

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**KENAI PENINSULA BOROUGH AND**

**TESORO ALASKA COMPANY, LLC**

This Memorandum of Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 2023 between the Kenai Peninsula Borough (“Borough”) and Tesoro Alaska Company LLC (“Tesoro”) concerning the Borough’s valuations of Tesoro’s Refinery Property (more specifically described below) for the purpose of assessing *ad valorem* property taxes. The Borough and Tesoro are hereinafter sometimes referred to individually as a “Party,” and collectively as the “Parties.”

**I. RECITALS**

**A.** Tesoro is the owner of certain real property and improvements thereon, including its Kenai Refinery (“Refinery”), located in the Kenai Peninsula Borough, Alaska. The Refinery improvements, including all components that constitute the Refinery excluding the land within Borough Assessor’s Parcel No. 014-150-02, are identified as “Improvements” (“Refinery Improvements”).

**B.** On an annual basis the Borough values the Refinery Improvements for the purpose of assessing *ad valorem* property taxes. In the past, Tesoro and the Borough have been involved in disputes over such valuations, requiring the commitment of extensive resources by both Parties.

**C.** In order to avoid valuation disputes such as those described above, the Parties wish to resolve the manner in which the Refinery Improvements will be valued by the Borough for the purpose of assessing *ad valorem* taxes in certain future years, all as more specifically set forth below.

Based upon the foregoing Recitals, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borough and Marathon agree as follows.

## II. AGREEMENT

**A. Full and True Value.** The parties agree that the valuation formula contained in this Agreement represents a recognized methodology for calculating full and true value for ad valorem tax purposes, using an agreed-upon benchmark value adjusted annually for changing market conditions and production volumes for the duration of this Agreement.

**B. 2024 Refinery Improvements Value.** Tesoro and the Kenai Peninsula Borough agree to the 2024 Refinery Improvements Value of TBD by Appraisal, and the TBD value of land, as set forth in the Borough's 2024 Notice of Assessment for Assessor's Parcel No. 014-150-02.

### **C. Definitions.**

The following terms are defined for the purposes of this Agreement as follows and are capitalized throughout this Agreement:

**“3-1-1-1 Crack Spread” or “Crack Spread”** means a comparison of the annual average prices using the respective monthly price data for three barrels of ANS Crude (California) Price compared with one barrel each of Seattle Pipeline Unleaded Gasoline Price, Seattle Pipeline Jet Kero Price, and Singapore HSFO 380 CST Price. The 3-1-1-1 Crack Spread under this Agreement is to be calculated using the respective monthly price data reported in Platts and averaged for the year considering the number of days in each month. The Crack Spread for any year is equal to [the Singapore HSFO 380 CST Price, plus the Seattle Pipeline Jet Kero Price, plus the Seattle Pipeline Unleaded Gasoline Price, minus 3 times the ANS Crude (California) Price], divided by 3.

**“ANS Crude (California) Price”** means the annual average price calculated as the weighted average (considering the number of days in each month) of the 12 monthly average prices quoted in dollars per barrel as reported in Platts under the heading “United States Spot Crude Assessments” for ANS Crude (California).

**“Crude Rate”** means the annual daily average of crude oil processed by the crude distillation unit at the Refinery. The Crude Rate shall be calculated by dividing the total crude oil throughput for each year (as reported on the December 31 Kenai Refinery Yield Report for each year) by the total number of calendar days in each year. In determining the total annual crude oil throughput from the December 31 Kenai Refinery Yield Report, non-crude oil feedstocks (including but not limited to HAGO-Mixed, tank wash, flush bunker, and jet fuel) shall not be included in the calculation.

**“Platts”** means the *Platts Oilgram Price Report – Price Average Supplement* published monthly by The McGraw Hill Companies. (The monthly Price Average Supplements provide a calculation of the monthly average prices as determined by Platts by averaging the Platts reported daily prices.) In the event Platts ceases to publish a monthly price used in this Agreement, the Parties shall substitute a mutually-agreeable reported monthly price designed to give a similar result to the discontinued monthly price. If the Parties are unable to agree upon a substitute reported monthly price as provided above after a good faith attempt, then either Party may terminate this agreement upon thirty (30) days’ advance written notice to the other Party.

