

**FINAL SETTLEMENT & RELEASE AGREEMENT INCLUDING
CONSENT FOR GRANT OF RIGHT-OF-WAY**

This Final Settlement & Release Agreement Including Consent for Grant of Right-of-Way is entered into by and among the Parties (as defined below).

RECITALS

1. WHEREAS, the capitalized terms in the Recitals of this Agreement are defined in the Definition section below, and such definitions are incorporated herein for all purposes;
2. WHEREAS, Tesoro and the MHA Nation previously entered into the Tribal Agreement, which was approved by the Tribal Resolution;
3. WHEREAS, Appendix B to the Tribal Agreement set forth the potential, maximum total compensation payable by Tesoro to the MHA Nation, subject to the terms and conditions of the Tribal Agreement, for past use and occupancy and on an annual basis over the life of the right-of-way granted by the USA pursuant to the Tribal Agreement;
4. WHEREAS, Tesoro and Landowners have been in various negotiations since at least as early as 2017 through the present to try to resolve the disputes and issues related to, among other things, the Pipeline, ROW, Lawsuits, and BIA Proceedings;
5. WHEREAS, numerous Landowners have retained counsel and representatives (including without limitation any persons serving in an expert capacity), including without limitation the law firms (and past, present, and future attorneys and employees thereof) of Kilpatrick Townsend & Stockton LLP, Jenner & Block LLP, and Pringle & Herigstad, PC (collectively, the "Landowners' Counsel" as defined below), since at least as early as 2018 to represent one or more of the Landowners in connection with, among other things, the disputes and issues related to, among other things, the Pipeline, ROW, Lawsuits, and BIA Proceedings, as well as the negotiations with Tesoro related thereto;

accordance with the MHA Executive Action, the total potential compensation that the MHA Nation was to receive from Tesoro over the life of the right-of-way pursuant to the terms and conditions of the Tribal Agreement is reduced to \$35,000,000;

12. WHEREAS, as part of the comprehensive resolution of the disputes and issues described and set forth in this Agreement, Tesoro has further increased by approximately \$2,215,743 the total potential compensation (collectively) paid to the Landowners over the life of the right-of-way as compared to its final offer made to the Landowners in or about January 2021;

13. WHEREAS, as a result of the re-allocation described in Paragraph 11 and the further increased compensation described in Paragraph 12, the total potential compensation (collectively) paid by Tesoro to the Landowners over the life of the right-of-way increased from \$14,006,745 in the January 2021 offer to \$35,000,000 (including fees and expenses to be paid to Landowners' Counsel) pursuant to the terms and conditions of this Agreement;

14. WHEREAS, as part of the comprehensive resolution of the disputes and issues as described and set forth in this Agreement, the total potential compensation paid over the life of the right-of-way pursuant to the terms and conditions of the Tribal Agreement and this Agreement is \$35,000,000 to the MHA Nation and \$35,000,000 collectively to the Landowners (including fees and expenses to be paid to Landowners' Counsel); and

15. WHEREAS, the Lawsuits are among the but-for causes for the Parties reaching this Agreement, and Landowners' Counsel have indicated that the total investment by Landowners' Counsel related to their representation of Landowners, in connection with, among other things, the disputes and issues related to, among other things, the Pipeline, ROW, Lawsuits, and BIA Proceedings, as well as the negotiations with Tesoro related thereto, is expected to equal or exceed \$4,900,000;

16. WHEREAS, in exchange for the receipt of \$4,900,000 directly from Tesoro pursuant to the terms and conditions of this Agreement, Landowners' Counsel have agreed to release and hold harmless from the terms of the Representation Agreements any and all

of any remainder interests with respect to any life tenants) and/or the MHA Nation. "Beneficial Interest" shall also include without limitation, as to any Indian Trust Tract or interest (including undivided interest) therein owned by (including in fee) and/or for the benefit of the MHA Nation and/or one or more Landowners (including owners of any remainder interests with respect to any life tenants) subject to restrictions on alienation in favor of the United States, any and all of the interest (including fee interest) in and to the said Indian Trust Tracts owned by and/or for the benefit of said Landowners (including owners of any remainder interests with respect to any life tenants) and/or the MHA Nation. "Beneficial Interest" shall include any and all interests, including without limitation, present, possessory, and future interests.

21. "Indian Trust Tracts" means any and all of the tracts of land located on the Fort Berthold Indian Reservation, including without limitation in McKenzie County, North Dakota, and Dunn County, North Dakota, in which the Landowners (including owners of any remainder interests with respect to any life tenants) and/or the MHA Nation have a Beneficial Interest, over which the Pipeline and ROW cross, including both the Allotments and the Tribal Tracts, each of which Indian Trust Tracts are more fully described in Appendix A of this Agreement.

22. "Allotments" means any and all of the tracts of land over which the Pipeline and ROW cross, in which surface estate and/or an undivided interest therein of said tracts of land one or more of the Landowners (including owners of any remainder interests with respect to any life tenants) has or acquires a Beneficial Interest; each of which Allotments are more fully described in Appendix A of this Agreement.

23. "Tribal Tracts" means any and all of the tracts of land over which the Pipeline and ROW cross, in which surface estate and/or an undivided interest therein of said tracts of land the MHA Nation has or acquires a Beneficial Interest; each of which Tribal Tracts are more fully described in Appendix A of this Agreement.

Indian Trust Tracts, when taking into consideration the total Tribal Interests, the Landowner Interests, and any fee title interests, shall total 1.00 (in decimal interest format) or 100% (in percent interest format).

