

Attachment 2

Exhibit B

**CHEVRON REFINERY MODERNIZATION PROJECT ENVIRONMENTAL AND
COMMUNITY INVESTMENT AGREEMENT**

Between

CITY OF RICHMOND, CALIFORNIA

And

**CHEVRON PRODUCTS COMPANY,
A DIVISION OF CHEVRON U.S.A.**

**CHEVRON MODERNIZATION PROJECT
ENVIRONMENTAL AND COMMUNITY INVESTMENT AGREEMENT**

This Chevron Modernization Project Environmental and Community Investment Agreement (the "Community Agreement" or "Agreement") dated _____, 2014 (the "Execution Date") is entered into by and between Chevron Products Company, a division of Chevron U.S.A. Inc., a Pennsylvania Corporation ("Chevron"), and the City of Richmond ("City"), a municipal corporation and charter city, as follows. The foregoing parties are sometimes referred to herein each individually as a "Party" and collectively as the "Parties."

- A. On May 23, 2011, Chevron submitted an application to the City for a Conditional Use Permit ("CUP") for the Chevron Refinery Modernization Project ("Project" or "Modernization Project"). In February 2014, Chevron submitted an application to the City for a Design Review Permit for the Modernization Project. The terms "Project" and "Modernization Project" shall include either the Project, as proposed by Chevron, or an alternative described in the Final EIR that may be approved by the City Council.
- B. The Modernization Project, as proposed by Chevron, consists of the modification, replacement, and installation of various equipment and structures at the Chevron Richmond Refinery ("Refinery"), including the Hydrogen Plant Replacement, Sulfur Removal Improvements, and emission-reducing Project Design Features, all as described in Volume 1, Chapter 3 of the March 2014 Draft Environmental Impact Report for the Chevron Refinery Modernization Project ("Draft EIR") as amended by the June 2014 Final Environmental Impact Report (State Clearinghouse No. 2011062042) (together, the "Final EIR"), which is a project EIR pursuant to the California Environmental Quality Act ("CEQA"), specifically Public Resources Code section 21165-21177 and CEQA Guidelines sections 15161.
- C. The Modernization Project Final EIR finds that all potential environmental impacts from the Modernization Project are not significant or will be mitigated to a less-than-significant level through the adoption of the mitigation measures identified in the Final EIR.
- D. In addition to implementing the mitigation measures required for the Modernization Project in the Final EIR and such additional conditions of approval as may be required, the City desires that Chevron make significant, additional investments in the Richmond community and Chevron desires to make such investments. Chevron desires to work cooperatively with the City to fund programs and projects that serve residents of Richmond and incorporated and unincorporated areas of North Richmond (collectively, "Richmond"), including programs, plans and policies that serve children and youth, help to reduce violence and crime in Richmond, create educational, employment, and training opportunities for Richmond and North Richmond residents, support wellbeing of residents, encourage new and innovative projects or programs that will address climate change and otherwise improve the quality of the environment and assist Richmond residents in having a safe and healthy place to live and raise families.

