

Date: March 11, 2024
 To: Weber County Board of County Commissioners
 From: Sean Wilkinson, AICP *SW*
 Director, Community Development Department

Subject: **Request for approval of an encroachment agreement between Weber County, Tesoro Logistics Northwest Pipeline LLC, and BLBP JV, LLC relating to a small portion of 2350 N Street that crosses a Tesoro pipeline**

Agenda Date: March 19, 2024

Documents: Exhibit A – Encroachment Agreement

Summary: BLBP JV, LLC (BLBP) is working to develop Parcel # 19-042-0078 located in Farr West City. The access to this parcel is from 2350 North Street in the Weber Industrial Park. 2350 North is not fully improved yet, and BLBP would like to improve and extend the road to its property. However, the new section of road crosses a Tesoro pipeline, and Tesoro requires an encroachment agreement for the road to be located on its property. The agreement requires BLBP to construct and maintain the new road and allows Weber County to operate and use it as a public roadway, open to the general public for ingress, egress, and general vehicular traffic.

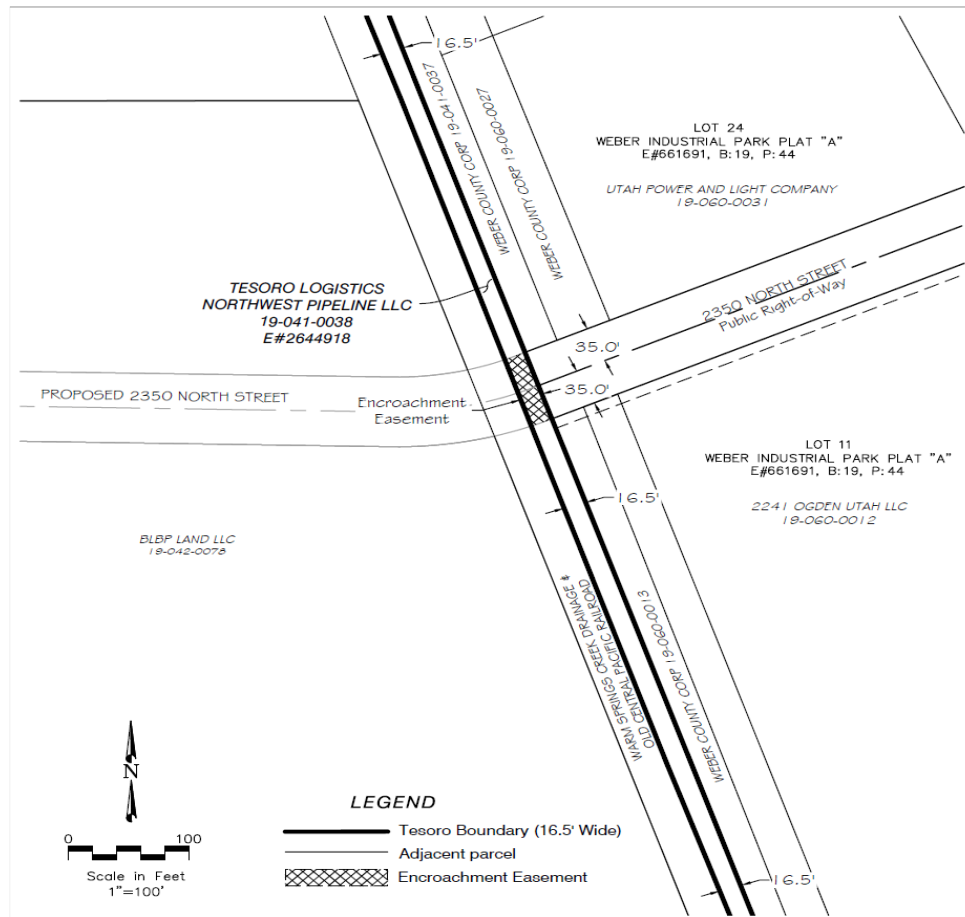


Exhibit A

After recording return to:

