

ENVIRONMENTAL FUNDING AGREEMENT

This **ENVIRONMENTAL FUNDING AGREEMENT** (“**Agreement**”) is between **CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY**, a California corporation (“**EMC**”), for itself and as Attorney-in-Fact for Union Oil Company of California, a California corporation (“**Union Oil**”), and **THE CITY OF LOS ANGELES**, a California municipal corporation, acting by and through its Board of Harbor Commissioners (“**CITY**”). EMC and City are referred to collectively as the “**Parties**” and individually as “**Party**.”

RECITALS

- A. Pursuant to a grant of tide and submerged lands from the State of California, City is vested with authority to control, manage, protect, and conserve that certain real property known as the Former Unocal Marine Station No. 0692, located at Port of Los Angeles (“**Port**”) Berth 78 on Nagoya Way, in San Pedro, California (“**Site**”), as depicted on Exhibit A – Map of Site.
- B. From approximately 1950-1999, Union Oil leased the Site from the City pursuant to Revocable Permit No. 93-34 (“**Revocable Permit**”) and operated a marine bulk diesel fuel storage and dispensing station for tugboats and fishing vessels at the Site, also referred to as Union Oil Site No. 35-8031. The Revocable Permit terminated on its own terms.
- C. The Site comprises approximately 0.2 acres of land and is bordered to the north by the San Pedro Fish Market, to the south by the Los Angeles Harbor Cruise and Whale Watching, to the east by a seawall, and to the west by a sidewalk and Nagoya Way. The Site is currently unoccupied and public access is prohibited.
- D. The Site was previously under the oversight of the Los Angeles Regional Water Quality Control Board (“**Regional Board**”). In 2002, the Site was excavated to remediate petroleum hydrocarbon contamination of soil and groundwater. The excavation was backfilled with pea gravel, non-impacted soil, and clean imported soil. Following Site remediation, Union Oil received case closure from the Regional Board in a “no further action” letter dated December 9, 2004.
- E. Residual impacted soil from the former marine bulk diesel fuel station remains at the Site and contamination has migrated to adjacent properties. EMC has been unable to access and excavate all residual contamination due to physical Site constraints, including overhead and underground utilities, existing building structures, and the proximity of the seawall along the eastern edge.
- F. Contaminated soil and groundwater from sources other than Union Oil’s marine bulk diesel fuel station may also be present on the Site however no alternate sources of contamination have been specifically identified at this time.
- G. On May 6, 2010, the Regional Board reopened the case and issued a new directive to EMC to take additional assessment and corrective action in response to alleged elevated levels of petroleum hydrocarbons in soil and the presence of light non-aqueous phase liquid (“**LNAPL**”) on the groundwater surface at the Site (“**Regional Board Directive**”) (see Exhibit B – Regional Board Directive). In response to the Regional Board Directive, EMC submitted a Soil Management Plan dated February 14, 2012, a Revised Soil Management Plan dated October 30, 2017, which includes proposed soil cleanup goals for the Site, and a Soil Management Plan Addendum dated March 23, 2018 (collectively, “**SMP**”) for the Site (see Exhibit C – Soil Management Plan Documents). The Regional Board approved the SMP with conditions, by letters dated January 11, 2018 and April 13, 2018 (“**Approved SMP**”).

- H. Pursuant to the SMP, residual impacted soil in excess of Site cleanup goals will be excavated to the extent practicable at four locations identified and currently delineated as Areas A, B, C, and D, and any LNAPL encountered in groundwater will be collected and transported offsite for disposal at an appropriate disposal or recycling facility.
- I. In October 2015, the City informed EMC of its plans to redevelop the Site as part of a larger 16-acre redevelopment project called the San Pedro Public Market (“**Redevelopment Project**”).
- J. The City will implement the SMP during the Port’s Redevelopment Project, which will proceed in two phases: Phase 1 will address the excavation of Area A, except for that which cannot be excavated due to interference by utilities needed to sustain the nearby Fish Market (“**Phase 1**”), and Phase 2 will address any remaining excavation of Area A, and the excavation of Areas B, C, and D (“**Phase 2**”). Phase 1 excavation is expected to begin in February 2019, and Phase 2 is expected to begin in 2021.
- K. This Agreement is expressly limited to Phase 1 and does not cover or concern Phase 2.
- L. Area A is limited to the boundaries as delineated in Exhibit D – Area of Excavation.
- M. The Parties desire to work cooperatively to ensure timely and efficient implementation of the Redevelopment Project and the SMP.
- N. The Parties therefore enter into this Agreement, without admitting any liability for the alleged contamination, to provide for the reimbursement by EMC of Work Costs incurred by City to implement the Approved SMP for Phase 1.

