

## **Board of Trustees Agenda Item**

**Board Meeting Date:** March 8, 2010

### **Title of Item:**

Energy Services Contract with Chevron Energy Solutions Company for the Installation of a 1,062 kW Photovoltaic System at Foothill College (Measure C Project #154)

### **Background and Analysis:**

On March 1, 2010, The Board of Trustees authorized District staff to negotiate and execute a contract with Chevron Energy Solutions to provide photovoltaic array installations.

The District and Chevron Energy Solutions researched locations and system sizing parameters and identified Lots 2 and 3 as a location capable of supporting a large installation. The size of the system responds to the space available in the parking lots and the ability of Chevron to complete the project during the summer when parking demand is lowest.

The outcome of the contract negotiation identifies a system sized to accommodate a 1,062 kilowatt (kW) system for Foothill College - which will be mounted on canopies in Parking lots 2 and 3. The design allows for shaded parking underneath the canopies, with lighting for night time usage. As an educational component of the installation, the system's operating information can be monitored on remote displays.

In addition to providing annual electrical power purchase savings in the amount of approximately \$250,000 per year, the project will be available for PG&E rebates estimated to be a total of \$1,300,000 over the next five years at the Foothill Campus.

The contract amount is \$6,956,648 and will be paid for out of Measure C Project #154.

### **Recommendation:**

Charles Allen, Executive Director of Facilities, Operations and Construction Management recommends that the Board approve the Energy Services Contract with Chevron Energy Solutions Company.

Submitted by:	Charles Allen, Executive Director of Facilities, Operations & Construction
Additional contact names:	Art Heinrich, Foothill Bond Program Director
Is backup provided?	Yes



### ENERGY SERVICES CONTRACT

"Customer": Foothill-DeAnza Community College District      Customer Address: 12345 El Monte Road, Los Altos Hills, CA 94022

Contract Effective Date: March \_\_, 2010      "Contract Amount" (refer to Attachment F): \$6,956,648

Date of Energy Audit Agreement between Customer and Chevron ES: February 8, 2008      Name of Lessor of Equipment (If Arranged by Chevron ES): \_\_\_\_\_

Estimated Construction Period: 0 Yrs. 6 Mo.

This Energy Services Contract ("Contract") is made and entered into as of the Contract Effective Date by and between **Chevron Energy Solutions Company, a Division of Chevron U.S.A., Inc., ("Chevron ES")**, a Pennsylvania corporation, having its principal offices at 345 California Street, 18<sup>th</sup> Floor, San Francisco, CA 94104, and the Customer identified above, for the purposes of providing comprehensive energy services. "Chevron ES" and the "Customer" may singularly be identified as "Party" and collectively as "Parties." The attachments listed below as being attached are attached hereto and fully incorporated herein.

#### ATTACHMENTS TO CONTRACT

Attachment	Title	Attached	<u>Not Applicable/</u>
			<u>Not Attached</u>
A	General Terms and Conditions	Attached	
B	Design/Build Terms and Conditions	Attached	
C	Customer's Facilities	Attached	
D	Scope of Work	Attached	
E	Project Schedule	Attached	
F	Progress Payment Schedule	Attached	
G	Standards of Occupancy & Control		n/a
H	Additional On-Going Scope of Work		n/a
I	Incentive Funds	Attached	
J	Project Stabilization/Construction Careers Agreement (PSA)	Attached	

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date first above written.

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

**CUSTOMER:**  
**Foothill-DeAnza Community College District**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Per Resolution No. \_\_\_\_\_, adopted by the **Board of Trustees** on March 1, 2010

APPROVED AS TO FORM:

\_\_\_\_\_  
Esq.

**ATTACHMENT A**  
**GENERAL TERMS AND CONDITIONS**

**CONTRACT RECITALS**

WHEREAS, Customer owns and/or operates certain public facilities specifically described in Attachment C attached hereto and incorporated herein ("Facilities") and Customer wishes to reduce its Facilities' energy consumption and costs and improve the Facilities' energy quality/reliability by contracting to procure comprehensive energy management strategy expertise to achieve long term benefits and flexibility in managing the Customer's power and energy needs and to implement certain new and upgraded energy system related equipment and materials; and

WHEREAS, Chevron ES is a full-service energy services company with the technical capabilities to provide services to the Customer including, but not limited to, energy auditing, engineering, procurement, construction management, installation, construction, financing, training, monitoring and verification, and maintenance and operation (collectively, "Services"); and

WHEREAS, the Customer executed an Investment Grade Solar Assessment Agreement with Chevron ES to perform a comprehensive energy analysis and present the Customer with a detailed Investment Grade Solar Assessment ("IGSA") Report and recommended energy plan to implement certain Solar Photovoltaic and Energy Conservation Measures ("ECM's"). The IGSA Report identified potential energy and operational savings opportunities at the identified Customer's Facilities and identified estimated program costs to implement the recommended ECM's and presented an overall potential energy cost and consumption savings of implementing the ECM recommendations; and

Whereas, the **Board of Trustees**, by adoption of Resolution No. \_\_\_\_ at its meeting of March 1, 2010, approved the Energy Services Contract by and between Chevron ES and the Customer and authorized the Executive Director of Facilities, Operations and Construction Management to execute this Energy Services Contract on behalf of the Customer.

NOW, THEREFORE, the Customer and Chevron ES hereby agree as follows:

**SECTION 1.      PERFORMANCE OF THE WORK**

Section 1.1.      **Performance of Work / Additional Terms and Conditions Governing Construction.** All the Work to be performed hereunder, including engineering, equipment and material procurement, installation, construction, and measurement & verification provided by Chevron ES, will be provided in accordance per the terms of this Contract, its attachments, and the terms of **Attachment B, "Design/Build Terms and Conditions"**, attached hereto and incorporated herein.

Section 1.2      **Scope of Work.** The Scope of Work to be provided hereunder ("Work"), including all engineering, equipment and material procurement, and installation and construction, is more fully described in the Scope of Work attached hereto as **Attachment D, "Scope of Work"**.

Section 1.3      **Project Schedule/ Notice to Proceed.** The preliminary project schedule is presented in **Attachment E, "Project Schedule"** which is attached hereto and incorporated herein ("Project Schedule"). Within ten (10) calendar days after the Contract Effective Date, Customer will issue to Chevron ES a written Notice to Proceed ("Notice to Proceed" or "NTP"). If the Customer fails to issue the Notice to Proceed within ten (10) calendar days after the Contract Effective Date, the Parties agree that the Notice to Proceed shall be deemed to have been issued on the tenth (10<sup>th</sup>) day. Chevron ES shall begin Work within thirty (30) calendar days of Chevron ES' receipt of the Notice to Proceed.

Section 1.4      **Additional Work.** During the Contract Term, the Parties hereto may mutually agree to add additional Work and/or Projects to the Scope of Work by a written Change Order, executed by both Parties; and such work shall be performed in accordance with the terms and conditions of this Contract, as amended.

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

Customer represents and warrants that it has furnished to Chevron ES (or shall furnish, or cause its energy suppliers to furnish, no later than ten (10) business days after the Contract Effective Date), all of its records and complete data requested by Chevron ES concerning, without limitation, energy usage, energy-related maintenance, and other related costs for the Facilities listed in **Attachment C, "Customer Facilities and Existing Equipment"**, and including without limitation the following data for at least the past twelve (12) months and, optimally, the most current thirty-six (36) month period: utility records; occupancy information; descriptions of any changes in the electrical infrastructure or underground utilities in the construction area, specifications, existing AutoCAD files, as-builts; within the Facilities. Customer agrees that Chevron ES may rely on the foregoing data as being accurate in all respects. If requested, Customer shall also provide any prior energy audits of the Facilities, and copies of Customer's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and shall authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of Chevron ES.

**SECTION 3.      CONTRACT TERM**

The term of the Contract shall commence on the Contract Effective Date and end upon Final Completion of the Project.

**SECTION 4.      PAYMENTS**

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Payments by Customer to Chevron ES under this Contract shall be in the form of monthly progress payments as discussed below and specifically described in **Attachment F, "Progress Payment Schedule"**.

Section 4.1. Monthly Progress Payments. Upon execution of this Contract, Chevron ES shall invoice the Customer for the Comprehensive Energy Analysis Fee plus a Mobilization Fee, as detailed on Attachment F. In addition, on or before the twentieth (20<sup>th</sup>) day of each month, Chevron ES shall submit to the Customer, or their designee, for approval its request for a monthly progress payment per the Draw Schedule in Attachment F ("Request for Payment") in a form reasonably acceptable to Customer. The Customer, or its designee, shall review and approve each Request for Payment, within ten (10) calendar days after its receipt thereof. A failure to timely approve a Request for Payment hereunder shall be a material default by Customer under this Contract. After approval of each Request for Payment by the Customer, or its designee, Customer shall pay such amount, less a ten percent (10%) retainage amount ("Retainage"). Each Monthly Progress Payment shall be made on or before the thirtieth (30<sup>th</sup>) day after such Request for Payment was received by Customer. Upon Substantial Completion, the Retainage shall be reduced to five (5%) percent of the total Contract Amount, and Chevron ES shall invoice and Customer shall pay this amount. Customer shall pay Chevron ES the remaining five (5%) percent Retainage upon achieving Final Completion.

Section 4.2 Final Payment. The final Request for Payment may be made after Final Completion. Final Payment amount shall also include payment to Chevron ES for the remaining five (5%) percent retainage amounts withheld by Customer, less 125% of the amount of any stop notices filed against the Customer for which Chevron ES has not provided a stop notice release bond.

