



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

Chevron ES Project #: DWCES-XXXX -\_\_-\_\_-\_\_  
Chevron ES Contract # CU1340

## PROGRAM DEVELOPMENT AGREEMENT

This PROGRAM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this third (3<sup>rd</sup>) 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, but are not required to, negotiate and execute an "Energy Services Contract", which shall mean a contract in compliance with Government Code Section 4217.12, providing for services required in the implementation of ECM's, including assisting in the design and development of financing packages for the payment of ECM's, engineering, design, procurement, construction, and other related services that may be provided by a qualified energy service company as defined by Public Utilities Code Section 388(c)(2);

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 (30<sup>th</sup>) calendar day the Parties are in the process of negotiating an Energy Services Contract (as defined above) 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.

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<sup>®</sup> 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 via a Self-Administered Claims Letter.

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

Limits as follows:

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

B. Commercial General Liability insurance with limits of:

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

Coverage to be written on a claims-made form. Coverage to be at least as broad as ISO form CG 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

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 Service, Standard & Poor's, 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 (as defined above) to be entered into in accordance with Government Code Section 4217.12 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.

## **8. WORK PRODUCT**

The 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.

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, defend, and hold harmless the other Party, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses (including reasonable attorney's fees and other reasonable defense costs), and liabilities of any nature that may be asserted by any person or entity arising out of the indemnifying Party's activities under this Agreement, excepting liabilities due to the negligence or willful misconduct of the indemnified Party. Notwithstanding the arbitration provisions of Section 14, any suit, action, or proceeding to enforce the defense or indemnification obligations of this paragraph shall be brought in a court of competent jurisdiction.

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 implements any of the ECMs recommended in the Report without Chevron ES performing the implementation, it shall be at City's sole risk and without liability to Chevron ES and its subcontractors. Also, if City uses the information provided by Chevron ES under this Agreement for construction purposes, 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, 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.

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 Parties will confer and attempt to resolve the matter informally. If such Dispute cannot be resolved in this manner within ten (10) Business Days after notice of the Dispute is given to the other Party, then the Dispute shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Construction Industry Arbitration Rules. The arbitration shall be heard by one arbitrator, who shall have experience in the general subject matter to which the dispute relates, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place at the AAA office geographically closest to the site where the Assessment has been performed.

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

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

## **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 concerning those services.

**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.
  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 conservation 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.
  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.

**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**