

COMMUNITY BENEFITS AGREEMENT

THIS AGREEMENT (“Agreement”) is executed by and between the **CITY OF CARSON**, a general law city & municipal corporation (“City” or “Carson”), and **TESORO REFINING & MARKETING COMPANY LLC**, a Delaware limited liability company, authorized and doing business in California (“Tesoro”). City and Tesoro may be referred to, individually or collectively, as “Party” or “Parties.”

RECITALS

A. Carson Refinery. Tesoro owns and operates the petroleum refinery located at 2350 East 223rd Street in Carson (“Carson Refinery”). The Carson Refinery manufactures gasoline, jet fuel, diesel fuel, petroleum coke, fuel oil, fuel gases, propylene and calcined coke. It receives crude oil at terminals in the Los Angeles/Long Beach Port Complex, and ships products throughout Southern California, Arizona and Nevada via product distribution pipelines and terminals.

(1) As detailed herein, Carson and Tesoro have discussed various issues and disputes relating to the Carson Refinery. Carson desires that Tesoro make funding available for significant investments in the Carson community and Tesoro desires to provide such funding to support the wellbeing of residents and otherwise improve the quality of the environment and assist Carson residents in having a safe and healthy place to work, live and raise families. The Parties are entering into this Agreement to resolve comprehensively all issues and disputes between them in a cooperative manner, and thereby allow Tesoro to provide funding for community benefits.

B. Tax Matters. The City Council of the City of Carson (“Council” or “City Council”) is considering various measures that could increase significantly the amount of taxes paid to Carson by Tesoro and other similar entities. Tesoro is one of Carson’s largest employers and taxpayers, and enjoys significant benefits from public services provided by Carson.

(1) On or about June 20, 2017, and by Resolution No. 17-079, the City Council declared a fiscal emergency, pursuant to Carson Municipal Code (“CMC”) § 61104(e), relating to the City’s utility user’s tax (“UUT”) pursuant to Chapter 11 of Article VI of the CMC. In the absence of such a resolution, CMC § 61104(e) limits the amount of UUT payments by a service user to One Million Dollars (\$1,000,000.00) per calendar year.

(2) Tesoro recognizes the importance of resolving any tax controversies with Carson, including providing certainty and clarity for Tesoro with respect to its future obligations to Carson. The Parties desire to resolve their differences over tax issues, to avoid litigation arising out of such disputes, and without acknowledging fault or responsibility in connection with the positions of either Party to this dispute (hereinafter referred to as the “Tax Dispute”).

C. LARIC EIR. Tesoro also owns and operates the petroleum refinery located at 2101 East Pacific Coast Highway in the Wilmington area of the City of Los Angeles (“Wilmington Refinery”). Tesoro proposes to integrate its Wilmington Refinery operations with Tesoro’s Carson Refinery operations to form the Tesoro Los Angeles Refinery in what is known as the Los Angeles Refinery Integration and Compliance Project (“LARIC” or the “Project”). The Project will greatly enhance the integration of Tesoro Los Angeles Refinery operations through process modifications that improve efficiency, and continue compliance with State and local air quality regulations mandating emission reductions.

(1) The Project includes, but is not limited to, the following modifications to the Carson Refinery operations: (1) modifications to the existing Coker Unit; (2) modifications to the existing No. 2 Coker; (3) modifications to the existing Vacuum Units No. 51; (4) modifications to the existing Fluid Catalytic Cracking Unit; (5) a new Wet Jet Treater; (6) modifications to the existing Hydrocracker Unit; (7) modifications to the existing Light Hydrotreating Unit; (8) modifications to the existing Naphtha Hydrodesulfurization Unit; (9) modifications to the Naphtha Isomerization Unit; (10) modifications to the existing Alkylation Unit; (11) modifications to the Mid-Barrel Distillate Treater; (12) modifications to the existing steam system; (13) construction of six new 500,000 barrel floating roof crude oil atmospheric storage tanks (“ASTs”); and (14) other modifications or construction as necessary to implement the Project (collectively, “Carson Project Elements”). The Carson Project Elements will not include construction or operation of a hydrofluoric (HF) acid alkylation unit.