Section 4.3 Disputed Invoices/Late Payments. If Customer disputes any Request for Payment, or part thereof, or any supporting documentation related thereto, or otherwise disputes any Request for Payment as provided in Section 4.5 below, Customer shall make full payment to Chevron ES when required in Section 4.1 above, less any portions of the Request for Payment amount in dispute, and shall provide to Chevron ES a written explanation of the basis for the dispute and the amount of the Request for Payment being withheld related to the dispute, no later than the Due Date. Customer shall be deemed to have waived and released any dispute known to it with respect to a bill if such written explanation is not provided within thirty (30) calendar days after the Due Date. If any amount disputed by Customer is finally determined to be due to Chevron ES, either by agreement between the Parties or as a result of dispute resolution pursuant to Section 16 below, it shall be paid to Chevron ES within ten (10) business days of such final determination, plus reasonable interest at the interest rate set forth in Attachment B, Section 19 ("Interest").

Section 4.4 Rebate Programs. On behalf of the Customer, Chevron ES shall prepare and submit to the applicable agencies all applications and documentation necessary for the listed energy efficiency rebate, incentive, and/or loan program(s) ("Incentive Funds") shown on **Attachment I, Incentive Funds**. In addition to the application submittal, Chevron ES will pay a \$20,000 deposit to PG&E to reserve the Incentive Funds. This deposit will be refunded to Chevron ES upon the completion of the project. While Chevron ES has extensive experience in assisting Customers with procuring Incentive Funds for our Customers, and does not foresee any reason why such Incentive Funds identified in Attachment I will not be obtained by the Customer for this Project, Chevron ES cannot guarantee that these Incentive Funds will be received by the Customer. Procurement, or lack thereof, of these Incentive Funds will not alter the Contract Amount of this Contract, or payment timeline associated with standard progress invoicing and payments.

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

Chevron ES warrants its workmanship provided hereunder, including its subcontractors' workmanship, shall be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("Chevron ES Warranty"). All warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, shall terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, Chevron ES will have no liability for breach of any warranty or for any latent or patent defect of any kind. Equipment and material warranties that exceed the one (1) year warranty period shall be provided directly by the equipment and/or material manufacturers and such warranties shall be assigned directly to the Customer, after the one (1) year period. Attachment D, "Scope of Work" lists the equipment affected and the warranty duration applicable to each. During the one (1) year Chevron ES warranty period, Chevron ES shall be the Customer's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. Other than for lamps and ballasts, any material defects that are discovered within the one (1) year Chevron ES warranty period, Chevron ES, or Chevron ES' subcontractors, will correct its defects, and/or Chevron ES will work with the equipment or material manufacturer as the Customer's agent to facilitate the manufacturer's correction of the equipment or material defect. For typical industry standard lamp and ballast failures during the one (1) year Chevron ES warranty period, the Customer will replace such failed lamps/ballasts with replacement stock provided by Chevron ES, provided, however, Customer shall return the failed lamps/ballasts to the manufacturer in order to ensure that sufficient quantities of replacement stock are available during the one year warranty period. Such warranty services shall be performed in a timely manner and at the reasonable convenience of the Customer. This warranty expressly excludes any remedy for damage or defect caused by improper use, improper or inadequate maintenance, operations of the installed equipment by users other than Chevron ES or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized Chevron ES subcontractor, improper operation, or normal wear and tear under normal usage. If a warranty issue arises on any equipment or material installed after the one (1) year Chevron ES warranty period, and the equipment or material has a warranty period that exceeds one (1) year, the Customer shall contact the manufacturer directly to resolve such warranty issues and Customer acknowledges that the manufacturer shall have sole responsibility for such issues.

Solar PV System Warranty. As to the Solar PV System (as defined below) only, Chevron ES warrants to Customer for a period of ten (10) years from the date of Substantial Completion ("Solar PV System Warranty") that: (i) its workmanship provided hereunder, including its subcontractors' workmanship, shall be free of material defects; (ii) the equipment that comprises the Solar PV System shall be free of defective system or component breakdown, or (iii) that degradation in electrical output shall not exceed the lesser of fifteen percent (15%) or the percent provided by the manufacturer's warranty from their originally rated electrical output. This Solar PV System Warranty covers solely the solar generating system, including PV modules (panels) and inverters, solar collectors, or tracking mechanisms associated with the solar generating system, and for meters that are integrated into the inverter (collectively, the "Solar PV System"). During the Solar PV System Warranty period, Chevron ES shall be Customer's agent in working with the equipment and

material manufacturers in resolving any equipment or material warranty issues covered by the Solar PV Warranty. The warranty services shall be performed in a timely manner and at the reasonable convenience of Customer. This warranty expressly excludes any remedy for damage or defect caused by improper or inadequate maintenance, operations of the installed equipment by users other than Chevron ES or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized Chevron ES subcontractor, improper operation, or normal wear and tear. If a warranty issue arises on any equipment or material installed after the ten (10) year Solar PV System Warranty period, and the equipment or material has a warranty period that exceeds ten (10) years, Customer shall contact the manufacturer directly to resolve such warranty issue and Customer acknowledges that the manufacturer shall have sole responsibility for such issues.

EXCEPT FOR THE WARRANTY AND GUARANTEES PROVIDED IN SECTION 5 HEREIN, CUSTOMER EXPRESSLY AGREES THAT CHEVRON ES MAKES NO OTHER WARRANTIES AND ASSUMES NO OTHER LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, IN CONNECTION WITH THE SALE AND INSTALLATION OF EQUIPMENT AND MATERIALS PROVIDED HEREUNDER WHETHER EXPRESS OR IMPLIED, IN LAW OR IN COMMUNICATION BETWEEN CHEVRON ES AND CUSTOMER. CHEVRON ES SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER **SHALL HAVE NO REMEDIES AGAINST EITHER CHEVRON ES OR ANY CHEVRON ES SUBCONTRACTOR FOR ANY DEFECTIVE WORK INSTALLED EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT IN ACCORDANCE WITH THE WARRANTY INDICATED ABOVE.** SPECIFICALLY, CHEVRON ES, OR CHEVRON ES' SUBCONTRACTOR, SHALL NOT BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

## **SECTION 6.      GOVERNMENTAL PERMITS AND APPROVALS; COORDINATION**

Section 6.1.      Permits and Approvals. Customer will cooperate fully with Chevron ES in obtaining all permits and approvals required under this Contract. Chevron ES is responsible for obtaining permits and approvals required for the design, building, installation, and start-up of the Work hereunder which are required as of the Contract Effective Date. The Customer shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits as applicable.

Section 6.2.      Coordination During Installation. Customer and Chevron ES shall cooperate to coordinate the activities of Chevron ES and Chevron ES' subcontractors and suppliers with those of Customer, its employees, and agents. Chevron ES will use reasonable efforts not to interfere with the performance of business activities conducted by Customer or its employees without prior written approval of Customer, which shall not be unreasonably withheld.

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

Section 7.1.      Ownership of Certain Proprietary Property Rights. Customer shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the equipment. Chevron ES shall grant to Customer a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for Customer to continue to operate, maintain, and repair the equipment in a manner that will yield maximal energy consumption reductions.

Section 7.2.      Ownership of Any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by Chevron ES pursuant to this Contract. If applicable, Chevron ES shall advise Customer in writing of all equipment and materials that will be replaced at the Facilities and Customer shall, within five (5) business days of Chevron ES' notice, designate in writing to Chevron ES which replaced equipment and materials that should not be disposed of off-site by Chevron ES (the "Retained Items"). It is understood and agreed to by both Parties that Customer shall be responsible for and designate the location and storage for the Retained Items. Chevron ES shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Chevron ES shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. Chevron ES shall not be responsible for the removal and/or disposal of any Hazardous Materials or substances except as required by the Scope of Work attached hereto.

## **SECTION 8.      LOCATION AND ACCESS**

Customer will provide sufficient space at the Facilities within reason for the performance of the Work and the installation, storage, and operation of any equipment and materials. Customer shall provide access to the Facilities, including parking permits and identification tags, for Chevron ES and subcontractors to perform its Work hereunder during regular business hours, or such other reasonable hours as may be requested by Chevron ES and acceptable to Customer. Customer shall not unreasonably restrict Chevron ES' access to Facilities to make emergency repairs or corrections as it may determine are needed.

## **SECTION 9.      INDEMNIFICATION / INSURANCE / BONDS**

Section 9.1.      Indemnification. To the full extent permitted by law, each Party 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, including the activities of other persons employed or utilized by that Party in the performance of this Contract excepting liabilities due to the negligence or willful misconduct of the indemnified Party. This indemnification obligation is not limited in any way by any limitations of any insurance held or provided by Chevron ES and shall continue to bind the parties after termination/completion of this Contract.

Section 9.2      Waiver of Consequential Damages and Limitation of Liability. Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of

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liability. "Consequential damages" includes, but is not limited to, operational losses in the performance of business including lost revenues and any lost profits. It is expressly understood and agreed to by both Parties that each Party's liability to the other shall be limited to reimbursement of only those Losses arising solely from a Party's breach of this Contract, negligence or willful misconduct. "Losses" means claims, actions, direct damages, liabilities, costs and/or expenses (including reasonable attorneys' fees).

Section 9.3 Chevron ES Insurance. Chevron ES shall maintain, for the duration of this Contract, the insurance coverage outlined in (i) through (vii) below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to Customer on an annual basis, prior to policy expiration, via a Certificate of Insurance or a Self Administered Claims Letter.

(i) Workers' Compensation/Employers Liability for states in which Chevron ES is not a qualified self-insured. Limits as follows:

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

(ii) Commercial General Liability insurance with limits of :

- \* \$1,000,000 per 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 Fire Damage

Coverage to be written on a Claims-made form. Coverage to be at least as broad as ISO form CG 002 (07/98), without endorsements that limit the policy terms with respect to: (1) the definition of an Insured Contract, (2) provisions for severability of interest, (3) explosion, collapse, underground hazard. Additionally, Chevron ES shall evidence the coverage in Section 9.3(ii) above prior to coming on to the Customer's property to undertake any work under the warranty period.

(iii) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an Occurrence form.

(iv) Professional Liability insurance with limits of:

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

Coverage to be written on a Claims-made form.

(v) Excess Liability insurance. Limits as follows:

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

Coverage to be written on a Claims-made form. Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability, Auto Liability and Professional Liability. Coverage terms and limits to also apply in excess of those required for Employers Liability.

