

## RESTORATION GUARANTY

THIS RESTORATION GUARANTY ("Restoration Guaranty") is made as of \_\_\_\_\_, 2016, by ExxonMobil Oil Corporation ("Guarantor") to and for the benefit of the CITY OF LOS ANGELES, acting by and through its Board of Harbor Commissioners ("City").

### WITNESSETH:

A. Permit Nos. 704 and 418 and Revocable Permit Nos. 1059, 1464 and 9-40 ("Current Entitlements") issued by City entitled Guarantor to use and occupy certain premises at the Port of Los Angeles in accordance therewith, and currently remain on holdover status;

B. Guarantor acknowledges that City holds the premises covered by such Current Entitlements as a trustee for the State of California and has a significant interest in safeguarding the condition, environmental and otherwise, of such premises;

C. To replace such Current Entitlements, and to grant new use and occupancy rights for the premises formerly covered by the Current Entitlements, City has issued to Guarantor a new permit with a five-year term (subject to early termination in accordance with its provisions) ("Permit"), which Permit Guarantor seeks to transfer to PBF Energy Western Region LLC, a subsidiary of PBF Energy, Inc. ("PBF" or "Tenant");

D. Guarantor acknowledges and agrees that, by entering into this Restoration Guaranty, City does not release (a) any rights to enforce performance of Section 117 of the Permit, or (b) rights that arise from or relate to the restoration and environmental remediation obligations of the Current Entitlements, enforcement of which are sought pursuant to the Oil Pollution Act of 1990, Section 13304 of the California Water Code, and/or laws that provide a remedy against the party responsible for causing contamination.

E. As one of the conditions to the effectiveness of such transfer of the Permit and the transfer of Guarantor's contractual obligations to City thereunder (other than as set forth in this Restoration Guaranty) to Tenant, City has requested and Guarantor has agreed to irrevocably guarantee on the terms and conditions set forth in this Restoration Guaranty, the timely payment and performance of the obligations of "Tenant" set forth in Section 117 of the Permit, as the terms and conditions of that Section exist on the effective date of this Restoration Guaranty. Guarantor acknowledges and agrees that such obligation includes but is not limited to the obligation to remediate "Aggregate Contamination," as that term is defined in the Permit; and

F. Guarantor acknowledges that City's approval of Guarantor's request to transfer its interests in the Permit, provides direct and significant benefits to Guarantor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to obtain City's approval of Guarantor's request to transfer its interests in the Permit, and intending to be legally bound, Guarantor does hereby, subject to City's approval of Guarantor's request to transfer its interests in the Permit, warrant, represent, and covenant unto City as follows:

1. INCORPORATION OF RECITALS.

The recitals of this Restoration Guaranty are incorporated herein.

2. GUARANTY AND SURETY.

This is a continuing guaranty of payment and performance. Guarantor hereby absolutely, irrevocably and unconditionally guarantees, and becomes surety for, the full and timely payment and performance of the debts, obligations and liabilities of "Tenant" as set forth in Section 117 of the Permit, as the terms and conditions of that provision and any terms used in such Section 117 that are defined in the Permit's glossary exist on the effective date of this Restoration Guaranty; provided, however, that such obligations do not and will not include any obligation to pay compensation, rent or other similar charges under the Permit, including, without limitation, any increases thereto pursuant to Section 117.2 of the Permit. Guarantor acknowledges and agrees that such obligations include but are not limited to the obligation to remediate "Aggregate Contamination," as that term is defined in the Permit. Such obligations identified in this Section 2 shall collectively be referred to as the "Guaranteed Obligations".

