

Cost Reimbursement Agreement between City and County of San Francisco, acting by and through the San Francisco Port Commission and ExxonMobil Oil Corporation, a New York corporation

for

Management of Residual Petroleum Hydrocarbons on Port Property in certain areas of the Former Mobil Bulk Terminal 04-394/Wharf J10

This Cost Reimbursement Agreement (“Agreement”) is entered into this ___ day of _____, 2016 (“Effective Date”), between City and County of San Francisco, acting by and through the San Francisco Port Commission (“Port”) and ExxonMobil Oil Corporation, a New York corporation (“ExxonMobil”). The Port and ExxonMobil are sometimes hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

- A. In 2006, the California Regional Water Quality Control Board for the San Francisco Bay Region (the “Water Board”) issued Site Cleanup Requirements for ExxonMobil and the Port of San Francisco for the Former Mobil Bulk Terminal 04-394 (Wharf J10) in Order No. R2-2006-0020 (the “Order”).
- B. The Order names ExxonMobil as the “primary discharger” and responsible party for the requirements of the Order. The Order names the Port as a “secondary discharger”.
- C. Between 1986 and 2013 ExxonMobil conducted investigations and remediation of petroleum in soil and groundwater under Water Board oversight and subject to Water Board approval. Remedial actions included excavation and removal of an approximately 0.12-acre area of the shoreline and installation of an organoclay permeable reactive barrier beneath clean fill and a new riprap embankment in 2011.
- D. Between 2011 and 2013 ExxonMobil continued visual monitoring of the shoreline for evidence of petroleum seepage from the site and groundwater monitoring for dissolved and/or separate-phase petroleum hydrocarbons in groundwater beneath the site. Monitoring indicated significantly improved environmental conditions following the corrective action described above. Visual monitoring ceased in 2012 and groundwater sampling and analysis ceased in the fourth quarter of 2013 with Water Board approval.
- E. In 2014, ExxonMobil completed an Environmental Risk Assessment that evaluated the potential human health and ecological risks associated with residual petroleum hydrocarbons remaining in the soil and groundwater beneath the site. The risk assessment concluded that the only potentially significant risk would be to construction workers exposed to petroleum in soil and benzene in vapor within a construction trench. The Water Board approved the risk assessment on September 11, 2014.

F. The Order requires the “discharger,” referring collectively to ExxonMobil and the Port, to develop and implement a Risk Management Plan (“RMP”) that specifies long term management measures to protect human health and the environment, and prevent nuisance conditions related to the ongoing presence of residual petroleum in the subsurface. The Order additionally requires that the RMP describe how the discharger will assume long term financial responsibility to safely manage any hydrocarbon contamination that is allowed to be left in place. ExxonMobil and the Port developed a mutually-agreed upon RMP, which was approved by the Water Board on April 22, 2016.

G. This Agreement provides for a process for the Port and its tenants to manage and seek cost reimbursement from ExxonMobil in the event the Port or its tenants encounter Residual Petroleum Hydrocarbon (defined hereinafter) while conducting maintenance or construction activities on Port Property within the RMP area.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Residual Contamination. The Parties acknowledge that the Water Board has authorized some petroleum hydrocarbons subject to the requirements of the Order to be managed in place on Port Property (“Residual Petroleum Hydrocarbon”). By entering into this Agreement, the Parties intend to allocate future costs related to the management of the Residual Petroleum Hydrocarbons.

2. Reimbursable Costs. ExxonMobil shall be responsible for reimbursing the Port or the Port's designated agent or contractor (collectively, “Port”) and Port's tenants, licensees or other authorized users of Port Property or their agents or contractors (collectively, “Port's Tenants”) for reasonable increased costs and expenses incurred by Port or Port's Tenants related to management of the Residual Petroleum Hydrocarbons that: 1) would not be incurred in the absence of the Residual Petroleum Hydrocarbons being left on Port Property; and 2) that are incurred when undertaking maintenance or construction activities on Port Property, including but not limited to costs incurred to design and complete construction in a manner that protects or restores the integrity of the permeable reactive barrier (“Reimbursable Costs”).

The Parties acknowledge that the management of the Residual Petroleum Hydrocarbons may necessitate some actions involving the investigation and remediation of Residual Petroleum Hydrocarbons. For purposes of this Agreement, “investigation” means, when used with reference to the Residual Petroleum Hydrocarbons, sampling, testing and other actions undertaken to determine the nature and extent of petroleum hydrocarbons. “Remediation” means, when used with reference to the Residual Petroleum Hydrocarbons, the cleanup, removal, containment, treatment, stabilization or monitoring of petroleum hydrocarbons.

