Council Meeting of
February 28, 2006

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Approval of a License Agreement for Monitoring Wells with ExxonMobil Oil Corporation

Expenditure: None

RECOMMENDATION

The Public Works Director recommends that the City Council:

1. Approve a 5-year License Agreement for Monitoring Wells with ExxonMobil Oil Corp for the drilling of thirty-eight (38) groundwater monitoring wells within a City easement at the southeast corner of Madrona Avenue and Del Amo Boulevard; and

2. Authorize the Mayor to execute and the City Clerk to attest to said Agreement.

Funding

Not Applicable.

BACKGROUND AND ANALYSIS

The ExxonMobil Oil Corp ("ExxonMobil") proposes to install thirty-eight (38) groundwater monitoring wells within a city easement for the purpose of conducting and monitoring the progress of a remedial action at the southeast corner of Madrona Avenue and Del Amo Boulevard. As such, ExxonMobil has filed an application for a permit to drill the monitoring wells to meet the requirements of the California Regional Water Control Board and the California Department of Health Services. It is anticipated that ExxonMobil's permit will be approved on March 9, 2006.

Prior to commencing work, ExxonMobil also is required to obtain a permit from the City and to execute a License Agreement for this work. As such, a License Agreement (Attachment A) has been prepared and is recommended for approval.

The License Agreement requires ExxonMobil to commence work within 60 days from approval and permits them to continue the monitoring for a period up to five (5) years. At that time, a new License Agreement would be required. Also, it requires that

ExxonMobil post a bond for a lump sum of $65,000 to ensure their compliance with the terms and conditions of the Agreement and to carry comprehensive liability insurance. The License Agreement also indemnifies the City its officers, agents and/or employees against all claims, costs, expenses, actions, lawsuits, expenses of response, remediation, or cleanup costs, or damages and liability of any kind whatsoever.

Respectfully submitted,

ROBERT J. BESTE
Public Works Director

By
Craig Bilezerian
Project Manager

CONCUR:

Robert J. Beste
Public Works Director

LeRoy J. Jackson
City Manager

Attachment: A. License Agreement for Monitoring Wells

Attachment A

LICENSE AGREEMENT FOR MONITORING WELLS

THIS AGREEMENT, made and entered into in quadruplicate as of this _____ day of _____, 2006 in the City of Torrance by and between the **CITY OF TORRANCE,** a municipal corporation, hereinafter called the "City", and **EXXONMOBIL OIL CORP,** a New York Corporation, hereinafter called "Grantee";

WHEREAS, Grantee desires to drill thirty-eight (38) monitoring wells on a City street easement at locations shown on attached map (Exhibit A); and

WHEREAS, the location and general description of the well is satisfactory to the City; and

WHEREAS, said monitoring wells are for the purpose of conducting and monitoring the progress of a remedial action at the locations shown on Exhibit A, hereinafter called "Site".

NOW, THEREFORE, the parties hereto agree as follows:

The City hereby grants to Grantee for the term of five (5) years from the effective date of this Agreement, subject to extensions at the discretion of the City, subject, further, to all the special and general provisions attached hereto and made a part hereof, the right and privilege to construct, erect, maintain, operate, repair, renew, remove and abandon monitoring wells for determining the extent of hydrocarbon migration in the City of Torrance as described and shown on Exhibit "A" attached hereto and made a part thereof.

GENERAL PROVISIONS

I. **LOCATION OF WELLS** - The well shall be located as described and shown in Exhibit "A".

II. **CONSTRUCTION OF WELLS**

A. Time of Construction. The Grantee, in good faith, shall commence the work of constructing the well within 60 days from the date of this Agreement and shall complete such construction within 1 year after commencing construction.

B. As-Built Drawings and Maps. Within ninety (90) days following the date in which any facilities have been constructed under this Agreement, the Grantee shall file as-built drawings and maps in such form as may be required by the City, showing accurately the location and size of all its facilities then in place, and shall, upon installation of any additional facilities, or upon removal, change or abandonment of all or any portion thereof, file revised as-built drawings and maps showing the location and size of all such additional, removed or abandoned facilities as of that date.

C. Other Approvals. The installation and operation of the well shall be to existing requirements of the City of Torrance and the Los Angeles Regional Water Control Board.