31. "ROW Acreage" means the total number of acres of the Indian Trust Tracts' surface that is actually covered by the ROW. For example, if the total acreage for Indian Trust Tract A is 5.0 acres, but the ROW only covers 0.40 acres of Indian Trust Tract A's surface, the ROW Acreage for Indian Trust Tract A would be 0.40 acres.

32. "TSR" or "TSRs" means Title Status Report(s) maintained by the BIA that sets forth, among other things, the title status of the Indian Trust Tracts, including without limitation, the identity of the MHA Nation and/or Landowners (including owners of any remainder interests with respect to any life tenants) who have a Beneficial Interest in the Indian Trust Tract.

33. "ROW" means an easement and right-of-way for the Pipeline, being a strip of land fifty (50) feet in width, twenty-five (25) feet on each side of the centerline of the Pipeline (one hundred (100) feet in width for construction and maintenance or repair or replacement of the Pipeline), over and across the Allotments, as more particularly described in the Grant of Easement for Right-of-Way attached as Appendix B of this Agreement. As more fully described in this Agreement and the Grant of Easement for Right-of-Way attached as Appendix B of this Agreement, the ROW is granted for the purposes of, including but not limited to, siting, accessing, surveying, installing, constructing, operating, maintaining, inspecting, repairing, protecting, improving, expanding, replacing, reconstructing, removing, abandoning in place, and reclaiming the Pipeline, together with the right of ingress and egress.

34. "Pipeline" means the existing and future oil and gas pipeline segment on the Fort Berthold Indian Reservation that crosses over the Indian Trust Tracts and is currently operated by Tesoro, as well as all existing and future appurtenances, equipment, and facilities relating thereto in, over, through, across, under, above, upon, and along the Indian Trust Tracts.

States Court of Appeals for the Eighth Circuit; (iii) Case No. 1:18-CV-00217; *Tex Hall, et al v. Tesoro High Plains Pipeline Company, LLC*; in the United States District Court for the District of North Dakota, Western Division; (iv) Case No. 20-1935; *Tex Hall, et al v. Tesoro High Plains Pipeline Company, LLC*; in the United States Court of Appeals for the Eighth Circuit; and (v) Case No. 1:21-cv-00090; *Tesoro High Plains Pipeline Company, LLC v. United States of America, et al*; in the in the United States District Court for the District of North Dakota, Western Division, including all proposed or actual interventions, joinders, consolidations, counterclaims, and/or cross-claims related thereto.

44. "BIA Proceedings" means the administrative proceedings relating to Tesoro and the Pipeline that have been pending before the Bureau of Indian Affairs, Assistant Secretary – Indian Affairs, Secretary of the Interior, Acting Secretary of the Interior, and/or the Interior Board of Indian Appeals, including without limitation, the administrative proceedings related to the BIA Decisions.

45. "All Claims" means all past, existing, and future claims, demands, causes of action, and lawsuits for all damages, liabilities, remedies, penalties, and/or compensation whatsoever, of any kind or character, whether asserted or unasserted, known or unknown, foreseen or unforeseen, in law and/or equity (including without limitation tribal law), whether in contract or in tort, or arising under or by virtue of any statute or regulation, whether brought directly by the Landowners (including owners of any remainder interests with respect to any life tenants), the MHA Nation, the BIA, and/or the USA or by any other person or entity on behalf of the Landowners (including all of any remainder interests with respect to any life tenants), the MHA Nation, the BIA, and/or the USA (including without limitation the BIA, the USA, and/or the Department of Justice), (i) arising out of or relating to (a) Tesoro's use and/or occupancy of the Indian Trust Tracts in connection with, or relating to, the Pipeline, at any time during the Past Use Period, (b) the Lawsuits and/or BIA Proceedings, and/or (c) the BIA Decisions; and/or (ii) that have been brought or could have been brought against Tesoro, including without limitation, in the Lawsuits

Berthold Agency, identified as ROW No. FBOG101520 and TAAMS Document ID 4200255099, and all attachments thereto.

49. "Prior Landowners Agreements" means prior agreements that Tesoro has entered into with certain Landowners between 2017 and the date of this Agreement wherein Tesoro entered agreements with, and obtained the consents of, certain Landowners for the past use and occupancy of one or more Indian Trust Tracts for the Past Use Period and for grant of a right-of-way across such Indian Trust Tracts with an effective date of such right-of-way commencing June 18, 2013 and remaining in effect, subject to the terms and conditions therein, until June 30, 2041, with such agreements and consents largely, if not exclusively, being obtained via documents entitled and referred to as "Settlement & Release Agreement and Consent for Grant of Right-of-Way".

50. "MHA Executive Action" means, collectively, the Executive Action, EA 2021-26, executed by certain MHA Tribal Business Council Members on or about July 30, 2021, and the subsequent further approval by requisite vote by the MHA Tribal Business Council at their duly-called meeting in or about June 2022.

51. "Required Consent" means the unrevoked written consent, authorization, and agreement to this Agreement (as evidenced by execution of the entirety of the Agreement) by the MHA Nation and a sufficient number of Landowners (including any owners of any remainder interests with respect to any life tenants, if any) with respect to each and every one of the 34 Allotments such that the USA and BIA can issue the Grant of Easement for Right-of-Way in the form and substance attached as Appendix B of this Agreement to Tesoro covering each and every one of the 34 Allotments pursuant to, and in compliance with, the requirements and authorities set forth in 25 U.S.C. §§ 323-328 and 25 C.F.R. Part 169.

