

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: July 5, 2016

RE: Stevedoring Agreement with Kinder Morgan TampaPlex Terminal, LLC

Attached hereto for your consideration is a Stevedoring Agreement with Kinder Morgan TampaPlex Terminal, LLC (Kinder Morgan) for the loading and unloading of coal from ships docked at the Kinder Morgan Terminal located at the Port of Tampa. Stevedoring services entail the loading and unloading of cargo from ships. The Stevedoring Agreement with Kinder Morgan, initially approved by the City Commission in 2005, contains successive one-year renewals upon mutual written agreement of the parties.

While the terms and conditions of the initial Agreement have remained in full force and effect, the rates for stevedoring services are adjusted on a year to year basis. The 2016 rate reflects a 1.27% increase from the contract's 2015 rates. The term of this Agreement will be for a period of one (1) year, effective upon City Commission approval. Pursuant to the City Commission's approval of the coal supply purchase from Glencore, Ltd. of 66,000 tons of Colombian coal in May 2016, the total cost for stevedoring services for two (2) ships will be approximately \$519,816. The unloading cost of the Colombian coal is included in Lakeland Electric's FY2016 and FY2017 Fuel Budget.

It is recommended that the appropriate City officials be authorized to execute the Stevedoring Agreement with Kinder Morgan for the loading/unloading of coal at the Port of Tampa.

RS
attachment

STEVEDORING AGREEMENT

THIS AGREEMENT, made and entered in this day of January 25th, 2005 by and between **KINDER MORGAN TAMPAPLEX TERMINAL LLC**, (hereinafter referred to as "Stevedore"), A Delaware Limited Liability Company and **LAKELAND ELECTRIC** (herein referred to as "Shipper"), a Florida Municipal corporation.

WITNESSETH:

IT IS HEREBY AGREED:

1. Definitions:

(A) The terms "Stevedore" and "Shipper" shall have meanings hereinabove given to such terms.

(B) The term "Facility" shall mean Tampaplex Terminal on Port Sutton Road in the Port of Tampa, State of Florida, suitable for the discharging of Products.

(C) The term "Products" shall mean free-flowing Petroleum Coke (aprox.45lbs.c.f.) or Coal (aprox.50lbs.c.f.).

(D) The term "Ton" shall mean a net ton consisting of 2,000 lbs.

(E) The term "Stevedoring Equipment" shall mean all equipment and ancillary attachments necessary to discharge, store and load out Products from the Vessels.

(F) The term "Vessels" shall mean "Handy size", single deck self-trimming

bulk carrier or ocean barges, with hatch openings large enough to permit proper discharging by clamshell buckets. Air draft is not to exceed 40 feet.

(G) The term "Storage Site" shall mean property located within the Facility.

(H) The term "Rain Event" i.e.: Weather delay shall mean when rainwater is visibly running off Products thru hopper or truck gates having the potential to flow into surface waters.

2. Term. This Agreement shall be legally binding as of the date and year first above written and shall continue until December 31, 2005. This Agreement will automatically renew at the end of the Contract Term for successive one year term, unless either party provides written notice, within 60 days of the expiration of the initial and successive Contract Terms that it does not desire to renew.

3. Mediation

In the event of any dispute under this Agreement which can not be readily resolved, it shall be referred to the appropriate executives of the respective Parties for negotiation and resolution as described below:

- a. Either party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties who have not previously been involved in the dispute shall meet at a

mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved by these persons within thirty (30) days of the disputing Party's notice, or if the Parties fail to meet within ten (10) days, the dispute shall be referred to senior executives of both Parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate mediation as provided herein.

- b. All negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.
- c. If the dispute has not been resolved by negotiation as provided herein, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate a mediation proceeding by a request in writing to the other Party. Thereupon, both Parties will be obligated to engage in a mediation.

- d. The Parties regard the aforesaid obligation to mediate as an essential provision of this Agreement and one that is legally binding on them. In case of a violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.

- e. If the dispute has not been resolved by negotiation or mediation as provided herein within one hundred twenty (120) days of the initiation of such mediation procedure, either party may initiate litigation upon ten (10) days' written notice to the other Party; provided, however, that if one Party has requested the other to participate in a non-binding procedure, as provided for under this Section, and the other has failed to participate, the requesting Party may initiate litigation before expiration of the above period.

- f. The procedures specified in this Section shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may seek a preliminary injunction or other provisional judicial relief if in its reasonable judgment such action is necessary to avoid irreparable

damage or to preserve the status quo. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Section.