(vi) Policy Endorsements.

- \* The insurance specified in clause 10.3(i) above shall contain waivers of subrogation rights against Customer.
- \* The insurance provided for Commercial General Liability and Auto Liability above shall:
  - (a) include the Customer as an additional insured with respect to Work performed under this Contract, and
  - (b) provide that the insurance is primary coverage with respect to all insureds and shall not be considered contributory insurance with any insurance policies of the Customer.

(vii) In lieu of any insurances required in this Section, Chevron ES may self insure hereunder and use a Self Administered Claims Program for this purpose. Chevron ES will notify Customer in writing 30 days prior to cancellation of the Self Administered Claims Program.

Section 9.4 Performance and Payment Bonds. Prior to commencing Work under this Contract, Chevron ES shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Amount, and a Payment Bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively "Contract Bonds"). The Contract Bonds shall be maintained in full force and effect until Final Completion. The bonds are not being furnished to cover the performance of any energy guaranty or guaranteed savings under this Contract. Customer agrees that upon Final Completion, the Performance and Payment Bonds shall be released and all obligations arising thereunder shall be terminated. AIA Bond forms will be used.

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

Section 10.1 Force Majeure Events. Neither Party shall be considered to be in default in the performance of any material obligation under this Contract (other than the obligation to make payments) when a failure of performance 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

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exercise of due diligence such Party could not reasonably have been expected to avoid and which it has been unable to overcome. A list of Force Majeure events are listed in the Definition section of **Attachment B, "Design/Build Terms and Conditions"** attached hereto. 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 Contract by reason of an event of Force Majeure shall give prompt written notice of such fact to the other Party.

Section 10.2 Utility Work. Customer expressly understands and agrees that the definition "Force Majeure" above also includes any Interconnection Facilities work that may need to be performed by the local Utility ("Utility") in order for Chevron ES to fully implement the Project. "Interconnection Facilities" shall mean any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under a separate contract between Customer and the Utility.

## **SECTION 11. EVENTS OF DEFAULT**

Section 11.1. Events of Default by Customer. Each of the following events or conditions shall constitute an "Event of Default" by Customer:

(i) any failure by Customer to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Customer demanding that such failure to perform be cured; provided that (i) such failure to perform shall not be deemed a default hereunder if it is due to causes beyond the control of Customer pursuant to Section 11 above; and (ii) if such cure cannot be effected in thirty (30) calendar days, Customer shall be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

(ii) any representation or warranty furnished by Customer in this Contract which was false or misleading in any material respect when made; or

(iii) any failure by Customer to pay any amount to Chevron ES which is not paid within ten (10) days of written notice from Chevron ES that the amount is past due.

Section 11.2. Events of Default by Chevron ES. Each of the following events or conditions shall constitute an "Event of Default" by Chevron ES:

(i) any failure by Chevron ES to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Chevron ES demanding that such failure to perform be cured; provided that (i) such failure to perform shall not be deemed a default hereunder if it is due to causes beyond the control of Chevron ES pursuant to Section 11 above, and (ii) if such cure cannot be effected in thirty (30) calendar days, Chevron ES shall be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

(ii) any representation or warranty furnished by Chevron ES in this Contract which was false or misleading in any material respect when made; or

(iii) any lien or encumbrance is placed upon the equipment by any subcontractor, laborer, or supplier of Chevron ES, which is not timely removed by Chevron ES; provided that Chevron ES has been duly paid for the Work (except as provided in Section 4.2) and such lien or encumbrance is not the result of any act or failure to act of Customer.

## **SECTION 12. REMEDIES UPON DEFAULT**

Section 12.1. Remedies upon Default by Customer. If an Event of Default by Customer occurs, Chevron ES will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Section 16 below including, without limitation, terminating this Contract or recovering amounts due and unpaid by Customer, and/or damages which shall include Chevron ES' reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; legal fees and arbitration costs; and any payment or delivery required to have been on or before the date of the Event of Default and not made, including Interest (as defined in Attachment B, Article 1) on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 12.2. Remedies Upon Default by Chevron ES. If an Event of Default by Chevron ES occurs, Customer shall be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Section 16 below, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by Chevron ES and/or damages, which shall include Customer's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; legal fees and arbitration costs; and any payment or delivery required to have been on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

## **SECTION 13. ASSIGNMENT**

Section 13.1. Assignment. This Contract may not be assigned by either party in whole or in part without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed; provided however, that Chevron ES may assign this Contract and all related contracts without the consent of Customer (i) to an affiliate; (ii) to an entity that is controlled by,

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controls, or is under common control with Chevron ES; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law; and provided further that Chevron ES may assign its rights, but not its obligations, under this Contract and all related contracts without the consent of Customer to (x) a lender providing financing to Chevron ES, or (y) a special purpose entity that is an affiliate of or is controlled by such lender. This Contract will be binding on, enforceable by, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.

**SECTION 14. SUBCONTRACTORS**

Section 14.1 Authority to Subcontract. Chevron ES may delegate its duties and performance under this Contract, and shall have the right to enter into agreements with any subcontractors and other service or material providers as Chevron ES shall select in its discretion to perform the Work hereunder, provided such subcontractors are qualified to perform the applicable work, hold the required State of California licenses, and agree to the applicable conditions of this Contract, including Attachment J, Project Stabilization Agreement. Chevron ES shall not be required to enter into any subcontracts with parties whom Chevron ES has not selected or subcontractors whom Chevron ES has objection to using.

Section 14.2 Prompt Payment of Subcontractors. Chevron ES shall promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of the law from arising against any Customer property, against the contractor's rights to payments hereunder, or against Customer.

Section 14.3 Responsibility. Chevron ES shall, at all times, be responsible for the negligent acts, errors and/or omissions of its subcontractors and agents. Nothing in this Contract shall constitute any contractual relationship between any others and the Customer or any obligation on the part of the Customer to pay, or to be responsible for the payment of, any sums to any Chevron ES subcontractors.

Section 14.4 Prevailing Wages. All employees of Chevron ES and Chevron ES' subcontractors performing Work for this Project shall be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed, provided payment of prevailing wages is required for this Project by applicable law.

**SECTION 15. DISPUTE RESOLUTION**

Section 15.1 Dispute Resolution. In the event of a dispute, claim, or controversy arising out of or in connection with this Contract, the Parties through their designated representatives/program managers agree to confer and attempt to resolve the matter informally. If such dispute cannot be resolved in this manner within ten (10) business days after notice of the dispute is given to the other Party, then the matter shall be referred to the Parties' senior officers for their review and resolution. If the matter can not be resolved by such officers within fifteen (15) business days following such referral, the matter shall be arbitrated and either Party may file a written demand for arbitration with the Judicial Arbitration & Mediation Services ("JAMS") and shall send a copy of such demand to the other Party. The arbitration shall be conducted pursuant to the appropriate JAMS Arbitration Rules in effect at the time the arbitration is commenced. For amounts in excess of \$250,000, JAMS Comprehensive Arbitration Rules and Procedures shall apply. The arbitration shall be heard by a panel of three arbitrators, who shall have experience in the general subject matter to which the dispute relates. The arbitration shall take place at the JAMS office geographically closest to the site where the Work or Services has been performed. The award rendered by the arbitrators shall be final and binding on the Parties and shall be deemed enforceable in any court having jurisdiction thereof and of the Parties. For lesser disputed amounts, JAMS Streamlined Arbitration Rules and Procedures shall apply. The arbitration shall be heard by one arbitrator, who shall have experience in the general subject matter to which the dispute relates. The arbitration shall take place at the JAMS office geographically closest to the site where the Work or Services has been performed. The award rendered by the arbitrator shall be final and binding on the Parties and shall be deemed enforceable in any court having jurisdiction thereof and of the Parties.

Section 15.2 Attorneys' Fees. The prevailing Party in any action or arbitration proceeding brought to enforce the terms of this Contract or arising out of this Contract (including actions to enforce an arbitration award) may recover its reasonable costs and attorneys' fees expended in good faith in connection with such an action or arbitration proceeding from the other Party.

**SECTION 16. REPRESENTATIONS AND WARRANTIES**

Each Party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, Chevron ES' Board of Directors and Customer's governing entity, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a Party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

**SECTION 17. WAIVER OF LIENS**



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Upon request from Customer, Chevron ES shall provide Customer with Progress Payment Waivers and Releases for Work Chevron ES has been paid up to that date. Upon receipt by Chevron ES of final payment for the Work (including payment of any retentions), Chevron ES will provide Customer with a Final, Unconditional Waiver and Release.

**SECTION 18. TERMINATION**

Section 18.1 Termination for Cause. If there is an Event of Default by either Party under this Contract, pursuant to the provisions of Section 12 unless such Event of Default has been cured within the applicable time periods for a cure set forth in such Section 12 in addition to the remedies provided for in Section 13 the non-defaulting Party may terminate this Contract by providing three (3) business days' notice to the defaulting Party in the case of a monetary default and ten (10) business days' notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party shall promptly return to the other all papers, materials, and property of the other held by such Party in connection herewith. Each Party shall also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If the Contract is so terminated, Chevron ES shall be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 18.2 Termination for Convenience. Both Chevron ES and Customer have the right to terminate this Contract upon mutual written agreement by both Parties hereto. If the Contract is so terminated by mutual agreement, Chevron ES shall be entitled to payment for all Work performed, earned profit and overhead, and costs incurred in accordance with this Contract only up to the date of termination.

**SECTION 19. CONSTRUCTION OF CONTRACT**

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Contract was executed.

**SECTION 20. BINDING EFFECT**

Except as otherwise provided herein, the terms and provisions of this Contract shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

**SECTION 21. INDEPENDENT CONTRACTOR**

The Parties hereto agree that Chevron ES, and any agents and employees of Chevron ES, its subcontractors and/or consultants, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of Customer.

**SECTION 22. NO WAIVER**

The failure of Chevron ES or Customer to insist upon the strict performance of the terms and conditions of this Contract shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of Chevron ES or Customer.