D. Installation and Testing of Well. The well shall be installed, sampled and tested in substantial accordance with the URS Corporation Work Plan prepared for ExxonMobil Oil Corp., for assessment as may be amended or modified with approval of the Regional Water Quality Control Board ("RWQCB").

III. CONFORMANCE REQUIREMENTS

A. Conformance with State Codes. The well and appurtenances shall be constructed in accordance with all State of California Standards for the construction of well as set forth in State laws, rules or regulations.

B. Conformance with City Ordinances and Permits. The well and appurtenances shall be constructed in conformity with all City ordinances, rules or regulations in effect at the time of construction, or as prescribed by the City.

C. Conformance with Regulations and Requirements of Boards and Agencies. The well shall be constructed and maintained in accordance with standards, regulations, or existing requirements of the Los Angeles Regional Water Quality Control Board and the State of California Department of Health Services.

IV. CLEANUP OF BREAKS AND LEAKS

If any portion of any street shall be damaged by reason of Grantee's construction, operation or maintenance of any facility constructed or maintained under this Agreement, or if any street, sidewalk, sewer, storm drain or other facility be contaminated with waste water, gasoline or other substance due to operations by the Grantee, the Grantee shall, at its own expense, immediately repair or clean up or cause to be repaired or cleaned up any such damage or contamination and restore such street, sidewalk, sewer, storm drain or other facility in accordance with applicable remedial standards, to the reasonable satisfaction of the City. Such cleanups shall be accomplished in a timely manner, with as little public disruption as possible.

V. EMERGENCY CREWS

During the term of this Agreement, the Grantee shall provide within a twenty-four (24) hour notification, crews for the purpose of repairs, cleanup, preventing or minimizing serious immediate damage or the threat of damage to people or the environment in the event of an emergency resulting from an earthquake, act of war, civil disturbance, flood, leakage or other cause.

VI. REARRANGEMENT OF FACILITIES

A. Expense of Grantee. Whenever, during the existence of this Agreement, the City shall change the grade, width, or location of any street or improve any street in any manner, including the laying of any sewer, storm drain, conduits, gas, water or other pipes owned or operated by the City or any other public agency, or construct any pedestrian tunnels, or other work of the City (the right to do all of which is specifically reserved to the City without any admission in its part that it would not otherwise have such rights) and such work shall, in the opinion of the City, render necessary any change in the position or location of any facilities of the Grantee in the street, the Grantee shall, at its own cost and expense, do any and all things to effect such change in position or location, in conformity with the written notice of the Engineering Director as provided in Paragraph D below.

B. Expense of Others. When such change in construction or work is done for the accommodation of any person, firm or corporation, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall (a) deposit with the Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of the Grantee shall be required to pay the costs of such change in work; and (b) shall execute an instrument agreeing to indemnify, defend and hold harmless the Grantee from any and all damages or claims caused by such rearrangement.

C. Rearrangement of the Facilities of Others. Nothing in this Agreement contained shall be construed to require the City to move, alter or relocate any of its facilities upon said streets, at its own expense, for the convenience, accommodation or necessity of any other public utility, person, firm or corporation, or to require the City or any person, firm or corporation now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon said streets for the convenience, accommodation or necessity of the Grantee. If the wells cannot be located as described in Exhibit "A", Grantor shall furnish Grantee with another reasonable acceptable location for such well in the immediate vicinity.

D. Notice. The Grantee shall be given not less than thirty (30) days written notice of any change or relocation of facilities which the Grantee is required to make

hereunder. Such notice shall specify in reasonable detail the work to be done by the Grantee and shall specify the time that such work is to be accomplished. In the event that the City shall change the provisions of any such notice given to the Grantee, the Grantee shall be given an additional period not less than thirty (30) days to accomplish such work.

VII. REMOVAL OR ABANDONMENT OF FACILITIES

A. Application to City. At the expiration, revocation or termination of this Agreement or of the permanent discontinuance of the use of its facilities or any portion thereof, the Grantee shall, within thirty (30) days thereafter, make a written application to the City for authority (as determined by the Grantee) either (a) to abandon all, or a portion, of such facilities in place; or (b) to remove all, or a portion, of such facilities. Such application shall describe the facilities desired to be abandoned or removed by reference to the map or maps required by Article II, Section B, of this Agreement and shall also describe with reasonable accuracy the relative physical condition of such facilities.

