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CALIFORNIA TAX CONTROVERSY  
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SACRAMENTO, CA 95814  
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**Mardiros H. Dakessian**  
Direct Phone: 213.516.5510  
Email: [marty@dakessianlaw.com](mailto:marty@dakessianlaw.com)

November 21, 2017

**VIA PERSONAL SERVICE & CERTIFIED U.S. MAIL WITH RETURN RECEIPT**

Ms. Barbara A. McGee  
City Clerk  
City Clerk's Office  
City of Rialto  
290 West Rialto Avenue  
Rialto, CA 92376

Mr. Robb Steel  
Assistant City Administrator/Development Services Director  
Development Services Department  
City of Rialto  
Business Licensing Division  
150 South Palm Avenue  
Rialto, CA 92376

CITY OF RIALTO  
2017 NOV 21 PM 3:32  
RECEIVED  
CITY CLERK

**Re: Appeal of 2017 Measure U Tax Assessment Dated November 14, 2017  
Claim for Refund of Measure U Taxes Paid**

Dear Ms. McGee and Mr. Steel:

This office represents Equilon Enterprises, LLC ("Equilon"). Please provide us with copies of any further correspondence. Equilon has received the City of Rialto's ("City") 2017 assessment of the business license tax on wholesale liquid fuel storage facilities passed in November 2014 under Measure U and now contained in Rialto Municipal Code ("RMC") Section 5.04.028 ("Measure U tax").

The purpose of this correspondence is as follows:

- 1) To appeal the 2017 Measure U tax assessment dated November 14, 2017 in the amount of \$665,754.44, under RMC Section 5.04.040, paragraph C (copy of assessment enclosed as **Exhibit 1**);

Ms. Barbara A. McGee

Mr. Robb Steel

November 21, 2017

Page 2 of 4

- 2) To request an adjustment of the Measure U tax under RMC Section 5.04.055, on grounds that the tax places an undue burden upon interstate commerce and/or violates the equal protection and due process clauses of the Constitutions of the United States and the State of California; and
- 3) To claim a refund of any Measure U taxes paid under Chapter 1 of the RMC.

Each of these items is discussed in more detail below.

#### **Administrative Appeal Under RMC Section 5.04.040(C)**

As a preliminary matter, it should be noted that under the Measure U procedural stipulation agreement entered into in May 2016 by and between the City on the one hand and the companies assessed under Measure U—including Equilon—on the other hand, Equilon is not required to file an administrative appeal and a claim for refund for the 2017 Measure U tax assessment and its administrative remedies shall be deemed exhausted. A copy of this agreement is enclosed as **Exhibit 2**.

With that said, Equilon is submitting this administrative appeal of the 2017 Measure U tax assessment in an abundance of caution based on the same grounds set forth in its administrative appeals of the Measure U tax assessments for 2015 dated September 11, 2015 and 2016 dated March 17, 2016. The grounds for relief discussed in the 2015 and 2016 administrative appeals are fully incorporated by reference.

#### **Request for Adjustment Under RMC Section 5.04.055**

Consistent with the discussion above regarding the administrative appeal, Equilon is not required to request an adjustment of the Measure U tax under RMC Section 5.04.055, but does so in an abundance of caution based on the same grounds set forth in its administrative appeals of the Measure U tax assessments for 2015 dated September 11, 2015 and 2016 dated March 17, 2016. The grounds for relief discussion in the 2015 and 2016 administrative appeals are fully incorporated by reference.

#### **Payment and Claim for Refund**

Under separate cover, Equilon will make a timely payment, under protest, in the amount of \$665,754.44 in satisfaction of the 2017 Measure U tax assessment. In accordance with the escrow agreement entered into in 2015, by and between the City on the one hand and the companies assessed under Measure U—including Equilon—on the other hand, Equilon's forthcoming payment in satisfaction of the 2017 Measure U tax assessment must be held in escrow. As part of the escrow agreement, the City committed to maintaining the amounts paid by the companies under protest under Measure U for 2015 and all subsequent years in a separate account, and not to spend or commingle the funds in question with other City funds during the

Ms. Barbara A. McGee

Mr. Robb Steel

November 21, 2017

Page 3 of 4

pendency of any action challenging the validity of the tax imposed. A copy of the escrow agreement is enclosed as **Exhibit 3**.