NOW THEREFORE, in consideration of the mutual covenants and promises, the Parties agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS, INTERPRETATION, AND EXHIBITS

- I.1 **Definitions.** In this Agreement, these capitalized words or expressions have the following meanings:

“**Affiliate**” means any legal entity that controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to “control” another if it owns directly or indirectly at least 50% of the shares or interests entitled to vote.

“**Agency-Directed Work**” means the following:

(A) Work conducted by City’s Contractor as necessary to comply with the Regional Board Directive and Approved SMP, limited only to excavating, extracting, sampling, handling, segregating, stockpiling, waste characterization, dewatering, removing, transporting, treating, and/or disposing of any residual soil and/or groundwater contaminated with petroleum hydrocarbons (including any LNAPL) within Area A, importing and backfilling new fill, and ambient air monitoring at the property boundary during any trenching, excavation, borings, and/or soil disturbance, all of which is limited only to Phase 1 work.

(B) Agency-Directed Work does not include any of the following:

- (1) Preparation of Environmental Documents required by the Regional Board, as this task will be handled by EMC pursuant to Section 4.1 (Communications with Regional Board).
- (2) Any SMP activities related to Phase 2 or otherwise conducted outside of Area A.
- (3) Excavation and handling of non-impacted soil existing at the Site, unless required to access impacted soil solely within Area A and not excavated for a purpose other than compliance with the SMP.
- (4) Any and all of costs relating to meetings, administrative time, and staff time of City.

“**Agreement**” has the meaning set out in the introductory paragraph and includes all exhibits listed in Section 1.2(D) (Interpretation and Exhibits).

“**Applicable Law**” means any law, regulation, statute, code, rule, order, guidelines, memoranda, permit, policy, license, certification, decree, or standard having the effect of law or similar legally effective measure that applies to this Agreement.

“**Approved SMP**” has the meaning set forth in Recital G.

“**Area A**” means the specific lateral and vertical dimensions of excavation as delineated for Area A in Exhibit D – Area of Excavation.

“**City**” has the meaning set out in the introductory paragraph.

“**City Group**” means City and the Port, and their respective employees, officials, representatives, agents, contractors, and suppliers of any tier, and other personnel of all of them, and any person acting on their behalf.

“**Claim**” means any claim, liability, loss, demand, damage (including consequential damage) cost, lien, cause of action of any kind, obligation, requirement, clean-up costs, penalty, fine, interest, and award, and whether arising by law, contract, tort (including negligence), voluntary settlement, or in any other manner.

“**Confidential Information**” means all information (including business, technical, and other information), data, knowledge, ideas, and work regarding the Agency-Directed Work or the Site that is disclosed or made available directly or indirectly to Contractor Group by City or EMC in any tangible or intangible form. The term “Confidential Information” does not include information that is any of the following: (A) available generally to the public, as evidenced by printed publication or similar proof, through no act or omission of Contractor Group, or (B) independently made available without restriction to Contractor Group by a person with a legal right to do so.

“**Contractor**” means a legal entity retained by City and approved by EMC as the contractor to implement the Agency-Directed Work.

“**Contractor Group**” means Contractor and Contractor’s employees, Affiliates, subcontractors, and suppliers of any tier, and shareholders, partners, or members where Contractor is a limited liability company, directors, officers, employees, and other personnel of all of them, and any person acting on their behalf.

“**Covered Contamination**” means petroleum hydrocarbon and motor vehicle fuel additive contamination that is encountered within Area A and removed from the Site pursuant to the Regional Board Directive. The term Covered Contamination does not include (A) any environmental contamination that is released or caused by a person other than EMC or Union Oil or any of their predecessor entities or Affiliates; or (B) any contamination that is naturally occurring.

“**Effective Date**” means the latest date on the signature page when all Parties have signed this Agreement.

“**EMC**” has the meaning set out in the introductory paragraph.

“**EMC Group**” means EMC, its Affiliates, its joint interest owners, contractors, and suppliers of any tier, and the shareholders, directors, officers, and employees of all of them.