4. Services.

(A) Stevedore shall provide the use of the Facility, the Storage Site, the Stevedoring Equipment and all labor services needed for the complete discharge, storing at the Storage Site, loading out to either trucks or railcars as deemed by Shipper, and scaling of Products from Vessels berthed at the facility. Shipper will be solely responsible for the nature and quality of the Products and Shipper will be solely responsible for any fines imposed on the Stevedore by the Environmental Protection Commission of Hillsborough County or the Florida Department of Environmental Protection because of any problem relating to the nature of the Products. Stevedore will be solely responsible for securing all petroleum coke and coal environmental permits, and hereby represents possession of such permits. It shall be Shipper's responsibility to nominate their performing vessel to Stevedore for acceptance. Stevedore shall discharge the vessel in a proper and workmanlike manner using its best efforts to achieve an estimated average discharge rate of 8,000 tons per weather working day 24 hours per day 7 days per week including Saturdays, Sundays and Holidays. No transfer operations will be performed on the following holidays: New Year's Day, Martin Luther King Day, Good Friday, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving,

Christmas Eve and Christmas Day.

(B) Any notice of damage to Vessels must be made to Stevedore's representative at the time of occurrence and Shipper will instruct vessel of the same. Stevedore will be responsible for damage to the Vessels only if caused by Stevedore's negligence.

(C) Shipper to give Stevedore a minimum of 15 day, 7 day, 3 day and 24 hour final notice of arrival of a vessel via facsimile (813) 247-1778. Stevedore will in all cases provide all necessary services upon receipt of notice from Shipper subject to the availability of equipment and berth.

(D) Stevedore shall provide pile maintenance (dozer) work, and any dust/fire suppression as necessary.

5. Compensation. Shipper shall pay Stevedore as follows for the work and other obligations assumed by Stevedore hereunder:

(A) \$5.23 per Ton for the complete stevedoring and terminaling of Products from Vessels. Storage will be invoiced on the first calendar day of each month.

(B) Stevedore shall give Shipper Free storage equal to the Bill of Lading Quantity ÷ 1,000 tons with weekends and holidays being exempt from the calculation of free days allowed. Once Shippers have expired the number of free days allowed storage charges will then be assessed at the rate of \$0.05 per net ton per day for the balance of tonnage remaining in inventory.

(C) Vessel or weather delays will be billed at \$700.00 per hour. It is understood,

however Stevedore and Shipper will immediately confer for finding the best solution to the problem or to minimize costs.

(D) Escalation: On January 1, 2006 charges in sections 5 A & B will be increased by a factor equal to the change in the "Gross Domestic Product" index as reflected in the Implicit Price Deflators for Gross Domestic Product Report published by the U.S. Department of Commerce from Quarter III of 2004 to Quarter III of 2005. Such increases will be computed to the nearest half cent. If publication of the Implicit Price Deflators for gross Domestic Product index shall be discontinued, the parties hereto shall thereafter accept comparable statistics on the cost of living for the City of Tampa as they shall be computed and published by an agency of the United States or the State of Florida or by a responsible financial periodical of recognized authority then to be selected by the parties hereto or, if the parties cannot agree upon a selection, by Mediation.

6. Insurance.

(A) During the term of this Agreement, Stevedore shall, at its own expense, carry in full force and effect the following insurance policies:

(i) Workman's Compensation and Occupational Disease Insurance:

Policy to provide statutory coverage in accordance with Florida State law and the United States Longshoreman & Harbor Worker's Compensation Act. Such policy shall also provide \$100,000.00 Employer's Liability Insurance.

(ii) Comprehensive General Liability - Bodily Injury Liability:

\$500,000.00 each accident; Property Damage: - \$100,000.00 each accident.

(iii) Stevedore's Liability: - In the amount of \$1,000,000.00 to cover loss or damage to the Vessels during loading and unloading.

(iv) Protection and Indemnity Insurance: - In the amount of \$1,000,000.00 on the barge-mounted cranes.

Stevedore shall provide Shipper with certificates of insurance evidencing the above coverage to be in full force and effect and containing the following statement:

"Ten (10) days' notice shall be given to Shipper before any material change in or cancellation of these policies shall be effective."

(B) Shipper shall carry insurance on the cargo including fire and extended coverage, theft and malicious mischief and shall indemnify and hold Stevedore harmless from claims on third parties or Shipper against Stevedore for bodily injury or property damage caused by Products or the nature of the Products (including dusting) while the same are under the control of Stevedore, except to the extent caused by Stevedore's negligence.

7. Environmental Permits.

(A) Stevedore shall, at its expense, carry and maintain upon all its' operations hereunder Permits for the products.

8. Independent Contractor. Stevedore, in the performance of the work and it's other obligations hereunder, shall operate as an Independent Contractor and not as agent of Shipper and as such shall have absolute and full power of management and direction in

all matters relating to the work and to the performance of its obligations hereunder.