**SECTION 23. SEVERABILITY**

In the event that any clause or provision of this Contract or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder.

**SECTION 24. ORDER OF PRECEDENCE**

This Contract, when executed, together with all Attachments, shall constitute the entire Contract between the Parties; and the Contract cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto. If there are any inconsistencies between the Contract, Attachments, and Construction Documents as defined in the General Terms and Conditions for Implementation and Construction, these inconsistencies shall be resolved by giving precedence in the order listed below:

- (1) Energy Services Contract
- (2) Attachment A – "General Terms and Conditions"
- (3) Attachment D - "Scope of Work"
- (4) Attachment C – "Customer's Facilities"
- (5) Construction Documents
- (6) Attachment B - "Design/Build Terms and Conditions"
- (7) Attachment G – "Standards of Occupancy & Control"
- (8) Attachment F - "Progress Payment Schedule"
- (9) Attachment E - "Project Schedule"
- (10) Attachment I – Incentive Funds
- (11) Investment Grade Solar Analysis

**SECTION 25. APPLICABLE LAW**

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of California. The Parties consent to personal jurisdiction and venue of the State and Federal Courts within the County of Santa Clara, California.

**SECTION 26. NOTICE**

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO CHEVRON ES:                   Chevron Energy Solutions Company  
345 California Street, 18<sup>th</sup> Floor  
San Francisco, CA 94104  
Tel:           415-733-4611  
Fax:           415-733-4950  
Attention: David Potter

With a COPY TO:               Legal Department  
Chevron Energy Solutions Company  
345 California Street, 18th Floor  
San Francisco, CA 94104-2624  
Tel:           415-733-4500  
Fax:           415-733-4957  
Attention: Contract Administrator

TO CUSTOMER:                 Executive Director, Facilities and Operations  
Foothill-DeAnza Community College District  
12345 El Monte Road  
Los Altos Hills, CA 94022  
Tel: 650-949-6150  
Fax: 650-949-6160  
Attention: Charles Allen

With a COPY TO:               Office of \_\_\_\_\_  
\_\_\_\_\_  
Street Address  
City, CA zip  
Tel:  
Fax:  
Attention:

**SECTION 27. HEADINGS**

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

**SECTION 28. CONFLICTS OF INTEREST**

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, no Party nor any director, employee or agent of any Party 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 Contract. Likewise, no Party nor any director, employee or agent 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 and any consideration received as a result of such violation shall be paid over or credited to the Party against whom it was charged. Any representative of any Party, authorized by that Party, may audit the records of the other Parties related to this Contract, including the expense records of the Party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this Section.

**SECTION 29. CREDITWORTHINESS**

If, at any time, Customer's credit rating falls below investment grade as defined by Moody's Investors Services (or other nationally-recognized independent rating agency), Customer agrees to provide Chevron ES with current information regarding its creditworthiness upon the request of Chevron ES. At its sole option, Chevron ES may then require Customer to provide security satisfactory to Chevron ES, and the Work may be withheld until such security is received. If Customer deposits the contract amount into a third-party escrow account with an escrow agent and agreement acceptable to Chevron ES, then the terms of this paragraph are not applicable.

**SECTION 30. PROJECT STABILIZATION AGREEMENT**

Within fourteen (14) calendar days after execution of the contract and before commencing any work, Chevron ES, its subcontractors and their sub-sub contractors of any tier must provide to the Customer evidence of acceptance of the terms and conditions of the Project Stabilization / Construction Careers Agreement (PSA) between Foothill-De Anza Community College District and the Santa Clara & San Benito Counties Building and Construction Trades Council, Attachment J.

## ATTACHMENT B DESIGN/BUILD TERMS AND CONDITIONS

### ARTICLE 1. DEFINITIONS

For purposes of the Energy Services Contract, and its Attachments, the defined terms herein shall have the meaning set forth as follows:

1. **Applicable Laws**: "Applicable Laws" shall mean all laws, building codes, rules, regulations, or orders of any federal, state, county, local, or other governmental body, agency, or other authority having jurisdiction over the performance of the Work, as may be in effect at the time the Work is undertaken.
2. **Applicable Permits**: "Applicable Permits" shall mean all permits, waivers, authorizations, or licenses issued or required to be issued by any federal, state, county, local, or other governmental body, agency, or other authority having jurisdiction over the performance of the Work, as may be in effect at the time the Work is undertaken.
3. **Beneficial Use**: "Beneficial Use" shall mean when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are being used for their intended purpose. A Certificate of Beneficial Use, which identifies when Customer took Beneficial Use of the Work, shall be prepared and issued by Chevron ES to the Customer and Subcontractor. Beneficial Use of equipment/systems criteria shall be established as defined in Attachment D, "Scope of Work" attached hereto.
4. **Change**: "Change" shall mean any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, suspension, or other modification that effects a change in the Scope of Work that is specified by the Contract. An unforeseen condition experienced by Chevron ES during the course of the Work is included within the definition of "Change".
5. **Change Order**: "Change Order" shall mean a written document signed by both Chevron ES and the Customer that authorizes Chevron ES to perform a change and/or modification to the Scope of Work. The Change Order shall modify the Scope of Work and shall identify: (1) the change and/or modification to the Scope of Work; (2) any additional compensation to be paid to Chevron ES to perform such change and/or modification; and (3) any extensions of Time to the Project Schedule to perform such change and/or modification.
6. **Claims**: "Claims" shall mean any and all actions, claims, losses, damages, expenses, or liabilities of either party arising from or as a result of these Terms and Conditions, the Contract, any addenda to the Contract, and/or Change Orders.
7. **Construction**: "Construction" shall mean any Work to be performed that involves any and all construction, alteration, repair, installation of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.
8. **Construction Documents**: "Construction Documents" shall mean the final designs, drawings, and specifications that are used for construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to the Contract and its Attachments.
9. **Contract**: "Contract" shall mean the Contract and all Attachments attached thereto which are incorporated therein, as it may be amended or modified from time to time in accordance with the provisions thereof.
10. **Contract Amount**: "Contract Amount" shall mean the amount of compensation, exclusive of the Annual Monitoring Fee, that shall be paid by Customer to Chevron ES for performing the Work in accordance with the Scope of Work, attached hereto as Attachment D.
11. **Contract Term**: The "Contract Term" shall commence on the Contract Effective Date and cease upon Final Completion.
12. **Contract Documents**: "Contract Documents" shall mean the Energy Services Contract, its Attachments, Construction Documents, Change Orders, and any amendments thereto.
13. **Contract Effective Date**: "Contract Effective Date" shall mean the date the Contract is fully executed and is in full force and effect.
14. **Excusable Delay**: "Excusable Delay" shall mean Chevron ES shall be entitled to an extension of Time and/or additional compensation caused by an Excusable Delay that shall be defined as (1) by an act or failure to act of, or other delay caused by, Customer or its agents or employees; (2) by failures of any governmental authorities to make timely inspection of the Work or by unanticipated efforts necessary to secure governmental approvals for the Project; (3) by delays resulting from the securing of permits for the Work; (4) by labor disputes, fire, vandalism, delay in manufacturing and deliveries; (5) by adverse weather conditions not reasonably anticipated; (6) by unforeseen site conditions, including discovery or existence of Hazardous Substances; (7) by unavoidable casualties or other causes beyond Chevron ES' control; (8) by delays caused by processing Change Orders requested by or agreed to by Customer, or resulting from the implementation of any Change Order; or (9) by delay caused by pending arbitration, or (10) any other cause outside Chevron ES' control.
15. **Final Completion**: "Final Completion" shall mean when 100% of the engineering and construction Work as identified in the Scope of Work has been completed, including completion of all required training, and delivery to the Customer of the final close-out documentation (as-built drawings, O&M Manuals, and warranty documentation). A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work. A Certificate of Final Completion will be executed at the Final Completion of the entire Work.
16. **Force Majeure**: "Force Majeure" shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which it has been unable to overcome,

including acts of God and the public enemy; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local Utility; flood, earthquake, tornado, storm, fire; civil disobedience, labor disputes, strikes, labor or material shortages, delay in manufacturing and deliveries of equipment; sabotage; restraint by court order or public authority (whether valid or invalid), and/or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by the fault of the Party asserting the Force Majeure.

17. **Hazardous Substances:** "Hazardous Substances" shall mean any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (i) any "hazardous substance" as defined by the Resource, Conservation and Recovery Act of 1976 (42 United States Code ("U.S.C."), Section 6901 *et seq.*), as amended, and regulations promulgated thereunder; (ii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in U.S.C. Section 9601 *et seq.*, as amended and regulations promulgated thereunder; and (iii) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law.
18. **Installation:** "Installation" shall mean the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.
19. **Interest:** "Interest" shall mean interest calculated at the lesser of the per annum rate of interest announced from time to time by Citibank, at its "prime" rate for commercial loans plus two percent (2%) or the maximum rate permitted by Applicable Laws.
20. **Losses:** "Losses" shall mean claims, actions, damages, losses, liabilities, costs, and/or expenses including reasonable attorney's fees.
21. **Material Changed Condition:** "Material Changed Condition" shall mean one or more of the following conditions that impact the Project Schedule and/or the Contract Amount: (i) parties outside the control of Chevron ES caused delays in Project Schedule; (ii) the discovery of differing and unexpected site conditions not previously disclosed by Customer and could not have been readily discoverable by Chevron ES prior to start of Work; (iii) the discovery of Hazardous Substances not previously disclosed; (iv) adverse weather conditions not reasonably anticipated; (v) delay in equipment and material deliveries outside Chevron ES' control; and (vi) any other condition that could not have been reasonably anticipated by the Parties and is outside Chevron ES' control.
22. **Party or Parties:** "Party" or "Parties" shall mean Chevron ES, Customer, each or both of them, as the context may require pursuant to the terms and conditions of the Contract.
23. **Project:** "Project" shall mean the entirety of Work to be performed by Chevron ES pursuant to the terms and conditions of the Scope of Work, and any Change Orders, as well as all efforts of Customer, and other entities, all as an integrated whole.
24. **Project Location:** "Project Location" shall mean that area or areas where the Project materials and equipment and any other energy related equipment as described in the Scope of Work shall be performed and/or installed.
25. **Scope of Work:** "Scope of Work" shall mean the Work to be performed hereunder by Chevron ES, and/or Chevron ES' subcontractors, pursuant to the Scope of Work (as amended by Change orders), attached hereto as Attachment D, and in accordance with the terms and conditions of the Contract and its Attachments, as amended.
26. **Substantial Completion:** "Substantial Completion" shall mean the stage in the progress of the Work or portion of the Work, where the Work or portion of the Work is sufficiently complete in accordance with the Contract Documents so that Customer can utilize and take beneficial use of the Work for its intended use or purpose. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.
27. **Time:** "Time" shall mean the time period within which Chevron ES shall complete the Work in accordance with the Project Schedule.
28. **Work:** "Work" shall mean the design, procurement, installation and/or construction required for the Project and includes all labor necessary to produce such services, all materials, fabrication, assemblies, and equipment incorporated or to be incorporated in such construction necessary to achieve Final Completion of the Project, including such materials and equipment which may be consumed or use but not actually incorporated in such construction. The Work may include design, supplying, installing, constructing, maintaining, operating, and warranting certain materials and equipment, and providing any other energy-related services specified in the Scope of Work.

