

CHEVRON REFINERY FEE AGREEMENT

I. BACKGROUND OF PROPOSED LITIGATION

On August 6, 2012, the rupture of a section of carbon steel pipe located at the site of the Chevron oil refinery in the City of Richmond exploded causing a fire and the release of toxins into the environment. Subsequent investigations by Cal/OSHA resulted in numerous citations and civil penalties being issued against Chevron. The City of Richmond, hereafter "**RICHMOND**", has suffered injury, damage, and or losses arising from this incident which it believes are compensable under existing law against **Chevron** and/or its employees, agents, affiliates and/or third party contractors (hereafter "**RESPONSIBLE PARTIES**" or "**RESPONSIBLE PARTY**"). Richmond retains the law firm to litigate this matter.

II. RECITALS

The California Supreme Court in *County of Santa Clara v. Superior Court* (2010) 50 Cal. 4th 35 upheld a public entity's right to engage outside counsel on a contingent-fee basis and provided specific guidelines for contingent-fee agreements between public and private counsel; **RICHMOND** desires to engage the services of **COTCHETT, PITRE & McCARTHY, LLP**, hereafter "**CPM**" or "**ATTORNEYS**", to represent them on a contingent fee basis consistent with the above authority, to prosecute a civil action arising out of the above-referenced incident to recover damages or compensation for injury, harm or losses cognizable under existing law against the legally **RESPONSIBLE PARTIES**. The Parties hereto have agreed that the City Attorney for the City of Richmond will retain full authority, control, supervision and final decision making over all aspects of **RICHMOND'S** interest in the Litigation and performance of the legal services by **CPM** under this Agreement. **CPM** maintains error & omissions insurance applicable to legal services to be rendered. It is acknowledged that **CPM** has made no representation whatsoever regarding the successful termination of any of the claims. In consideration of the promises and mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

III. ATTORNEYS FEES AND COSTS

A. DEFINITIONS

1. "**NET RECOVERY**" is that sum **RECOVERED** from any **RESPONSIBLE PARTY** after monies are deducted for all costs paid by **RICHMOND** or advanced by **CPM** pursuant to this Agreement. The percentage contingent attorneys fee shall be applied to the **NET RECOVERY** as hereafter set forth in Section III, B. *infra*.
 2. "**RECOVERY**" or "**RECOVERED**" shall mean any money, cash equivalent or "**NON-MONETARY BENEFIT**" obtained as a result of the litigation against any **RESPONSIBLE PARTY**, including any element of damage or economic harm for:
 - a. Injury to real or personal property, including any claim for diminished value to property or assets, i.e. "stigma value";
 - b. Compensation or reimbursement of immediate or long-term response costs to the incident, including costs associated with the expenditure of public resources; i.e.,
-

the response costs of fire, police, or other emergency or assistive services provided by City Officials and/or employees;

- c. Cleanup or remediation efforts for harm to the environment; i.e, injury to air or water quality;
 - d. Harm or injury to reputation or goodwill if any; and
 - e. **RECOVERY of STATUTORY ATTORNEYS FEES and STATUTORY COSTS**, penalties or accrued interest. Should CPM receive as part of any **RECOVERY a STATUTORY AWARD OF ATTORNEY'S FEES OR COSTS** as against any responsible party to the litigation, such amounts will be offset from the total gross **RECOVERY** for purposes of establishing any contingent fee award under this Agreement. _____
3. **"NON-MONETARY BENEFIT:** To the extent any element of the "RECOVERY" results in compensation provided in the form of a **NON-MONETARY BENEFIT**, i.e., funding grants for establishment of a public library, or other civic endowment; or i.e., if any **RESPONSIBLE PARTY** agrees to enhance their existing environmental quality monitoring; the parties will to use their best efforts to agree upon the fair market value of the **NON-MONETARY BENEFIT**, and if no agreement can be reached as to the value of the **NON-MONETARY BENEFIT** within 30 days of the final settlement or judgment establishing the **RECOVERY**, the parties agreed to submit any dispute over such value to arbitration through JAMS in San Francisco pursuant to the terms set forth in Section V, *infra*. _____
4. **"STATUTORY AWARD OF ATTORNEYS FEES OR COSTS"** shall refer to any right to recover attorneys fees or costs pursuant to specific statutory authority, i.e. Code of Civil Procedure §1021.5. _____
5. CPM agrees and understands that no **ATTORNEYS FEES** shall be claimed for benefits, costs, or conditions of approval related to **RICHMOND'S** negotiations and/or settlements with **Chevron** over (1) the **REVISED HYDROGEN RENEWAL PROJECT**, which relates to Chevron's proposed plan to construct and install new facilities as well as replace or modify existing refinery facilities; (2) **RICHMOND'S UTILITY USERS TAX** and/or **MEASURE T**; (3) **Chevron's PROPERTY TAX REFUND**; and (4) the **COMMUNITY MARKETING STUDY**, which **Chevron** has previously agreed to provide to **RICHMOND**. These negotiations and/or settlements are independent from the services provided by CPM in relation to **RICHMOND'S** injuries, damages, and/or losses from the August 6, 2012 refinery fire and will not be included in the calculations for **ATTORNEYS FEES OR COSTS**. _____
6. CPM shall defend **RICHMOND** against any claims or counterclaims, should they be asserted by **Chevron**, as part of this litigation. _____