- E. On May 28, 2014, the City convened a public community workshop to receive recommendations from the public for programs serving Richmond to be funded by Chevron in connection with the proposed Modernization Project.
- F. On June 12, 2014, the City convened a second public community workshop to review and receive further public input on a draft set of proposed programs (developed based on the input received at the May 28, 2014 workshop) to be funded by Chevron in connection with the proposed Modernization Project.
- G. The priorities identified as a result of the two public workshops and City review process were further evaluated, and identified as creating benefits for the Richmond communities closest to the Chevron Richmond Refinery.
- H. On July 9 and 10, 2014, the Planning Commission held a duly noticed public hearing to consider the requested Conditional Use Permit and Design Review Permit for the Project, to consider whether the EIR for the Project was completed in compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 *et seq.*, and the City of Richmond's Guidelines and Procedures for Implementation of CEQA, Resolution No. 125-03 (adopted September 23, 2003), and to consider whether to recommend that the City enter into an agreement between the City and Chevron providing for Chevron funding to the City to support a variety of programs, including those identified during the May 28 and June 12 public workshops.
- I. On July 10, 2014, by way of Resolution 14-11, the Commission certified that the EIR was completed in compliance with CEQA, adopted findings pursuant to Public Resources Code section 21081 for the Chevron Refinery Modernization Project ("CEQA Findings"), and adopted the Mitigation Monitoring and Reporting Program for the Chevron Refinery Modernization Project ("MMRP") and the mitigation measures identified therein, and made such mitigation measures conditions of approval. The CEQA Findings selected the Reduced Sulfur Processing/No Increase in Refinery Greenhouse Gas Emissions Alternative ("Alternative 11") as the "environmentally superior" alternative. The certification of the EIR was subsequently appealed to the City Council by Chevron.
- J. On July 10, 2014, by way of Resolution 14-12, the Planning Commission approved Conditional Use Permit and Design Review Permit Number PLN11-089 for Alternative 11, subject to the condition that Permit Number PLN11-089 shall not become effective unless and until the City Council first approves and executes, or affirmatively and explicitly does not require, a Chevron Modernization Project Community Health and Wellness Agreement. By way of the same Resolution 14-12, the Planning Commission recommended to the City Council that the City enter into a fully-enforceable Chevron Modernization Project Community Health and Wellness Agreement with Chevron (renamed the Environmental and Community Investment Agreement), which includes programs to receive direct funding as well as programs to be eligible for grant funding from the City, as further described in Exhibit B to Resolution 14-12. The approval of the Conditional Use Permit was subsequently appealed to the City Council by Chevron.

- K. On July 29, by way of Resolution ____, the City Council has or will have taken action on Conditional Use Permit and Design Review Permit Number PLN11-089, subject to the condition that the City enter into this Agreement prior to commencing construction of the Project.
- L. In negotiating and entering into this Agreement, the City Council has taken into consideration the priorities identified in the two public workshops as well as the recommendations of the Planning Commission, and has identified programs consistent with the categories of programs and initiatives identified in Exhibit B to Resolution 14-12.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth in this Agreement, the Parties agree as follows:

1. **Effective Date.** This Agreement shall become effective upon City Council approval of Conditional Use Permit and Design Review Permit Number PLN11-089] (the "Effective Date"). This Agreement shall remain in effect until the later of (i) ten years after commencement of operations of the Replacement Hydrogen Plant, or (ii) transfer of ten annual payments of \$3 million to the City as described in Paragraph 2(A) below and transfer of ten annual payments of \$3 million to the City as described in Paragraph 2(B).
2. **Chevron Funding Categories, Amounts and Timing**

In accordance with the terms of this Agreement, City shall use the funding and support provided by Chevron to provide benefits, including associated City administrative costs, in the following categories. For each category of programs, the first payment shall be due on the earlier of: (i) sixty (60) days after issuance of the first building permit for the Replacement Hydrogen Plant in the event there is no litigation pending against the Project EIR or against City or Bay Area Air Quality Management District Project permits or approvals ("Litigation Challenge"); (ii) prior to commencement of operation of the Replacement Hydrogen Plant even if Litigation Challenges remain pending; or (iii) sixty (60) days following final judicial resolution of all Litigation Challenge(s). Annual payments thereafter shall be due on or before the anniversary of the first payment, or another mutually agreed upon date.

A. Community Programs

Chevron shall transfer to the City \$3,000,000 each year for ten (10) years, with total funding of \$30,000,000, to fund the following Community Programs. The total expenditures identified below represent the total expenditure available under this Agreement for those individual Community Programs. The annual allocation of funds to the individual Community Programs shall be made by the City in the City's sole discretion with advice from Richmond residents and stakeholders, including Chevron.

The City on an annual basis shall track the progress of and issue a report describing the Community Programs funded under this paragraph, their outcomes and contributions to the City for each year in which funds under this Agreement are expended. This tracking and reporting obligation of the City shall be for the benefit of Chevron, as well as the City, both of which are desirous of transparency and reporting on the progress of the goals identified in Recital D.

The Community Programs and the allocation of funding for those Community Programs identified in this Agreement shall be subject to annual review by the City Council, and may be adjusted and modified depending upon impact, community need, and the development of new technology.

A. Scholarship Program.

Total Expenditure: \$12,000,000.

The scholarship program would enhance the ability of Richmond residents to pursue higher education, secure meaningful employment, as well as to pursue careers in research and development, engineering, and renewable energy fields.

