consortium and pay any fees or levies imposed by that consortium or by the Port of Milwaukee to cover security costs.

“Security,” as that term is used herein shall mean “Measures designed to safeguard personnel; to prevent unauthorized access to equipment, property, buildings, harbor facilities, installations, materials, and documents; and to safeguard against espionage, sabotage, damage, and theft, or to prevent persons or organizations from engaging in any activity or using Port properties, equipment and material in a manner that would aid an effort to harm vital interests of the City of Milwaukee, the State of Wisconsin or the United States of America.”

25. **Environmental Compliance and Obligations.**

A) **Compliance with Environmental Regulations.** Tenant shall fully comply with all environmental laws, including statutes, regulations, or other applicable requirements imposed by any federal, state, or municipal agency with respect to the environmental condition of the Property and/or with respect to any activities or operations that Tenant may conduct upon the Property (hereinafter referred to as "Environmental Requirements"). Tenant shall not cause, permit or suffer the existence or commission by Tenant, its agents, employees, contractors or invitees, or by any other person of any violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof.

B) **Environmental Laws.** The term "Environmental Laws" shall mean and include (a) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984; (b) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601-9657; (c) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801-1812; (d) the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq.; (e) the Clean Air Act, 42 U.S.C. § 7401, et. seq.; (f) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, et. seq.; (g) Chapters 280-299 of Wisconsin Code; and all

similar federal, state, or local environmental laws, ordinances, rules, codes and regulations, and as any of the foregoing may have been amended, supplemented, or supplanted and any other federal, state or local laws, ordinances, rules, codes and regulations now existing relating to the environment or the regulation or control or imposing liability or standards of conduct concerning toxic or hazardous waste, substances or materials.

C) Hazardous Material; Environmental Liens. Except to the extent commonly used in the day-to-day operation of the Property, and in strict compliance with all Environmental Requirements (including those relating to storage, use and disposal), Tenant shall not cause, permit or suffer any "hazardous material" or "hazardous substance" (as defined by applicable Federal or State statutes or regulations) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about, or beneath the Property or any portion thereof by Tenant, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of the City. Any request by Tenant for such consent by City shall be in writing and shall demonstrate to the reasonable satisfaction of City that such "hazardous material" or "hazardous substances" is necessary to the conduct of the business of Tenant and will be stored, used, and disposed of in a manner that complies with all applicable Environmental Requirements. Tenant shall not create or suffer to exist with respect to the Property any lien, security interest, or other charge or encumbrance of any kind relating to the environmental condition of the Property, including (without limitation) any lien imposed pursuant to Sec. 107(f) of the Superfund Amendments and Reauthorization Act 1986 (42 U.S.C. § 9607(L)) or any similar State Statute.

D) Obligation to Investigate and/or Remediate. Tenant shall, upon demand of City, and at its sole cost and expense, promptly take all actions to investigate and/or remediate the environmental condition of the Property which may be required by any federal, state or local governmental agency or political subdivision which remediation is necessitated from, or attributable to, the presence upon, about, or beneath the Property of any "hazardous material" or "hazardous substances" or any violation of Environmental Requirements caused by the Presence of and/or activities or operations conducted by the Tenant upon the Property. Any such investigation and/or remediation shall be performed by and under the direction of a qualified environmental consulting or engineering firm approved by City in advance of the commencement of the work. Tenant agrees to allow entry upon the Property by City, or agents,

contractors or employees of City for purposes of conducting environmental audits and/or other tests for the purpose of determining the impact of Tenant's presence and/or activities or operations upon or with respect to the Property upon the environmental condition thereof. In the event that Tenant performs any such environmental audit and/or test on its own behalf, it shall promptly provide to City full and complete copies of any results and/or reports that are generated in connection with the above activities.

E) Survival of Obligations. Tenant's obligations with respect to the environmental condition of the Property (as more fully set forth in Subsections (A) through (C) above) shall survive the expiration or termination of this Lease.

F) Nothing in this agreement shall be deemed to be or constitute a waiver by City of any defense available to it as a governmental entity pursuant to 42 U.S.C. § 9601 (35) (A) (ii) and § 9607 (b) (3) or Wis. Stat. § 292.11(9)(e), 292.23(2), 292.24(2) and 292.26.

