

## REIMBURSEMENT AGREEMENT

April

This Reimbursement Agreement ("Agreement") is effective this <sup>4</sup>~~23rd~~ day of ~~March~~, 2014 ("Effective Date"), by and between **EXXON MOBIL CORPORATION**, formerly known as Exxon Corporation, qualified to do business in the State of California (hereinafter "ExxonMobil") and the City of Monterey (hereinafter "Claimant").

### BACKGROUND

1. ExxonMobil is the former lessee of a certain property known as former Exxon Facility RAS/SS #7-0228 located at 595 Munras Avenue, Monterey, California (hereinafter the "Property"); and the Claimant is the current owner of the Property. Claimant intends to redevelop the Property for mixed commercial and residential use, with a residential component on the second floor ("Development Plans").

2. Claimant entered into a lease with Texaco, Inc. regarding the Property commencing January 1, 1972, and the lease was subsequently amended (the lease and its amendments are collectively referred to as the "Lease"). The Lease was subsequently assigned to ExxonMobil. Claimant and ExxonMobil acknowledge the existence of the Lease and agree that this Agreement does not affect the rights and obligations of either party pursuant to the Lease.

3. ExxonMobil previously performed a site investigation and corrective action at the Property under the oversight of the Central Coast Regional Water Quality Control Board ("Regional Board"). In a letter dated May 9, 2013, the Regional Board confirmed completion of the site investigation and corrective action and stated that "no further action related to the petroleum release at the site is required."

4. ExxonMobil acknowledges that Claimant may incur incremental costs and expenses during its planned redevelopment of the Property, including costs related to a vapor barrier system to be installed at the Property, and possibly other incremental costs related to petroleum hydrocarbon contaminated soils, and intends to reimburse Claimant for certain expenses under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and in reliance upon the representations and covenants made by ExxonMobil hereunder, the sufficiency of which are acknowledged, the parties hereto covenant and agree as follows:

1. Reimbursement of Claimant's Incremental Costs Associated with Redevelopment. ExxonMobil shall reimburse Claimant a total amount not-to-exceed One Hundred Forty Three Thousand Dollars (\$143,000) for future incremental costs and expenses incurred by Claimant within five (5) years of the

Effective Date of this Agreement related to a vapor barrier system to be installed at the Property and the incremental costs to segregate and remove petroleum contaminated soils that might be discovered as a result of excavation in the public right-of-way (the "ROW") adjacent to the property provided that such costs arise as a result of a discharge of petroleum hydrocarbons which was caused by ExxonMobil's operations on the Property (hereinafter referred to as "Covered Contamination"). Such future incremental costs shall be referred to herein as the "Delta Costs."

- a. Vapor Barrier. Claimant agrees to provide copies of the plans for the design of the vapor barrier system to ExxonMobil at least 30 days prior to installation of the system, and to consult with ExxonMobil or its agents regarding the design of the vapor barrier system if requested by ExxonMobil prior to installation of the system. Pursuant to Section 1.c., Claimant shall provide ExxonMobil advance written notice regarding any work related to the vapor barrier on the Property. Claimant shall also grant ExxonMobil and/or its environmental consultants the right to access the Property to observe any work related to and to inspect or monitor the vapor barrier system on the Property. ExxonMobil agrees to reimburse Claimant for the actual, documented costs incurred to design, engineer, install, manage, monitor, and test the vapor barrier system.
- b. Soils. The Delta Costs concerning soils shall only include the incremental, additional costs to screen, segregate, remove and dispose of any soils contaminated by Covered Contamination encountered as a result of required utility connection improvements in the ROW adjacent to the Property above and beyond the costs of such work of the same volume of soil if it did not contain Covered Contamination. Required utility connection improvements include, but are not limited to sawcutting the street to accommodate five (5) utility trenches, excavation, trenching plate crossings, traffic control for night work, importing clean soil to backfill utility trench, testing of suspect contaminated material, protecting suspect material storage pile, exporting suspect material and street paving repair. Pursuant to Section 1.c., Claimant shall provide ExxonMobil advance written notice of its intention to conduct any demolition, soil grading or excavation activities on the Property. Claimant shall be responsible for screening, segregating, removing and disposing of soils during redevelopment of the Property. If offsite disposal of soils is required, Claimant shall dispose of all such soils at a certified disposal facility in compliance with all applicable laws and regulations. ExxonMobil shall reimburse Claimant for the Delta Costs related to such work.
- c. Notice. Claimant shall provide ExxonMobil thirty (30) days written notice prior to (i) any work related to the installation of a vapor barrier system on the Property; or (ii) excavation or construction at the Property. Claimant shall also permit ExxonMobil and/or its environmental consultants to

access the Property to observe, and provide oversight for, such activities. Such notice shall be given to ExxonMobil, including a copy via email, at:

Jennifer C. Sedlachek  
ExxonMobil Environmental Services Company  
4096 Piedmont Avenue #194  
Oakland, CA 94611  
Email: jennifer.c.sedlachek@exxonmobil.com

- d. Reimbursement. ExxonMobil shall reimburse Claimant all Delta Costs within sixty (60) days of tender from Claimant, provided Claimant's submission for reimbursement of Delta Costs includes appropriate supporting documentation consistent with reasonable commercial practice, including copies of invoices given to them by contractors. Claimant shall provide requests for reimbursement, including a copy via email, to:

Jerri L. Hanks, Commercial Advisor  
ExxonMobil Environmental Services Company  
13401 North Freeway, Room 112  
Houston, TX 77060  
Phone: (832) 624-1946  
Email: jerri.l.hanks@exxonmobil.com

2. Release of ExxonMobil. On behalf of itself, its agents, representatives, insurers, successors in interest, heirs and assigns, Claimant fully and finally and forever releases, acquits and discharges ExxonMobil and its related entities, both parent company and affiliates, predecessors, successors, assigns, officers, directors, stockholders, shareholders, attorneys, representatives, agents and employees, past, present and future, and all other persons and entities for whose acts or omissions ExxonMobil could be held legally responsible ("Released Parties"), from any and all claims, suits, damages and causes of action of whatever nature and kind, which Claimant ever had, now has or may have on account of or relating to the design, engineering, installation, management, monitoring and testing of a vapor barrier system on the Property or the screening, segregating, removal, disposal and other costs related to contaminated soils related to Claimant's required utility connection improvements in the ROW incurred within five (5) years of the Effective Date of this Agreement.
3. Claimant hereby grants ExxonMobil and its consultants, contractors, and agents a right of entry and access to the Property reasonably necessary for ExxonMobil to observe and/or provide oversight for any activities that may be required by this Agreement or otherwise required by any governmental agency exercising oversight and enforcement responsibility over the Property. Claimant further agrees that such right of entry and access shall not be unreasonably impeded by actions of Claimant. Claimant agrees that any lease, sublease, conveyance or the like to a third-party will specifically recognize the existence of this Agreement.

Claimant will require same third-party to grant reasonable access consistent with the continued use and occupancy of the property by the third-party for its intended purpose.

4. This Agreement is binding upon and inures to the benefit of Claimant and ExxonMobil and their respective heirs, executors, administrators, personal representatives, successors, transferees and assigns.
5. The parties acknowledge the existence of the Lease and agree that this Agreement does not affect the rights or obligations pursuant to the Lease. This Agreement constitutes the parties' entire agreement on the reimbursement of Claimant's Delta Costs associated with improvements as described in Section 1 of this Agreement. There are no written or oral representations or understandings that are not fully expressed in this Agreement. No change, waiver, or discharge is valid unless in writing and signed by the party against whom it is sought to be enforced.
6. This Agreement represents a compromise settlement of a disputed claim and is not and shall not be construed as an admission of any issue of fact or law or as an admission or adjudication of any liability and shall not be admissible in any other suit or proceeding.
7. Claimant represents and agrees that the only party having present ownership interest in the Property is Claimant, and that no other person or entity has any present legal or equitable title to such Property or any causes of action in reference thereto.
8. Claimant and ExxonMobil acknowledge that this Agreement has been negotiated at arm's-length and therefore agree that any rule of construction of contracts resolving any ambiguities against the drafting party is waived and shall be inapplicable to this document.
9. Except as otherwise provided in Section 1, any notice, request, consent, waiver or other communication required or permitted to be given throughout this Agreement shall be effective only if in writing and shall be deemed sufficient only if delivered in person or sent by telecopy, or by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To ExxonMobil:      Claims and Superfund Manager  
13401 North Freeway, Room 110  
Houston, TX 77060

To Claimant:      City Clerk's Office  
Attn: City Clerk  
City Hall  
580 Pacific Street  
Monterey, CA 93940



10. If any part of this Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.
11. The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or of any other term or condition.
12. This Agreement must be construed – and its performance enforced – under California law.
13. This Agreement may be executed in one or more counterparts and by facsimile signatures, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same agreement.
14. Each person executing this Agreement represents that the party on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute the Agreement on behalf of such party.

IN WITNESS HEREOF, the parties hereto are authorized and have executed this Agreement on the day and year first written above.

**EXXON MOBIL CORPORATION**

28 MAR 2014  
Date

By: [Signature]  
Name: Scott Wybro  
Title: Agent and Attorney In Fact

4/3/2014  
[Signature]  
Date

**CITY OF MONTEREY**

By: [Signature]  
Name: Michael McCarthy  
Title: Interim City Manager