(2) The Project also includes, but is not limited to, the following modifications to equipment that supports operations at both the Carson and Wilmington Refinery properties: (1) modifications to existing storage tanks at both locations; (2) new interconnecting pipelines between the Wilmington and Carson operations; (3) new electrical connections from the Watson Cogeneration facility located at the Carson operations to the Wilmington operations; and (4) other modifications or construction as necessary to implement the Project. In addition, modifications to existing Liquid Petroleum Gas Rail (“LPG”) Unloading facilities at the Carson operations are also proposed. The proposed Project will be designed to comply with the federally mandated Tier 3 gasoline specifications and with State and local regulations mandating emission reductions.

(3) An Environmental Impact Report (“EIR”) was prepared for the Project by the South Coast Air Quality Management District (“SCAQMD”) as the “lead agency” pursuant to the California Environmental Quality Act (“CEQA”). The City is identified in the EIR as a “responsible agency” pursuant to CEQA Guidelines § 15381.

(4) The EIR states that the Project will require the City to issue a conditional use permit for the new ASTs, right-of-way approval for the new pipelines, and ministerial building and grading permits (collectively, the “Entitlements”). Construction of the Project is anticipated to take five (5) years to complete.

(5) SCAQMD certified the Final EIR (State Clearinghouse No. 2014091020) on May 12, 2017. Subsequently, lawsuits were filed challenging the EIR by (1) Safe Fuel and Energy Resources California, Peter Estrada, Leonardo Parra and Nicolas Garcia, and (2) Communities for a Better Environment.

(6) The City contends the EIR is defective and violates applicable law, and has communicated its objections to the EIR to Tesoro and to SCAQMD. On June 9, 2017, the Parties and SCAQMD entered into a Tolling Agreement with respect to the City’s claims against SCAQMD and/or the Project. Tesoro disputes each of the claimed deficiencies raised by City with respect to the Project’s EIR. The Parties desire to resolve their differences over the Project or the EIR, to avoid litigation arising out of such disputes, and without acknowledging fault or responsibility in connection with the positions of either Party to this dispute (hereinafter referred to as the “Project EIR Dispute”).

D. Franchise Amendments. Pursuant to Chapter 8 of Article VI of the CMC, Carson has granted four franchises for pipelines to Tesoro and/or related to the Carson Refinery.

(1) On February 3, 2009, the City Council adopted Ordinance No. 09-1416 granting a franchise to Tesoro for nonpublic utility pipelines in Carson that are not located on the Carson Refinery property (the “Tesoro Franchise”).

(2) Tesoro purchased the Carson Refinery effective June 1, 2013, pursuant to a Purchase and Sale Agreement dated August 8, 2012, with BP West Coast Products LLC (“BP”). On February 14, 2013, BP submitted a written request for the City Council’s consent to the assignment or transfer to Tesoro of three of BP’s nonpublic utility pipeline franchises, identified as City of Carson Ordinances 92-962, 99-1177 and 00-1204 (collectively, the “BP Franchises”).

(3) There exists currently a dispute between the Parties regarding compliance with CMC provisions for transfer of the BP Franchises to Tesoro’s affiliate, Tesoro SoCal Pipeline Company LLC. In addition, a dispute exists between the Parties as to the specific pipelines subject to the Tesoro Franchise. The Parties desire to resolve their differences over the BP and Tesoro Franchises, to avoid litigation between them arising out of such disputes, and without acknowledging fault or responsibility in connection with the positions of either Party to this dispute (hereinafter referred to as the “Franchise Dispute”).

E. Truck Yard CUP. Shippers Transport Express, Inc. (“Shippers”) leases from Tesoro three parcels located at 1150 E. Sepulveda Boulevard in Carson for operation of a truck yard and container storage facility. The three leased parcels are located within the boundary of the Carson Refinery property, comprise 59.11 acres in total, and are identified by Assessor Parcel Numbers (“APNs”) 7315-001-026, 7315-001-025, and 7315-001-027 (collectively, the “Shippers Site”).

(1) The City Planning Commission approved Tentative Parcel Map No. 25505 on August 10, 1999, subdividing the Shippers Site for leasing for cargo container storage and other uses. Shippers commenced operation of a truck parking and cargo container facility on the Shippers Site on or about November 1999.

(2) Shippers and the Parties have had numerous discussions relating to the issuance of use permits or other approvals for Shippers’ operations at the Shippers Site. On or about October 4, 2010, BP filed an application with the City for a conditional use permit relating to Shippers’ operations on the property. That application is currently pending.

