

TRIPARTY SETTLEMENT AGREEMENT

This Triparty Settlement Agreement (“Agreement”) is entered into as of February ___, 2019 (“Effective Date”), by and among SHIPPERS TRANSPORT EXPRESS, INC., a California corporation (“Shippers”), TESORO LOGISTICS OPERATIONS LLC, a Delaware limited liability company, authorized and doing business in California (“Tesoro”), and the CITY OF CARSON, a municipal corporation (“City”). Shippers, Tesoro and City are sometimes referred to, individually or collectively, as “Party” or “Parties.”

RECITALS

WHEREAS, Shippers currently occupies certain real property consisting of 59.11 acres, located at 1150 E. Sepulveda Boulevard, City of Carson, California, designated as Assessor Parcel Numbers 7315-001-026 (“Parcel 1”), 7315-001-025 (“Parcel 2”), 7315-001-027 (“Parcel 3”) (the “Property”), pursuant to a Ground Lease, dated January 1, 2005, with BP West Coast Products LLC (“BP”). Shippers’ operations on the Property consist primarily of cargo container storage and truck parking facilities.

WHEREAS, on August 8, 2012, BP and certain of its affiliates entered into a Purchase and Sale Agreement (“PSA”) whereby BP agreed to sell certain assets to Tesoro Refining & Marketing Company LLC (“TRMC”) or its affiliates, including the former ARCO refinery and the Property. The Shippers Ground Lease was assigned to Tesoro Logistics Operations as part of that asset sale.

WHEREAS, the City maintains that the PSA and Ground Lease were entered into without the required City approvals and that Shippers’ operations on the Property, without proper permitting (including the requirement for approval from the City for a conditional use permit), constitutes a violation of the Carson Municipal Code (“CMC”) (collectively, the “City Violations”). In addition, Tesoro, as the owner of the Property, was also determined by the City to be in violation of the CMC. However, Shippers and Tesoro disputed that the City Violations had occurred (the “Disputed Matters”).

WHEREAS, the City and Tesoro sought to resolve their differences over the City Violations and avoid litigation. The City Council of the City adopted Resolution 17-088 on July 5, 2017 (the “Compliance Resolution”), as shown on Exhibit A, attached hereto and incorporated herein, to resolve the parties’ disputes regarding the City Violations and provide a deadline of December 31, 2018 (“Compliance Deadline”) for Shippers to terminate its operations and to vacate the Property. In addition, the Compliance Resolution, provided, among other things, (i) that Shippers or Tesoro would pay certain development impact fees to the City for Shippers’ operations on the Property, collectively, totaling One Million Four Hundred Thousand Dollars (\$1,400,000), in three separate installments (the “DIF Payments”), and (ii) that the City, in its sole discretion, may extend the Compliance Deadline by up to two years following written request therefor submitted by Shippers or Tesoro, subject to extension payments from Shippers and/or Tesoro, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) for each three month period of extension beyond the Compliance Deadline in order to enable Shippers to continue its storage and parking operations on the Property.

WHEREAS, in an effort to assist Shippers to relocate its operations and bring the Property into compliance with the CMC, on August 21, 2018, City Council unanimously approved Resolution No. 18-117 to grant an exception to the City's Logistics Moratorium to allow Shippers to file a Conditional Use Permit ("CUP") for a site located at 2149 E. Sepulveda Boulevard, in the City of Carson (the "Alternative Site"). Shippers had proposed to move a portion of its operations to this Alternative Site, however, Shippers has not filed a CUP application with the City.

WHEREAS, Tesoro Logistics Operations LLC is the current owner of the Property and is obligated to comply with the terms and conditions under the Compliance Resolution.

WHEREAS, on October 2, 2018, the City received a request for an extension to the Compliance Deadline from Tesoro on behalf of Shippers, but Shippers has not subsequently submitted the required extension fee payments and other deposits due to the City in order to allow for such extension under the Compliance Resolution. As Shippers remains in occupancy of the Property and continues to conduct its truck storage and parking operations on the Property, Shippers and Tesoro are currently in violation of the Compliance Resolution. Under the Compliance Resolution, Shippers' failure to meet the Compliance Deadline or pay the required extension fees entitles the City to pursue enforcement proceedings and legal actions against Shippers and/or Tesoro in order to ensure compliance with the CMC, including, a delinquent departure penalty fee in the amount of \$5,000 for each day of delay commencing on January 1, 2019 and continuing until the Property is completely vacated.