In Equilon's case, \$1,610,641.38 is currently escrowed with respect to its payments of the 2015 and 2016 Measure U tax assessments. Upon receipt of Equilon's payment for the 2017 Measure U tax assessment, an additional \$665,754.44 must be escrowed.

**Conclusion**

For these reasons, we respectfully request that the City grant our appeal, withdraw the Measure U tax assessment and refund any amounts paid.

\*\*\*\*\*

Thank you for your attention to this important matter. Should you have any questions, please contact me at (213) 516-5510 or Ruben Sislyan at (213) 516-5504.

Sincerely,



Mardiros H. Dakessian  
Dakessian Law, Ltd.  
Counsel for Equilon Enterprises, LLC

Ms. Barbara A. McGee

Mr. Robb Steel

November 21, 2017

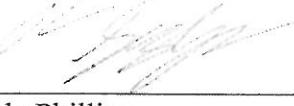
Page 4 of 4

**TAXPAYER STATEMENT**

The undersigned is the “employee of the business having the highest level of day to day knowledge of and responsibility for the information” relating to the Rialto Business License Tax within the meaning of Section 5.04.040.C.iv of the Rialto Municipal Code. We reserve the right to submit additional facts, grounds for relief and points and authorities in support of our position.

Dated: November 21, 2017

EQUILON ENTERPRISES, LLC (DBA – Shell Products US)

p.p. 

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J. Wade Phillips  
Senior Counsel for State Tax Disputes

# EXHIBIT 1



# *City of Rialto*

## *California*

November 14, 2017

Equilon Enterprises, LLC  
2307 S. Riverside Avenue  
Bloomington, CA 92316  
APN: 0258-051-30

**Re: City of Rialto Business License Tax for Wholesale Liquid Fuel Storage Facilities located at 2307 S. Riverside in the City of Rialto—Notice of Assessment**

Dear Equilon Enterprises, LLC:

On November 4, 2014, the electorate of the City of Rialto approved Measure U and enacted a liquid fuel storage tax. Measure U is a business license tax on wholesale liquid fuel storage facilities located within the City.

On December 9, 2014, the Rialto City Council certified the election results and adopted Ordinance No. 1556 providing that any person engaged in the business of owning, operating, leasing, supplying or providing a wholesale liquid fuel storage facility shall pay an annual business license tax. On January 13, 2015, the City Council adopted Resolution No. 6685, which set the amount of the business license tax on wholesale liquid fuel storage facilities at one dollar (\$1.00) per year per cubic foot of liquid fuel storage capacity.

Thank you for submitting the Business License Application and Supplemental Information Form received on 4/14/2015. Based on the Business License Application and Supplemental Information Form, as well as conversations with and additional documents submitted by representatives for Equilon Enterprises, LLC, the Wholesale Liquid Fuel Storage Tax for the facility located at 2307 S. Riverside Avenue is \$665,754.44 for 8 tanks totaling 665,754.44 cubic feet at a

subsection E of this section. The collector also shall prepare a written response to the notice of appeal. The record on appeal and the response (except the business's documents produced under subsection E of this section) shall be served upon the business at least five days prior to the appeal hearing before the city administrator in the manner provided in subsection E of this section.

- G. Hearing on Appeal. The hearing prescribed by this section shall be before the city administrator who shall preside over the hearing and make all ruling thereon; and the city administrator may be assisted by the city attorney. The business may submit such evidence relevant to the grounds specified in the notice of appeal; and the business shall bear the burden of proof thereon. The collector may submit such evidence relevant to the grounds specified in the notice of appeal. The city administrator may make inquiries of the business and the collector including their witnesses and documents. The city administrator may require the presentation of additional evidence by the business or the collector including the production of any documents. The hearing on appeal shall be limited to the grounds specified in the notice of appeal; and the city administrator may not consider any grounds not specified in the notice of appeal. The hearing may be continued from time to time by the city administrator. At the conclusion of the presentation of evidence at the hearing, the city administrator may require the business and the collector to submit a written summary of its case with sufficient time therefore before rendering a decision on the notice of appeal. At the conclusion of the presentation of evidence or the submission of written summaries as determined by the city administrator, the hearing shall be deemed completed.
- H. Notice of Decision on Appeal. After completion of the hearing, the city administrator may affirm the assessment or decrease the assessment, in whole or in part, as the evidence may require. Within fifteen days after the hearing is completed, the city administrator shall issue a written notice of decision to the business and the collector, which shall be mailed to the business in the manner provided in subsection E of this section, including a copy of the affidavit or certificate of mailing to the business, on which date the decision on appeal shall be final.
- I. Review of Decision on Appeal. Judicial review of the decision on appeal may be had pursuant to Code of Civil Procedure Section 1094.5 but only if a petition for writ of mandate is filed within the time limits specified in Code of Civil Procedure Section 1094.6. The notice of decision also shall notify the business that the time within which judicial review must be sought is governed by Code of Civil Procedure Section 1094.6.
- J. Effect of Delay. Failure of the collector to comply with the times prescribed herein or any failure of the city administrator to complete any procedures within the times stated shall not affect the validity of any proceedings.

