



ENERGY SERVICES CONTRACT

"Customer": City of Lemoore

Customer Address: 119 Fox Street, Lemoore, CA 93245

Contract Effective Date: June 19, 2012

Contract Amount: Refer to definition in Attachment B

Estimated Construction Period: 3 months

This Energy Services Contract ("Contract") is made and entered into as of the Contract Effective Date specified above by and between **Chevron Energy Solutions Company, a Division of Chevron U.S.A. Inc. ("Chevron ES")**, a Pennsylvania corporation, having its principal offices at 345 California Street, 18th Floor, San Francisco, CA 94104, and the Customer identified above, for the purposes of providing comprehensive energy services. Chevron ES and the Customer may singularly be identified as a "Party" and collectively as the "Parties." The attachments listed below as being attached are attached hereto and fully incorporated herein.

ATTACHMENTS TO CONTRACT

Attachment	Title	Attached	Not Applicable/	
			Not Attached	
A	General Terms and Conditions	Attached		
B	Design/Build Terms and Conditions	Attached		
C	Customer's Facilities and Existing Equipment	Attached		
D	Scope of Work	Attached		
E	List of Incentives	Attached		

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date first above written.

CHEVRON ES:
Chevron Energy Solutions Company, a Division of
Chevron U.S.A. Inc.

CUSTOMER:
City of Lemoore

By: _____

By: _____

Print Name: _____

Print Name: _____

Title:

Title:

Approved by City of Lemoore City Council on June 19, 2012

APPROVED AS TO LEGAL FORM:

Lozano Smith, A Professional Corporation

 Jerome M. Behrens, Esq.

**ATTACHMENT A
GENERAL TERMS AND CONDITIONS**

CONTRACT RECITALS

WHEREAS, Customer owns and/or operates certain public facilities specifically described in **Attachment C, "Customer's Facilities and Existing Equipment"** ("Facilities") and Customer wishes to reduce its Facilities' energy consumption and costs and improve the Facilities' energy quality/reliability by contracting to procure comprehensive energy management strategy expertise to achieve long term benefits and flexibility in managing the Customer's power and energy needs and to implement certain new and upgraded energy system related equipment and materials and other energy conservation measures ("ECMs"); and

WHEREAS, Chevron ES is a full-service energy services company with the technical capabilities to provide services to the Customer including, but not limited to, energy auditing, engineering, procurement, construction management, installation, construction, training, monitoring and verification, and maintenance and operation (collectively, "Services"); and

WHEREAS, the Lemoore City Council, at its June 19, 2012 meeting approved this Energy Services Contract by and between Chevron ES and the Customer and authorized the City Manager to execute this Energy Services Contract on behalf of the Customer.

NOW, THEREFORE, the Customer and Chevron ES hereby agree as follows:

SECTION 1. PERFORMANCE OF THE WORK

Section 1.1. **Performance of Work / Additional Terms and Conditions Governing Construction.** All the Work to be performed hereunder, including engineering, equipment and material procurement, installation, construction, and measurement & verification provided by Chevron ES, will be provided in accordance with the terms of this Contract, its attachments, and the terms of **Attachment B, "Design/Build Terms and Conditions"**.

Section 1.2 **Scope of Work.** The Scope of Work to be provided hereunder ("Work"), including all engineering, equipment and material procurement, and installation and construction, is more fully described in **Attachment D, "Scope of Work"**.

Section 1.3 **Notice(s) to Proceed.** After the Contract Effective Date, Customer will issue to Chevron ES one or more written Notices to Proceed (each a "Notice to Proceed") specifying in detail the portion of the Work Chevron ES is then authorized to commence, and instructing Chevron ES to proceed with the procurement, installation, and construction of such portion of the Work; provided that in no event shall any Notice to Proceed be delivered later than August 1, 2012. In reliance on each such Notice to Proceed, Chevron ES shall then begin such portion of the Work within thirty (30) calendar days of Chevron ES's receipt of the related Notice to Proceed. Notwithstanding the foregoing, Chevron ES shall have no obligation to perform or continue any portion of the Work (other than minor "punch-list" items or corrective work under the warranty provisions of Section 5) after September 13, 2012. Although Customer has applied for a grant equal to the maximum Contract Amount of \$635,144 (grant agreement number CBG-11-006; the "grant"), which is defined in Attachment B, the California Energy Commission ("CEC") may not fully fund the grant or may unilaterally reduce the grant (the State of California Energy Efficiency and Conservation Block Grant (EECBG)) under the American Recovery and Reinvestment Act of 2009 (ARRA) which is beyond the control of Customer. Accordingly, as grant commitments are received by Customer, Customer shall issue Notices to Proceed for the portions of the Scope of Work (Attachment D) based upon available grant funding.

Section 1.4 **Additional Work.** During the Contract Term, the Parties hereto may mutually agree to add additional Work and/or Projects to the Scope of Work by a written Change Order, executed by both Parties; and such work shall be performed in accordance with the terms and conditions of this Contract, as amended.

SECTION 2. CUSTOMER'S ENERGY AND OPERATIONAL RECORDS AND DATA

Customer represents and warrants that it has furnished to Chevron ES (or shall furnish, or cause its energy suppliers to furnish, no later than ten (10) business days after the Contract Effective Date), all of its records and complete data requested by Chevron ES concerning, without limitation, energy usage, energy-related maintenance, and other related costs for the Facilities listed in **Attachment C, "Customer Facilities and Existing Equipment"**, and including without limitation the following data for at least the past twelve (12) months and, optimally, the most current thirty-six (36) month period: utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, O&M manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures presently utilized. Customer agrees that Chevron ES may rely on the

foregoing data as being accurate in all respects. If requested, Customer shall also provide any prior energy audits of the Facilities, and copies of Customer's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and shall authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of Chevron ES.

SECTION 3. CONTRACT TERM

The term of the Contract shall commence on the Contract Effective Date and end upon Final Completion of the Project.

SECTION 4. PAYMENTS

Payments by Customer to Chevron ES under this Contract shall be in the form of monthly progress payments as discussed below.

Section 4.1. Monthly Progress Payments. On or before the twentieth (20th) day of each month, Chevron ES shall submit to the Customer, or their designee, for approval its request for a monthly progress payment (each a "Request for Payment") in a form reasonably acceptable to Customer, for that portion of the Work completed prior to the date of such Request for Payment. The Customer, or their designee, shall approve each Request for Payment, less any Retainage (as defined below), within thirty (30) calendar days after its receipt thereof. A failure to timely approve and pay a Request for Payment hereunder shall be a material default by Customer under this Contract. Each Monthly Progress Payment shall be made on or before the tenth (10th) day after such Request for Payment was received by Customer.

Section 4.2 Retainage. The Customer may withhold a retainage amount ("Retainage") of five percent (5%) of each monthly progress payment in accordance with California Public Contract Code §7201. The Customer may make progress payments in full without Retainage at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. Upon Substantial Completion of the Work, Retainage shall be reduced to two (2%) percent of the total Contract Amount, and Chevron ES shall invoice and Customer shall pay the remaining amount. Customer shall pay Chevron ES the final two (2%) percent Retainage upon achieving Final Completion.

Section 4.3 Final Payment. The final Request for Payment may be made after Final Completion. The Customer, or their designee, shall approve and pay the final Request for Payment, without Retainage, within forty-five (45) calendar days after its receipt thereof. The Final Payment amount shall also include payment to Chevron ES for any remaining Retainage withheld by Customer.

Section 4.4 Disputed Invoices/Late Payments. If Customer disputes any Request for Payment, or part thereof, or any supporting documentation related thereto, or otherwise disputes any Request for Payment as provided in Section 4.5 below, Customer shall make full payment to Chevron ES when required in Section 4.1 above, less any portions of the Request for Payment amount in dispute, and shall provide to Chevron ES a written explanation of the basis for the dispute and the amount of the Request for Payment being withheld related to the dispute, no later than the Due Date. Customer shall be deemed to have waived and released any dispute known to it with respect to a bill if such written explanation is not provided within thirty (30) calendar days after the Due Date. If any amount disputed by Customer is finally determined to be due to Chevron ES, either by agreement between the Parties or as a result of dispute resolution pursuant to Section 15 below, it shall be paid to Chevron ES within ten (10) business days of such final determination, plus reasonable interest at the interest rate set forth in **Attachment B, "Design/Build Terms and Conditions"** Section 19 ("Interest").