“**Environmental Documents**” means any technical reports, memoranda, correspondence, and other environmental related documents regarding the Site or implementation of the Regional Board Directive.

“**LNAPL**” has the meaning set forth in Recital G.

“**Party**” means any of EMC, Union Oil, City, or Port, and “**Parties**” means all of them.

“**Phase 1**” has the meaning set forth in Recital J, and which is further described in Exhibit C – Soil Management Plan Documents and Exhibit E – Contractors’ Estimates.

“**Phase 2**” has the meaning set forth in Recital J.

“**Port**” has the meaning set forth in Recital A.

“**Redevelopment Project**” has the meaning set forth in Recital I.

“**Regional Board**” means the Los Angeles Regional Water Quality Control Board.

“**Regional Board Directive**” has the meaning set forth in Recital G.

“**Releasing Parties**” means all members of City Group, any Subsequent Owner, and anyone else acting on City Group’s behalf, as well as each of their predecessors, representatives, agents, counsel, successors, heirs, and assigns and their parents, Affiliates, related parties, insurers, subsidiaries, shareholders, members, partners, representatives, agents, and each of their respective past, present, or future directors, officers, members, partners, counsel, and employees, and any other person (natural, and entity, or otherwise) claiming by, through, or under City Group or any Subsequent Owner.

“**Revocable Permit**” has the meaning set forth in Recital B.

“**Site**” has the meaning set forth in Recital A.

“**SMP**” has the meaning set forth in Recital G.

“**Subsequent Owner**” means any person or persons taking title to the Site at a future date.

“**Union Oil**” has the meaning set out in the introductory paragraph.

“**Work Costs**” means only those costs incurred by City to perform and implement the Agency-Directed Work, as set forth in Exhibit E – Contractors’ Estimates.

1.2 **Interpretation and Exhibits.**

(A) Reference to the singular includes a reference to the plural and vice-versa, reference to any gender includes all other genders, and the words “includes” and “including” are illustrative, not limiting. The word “or” is not exclusive. The headings in this Agreement are included for convenience and do not affect the construction or interpretation of any provision of this Agreement.

(B) References to matters “arising” (or which “arise” or “arises”) “out of this Agreement” include matters which occur in connection with this Agreement, which flow from this Agreement, or which would not have arisen or occurred but for the entering into this Agreement, or the performance of or failure to perform obligations under this Agreement.

(C) If a conflict exists between the body of this Agreement and the exhibits, the body prevails to the extent of the conflict.

(D) The following exhibits are attached and made a part of this Agreement:

- (1) Exhibit A – Map of Site
- (2) Exhibit B – Regional Board Directive
- (3) Exhibit C – Soil Management Plan Documents
- (4) Exhibit D – Area of Excavation
- (5) Exhibit E – Contractors’ Estimates

2. **TERM AND TERMINATION**

2.1 **Term.** This Agreement is effective from the Effective Date and, subject to Section 7.2 (Pre-Contract Violations, Reporting Violations, and Termination) and Section 7.10 (Survival), terminates on the occurrence of either: (A) on December 31, 2019 if the City’s Contractor has not commenced the Agency-Directed Work, or (B) if the Agency-Directed Work has commenced on or before December 31, 2019, upon completion of the Agency-Directed Work and payment by EMC of Work Costs pursuant to this Agreement, unless extended by written agreement of the Parties.

3. THE AGENCY-DIRECTED WORK

3.1 **Contractor Services.** EMC and City agree that National Demolition Contractors and Pacific Edge are the approved Contractors. City shall retain Contractors to perform the Agency-Directed Work and shall be responsible for implementation of the Agency-Directed Work. Contractors' contractual engagement shall be solely with City who shall have direct control over the Contractors and shall act in an independent capacity and not on behalf of, or as representative, or agent of EMC Group. City shall not change the Contractors without the prior written approval of EMC.

(A) **Scope of Work, Deliverables, and Budget.** The Contractor's scope of Agency-Directed Work, approved budget for Work Costs, and deliverables are described in Exhibit E – Contractors' Estimates. Any additional Environmental Documents prepared by Contractors for the Agency-Directed Work shall be submitted to EMC for approval, which shall not be unreasonably withheld. EMC shall have the right to comment on said additional documents and request changes or modifications within 10 business days of receipt or such other time period as the Parties agree. The Parties agree to negotiate, in good faith, a resolution if a dispute arises regarding the content of the draft documents. If City or Contractors receive no comment from EMC within the 10-business day comment period, the additional documents shall be considered approved by EMC. Copies of final documents shall be promptly provided to EMC.

