



**ENERGY SERVICES CONTRACT**

Customer: City of Lemoore

Customer Address:  
 119 Fox Street  
 Lemoore, CA 93245

Contract Effective Date: May 7, 2013

Estimated Construction Period: 12 months

Contract Amount: Refer to definition in **Attachment B**

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, 18<sup>th</sup> 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

<u>Attachment</u>	<u>Title</u>	<u>Attached</u>	<u>Not Applicable/ Not Attached</u>
A	General Terms and Conditions	Attached	
B	Design/Build Terms and Conditions	Attached	
C	Customer's Facilities	Attached	
D	Scope of Work	Attached	
E	Project Schedule	Attached	
F	Project Payment Schedule	Attached	
G	List of Incentives	Attached	
H	Monitoring Installation Scope of Work	Attached	
I	Preventive Maintenance	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 \_\_\_\_\_, 2013

APPROVED AS TO LEGAL FORM:

Lozano Smith, A Limited Liability Partnership

\_\_\_\_\_  
 Laurie Avedisian

**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**" ("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 May \_\_\_\_, 2013, meeting approved this Energy Services Contract by and between Chevron ES and the Customer and authorized the Acting 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 **Project Schedule / Notice to Proceed.** The preliminary project schedule is presented in **Attachment E**, "**Project Schedule**". Within ten (10) calendar days after the Customer has secured financing as set forth in Section 1.5, Customer will issue to Chevron ES a written Notice to Proceed ("Notice to Proceed"). If the Customer fails to issue the Notice to Proceed within ten (10) calendar days after financing is secured or such additional time as mutually agreed to in writing pursuant to Section 1.5, the Parties agree that the Notice to Proceed will be deemed to have been issued on the tenth (10<sup>th</sup>) calendar day after financing is secured. Chevron ES will begin Work within thirty (30) calendar days of Chevron ES's receipt of the Notice to Proceed.

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 will be performed in accordance with the terms and conditions of this Contract, as amended.

Section 1.5 **Finance Contingency.** It is hereby agreed by Chevron ES and the Customer that the continued existence of this Contract is expressly contingent upon the following:

- (a) The receipt by Customer, within thirty (30) calendar days after execution of this Contract, of an initial Reservation Notice from the Utility with respect to the Incentive Funds. If such Reservation Notice is not received within such thirty-day period, this Contract may be terminated by Customer for convenience unless the Parties mutually agree in writing to extend such time period; provided that if this Contract is so terminated, the Customer will have no obligation to reimburse Chevron ES for the \$76,250 CSI application fee.
- (b) The ability of the Customer to secure financing for the payments to be made by Customer hereunder, including payments for the cost of the Work to be performed by Chevron ES, upon terms acceptable to the Customer. Upon execution of this Contract, and determination of such payments and costs, the Customer will have thirty (30) calendar days to obtain such financing. If financing is not secured by the Customer within such period, this Contract may be terminated by Chevron ES for cause unless the Parties mutually agree in writing to extend such financing period.

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

Customer represents and warrants that it has furnished to Chevron ES (or will 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 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 will 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 will 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 will commence on the Contract Effective Date and end upon Final Completion of the Project.

### **SECTION 4. PAYMENTS**

As compensation for the performance of the Work and all of Chevron ES's obligations hereunder, Customer will pay the Contract Amount to Chevron ES.

Section 4.1 Monthly Progress Payments. Upon execution of this Contract, Chevron ES will invoice the Customer for a mobilization, design and engineering fee, as detailed on **Attachment F, "Progress Payment Schedule"**. On or before the twentieth (20th) day of each month thereafter, Chevron ES will 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, will 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 will be a material default by Customer under this Contract. Each Monthly Progress Payment will 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 will be reduced to two (2%) percent of the total Contract Amount, and Chevron ES will invoice and Customer will pay the remaining amount. Customer will 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, will approve and pay the final Request for Payment, without Retainage, within forty-five (45) calendar days after its receipt thereof. The Final Payment amount will 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, Customer will 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 will 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 will 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 will 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 4.5 Rebate Programs. To the extent included in the Scope of Work, Chevron ES will assist Customer in the preparation and submission to the applicable agencies of applications and documentation necessary for the energy efficiency rebate, incentive, and/or loan program(s) ("Incentive Funds") shown on **Attachment H, "Incentive Funds"**. Chevron ES cannot guarantee that Customer will receive the Incentive Funds or any portion thereof; Chevron ES expressly disclaims any liability for Customer's failure to receive any portion of the Incentive Funds, and Customer acknowledges and agrees that Chevron ES will have no liability for any failure to receive all or any portion of the

Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Amount of this Contract or the payment timeline associated with payment of the Contract Amount, except as set forth in Section 1.5.

Section 4.6 CSI Application Fee Reimbursement. Subject to Section 1.5 within thirty (30) calendar days after execution of this Contract, Customer will reimburse Chevron ES \$76,250 for the CSI application fee. Such reimbursement will be separate and apart from the Contract Amount.

## **SECTION 5. WARRANTY/LIMITATION OF LIABILITY**

Section 5.1 Chevron ES warrants to Customer that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. Chevron ES further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will 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").

Section 5.2 Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the later of 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 for such Generating Facility; and thereafter, Chevron ES will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.15 and 338.

Section 5.3 Pursuant to the requirements of the California Solar Initiative Program, for each Generating Facility, Chevron ES further warrants to Customer, 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 for such Generating Facility, that any additional equipment and materials that are not part of the solar generating systems, as described below, including meters (other than meters that are integrated into any inverter, which are covered under the 10 Year Chevron ES Warranty), will be free from degradation in electrical output of more than fifteen per cent (15%) from their originally rated electrical output as a result of faulty installation during such one (1) year warranty period. This Chevron ES Warranty expressly excludes any remedy for corrosion, erosion, or damage directly or indirectly caused by parties other than Chevron ES or its subcontractors, but does not exclude damage directly or indirectly caused by Chevron ES or its subcontractors in performing any obligation under the Contract including without exception PM Services.

Section 5.4 Pursuant to the requirements of the California Solar Initiative Program, for each Generating Facility, Chevron ES warrants to Customer, for a period of ten (10) years from the Substantial Completion Date for such Generating Facility, (i) that such Generating Facility will be free from defects in workmanship provided hereunder; and (ii) that the equipment will be free of defective system or component breakdown, or degradation in electrical output of more than fifteen percent (15%) from its originally rated electrical output as a result of faulty installation (the "10 Year Chevron ES Warranty"). This 10 Year Chevron ES Warranty covers solely the solar generating system, including PV modules (panels) and inverters (including meters that are integrated into any inverter) associated with the solar generating systems for each Generating Facility, and provides for the no-cost repair or replacement of solar generating system components to the extent not otherwise covered by a manufacturer's warranty. This warranty expressly excludes any remedy for corrosion, erosion, or damage directly or indirectly caused by parties other than Chevron ES or its subcontractors, but does not exclude damage directly or indirectly caused by Chevron ES or its subcontractors in performing any obligation under the Contract including without exception PM Services.