Section 4.5 Rebate Programs. Customer and Chevron ES agree that, in addition to the Contract Amount payable by Customer, a portion of the Project will be funded through rebates from the Utility-administered LED Street Light Program ("Incentive Funds"), which is referenced on **Attachment E, "List of Incentives"**. Chevron ES will execute all necessary applications and documentation, and will receive such Incentive Funds directly from the Utility. Customer agrees to provide all requested assistance to Chevron ES in qualifying for the Incentive Funds. Chevron ES expressly disclaims any liability for Customer's failure to receive any energy efficiency rebate, incentive, and/or loan program(s) other than the Incentive Funds, and Customer acknowledges and agrees that Chevron ES shall have no liability for Customer's failure to receive any such funds. Procurement, or lack thereof, of any funds (including the Incentive Funds) will not alter the Contract Amount of this Contract or the payment timeline associated with payment of the Contract Amount.

SECTION 5. WARRANTY/LIMITATION OF LIABILITY

Chevron ES warrants its workmanship provided hereunder, including its subcontractors' workmanship, shall be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("Chevron ES Warranty"). All warranties hereunder, including without limitation those for defects, whether latent or

patent, in design, engineering, or construction, shall terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, Chevron ES will have no liability for breach of any warranty or for any latent or patent defect of any kind. Equipment and material warranties that exceed the one (1) year warranty period shall be provided directly by the equipment and/or material manufacturers and such warranties shall be assigned directly to the Customer, after the one (1) year period. During the one (1) year Chevron ES warranty period, Chevron ES shall be the Customer's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. Other than for lamps and ballasts, any material defects that are discovered within the one (1) year Chevron ES warranty period, Chevron ES, or Chevron ES's subcontractors, will correct its defects, and/or Chevron ES will work with the equipment or material manufacturer as the Customer's agent to facilitate the manufacturer's correction of the equipment or material defect. For typical industry standard lamp and ballast failures during the one (1) year Chevron ES warranty period, the Customer will replace such failed lamps/ballasts with replacement stock provided by Chevron ES, provided, however, Customer shall return the failed lamps/ballasts to the manufacturer in order to ensure that sufficient quantities of replacement stock are available during the one year warranty period. Such warranty services shall be performed in a timely manner and at the reasonable convenience of the Customer. This warranty expressly excludes any remedy for damage or defect caused by improper use, improper or inadequate maintenance, operations of the installed equipment by users other than Chevron ES or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized Chevron ES subcontractor, improper operation, or normal wear and tear under normal usage. If a warranty issue arises on any equipment or material installed after the one (1) year Chevron ES warranty period, and the equipment or material has a warranty period that exceeds one (1) year, the Customer shall contact the manufacturer directly to resolve such warranty issues and Customer acknowledges that the manufacturer shall have sole responsibility for such issues.

EXCEPT FOR THE WARRANTY AND GUARANTEES PROVIDED IN SECTION 5 HEREIN, CUSTOMER EXPRESSLY AGREES THAT CHEVRON ES MAKES NO OTHER WARRANTIES AND ASSUMES NO OTHER LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, IN CONNECTION WITH THE SALE AND INSTALLATION OF EQUIPMENT AND MATERIALS PROVIDED HEREUNDER WHETHER EXPRESS OR IMPLIED, IN LAW OR IN COMMUNICATION BETWEEN CHEVRON ES AND CUSTOMER. CHEVRON ES SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER **SHALL HAVE NO REMEDIES AGAINST EITHER CHEVRON ES OR ANY CHEVRON ES SUBCONTRACTOR FOR ANY DEFECTIVE WORK INSTALLED EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT IN ACCORDANCE WITH THE WARRANTY INDICATED ABOVE.** SPECIFICALLY, CHEVRON ES, OR CHEVRON ES'S SUBCONTRACTOR, SHALL NOT BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

SECTION 6. GOVERNMENTAL PERMITS AND APPROVALS; COORDINATION

Section 6.1. Permits and Approvals. Customer will cooperate fully with and assist Chevron ES in obtaining all permits and approvals required under this Contract. Chevron ES is responsible for obtaining permits and approvals, required for the building, installation, and start-up of the Work hereunder which are required as of the Contract Effective Date. The Customer shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits as applicable.

Section 6.2. Coordination During Installation. Customer and Chevron ES shall cooperate to coordinate the activities of Chevron ES and Chevron ES's subcontractors and suppliers with those of Customer, its employees, and agents. Chevron ES will use reasonable efforts not to interfere with the performance of business activities conducted by Customer or its employees without prior written approval of Customer, which shall not be unreasonably withheld.

SECTION 7. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT

Section 7.1. Ownership of Certain Proprietary Property Rights. Customer shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the equipment. Chevron ES shall grant to Customer a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for Customer to continue to operate, maintain, and repair the equipment in a manner that will yield maximal energy consumption reductions.

Section 7.2. Ownership of Any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by Chevron ES pursuant to this Contract. If applicable, Chevron ES shall advise Customer in writing of all equipment and materials that will be replaced at the Facilities and Customer shall, within five (5) business days of Chevron ES's notice, designate in writing to Chevron ES which replaced equipment and materials that should not be disposed of off-site by Chevron ES (the "Retained Items"). It is understood and agreed to by both Parties that Customer shall be responsible for and designate the location and storage for the Retained Items. Chevron ES shall be responsible for the disposal of replaced equipment and materials, except for the

Retained Items. Chevron ES shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. Chevron ES shall not be responsible for the removal and/or disposal of any Hazardous Materials or substances except as required by the Scope of Work.

SECTION 8. LOCATION AND ACCESS

Customer will provide sufficient space at the Facilities for the performance of the Work and the installation, storage, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Customer shall provide access to the Facilities, including parking permits and identification tags, for Chevron ES and subcontractors to perform its Work hereunder during regular business hours, or such other reasonable hours as may be requested by Chevron ES and acceptable to Customer. The Customer shall also either provide a set or sets of keys to Chevron ES and its subcontractors (signed out per Customer policy) or provide a readily available security escort to unlock and lock doors. Customer shall not unreasonably restrict Chevron ES's access to Facilities to make emergency repairs or corrections as it may determine are needed.

SECTION 9. INDEMNIFICATION / INSURANCE / BONDS

Section 9.1. Indemnification. To the full extent permitted by law, each Party shall indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity in whole or in part, arising out of that Party's activities hereunder, including the activities of other persons employed or utilized by that Party in the performance of this Contract excepting liabilities due to the negligence or willful misconduct of the indemnified Party. This indemnification obligation is not limited in any way by any limitations of any insurance held or provided by Chevron ES and shall continue to bind the parties after termination/completion of this Contract.

Section 9.2 Waiver of Consequential Damages and Limitation of Liability. Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability. "Consequential damages" includes, but is not limited to, operational losses in the performance of business including lost revenues and any increase in operating expense, and any lost profits. It is expressly understood and agreed to by both Parties that each Party's liability to the other shall be limited to reimbursement of only those Losses arising solely from a Party's breach of this Contract, negligence or willful misconduct. "Losses" means claims, actions, direct damages, liabilities, costs and/or expenses (including reasonable attorneys' fees).

Section 9.3 Chevron ES Insurance. Chevron ES shall maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (i) through (vii) below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to Customer via a Self Administered Claims Letter.

(i) Workers' Compensation/Employers Liability for states in which Chevron ES is not a qualified self-insured. Limits as follows:

- * Workers' Compensation - Statutory
- * Employers Liability - Bodily Injury by accident \$1,000,000 each accident
Bodily Injury by disease \$1,000,000 each employee
Bodily Injury by disease \$1,000,000 policy limit

(ii) Commercial General Liability insurance with limits of :

- * \$1,000,000 each occurrence for Bodily Injury and Property Damage
- * \$1,000,000 General Aggregate - other than Products/Completed Operations
- * \$1,000,000 Products/Completed Operations Aggregate
- * \$1,000,000 Personal & Advertising Injury
- * \$ 100,000 Damage to premises rented to Chevron ES

Coverage to be written on a Claims-made form. Coverage to be at least as broad as ISO form CG 0002 (12/07), without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest and (2) explosion, collapse, underground hazard.