# EXHIBIT 2

1 City for amounts due for the 2015 Assessment that have not been paid by any of the  
2 Companies;

3 WHEREAS, on or around March 8, 2016, City issued tax assessment notices to  
4 Companies pursuant to Rialto Municipal Code § 5.04.028 (adopted as Measure U by the  
5 voters at the November 4, 2014 election), Rialto Ordinance No. 1556, and Rialto  
6 Resolution No. 6685 (the “2016 Assessment”);

7 WHEREAS, Companies continue to dispute the legality of the 2016 Assessment,  
8 and have filed claims and appeals with City seeking refunds of the amount paid or to be  
9 paid by Companies to City for those assessments; and

10 WHEREAS, the parties desire to resolve the underlying merits of the legality of the  
11 Measure U tax efficiently, without incurring unnecessary legal fees and costs, and further  
12 desire to eliminate the need for the Parties to undergo the claims and appeals process with  
13 respect to any future assessments while the underlying legality of the Measure U tax is  
14 being resolved.

15 THE PARTIES DO HEREBY stipulate and agree as follows:

- 16 1. City agrees that the appeal and claim documents Companies have filed with  
17 respect to the 2015 Assessment and the 2016 Assessment meet the  
18 requirements of Chapter 1.14 of the Rialto Municipal Code and Government  
19 Code Sections 910 and 915.
- 20 2. City and Companies agree that Companies claims with respect to the 2015  
21 Assessment and the 2016 Assessment are deemed denied under Rialto  
22 Municipal Code Section 1.14.60 and Government Code Section 912.4.
- 23 3. City thus agrees that Companies have exhausted all administrative remedies  
24 with respect to the 2015 Assessment and the 2016 Assessment.
- 25 4. City and Companies agree that Companies are not required to file appeal and  
26 claim documents for any future assessments of Measure U tax to the extent  
27 such claims and appeals are filed in regards to the issues being litigated in

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KURT R. ONETO  
CHRISTOPHER E. SKINN  
*Counsel for Phillips 66 Company*

12 Dated: September   , 2015

REED SMITH, LLP

13 By: MARDIROS H. DAKESSIAN  
14 JOHN L. SMITH  
15 *Counsel for S.F.P.P., L.P./Kinder Morgan*

16 Dated: September 22, 2015

REED SMITH, LLP

17 By: MARDIROS H. DAKESSIAN  
18 JOHN L. SMITH  
19 *Counsel for Equilon Enterprises, L.P./Shell*

20 Dated: September   , 2015

21 MANATT, PHELPS & PHILLIPS, LLP

22 By: RONALD B. TUROVSKY  
23 JEFFREY A. MANNISTO  
24 *Counsel for Tesoro Petroleum*

AME RRINE  
DNI, LLP  
Kurt J. Chaffin  
DNETO  
PHER E. SKINN LLP

12  
13 Dated: September \_\_, 2015 REED SMITH, LLP  
14

15 By: MARDIROS H. DAKESSIAN  
16 JOHN L. SMITH  
17 *Counsel for S.F.P.P., L.P./Kinder Morgan*

18 Dated: September \_\_, 2015 REED SMITH, LLP  
19

20 By: MARDIROS H. DAKESSIAN  
21 JOHN L. SMITH  
22 *Counsel for Equilon Enterprises, L.P./Shell*

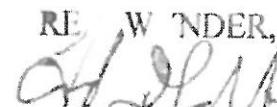
23 Dated: September 27 2015 MANATT, PHELPS & PHILLIPS, LLP  
24