3. SUBSEQUENT ACTS BY CITY.

City may, in its sole and absolute discretion and without notice to Guarantor, take any action which might otherwise be deemed a legal or equitable release or discharge of Guarantor's obligations hereunder without either impairing or affecting the liability of Guarantor for payment and performance of the Guaranteed Obligations, provided that no such actions shall extend the term or broaden the scope of this Restoration Guaranty. Such actions might include, by way of illustration and not limitation:

3.1 the acceptance of partial payment or performance of the Guaranteed Obligations;

3.2 the settlement, release, compromise, cancellation, rearrangement or consolidation of any of the Guaranteed Obligations;

3.3 the collection of or other liquidation of any claims City may have in respect to the Guaranteed Obligations;

3.4 the granting of indulgences, forbearances, compromises, extensions or adjustments in respect to any covenant or agreement under the Permit;

3.5 the release from liability of any other guarantor, or payment or performance of the Guaranteed Obligations or any portion thereof;

3.6 the release, surrender, exchange or compromise of any lien, security or collateral held by City as security for the Guaranteed Obligations; or

3.7 the release or compromise of any lien or security held by City as security for the liability of any other person who is guaranteeing the Guaranteed Obligations.

Any alterations of the terms of this Restoration Guaranty shall be in writing, mutually agreed to by City and by Guarantor and in conformity with the procedures set forth in City's Charter and Administrative Code.

4. EXPENSES.

Guarantor agrees to reimburse City for all expenses (including without limitation reasonable attorneys' fees, costs and expenses) incurred by City in enforcing the Guaranteed Obligations against Guarantor, pursuing any remedies relating to the Guaranteed Obligations against Guarantor, and enforcing this Restoration Guaranty.

5. PAYMENT AND PERFORMANCE BY GUARANTOR.

5.1 City shall not be required to liquidate any lien or any other form of security, instrument, or note held by City prior to making such demand. THIS IS A GUARANTY OF PAYMENT AND PERFORMANCE AND NOT OF COLLECTION, and Guarantor hereby waives all rights that Guarantor may have, if any, to require that any action be brought against Tenant (or any other person) or to require that resort be first made against any security prior to demanding payment or performance hereunder.

5.2 In the event (a) City provides to Tenant and Guarantor, on or before the fifth (5<sup>th</sup>) anniversary of the effective date of the Permit, written notice of a Tenant default with respect to the Guaranteed Obligations, or (b) if the Regional Water Quality Control Board has not confirmed in writing, on or before the date that is one (1) month prior to the Permit's Expiration Date (as that term is defined in the Permit), that the obligations imposed by Cleanup and Abatement Order No. 99-003 have been fully performed, Guarantor shall pay or perform any unperformed Guaranteed Obligations, until such time as they, in the sole reasonable discretion of the Executive Director of City's Harbor Department ("Executive Director"), have been fully performed, without regard to whether such full performance extends beyond the fifth (5<sup>th</sup>) anniversary of the effective date of the Permit. Should Guarantor become obligated to pay or perform any Guaranteed Obligations pursuant to this Section 5.2, City agrees to: (i) accept the performance by the Guarantor of the obligations of Tenant under Section 117 of the Permit and (ii) cooperate with Guarantor in connection therewith, including, without limitation, by providing reasonable access to the sites and facilities governed by the Permit and by providing all documents, materials, reports, studies and other information in the City's possession and reasonably necessary for Guarantor's prosecution of such remedial actions.

6. CUMULATIVE REMEDIES.

Guarantor hereby agrees that all rights and remedies that City is afforded by reason of this Restoration Guaranty are separate and cumulative and may be pursued separately, successively, or concurrently, as City deems advisable. In addition, all such rights and remedies are nonexclusive and shall in no way limit or prejudice City's ability to pursue any other legal or equitable rights or remedies that may be available. Without limiting the generality of the foregoing, Guarantor agrees that in any action by City by reason of the Guaranteed Obligations, City at its election may proceed (a) against Guarantor together with Tenant, (b) against Guarantor and Tenant or Tenant's successors individually, or (c) against Guarantor only without having commenced any action against or having obtained any judgment against Tenant.

