

LOAN FACILITY AGREEMENT¹

This Loan Facility Agreement ("**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 –

RIVERSTONE UTOPIA MEMBER, LLC, a limited liability company formed under the laws of the State of Delaware (hereinafter, "Riverstone");

And –

KINDER MORGAN UTOPIA HOLDCO LLC, a limited liability company formed under the laws of the State of Delaware (hereinafter, "Parent");

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~~, **Riverstone and the Parent**, hereinafter, the "**Parties**").

RECITALS:

- A. Subsection ~~48.13(1)~~**138(1)** of the ~~National~~**Canadian** Energy ~~Board~~**Regulator** Act (the "~~NEB Act~~**CERA**") 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~~**The Parties** 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.

¹ 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.

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;

~~“BoardCERA”~~ means the ~~NationalCanadian Energy BoardRegulator Act, S.C. 2019, c 28, s 10, as may be amended or supplemented from time to time and for certainty, includes any replacement or successor legislation;~~

“Commission” means the Commission of the Canada Energy Regulator, or any successor administrative body;

“Facility Amount” means \$15,000,000;

“Funding Time” has the meaning ascribed to it in ~~Section 2.1~~Section 2.2;

“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;~~“Interest Rate”, in respect of an Advance, means an amount equal to LIBOR plus 2.0%, unless another amount is otherwise agreed to among all of the Parties; provided that, in the event LIBOR is either (x) illegal or no longer ascertainable in a manner reasonably acceptable to all Parties or (y) no longer generally used by commercial banks in New York law-governed business credit facilities over \$50,000,000, then the Parties shall agree a new Interest Rate in good faith based on such other risk free rate (such as the Secured Overnight Financing Rate) as is generally adopted by commercial banks in New York law-governed business credit facilities over \$50,000,000 or as may be otherwise agreed among the Parties, in each case with the goal of maintaining substantially the same economics as the Interest Rate provides on the date hereof (taking into account fluctuations in LIBOR since the date hereof), and this Agreement shall be amended to reflect such agreed Interest Rate;

“Lenders” means, with respect to an Advance, KMI and ~~KMEP~~each Optional Lender that elects to fund such Advance as provided in Section 2.5 and actually funds such Advance as provided in Section 2.2, and “Lender” means any one of KMI ~~or KMEP~~and such funding Optional Lenders individually;

“LIBOR” means the greater of (x) 0% per annum, and (y) the rate per annum reported by The Wall Street Journal (or if not then reported thereby, reported on by such other reputable service as the Parties shall agree), on the day before the applicable funding date, and thereafter on the first day of each calendar quarter, as the LIBOR rate applicable to an interest period of three (3) months; “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~~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;~~Optional Lenders” means each of KMEP, Riverstone, and their respective successors and permitted assigns;

“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~~ Utopia or KMI only (i) with the prior written consent of the ~~Board~~ Commission, and ~~(ii) – (ii)~~ upon delivering prior written notice to each of the other Parties no later than one (1) month prior to the desired date of termination. Any Optional Lender may, at any time and in its sole discretion, resign from its role as an Optional Lender with respect to funding any additional Advances hereunder (a “Resignation”) upon not less than thirty (30) days prior notice to Utopia and the Agent (or such shorter period as may be acceptable to Utopia and the Agent). For the avoidance of doubt, upon a Resignation, (a) such Optional Lender shall remain a Lender in accordance with the terms of this Agreement solely to the extent of any unpaid Advance (including accrued interest thereon) made by such Optional Lender prior to such Resignation and (b) such Optional Lender shall have no further obligations or liabilities under this Agreement.
- 2.2 On delivery ~~to Agent~~ by Utopia to Agent (with a copy to each Optional Lender by electronic mail to its addresses specified in writing to Utopia and Agent from time to time in the form attached as Schedule C) 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 (subject in the case of any Optional Lender to Section 2.5) to Utopia in the amount specified and within five (5) days of receipt of such request and, in the case of an Optional Lender that has elected to fund under Section 2.5, by no later than 8 a.m. Eastern Time on the fifth (5th) day after receipt thereof (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~~ Schedule A 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, (a) Riverstone may (but shall not be required to), in its sole and absolute discretion, elect to fund an Advance in an amount not exceeding 50% of such Advance by notice to Agent at least three (3) days prior to the Funding Time, and (b) KMEP may,

