**MEMORANDUM OF UNDERSTANDING**
**BETWEEN**
**CALIFORNIA ATTORNEY GENERAL AND**
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

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The California Attorney General and the Bay Area Air Quality Management District (jointly "Parties") enter into this Memorandum of Understanding ("MOU") regarding establishment of a carbon offset fund and implementation of a greenhouse gas ("GHG") reduction grant program.

BACKGROUND:

1. The California Attorney General ("Attorney General") is the chief law officer for the State of California and has the independent power and authority to protect the environment and public health of the People of the State.

2. The Bay Area Air Quality Management District (the "Air District") is a special district created by the California Legislature and has the power and authority to control air pollution from non-vehicular sources within its jurisdiction. The Air District's authority over the emission of air pollutants includes greenhouse gas ("GHG") emissions.

3. The Air District has extensive experience in administering grant programs to reduce criteria air pollutants in the San Francisco Bay Area.

4. In 2005, the Air District established a Climate Protection Program to address climate change and climate protection. As part of the Climate Protection Program, and in addition to the programs referenced above in paragraph 3 of this MOU, the Air District has created and administers a grant program to reduce emissions of GHG within the Air District's jurisdiction.

5. The Attorney General entered a Settlement Agreement dated September 10, 2007, (Exhibit A) (the "Settlement Agreement") with ConocoPhillips Company ("Conoco") to resolve a dispute regarding the environmental impact of GHG emissions (primarily carbon dioxide) from the Clean Fuels Expansion Project at the refinery in Rodeo, California. The Settlement Agreement requires Conoco to make a payment by June 1, 2009, to a carbon offset fund created by the Air District.

6. The Settlement Agreement provides that the Air District will use the payment "to fund grants for projects undertaken in the San Francisco Bay Area to achieve verifiable, quantifiable reductions in GHG emissions, with priority given to projects near the Rodeo refinery."

7. The payment could be as much as $7 million dollars (Seven Million Dollars); however, pursuant to the terms of the Settlement Agreement, the amount will be reduced by $25 for

each ton of GHG emission reductions that Conoco achieves at the Rodeo Refinery.

AGREEMENT TO IMPLEMENT GHG REDUCTION GRANT PROGRAM:

8. The Air District shall establish and maintain an interest-bearing account (the "Carbon Offset Account") to hold the funds received from Conoco pursuant to the Settlement Agreement. The Air District shall notify the Attorney General when it receives payment from Conoco and provide the Attorney General with a copy of the check.

9. The Air District shall implement a GHG reduction grant program using the funds received from Conoco, as provided herein.

10. The Air District shall make a reasonable effort to issue an initial request for proposals for GHG reduction grants within three months of receipt of the payment from Conoco. If the Air District does not award all funds in response to the initial request, it may issue subsequent requests for proposals.

11. Before the Air District issues a request for proposals, representatives of the Air District and the Attorney General shall meet and discuss the proposed content of the document. Subsequently, the Air District shall provide a draft request for proposals to the Attorney General for review and comment. The Attorney General shall provide any comments within 15 days, and the Air District may then issue the request for proposals.

12. The Air District may award a GHG reduction grant under this MOU to any organization, unincorporated association, trust, corporation, partnership, limited liability company, accredited academic institution, individual, or government agency.

13. The Air District shall make a reasonable effort to award all of the funds received from Conoco and accrued interest within two years of receipt of the payment from Conoco.

14. The Air District may use for actual administrative costs (including outreach) of carrying out this MOU not more than 5 percent of the funds received from Conoco pursuant to the Settlement Agreement. The Air District must maintain and make available to the Attorney General documentation of the funds used for those costs. In addition, prior to distributing to grant recipients any funds from the Carbon Offset Account, the Air District shall deduct from the funds received from Conoco pursuant to the Settlement Agreement any audit costs which will be incurred pursuant to paragraph 26 of this MOU.