B. Determination of City. The City shall determine whether such abandonment or removal which is thereby proposed may be effected without detriment to the public interest or under what conditions such proposed abandonment or removal may be safely effected. The City shall then notify the Grantee in writing within 30 days following its receipt of Grantee's application, and according to such reasonable conditions as shall be specified that the Grantee may either effect such abandonment or such removal shall, as appropriate, within ninety (90) days thereafter, either:

1. Remove all or a portion of such facilities; or

2. Abandon in place all or a portion of such facilities, as set forth in the Engineering Director's order.

C. Failure to Properly Abandon. If any facilities to be abandoned in place subject to prescribed conditions shall not be abandoned in accordance with all such conditions, then the City may make additional appropriate orders, including, if deemed desirable, an order that the Grantee shall remove all such facilities in accordance with applicable requirements. In the event the Grantee shall fail to remove any facilities which the Grantee is obligated to remove in accordance with such applicable requirements within such time as may be prescribed by the City, then the City may remove or cause to be removed such facilities at the Grantee's expense and the Grantee shall pay to the City the actual cost thereof plus the current rate of overhead being charged by the City for reimbursable work.

VIII. INDEMNIFICATION BY GRANTEE

A.

Grantee will indemnify, defend, and hold harmless City, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, relating to Grantee's activities under this Agreement, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of Grantee, its officers, employees, agents, subcontractors or vendors. It is further agreed, Grantee's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of City, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of City, its officers, employees or agents. Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Grantee and City, as to whether liability arises from the sole negligence of the City or its officers, employees, agents, subcontractors or vendors, Grantee will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Grantee will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

B. Grantee shall indemnify and hold harmless the City, its officers, agents and/or employees from and against all claims, costs, expenses, actions, lawsuits, expenses of response, remediation, or cleanup costs, or damages and liability of any kind whatsoever, including but not limited to attorney fees and expenses, directly or indirectly arising out of or attributable to the release or threatened release of a hazardous substance emanating from the Site. This provision shall not apply to any action brought by a third party against the City. Grantee expressly covenants, warrants and promises not to sue the City, its officers, agents and/or employees in any action for contribution or indemnification for any remediation cleanup costs or response which Grantee undertakes as a result of any release of hydrocarbons from the Site.

This indemnity shall continue in full force and effect, and shall survive the termination of this agreement.

IX. INSURANCE REQUIREMENTS

A. INSURANCE

Licensee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of City of Torrance property thereunder by the Licensee, its' agents, representatives, employees or subcontractors. The insurance must be full coverage, or if self-insured, such self insurance must be approved by the City's Risk Manager.

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability.

    a. Primary Bodily Injury with limits of at least $250,000 per person, $500,000 per occurrence and;

    b. Primary Property Damage with limits of at least $100,000 per occurrence, or;

    c. Combined single limits of at least $500,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, explosion, collapse and underground hazards, and contractual obligations with combined single limits of at least $1,000,000 per occurrence.

3. Pollution Liability with coverage for:

    a. Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;

    b. Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

    c. Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages, and

    d. Losses caused by pollution conditions that arise from the operations of the licensee described under the Scope of Services of this contract with combined single limits of at least $1,000,000 per occurrence.

4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least $500,000.

B. ADDITIONAL INSURED

The City of Torrance, Los Angeles County-Torrance Civic Center authority, Torrance Public Facilities Building Corporation, Torrance Transit System, Redevelopment Agency of the City of Torrance, Torrance Municipal Water Department, elected officials, officers, agents, employees, volunteers, and members of boards and commissions must be named as additional insureds with respect to liability arising out of the operation or property of Grantee.

C. SUFFICIENCY OF INSURERS

Insurance required by this contract/purchase order will be satisfactory only if issued by companies rated **"B+"** or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category of a **"VII"** or better.

D. INCREASE IN REQUIREMENTS

Such insurance shall be maintained by the Grantee for the life of Agreement, and each year on the anniversary of this franchise, Grantee will provide updated evidence that such insurance is in force. The City has the right during the term of this Agreement to amend the insurance requirements to increase the amount and scope of coverage. The City covenants that it will not exercise such right in an unreasonable manner.