(3) There exists currently a dispute between the Parties relating to the permitting issues for the Shippers operations. The Parties desire to resolve their differences over the permit application, to avoid litigation between them arising out of such disputes, and without acknowledging fault or responsibility in connection with the positions of either Party to this dispute (hereinafter referred to as the “Truck Yard CUP Dispute”); and

F. The Parties desire to fully and finally resolve all disputes between them, including but not limited to: (1) each of the above-referenced disputes, including, but not limited to, the Tax Dispute, the Franchise Dispute, the Truck Yard CUP Dispute, the Project EIR Dispute

(collectively the “Disputes”); and (2) the City’s processing and permitting processes for the Entitlements.

G. The Parties have entered into a Reimbursement Agreement, dated May 24, 2017, with respect to reimbursement for City’s costs incurred in resolving the Disputes, and in documenting resolution(s) of the same, and in the processing, reviewing, and approving, the Entitlements for the Project.

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

TERMS

1. **Incorporation of Recitals.** The Parties hereby incorporate the Recitals as though fully set forth herein.

2. **Definitions.** This Agreement uses a number of terms having specific meanings, as defined above or below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. The defined terms include the following:

2.1 “AST CUP” means the conditional use permit(s) required from Carson for construction and/or operation of new ASTs at the crude terminal to be located at 24696 S. Wilmington Avenue (“Carson Crude Terminal”) on the Tesoro Los Angeles Refinery property.

2.2 “Effective Date” means the date this Agreement has been approved by public action taken at a duly noticed meeting of the City Council. This Agreement shall remain in effect until the later of (1) three years after the date of the last payment pursuant to Section 3.1 below, or (2) one year after the date of the last payment pursuant to Section 3.2 below.

2.3 “Milestone 1” means the first date on which (a) all construction activities are completed on all pipelines routed through the Alameda Street crossing bore and the Sepulveda Boulevard crossing bore (“LARIC Pipelines”), and (b) any of the LARIC Pipelines are used to transfer hydrocarbons to or from the Carson and Wilmington Refineries.

2.4 “Milestone 2” means the earlier of the following dates: (a) the first date on which construction activities, including excavation, base or foundation construction, or tank erection, are commenced on any new AST located at the proposed Carson Crude Terminal, or (b) the date on which Carson issues, in its sole, constitutional, and statutory discretion, the AST CUP.

2.5 “Milestone 3” means the first date on which all construction activities are completed on the following Carson Project Elements, and each listed Element is placed into service: (a) modifications to the existing Vacuum Unit No. 51, (b) modifications to the existing Hydrocracker Unit, (c) modifications to the existing Light Hydrotreating Unit, (d) modifications to the existing Alkylation Unit, (e) modifications to the Mid-Barrel Distillate Treater, and (f) modifications to the existing LPG Unloading Facilities.

2.6 “Milestone 4” means the first date on which (a) all construction activities are completed on all Carson Crude Terminal ASTs, and (b) a minimum of one (1) of the Carson Crude Terminal ASTs are placed into service.

2.7 “Milestone 5” means the first date on which (a) all construction activities are completed on the Wilmington Sulfuric Acid Regeneration Plant (“SARP”), and (b) the SARP is placed into service.

2.8 In the event that Tesoro, in its sole and unfettered discretion, elects not to apply for the AST CUP on or before the fifth (5th) anniversary of the Effective Date, the Parties shall within ninety (90) days thereafter meet and confer and in good faith seek to agree to new substitute Milestone(s) for applicable payments set forth in Section 3.1, *infra*, for Milestone 2 and Milestone 4. The new Milestone(s) to be negotiated shall be within the same general time frame as if the AST CUP had been timely pursued and applied for by Tesoro. The Parties understand and agree that Tesoro’s election not to apply for the AST CUP shall not increase or reduce the total amount of LARIC Project Funding set forth in Section 3.1, *infra*.

3. **Tesoro Funding Amounts And Timing.** In accordance with the terms of this Agreement, City shall deposit the funding from Tesoro as described in this section (collectively referred to as “Tesoro Funding”) into its General Fund to provide a series of existing and future community benefit programs, including, but not limited to, community air quality monitoring, emergency services programs, environmental enhancements including new landscaping, medians and street trees, funding for health programs and the Carson Stroke Center, park and municipal facility improvements, community special events, and such other and further community benefits as the City Council shall, in its sole and unfettered discretion, determine are warranted, needed, or appropriate. All payments referenced in this Section shall be made by wire transfer on or before the specified due date.