Section 5.5 Equipment and material warranties that exceed the one (1) year warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to the Customer, after the one (1) year period. During the one (1) year Chevron ES Warranty period, Chevron ES will be the Customer's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. 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. Such warranty services will be performed in a timely manner and at the reasonable convenience of the Customer. 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 will contact the manufacturer directly to resolve such warranty issues and Customer acknowledges that the manufacturer will have sole responsibility for such issues.

Section 5.6 The warranties in this ARTICLE 5 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than Chevron ES or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized Chevron ES subcontractor, improper use or operation, or normal wear and tear under normal usage.

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 5, CHEVRON ES MAKES NO OTHER WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. CUSTOMER WILL HAVE NO REMEDIES AGAINST EITHER CHEVRON ES OR ANY CHEVRON ES SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE WORK INSTALLED EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED ABOVE. SPECIFICALLY, NEITHER CHEVRON ES, NOR CHEVRON ES'S SUBCONTRACTORS OR VENDORS, WILL 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 (but not paying for) 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 will be responsible for obtaining and paying for any other permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable. Customer is also responsible for all fees associated with plan checks, permits, inspections and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s).

Section 6.2. Coordination During Installation. Customer and Chevron ES will 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 will not be unreasonably withheld.

**SECTION 7. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT**

Section 7.1. Ownership of Certain Proprietary Property Rights. Customer will 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 will 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 maximum 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 will 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 will advise Customer in writing of all equipment and materials that will be replaced at the Facilities and Customer will, 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 ( "Retained Items"). It is understood and agreed to by both Parties that Customer will be responsible for and designate the location and storage for the Retained Items. Chevron ES will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Chevron ES will 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 will 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 will 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 will 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 will 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 will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims,

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

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 will 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 will 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 will 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 will 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 will:
  - (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 will 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 will be maintained in full force and effect until Final Completion; provided that upon the achievement of Substantial Completion, the value of the Contract Bonds will 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 will be released and all obligations arising thereunder will be terminated.

## **SECTION 10. CONDITIONS BEYOND CONTROL OF THE PARTIES**

Section 10.1 Force Majeure Events. Neither Party will 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 will be due to an event of Force Majeure. The term "Force Majeure" will 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 will 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 will 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" will 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 will 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 will not be deemed 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 will 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 will 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 will 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 will 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 will 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 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 Chevron ES and/or damages, which will 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 will 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 will have the right to enter into agreements with any subcontractors and other service or material providers as Chevron ES will select in its discretion to perform the Work hereunder. Chevron ES will 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 will 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 will, at all times, be responsible for the negligent acts, errors and/or omissions of its subcontractors and agents. Nothing in this Contract will 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 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 will 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 will be arbitrated and either Party may file a written demand for arbitration with the American Arbitration Association (“AAA”) and will send a copy of such demand to the other Party. The arbitration will 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 will apply. For lesser disputed amounts, AAA Fast Track Procedures will apply. The award rendered by the arbitrator will be final and binding on the Parties and will be deemed enforceable in any court having jurisdiction thereof and of the Parties. The arbitration will be heard by one arbitrator, who will have experience in the general subject matter to which the dispute relates. The arbitration will 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 will 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 will promptly return to the other all papers, materials, and property of the other held by such Party in connection herewith. Each Party will 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 terminated as a result of an Event of Default by Customer, Chevron ES will 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 (including, without limitation, reimbursement of the \$76,250 CSI application fee).

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, except as set forth in Section 1.5, Chevron ES will 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 (including, without limitation, reimbursement of the \$76,250 CSI application fee).

## **SECTION 19. CONSTRUCTION OF CONTRACT**

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will 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 will 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, will 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 will 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 will be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions, provided that no such severability will 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, will 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 will be resolved by giving precedence in the order listed below:

- (1) Construction Documents
- (2) Energy Services Contract
- (3) Attachment A – “General Terms and Conditions”
- (4) Attachment B – “Design/Build Terms and Conditions”
- (5) Attachment D – “Scope of Work”
- (6) Attachment H – “Monitoring Installation Scope of Work”
- (7) Attachment I – “Preventive Maintenance”
- (8) Attachment F – “Progress Payment Schedule”
- (9) Attachment C – “Customer’s Facilities”
- (10) Attachment E – “Project Schedule”
- (11) Attachment G – “List of Incentives”

**SECTION 25. APPLICABLE LAW**

This Contract and the construction and enforceability thereof will 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 will 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: 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:  
Attention: Laurie Avedisian

**SECTION 27. HEADINGS**

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will 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 will 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, will 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 will promptly notify the other Parties of any violation of this section and any consideration received as a result of such violation will 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.

**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 will 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 will 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 will 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 will 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.
- (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 will have the meaning set forth as follows:

1. **Applicable Laws**: “Applicable Laws” will 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” will 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” will 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, will be prepared and issued by Chevron ES to the Customer and Subcontractor. Beneficial Use of equipment/systems criteria will be established as defined in **Attachment D, “Scope of Work”**.
4. **Change**: “Change” will 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” will 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 will modify the Scope of Work and will 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 revision of the Project Schedule or extensions of Time to perform such change and/or modification.
6. **Claims**: “Claims” will 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” will 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” will 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” will 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” will mean twelve million, eight-hundred ninety thousand dollars (\$12,890,000), which is the amount of compensation that will be paid by Customer to Chevron ES for performing the Work in accordance with the Scope of Work.
11. **Contract Term**: The “Contract Term” will commence on the Contract Effective Date and cease upon Final Completion.
12. **Contract Documents**: “Contract Documents” will mean the Contract, the Construction Documents, Change Orders, and any amendments thereto.
13. **Excusable Delay**: “Excusable Delay” will mean Chevron ES will be entitled to an extension of Time and/or additional compensation caused by an Excusable Delay that will 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.
14. **Final Completion**: “Final Completion” will 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.

15. **Force Majeure:** "Force Majeure" will 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.
16. **Hazardous Substances:** "Hazardous Substances" will 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.
17. **Installation:** "Installation" will 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.
18. **Interest:** "Interest" will 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.
19. **Losses:** "Losses" will mean claims, actions, damages, losses, liabilities, costs, and/or expenses including reasonable attorney's fees.
20. **Material Changed Condition:** "Material Changed Condition" will mean one or more of the following conditions that impact the Project Schedule 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.
21. **Party or Parties:** "Party" or "Parties" will mean Chevron ES, Customer, each or both of them, as the context may require pursuant to the terms and conditions of the Contract.
22. **Project:** "Project" will 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.
23. **Project Location:** "Project Location" will mean that area or areas where the Project materials and equipment and any other energy related equipment as described in the Scope of Work will be performed and/or installed.
24. **Scope of Work:** "Scope of Work" will 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.
25. **Substantial Completion:** "Substantial Completion" will 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.
26. **Time:** "Time" will mean the time period within which Chevron ES will complete the Work.
27. **Work:** "Work" will 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 will provide 24 hour advanced notice to Customer for access to any Customer Facilities.
3. **Project Schedule.** The Project Schedule attached hereto as **Attachment E, "Project Schedule"**, is a preliminary, estimated Project Schedule. During the course of Project implementation, both the Customer and Chevron ES will 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. The estimated Project Schedule will be finalized during the completion of the Construction Documents, provided that the final Project Schedule will be subject to amendment and revision to take into account any Excusable Delays. Subject to any such Excusable Delays, Chevron ES and its subcontractors will work diligently to implement the Project in accordance with the Project Schedule and Chevron ES will notify Customer regarding any and all revisions to the Project Schedule necessitated by such delay.