**“Singapore HSFO 380 CST Price”** means the annual average price calculated as the weighted average (considering the number of days in each month) of the 12 monthly average prices quoted in dollars per metric ton (converted into dollars per barrel) in the “Singapore” section of Platts under the heading “Singapore Cargoes.”

“**Seattle Pipeline Jet Kero Price**” means the annual average price calculated as the weighted average (considering the number of days in each month) of the 12 monthly average prices quoted in cents per gallon (converted into dollars per barrel) for Jet Kero in the “Seattle Pipeline” section of Platts under the heading “West Coast Spot.”

“**Seattle Pipeline Unleaded Gasoline Price**” means the annual average price calculated as the weighted average (considering the number of days in each month) of the 12 monthly average prices quoted in cents per gallon (converted into dollars per barrel) for “unleaded” in the “Seattle Pipeline” section of Platts under the heading “West Coast Spot.”

**D. 2025-2028 Refinery Improvements Value.** The assessed value of the Refinery Improvements for the purposes of the assessment of *ad valorem* taxes by the Borough for the years 2025 through and including 2028 (“Refinery Improvements Value”) shall be calculated based on a formula utilizing the Borough’s 2024 Valuation as of January 1, 2024, for the Refinery Improvements of TBD by appraisal (“Base Value”). For each year between 2025 and 2028, the Refinery Improvements Value shall be determined by multiplying the Base Value by (1) the most recent five-year average Crack Spread divided by the 2019-2023 base five-year average Crack Spread; and that product shall then, in turn, be multiplied by (2) the most recent five-year average historical Crude Rate divided by the 2019-2023 base five-year historical Crude Rate.

The Crack Spread and Crude Rate factor calculations herein defined are intended to adjust the Base Value to an estimate of market value annually, assuming that the Refinery will continue, throughout the term of this agreement, to operate using a similar mix of available crude inputs to produce a similar mix of refined or residual product outputs as it has over the past several years. Should the mix of available crude inputs change to the extent that the Refinery’s actual annualized average crude inputs include more than 30% or less than 5% Cook Inlet crude in any calendar year,

then either party, at its discretion, shall have the right, upon written notice to the other, to renegotiate the Refinery Improvement Value formula. In this event, the Parties shall enter into good faith negotiations to define a Refinery Improvement Value formula acceptable to both parties. In the event that the Parties are unable to mutually agree upon such issue, either Party may terminate this Agreement, upon thirty (30) days' advanced written notice to the non-terminating Party.

The use of this formula to illustrate the 2025 Refinery Improvements Value may be expressed mathematically as follows:

$$\text{2025 Refinery Improvement Value} = \left[ \text{Base Value} \times \left( \frac{\text{2020-2024 Crack Spread}}{\text{2019-2023 Crack Spread}} \right) \right] \times \left( \frac{\text{2020-2024 Crude Rate}}{\text{2019-2023 Crude Rate}} \right)$$

The use of this formula to illustrate the 2026 Refinery Improvements Value may be expressed mathematically as follows:

$$\text{2026 Refinery Improvement Value} = \left[ \text{Base Value} \times \left( \frac{\text{2021-2025 Crack Spread}}{\text{2019-2023 Crack Spread}} \right) \right] \times \left( \frac{\text{2021-2025 Crude Rate}}{\text{2019-2023 Crude Rate}} \right)$$

The Parties have illustrated this formula in greater detail in an Excel spreadsheet which is attached to this Agreement as Exhibit A ("Refinery Improvements Valuation Model"). The values of the Refinery Improvements, resulting from the above-referenced formula, through the application of the Refinery Improvements Valuation Model for each of the years 2025 through 2028, inclusive, shall be rounded to the nearest \$100,000. The Parties have reviewed the Refinery Improvements Valuation Model and the data inputs which were known at the time of entering into this Agreement and stipulate and agree that the Refinery Improvements Valuation Model and its inputs are correctly expressed. The Parties further stipulate and agree that in the event of an inconsistency between the Refinery Improvements Valuation Model, attached as Exhibit A and the terms of this Agreement that they should be interpreted and applied, giving greater weight to the Refinery Improvements Valuation Model.