B. **ATTORNEYS FEES:** It is understood that no specific percentage fee is established by law, and that this fee has been specifically agreed to between the parties as follows:

1. The sum of six and one-quarter percent (6.25%) of the **NET AMOUNT RECOVERED** by resolution through compromise, final judgment or other final adjudicatory proceeding, provided that the matter is finally resolved within six (6) months after the Complaint is filed in this action. _____
2. The sum of nine and three-quarter percent (9.75%) of the **NET AMOUNT RECOVERED** by resolution through compromise, final judgment or other final adjudicatory proceeding, provided that the matter is finally resolved between six (6) months and twelve (12) months after the Complaint is filed in this action. _____
3. In the event the matter is not finally resolved within the periods set forth above, the sum of twelve and one-half percent (12.5%) of the **NET AMOUNT RECOVERED**. _____
4. In addition, if the **RECOVERY** exceeds five million dollars (\$5,000,000), the **ATTORNEYS' FEES** above increase by an additional one (1) percent. _____

C. **COSTS**

1. **RICHMOND** agrees to pay all costs on a monthly basis. The costs for which **RICHMOND** is responsible to pay shall not exceed five hundred thousand dollars (\$500,000.00). Thereafter, costs necessary for the prosecution of claims on behalf of **RICHMOND** will be advanced by **CPM**. All such costs shall be deducted from the gross **RECOVERY** and refunded to **RICHMOND** and/or **CPM** who have incurred the expenses. _____
2. **COSTS** may include, without limitation, travel expenses, photocopying charges, telephone charges, postage charges, travel expenses, (including lodging and food and the like), court reporters and transcripts, exhibits and visual presentation costs, electronic data storage charges, **CPM** employs outside investigators and other experts, only after consultation and approval of **RICHMOND**, whose expenses shall be charged as costs. **RICHMOND** presently has several experts that have reviewed aspects of the events. _____

IV. COMPLETE AGREEMENT

RICHMOND acknowledges that this Agreement is the complete agreement between **RICHMOND** and **CPM**, and that no other terms, agreements, representations, or promises have been made between **CPM** and **RICHMOND** and that this document constitutes the complete and entire agreement between them. _____

V. DISPUTE RESOLUTION

In the event that any dispute arises relating to this Agreement or CPM's performance of services hereunder, RICHMOND and CPM agree that such dispute shall be submitted to Judicial Arbitration Mediation Services ("JAMS") in San Francisco within 60 days of Notice of Election to Arbitrate by either party. During the 60 day period, RICHMOND and CPM agree to use their best efforts to mediate their dispute. RICHMOND agrees to submit to the jurisdiction of JAMS or the substitute forum for purposes of enforcing this arbitration agreement. The dispute shall be conclusively decided, without appeal or review, by a mutually agreeable JAMS neutral, or if an agreement cannot be reached as to a JAMS neutral, by a JAMS neutral selected by the Senior Judicial Officer and Chairman of the Executive Committee of JAMS (or the equivalent). Any costs, fees, or expenses of the services of JAMS will initially be shared equally by CPM and RICHMOND. Any award of the Arbitrator may re-allocate Arbitration fees, Arbitrator compensation and costs pursuant to Rule 24 of the JAMS Comprehensive Arbitration Rule and Procedures. This agreement to arbitrate is not intended to abrogate RICHMOND'S right to require a non-binding fee arbitration pursuant to California Business & Professions Code §§ 6200-6206.

