



AGENDA REPORT

**PLANNING AND BUILDING
SERVICES DEPARTMENT**

SUPPLEMENT

DATE: July 29, 2014

TO: Mayor McLaughlin and Members of the City Council

FROM: Richard Mitchell, Planning and Building Services Director
Lina Velasco, Senior Planner

SUBJECT: CHEVRON REFINERY MODERNIZATION PROJECT

DOCUMENTS ATTACHED:

- Attachment 1 – Modified Conditions of Approval to Resolution 2, addressing particulate matter emissions and pipeline safety
- Attachment 2 – A replacement of Exhibit B to Resolution 2 (i.e. Exhibit B to Attachment 2 of the June 22, 2014 Agenda Report), consisting of a modified Environmental and Community Investment Agreement
- Attachment 3 - Responses to comments received since the last Staff Report on this matter

Attachment 1

Modified Conditions of Approval (7/29/14)

Pipe Replacement (to replace PC Condition G4a):

"G4ax: During the next turnaround for the crude unit, and no later than the end of 2017, Chevron shall upgrade with inherently safer technology any carbon steel piping circuits in the crude unit identified by the Reliability Analysis as potentially having increased sulfidation corrosion rates under Project conditions."

Verification- All Project-impacted units & circuits (to accompany replacement of PC Condition G4a):

"G4ay: Within six months prior to commencing Project operations, Chevron shall review the corrosion data and flag dates of fixed equipment and piping in process units susceptible to high-temperature sulfidation identified in the Reliability Analysis (taking into account the most current actual conditions combined with post-Project projected corrosion rates predicted based on McConomy curves) and ensure that enhanced monitoring and inspection measures, including those identified in the Reliability Analysis and Reliability Program, are implemented after commencement of Project operations to periodically verify actual post-Project corrosion rates and adjust any flag dates or replacement plans as warranted. Pursuant to the Richmond Industrial Safety Ordinance, Chevron shall make all information relating to its verification, monitoring, and inspection activities available to the City and County and their respective third-party experts upon request."

PM monitoring (to replace PC Condition D4a):

On or before December 31, 2015, Chevron shall install a test platform and sampling port, consistent with BAAQMD's "Guidance for Construction of Particulate Sampling and Test Facilities," on the FCC to allow for supplemental testing of PM10 and PM 2.5 pursuant to USEPA Test Method 201a/202. Chevron shall thereafter use this new test platform and sampling port to conduct further sampling of PM following installation, and shall report sampling results as part of the Mitigation Monitoring and Reporting Program (MMRP). Chevron shall continue to comply with BAAQMD permit requirements for the FCC unit, including without limitation any new particulate matter monitoring requirements using this new test platform and sampling port, and any future emission limits that may be established for condensable PM.

Attachment 2

Exhibit B

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

Between

CITY OF RICHMOND, CALIFORNIA

And

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

CHEVRON MODERNIZATION PROJECT ENVIRONMENTAL AND COMMUNITY INVESTMENT AGREEMENT

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

A. On May 23, 2011, Chevron submitted an application to the City for a Conditional Use Permit ("CUP") for the Chevron Refinery Modernization Project ("Project" or "Modernization Project"). In February 2014, Chevron submitted an application to the City for a Design Review Permit for the Modernization Project. The terms "Project" and "Modernization Project" shall include either the Project, as proposed by Chevron, or an alternative described in the Final EIR that may be approved by the City Council.

B. The Modernization Project, as proposed by Chevron, consists of the modification, replacement, and installation of various equipment and structures at the Chevron Richmond Refinery ("Refinery"), including the Hydrogen Plant Replacement, Sulfur Removal Improvements, and emission-reducing Project Design Features ("PDFs"), all as described in Volume 1, Chapter 3 of the March 2014 Draft Environmental Impact Report for the Chevron Refinery Modernization Project ("Draft EIR") as amended by the June 2014 Final Environmental Impact Report (State Clearinghouse No. 2011062042) (together, the "Final EIR"), which is a project EIR pursuant to the California Environmental Quality Act ("CEQA"), specifically Public Resources Code section 21165-21177 and CEQA Guidelines sections 15161.

C. The Modernization Project Final EIR finds that all potential environmental impacts from the Modernization Project are not significant or will be mitigated to a less-than-significant level through the adoption of the mitigation measures identified in the Final EIR.

D. The emission-reducing PDFs included in the Final EIR for greenhouse gas (GHG) and Toxic Air Contaminant (TAC) emissions are necessary to achieve the Modernization Project objective of no net increase. With approval of the Reduced Sulfur Processing/No Physical Increase in Refinery GHG Emissions Alternative ("Alternative 11"), implementation of these emission-reducing PDFs and others would go beyond what CEQA requires. The PDFs, which will be in place prior to the operations of the Modernization Project, include:

- Replacement of three Suezmax vessels from West Coast service with two new Suezmax ships outfitted with low-emission engine technologies to reduce nitrogen oxide and diesel particulate matter emissions;
- Installation of new, cleaner Tier 4 main engines and Tier 3 auxiliary engines on one (1) tugboat that services the Chevron Long Wharf to reduce nitrogen oxide and diesel particulate emissions;

- Installation of three (3) domes on Refinery storage tanks to decrease emissions of volatile organic compounds;
- A commitment to acquire power from Marin Clean Energy for the Refinery's commercial accounts to reduce GHG emissions;
- Installation of new energy-saving LED lights to reduce GHG emissions; and
- An upgrade of the motor in the Fluid Catalytic Cracker ("FCC") cooling water tower to reduce GHG emissions.

