



CITY OF MARTINEZ

CITY COUNCIL
April 3, 2013

TO: Mayor and City Council
FROM: Michael Chandler, Senior Management Analyst
SUBJECT: Chevron Energy Solutions Program Development Agreement
DATE: March 27, 2013

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute a Program Development Agreement with Chevron Energy Solutions Company.

Staff and Chevron ES met with the Franchise/Public Infrastructure Subcommittee on February 28, 2013, to review proposed terms of the franchise amendments and rate analysis. The Subcommittee recommended forwarding to the City Council for approval.

BACKGROUND

Chevron Energy Solutions Company (“Chevron ES”), a division of Chevron USA Inc., is an Energy Service Company, or “ESCO.” Performance contracting laws allow public agencies such as cities to contract with an ESCO for energy conservation projects if the ESCO can guarantee the City will receive economic benefits associated with the recommended conservation measures. The ESCO or its financing company will fund all costs related to the study, design and construction or installation of the energy-saving improvements. The total project cost to the ESCO (including profit) will be reimbursed through the energy savings realized by the City during the payback period in the form of reduced utility costs.

The development and implementation of the recommended conservation measures would be performed in multiple stages. The first stage would require the entry by the City into a Program Development Agreement with Chevron ES, of which staff is recommending for approval by the City Council at this council meeting. The Agreement would require Chevron ES to prepare a report which would identify any recommended conservation measures. Upon the receipt of this report, the City would begin negotiations with Chevron ES on a second agreement known as an Energy Services Contract to implement the recommended conservation measures. If City staff reaches agreement with Chevron ES on the terms of an Energy Services Contract, the contract would be considered by the City Council at a public hearing pursuant to statutory provisions which require the Council make certain findings in order to approve the City’s entry into the Energy Services Contract. If the contract is approved, Chevron ES would provide services to the City in order to implement the recommended conservation measures through a financing method.

The City's authority to enter contracts with ESCO's to develop and implement conservation measures through financing is provided by Sections 4217.10 through 4217.18 of the Government Code. Section 4217.10 broadly authorizes public agencies to develop sources of energy conservation at the agencies' facilities. Section 4217.11 defines terms such as energy conservation measures and energy service contracts that govern the development, implementation, and financing of energy conservation measures under agreements between agencies and ESCO's. Under Section 4217.12, a public agency must hold a public hearing to approve an energy services contract (which would follow the Program Development Agreement) with an ESCO and must make two findings in order to approve such agreement: 1) the anticipated cost for the energy provided by the energy conservation measures will be less than the anticipated marginal cost to the public agency from energy that would have been consumed without the measures; and 2) the projected cost savings from the energy conservation measures is greater than the cost to implement the proposed measures.

Chevron ES approached the City in October 2012 to provide an overview of its services and give examples of energy efficient and cost-effective projects it has done for other cities in the Bay Area. Chevron ES later presented at the October 17, 2012 City Council Meeting and discussed the possibility of Chevron ES conducting a holistic evaluation of the City's buildings, facilities and infrastructure to identify opportunities for cost-effective energy efficiency upgrades. The City Council directed staff to proceed with evaluating the merits of the Chevron ES proposal.

The City currently spends approximately \$1 million annually on energy costs. The chart below (using 2011 utility data, the most current provided by PG&E) provides a summary of municipal utility costs:

Facility/Infrastructure	Electrical Cost	Gas Cost	Total Cost
City Buildings	\$179,110	\$37,730	\$ 216,840
Water Treatment Plant	\$320,631	\$ 4,723	\$ 325,354
Pumping Stations	\$133,451	n/a	\$ 133,451
PG&E-owned Streetlights	\$249,347	n/a	\$ 249,347
City-owned Streetlights	\$ 55,847	n/a	\$ 55,847
Irrigation Accounts	\$ 16,564	n/a	\$ 16,564
Misc Building Accounts	\$ 59,567	n/a	\$ 59,567
Totals	\$1,014,517	\$42,453	\$1,056,970

Of note from the list of existing City utility costs are the PG&E-owned streetlights. PG&E recently provided to the City a copy of its LED Streetlight Program submission to the California Public Utilities Commission (CPUC). In the submission, PG&E requests approval of a General Rate Case for conversion of existing High Pressure Sodium Vapor streetlights to more energy-efficient LED streetlights, starting in 2014. The cost of the conversions would be funded as a pass-through by the participating public agencies, but at a lower overall rate than what PG&E currently charges for streetlight utility and maintenance costs. As such, the conversion of PG&E-owned streetlights to LED's are expected to be managed through the General Rate Case program, and not as a result of the City's partnership with Chevron ES or any energy services contract agreement between the parties.