3. RMP Requirements. ExxonMobil and Port agree that the following management measures described in the RMP are appropriate measures for management of the Residual Petroleum Hydrocarbons on Port Property:

a. Requirement for special notice to the Port, City and County of San Francisco Department of Public Health (DPH) and/or ExxonMobil prior to working in the “RMP

Area" as defined in the Risk Management Plan (AME 4/11/16, Figure 4). *Exhibit A* of this Agreement shows the RMP Area.

b. Additional worker safety training, monitoring, and protective equipment required because of the Residual Petroleum Hydrocarbons (RMP Section 3.7).

c. Additional conditions imposed on handling and/or disposal of soil or groundwater due to presence of Residual Petroleum Hydrocarbons or classification as special or hazardous waste due to concentration of Residual Petroleum Hydrocarbons (RMP Section 3.4).

e. Professional services required to assess potential impact of maintenance or construction activities on Residual Petroleum Hydrocarbons or the permeable reactive barrier and development and implementation of any special design, construction, or engineering controls required because of the Residual Petroleum Hydrocarbons (RMP Section 3.4).

f. Use of back fill that would not have been required if the soil had not contained Residual Petroleum Hydrocarbons and otherwise could have been reused in accordance with the RMP (RMP Section 3.4.3).

g. Storage, treatment and disposal measures for soil or groundwater that would not be required but for the presence of Residual Petroleum Hydrocarbons.

h. Response to unknown conditions related to Residual Petroleum Hydrocarbons (RMP Section 3.4.6).

4. **RMP Compliance.** In addition to any other applicable RMP measures, Port will implement the RMP measures listed in Section 3, above, as applicable to the particular activity, when conducting construction and maintenance activities in the RMP Area. Port's obligation to implement the RMP measures listed in Section 3 of the RMP, are enforceable by the DPH and Water Board. Nothing in this Agreement shall give rise to any claim against Port by ExxonMobil or any other person for any alleged failure of Port to implement the RMP measures.

Port will require compliance with the requirements of Section 3 of the RMP as a condition of issuing a building or encroachment permit to a Port Tenant for construction and maintenance activities that disturb the ground surface or subsurface in the RMP Area where such regulatory permit is required. Port will advise permittees of this Agreement and the ability for reimbursement of Reimbursable Costs as provided under Section 14.

5. **Notice.** Except for emergencies, Port will provide a notice to ExxonMobil at least sixty (60) calendar days in advance of any maintenance or construction work for which Port intends to seek reimbursement under this Agreement. Where Port is required to perform work on an emergency basis (for example, but not limited to, such incidents as a water line or sewer line leak, fire or natural disaster, or discovery of a health, public safety or environmental hazard that requires work in the RMP Area), Port will provide a notice to ExxonMobil as soon as possible after commencement of the emergency work. In either case, failure of Port to provide notice

under this Section does not relieve ExxonMobil of responsibility for payment of Reimbursable Costs.

6. On-site Representative. For any maintenance or construction work for which Port intends to seek reimbursement under this Agreement, ExxonMobil may have a representative (“Representative”) on-site during any subsurface work undertaken by Port for the purpose of observing such work.

a. ExxonMobil agrees that its Representative shall not interfere with activities of Port, shall follow all instructions of Port, and shall comply with all applicable laws, including worker safety requirements, and observe all safety procedures of Port. Further, Port may exercise its reasonable discretion in consideration of the nature of the site and activities to limit the areas of the site that the Representative may access, limit the number of Representatives that are allowed on site at any one time, and to require advance notice from ExxonMobil of its intent to have Representatives on site.

b. ExxonMobil agrees to indemnify, hold harmless and defend Port, without cost to the Port, its officers, agents and employees, from and against any and all claims, judgments, losses, costs, damages, penalties, fines or liabilities including, without limitation, interest and reasonable attorneys’ fees of whatever kind to the extent arising in any manner out of (i) any injury to or death of any person or damage to or destruction of any property occurring in, on, under or about the Port Property, or any part thereof, whether to the person or property of ExxonMobil or its Representative, resulting from the Representative’s access and/or observation on the Port Property; (ii) any failure by the Representative or ExxonMobil to observe or perform any of the terms, covenants or conditions of Section 6(a), above; or (iii) the unauthorized access on or interference with any activities on the Port Property by ExxonMobil’s Representative.