E. The Final EIR requires Chevron to implement certain measures designed to protect and enhance public health and safety, and Chevron has committed to the implementation of these measures, including:

- Funding a five (5) year air deposition background study at up to 20 locations throughout Richmond, which may be done in conjunction with local high school science departments;
- Providing further training for the Richmond Fire Department for new equipment and operational practices;
- Working with the City, Contra Costa Sheriff's Department and other agencies to identify any beneficial improvements to the existing Community Warning System (for example, translation services, cell phone integration, notifying public congregation areas), including, as needed, contributing to and helping to identify funding for any such improvements;
- Working with local stakeholders to ensure all local area schools have emergency response procedures and plans that are adequate to minimize the risk to students in the event of a refinery incident, and ensuring that all schools have operational NOAA weather radios, and provide training on how to use them;
- Planning and conducting with appropriate regional agencies emergency response drills, and establish communication networks/protocols extending to neighboring communities and agencies.

F. Chevron anticipates that the cost of the environmental and community investments described in Recitals D and E will be up to \$40 million to directly improve air quality and enhance the public health, safety, and welfare of the residents of Richmond and incorporated and unincorporated areas of North Richmond (collectively, "Richmond").

G. In addition to implementing the mitigation measures required for the Modernization Project in the Final EIR and such additional conditions of approval as may be required, the City desires that Chevron make significant, additional investments in the Richmond community and Chevron desires to make such investments. Chevron desires to work cooperatively with the City to fund additional programs and projects that serve Richmond,

including programs, plans and policies that serve children and youth, help to reduce violence and crime in Richmond, create educational, employment, and training opportunities for Richmond and North Richmond residents, support wellbeing of residents, encourage new and innovative projects or programs that will address climate change and otherwise improve the quality of the environment and assist Richmond residents in having a safe and healthy place to live and raise families.

H. On May 28, 2014, the City convened a public community workshop to receive recommendations from the public for programs serving Richmond to be funded by Chevron in connection with the proposed Modernization Project.

I. On June 12, 2014, the City convened a second public community workshop to review and receive further public input on a draft set of proposed programs (developed based on the input received at the May 28, 2014 workshop) to be funded by Chevron in connection with the proposed Modernization Project.

J. The priorities identified as a result of the two public workshops and City review process were further evaluated, and identified as creating benefits for the Richmond communities closest to the Chevron Richmond Refinery.

K. On July 9 and 10, 2014, the Planning Commission held a duly noticed public hearing to consider the requested Conditional Use Permit and Design Review Permit for the Project, to consider whether the EIR for the Project was completed in compliance with CEQA, Public Resources Code section 21000 *et seq.*, and the City of Richmond's Guidelines and Procedures for Implementation of CEQA, Resolution No. 125-03 (adopted September 23, 2003), and to consider whether to recommend that the City enter into an agreement between the City and Chevron providing for Chevron funding to the City to support a variety of programs, including those identified during the May 28 and June 12 public workshops.

L. On July 10, 2014, by way of Resolution 14-11, the Commission certified that the EIR was completed in compliance with CEQA, adopted findings pursuant to Public Resources Code section 21081 for the Chevron Refinery Modernization Project ("CEQA Findings"), and adopted the Mitigation Monitoring and Reporting Program for the Chevron Refinery Modernization Project ("MMRP") and the mitigation measures identified therein, and made such mitigation measures conditions of approval. The CEQA Findings selected the Reduced Sulfur Processing/No Increase in Refinery Greenhouse Gas Emissions Alternative ("Alternative 11") as the "environmentally superior" alternative. The certification of the EIR was subsequently appealed to the City Council by Chevron.

M. On July 10, 2014, by way of Resolution 14-12, the Planning Commission approved Conditional Use Permit and Design Review Permit Number PLN11-089 for Alternative 11, subject to the condition that Permit Number PLN11-089 shall not become effective unless and until the City Council first approves and executes, or affirmatively and explicitly does not require, a Chevron Modernization Project Community Health and Wellness Agreement. By way of the same Resolution 14-12, the Planning Commission recommended to the City Council that the City enter into a fully-enforceable Chevron Modernization Project Community Health and Wellness Agreement with Chevron (renamed the Environmental and

Community Investment Agreement), which includes programs to receive direct funding as well as programs to be eligible for grant funding from the City, as further described in Exhibit B to Resolution 14-12. The approval of the Conditional Use Permit was subsequently appealed to the City Council by Chevron.

N. On July 29, by way of Resolution ____, the City Council has or will have taken action on Conditional Use Permit and Design Review Permit Number PLN11-089, subject to the condition that the City enter into this Agreement prior to commencing construction of the Project.

O. In negotiating and entering into this Agreement, the City Council has taken into consideration the priorities identified in the two public workshops as well as the recommendations of the Planning Commission, and has identified programs consistent with the categories of programs and initiatives identified in Exhibit B to Resolution 14-12. This Agreement is a voluntary investment by Chevron to assist the Richmond community, and is not a mitigation measure which is required to reduce any environmental impact nor is it a condition of approval for the conditional use permit or Project.