B. Programs relating to Skills, Job Training and Readiness, and Job Transition Training

Total expenditure: \$6,000,000.

City to fund programs relating to skills, job training and readiness, and job transition training, so that Richmond residents, including youth, will be better able to secure employment and make meaningful professional contributions in the trades related to Project construction or operations, in technical and service fields that support the Refinery, and in the emerging field of renewable energy, as well as to promote local hiring. These funds shall be allocated, in amounts to be determined by the City, to:

- a. Fund pre-apprenticeship construction skills training with direct entry agreements with the Carpenters Union, Joint Apprenticeship & Training Committee (JATC), and Laborers Training & Retraining Trust Fund for Northern California, and for any expansion of the program to include skills training in the plumbing, piping, and electrical trades. Training includes, but is not limited to, Carpentry, Forms & Concrete, Hazardous Materials, Lead, Asbestos, Energy Efficiency, & Solar Installation.
- b. Establish and fund a Business Assistance and Capacity Building Program, or to support existing business assistance and capacity building programs administered by other organizations.
- c. Augment funding of On The Job Training (OTJT) program(s), which provides wage subsidies for businesses that hire Richmond residents and to improve the skills and job-readiness of Richmond residents.

- d. Fund Adult Education and Skill Building Program(s) including RichmondWORKS and Literacy for Every Adult Program (LEAP), to prepare Richmond residents to be part of the local labor force with the goal of achieving full and meaningful employment. The program(s) would focus on skills that will enhance local workers competitiveness in local job markets. The program(s) may include education and skills such as administrative support services, General Educational Diploma (GED) preparation, English as a second language (ESL), vocational classes, mathematics skills, financial coaching, and mental health and wellbeing.
- e. Fund expansion of Youth Employment and Skill Building programs designed to enhance the readiness of Richmond youth for employment, including in petro-chemical or renewable energy related sectors, including emergency preparedness and response. The programs may include YouthWORKS, internships, work experience and service learning, career services (e.g., connecting students with jobs, grants, and scholarships), high school shadow program for internships, college internships, and summer programs.
- f. Fund job transition training, targeting the re-entry population for employment. The job transition training may include, but not be limited to, teaching technical and soft skills such as safety training, mentoring, life skills, business and project management skills, and educational assessment.
- g. To fund programs that support entrepreneurship, particularly for youth, women, and disadvantaged groups, to increase the pool of Richmond businesses using programs that provide entrepreneurship skills and opportunities and potentially providing services to local industries, including refinery and related industries, and the renewable energy industry.

C. Branding Study

Total expenditure: \$1,250,000.

Implement a comprehensive marketing campaign for the City to enhance the City's tax base, to in-turn sustain public services essential to ensuring security and safety associated with Facility operations and activities.

D. Public Safety Programs

Total expenditure: \$3,500,000.

Sustain critical programs in the City of Richmond's public safety departments, including but not limited to the Youth Academy, Explorers, and the Richmond Police Department CCTV Program cameras (including equipment acquisition and maintenance, and officer review of camera footage), during construction of the Project in order to prepare for and assist in responding to incidents that may be associated with the number of Project construction

workers and subcontractors, and high volumes of truck and equipment traffic on local roadways due to Project construction; provided, however, that no component requiring additional review and discretionary approval under the California Environmental Quality Act (CEQA) may proceed until such time as such subsequent required CEQA process has been completed.

E. Free Internet Access

Total Expenditure: \$1,000,000.

Free internet access, including the provision of internet and fiber optic infrastructure, in Facility fenceline communities to ensure that fenceline community residents have access to online Community Warning System (CWS) resources and information, and enhance CWS operation in fenceline communities in the event of Facility incidents and emergencies.

F. Capital Funding for the Family Justice Center

Total Expenditure: \$250,000.

Provide capital funding for the Family Justice Center to provide health and wellness education, support services, crisis intervention, and counseling and case management for local youth and adults. The objective of this funding is to enhance health and wellness of Richmond residents and provide support services to reduce stress so that residents are better able to achieve and maintain meaningful employment in Facility- and renewable energy- related jobs (e.g., Project construction, operations, and Facility-related suppliers and service providers, and similar renewable energy jobs); provided, however, that no component requiring additional review and discretionary approval CEQA may proceed until such time as such subsequent required CEQA process has been completed.