9. **Force Majeure.** In the event Either Party is unable to perform its' obligation under this Agreement by reason of an event of Force Majeure, the time for performance of its obligation shall be extended until such time as the Force Majeure ceases.

The term event of "Force Majeure" shall mean any cause whatsoever beyond the control of Either Party preventing Either Party in whole or in part from performing the work or any other obligation hereunder. Any event of Force Majeure shall include the following, but not limited to: Acts of any governmental body whether civil or military, foreign or domestic, Acts of public enemy, riots, strikes, labor disputes, all perils and accidents of the seas or waters, fires, explosions, floods, embargoes, and breakdowns. However, in the event of a breakdown of Stevedoring Equipment during the discharging operation, Stevedore will use its' best efforts to repair such equipment or secure alternate equipment in order to complete the discharge operation.

Upon occurrence of Force Majeure, the claiming party shall promptly notify the other party and give it a description of the nature, cause and probable duration of the Force Majeure, and it shall exercise due diligence to remedy and overcome the event of Force Majeure.

10. **Taxes.** It is hereby agreed that Shipper will pay state sales or use taxes, if any.

11. **Notice.** Any notice required or permitted to be given under this Agreement, unless otherwise provided for herein, shall be in writing and shall be deemed to have been sufficiently given if delivered by hand or deposited in the United States Mails, postage

prepaid, for mailing as follows:

If Stevedore, delivered to:

Kinder Morgan Terminals

5321 Hartford Street

Tampa, FL 33617

Tel: 813 - 620 - 2705

Fax: 813 - 620 - 2096

If to Shipper, delivered to:

Lakeland Electric

501 E. Lemon Street

Lakeland, FL 33801

Attention: Mr. Richard Snyder

Tel: 863-834-6586 or 863-834-6583

Fax: 863-834-8393

12. **Records.** Stevedore agrees to maintain for a period of four (4) months following discharge of any Vessel, full complete records, books of account and other documentary evidence relating to the amount of Products discharged from Vessels.

13. **Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

14. **Waivers of Default.** The failure of either party to insist in any one or more

instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such right, but the same shall continue and remain in full force and effect.

15. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other, which shall not be unreasonably withheld.

16. **Entire Agreement; Amendments.** This Agreement constitutes the entire Agreement between the parties and supersedes all prior Agreements and understandings between them. The terms of this Agreement may not be modified or amended except by written instrument signed by the parties hereto.

17. **Care of Products.** Stevedore agrees that the obligation assumed by it to discharge Products for Shipper pursuant to this Agreement imposes duties upon Stevedore. Stevedore will exercise due care and caution in handling Shipper's Products to prevent the introduction of foreign material therein, prevent loss due to spillage, and prevent contamination resulting from improperly cleaned or uncleaned equipment.

18. **Equal Opportunity.** In accordance with Federal Regulations, Stevedore agrees to the Equal Opportunity Clause (Section 202 of Executive Order 11246) and Certification of Nonsegregated Facilities.

KINDER MORGAN

LAKELAND ELECTRIC

TAMPAPLEX TERMINAL, LLC

Signed: *M. C. Williams*

Signed: *Richard D. Snyder*

Title: *VP*

Title: *Fuels Manager*

**Kinder Morgan Terminals
Lakeland Electric
2016 Rate Escalation**

Minimum Guarantee:	n/a
Guarantee Period:	n/a
Customer #:	7078
Contract #:	44
Contract Expir Date:	01/25/05- 12/31/16
Contract Notice Period:	60 Days
Contract Options:	Additional 1-yr term
Escalation Date:	01/01/16
Escalation Terms:	GDP Q3
Discharge Guarantee	8.000 NT/ WWD

Service	2015 Rate	1.29% Deflator	2016 Rate
Inbound			
Stevedoring - KM Cranes	\$4.99	1.013	\$5.050
Security - per ton	\$0.04	1.013	\$0.04
Outbound			
Load to Trucks from Stockpile	\$2.04	1.013	\$2.07
Other			
Monthly Storage up to 50,000 NT after 60 free days.	\$6,102.72	1.013	\$6,181.62
Storage/nt/day > 50,000 tons	\$0.02	1.013	\$0.02
After hours loading Trucks (4hr min.)	\$76.29	1.013	\$77.28
Vessel Discharge (per crew) - Holiday	\$635.70	1.013	\$643.92
Vessel Standby - per gang hour	\$483.13	1.013	\$489.38
Additional Services per hour - ST	\$40.69	1.013	\$41.22
Additional Services per hour - OT	\$61.03	1.013	\$61.82
Intra-Terminal Product Transfer per ton (min \$3,000)	\$3.05	1.013	\$3.09