

MEMORANDUM

April 21, 2016

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Eleni Kounalakis
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Interim Executive Director

SUBJECT: Approval of Cost Reimbursement Agreement between the City and County of San Francisco and ExxonMobil Oil Corporation for Management of Residual Petroleum Hydrocarbons on City Property within the block bounded by Jefferson, Hyde, and Leavenworth Streets, and San Francisco Bay

DIRECTOR'S RECOMMENDATION: Approve Resolution

Executive Summary

Beginning over 100 years ago, General Petroleum Corporation and Mobil Oil, both predecessors to ExxonMobil Oil Corporation ("ExxonMobil"), operated a fuel storage and distribution facility in the area known as Wharf J10. The historic operations resulted in petroleum hydrocarbon contamination in soil and groundwater beneath the former fuel terminal footprint and surrounding property. The San Francisco Bay Regional Water Quality Control Board ("Water Board") issued a cleanup order to ExxonMobil and the Port of San Francisco in 2008. ExxonMobil has completed site investigation, remediation, and risk assessment such that the Water Board has determined that petroleum hydrocarbons have been substantially treated or removed and that remaining residual petroleum hydrocarbons can be safely managed on-site by implementing appropriate risk management measures.

ExxonMobil Corporation and the Port of San Francisco have negotiated a Cost Reimbursement Agreement through which ExxonMobil would reimburse the Port or Port tenants for additional costs incurred in order to implement risk management measures during maintenance or construction within a specified area where residual petroleum

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hydrocarbons and/or material placed for remediation of petroleum hydrocarbons remain in the subsurface. The Cost Reimbursement Agreement establishes conditions and procedures under which reimbursement would occur during a term of up to 20 years and a maximum reimbursement amount of \$5 Million with annual increases of 3% annually for inflation. Port staff recommends that the Port Commission approve the proposed Cost Reimbursement Agreement, subject to Board of Supervisors' approval.

Strategic Objective

Execution of the Cost Reimbursement Agreement would support the Port Strategic Plan objective of Stability by establishing a funding solution to address potential future capital costs to construct within the area where risk management measures are required.

History

This staff report pertains to the block bounded by Jefferson, Hyde, and Leavenworth Streets, and San Francisco Bay (See Attachment), including a portion of that area historically occupied by a fuel storage and distribution terminal, referred to as "Former Mobil Bulk Terminal 04-394" (See Attachment B). General Petroleum leased and began fueling operations at the former Mobil fuel terminal site in 1913. General Petroleum was purchased by Mobil Oil in the 1940s. Mobil Oil operated the fuel terminal, including above ground diesel storage tanks and an underground gasoline storage tank and appurtenant underground pipelines in the subject block until 1989. Until 2007, the shoreline between Leavenworth and Hyde was covered by a pile-supported wharf, "Wharf J10", and overlying fish processing building.

Regulatory Background and Site Cleanup

In 1986 petroleum contamination in soil and groundwater beneath the Wharf J10 Area was discovered during removal of an underground gasoline storage tank, and the Site became subject to regulation by the City and County of San Francisco Department of Public Health's Bureau of Environmental Health Management (DPH). Mobil Oil began investigating the nature and extent of petroleum contamination in accordance with DPH requirements. In 1994 the Port and Mobil Oil executed an access agreement that authorized Mobil Oil to investigate and remediate contamination in the area and committed Mobil Oil to remediate contamination to the point that cleanup was deemed complete by the appropriate regulatory agency. In 1999, the Water Board assumed regulatory oversight of Mobil's investigation, risk assessment, and remedial action planning at the Former Mobil Terminal site.

In 2002, the Port discovered separate-phase petroleum, indicative of significant contamination, along the shoreline near Wharf J10, and reported its findings to the Water Board and tenants in the vicinity. In 2006, the Water Board, dissatisfied with the pace of Mobil's progress under a voluntary approach, issued a Clean-up Order¹ ("the Order") to ExxonMobil, as the party primarily responsible for discharge of pollutants, and

¹ "Site Cleanup Requirements - Order No. R2-2006-0020, Former Mobil Bulk Terminal No. 04-394, 440 Jefferson Street, City and County of San Francisco", adopted March 8, 2006

the Port, as the property owner. The Order required ExxonMobil to take specified steps to complete investigation and remediation of petroleum contamination within a specified schedule.