G. Competitive Grant Program

Total expenditure: \$6,000,000.

- a) Chevron shall provide to the City \$6,000,000 over the first seven years of annual payments to fund community programs and non-profits focused on communities, youth and youth sports programs, which may include but are not limited to:
 - a. Summer camp programs, including programs developed collaboratively with the West Contra Costa Unified School District and the Education Fund, to make structured, academically-focused, out-of-school-time programs available so that Richmond youth might be better prepared to eventually secure meaningful employment.
 - b. Implementation of the City of Richmond's Health in All Policies Strategy and Ordinance, which aims to eliminate health disparities and work

towards health equity through a collaborative approach by addressing the social determinants of health and integrating health into the decision making process across all departments of the City.

- c. Implementation of Full Service Community Schools in the Richmond and Kennedy High School family of schools, particularly those elementary schools nearest to the Facility, to support:
 - i. Coordination and delivery of support services for school sites;
 - ii. Career academies;
 - iii. Implementation of Restorative Justice practices and programs;
 - iv. Health and wellness education;
 - v. Science, technology, arts, engineering and mathematics and applied learning partnerships;
 - vi. Student and parent engagement and education in academic and career pathways (culturally relevant and linguistically appropriate);
 - vii. Environmental and health applied learning partnerships; and
 - viii. Coordination of the above listed services with local businesses and organizations, universities, service providers, public agencies, and other organizations with expertise in the topical service subjects.

The supporting programs and activities will complement the implementation of the Cities Education and Human Services Element, West Contra Costa County Unified School District (WCCUSD) Local Control Accountability Plan, and WCCUSD Strategic Plan.

- d. The expansion of existing, and/or the implementation of new service learning programs and activities designed to build a range of skills for infants, children, and youth, including:
 - i. Personal (e.g., physical, social/emotional, life/career-planning, literacy and readiness)
 - ii. Academic (e.g., literacy, mathematics, environmental science, public health, performing arts)
 - iii. Technical: (e.g., engineering, technology)

The objective shall be to contribute to the education, skills, and training of future generations of Richmond residents to better enable them to secure meaningful employment, including in Project construction or operations, with Facility-related supply and service vendors, or in renewable energy jobs.

- e. Design and construction of new segment(s) of the Bay Trail to close gaps along the trail to improve the feasibility of travel by other modes other than automobiles for local residents and thereby improve the wellness of local residents and reduce greenhouse gas emissions; provided, however,

that no component requiring additional review and discretionary approval under the CEQA may proceed until such time as such subsequent required CEQA process has been completed.

- f. Establishment (including planning and building) of and ongoing delivery of health care services by Community Health Centers, that focus on providing direct primary health care services to the residually uninsured populations in Richmond, and to support the wellness of Richmond residents whose health may be affected by local environmental conditions, including air quality from local industrial emissions.
- g. In-home, community-based asthma prevention program(s), in light of local air quality and to improve public health and safety, which may include partnerships with UC San Francisco and other medical providers.
- h. Streetscape improvements for Cutting Boulevard, San Pablo Avenue, Barrett Avenue, Macdonald Avenue, and 23rd Street to enhance transit use as well as pedestrian and bicycle safety, including improvements for freeway underpasses, bus shelters, lighting, trash receptacles, crosswalks, signage, sidewalks, bike lanes, Class I trails and art, all of which would improve local public transit, bicycle, and pedestrian commuting and thereby improve air quality and reduce greenhouse gases; provided, however, that no component requiring additional review and discretionary approval under the California Environmental Quality Act (CEQA) may proceed until such time as such subsequent required CEQA process has been completed.
- i. Preparation of an annual City Health and Environmental Report Card, based on the goals, indicators, and implementing actions specified in the City's Health in All Policies Strategy and Climate Action Plan. The report shall include information and data regarding the Facility's performance in furtherance of the Health in All Policies strategy.

B. Community-Based Greenhouse Gas Reduction Programs

Consistent with the commitment and mandated mitigation measure in the environmental impact report (EIR) prepared for the Richmond Refinery Modernization Project, funding for the Community-Based Greenhouse Gas Reduction Programs (GHG Program) shall be \$3,000,000 per year for ten (10) years, with total funding not to exceed \$30,000,000, to support the types of GHG Programs identified in Chapter 4.8 – Greenhouse Gases of the EIR, and to be selected and implemented in the manner provided in that chapter, including but not limited to the following:

1. Electric City and Easy Go

Total expenditure: \$12,000,000.