Dentons Durham Jones Pinegar P.C.
Attn: Brian Cheney
3301 N. Thanksgiving Way, Ste. 400
Lehi, UT 84043

T&C File No.: _____
Parcel Nos.: 190410038; 190420078

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this “**Agreement**”) is entered into this ____ day of February, 2024 (“**Effective Date**”) by and between Tesoro Logistics Northwest Pipeline LLC, a Delaware limited liability company (“**TESORO**”), Weber County, a political subdivision of the State of Utah (“**REQUESTER**”), and BLBP JV, LLC, a Utah limited liability company (“**BLBP**”). As used herein, “**Party**” means TESORO, REQUESTER or BLBP, as applicable, and “**Parties**” means all of them collectively.

- A. TESORO is the owner of the real property identified as Weber County Parcel 190410038 as further described in that deed recorded on July 11, 2013 entry 2644918 as located in the Official Records of the Weber County Recorder (the “**Tesoro Property**”).
- B. BLBP is the owner of that certain real property identified as Weber County Parcel 190420078 as further described in that special warranty deed recorded on June 15, 2023 as entry 3287254 as located in the Official Records of the Weber County Recorder (the “**BLBP Property**”).
- C. REQUESTER is or will be the owner of a certain public roadway to be constructed on the BLBP Property known as 2350 North Street (the “**Road**”), a portion of which will be located on the Tesoro Property as shown on Exhibit A attached hereto, and desires to permanently encroach upon the Tesoro Property as further described below.
- D. TESORO is willing to allow such encroachment subject to the limitations and restrictions set forth in this Agreement.

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, and intending to be legally bound, REQUESTER, TESORO and BLBP agree to the preamble, the recitals, and the following:

ARTICLE 1 – DEFINITIONS

- 1.1 These capitalized terms have the following meanings:

“**Encroachment**” means the Road, as depicted on Exhibit A.

“**Encroachment Area**” means the portion of the Tesoro Property upon which the Encroachment is permitted to sit pursuant to the terms of this Agreement but only as depicted on Exhibit A.

ARTICLE 2 - ENCROACHMENT

- 2.1 Subject to the terms of this Agreement, BLBP may construct and maintain, and REQUESTER may operate and use, the Encroachment upon the Encroachment Area as provided in this Agreement.
- 2.2 REQUESTER and BLBP may each use and occupy the Encroachment Area to the extent necessary to construct and maintain (for BLBP) and operate and use (for REQUESTER) the Encroachment as a portion of the public roadway in accordance with the REQUESTER’s standards, and such use or occupancy is not exclusive, it being understood that BLBP will complete the initial construction of the Encroachment. The Encroachment will be used by the general public for ingress and egress and general vehicular traffic consistent with other public roadways owned by REQUESTER. REQUESTER and BLBP may not extend, expand, or alter the footprint of the Encroachment without the prior written consent of TESORO, which will be memorialized by amendment of this Agreement.
- 2.3 BLBP will construct and maintain the Encroachment and use the Encroachment Area subject to these specifications:
- (a) Any change to the elevation of, or drainage anywhere on, the Encroachment Area shall require TESORO’s prior written consent, which TESORO may withhold or condition in its sole discretion. BLBP or its successors-in-interest to the BLBP Property will be solely responsible for, and will bear the expense of repairs attributable to, any loss of subjacent or lateral support to the Encroachment Area and/or TESORO’s pipeline or facilities caused by the Encroachment.
 - (b) BLBP will place a ‘one call’ two (2) business days prior to beginning work upon the Encroachment Area.
- 2.4 If REQUESTER or BLBP removes all or a portion of the Encroachment, the owner of the BLBP Property will repair and restore the Encroachment Area to its original condition.
- 2.5 REQUESTER and BLBP will each (as applicable) ensure that the Encroachment and any associated activities comply with Law and this Agreement. As used in this Agreement, “**Law**” means any applicable treaty, constitution, charter, act, statute, federal, state and local laws, ordinance, code, rule, regulation, resolution, permit, order, decree, mandate, injunction, writ, directive, interpretation, or final non-appealable judgment adopted, enacted, issued, promulgated or ratified by any governmental entity, including tribal entities, and having the force of law.