X. DEFAULT

A. Effect of Default. In the event that the Grantee shall default in the performance of any of the terms, covenants and conditions herein and such default is curable, the City shall give written notice to the Grantee of such default. In the event that the Grantee does not commence the work necessary to cure such default within thirty (30) days after such notice is sent or prosecute such work diligently to completion, the City may declare this Agreement forfeited. Upon giving written notice thereof to the Grantee, this Agreement shall be void and the rights of the Grantee hereunder shall terminate and the Grantee shall execute an instrument of surrender and deliver same to the City.

B. Force Majeure. In the event Grantee is unable to perform any of the terms of this Agreement by reason of strikes, riots, acts of God, acts of public enemies or other such cause beyond its control, it shall not be deemed to be in default or have forfeited its rights hereunder if it shall commence and prosecute such performance with reasonable promptness as soon as possible to do so.

C. Cumulative Remedies. No provision herein made for the purpose of securing the enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy, or to afford the exclusive procedure, for the enforcement of said terms and conditions, but the remedies and procedures herein provided, in addition to those provided by law, shall be deemed to be cumulative.

XI. SCOPE OF RESERVATION

The enumeration herein of specific rights reserved shall not be construed as exclusive or as limiting and general reservation herein made or as limiting such rights as the City may now or hereafter have in law.

XII. NOTICE

All notices, requests, demands, or other communications under this Agreement must be in writing. Notice will be sufficiently given for all purposes as follows:

A. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

B. First-class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

C. **Certified mail**. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

D. **Overnight delivery**. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

E. **Facsimile transmission.** When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt, provided that (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (ii) the receiving party delivers a written confirmation of receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day. Addresses for purpose of giving notice are as follows:

Grantee: Peter W. Trelenberg
ExxonMobil Torrance Refinery
3700 West 190th Street
Torrance, CA 90509
Fax Number: (310) 212-4592

City of Torrance:

City Clerk
3031 Torrance Boulevard
Torrance, CA 90503
Fax: (310) 618-2931

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

XIII. SUCCESSORS

The terms herein shall inure to the benefit of or shall bind, as the case may be, the successors and assigns of the parties hereto.

XIV. ACCEPTANCE OF AGREEMENT

This Agreement is entered and shall be held and enjoyed only upon the terms and conditions herein contained.

XV. AGREEMENT TO BE STRICTLY CONSTRUED AGAINST GRANTEE

The Agreement is granted upon each and every condition herein contained and shall ever be strictly construed against Grantee. Nothing shall pass hereby unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of this Agreement.

XVI. SPECIAL PROVISIONS

A. Bond. This Agreement is granted on the condition that the Grantee has now and shall at all times during the life of this Agreement keep on file with the City a bond running to the City in the sum of Sixty-five Thousand Dollars ($65,000), executed by a reputable indemnity company entitled to do business in the State of California. The said Bond shall contain the condition that the Grantee shall well and truly observe, fulfill and perform each and every term and condition of this Agreement, and that in case of any breach of condition of said Bond the whole amount of the sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and from the sureties upon said Bond. The provisions of this paragraph shall not exempt the Grantee from compliance with any of the laws of the City in force during the term hereof, which require the Grantee to post a Bond other than the bond required by this paragraph.

B. Fees. As reimbursement for administrative costs in the execution of this Agreement, the Grantee shall pay to the City in lawful money of the United States a fee of One Hundred Fifty Dollars ($150). This payment shall be made to the City prior to the signing of this Agreement and if made by check shall be made payable to the City of Torrance.

C. Independent Laboratory Analysis. Grantee agrees to have all chemical analyses of samples taken from the well, which are the subject of this Agreement, performed by qualified independent laboratories which are mutually acceptable to the Grantee and to the City. Grantee also agrees to provide copies of all analytical test reports to the City as soon as said reports are available. Additionally, Grantee agrees to provide the City with copies of all reports and documents submitted to federal, state, county, and local governments and agencies concerning the monitoring well.