In 2007, the Port demolished and removed Wharf J10 and the overlying fish processing building due to structural instability. Removal of the wharf that had covered the shoreline revealed visible petroleum seepage from the shoreline into the Bay. In 2008, after ExxonMobil had failed to meet deadlines specified by the Water Board Order, the City and County of San Francisco sued ExxonMobil in effort to enforce the requirements of the Order.

Between 2007 and 2011, ExxonMobil continued investigation, interim remedial action, and planning and permitting the anticipated permanent remedial action. In 2011, ExxonMobil implemented the subject remedial action, removing 1,239 tons of petroleum-contaminated fill along the shoreline, replacing it with clean engineered back fill, and covering the new shoreline slope with a layer of permeable material that chemically binds with petroleum hydrocarbons (referred to as a “permeable reactive barrier” or PRB), and rip rap for slope stabilization and protection from erosion. The PRB prevents migration of any residual petroleum hydrocarbons that may remain in soil or groundwater beneath the upland portions of the site toward the Bay. This cleanup action removed the petroleum contamination at the Site to the extent reasonably achievable, and removed the contaminated soil that had been the source of petroleum discharge to groundwater and the Bay. Two years of subsequent monitoring found negligible concentrations of petroleum in groundwater and no evidence of continued petroleum discharge to the Bay.

The City and County of San Francisco settled its suit with ExxonMobil in 2012.

Future Costs of Contamination

Although the cleanup substantially removed petroleum contamination from the Site and virtually eliminated risk that any remaining residual petroleum hydrocarbons could migrate, some residual contamination may remain in soil and/or groundwater beneath upland portions of the Site. In compliance with the Water Board Order, ExxonMobil assessed potential risk to human health and the environment due to presence of residual petroleum hydrocarbons and found no significant risk to Bay water quality or aquatic life or to current or future Site occupants. However, the risk assessment did find potential health risk to workers exposed directly to groundwater or vapor in a below-grade trench, such as plumbers working in a utility trench deep enough to reach saturated soil or groundwater.

The Order also required ExxonMobil and the Port to develop a Risk Management Plan (RMP) to ensure that residual contamination could be safely managed on-site. The RMP requires notification about Site conditions to any Port staff, tenant, or contractor undertaking subsurface work within the Site, and implementation of appropriate health and safety and waste management measures during such work. The RMP imposes additional monitoring and reporting requirements related to facilities maintenance or new construction. The RMP specifies that if new construction is planned within the Site,

it must be designed and constructed in a manner that protects the PRB that was placed over the new shoreline fill and beneath the riprap surface. The RMP also requires the Port to maintain some form of durable cover, such as pavement or building, over soil within the Site and prohibits use of groundwater for drinking water supply.

The Port, tenants within the RMP area, or their agents may incur additional costs to maintain existing or construct new facilities within the Site in order to comply with the RMP. Such costs include but may not be limited to professional services of a Certified Industrial Hygienist to evaluate and specify project-specific worker health and safety protections, additional air monitoring and protective equipment, and designing and implementing construction to avoid impact to the PRB.

Cost Reimbursement Agreement

Port staff, in consultation with City Attorney’s Office, has negotiated the proposed Agreement with ExxonMobil that provides a process for ExxonMobil to reimburse Port’s or tenants’ costs incurred to comply with the RMP. The Water Board requires establishment of such an agreement and is the last task specified by the Order that remains to be completed.

The proposed Cost Reimbursement Agreement (“Agreement”) would apply only to a portion of the former fuel terminal footprint: approximately 130’ (along the shoreline) by 160’, a total area of approximately 20,800 square feet. This is the location of the residual contamination and is identified as the “Risk Management Plan Area” (RMP Area) in Attachment B. In 2006, the City and County of San Francisco executed a similar agreement with four oil companies who had formerly operated fuel terminals in the Mission Bay area to reimburse the City for costs incurred due to the presence of residual petroleum hydrocarbons left in place beneath approximately 12.4 acres of land in Mission Bay.

Following are the primary terms of the proposed Agreement:

Parties:	The Agreement establishes a process through which the Port or Port Tenants located within the RMP Area may seek reimbursement from ExxonMobil for Reimbursable Costs.
Term:	The term is the earlier of 20 years from the Effective Date or when ExxonMobil has reimbursed the total maximum reimbursable amount (Reimbursement Cap). The Agreement specifies that upon its expiration the Port and ExxonMobil will negotiate in good faith to extend the Agreement or enter into a new one that fulfills the same purpose of providing financial responsibility for long term management of residual petroleum hydrocarbons to be managed in place.
Reimbursement Cap	The Reimbursement Cap is \$5 Million, increased annually by 3%.