(B) **Contract Value, Invoices, and Payment.**

(1) **Contract Value.** The Contractors' estimates, as set forth in Exhibit E total Seven Hundred Fifty-Three Thousand Eight Hundred Sixty-Eight Dollars (\$753,868). This amount does not include a 20% contingency fund of One Hundred Fifty Thousand Seven Hundred Seventy-Three Dollars (\$150,773) for unforeseen issues associated with the Agency-Directed Work that are not included in or reasonably contemplated by Exhibit E. The value of the Agency-Directed Work shall not exceed the sum of the Contractors' estimates and the contingency fund without the advance written approval of EMC. City shall use the contingency fund as set forth in Section 3.1(B)(2) below.

(2) **Use of Contingency Fund.**

(a) City shall seek EMC's approval prior to authorizing the Contractors to perform any additional unforeseen, non-emergency activities associated with the contingency fund, and EMC shall promptly provide its approval within 72 hours, which shall not be unreasonably withheld. If EMC fails to provide approval within 72 hours, the City shall consider the request approved.

(b) For any unforeseen emergency activities that must be implemented within 48 hours, City does not require EMC's advance approval, but City shall promptly notify EMC that the contingency fund was used and the amount to be withdrawn from the fund.

- (3) **Invoices for Work Costs.** Within 120 days after completion of the Agency-Directed Work, Contractors shall each send to City for review 1 invoice for total Work Costs incurred for the Agency-Directed Work performed, along with the cost support and the specific breakdown of incurred costs. City shall determine if the Work Costs billed are appropriate, within budget, and covered under this Agreement. City shall return the respective invoice to Contractors if not acceptable. City shall send one final approved invoice to EMC with a cover letter that states that the invoice is approved and must be paid pursuant to this Agreement. City shall also provide any tax forms that need to be completed to process payments as provided in Section 3.1(B)(4) (Payment) below. EMC shall not be billed for City staff time.
- (4) **Payment.** EMC shall review and pay the City's invoice within 30 days from the date of receipt unless EMC delivers to City a written objection to the costs within 15 days from the date of receipt. Objections to costs may include costs related to exclusions set forth in Section 5.5(B). EMC shall timely pay to the City all costs that are not in dispute. The Parties shall cooperate in good faith to resolve issues concerning the invoice. Any disagreement concerning costs that cannot be resolved shall be submitted to the dispute resolution process under Section 6.2 (Resolution of Disputes).
- (C) **Notification of Contractor Claims or Disputes.** Each Party will promptly notify the other Party of any disputes with a Contractor in respect of the Agency-Directed Work, the invoices or payments related to the Agency-Directed Work, or any Claims that may affect the Agency-Directed Work or the Parties' rights and obligations under this Agreement.
- (D) **Contractor's Insurance.** City shall require the Contractors who perform the Agency-Directed Work under this Agreement to maintain all insurance required by law, maintain liability insurance coverage in accordance with the Contractors' service agreements, and shall name EMC as an additional insured. City shall deliver Contractors' certificates of insurance to EMC within 10 days after the Effective Date.
- 3.2 **Access.** City grants EMC Group a temporary, nonexclusive license to enter the Site as needed to oversee the Agency-Directed Work for the duration of Phase I. EMC will provide City with reasonable advance notice of EMC's intent to access the Site, and City agrees to assist EMC in locating and gaining access to areas of the Site where such work will be performed.
- 3.3 **Project Notice.** City shall provide EMC with advance written notice in accordance with Section 7.7 (Notices) at least 30 calendar days prior to commencing the Agency-Directed Work and at least 5 calendar days prior to any construction or planning meetings where the Agency-Directed Work will be discussed. Where 5-day notice of a meeting is not provided due to circumstances beyond City's control, City shall provide notice as soon as possible prior to the meeting.
- 3.4 **Disposal Facility Designation.** All manifests for Covered Contamination must identify City as the person arranging for the transportation and disposal of Covered

Contamination, including designation of the disposal facility. City has selected Antelope Valley Landfill in Palmdale, CA as the disposal facility. EMC shall defend, indemnify, and hold harmless City against any cost and liability incurred by City as a direct result of City arranging pursuant to this Section 3.4 (Disposal Facility Designation) for the transportation and disposal of Covered Contamination.