25 By: RONALD B. TUROVSKY  
26 JEFFREY A. MANNISTO  
27 *Counsel for Tesoro Petroleum*

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By: KURT R. ONETO  
CHRISTOPHER E. SKINNELL  
*Counsel for Phillip 66 Company*

13

Dated: September \_\_, 2015 REED SMITH, LLP

14

15

By: MARDIROS H. DAKESSIAN  
JOHN L. SMITH  
*Counsel for S.F.P.P., L.P./Kinder Morgan*

16

17

Dated: September \_\_, 2015 REED SMITH, LLP

18

19

By: MARDIROS H. DAKESSIAN  
JOHN L. SMITH  
*Counsel for Equilon Enterprises, LLC*

20

21

Dated: September \_\_, 2015 MANATT, PHELPS & PHILLIPS, LLP

22

23

By: RONALD B. TUROVSKY  
JEFFREY A. MANNISTO

15

OF RIALTO

15

COMPANY

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MR MORGAN

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~~JL~~

Print: Wad Phillips, S Tax Counsel

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— 15 OF RIALTO

— 015 HIL COMPANY

— 22 15 , IND R MORGAN

*Gary E. Pain*  
*Gary E. Pain*

— 15 , L.P./SHELL

— 15 ETROLEUM

Kerry Beagle

Kerry Beagle

14 Dated: September \_\_, 2015

15 EQUILON ENTERPRISES, L.P./SHELL

16 By: \_\_\_\_\_

17 Print: \_\_\_\_\_

19 Dated: September 23 2015

20 TESORO PETROLEUM

21 By: Ray Au

22 Print: RAY AU - MANAGING COUNSEL

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Debra Robertson  
Debra Robertson

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in all subsequent years until this agreement is terminated by the Parties (“Measure U Funds” or “MUF”), in an escrow account which is separately segregated from City’s General Fund and all other funds.

2. City further agrees that until this agreement is terminated by the Parties, it will not commingle the MUF with any other funds, spend the MUF, or encumber the MUF in any manner (including securing a loan with the MUF).
3. In consideration for City’s segregation of the MUF and forbearance from spending or otherwise encumbering the MUF, Companies agree not to pursue their judicial remedies to impose a mandatory escrow of Measure U Funds.
4. The Parties further agree that this agreement terminates upon the earliest of the following: either (1) a judgment that is final following the expiration of any time to seek further appellate review or final appellate determination of the claims raised by Companies (“final judgment”) resolving all of the claims in City’s favor; (2) City’s payment of the full amount claimed by Companies as refunds due; or (3) if the final judgment orders only a partial refund, payment by City of the amount ordered to be refunded.
5. This agreement may be signed in counterpart originals, and facsimile or scanned PDF signatures shall be deemed to be original signatures.

/

Resolution No. 6685; and

WHEREAS, Companies dispute the legality of the assessments issued on or around September 3, 2015 and have filed claims and appeals with City seeking refunds of the amount paid or to be paid by Companies to City for those assessments; and

14 WHEREAS, Companies have or will shortly pay under protest to City some or all of the amounts sought by City in those assessments, an amount expected to total in the millions of dollars; and

WHEREAS, page 11 of the City of Rialto Fiscal Year 2015/2016 Annual Budget states that “By law, if taxpayers pay the Measure U tax under protest, the funds will have to be held in escrow until a settlement agreement is reached”; and

WHEREAS, Companies’ claims challenge the validity of the tax imposed by Measure U, and the legal resolution of Companies’ claims is expected to take several years; and

24 WHEREAS, Companies have a collective concern that even if they should prevail in their litigation and obtain a judicial order granting their claims for refund, City might be 25 unable to pay; and

26 WHEREAS, because of the foregoing, Companies were prepared to seek a judicial 27 order seeking an escrow of the Measure U funds subject to Companies’ claims in an 28 escrow account that was segregated from City’s General Fund and all other funds;