**E. Real Property and Personal Property Valuation.** The Refinery Improvements Value does not include the land or business personal property, which shall be separately valued and assessed by the Borough for 2024 through 2028, and such assessments shall be subject to Marathon's appeal rights consistent with prevailing law.

**F. Exemptions.** Notwithstanding any other provision of this Agreement, the eligibility of the Refinery Improvements for any applicable exemption available in accordance with prevailing Borough ordinance or other law shall not be affected by this agreement for the purpose of calculating any *ad valorem* tax due during the term of this Agreement unless otherwise required by law.

**G. Capital Improvements.** The agreed Refinery Improvements Valuation Model for 2025 through 2028, relies, in part, on Tesoro's January 2024 projected capital expenditure budget for the years 2024 through 2028 ("Proposed Capital Budget"), a copy of which is attached hereto as Exhibit B. All capital expenditures referenced in the Proposed Capital Budget are categorized therein as either (1) regulatory ("REG"), being government-mandated expenditures, (2) maintenance and sustaining capital expenditures, or (3) turnaround expenditures. The capital expenditures described in the Proposed Capital Budget, plus the Buffer Amounts described below, are recognized as being consistent with the values determined using the Refinery Improvements Valuation Model and will not be separately considered as adding value to the refinery to the extent the actual capital expenditures are in line with the Proposed Capital Budget, as more specifically set forth below.

On or before February 15 of each year during the term of this Agreement, Tesoro shall provide the Borough with a summary of all actual capital expenditures relating to the Refinery for the calendar year preceding the year in which the information is provided, including the actual

capital expenditures for each of the projects reflected in the Proposed Capital Budget. Each such annual summary shall also include actual capital expenditure information provided in previous annual summaries. If

(a) Tesoro's annual total actual capital expenditures as reflected in such summaries either

- (1) exceed the annual amount budgeted for capital expenditures for that year (as reflected in the Proposed Capital Budget, Exhibit B) by more than seven percent (7%) (Buffer Amount), or
- (2) include more than three-and-one-half percent (3.5%) (Buffer Amount) of that year's annual budget for capital expenditures for any project not included in the Proposed Capital Budget (Exhibit B), or

(b) Tesoro's cumulative total actual capital expenditures as reflected in such summaries either

- (1) exceed \$TBD budgeted for such projects (as reflected in the Proposed Capital Budget) by more than \$20 million ("Buffer Amount"), or
- (2) include more than \$10 million ("Buffer Amount") in capital expenditures (cumulatively over the term of this Agreement) for any project not described in the Proposed Capital Budget,

then the Parties shall enter into good faith negotiations regarding whether, or to what extent, such additional capital expenditures have increased the value of the Refinery Property. In the event that the Parties are unable to mutually agree upon such issue, either Party may terminate this Agreement, upon thirty (30) days' advanced written notice to the non-terminating Party. Tesoro may move scheduled capital expenditures (as reflected in the Proposed Capital Budget, Exhibit B) from one year to another upon 90 days advance written notice to the Borough, but the cumulative total capital expenditure limit over the term of this agreement, \$TBD, may not be amended.

For the purposes of categorizing capital expenditures hereunder (1) regulatory/government-mandated capital expenditures include those expenditures that become necessary as a result of regulatory changes in product specifications or required modifications to the refinery facilities to maintain compliance with allowable emission levels, (2) maintenance and sustaining capital expenditures include those for projects to replace and maintain the refinery operations at a level consistent with the operating levels in 2019 - 2023 and are not expected to generate incremental revenue for the refinery, and (3) turnaround expenditures include those costs, including both expenses and capital expenditures, spent in connection with scheduled major maintenance procedures where the process units are shut down on a periodic basis to perform maintenance.