(iii) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an Occurrence form.

(iv) Professional Liability insurance with limits of:
* \$1,000,000 per occurrence

- * \$1,000,000 aggregate

Coverage to be written on a Claims-made form.

- (v) Excess Liability insurance. Limits as follows:
 - * \$1,000,000 each occurrence
 - * \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

- (f) Policy Endorsements.
 - * The insurance provided for Workers' Compensation and Employers' Liability above shall contain waivers of subrogation rights against Customer, but only to the extent of the indemnity obligations contained in this Contract.
 - * The insurance provided for Commercial General Liability and Auto Liability above shall:
 - (i) include the Customer as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
 - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

(vii) In lieu of any insurances required in this Section, Chevron ES may self insure hereunder and use a Self Administered Claims Program for this purpose. Chevron ES will notify Customer in writing 30 days prior to cancellation of the Self Administered Claims Program.

Section 9.4 Performance and Payment Bonds. Prior to commencing Work under this Contract, Chevron ES shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Amount, and a Payment Bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively "Contract Bonds"). The Contract Bonds shall be maintained in full force and effect until Final Completion; provided that upon the achievement of Substantial Completion, the value of the Contract Bonds shall be reduced to the value of the Retainage then being withheld by Customer. The bonds are not being furnished to cover the performance of any energy guaranty or guaranteed savings under this Contract. Customer agrees that upon Final Completion, the Performance and Payment Bonds shall be released and all obligations arising thereunder shall be terminated.

SECTION 10. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 10.1 Force Majeure Events. Neither Party shall be considered to be in default in the performance of any material obligation under this Contract (other than the obligation to make payments) when a failure of performance shall be due to an event of Force Majeure. The term "Force Majeure" shall mean any cause beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which it has been unable to overcome. A list of Force Majeure events are listed in the definition section of **Attachment B, "Design/Build Terms and Conditions"**. Neither Party shall be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Contract by reason of an event of Force Majeure shall give prompt written notice of such fact to the other Party.

Section 10.2 Utility Work. Customer expressly understands and agrees that the definition "Force Majeure" above also includes any Interconnection Facilities work that may need to be performed by Pacific Gas & Electric Company ("Utility") in order for Chevron ES to fully implement the Project. "Interconnection Facilities" shall mean any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under a separate contract between Customer and the Utility.

SECTION 11. EVENTS OF DEFAULT

Section 11.1. Events of Default by Customer. Each of the following events or conditions shall constitute an "Event of Default" by Customer:

- (i) any failure by Customer to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Customer demanding that such failure to perform be cured; provided that (i) such failure to perform shall not be deemed

**Energy Services Contract
City of Lemoore and Chevron Energy Solutions Company**

a default hereunder if it is due to causes beyond the control of Customer pursuant to Section 10 above; and (ii) if such cure cannot be effected in thirty (30) calendar days, Customer shall be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

(ii) any representation or warranty furnished by Customer in this Contract which was false or misleading in any material respect when made; or

(iii) any failure by Customer to pay any amount to Chevron ES which is not paid within ten (10) days of written notice from Chevron ES that the amount is past due.

Section 11.2. Events of Default by Chevron ES. Each of the following events or conditions shall constitute an "Event of Default" by Chevron ES:

(i) any failure by Chevron ES to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Chevron ES demanding that such failure to perform be cured; provided that (i) such failure to perform shall not be deemed a default hereunder if it is due to causes beyond the control of Chevron ES pursuant to Section 10 above, and (ii) if such cure cannot be effected in thirty (30) calendar days, Chevron ES shall be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

(ii) any representation or warranty furnished by Chevron ES in this Contract which was false or misleading in any material respect when made; or

(iii) any lien or encumbrance is placed upon the equipment by any subcontractor, laborer, or supplier of Chevron ES, which is not timely removed by Chevron ES; provided that Chevron ES has been duly paid for the Work and such lien or encumbrance is not the result of any act or failure to act of Customer.

SECTION 12. REMEDIES UPON DEFAULT

Section 12.1. Remedies upon Default by Customer. If an Event of Default by Customer occurs, Chevron ES will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Section 16 below including, without limitation, terminating this Contract or recovering amounts due and unpaid by Customer, and/or damages which shall include Chevron ES's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; legal fees and arbitration costs; and any payment or delivery required to have been on or before the date of the Event of Default and not made, including Interest (as defined in **Attachment B, "Design/Build Terms and Conditions"** Article 1) on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 12.2. Remedies Upon Default by Chevron ES. If an Event of Default by Chevron ES occurs, Customer shall be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Section 16 below, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by Chevron ES and/or damages, which shall include Customer's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; legal fees and arbitration costs; and any payment or delivery required to have been on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

SECTION 13. ASSIGNMENT

Section 13.1. Assignment. This Contract may not be assigned by either party in whole or in part without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed; provided however, that Chevron ES may assign this Contract and all related contracts without the consent of Customer (i) to an affiliate; (ii) to an entity that is controlled by, controls, or is under common control with Chevron ES; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law; and provided further that Chevron ES may assign its rights, but not its obligations, under this Contract and all related contracts without the consent of Customer to (x) a lender providing financing to Chevron ES, or (y) a special purpose entity that is an affiliate of or is controlled by such lender. This Contract will be binding on, enforceable by, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.

SECTION 14. SUBCONTRACTORS

Section 14.1 Authority to Subcontract. Chevron ES may delegate its duties and performance under this Contract, and shall have the right to enter into agreements with any subcontractors and other service or material

providers as Chevron ES shall select in its discretion to perform the Work hereunder. Chevron ES shall not be required to enter into any subcontracts with parties whom Chevron ES has not selected or subcontractors whom Chevron ES has objection to using.

Section 14.2 Prompt Payment of Subcontractors. Chevron ES shall promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of the law from arising against any Customer property, against the contractor's rights to payments hereunder, or against Customer.

Section 14.3 Responsibility. Chevron ES shall, at all times, be responsible for the negligent acts, errors and/or omissions of its subcontractors and agents. Nothing in this Contract shall constitute any contractual relationship between any others and the Customer or any obligation on the part of the Customer to pay, or to be responsible for the payment of, any sums to any Chevron ES subcontractors.

Section 14.4 Prevailing Wages. All employees of Chevron ES and Chevron ES's subcontractors performing Work for this Project shall be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed, in accordance with the requirements of California Labor Code §1771. In accordance with California Labor Code §§1773 and 1773.2, the Customer shall obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work, and shall cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. The Customer shall promptly notify Chevron ES of any changes to any such prevailing wage determination.

SECTION 15. DISPUTE RESOLUTION

Section 15.1 Dispute Resolution. In the event of a dispute, claim, or controversy arising out of or in connection with this Contract, the Parties through their designated representatives/program managers agree to confer and attempt to resolve the matter informally. If such dispute cannot be resolved in this manner within ten (10) business days after notice of the dispute is given to the other Party, then the matter shall be referred to the Parties' senior officers for their review and resolution. If the matter cannot be resolved by such officers within fifteen (15) business days following such referral, the matter shall be arbitrated and either Party may file a written demand for arbitration with the American Arbitration Association ("AAA") and shall send a copy of such demand to the other Party. The arbitration shall be conducted pursuant to the appropriate AAA Arbitration Rules in effect at the time the arbitration is commenced. For amounts in excess of \$75,000, AAA Regular Track Procedures shall apply. For lesser disputed amounts, AAA Fast Track Procedures shall apply. The award rendered by the arbitrator shall be final and binding on the Parties and shall be deemed enforceable in any court having jurisdiction thereof and of the Parties. The arbitration shall be heard by one arbitrator, who shall have experience in the general subject matter to which the dispute relates. The arbitration shall take place at the AAA office geographically closest to the site where the Work or Services has been performed.

Section 15.2 Attorneys' Fees. The prevailing Party in any action or arbitration proceeding brought to enforce the terms of this Contract or arising out of this Contract (including actions to enforce an arbitration award) may recover its reasonable costs and attorneys' fees expended in connection with such an action or arbitration proceeding from the other Party.