52. "Landowner's Counsel" means any and all counsel and representatives (including without limitation any persons serving in an expert capacity) retained by and/or on behalf of one or more Landowners to represent one or more Landowners in connection with, among other

57. The Recitals and Definitions are incorporated herein for all purposes relating to this Agreement.

58. **Required Consent as an Express Condition.** In addition to any other conditions set forth in this Agreement, the force and effect of each of the rights, duties, and obligations in this Agreement are expressly conditioned upon the occurrence of the following (the "Required Consent and ROW Issuance Conditions"):

- A. Full execution of the Agreement by:
 - i. Tesoro,
 - ii. BIA (after obtaining approval of the Agreement from the appropriate authority at the United States Department of the Interior),
 - iii. USA (after obtaining approval of the Agreement from the appropriate authority at the United States Department of Justice),
 - iv. a sufficient number of Landowners (including any owners of any remainder interests with respect to any life tenants) whom the USA and BIA have confirmed constitute a sufficient number to achieve Required Consent, and
 - v. Kilpatrick Townsend & Stockton LLP, Jenner & Block LLP, and Pringle & Herigstad, PC; and
- B. Full execution by Tesoro, MHA Nation, USA, and BIA of an amendment to the Tribal Agreement in a form acceptable to Tesoro, which, at a minimum, amends the terms and conditions of the Tribal Agreement with respect to the future payments to the MHA Nation consistent with Paragraph 65 of this Agreement; and
- C. BIA's and USA's execution, grant, and issuance of an amendment to the Tribal ROW in a form acceptable to Tesoro, which, at a minimum, (i) amends the effective start date of the Tribal ROW from June 19, 2013 to June 18, 2013,

and distribute the Initial Landowners Past Use Payment¹ to the Landowners on a pro-rata basis in accordance with the ROW Acreage and Percent Interest and based on the TSRs.² The Parties acknowledge and agree that the allocation calculation and distribution of the Initial Landowners Past Use Payment shall be the sole and exclusive responsibility of the BIA and USA, and Tesoro shall have no responsibility or liability whatsoever with respect to the allocation calculation and distribution of the Initial Landowners Past Use Payment.

61. **Additional Landowners Past Use Payment.** Within fifteen (15) days of the Required Consent and ROW Issuance Conditions being satisfied in accordance with Paragraph 58 of this Agreement, Tesoro shall make payment to the BIA in the amount of Eighty-Five Thousand Four Hundred Thirty-Six and 00/100 Dollars (\$85,436.00) for the collective benefit of the Landowners (the "Additional Landowners Past Use Payment"). The Parties agree that, upon Tesoro's payment of the Additional Landowners Past Use Payment to the BIA, the BIA shall allocate and distribute the Additional Landowners Past Use Payment to the Landowners on a pro-rata basis in accordance with the ROW Acreage and Percent Interest and based on the TSRs.³ The Parties acknowledge and agree that the allocation calculation and distribution of the Additional Landowners Past Use Payment shall be the sole and exclusive responsibility of the BIA and USA, and Tesoro shall have no responsibility or liability whatsoever with respect to the allocation calculation and distribution of the Additional Landowners Past Use Payment.

¹ All payments made by Tesoro and distributed to Landowners hereunder shall be deposited by the BIA into the Landowners' respective Individual Indian Money ("IIM") accounts, unless the BIA is specifically directed otherwise by particular Landowners.

² For example and for illustration purposes only, assume the total ROW Acreage relating to the Landowner Interests for all Landowners totals 62.67 acres for all Allotments. Further assume a particular Landowner's Percent Interest, according to the TSRs, is 0.45 (in decimal interest format) or 45% (in percent interest format) in a hypothetical Individual Allotment A. Further assume the ROW Acreage of hypothetical Individual Allotment A is 1.25 acres. The hypothetical Landowner in this example would receive \$35,795.66 from the Initial Landowners Past Use Payment based on a calculation of $\$3,988,114.00 \times 1.25 \text{ acres} / 62.67 \text{ acres} \times 0.45$.

³ Using the same hypothetical example as set forth in Footnote 2 for illustration purposes only, the hypothetical Landowner would receive \$766.84 from the Additional Landowners Past Use Payment based on a calculation of $\$85,436.00 \times 1.25 \text{ acres} / 62.67 \text{ acres} \times 0.45$.

July 1, 2027: \$1,486,065 July 1, 2033: \$1,486,065 July 1, 2039: \$1,486,064
July 1, 2040: \$1,486,064

The Parties agree that, upon Tesoro's payment of the Future Landowners ROW Payments to the BIA, the BIA shall allocate and distribute the Future Landowners ROW Payments to the Landowners on a pro-rata basis in accordance with the ROW Acreage and Percent Interest and based on the TSRs.⁵ The Parties acknowledge and agree that the allocation calculation and distribution of the Future Landowners ROW Payments shall be the sole and exclusive responsibility of the BIA and USA, and Tesoro shall have no responsibility or liability whatsoever with respect to the allocation calculation and distribution of the Future Landowners ROW Payments. The Parties further acknowledge and agree that the Future Landowners ROW Payments shall cover each of the periods noted above, commencing on July 1 of said year of the payment through June 30 of the following year (e.g., the payment for July 1, 2022 will cover the period of July 1, 2022 through June 30, 2023).