WHEREAS, there presently exists a dispute among the Parties in the amount of the extension fee payments due to the City under the Compliance Resolution. In order to resolve such dispute and avoid litigation, on February 5, 2018 (the "Resolution Date"), the Parties agreed to modify certain terms and conditions under the Compliance Resolution, and resolve other outstanding issues, as set forth in this Agreement.

WHEREAS, the Parties enter into this Agreement based on the understandings set forth in these Recitals, each of which they affirm to be true and correct.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants, warranties and representations set forth below, the Parties agree as follows:

1. Settlement Terms and Conditions.

1.1 **Compliance Date.** Subject to the terms and conditions of this Section 1, Shippers and Tesoro shall be entitled to continue the current operation of the cargo container storage, truck parking, and/or truck terminal facilities on the Property through July 31, 2019 (the "Compliance Date"). On or prior to the Compliance Date, Shippers must have ceased all operations on the Property and fully vacated the Property. The "Initial Term" hereof shall be deemed to commence on January 1, 2019 and shall expire on the Compliance Date. Failure to meet the Compliance Date shall subject Shippers and/or Tesoro to enforcement actions as well as such other legal remedies as may be afforded the City by law.

1.2 Compliance Impact Fee. Shippers and/or Tesoro shall pay to the City a “Compliance Impact Fee” of One Hundred Fifty Thousand Dollars (\$150,000) for each three (3) month period during the Initial Term hereof for on-going operations by Shippers at the Property. The first such Compliance Impact Fee shall be due to the City within ten (10) days following the Effective Date.

1.3 Extension. In the event that Shippers and/or Tesoro are unable to meet the Compliance Date, the City may, in its sole and unfettered discretion, and subject to the terms and conditions of this Section 1.3, extend the Compliance Date (the “Extension”) until December 31, 2020 (the “Extended Compliance Date”). Such discretion shall be exercised by the City Council of the City at a duly noticed public meeting and provided that Shippers and/or Tesoro make(s) a written request to extend such deadline(s) not later than sixty (60) calendar days prior to the Compliance Date. In the event the City approves the Extended Compliance Date, then Shippers and/or Tesoro shall pay the City, prior to the expiration of the Initial Term, a minimum “Extended Compliance Impact Fee” of Two Hundred Thousand Dollars (\$200,000) for each three (3) months of extension beyond the Compliance Date for on-going operations by Shippers at the Property. Separately, as a condition to the effectiveness of the Extended Compliance Date, prior to the expiration of the Initial Term, Shippers and/or Tesoro must deposit with the City, to be held in a separate City interest bearing account, the sum of Four Hundred Thousand Dollars (\$400,000.00) (the “Reimbursement Fund”) which the City may draw upon to reimburse the City for any delinquencies by Shippers or Tesoro in complying with the terms and conditions of this Agreement, for any “Extended Compliance Impact Fee” due by Shippers and/or Tesoro which is not paid when due, for any litigation costs and attorneys’ fees incurred by the City arising out of or related to this Agreement, or for any litigation costs and attorneys’ fees incurred by the City in any enforcement proceeding(s) the City may be required to undertake against Shippers and/or Tesoro to compel the cessation of the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property by Shippers and/or Tesoro. Upon the expiration of the Extended Compliance Date, or upon termination of any litigation arising out of or related to this Agreement, or upon termination of any enforcement proceeding(s) by the City to compel the cessation of the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property by Shippers and/or Tesoro, the City shall refund to Shippers or Tesoro (as applicable) the balance of the Reimbursement Fund, if any, not drawn upon by the City.

1.4 Delinquent Departure Penalty. The Parties acknowledge and agree that in consideration of the terms and conditions of this Agreement, the City has agreed to not assess the any delinquent departure penalty payments due to the City under the Compliance Resolution which have totaled \$180,000 between January 1, 2019 and February 5, 2019 (i.e., the period between the Compliance Deadline under the Compliance Resolution and the Resolution Date). However, in the event that Shippers does not cease all operations and fully vacate the Property on or before the Compliance Date, unless the City has approved of the Extension and Shippers and Tesoro have complied with all terms and conditions set forth in Section 1.3 above, Shippers and/or Tesoro must pay to the City (1) a delinquent departure penalty in the amount of Five Thousand Dollars (\$5,000) per day for each day of delayed departure beyond the Compliance Date, together with (2) the previously incurred delinquent departure penalty payments which the City has not assessed due to Shippers continued operations on the Property past the Compliance Date between January 1, 2019 through and until the Resolution Date (i.e., \$180,000).