AGREEMENT

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

1. EFFECTIVE DATE

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

2. CHEVRON FUNDING AMOUNTS AND TIMING

In accordance with the terms of this Agreement, City shall use funding from Chevron totaling \$80,000,000 and support provided by Chevron to provide benefits, including associated City administrative costs, in the categories set forth in Section 3. The amount and timing of Chevron's funding obligation shall be divided into two payment types.

A. Guaranteed Payments

Following approval of the Project and execution of this Agreement, Chevron shall pay to the City \$5,000,000 over five years as follows:

| Year | Amount |
|-------------|---------------|
| 2014 | \$500,000 |

| Year | Amount |
|-------------|---------------|
| 2015 | \$1,500,000 |
| 2016 | \$1,000,000 |
| 2017 | \$1,000,000 |
| 2018 | \$1,000,000 |

The first Guaranteed Payment shall be made no later than ninety (90) days following approval of the Project and execution of this Agreement, and annually thereafter on the anniversary of the first payment, or another mutually agreed upon date. The Guaranteed Payments shall be used to help fund to the Electric City and Easy Go program described in Section 3.B.1, and shall be credited to the funding obligation for Community-Based Greenhouse Gas Reduction Programs, as described in Section 2.B.

B. Contingent Payments

Chevron shall pay to the City the remaining \$75,000,000 over ten years commencing on the "Obligation Date," which shall be the earlier of: (i) sixty (60) days after issuance of the first building permit for the Replacement Hydrogen Plant in the event there is no litigation pending against the Project EIR or against City or Bay Area Air Quality Management District Project permits or approvals ("Litigation Challenge"); (ii) prior to commencement of operation of the Replacement Hydrogen Plant even if Litigation Challenges remain pending; or (iii) sixty (60) days following final judicial resolution of all Litigation Challenge(s). Annual payments thereafter shall be due on or before the anniversary of the first payment, or another mutually agreed upon date.

Chevron’s annual payment to the City for the term of the agreement (“Annual Funding Amount”) shall be:

| Year | Amount |
|-------------|---|
| Year 1 | \$11,000,000 (\$8,000,000 of this Annual Funding Amount shall be used to fund the scholarship program described in Section 3.A.1) |
| Year 2 | \$8,000,000 |
| Year 3 | \$8,000,000 |
| Year 4 | \$8,000,000 |
| Year 5 | \$8,000,000 |
| Year 6 | \$8,000,000 |
| Year 7 | \$7,000,000 |
| Year 8 | \$7,000,000 |
| Year 9 | \$6,000,000 |
| Year 10 | \$4,000,000 |

As provided in Section 2.B, no less than \$3,000,000 per year for ten (10) years shall be allocated from the Annual Funding Amount to the Community-Based Greenhouse Gas Reduction Programs, except that the Guaranteed Payments shall amortize over the ten year period and \$500,000 per year shall be applied to the funding commitment for the Community-Based Greenhouse Gas Reduction Programs.

3. CHEVRON FUNDING CATEGORIES

The City shall use the Annual Funding Amount to fund projects and programs in the following general categories.

A. Community Programs

The Annual Funding Amount not designated for the Community-Based Greenhouse Gas Reduction Programs shall be used to fund the following Community Programs. The total expenditures identified below represent the projected total expenditure available under this Agreement for those individual Community Programs. The disbursement of the Annual Funding Amount to the individual Community Programs shall be allocated as set forth below over the ten (10) year funding period by the City in the City's sole discretion with advice from Richmond residents and stakeholders, including Chevron; provided the allocation of funds among funding Community Program categories over the ten (10) year funding period may be modified upon a two-thirds (2/3) majority vote of the City Council, which vote may be held not more than once within each calendar year during which the funding obligations of the Agreement remains in effect.

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

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

B. Scholarship Program

Total Expenditure: \$35,000,000.

This program will provide scholarship money for any Richmond resident when they graduate high school to continue their education. This program will be modeled on the Kalamazoo or the El Dorado Promise which provide a similar service to young people in those communities. The Richmond Promise will guarantee the ability of Richmond residents to pursue higher education and secure meaningful employment, including pursuing careers in research and development, engineering, and renewable energy fields. This program will be limited to students who live in Richmond and graduate from a public high school in the West Contra Costa Unified School District. The program will be administered through a private 501(c)(3) non-profit or

foundation formed or selected by the City and Chevron. Chevron shall work with the City and use its best efforts to raise additional funds to benefit this program.

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

Total expenditure: \$6,000,000.