64. **Conditional Payment Guaranty.** The Parties acknowledge and agree that MPLX LP shall guaranty that the Initial Landowners ROW Payment and Future Landowners ROW Payments are made to the Landowners in the event Tesoro High Plains Pipeline Company, LLC becomes insolvent, however such payment obligations (and MPLX LP's guaranty of the payment

⁵ Using the same hypothetical example as set forth in Footnote 2 for illustration purposes only, for the Future Landowners ROW Payments shown in Paragraph 63 of this Agreement in the amount of \$911,065 to be due in 2022-2025, the hypothetical Landowner would receive \$8,177.34 from the Future Landowners ROW Payments for each of those years based on a calculation of $\$911,065 \times 1.25 \text{ acres} / 62.67 \text{ acres} \times 0.45$; for the Future Landowners ROW Payments shown in Paragraph 63 of this Agreement in the amount of \$1,186,065 to be due in 2026, the hypothetical Landowner would receive \$10,645.63 from the Future Landowners ROW Payments for that year based on a calculation of $\$1,186,065 \times 1.25 \text{ acres} / 62.67 \text{ acres} \times 0.45$; for the Future Landowners ROW Payments shown in Paragraph 63 of this Agreement in the amount of \$1,486,065 to be due in 2027-2038, the hypothetical Landowner would receive \$13,338.30 from the Future Landowners ROW Payments for each of those years based on a calculation of $\$1,486,065 \times 1.25 \text{ acres} / 62.67 \text{ acres} \times 0.45$; and for the Future Landowners ROW Payments shown in Paragraph 63 of this Agreement in the amount of \$1,486,064 to be due in 2039-2040, the hypothetical Landowner would receive \$13,338.30 from the Future Landowners ROW Payments for each of those years based on a calculation of $\$1,486,064 \times 1.25 \text{ acres} / 62.67 \text{ acres} \times 0.45$.

Agreement. All other terms and conditions of the Tribal Agreement shall remain the same and shall remain in force and effect.

66. **Fees and Expenses.** Within fifteen (15) days of the Required Consent and ROW Issuance Conditions being satisfied in accordance with Paragraph 58 of this Agreement, Tesoro shall make total payments to and/or for the collective benefit of Kilpatrick Townsend & Stockton LLP, Jenner & Block LLP, and Pringle & Herigstad, PC in the amount of \$2,300,000, and then in the following amounts and by the dates set forth below (the initial payment in the amount of \$2,300,000 and the payments set forth in the table immediately below collectively referred to hereinafter as the "Payments for Fees and Expenses"):

July 1, 2022: \$575,000

July 1, 2023: \$575,000

July 1, 2024: \$575,000

July 1, 2025: \$575,000

July 1, 2026: \$300,000

The Parties agree that the portions of each of the Payments for Fees and Expenses to be paid by Tesoro to Kilpatrick Townsend & Stockton LLP, Jenner & Block LLP, and/or Pringle & Herigstad, PC, respectively, shall be made in accordance with the allocation of such Payments for Fees and Expenses that is agreed upon by and between Kilpatrick Townsend & Stockton LLP, Jenner & Block LLP, and Pringle & Herigstad, PC, and such allocation shall be set forth in a notification provided to Tesoro in writing and signed by each of Kilpatrick Townsend & Stockton LLP, Jenner & Block LLP, and Pringle & Herigstad, PC. If such written and fully-executed notification has not been received by Tesoro at least 30 days prior to the date of one or more of the Payments for Fees and Expenses, then Tesoro shall deposit such funds when due and payable in accordance with the schedule set forth above in this Paragraph into an interest bearing account of Tesoro's choice (the "Deposited Funds"). The Deposited Funds shall not be released,

whatsoever to the subject matter of this Agreement, and (ii) any purported liens and/or encumbrances previously asserted with respect to the Indian Trust Tracts in connection with any claim of attorneys' fees and expenses are FULLY and FOREVER RELEASED, WITHDRAWN, and DISCHARGED.

67. **Landowners' Consent for Grant of Easement for Right-of-Way.** By signing this Agreement (including by signing the BIA Consent Form as described in Paragraph 81 of this Agreement), each of the undersigned Landowners (including owners of any remainder interests with respect to any life tenants) agrees, authorizes, grants, and consents to the execution, issuance, and grant by the USA and BIA (including without limitation, by the Secretary of the Interior, acting through the BIA pursuant to the authority of 25 U.S.C. §§ 323-328 and 25 C.F.R. Part 169) of the ROW to Tesoro (including Tesoro's successors and assigns) over and across the Allotments set forth in Appendix A to this Agreement, including without limitation, in the form and substance of the Grant of Easement for Right-of-Way attached as Appendix B to this Agreement; and each of the Landowners (including all owners of any remainder interests with respect to any life tenants) further agrees and consents to each of the terms and conditions set forth in the Grant of Easement for Right-of-Way attached as Appendix B to this Agreement, including without limitation, the ROW purposes and term (effective June 18, 2013 through June 30, 2041 subject to the terms and conditions) set forth in the Grant of Easement for Right-of-Way attached as Appendix B to this Agreement. By signing this Agreement, the BIA and USA agree that within twenty (20) days of the later of (i) USA and BIA confirming that a sufficient number of Landowners (including any owners of any remainder interests with respect to any life tenants) have executed the Agreement to achieve Required Consent and (ii) receipt from Tesoro of a complete application (except bond, insurance, or alternative form of security) pursuant to 25 CFR § 169.102, the BIA and USA shall execute, grant, and issue the Grant of Easement for Right-of-Way in the form and substance attached as Appendix B of this Agreement, covering each and all

Acreage as determined by the BIA and used in its allocation calculation and distribution shall control and satisfy any and all obligations of Tesoro with respect to such payments and any and all liabilities and obligations relating thereto;