3.1 **LARIC Project Funding.** Following the execution of this Agreement, Tesoro shall pay to the City Nine Million Dollars (\$9,000,000.00) as follows:

- (a) One Million, Five Hundred Thousand Dollars (\$1,500,000.00) shall be paid no later than thirty (30) days following the Effective Date of this Agreement;
- (b) One Million, Five Hundred Thousand Dollars (\$1,500,000.00) shall be paid no later than thirty (30) days following the date that Tesoro provides written notice to Carson of completion of Milestone 1;
- (c) One Million, Five Hundred Thousand Dollars (\$1,500,000.00) shall be paid no later than thirty (30) days following the date that Tesoro provides written notice to Carson of completion of Milestone 2;
- (d) One Million, Five Hundred Thousand Dollars (\$1,500,000.00) shall be paid no later than thirty (30) days following the date Tesoro provides written notice to Carson of completion of Milestone 3;
- (e) One Million, Five Hundred Thousand Dollars (\$1,500,000.00) shall be paid no later than thirty (30) days following the date that Tesoro provides written notice to Carson of completion of Milestone 4; and

- (f) One Million, Five Hundred Thousand Dollars (\$1,500,000.00) shall be paid no later than thirty (30) days following the date that Tesoro provides written notice to Carson of completion of Milestone 5.

The payments specified in sub-sections (b) through (f) of this Section 3.1 shall only be made in the event that there is no litigation, other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), or alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures) pending against the EIR, the Project, any Project permits or approvals and/or this Agreement (“Litigation Challenge”) on the date that the payment is due and payable. If any Litigation Challenge is pending on the date that any such payment is due and payable, Tesoro’s obligation to make such payment shall be tolled until ninety (90) days following judicial resolution of all Litigation Challenges, including any writs or appeals. If a Litigation Challenge is pending on the date that any payment is due and payable under this Section 3.1, Tesoro shall deposit the entire amount due and payable into a separate interest bearing account (“Escrow Account I”) with the City of Carson. Within ninety (90) days following the final resolution of any Litigation Challenge, Tesoro shall authorize, in writing, the City to withdraw all funds in Escrow Account I. In addition, the payments specified in sub-sections (b) through (f) of this Section 3.1 are expressly contingent on and subject to the limitations in Section 3.3 herein.

3.2 Community Funding. Tesoro shall pay to the City Fifteen Million Dollars (\$15,000,000.00) as follows:

- (a) One Million Dollars (\$1,000,000.00) shall be paid no later than thirty (30) days following the Effective Date of this Agreement;
- (b) One Million Dollars (\$1,000,000.00) shall be paid no later than January 31, 2018; and
- (c) The remaining community funding shall be paid in equal amounts of One Million Dollars (\$1,000,000.00) on an annual basis over thirteen years, commencing on December 31 of the first year following the date Tesoro provides written notice to Carson of completion of Milestone 3.

The payments specified in sub-sections (b) through (c) of this Section 3.2 shall only be made in the event that there is no Litigation Challenge pending on the date that the payment is due and payable. If any Litigation Challenge is pending on the date that any such payment is due and payable, Tesoro’s obligation to make such payment shall be tolled until ninety (90) days following judicial resolution of all Litigation Challenges, including any writs or appeals. If a Litigation Challenge is pending on the date that any payment is due and payable under this Section 3.2, Tesoro shall deposit the entire amount due and payable into a separate interest bearing account (“Escrow Account II”) with the City of Carson. Within ninety (90) days following the final resolution of any Litigation Challenge, Tesoro shall authorize, in writing, the City to withdraw all funds in Escrow Account II. In addition, the payments specified in sub-sections (b) through (c) of this Section 3.2 are expressly contingent on and subject to the limitations in Section 3.3 herein.

3.3 Litigation Impact. The provisions of Sections 3.1 and 3.2 of this Agreement will become null and void and of no further effect if the LARIC Project, the EIR, or any Project permits or approvals are rescinded or deemed invalid by any Litigation Challenge.

In such event, all funds in Escrow Accounts I and II shall be returned to Tesoro within ten (10) days after Tesoro's written notice to the City.