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

- (a) Fund pre-apprenticeship construction skills training with direct entry agreements with the Carpenters Union, Joint Apprenticeship & Training Committee (JATC), and Laborers Training & Retraining Trust Fund for Northern California, and for any expansion of the program to include skills training in the plumbing, piping, and electrical trades. Training includes, but is not limited to, Carpentry, Forms & Concrete, Hazardous Materials, Lead, Asbestos, Energy Efficiency, & Solar Installation.
- (b) Establish and fund a Business Assistance and Capacity Building Program, or to support existing business assistance and capacity building programs administered by other organizations.
- (c) Augment funding of On The Job Training (OTJT) program(s), which provides wage subsidies for businesses that hire Richmond residents and to improve the skills and job-readiness of Richmond residents.
- (d) Fund Adult Education and Skill Building Program(s) including RichmondWORKS and Literacy for Every Adult Program (LEAP), to prepare Richmond residents to be part of the local labor force with the goal of achieving full and meaningful employment. The program(s) would focus on skills that will enhance local workers competitiveness in local job markets. The program(s) may include education and skills such as administrative support services, General Educational Diploma (GED) preparation, English as a second language (ESL), vocational classes, mathematics skills, financial coaching, and mental health and wellbeing.
- (e) Fund expansion of Youth Employment and Skill Building programs designed to enhance the readiness of Richmond youth for employment, including in petro-chemical or renewable energy related sectors, including emergency preparedness and response.

The programs may include YouthWORKS, internships, work experience and service learning, career services (e.g., connecting students with jobs, grants, and scholarships), high school shadow program for internships, college internships, and summer programs.

- (f) Fund job transition training, targeting the re-entry population for employment. The job transition training may include, but not be limited to, teaching technical and soft skills such as safety training, mentoring, life skills, business and project management skills, and educational assessment.
- (g) To fund programs that support entrepreneurship, particularly for youth, women, and disadvantaged groups, to increase the pool of Richmond businesses using programs that provide entrepreneurship skills and opportunities and potentially providing services to local industries, including refinery and related industries, and the renewable energy industry.

D. Public Safety Programs

Total expenditure: \$2,000,000.

Sustain critical programs in the City of Richmond's public safety departments, including but not limited to the Youth Academy, Explorers, and the Richmond Police Department CCTV Program cameras (including equipment acquisition and maintenance, and officer review of camera footage), during construction of the Project in order to prepare for and assist in responding to incidents that may be associated with the number of Project construction workers and subcontractors, and high volumes of truck and equipment traffic on local roadways due to Project construction; provide capital funding for the Family Justice Center. No component requiring additional review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed.

E. Free Internet Access

Total Expenditure: \$1,000,000.

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

F. Competitive Grant Program

Total expenditure: \$6,000,000.

Chevron shall provide to the City \$6,000,000 over the first seven years of annual payments to fund community programs and non-profits focused on communities, youth and youth sports programs, which may include but are not limited to:

- (a) Summer camp programs, including programs developed collaboratively with the West Contra Costa Unified School District and the Education Fund, to make structured, academically-focused, out-of-school-time programs available so that Richmond youth might be better prepared to eventually secure meaningful employment.
- (b) Implementation of the City of Richmond's Health in All Policies Strategy and Ordinance, which aims to eliminate health disparities and work towards health equity through a collaborative approach by addressing the social determinants of health and integrating health into the decision making process across all departments of the City.
- (c) Implementation of Full Service Community Schools in the Richmond and Kennedy High School family of schools, particularly those elementary schools nearest to the Facility, to support:
 - (i) Coordination and delivery of support services for school sites;
 - (ii) Career academies;
 - (iii) Implementation of Restorative Justice practices and programs;
 - (iv) Health and wellness education;
 - (v) Science, technology, arts, engineering and mathematics and applied learning partnerships;
 - (vi) Student and parent engagement and education in academic and career pathways (culturally relevant and linguistically appropriate);
 - (vii) Environmental and health applied learning partnerships; and
 - (viii) Coordination of the above listed services with local businesses and organizations, universities, service providers, public agencies, and other organizations with expertise in the topical service subjects.

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

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

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

- (e) Design and construction of new segment(s) of the Bay Trail to close gaps along the trail to improve the feasibility of travel by other modes other than automobiles for local residents and thereby improve the wellness of local residents and reduce greenhouse gas emissions; provided, however, that no component requiring additional review and discretionary approval under the CEQA may proceed until such time as such subsequent required CEQA process has been completed.
- (f) Establishment (including planning and building) of and ongoing delivery of health care services by Community Health Centers, that focus on providing direct primary health care services to the residually uninsured populations in Richmond, and to support the wellness of Richmond residents whose health may be affected by local environmental conditions, including air quality from local industrial emissions; provided, however, that no component requiring additional review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed.
- (g) In-home, community-based asthma prevention program(s), in light of local air quality and to improve public health and safety, which may include partnerships with UC San Francisco and other medical providers.

G. Community-Based Greenhouse Gas Reduction Programs

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

(1) Electric City and Easy Go

Total expenditure: \$18,000,000.

This transportation program may include a City bike-share program, charging stations, vehicle purchase for the City, electricity costs for the City's vehicle fleet for ten years, to offset City costs of conversion to zero emission vehicles; to improve mobility for Richmond residents, including but not limited to, improvements in walkability, BART alternatives, public transit connections, reduced price transit passes, bike paths, bike share and shuttle services; and financial incentives to encourage acquisition, lease, rental, sharing and use of electric vehicles; incentives to promote electric vehicle programs in future projects; and educational outreach to promote these transportation measures, promote trip-sharing, promote shared use of specialty vacation vehicles such as Sports Utility Vehicles (SUVs); and continue to subsidize the existing Easy Go programs provided, however, that no more than 20% of available funding can be spent to support the existing Easy Go fleet and program, and future Easy Go fleet acquisitions are limited to electric vehicles where feasible (e.g., electric vans are not yet feasible), all for the purpose of reducing greenhouse gas emissions; provided, however, that no component requiring additional review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed.

