

**OBLIGATION PASS-THROUGH AND REIMBURSEMENT AGREEMENT
BETWEEN CITY OF CARSON AND WATSON LAND COMPANY**

THIS OBLIGATION PASS-THROUGH AND REIMBURSEMENT AGREEMENT ("Agreement") shall be effective May ___, 2016 ("Effective Date"), by and between the CITY OF CARSON, a California municipal corporation ("**City**"), and WATSON LAND COMPANY, a California corporation ("**Watson**"), (collectively, the "**Parties**").

RECITALS:

WHEREAS, Watson and Porsche Cars North America, Inc. ("PCNA") entered into a Ground Lease dated September 11, 2011 (the "Ground Lease") for certain land described therein (the "Land"), to be improved by PCNA with a building and various track features and site improvements for a facility referred to as the Porsche Experience Center project (the "**Project**"); and

WHEREAS, as part of the Project, PCNA desires to install new fencing improvements (the "**Fencing**"), as depicted on Exhibit A to that certain "Fence Maintenance Agreement Adjacent to State Highway Right of Way on Route 405 within the City of Carson" dated May ___, 2015 (the "**Caltrans Agreement**") hereto and incorporated herein as Attachment "1;" and

WHEREAS, because of the installation of the Fencing, the California Department of Transportation ("**Caltrans**") will remove the relevant fence within its State Route 405 right of way and not maintain such a fence where it would normally maintain such a fence.

WHEREAS, the Caltrans desires to ensure that the Fencing is sufficiently maintained; and

WHEREAS, at Watson's and PCNA's request, the City agreed to be a party to the Caltrans Agreement in order to facilitate installation of the Fencing in connection with PCNA's development of the Project. As a condition to the City's willingness to be a party to the Caltrans Agreement, the City requires that Watson, as the owner of the fee simple interest in the Land affected by the Ground Lease, to enter into this Agreement with the City to confirm that Watson shall be responsible for any and all obligations of the City under the Caltrans Agreement; and

WHEREAS, Watson and the City desire to enter into this Agreement to set forth the agreement and understanding of Watson and the City as to the obligations and responsibilities under the Caltrans Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for good valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT:

Section 1. Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Conflicts of Interest.

(a) No Financial Relationship. Watson acknowledges the requirements of Government Code Sections 1090 *et seq.* (the “1090 Laws”) and warrants that it has not entered into any financial or transactional relationships or arrangements that would violate the 1090 Laws, nor shall Watson solicit, participate in, or facilitate a violation of the 1090 Laws.

(b) Watson's Representations and Warranties. Watson represents and warrants that for the twelve (12) month period preceding the effective date of this Agreement it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code sections 87100 *et seq.*).

(c) Watson's Acknowledgments. Subject to the reimbursement requirements set forth below and to the extent Caltrans requires the City to directly perform any obligation under the Caltrans Agreement, Watson acknowledges and agrees as follows:

(1) The City has sole discretion to select which of its employees and contractors are assigned to fulfill its obligations under the Caltrans Agreement, if any.

(2) The City has sole discretion to direct the work and evaluate the performance of the employees and contractors assigned to fulfill its obligations under the Caltrans Agreement, if any, and the City retains the right to terminate or replace at any time any such person.

(3) The City has sole discretion to determine the amount of compensation paid to employees or contractors assigned to fulfill its obligations under the Caltrans Agreement, if any.

(4) The City, not Watson, shall pay employees and contractors assigned to work on the application from a City account.

Section 3. Reimbursement of City's Costs in Preparation of this Agreement

City estimates that its projected and already incurred legal costs in preparation, analyzing, reviewing, and/or drafting this Agreement and the Caltrans Agreement will be Five Thousand Nineteen Dollars and Fifty Cents (\$5,019.50). Within ten (10) business days of executing this Agreement, Watson shall pay Five Thousand Nineteen Dollars and Fifty Cents (\$5,019.50) to City for such legal costs. Watson may request documentation showing that such payments have been made by the City.

Section 4. Performance of Obligations under the Caltrans Agreement.