# EXHIBIT 3

1 APPROVED AS TO FORM BY COUNSEL:

2 Dated: May \_\_, 2016

ALESHIRE & WYNDER, LLP

3  
4 By: FRED GALANTE  
5 JUNE S. AILIN  
6 *Counsel for City of Rialto*

7 Dated: May \_\_, 2016

8 NIELSEN, MERKSAMER, PARRINELLO,  
9 GROSS & LEONI, LLP

10 By: KURT R. ONETO  
11 CHRISTOPHER E. SKINNELL  
12 *Counsel for Phillips 66 Company*

13 Dated: May \_\_, 2016

14 REED SMITH, LLP

15 By: JOHN L. SMITH  
16 *Counsel for S.F.P.P., L.P./Kinder Morgan*

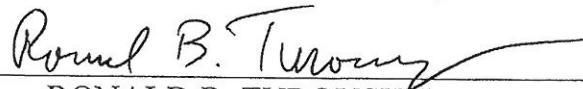
17 Dated: May \_\_, 2016

18 DAKESSIAN LAW, LTD.

19 By: MARDIROS H. DAKESSIAN  
20 *Counsel for Equilon Enterprises, L.P./Shell*

21 Dated: May 2, 2016

22 MANATT, PHELPS & PHILLIPS, LLP

23   
24 By: RONALD B. TUROVSKY  
25 JEFFREY A. MANNISTO  
26 *Counsel for Tesoro Logistics Operations, LLC*

1 APPROVED AS TO FORM BY COUNSEL:

2 Dated: May \_\_, 2016

ALESHIRE & WYNDER, LLP

4 By: FRED GALANTE  
5 JUNE S. AILIN  
6 *Counsel for City of Rialto*

7 Dated: May \_\_, 2016

8 NIELSEN, MERKSAMER, PARRINELLO,  
9 GROSS & LEONI, LLP

10 By: KURT R. ONETO  
11 CHRISTOPHER E. SKINNELL  
12 *Counsel for Phillips 66 Company*

13 Dated: May \_\_, 2016

14 REED SMITH, LLP

15 By: JOHN L. SMITH  
16 *Counsel for S.F.P.P., L.P./Kinder Morgan*

17 Dated: May 3, 2016

18 DAKESSIAN LAW, LTD.

19 By: MARDIROSH DAKESSIAN  
20 *Counsel for Equilon Enterprises, L.P./Shell*

21 Dated: May \_\_, 2016

22 MANATT, PHELPS & PHILLIPS, LLP

23 By: RONALD B. TUROVSKY  
24 JEFFREY A. MANNISTO  
25 *Counsel for Tesoro Logistics Operations, LLC*

1 APPROVED AS TO FORM BY COUNSEL:

2 Dated: May \_\_, 2016

ALESHIRE & WYNDER, LLP

4 By: FRED GALANTE  
5 JUNE S. AILIN  
6 *Counsel for City of Rialto*

7 Dated: May \_\_, 2016

8 NIELSEN, MERKSAMER, PARRINELLO,  
9 GROSS & LEONI, LLP

10 By: KURT R. ONETO  
11 CHRISTOPHER E. SKINNELL  
12 *Counsel for Phillips 66 Company*

13 Dated: May 5, 2016

14 REED SMITH, LLP

15 By: JOHN L. SMITH  
16 *Counsel for S.F.P.P., L.P./Kinder Morgan*

17 Dated: May \_\_, 2016

18 DAKESSIAN LAW, LTD.

19 By: MARDIROS H. DAKESSIAN  
20 *Counsel for Equilon Enterprises, L.P./Shell*

21 Dated: May \_\_, 2016

22 MANATT, PHELPS & PHILLIPS, LLP

23 By: RONALD B. TUROVSKY  
24 JEFFREY A. MANNISTO  
25 *Counsel for Tesoro Logistics Operations, LLC*

1 [SIGNATURES TO MEASURE U PROCEDURAL STIPULATION]