This transportation program may include a City bike-share program, charging stations, vehicle purchase for the City, electricity costs for the City's vehicle fleet for ten years, to offset City costs of conversion to zero emission vehicles, and to improve mobility for Richmond residents, including but not limited to, improvements in walkability, BART alternatives, public transit connections, reduced price transit passes, bike paths, bike share and shuttles for the purpose of reducing greenhouse gas emissions; provided, however, that no component requiring additional review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed.

2. Climate Action Plan

Total expenditure: \$1,500,000.

City to further develop its Climate Action Plan integrating co-health benefits and greenhouse gas reduction targets for the City. Funds may also be used for implementation and monitoring; provided, however, that no component requiring additional review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed. The Climate Action Plan is the policy vehicle through which the City addresses reduction of greenhouse gases, improvement of air quality, and protection of health, all of which are in furtherance of the mitigation measures adopted for the Project.

3. Urban Forestry

Total expenditure: \$6,500,000.

Urban greening, regional trail, and park improvement program(s) (e.g., tree planting, urban agriculture, park access) designed to reduce greenhouse gas emissions and achieve co-benefits, including, improved air quality, stormwater quality and noise levels, reduced crime, improved health, and/or to restoration of biological resources. These programs may include, but are not limited to, outdoor education, job training, youth involvement, and resource maintenance, including funding for City staff (e.g., gardener, arborist) to coordinate, implement and/or oversee these programs, and other activities related to resource management at point Molate; provided, however, that no component requiring additional review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed.

4. Roof-top Solar, Energy Retrofit, City of Richmond Zoning Ordinance Update and Additional Programs

Total Expenditure: \$10,000,000.

Funding for roof-top solar systems, energy efficiency, City of Richmond Zoning Ordinance Update to align the City's development regulations with General Plan 2030 for the purposes of reducing greenhouse gas emission, and other programs identified in Chapter 4.8 of the EIR; provided, however, that no component requiring additional

review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed.

3. Other Commitments

A. Modernization Project Local Content Agreement

For construction employment related to the Modernization Project, on a quarterly basis, Chevron shall ensure that all construction contractors have demonstrated good faith efforts by following the hiring processes specified below in an attempt to employ Richmond residents. For non-construction employment related to the Modernization Project, on a quarterly basis Chevron shall ensure that it has demonstrated good faith efforts by following the hiring processes specified below in an attempt to employ an individual having his or her permanent residence in one of the seven (7) zip code areas covering Richmond, unincorporated North Richmond, or environs (Richmond Domiciled Residents).

(a) Construction Employment. Chevron shall ensure compliance with provisions of this subsection (a) by all construction contractors of any tier, performing work on the Modernization Project.

1. Long-Range Planning. Prior to hiring for construction employment the Modernization Project, each contractor shall provide to the designated City staff the approximate number and type of hires that it will make for employment, and the basic qualifications necessary for each projected hire.

2. Hiring Process. Contractors shall take the following steps to employ Richmond Domiciled Residents:

- i. Step One - Assignment of Current Workers: Contractors shall assign to perform project work any current employees who are Richmond Domiciled Residents.
- ii. Step Two – Dual Notification: Contractors signatory to a collective bargaining agreement shall both (A) request that the hiring hall refer Richmond Domiciled Residents, and utilize name call, apprenticeship sponsor, rehire, or similar procedures in the collective bargaining agreement to request particular individuals who have been identified as Richmond Domiciled Residents; and (B) notify the City’s Employment and Training Department (ETD) of workers needed and relevant qualifications. Contractors that are not signatory to a collective bargaining agreements shall notify the City’s Employment and Training Department (ETD) of workers needed and relevant qualifications.
- iii. Step Three – Consideration of Richmond Domiciled Residents: If the contractor is not signatory to a collective bargaining agreement, or if the hiring hall has not promptly referred

Richmond Domiciled Residents, the contractor shall fairly consider Richmond Domiciled Residents that have been referred by the ETD within 2 business days of request therefor.