(a) Pass-through of Obligations. To the extent possible, all of the inspection, repair, replacement, removal, indemnity, reporting and payment obligations of the City under the Caltrans Agreement shall be performed directly by Watson, at no cost or expense to the City. To the extent any of the work required under the Caltrans Agreement constitute a project for which the payment of “prevailing wages” is required under the California Labor Code, Watson shall comply with such requirements. To the extent applicable, Watson shall also require its contractors and subcontractors to comply with the requirements of all applicable laws, this Agreement and the Caltrans Agreement. To the extent Caltrans requires the City to perform any such inspection, repair, replacement, removal, reporting or payment obligations under the Caltrans Agreement directly, rather than having such obligations performed by Watson or PCNA, the City shall so advise Watson in a prompt and timely manner, and following the delivery of such notice to Watson, the City shall perform or cause to be performed the inspection, repair, replacement, removal, reporting or payment obligation in question. The actual and reasonable third party costs incurred by the City in performing such obligation shall be reimbursed to the City by Watson within thirty (30) days following Watson’s receipt of an invoice from the City, together with the relevant supporting documentation.

(b) Deposit for City’s Direct Performance of the Caltrans Agreement.

(1) To the extent Caltrans requires the City to perform any obligations under the Caltrans Agreement, rather than having such obligations performed by Watson, and the City’s reasonable estimate of “Eligible Expenses” (as defined below) to be incurred by the City in performing such obligations is greater than Twenty Five Thousand Dollars (\$25,000), then within ten (10) business days following notice from the City that Caltrans is requiring the City to directly perform such obligations under the Caltrans Agreement, Watson shall pay the City an initial deposit of Fifty Thousand Dollars (\$50,000) for the projected costs of the Eligible Expenses. The City shall monitor its expenses and the balance in the deposit account and whenever it believes, in good faith, that there will be insufficient funds to pay all of the City’s Eligible Expenses for the next ninety (90) days, the City may make a written request for additional funds (“**Additional Advance**”), which shall state the existing balance and the additional amounts requested and include documentation reasonably detailing the expenditures to date and projected expenditures. The City may request the funds it reasonably believes necessary to cover a period not exceeding ninety (90) days. The initial deposit and Additional Advance funds are hereinafter collectively referred to as the “**Deposit.**” Watson shall remit the Additional Advance within thirty (30) business days of City’s written request therefor.

A. Eligible Expenses. The Deposit shall be used to pay for all costs incurred by the City in connection with the Caltrans Agreement, including, but not limited to, those costs related to Section 4 of the Caltrans Agreement (“**Eligible Expenses**”).

B. Administration of Deposit. The Deposit may be pooled with other funds of the City for purposes of investment and safekeeping. The Deposit shall not accrue interest. The City will administer the Deposit and may draw upon the Deposit to pay for Eligible Expenses. The City shall maintain satisfactory accounting records as to the expenditure of the Deposits at all times.

(2) Return of Funds. The City shall return to Watson, without interest, any remaining funds paid to the City, as required above, within thirty (30) days of the City’s completion of any obligation that Caltrans requires it to perform under the Caltrans Agreement.

(3) Right of Entry. In the event that Caltrans requires the City to perform any obligations under the Caltrans Agreement, City, including its contractors and/or subcontractors, shall have the right to enter upon the Land for the purpose of carrying out such obligations in the manner City deems reasonably necessary and appropriate.

Section 5. Watson's Rights Concerning Expenses and Review of Documents.

(a) Statements of Account. Within thirty (30) business days of receipt by the City of a written request therefor submitted by Watson, the City shall provide Watson an accounting of expenditures made from the deposits required by this Agreement together with copies of all invoices for costs included in such request. The City shall make available for review copies of each statement or invoice received from any consultant or professional whose costs are chargeable to each respective deposit account. All confidential information shall be redacted or otherwise deleted from any and all cost reports, detailed accounting documents, invoices or other accounting related records provided to Watson.

Section 6. Agreement Not Debt or Liability of City. It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City. No official, officer, employee or agent of the City shall be personally liable hereunder to any extent.

Section 7. Insurance. Watson shall maintain in full force and effect during the term of this Agreement, at Watson's sole cost and expense, a policy of comprehensive general liability insurance in terms and amounts satisfactory to City, but in any event no less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence, combined single limit bodily injury, personal injury, death and property damage, subject to such increases in amount as City may reasonably require from time to time, covering any accident or incident arising out of or resulting from the performance of the work, operations or activities provided herein of Watson or Watson's agents, employees, contractors, or invitees. Such coverage shall also contain endorsements: (a) deleting any employee exclusion on personal injury coverage; and (b) providing for coverage of employer's automobile non-ownership liability. Coverage shall include, but not be limited to, personal injury liability, Site and operation, blanket contractual, cross liability, severability of interest, broad form property damage, and independent contractors. City shall be named as an additional insured under such insurance policy. Such insurance shall be primary and noncontributing, and shall not be cancelable or subject to reduction of coverage of other modification without 30 days prior written notice to Watson. Watson shall endeavor to have its insurance carrier provide notice of cancellation, reduction of coverage or other modification to City. In any event, however, Watson shall be obligated to promptly provide notice to City if Watson receives notice of any such cancellation, reduction of coverage, or other modification. Watson shall concurrently with the execution of this Agreement deliver to City a certificate of insurance evidencing such coverage. In the event Watson's insurance policy is renewed, replaced or modified, Watson shall promptly furnish City with a copy of a certificate of insurance, as renewed, replaced or modified. Watson shall not be required to provide a copy of Watson's insurance policy, provided that in the event of a claim or cause of action against City, its officers, directors, agents, representatives, City Council members, or employees, arising from this or related to this Agreement, City may review the policy as necessary

Section 8. Indemnification. Watson shall indemnify, defend, protect and hold City, and its officers, directors, agents, representatives, and City Council members and employees harmless from and against all liens and encumbrances of any nature whatsoever which may arise in the exercise of Watson's rights hereunder, and from any and all claims, causes of action, liabilities, costs and expenses (including reasonable attorneys' fees), losses or damages arising out of or resulting from the performance of the work, operations or activities provided herein of Watson or Watson's agents, employees, contractors, or invitees, or any act or failure to act of Watson or Watson's agents, employees, contractors, or invitees in violation of this Agreement, except those arising out of the negligence or willful misconduct of City, its officers, directors, agents, representatives, City Council members and employees. The indemnification obligations contained in this Section shall survive the termination of this Agreement.

Section 9. Notices.

Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one party to another (collectively, the "**Notices**") shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to Watson: Watson Land Company
22010 Wilmington Avenue
Carson, CA 90745
Attention: General Counsel

If to the City: City of Carson
701 East Carson Street
Carson, CA 90745
Attn: City Manager

With a copy to: Sunny K. Soltani, Esq.
Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
ssoltani@awattorneys.com

Each such Notice shall be deemed delivered to the party to whom it is addressed: (i) if personally served or delivered, upon delivery; (ii) if given by fax, upon the sender's receipt of an appropriate answerback or other written acknowledgement; (iii) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, seventy-two (72) hours after such notice is deposited with the United States mail; (iv) if given by overnight courier, with courier charges prepaid, twenty-four (24) hours after delivery to said overnight courier; (v) if sent by electronic mail, when received as evidenced by confirmation of receipt, or (vi) if given by any other means, upon delivery at the address specified in this Section.

Section 10. California Law.

This Agreement shall be governed by, construed in accordance with, and interpreted under the laws of the State of California. The venue for any litigation regarding this

Agreement shall be Los Angeles County, State of California.

Section 11. Successors, Assigns and Delegation.

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and legal representatives. Watson shall be permitted to delegate any of the duties and obligations under this Agreement to PCNA or any successor to PCNA's leasehold interest under the Ground Lease, but no such delegation shall limit or impair the City's rights and remedies against Watson under this Agreement.

Section 12. Term; Termination.

This Agreement shall be deemed to commence on the Effective Date and shall continue thereafter for the term of the Caltrans Agreement.

Section 13. Severability.

If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 14. Attorneys' Fees.

In the event that any party shall commence any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorneys' fees.

Section 15. Waiver

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Watson shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

Section 16. Integration; Amendment.

This Agreement including the attachment hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Watson and by the City Council. The parties agree that

this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

Section 17. Ambiguities.

In the event of any asserted ambiguity in, or dispute regarding, the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the drafting party.

Section 18. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

Section 19. Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party; and (iii) the entering into of this Agreement does not violate any provision of any other agreement to which said party is bound.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the day and year written alongside their respective signature line below.

Executed on: _____, 2016

"WATSON":
Watson Land Company, a California corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

Executed on: _____, 2016

CITY OF CARSON

ATTEST:

Donesia Gause
City Clerk

Albert Robles
Mayor

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani
City Attorney

**CONSENT OF PORSCHE CARS NORTH AMERICA ("PCNA") AS TO THE CITY'S
RIGHT OF ENTRY DESCRIBED IN SECTION 4(B)(3) OF THIS AGREEMENT:**

Executed on: _____, 2016

"PCNA":
Porsche Cars North America, a Delaware
corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ATTACHMENT "1"
CALTRANS AGREEMENT