(2) Climate Action Plan

Total expenditure: \$1,000,000.

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

(3) Urban Forestry

Total expenditure: \$2,000,000.

Urban greening, regional trail, and park improvement program(s) (e.g., tree planting, urban agriculture, park access) designed to reduce greenhouse gas emissions and achieve co-benefits, including, improved air quality, stormwater quality and noise levels, reduced crime,

improved health, and/or to restoration of biological resources. These programs may include, but are not limited to, outdoor education, job training, youth involvement, and resource maintenance, including funding for City staff (e.g., gardener, arborist) to coordinate, implement and/or oversee these programs, and other activities related to resource management at Point Molate; provided, however, that no component requiring additional review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed.

(4) Transportation and Transit Programs.

Total Expenditure: \$2,750,000.

Funding for programs that directly or indirectly encourage alternative transportation and access to public transportation, including but not limited to alternative fuel sources, and which contribute to community fiscal health by reducing spending on vehicle fuel.

(5) Roof-top Solar, Energy Retrofit, City of Richmond Zoning Ordinance Update and Additional Programs

Total Expenditure: \$6,250,000.

Funding for roof-top solar systems, energy efficiency, City of Richmond Zoning Ordinance Update to align the City's development regulations with General Plan 2030 for the purposes of reducing greenhouse gas emission, and other programs identified in Chapter 4.8 of the EIR; provided, however, that no component requiring additional review and discretionary approval under CEQA may proceed until such time as such subsequent required CEQA process has been completed.

4. OTHER COMMITMENTS

The following commitments shall become binding on the parties on the Obligation Date:

A. Modernization Project Local Content Agreement

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

- (1) Construction Employment. Chevron shall ensure compliance with provisions of this subsection (a) by all construction contractors of any tier, performing work on the Modernization Project.
 - (a) Long-Range Planning. Prior to hiring for construction employment the Modernization Project, each contractor shall provide to the designated City staff the approximate number and type of hires that it will make for employment, and the basic qualifications necessary for each projected hire.
 - (b) Hiring Process. Contractors shall take the following steps to employ Richmond Domiciled Residents:
 - (i) Step One - Assignment of Current Workers: Contractors shall assign to perform project work any current employees who are Richmond Domiciled Residents.
 - (ii) Step Two – Dual Notification: Contractors signatory to a collective bargaining agreement shall both (A) request that the hiring hall refer Richmond Domiciled Residents, and utilize name call, apprenticeship sponsor, rehire, or similar procedures in the collective bargaining agreement to request particular individuals who have been identified as Richmond Domiciled Residents; and (B) notify the City’s Employment and Training Department (ETD) of workers needed and relevant qualifications. Contractors that are not signatory to a collective bargaining agreements shall notify the City’s Employment and Training Department (ETD) of workers needed and relevant qualifications.
 - (iii) Step Three – Consideration of Richmond Domiciled Residents: If the contractor is not signatory to a collective bargaining agreement, or if the hiring hall has not promptly referred Richmond Domiciled Residents, the contractor shall fairly consider Richmond Domiciled Residents that have been referred by the ETD within 2 business days of request therefor.
 - (c) Compliance. Chevron is in compliance with this section (a) for a quarter if all contractors performing work in that quarter have demonstrated good faith efforts by complying with the hiring process requirements set forth above.
 - (d) Apprentice Utilization. Each project contractor shall employ in its regular workforce Richmond Domiciled Residents who are enrolled and participating in an apprenticeship program. Such an apprenticeship program must have been approved by the State

Department of Industrial Standards. The expected number of apprentices will vary based upon the availability of Richmond Domiciled Residents indentured in the various apprenticeship programs, and shall be specified by the City for each trade, prior to commencement of project construction.

(2) Non-Construction Employment.

- (a) Hiring Process. For non-construction jobs related to the Modernization Project, prior to hiring a non-Richmond Domiciled Resident or recruiting from the general public, Chevron will notify the ETD with regard to available positions, with a description of qualifications, and fairly consider (including by interview) qualified workers referred by the ETD within five days of request. Job qualifications shall be only those directly related to performance of job duties. Chevron is in compliance with this section (b) for a quarter if it has complied with the hiring process described in this section for all Modernization Project hires made during that quarter.
- (b) Award of Service Contracts and Supply Contracts. When Chevron awards a contract for non-construction services to be performed related to the Modernization Project, or for purchase of supplies related to the Modernization Project, Chevron shall make good faith efforts to award the contract to a “Richmond business,” as defined in the Richmond Business Opportunity Ordinance. For purposes of this section (c), good faith efforts include:
 - (i) at least four weeks before award of the contract in question, providing notification of the contracting opportunity, and the procedure for bidding on the contract, to City’s designated business liaison, or other outreach resource as directed by the City;
 - (ii) at least four weeks before award of the contract in question, advertising the opportunity to bid in a local publication designated by the City; and
 - (iii) promptly providing Richmond businesses with complete information about the prospective contract and bidding procedures.