7. WAIVERS BY GUARANTOR.

7.1 Guarantor hereby waives:

7.1.1 notice of acceptance of this Restoration Guaranty and of creation of the Guaranteed Obligations;

7.1.2 presentment, notice of non-payment, and demand for payment of the Guaranteed Obligations;

7.1.3 protest, notice of protest, and notice of dishonor or default to Guarantor or to any other party with respect to any of the Guaranteed Obligations;

7.1.4 any defense or circumstance (including, without limitation, disability, insolvency, lack of authority or power, insanity, minority, death or dissolution), other than payment of the Guaranteed Obligations, which might otherwise constitute a legal or equitable discharge of Guarantor's liability hereunder;

7.1.5 any defense of Tenant to the Guaranteed Obligations, other than the right to assert that a default by Tenant has not occurred or has been cured;

7.1.6 any rights to extension, composition or otherwise under the Bankruptcy Code or any amendments thereof, or under any state or other federal statute;

7.1.7 the right to trial by jury in any litigation arising out of, relating to, or connected with this Restoration Guaranty; and

7.1.8 all rights or defenses that Guarantor may have as set forth in Division Three, Part 4, Title 13, currently Sections 2787 through 2914, of the California Civil Code, which address generally suretyship;

7.2 It is expressly agreed that Guarantor shall remain liable hereon regardless of whether Tenant is held to be not liable on the Guaranteed Obligations. It

is agreed between Guarantor and City that the foregoing waivers are of the essence of this transaction and that, but for this Guaranty and such waivers, City would decline to consent to Guarantor's request to transfer its interests in the Permit, together with the concurrent release of Guarantor from all obligations under the Permit or the Current Entitlements (other than as specifically set forth in Recital D).

8. REPRESENTATIONS AND WARRANTIES.

Guarantor hereby represents and warrants to City that, as of the date hereof:

8.1 Guarantor now has no defense whatsoever to any action, suit or proceeding whatsoever that may be instituted on this Restoration Guaranty;

8.2 No other agreement or special condition exists between Guarantor and City regarding the liability of Guarantor hereunder; and

8.3 This Restoration Guaranty constitutes a valid and binding obligation of Guarantor, enforceable in accordance with its terms.

9. STRICT PERFORMANCE: WAIVERS.

No failure, delay or omission by City to exercise any of the rights, powers, remedies and privileges hereunder shall be deemed a waiver thereof and every such right, power, remedy and privilege may be exercised repeatedly. No notice to or demand on Guarantor shall be deemed to be a waiver of the right of City to take further action without notice or demand as provided herein. In no event shall any modification or waiver of the provisions of this Restoration Guaranty be effective unless in writing executed by City. Any waiver granted shall be applicable only in the specific instance for which it is given. Failure of City to insist upon strict performance or observance of any of the terms, provisions and covenants hereof or to exercise any right herein contained shall not be construed as a waiver or relinquishment of the right to demand strict performance at another time. Receipt by City of any payment or performance on the Guaranteed Obligations shall not be deemed a waiver of the breach of any provision hereof or of the Permit.

10. CAPTIONS.

The captions appearing herein are used for reference only and shall not be construed as limiting anything set forth herein.

11. SEVERABILITY.

If any term, covenant, condition or provision of this Restoration Guaranty, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Restoration Guaranty, or the application thereof to any other person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

12. GOVERNING LAW.

This Restoration Guaranty shall be governed by the laws of the State of California without reference to choice of law rules. Any action or proceeding arising out of or related to this Restoration Guaranty shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules. If either party files or attempts to litigate an action in violation of this Section 12, the other party shall be entitled to recover reasonable costs and attorneys' fees incurred to enforce this Section 12.

13. ASSIGNMENT: DELEGATION: BINDING EFFECT.

The duties and obligations of Guarantor may not be delegated or transferred by Guarantor without the prior written consent of City. The duties and obligations of Guarantor shall bind Guarantor's heirs, personal representatives, executors, successors and assigns.