**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 will order the equipment identified in the Scope of Work, and any other necessary materials and supplies.
- (c) Customer will designate a single-point representative with whom Chevron ES will 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 will 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 will:
  - 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 will 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 will 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 will 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 will 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 will be the “designer” as that term is identified in the Energy Policy Act of 2005, and Chevron ES will 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.** Chevron ES will prepare and submit all designs, drawings, and specifications to the Customer for review. Customer will 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 will 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 will 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 will 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 will 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 will 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 will 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 will provide notice to Customer of any scheduled test(s) of installed equipment, and Customer and/or its designees will 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 will 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 will 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 will 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.

**3. Customer's Responsibilities During Construction Phase.**

- (a) Customer will 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 will provide notice to Chevron ES of such change. Any independent review of the construction will be undertaken at Customer's sole expense, and it will 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 will not relieve Chevron ES of any of its obligations or responsibilities hereunder.
- (b) Customer will 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 will remain responsible for the maintenance of the portion of the Project Location that is not directly affected by Chevron ES's Work. Customer will keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Customer.
- (d) Customer will 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 will 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 will 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 will 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 will 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 will 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 will be authorized by a written Change Order signed by both Customer and Chevron ES. The Change Order will 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 will 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 will be responsible for payment of the extra costs caused by such modifications and/or changes and Chevron ES will 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 will 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 will be resolved in accordance with the provisions of Section 15, "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 will 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 will 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 will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Customer will 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 will execute all generator manifests with respect thereto. Chevron ES will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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. **Use or Occupancy:** The Customer may take occupancy or 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. Occupancy or use will not commence until the Customer’s insurance company has consented to such occupancy or use. When occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, Customer and Chevron ES will 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 will 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 will not be unreasonably withheld.
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 will 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 will be deemed fully completed. If Customer determines that any Work is incomplete and/or defective, the

Customer will 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 will provide written notice to the Customer that the Work is fully complete. Customer will 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 will 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 will give Chevron ES written notice of acceptance of the Work and Final Completion and will promptly (i) issue a Final Completion Certificate to Chevron ES and (ii) record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204. At that time, Customer will pay Chevron ES any remaining Contract Amount due and any outstanding retainage being withheld by the Customer.

4. **Transfer of Title; Risk of Loss.** Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to Customer upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by Customer and (ii) the date any such items are incorporated into the Project Location. Chevron ES will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to Customer will in no way affect Customer's and Chevron ES's rights and obligations as set forth in other provisions of this Contract. Except as provided in this Section 4, after the date of Substantial Completion, Chevron ES will have no further obligations or liabilities to Customer arising out of or relating to this Contract, except for the obligation to complete any Punch List items, the obligation to perform any warranty service, and obligations which, pursuant to their terms, survive the termination of this Contract.

**ATTACHMENT C  
CUSTOMER'S FACILITIES**

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

Facility	Location Description	Existing Utility Meter Number
Water Well No. 4	North Well Field	35M246
Water Well No. 6	North Well Field	1004778379
Water Well No. 7	North of West Hills College	X08658
Water Well No. 9	East of Waste Water Treatment Plant.	1003191252
Water Well No. 10	East of CMC	1004391165
Water Well No. 11	Northwest Corner of Lemoore Ave. and Glendale Ave.	0706R1
Water Well No. 12	Adjacent to Cedar Lane and Blue Jay Ave.	0317R3
Water Well No. 13	East of West Hills College	1007073641
Cinnamon Municipal Complex (CMC)	711 Cinnamon Drive	1003172127
Waste Water Treatment Plant (WWTP)	1145 South 18½ Ave.	Meter No. 1: R05048 Meter No. 2: 1006909488
Police Station	657 Fox St.	1003977086
Main Water Plant	40 G St.	71425R

**ATTACHMENT D**

**SCOPE OF WORK**

California State Contractor's License Number 813797

Solar Generating Facilities to be Installed

Facility	Est. kW <sub>DC</sub>
Water Well No. 4	792.0
Water Well No. 6	270.0
Water Well No. 7	194.4
Water Well No. 9	72.0
Water Well No. 10	Array No. 1: 252.0 Array No. 2: 269.4
Water Well No. 11	259.2
Water Well No. 12	345.2
Water Well No. 13	216.0
Cinnamon Municipal Complex	86.4
Waste Water Treatment Plant	Array No. 1: 162.0 Array No. 2: 180.0
Police Station	10.8

**General Conditions Scope of Work provided by Chevron ES:**

- Project management and engineering.
- Construction management and supervision. A Chevron ES construction manager will be assigned to this project and will be responsible for monitoring the on-site construction.
- Provide onsite storage containers for project materials and equipment.
- Provide trash dumpsters as needed as well as cleanup and disposal of all refuse generated by project.
- Provide portable toilets.
- Provide temporary fencing as required for access control in the areas of and for the duration of work.
- Provide cranes, lifts and rigging necessary for scope of work.
- Provide startup, acceptance testing, commissioning, training and Operation & Maintenance manuals as needed on systems provided.
- Record (as-builts) plans and equipment data sheets will be provided for the photovoltaic systems. Three (3) sets of printed record and equipment data sheets will be provided.

**General Engineering Scope of Work provided by Chevron ES:**

- Prepare plans to be submitted for Customer approval.
- Provide equipment submittals for Customer acceptance.
- Provide shop drawings, as appropriate for the work.
- Interface Utility for rate schedule changes and interconnect application and approval.
- Site Survey.
- California Solar Incentive monitoring.
- Conceptual layouts for the solar projects are included at the end of this **Attachment D**.

**Project Area Access:**

- Chevron ES has assumed project construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions. Vehicles and heavy equipment should be expected at all sites, primarily for handling and delivering materials.
- Chevron ES will provide a construction site plan prior to onsite construction for each site.
- The Customer will provide access to necessary locations at all times.
- The construction sites will be restricted to project construction personnel.
- An escort can be scheduled and provided to allow access to the construction sites for Customer staff.
- Other personnel will not have access to the construction sites.

**Water Well No. 4 (North Well Site): 792.0 kW<sub>DC</sub> System**

Chevron ES will design-build a photovoltaic system, consisting of single-axis tracking arrays located at the North Well Site adjacent to Well No. 4. The system will have two (2) inverters. The inverters and associated concrete equipment pad will be located adjacent to the solar arrays. The point of connection will be located at the existing Well No. 4 electrical panel. A six-foot chain-link fence topped with three stands of barb-wire will be provided to enclose the inverters and arrays. A maintenance road will be extended from the existing site perimeter road to provide service access to the inverters and arrays. Grading and altering the grade of this site is not included. Servicing (replacing, re-grading, or patching) or making other improvements to the existing site entry and perimeter road is not included.