4. INTERACTIONS WITH REGIONAL BOARD

- 4.1 **Communications with Regional Board.** EMC shall be solely responsible for handling any required communications with the Regional Board to implement the Agency-Directed Work, including the preparation and submission of Environmental Documents to the Regional Board relating to the Agency-Directed Work.
- 4.2 **City Review of Draft Environmental Documents.** Prior to EMC submitting any documents to the Regional Board relating to the Agency-Directed Work, including Environmental Documents, City shall have a right to review and provide comments within 10 business days of receipt of a draft Environmental Document or such other period as the Parties agree in writing. If EMC receives no comment from City within the 10-business day comment period, the documents shall be considered approved by City. EMC, in its sole and reasonable discretion, shall have the right to accept or reject any comments from City. EMC shall promptly provide to City copies of all final Environmental Documents and any documents received from the Regional Board.

5. RELEASES, WAIVERS, AND EXCLUSIONS

5.1 CITY RELEASE.

- (A) City, on its behalf and on behalf of Releasing Parties and anyone else acting on Releasing Parties' behalf, waives, releases, and forever discharges EMC Group from any and all Claims arising out of or in any way related to the Revocable Permit, except for any surviving indemnity obligations under Section 21 of the Revocable Permit.
- (B) City, on its behalf and on behalf of Releasing Parties and anyone else acting on Releasing Parties' behalf, releases and forever discharges EMC Group from any and all Claims, including Claims by third parties, arising out of or in any way related to (1) the performance of the Agency-Directed Work, (2) the Work Costs (to the extent paid in full to the satisfaction of City), (3) Covered Contamination (including any LNAPL) encountered in connection with the Agency-Directed Work, and (4) any attorney's fees incurred in connection with any such Claims.

- 5.2 For the avoidance of doubt, Section 5.1 shall not release EMC Group from liability for any Claims in connection with (1) any residual soil and/or groundwater contaminated with petroleum hydrocarbons (including any LNAPL) that was not excavated or otherwise removed as Covered Contamination and was released or caused by EMC, Union Oil or any of their predecessor entities or Affiliates; and (2) Phase 2.

- 5.3 **WAIVER.** The Parties waive any and all rights they may have under any and all statutes or laws that purport to limit the scope of the general release, including section 1542 of the Civil Code of the State of California, which provides as follows: "a general release does not extend to claims that the creditor or releasing party does not know or suspect to exist

in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

5.4 **EXCLUSIONS.**

- (A) The waiver and release obligations in this Agreement apply regardless of the active, passive, contributory, or concurrent negligence or liability without fault of any person released or indemnified.
- (B) EMC accepts no responsibility for, and reserves all rights, claims and defenses, with respect to Claims for environmental contamination that is not Covered Contamination, including but not limited to (1) non-petroleum hydrocarbon contamination found anywhere on the Site, (2) contamination migrating onto the Site, (3) contamination that is released or caused by a person other than EMC or Union Oil or any of their predecessor entities or Affiliates, (4) any contamination that is naturally occurring, and (5) any contamination caused by releases or spills on the Site occurring after the date that Union Oil ceased operating at the Site in 1999. If EMC and City disagree as to whether environmental contamination on the Site is EMC’s responsibility, EMC and City shall resolve the disagreement pursuant to Section 6 (Governing Law and Resolution of Disputes).

5.5 **NO ADMISSION OF LIABILITY.** The Parties acknowledge and agree that this Agreement, the act of entering into it, and any act or omission pursuant to this Agreement must not be construed as an admission of any nature.

6. **GOVERNING LAW AND RESOLUTION OF DISPUTES**

- 6.1 **Governing Law.** This Agreement is governed by and interpreted in accordance with the law of the State of California, without regard to its choice of law rules, except that the substantive and procedural rules of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 govern Section 6.2 (Resolution of Disputes).
- 6.2 **Resolution of Disputes.** The Parties shall exclusively and finally resolve any dispute between them using direct negotiations, mediation, and then litigation as set out in this Section 6.2 (Resolution of Disputes). If a dispute arising out of this Agreement is not resolved by direct negotiations, either Party may initiate mediation by giving notice to the other setting out the disputed issues and the value of the claim. Mediation must be attended by a representative from each Party with decision-making authority. All mediation fees and costs must be paid equally and each Party shall bear its own attorneys’ fees and costs in connection with such mediation. If the Parties fail to resolve the dispute within 60 days from notice of mediation, either Party may initiate litigation. The Parties irrevocably and unconditionally agree that any litigation arising out of this Agreement may be brought in a court of competent jurisdiction in the County of Los Angeles, State of California.