## **H. Documentation and Inspections.**

### **1. Documentation.**

a. On or before February 15 of each year during the period 2025 through 2028, inclusive, Tesoro shall provide the Borough with the following information for the three (3) year period preceding the year in which the information is provided:<sup>1</sup>

i. Annual average per-barrel prices for ANS crude oil in California as reported by Platts;

ii. Annual average per-barrel prices for Seattle Pipeline Unleaded Gasoline, Seattle Pipeline Jet Kero and Singapore HSFO 380 CST, as reported by Platt's; and

iii. Tesoro's annual Kenai Refinery Charge and Yield Reports reflecting historical Crude Rates for the Kenai Refinery, with the calculation of the year average rate, and

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<sup>1</sup> For example, information provided by Tesoro by February 15, 2025 shall include monthly historical price information for 2022, 2023, and 2024 with the calculation of the year average values.



such other documentation and information as is reasonably requested by the Borough for the purpose of confirming the accuracy of the Crude Rate reported by Tesoro.

b. Annually and contemporaneous with information provided under paragraph II.H.1.a above, Marathon will provide the Borough with a copy of Platts' monthly Price Average Supplement for each month of the year which contains the published prices utilized in the formulas described in this Agreement.

**2. Refinery Inspections.** Tesoro shall host an annual inspection tour of the Refinery Property for the Borough at a mutually-agreeable date and time, preferably in or about January or February of each year during the term of this Agreement.

**I. Future Negotiations.** During the first three (3) months of 2028, Tesoro and the Borough shall commence good-faith negotiations, and thereafter use their best efforts to enter into another valuation settlement agreement by the end of 2028. If these negotiations are not successful, the normal assessment process will be followed.

**J. Binding Effect and Survival on Merger or Acquisition.** This Agreement is binding on and inures to the benefit of the Parties, as well as its successors and assigns. In the event Tesoro is acquired during the term of this Agreement, or is the non-surviving party in a merger, or sells all or substantially all of its assets, this Agreement shall not automatically be terminated, and Tesoro agrees to exhaust efforts to ensure that the transferee or surviving company shall assume and be bound by the provisions of this Agreement.

**K. Governing Law and Venue.** This Agreement shall be interpreted under the laws of the State of Alaska and any disputes arising out of the interpretation and enforcement of this Agreement shall be resolved in the State Superior Court located in Kenai, Third Judicial District, State of Alaska.

**L. Interpretation and Merger.** This Agreement constitutes the entire agreement between the Parties as to the matters addressed herein and there exists no other agreement of any kind, which varies, alters, subtracts from or adds to this Agreement. This Agreement shall be construed according to the fair intent of the language as a whole, not for or against any Party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

**M. Severability.** If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the illegal clause or provision shall be severed, and the remainder of this Agreement shall remain in full force and effect.

**N. Approvals.** The Parties execute this Agreement on the dates set forth below. The signature of each person is an acknowledgement by the Party for whom the person signs that the person signing has the authority to bind the Party to this Agreement.

**O. Termination.** Notwithstanding anything herein to the contrary, in the event that Marathon discontinues operation of one or more of its primary processing units, either party may terminate this agreement upon 30 days' advance written notice to the other party.

**P. No Precedential Effect.** This Agreement represents a compromise of contested positions, and its terms and the methodology it employs shall not have any precedential effect in future administrative or judicial proceedings, including those before the Borough BOE.

**Q. Counterparts and Electronic Signature.** This Agreement may be executed in counterpart, and may be executed by way of facsimile or electronic signature in compliance with AS 09.80, and if so, shall be considered an original.

**KENAI PENINSULA BOROUGH**

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Adeena Wilcox  
Borough Assessor

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Peter A. Micciche  
Borough Mayor

Approved as to form and  
legal sufficiency:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Todd Sherwood  
Deputy Borough Attorney

ATTEST:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Michele Turner  
Acting Borough Clerk

**TESORO ALASKA COMPANY LLC**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Gary Johnson  
VP of Tax