1.5 CUP Application. As a condition to the City's allowance for Shippers' / Tesoro's continued operations on the Property, Shippers shall be required to submit a CUP Application for the relocation of its cargo container storage and parking operations on the Property to the Alternative Site on or before March 28, 2019. In the event Shippers fails to submit a complete CUP application by such date, the City shall be entitled to assess a delinquent departure penalty payment in the amount of Five Thousand Dollars (\$5,000) per day for each day of delayed departure past the Compliance Deadline (i.e., January 1, 2019).

1.6 Approval of This Agreement. At a duly noticed meeting, the City Council will consider approval of this Agreement. The Parties understand, and expressly agree, that this Agreement does not waive or limit the City's exercise of its police powers as defined by law (which police powers the Parties acknowledge and agree cannot be contractually waived) to exercise its independent discretion with respect to this Agreement.

2. **Indemnification.** Tesoro and Shippers shall each 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 the Compliance Resolution and/or 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.

3. **Parties Acknowledgments.**

3.1 Prior DIF Payments. The Parties acknowledge and agree that Tesoro and/or Shippers has paid the DIF Payments (i.e., the Retroactive Development Impact Fee, the 2017 Development Impact Fee and the 2018 Development Impact Fee (as each such term is defined in the Compliance Resolution)) as and when required under the Compliance Resolution, and as a result, neither Tesoro or Shippers shall be obligated to pay any previously-imposed development impact fees required under the Compliance Resolution for Shippers and/or Tesoro's previous operations on the Property.

3.2 City's Reservations. Nothing herein shall (i) constitute a waiver of the City's right to pursue any and all enforcement actions against Shippers and/or Tesoro for the City Violations in the event of either parties' noncompliance with the terms and conditions of this Agreement, or (ii) prevent the City from a future exercise of its police powers pertaining to the Property, including for code enforcement to deal with violations of code or nuisances or otherwise, or to adopt an abatement program or taking any other action within its police powers.

3.3 Continuing Charges, Taxes and Fees. Shippers and/or Tesoro shall pay to the City all normal and customary fees and charges applicable to all permits necessary for the use of the Property and/or the Alternative Site, and any taxes, fees, and charges hereafter imposed by

City in connection with the use of the Property and/or the Alternative Site which are standard and uniformly-applied to similar entities in the City

4. **Compliance with City of Carson Codes and Regulations.** Nothing in this Agreement shall be interpreted to exempt Shippers or Tesoro from any applicable codes or regulations, including but not limited to submitting applications and plans to obtain all necessary land use entitlements and permits necessary in order to allow for Shippers relocation of its operations to the Alternative Site.

5. **City's Authority to Legislate.** The Parties further agree, at all times, City retains its authority to legislate on the matters subject to this Agreement in connection with its police powers, including the authority to deny any extension to the Initial Term in this Agreement.

6. **Waiver, Release of Claims & Acknowledgement.** Except as provided in this Agreement, 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 (collectively, "Releasees"), of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which any Party now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof for any and all Claims constituting, arising out of, or based upon the Compliance Resolution, the Property, this Agreement, and/or the Disputed Matters.

7. **Non-Admission of Liability.** The Parties acknowledge and agree this Agreement is a settlement of disputed claims. Neither the fact the Parties have settled nor the terms of this Agreement shall be construed in any manner as an admission of any liability by any Party hereto, or any of its employees, or an affiliated person(s) or entity/ies.

8. **Discovery of Different or Additional Facts.** The Parties acknowledge they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of this Agreement, and expressly agree to assume the risk of the possible discovery of additional or different facts, and agree this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

9. **Release of Unknown Claims.** The Release set forth above in Section 6 of this Agreement is to be interpreted as broadly as possible, and is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims which the Parties may have, except for any claims that may arise from the terms of this Agreement.

10. **Attorneys' Fees and Costs.**

10.1 In the event the City is required to take action to enforce the terms and conditions of 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 and/or Tesoro, the City shall be reimbursed by Shippers and/or Tesoro for all costs and reasonable attorneys' fees incurred in such action or enforcement proceeding(s).