15. Within 60 days of the end of the Air District's fiscal year (until all the funds are spent), the Air District shall provide the Attorney General with an accounting showing the balance in the Carbon Offset Account, and all expenditures paid from the account and interest earned by the account during the most recently-concluded fiscal year.

16. On request, the Air District shall make available to the Attorney General and the public documentation of the GHG reduction grants that are awarded, including the recipients,

amount of each grant, and the activities that will be funded.

CRITERIA FOR AWARDING GRANTS:

17. The Air District shall award the grants for activities that will achieve permanent reductions in GHG emissions that are verifiable and quantifiable. The grants may be awarded for activities that reduce emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

18. For purposes of this MOU, "reductions in GHG emissions" includes measures that are designed to address climate change and can be translated into an equivalent amount of avoided carbon dioxide emissions.

19. For purposes of this MOU, the Air District may consider reductions of GHG emissions to be "verifiable and quantifiable" if there is no practical way to measure the actual reductions achieved, but published data can be relied on to provide a reasonable estimate of those reductions.

20. For purposes of this MOU, an activity is eligible for a grant only if the GHG emission reductions are "additional" because (1) they are not required by any law, regulation, permit, court order, order issued by an administrative agency, memorandum of understanding, or other legally binding document; (2) GHG emissions will be reduced beyond what would have happened in the absence of the grant; and (3) the grant is needed for the activity to occur in a timely and successful manner (taking into account any available rebates, incentives or tax credits).

21. The Air District may award grants for activities that will achieve GHG reductions anywhere in the agency's jurisdiction. However, the Air District shall give highest priority to activities resulting in significant GHG emission reductions near the Conoco refinery in Rodeo, and shall give next highest priority to activities resulting in significant GHG emission reductions in other areas of Contra Costa County (including the City of Richmond). The priority given under this paragraph shall be primary to the priority given under paragraph 22 of this MOU.

22. In selecting grant recipients, the Air District shall give priority to projects that result in substantial co-benefits from reduced emission of criteria pollutants and/or toxic air contaminants.

23. The Air District may award GHG reduction grants for only the following categories of activities:

    A. Increasing energy efficiency or conservation in existing buildings.

    B. Increasing water conservation.

C. Installing new renewable energy generation, combined heat and power systems, or systems to capture methane to produce electricity.

D. Cool roofs on existing buildings and/or cool pavement. (Cool roofs and pavement shall have significantly increased solar reflectance compared to standard materials).

E. Reducing GHG emissions from motor vehicles (including but not limited to automobiles, trucks and buses).

F. Reducing vehicle trips by increasing walking, biking, car-pooling and use of public transit.

24. The Parties may amend this MOU to add additional categories of activities.

25. The Air District shall not award a grant for an activity that will significantly increase emissions of a criteria pollutant or toxic air contaminant. This does not refer to temporary construction emissions.

26. The Air District may undertake to audit any project funded in any part by a grant of funds from the Carbon Offset Account. Grant recipients shall agree to submit to such audits. In addition, grant recipients shall be required to make available to the Air District, for public distribution, all records showing the activities that were conducted with the grant funds, the cost of the activities, and all records relevant to evaluating the GHG reductions achieved.

27. Grant recipients shall agree that they will not seek credit towards any obligations imposed pursuant to the California Global Warming Solutions Act of 2006, California Health and Safety Code Section 38500, et seq., for early voluntary reductions of GHG emissions based on GHG reductions that result from any project funded in any part by a grant of funds from the Carbon Offset Account. Grant recipients shall further agree not to use any such project for credit under any state or federal emissions averaging, banking, or trading program or to use any emission reduction generated by any such project as marketable emission reduction credits or offsets of any type or to offset any emission reduction obligation of any entity.

28. No addition to or amendment of this MOU will be effective unless set forth in writing and signed by an authorized representative of each of the Parties.

29. No party shall assign any rights or obligations under this MOU to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.

