

LEASE AGREEMENT

Lease Agreement made as of the 1st day of November 2013, by and between Kinder Morgan Bulk Terminals, (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 :

The City hereby leases, demises and lets unto Tenant the real property comprised of approximately 8.610 acres (hereinafter referred to as the "Property"), located on the South Harbor Tract of the City of Milwaukee, including Terminals 4 and 4A, consisting of approximately 104,000 square feet. 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 as of 12:01 A.M. November 1, 2013, and terminate at 11:59 P.M. December 31, 2020.
2. **Rent.** Tenant shall pay to the City an annual "Base Rental" of Two Hundred Eight Thousand Nine Hundred Ninety and no/100th Dollars (\$208,990.00) payable quarterly in the amount of Fifty Two Thousand Two Hundred Forty Seven and fifty/100th Dollars (\$52,247.50). 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, and shall be made without demand therefor.
3. **Escalation of Base Rent.** On the fifth (5th) anniversary of the effective date of this Lease (November 1, 2018), 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 Bureau of Labor Statistics (or its successor organization) (1982=100) for the five (5) year period prior to the beginning of the new rental period, to the base rental figure for the first initial five (5) year term: provided, however, that in no event shall the new base rental figure, as adjusted, be less than that paid in the prior five (5) year rental period.
4. **Landborne/Wharfage Receipts Charge.** In addition to the foregoing Base Rent during the Term of this Lease, Tenant shall also pay the City a landborne/wharfage receipts charge for all landborne or waterborne receipts of commodity shipments made by water, truck, rail or any other conveyance onto the Property leased by Tenant. The landborne/wharfage receipts charge for milorganite payable by Tenant to the City shall be \$0.30 per metric ton. The landborne/wharfage receipts charge for all other commodities payable by Tenant to the 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 change from time to time.

The landborne/wharfage receipts charges shall be payable quarterly, in arrears, on the first business day of each January, April, July and October during the term of this Lease, and shall be made without demand therefor. Each payment shall be for the immediately preceding quarter. The obligation to pay shall commence on the date Tenants takes possession and occupies the Property. The first quarterly payment shall be due and payable for the period from the date Tenant took possession to the date of said payment, prorated to cover any partial quarter.

5. **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 the City. Tenant shall maintain adequate books and records for determination of all amounts due the 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.

6. **Use of the Property.** Tenant shall use the Property to establish and maintain a dockside bulk materials bagging and warehousing facility. Tenant may receive, ship, store, handle and/or bag bulk salt and Milorganite and perform ancillary and warehouse services consistent with such business. Raw product to be bagged, or finished product to be shipped, shall be generally but not exclusively transported by water. 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.

The handling of steel and project cargoes is specifically precluded under this Lease.

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

8. **Termination and Vacation.**

A) **Termination and Vacation Date.** Tenant shall vacate the Property on or before the expiration of this Lease. The Property shall be returned to the City by Tenant as level base ground in substantially the same condition in which it was received. In the event that Tenant fails

to vacate the Property in a timely fashion, the City shall have the option to do any or all of the following: (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 the 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 the City, after ten (10) days' written notice to Tenant, the 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) Termination. 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.

9. **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. The 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 the City.

Upon occurrence of any one or more of such events of default, it shall be lawful for the 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 the 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 the City to declare this Lease ended and terminated, and to enforce all of the City's rights and remedies hereunder for any other default not so cured.

10. Maintenance and Housekeeping.

A) City's Repairs & Maintenance. Tenant accepts the Property in the condition in which it is at the commencement of this Lease and warrants that, as is, the Property is suitable for its purposes without need of further improvements by the City. Tenant further warrants that no bulk salt or other corrosive material will be stored in Terminal 4 proper (bagged product allowable). However, it is recognized that small amounts of bulk material may be held in the enclosed bagging process room at the east end of Terminal 4 while bagging operations are underway. Tenant will install mechanisms acceptable to the Port that would prevent the introduction of salt spray or other particulate matter into the air, either within or outside of Terminal 4 and its environs. Tenant will maintain the highest degree of housekeeping on the leasehold and promptly remove any particulate or residue from operations from ship aprons, and from within or around Terminals 4 and 4A.