## **ARTICLE 2. PROJECT IMPLEMENTATION - GENERAL**

1. **Project Meetings/Status Updates.** During the Design and Construction Phases of the Project, Chevron ES will meet with Customer to review equipment, scope of work, and installation plans that relate to the design and construction of the Project. Also during the course of the Work, Chevron ES will periodically provide reports to the Customer of the general status and progress of the Work.
2. **Project Location Access.** Customer hereby grants to Chevron ES, without cost to Chevron ES, all rights of ingress and egress at the Project Location identified in the Scope of Work, necessary for Chevron ES to perform all Work and provide all services contemplated by the Contract and the Scope of Work. Chevron ES shall provide 24 hour advanced notice to Customer for access to any Customer Facilities.
3. **Project Schedule.** The Project Schedule attached hereto as Attachment E, "Project Schedule", is a preliminary, estimated Project Schedule. During the course of Project implementation, both the Customer and Chevron ES shall perform their respective obligations in an expeditious manner that is consistent with reasonable skill and care for the type of project described in the Scope of Work and in keeping with the orderly progress of the Work pursuant to the terms of the Scope of Work. The estimated Project Schedule will be finalized during the completion of the Construction Documents, provided that such Final Schedule will be subject

to amendment and revision to take into account any Excusable Delays (as defined herein). Subject to any such Excusable Delays, Chevron ES and its subcontractors shall work diligently to implement the Project in accordance with the Project Schedule and Chevron ES shall notify Customer regarding any and all revisions to the Project Schedule necessitated by such delay.

### **ARTICLE 3. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT.**

#### **1. General Provisions.**

- (a) As soon as possible after the Contract Effective Date, Chevron ES will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work identified in Attachment D, including all architectural, structural, electrical and other design professional efforts necessary to support the development and approvals of the Project.
- (b) Upon the issuance of the Notice to Proceed and upon completion of the design phase, Chevron ES shall order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the Project Schedule.
- (c) Customer shall designate a single-point representative with whom Chevron ES shall consult on a reasonable, regular basis and who is authorized to act on Customer's behalf with respect to the Project design. Customer's representative shall render decisions in a timely manner with regard to any documents submitted by Chevron ES and to other requests made by Chevron ES in order to avoid unreasonable delay in the orderly and sequential progress of Chevron ES' design services.
- (d) Within ten (10) business days of Chevron ES' request, Customer shall:
  - 1) furnish all surveys or other information in Customer's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
  - 2) disclose any prior environmental review documentation and all known information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location where the Work will be performed pursuant to the Scope of Work;
  - 3) supply Chevron ES with all relevant information in Customer's possession, including any as-built drawings and photographs, of prior construction undertaken in the general area where the Work will be performed pursuant to the Scope of Work; and
  - 4) obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location site essential to the execution of the Work.
- (e) All information furnished pursuant to this section shall be supplied at Customer's expense, and Chevron ES is entitled to rely upon the accuracy and completeness of all information provided. Chevron ES will notify Customer of any readily apparent omissions or discrepancies. Customer acknowledges that any failure to provide the information specified in subsection (d) above to Chevron ES may result in an Excusable Delay as defined herein. Chevron ES is responsible to survey utilities at all locations of underground work to supplement known utility information and to identify possible unknown utilities in the area of Work. By performing such survey, Chevron ES does not assume any liability in the event that its efforts do not identify all underground utilities or other hidden obstructions.
- (f) In the event that any information is disclosed under this section that constitutes a Change to the Work and/or is a Material Changed Condition, Chevron ES will provide notice to Customer within ten (10) business days after receipt of this information, and the parties will meet and confer with respect to those Changes. If Customer authorizes a Change Order, Chevron ES shall be compensated, and may receive an extension of Time for performance, if necessary, to perform the additional Work in accordance with Terms and Conditions. If the parties are unable to agree on whether Customer's disclosed information constitutes a Change to the Work or a Material Changed Condition, those disputes shall be resolved in accordance with Section 15 of Attachment A of the Contract.
- (g) Chevron ES contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a Pre-Existing Condition by the Customer prior to the execution of the Contract. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the execution of the Contract shall constitute a valid basis for a Change Order pursuant to these Terms and Conditions.
- (h) Customer agrees that for the Work on the Project hereunder, Chevron ES shall be the "designer" as that term is identified in the Energy Policy Act of 2005, and Chevron ES shall have the exclusive right to report to any federal, state, or local agency, authority or other party, including without limitation under Section 179(b) of the Energy Policy Act of 2005, any tax benefit associated with the Work.
- (i) Chevron ES shall engage the services of a California-licensed geotechnical engineer to conduct soils investigations necessary to provide soils information needed for design and sufficient to obtain permit approvals.

#### **2. Review of Construction Documents.**

- (a) Chevron ES shall prepare and submit all designs, drawings, and specifications to the Customer for review. Customer shall review the documents and provide any comments in writing to Chevron ES within ten (10) business days after receipt of documents. Chevron ES will incorporate appropriate Customer comments into the final designs, drawings, and specifications, as applicable. The terms and conditions of any permit approvals required for the Project will be provided to Customer by Chevron ES. Chevron ES reserves the right to issue the designs, drawings, and specifications in phases to allow the construction to be performed in phases. Construction that proceeds before approval of design by Customer shall be done at

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Chevron ES' risk. If Customer fails to provide written comments within the ten (10) business day period, Customer shall be deemed to have accepted and approved the design and documents.

3. **Permits and Approvals.** The respective obligations of the Parties in obtaining permits and approvals are as specified in Section 6 of Attachment A of the Contract. Customer shall agree to any nonmaterial changes to the designs, drawings, and specifications required by any governmental authority having jurisdiction over the Work. The Contract Amount provided for in the Scope of Work shall be increased by any additional cost incurred by Chevron ES due to a change required by a governmental authority and the time required to complete the Work pursuant to the Project Schedule will be increased by the number of additional days required to complete the Work because of a governmentally imposed change in the Project.
4. **Changes During Final Design Phase.** If during the design phase Customer requests changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, as defined in Article 1 above, Customer shall be responsible for payment of the extra costs caused by such modifications and/or changes. Valid bases for additional compensation and/or Time extension include, but are not limited to: (i) Customer requests changes and/or modifications to the Project Scope of Work during the Project Design Phase; (ii) Customer caused delays during Chevron ES' design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain certain permits; (vi) damage to any equipment or other Work installed by Chevron ES caused by the act or omission of Customer, its agents or employees; (vii) changes and/or modifications to Scope of Work ordered by any governmental authority having jurisdiction over the Project; and (viii) any other condition that would not reasonably have been anticipated by Chevron ES that modifies and/or changes the Scope of Work that increases the agreed upon Contract Amount or increases in the Time needed to complete the Work identified in the Scope of Work.

#### **ARTICLE 4. CONSTRUCTION PHASE.**

1. **General Provisions.** Upon securing necessary permits, pursuant to Section 6 of Attachment A of the Contract, and acceptance and approval of Final Construction Documents by Customer, Chevron ES will commence the construction of the Project in accordance with the Final Construction Documents. The construction will be performed by Chevron ES and/or one or more licensed subcontractors qualified to perform the Work. The construction will be performed in accordance with all Applicable Laws and Applicable Permits.
2. **Chevron ES' Responsibilities During Construction Phase.**
  - (a) As an independent contractor to Customer, Chevron ES will be responsible for providing, or causing to be provided by Chevron ES' subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Work and any Change Orders. Chevron ES is hereby required to purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the Project Schedule. Chevron ES will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the final Construction Documents.
  - (b) Chevron ES will make all reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Customer's operations at the Project Location. Chevron ES will provide at least thirty (30) calendar days written notice to Customer of any planned power outages that will be necessary for the construction. Chevron ES will cooperate with Customer in scheduling such outages, and Customer agrees to provide its reasonable approval of any scheduled outage.
  - (c) Chevron ES will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Project. Chevron ES will take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (1) employees of Chevron ES and subcontractors performing Work under this Contract; (2) Chevron ES' property and other materials to be incorporated for the Project, under the care, custody, and control of Chevron ES or its subcontractors; and (3) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. Chevron ES will not be responsible for Customer's employees' safety unless Chevron ES' negligence in the performance of its Work is the proximate cause of the employee's injury.
  - (d) Based on the final Construction Documents, Chevron ES will obtain required building permits for Project Construction. Customer will cooperate with Chevron ES in securing such permits. Customer shall be responsible for procuring all other necessary permits, if any.
  - (e) Chevron ES will maintain in good order at the Project Location copies of the Scope of Work, all Change Orders, the Contract (with all Attachments), one record copy of all drawings, specifications, product data, samples, manufacturer's operation & maintenance manuals, and other pertinent construction-related documents.
  - (f) **Systems Startup and Equipment Commissioning.** Chevron ES shall provide notice to Customer of any scheduled test(s) of installed equipment, and Customer and/or its designees shall have the right to be present at any or all such tests conducted by Chevron ES, any subcontractor, and/or manufacturers of the equipment. Chevron ES shall be responsible for correcting and/or adjusting all deficiencies in systems and equipment operations that Chevron ES provided and installed that may be observed during equipment commissioning procedures.
  - (g) The following duties shall be performed by Chevron ES:
    - Organize and conduct a pre-construction meeting with the Customer and each subcontractor.
    - Organize and conduct regularly scheduled progress meetings throughout the installation period.
    - Schedule and manage all subcontractors and related work.