7. **GENERAL PROVISIONS**

- 7.1 **Conflict of Interest.** No member of City Group will, in connection with this Agreement, the Agency-Directed Work, or the contract with Contractor, (A) give to or receive from any director, employee, or agent of EMC or its Affiliate, any gift, entertainment, or other benefit of significant cost or value, or any commission, fee, or rebate, and (B) enter into

any business arrangement with any director, employee, or agent of EMC or its Affiliate (other than as a representative of EMC or its Affiliate) without EMC's prior written consent.

- 7.2 **Pre-Contract Violations, Reporting Violations, and Termination.** City represents and warrants that no event has occurred prior to the Effective Date, which if it had occurred after the Effective Date, would be a violation of Section 7.1 (Conflict of Interest). City shall immediately notify EMC of any violation of Sections 7.1 (Conflict of Interest) or 7.2 (Pre-Contract Violations, Reporting Violations, and Termination). Notwithstanding any other contrary provision of this Agreement, EMC may terminate this Agreement at any time with immediate effect for any violation of Sections 7.1 (Conflict of Interest) or 7.2 (Pre-Contract Violations, Reporting Violations, and Termination).
- 7.3 **Records and Inspection.** Up until 24 months from the end of the calendar year in which this Agreement is terminated, (A) City shall ensure that all members of City Group retain all records related to this Agreement (or until expiration of the statute of limitations for taxes or import or export charges), and (B) EMC may inspect at any time all records to confirm that the requirements of this Agreement are met.
- 7.4 **Taxes.** Each Party or Contractor is responsible for all liabilities or Claims for taxes that any taxing authority may assess or levy against that Party or Contractor relating to this Agreement or City's contract with Contractor. Each Party shall protect, defend, and indemnify each other Party from any loss, cost, or liability arising from the indemnifying Party's failure to report and discharge such taxes or satisfy such obligations.
- 7.5 **Prior Agreements.** This Agreement supersedes all prior and contemporaneous representations, agreements, understandings, and commitments between the Parties concerning the subject matter of this Agreement, including but not limited to the Revocable Permit.
- 7.6 **Amendments.** No amendment to this Agreement is effective unless made in writing and signed by authorized representatives of all Parties.
- 7.7 **Notices.** Notices are effective when received by the recipient during the recipient's regular business hours. All notices under this Agreement must be in writing and will be deemed properly given when addressed to the appropriate Party at the address set out in the signature page of this Agreement. Each Party may change the contact information for notices by notice to the other Party. All such notices will be deemed to have been duly given and received upon mailing or delivery by courier or personal delivery service. Notices delivered by email will only be effective if the email clearly and prominently states that it is an effective notice given under this Agreement. Notices which do not comply with the requirements of this Agreement are ineffective and do not impart actual or any other kind of notice.
- 7.8 **Counterparts.** The exchange of counterpart signature pages between the Parties constitutes execution and delivery of this Agreement and it will not be necessary that the signatures of all Parties be contained on any one counterpart. No Party will be bound to this Agreement unless and until all Parties have executed a counterpart. Executed signature pages sent by facsimile, email, scan, or otherwise by photocopy are valid means of delivery.