SECTION 16. REPRESENTATIONS AND WARRANTIES

Each Party warrants and represents to the other that:

(i) it has all requisite power, authority, licenses, permits, or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(ii) the execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, Chevron ES's Board of Directors and Customer's governing entity, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a Party or by which it or its properties may be bound or affected; and

(iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

SECTION 17. WAIVER OF LIENS

Upon request from Customer, Chevron ES shall provide Customer with Progress Payment Waivers and Releases for Work Chevron ES has been paid up to that date. Upon receipt by Chevron ES of final payment for the Work (including payment of any Retainage), Chevron ES will provide Customer with a Final, Unconditional Waiver and Release.

SECTION 18. TERMINATION

Section 18.1 Termination for Cause. If there is an Event of Default by either Party under this Contract, pursuant to the provisions of Section 12 unless such Event of Default has been cured within the applicable time periods for a cure set forth in such Section 12 in addition to the remedies provided for in Section 13 the non-defaulting Party may terminate this Contract by providing three (3) business days' notice to the defaulting Party in the case of a monetary default and ten (10) business days' notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party shall promptly return to the other all papers, materials, and property of the other held by such Party in connection herewith. Each Party shall also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If the Contract is so terminated, Chevron ES shall be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 18.2 Termination for Convenience. Both Chevron ES and Customer have the right to terminate this Contract upon mutual written agreement by both Parties hereto. If the Contract is so terminated by mutual agreement, Chevron ES shall be entitled to payment for all Work performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

SECTION 19. CONSTRUCTION OF CONTRACT

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Contract was executed.

SECTION 20. BINDING EFFECT

Except as otherwise provided herein, the terms and provisions of this Contract shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

SECTION 21. INDEPENDENT CONTRACTOR

The Parties hereto agree that Chevron ES, and any agents and employees of Chevron ES, its subcontractors and/or consultants, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of Customer.

SECTION 22. NO WAIVER

The failure of Chevron ES or Customer to insist upon the strict performance of the terms and conditions of this Contract shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of Chevron ES or Customer.

SECTION 23. SEVERABILITY

In the event that any clause or provision of this Contract or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder.

SECTION 24. ORDER OF PRECEDENCE

This Contract, when executed, together with all Attachments, shall constitute the entire Contract between the Parties; and the Contract cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto. If there are any inconsistencies between the Contract, Attachments, and Construction Documents as defined in the General Terms and Conditions for Implementation and Construction, these inconsistencies shall be resolved by giving precedence in the order listed below:

- (1) Energy Services Contract
- (2) Attachment A – “General Terms and Conditions”
- (3) Attachment D – “Scope of Work”
- (4) Attachment C – “Customer’s Facilities and Existing Equipment”
- (5) Construction Documents
- (6) Attachment B – “Design/Build Terms and Conditions”
- (7) Attachment E – “List of Incentives”

SECTION 25. APPLICABLE LAW

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of California. The Parties consent to personal jurisdiction and venue of the State and Federal Courts within the Kings County, California.

SECTION 26. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, or fax with proof of transmission, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO CHEVRON ES: Chevron Energy Solutions Company
145 South State College Boulevard, Suite 400
Brea, CA 92821
Tel: 714-671-3220
Fax: 714-671-3438
Attention: Jonathan Brown, Project Manager

With a COPY TO: Legal Department
Chevron Energy Solutions Company
345 California Street, 18th Floor
San Francisco, CA 94104-2624
Tel: 415-733-4500
Fax: 415-733-4957
Attention: Contract Administrator

TO CUSTOMER: City of Lemoore
119 Fox Street
Lemoore, CA 93245
Tel: 559-924-6700
Fax: 559-924-9003
Attention: Jeff Britz, City Manager

With a COPY TO: Offices of Lozano Smith
7404 N. Spalding Avenue
Fresno, CA 93720-3370
Tel: (559) 431-5600
Fax: (559) 261-9366
Email: jbehrens@lozanosmith.com
Attention: Jerome M. Behrens

SECTION 27. HEADINGS

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

SECTION 28. CONFLICTS OF INTEREST

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, no Party nor any director, employee or agent of any Party shall give to or receive from any director, employee or agent of any other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, no Party nor any director, employee or agent of any Party, shall without prior notification thereof to all Parties enter into any business relationship with any director, employee or agent of another Party or of any Affiliate of another Party, unless such person is acting for and on behalf of the other Party or any such

Affiliate. A Party shall promptly notify the other Parties of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the Party against whom it was charged. Any representative of any Party, authorized by that Party, may audit the records of the other Parties related to this Contract, including the expense records of the Party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this Section.

SECTION 29. CREDITWORTHINESS

If, at any time, Customer's credit rating falls below investment grade as defined by Moody's Investors Services (or other nationally-recognized independent rating agency), Customer agrees to provide Chevron ES with current information regarding its creditworthiness upon the request of Chevron ES. At its sole option, Chevron ES may then require Customer to provide security satisfactory to Chevron ES, and the Work may be withheld until such security is received. If Customer deposits the Contract Amount into a third-party escrow account with an escrow agent and agreement acceptable to Chevron ES, then the terms of this paragraph are not applicable.

SECTION 30. AMERICAN RECOVERY AND REINVESTMENT ACT

In the event Customer is using American Recovery and Reinvestment Act ("ARRA") funding, in whole or in part, to pay for the Scope of Work set forth in this Contract, Customer acknowledges and agrees that the supplies and services hereunder are being procured and purchased under state or local procurement laws and Chevron ES is a "vendor" or "contractor" hereunder. As such, Customer agrees that Chevron ES is not a recipient, grantee, awardee, subrecipient, subgrantee or subawardee of ARRA funds hereunder. In the event that after Contract execution the awarding agency or a court of proper jurisdiction determines that Chevron ES is a recipient, grantee, awardee, subrecipient, subgrantee or subawardee under the ARRA funded grant rather than a "vendor" or "contractor", Chevron ES reserves the right to terminate this Contract at its discretion pursuant to the termination for convenience provision set forth in this Contract. Customer agrees to release, defend, indemnify, and hold Chevron ES harmless from and against any claims, costs, or damages arising out of or related to such a determination notwithstanding any other provisions in this Contract. Chevron ES shall comply with the requirements for all lower-tier subcontracts entered into under ARRA funding agreements, to the extent applicable to "vendors" or "contractors" for the relevant portion of the Scope of Work set forth in this Contract, as stated in the Terms and Conditions of the Customer's agreement with the California Energy Commission, agreement number CBG-11-006, a copy of which Chevron ES acknowledges has been delivered to Chevron ES.

SECTION 31. EXPORT CONTROL; PROHIBITED PARTIES

Section 31.1 The Parties understand and acknowledge that confidential information exchanged under this Contract may be subject to compliance with any and all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data. The Parties agree to comply with all such laws, regulations, and orders, including, if applicable, all requirements of the International Traffic in Arms regulations and/or the Export Administration Act, as may be amended. Each Party further agrees to comply with any export license requirements that govern the export, re-export, transfer, or release of confidential information provided hereunder. Each Party agrees to provide an Export Classification Number (ECCN) or USML Classification Number to the receiving Party in writing for all confidential information that is classified with an Export Control Classification Number (ECCN) other than EAR99 or is classified on the USML. The ECCN and USML Classification, if required shall be provided at the time the confidential information is provided to the receiving Party. If a disclosing Party provides confidential information subject to the terms of an export license or other export authorization, the disclosing Party shall notify the receiving Party in writing of any restrictions on the use, transfer, distribution, or re-export of the confidential information contained in said export license or authorization. Chevron ES and its Affiliates shall not be obligated to perform any obligations hereunder if and to the extent that any such performance is prohibited by or contrary to any applicable U.S. laws or regulations, including U.S. export regulations. An entity is deemed to "control" another if it owns directly or indirectly at least fifty percent of either of the shares entitled to vote at a general election of directors of such other entity or the voting interest in such other entity if such entity does not have either shares or directors.

Section 31.2 Chevron ES is a United States company with a policy requiring it to comply with all applicable laws, including economic sanctions and trade restrictions imposed by the United States government. Chevron ES has undertaken to provide its parent organization with any information relevant to its potential involvement with any party that may be the target of such sanctions and restrictions. Accordingly, Customer shall provide Chevron ES with ninety (90) days advance notice of the names and addresses of any member of Customer's organization which may be any of the following:

- (a) The target of, or owned or subject to control by any country, institution, organization, entity or person that is the target of, economic sanctions and trade restrictions imposed by the United States government.