- Provide the Customer a single point of contact and responsibility of all work related to the project.
- Investigate and resolve design, construction, and field issues as they arise during the project
- Coordinate on-site work, and schedule accordingly with Customer.
- Perform progress inspections throughout the installation period. Provide the Customer and Subcontractor with results of findings.
- Identify any existing Customer equipment that is found during implementation of the work not to be functioning properly, and notify in writing to Customer.
- Provide regular status reports to the Customer.
- When appropriate, initiate a thorough inspection of the work with the Customer and Subcontractor to obtain substantial completion.
- Check, test, and start-up each item of equipment.
- Perform a point-by-point hardware commissioning of the Chevron ES installed energy management system. Identify any EMS items that are not functioning properly, and include on the punch list.
- Identify any existing Customer equipment that is found during EMS commissioning not to be functioning properly, and notify in writing to Customer.
- Perform a complete software/programming commissioning of the energy management system. Identify any EMS items that are not programmed per specification, and include on the punch list.
- With the Customer and Subcontractor, perform final inspection of the Work.
- Review subcontractor invoices and authorize payment as appropriate.
- Obtain/prepare final as-built documentation for the project, and deliver to the Customer. Documentation shall include O&M manuals as appropriate, warranty information, and as-built drawings and related information.
- Obtain a certificate of final completion, signed by the Customer, Subcontractor, and Chevron ES.

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

- (a) Customer shall designate a single-point representative authorized to act on Customer's behalf with respect to Project construction and/or equipment installation. Customer may from time to time change the designated representative and shall provide notice to Chevron ES of such change. Any independent review of the construction shall be undertaken at Customer's sole expense, and it shall be performed in a timely manner so as to not unreasonably delay the orderly progress of Chevron ES' Work. Any independent review of the construction by Customer shall not relieve Chevron ES of any of its obligations or responsibilities hereunder.
- (b) Customer shall provide a temporary staging area for Chevron ES, or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed.
- (c) Customer shall remain responsible for the maintenance of the portion of the Project Location that is not directly affected by Chevron ES' Work. Customer shall keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Customer.
- (d) Customer shall be solely responsible for obtaining any required environmental clearance from and any special permits required by any federal, state, and local jurisdictions prior to scheduled construction start date.
- (e) Customer shall be responsible for the preparation of the designated Project Location site for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, and appurtenances.
- (f) Customer shall be solely responsible for the removal of any Hazardous Substances either known to Customer prior to the commencement of the Work or encountered by Chevron ES during the construction of the Project, if necessary in order for the Work to progress safely, that was not knowingly released or brought to the site by Chevron ES. Chevron ES will respond to the discovery of Hazardous Substances at or around the Project Location during the course of Chevron ES' construction in accordance with Section 6, "Hazardous Substances", below.
- (g) Customer shall coordinate the Work to be performed by Chevron ES with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that Chevron ES will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) Customer shall allow Chevron ES and its Subcontractors access to and reasonable use of necessary quantities of Customer's water and other utilities, including electrical power, as needed for the construction of the Work, at no extra cost to Chevron ES.
- (i) Customer will provide Chevron ES and/or its Subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to Chevron ES, access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours, unless otherwise provided for in the Scope of Work.
- (j) The Customer shall also do the following:
  - Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of work.
  - When appropriate, participate in the job inspection walk-through with Chevron ES and the subcontractor to determine Substantial Completion or beneficial use of major equipment. Sign the Certificate of Substantial Completion, as appropriate.
  - Perform a final walk-through of the project. Upon receipt of the O&M Manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.



**Energy Services Contract**  
**Foothill-DeAnza Community College District and Chevron Energy Solutions Company**

- The Customer is encouraged to provide a staff member(s) (HVAC technician, etc.) to accompany Chevron ES during the EMS Commissioning. This is an excellent opportunity to learn in-depth the operation and installation of the EMS.
- Provide knowledgeable staff to participate in the training programs, which will be scheduled in advance for proper coordination.
- Upon the completion of the entire Scope of Work, including training, and close-out documents, sign a Certificate of Final Completion for Entire Implementation Project.

**4. Changes During Construction.**

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work shall be authorized by a written Change Order signed by both Customer and Chevron ES. The Change Order shall state the change and/or modification to the Scope of Work, any additional compensation to be paid, or extension of Time, if needed, to Chevron ES to perform such change and/or modification. Chevron ES may, at its election, suspend performance of that portion of the Work affected by any proposed Change Order until an agreement has been reached with the Customer regarding the Change Order. Chevron ES will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change Order until such time as the Change Order is resolved. In addition, if Customer requests a proposal from Chevron ES for a change to the Scope of Work and Customer subsequently elects to not proceed with such change, Customer agrees that a Change Order shall be issued to reimburse Chevron ES for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by the Customer.
- (b) Change Orders Requiring Additional Compensation. If during construction Customer requests changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, as defined in Article 1 above, the parties agree that additional compensation may be necessary to perform such modifications and/or changes. Customer shall be responsible for payment of the extra costs caused by such modifications and/or changes and Chevron ES shall be entitled to additional compensation of the reasonable costs caused actually incurred for the following reasons, that include, but are not limited to: (1) Customer requests changes and/or modifications to the Project Scope of Work during the construction phase of the Project; (2) Customer caused delays during Chevron ES' construction work; (3) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (4) discovery of Hazardous Substances at or impacting the Project Location; (5) changes and/or modifications to the Scope of Work that require Chevron to obtain required permits and approvals as required by any governmental authority having jurisdiction over the project; (6) damage to any equipment or other Work installed by Chevron ES caused by the act or omission of Customer, its agents or employees; (7) changes and/or modifications to Scope of Work ordered by any governmental authority having jurisdiction over the Project; and (8) any other condition that would not reasonably have been anticipated by Chevron ES that modifies and/or changes the Scope of Work agreed upon in the Scope of Work that increases the agreed upon Contract Amount identified in the Scope of Work.
- (c) Change Orders Requiring Additional Time / Excusable Delays. If during construction Customer requests changes and/or modifications to the Work identified in the Scope of Work, there are Excusable Delays, and/or there are Material Changed Conditions, as defined in Article 1 above, the parties agree that a reasonable extension of Time to the Project Schedule may be necessary to perform such modifications and/or changes. In addition, if Chevron ES is delayed at any time in the progress of the Work for any reason beyond its control, including, but not limited to, any of the following (each defined as an "Excusable Delay"): (1) by an act or failure to act of, or other delay caused by, Customer or its agents or employees; (2) by failures of any governmental authorities to make timely inspection of the Work or by unanticipated efforts necessary to secure governmental approvals for the Project; (3) by delays resulting from the securing of permits for the Work; (4) delays caused by changes and/or modifications to the Scope of Work as required by any governmental authority having jurisdiction over the project; (5) by labor disputes, fire, vandalism, delay in manufacturing and deliveries; (6) by adverse weather conditions not reasonably anticipated; (7) by unforeseen site conditions, including discovery or existence of Hazardous Substances; (8) by unavoidable casualties or other causes beyond Chevron ES' control; (9) by delays caused by processing Change Orders requested by or agreed to by Customer, or resulting from the implementation of any Change Order; or (10) by delay caused by pending arbitration, then the targeted milestone dates set forth in the Project Schedule shall be reasonably extended by a Change Order, executed by both Customer and Chevron ES. Prior to the extension of such milestone dates, Chevron ES will use reasonable efforts to make up such delays, including authorizing overtime payments (provided that Customer has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith). Chevron ES shall also be entitled to additional compensation for reasonable costs actually incurred for the following Excusable Delays: (i) by an act or failure to act of, or other delay caused by Customer or its agents or employees; (ii) delays caused by changes and/or modifications to the Scope of Work - as required by any governmental authority having jurisdiction over the project for those changed conditions; (iii) by unforeseen site conditions, including discovery or existence of Hazardous Substances; (iv) by unavoidable casualties or other causes beyond Chevron ES' control; (v) by delays caused by processing Change Orders requested by or agreed to by Customer, or resulting from the implementation of any Change Order; and (vi) by delay caused by pending arbitration.
- (d) Material Changed Conditions/ Conditions Beyond Chevron ES' Control. Chevron ES will provide written notice to Customer of any Material Changed Condition and or any Force Majeure event, as such terms are defined in Article 1 above, within ten (10) business days of Chevron ES' first discovery of such Material Changed Condition. In the event that Chevron ES' notice concerns unanticipated subsurface conditions, including soil conditions, or Hazardous Substances, Chevron ES will not disturb the condition until said notice has been given to Customer, and Customer has had a reasonable opportunity to investigate the condition. If there is a disagreement between Customer and Chevron ES as to whether a Change Order should be issued and executed because of the Material Changed Condition and/or condition beyond Chevron ES' control, those disputes shall be resolved in accordance with the provisions of Section 16, "Dispute Resolution", of Attachment A of the Contract. Pending the resolution of any dispute between Chevron ES and Customer concerning a Material Changed Condition and/or change beyond Chevron ES' control, Chevron ES reserves the right to suspend only that portion of the Work

subject to the dispute pending the resolution of such dispute.