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- 2.6 If the Encroachment interferes with TESORO's operations, use and enjoyment of the Tesoro Property, or TESORO's ability to maintain its rights thereunder, at TESORO's sole option, BLBP will promptly upon written notice from TESORO (a) temporarily remove or relocate all or part of the Encroachment at BLBP's sole cost; or (b) reimburse TESORO for relocating all or part of the Encroachment. Except as provided in Section 3.2, REQUESTER and BLBP each acknowledge that TESORO will not be responsible for any damages to the Encroachment caused by TESORO or its designees.
- 2.7 In exchange for the Encroachment granted herein, BLBP will pay TESORO \$ _____ due and owing upon execution of this Agreement.

ARTICLE 3 - WAIVER

- 3.1 BLBP and REQUESTER each understand that TESORO uses and maintains active operations on the Tesoro Property. BLBP and REQUESTER each hereby waives, releases, and forever discharges all Claims (as defined below) against TESORO for business interruption or delays, lost profits or revenue, lost commercial opportunities or other similar damages arising or resulting from TESORO exercising its rights under this Agreement or its use and enjoyment of the Tesoro Property.
- 3.2 TESORO and its designees will, from time to time, conduct activities in close proximity to the Encroachment. BLBP and REQUESTER each hereby waives, releases, and forever discharges all Claims against TESORO for damage to the Encroachment caused by TESORO or its designees, except for damages to the Encroachment caused by the gross negligence or willful misconduct of TESORO or its designees.
- 3.3 **"Claims"** means all claims or causes of action of any nature, whether known or unknown, that (a) relate to the Agreement, (b) sound in law or in equity, whether in contract or tort, or are based upon fraud or misrepresentation, breach of duty, common law, or arise under or by virtue of any judicial decision, constitutional provision, statute or regulation, and (c) are for damages, including, actual, consequential, punitive or exemplary damages, costs, expenses, interest, demands, suits, reasonable attorneys' fees, losses, injuries, injunctive relief, or other remedies of any nature, whether equitable or legal.

ARTICLE 4 – DEFAULT; TERMINATION

- 4.1 If either REQUESTER or BLBP breaches the provisions of this Agreement, TESORO may terminate this Agreement and pursue available remedies of any nature, whether equitable or legal. REQUESTER and BLBP each consent to TESORO seeking injunctive relief or an emergency order to enforce the provisions of this Agreement, or prevent breach thereof, without the necessity to post a bond.
- 4.2 Nothing contained herein will be deemed to constitute any warranty or representation by TESORO as to its authority to permit the Encroachment upon the Encroachment Area, except regarding TESORO's rights as set forth in this Agreement that may restrict the

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Encroachment. REQUESTER's obligations under this Section will survive termination of this Agreement.

ARTICLE 5 – INDEMNITY

5.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, BLBP WILL PROTECT, INDEMNIFY, HOLD HARMLESS, RELEASE, DISCHARGE AND DEFEND TESORO, ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND INVITEES, JOINTLY AND SEVERALLY, FROM AND AGAINST ALL CLAIMS BECAUSE OF:**

(a) BODILY INJURY OR DEATH;

(b) DAMAGE TO PROPERTY; OR

(c) CONTAMINATION OF OR ADVERSE EFFECTS ON THE ENVIRONMENT, INCLUDING THE COST OF ASSESSMENT AND REMEDIATION,

WHICH, IN EACH CASE, OCCUR IN CONNECTION WITH (x) REQUESTER'S OR BLBP'S USE OR OCCUPANCY OF THE TESORO PROPERTY OR (y) ANY ACTIVITY ASSOCIATED WITH THE ENCROACHMENT CONDUCTED BY REQUESTER, BLBP, OR THEIR RESPECTIVE AFFILIATES, OR THEIR EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES, EXCEPT TO THE EXTENT SUCH CLAIMS ARISE OUT OF OR ARE CAUSED BY TESORO'S NEGLIGENCE OR WILLFUL MISCONDUCT.

