



Chevron Energy Solutions Company,
a division of Chevron U.S.A. Inc.

Chevron ES Project #: DWCES-32492 - _ _ _
Chevron ES Contract # CU _____

PROGRAM DEVELOPMENT AGREEMENT

This PROGRAM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this _____ () day of September 2012¹ between Chevron Energy Solutions Company, a Division of Chevron U.S.A. Inc. ("Chevron ES"), having its principal offices at 345 California Street, 18th Floor, San Francisco, CA 94104 and City of Lemoore, located at 119 Fox Street, Lemoore, CA 93245 ("Customer" and together with Chevron ES the "Parties" and each of Customer and Chevron ES a "Party".)

WHEREAS, Chevron ES is an energy services and solutions company with the technical and management capabilities and experience to perform an integrated energy assessment (an "Assessment") and to identify supply-side and/or demand-side energy conservation measures ("ECMs");

WHEREAS, Customer desires to enter into an agreement to have Chevron ES perform an Assessment in accordance with the scope of work set forth in Attachment A (the "Scope of Work") for the facilities listed on Part I of Attachment B (the "Included Facilities"), and to identify energy improvements and operational changes which are recommended to be installed or implemented at the Included Facilities; and

WHEREAS, the primary purpose of the Assessment is to provide an engineering and economic basis for the implementation of ECMs, in furtherance of which the Parties intend to negotiate and execute a contract providing for, among other things, engineering, procurement, installation, construction and training services (an "Energy Services Contract");

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. ASSESSMENT

Chevron ES agrees to complete the Assessment within ninety (90) calendar days after the date on which Chevron ES receives the information listed in Part I of Attachment A (the "Required Information"). Customer agrees to deliver the Required Information to Chevron ES no later than thirty (30) calendar days after the date hereof.

Customer agrees to assist Chevron ES in performing the Assessment by (i) providing Chevron ES, its employees and agents, such access to the Included Facilities and other relevant facilities of Customer as Chevron ES deems necessary and (ii) providing, or causing Customer's energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Included Facilities and other relevant facilities. Chevron ES shall be entitled to rely upon the accuracy and completeness of all information provided to Chevron ES by Customer and Customer's energy suppliers. Chevron ES will promptly provide written notice to Customer if Chevron ES determines there is any incorrect data included in the information provided by Customer or Customer's energy suppliers, but Chevron ES shall have no obligation to correct or confirm any such information unless otherwise specified in the Scope of Work. Any change(s) in the Scope of Work shall be set forth in a writing executed by the Parties.

2. COMPENSATION TO CHEVRON ES

Customer shall compensate Chevron ES for its performance of the Assessment by payment to Chevron ES of a fee (the "Assessment Fee") in the amount of fourteen thousand dollars (\$14,000); provided that the Assessment Fee will be zero if both (i) Chevron ES determines that the project cost/kWh to be generated in the first year after implementation of the recommended ECMs will be greater than or equal to \$2.33/kWh and (ii) Chevron ES and Customer do not execute an Energy Services Contract.

The Assessment Fee will be due and payable thirty (30) calendar days after Chevron ES's completion of the Assessment; *provided* that if on such thirtieth (30th) calendar day Chevron ES and Customer are negotiating an Energy Services Contract in good faith, the Assessment Fee will be due ninety (90) calendar days after Chevron ES's completion of the Assessment; *provided further*, that if Chevron ES and Customer execute an Energy Services

¹ Insert date Chevron ES signs the Agreement.

Contract within ninety (90) calendar days after Chevron ES's completion of the Assessment, the Assessment Fee shall be incorporated into the total contract amount payable under such Energy Services Contract.

Customer and Chevron ES reserve the right to terminate this Agreement at any time during the course of the Assessment, by delivery of written notice to the other. If this Agreement is terminated by Customer, a fee will be payable by Customer to Chevron ES within thirty (30) calendar days of termination, in an amount equal to the lesser of (i) Chevron ES's estimate of its fees, costs, expenses, disbursements and overhead incurred through the date of termination and (ii) a pro-rated fee based on Chevron ES's estimate of the percentage of completion of the Assessment. If this Agreement is terminated by Chevron ES, Customer shall have no obligation to pay any portion of the Assessment Fee to Chevron ES. If Chevron ES determines that the projected savings from implementation of the ECMs identified during the Assessment cannot result in a paid-from-savings project which complies with California Government Code Sections 4217.10 through 4217.18, the Assessment and this Agreement will be terminated by Chevron ES.

Any amount not paid when due shall, from and after the due date, bear interest at a fluctuating rate equal to the sum of (a) The United States Prime Rate as listed from time to time in the Eastern print edition of the Wall Street Journal[®] plus (b) 2% per annum. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

3. INSURANCE

Chevron ES shall maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in subsections A through G 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.