30. This MOU shall be binding on and inure to the benefit of the successors of the Parties.

31. Each undersigned representative certifies that he or she is fully authorized to execute this MOU and bind the party that he or she represents.

32. This MOU may be signed in counterparts, each of which shall be deemed an original.

EDMUND G. BROWN
ATTORNEY GENERAL
OF THE STATE OF CA

By: Sandra Goldberg

Date: 11/14/08

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

By: _____
Jack P. Broadbent
Executive Officer/APCO

Date: _____

Approved as to form:

By: _____
Brian C. Bunger
District Counsel

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EDMUND G. BROWN
ATTORNEY GENERAL
OF THE STATE OF CA

By: _____

Date: _____

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

By: _____
Jack P. Broadbent
Executive Officer/APCO

Date: 11/24/08

Approved as to form:

By: _____
Brian C. Bunger
District Counsel

**EXHIBIT A**

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between ConocoPhillips Company ("COP") and Edmund G. Brown Jr., Attorney General of California, on behalf of the People of the State of California ("Attorney General"), and is dated and effective as of September 10, 2007 (the "Effective Date"). COP and the Attorney General are sometimes collectively referred to herein as the "Parties."

## RECITALS

WHEREAS, on or about May 27, 2005, COP submitted an application to the County of Contra Costa (the "County") for a project known and referred to as the Clean Fuels Expansion Project (the "Project"). COP states that the Project is designed to use the heavy gas oil that is already produced at COP's Rodeo, California Refinery ("the Refinery"), and that currently is being sold in the fuel oil market, to produce instead cleaner-burning gasoline and diesel fuels. Without importing any additional crude oil to the Refinery, COP believes that the Project will enable the Refinery to increase the supply of cleaner-burning fuels into the California market by approximately 1 million gallons per day. Increased production of cleaner-burning fuels is now mandated by the California Air Resources Board ("CARB") and the United States Environmental Protection Agency. The Project includes a Hydrogen Plant, to be constructed, owned, and operated by Air Liquide (the "Hydrogen Plant"), which will produce steam and electricity, as well as hydrogen, for use in Refinery processes;

WHEREAS, on or about September 12, 2005, in accordance with the requirements of the California Environmental Quality Act ("CEQA"), the County prepared and circulated a Notice of Preparation of an Environmental Impact Report for the Project. A Draft Environmental Impact Report for the Project was circulated for comment in November 2006. Comments were received on the EIR; the County prepared responses to those comments and completed the Final Environmental Impact Report for the Project (the "EIR") in April 2007. COP contends that the EIR adequately addressed, among other things, the greenhouse gas emissions ("GHG") from the Project and associated issues of climate change, and that the County Planning Commission was correct in concluding, based on substantial evidence, that further discussion in the EIR relating to GHGs would be speculative. The EIR was certified and the Project permit was approved by the County Planning Commission on May 8, 2007;

WHEREAS, on May 18, 2007, the Attorney General filed an appeal to the Contra Costa County Board of Supervisors of the Planning Commission's approval of the Project and certification of the EIR, on the alleged ground that

the EIR failed to adequately address the GHG emissions from the Project and associated climate change impacts (the "AG Appeal"); and

WHEREAS, given the uncertainties of the outcome of the disputes and issues relating to the AG Appeal, and subject to the terms and conditions set forth herein, the Parties wish to resolve the issues raised by the AG Appeal without the need for further administrative hearing or judicial proceedings. .

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

1. The EIR for the Project states that the Project will result in 1.25 million metric tons of CO2 emissions, mostly attributable to the Hydrogen Plant. At least initially, COP will not be using the entire capacity of the Hydrogen Plant, and emissions from the Hydrogen Plant associated with COP's usage will be approximately 500,000 metric tons of CO2 per year. Without admitting any liability or obligation to do so, and solely as a compromise of the issues raised by the AG Appeal, COP agrees to offset those GHG emissions by taking the following actions:

a. COP has registered its Santa Maria Refinery calcining plant with the California Climate Action Registry, and estimates that the annual CO2 emissions from the plant are 70,000 tons. COP agrees to permanently surrender its operating permit for that facility by no later than December 31, 2007.