Failure of ExxonMobil to have a Representative does not relieve ExxonMobil of responsibility for payment of Reimbursable Costs.

7. Contracting Procedure. With respect to maintenance or construction work for which Port may seek reimbursement under this Agreement, Port shall award contracts for work (including work to be performed by City employees) in accordance with the applicable procedures set forth in Chapter 6 of the City’s Administrative Code or such successor code that may be adopted by the City, including provisions for prevailing wages. Port will be deemed to have complied with this Section 7 if (i) Port has awarded a contract in accordance with the applicable procedures as set forth in Chapter 6 of the City’s Administrative Code or successor code or (ii) Port has incurred expenses itself as a result of work performed by Port employees in accordance with the applicable procedures as set forth in Chapter 6 of the City’s Administrative Code or successor code.

8. Reimbursement. ExxonMobil is responsible for any costs and expenses incurred by Port for which Port seeks reimbursement that are Reimbursable Costs, that do not exceed the scope of work required by the RMP, and that are incurred by Port in accordance with the terms of this Agreement, and that were not disputed by ExxonMobil in accordance with this Agreement with said dispute resolved or adjudicated in favor of ExxonMobil. Costs and expenses incurred by

Port to implement the RMP measures set forth in Section 3, above, and pursuant to a contract awarded by Port or performed by Port in accordance with Section 7, above, are presumed to be Reimbursable Costs. ExxonMobil may dispute or mediate costs and expenses for which Port seeks reimbursement only on the basis that the work performed exceeds the scope of work required by the RMP measures in Section 3 and/or are not Reimbursable Costs as defined in Section 2 and/or for the reasons articulated during the process provided for in Section 9. Port may also seek reimbursement of reasonable administrative expenses, including overhead and staff costs, including legal staff, necessary to process requests for reimbursement that meet the definition of Reimbursable Cost in accordance with this Agreement, provided that said administrative expenses shall not exceed seven percent (7%) of any such claim for Reimbursable Costs.

9. Pre-authorization. Except for emergency work, Port agrees to request pre-authorization of Reimbursable Costs from ExxonMobil prior to commencing maintenance or construction work that Port reasonably believes will result in a Reimbursable Cost in excess of ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000) in accordance with the following procedures: Port shall submit a scope of work and cost estimate to ExxonMobil. Within thirty (30) calendar days, ExxonMobil shall approve or disapprove the request in writing. In the event that ExxonMobil disapproves the request in whole or part, ExxonMobil shall specify in writing the basis for disapproving the request and shall provide detailed recommendations to Port as to how Port could modify its request to qualify as a Reimbursable Cost. Port may at its option, submit a revised pre-authorization request, in accordance with the procedure specified above, in the event that ExxonMobil disapproves all or any portion of a pre-authorization request. Within thirty (30) calendar days, ExxonMobil shall approve or disapprove the revised pre-authorization request in writing specifying in detail the basis for any disapproval of the request. Failure of ExxonMobil to respond in writing, specifying in detail the basis for any disapproval of a pre-authorization request, within thirty (30) calendar days of a pre-authorization request or revised pre-authorization request shall be deemed approval of the pre-authorization request. For maintenance or construction work that Port reasonably believes will result in a Reimbursable Cost in excess of fifty thousand dollars (\$50,000), pre-authorization process outlined in this section will apply but with the a sixty (60) calendar day window for review and response by ExxonMobil.

10. Reimbursement Process. To obtain reimbursement from ExxonMobil for Reimbursable Costs, Port will provide ExxonMobil with an itemized invoice and all supporting documentation for any costs and expenses for which Port seeks reimbursement (hereinafter referred to as the "Reimbursement Request") and the name and address of Port's designated representative for receipt of any reimbursement check. ExxonMobil shall review the Reimbursement Request and within sixty (60) calendar days from the date of receipt approve or disapprove, in whole or part, the Reimbursement Request and, to the extent approved, forward a reimbursement check to the designated representative. In the event ExxonMobil disapproves any portion of the Reimbursement Request, ExxonMobil shall provide Port with a notice of dispute in writing containing a reasonably detailed rationale for disapproving any disputed portion of the Reimbursement Request. A Reimbursement Request that is consistent with an approved pre-authorization request and supported by an itemized invoice, and, as applicable, supporting documentation, shall not be subject to dispute on any grounds other than those asserted by ExxonMobil during the process described in the preceding Section 9. All undisputed portions of

a Reimbursement Request are due and payable within 60 calendar (60) days of receipt by ExxonMobil. Port may charge ExxonMobil interest on late payments on undisputed invoices at the rate of six percent (6%) per annum.