Pursuant to the 2010 JAMS Comprehensive Arbitration Rules and Procedures, Rule 11(c), "[j]urisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter." _____


RICHMOND acknowledges that RICHMOND is waiving the right to a jury trial as to such disputes. RICHMOND knowingly waives the right to a jury trial of any dispute with CPM relating to this Agreement, pursuant to *Schatz v. Allen Matkins Leck Gamble & Mallory* (2009) 45 Cal.4th 557. RICHMOND also knowingly waives the right to the full extent of discovery and appellate review that would apply if such a dispute were brought and litigated in court. _____

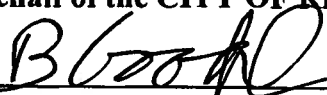
VII. AUTHORITY TO SIGN

The individual signing below verifies that he or she is authorized by RICHMOND to enter into this Agreement, and that all appropriate formalities necessary for approval and ratification of this Agreement on RICHMOND'S behalf have been obtained.

DATED at Richmond, California, July __, 2013. A duplicate copy of this contract has been provided to RICHMOND.

for COTCHETT, PITRE & McCARTHY LLP
ATTORNEYS



on behalf of the CITY OF RICHMOND


APPROVED AS TO FORM, CITY
ATTORNEY BRUCE REED
GOODMILLER

V. DISPUTE RESOLUTION

In the event that any dispute arises relating to this Agreement or CPM's performance of services hereunder, **RICHMOND** and **CPM** agree that such dispute shall be submitted to Judicial Arbitration Mediation Services ("JAMS") in San Francisco within 60 days of Notice of Election to Arbitrate by either party. During the 60 day period, **RICHMOND** and **CPM** agree to use their best efforts to mediate their dispute. **RICHMOND** agrees to submit to the jurisdiction of JAMS or the substitute forum for purposes of enforcing this arbitration agreement. The dispute shall be conclusively decided, without appeal or review, by a mutually agreeable JAMS neutral, or if an agreement cannot be reached as to a JAMS neutral, by a JAMS neutral selected by the Senior Judicial Officer and Chairman of the Executive Committee of JAMS (or the equivalent). Any costs, fees, or expenses of the services of JAMS will initially be shared equally by **CPM** and **RICHMOND**. Any award of the Arbitrator may re-allocate Arbitration fees, Arbitrator compensation and costs pursuant to Rule 24 of the JAMS Comprehensive Arbitration Rule and Procedures. This agreement to arbitrate is not intended to abrogate **RICHMOND'S** right to require a non-binding fee arbitration pursuant to California Business & Professions Code §§ 6200-6206.

Pursuant to the 2010 JAMS Comprehensive Arbitration Rules and Procedures, Rule 11(c), "[j]urisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter."

RICHMOND acknowledges that **RICHMOND** is waiving the right to a jury trial as to such disputes. **RICHMOND** knowingly waives the right to a jury trial of any dispute with **CPM** relating to this Agreement, pursuant to *Schatz v. Allen Matkins Leck Gamble & Mallory* (2009) 45 Cal.4th 557. **RICHMOND** also knowingly waives the right to the full extent of discovery and appellate review that would apply if such a dispute were brought and litigated in court.

VII. AUTHORITY TO SIGN

The individual signing below verifies that he or she is authorized by **RICHMOND** to enter into this Agreement, and that all appropriate formalities necessary for approval and ratification of this Agreement on **RICHMOND'S** behalf have been obtained.

DATED at Richmond, California, July 24, 2013. A duplicate copy of this contract has been provided to **RICHMOND**.


for COTCHETT, PITRE & McCARTHY LLP
ATTORNEYS

on behalf of the CITY OF RICHMOND

APPROVED AS TO FORM, CITY
ATTORNEY BRUCE REED
GOODMILLER