3.4 Credit for a New Tax. The amount paid by Tesoro pursuant to Section 3.2 of this Agreement in any calendar year shall be credited against any New Tax rate imposed by Carson on Tesoro in that same calendar year. As used herein, a "New Tax" means any tax rate approved by Carson voters at any election held or imposed on Tesoro between July 1, 2017 and December 31, 2031, and includes both an increase in an existing tax rate or a new tax owed by Tesoro to Carson. As used herein, "tax" has the same meaning as in Section 1(e) of Article XIII(C) of the California Constitution. In the event that a New Tax is an increase in an existing tax rate, the credit described in this Section shall be against the difference between the amount of tax owed by Tesoro prior to the tax rate increase and the increased tax due and owing from such increased tax rate. Automatic increases in existing tax rates pursuant to an existing schedule or formula as of the Effective Date of this Agreement shall not constitute a New Tax.

4. Franchise Agreements. The City shall, at the earliest possible time, and in no event later than thirty (30) days after the Effective Date, (1) consider, in its sole, constitutional, and statutory discretion, amending the BP Franchises and transfer them to Tesoro, in the form that is in substantial conformance with Exhibit A with minor changes as needed for clarification and formatting purposes; and (2) consider in its sole, constitutional, and statutory discretion, amending the Tesoro Franchise, in the form that is in substantial conformance with Exhibit B with minor changes as needed for clarification and formatting purposes (collectively, the "Ordinances"). If the Ordinances are approved with any additional, new, changed, or revised terms or conditions of approval not included in Exhibit A and Exhibit B, and not agreed to by Tesoro, which agreement shall not be unreasonably withheld, Tesoro may, at its sole election, declare that this entire Agreement shall be null and void and of no further effect. Tesoro's failure to agree to any additional, new, changed, or revised terms or conditions of approval shall be conclusively presumed to be reasonable for any new, changed, or revised terms or conditions of approval that would impose a financial obligation on the Pipeline Franchises in excess of \$25,000.

5. Compliance Order. The City shall, at the earliest possible time, and in no event later than thirty (30) days after the Effective Date, consider, in its sole, constitutional, and statutory discretion, a resolution to resolve the Truck Yard Dispute, in the form that is in substantial conformance with Exhibit C with minor changes as needed for clarification and formatting purposes (the "Compliance Resolution"). If the Compliance Resolution is approved with any additional, new, changed, or revised terms or conditions of approval not included in Exhibit C, and not agreed to by Tesoro, which agreement shall not be unreasonably withheld, Tesoro may, at its sole election, declare that this entire Agreement shall be null and void and of no further effect. Tesoro's failure to agree to any additional, new, changed, or revised terms or conditions of approval shall be conclusively presumed to be reasonable for any new, changed, or revised terms or conditions of approval that would impose a financial obligation on Tesoro in excess of \$25,000.

6. LARIC Approvals. The Parties hereby agree that construction of the LARIC Project will require that the City consider, in its sole, constitutional, and statutory discretion, only the following discretionary permits or entitlements: (a) the AST CUP and (b) an amendment of an existing franchise ordinance for the LARIC Pipelines ("LARIC Franchise"). In addition, the

Project will require the processing of ministerial permits, including grading permits, building and other similar permits, maps, plans, licenses or approvals by Carson, including any amendments or modifications thereto (collectively, "Permits"). The AST CUP, LARIC Franchise, and Permits are collectively referred to herein as "Subsequent Approvals". The City shall accept for processing, review and action all applications for Subsequent Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with any then-existing land use regulations. The City hereby expressly acknowledges and affirms that the EIR satisfies CEQA requirements for the City's approval of the Subsequent Approvals, including pursuant to California Public Resources Code section 21167.2. The Parties acknowledge that under no circumstances shall City be obligated in any manner to approve any Subsequent Approval, or to approve any Subsequent Development Approval with or without any particular condition. Nothing in this Agreement limits, and Tesoro expressly reserves, any appeals, claims, rights or remedies Tesoro may have regarding the Subsequent Approvals, including the City's compliance with any applicable statutes, ordinances, regulations and/or codes with respect to processing, review and action on any Subsequent Approvals. However, unless otherwise requested by Tesoro, City shall not, upon issuance of any Subsequent Approval, amend or rescind the same. Processing of Subsequent Approvals shall not require an amendment to this Agreement.

7. **Utility Users Tax.** The Parties hereby agree that, for the calendar years 2017 to 2031, Tesoro shall pay to Carson the full amount of electricity users tax pursuant to CMC § 61105 ("EUT"), and the full amount of gas users tax ("GUT") pursuant to CMC § 61106, in any one calendar year, irrespective of the limitation imposed by CMC § 61104(e). The Parties further agree that the amount of EUT and GUT owed in any calendar year shall be determined based on the provisions of CMC §§ 61105 and 61106, as the same may be amended by the voters of Carson from time-to-time, and is subject to the provisions of Section 3.4 herein.