**Water Well No. 6 (North Well Site): 270.0 kW<sub>DC</sub> System**

Chevron ES will design-build a photovoltaic system, consisting of single-axis tracking arrays located at the North Well Site adjacent to Well No. 6. The system will have one (1) inverter. The inverter and associated concrete equipment pad will be located adjacent to the solar arrays. The point of connection will be located at the existing Well No. 6 electrical panel. A six-foot chain-link fence topped with three stands of barb-wire will be provided to enclose the inverters and arrays. A maintenance road will be extended from the existing site perimeter road to provide service access to the inverter and arrays. Grading and altering the grade of this site is not included. Servicing (replacing, re-grading, or patching) or making other improvements to the existing site perimeter road is not included.

**Water Well No. 7: 194.4 kW<sub>DC</sub> System**

Chevron ES will design-build a system, consisting of fixed tilt arrays located adjacent to Well No. 7. The arrays will be separated to allow access for a future road. The system will have a maximum of two (2) inverters. The inverters and associated concrete equipment pad will be located adjacent to the solar arrays. The point of connection will be located at the existing Well No. 7 electrical panel. The existing fence will be extended to enclose the array and inverters. The height and construction of the new section of fence will match the existing. Grading or altering the grade of this site is not included. Servicing the existing maintenance road is not included. Alterations to the system after construction to accommodate a future road are not included.

**Water Well No. 9: 72.0 kW<sub>DC</sub> System**

Chevron ES will design-build a photovoltaic system, consisting of single-axis tracking arrays located adjacent to the arrays for the Waste Water Treatment Plant. The system will have one (1) inverter. The inverter and associated concrete equipment pad will be located adjacent to the arrays. The electrical panel serving Well No. 9 will be replaced. The new electrical panel will be of similar capacity to the existing panel. The point of connection for the solar system will be located at the new electrical panel. The fence enclosing the systems for the Waste Water Treatment Plant (identified below) will also enclose the inverter and arrays for this site. The maintenance road providing access to the Waste Water Treatment Plant systems will also provide access to the inverter and arrays for this system. Altering the overall grade or drainage of this site is not included.

**Water Well No. 10:           Array No. 1: 252.0 kW<sub>DC</sub> System  
                                  Array No. 2: 269.4 kW<sub>DC</sub> System**

Chevron ES will design-build photovoltaic systems consisting of fixed tilt arrays (Array No. 1) and two parking lot shade canopies (Array No. 2). Each shade canopy will support a sub-array having a nominal capacity of 134.7 kW<sub>DC</sub>.

Array No. 1 will be located south of the Cinnamon Municipal Complex within the existing detention pond. The racking system will have a maximum height of five feet between the grade and the bottom edge of any solar panel. The inverter and associated concrete equipment pad serving Array No. 1 will be located adjacent to the service road south of the Complex and north of the detention pond. The electrical conduit and wiring will route through the existing building. The point of connection will be located at the Well No. 10 electrical panel. The Customer will provide right of way access to bore across the adjacent property to Well No. 10 electrical panel. A six-foot chain-link fence will be provided to enclose the inverter. The existing fence enclosing the detention pond will remain. The area associated with the array will be graded to maintain existing detention pond capacity. The existing driveways and service entry points to the detention pond will remain. Improvements to the driveways, service roads and existing fences are not included.

The parking lot shade canopies supporting Array No. 2 will be located in the center parking aisle in the expanded parking lot (identified below). Canopy lighting will be provided by ten (10) evenly spaced outdoor-rated lighting fixtures. The lighting fixtures will consist of a single four-foot, fluorescent (T-8) lamp and ballast. The fixtures will be mounted to the underside of the canopy. An existing electrical circuit from the Complex will provide the power for lighting. The inverter and associated concrete pad serving Array No. 2 will be located adjacent to the expanded parking lot. The point of connection will be located at the Well No. 10 electrical panel. A six-foot chain-link fence topped with three stands of barb-wire will be provided to enclose the inverter. A roof deck beneath the solar panel is not included. The steel



The point of connection for Array No. 2 will be at the electrical panel housing Meter No. 2 located on the eastern side of the Waste Water Treatment Plant.

A six-foot chain-link fence topped with three stands of barb-wire will be provided to systems for the Waste Water Treatment Plant and Well No. 9. A maintenance road will be extended from 19½ Avenue to provide service access to the inverters and arrays. Two entry points with commercial (concrete) drive approaches will be provided. Rough grading of the site to reduce elevation is included. Altering the overall grade or drainage of this site is not included.

**Police Station: 10.8 kW<sub>DC</sub> System Addition**

Chevron ES will design-build a 10.8 kW<sub>DC</sub> addition to the existing solar system at the Lemoore Police Station. The fix tilt racking system and solar modules will be located on the roof of the Police Station. The racking systems will require multiple penetrations into the existing roof system. Electrical wires, conduit and combiner boxes, will be installed exposed on the roof. The existing inverter will remain and the direct current input will be altered to accommodate the additional capacity. Extending the inverter warranty and roof warranty is not included.

**Main Water Plant: Switchboard Replacement**

Chevron ES will provide the turn-key Switchboard Replacement scope of work identified within the Construction Documents produced by Quad Knopf Engineers dates December 11, 2012 (Quad Knopf Job No. L120144). Final Record (As-built) plans and documentation will be created by the Customer's engineer of record. The engineer of record will be retained by the Customer to respond to requests for information (RFIs) throughout the construction period.

**General Project Exclusions and Clarifications**

- Prevailing wages will not be paid for this project.
- Plan check and permitting (building/construction and CEQA) will be performed by Customer at no cost to Chevron ES. Cost for plan check or permitting by any entity is excluded.
- 15-year manufacturer warranty for the inverters will be provided directly by the manufacturer to the Customer
- Chevron ES standard construction means & methods will be used.
- A scheduled electrical shutdown will be required for the PV system interconnection.
- Directional boring will be utilized over excavation when possible.
- Chevron ES will provide rough grading of sites and soil compaction where necessary to assist with system installation.
- Chevron ES has assumed existing maintenance roads are accepted by City and County Fire Departments. New maintenance roads will compose of 6" class 2 recycled rock base.
- All work will be performed during normal work hours; no overtime hours are included in this proposal unless otherwise stated.
- The scope of work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. Chevron ES will 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.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, Chevron ES will immediately notify the Customer representative.
- Temporary utilities to be provided by Customer at no cost (trailer power, phone lines, construction power, etc.).
- 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.
- Trenching and boring spoils will be distributed across the site at the ground mounted arrays. Spoils resulting from the shade canopy structures at the Cinnamon Municipal Complex will be removed from site.
- The parking lot shade canopy structures are not weather tight and will not provide shelter from rain.
- A trailer containing a water tank and pressure washer will be provided to the Customer for washing panels. Water hose bibs at the ground mounted arrays are not included.
- For the ground mounted arrays the area (footprint) will remain natural. A rock/gravel base is not included. Weed/plant removal and abatement is not included.
- No decorative fascia along the perimeter of the panels or any decorative covering underneath the panels are included.
- Painting, unless specified, is not included.
- Fire alarm, fire suppression systems, blue phone system, security camera system, canopy receptacles, and hose bibs are excluded.
- PV security system of any kind is excluded.
- Removal or haul-off of contaminated soil is excluded.
- Telemetry equipment of any kind not listed in the scope of work is excluded.