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- (b) Debarred or otherwise excluded or declared ineligible to participate in United States government contracts or contracts, grants or other programs financed in whole or in part by the United States government.
- (c) Listed by the United States Departments of Commerce or State as an entity with which United States persons may not engage in export or re-export related transactions.

**ATTACHMENT B
DESIGN/BUILD TERMS AND CONDITIONS**

ARTICLE 1. DEFINITIONS

For purposes of the Energy Services Contract, and its Attachments, the defined terms herein shall have the meaning set forth as follows:

1. **Applicable Laws**: “Applicable Laws” shall mean all laws, building codes, rules, regulations, or orders of any federal, state, county, local, or other governmental body, agency, or other authority having jurisdiction over the performance of the Work, as may be in effect at the time the Work is undertaken.
2. **Applicable Permits**: “Applicable Permits” shall mean all permits, waivers, authorizations, or licenses issued or required to be issued by any federal, state, county, local, or other governmental body, agency, or other authority having jurisdiction over the performance of the Work, as may be in effect at the time the Work is undertaken.
3. **Beneficial Use**: “Beneficial Use” shall mean when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are being used for their intended purpose. A Certificate of Beneficial Use, which identifies when Customer took Beneficial Use of the Work, shall be prepared and issued by Chevron ES to the Customer and Subcontractor. Beneficial Use of equipment/systems criteria shall be established as defined in **Attachment D, “Scope of Work”**.
4. **Change**: “Change” shall mean any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, suspension, or other modification that effects a change in the Scope of Work that is specified by the Contract. An unforeseen condition experienced by Chevron ES during the course of the Work is included within the definition of “Change”.
5. **Change Order**: “Change Order” shall mean a written document signed by both Chevron ES and the Customer that authorizes Chevron ES to perform a change and/or modification to the Scope of Work. The Change Order shall modify the Scope of Work and shall identify: (1) the change and/or modification to the Scope of Work; (2) any additional compensation to be paid to Chevron ES to perform such change and/or modification; and (3) any extensions of Time to perform such change and/or modification.
6. **Claims**: “Claims” shall mean any and all actions, claims, losses, damages, expenses, or liabilities of either party arising from or as a result of these Terms and Conditions, the Contract, any addenda to the Contract, and/or Change Orders.
7. **Construction**: “Construction” shall mean any Work to be performed that involves any and all construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.
8. **Construction Documents**: “Construction Documents” shall mean the final designs, drawings, and specifications that are used for construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to the Contract and its Attachments.
9. **Contract**: “Contract” shall mean the Contract and all Attachments attached thereto which are incorporated therein, as it may be amended or modified from time to time in accordance with the provisions thereof.
10. **Contract Amount**: “Contract Amount” shall mean the amount of funding commitments Customer receives from the California Energy Commission as described in Attachment A; the Contract Amount shall not exceed \$635,144, which is the maximum amount of compensation that shall be paid by Customer to Chevron ES for performing the Work in accordance with the Scope of Work.
11. **Contract Term**: The “Contract Term” shall commence on the Contract Effective Date and cease upon Final Completion.
12. **Contract Documents**: “Contract Documents” shall mean the Energy Services Contract, its Attachments, Construction Documents, Change Orders, and any amendments thereto.
13. **Contract Effective Date**: “Contract Effective Date” shall mean the date the Contract is fully executed and is in full force and effect.
14. **Excusable Delay**: “Excusable Delay” shall mean Chevron ES shall be entitled to an extension of Time and/or additional compensation caused by an Excusable Delay that shall be defined as (1) by an act or failure to act of, or other delay caused by, Customer or its agents or employees; (2) by failures of any governmental authorities to make timely inspection of the Work or by unanticipated efforts necessary to secure governmental approvals for the Project; (3) by delays resulting from the securing of permits for the Work; (4) by labor disputes, fire, vandalism, delay in manufacturing and deliveries; (5) by adverse weather conditions not reasonably anticipated; (6) by unforeseen site conditions, including discovery or existence of Hazardous Substances; (7) by unavoidable casualties or other causes beyond Chevron ES’s control; (8) by delays caused by processing Change Orders requested by or agreed to by

Customer, or resulting from the implementation of any Change Order; or (9) by delay caused by pending arbitration, or (10) any other cause outside Chevron ES's control.

15. **Final Completion:** "Final Completion" shall mean when 100% of the engineering and construction Work as identified in the Scope of Work has been completed, including completion of all required training, and delivery to the Customer of the final close-out documentation (as-built drawings, O&M Manuals, and warranty documentation). A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work. A Certificate of Final Completion will be executed at the Final Completion of the entire Work.
16. **Force Majeure:** "Force Majeure" shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which it has been unable to overcome, including acts of God and the public enemy; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local Utility; flood, earthquake, tornado, storm, fire; civil disobedience, labor disputes, strikes, labor or material shortages, delay in manufacturing and deliveries of equipment; sabotage; restraint by court order or public authority (whether valid or invalid), and/or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by the fault of the Party asserting the Force Majeure.
17. **Hazardous Substances:** "Hazardous Substances" shall mean any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (i) any "hazardous substance" as defined by the Resource, Conservation and Recovery Act of 1976 (42 United States Code ("U.S.C."), Section 6901 et seq.), as amended, and regulations promulgated thereunder; (ii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in U.S.C. Section 9601 et seq.), as amended and regulations promulgated thereunder; and (iii) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law.
18. **Installation:** "Installation" shall mean the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.
19. **Interest:** "Interest" shall mean interest calculated at the lesser of the per annum rate of interest announced from time to time by Citibank, at its "prime" rate for commercial loans plus two percent (2%) or the maximum rate permitted by Applicable Laws.
20. **Losses:** "Losses" shall mean claims, actions, damages, losses, liabilities, costs, and/or expenses including reasonable attorney's fees.
21. **Material Changed Condition:** "Material Changed Condition" shall mean one or more of the following conditions that impact the Time and/or the Contract Amount: (i) parties outside the control of Chevron ES caused delays; (ii) the discovery of differing and unexpected site conditions not previously disclosed by Customer and could not have been readily discoverable by Chevron ES prior to start of Work; (iii) the discovery of Hazardous Substances not previously disclosed; (iv) adverse weather conditions not reasonably anticipated; (v) delay in equipment and material deliveries outside Chevron ES's control; and (vi) any other condition that could not have been reasonably anticipated by the Parties and is outside Chevron ES's control.
22. **Party or Parties:** "Party" or "Parties" shall mean Chevron ES, Customer, each or both of them, as the context may require pursuant to the terms and conditions of the Contract.
23. **Project:** "Project" shall mean the entirety of Work to be performed by Chevron ES pursuant to the terms and conditions of the Scope of Work, and any Change Orders, as well as all efforts of Customer, and other entities, all as an integrated whole.
24. **Project Location:** "Project Location" shall mean that area or areas where the Project materials and equipment and any other energy related equipment as described in the Scope of Work shall be performed and/or installed.
25. **Scope of Work:** "Scope of Work" shall mean the Work to be performed hereunder by Chevron ES, and/or Chevron ES's subcontractors, pursuant to the Scope of Work (as amended by Change orders), and in accordance with the terms and conditions of the Contract and its Attachments, as amended.
26. **Substantial Completion:** "Substantial Completion" shall mean the stage in the progress of the Work or portion of the Work, where the Work or portion of the Work is sufficiently complete in accordance with the Contract Documents so that Customer can utilize and take beneficial use of the Work for its intended use or purpose. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.
27. **Time:** "Time" shall mean the time period within which Chevron ES shall complete the Work.
28. **Work:** "Work" shall mean the design, procurement, installation and/or construction required for the Project and includes all labor necessary to produce such services, all materials, fabrication, assemblies, and equipment incorporated or to be incorporated in such construction necessary to achieve Final Completion of the Project, including such materials and equipment which may be consumed or use but not actually incorporated in such construction. The Work may include

design, supplying, installing, constructing, maintaining, operating, and warranting certain materials and equipment, and providing any other energy-related services specified in the Scope of Work.

