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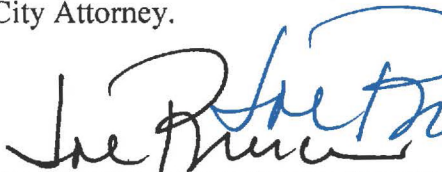
Tesoro Refining & Marketing Company, LLC (Tesoro) owns and operates a petroleum refinery located in Wilmington. Tesoro also owns and operates a refinery in the City of Carson. Tesoro is in the process of integrating the two refineries and has secured regulatory approval for the Los Angeles Refinery Integration and Compliance Project (LARIC). LARIC will enhance integration of the two refineries, improve operations, and continue compliance with State and local air quality regulations mandating emission reductions. On May 12, 2017, the South Coast Air Quality Management District certified the final Environmental Impact Report for the project. Tesoro anticipates that construction of LARIC will take five years to complete.

In connection with LARIC, Council District 15 has maintained that Tesoro should make funding available for significant investments in the surrounding community. Tesoro has indicated their intent to make substantial funding available to support the wellbeing and safety of Council District 15 residents and to improve the City's environment. Tesoro and Council District 15 have negotiated a Community Benefits Agreement in which Tesoro has agreed to pay the City \$9 million. This sum is to be paid in seven installments coinciding with certain milestones during the construction of LARIC. These funds will be utilized for existing and future community benefit programs, improvement projects, and services benefitting the communities in Council District 15.

I THEREFORE MOVE that the City Council:

1. Approve the attached Community Benefits Agreement between the City of Los Angeles and Tesoro Refining & Marketing Company LLC (Tesoro), which will obligate Tesoro to pay the City \$9 million for existing and future community benefit programs, improvement projects, and services benefitting the communities in Council District 15; and
2. Authorize Council District 15 to execute the attached Community Benefits Agreement subject to approval as to form and legality by the City Attorney.

PRESENTED BY:



JOE BUSCAINO
Councilmember, 15th District

SECONDED BY:



ORIGINAL

jmq

SEP 28 2018

COMMUNITY BENEFITS AGREEMENT

THIS AGREEMENT ("Agreement") is executed by and between the **CITY OF LOS ANGELES**, a charter city and municipal corporation ("City"), 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. Wilmington Operations. Tesoro owns and operates the petroleum refinery located at 2101 East Pacific Coast Highway in the Wilmington area of the City ("Wilmington Operations"). The Wilmington Operations manufactures gasoline, jet fuel, diesel fuel, petroleum coke, fuel oil, and fuel gases. 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, City and Tesoro have discussed various issues relating to the Wilmington Operations. City desires that Tesoro make funding available for significant investments in the community and Tesoro desires to provide such funding to support the wellbeing of residents and otherwise improve the quality of the environment and assist City residents in having a safe and healthy place to work, live and raise families. The Parties are entering into this Agreement to comprehensively resolve all issues between them in a cooperative manner, and thereby allow Tesoro to provide funding for community benefits.

B. LARIC EIR. Tesoro also owns and operates the petroleum refinery located at 2350 East 223rd Street in the City of Carson ("Carson Operations"). Tesoro is integrating its Carson Operations with its Wilmington 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 enhance the integration of the Tesoro Los Angeles Refinery operations to 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 Wilmington Operations: (1) shutdown of the existing Fluid Catalytic Cracking Unit; (2) modifications to the existing Hydrocracker Unit; (3) modifications to the existing Hydrotreater Unit No. 4; (4) construction of piping connections at Carson and Wilmington Operations; and (5) other modifications or construction as necessary to implement the Project (collectively, "Wilmington Project Elements").

(2) The Project also includes, but is not limited to, the following modifications to equipment that supports both the Carson and Wilmington Operations: (1) modifications to existing storage tanks; (2) new interconnecting pipelines between the Carson and Wilmington Operations; and (3) other modifications or construction as necessary to implement the Project. The Project is designed, among other things, to allow Tesoro to comply with the federally mandated Tier 3 gasoline specifications and with State and local air quality regulations.

(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 Alameda Corridor Transportation Authority, a joint powers authority of City and the City of Long Beach, is identified in the EIR as

a responsible agency. City is otherwise identified in the EIR as responsible only for ministerial permits.

(4) 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.

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 herein. 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 "Effective Date" means the date this Agreement has been executed by Tesoro and approved by public action taken at a duly noticed meeting of the City Council. This Agreement shall remain in effect until one year after the date of the last payment pursuant to Section 3.1 below.

2.2 "Milestone 1" means the first date on which all construction activities are completed on all pipelines routed through the Alameda Street crossing bore ("LARIC Pipelines").

2.3 "Milestone 2" means the date the LARIC pipelines are used to transfer hydrocarbons to or from the Carson and Wilmington Operations.

2.4 "Milestone 3" means the first date on which all shutdown activities related to the Fluid Catalytic Cracking Unit at the Wilmington Operations, including compliance with any shutdown conditions, are complete.

2.5 "Milestone 4" means the first date on which all construction activities on the Hydrocracker Unit at the Wilmington Operations are complete.

2.6 "Milestone 5" means the first date on which all construction activities on the Wilmington Project Elements are complete.

2.7 "Milestone 6" means the first date on which the Sulfuric Acid Regeneration Plant is in operation.

3. **Tesoro Community Funding Amounts And Timing.** In accordance with the terms of this Agreement, City shall deposit the funding from Tesoro as described in this Section into its General Fund to provide a series of existing and future community benefit programs, improvement projects, and services benefitting the communities in Council District 15. All

payments referenced in this Section shall be made by wire transfer on or before the specified due date per wire transfer directions provided by the receiving Party to the paying Party.