- Chain link fence privacy slats are not included. No allowance has been made for screening of new or existing equipment, unless specifically noted above.
- Bollards are not included at any site.

**Criteria for Achieving Beneficial Use:**

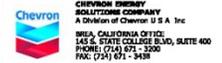
SOLAR SYSTEM - Will occur when Utility is ready to issue the permission-to-operate letter and system is capable of generating energy.

Conceptual Layout for Water Well No. 4



**CITY OF LEMOORE**  
**WATER WELL No. 4**  
**ELDER AVENUE & 17TH AVENUE**  
**LEMOORE, CA 93245**

**3/25/2013**



Conceptual Layout for Water Well No. 6

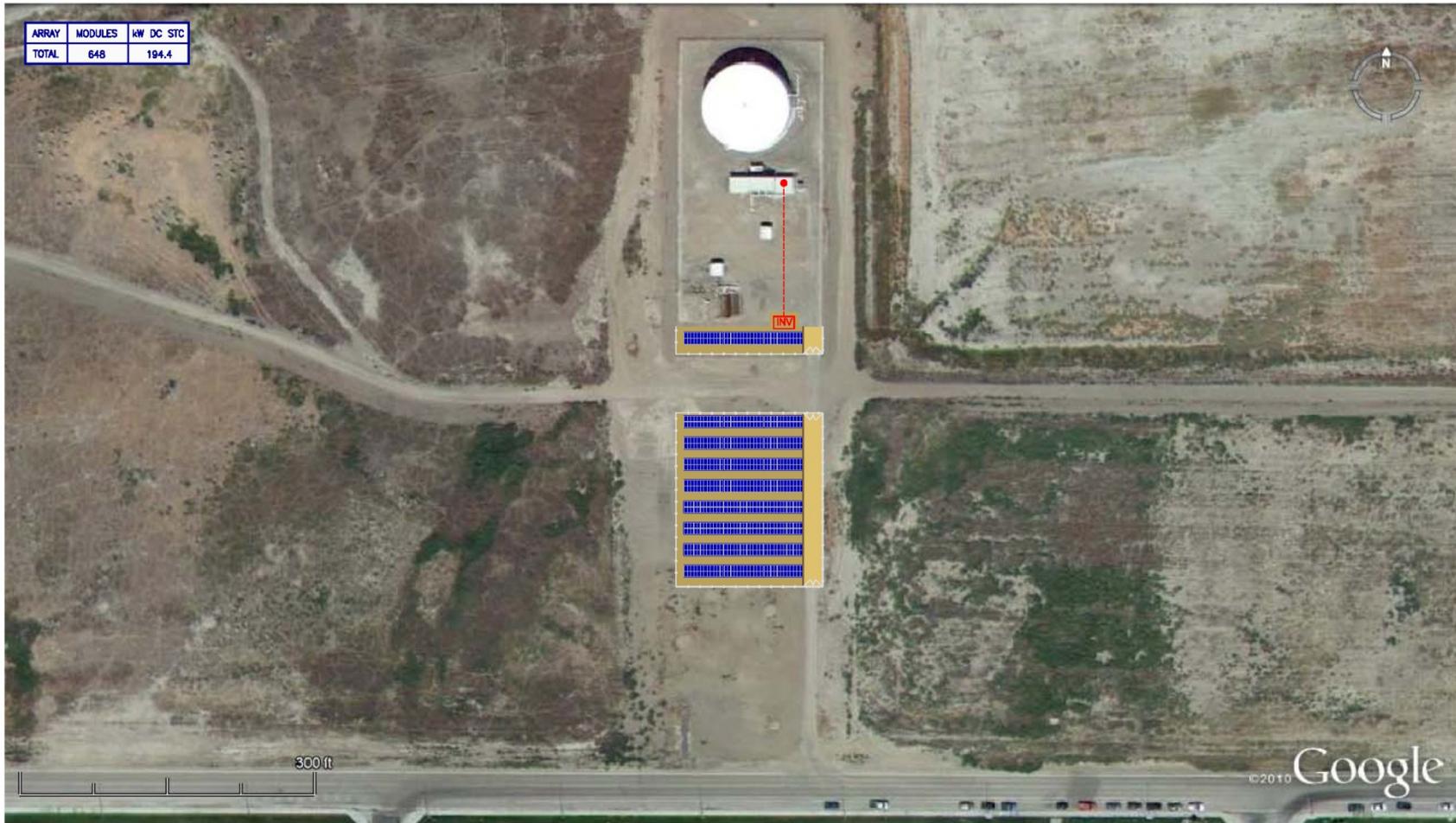


**CITY OF LEMOORE**  
**WATER WELL No. 6**  
**ELDER AVENUE & 17TH AVENUE**  
**LEMOORE, CA 93245**

**3/26/2013**

 **CHEVRON ENERGY SOLUTIONS COMPANY**  
A Division of Chevron U.S.A. Inc.  
9000 CALIFORNIA DRIVE  
140 S. STATE COLLEGE BLVD, SUITE 400  
P.O. BOX 101111 • DALLAS, TX 75281  
PHONE: (714) 851-3200  
FAX: (714) 851-3418