b. By March 31, 2008, COP will conduct a facility-wide energy efficiency audit of its Rodeo Refinery using an outside consultant, in order to identify possible energy efficiency measures that may be taken at the facility. COP may choose, but shall not be obligated to implement any of the findings of that audit.

c. By December 31, 2008, COP will complete a greenhouse gas emissions audit of its California refineries. This audit will include a review of the greenhouse gases emitted from those facilities, including carbon dioxide, methane, CFC and HFC compounds. The audit will be conducted to identify sources of these emissions and potential emissions reduction opportunities at COP's California refineries. COP will take the information contained in the audit into consideration as part of its strategy for compliance with California Health and Safety code Division 25.5, sections 38500, et seq., the California Global Warming Solutions Act ("AB32").

d. By no later than June 1, 2009, COP will make a one-time payment of $7 million (Seven Million Dollars) to a carbon offset fund to be created by the Bay Area Air Quality Management District (BAAQMD). This payment will be used by the BAAQMD, pursuant to a Memorandum of Understanding ("MOU") to be entered into between the Attorney General and the BAAQMD, to fund grants for projects undertaken in the San Francisco Bay Area to achieve verifiable, quantifiable reductions in GHG emissions, with priority given to projects near the Rodeo Refinery. In the event (1) the fund has not been created; or (2) the MOU has not been signed by June 1, 2009, then COP and the Attorney General will meet to agree upon an alternative recipient for the funds. COP's payment obligation under this paragraph 1 (d) shall be reduced by $25 per ton for each ton of GHG emissions reductions per year that COP achieves at its Rodeo Refinery by implementing measures identified in the facility-wide audit of the Refinery, or otherwise reviewed and verified by the BAAQMD.

e. By no later than June 1, 2009, COP will pay $200,000 (Two Hundred Thousand Dollars) to the Audubon Society for the restoration of San Pablo Bay wetlands to offset the Project's emissions of GHGs by increasing the sequestration of carbon. In the event the Audubon Society, (1) does not exist on the date for payment under this subparagraph; (2) does not agree to the use of the funds specified herein; or (3) does not accept the funds for any reason, then COP and the Attorney General will meet to agree on an alternate recipient.

f. By no later than June 1, 2009, COP will pay $2.8 million (Two Million Eight Hundred Thousand Dollars) to California Wildfire ReLeaf, subject to California Wildfire ReLeaf's written agreement to use the funds for reforestation and/or conservation projects (the "forestry projects") in California to be conducted in accordance with the California Climate Action Registry's Forestry Project Protocol. California Wildfire ReLeaf will be responsible for ensuring that it complies with Registry requirements for certification of a reduction inventory for projects receiving these funds. This payment will offset the Project's emissions of GHGs by funding planting and/or conservation of trees that sequester carbon. COP currently estimates that these forestry projects will sequester 1,500,000 metric tons of CO2 over the life span of the trees. In the event California Wildfire ReLeaf, (1) does not exist at the time the payment under this subparagraph is due; (2) does not agree to the use of the funds specified herein; or (3) does not accept the funds for any reason, COP and the Attorney General will meet to agree on an alternate recipient.

g. COP's obligation to make the payments set forth in paragraphs 1 (d) through (f) of this Agreement is contingent upon COP obtaining a valid Contra Costa County land use permit for the Project, containing the

terms of this Agreement as permit conditions. If the Project is proceeding (being built or in operation) on June 1, 2009, COP shall make the payments, even if CEQA litigation concerning the Project is still pending. If the Parties dispute whether payment should be made pursuant to this sub-paragraph, they will meet in a timely fashion and attempt to resolve the dispute.