The City and Chevron ES have coordinated efforts over the past 4 months to make an initial evaluation of whether Martinez is a viable candidate for ESCO-financed projects. This coordination included a detailed review of the City's utility billing history and a number of on-site facility tours during which City staff were available to answer technical questions from the Chevron ES project manager and engineering team. The findings from these initial exercises indicate significant savings opportunities in the areas of water meters, mechanical controls, street lighting, and solar installations, among others.

Chevron ES presented an overview of its findings and proposed services to the Franchise/Public Infrastructure Subcommittee on February 28, 2013. Included in that discussion were two special programs Chevron ES is offering to the City at no charge. The first is a Public Safety Pilot Program to the City that would target a specific location and use technological enhancements to improve safety. The second is a program Chevron ES calls the "CapaCity Project" that involves paid internships for local students to teach them how to perform home and small business energy audits. As previously mentioned, the next step in the process is for the City and Chevron ES to enter into a formal Program Development Agreement to fully scope the savings opportunities. The Subcommittee recommended forwarding this item to the full Council for approval.

As a condition of the attached Program Development Agreement, Chevron ES will conduct a comprehensive energy assessment of City buildings, facilities and infrastructure to identify improvements that will save energy, for a cost of \$55,000. The audit will also involve review of building records (including mechanical and engineering systems and designs); energy usage; site inspections; and interviews with City staff. Potential energy conservation measures or renewable energy opportunities will be evaluated and energy savings calculated. A financing plan designed to cover the cost of the conservation measures through energy savings over a specified period of time would then be developed that would fund the identified improvements.

Should the assessment identify feasible energy conservation measures from both an energy savings and financing standpoint, and the City elects to proceed with implementation of those measures, the assessment fee would simply be rolled into a larger Energy Services Contract between the City and Chevron ES to establish the projects to be completed, the financing mechanism to be utilized, and the amount of the anticipated project obligations. Should the City decide not to proceed with feasible measures, Chevron ES would be entitled to compensation for the assessment, and the City would be precluded from proceeding with the proprietary measures for a period of six years from the effective date of the Program Development Agreement. In the event that significant energy savings are not identified, the City will not be obligated to pay Chevron ES the assessment fee.

The final form of the attached Program Development Agreement was still being negotiated between the parties at the time the agenda was finalized. As such, the latest version of the attached Agreement is marked as a draft document. It is anticipated that a final version of the Agreement will be completed in advance of the Council meeting, in which case copies will be made available prior to or at the time of the meeting.

FISCAL IMPACT:

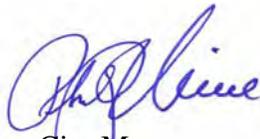
The cost for the energy assessment is \$55,000. Should the City proceed with an Energy Services Contract with Chevron Energy Solutions for the implementation of energy conservation measures, the assessment fee would be included in the reimbursement to Chevron ES from the energy savings. If the assessment does not demonstrate significant energy savings sufficient to cover the implementation of energy conservation measures, the City is not obligated to pay the fee. However, if the City terminates the Program Development Agreement or decides not to proceed with feasible conservation measures through Chevron ES, the City would be liable for payment of the fee to Chevron ES. In the unlikely event that the City chooses not to proceed with feasible conservation measures, staff would return with an appropriation at that time.

ACTION:

Motion to adopt a resolution authorizing the City Manager to execute a Program Development Agreement with Chevron Energy Solutions Company.

Attachments: Resolution
Program Development Agreement

APPROVED BY:


City Manager

RESOLUTION NO. -13

AUTHORIZING THE CITY MANAGER TO EXECUTE A PROGRAM DEVELOPMENT AGREEMENT WITH CHEVRON ENERGY SOLUTIONS COMPANY

WHEREAS, the City of Martinez ("City"), as a public agency, is able to contract with a qualified Energy Service Company ("ESCO") for energy conservation projects if the ESCO can guarantee the City will receive economic benefits associated with the recommended conservation measures; and

WHEREAS, Chevron Energy Solutions Company ("Chevron"), a qualified ESCO, approached the City in October 2012 to provide an overview of its services and broach the possibility of the parties entering into a formal Program Development Agreement ("PDA") through which Chevron would evaluate and identify opportunities for cost effective energy efficient upgrades for the City, for an assessment fee in an amount of \$55,000 ("Assessment Fee"); and

WHEREAS, the City and Chevron have worked together over the past several months to determine whether the savings opportunities for the City were significant enough to justify executing the PDA; and

WHEREAS, the findings from Chevron's initial assessment indicate significant opportunities for implementing energy and cost savings measures are available; and

WHEREAS, Chevron presented its initial findings to the Franchise/Public Infrastructure Subcommittee on February 28, 2013, and the Subcommittee recommended forwarding approval of the PDA to the City Council at that time.