3.1 LARIC Project Funding. Following the mutual execution of this Agreement, Tesoro shall pay City Nine Million Dollars (\$9,000,000.00) 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) Two Million Dollars (\$2,000,000.00) shall be paid no later than thirty (30) days following the date that Tesoro provides written notice to City 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 Tesoro provides written notice to City 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 City 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 City of completion of Milestone 4;
- (f) Seven Hundred Fifty Thousand Dollars (\$750,000.00) shall be paid no later than thirty (30) days following the date that Tesoro provides written notice to City of completion of Milestone 5; and
- (g) Seven Hundred Fifty Thousand Dollars (\$750,000.00) shall be paid no later than thirty (30) days following the date that Tesoro provides written notice to City of completion of Milestone 6. However, in the event that Tesoro, in its sole and unfettered discretion, elects not to apply for the Sulfuric Acid Regeneration Plant ("SARP") on or before the fourth (4th) 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, above, for Milestone 6. The new Milestone(s) to be negotiated shall be within the same general time frame as if the SARP had been timely pursued and applied for by Tesoro. The Parties understand and agree that Tesoro's election not to apply for the SARP permit shall not increase or reduce the total amount of LARIC Project Funding set forth in this section 3.1.

The Parties acknowledge that there is a pending Litigation Challenge entitled *Communities for a Better Environment v. South Coast Air Quality Management District*, Los Angeles Superior Court Case No. BS 169841 (and Tesoro is the Real Party in Interest).

If any 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") 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 on that date into a separate interest-bearing account ("Escrow Account") with the City of Los Angeles. Within ninety (90) days following the final resolution of any Litigation Challenge, including any writs or appeals, Tesoro shall authorize, in writing, the City to withdraw all funds in the Escrow Account. The City shall not withdraw any funds without Tesoro's written authorization. City is entitled to the interest accrued on funds in the Escrow Account. In addition, the payments specified in sub-sections (b) through (e) of this Section 3.1 are expressly contingent on and subject to the limitations in Section 3.2 herein.

3.2 Litigation Impact. The provisions of Section 3.1 of this Agreement shall 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 the Escrow Account shall be returned to Tesoro within ten (10) days after Tesoro's written request to the City.

4. Approvals. City shall accept for processing, review, and act on all applications for any subsequent permits ("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. City hereby expressly acknowledges that the EIR certified by the SCAQMD on May 12, 2017 satisfies CEQA requirements, pursuant to California Public Resources Code section 21167.2. The Parties acknowledge that, other than generally applicable obligations, the City is not obligated to approve any Subsequent 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 City's compliance with any applicable statutes, ordinances, regulations and/or codes with respect to processing, review and action on any Subsequent Approvals. Processing of Subsequent Approvals shall not require an amendment to this Agreement.

5. Joint Press Release and Public Support. Within three (3) business days or other mutually agreeable date after City Council approval of this Agreement, the Parties shall issue a jointly prepared and agreed upon press release.

6. 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.

7. 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 and agree not to file, fund or assist any third party: (1) in filing any litigation, challenge, or appeal, or (2) pursuing any claim, cause of action, or demand, arising out of or relating to the LARIC Project or the EIR. Nothing in this paragraph is intended to limit City Related Parties' right to participate in any electoral or other public proceeding.

8. **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. Nothing herein is intended to require Tesoro to indemnify, protect, defend or hold City harmless for the acts of City's officers, employees, agents, contractors, or subcontractors.

9. **Additional Terms.**

9.1 **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.

9.2 **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.*).

9.3 **Potential Project Delays.** The Parties acknowledge that there may be challenges to the legality, validity and adequacy of 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 entitlements and/or implementation of the Project.

10. **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.

11. **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.

12. **Name Change.** In the event that Tesoro changes its legal name, such a change will not constitute, and shall not be deemed, an amendment or modification of any terms of this Agreement.

13. **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.

14. **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.

15. **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 Los Angeles
Los Angeles City Hall
200 N. Spring Street, Suite 410
Los Angeles, CA 90012
Attn: City Councilmember Joe Buscaino

Copy to: City Clerk
Los Angeles City Hall
200 N. Spring Street
Los Angeles, CA 90012
Attn: Holly Wolcott

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

Copy to: Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
Attn: Malcolm C. Weiss

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, as of 24 hours after transmission.

16. **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.

17. **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.

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

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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.

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

29. **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.

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

31. **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 Effective Date.

TESORO:

TESORO REFINING & MARKETING
COMPANY LLC

By: GEO Wm
Its: EVF Operations
Date: 9-27-18

APPROVED AS TO FORM:

By: Deborah P. Felt
Deborah P. Felt, Senior Counsel

CITY:

CITY OF LOS ANGELES

By: _____
Its: _____
Date: _____

ATTEST:

By: _____
Its: City Clerk

APPROVED AS TO FORM:

By: _____
Its: City Attorney

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

TESORO:

TESORO REFINING & MARKETING
COMPANY LLC

By: [Signature]
Its: EW Operate
Date: 8-27-18

APPROVED AS TO FORM:

By: [Signature: Deborah P. Felt]
Deborah P. Felt, Senior Counsel

CITY:

CITY OF LOS ANGELES

By: _____
Its: _____
Date: _____

ATTEST:

By: _____
Its: City Clerk

APPROVED AS TO FORM:

By: _____
Its: City Attorney