

**EXTENSION & AMENDMENT
OF EASEMENT & LEASE AGREEMENT**

Between

WEST SHORE PIPELINE COMPANY

and the

**BOARD OF HARBOR COMMISSIONERS
CITY OF MILWAUKEE**

Term of Agreement: January 1, 2008 – December 31, 2032

Date of Agreement:

EXTENSION AND AMENDMENT OF EASEMENT & LEASE AGREEMENT

Extension and Amendment of Easement and Lease Agreement this ____ day of _____, 20____ between the City of Milwaukee, a Wisconsin municipal corporation, acting by and through its Board of Harbor Commissioners (hereinafter referred to as “the City”), and the West Shore Pipeline Company, a Delaware corporation licensed in Wisconsin (hereinafter referred to as “Tenant”).

Whereas, the City and Tenant entered into an Easement and Lease Agreement (hereinafter referred to as “the Agreement”), on July 1, 1961; and

Whereas, the Agreement was first extended and amended on April 23, 1984 as provided in Paragraph 33 of the Agreement.

Whereas, the City and Tenant desire again to amend and extend the Agreement; now, therefore

The City and Tenant agree to the following terms and conditions for this Extension and Amendment of Easement and Lease Agreement:

1. All easements granted by the City to Tenant as part of the Agreement are represented by the Board of Harbor Commissioner’s Drawing No. C12-1-9, entitled “South Harbor Tract-West Shore Pipeline Easements,” dated January 20, 1984, appended hereto as Exhibit A and incorporated herein by this reference. The City and Tenant agree that this exhibit accurately reflects all easements granted to Tenant by the City under the Agreement and this Extension and Amendment, and that this provision shall supersede all similar provisions in the Agreement.

2. The term of this Extension and Amendment shall be from January 1, 2008 through December 31, 2032. Subsequent extensions will be at the sole option of the City.

3. Tenant will pay to the City as fair rental value the sum of Twelve Thousand Five Hundred Fifty Five and no/100ths Dollars (\$12,555) per year. Rent for each and every other year shall be due on December 31st of the preceding year.

4. On January 1, 2013 and on every fifth anniversary thereafter, during the term of this Agreement the rent shall be increased by a total of \$1,850 or \$370 per year.

5. Tenant operating as a common carrier has the option to commit to work with other Port tenants in a commercially sound manner to ship petroleum and bio-diesel products throughput using Tenant’s pipeline and existing terminal storage, and to improve access to City’s Liquid Cargo Pier 5 provided, (a) commercial terms are reasonable, (b) provided that a

reasonable return on investment can be assured, and (c) provided that the carrier activity can be conducted in a safe and environmentally sound manner.

6. Tenant and 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.

7. Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin. If any term or provision of this Agreement, 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 Agreement 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 Agreement shall be valid and shall 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 Agreement 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 Agreement, and that the Tenant must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Agreement.

8. 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, to the extent that those regulations apply to pipelines regulated under the Hazardous Liquid Pipeline Safety Act, 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, and 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.”

9. Environmental Compliance and Obligations.

(A) Compliance with Environmental Regulations. Tenant shall fully comply with all 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) Hazardous Material; Environmental Liens. Except to the extent commonly used in the day-to-day operation of the petroleum products pipeline and associated metering sites, tanks, and other above ground facilities, 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.

(C) 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 if so required by any federal, or state 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 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.

Tenant agrees to assume responsibility for and to pay for any and all physical damage to improvements or property of others, which may be caused by Tenant in constructing, repairing or renewing its pipelines in the demised area, or physical damage caused by any rupture of said active or out-of-service pipeline(s) for any cause whatsoever without limitation, payments therefore to be made before or after completion of the work at the option of Tenant.

To ensure out-of-service pipelines are properly closed and cleared of petroleum and other products, Tenant will within six months of the date of Agreement:

- 1) provide documentation showing which of their pipelines that have been idled and been placed out of service since agreement began in 1961; and
- 2) provide documentation acceptable by the Harbor Engineer that all out-of-service lines have refined product removed, sealed and/or properly drained of all product and charged with nitrogen or in an environmentally acceptable manner.

(D) 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.

10. Insurance. Tenant shall maintain in full force and effect throughout the term of this Extension and Amendment of Easement and Lease Agreement, 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 Extension:

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) Commercial 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

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 with 4-year "tail."

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~~ within thirty (30) days ~~prior to occupancy~~ after Agreement begins; 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 Agreement. Once in every three (3)-year period during the term of this Agreement, 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.

11. All other terms and conditions of the Agreement shall remain in full force and effect, subject only to mutual written amendment by both the City and Tenant.

IN WITNESS WHEREOF, the parties hereto have caused this Extension and Amendment of Easement and Lease Agreement to be executed by their proper respective officers and their corporate seals to be affixed hereto as of the day and year first written above.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

Tom Barrett, Mayor

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

W. Martin Morics, Comptroller

In the Presence of:

BOARD OF HARBOR COMMISSIONERS

Daniel J. Steininger, President

Donna Luty, Secretary

In the Presence of:

WEST SHORE PIPELINE COMPANY, INC.

(witness signature)

James C. Andrews, President

(witness signature)

Scott Croston, Vice President

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20____, Tom Barrett, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin

My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20____, Ronald D. Leonhardt, the City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin

My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20____, W. Martin Morics the City Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin

My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20____, Daniel J. Steininger, President, and Donna Luty, Secretary of the Board of Harbor Commissioners, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin

My Commission Expires _____

**STATE OF ILLINOIS
COOK COUNTY**

Personally came before me this _____ day of _____, 20____, James C. Andrews, the President, and of West Shore Pipeline Company, Inc. who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Illinois

My Commission Expires _____

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

Assistant City Attorney

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11/09/07