

TO CITY CLERK FOR PLACEMENT ON NEXT
REGULAR COUNCIL AGENDA TO BE POSTED

#54

MOTION

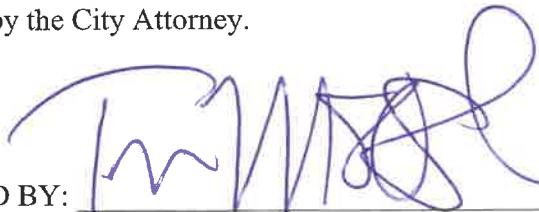
On October 9, 2018, the Council approved a Community Benefits Agreement (C-132438) with the Tesoro Refining & Marketing Company (Tesoro) which was integrating its oil refineries in Wilmington and the City of Carson (C.F. 18-0926). Under the Community Benefits Agreement, Tesoro agreed to make seven payments totaling \$9 million in order to support the wellbeing of Council District 15 residents and improve the environment in the area, and the City agreed to not pursue litigation against Tesoro related to implementation and development of the refinery integration project.

The City and Tesoro are now seeking to provide community benefit programs, improvements, and services to affected residents through the work of the California Community Foundation and the One Five Foundation. In order to allow for the final payment of \$750,000 to be provided to the California Community Foundation rather than the City, Tesoro and the City have negotiated the attached Mutual Termination Agreement, which will terminate the Community Benefits Agreement on the condition that Tesoro provide the final community funding payment of \$750,000 to the California Community Foundation for community benefit work and services in Council District 15.

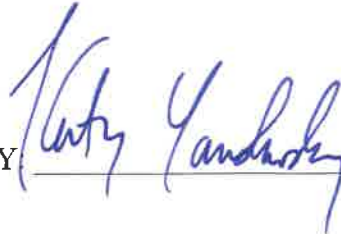
I THEREFORE MOVE that the City Council:

1. Approve the attached Mutual Termination Agreement between the City of Los Angeles and Tesoro Refining & Marketing Company LLC (Tesoro), which will terminate the Community Benefits Agreement (C-132438) on condition that Tesoro makes a one-time payment of \$750,000 to the California Community Foundation.
2. Authorize Council District 15 to execute the attached Mutual Termination Agreement, subject to approval as to form and legality by the City Attorney.

PRESENTED BY:


TLM McOSKER
Councilmember, 15th District

SECONDED BY:



ORIGINAL

majs


DEC 06 2024

MUTUAL TERMINATION AGREEMENT

THIS MUTUAL TERMINATION AGREEMENT (this “Mutual Termination Agreement”) is entered into as of December 6, 2024 (the “Effective Date”) by and between Tesoro Refining & Marketing Tesoro LLC, a Delaware limited liability company, authorized and doing business in California (“Tesoro”) and the City of Los Angeles California, a charter city and municipal corporation (“City”). Tesoro and City may be referred to in this Termination Agreement, individually or collectively, as “Party” or “Parties” as appropriate.

WHEREAS, Tesoro and City entered into that certain Community Benefits Agreement, City Contract No. C-132438, between Tesoro and the City on or about September 27, 2018, as may have been amended (the “LA Community Benefits Agreement”); and

WHEREAS, despite any differing terms in the LA Community Benefits Agreement, Tesoro and City mutually desire to terminate the LA Community Benefits Agreement subject to the terms of this Mutual Termination Agreement; and

WHEREAS, the parties agree that the final remaining Tesoro community funding payment (Milestone 6 payment) under the LA Community Benefits Agreement will provide community benefit programs, improvement projects, and services benefiting the communities in Council District 15 through the work of the California Community Foundation and the One Five Foundation.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tesoro and City agree as follows:

1. Capitalized terms not defined in this Mutual Termination Agreement will have the meanings given to them in the LA Community Benefits Agreement.

2. Subject to satisfaction of the conditions precedent to termination set out in Section 3 below, the LA Community Benefits Agreement is hereby terminated on December 20, 2024 or, if later, the date the conditions precedent in Section 3 (a) and Section 3 (b) are met (the “Termination Date”) and will be of no further force or effect thereafter.

3. As conditions precedent to the effectiveness of the termination of the LA Community Benefits Agreement, each of the following conditions shall be met:

(a) Tesoro will make a one-time payment of Seven Hundred Fifty Thousand Dollars and no/100's (US) to the California Community Foundation (“Organization”) within 30 days of the Effective Date of this Mutual Termination Agreement;

(b) The Organization will appoint an employee of Tesoro to the board of the One Five Foundation; and

4. The City will cooperate with the Organization to support Tesoro in Tesoro’s efforts to fund certain philanthropic endeavors such as Work Force Development, Sustainability and Thriving Communities (education, essential services, economic vitality, infrastructure, food insecurity, emergency preparedness) through the One Five Foundation.

5. The Parties waive any termination notice and notice period requirements in the LA Community Benefits Agreement and neither Party will incur any penalty, fee or cost for the early termination of the LA Community Benefits Agreement.

6. The Parties are not waiving any right, duty or obligation under the LA Community Benefits Agreement arising prior to the Termination Date.

7. Release. Except with respect to the obligations created by, acknowledged, or arising from this Mutual Termination 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,

Form Revised: 07/17/2020

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 LA Community Benefits Agreement. No claim for breach of this Mutual Termination Agreement is waived by either Party.

8. Indemnity. From and after the Termination Date, 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 Mutual Termination 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. Covenant Not to Sue. From and after the Effective Date, in consideration of the promises set forth in this Mutual Termination 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: (1) in filing any litigation, challenge, or appeal, or (2) pursuing any claim, cause of action, or demand that arises out of or relates to the LA Community Benefits Agreement except with respect to any breach or default by Tesoro under this Mutual Termination Agreement. Nothing in this paragraph is intended to limit City Related Parties' right to participate in any electoral or other public proceeding.

10. Each person executing this Mutual Termination Agreement has full authority to do so and the City has or will take all appropriate action to authorize the person executing this Mutual Termination Agreement to do so.

11. Unless otherwise provided herein, the rights, duties and obligations in Section 7 – Release, Section 8 – Indemnity, and 9 – Covenant Not to Sue survive any expiration or termination of the LA Community Benefits Agreement and this Mutual Termination Agreement and will continue in full force and effect.

12. This Mutual Termination Agreement may be executed in counterparts and when so executed and delivered it will constitute one instrument legally binding upon the Parties hereto. Tesoro and City acknowledge that this Mutual Termination Agreement may be executed utilizing an electronic signature process. By signing electronically, the Parties further acknowledge that they each have read, understand and are bound to the terms and conditions hereof in the same manner as if the Parties had signed this Mutual Termination Agreement with handwritten original signatures.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed this Mutual Termination Agreement as of the Effective Date.

TESORO:

TESORO REFINING & MARKETING COMPANY LLC

By: _____

Its: _____

Date: _____

CITY:

CITY OF LOS ANGELES

By: _____

Its: _____

Date: _____

ATTEST:

By: _____

Its: City Clerk

APPROVED AS TO FORM:

By: _____

Its: City Attorney