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to execute a Program Development Agreement with Chevron Energy Solutions Company upon the mutually agreeable terms, considerations, covenants, and conditions as set forth in the form attached to this resolution.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City council of the City of Martinez at a Regular Meeting of said Council held on the 3rd day of April, 2013, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ



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

Chevron ES Project #: DWCES-XXXXX - ___
Chevron ES Contract # CU _____

PROGRAM DEVELOPMENT AGREEMENT

This PROGRAM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this ____ (____th) day of April, 2013 ("Agreement Effective Date") between Chevron Energy Solutions Company, a Division of Chevron U.S.A. Inc. ("Chevron ES"), having its principal offices at 345 California Street, 18th Floor, San Francisco, CA 94104 and the City of Martinez, California, with offices at 525 Henrietta Street, Martinez, CA 94553 ("City" and together with Chevron ES the "Parties" and each of City and Chevron ES a "Party").

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

WHEREAS, City desires to enter into an agreement to have Chevron ES perform an Assessment in accordance with the Scope of Work set forth in Attachment A (the "Scope of Work" or "the Work") for the buildings listed on Part I of Attachment B (the "Included Buildings"), and to deliver a report, described in the Scope of Work, identifying energy improvements and operational changes which are recommended to be installed or implemented at the Included Buildings (the "Report"); and

WHEREAS, the primary purpose of the Assessment and the Report is to provide an engineering and economic basis for the implementation of the ECMs identified in the Report, in furtherance of which the Parties may negotiate and execute a contract for design, engineering and/or construction management services provided for the implementation of the ECMs (an "Energy Services Contract"), but are not being required to do so;

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

1. ASSESSMENT AND REPORT

Chevron ES agrees to complete the Assessment and to present to City a Report within two hundred and ten (210) calendar days after the date on which Chevron ES receives the information listed in Part I of Attachment A (the "Required Information").

City agrees to assist Chevron ES in performing the Assessment by (i) providing the Required Information to Chevron ES as soon as possible, but in no event later than thirty (30) days after the Agreement Effective Date; (ii) providing Chevron ES, its employees and agents, such access to the Included Buildings and other relevant facilities of City as Chevron ES deems necessary; and (iii) providing, or causing City's energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Included Buildings and other relevant facilities. Chevron ES shall be entitled to rely upon the accuracy and completeness of all information provided to Chevron ES by City and City's energy suppliers. Chevron ES will promptly provide written notice to City if Chevron ES determines there is any incorrect data included in the information provided by City or City's energy suppliers, but Chevron ES shall have no obligation to correct or confirm any such information unless otherwise specified in the Scope of Work. Any change(s) in the Scope of Work shall be set forth in a writing executed by the Parties.

2. COMPENSATION TO CHEVRON ES

City shall compensate Chevron ES for its performance of the Assessment by payment to Chevron ES of a fee in the amount of fifty-five-thousand dollars (\$55,000.00) (the "Assessment Fee").

The Assessment Fee will be due and payable thirty (30) calendar days after Chevron ES's submission of the Report; *provided, however*, that in the event on such thirtieth (30th) calendar day the Parties have entered into, or are in the process of negotiating, an Energy Services Contract in good faith, the Assessment Fee will be due ninety (90) calendar days after Chevron ES's submission of the Report; *provided further*, that if Chevron ES and City execute an Energy Services Contract within ninety (90) calendar days after Chevron ES's submission of the Report, the Assessment Fee shall be incorporated into the total contract amount payable under such Energy Services Contract. As stated by this paragraph, negotiations of an Energy Services Contract in good faith shall not be construed to require the parties to negotiate the provision of construction or construction management services for the

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implementation of any ECM's. Any negotiation that includes the provision of services that may not be obtained without public bidding or other proceedings required by law shall not be considered to be entered into in good faith under this section.