8. **Sales and Use Tax.**

8.1 Tesoro shall, in good faith, undertake commercially reasonable measures to obtain and maintain a Use Tax Direct Payment Permit ("UTDPP") from the California State Board of Equalization ("SBOE") that will allow Tesoro to self-assess use tax on out-of-state purchases of materials for construction of the Carson Project Elements and directly remit such use tax to the SBOE. Tesoro shall designate the Carson Refinery address as its sole business address where property purchased under the UTDPP for the Carson Project Elements will be used.

8.2 Tesoro shall, in good faith, undertake commercially reasonable measures to require qualifying contractors and sub-contractors awarded contracts for construction of Carson Project Elements to obtain a sub-permit from SBOE that identifies the Carson Refinery as the jobsite where Project materials are sold and Project furnishings are used, as defined in the Revenue and Taxation Code and applicable SBOE regulations, and allows direct allocation to Carson of the local sales and use taxes on Carson Project Elements materials and fixtures.

8.3 In the event that the total amount of the tax allocation(s) received by Carson pursuant to Sections 8.1 and 8.2 between July 1, 2017 and June 30, 2022 ("Total Sales Tax") is less than one million dollars (\$1,000,000.00), Tesoro shall pay the difference between

the Total Sales Tax amount and one million dollars (\$1,000,000.00). Tesoro's payment under this Section, if any, shall be due and payable on or before December 31, 2022.

9. **Joint Press Release.** Within three (3) business days after City Council approval of this Agreement, the Parties shall issue a jointly prepared and agreed upon press release.

10. **Release of Claims.** Except with respect to the obligations created by, acknowledged, or arising from this Agreement or any other documents contemplated hereunder, each of the Parties hereto, on behalf of themselves, and their respective officials, attorneys, agents, representatives, employees, successors, board members, assigns, partners, managers, brokers, officers, directors, shareholders, insurers, sureties and persons and entities holding beneficial interests, does hereby release and absolutely and forever discharge the other Party and each of the other Party's successors, servants, board members, agents, employees, heirs, assigns, partners, managers, brokers, officers, directors, shareholders, insurers, sureties and persons and entities holding beneficial interests from any and all claims, demands and causes of action, whether or not now known, suspected or claimed, which any of the Parties ever had, now has, claims to have had, or may have had against any Party relating to or arising from the Project, the Disputes or the facts and/or claims alleged therein.

11. **Covenant Not to Sue.** In consideration of the promises set forth in this Agreement, City and its officials, attorneys, agents, representatives, employees, officers, directors, predecessors-in-interest, successors-in-interest and assigns (collectively, "City Related Parties") hereby covenant not to file, fund or otherwise voluntarily assist any third party in filing: (1) any Litigation Challenge or (2) any claim, cause of action, demand, obligation or liability that arises out of or relates to any Disputes, Entitlements, the Project, the EIR, or the Carson Refinery. Nothing in this paragraph is intended to limit City Related Parties' right to participate in any electoral or other public proceeding.

12. **Conflicts of Interest.**

12.1 **No Financial Relationship.** Tesoro 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 Tesoro solicit, participate in, or facilitate a violation of the 1090 Laws.

12.2 **Tesoro's Representations and Warranties.** Tesoro 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.*).

13. **Indemnification and Hold Harmless.**

13.1 **Non-liability of City Concerning Entitlements.** The Parties acknowledge that there may be challenges to the legality, validity and adequacy of the Entitlements and/or this Agreement in the future; and if successful, such challenges could delay or prevent the performance of this Agreement and/or approval of the Entitlements

and/or implementation of the Project. City shall have no liability under this Agreement for the inability of Tesoro to obtain the Entitlements and/or implementation of the Project as the result of a judicial determination that some or all of the Entitlements are invalid or inadequate or not in compliance with law.