3. Compliance. Chevron is in compliance with this section (a) for a quarter if all contractors performing work in that quarter have demonstrated good faith efforts by complying with the hiring process requirements set forth above.

4. Apprentice Utilization. Each project contractor shall employ in its regular workforce Richmond Domiciled Residents who are enrolled and participating in an apprenticeship program. Such an apprenticeship program must have been approved by the State Department of Industrial Standards. The expected number of apprentices will vary based upon the availability of Richmond Domiciled Residents indentured in the various apprenticeship programs, and shall be specified by the City for each trade, prior to commencement of project construction.

(b) Non-Construction Employment.

1. Hiring Process. For non-construction jobs related to the Modernization Project, prior to hiring a non-Richmond Domiciled Resident or recruiting from the general public, Chevron will notify the ETD with regard to available positions, with a description of qualifications, and fairly consider (including by interview) qualified workers referred by the ETD within five days of request. Job qualifications shall be only those directly related to performance of job duties. Chevron is in compliance with this section (b) for a quarter if it has complied with the hiring process described in this section for all Modernization Project hires made during that quarter.

(c) Award of Service Contracts and Supply Contracts. When Chevron awards a contract for non-construction services to be performed related to the Modernization Project, or for purchase of supplies related to the Modernization Project, Chevron shall make good faith efforts to award the contract to a “Richmond business,” as defined in the Richmond Business Opportunity Ordinance. For purposes of this section (c), good faith efforts include:

1. at least four weeks before award of the contract in question, providing notification of the contracting opportunity, and the procedure for bidding on the contract, to City’s designated business liaison, or other outreach resource as directed by the City;
2. at least four weeks before award of the contract in question, advertising the opportunity to bid in a local publication designated by the City; and
3. promptly providing Richmond businesses with complete information about the prospective contract and bidding procedures.

Within five days after the award of any contract covered by this section, Chevron shall provide to the City the following information: the name, address, and telephone number of the business to whom the contract was awarded, whether that business is a certified local business, and the projected dollar amount of the contract.

(d) Miscellaneous.

1. Local Hire Coordinator. Chevron shall provide a local-hire coordinator to help implement this Paragraph 3.A.

2. Reporting. For both construction and non-construction jobs, Chevron shall prepare monthly reports detailing: the number of hires for employment relating to the Modernization Project during the month (Modernization Hires); what percentage of Modernization Hires were Richmond Domiciled Residents; a description of Modernization Project jobs filled by Richmond Domiciled Residents and others; the amount of total monthly wages (Wage Bill) for both Modernization Hires and Richmond Domiciled Resident Modernization Hires; and compliance with the provisions in this Paragraph 3.A. Reports shall be filed with the ETD within thirty days after completion of each month. Chevron shall also describe the measures taken to implement this Paragraph 3.A at such level of detail such that compliance can be ascertained and assured. Reports shall commence once construction begins. City staff will assist Chevron by preparing forms to be completed for this purpose.

3. Out-of-State Workers. The requirements of sections (a) and (b) shall not apply to hours of work performed by residents of states other than the State of California, and such hours shall not be considered determining satisfaction of percentage requirements described herein.

B. Safety and Reliability Report.

Chevron shall prepare and submit an annual report to the City of Richmond, for review by the Planning Commission, and which report establishes specific annual goals and targets for the entire Chevron Facility (not limited to the Project) safety and reliability improvements, and provides a status update on performance regarding the prior year's goals. These goals shall include "stretch" goals designed to institutionalize a system of continuous safety improvement at the Facility, and shall include goals that are quantifiable or otherwise measurable. The report shall also describe all actions that have been initiated and implemented in the year immediately preceding the submittal of the report to improve safety and reliability at the Facility, including physical improvements, safety culture improvements, and management improvements designed to enhance safety and reliability. This report may be submitted along with the Modernization Project Reliability Program annual report, given that there may be some overlap between the required reporting elements of this condition and the Reliability Program reporting requirements.