11. **Recourse.** If ExxonMobil fails to pay within sixty (60) calendar days of receipt of the invoice by ExxonMobil (unless disputed pursuant to Section 12, below), with interest, Port shall have the right to seek immediate judicial relief, without obligation for further notice to ExxonMobil.

12. **Disputes.** In the event of a dispute over an invoice, the Parties will first attempt to resolve disputes informally. If the dispute cannot be resolved informally within thirty (30) calendar days of the notice of dispute, any party may submit the dispute to mediation, pursuant to the following procedures: The Party seeking mediation shall provide the other Parties with a notice of demand for mediation. Within thirty (30) calendar days of notice of demand for mediation, the City and, collectively, ExxonMobil, shall jointly designate a mediator and the expenses of said mediation shall be borne fifty percent (50%) Port and fifty percent (50%) by ExxonMobil. In the event the Parties fail to agree on a mediator, the Parties are not bound to mediate the matter and may seek judicial relief. The mediation shall be conducted within sixty (60) calendar days of the demand, unless otherwise agreed by the Parties. Any Party may commence a lawsuit over the dispute after one (1) calendar day of mediation, unless otherwise agreed by the Parties.

13. **Term.** This Agreement shall commence on the Effective Date and shall expire on the earlier of: (i) the date twenty (20) years from the Effective Date or (ii) the date when ExxonMobil has reimbursed Port or Port's Tenants for an amount exceeding the Reimbursement Cap, as defined below (the "Expiration Date"). For purposes of this Agreement, the Reimbursement Cap means five million dollars (\$5,000,000) in costs reimbursed pursuant to this Agreement, as adjusted herein ("Reimbursement Cap"). Commencing on the first anniversary of the Effective Date of this Agreement, or if that date is not the first day of the month, then on the first day of the month following that date, and on each anniversary of such date thereafter (the "Anniversary Date"), the Reimbursement Cap shall be increased by three percent (3%).

If the Expiration Date is determined under (i) above, Port may submit Reimbursement Requests in accordance with the procedures set forth in this Agreement for costs incurred during the term until the date six (6) months after the Expiration Date. Upon expiration of this Agreement, the Parties will negotiate in good faith to extend this Agreement or enter a new agreement which fulfills the purposes of this Agreement and the long term management measures specified in the RMP and the Order.

In the event that Port makes a claim for costs after the expiration of this Agreement that would otherwise have been covered by this Agreement, ExxonMobil hereby agrees that it will not raise as a defense to such claim a defense based on the doctrine of laches or the expiration of a statute of limitations; provided however that this waiver shall not serve to revive any claim that has expired as of the Effective Date due to the running of any statute of limitations, and any applicable statute of limitations tolled during the term of the Agreement will begin to run again upon the termination of this Agreement. This Section 13 will survive the expiration or earlier termination of this Agreement.

14. Port Tenants. Port Tenants may seek reimbursement for Reimbursable Costs using the same process and procedures and subject to the same conditions and limitations specified in this Agreement, except that, in lieu of the requirements described in Section 7, Port Tenants must obtain pre-authorization for all work under the procedures described in Section 9 without regard to the amount of Reimbursable Costs. In cases where work is required on an emergency basis, Port Tenants will seek authorization as soon possible after commencement of the emergency work.

15. Recordation. Concurrently with the execution of this Agreement, the Parties agree to execute and record in the Official Records of the City and County of San Francisco a Memorandum of Agreement in the form attached hereto as *Exhibit B* and incorporated herein by this reference.

16. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and may be served by personal delivery, by sending the notice by overnight courier service, addressed to the party to be notified, or by depositing the notice in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with a return receipt requested. Any notice or other communication served in the manner hereinabove described shall be deemed to have been given and received upon the date of delivery to the addressee or refusal by the addressee to accept delivery. Alternatively, any notice or other communication required or permitted to be given under this Agreement may be served by facsimile and, in such event, shall be deemed to have been given and received upon the date of delivery to the addressee by facsimile provided that a copy of any such notice or communication is also sent by overnight courier service, addressed to the Party to be so notified. For purposes of notice, the addresses and facsimile numbers of the Parties shall be as follows:

To: ExxonMobil: ExxonMobil Environmental Services
Project Manager: Jennifer C. Sedlachek
4096 Piedmont Avenue #194
Oakland, CA 94611
Phone: 510.547.8196

To: Port: Port of San Francisco
Chief Harbor Engineer
Pier 1
San Francisco, CA 94111
Phone: (415) 274-0400
Fax: (415) 274-0528

With a copy to: Port General Counsel at the same address

The Parties may modify the addresses and/or names of representatives set forth in this Section 19 by providing notice thereof in accordance with the provisions hereof.

17. Admissions. Each Party acknowledges and agrees that this Agreement involves a compromise settlement of certain claims and disputes between Port and ExxonMobil, and that the agreements, covenants, provisions, terms and conditions in this Agreement shall not constitute or be deemed to be an admission of any liability or responsibility whatsoever on the part of any Party. This Agreement shall not be admissible as evidence in any action except an action to interpret or enforce this Agreement, including any amendments and modifications thereto.

18. Prior Agreements. Except for the Access Agreement and the 2012 Settlement Agreement and Release between the City and ExxonMobil settling Superior Court Case No. CGC-09-489792 (the state court action) and Case No C-08-03490 (the federal court action), (i) this Agreement supersedes any and all other prior agreements and understandings, either oral or in writing, between the Parties with respect to the subject matter of this Agreement, and no other prior agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid and binding; and (ii) each Party acknowledges and agrees that upon execution of this Agreement by the Parties this Agreement shall constitute the entire agreement between Port and ExxonMobil concerning the subject matter of this Agreement.

19. Counterparts. This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed an original for all purposes, but all such multiple originals or counterparts together shall constitute one and the same instrument. Facsimile copies of the Parties signatures to this Agreement shall be considered originals for all purposes.

20. Governing Law. This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of California without regard to the principles of conflicts of law thereof.

21. Interpretation. The Parties acknowledge and agree that this Agreement is the result of negotiations, that they have each been represented by legal counsel in such negotiations, and each Party and its legal counsel have participated fully in the review and revision of this Agreement. The Parties further acknowledge and agree that the provisions of this Agreement shall be construed and enforced in accordance with their fair meaning, and any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The captions and headings contained herein are for convenience only, and shall not affect the meaning or interpretation of this Agreement.

22. Severability. The Parties acknowledge and agree that if any agreement, covenant, provision, term or condition in this Agreement is invalid, illegal or incapable of being enforced under any applicable rule or law of either the State of California or the United States of America by a court of competent jurisdiction, such agreement, covenant, provision, term or condition shall be ineffective only to the extent of such invalidity, illegality or unenforceability and all other agreements, covenants, provisions, terms and conditions in this Agreement shall nevertheless remain in full force and effect; provided that the elimination or invalidity of such agreement, covenant, provision, term or condition does not materially alter the intent of the Agreement or the consideration received by any Party.

23. Cooperation Clause. The Parties shall reasonably cooperate to effectuate the purposes and intent of this Agreement.

24. Third Party Beneficiaries. Except as explicitly provided herein for Port Tenants, nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties and their respective successors and assigns, if any, nor shall any agreements, covenants, provisions, terms or conditions in this Agreement give any third parties any right of subrogation or action against the Parties.

25. Voluntary Execution of Agreement. Each Party represents and warrants that it consulted with and was represented by legal counsel throughout all aspects of this Agreement, that it has read the Agreement and understands the terms and conditions thereof, and that it has executed this Agreement voluntarily and without fraud, duress, and undue influence.

26. Authority. Each person signing this Agreement represents that he or she has the authority to do so on behalf of the Party for whom he or she is signing.

27. No Release of Claims. Nothing in this Agreement shall be deemed either a specific or general release of claims that any Party may have against any other Party to this Agreement with respect to Residual Petroleum Hydrocarbons on Port Property.

28. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the successors and assigns of Port and ExxonMobil. Where the term "Port" or "ExxonMobil" is used in this Agreement, it means and includes their respective successors and assigns.