- 7.9 **Severability and Savings.** If any provision (or part of a provision, as applicable) of this Agreement is determined to be invalid or unenforceable by a court or arbitrator of competent jurisdiction, the invalidity or unenforceability will not affect the other provisions of this Agreement, and all provisions not affected by such invalidity or unenforceability will remain in full force and effect. The offending provision (or part of the provision, as applicable) will be modified to be valid and enforceable while achieving to the greatest possible extent, the economic, legal, and commercial objectives of the invalid or unenforceable provision.
- 7.10 **Survival.** All provisions in this Agreement containing waivers, disclaimers, representations, warranties, releases, indemnity and defense obligations; all provisions relating to conflict of interest, dispute resolution and governing law, insurance, limitations of liability, retention and inspection of records, tax; and all causes of action which arose prior to termination except to those released under this Agreement, survive indefinitely until, by their respective terms, they are no longer operative or are limited by an applicable statute of limitations.
- 7.11 **Binding Effect.** Subject to Section 7.12 (Assignment and Transfer), this Agreement will be binding on and inure for the benefit of the rightful successors and permitted assigns of the Parties.
- 7.12 **Assignment and Transfer.**
- (A) **By City.** City represents and warrants that, prior to any sale or transfer of the Site to a Subsequent Owner that takes place before the Agency-Directed Work is complete, City shall do all of the following:
- (1) Provide a copy of this Agreement to the Subsequent Owner.
 - (2) Require the Subsequent Owner to agree in writing to assume and be bound by the access and release terms of this Agreement.
 - (3) Provide written notice to EMC of the scheduled sale or transfer of the Site at least 1 month before any sale or transfer of the Site is completed.
 - (4) Require as part of the purchase and sale agreement with the Subsequent Owner that the Subsequent Owner provide a provision the same as that contained in Section 5 (Releases, Waivers, and Exclusions) and this Section 7.12(A) (Assignment and Transfer by City) in its purchase and sale agreement with any Subsequent Owner.
 - (5) Promptly notify EMC of the effective transfer of its interest in the Site and provide EMC with a copy of its assignment of this Agreement that includes the requirement under Section 7.12(A)(2) (Assignment and Transfer by City).
- (B) **By EMC.** EMC may, at any time, assign or transfer all or part of its rights or obligations under this Agreement to any person or entity without City's consent.
- (C) **Certain Representations and Warranties.** Each Party represents and warrants that it has not sold, assigned, transferred, conveyed, hypothecated, encumbered,

or disposed in any other manner or to any person or entity any Claims relating to the subject matter of this Agreement.

- 7.13 **Third Party Beneficiaries.** Except as otherwise expressly stated, any person who is not a Party to this Agreement does not have any rights under this Agreement nor may such person enforce any provision in this Agreement.
- 7.14 **No Joint Venture, Partnership, or Fiduciary Relationship.** This Agreement does not constitute and must not for any reason be interpreted to create a partnership, joint venture, or any fiduciary relationship between the Parties, and no Party will have the authority to bind the other Party.
- 7.15 **Construction.** Each Party has participated in the preparation of this Agreement and has had the opportunity to consult with legal counsel and any other advisors of its choice to its satisfaction regarding the terms and provisions of this Agreement. Each Party bears its own costs incurred to prepare this Agreement. As a result, the rule of construction that an agreement be construed against the drafter will not be asserted or applied to this Agreement.
- 7.16 **No Waiver of Claims.** Except as provided in Section 5 (Releases, Waivers, and Exclusions), the Parties do not waive, and expressly reserve, all claims and defenses that they may have against each other and all third parties under legal or equitable authority for recovery of all expenses and losses incurred by the Parties to remediate (meaning environmental investigation, assessment, monitoring, excavation, removal, corrective action, response action, mitigation, treatment, decontamination, or cleanup of) the Site.

The remainder of the page intentionally left blank.

IMPORTANT NOTICE: THIS AGREEMENT CONTAINS PROVISIONS REGARDING INDEMNITIES AND WARRANTIES THAT EXPRESS THE AGREEMENT OF THE PARTIES CONCERNING CLAIMS ARISING OUT OF THIS AGREEMENT.

The Parties have executed this Agreement as evidenced by the following signatures of authorized representatives of the Parties:

EMC:
**CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY**

CITY:
THE CITY OF LOS ANGELES

Signature:



Signature:

Name: Frank G. Soler

Name: Eugene Seroka

Title: Assistant Secretary

Title: Executive Director

Date: May 10, 2019

Date: _____

AGREEMENT NOTICES

AGREEMENT NOTICES

Attention: Sharon Vasquez,
Property Specialist – Claims &
Agreements,
Facility No. 35-8031

Attention: Chris Grossi
Senior Civil Engineer

Email: SharonVasquez@chevron.com

Email: cgrossi@portla.org

Phone: 714-671-3262

Phone: 310-732-3096

Facsimile: 714-671-3440

Facsimile: 310-519-0178

Address: Chevron Environmental
Management Company
Real Estate Strategy, Transactions &
Projects – Commercial Transactions
145 S. State College Blvd, Suite 500
Brea, CA 92821-5833

Address: City of Los Angeles
Harbor Department
425 S. Palos Verdes Street
San Pedro, CA 90731

APPROVED AS TO FORM AND LEGALITY

May 13 2019
MICHAEL N. FEUER, City Attorney

By 
City Attorney