26. Liens. Tenant shall not mortgage or otherwise encumber or allow to be encumbered its interest herein without obtaining the prior written consent of City. Should Tenant cause any mortgage, lien or other encumbrance (hereinafter singularly or collectively referred to as "Encumbrance") to be filed, against the Premises or the Property, Tenant shall dismiss or bond against same within fifteen (15) days after the filing thereof. If Tenant fails to remove said Encumbrance within said fifteen (15) days, City shall have the absolute right to remove said Encumbrance by whatever measures City shall deem convenient including, without limitation, payment of such Encumbrance, in which event Tenant shall reimburse City, as Additional Rent, all costs expended by City, including reasonable attorney's fees, in removing said Encumbrance. All of the aforesaid rights of City shall be in addition to any remedies which either City or Tenant may have available to them at law or in equity.

27. Time of the Essence. It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Lease.

28. Waiver. One or more waivers by any party of any covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

29. **Sole Agreement and Amendment.** This shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Lease. Each person signing this Lease warrants that this is the full, entire and complete Lease between the parties; that the terms of this Lease supersede and nullify any and all prior discussion, negotiations or agreements between the parties and/or any of the parties' respective officers, employees or agents relating in any manner to the subject matter of this Lease; and that no promise or inducement not expressed in this Lease has been made or exists to cause or influence each such person to execute this Lease. Each person signing this Lease warrants their ability to bind the party on whose behalf each signs.

30. **Notice.** Any notice provided for herein or given pursuant to this Lease, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

To the City:

BOARD OF HARBOR COMMISSIONERS  
2323 S. Lincoln Memorial Drive  
Milwaukee, WI 53207  
Attention: Municipal Port Director

To The Tenant:

Kinder Morgan/Milwaukee Bulk Terminals, Inc.  
1900 S. Harbor Drive  
Milwaukee, WI 53207  
Attn: Mr. James Hill, General Manager

31. **Governing Law.** This Lease shall be governed by the internal laws of the State of Wisconsin. If any term or provision of this Lease or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Lease and exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by applicable law.

Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Lease are subject to and conditioned on the provisions of Wis. Stat. §19.21, et seq. Tenant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Lease, and that the Tenant must defend and hold the City harmless from liability under that laws. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Lease.

32. **Authorization.** The undersigned signatories to this instrument represent that they are duly authorized to contract on behalf of their respective entities.

33. **No Slavery Affidavit.** The Tenant shall execute the Affidavit of Compliance attached hereto as Exhibit \_\_\_\_\_ contemporaneously with its execution of this Lease.

34. **Nondiscrimination.** Tenant hereby agrees that in its use of the Property and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

35. **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Lease. The terms "Board of Harbor Commissioner" and "City" whenever used herein shall mean and include the Board of Harbor Commissioners of the City of Milwaukee and/or its successors and assigns in authority, as the context may require.

36. **Approval.** IT IS FURTHER AGREED AND UNDERSTOOD that this Lease must be submitted to the Common Council of the City of Milwaukee and that the same must be approved by the Common Council and its execution authorized.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers executed this Lease under seal as of the day and year first above written.

IN THE PRESENCE OF:

**CITY OF MILWAUKEE**

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Tom Barrett, Mayor

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Jim Owczarski, City Clerk

**COUNTERSIGNED:**

\_\_\_\_\_  
Martin Matson, Comptroller

**BOARD OF HARBOR COMMISSIONERS**

\_\_\_\_\_  
Timothy K. Hoelter, President

\_\_\_\_\_  
Lawrence Sullivan, Interim Secretary

**KINDER MORGAN/MILWAUKEE BULK TERMINALS, INC.**

\_\_\_\_\_  
James Hill, General Manager

STATE OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, James Hill, the General Manager of Kinder Morgan/Milwaukee Bulk Terminals, Inc., who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission Expires \_\_\_\_\_

APPROVED as to Form and Execution this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Assistant City Attorney

kmmt15lse.808.doc  
12/11/14



**PLEASE NOTE:** TENANTS MUST COMPLETE THE FOLLOWING:

(Note: Someone other than the individual who executed this Lease must certify the following):

CERTIFICATE RE: CORPORATION

I, \_\_\_\_\_ certify that I am the \_\_\_\_\_ of the above  
(print name) (print title)

TENANT named herein; that \_\_\_\_\_, who executed this Lease on behalf of  
(print signator of tenant)

the above TENANT was then \_\_\_\_\_ of said corporation, and in said  
(official capacity of signator)

capacity, duly signed said Lease for and on behalf of said corporation, being duly authorized so to do under its bylaws or is authorized so to do by action of its duly constituted board, all of which is within the scope of its corporate powers.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_  
(location-city)

\_\_\_\_\_  
(signature)

# LEASE AGREEMENT

Between

KINDER MORGAN/MILWAUKEE BULK TERMINALS, INC.

And the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

For lease of .808 acres of property located on the  
Ports Inner Harbor at 1601 S. Carferry Drive

Lease Term: February 1, 2015 through December 31, 2025