29. Recitals. The Parties hereby agree that the recitals in this Agreement are true and correct and incorporated herein by this reference.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date set forth next to their respective signatures below.

EXXONMOBIL OIL CORPORATION, A NEW YORK CORPORATION

By: Andrew Haworth
ANDREW HAWORTH - US PROJECT EXECUTION MGR

Its: ATTORNEY-IN-FACT

Date: 4/25/2016

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the SAN FRANCISCO PORT
COMMISSION

By: _____
Elaine Forbes
Port Interim Executive Director

Date: _____

Approved as to Form:
Dennis J. Herrera
City Attorney

By _____
Rona H. Sandler
Deputy City Attorney

PORT Commission Resolution No. _____

Board of Supervisors Resolution No. _____

Attachment B: Risk Management Plan

Exhibit A

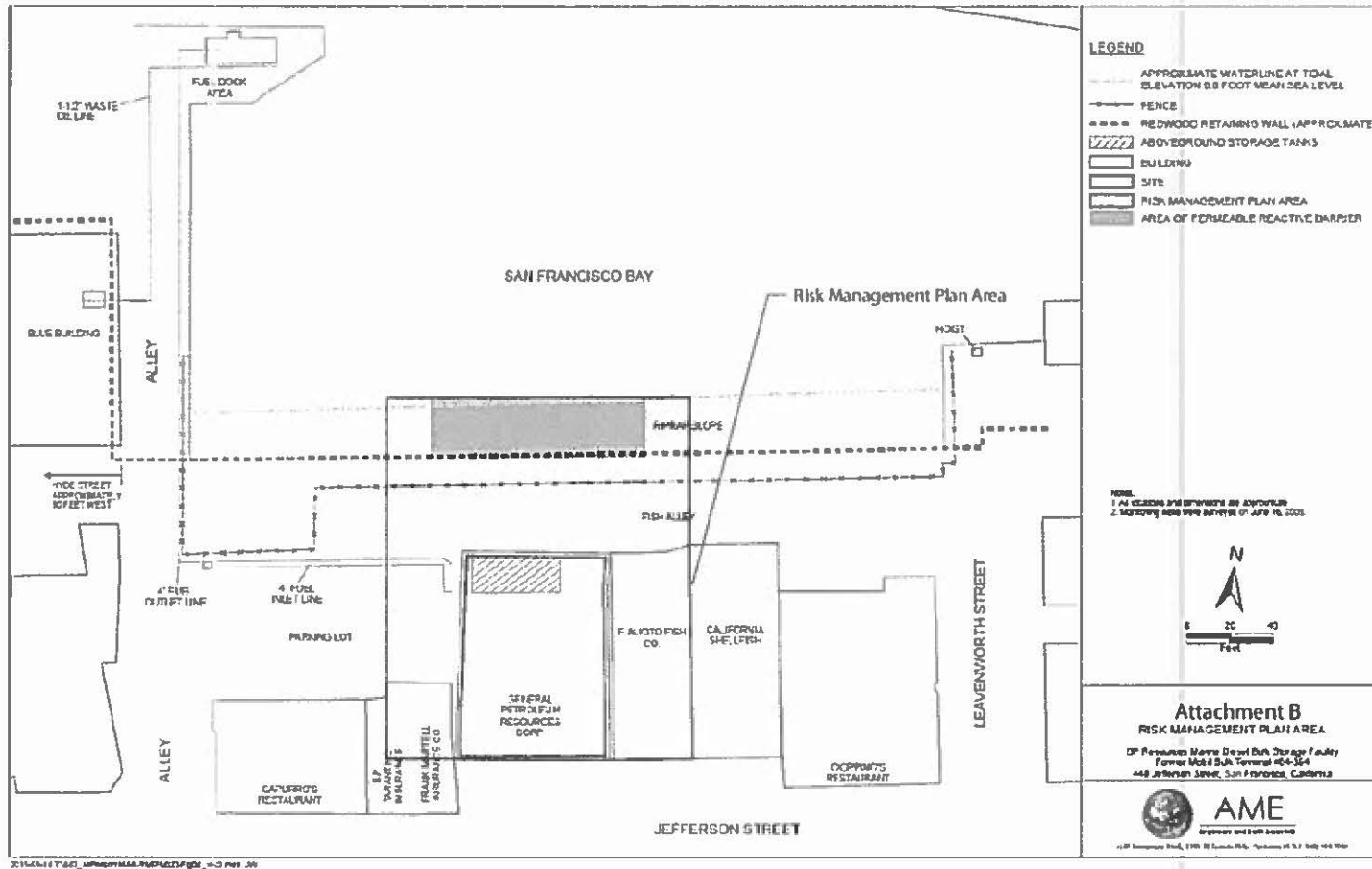


EXHIBIT B

FORM MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

CITY AND COUNTY OF SAN FRANCISCO
San Francisco Port Commission
Attn: Port General Counsel
Port of San Francisco
1 Pier
San Francisco, Ca 94111