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

(3) Miscellaneous.

- (a) Local Hire Coordinator. Chevron shall provide a local-hire coordinator to help implement this Paragraph 3.A.
- (b) Reporting. For both construction and non-construction jobs, Chevron shall prepare monthly reports detailing: the number of hires for employment relating to the Modernization Project during the month (Modernization Hires); what percentage of Modernization Hires were Richmond Domiciled Residents; a description of Modernization Project jobs filled by Richmond Domiciled Residents and others; the amount of total monthly wages (Wage Bill) for both Modernization Hires and Richmond Domiciled Resident Modernization Hires; and compliance with the provisions in this Paragraph 3.A. Reports shall be filed with the ETD within thirty days after completion of each month. Chevron shall also describe the measures taken to implement this Paragraph 3.A at such level of detail such that compliance can be ascertained and assured. Reports shall commence once construction begins. City staff will assist Chevron by preparing forms to be completed for this purpose.
- (c) Out-of-State Workers. The requirements of sections (a) and (b) shall not apply to hours of work performed by residents of states other than the State of California, and such hours shall not be considered determining satisfaction of percentage requirements described herein.

B. Utility-Scale Photovoltaic Solar Farm

Following approval of the Project, Chevron shall enter into a lease with Marin Clean Energy (“MCE”) that is substantially similar to the near-execution form lease agreement that has been negotiated by Chevron and MCE and which has been reviewed by the MCE Board of Directors (“the MCE Lease”). Pursuant to the MCE Lease:

- (a) Chevron shall provide MCE sixty (60) acres of Chevron-owned land adjacent to the Richmond Parkway for the development of a utility-scale photovoltaic solar farm (the “MCE PV Project”);
- (b) The initial term shall be twenty-five (25) years, with one (1) five (5) year extension;
- (c) Chevron shall provide the land, which Chevron values at approximately \$10,000,000 for the life of the lease, at a nominal rate of \$1.00 per year;
- (d) MCE shall use its best efforts to use a minimum of 50% Richmond-resident labor force;

- (e) A viewing platform and kiosk is planned at the MCE PV Project site, promoting public education about the role of solar energy in their community.

Pursuant to the MCE Lease, the initial phase of the MCE PV Project would be for development of a two (2) megawatt (MW) facility, with later phases potentially resulting in up to a twelve (12) MW facility providing a source of local renewable energy. For informational purposes only, and not as a term of this Agreement or the MCE Lease, Chevron and the City understand that the initial 2 MW facility MCE PV Project would be the largest facility of its kind in Richmond and Contra Costa County, and any later-development to increase the MCE PV Project up to 12 MW facility would be the largest of its kind in the greater San Francisco Bay Area.

The terms of the MCE Lease may be amended upon mutual agreement of Chevron and MCE, and any such amendment of the MCE Lease, including an amendment that effects any of the above-specified terms, shall not considered a breach of this Agreement. Chevron shall work with MCE and the City as necessary to coordinate and maximize the community benefits of the MCE PV Project. In the event of any amendment to the MCE Lease, Chevron shall use its best efforts to ensure that the local labor requirement and public education provisions remain a substantive commitment of the MCE Lease.

5. GOVERNANCE

Funds made available pursuant to Section 2 of this Agreement shall be administered solely by the City of Richmond in its sole discretion. The City will solicit input from community stakeholders, including Chevron, and Richmond residents.

6. MISCELLANEOUS

A. No Third Party Beneficiaries.

There are no intended third party beneficiaries to this Agreement. This Agreement is intended to benefit only the Parties and no other person or entity has or shall acquire any rights hereunder.

B. Public Benefit Only.

Nothing in this Agreement is intended to personally benefit, or improperly influence, any government official.

C. Grants Benefitting Specific Persons.

There is no intention by either party to earmark any payment or grant to, or for the benefit of, any specific individual or entity, unless specifically provided for in this Agreement.

D. Grants to Public Agencies.

Any grants or payments made pursuant to this Agreement to public agencies shall be conditioned on that agency's agreement to disclose its receipt as required by the California Political Reform Act, as interpreted by the California Fair Political Practices Commission.

E. Police Power.

Nothing herein shall constitute a surrender or abnegation of the City's control over its planning and zoning processes. Nothing in this Agreement shall be construed to abrogate the police powers conferred on the City pursuant to Article XI, Sections 5 and 7 of the California Constitution.

F. Entire Agreement.

This Agreement, inclusive of Exhibit A, constitutes the entire agreement between the parties and it is expressly understood that the Agreement has been freely and voluntarily entered into by the parties with the advice of counsel, who have explained the legal effect of this Agreement. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be altered, modified or otherwise changed in any respect except in writing, duly executed by the Parties or their authorized representatives. This Agreement is fully integrated.

G. Successors in Interest.

The rights and obligations of the Agreement shall be binding on all successive owners, heirs, and assigns of the parties hereto.

H. Amendments.

This Agreement may be modified, supplemented, or amended in writing by the Parties. Any modification, supplementation, amendment, or waiver that would materially affect the rights of both Parties must be signed by both Parties.

I. Warranty of Authority.

By executing this Agreement, each of the undersigned Parties to this Agreement covenants, warrants, and represents that he, she or it is fully authorized to enter into this Agreement and carry out the obligations on behalf of the person or entity for whom he or she is signing.