A. 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

B. 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 or (2) explosion, collapse, underground hazard.

C. 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.

D. Professional Liability insurance with limits of:

- * \$1,000,000 per occurrence
- * \$1,000,000 aggregate

Coverage to be written on a claims-made form.

E. 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 Agreement.
- * The insurance provided for Commercial General Liability and Auto Liability above shall:
 - (1) include Customer as an additional insured with respect to Work performed under this Agreement, but only to the extent of the indemnity obligations contained in this Agreement, and
 - (2) provide that the insurance is primary coverage with respect to all insureds and shall not be considered contributory insurance with any insurance policies of Customer, but only to the extent of the indemnity obligations contained in this Agreement.

G. In lieu of any insurances required in this Section 3, Chevron ES may self insure hereunder and use a self administered claims program (a "SACP") for this purpose. Chevron ES will notify Customer in writing thirty (30) calendar days prior to cancellation of the SACP.

4. INDEPENDENT CONTRACTOR

Chevron ES shall perform as an independent contractor under this Agreement. None of Chevron ES, its consultants and subcontractors, and their respective employees and agents, are employees of Customer or the City of Buellton for any purpose. This Agreement may not be construed to represent the creation of an employer/employee relationship. Chevron ES shall act in an independent capacity and retain sole discretion in the manner and means of carrying out its activities under this Agreement. Chevron ES is free to work for other entities while under contract with Customer.

5. CREDIT

Customer shall periodically provide to Chevron ES that financial information or security deemed necessary by Chevron ES to support any credit extension. If during the life of this Agreement, the financial capacity of Customer becomes impaired or unsatisfactory to Chevron ES in the sole judgment of Chevron ES, advance cash payment or security satisfactory to Chevron ES shall be given by Customer on demand by Chevron ES and the Work Product (as defined below) may be withheld until such payment or security is received.

6. CONFLICTS OF INTEREST

Conflicts of interest relating to this Agreement are strictly prohibited. Except as otherwise expressly provided herein, no Party nor any director, employee, agent or subcontractor 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 Agreement. Likewise, no Party nor any shareholder, director, employee, agent or subcontractor 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 6 and any consideration received as a result of such violation shall be paid over or credited to the Party against whom it was charged. The Parties agree to maintain true and correct records in connection with all matters relating to this Agreement, and to retain such records for at least twenty-four (24) months following the expiration of this Agreement.

7. ENERGY SERVICES CONTRACT

As it is the intent of Customer and Chevron ES to pursue cost effective energy retrofits and ECMs at the Included Facilities pursuant to an Energy Services Contract, both Parties currently intend, without binding either party, to enter into good faith negotiations of an Energy Services Contract immediately following completion of the Assessment.

8. WORK PRODUCT

Customer is prohibited from using any designs or any other work product prepared or produced by Chevron ES ("Work Product") hereunder as a basis for facility construction or implementation of ECMs developed herein by any entity other than Chevron ES for a period of five (5) years after the termination of this Agreement by Customer for any reason or by Chevron ES for breach by Customer. If Chevron ES determines that Customer has violated this prohibition, Chevron ES may, in its sole discretion and in addition to injunctive relief or any other legal or equitable remedies Chevron ES may have, require that Customer pay, in addition to the Assessment Fee, liquidated damages in an amount equal to (5) five times the Assessment Fee. This liquidated damages amount is not a penalty but a

reasonable estimate of the amount of losses Chevron ES will suffer, and will survive the termination of this Agreement.

Reports of any geotechnical analyses performed for the Included Facilities will be provided to the Customer.

Customer shall not, by virtue of this Agreement, 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 Assessment.

9. LIMITATION OF LIABILITY

Chevron ES will not be liable, in connection with this Agreement or any analysis, report, or other deliverables provided hereunder, for damages of any kind, including special, indirect, incidental, consequential or punitive damages, however caused, under any theory of liability and regardless of either Party's fault. Per Section 8 above, under certain circumstances Customer is prohibited from utilizing Chevron ES's Work Product for a period of five (5) years and Customer may be required to pay liquidated damages to Chevron ES for violating this prohibition. In addition, if Customer uses the information provided by Chevron ES for implementation purposes without the written permission of Chevron ES, Customer agrees to waive and release, and indemnify and hold harmless, Chevron ES, its subcontractors, and their directors, employees, subcontractors, and agents from any and all liability, claims, damages, losses and/or costs associated with or resulting from such use.

10. 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 Assessment, 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 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 Agreement at its discretion. 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 Agreement.

11. NONDISCRIMINATION; COMPLIANCE WITH LAWS; CONFIDENTIALITY; DATA PROTECTION

Chevron ES shall comply with all applicable laws, rules, regulations and policies, including, but not limited to, those relating to nondiscrimination, accessibility and civil rights.