CITY OF TORRANCE
A Municipal Corporation

By _____
Dan Walker
Mayor of the City of Torrance

ATTEST:

_____
Sue Herbers
City Clerk of City of Torrance

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By _____

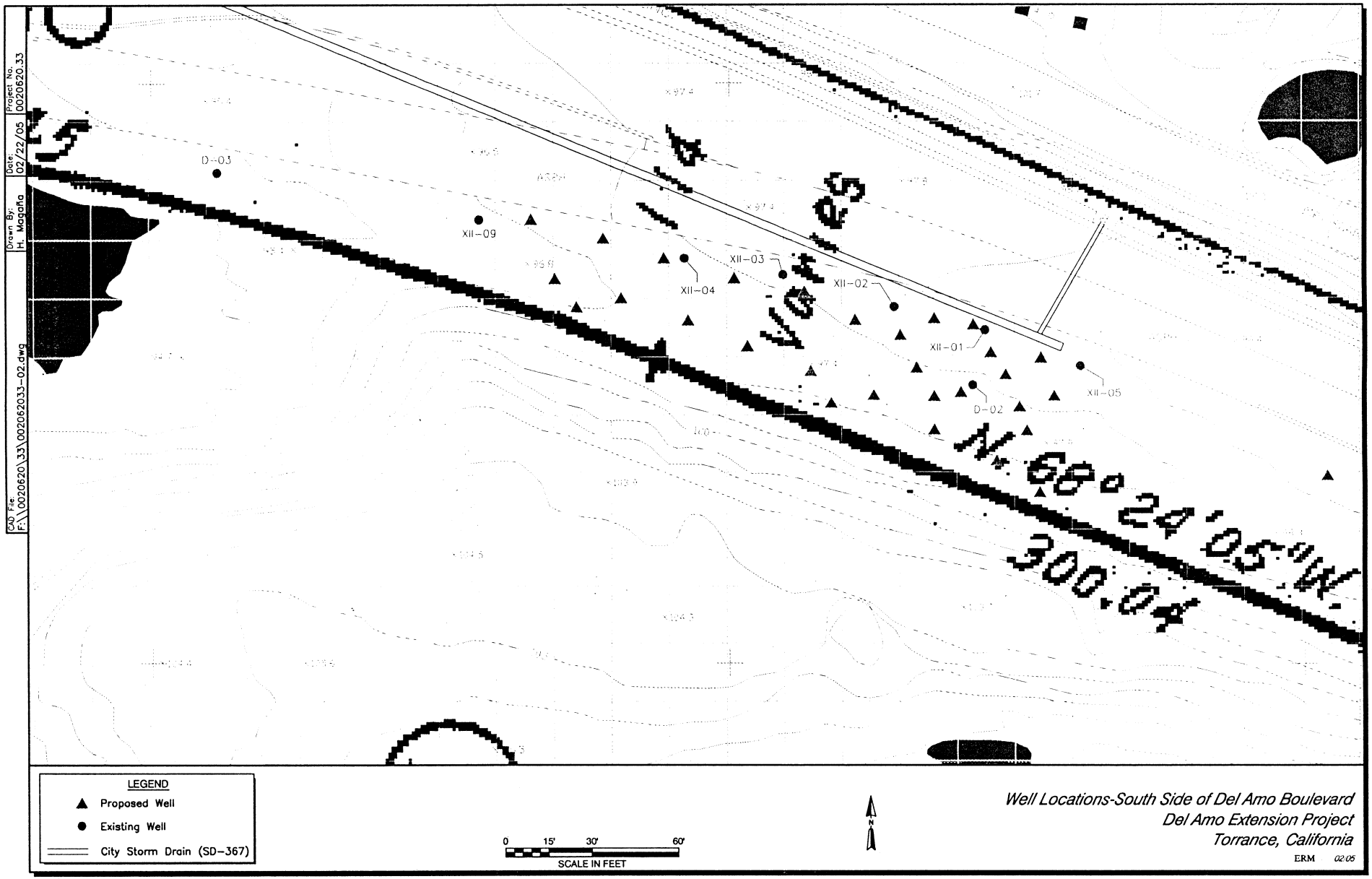
Deputy City Attorney

Attachment: Exhibit A

EXXONMOBIL OIL CORP.,
A New York Corporation

By Peter W. Trelenberg
Peter W. Trelenberg
Torrance Refinery Manager

AH-HIAN TAN
Commission # 1463411
Notary Public - California
Los Angeles County
My Comm. Expires Jan 17, 2008



Well Locations-South Side of Del Amo Boulevard
Del Amo Extension Project
Torrance, California

ERM 02/05