ARTICLE 6 – MISCELLANEOUS

6.1 **INTERPRETATION.** Unless the context as used in this Agreement clearly indicates otherwise: (a) words in the singular include the plural and words used in the plural include the singular; (b) references to any Party include such Party's successors and assigns; (c) the words "include", "includes" and "including" will be deemed to be followed by the words "without limitation"; (d) any addendum, exhibit or schedule attached is deemed to be incorporated by reference into the Agreement; and (e) reference to any Law will be deemed to also refer to all rules and regulations promulgated thereunder.

6.2 **COUNTERPARTS.** The Parties acknowledge that this Agreement may be executed in counterparts, each of which will be deemed to be an original and taken together will be considered as one document.

6.3 **BINDING ON SUCCESSORS AND ASSIGNS.** This Agreement is binding upon and inures to the benefit of each of the Parties and their respective heirs, successors, and assigns, including successor owners and occupants of the Encroachment.

- 6.4 **GOVERNING LAW.** The validity, interpretation or performance of this Agreement and any disputes arising hereunder will be governed and construed in accordance with the Laws of the state where the Encroachment is located.
- 6.5 **AMENDMENTS.** Except as otherwise expressly set forth herein, this Agreement will not be modified, in whole or in part, except by a written amendment signed by both Parties and expressly identified as an amendment or modification. Any attempt by either Party through any document to vary any of the terms of this Agreement will be deemed void.
- 6.6 **CONSPICUOUS. TO THE EXTENT REQUIRED BY LAW TO BE EFFECTIVE, THE PROVISIONS IN THIS AGREEMENT IN BOLD-TYPE FONT ARE “CONSPICUOUS” FOR THE PURPOSE OF ANY LAW.**
- 6.7 **SEVERABILITY.** Each clause and provision of this Agreement is severable. If any clause or provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, all other clauses or provisions of this Agreement will remain in full force and effect in such jurisdiction and will not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Agreement in any jurisdiction. If any clause or provision contained herein is, to any extent, held invalid or unenforceable in any respect under the Laws governing this Agreement, such clause or provision will be restricted in applicability, reformed to the minimum extent required for such clause or provision to be enforceable or the Parties will amend or otherwise modify this Agreement to replace such clause or provision with a valid and enforceable clause or provision giving effect to the intent of the Parties.
- 6.8 **WAIVER.** Neither action taken nor inaction pursuant to this Agreement will be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained herein by the Party committing such action or inaction. A waiver by any Party of a particular right, including breach of any provision of this Agreement, will not operate or be construed as a subsequent waiver of that same right or waiver of any other right.
- 6.9 This Agreement, as may be amended in accordance with the terms herein, contains the entire agreement of the Parties related to the Encroachment and supersedes any and all prior negotiations, agreements, or understandings, written or oral, with respect to the Encroachment or the use or occupancy of the Encroachment Area. Each Party warrants to the other that no promises or inducements for this Agreement have been made except as herein set forth. This Agreement is the result of negotiations between the Parties and no Party will be deemed to be the drafter of this Agreement. The language of all parts of this Agreement will be in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party.

[Remainder of page intentionally left blank. Signature pages follow.]

BLBP:

**BLBP JV, LLC,
a Utah limited liability company**

By: _____

Name: _____

Title: _____

State of Utah)
) ss
County of Weber)

The foregoing instrument was acknowledged before me this ____ day of February, 2024 by _____, the _____ of BLBP JV, LLC, on behalf of such company.

Signature: _____

Name: _____

My commission expires: _____

EXHIBIT A TO ENCROACHMENT AGREEMENT

ENCROACHMENT