Chevron ES is not a municipal advisor and does not provide advice with respect to municipal securities or other municipal financial products.

To the extent permitted by applicable law, the Parties shall maintain the confidentiality of all non-public information, documents, programs, procedures, and all other non-public items that the Parties encounter during the Assessment or pursuant to this Agreement. This requirement shall be ongoing and shall survive the termination of this Agreement.

Chevron ES and Customer agree that it is not anticipated that any personal data will be processed by Customer on behalf of Chevron ES under or as a result of this Agreement (other than as contained within the terms of the Agreement). If Customer begins to process personal data on behalf of Chevron ES, Customer will immediately notify Chevron ES and the Parties will incorporate appropriate data protection provisions into this Agreement.

12. FORCE MAJEURE

Neither Party shall be considered to be in default in the performance of any material obligation under this Agreement (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, despite using commercially reasonable efforts, it has been unable to overcome. 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 Agreement by reason of an event of Force Majeure shall give prompt written notice of such fact to the other Party.

13. AMENDMENT; COUNTERPARTS; INTEGRATION

This Agreement may not be amended except by a writing executed by both Parties. No oral amendment shall be enforceable, even if supported by new consideration.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by email or fax shall be effective as delivery of a manually executed counterpart of this Agreement.

14. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY

In the event of a dispute, claim, or controversy (“Dispute”) arising out of or in connection with this Agreement, the Parties will 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 Dispute shall be settled by arbitration administered by the American Arbitration Association (“AAA”) under its Construction Industry Arbitration Rules. The arbitration shall be heard by one arbitrator, who shall have experience in the general subject matter to which the Dispute relates, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place at the AAA office at Fresno, California.

This Agreement is governed by the laws of the State of California. The Parties consent to personal jurisdiction and venue of the State and Federal Courts within the City and County of San Francisco, California, and, by execution and delivery of this Agreement, each of the Parties hereby (i) accepts the jurisdiction of the foregoing courts for purposes of enforcement of any arbitral award and (ii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venues of any suit, action or proceedings with respect hereto brought in any such court, and further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceedings brought in any such court has been brought in an inconvenient forum. The prevailing Party in any action or arbitration proceeding brought to enforce the terms of this Agreement or arising out of this Agreement (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.

If any term of this Agreement is declared by a court to be illegal, invalid or unenforceable, the legality, validity and enforceability of the other terms of this Agreement shall not be affected or impaired thereby, and the rights and obligations of the Parties shall be enforced as if the illegal, invalid or unenforceable term were revised to the minimum extent necessary to make such term legal, valid and enforceable.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement.

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:

Attachment A – Integrated Energy Assessment

INTEGRATED ENERGY ASSESSMENT

I. Documents Needed to Proceed with Assessment.

- A. Customer shall provide the following detailed documentation:
 - 1. Actual utility company invoices for all utilities serving the Included Facilities, for three (3) immediately prior years, with a minimum of one (1) year, beginning with the most recently completed month.
 - 2. Record drawings (AutoCAD or hard copy) for the Included Facilities, if available:
 - a. electrical
 - b. structural
 - c. architectural
 - d. modifications and remodels
 - 3. Utility company demand interval recordings of 15/30 minute electrical demand for characteristic months of the year, where available.

II. Scope of Work.

The Integrated Energy Assessment (the "Assessment") shall be performed as described below:

- A. Perform detailed review of documents delivered above.
- B. Perform an inspection survey of the Included Facilities to:
 - 1. Identify the potential locations and type of application for solar photovoltaic technologies.
- C. Research application of virtual net metering tariff.
- D. Evaluate both fixed tilt and single-axis tracking systems.
- E. Evaluate solar parking canopies at Cinnamon Municipal Complex.
- F. Evaluate installation of solar panels on the top of the tanks at the 40 G Street facility. Structural analysis of the tanks is not included.
- G. List potential sites for solar photovoltaic installations, preliminary layouts, estimated capacity and production.
- H. Perform Utility and Solar photovoltaic Production Analysis. Identify current rate schedule, analyze electrical usage and model load profile for each site; determine historical site-specific rate escalation.
- I. Prepare a proposed "Project Cost" and a list of "Services to be provided," in anticipation of Chevron ES and Customer entering into an ESC to design, construct, and install the ECMs.
- J. Provide to Customer the financial analysis and the ESC, including the scope of work

ATTACHMENT B

CUSTOMER SITES

INCLUDED FACILITIES

1. North Well Field
2. Cinnamon Municipal Complex (Well #10)
3. Cinnamon Municipal Complex (Solar parking canopies)
4. Wastewater Treatment Plant
5. Well #7
6. Well #11
7. Well #12
8. Well #13
9. 40 G Street