Each of City and Chevron ES reserves the right to terminate this Agreement at any time during the course of the Assessment, by delivery of written notice to the other. If this Agreement is terminated by City, a fee will be payable by City to Chevron ES within thirty (30) calendar days of termination, in an amount equal to the greater of (i) Chevron ES's estimate of its fees, costs, expenses, disbursements and overhead incurred through the date of termination and (ii) a pro-rated fee based on Chevron ES's estimate of the percentage of completion of the Assessment. If this Agreement is terminated by Chevron ES, City shall have no obligation to pay any portion of the Assessment Fee to Chevron ES.

In addition, should the Report prepared by Chevron ES conclude that the projected savings from the proposed ECMs will not result in a paid-from-savings project that complies with California Government Code sections 4217.10 through 4217.18, this Agreement shall be terminated by Chevron ES and City shall have no obligation to pay any portion of the Assessment Fee to Chevron ES.

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

3. INSURANCE

Chevron ES shall maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in subsections A through G below, and all such other insurance as required by applicable law. Evidence of coverage that satisfies all of the following requirements will be provided to City on executed forms subject to the satisfaction of the City by no later than the Effective Date.

A. Workers' Compensation/Employers Liability for states in which Chevron ES is not a qualified self-insured.

Limits as follows:

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

B. Commercial General Liability insurance with limits of:

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

Coverage to be written on a claims-made form. Coverage to be at least as broad as ISO form CG 002 (12/07), without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest, (2) explosion, collapse, underground hazard.

C. Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident.

Coverage to be written on an occurrence form.

D. Professional Liability insurance with limits of:

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

Coverage to be written on a claims-made form.

E. Excess Liability insurance. Limits as follows:

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

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and

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limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

F. Policy Endorsements.

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

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

4. INDEPENDENT CONTRACTOR

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

5. CREDITWORTHINESS

If, at any time, City's credit rating falls below investment grade as defined by Moody's Investors Services (or other nationally-recognized independent rating agency), City 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 City either to (i) provide security satisfactory to Chevron ES, and the Work Product (as defined below) may be withheld until such security is received, or (ii) deposit the Assessment Fee into a third-party escrow account with an escrow agent and subject to an escrow agreement, in each case acceptable to Chevron ES. This section shall only apply if the City has been rated by Moody's Investors Services or other nationally-recognized independent rating agency as of the Agreement Effective Date.

6. CONFLICTS OF INTEREST

Conflicts of interest relating to this Agreement are strictly prohibited. Except as otherwise expressly provided herein, no Party nor any director, employee, agent or subcontractor of any Party shall give to or receive from any director, employee or agent of any other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Agreement. Likewise, no Party nor any shareholder, director, employee, agent or subcontractor of any Party, shall, without prior notification thereof to all Parties, enter into any business relationship with any director, employee or agent of another Party or of any affiliate of another Party, unless such person is acting for and on behalf of the other Party or any such affiliate. A Party shall promptly notify the other Parties of any violation of this Section 6 and any consideration received as a result of such violation shall be paid over or credited to the Party against whom it was charged. The Parties agree to maintain true and correct records in connection with all matters relating to this Agreement, and to retain such records for at least twenty-four (24) months following the expiration of this Agreement.

7. ENERGY SERVICES CONTRACT

The Parties may, but are not obligated to by any term of this Agreement, enter into good faith negotiations of an Energy Services Contract immediately following completion of the Assessment. Nothing in this Agreement may be construed as obligating either City or Chevron ES to perform any act, including negotiation of an Energy Services Contract, that would place City or Chevron ES in violation of any state or federal law including applicable provisions of the Public Contract Code or any of City's ordinances, policies, or procedures relating to the purchasing of goods or services by City. Nothing in this agreement shall be construed as requiring construction services subject to

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competitive bidding under the Public Contract Code to be included in the scope of services of the Energy Services Contract between the Parties.

8. WORK PRODUCT

Except as otherwise stated by this paragraph, City is prohibited from using the Report, any designs or any other work product prepared or produced by Chevron ES ("**Work Product**") hereunder as a basis for facility construction or implementation of ECMs developed herein by any entity other than Chevron ES for a period of five (5) years after the later of (i) delivery of the Report and (ii) the termination of this Agreement by City for any reason or by Chevron ES for breach by City. If Chevron ES determines that City has violated this prohibition, Chevron ES will have access to all remedies available at law or equity, including injunctive relief. Notwithstanding any of the above, at any time City may use the Report, any designs or any other work product prepared or produced by Chevron ES for, or in connection with, construction services provided by any other person, firm or entity in connection with the implementation of ECM's designed or formulated under an Energy Services Contract with Chevron ES.