Reimbursable Costs:	Reimbursable Costs are increased costs and expenses incurred by Port or Port Tenants related to management of residual petroleum present within the RMP Area that would not be incurred in absence of residual petroleum left on Port property and are required to comply with the RMP.
Pre-Authorization of Work:	Except for emergency work, the Port or Port Tenant will request pre-authorization of reimbursable costs greater than \$10,000 by submitting a scope of work and cost estimate to ExxonMobil.
Reimbursement:	The Agreement sets forth a process for pre-approval of Port or Port Tenant work and for reimbursement of costs by ExxonMobil.
Dispute Resolution	The Agreement provides for mediation of disputes by a jointly designated mediator and with mediation costs split equally between the Port or Port Tenant and ExxonMobil.
No Release:	The Agreement does not release ExxonMobil from liability or preclude the Port from seeking judicial remedies with respect to residual petroleum on Port property.

Board of Supervisors and City Approvals

The Agreement with ExxonMobil will require approval from the Board of Supervisors because the term is 20 years. City Charter Section 9.118 requires Board of Supervisors' approval of agreements having a term of ten years or more.

CEQA

The Water Board found ExxonMobil's investigation and remediation activities at the Site to be categorically exempt from the requirement for further environmental review under the California Environmental Quality Act. Execution of the Agreement would not constitute a "project" under CEQA.

Climate Action

Climate change and sea level rise will not impact the effectiveness of the remedial action, the costs that the Port or Port Tenants may incur due to presence of residual petroleum hydrocarbons, or any terms of the Agreement. The Agreement will not affect or support the Port's climate action goals.

Recommendation

Port staff recommends approval of the Cost Reimbursement Agreement between the City and County of San Francisco and ExxonMobil for Management of Residual Petroleum Hydrocarbons on Port Property within a portion of the Former Mobil Bulk Terminal 04-394/Wharf J10 area.

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Planning & Development

For: Byron Rhett, Deputy Director
Planning & Development

Attachments

A: Site Location Map

B: Risk Management Plan Area

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 16-19

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (“Water Board”) has regulatory authority to oversee environmental site investigation and remedial action within the Port area of the City and County of San Francisco; and

WHEREAS, On March 8, 2006 the Water Board issued Site Cleanup Requirements - Order No. R2-2006-0020 (the “Order”); to ExxonMobil Oil Corporation and the Port of San Francisco; and

WHEREAS, ExxonMobil has completed site investigation, remedial action planning, and execution of remedial action to treat and remove petroleum contamination in subsurface soil and groundwater under Water Board oversight and in compliance with the Order; and

WHEREAS, ExxonMobil has assessed the potential human health and environmental risk assessment and demonstrated to the satisfaction of the Port of San Francisco and the Water Board that any remaining residual petroleum can be safely managed through implementation of risk management measures under an approved Risk Management Plan (“RMP”); and

WHEREAS, the final task required of ExxonMobil and the Port under the Order is establishment of a process through which ExxonMobil will take long-term financial responsibility for management of petroleum constituents that are left in place; and

WHEREAS, Port staff and ExxonMobil have negotiated a proposed 20-year Cost Reimbursement Agreement (“Agreement”) for the reimbursement of Port costs of managing residual petroleum on Port property within the area covered by the RMP; now, therefore be it

RESOLVED that the Port Commission hereby approves the Cost Reimbursement Agreement between the City and County of San Francisco and ExxonMobil Corporation for management of residual petroleum hydrocarbons on the subject Port property as described in the Memorandum dated April 21, 2016, and, subject to approval by the Board of Supervisors, authorizes the Executive Director or her designee to take such actions (including the execution of the agreement) as she deems necessary and advisable, in consultation with the City Attorney, to

effectuate this approval and the purpose and intent of this Resolution; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director or her designee to enter into any additions, amendments or other modifications to the Agreement that the Executive Director, in consultation with the City Attorney determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port or materially decrease the benefits to the City or Port, and are necessary or advisable to complete the transactions which the Agreement contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director or her designee of the Agreement, and any such amendments thereto.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 26, 2016.

Secretary

Attachment B: Risk Management Plan