in its sole and absolute discretion, elect to ~~participate in fund~~ an Advance, in whole or in part, by notice to Agent at least ~~two~~three (23) days prior to the Funding Time, in an amount not to exceed the aggregate amount of such Advance less the amount (if any) that Riverstone has elected to fund pursuant to this Section 2.5. ~~If KMEP elects to participate in an Advance,~~ KMI shall fund the balance of the Advance not funded by KMEP and Riverstone. ~~If KMEP does not elect to participate in no~~ Optional Lender elects to fund, or if any Optional Lender elects to fund but fails to actually fund an Advance by the Funding Time, then KMI shall fund the entire Advance or, if applicable, the aggregate balance not funded by the Optional Lenders. Agent will maintain appropriate records, including pursuant to Section 2.4, to reflect the principal amount of each Advance funded by each Lender. In the event that no Lender makes an Advance in the amount requested in accordance with the terms of this Agreement, then Utopia shall notify the Commission within two (2) business days of obtaining knowledge of same.

2.6 Utopia shall use the Advances only for the purposes contemplated under ~~Subsection 4(1)~~Sections 137 and 138 of the ~~Regulations~~CERA.

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 as set forth in Section 5, if applicable) 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, ~~of~~ 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 of any Advance, deliver notice to Agent to extend the Maturity Date with respect to such Advance for a further five
- (5) years from ~~the~~its 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~~with respect to an Advance shall be evidenced by a document in writing signed by the Lenders to which such advance is payable and Utopia.

5. PREPAYMENT OF ADVANCES

- 5.1 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.
- 5.2 To the extent Parent has cash available for distribution to its members under its governing documents, Parent shall, or shall cause Utopia to, apply such cash to prepay outstanding Advances on or before the last business day of any calendar quarter but in any event prior to making any such distribution unless otherwise agreed by the Lenders to which such Advances are payable.
- 5.3 Any prepayment of any Advance shall be accompanied by all accrued interest thereon to such date. Each prepayment pursuant to this Section 5 shall be applied to any specific Advance in direct order of maturity of the Advances.

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~~on an Interest Payment Date, Agent shall ~~(unless Utopia directs otherwise)~~ apply all payments first to the accrued and unpaid interest on the Advances and, after the accrued and unpaid interest of the Advances has been paid in full, to the outstanding principal amount of the Advances ~~and, after the.~~ Each payment or prepayment of principal amount has been repaid in full, to the accrued, unpaid interest on the Advances of any Advance and each payment of interest with respect to such Advance shall be allocated pro rata among Lenders in accordance with respective principal amounts of such Advance funded by each Lender.

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~~each Lender 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~~Commission, provided that ~~KMI or KMEP~~(x) any Lender may assign this Agreement to any of its affiliates without the prior consent of the ~~Board~~Commission so long as ~~KMI or KMEP~~such Lender, as the case may be, remains fully obligated for performance under this Agreement and (y) Riverstone may assign all or any portion of its rights and obligations under this Agreement to a transferee of all or any portion of its ownership interest in Utopia's parent company without the prior consent of the Commission or any other Party; provided that Riverstone and such assignee have provided written notice of such assignment to Utopia and Agent, including a completed copy of Schedule C. 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~~Subject to Section 7.5 above, any provision of this Agreement may be amended only if the Parties obtain the prior written consent of the ~~Board, except~~Commission and each Party hereto; provided that the Parties may ~~enter into one or more amendments to~~amend 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.~~to reflect any replacement of the Interest Rate in accordance with the terms of the definition thereof.

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.

By:
Title:

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

By: Title:

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

By: Title:

RIVERSTONE UTOPIA MEMBER, LLC

By: Title:

KINDER MORGAN UTOPIA HOLDCO LLC

By: Title:

KINDER MORGAN UTOPIA LTD.
By: Kinder Morgan Utopia Holdco
LLC, Its Sole Member

By:
Title:

SCHEDULE A

(To the Loan Facility Agreement dated

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, 2019 between Kinder Morgan, Inc.,

Kinder Morgan Energy Partners, L.P., Riverstone Utopia Member, LLC, Kinder Morgan Utopia
Holdco LLC and Kinder Morgan Utopia Ltd.)