Conceptual Layout for Water Well No. 7

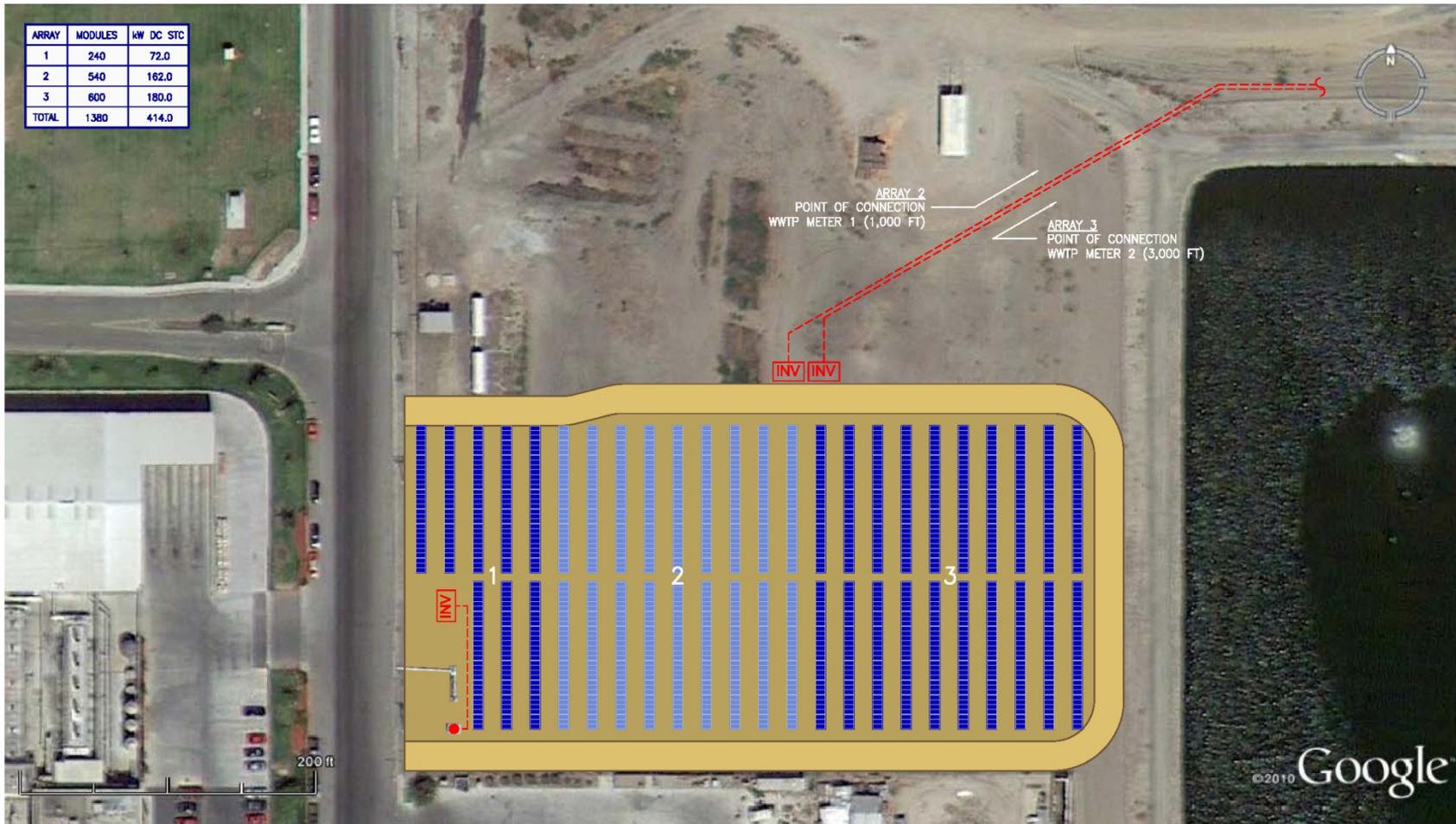


**CITY OF LEMOORE**  
**WATER WELL No. 7**  
**BUSH STREET & MARSH DRIVE**  
**LEMOORE, CA 93245**

**3/28/2013**

 **CHEVRON ENERGY SOLUTIONS COMPANY**  
A Division of Chevron U.S.A. Inc.  
9600 CALIFORNIA DRIVE  
140 S. STATE COLLEGE BLVD, SUITE 400  
P.O. BOX 101 - 1000  
FAC: (761) 491 - 9418

Conceptual Layout for Water Well No. 9 and Waste Water Treatment Plant



**CITY OF LEMOORE**

**3/13/2013**

**WATER WELL No. 9 & WASTE WATER TREATMENT PLANT  
 19TH AVENUE & ENTERPRISE DRIVE  
 LEMOORE, CA 93245**

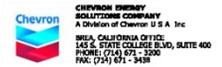
 **CHEVRON ENERGY SOLUTIONS COMPANY**  
 A Division of Chevron U.S.A. Inc.  
 9500 CALIFORNIA DRIVE  
 LAS SAGRAS COLLEGE BLVD, SUITE 400  
 FORT WORTH, TEXAS 76134  
 PHONE: (714) 851-3200  
 FAX: (714) 851-3418

Conceptual Layout for Water Well No. 10 and Cinnamon Municipal Complex



**CITY OF LEMOORE**  
**WATER WELL No. 10 & CINNAMON MUNICIPAL COMPLEX (CMC)**  
**711 W. CINNAMON DRIVE**  
**LEMOORE, CA 93245**