ARTICLE 2. PROJECT IMPLEMENTATION - GENERAL

1. **Project Meetings/Status Updates.** During the Design and Construction Phases of the Project, Chevron ES will meet with Customer to review equipment, scope of work, and installation plans that relate to the design and construction of the Project. Also during the course of the Work, Chevron ES will periodically provide reports to the Customer of the general status and progress of the Work.
2. **Project Location Access.** Customer hereby grants to Chevron ES, without cost to Chevron ES, all rights of ingress and egress at the Project Location identified in the Scope of Work, necessary for Chevron ES to perform all Work and provide all services contemplated by the Contract and the Scope of Work. Chevron ES shall provide 24 hour advanced notice to Customer for access to any Customer Facilities.
3. **Time.** During the course of Project implementation, both the Customer and Chevron ES shall perform their respective obligations in an expeditious manner that is consistent with reasonable skill and care for the type of project described in the Scope of Work and in keeping with the orderly progress of the Work pursuant to the terms of the Scope of Work. Subject to any such Excusable Delays, Chevron ES and its subcontractors shall work diligently to implement the Project

ARTICLE 3. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT.

1. General Provisions.

- (a) As soon as possible after the Contract Effective Date, Chevron ES will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work identified in Attachment D.
- (b) Upon the issuance of the Notice to Proceed and upon completion of the design phase, Chevron ES shall order the equipment identified in the Scope of Work, and any other necessary materials and supplies.
- (c) Customer shall designate a single-point representative with whom Chevron ES shall consult on a reasonable, regular basis and who is authorized to act on Customer's behalf with respect to the Project design. Customer's representative shall render decisions in a timely manner with regard to any documents submitted by Chevron ES and to other requests made by Chevron ES in order to avoid unreasonable delay in the orderly and sequential progress of Chevron ES's design services.
- (d) Within ten (10) business days of Chevron ES's request, Customer shall:
 - 1) furnish all surveys or other information in Customer's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
 - 2) disclose any prior environmental review documentation and all known information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location where the Work will be performed pursuant to the Scope of Work;
 - 3) supply Chevron ES with all relevant information in Customer's possession, including any as-built drawings and photographs, of prior construction undertaken in the general area where the Work will be performed pursuant to the Scope of Work; and
 - 4) obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location site essential to the execution of the Work.
- (e) All information furnished pursuant to this section shall be supplied at Customer's expense, and Chevron ES is entitled to rely upon the accuracy and completeness of all information provided. Customer acknowledges that any failure to provide the information specified in subsection (d) above to Chevron ES may result in an Excusable Delay as defined herein.
- (f) In the event that any information is disclosed under this section that constitutes a Change to the Work and/or is a Material Changed Condition, Chevron ES will provide notice to Customer within ten (10) business days after receipt of this information, and the parties will meet and confer with respect to those Changes. If Customer authorizes a Change Order, Chevron ES shall be compensated, and receive an extension of Time for performance, if necessary, to perform the additional Work in accordance with Terms and Conditions. If the parties are unable to agree on whether Customer's disclosed information constitutes a Change to the Work or a Material Changed Condition, those disputes shall be resolved in accordance with Section 15 of Attachment A of the Contract.
- (g) Chevron ES contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a Pre-Existing Condition by the Customer prior to the execution of the Contract. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the execution of the Contract shall constitute a valid basis for a Change Order pursuant to these Terms and Conditions.

- (h) Customer agrees that for the Work on the Project hereunder, Chevron ES shall be the “designer” as that term is identified in the Energy Policy Act of 2005, and Chevron ES shall have the exclusive right to any federal, state, or local agency, authority or other party, including without limitation under Section 179(b) of the Energy Policy Act of 2005, any tax benefit associated with the Work. Upon Final Completion, Customer agrees to execute a written allocation including a declaration related to Internal Revenue Code §179D. Chevron ES will prepare the declaration and all accompanying documentation. Chevron ES will be designated the §179D beneficiary.

2. Review of Construction Documents.

- (a) Chevron ES will prepare and submit all designs, drawings, and specifications to the Customer for review. Customer shall review the documents and provide any comments in writing to Chevron ES within ten (10) business days after receipt of documents. Chevron ES will incorporate appropriate Customer comments into the final designs, drawings, and specifications, as applicable. The terms and conditions of any permit approvals required for the Project will be provided. Chevron ES reserves the right to issue the designs, drawings, and specifications in phases to allow the construction to be performed in phases. If Customer fails to provide written comments within the ten (10) business day period, Customer shall be deemed to have accepted and approved the documents.

- 3. Permits and Approvals.** The respective obligations of the Parties in obtaining permits and approvals are as specified in Section 6 of Attachment A of the Contract. Customer shall agree to any nonmaterial changes to the designs, drawings, and specifications required by any governmental authority having jurisdiction over the Work. The Contract Amount provided for in the Scope of Work shall be increased by any additional cost incurred by Chevron ES due to a change required by a governmental authority and the Time required to complete the Work will be increased by the number of additional days required to complete the Work because of a governmentally imposed change in the Project.

- 4. Changes During Final Design Phase.** If during the design phase Customer requests changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, as defined in Article 1 above, Customer shall be responsible for payment of the extra costs caused by such modifications and/or changes. Valid bases for additional compensation and/or Time extension include, but are not limited to: (i) Customer requests changes and/or modifications to the Project Scope of Work during the Project Design Phase; (ii) Customer caused delays during Chevron ES’s design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain certain permits; (vi) damage to any equipment or other Work installed by Chevron ES caused by the act or omission of Customer, its agents or employees; (vii) changes and/or modifications to Scope of Work ordered by any governmental authority having jurisdiction over the Project; and (viii) any other condition that would not reasonably have been anticipated by Chevron ES that modifies and/or changes the Scope of Work that increases the agreed upon Contract Amount or increases in the Time needed to complete the Work identified in the Scope of Work.

ARTICLE 4. CONSTRUCTION PHASE.

- 1. General Provisions.** Upon securing necessary permits, pursuant to Section 6 of Attachment A of the Contract, and acceptance and approval of Final Construction Documents by Customer, Chevron ES will commence the construction of the Project in accordance with the Final Construction Documents. The construction will be performed by Chevron ES and/or one or more licensed subcontractors qualified to perform the Work. The construction will be performed in accordance with all Applicable Laws and Applicable Permits.

2. Chevron ES’s Responsibilities During Construction Phase.

- (a) As an independent contractor to Customer, Chevron ES will be responsible for providing, or causing to be provided by Chevron ES’s subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Work and any Change Orders. Chevron ES is hereby required to purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work. Chevron ES will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the final Construction Documents.
- (b) Chevron ES will make all reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Customer’s operations at the Project Location. Chevron ES will provide at least thirty (30) calendar days written notice to Customer of any planned power outages that will be necessary for the construction. Chevron ES will cooperate with Customer in scheduling such outages, and Customer agrees to provide its reasonable approval of any scheduled outage.
- (d) Chevron ES will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Project. Chevron ES will take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (1) employees of Chevron ES and subcontractors performing Work under this Contract; (2) Chevron ES’s property and other materials to be incorporated for the Project, under the care, custody, and control of Chevron ES or its subcontractors; and (3) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of

construction. Chevron ES will not be responsible for Customer's employees' safety unless Chevron ES's negligence in the performance of its Work is the proximate cause of the employee's injury.

- (e) Customer shall be responsible for procuring all necessary permits, if any.
- (f) Chevron ES will maintain in good order at the Project Location copies of the Scope of Work, all Change Orders, the Contract (with all Attachments), one record copy of all drawings, specifications, product data, samples, manufacturer's operation & maintenance manuals, and other pertinent construction-related documents.
- (g) Systems Startup and Equipment Commissioning. Chevron ES shall provide notice to Customer of any scheduled test(s) of installed equipment, and Customer and/or its designees shall have the right to be present at any or all such tests conducted by Chevron ES, any subcontractor, and/or manufacturers of the equipment. Chevron ES shall be responsible for correcting and/or adjusting all deficiencies in systems and equipment operations that Chevron ES provided and installed that may be observed during equipment commissioning procedures.
- (h) The following duties shall be performed by Chevron ES:
 - Organize and conduct a pre-construction meeting with the Customer and each subcontractor.
 - Organize and conduct regularly scheduled progress meetings throughout the installation period.
 - Schedule and manage all subcontractors and related work.
 - Provide the Customer a single point of contact and responsibility of all work related to the project.
 - Investigate and resolve design, construction, and field issues as they arise during the project
 - Coordinate on-site work, and schedule accordingly with Customer.
 - Perform progress inspections throughout the installation period. Provide the Customer and Subcontractor with results of findings.
 - Identify any existing Customer equipment that is found during implementation of the work not to be functioning properly, and notify in writing to Customer.
 - Provide regular status reports to the Customer.
 - When appropriate, initiate a thorough inspection of the work with the Customer and Subcontractor to obtain substantial completion.
 - Check, test, and start-up each item of equipment.
 - With the Customer and Subcontractor, perform final inspection of the Work.
 - Review subcontractor invoices and authorize payment as appropriate.
 - Obtain/prepare final as-built documentation for the project, and deliver to the Customer. Documentation shall include O&M manuals as appropriate, warranty information, and as-built drawings and related information.
 - Obtain a certificate of final completion, signed by the Customer, Subcontractor, and Chevron ES.
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3. Customer's Responsibilities During Construction Phase.

