

## LOAN FACILITY AGREEMENT<sup>1</sup>

This Loan Facility Agreement, effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, is by and among:

**KINDER MORGAN INC.**, a corporation incorporated under the laws of the State of Delaware (hereinafter, "**KMI**");

– And –

**KINDER MORGAN ENERGY PARTNERS L.P.**, a limited partnership formed under the laws of the State of Delaware (hereinafter, "**KMEP**");

– And –

**KINDER MORGAN UTOPIA LTD.**, a limited company continued under the laws of the Province of Alberta (hereinafter, "**Utopia**" and together with KMI and KMEP, hereinafter, the "**Parties**").

### **RECITALS:**

- A. Subsection 48.13(1) of the *National Energy Board Act* (the "**NEB Act**") and subsection 2(1)(a) of the *Pipeline Financial Requirements Regulations* ("**Regulations**") require companies that operate one or more authorized oil pipelines that have the capacity to transport at least 50,000 but fewer than 250,000 barrels of oil per day to maintain \$300,000,000 in financial resources. Pursuant to subsection 4(1) of the Regulations, Utopia is required to maintain at least 5% (i.e., \$15,000,000) of the required financial resources in types that are readily accessible ("**Readily Accessible Financial Resources**").
- B. Lenders and Utopia wish to enter into a new \$15,000,000 loan facility to provide Utopia with funds to satisfy the Readily Accessible Financial Resources.
- C. KMI has agreed to act as Agent for the Lenders, all on the terms and conditions set out herein.

**NOW THEREFORE**, in consideration of the premises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged by each of the Parties, the Parties agree as follows:

### **1. DEFINITIONS**

"**Advance**" means an advance (as from time to time reduced by repayment or prepayment) made or to be made by a Lender hereunder;

"**Agent**" means KMI;

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<sup>1</sup> This draft Loan Facility Agreement remains subject to approval by the boards of directors of each of Kinder Morgan, Inc. and Kinder Morgan Utopia Holdco LLC.

“**Board**” means the National Energy Board, or any successor administrative body;

“**Facility Amount**” means \$15,000,000;

“**Funding Time**” has the meaning ascribed to it in Section 2.1;

“**Interest Payment Date**” means, in respect of interest that has accrued up to and including December 31 of a calendar year, December 31 of the second calendar year commencing after the accrual year;

“**Interest Rate**”, in respect of an Advance, means an amount agreed to between the Parties and determined to be an arm’s length borrowing rate at the time of an Advance and, where the Maturity Date has been extended, such other rate of interest agreed to between the Parties as an arm’s length borrowing rate for the purposes of the relevant extension;

“**Lenders**” means KMI and KMEP and “**Lender**” means any one of KMI or KMEP;

“**Maturity Date**”, in respect of an Advance, means five years from the date of an Advance or such later date as provided for in Section 4.2 herein;

“**NEB Act**” means the *National Energy Board Act*, R.S.C. 1985, c N-7 as may be amended or supplemented from time to time and for certainty, includes any replacement or successor legislation;

“**Readily Accessible Financial Resources**” has the meaning ascribed to it in the Recitals; and

“**Regulations**” means the *Pipeline Financial Requirements Regulations*, SOR/2018-142 as may be amended or supplemented from time to time and for certainty, includes any replacement or successor legislation.

## 2. **ADVANCES**

- 2.1 The term of this Agreement shall commence on the date hereof and shall continue indefinitely unless terminated pursuant to this Section 2.1. The Agreement may be terminated by either Party only (i) with the prior written consent of the Board, and (ii) upon delivering prior written notice no later than one (1) month prior to the desired date of termination.
- 2.2 On delivery to Agent by Utopia of a request to borrow in the form attached as Schedule B but subject to Section 2.5, Lenders agree that they shall make Advances to Utopia in the amount specified and within five (5) days of receipt of such request (each, the “**Funding Time**”), and Utopia may borrow, repay and re-borrow up to the Facility Amount available under this Agreement at any time and from time to time.
- 2.3 All Advances under this Agreement shall be denominated in Canadian Dollars unless agreed to otherwise by the Parties and the aggregate amount of Advances outstanding at any time shall not exceed the Facility Amount.
- 2.4 Agent may, and is hereby unconditionally and absolutely authorized and directed by the Parties to, enter on the attached schedule or such other records of account used by