2 Dated: May \_\_, 2016 CITY OF RIALTO

3 By: \_\_\_\_\_

4 Print: \_\_\_\_\_

5 Dated: May \_\_, 2016 PHILLIPS 66 COMPANY

6 By: \_\_\_\_\_

7 Print: \_\_\_\_\_

8 Dated: May \_\_, 2016 S.F.P.P., L.P./KINDER MORGAN

9 By: \_\_\_\_\_

10 Print: \_\_\_\_\_

11 Dated: May 3, 2016 EQUILON ENTERPRISES, L.P./SHELL

12 By: Wade Phillips, Sr. Tax Counsel, Tax Officer

13 Print: Wade Phillips, Sr. Tax Counsel, Tax Officer

14 Dated: May \_\_, 2016 TESORO LOGISTICS OPERATIONS, LLC

15 By: \_\_\_\_\_

16 Print: \_\_\_\_\_

1 APPROVED AS TO FORM BY COUNSEL:

2 Dated: May \_\_, 2016

ALESHIRE & WYNDER, LLP

4 By: FRED GALANTE  
5 JUNE S. AILIN  
6 *Counsel for City of Rialto*

7 Dated: May 18, 2016

8 NIELSEN, MERKSAMER, PARRINELLO,  
9 GROSS & LEONI, LLP

10 

11 By: KURT R. ONETO  
12 CHRISTOPHER E. SKINNELL  
13 *Counsel for Phillips 66 Company*

14 Dated: May \_\_, 2016

REED SMITH, LLP

15 By: JOHN L. SMITH  
16 *Counsel for S.F.P.P., L.P./Kinder Morgan*

17 Dated: May \_\_, 2016

DAKESSIAN LAW, LTD.

18 By: MARDIROS H. DAKESSIAN  
19 *Counsel for Equilon Enterprises, L.P./Shell*

20 Dated: May \_\_, 2016

21 MANATT, PHELPS & PHILLIPS, LLP

22 By: RONALD B. TUROVSKY  
23 JEFFREY A. MANNISTO  
24 *Counsel for Tesoro Logistics Operations, LLC*

1 APPROVED AS TO FORM BY COUNSEL:

2 Dated: May 17, 2016

ALESHIRE & WYNDER, LLP



3  
4 By: FRED GALANTE  
5 JUNE S. AILIN  
6 *Counsel for City of Rialto*

7 Dated: May \_\_, 2016

8 NIELSEN, MERKSAMER, PARRINELLO,  
9 GROSS & LEONI, LLP

10 By: KURT R. ONETO  
11 CHRISTOPHER E. SKINNELL  
12 *Counsel for Phillips 66 Company*

13 Dated: May \_\_, 2016

14 REED SMITH, LLP

15 By: JOHN L. SMITH  
16 *Counsel for S.F.P.P., L.P./Kinder Morgan*

17 Dated: May \_\_, 2016

18 DAKESSIAN LAW, LTD.

19 By: MARDIROS H. DAKESSIAN  
20 *Counsel for Equilon Enterprises, L.P./Shell*

21 Dated: May \_\_, 2016

22 MANATT, PHELPS & PHILLIPS, LLP

23 By: RONALD B. TUROVSKY  
24 JEFFREY A. MANNISTO  
25 *Counsel for Tesoro Logistics Operations, LLC*

1 [SIGNATURES TO MEASURE U PROCEDURAL STIPULATION]

2 Dated: May \_\_, 2016

CITY OF RIALTO

3 By: \_\_\_\_\_

5 Print: \_\_\_\_\_

7 Dated: May \_\_, 2016

PHILLIPS 66 COMPANY

8 By: \_\_\_\_\_

10 Print: \_\_\_\_\_

11 Dated: May \_\_, 2016

S.F.P.P., L.P./KINDER MORGAN

12 By: \_\_\_\_\_

14 Print: \_\_\_\_\_

16 Dated: May \_\_, 2016

EQUILON ENTERPRISES, L.P./SHELL

17 By: \_\_\_\_\_

19 Print: \_\_\_\_\_

20 Dated: May 2, 2016

21 TESORO LOGISTICS OPERATIONS, LLC

22 By: Alan Au

23 Print: ALAN AU - MANAGING COUNSEL

1 [SIGNATURES TO MEASURE U PROCEDURAL STIPULATION]