13.2 Participation in Litigation: Indemnity. Tesoro agrees to 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 this Agreement (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. In the event any action for any Claims and Liabilities is brought against City, upon City’s notification to Tesoro of the pendency of a claim or suit, Tesoro shall make a minimum deposit sufficient to pay all of the Tesoro’s estimated indemnification obligations for the next ninety (90) days, which includes legal costs and fees anticipated to be incurred as reasonably determined by City (“**Litigation Deposit**”), in a minimum amount of One Hundred Thousand Dollars (\$100,000.00). Tesoro shall make deposits required under this Section within ten (10) days of City’s written request. Prior to making any initial expenditures from the Litigation Deposit, the City shall provide to Tesoro an estimated budget for all City legal costs and fees, including City staff costs. The estimated budget shall include a rate schedule, listing the hourly rates for all City staff, attorneys, consultants, experts and other personnel for whom reimbursement will be requested under this provision. Tesoro shall have the right to approve the estimated budget within ten (10) days of receipt. If Tesoro disapproves the estimated budget, the City and Tesoro shall meet within five (5) days of disapproval to discuss the estimated budget with the goal of reaching mutual agreement. Tesoro shall not unreasonably withhold approval of the estimated budget. If City and Tesoro are unable to reach agreement on the estimated budget within ten (10) days after that meeting, either Party may terminate this Agreement. Tesoro may also elect not to pay defense costs of a claim or lawsuit should Tesoro actually terminate the processing or seeking approval of the Entitlements and terminate this Agreement. Upon termination, City shall have the right to abandon any litigation and to revoke any and all Entitlements granted to Tesoro and seek reimbursement of any amounts for fees and other costs that were reasonably incurred by City up to the date of Tesoro’s termination or for which City may be liable as a result of the termination of the litigation; all other deposited funds shall be returned to Tesoro. Notwithstanding the foregoing, Tesoro shall have no obligation to indemnify City against claims Tesoro may assert against City arising out of or relating to the Entitlements.

13.3 City Right to Abandon. If Tesoro fails to timely pay the Litigation Deposit or an agreed upon additional deposit, City may abandon any litigation without liability to Tesoro and may recover from Tesoro any attorney fees and other costs for which the City may be liable as a result of abandonment of any Claims and Liabilities. Under such circumstances, the City shall also have the right to revoke any and all Entitlements granted to Tesoro.

13.4 City Discretion. It is expressly agreed that City shall have the right to utilize the City Attorney's office or use other legal counsel of its choosing. Tesoro's obligation to pay the defense costs of City shall extend until final judgment, including any appeals, unless this Agreement is otherwise terminated by Tesoro as described hereinabove. City agrees to fully cooperate with Tesoro in the defense of any matter in which Tesoro is defending and/or holding City harmless. City may make all reasonable decisions with respect to its representation in any legal proceeding, including its inherent right to abandon or to settle any litigation brought against City in its reasonable discretion.

13.5 Hold Harmless. Tesoro hereby agrees to, and shall defend, save and hold City, and each of its respective elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorney fees) and liability for any damages, personal injury or death, that may arise, directly or indirectly, from Tesoro's or Tesoro's agents, contractors, subcontractors, agents, or employees activities arising out of or related to the Agreement, the Entitlements and/or implementation of the Project, whether such Entitlements and/or implementation of the Project is undertaken by Tesoro or by any of Tesoro's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for Tesoro or any of Tesoro's agents, contractors or subcontractors. Nothing herein is intended to require Tesoro to hold City harmless for the acts of City's officers, employees, agents, contractors, or subcontractors.

13.6 Exception. The obligations of Tesoro under this Section 13 shall not apply to any claims, actions, or proceedings arising through the gross negligence or willful misconduct of the City, and its respective members, officers, or employees.

13.7 Survival of Indemnity & Hold Harmless Obligations. All indemnity and hold harmless provisions set forth in this Agreement shall survive termination of this Agreement, and shall remain in effect for a period of two (2) years from and after the approval of all Entitlements.

14. Binding on Successors. This Agreement shall bind the heirs, personal representatives, successors and assigns of the Parties, and inure to the benefit of each Party, its officials, departments, representatives, agents, directors, managers, members, brokers, officers, partners, employees, servants, successors, franchisors, and assigns.

15. Assignment. Tesoro may not assign this Agreement to any other entity unless agreed to in writing by City and upon proof of the financial viability of the successor entity to fulfill the Agreement's obligations. City's consent to assignment shall not be unreasonably withheld.

16. Name Change. In the event that Tesoro changes its legal name, Tesoro shall advise the City by written notice pursuant to Section 19 herein before the expiration of sixty (60) days after the effective date of such name change. A notice of a change in legal name does not constitute, and shall not be deemed, an amendment or modification of any terms of this Agreement.

17. Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between City and Tesoro. Nothing herein shall be deemed to make Tesoro an agent of City.

18. **Authority to Enter Agreement.** Tesoro hereby warrants that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

19. **Notices.** All notices, demands, invoices, and communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To City: City of Carson
701 East Carson Street
Carson, California 90745
Attn: City Manager & Community Development Director

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave. Suite 1700
Irvine, CA 92612
Fax: 949-223-1180
Attn: Sunny Soltani

To Tesoro: Tesoro Refining & Marketing Company LLC
2350 E. 223rd Street
Carson, CA 90810
Attn: David L. Foster / Deborah P. Felt

Copy to: Meyers Nave Riback Silver & Wilson
707 Wilshire Boulevard, 24th Floor
Los Angeles, CA 90017
Fax: 213-626-0215
Attn: Amrit S. Kulkarni

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail; and by email, upon the sender's receipt of an email from the recipient acknowledging receipt.

20. **Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

21. **Construction; References; Captions.** It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days, provided, however that any deadline that falls on a weekend or holiday shall be extended to the next City business day. All references to Tesoro include all personnel, employees, agents, and contractors of Tesoro, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and

paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

22. **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

23. **Events of Default.** A Party will be deemed in default under this Agreement (“Defaulting Party”) upon the occurrence and continuance beyond all applicable cure period of any of the following (each shall be a “Default”): (1) the Defaulting Party fails to pay a material amount due under this Agreement to the other Party (the “Non-Defaulting Party”) and such failure continues for more than thirty (30) days after the date of written notice from the Non-Defaulting Party specifying the amount that is owing and past due in reasonable detail; (2) the Defaulting Party fails to perform any other material obligation under this Agreement and such failure continues for more than thirty (30) days after the date of written notice from the Non-Defaulting Party specifying such failure to perform in reasonable details; or (3) failure of a representation or warranty set forth in this Agreement to be true in any material respect as of the date when made or required to be made under this Agreement.

24. **Dispute Resolution.** If a legal dispute arises related to the interpretation or enforcement of or the status of compliance with the terms and conditions of this Agreement, including the rights and obligations of the Parties hereunder (the “Disagreement”), City and Tesoro shall first attempt to resolve it through informal discussions. In the event a Disagreement cannot be resolved in this manner within twenty-one (21) days, City and Tesoro shall endeavor to settle the Disagreement by mediation which, except as otherwise mutually agreed upon by the Parties, shall be conducted under the then-current JAMS rules and procedures for mediating business disputes by a neutral third party selected from the JAMS panel of neutrals. This dispute resolution procedure shall be undertaken in good faith and exhausted prior to the institution of legal proceedings by either Party.

25. **Remedies.** If a Default occurs and continues under this Agreement, the remedies for the Non-Defaulting Party shall be to terminate this Agreement or any of its obligations thereunder, or to seek specific performance of this Agreement. Neither City nor Tesoro shall have any liability or obligation to pay damages to one another or to any other person or entity as a result of or attributable to any Default or other breach or violation of this Agreement.

26. **Costs of Enforcement.** If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each party to the litigation shall bear its own attorney fees and costs.

27. **Waiver.** No waiver of any Default shall constitute a waiver of any other Default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

28. **Binding Effect.** Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal

representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

29. **No Third Party Beneficiaries.** Except as set forth in Section 10 above, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

30. **Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

31. **Consent to Jurisdiction and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Los Angeles, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Tesoro expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure § 394.

32. **Time is of the Essence.** Time is of the essence with respect to this Agreement.

33. **Force Majeure.** Tesoro shall not be held responsible for any delays in the performance of its obligations under this Agreement when caused by strikes, lockouts, labor disputes, weather, natural disasters, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond its commercially reasonable control.

34. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

35. **Entire Agreement.** This Agreement contains the entire agreement between City and Tesoro and supersedes any prior oral or written statements or agreements between City and Tesoro with respect to the subject matter of this Agreement.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

TESORO:

TESORO REFINING & MARKETING
COMPANY LLC

By: _____

Its: _____

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Deborah P. Felt, Senior Counsel

CITY:

CITY OF CARSON

By: _____

Its: City Manager

ATTEST:

By: Donesha M. Gause, CMC

Its: City Clerk

APPROVED AS TO FORM:

By: _____

Sunny K. Soltani, City Attorney

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