- (a) Customer shall designate a single-point representative authorized to act on Customer's behalf with respect to Project construction and/or equipment installation. Customer may from time to time change the designated representative and shall provide notice to Chevron ES of such change. Any independent review of the construction shall be undertaken at Customer's sole expense, and it shall be performed in a timely manner so as to not unreasonably delay the orderly progress of Chevron ES's Work. Any independent review of the construction by Customer shall not relieve Chevron ES of any of its obligations or responsibilities hereunder.
- (b) Customer shall provide a temporary staging area for Chevron ES, or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed.
- (c) Customer shall remain responsible for the maintenance of the portion of the Project Location that is not directly affected by Chevron ES's Work. Customer shall keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Customer.
- (d) Customer shall be solely responsible for obtaining any required environmental clearance from and any special permits required by any federal, state, and local jurisdictions prior to scheduled construction start date.
- (e) Customer shall be responsible for the preparation of the designated Project Location site for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities.
- (f) Customer shall be solely responsible for the removal of any Hazardous Substances either known to Customer prior to the commencement of the Work or encountered by Chevron ES during the construction of the Project, if necessary in order for the Work to progress safely, that was not knowingly released or brought to the site by Chevron ES. Chevron ES will respond to the discovery of Hazardous Substances at or around the Project Location during the course of Chevron ES's construction in accordance with Section 6, "Hazardous Substances", below.

- (g) Customer shall coordinate the Work to be performed by Chevron ES with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that Chevron ES will coordinate the Interconnection Facilities work, if any, that will be performed by the local utility.
- (h) Customer shall allow Chevron ES and its Subcontractors access to and reasonable use of necessary quantities of Customer's water and other utilities, including electrical power, as needed for the construction of the Work, at no extra cost to Chevron ES.
- (i) Customer will provide Chevron ES and/or its Subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to Chevron ES, access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.
- (j) The Customer shall also do the following:
 - Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of work.
 - When appropriate, participate in the job inspection walk-through with Chevron ES and the subcontractor to determine Substantial Completion or beneficial use of major equipment. Sign the Certificate of Substantial Completion, as appropriate.
 - Perform a final walk-through of the project. Upon receipt of the O&M Manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
 - The Customer is encouraged to provide a staff member(s) to accompany Chevron ES during the EMS Commissioning.
 - Provide knowledgeable staff to participate in the training programs, which will be scheduled in advance for proper coordination.
 - Upon the completion of the entire Scope of Work, including training, and close-out documents, sign a Certificate of Final Completion for Entire Implementation Project.

4. Changes During Construction.

- (a) **Change Orders Generally.** Changes and/or modifications to the Scope of Work shall be authorized by a written Change Order signed by both Customer and Chevron ES. The Change Order shall state the change and/or modification to the Scope of Work, any additional compensation to be paid, or extension of Time, if needed, to Chevron ES to perform such change and/or modification. Chevron ES may, at its election, suspend performance of that portion of the Work affected by any proposed Change Order until an agreement has been reached with the Customer regarding the Change Order. Chevron ES will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change Order until such time as the Change Order is resolved. In addition, if Customer requests a proposal from Chevron ES for a change to the Scope of Work and Customer subsequently elects to not proceed with such change, Customer agrees that a Change Order shall be issued to reimburse Chevron ES for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by the Customer.
- (b) **Change Orders Requiring Additional Compensation.** If during construction Customer requests changes and/or modifications to the Work identified in the Scope of Work, there are Excusable Delays and/or there are Material Changed Conditions, as defined in Article 1 above, Customer shall be responsible for payment of the extra costs caused by such modifications and/or changes and Chevron ES shall be entitled to additional compensation for the following reasons, that include, but are not limited to: (1) Customer requests changes and/or modifications to the Project Scope of Work during the construction phase of the Project; (2) Customer caused delays during Chevron ES's construction work; (3) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (4) discovery of Hazardous Substances at or impacting the Project Location; (5) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any governmental authority having jurisdiction over the project; (6) damage to any equipment or other Work installed by Chevron ES caused by the act or omission of Customer, its agents or employees; (7) changes and/or modifications to Scope of Work ordered by any governmental authority having jurisdiction over the Project; and (8) any other condition that would not reasonably have been anticipated by Chevron ES that modifies and/or changes the Scope of Work agreed upon in the Scope of Work that increases the agreed upon Contract Amount identified in the Scope of Work.
- (c) **Change Orders Requiring Additional Time / Excusable Delays.** If during construction Customer requests changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, as defined in Article 1 above, the parties agree that a reasonable extension of Time may be necessary to perform such modifications and/or changes. In addition, if Chevron ES is delayed at any time in the progress of the Work for any reason beyond its control, including, but not limited to, any of the following (each defined as an "Excusable Delay"): (1) by an act or failure to act of, or other delay caused by, Customer or its agents or employees; (2) by failures of any governmental authorities to make timely inspection of the Work or by unanticipated efforts necessary to secure governmental approvals for the Project; (3) by delays resulting from the securing of permits for the Work; (4) delays

caused by changes and/or modifications to the Scope of Work as required by any governmental authority having jurisdiction over the project; (5) by labor disputes, fire, vandalism, delay in manufacturing and deliveries; (6) by adverse weather conditions not reasonably anticipated; (7) by unforeseen site conditions, including discovery or existence of Hazardous Substances; (8) by unavoidable casualties or other causes beyond Chevron ES's control; (9) by delays caused by processing Change Orders requested by or agreed to by Customer, or resulting from the implementation of any Change Order; or (10) by delay caused by pending arbitration, then the Time shall be reasonably extended by a Change Order, executed by both Customer and Chevron ES. Prior to such extension of Time, Chevron ES will use reasonable efforts to make up such delays, including authorizing overtime payments (provided that Customer has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith).

(d) **Material Changed Conditions/ Conditions Beyond Chevron ES's Control.** Chevron ES will provide written notice to Customer of any Material Changed Condition and or any Force Majeure event, as such terms are defined in Article 1 above, within ten (10) business days of Chevron ES's first discovery of such Material Changed Condition or event of Force Majeure. In the event that Chevron ES's notice concerns unanticipated subsurface conditions, including soil conditions, or Hazardous Substances, Chevron ES will not disturb the condition until said notice has been given to Customer, and Customer has had a reasonable opportunity to investigate the condition. If there is a disagreement between Customer and Chevron ES as to whether a Change Order should be issued and executed because of the Material Changed Condition and/or condition beyond Chevron ES's control, those disputes shall be resolved in accordance with the provisions of Section 16, "Dispute Resolution", of Attachment A of the Contract. Pending the resolution of any dispute between Chevron ES and Customer concerning a Material Changed Condition and/or change beyond Chevron ES's control, Chevron ES reserves the right to suspend Work pending the resolution of the dispute.

5. **Minor Changes to Scope of Work.** Chevron ES shall have authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the final Construction Documents, as amended by Change Order, without prior notice to Customer. Chevron ES will either promptly inform Customer, in writing, of any minor changes made during the implementation of the Project, or make available to Customer at the site a set of as-built drawings that will be kept current to show those minor changes.

6. **Hazardous Substances.** Chevron ES will promptly provide written notice to Customer if Chevron ES observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. Chevron ES shall have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of any work unless otherwise specified in the Scope of Work. Customer shall be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Customer shall be responsible for complying with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection shall execute all generator manifests with respect thereto. Chevron ES shall comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Customer shall provide Chevron ES, within ten (10) business days of the execution of this Contract, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Work area, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, no conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are no unsafe working conditions at the Facilities.