- B. Each of the Landowners (including each of the owners of any remainder interests with respect to any life tenants) (on behalf of himself/herself and his/her predecessors and successors in interest, heirs, devisees, successors, and assigns) authorizes the USA and BIA to accept—and the BIA and USA hereby agrees to accept for and on behalf of all Landowners (including all owners of any remainder interests with respect to any life tenants) and each of the Landowners' and remaindermen's predecessors and successors in interest, heirs, devisees, successors, and assigns—the compensation set forth in Paragraphs 62-63 of this Agreement (the Initial Landowners ROW Payment and Future Landowners ROW Payments), subject to the terms and conditions of this Agreement, in full consideration for the grant of the ROW as described in this Agreement (including without limitation Appendix B to this Agreement), and each of the Landowners (including each of the owners of any remainder interests with respect to any life tenants) acknowledges and agrees that the amounts of compensation set forth in Paragraphs 62-63 of this Agreement are the total compensation to be paid for all Landowners' (including owners of any remainder interests with respect to any life tenants) combined Beneficial Interest (and not the individual amount to be received by each of the Landowners);
- C. Each of the Landowners' pro-rata portion of the compensation set forth in Paragraphs 62-63 of this Agreement (the Initial Landowners ROW Payment

- H. The ROW may be assigned or transferred by Tesoro without further Landowners' or remaindermen's consent or BIA approval, provided that Tesoro will provide written confirmation to BIA of any such transfer or assignment, provided that the payment obligations hereunder follow the assignment (and the payment obligations shall remain subject to the same terms and conditions of this Agreement); and if Tesoro's payment obligations hereunder are not assumed by the assignee or transferee, Tesoro shall continue to retain responsibility for the payment obligations (and the payment obligations shall remain subject to the same terms and conditions of this Agreement, e.g., the payment obligations shall exist for so long as the Grant of Easement for Right-of-Way remains in effect subject to its terms and conditions); and
- I. The foregoing compensation (the Initial Landowners ROW Payment and Future Landowners ROW Payments) is all of the compensation and monies that Landowners (including the owners of any remainder interests with respect to any life tenants), the BIA, and USA will be paid in consideration for, or related to, the BIA's grant of the ROW.

70. **Landowners' Settlement and Release Agreement.** By signing this Agreement (including by signing the BIA Consent Form as described in Paragraph 81 of this Agreement), each of the Landowners (including each of the owners of any remainder interests with respect to any life tenants) (on behalf of himself/herself and his/her predecessors and successors in interest, heirs, devisees, successors, and assigns), as well as the BIA and USA for itself and for and on behalf of all Landowners (including each of the owners of any remainder interests with respect to any life tenants) (and each of the Landowners' and remaindermen's predecessors and successors in interest, heirs, devisees, successors, and assigns), further consent, agree, and acknowledge as follows:

and assigns) authorizes the USA and BIA to accept—and the BIA and USA hereby agrees to accept for and on behalf of all Landowners (including each of the owners of any remainder interests with respect to any life tenants) and each Landowners' and remaindermen's predecessors and successors in interest, heirs, devisees, successors, and assigns—the compensation set forth in Paragraphs 60-61 of this Agreement (the Initial Landowners Past Use Payment and the Additional Landowners Past Use Payment), which shall constitute full and final consideration and compensation (including without limitation all interest, damages, and penalties), including their predecessors and successors in interest, heirs, devisees, successors, and assigns, for All Claims, including without limitation any and all past use and occupancy of the Indian Trust Tracts during the Past Use Period by Tesoro (including its predecessors in interest), and each of the Landowners (including each of the owners of any remainder interests with respect to any life tenants) (on behalf of himself/herself and his/her predecessors and successors in interest, heirs, devisees, successors, and assigns) acknowledges and agrees that the amounts of compensation set forth in Paragraphs 60-61 of this Agreement are the total compensation to be paid for all Landowners' (including owners of any remainder interests with respect to any life tenants) combined Beneficial Interest (and not the individual amount to be received by each of the Landowners).

- D. Each of the Landowners' pro-rata portion of the compensation set forth in Paragraphs 60-61 of this Agreement (the Initial Landowners Past Use Payment and the Additional Landowners Past Use Payment), as calculated, allocated, and distributed by the BIA subject to the terms and conditions of this

respect to such payments and any and all liabilities and obligations relating thereto;

H. The foregoing compensation (the Initial Landowners Past Use Payment and the Additional Landowners Past Use Payment) is all of the compensation and monies that Landowners (including owners of any remainder interests with respect to any life tenants), BIA, and USA will be paid in consideration for, or related to, All Claims, including without limitation any and all past use and occupancy of the Indian Trust Tracts during the Past Use Period by Tesoro (including its predecessors in interest).

71. **COVENANT TO NOT SUE.** Landowners (including owners of any remainder interests with respect to any life tenants) (including their predecessors and successors in interest, heirs, devisees, successors, and assigns), and the BIA and USA on behalf of Landowners (including owners of any remainder interests with respect to any life tenants) (including their predecessors and successors in interest, heirs, devisees, successors, and assigns), immediately and irrevocably covenant and agree to not prosecute or cause to be prosecuted against Tesoro any claim, lawsuit (including any class action lawsuit), action, or proceeding, of any kind or description, in any court, administrative, tribunal, or other forum, whether at law or in equity, arising out of or relating to All Claims; not join or participate as a party or class member in any claim, lawsuit (including any class action lawsuit), action, or proceeding, of any kind or description, in any court, administrative, tribunal, or other forum, whether at law or in equity, arising out of or relating to All Claims; not solicit others to institute any such claims, lawsuits, actions, or proceedings; and not to consent to be a complainant in any civil action or proceeding against Tesoro arising out of or relating to All Claims.