2 Dated: May \_\_\_, 2016

CITY OF RIALTO

3 By: \_\_\_\_\_

4 Print: \_\_\_\_\_

5 Dated: May \_\_\_, 2016

6 PHILLIPS 66 COMPANY

7 By: \_\_\_\_\_

8 Print: \_\_\_\_\_

9 Dated: May \_\_\_, 2016

10 S.F.P.P., L.P./KINDER MORGAN

11 By: Richard Sanders

12 Print: Richard Sanders, ASST. GEN.  
COUNSEL

13 Dated: May \_\_\_, 2016

14 EQUILON ENTERPRISES, L.P./SHELL

15 By: \_\_\_\_\_

16 Print: \_\_\_\_\_

17 Dated: May \_\_\_, 2016

18 TESORO LOGISTICS OPERATIONS, LLC

19 By: \_\_\_\_\_

20 Print: \_\_\_\_\_

1 [SIGNATURES TO MEASURE U PROCEDURAL STIPULATION]

2 Dated: May \_\_, 2016

CITY OF RIALTO

3 By: \_\_\_\_\_

5 Print: \_\_\_\_\_

6 Dated: May 11, 2016

7 PHILLIPS 66 COMPANY

8 By: Kerry Creager

9 Print: Kerry Creager

10 Dated: May \_\_, 2016

11 S.F.P.P., L.P./KINDER MORGAN

12 By: \_\_\_\_\_

14 Print: \_\_\_\_\_

15 Dated: May \_\_, 2016

16 EQUILON ENTERPRISES, L.P./SHELL

17 By: \_\_\_\_\_

18 Print: \_\_\_\_\_

19 Dated: May \_\_, 2016

20 TESORO LOGISTICS OPERATIONS, LLC

21 By: \_\_\_\_\_

23 Print: \_\_\_\_\_

1 [SIGNATURES TO MEASURE U PROCEDURAL STIPULATION]

2 Dated: May 17, 2016

3 CITY OF RIALTO

4 By: 

5 Print: Michael E. Stoy

6 Dated: May \_\_, 2016

7 PHILLIPS 66 COMPANY

8 By: \_\_\_\_\_

9 Print: \_\_\_\_\_

10 Dated: May \_\_, 2016

11 S.F.P.P., L.P./KINDER MORGAN

12 By: \_\_\_\_\_

13 Print: \_\_\_\_\_

14 Dated: May \_\_, 2016

15 EQUILON ENTERPRISES, L.P./SHELL

16 By: \_\_\_\_\_

17 Print: \_\_\_\_\_

18 Dated: May \_\_, 2016

19 TESORO LOGISTICS OPERATIONS, LLC

20 By: \_\_\_\_\_

21 Print: \_\_\_\_\_

1 connection herewith, and that Companies' administrative remedies shall be  
2 deemed exhausted.

3 5. City and Companies agree that neither this stipulation nor the stipulation  
4 entered into with respect to the 2015 Assessment constitutes a waiver by the  
5 City of any unpaid taxes due from Companies.  
6 6. This agreement may be signed in counterpart originals, and facsimile or  
7 scanned PDF signatures shall be deemed to be original signatures.

8 [SIGNATURES ON FOLLOWING PAGE]

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MEASURE U - PROCEDURAL STIPULATION

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## MEASURE U PROCEDURAL STIPULATION

The parties to this agreement are the CITY OF RIALTO (“City”) on the one hand, and PHILLIPS 66 COMPANY, S.F.P.P., L.P./KINDER MORGAN, EQUILON ENTERPRISES/SHELL PRODUCTS US, and TESORO LOGISTICS OPERATIONS, LLC (collectively “Companies”) on the other hand. “City” and “Companies” shall collectively constitute the “Parties” to this stipulation.

7 WHEREAS, on or around September 3, 2015 City issued tax assessment notices to  
8 Companies pursuant to Rialto Municipal Code § 5.04.028 (adopted as Measure U by the  
9 voters at the November 4, 2014 election), Rialto Ordinance No. 1556, and Rialto  
10 Resolution No. 6685 (the “2015 Assessment”);

11 WHEREAS, Companies dispute the legality of the 2015 Assessments issued on or  
12 around September 3, 2015;

13 WHEREAS, Companies have paid under protest to City some or all of the amounts  
14 sought by City in the 2015 Assessments, an amount totaling in the millions of dollars:

15 WHEREAS, Companies' claims challenge the legality of the tax imposed by  
16 Measure U;

17 WHEREAS, in response to the 2015 Assessment, Companies filed administrative  
18 appeal and claim documents with City requesting cancellation of the 2015 Assessments  
19 and claiming refunds of amounts paid;