C. GHG Reductions Report.

Chevron shall prepare and submit an annual report to the City of Richmond, for review by the Planning Commission, describing all actions that have been initiated and implemented in the year immediately preceding the submittal of the report to comply with California Executive Order S-3-05, which requires reducing greenhouse gas emissions to eighty percent (80%) below 1990 levels by 2050. The report shall include Chevron's objectives, plans, strategies, and investments to reduce greenhouse gas emissions, including to achieve Facility greenhouse gas emissions reductions of eighty percent (80%) below 1990 levels by 2050, transitioning to low- and zero-carbon transportation fuels and renewable energy sources, and the identification of new

research, manufacturing, and service businesses to be located in Richmond (thereby preserving local jobs) to replace petroleum refining operations that may diminish in the future due to the objectives of California Executive Order S-3-05.

4. Governance.

Funds made available through this Agreement shall be administered solely by the City of Richmond in its sole discretion. The City will solicit input from community stakeholders, including Chevron, and Richmond residents.

5. Miscellaneous.

- a. No Third Party Beneficiaries.** There are no intended third party beneficiaries to this Agreement. This Agreement is intended to benefit only the Parties and no other person or entity has or shall acquire any rights hereunder.
- b. Police Power.** Nothing herein shall constitute a surrender or abnegation of the City's control over its planning and zoning processes. Nothing in this Agreement shall be construed to abrogate the police powers conferred on the City pursuant to Article XI, Sections 5 and 7 of the California Constitution.
- c. Entire Agreement.** This Agreement, inclusive of Exhibit A, constitutes the entire agreement between the parties and it is expressly understood that the Agreement has been freely and voluntarily entered into by the parties with the advice of counsel, who have explained the legal effect of this Agreement. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be altered, modified or otherwise changed in any respect except in writing, duly executed by the Parties or their authorized representatives. This Agreement is fully integrated.
- d. Successors in Interest.** The rights and obligations of the Agreement shall be binding on all successive owners, heirs, and assigns of the parties hereto.
- e. Amendments.** This Agreement may be modified, supplemented, or amended in writing by the Parties. Any modification, supplementation, amendment, or waiver that would materially affect the rights of both Parties must be signed by both Parties.
- f. Warranty of Authority.** By executing this Agreement, each of the undersigned Parties to this Agreement covenants, warrants, and represents that he, she or it is fully authorized to enter into this Agreement and carry out the obligations on behalf of the person or entity for whom he or she is signing.
- g. Understanding of Terms.** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part of, or on behalf of, any of them. Each of the Parties to this Agreement has read and fully understands the meaning of each provision of this Agreement and has relied on independent advice and representation of legal counsel in entering into this Agreement.

- h. Severability.** In the event any of the terms, conditions, or covenants contained in this Agreement is held to be invalid, any such invalidity shall not affect any other terms, conditions or covenants contained herein which shall remain in full force and effect.
- i. Construction.** This Agreement and each of the provisions hereof, is the product of negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by or drafted by any particular party hereto. The rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- j. Governing Law.** This Agreement shall be governed, construed, interpreted, enforced and the relations between the parties determined in accordance with the laws of the state of California, without regard to its choice of law rules.
- k. Venue.** The Parties irrevocably agree to the jurisdiction of, and any action to enforce or interpret this Agreement shall be filed in, the Superior Court of the County of Contra Costa.
- l. Headings and Captions.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision thereof.
- m. Notices.** Except as otherwise specifically set forth herein, all notices or other communications specifically required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by certified mail, return receipt requested and postage prepaid, or sent by reputable overnight courier (such as Federal Express), or by tele-facsimile with confirmation by overnight courier or U.S. Postal Service the following day, to the following:

For CITY OF RICHMOND:

Attention: City Manager P.O. Box 4046
Richmond, CA 94804
FAX: (510) 620-6542

Copy to:

Attention: City Attorney City of Richmond
P.O. Box 4046
Richmond, CA 94804
FAX: (510) 620-6716

For CHEVRON PRODUCTS COMPANY

Attention: Refinery Manager Richmond Refinery
Chevron Products Company 841 Chevron Way

Richmond, CA 94801

A notice shall be effective on the date of personal delivery or tele-facsimile transmission, if personally delivered or transmitted before 5:00 p.m., otherwise on the day following personal delivery or telecopy transmission, or two (2) business days following the date the notice is postmarked, if mailed, or on the day following delivery to the overnight courier, if sent by overnight courier. Any Party to the Agreement may change the person, address, or tele-facsimile number to which notices are to be given to it by giving notice of such change in the manner set forth above for giving notice.