3/26/2013

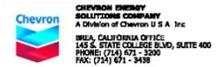


Conceptual Layout for Water Well No. 11

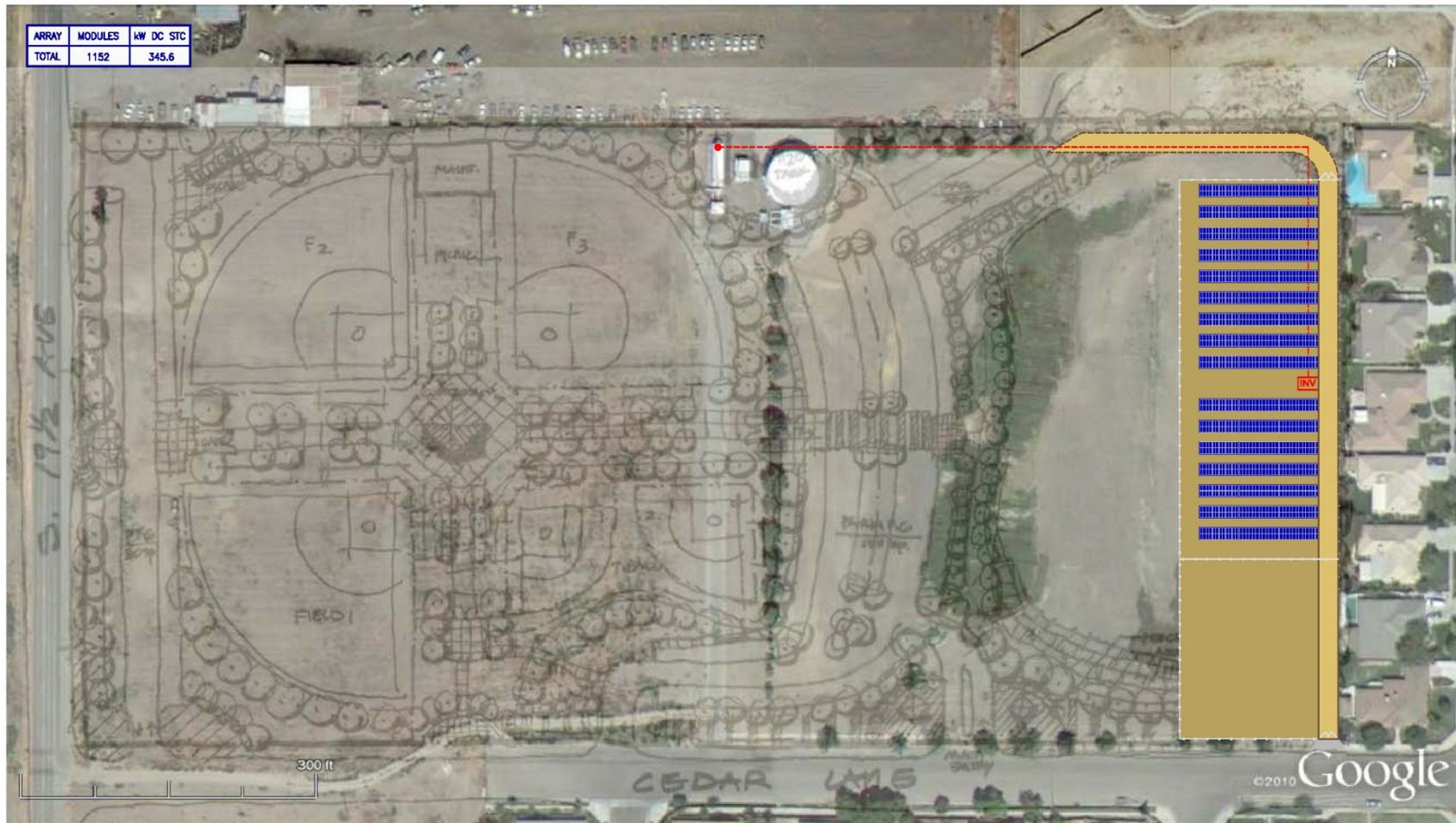


**CITY OF LEMOORE**  
**WATER WELL No. 11**  
**18TH AVENUE & E. GLENDALE AVENUE**  
**LEMOORE, CA 93245**

**3/25/2013**



Conceptual Layout for Water Well No. 12



**CITY OF LEMOORE**

**3/25/2013**

**WATER WELL No. 12 & SPORTS PARK CONCEPT  
 BLUEJAY AVENUE & CEDAR LANE  
 LEMOORE, CA 93245**



Conceptual Layout for Water Well No. 13

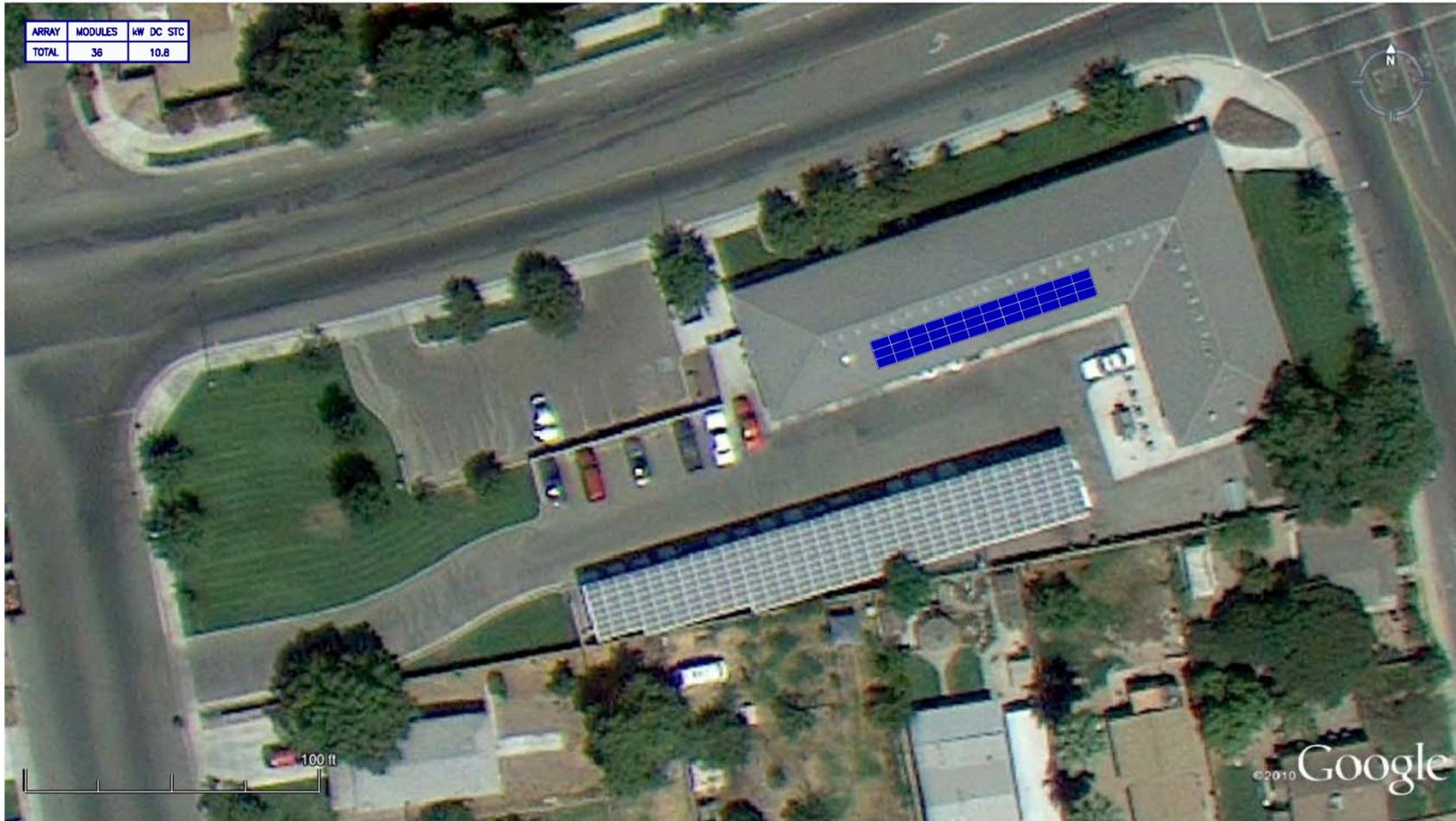


**CITY OF LEMOORE**  
**WATER WELL No. 13**  
**PEDERSON STREET & COLLEGE AVENUE**  
**LEMOORE, CA 93245**

**3/25/2013**

 **CHEVRON ENERGY SOLUTIONS COMPANY**  
A Division of Chevron U.S.A. Inc.  
9801 CALIFORNIA DRIVE  
140 S. STATE COLLEGE BLVD, SUITE 400  
P.O. BOX 1700  
P.O. BOX 1700  
FAC: (714) 491-3418

Conceptual Layout for Lemoore Police Station



**CITY OF LEMOORE**  
**POLICE DEPARTMENT HEADQUARTERS**  
**657 FOX STREET**  
**LEMOORE, CA 93245**

**3/25/2013**

 **CHEVRON ENERGY SOLUTIONS COMPANY**  
A Division of Chevron U.S.A. Inc.  
9000 CALIFORNIA DRIVE  
140 S. STATE COLLEGE BLVD, SUITE 400  
P.O. BOX 101111  
HOUSTON, TX 77251-1111  
PHONE: (713) 491-3200  
FAX: (713) 491-3418

**ATTACHMENT E**

**PROJECT SCHEDULE**

After contract execution, the Chevron ES Construction Manager will develop, with input from the Customer's staff, a master Microsoft Project® schedule. The project team will establish a weekly construction meeting at which time the work of the previous week will be reviewed, and a two week look ahead will be coordinated. The Microsoft Project® schedule will be updated on a monthly basis. At this time, Chevron ES estimates that after contract execution, the issuing of subcontractor contracts, design, engineering, mobilization, construction, and commissioning/turnover will take twelve months.

**ATTACHMENT F**

**ALLOCATION OF CONTRACT AMOUNT**

<b>Mobilization, Design &amp; Engineering Fee</b>	<b>\$2,578,000</b>
<b>Remaining Implementation Cost</b>	<b>\$10,312,000</b>
=====	
<b>Contract Amount</b>	<b>\$12,890,000</b>

The mobilization, design and engineering fee will be invoiced to the Customer upon both Parties signing the Energy Services Contract, and will be due and payable as provided in the Contract.