Agent all Advances, all payments made on account of the amounts remaining unpaid and the dates thereof. The aggregate unpaid principal balance of the Advances shown on the attached schedule or records of account shall be rebuttable presumptive evidence of the principal amount owing and unpaid under the Advances to Lenders. The failure to record the date and amount of any advance on the attached schedule or such alternative records of account shall not limit or otherwise affect the obligation of Utopia to repay the aggregate principal amount of the Advances actually made by Lenders, together with all accrued and unpaid interest on such principal amount.

2.5 On receipt by Agent of a request under Section 2.2, KMEP may, in its sole discretion, elect to participate in an Advance by notice to Agent at least two (2) days prior to the Funding Time. If KMEP elects to participate in an Advance, KMI shall fund the balance of the Advance not funded by KMEP. If KMEP does not elect to participate in an Advance, then KMI shall fund the entire Advance. Agent will maintain appropriate records, including pursuant to Section 2.4, to reflect the principal amount of each Advance funded by each Lender.

2.6 Utopia shall use the Advances only for the purposes contemplated under Subsection 4(1) of the Regulations.

### 3. **INTEREST ON ADVANCES**

3.1 Each Advance shall bear interest at a rate per annum equal to the relevant Interest Rate, with interest calculated on the basis of a year of 360 days, calculated daily on the outstanding balance of the Advance.

3.2 Accrued but unpaid interest on an Advance shall be payable by Utopia in arrears on the relevant Interest Payment Date or at such other intervals of time as Utopia and Agent may from time to time agree in writing. All interest hereunder shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

3.3 All agreements between Utopia and Lenders, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency or event whatsoever, whether by reason of demand or otherwise, shall such agreements cause the amount contracted for, charged, received, paid or agreed to be paid to Lender for the use, forbearance or detention of the funds evidenced hereby or otherwise, or for the performance or payment of any covenant or obligation contained in any instrument securing the payment hereof, to exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Lenders in excess of the maximum lawful amount, the interest payable to Lenders shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Lenders shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to Utopia. All interest paid or agreed to be paid to Lenders shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the period of the Advances evidenced hereby until payment in full of the principal so that the

interest hereon for such period shall not exceed the maximum amount permitted by applicable law.

**4. REPAYMENT OF ADVANCES**

4.1 Each Advance (together with all accrued and unpaid interest thereon and other amounts due or owing to Lenders in connection with such Advance) shall be repayable by Utopia on the Maturity Date.

4.2 Utopia may, in its sole discretion but no later than fifteen (15) days prior to the Maturity Date, deliver notice to Agent to extend the Maturity Date for a further five (5) years from the current Maturity Date or such extended Maturity Date, at which time the Parties shall, acting reasonably, determine the applicable Interest Rate that will take effect from the Maturity Date at the time of the notice to the new Maturity Date. Any extension of the Maturity Date and resetting of the Interest Rate shall be evidenced by a document in writing signed by Lenders and Utopia.

**5. PREPAYMENT OF ADVANCES**

Subject to the terms hereof, Utopia may, at its option, without penalty or premium, prepay the Advances in whole at any time, or in part from time to time, provided that Agent receives at least 2 business days' notice of such prepayment.

**6. PAYMENTS**

6.1 Unless required by law and unless Utopia and Agent agree otherwise, all payments made by Utopia hereunder shall be made free and clear of and without any deduction for or on account of any tax, set-off or counterclaim.

6.2 All payments of principal and interest in respect of the Advances shall be payable in lawful money of Canada in immediately available funds unless agreed to otherwise by the Parties.