- n. Agreement Lawful and Enforceable.** All Parties agree that this Agreement is lawful, enforceable, and binding on all Parties; agree to waive any challenges to the enforceability of this Agreement; and agree not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or proceeding.
- o. Events of Default.** A Party will be deemed to be in default under this Agreement ("Defaulting Party") upon the occurrence and continuance beyond all applicable cure period of any of the following (each shall be an "Event of Default"): (a) the Defaulting Party fails to pay an amount due under this Agreement to the other Party (the "Non-Defaulting Party") and such failure continues for more than thirty (30) days after the date of written notice from the Non-Defaulting Party specifying the amount that is owing and past due in reasonable detail; (b) the Defaulting Party fails to perform any other material obligation under this Agreement and such failure continues for more than thirty (30) days after the date of written notice from the Non-Defaulting Party specifying such failure to perform in reasonable detail; or (c) failure of a representation or warranty set forth in this Agreement to be true in any material respect as of the date when made or required to be made under this Agreement.
- p. Dispute Resolution.** If a legal dispute arises related to the interpretation or enforcement of or the status of compliance with the terms and conditions of this Agreement, including the rights and obligations of the Parties hereunder (the "Dispute"), City and Chevron shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within twenty-one (21) days, City and Chevron shall endeavor to settle the Dispute by mediation which, except as otherwise mutually agreed upon by the Parties, shall be conducted under the then current JAMS rules and procedures for mediating business disputes by a neutral third party selected from the JAMS panel of neutrals. This dispute resolution process shall be undertaken in good faith and exhausted prior to the institution of legal proceedings by either Party.
- q. Remedies.** If an Event of Default occurs and continues under this Agreement, the remedies of the Non-Defaulting Party will be to terminate this Agreement or to seek specific performance of this Agreement. Neither City nor Chevron shall have any liability or obligation to pay damages to one another or to any other person or

entity as a result of or attributable to any Event of Default or other breach or violation of this Agreement.

- r. **Costs of Enforcement.** If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each party to the litigation shall bear its own attorney's fees and costs.
- s. **Waiver.** The waiver of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a default, shall not be deemed a waiver of any provision or term of this Agreement. The waiver by City of any breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach. Inspections or approvals, or statements by any officer, agent or employee of the City relating to Chevron's performance, or payments therefore, or any combination of these acts, shall not relieve Chevron's obligation to fulfill this Agreement as prescribed; nor shall the City be thereby stopped from bringing any action for enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.
- t. **Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
- u. **Further Acts.** Each Party hereby agrees that it shall, upon request of any other Party, execute and deliver such further documents and do such other acts and things that are reasonably necessary and appropriate to effectuate the terms and conditions of this Agreement.
- v. **Indemnification**
 - (1) Chevron shall indemnify, defend and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, suits, or actions of every kind and description, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of Chevron, its officers, agents, and employees, or brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by Chevron in the performance of this Agreement, including the concurrent or successive passive negligence of the City, its officers, agents, employees or volunteers.
 - (2) It is understood that the duty of Chevron to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Chevron shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City, the City and its officers, agents, employees or volunteers, immediately upon

tender to Chevron of the claim in any form or at any state of an action or proceedings, whether or not liability is established. An allegation or determination that persons other than Chevron are responsible for the claim does not relieve Chevron from its separate and distinct obligation to defend under this Section 5(v). The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes and obligation to provide independent counsel if Chevron asserts that liability is caused in whole, or in part, by the negligence or will misconduct of an indemnified Party. This Section 5(v) survives performance of Chevron's duties set forth herein and termination of this Agreement.

- w. **Force Majeure.** Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections, terrorism and/or any other cause beyond the reasonable control of the Party whose performance is affected. Notwithstanding the preceding sentence, it shall be the duty of any Party invoking *force majeure* to give prompt written notice of the *force majeure* event to the other Party and to promptly take reasonable steps in good faith to minimize the delay or damages resulting from a default in performance and to perform all non-excused obligations of such Party under this Agreement.
- x. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall be constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Execution Date.

Agreed and Accepted

Chevron Products Company,
A division of Chevron U.S.A. Inc.

_____, Refinery General Manager

Date

City of Richmond, a municipal corporation and charter city

Bill Lindsay, City Manager

Date

Approved as to Form

Bruce Reed Goodmiller, City Attorney

Date