J. Understanding of Terms.

This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part of, or on behalf of, any of them. Each of the Parties to this Agreement has read and fully understands the meaning of each provision of this Agreement and has relied on independent advice and representation of legal counsel in entering into this Agreement.

K. Severability.

In the event any of the terms, conditions, or covenants contained in this Agreement is held to be invalid, any such invalidity shall not affect any other terms, conditions or covenants contained herein which shall remain in full force and effect.

L. Construction.

This Agreement and each of the provisions hereof, is the product of negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by or drafted by any particular party hereto. The rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

M. Governing Law.

This Agreement shall be governed, construed, interpreted, enforced and the relations between the parties determined in accordance with the laws of the state of California, without regard to its choice of law rules.

N. Venue.

The Parties irrevocably agree to the jurisdiction of, and any action to enforce or interpret this Agreement shall be filed in, the Superior Court of the County of Contra Costa.

O. Headings and Captions.

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision thereof.

P. Notices.

Except as otherwise specifically set forth herein, all notices or other communications specifically required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by certified mail, return receipt requested and postage prepaid, or sent by reputable overnight courier (such as Federal Express), or by tele-facsimile with confirmation by overnight courier or U.S. Postal Service the following day, to the following:

For CITY OF RICHMOND:

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

Copy to:

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

For CHEVRON PRODUCTS COMPANY

Attention: Refinery Manager Richmond Refinery
Chevron Products Company 841 Chevron Way
Richmond, CA 94801

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

Q. Agreement Lawful and Enforceable.

All Parties agree that this Agreement is lawful, enforceable, and binding on all Parties; agree to waive any challenges to the enforceability of this Agreement; and agree not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or proceeding.

R. Events of Default.

A Party will deemed to be in default under this Agreement ("Defaulting Party") upon the occurrence and continuance beyond all applicable cure period of any of the following (each shall be an "Event of Default"): (a) the Defaulting Party fails to pay an amount due under this Agreement to the other Party (the "Non-Defaulting Party") and such failure continues for more than thirty (30) days after the date of written notice from the Non-Defaulting Party specifying the amount that is owing and past due in reasonable detail; (b) the Defaulting Party fails to perform any other material obligation under this Agreement and such failure continues for more than thirty (30) days after the date of written notice from the Non-Defaulting Party specifying such failure to perform in reasonable detail; or (c) failure of a representation or warranty set forth in this Agreement to be true in any material respect as of the date when made or required to be made under this Agreement.

S. Dispute Resolution.

If a legal dispute arises related to the interpretation or enforcement of or the status of compliance with the terms and conditions of this Agreement, including the rights and obligations of the Parties hereunder (the "Dispute"), City and Chevron shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within twenty-one (21) days, City and Chevron shall endeavor to settle the Dispute by mediation which, except as otherwise mutually agreed upon by the Parties, shall be conducted under the then

current JAMS rules and procedures for mediating business disputes by a neutral third party selected from the JAMS panel of neutrals. This dispute resolution process shall be undertaken in good faith and exhausted prior to the institution of legal proceedings by either Party.

T. Remedies.

If an Event of Default occurs and continues under this Agreement, the remedies of the Non-Defaulting Party will be to terminate this Agreement or to seek specific performance of this Agreement. Neither City nor Chevron shall have any liability or obligation to pay damages to one another or to any other person or entity as a result of or attributable to any Event of Default or other breach or violation of this Agreement.

U. Costs of Enforcement.

If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each party to the litigation shall bear its own attorney's fees and costs.

V. Waiver.

The waiver of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a default, shall not be deemed a waiver of any provision or term of this Agreement. The waiver by City of any breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach. Inspections or approvals, or statements by any officer, agent or employee of the City relating to Chevron's performance, or payments therefore, or any combination of these acts, shall not relieve Chevron's obligation to fulfill this Agreement as prescribed; nor shall the City be thereby stopped from bringing any action for enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.

W. Incorporation of Recitals and Introductory Paragraph.

The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

X. Further Acts.

Each Party hereby agrees that it shall, upon request of any other Party, execute and deliver such further documents and do such other acts and things that are reasonably necessary and appropriate to effectuate the terms and conditions of this Agreement.

Y. Indemnification.

- (1) Chevron shall indemnify, defend and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, suits, or actions of every kind and description, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of Chevron,

its officers, agents, and employees, or brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by Chevron in the performance of this Agreement, including the concurrent or successive passive negligence of the City, its officers, agents, employees or volunteers.

- (2) It is understood that the duty of Chevron to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Chevron shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City, the City and its officers, agents, employees or volunteers, immediately upon tender to Chevron of the claim in any form or at any state of an action or proceedings, whether or not liability is established. An allegation or determination that persons other than Chevron are responsible for the claim does not relieve Chevron from its separate and distinct obligation to defend under this Section 5(v). The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes and obligation to provide independent counsel if Chevron asserts that liability is caused in whole, or in part, by the negligence or will misconduct of an indemnified Party. This Section 5(v) survives performance of Chevron's duties set forth herein and termination of this Agreement.

Z. Force Majeure.

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

AA. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall be constitute but one and the same instrument.