~~ADVANCES AND PAYMENTS OF PRINCIPAL~~
ADVANCES AND PAYMENTS OF PRINCIPAL

LENDER: KINDER MORGAN, INC.

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, 2019 between Kinder Morgan, Inc.,

(To the Loan Facility Agreement dated 10 -

Kinder Morgan Energy Partners, L.P., Riverstone Utopia Member, LLC, Kinder Morgan Utopia Holdco LLC and Kinder Morgan Utopia Ltd.)

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ADVANCES AND PAYMENTS OF PRINCIPAL
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LENDER: KINDER MORGAN ENERGY PARTNERS, L.P.

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~~SCHEDULE A~~

(To the Loan Facility Agreement dated _____, 2019 between Kinder Morgan, Inc.,
Kinder Morgan Energy Partners, L.P., Riverstone Utopia Member, LLC, Kinder Morgan Utopia
Holdco LLC and Kinder Morgan Utopia Ltd.)

~~FORM OF BORROWING REQUEST~~
ADVANCES AND PAYMENTS OF PRINCIPAL

LENDER: RIVERSTONE UTOPIA MEMBER, LLC

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<u>Date</u>	<u>Amount of Advance</u>	<u>Interes t Rate</u>	<u>Principal Paid</u>	<u>Aggregate Unpaid Principal Balance</u>	<u>Initials</u>

~~SCHEDULE B~~

(To the Loan Facility Agreement dated _____, 2019 between Kinder Morgan, Inc.,
Kinder Morgan Energy Partners, L.P., Riverstone Utopia Member, LLC,
Kinder Morgan Utopia Holdco LLC and Kinder Morgan Utopia Ltd.)

FORM OF BORROWING REQUEST

TO: Kinder Morgan, Inc. (as Agent), Riverstone Utopia Member, LLC and Kinder Morgan Energy Partners, L.P.

RE: Loan Facility Agreement dated _____ 1. The Funding Time will be the [●●] day of [●●], [●●].
~~2019 (the "Loan Facility")~~

DATE: [●●]

, 2019 (the "Loan Facility")

- 2. Pursuant to Section ~~2.1~~2.2 of the Loan Facility, the undersigned hereby irrevocably requests that the following Advance under the facility be made available:

PRINCIPAL AMOUNT

- 3. The ~~Interest~~Maturity ~~R~~Date 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: Kinder Morgan Utopia Holdco LLC, Its Sole Member

By:
Title
:

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

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

By:
Title

: Acknowledged by KMEP the [●] day of [●],

[●].

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

By:
Title:

Acknowledged by Riverstone the [●] day of [●],

[●].

RIVERSTONE UTOPIA MEMBER LLC

By:
Title
:

SCHEDULE C

(To the Loan Facility Agreement dated _____, 2019 between Kinder Morgan, Inc.,
Kinder Morgan Energy Partners, L.P., Riverstone Utopia Member, LLC,
Kinder Morgan Utopia Holdco LLC and Kinder Morgan Utopia Ltd.)

FORM OF LENDER CONTACT INFORMATION NOTIFICATION

TO: Kinder Morgan, Inc. (as Agent) and Kinder Morgan Utopia
Ltd. [1001 Louisiana Street, Suite 1000
Houston, Texas 77002]²

FROM: [●] (“Optional
Lender”)

RE: Loan Facility Agreement dated _____, 2019 (the "Loan Facility")

DATE: _____

_____ [●]

Requests for Advances under the Loan Facility shall be delivered to Optional
Lender by electronic mail to the following:

@

@

² Or such other address as may be communicated by Agent to Optional Lender in writing.

@

@

(Provide at least two email contacts)

Document comparison by Workshare 10.0 on Friday, October 11, 2019
12:16:06 PM

Input:	
Document 1 ID	iManage://bjwork.legal.bjlocal/WSLegal/22570814/2
Description	#22570814v2<bjwork.legal.bjlocal> - Attachment NEB.Utopia-1.8(c) - Utopia Loan Facility
Document 2 ID	iManage://bjwork.legal.bjlocal/WSLegal/23340653/1
Description	#23340653v1<bjwork.legal.bjlocal> - Revised - Loan Facility Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
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Moved deletion	
Inserted cell	
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Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	186
Deletions	76
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	264