

Mr. Francy offered the following Resolution and moved on its adoption:

R-12-220
RESOLUTION APPROVING
LIMITED RELEASE AGREEMENT
BETWEEN THE BOROUGH OF HIGHLANDS AND
EXXON MOBILE CORPORATION

WHEREAS, Exxon Mobil has performed remedial activities along approximately 200 feet of Bayside Drive resulting in damage to the asphalt surfacing of Bayside Drive in Highlands, New Jersey. Exxon Mobile Corporation has agreed to provide funding in the amount of \$137,000 to the Borough of Highlands to repair and reconstruct approximately 600 feet of road on Bayside Drive from Marie Avenue to Matthews Street (the “Repaving & Improvement Project”). and

WHEREAS, the Borough of Highlands and Exxon Mobile Corporation have resolved all matters and claims in dispute arising from or relating to the Repaving Project on Bayside Drive and have set forth terms of their settlement in the attached Limited Release Agreement.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Highlands that the agreement in substantially the same form as attached hereto is hereby approved and the Borough Administrator is hereby authorized to execute attached Limited Release Agreement.

Seconded by Mr. Redmond and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Redmond, Mr. O’Neil, Mr. Francy, Ms. Kane

NAYES: None

ABSENT: Mayor Nolan

ABSTAIN: None

DATE: October 3, 2012

Carolyn Cummins, Borough Clerk

I hereby certify this to be a true copy of Resolution R-12-220 adopted by the Governing Body of the Borough of Highlands at a meeting held on October 3, 2012.

BOROUGH CLERK/DEPUTY CLERK

ECT: _____

RAS / SS # 3-2959

LIMITED RELEASE AGREEMENT

This Release Agreement ("Agreement") is effective this ____ day of September, 2012. This Agreement is made and entered into by and between the Borough of Highlands ("Claimant") and Exxon Mobil Corporation ("ExxonMobil").

BACKGROUND

- A. ExxonMobil has performed remedial activities along approximately 200 feet of Bayside Drive allegedly resulting in damage to the asphalt surfacing of Bayside Drive in Highland, New Jersey. Claimant has agreed to repair and reconstruct approximately 600 feet of road on Bayside Drive from Marie Avenue to Matthews Street (the "Repaving Project").
- B. A dispute arose between Claimant and ExxonMobil regarding financial responsibility for the Repaving Project.
- C. Claimant contends that ExxonMobil is responsible for a portion of the costs of the Repaving Project. ExxonMobil has denied any wrongdoing related to the damage to the asphalt surfacing of Bayside Drive.
- D. Claimant and ExxonMobil have resolved all matters and claims in dispute arising from or relating to the Repaving Project and have set forth the terms of their settlement below.

NOW, THEREFORE, in consideration of the money to be paid and the promises made herein, the parties agree as follows:

1. Payment to Claimant. Within 30 days of final execution of this agreement and upon completion of the Repaving Project, as demonstrated by Claimant in the form of

paid invoices for services from Claimants' contractor, ExxonMobil shall reimburse Claimant for expenditures for the Repaving Project in an amount of up to one hundred thirty-seven thousand dollars, (\$137,000.00), in full satisfaction of all claims for costs or damages incurred by Claimant relating to the damage of the asphalt surfacing of Bayside Drive. Payment will be in the form of a check made payable to _____ whose legal address is _____ and whose TIN is _____.

2. Release of ExxonMobil. On behalf of itself, its agents, representatives, insurers, successors in interest, heirs and assigns, Claimant fully and finally and forever releases, acquits and discharges ExxonMobil and its related entities, both parent company and affiliates, predecessors, successors, assigns, officers, directors, stockholders, shareholders, attorneys, representatives, agents and employees, past, present and future, and all other persons and entities for whose acts or omissions ExxonMobil could be held legally responsible ("Released Parties"), from any and all claims, suits, damages and causes of action of whatever nature and kind, including without limitation all claims for personal injury, emotional distress, property damages, trespass, nuisance, negligence, and/or economic loss, including lost interest, lost opportunities, diminution in real property value, stigma damages, any claims for attorneys' or consultants' fees and any other claims, demands, damages, losses or causes of action of whatever kind or nature which Claimant ever had, now has or may have on account of or arising from the alleged damage to Bayside Drive and the Repaving Project, whether at law or in equity, whether under state or federal law or regulation, whether known or unknown, whether suspected or unsuspected without any limitation or restriction whatsoever, except actions or claims to enforce the terms of this Agreement. This Release Agreement is a limited release and applies solely to the damage to the asphalt surfacing of Bayside Drive caused by Exxon Mobile's remedial activities along 200 feet of Bayside Drive. Claimant does not release the Released Parties from, and this Release Agreement specifically excludes, any other claims Claimant might have against the Released Parties, including, but not limited to claims for environmental damage, including environmental damage within the area of the Repaving Project, or damages to the any roadway other than that included in the Repaving Project.

3. Indemnification of ExxonMobil. Claimant agrees it shall defend, indemnify and hold harmless the Released Parties from any loss, claim, damage, or liability which arises or occurs as a result of the performance of the Repaving Project by the Borough's contractors, including workers compensation claims. This indemnification agreement does not apply to any work performed by or other actions of ExxonMobile, its employees, contractors, agents or representatives.

4. This Agreement represents a compromise settlement of a disputed claim and is not and shall not be construed as an admission of any issue of fact or law or as an admission or adjudication of any liability and shall not be admissible in any other suit or proceeding.

5. This Agreement is binding upon and inures to the benefit of Claimant and ExxonMobil and their respective heirs, executors, administrators, personal representatives, successors, transferees and assigns.

6. This Agreement constitutes the parties' entire agreement on this subject. There are no written or oral representations or understandings that are not fully expressed in this Agreement. No change, waiver, or discharge is valid unless in writing and signed by the party against whom it is sought to be enforced.

7. Claimant represents and agrees that the only party having present ownership interest in the Property is Claimant, and that no other person or entity has any present legal or equitable title to such Property or any causes of action in reference thereto.

8. Claimant and ExxonMobil acknowledge that this Agreement has been negotiated at arm's-length and therefore agree that any rule of construction of contracts resolving any ambiguities against the drafting party is waived and shall be inapplicable to this document.

9. The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or of any other term or condition.

10. This Agreement must be construed – and its performance enforced – under New Jersey law.

11. This Agreement, executed in duplicate originals, shall be effective on the date first written above.

12. Each person executing this Agreement represents that the party on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute the Agreement on behalf of such party.

EXXON MOBIL CORPORATION

Date

By: _____

Name: Peter K. Janzen

Title: Agent and Attorney in Fact

CLAIMANT

Date

By: _____
Name: _____
Title: _____