FOR RECORDER'S USE ONLY

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Memorandum”), dated for reference purposes as of _____, 2016, is by and between ExxonMobil Oil Corporation, a New York corporation (“ExxonMobil”) and the City and County of San Francisco, acting by and through the San Francisco Port Commission (“Port”). The Port and ExxonMobil will sometimes hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

Recitals

A. Concurrently herewith, Port and ExxonMobil have entered into that certain Cost Reimbursement Agreement (“Agreement”), dated as of _____, 2016 (“Effective Date”), pursuant to which ExxonMobil and Port agreed to a process for Port and certain designees of Port to manage and seek cost reimbursement from ExxonMobil in the event the Port or its designees encounter Residual Petroleum Hydrocarbons on Port property in the Risk Management Plan Area (“RMP Area”) under the San Francisco Bay Regional Water Quality Control Board (“Board”) Order No. R2-2005-0028 (“Order”) while conducting maintenance and construction activities. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Agreement.

B. Port and ExxonMobil desire to execute this Memorandum to provide constructive notice of both Port’s and ExxonMobil’s rights and obligations under the Agreement to all third parties.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. General Terms and Conditions of the Agreement. Pursuant to the terms and conditions set forth in the Agreement, ExxonMobil agrees to be responsible for reimbursing Port for specified costs incurred by Port and its designees including certain Port tenants related to the management of Residual Petroleum Hydrocarbons while conducting maintenance and construction activities in the RMP Area. Subject to the terms and conditions set forth in the Agreement, the Parties agree that the management measures set forth in the Risk Management

Plan and amended from time to time, are appropriate measures for management of the Residual Petroleum Hydrocarbons in the RMP Area.

2. Term. Unless otherwise explicitly provided in the Agreement, the Agreement shall commence on the Effective Date and shall expire on the earlier of: (i) the date twenty (20) years from the effective date or (ii) the date when ExxonMobil has reimbursed Port for an amount exceeding Five Million dollars (\$5,000,000) increased by three percent (3%) annually.

If the Expiration Date is determined under (i) above, the Port may submit Reimbursement Requests in accordance with the procedures set forth in the Agreement for costs incurred during the term until the date six (6) months after the expiration date. Upon expiration of the Agreement, the Parties will negotiate in good faith to extend the Agreement or enter a new agreement which fulfills the purposes of the Agreement and the long term management measures specified in the Port RMP and the Order.

In the event that Port makes a claim for costs after the expiration of the Agreement that would otherwise have been covered by the Agreement, ExxonMobil hereby agrees that it will not raise as a defense to such claim a defense based on the doctrine of laches or the expiration of a statute of limitations; provided however that this waiver shall not serve to revive any claim that has expired as of the Effective Date due to the running of any statute of limitations.

3. Successors and Assigns. This Memorandum and the Agreement is binding upon and shall inure to the benefit of the successors and assigns of the Port and the individual members of ExxonMobil.

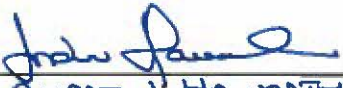
4. Inconsistency. To the extent of any inconsistency between the terms and conditions this Memorandum and the Agreement, the terms and conditions of the Agreement will control.

5. Recitals. The Parties hereby agree that the recitals in this Memorandum are incorporated herein by this reference.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed on the date set forth next to their respective signatures below.

EXXONMOBIL OIL CORPORATION, A NEW YORK CORPORATION

By: 
ANDREW HAWORTH

Its: ATTORNEY-IN-FACT

Date: 4/25/2016

PORT:

**CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the SAN FRANCISCO PORT
COMMISSION**

By: _____
Elaine Forbes
Port Interim Executive Director

Date: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Rona H. Sandler
Deputy City Attorney

Port Commission Resolution No. _____
Board of Supervisors Resolution No. _____