Customer shall indemnify, defend, and hold Chevron ES harmless from and against any and all claims and costs of whatever nature, including but not limited to, consultants' and attorneys' fees, damages for bodily injury and property damage, fines, penalties, cleanup costs, costs associated with delay or work stoppage, and third party claims (hereinafter "Liability"), that in any way result from or arise under from such Customer owned or generated hazardous materials and substances, except for liabilities due to Chevron ES's, or its subcontractors, agents representatives, and employees', negligence or willful misconduct in handling, disturbance, or release of Hazardous Materials or Substances. This indemnification shall survive any termination of this Contract.

7. **Pre-Existing Conditions.** Certain pre-existing conditions may be present within the Customer's facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of Chevron ES's Work, (iii) may cause Chevron ES's completed Work to be non-compliant with applicable codes, (iv) may prevent the Customer from realizing the full benefits of Chevron ES's Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of Chevron ES's Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, Chevron ES shall not be responsible for repairing such pre-existing conditions unless such is expressly provided for in the Scope of Work or an approved change thereto. Chevron ES, in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a change order with the Customer for additional compensation and, if appropriate, an extension of time. Examples of pre-existing conditions include, but are not limited to, the following:

- With respect to lighting equipment maintenance and/or lamp and ballast retrofit work, the Customer shall be responsible for properly grounding lighting fixtures before Chevron ES commences work in compliance with applicable codes.
- With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, the Customer shall be responsible for providing an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest National Electrical Code ("NEC"). Chevron ES's Scope of Work shall include properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
- Where Chevron ES's Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor shall be included in the lighting circuits. The Customer is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the facility grounding electrode system in compliance with the latest NEC.
- With respect to Chevron ES projects with new equipment connecting to the facility's existing electrical distribution system, Chevron ES shall not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. The Customer is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and Guidelines.
- Chevron ES is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew.
- Chevron ES shall not be responsible for existing damaged pipes, valves, and related parts and components due to a lack of water treatment.
- Existing pneumatic control systems that remain in place shall be properly maintained (use of air dryer, clean filter, etc.) by the Customer such that oil or moisture does not reach the control and operating devices.
- Unless specifically included in the Scope of Work, existing valves, dampers, linkages, and piping specialties to which new controls/building automation system are being connected are to be in proper functioning condition. If existing device is found to be improperly functioning, Customer may repair or compensate Chevron ES for repair / replacement of the device.

ARTICLE 5. PROJECT COMPLETION.

1. **Beneficial Use:** The Customer may take Beneficial Use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, provided that such occupancy or use is authorized by Governmental Authority and, provided further, that Customer assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. Beneficial Use shall not commence until the Customer's insurance company has consented to such occupancy or use. When Beneficial Use of a portion of the Work occurs before Substantial Completion of such portion, Customer and Chevron ES shall accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and retainage with respect to such portion.
2. **Substantial Completion / Reduction of Retention:** At the time the Work is Substantially Complete in conformance with the Scope of Work and Construction Documents, Chevron ES will supply to Customer a written Certificate of Substantial Completion. Customer shall within ten (10) business days of receipt of the Certificate of Substantial Completion, review the Work for the sole purpose of determining that it is substantially complete and in substantial conformance with the Scope of Work, final Construction Documents and any Change Orders, and sign and return the Certificate of Substantial Completion to Chevron ES acknowledging and agreeing: (1) that the Work is substantially complete in accordance with the Contract Documents so Customer can occupy or utilize the Work for its intended use; (2) the date of such Substantial Completion; (3) that from the date of Substantial Completion Customer will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of the Work. Customer agrees that approval of the Certificate of Substantial Completion shall not be unreasonably withheld. Title to any and all of the materials and equipment installed shall pass from Chevron ES to Customer upon the date of Substantial Completion.
3. **Final Completion:** When Chevron ES considers the Work to be fully complete in accordance with the Scope of Work, Chevron ES will notify the Customer that the Work is fully complete and ready for final inspection. The Customer shall

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inspect the Work to verify the status of Final Completion within ten (10) business days after its receipt of Chevron ES's certification that the Work is Complete. If Customer does not verify the Final Completion of the Work with this period, the Work shall be deemed fully completed. If Customer determines that any Work is incomplete and/or defective, the Customer shall promptly notify Chevron ES in writing of such incomplete and/or defective work, itemizing and describing such remaining items with reasonable particularity. Chevron ES will, in a reasonable amount of time, complete any incomplete items or remedy defective items after which Chevron ES shall provide written notice to the Customer that the Work is fully complete. Customer shall re-inspect all work completed or remedied by Chevron ES within ten (10) business days of Chevron ES's notice of completion from Chevron ES that the Work is complete. If the Customer does not re-inspect the Work within the ten (10) business day period, the Work shall be deemed fully complete. When the Customer agrees that the Work is fully completed in accordance with the Scope of Work and Contract Documents, Customer shall give Chevron ES written notice of acceptance of the Work and Final Completion and will issue a Final Completion Certificate to Chevron ES. At that time, Customer shall pay Chevron ES any remaining Contract Amount due and any outstanding retainage being withheld by the Customer.

**ATTACHMENT C
CUSTOMER'S FACILITIES**

The following Customer Facilities are included under the Scope of Work as listed below:

A total of 1,261 streetlights installed throughout the City of Lemoore.

**ATTACHMENT D
SCOPE OF WORK**

Energy Conservation Measures to Be Implemented

ECM No.	Description
01	City Wide Street Lighting

General Conditions Scope of Work provided by Chevron ES:

- Provide project management.
- Provide construction management and supervision. A construction manager will be assigned to this Project and will be responsible for monitoring the on-site construction.
- Provide O&M manuals on systems provided under this Contract.
- One year parts and labor warranty upon beneficial use on systems provided under this Contract.
- Manufacturers' warranty shall be assigned to the Customer.

ECM 01: City-wide Street Lighting

Chevron ES shall perform the following work, subject to grant funding as described in Attachment A:

- Replace existing high intensity discharge (HID) "cobra head" fixtures with new Beta® Light Emitting Diode (LED) fixtures, per the following existing street lighting schedule:

Existing Fixture and Voltage	Proposed Fixture	Quantity
70 Watt High Pressure Sodium (HPS) Lamp @ 120 volts (V)	30 LED	954
100 Watt HPS Lamp @ 120 V	30 LED	10
150 Watt HPS Lamp @ 120 V	40 LED	157
200 Watt HPS Lamp @ 120 V	50 LED	1
70 Watt HPS Lamp @ 240 V	30 LED	124
150 Watt HPS Lamp @ 240 V	40 LED	9
200 Watt HPS Lamp @ 240 V	50 LED	6
	Total	1261

- Provide traffic control (i.e. cones) to route traffic around work area.
- Remove and properly dispose of existing "cobra head" fixtures.
- Provide a new photocell for each new fixture.
- Provide new wattage stickers on the underside of each new fixture.
- Assist Customer to coordinate with the Utility to change tariff (rate) based on the Scope of Work.

General Project Exclusions and Clarifications

- Plan check fees and construction permit costs have not been included. Customer will waive or pay for such fees.
- Construction shall be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions created by the Customer.
- Work shall be performed during normal work hours.
- The Scope of Work assumes that, unless specifically identified otherwise, existing systems are functioning properly and are up to current codes. Chevron ES shall not be responsible for repairs or upgrades to existing systems, other than those specifically identified herein.
- No allowances have been made to bring existing systems up to code. Newly installed systems will be code compliant.
- No allowance has been made for structural upgrades to existing structures, except as noted.
- Removal and disposal of hazardous materials, including asbestos containing materials, to be by the Customer (except as noted above). If Chevron ES encounters material suspected to be hazardous, we will notify the Customer representative and stop further work in this area until the material is removed.
- Chevron ES standard construction means & methods shall be used.

Criteria for Achieving Beneficial Use:

Uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks, to determine proper operation.

**ATTACHMENT E
LIST OF INCENTIVES**

<http://www.pge.com/mybusiness/energysavingsrebates/rebatesincentives/ref/lighting/lightemittingdiodes/incentives/index.shtml>