20 WHEREAS, Companies' appeal and claim documents set forth in detail their  
21 respective grounds for challenging the legality of the Measure U tax;

22        WHEREAS, in order to resolve the underlying merits of the legality of the Measure  
23        U tax efficiently, without incurring unnecessary legal fees and costs, the parties entered  
24        into a procedural stipulation, by which the parties agreed that Companies have exhausted  
25        their administrative remedies with respect to the claims for refund of amounts paid for the  
26        2015 Assessment;

27 WHEREAS, the procedural stipulation did not constitute a waiver of claims by the

tax rate of \$1.00 per cubic foot. The amount of the tax was calculated based on a chart submitted to the City by legal counsel for Equilon Enterprises, LLC. Please remit the tax within 21 days of the date of this Notice of Assessment to:

City of Rialto  
Business Licensing Division  
150 S. Palm Avenue  
Rialto, CA 92376

In accordance with Chapter 5.04.040 of the Rialto Municipal Code (RMC), you will have ten (10) ten days from the date of this Notice of Assessment to file an appeal. The RMC Chapter is included with this letter for your reference.

Should you have any questions, please do not hesitate to contact Gina M. Gibson, Business Licensing Division at [ggibson@rialtoca.gov](mailto:ggibson@rialtoca.gov) or call (909) 820-2517. Thank you in advance for your prompt payment.

Sincerely,



Gina Gibson  
Planning Manager  
Planning Division, Development Services Department

## Rialto Municipal Code Chapter 5.04.040

### - Assessment of business license tax.

- A. Notice of Assessment. Whenever the collector determines that any business license tax is due or may be due to the city from any business under this code, the collector may make an assessment of such business license tax and notify the business so assessed. The notice of assessment shall separately set forth the amount of the business license tax due and the amount of any penalties accrued to the date of the notice of assessment. The notice of assessment also shall notify the business of its right to appeal the assessment.
- B. Service of Notice of Assessment. The notice of assessment shall be served upon the business so assessed by personal service or first class mail, postage prepaid, upon the individual who signed the business license application, or an individual identified in the business license application, or the individual who signed a statement under penalty of perjury at the address of the business contained in the business license application or in a statement required under this code, or to such other address registered by the business with the collector for the purpose of receiving notices pursuant to this code. For the purpose of this section, service of the notice of assessment shall be deemed complete at the time of personal service or deposit in the United States mail.
- C. Notice of Appeal. Within ten days of date that service of the notice of assessment is complete, the business so served may appeal the assessment as provided herein. The notice of appeal shall be in writing and (i) identify the assessment and/or penalties being appealed, (ii) set forth the grounds of the appeal in particularity including any supporting documentation; (iii) specify the relief requested and (iv) signed by an officer, owner or employee of the business having the highest level of day to day knowledge of and responsibility for the information required by this code. The filing of a notice of appeal shall subject the business to the jurisdiction of the collector and the city administrator. The notice of appeal shall be served upon the collector by personal service or first class mail, postage prepaid, at the address on the notice of assessment. For the purpose of this section, service of the notice of appeal shall be deemed complete at the time of personal service or deposit in the United States mail.
- D. Waiver of Appeal. If the business so assessed fails to request an appeal or fails to satisfy these appeal requirements within the time specified, the appeal right of the business so assessed shall be deemed waived, the proceedings prescribed by this section shall be deemed exhausted, and the amount of the assessment shall be final and immediately due and payable to the city plus penalties and interest as provided by this code, which shall continue to accrue until paid. The city shall have the right to bring an action in any court of competent jurisdiction to collect the amount of the assessment plus penalties and interest.
- E. Time of Hearing on Appeal. The collector shall cause the appeal to be set for hearing before the city administrator not later than forty-five days after the date of receipt of the notice of appeal. Notice of the time and place of the hearing shall be served, by first class mail, postage prepaid, upon the business not later than fifteen days before the date set for the hearing and such notice may designate the documents required to be produced by the business no later than seven days before the hearing.
- F. Record on Appeal. Upon receipt of a notice of appeal, the collector shall prepare the record on the subject matter of the appeal including the notice of assessment, the notice of appeal and the documents submitted by the business in response to the collector's request for production under