5. **Minor Changes to Scope of Work.** Chevron ES shall have authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the final Construction Documents, as amended by Change Order, without prior notice to Customer. Chevron ES will promptly inform Customer, in writing, of any minor changes made during the implementation of the Project.
6. **Hazardous Substances.** Chevron ES will promptly provide written notice to Customer if Chevron ES observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. Chevron ES shall have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of any work unless otherwise specified in the Scope of Work. Customer shall be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Customer shall be responsible for complying with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection shall execute all generator manifests with respect thereto. Chevron ES shall comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Customer shall provide Chevron ES, within ten (10) business days of the execution of this Contract, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Work area, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, no conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are no unsafe working conditions at the Facilities.

Customer shall indemnify, defend, and hold Chevron ES harmless from and against any and all claims and costs of whatever nature, including but not limited to, consultants' and attorneys' fees, damages for bodily injury and property damage, fines, penalties, cleanup costs, costs associated with delay or work stoppage, and third party claims (hereinafter "Liability"), that in any way result from or arise under from such Customer owned or generated hazardous materials and substances, except for liabilities due to Chevron ES', or its subcontractors, agents representatives, and employees', negligent or willful misconduct in handling, disturbance, or release of Hazardous Materials or Substances. This indemnification shall survive any termination of this Contract.

7. **Pre-Existing Conditions.** Certain pre-existing conditions may be present within the Customer's facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of Chevron ES' Work, (iii) may cause Chevron ES' completed Work to be non-compliant with applicable codes, (iv) may prevent the Customer from realizing the full benefits of Chevron ES' Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of Chevron ES' Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, Chevron ES shall not be responsible for repairing such pre-existing conditions unless such is expressly provided for in the Scope of Work or an approved change thereto. Chevron ES, in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a change order with the Customer for additional compensation and, if appropriate, an extension of time. Examples of pre-existing conditions include, but are not limited to, the following:
  - With respect to lighting equipment maintenance and/or lamp and ballast retrofit work, the Customer shall be responsible for properly grounding lighting fixtures before Chevron ES commences work in compliance with applicable codes.
  - With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, the Customer shall be responsible for providing an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest National Electrical Code ("NEC"). Chevron ES' Scope of Work shall include properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
  - Where Chevron ES' Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor shall be included in the lighting circuits. The Customer is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the facility grounding electrode system in compliance with the latest NEC.
  - With respect to Chevron ES projects with new equipment connecting to the facility's existing electrical distribution system, Chevron ES shall not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. The Customer is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and Guidelines.
  - Chevron ES is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew.
  - Chevron ES shall not be responsible for existing damaged pipes, valves, and related parts and components due to a lack of water treatment.
  - Existing pneumatic control systems that remain in place shall be properly maintained (use of air dryer, clean filter, etc.) by the Customer such that oil or moisture does not reach the control and operating devices.

- Unless specifically included in the Scope of Work, existing valves, dampers, linkages, and piping specialties to which new controls/building automation system are being connected are to be in proper functioning condition. If existing device is found to be improperly functioning, Customer may repair or compensate Chevron ES for repair / replacement of the device.

**ARTICLE 5. PROJECT COMPLETION.**

1. **Substantial Completion / Reduction of Retention:** At the time the Work is Substantially Complete in conformance with the Scope of Work and Construction Documents, Chevron ES will supply to Customer a written Certificate of Substantial Completion. Customer shall within ten (10) business days of receipt of the Certificate of Substantial Completion, review the Work for the sole purpose of determining that it is substantially complete and in substantial conformance with the Scope of Work, final Construction Documents and any Change Orders, and sign and return the Certificate of Substantial Completion to Chevron ES acknowledging and agreeing: (1) that the Work is substantially complete in accordance with the Contract Documents so Customer can occupy or utilize the Work for its intended use; (2) the date of such Substantial Completion; (3) that from the date of Substantial Completion Customer will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of the Work. Customer agrees that approval of the Certificate of Substantial Completion shall not be unreasonably withheld. Title to any and all of the materials and equipment installed shall pass from Chevron ES to Customer upon the date of Substantial Completion. At such time, the retention withheld by Customer shall be reduced to five (5%) percent, less 125% of any stop notices filed against the Customer.
2. **Final Completion:** When Chevron ES considers the Work to be fully complete in accordance with the Scope of Work, Chevron ES will notify the Customer that the Work is fully complete and ready for final inspection. The Customer shall inspect the Work to verify the status of Final Completion within ten (10) business days after its receipt of Chevron ES' certification that the Work is Complete. If Customer does not verify the Final Completion of the Work with this period, the Work shall be deemed fully completed. If Customer determines that any Work is incomplete and/or defective, the Customer shall promptly notify Chevron ES in writing of such incomplete and/or defective work, itemizing and describing such remaining items with reasonable particularity. Chevron ES will, within thirty (30) days, or such longer period as the Parties may agree to, complete any incomplete items or remedy defective items after which Chevron ES shall provide written notice to the Customer that the Work is fully complete. Customer shall re-inspect all work completed or remedied by Chevron ES within ten (10) business days of Chevron ES' notice of completion from Chevron ES that the Work is complete. If the Customer does not re-inspect the Work within the ten (10) business day period, the Work shall be deemed fully complete. When the Customer agrees that the Work is fully completed in accordance with the Scope of Work and Contract Documents, Customer shall give Chevron ES written notice of acceptance of the Work and Final Completion and will issue a Final Completion Certificate to Chevron ES. At that time, Customer shall pay Chevron ES any remaining Contract Amount due and any outstanding Retainage being withheld by the Customer.

**ATTACHMENT C**  
**CUSTOMER'S FACILITIES**

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

Facility	Location	Square Feet
Foothill College	12345 El Monte Rd., Los Altos Hills, CA 94022	N/A

## **ATTACHMENT D SCOPE OF WORK**

### **Background**

Chevron Energy Solutions (Chevron ES) proposes to install a photovoltaic system on parking lot canopies at Foothill College, approximately in the locations shown on the attached PV Layout Plan.

Chevron ES has performed a site analysis visit and proposes to install carport style 'T' structures from a Pre-Engineered standard structure list. The structure will be painted.

Roof mount systems were looked at and determined not optimum, and the time lag with permit approval process was determined not favorable.

Additional analysis revealed that roof-mount systems will not deliver the following additional benefits:

- Shaded parking lots.
- Parking lighting will improve significantly with minimum light pollution.
- Provide higher visibility and educational interaction to the PV system.

### **System Type**

The power system is to utilize solar photovoltaic power panels installed at the most optimal angles and alignments to produce the most power on a cost effective basis. Carport structures final design layout will be approved by the College before proceeding with construction.

System size at Foothill College is as follows:

- Parking Lot Arrays: 1062 KWdc    1,406,388 kWh/yr

### **Scope of Work - General**

Chevron ES shall provide all labor, materials and equipment necessary to provide one turnkey 1062 kWdc solar photovoltaic (PV) system mounted on canopy support structures. The system will be located in and near the Foothill College Lot 2-3 Parking Lots. The solar canopy support structures will allow parking below and vehicular circulation between structures, and will include lighting. Existing improvements below canopies will be repaired or altered as required by the Work.

#### **Technical Data:**

- Inverter locations will be centrally located in the parking lot and will connect electrically to the main service at either 480v or 12/21kv.
- Solar panel type shall be Solarworld 230 or equivalent (see attached data sheet).
- Inverter shall be Satcon (see attached data sheet).
- Solar canopy 'T' structure shall allow parking below and traffic circulation between canopies. (see attached data sheet).
- Includes kiosk display at Customer designated location showcasing the solar PV technology, real time tracking of production, savings and environmental benefits.

In accordance with Attachments A and B, Chevron ES will provide:

- Layout and design services for the proposed solar PV system.

- Acquisition of any permits necessary from the governing agency for the construction of the proposed solar PV system.
- Obtaining approval from the local utility for any electrical interconnection.
- Installation and construction of a complete, functioning solar PV system and its supporting structures.
- Metering and meter reading services.

Maintenance and operations of the solar PV system, if requested by Customer, will be provided at additional cost to be determined by the Parties.

### **Project Schedule**

Chevron ES shall incorporate in the Project Schedule reasonable allowances for:

- Securing permits and approvals, and required inspections
- Campus operations that cannot be suspended (such as final examinations, graduation)
- Delivery of materials and equipment
- Weather delays for conditions normal during the construction period

### **Times of Work**

Construction shall be limited to the hours between 7:30 AM and 6:00 PM Monday through Saturday.

### **DSA Approvals & Permits**

Chevron ES, its designers, contractors and inspectors shall provide documentation required for all approvals by the Division of the State Architect (DSA), and shall complete the closeout process within 90 days of Final Completion.

The Customer shall secure the services of a DSA-approved Inspector of Record who will represent DSA as the authority having jurisdiction. Chevron ES shall notify the IOR of required inspections and shall provide reasonable access and accommodations for inspections.

In addition to required building permits, Chevron ES shall secure other permits directly related to Project Construction, such as permits required for air quality control, storm water control, and OSHA compliance.

### **Environmental Requirements**

Chevron ES shall review the mitigations required by the Foothill College Environmental Impact Report and conform to requirements applicable to the Work. The site is adjacent to Adobe Creek and Chevron ES and its subcontractors shall adhere strictly to environmental requirements related to the site location.

**Beneficial Use:** Shall occur when PG&E issues the Permission-To-Operate letter

## **Paving Scope of Work**

The 1.06 MW solar PV system is to be constructed on parking lot 2/3. This optimum layout of the arrays requires that the parking stalls be relocated. This relocation can be accomplished by blacking out the stripes, applying a seal coat to the existing layout and then restriping the parking stalls to accomplish this realignment. To make up for the lost stalls in parking lot 2/3, parking lot 6 will be realigned as well.

### **Scope of Work - General**

Chevron ES shall provide all labor, materials and equipment necessary to re-align the parking stalls in **Lot 2/3**.