72. **DISMISSAL OF ANY AND ALL PENDING CLAIMS AND BIA PROCEEDINGS.**
To the extent Landowners (or the BIA or USA as trustee or representative on behalf of

during the Past Use Period. In the event action is not taken to dismiss such lawsuit if required by the preceding sentence, Tesoro shall not object to or otherwise oppose any filing by Landowners (including owners of any remainder interests with respect to any life tenants) and the USA and BIA on behalf of Landowners (including owners of any remainder interests with respect to any life tenants), their successors or assigns, seeking to dismiss this lawsuit.

73. **IRREVOCABILITY.** The Parties acknowledge and agree that the consents, agreements, and acknowledgements set forth in this Agreement shall not be revocable upon the Required Consent and ROW Issuance Conditions being satisfied in accordance with Paragraph 58 of this Agreement.

74. **NO ADMISSION.** The Parties acknowledge and agree that neither the offer nor payment of any consideration described in this Agreement shall be considered as an admission of liability on the part of Tesoro. Tesoro denies any and all liability. Tesoro further denies that this Agreement can be admissible in any action or proceeding or used in connection with any fair market valuation determination, including because the entirety of the Agreement reflects and arises out of the settlement and compromise of disputed claims. The Parties agree that the foregoing provisions shall not prevent any of the Parties from seeking to admit the Agreement into evidence in any action or proceeding to enforce this Agreement.

75. **USA'S AND BIA'S REPRESENTATIONS, WARRANTIES, AND FURTHER ASSURANCES.** The USA and BIA represent and warrant to Tesoro that the USA by and through the BIA is duly-authorized as trustee on behalf of all Landowners (including owners of any remainder interests with respect to any life tenants) with respect to the Indian Trust Tracts and it has requisite authority to enter into this Agreement, including without limitation Paragraphs 70-72, and also has requisite authority to (i) release, acquit, and forever discharge Tesoro from All Claims for and on behalf of all Landowners (including owners of any remainder interests with

Winston-Salem, NC 27101
&
Keith Harper
Jenner & Block LP
1099 New York Ave., NW
Suite 900
Washington, D.C. 20001-4412

For Kilpatrick Townsend & Stockton LLP:
Dustin T. Greene
1001 W. Fourth St.
Winston-Salem, NC 27101

For Jenner & Block LLP:
Keith Harper
1099 New York Ave., NW
Suite 900
Washington, D.C. 20001-4412

For USA:
Office of the Director, Bureau of Indian Affairs
United States Department of the Interior
1849 C Street NW
Washington DC 20240

For BIA:
Timothy LaPointe, Regional Director
Bureau of Indian Affairs, Great Plains
115 4th Avenue SE, Suite 400
Aberdeen, South Dakota 57401

For USA's and BIA's Counsel:

Peter Kryn Dykema
Natural Resources Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Samuel D. Gollis
Indian Resources Section
Environment and Natural Resources Division
United States Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202

Michael D. Schoepf
Assistant United States Attorney
P.O. Box 699
Bismarck, ND 58502-0699

that execution of the BIA Consent Form shall be deemed for all purposes to be said Landowners execution of and agreement to this Agreement.

AGREED TO IN ITS ENTIRETY:

Tesoro High Plains Pipeline Company, LLC

By:

Signature _____

Date _____

Printed Name:

United States of America, Department of the Interior, Bureau of Indian Affairs

By:

Signature _____

Date _____

Printed Name:

Title:

Kilpatrick Townsend & Stockton LLP

By:

Signature _____

Date _____

Printed Name:

Jenner & Block LLP

By:

Signature _____

Date _____

Printed Name:

Pringle & Herigstad, PC

By:

Signature _____

Date _____

Printed Name:

Allotments

<u>Tract #</u>	<u>Land Description</u>
	<u>Township 149 North, Range 95 West, 5th P.M.</u>
1793	Section 25: Lot 8, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 36: N $\frac{1}{2}$ NE $\frac{1}{4}$
1794	Section 36: N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ <u>Township 149 North, Range 94 West, 5th P.M.</u>
1791	Section 31: Lots 2, 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$
715A	Section 31: SE $\frac{1}{4}$
	<u>Township 148 North, Range 95 West, 5th P.M.</u>
355A	Section 2: Lots 3, 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$
880A-D	Section 2: W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$
880A-B	Section 2: N $\frac{1}{2}$ SE $\frac{1}{4}$
881A-B	Section 12: NE $\frac{1}{4}$ NW $\frac{1}{4}$
717A	Section 12: NE $\frac{1}{4}$
1001A	Section 12: NE $\frac{1}{4}$ SE $\frac{1}{4}$
	<u>Township 148 North, Range 94 West, 5th P.M.</u>
2206-B	Section 7: Lots 3, 4
2206-A	Section 7: SE $\frac{1}{4}$ SW $\frac{1}{4}$
940A	Section 17: W $\frac{1}{2}$
1761	Section 17: SE $\frac{1}{4}$
2098-C	Section 21: SE $\frac{1}{4}$ NW $\frac{1}{4}$
1086A	Section 21: NE $\frac{1}{4}$ SW $\frac{1}{4}$
1127A-C	Section 21: NW $\frac{1}{4}$ SE $\frac{1}{4}$
1127A-D	Section 21: NE $\frac{1}{4}$ SE $\frac{1}{4}$
1127A-F	Section 21: SE $\frac{1}{4}$ SE $\frac{1}{4}$