6.3 Except for interest payable in respect of an Interest Payment Date, Agent shall (unless Utopia directs otherwise) apply all payments first to the outstanding principal amount of the Advances and, after the principal amount has been repaid in full, to the accrued, unpaid interest on the Advances.

**7. OTHER MATTERS**

7.1 This Agreement shall be governed by the laws of the Province of Alberta and federal laws of Canada applicable therein, and the Parties hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta.

7.2 All dollar amounts in this Agreement shall be references to Canadian Dollars unless indicated or agreed by the Parties otherwise.

7.3 If at any time any one or more of the provisions of this Agreement is or becomes invalid, illegal or unenforceable in any respect, such provisions shall be deemed to be severed from this Agreement to the extent of such invalidity, illegality or unenforceability, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired thereby.

- 7.4 No delay by Lenders in exercising any power or right hereunder shall operate as a waiver of any power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise of any other power or right hereunder or otherwise; and no waiver whatsoever or modification of the terms hereof shall be valid unless set forth in writing by Lenders or Utopia as the case may be and then only to the extent set forth therein.
- 7.5 This Agreement shall enure to the benefit of and be binding on the parties and their respective successors and permitted assigns. No Party to this Agreement may assign, or transfer, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Parties and the Board, provided that KMI or KMEP may assign this Agreement to any of its affiliates without the prior consent of the Board so long as KMI or KMEP, as the case may be, remains fully obligated for performance under this Agreement. Any purported assignment in violation of the foregoing is null and void.
- 7.6 This Agreement may be executed in several counterparts and by different Parties on separate counterparts, each of which, when so executed, shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument.
- 7.7 Any provision of this Agreement may be amended only if the Parties obtain the prior written consent of the Board, except that the Parties may enter into one or more amendments to this Agreement for the following purposes without the consent of the Board:
- (i) to add to the covenants of the Parties such further covenants, restrictions, conditions or provisions for the purposes of satisfying the requirement for the Readily Accessible Financial Resources;
  - (ii) to cure any ambiguity, to correct or supplement any provision in this Agreement, including changes in the names of any Party or the Board, that may be defective or inconsistent with any other provision in this Agreement; or
  - (iii) any other amendment to this Agreement that would provide any additional rights or benefits to the Board.

**IN WITNESS WHEREOF** each of the Parties hereto has executed this Agreement and affixed its corporate seal effective as of the date first written above.

**KINDER MORGAN INC.**

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By:  
Title:

**KINDER MORGAN ENERGY PARTNERS  
L.P., by its general partner, Kinder Morgan  
G.P. Inc.**

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By:  
Title:

**KINDER MORGAN UTOPIA LTD.**

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By:  
Title:







**SCHEDULE B**

(To the Loan Facility Agreement dated \_\_\_\_\_, 2019 between Kinder Morgan Inc.,  
Kinder Morgan Energy Partners L.P. and Kinder Morgan Utopia Ltd.)

**FORM OF BORROWING REQUEST**

TO: Kinder Morgan Inc. (as Agent)  
RE: Loan Facility Agreement dated \_\_\_\_\_, 2019 (the "Loan Facility")  
DATE: [•]

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1. The Funding Time will be the [•] day of [•],[•].
2. Pursuant to Section 2.1 of the Loan Facility, the undersigned hereby irrevocably requests that the following Advance under the facility be made available:

**PRINCIPAL AMOUNT**

- \_\_\_\_\_
3. The Interest Rate in respect of the Advance shall be [•]% and the Maturity Date shall be the fifth anniversary of the Funding Time.
  4. Capitalized words and phrases used and not otherwise defined herein have the meanings attributed to them in and for the purposes of the Loan Facility.

The undersigned has caused this request to be executed and delivered, and the certifications contained herein to be made, by a duly authorized officer of the undersigned as of the date first above written.

**KINDER MORGAN UTOPIA LTD.**

\_\_\_\_\_  
By:  
Title:

Acknowledged by Agent the [•] day of [•],[•].

**KINDER MORGAN INC.** (in its capacity as  
Agent)

\_\_\_\_\_  
By:  
Title: