

**SETTLEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF CARSON
AND
SHIPPERS TRANSPORT EXPRESS, INC.**

WHEREAS, Shippers Transport Express, Inc., a California corporation (“Shippers”) is the lessee of property owned by Tesoro Logistics Operations LLC, which property is designated as Assessor Parcel Numbers 7315-001-026 (“Parcel 1”), 7315-001-025 (“Parcel 2”), and 7315-001-027 (“Parcel 3”), also referenced as 1150 E. Sepulveda Blvd., Carson, and which parcels collectively comprise approximately 60 acres located entirely in the City of Carson (“City”) (Parcels 1, 2 and 3 collectively, the “Property”). The City and Shippers are collectively referred to herein as the “Parties.”

WHEREAS, Shippers is currently using approximately 3-4 acres of the Property to store trucks, and desires to expand this use to the entire 60 acres of the Property, and also to use the entirety of the Property to store cargo containers.

WHEREAS, Shippers’ current use of approximately 3-4 acres of the Property for storage of trucks, and its desired use of the entirety of the Property for storage of trucks and cargo containers, requires a City-issued conditional use permit pursuant to Carson Municipal Code (“CMC”) Sections 9141.1 and 9148.9 (without limitation). Shippers does not have a City-issued conditional use permit for the above-referenced current or desired use of the Property.

WHEREAS, a historical overview of Shippers’ acquisition of its current interests in the Property, its use of and activities on the Property, the City approvals or entitlements issued and considered with respect to same, and the disputes between City and Shippers related to same, as of July 5, 2017, is provided in City Resolution No. 17-088.

WHEREAS, on July 5, 2017, the City Council adopted Resolution No. 17-088, entitled “A Resolution of the [City Council] Commanding Compliance with the Carson Zoning Ordinance Regarding [Shippers], located at 1150 East Sepulveda Boulevard, City of Carson” (the “Compliance Resolution”). As detailed in Section 2 of the Compliance Resolution, City staff had determined, and Shippers disputed, that Shippers’ operations on the Property violated: (i) CMC §§9141.1 and/or 9148, to the extent that cargo container storage was conducted within 1,000 feet of residentially zoned property or institutional uses; and (ii) CMC §§ 9141.1 and/or 9148.9, to the extent that a truck terminal or truck yard was operated without prior issuance of a conditional use permit.

WHEREAS, the Compliance Resolution established a “Compliance Deadline” of December 30, 2018, by when Shippers was ordered to terminate, and cease and desist in, the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property by December 31, 2018.

WHEREAS, the Compliance Resolution, at Section 3, provides, “[i]n the event that Shippers . . . [is] unable to meet the Compliance Deadline, the City may . . . extend the Compliance Deadline by the period(s) of time up to two (2) additional calendar years (defined as an “Extended Compliance Deadline”),” and “in the event the City grants an Extended Compliance Deadline, then Shippers . . . shall pay, prior to the first date of the period covered by any Extended Compliance Deadline, to the City a minimum “Extended Compliance Impact Fee” of \$250,000 for each three (3) months extension beyond the Compliance Deadline or any Extended Compliance Deadline for on-going operations by Shippers at the Property”

WHEREAS, the Compliance Deadline was never extended pursuant to the Compliance Resolution. No request for an extension of the Compliance Deadline was ever made, and no Extended Compliance Impact Fee was ever paid.

WHEREAS, on or about October 5, 2021, the City sent Shippers a cease and desist letter, stating that the previous week it had come to the City’s attention that Shippers had been once again illegally using the Property as a truck yard without the required conditional use permit, despite its awareness of the conditional use permit requirement, the Compliance Resolution, and the fact that no extension of the Compliance Deadline had been granted nor any conditional use permit issued by the City to authorize such use.

WHEREAS, Shippers does not dispute that it is currently using approximately 3-4 acres of the Property for truck storage without any City approval or conditional use permit, but disputes that a conditional use permit is required for truck or cargo container storage on the Property; Shippers also contends, and City disputes, that Shippers had ceased using the Property for truck storage purposes by December 31, 2018, as required by the Compliance Resolution, and only recently re-commenced the use of the Property for such purposes (collectively, the “Dispute”).

WHEREAS, Shippers desires to obtain City authorization to not only engage in the above-referenced current use, but to expand said use to include storage of trucks and cargo containers on the entirety of the Property, for a two-year period dating from the Effective Date of this Agreement (hereinafter, the “Use”).

WHEREAS, Shippers asserts that the Use is needed due to the international supply chain crisis that has created a backlog in the ports of Los Angeles and Long Beach (collectively, the “Ports”), which has made economic conditions such that it has become prohibitively expensive for Shippers to store its trucks and/or cargo containers at the Ports.

WHEREAS, the City acknowledges the existence of a backlog at the Ports, which is part of an international supply chain crisis. The crisis is believed to be caused at least in part by the COVID-19 pandemic, which has increased or changed U.S. consumer demands, and which has also resulted in interferences with the supply of trucks, cargo containers, and relevant workers such as truck drivers needed to process the increased or changed consumer demands. As a result of the crisis, trucks and cargo containers that need to be moved have become stuck at the Ports, and there has been insufficient space for shipping companies to offload new cargo containers into the Ports. Because of the insufficient space to store trucks and containers at the ports, the costs to do so have been increased. To help alleviate the supply chain crisis, there is a desperate need to find locations

to which to move trucks and/or cargo containers that need to be moved or cleared away from the Ports. Indeed, the office of the U.S. Secretary of Transportation has recently contacted the City encouraging the City to do what it can to help alleviate this crisis. Another example of the measures needed to address the crisis, although inapplicable to the City, is illustrated by Governor Newsom's issuance of Executive Order N-19-21, which aims to alleviate congestion at California's shipping ports and tackle the state's truck driver shortage by, among other things, directing State agencies to find state, federal and private land for short-term container storage.

WHEREAS, the City desires to help alleviate the supply chain crisis to the extent it can do so consistent with the protection and promotion of the public health, safety or welfare in the City, and given the urgency of the situation, the time that would be required for processing of a conditional use permit application for the Use is prohibitive in regards to that objective. Accordingly, due to the supply chain crisis, the City is willing to temporarily forego enforcement of the CMC's conditional use permit requirement, including calculation of associated fees such as (without limitation) community facilities district and development impact fees, with respect to the Use, on the terms and conditions set forth herein.

WHEREAS, the Parties acknowledge that the cost of extending the Compliance Deadline for two years under the Compliance Resolution would have been \$2,000,000 (\$250,000 per three-month extension period, or \$1,000,000 per year).

WHEREAS, the Parties desire to resolve the Dispute without the need for litigation between them arising therefrom, and without acknowledging fault or responsibility or making any admission in connection with the positions of any Party thereto, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

- 1) Recitals. The foregoing recitals are true and correct, and are incorporated herein by reference.
- 2) Effective Date; Term. This Agreement shall take effect as of January 1, 2022 (the "Effective Date"). The term of this Agreement shall commence on the Effective Date and continue until January 1, 2024, or until the expiration of any applicable Extended Compliance Deadline pursuant to Section 4, below.
- 3) Compliance Agreement.
 - a) Shippers is hereby authorized to conduct or engage in the Use until January 1, 2024 (hereinafter, the "Compliance Deadline"). Failure to terminate the Use on or before the Compliance Deadline shall subject Shippers to enforcement actions as well as such other legal remedies as may be afforded the City by law.
 - b) In consideration of Section 3(a), above, Shippers shall pay City the amount of \$1,000,000 per annum, or \$2,000,000 for the two-year term of this Agreement, payable in quarterly

installments of \$250,000, with each installment payment due within thirty (30) days following conclusion of the applicable calendar quarter.

- i) The payment obligations set forth herein are based on the payment obligations provided in the Compliance Resolution, including its requirement of payment of \$250,000 per three-month extension of the “Compliance Deadline” as defined therein.
- c) In the event Shippers fails to make timely payment of any installment payment pursuant to Section 3(b), above, then Shippers shall pay a daily penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each calendar day such payment is delinquent.
- d) Subject to the City’s election, in its sole and unfettered discretion, to extend the Compliance Deadline, as set forth in Section 4 below, should Shippers fail to meet any Compliance Deadline, Shippers shall pay a delinquent departure penalty in the amount of Five Thousand Dollars (\$5,000.00) per day for each day of delayed departure beyond a Compliance Deadline.
- e) In conducting or engaging in the Use pursuant to this Agreement, Shippers shall at all times comply with, and ensure compliance by all other persons with, the following truck routes and associated restrictions, which are intended to insure that trucks leaving Shippers’ facility on the Property will only use Sepulveda for the mile and a half it will take them to access the Alameda corridor or State 103 and avoid any use of roadways that access residential areas of Carson. Similarly, the Shippers facility on the Property will be accessed only by trucks going westbound on Sepulveda, from either the Alameda corridor or State 103. No trucks proceeding eastbound on Sepulveda will be permitted to access the Property. Reference is made to the site map of the area showing the truck routes that will be implemented to and from the facility as included in the letter from Joseph Mirkovich to Sharon Landers dated November 8, 2021, which site map is incorporated herein by reference:
 - i) All trucks, meaning bobtails and trucks carrying containers, leaving Shippers’ facility will be required to make a right turn only and then proceed eastbound on Sepulveda;
 - ii) All trucks entering Shippers’ facility will be required to make only a left turn into the Property. No trucks will be allowed to approach the Property eastbound on Sepulveda and make a right turn into the Shippers’ facility.
 - iii) There will be a guard at the entrance to Shippers’ facility, during business hours, to insure compliance with these restrictions.
 - iv) Any trucks/drivers that fail to comply with these restrictions will be banned from Shippers’ facility.
 - v) Shippers will do daily e-modal broadcasts to remind the trucking community of the specific route that is to be taken to access Shippers’ facility.

- f) Stacking of cargo containers, or otherwise placing cargo containers on top of one another, shall be prohibited on the Property at all times.
- g) In the event that any provision of this Agreement is rescinded or revoked by the City, or declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the entire Agreement shall be null and void and shall subject Shippers to such enforcement action(s) as well as such other legal remedies as may be afforded the City by law.
- h) In the event the City is required to take action to enforce this Agreement, or in the event this Agreement is declared invalid, illegal or otherwise unenforceable by the court of competent jurisdiction and the City is required to commence an enforcement proceeding(s) against Shippers, the City shall be reimbursed by Shippers for all costs and reasonable attorneys' fees incurred in such action or enforcement proceeding(s).
- i) In the event that any claim or litigation is filed to challenge any provision of this Agreement ("Litigation Challenge"), the payment obligations of Shippers under this Agreement shall be tolled and delayed for a period of time equal to the time any such "Litigation Challenge" is pending. If a "Litigation Challenge" is pending on the date that any payment is due and payable under this Agreement, Shippers shall deposit the entire amount due and payable into a separate interest bearing account ("Escrow Account") with the City. Within thirty (30) days following the final resolution of any "Litigation Challenge," Shippers shall authorize, in writing, the City to withdraw all funds in the "Escrow Account."

4) City's Discretion to Extend Compliance Deadline.

- a) In the event that Shippers is unable to meet the Compliance Deadline, the City may, in its sole and unfettered discretion, extend the Compliance Deadline by the period(s) of time up to two (2) additional calendar years (an "Extended Compliance Deadline").
- b) Such discretion shall be exercised by the Carson City Council at a duly noticed public meeting and provided that Shippers makes a written request to extend such deadline(s) not later than ninety (90) calendar days prior to the Compliance Deadline or any Extended Compliance Deadline.
- c) In the event the City grants an Extended Compliance Deadline, then Shippers shall pay, prior to the first date of the period covered by any Extended Compliance Deadline, to the City a minimum "Extended Compliance Impact Fee" of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each three (3) months extension beyond the Compliance Deadline or any Extended Compliance Deadline for on-going operations by Shippers at the Property, together with such other additional reasonable conditions and reasonable requirements as the City shall impose in return for any Extended Compliance Deadline.
- d) During the term of this Agreement, or any Extended Compliance Deadline, Shippers shall pay to the City all normal and customary fees and charges applicable to all permits necessary for the use, and any taxes, fees, and charges hereafter imposed by City in

connection with the use which are standard and uniformly-applied to similar entities in the City.

- 5) Indemnification. Shippers shall indemnify, protect, defend, and hold harmless City, and its respective officials, officers, employees, agents, elected boards, commissions, departments, agencies, and instrumentalities thereof, from any and all actions, suits, claims, demands, writs of mandamus, liabilities, losses, damages, penalties, obligations, expenses, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures) asserted by third parties against City that may arise from or relate to adoption of this Resolution (herein the “Claims and Liabilities”), whether such Claims and Liabilities arise out of or under planning and zoning laws, the Subdivision Map Act, Code of Civil Procedure section 1085 or 1094.5, or any other federal, state, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction.
- 6) Notices. Any notice, demand or other communication of any kind that a Party may be required to serve upon the other Party, pursuant to this Agreement, shall be given in writing and be delivered (a) in person (including express, courier, or overnight service), (b) by facsimile (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or (c) by certified or registered mail, postage prepaid, return receipt requested, and, in any such case, addressed as follows:

If to Shippers, addressed to:

Shippers Transport Express, Inc.
1150 E. Sepulveda Blvd.
Carson, CA 90745
Attn: Kevin Baddeley

With a copy to:

Carrix, Inc.
1131 SW Klickitat Way
Seattle, WA 98134
Attn: General Counsel

If to City, addressed to:

City of Carson
Attn.: City Manager
701 E. Carson St.
Carson, CA 90745

With a copy to:

Sunny K. Soltani, City Attorney
Aleshire & Wynder, LLP
18881 Von Karman Ave., #1700
Irvine, CA 92612
Telephone: (949) 223-1170
Facsimile: (949) 223-1180

or to such other address or to such other person as a Party shall have last designated by such notice to the other Party. Each such notice, demand, or other communication, if addressed as aforesaid and delivered by one of the options specified in this paragraph, shall be effective upon the date of delivery, whether or not accepted by the addressee.

- 7) Non-Admission of Liability. Neither the fact of this Agreement nor the terms of this Agreement shall be construed in any manner as an admission of any liability by the Parties.
- 8) Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to Shippers or any successor in the event of any default or breach by the City of the terms of this Agreement or for any amount which may become due to Shippers or any successor under the terms of this Agreement.
- 9) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 10) Headings. The titles and headings of the paragraphs and sections of this Agreement are intended solely for convenience of reference, and shall not be construed as an explanation, modification or intended construction of any of the terms or provisions of this Agreement.
- 11) Entire Agreement. This Agreement constitutes the entire understanding by and between the Parties pertaining to the Dispute. Each Party acknowledges that no party, agent or representative of another Party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement, that induced the Party to sign this document.
- 12) Amendment; Interpretation. The Parties agree that this Agreement shall not be amended or modified, except in writing signed by the Parties, and shall not be construed against any Party because that Party's representative drafted the Agreement or any portion of it.
- 13) Waiver. Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any time be deemed a waiver or relinquishment of any right or power at any other time or times.

- 14) Assistance of Counsel. The Parties each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this Agreement concerning the terms and conditions of this Agreement.
- 15) Agreement Binding on Successors. It is agreed that this Agreement, together with the releases, shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties.
- 16) Jurisdiction and Venue. This Agreement is intended to be construed pursuant to the laws of the State of California. Each Party agrees that the proper venue for any action arising out of the breach or the interpretation of this Agreement or other documents delivered pursuant to any provision thereof, shall be the Superior Court of the State of California for the County of Los Angeles.
- 17) No Assignment. The Parties, and each of them, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, and shall not hereafter assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions, and causes of actions released under this Agreement.
- 18) Authority to Execute Agreement. Each Party declares that it has read this Agreement and understands and knows the contents thereof, and each Party and signatory represents and warrants that each of the persons executing this Agreement is empowered to do so and thereby bind the respective Party to the terms hereof.
- 19) Voluntary Agreement. This Agreement is executed knowingly and voluntarily by each of the Parties without any duress or undue influence on the part of, or on behalf of, any of them.
- 20) Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute an agreement binding on the Parties. The Parties further agree that a digital or electronic signature shall have the same force and effect as a manual or wet-ink signature, and that a facsimile copy or a copy in pdf format of the executed counterparts shall have the same force and effect as an original.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

CITY:

CITY OF CARSON, a California municipal corporation

By: _____
Lula Davis Holmes, Mayor

Date: _____

APPROVED AS TO FORM:

By: _____
Sunny K. Soltani, City Attorney

ATTEST

By: _____
Dr. Khaleah Bradshaw, City Clerk

SHIPPERS:

SHIPPERS TRANSPORT EXPRESS, a California corporation

By: _____
Name: Kevin Baddeley
Title: President

Date: _____

By: _____
Name:
Title:

Date: _____