14. TERM AND TERMINATION: REINSTATEMENT: LIMITATION.

14.1 Subject to Section 14.3 below, except to the extent any portion of Guarantor's obligations hereunder remain to be performed pursuant to Section 5.2, this Restoration Guaranty shall terminate, and shall be released, without further action by either party, upon the fifth (5<sup>th</sup>) anniversary of the effective date of the Permit; provided that if City has commenced and is diligently pursuing certifications of the environmental impact report required by the California Environmental Quality Act and the environmental impact statement required by the National Environmental Policy Act for the development project at the Permit's premises intended to implement the improvements necessary to effectuate compliance with the Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS") and to legally entitle an additional term of use and occupancy of those premises beyond that entitled by the Permit, but such certification has not been obtained by one hundred and eighty (180) days following the third (3<sup>rd</sup>) anniversary of the effective date of the Permit, which date is agreed to be \_\_\_\_\_, this Restoration Guaranty shall terminate one hundred and eighty (180) days following such fifth (5<sup>th</sup>) anniversary.

14.2 Notwithstanding the foregoing, this Restoration Guaranty shall terminate without further action by either party upon Board's approval of Tenant's Transfer (as defined in Section 113 of the Permit) of the Permit, if any; provided that, should Guarantor's performance of the Guaranteed Obligations occur following PBF's transfer of interests in the Permit in violation of such Section 113 of the Permit, such unauthorized transfer shall not invalidate this Restoration Guaranty, but shall entitle Guarantor to establish in a writing transmitted to Executive Director that environmental remediation and/or restoration costs, if any, were not the result of PBF's or Guarantor's use and occupancy of the premises covered by the Permit prior to such unauthorized transfer. Executive Director shall not unreasonably withhold, condition or delay the granting of such relief; provided that Guarantor must submit the writing referenced immediately above within one (1) year following City's transmittal of notice pursuant to Section 4.2. During such period, City shall provide reasonable access to the sites and facilities governed by the Permit and provide all documents, materials, reports, studies

and other information in the City's possession and reasonably necessary for Guarantor's pursuit of such relief.

14.3 Subject to Section 14.1, this Restoration Guaranty shall remain in full force and effect and continue to be effective should any petition be filed by or against Tenant under the Bankruptcy Code, as at any time amended, for liquidation or reorganization, or should Tenant become insolvent or make an assignment for the benefit of creditors or a receiver or trustee be appointed for all or any significant part of Tenant's assets, and this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of the Guaranteed Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by City, whether as a "preferential transfer," "voidable preference," "fraudulent conveyance," or otherwise, as if the portion of such payment rescinded, reduced, restored or returned had never been made.

15. OTHER SOURCES OF PAYMENT. If City receives payments from Tenant or any other person, including, without limitation, proceeds from insurance, bonds, other security or federal or state programs, with respect to the Guaranteed Obligations, either before or after transmittal by City of a notice of default pursuant to Section 4.2, then such amounts, if received before full payment by Guarantor under this Restoration Guaranty, shall be applied to reduce any amount due from Guarantor under this Restoration Guaranty. If such amounts are received after full payment under this Restoration Guaranty, such amounts shall be paid to Guarantor to reimburse it for payments made under this Restoration Guaranty.

16. COUNTERPARTS. This Restoration Guaranty may be signed in counterparts, each of which shall be deemed an original but all of which will together shall constitute one and the same instrument.

17. NOTICES.

**To City:** The City of Los Angeles  
Executive Director  
425 S. Palos Verdes Street  
San Pedro, California 90731

**To Guarantor:** ExxonMobil Corporation  
DBDP Vice President  
22777 Springwoods Village Parkway  
Spring, Texas 77389

Either party may change its address for notices at any time by providing written notice to the other.

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IN WITNESS WHEREOF, Guarantor has duly executed this Restoration Guaranty the day and year first above written.

**Guarantor: ExxonMobil Oil Corporation**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
W. Alan Sawyer  
Attorney-In-Fact of ExxonMobil  
Oil Corporation

Attest: \_\_\_\_\_  
Name:  
Title:

**City:**

THE CITY OF LOS ANGELES, by its  
Board of Harbor Commissioners

Dated: \_\_\_\_\_

By \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest: \_\_\_\_\_  
AMBER KLESGES  
Board Secretary

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2016  
MICHAEL N. FEUER, City Attorney  
JANNA B. SIDLEY, General Counsel

By \_\_\_\_\_  
STEVEN Y. OTERA, Deputy