Tract #	Land Description
T1108A-A	Section 18: NE $\frac{1}{4}$
T2098-D	Section 20: NE $\frac{1}{4}$ NE $\frac{1}{4}$
T2098-B	Section 21: W $\frac{1}{2}$ NW $\frac{1}{4}$
T1012A-A	Section 35: NE $\frac{1}{4}$
T1120A	Section 35: SE $\frac{1}{4}$ Section 36: SW $\frac{1}{4}$
<i><u>Township 147 North, Range 93 West, 5th P.M.</u></i>	
T1827	Section 17: W $\frac{1}{2}$ SE $\frac{1}{4}$
T1950	Section 20: W $\frac{1}{2}$ NE $\frac{1}{4}$
T5343	Section 20: 22.5 acre tract in N $\frac{1}{2}$ S $\frac{1}{2}$ S $\frac{1}{2}$

BIA TAAMS No. _____

Tract No(s). _____

Tribal Tract No(s). _____

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Agency Name and Address

GRANT OF RIGHT-OF-WAY

The United States of America, acting by and through the Bureau of Indian Affairs, Department of the Interior, Fort Berthold Agency, P.O. Box 370, New Town, North Dakota 58763, for, and on behalf and with the consent of the Indian Landowners (the GRANTOR), under authority contained and under the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328); and Part 169, Title 25, *Code of Federal Regulations*, which by reference are made a part hereof, does hereby grant to: Tesoro High Plains Pipeline Company, LLC, 200 East Hardin St., Findlay, OH 45840 (the GRANTEE).

1. **GRANT.** Subject to the terms, conditions, and restrictions set forth herein and in the Final Settlement & Release Agreement Including Consent of Grant for Right-of-Way dated _____ (the "Final Settlement Agreement"), the terms and conditions of which are incorporated herein and made a part hereof, including as described in Paragraph 63 of the Final Settlement Agreement, and in consideration of sufficient compensation payable to the BIA on behalf of the landowners in the context of a settlement and compromise of disputed claims, which includes certain payments to be paid in the first ten Future Landowners ROW Payments (*i.e.*, those Future Landowners ROW Payments that are due through and including July 1, 2031), and one or more additional Future Landowners ROW Payments to be paid after July 1, 2031 in the absence of surrender of this right-of-way as described below in paragraph 3,

GRANTOR does hereby grant to GRANTEE, a right-of-way fifty feet (50') in width (expanding to one hundred feet (100') in width as necessary during periods of construction, maintenance and repair of the pipeline), twenty five (25) feet on either side of the following described centerline, for purposes of siting, surveying, constructing, installing, operating, inspecting, maintaining, protecting, repairing, improving, expanding, replacing, reconstructing, removing or abandoning in place, and reclaiming one pipeline and any improvements appurtenances, equipment, or facilities (collectively, the "Appurtenances") incident thereto, together with rights of ingress and egress (including over and across all existing roads and trails) for said purposes, over and across the following described land:

Tract #	Land Description ⁷
<u>Township 149 North, Range 95 West, 5th P.M.</u>	

⁷ The Grant of Right-of-Way that is ultimately issued by the BIA shall be in the same form and substance as reflected in this Appendix B, except only that the general Land Descriptions (e.g., "Section 25: Lot 8,

Tract #	Land Description ⁷
2133	Section 17: SE¼NW¼
1734	Section 17: E½SW¼
1949	Section 20: NW¼SE¼

This right-of-way is limited to and more particularly described to be [redacted] acres in area, as shown on the maps and plats attached hereto and made a part hereof.⁸

2. **TERM.** Subject to the cancellation and surrender provision below, this right-of-way is for a term, effective June 18, 2013 and ending on June 30, 2041, so long as the right-of-way is used for the purpose above specified.

3. **CANCELLATION AND SURRENDER.** This right-of-way may be cancelled in whole or in part by the GRANTOR (25 CFR 169.404) only for the following causes upon 30 days written notice, and failure of the GRANTEE within said notice period to correct the basis for cancellation (25 CFR 169.405):

- A. Failure to comply with any term or condition of the Grant, or the applicable regulations.
- B. A non-use of the right-of-way for any consecutive two-year period (for the purpose for which it was granted).

Surrender: GRANTEE may affirmatively relinquish this right-of-way upon twelve (12) month's prior written notice to GRANTOR, which notice will terminate the effect of this right-of-way upon the effective date of the relinquishment, and thereafter the effective date of relinquishment GRANTEE shall be relieved from all further unaccrued obligations under this right-of-way, including the Final Settlement Agreement, SAVE AND EXCEPT ONLY: (i) GRANTEE's obligation to make the first ten Future Landowners ROW Payments that are reflected in Paragraph 63 of the Final Settlement Agreement (*i.e.*, those Future Landowners ROW Payments that are due through and including July 1, 2031), which first ten Future Landowners ROW Payments shall still be made by GRANTEE in the amounts and on the dates reflected in Paragraph 63 of the Final Settlement Agreement; and (ii) GRANTEE's obligation to make the Payments for Fees and Expenses as set forth in Paragraph 66 of the Final Settlement Agreement.

4. **MITIGATION MEASURES.** (25 CFR 169.123) The GRANTEE agrees to comply with any mitigation measures or conditions described to protect environmental, biological and cultural resources within the right-of-way area as defined in the environmental compliance documentation and this grant.

5. **RESERVATION OF JURISDICTION.** (25 CFR 169.10, 169.125) The Three Affiliated Tribes of the Fort Berthold Reservation ("Tribe") maintains its existing jurisdiction over the land, activities, and persons within the right-of-way and this grant does not diminish to any extent: (a) the Tribe's power to tax the land, any improvements on the land, or any person or activity within, the right-of-way; (b) the Tribe's authority to enforce tribal law of general or particular application on the land subject to and within the right-of-way, as if there were no grant of right-of-way; (c) the Tribe's inherent sovereign power to exercise civil jurisdiction over non-members on Indian land; or (d)

⁸ The total acreage and maps and plats shall be filled in and attached based on the metes and bounds Land Descriptions described in footnote 7 and approved by the BIA.