h. COP agrees to offset CO2 emissions from the Hydrogen Plant in excess of 500,000 metric tons of CO2 per year (which is equivalent to an expected COP use of 50 MM standard cubic feet per day of hydrogen production), if any, for the period from the start-up of the Hydrogen Plant until regulations are adopted for the implementation of AB-32 [cite], but only to the extent those emissions are attributable to COP's use of more than 50 MM standard cubic feet per day of hydrogen production from that Plant. Such offsets may include, but are not limited to, reduction in rates and/or shutdown of existing hydrogen plants and/or other operating equipment within the Rodeo Refinery. To the extent there are CO2 emissions from the Hydrogen Plant in excess of 500,000 metric tons per year of CO2 in the period between start-up of the Hydrogen Plant and the adoption of regulations for the implementation of AB-32, but which are attributable to the use of excess capacity by third parties other than COP, then Air Liquide, along with its third party customers, will be responsible to provide the required offsets and COP will not be responsible for offsetting those emissions. In the event that AB-32 is modified or replaced by an equivalent California law prior to implementation, or is pre-empted by federal law concerning GHG's or climate change, the offset requirements in this paragraph will apply to the period from plant start-up to the implementation of the relevant state or federal law.

3. COP may apply to receive offset and/or credit status for reductions achieved through the projects and activities funded pursuant to this Agreement, under AB-32 or any equivalent state or federal law or regulation.

4. The Attorney General recognizes that COP's significant efforts to mitigate GHG emissions from the Clean Fuels Project, in advance of the establishment of regulations and guidelines under AB 32, and without the need for the initiation of litigation by the Attorney General, helps to achieve the goals of AB 32. Therefore, on or before the Effective Date of this Agreement, the Attorney General will provide the County with a letter withdrawing the AG Appeal of the Project permit. This Agreement shall be attached to the letter withdrawing the AG Appeal. The Attorney General further agrees not to file any documents or pleadings in any administrative or judicial proceedings concerning the Project, pending now or in the future, that would tend to support a challenge to the Project, the EIR, or the Project approvals, including but not limited to the appeals

filed by Communities for a Better Environment and the Center for Biological Diversity.

5. This Agreement represents the entire agreement of the Parties with respect to the subject matter herein, and merges and supersedes any prior written or oral representations, discussions, understandings or agreements by or between the Parties relating to the subject matter of this Agreement.

6. No addition to or modification of any term or provision of this Agreement will be effective unless set forth in writing and signed by an authorized representative of each of the Parties.

7. In agreeing to make the payments identified herein, COP does not admit the necessity of implementing any additional offset or mitigation measures for the Project, and COP agrees to make these payments solely as a compromise and settlement of the AG Appeal.

8. Each Party represents and warrants that it has the right, power, and authority to execute this Agreement. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this Agreement for it, to enter into this Agreement.

9. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties to the Agreement.

10. Each Party to this Agreement shall bear its own attorney's fees and costs incurred in connection with the AG Appeal and this Settlement Agreement.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement shall be binding upon the receipt of facsimile signatures.

13. This Agreement shall be deemed to have been jointly drafted, so that the general rule of construction that it be construed against the drafter shall not apply.

14. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to be given when served personally, or on the third day after mailing if mailed in the United States mail, postage prepaid, addressed to the address for each Party set forth below:

Attorney General:

Sandra Goldberg
Office of the Attorney General
1515 Clay St., PO Box 70550
Oakland, CA 94612-0550

COP:

Elissa Warantz
3900 Kilroy Airport Way, Ste 210
Long Beach, CA 90806

15. The Parties will execute all further and additional documents as shall be convenient, necessary or desirable to carry out the intent and provisions of this Agreement.

In witness whereof, this Agreement is executed by the following:

| PEOPLE OF THE STATE OF CALIFORNIA BY AND THROUGH ATTORNEY GENERAL EDMUND G. BROWN | CONOCOPHILLIPS COMPANY |
|---|---|
| Sandra Goldberg | |
| Sandra Goldberg, Deputy Attorney General | |
| Dated: 9/10/07 | Dated: 9-10-07 |