The City will repair and maintain, at its own expense, the roof, floor, foundations, walls, fire sprinkler systems, plumbing, electrical and heating systems and the ceilings of each terminal building, except as noted below. The City also will repair and maintain, at its own expense, the docks, dockwalls, access roads, and aprons on and immediately adjacent to the Property. In addition, the City will maintain, at its own expense, the berthing slips and areas adjacent to the Property at "Seaway Depth" of 27 feet and the City will maintain and repair, at its own expense, any railroad tracks on the Property.

B) Tenant's Repairs & Maintenance. Tenant will maintain and repair, at its own expense, all overhead doors, glass window and door panes, alarm systems, fencing and gates, electrical fixtures both within and attached to the terminal buildings. Tenant shall also be responsible for the repairs and maintenance due to ordinary wear and tear on plumbing, sewer, and heating systems such as, but not limited to, clearing of clogged drains, replacement of washers and the normal annual cleaning and adjustment of the heating system.

Tenant will perform such maintenance and repair on a regular basis and in such a manner as to keep the above-mentioned systems in optimal operational condition. Tenant will repair any damage promptly.

Tenant shall utilize proper and sufficient dunnage under cargo to ensure loads are properly spread on ship aprons and in storage areas in order to minimize damage to paved areas. Tenant shall be responsible for the cost of any damage caused by improper or insufficient dunnaging of cargoes.

Tenant shall keep the Property and any dock area servicing the Property in a clean and sanitary condition, and shall keep the common parking areas, driveways and loading docks free of Tenant's debris, and shall control weeds and maintain any landscaping. Tenant shall not store materials, waste or pallets outside of the Property, and shall timely arrange for the removal and/or disposal of all pallets, crates and refuse owned by Tenant, which cannot be disposed of in the dumpster(s) servicing the Property.

Tenant shall at all times keep the Property and all improvements thereon in a clean, neat, orderly and well-maintained appearance. Interior painting of leasehold improvements will be done by Tenant at its own expense. Exterior painting of leasehold improvements will be done by the City, at its own expense. Any type of repair or maintenance, which is not specifically referenced herein, will be the responsibility of the City. However, the City will not be responsible for any repair or maintenance occasioned by the negligent or intentional tortuous act of Tenant or the Tenant's agents or assigns.

Upon the expiration or earlier termination of this Lease, Tenant shall return the Property to the City in substantially the same condition as received with reasonable wear and tear accepted. Tenant shall perform all repairs and maintenance in a good and work-man-like 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 the City's insurance carrier. In the event Tenant fails to properly perform any such repairs or maintenance within a reasonable period of time, the City shall have the option to perform any such repairs on behalf of Tenant, in which event Tenant shall reimburse to the City, as Additional Rent, the costs thereof within thirty (30) days after receipt of the City's invoice for same.

The City retains the right to have its officers, agents, or employees inspect the Property at all reasonable times, upon reasonable notification, and Tenant shall be required to grant reasonable access to the Property at all times for purposes of such inspections or for the performance of any repair or maintenance or the making of any improvements by authorized officers, agents, contractors, or employees of the City, all subject to Tenant's normal security procedures at the Property (which security procedures must be approved by the Port Director, which approval shall not unreasonably be withheld or delayed).

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

12. **Crane Service and Other Services Provided by City**. The City shall provide crane services to Tenant under the terms and conditions stated in the then current Municipal Port Tariff. The City at Tenant's request may provide other services to Tenant under the terms and conditions stated in the then current Municipal Port Tariff, or upon terms and conditions agreed upon by the parties in writing for any such services not then covered by the Municipal Port Tariff.

13. **Razing of Terminal 4A**. Tenant shall have the option, during the Term of this Lease at Tenant's own expense, to dismantle Terminal 4A. The Base Rent for the property shall not be reduced in the event Tenant exercises such option to dismantle Terminal 4A.