- (ix) Restore the surface to its original condition, as much as reasonably possible, upon cancellation or termination of the right-of-way;
 - (x) At all times keep the BIA, and the Tribe for tribal land, informed of the grantee's address;
 - (xi) Refrain from interfering with the landowner's use of the land, provided that the landowner's use of the land is not inconsistent with the right-of-way;
 - (xii) Notify the BIA, and the Tribe for tribal land, if it files for bankruptcy or is placed in receivership.
6. Unless GRANTEE would be prohibited by law from doing so, GRANTEE must also:
- (i) Hold the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the applicant's use or occupation of the premises; and
 - (ii) Indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the premises that occurs during the term of the grant, regardless of fault, with the exception that the applicant is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct.
7. **ENCROACHMENT (25 CFR 169.128).** GRANTEE may not unreasonably withhold its consent for a new right-of-way within its existing right-of-way that does not interfere with the use or purpose of its right-of-way.
8. **PERMANENT IMPROVEMENTS (25 CFR 169.130).** Notwithstanding any rule of law or equity, unless otherwise sold, assigned, or conveyed to another party, GRANTEE shall be and shall remain the owner of the pipeline and Appurtenances placed within the right-of-way. For the purpose of minimizing surface disturbance and avoiding economic waste, GRANTEE shall have twelve (12) months from the expiration, termination, or cancellation of this grant in which to purge and abandon the pipeline and underground Appurtenances in place in accordance with industry standards and all applicable law. GRANTEE shall remove all above-ground Appurtenances and restore the surface of premises within said twelve (12) months.
9. **AMENDMENT.** This grant may not be amended except as provided in 25 CFR 169.204 - 169.206.
10. **ASSIGNMENT (25 CFR 169.207).** This grant may be assigned without consent of the Indian landowner(s) and without BIA approval. Within 30 days, a copy of the assignment and supporting documents will be sent to BIA for recording in the LTRO.
11. **MORTGAGE (25 CFR 169.210).** This grant may be mortgaged without consent of the Indian landowner(s) and without BIA approval. Within 30 days, a copy of the mortgage and supporting documents will be sent to BIA for recording in the LTRO.
12. **EFFECTIVE DATE (25 CFR 169.301).** Upon BIA approval, this grant will be effective June 18, 2013 and end on June 30, 2041.

Summary of Proposed Settlement Offer

1. Trespass Payment: \$4,464,775

- Tesoro would pay a total of \$4,464,775 to the Landowners for Tesoro's trespass. This payment will be made within fifteen (15) days after the settlement is final.

2. Future Right-of-Way Payment: \$25,635,233

- The settlement would grant Tesoro a new right-of-way and would cover the period June 18, 2013, through June 30, 2041. The attached table shows the annual payments Tesoro would make.
- Tesoro may cancel its right-of-way agreement by providing 12 months' notice to the Landowners but the payment of \$12,260,650 to be paid to the Landowners in annual installments as shown in the attached table for the first ten (10) years are guaranteed.
- The total compensation for the remaining ten (10) years is \$13,374,583, which would be paid in annual installments by Tesoro unless Tesoro chooses to terminate the right-of-way agreement.

3. Attorneys' Fees

- Tesoro will also pay a total of \$4,900,000 to the law firms of Kilpatrick Townsend & Stockton, LLP, Jenner & Block LLP, and Pringle & Herigstad, P.C.
- The \$4,900,000 payment represents the total compensation the law firms will receive for their services. The law firms have agreed to release their clients from any obligation to pay fees, costs, or expenses in relation to their work on this matter.

4. Litigation

- If there are a sufficient number of consents to the settlement proposal, all of the lawsuits relating to Tesoro's trespass will be dismissed.
- If there are not a sufficient number of consents to the settlement proposal, all of the lawsuits are expected to continue. The United States would continue to pursue its trespass counterclaim against Tesoro.

Effect of Accepting or Declining the Settlement Offer

If a sufficient number of landowners ACCEPT the settlement offer:

- You would be guaranteed to receive a portion of the trespass payment of \$4,464,775 based on your ownership interest.
- You would also receive annual payments for the new right-of-way and would be guaranteed to receive a portion of the annual payments made during the first 10 years of the right-of-way (\$12,260,650.00) based on your ownership interest.
- If Tesoro continues to operate the Pipeline beyond the first 10 years of the right-of-way, you would continue to be paid annually based on your ownership interest for each year Tesoro operates the Pipeline.
- Tesoro may terminate the right-of-way upon 12 months' notice and while payment for the first 10 years is guaranteed, payment in the remaining years are only guaranteed if Tesoro continues operating the Pipeline.
- Tesoro may continue operating the Pipeline until June 30, 2041.
- You would agree – as the Tribe has agreed – that Tesoro may leave the Pipeline in place upon the termination of operations. *See* Appendix B paragraph 8.
- You would agree – as the Tribe has agreed – that Tesoro may assign the right-of-way. *See* Appendix B paragraph 10.
- You would agree – as the Tribe has agreed – that Tesoro may have the right to mortgage the right-way. *See* Appendix B paragraph 11.
- You would agree to waive all past claims relating to the right-of-way (excluding environmental claims) for the period June 18, 1993, to the present.

If there are not enough consents to the settlement offer:

- Tesoro would not receive a new right-of-way and you would not receive payment for a new right-of-way.
- Payment amounts for Tesoro's trespass would be determined by the court in the future.
- The United States would continue to pursue the trespass counterclaim it filed against Tesoro in Federal Court in North Dakota.