City shall not, by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Assessment or the Report.

9. INDEMNIFICATION

Each Party shall indemnify, hold harmless, release and defend the other Party, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity in whole or in part, arising out of that Party's activities hereunder excepting liabilities due to the negligence or willful misconduct of the Indemnified Party. Further, 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. In addition, if City initiates implementation of any of Chevron ES' Report recommended ECMs without the participation of Chevron ES, Chevron ES will not be liable in connection with this analysis, report, or other deliverables provided hereunder for damages of any kind, including special, indirect, incidental, consequential, or punitive damages, however caused, under any theory of liability and regardless of either party's fault. In addition, if City uses the information provided hereunder for construction purposes without the participation of Chevron ES, City shall waive and release, and indemnify and hold harmless, Chevron ES, its subcontractors and their directors, employees, subcontractors, and agents from any and all liability, claims, damages, losses, and/or costs associated with or resulting from such use.

10. AMERICAN RECOVERY AND REINVESTMENT ACT

In the event City is using American Recovery and Reinvestment Act ("**ARRA**") funding, in whole or in part, to pay for the Assessment, City 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, City agrees that Chevron ES is not a recipient, grantee, awardee, subrecipient, subgrantee or subawardee of ARRA funds hereunder. In the event that the awarding agency or a court of proper jurisdiction determines that Chevron ES is a recipient, grantee, awardee, subrecipient, subgrantee or subawardee under the ARRA funded grant, rather than a "vendor" or "contractor," Chevron ES reserves the right to terminate this Agreement at its discretion. City agrees to release, defend, indemnify, and hold Chevron ES harmless from and against any claims, costs, or damages arising out of or related to such a determination notwithstanding any other provisions in this Agreement.

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

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

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

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

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

12. FORCE MAJEURE

Neither Party shall be considered to be in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance shall be due to an event of Force Majeure. The term "Force Majeure" shall mean any cause beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which, despite using commercially reasonable efforts, it has been unable to overcome. Neither Party shall be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure shall give prompt written notice of such fact to the other Party.

13. AMENDMENT; COUNTERPARTS; INTEGRATION

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

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

14. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY

In the event of a dispute, claim, or controversy ("Dispute") arising out of or in connection with this Agreement, the Party alleging such breach shall give the breaching party not less than thirty (30) days' written notice of breach ("Notice of Breach"). The Notice of Breach shall specify the nature of alleged breach and the manner in which said breach may be satisfactorily cured. The breaching party shall have the right to demonstrate that it was never, in fact, in breach or shall cure the breach within thirty (30) days; provided, however, that if the nature of the alleged breach is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the Party charged shall not be considered in breach for purposes of instituting legal action. If the breach is cured, then no breach shall exist or be deemed to have existed and the noticing party shall take no further action. After proper notice and the expiration of such 30-day cure period without cure, (a) the Parties may pursue alternative dispute resolution, as long as the Parties mutually consent to do so, and/or (b) the noticing Party, at its option, may institute legal action and may seek any and all remedies available at law or in equity.

This Agreement is governed by the laws of the State of California. Any suit, claim, or legal proceeding of any kind (including but not limited to the enforcement of any arbitration award) related to this Agreement shall be filed and heard in a court of competent jurisdiction in either the County of Contra Costa or the City and County of San Francisco, California, wherever venue shall be proper.

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

15. ENTIRE AGREEMENT.

This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed under this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements.

16. SIGNATURES.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Chevron ES and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

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

The City of Martinez

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Attachment A

INTEGRATED ENERGY ASSESSMENT

I. Required Information (Needed to Proceed)

- A. City shall provide the following detailed documentation:
1. Actual utility company invoices for all utilities serving the Included Buildings for the 3 years immediately prior to the Agreement Effective Date. Online access to electric usage history, including 15 minute interval data for the last 12 months for all electric meters.
 2. Record drawings (AutoCAD or hard copy) for the Included Buildings, as requested by Chevron ES, including:
 - a. mechanical
 - b. plumbing
 - c. electrical
 - d. building automation and temperature controls
 - e. structural
 - f. architectural
 - g. modifications and remodels
 3. AutoCAD or hard copy of 8 ½" x 11" or 11" x 17" floor and roof plans of all Included Buildings, as well as all relevant information in City's possession concerning the age, type and condition of the roofs.
 4. A list of key contacts at each site, including City personnel knowledgeable about the electrical, HVAC, lighting and controls systems.
 5. Energy management system and HVAC equipment operating schedules, point lists and sequences of operation.
 6. SCADA/PLCs sequences of operation for industrial processes, list of the controlled systems and point lists.
 7. Previous investment grade energy audits and any other energy assessment of existing buildings and industrial facilities.
 8. Access to building operators for interviews by Chevron ES engineering team.
 9. Test and balance reports for water and air systems, where available.