14. **Vessel Berthing**. Vessels that need to use berths adjacent to the Property, in connection with Tenant's use of the Property for the purposes specified in Paragraph 6 above, shall be given preference by the City when determining berth assignments. However, this Lease will in no way be construed as allowing Tenant the exclusive right to determine berthing locations or as allowing Tenant the exclusive use of any berth.

15. **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 the City. For purposes of this Section, the transfer of any majority interest in any corporation or partnership shall be deemed an assignment of this Lease. In the event the 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 the City for all reasonable attorneys' fees in connection with reviewing and/or drafting any appropriate documents to affect such transfer of Tenant's interests. Further, Tenant shall pay to the 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.

16. **Indemnification**. Tenant hereby agrees to indemnify and save harmless the 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 the City, its agents, contractors or employees.

17. **Insurance**. Tenant shall maintain in full force and effect throughout the currency of this Lease, the following insurance covering all liability or obligations that 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 Combined Single Limit:	\$1,000,000 per occurrence
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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 four 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 the 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 the 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 the 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 the 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, the City shall review the extent and limits of the insurance coverage required herein. After said review, should the 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.

18. **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.

19. **Alterations & Improvements.** Tenant shall not make any alterations, additions, buildings or improvements to the Property or Property without the prior written consent of the 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 the 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 the City's written election, such alterations, additions, buildings and improvements shall revert to the City and shall remain within the Property. In no event shall the 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.

20. **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 the 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 the City. Should the City elect to make such repairs, this Lease shall remain in full force and effect, and the 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 the City, this Lease shall remain in full force and effect, and the City shall not be liable therefore; but the 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 untenable. In the event only a portion of the Property is untenable, Tenant's rent shall be equitably abated in proportion to that portion of the Property, which is 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.

21. **Site Development Agreements.** In the event that the 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.

22. **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.

23. **Security Compliance.** Tenant agrees to conform to all national security requirements imposed be 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.”

24. 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 the City shall be in writing and shall demonstrate to the reasonable satisfaction of the 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 the 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 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 the City in advance of the commencement of the work. Tenant agrees to allow entry upon the Property by the City, or agents, contractors or employees of the 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 the 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 the 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.

25. **Liens.** Tenant shall not mortgage or otherwise encumber or allow to be encumbered its interest herein without obtaining the prior written consent of the 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, the City shall have the absolute right to remove said

Encumbrance by whatever measures the City shall deem convenient including, without limitation, payment of such Encumbrance, in which event Tenant shall reimburse the City, as Additional Rent, all costs expended by the City, including reasonable attorney's fees, in removing said Encumbrance. All of the aforesaid rights of the City shall be in addition to any remedies which either the City or Tenant may have available to them at law or in equity.

26. **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.

27. **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.

28. **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.

29. **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 Bulk Terminals
1900 S. Harbor Drive
Milwaukee, WI 53207

30. **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.

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

32. **No Slavery Affidavit.** Tenant shall execute the Affidavit of Compliance attached hereto contemporaneously with its execution of this Lease.

33. **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.

34. **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.

35. **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.

CITY OF MILWAUKEE

Tom Barrett, Mayor

Jim Owczarski, City Clerk

COUNTERSIGNED:

Martin Matson, Comptroller

BOARD OF HARBOR COMMISSIONERS

Timothy K. Hoelter, President

Lawrence Sullivan, Interim Secretary

KINDER MORGAN BULK TERMINALS

Mark Wells, Terminal Manager

STATE OF _____
_____ COUNTY

Personally came before me this _____ day of _____, 20____, Mark Wells, the Terminal Manager, and who by its authority, on its behalf executed the foregoing instrument, and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

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)

(signature)

APPROVED as to Form and Execution this
_____ day of _____, 20 ____

Assistant City Attorney

i:kmbt4-4Aseagree.doc

12/2/13

LEASE AGREEMENT
between
KINDER MORGAN BULK TERMINALS
and the
BOARD OF HARBOR COMMISSIONERS/
CITY OF MILWAUKEE

Lease is for real property comprised of approximately 8.610 acres located on the South Harbor Tract of the City of Milwaukee, including Terminals 4 and 4A, consisting of approximately 104,000 square feet.

Term: November 1, 2013 through December 31, 2020