Project shall include:

- Black-out existing stripes prior to sealcoat.
- Sealcoat 351,000 sq.ft. parking lot 2/3 with two applications of Reed and Graham Overkote Modified Sealer or equal.
- Re-stripe parking lot 2/3 to new layout with one application of traffic paint.
- Relocate three Emergency Phones including electrical and communication.
- Relocate three Ticket Machines including electrical and communication.
- Sawcut demo and remove (12,000 sq.ft.) existing asphalt and base in preparation for bio-swales.
- Install 6,000 linear feet of new curbs for Bio-swale in eleven locations.
- Install ¾" drain rock to Bio-swale 8" thick.
- Remove and replace curb at Krauss Center border.
- Install 540 linear feet of 18-inch curb at edge of parking lot.
- Install 200 sq. ft. sidewalk at edge of parking lot.
- Pave one new driveway with 3-inches of new asphalt over 7-inches new Class II base.
- Remove and Replace two existing driveways.
- Sawcut demolish and remove 275 linear feet of existing curb, 125 Sq. Ft. of existing sidewalk, 23 light pole bases, 9,200 Sq. ft. of asphalt in various locations.
- Pedestrian Circulation Improvements as approved by Customer (the allowance for this item is \$75,000)

Additional work, if requested by Customer, will be provided at additional cost to be determined by the Parties.

Chevron ES shall provide all labor, materials and equipment necessary to re-align the parking stalls in **Lot 6**.

Project shall include:

- Black-out existing stripes prior to sealcoat.
- Sealcoat 184,000 sq.ft. parking lot 6 with two applications of Reed and Graham Overkote Modified Sealer or equal.
- Re-stripe parking lot 6 with one application of traffic paint.

Additional work, if requested by Customer, will be provided at additional cost to be determined by the Parties.

## **Project Schedule**

Chevron ES shall incorporate in the Project Schedule reasonable allowances for:

- Securing permits and approvals, and required inspections
- Campus operations that cannot be suspended (such as final examinations, graduation)
- Delivery of materials and equipment
- Weather delays for conditions normal during the construction period

## **Times of Work**

Construction shall be limited to the hours between 7:30 AM and 6:00 PM Monday through Saturday.

## **DSA Approvals & Permits**

Project shall provide documentation required for all approvals by the Division of the State Architect (DSA), and shall complete the closeout process within 90 days of Final Completion.

The Customer shall secure the services of a DSA-approved Inspector of Record who will represent DSA as the authority having jurisdiction. Chevron ES shall notify the IOR of required inspections and shall provide reasonable access and accommodations for inspections.

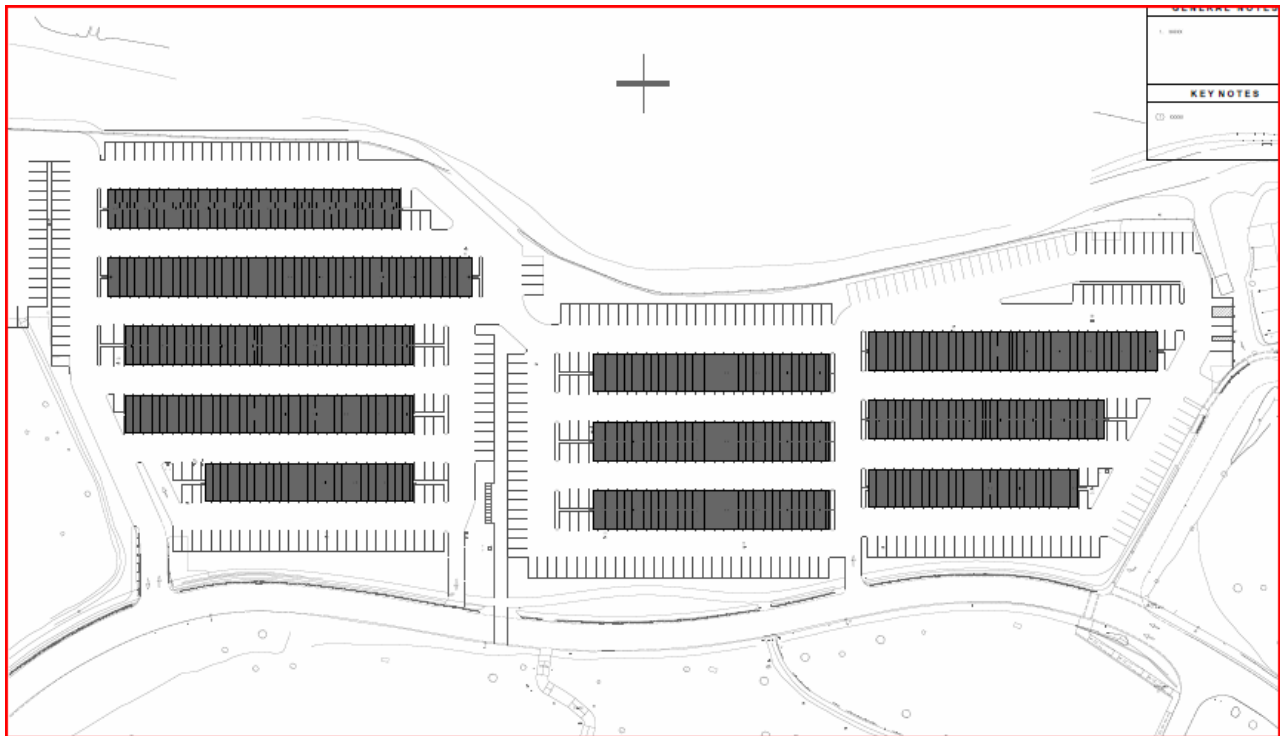
## **Environmental Requirements**

Chevron ES shall review the mitigations required by the Foothill College Environmental Impact Report and conform to requirements applicable to the Work. The site is adjacent to Adobe Creek and Chevron ES and its subcontractors shall adhere strictly to environmental requirements related to the site location.

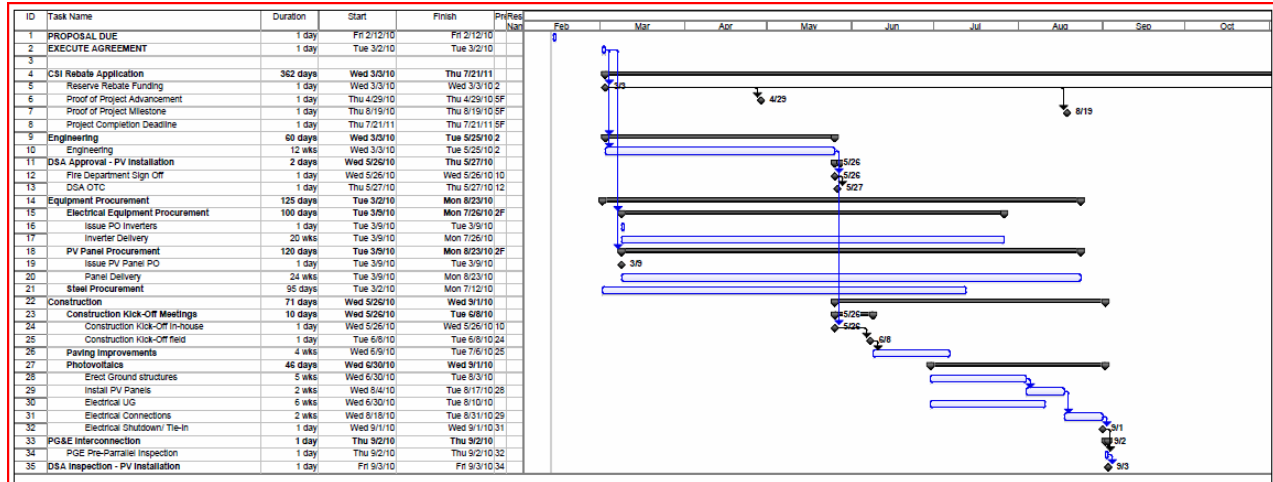
END OF ATTACHMENT D



Foothill College, Lots 2-3  
PV Layout



## ATTACHMENT E PROJECT SCHEDULE



**ATTACHMENT F  
PROGRESS PAYMENT SCHEDULE**

Investment Grade Solar Analysis Fee	\$0
Mobilization Fee	\$1,050,000
Remaining Implementation Cost	\$5,906,648
Contract Amount	\$6,956,648

The fee for the Investment Grade Solar Analysis Report plus a mobilization fee will be invoiced to the Customer upon both parties signing the Energy Services Contract and due and payable as detailed in Contract Attachment A.

**Estimated Payment Schedule**

<u>Month</u>	<u>Invoice Amount</u>
Mar	\$1,050,000
Apr	\$690,000
May	\$690,000
Jun	\$690,000
Jul	\$1,050,000
Aug	\$1,050,000
Sep	\$1,046,648
Oct	\$690,000

**Billing Notes:**

1. Billing will be per terms and conditions specified in the master agreement; generally monthly based on a percentage of the work completed.
2. Upon execution of the master contract, Chevron ES will bill the District for the following items:
  - a. 100% of the scheduled value of item (3.a.) "ENGINEERING" completed
  - b. 100% of the scheduled value of item (3.a.) "MAJOR EQUIPMENT" procurement
  - c. 100% of the scheduled value of item (3.a.) "PV INSTALLATION" for mobilization
3. For billing purposes, task percent-of-complete will be established as follows:

For "ENGINEERING"

  - a. % complete equals = % of total task duration per project schedule

For MAJOR EQUIPMENT procurement:

  - a. 20% at material order
  - b. 100% upon delivery of material to site or bonded warehouse

For PV INSTALLATION:

  - a. 20% upon Subcontractor mobilization
  - b. 21% - 95% based on % of work completed
  - c. 100% (less retainage) at Substantial Completion
4. Payment of Total Contract amount and release of final payments and retention amounts shall be as specified in the master agreement.

**ATTACHMENT G**  
**STANDARDS OF OCCUPANCY & CONTROL**

**N/A**

**ATTACHMENT H**  
**ADDITIONAL ON-GOING SCOPE OF WORK**

**N/A**

**ATTACHMENT I**  
**INCENTIVE FUNDS**

PG&E CSI Incentive Projection (Step 6)

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
\$272,027	\$270,667	\$269,313	\$267,967	\$266,627