II. Scope of Work

The Work to be performed is described below:

- A. Perform detailed review of the Required Information.
- B. Perform a site survey to identify potential ECMs and distributed/renewable generation technologies, including proposed locations and potential improvements to the physical environment. The site survey will consist of:
1. Site walks to observe and capture data on energy using equipment.
 2. Observations of sample physical environment factors.
 3. Interview site facility personnel or others as needed in Chevron ES's discretion.
 4. Obtain the hours of operation for sites and equipment, and expected occupancy and use.
 5. Identify plug loads, such as computers, space heaters, and kitchen equipment.

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6. Shading analysis.
 7. Data logging, as necessary.
- C. Perform Utility Analysis and Solar Photovoltaic Production Analysis:
1. Identify current rate schedule; analyze electrical usage and model load profile for each site.
 2. Determine historical site-specific rate escalation.
 3. Determine expected solar photovoltaic production curve for proposed sites.
 4. Overlay electrical load profile with expected solar photovoltaic production curve to “right size” the solar photovoltaic systems and identify rate restructuring opportunities.
- D. Evaluate the following for potential ECM's or renewable energy opportunities:
1. Solar Photovoltaics
 2. Wind Power
 3. Cogeneration
 4. Interior and Exterior Lighting
 5. Lighting Controls
 6. Parking Lot lighting
 7. HVAC Equipment
 8. Controls and Automation
 9. Pool Covers
 10. Pump replacement
 11. Compressors
 12. Boilers
 13. Water conservations retrofits of lavatories, toilets, and showers
 14. Irrigation Controls
 15. Ground Water Pumping
 16. Trash Control
 17. Water Reclamation Plan systems
 18. Waste Water Treatment Plant
 19. Street Lighting
 20. Water Meters
- E. Prepare a post-inspection status update to present preliminary findings. The update will consist of:
1. Demand Side Measures or ECMs: List of energy retrofit opportunities which appear likely to be cost effective and warrant detailed analysis.
 2. Supply Side Measures: List of potential sites for distributed generation, proposed solar array aerial layouts, estimated capacity and production.
- F. Tabulate the data gathered during the survey and process as required. Prepare in a format suitable for inclusion in the Report.
- G. Calculate energy savings for all viable ECMs. The best method for calculating savings shall be determined by Chevron ES, and may include using modeling software such as eQuest or Trace 700, or may involve spreadsheet analysis or calculations following the methodology of ASHRAE or other nationally recognized authority and shall be based on sound engineering principles.
- H. Perform preliminary engineering and prepare a Report including:
1. A general scope of the construction work.
 2. Project proforma.
 3. Proposed project schedule.

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4. Calculate utility incentives and other grants and assist City in the application process by preparing the required technical documents.
- I. Prepare a proposed "Project Cost" and a list of "Services to Be Provided" in anticipation of Chevron ES and City entering into an Energy Services Contract to design, construct, install, and monitor the projects proposed in the Report. Cost calculations shall explicitly state that the Energy Services Contract must be promptly executed to avoid price increases and that hazardous substance and abnormal subsurface/soil condition issues must not be present.
 - J. Assess installing optimized park lighting that includes controls, microphones and security camera systems.
 - K. Consult with City regarding how the proposed ECMs, renewable energy, operational efficiency measures, and other program elements may be utilized to leverage opportunities to improve public safety, promote workforce development, promote economic development, place-making (e.g.: Central Plaza) as well as including collaboration with regional education groups to provide educational development opportunities.
 - L. Consult with City regarding a potential media strategy to increase brand awareness and tourism opportunities for City.
 - M. Meet with City to:
 1. Review the retrofit options proposed and assemble a package of options which is compatible with City's investment and infrastructure improvement goals; and
 2. Review the proposed project cost and list of services to be provided to determine next steps.

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**ATTACHMENT B
CITY BUILDING INVENTORY**

BUILDINGS INCLUDED IN ASSESSMENT

Building/ Facility Name

All City Facilities/Sites, including:

**City Hall
Water Treatment Plant
Pumping Stations
Rankin Aquatic Center
Marina
Senior Center
Parks and Recreational facilities**