The Schedule of Values (SOV) is given below. A detailed SOV will be provided after contract execution. Using Chevron ES's standard forms, the progress of the work will be documented, and the Customer invoiced monthly based on the actual work completed for the invoiced period. All invoices will be submitted through the Administrative Analyst prior to payment by the Customer. Invoices will be in the form and contain the information requested by the Customer and will be subject to approval by the Customer. Customer will make payments within thirty (30) days of receipt of approved invoice.

Schedule of Values (SOV)	
Facility	Project Price
Mobilization, Design and Engineering	\$2,578,000
Water Well No. 4 Solar	\$2,509,051
Water Well No. 6 Solar	\$870,705
Water Well No. 7 Solar	\$559,211
Water Well No. 9 Solar	\$329,361
Water Well No. 10 Solar	\$2,207,351
Water Well No. 11 Solar	\$727,745
Water Well No. 12 Solar	\$959,545
Water Well No. 13 Solar	\$593,067
Cinnamon Municipal Complex Solar	\$245,596
Waste Water Treatment Plant Solar	\$1,273,360
Police Station Solar	\$37,008

**ATTACHMENT G**

**LIST OF INCENTIVES**

1. California Solar Initiative (CSI)  
<http://www.gosolarcalifornia.ca.gov>

## **ATTACHMENT H**

### **MONITORING INSTALLATION SCOPE OF WORK**

#### *Overview of DAS Network Installation & Equipment Requirements*

Chevron ES will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plant.

#### ***Chevron ES DAS Monitoring Installation:***

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with Customer's specifications.
- Test and verify Customer/Facility network connectivity.
  - a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated Customer/Facility maintenance staff.

#### ***Customer/Facility Responsibilities:***

- Provide two (2) external static IP addresses per site, subnet mask default gateway, and DNS-information to allow remote access to DAS panel(s).
- Provide network connectivity to each DAS panel location.
- Provide Chevron ES five (5) business days prior notification of any IP addressing scheme changes or changes made to restrict network access to ensure maximum uptime is maintained.

**ATTACHMENT I**

**PREVENTIVE MAINTENANCE**

**EQUIPMENT AND FACILITIES COVERED**

Chevron ES will perform Preventive Maintenance Services (“PM Services”) as defined in this **Attachment I** with respect to the photovoltaic, solar powered generating facilities being constructed on Customer’s property at the Project Locations listed in **Attachment C**, “Customer’s Facilities” (the “Generating Facilities”).

**I. Term**

So long as Customer pays to Chevron ES the Annual Maintenance Fee, Chevron ES will provide the PM Services, as described herein, up to ten (10) years from the O&M Commencement Date. “O&M Commencement Date” means the first day of the month immediately following the later of (i) Chevron ES’s receipt of the fully signed certificate of Final Completion, and (ii) Chevron ES’s receipt of the full Contract Amount. At the end of this term, the Customer may:

- a. Enter into another agreement with Chevron ES to perform PM Services
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

**II. Annual Maintenance Fee, Reporting**

Chevron ES will provide PM Services to the Customer for years 1-10, starting on the O&M Commencement Date, for annual amounts (“Annual Maintenance Fee”) given below:

Year 1:	\$61,569
Year 2:	\$63,715
Year 3:	\$65,954
Year 4:	\$68,294
Year 5:	\$70,740
Year 6:	\$58,693
Year 7:	\$60,934
Year 8:	\$63,291
Year 9:	\$65,771
Year 10:	\$68,384

The Annual Maintenance Fee for the first year will be invoiced by Chevron ES to the Customer in a lump sum on the O&M Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by Chevron ES on the corresponding anniversary of the O&M Commencement Date. The Customer, or its designee, will pay Chevron ES such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless the Customer gives Chevron ES prior written notice of its intent to terminate the PM Services, any failure to timely pay the Annual Maintenance Fee in accordance with this **Attachment I** will be a material default by Customer under the Contract, and Chevron ES, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide PM Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, Chevron ES will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to the Customer on a quarterly basis.

If Chevron ES is no longer the provider of PM Services, the Customer’s new provider will maintain similar service logs. Chevron ES will have reasonable access to inspect service logs to determine that adequate PM Services are being performed.

**III. Preventive Maintenance Services Provided**

Chevron ES will provide the following PM Services during the term:

- a. Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations

- and support structure on an annual basis.
- b. Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on a semi-annual basis.
- c. Monitoring: Monitor system performance on a daily basis for a five (5) year period.
- d. Cleaning:
  - i. Remove dust, dirt, and debris from outside and inside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.

#### **IV. Repair Services**

- a. Covered Equipment: Components of the Generating Facilities installed under this **Attachment I** include:
  - 1. Inverters
  - 2. Photovoltaic Panels
  - 3. Combiner Boxes
  - 4. Disconnect Switches
  - 5. AC and DC Power Wire
  - 6. Meters integral with Inverters
- b. Exclusions:
  - 1. Array structure
  - 2. Lighting
  - 3. Roofing
  - 4. Paint or finish
  - 5. Concrete
  - 6. Asphalt
  - 7. Bollards
  - 8. Conduit
  - 9. Data acquisition systems
  - 10. Meters
  - 11. Data acquisition communication wire
- c. If a Generating Facility is damaged due to a Force Majeure Event, Customer's negligence, or any other event beyond the control of Chevron ES, Chevron ES will provide repairs as required to restore the Generating Facilities to normal operating parameters or to replace deteriorated, damaged, parts and equipment. The Customer will compensate Chevron ES for such repairs/replacement on a time and material basis, with Chevron ES providing back-up cost detail for actual, reasonable costs including reimbursable expenses, multiplied by 1.15.
- d. "Repairs" will include any of the following as necessary: Procuring parts or materials, removing damaged or out-of-specifications parts or materials, installing repaired or replacement parts or materials, and testing.

#### **V. Services And Equipment To Be Covered By Customer**

Chevron ES's obligations under this **Attachment I** are expressly conditioned upon Customer's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to Chevron ES:

- a. The Generating Facilities described herein will be made available to Chevron ES as of the Contract Effective Date.
- b. Operate and maintain security systems associated with Generating Facilities.
- c. Customer will be responsible for maintenance of all landscaping in and around Generating Facilities including tree trimming and weed abatement.
- d. Customer will be responsible for pressure washing the solar panels, as needed.
- e. Allowing Chevron ES and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the PM Services, including reasonable work, parking, and equipment staging areas.
- f. Allowing Chevron ES and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for Chevron ES to satisfy its obligations under the Contract, all free of charge to Chevron ES.
- g. Customer will be responsible pursuant to Applicable Law for the remediation of any known Hazardous Substances encountered by Chevron ES during the performance of the PM Services which Hazardous Substances were not deposited by Chevron ES, including any backfill with clean soil as may be reasonably required.
- h. Customer will insure the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.
- i. Chevron ES will have no obligation to provide the PM Services to the extent such provision of PM Services is materially adversely affected by Customer's failure to satisfy the conditions set forth in this **Attachment I**.