10.2 In the event of any legal action or proceeding (including any enforcement action) brought by any of the Parties hereto arising from or in any way connected with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorneys' fees from the losing Party(ies). Attorneys' fees shall include attorneys' fees on any appeal, and in addition a Party entitled to recover its attorneys' fees shall be entitled to recover all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs which are incurred in such litigation. All such fees and costs shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

11. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, officers, owners, members, successors and assigns.

12. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent, prior to signing this Agreement, they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment.

13. **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.

14. **Notices.** All notices to be given and documents to be delivered under this Agreement shall be either (a) personally delivered (including sent by courier such as Federal Express, United Parcel Service and Express Mail of the U.S. Postal Service, as long as a signed receipt for delivery is obtained), or (b) sent by certified U.S. mail, postage prepaid, to the Parties at the addresses set forth below:

<u>If to the City:</u>	City of Carson
	701 East Carson St.
	Carson, CA 90745
	Attn: Saied Naaseh

Email: snaaseh@carson.ca.us

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

If to Shippers Shippers Transport Express, Inc.
1150 E. Sepulveda Blvd.
Fontana, CA 92337
Attn. Kevin Baddeley
Email: Kevin.Baddeley@SSAMarine.com

With a copy to: Russell, Mirkovich & Morrow
One World Trade Center, Suite 1660
Long Beach, CA 90831-1660
Attn: Joseph N. Mirkovich
Email: jnmirkovich@rumlaw.com

If to Tesoro: Tesoro Logistics Operations LLC
6 Centerpointe Drive
La Palma, CA 90623
Attn: Holly P. Kranzmann / Deborah P. Felt
Email: Holly.P.Kranzmann@andeavor.com /
DPFelt@Marathonpetroleum.com

With a copy to: Meyers Nave LLP
707 Wilshire Blvd., 24th Floor
Los Angeles, CA 90017
Attn: Amrit S. Kulkarni
Email: amrit@meyersnave.com

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail transmission shall be as effective as delivery of a manually executed original counterpart.

16. **Singular and Plural.** Whenever required by the context, as used in this Agreement the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

17. **Injunctive Relief for Breach.** The Parties acknowledge and agree that any material violation of this Agreement is likely to result in immediate and irreparable harm for which monetary damages are likely to be inadequate. Accordingly, the Parties consent to injunctive and other appropriate equitable relief upon the institution of proceedings therefor by

any other party in order to protect the rights of the Parties under this Agreement. Such relief shall be in addition to any other relief to which the Parties may be entitled at law or in equity.

18. **Severability.** If any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, then such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

19. **Incorporation of Recitals and Exhibits.** The Recitals contained in this Agreement, together with the Compliance Resolution shown on Exhibit A attached hereto, are an integral part of this Agreement and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement and each are hereby incorporated herein.

20. **Headings.** Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

21. **Ambiguity.** The Parties acknowledge this Agreement was jointly prepared by them and any uncertainty or ambiguity existing herein shall not be interpreted against any of the Parties, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

22. **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 one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

23. **Governing Law.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles. Any action to enforce the terms of this Agreement shall be brought in the Superior Court of the County of Los Angeles.

24. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the Parties to this Agreement regarding the subject matter hereof, including, without limitation, the Compliance Resolution. The Parties to this Agreement each acknowledge no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

25. **Modifications.** Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each party hereto in order to become effective.

26. **Authority To Sign.** The persons executing this Agreement on behalf of the Parties hereto represent and warrant (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 to bind such Party, including its members, agents and assigns, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned fully agree to be bound by the above terms and conditions, and have executed this Agreement effective as of the date first written above.

CITY OF CARSON, a municipal
corporation

Albert Robles, Mayor

ATTEST

Donesia Gause, MMC, City Clerk

APPROVED AS TO FORM

ALESHIRE & WYNDER LLP

Sunny K. Soltani, City Attorney

**SHIPPERS TRANSPORT EXPRESS,
INC.**, a California corporation

Name:

Title:

**TESORO LOGISTICS OPERATIONS
LLC**, a Delaware limited liability company

Name: Holly P. Kransmann

Title: VP, Logistics Development

EXHIBIT A

COMPLIANCE RESOLUTION

[Attached]