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

Agreed and Accepted

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

_____, Refinery General Manager

Date

City of Richmond, a municipal corporation and charter city

Bill Lindsay, City Manager

Date

Approved as to Form

Bruce Reed Goodmiller, City Attorney

Date

Attachment 3

Responses to comments received since publication of the July 22, 2014 City Council Agenda Report concerning the Chevron Modernization Project Matter

Response to Contra Costa Times, 7/24/2014 Editorial on Project Conditions of Approval

This editorial commented that "While some of the Planning Commission recommendations go way too far, two merit serious discussion, for they aim squarely at protecting the public."

The editorial continues to discuss the two conditions of approval added by the Planning Commission that the author believes warrant discussion, including one relating to particulate matter emissions limits and monitoring, and one relating to replacement of "older, corrosion-prone pipe that carries high-sulfur material."

The editorial opines: "Chevron argues that because the refinery unit that produces most of those emissions would not be altered by the project, the requirement is unreasonable. We disagree. Chevron should take a holistic approach: Production through that unit could increase because of project changes elsewhere in the plant. Furthermore, the company should look for opportunities to reduce pollution locally before mitigating environmental effects with improvements elsewhere."

With regard to the particulate monitoring condition, the EIR preparers understand this comment to refer to Planning Commission Condition of Approval D4a ("Condition D4a"), which would limit the FCC unit's filterable and condensable PM₁₀ emission to 92 tons in any consecutive 12 month period, as determined using most current EPA emission monitoring methodologies (or as approved by the Zoning Administrator following a noticed public hearing). As explained in the July 22, 2014 City Council Agenda Report for the Modernization Project ("Agenda Report"), Staff recommends that the City Council reject Condition D4a because its adoption is not required to mitigate Project-related PM₁₀ emissions to less than significant levels and its adoption would expose the project approvals to legal challenge and the City to legal liability.

As explained in EIR, Volume 1, Section 4.3, the Project would require no mitigation to reduce PM₁₀ emissions to less than significant level under the 93% Utilization scenario, which assumes a Facility utilization rate significantly higher than Baseline conditions. Even if the Facility were to operate at an unlikely 100% Utilization level, the Project's PM₁₀ emissions would be mitigated to a less than significant level by implementing Mitigation Measure 4.3-5b, which requires Chevron to increase the size of the FCC ESP to eliminate an existing NH₃ injection process in the flue gas in the FCC unit. Thus, Condition D4a is not required to mitigate PM₁₀ emissions to a less than significant level or to achieve the No Net Increase Project objective. Indeed, if Alternative 11 were adopted instead of the Project, then associated PM₁₀ emissions would be reduced well below Baseline levels even without mitigation, as explained in EIR, *Volume 1, Chapter 6* (as revised by the Final EIR).

As explained in the Agenda Report, the emissions limits required by Condition D4a were not assumed in the EIR and thus Condition D4a would be exposed to legal challenge on the basis that the EIR did not adequately analyze the potentially significant environmental effects associated with Condition D4a's emission limit. The emission restrictions required by Condition D4a could alter the Refinery's operational conditions in a manner that increases other categories of emissions; the potential for such an adverse effect is not currently evaluated in the EIR. Indeed, such a result was observed when the EIR preparers evaluated the environmental effects associated with Alternative 12, which assumed a

proposed modification to the FCC would not occur and resulted in environmental impacts inferior to those associated with Alternative 11. Any similar result related to Condition D4a should be evaluated in the EIR before it is adopted as a condition of approval.

As further explained in the Agenda Report, CEQA mandates that the lead agency's factual determinations be based on substantial evidence. Condition D4a was imposed by the Planning Commission on the basis that it accurately describes the permit limits applicable to the Facility's FCC unit. However, as explained in Master Response 3, and as confirmed by BAAQMD, the Facility's FCC unit is in compliance with all applicable permit limits, including limits on PM₁₀ emissions. The purported justification for imposing Condition D4a has no basis in substantial evidence and its adoption would therefore be subject to judicial invalidation.

Finally, as explained in the Agenda Report, the City may not legally impose conditions of approval that lack an essential nexus between a significant Project environmental impact and the conditions imposed to mitigate, reduce or avoid such impact. As discussed above, the Project would not result in any significant PM10 impacts under the 93% Utilization Scenario and any such impact would be fully mitigated under the 100% Utilization Scenario. Moreover, if Alternative 11 were adopted, related PM10 emissions would be reduced below Baseline levels and thus improve existing environmental conditions without need for any mitigation. Under these facts, there is no legal basis for imposing Condition D4a on the Project or Alternative 11.

With regard to the pipe replacement condition referenced by the editorial, the EIR preparers assume that the author is referring to condition G4a added by the Planning Commission. Condition G4a as currently written states:

G-4a. By the end of the next refinery turn-around, no later than December 31, 2017, Chevron shall replace all carbon steel components in the Richmond refinery that were installed before 1990 and process hydrocarbons at temperatures exceeding 450 degrees Fahrenheit with inherently safer technology that is maximally resistant to corrosion by sulfur and other hazards identified for each component.

Numerous earlier responses to comments have addressed this condition. Please see Attachment 4 (page 11-16) of the Agenda Report for the July 29, 2014 City Council hearing, as well as Attachment 2 to the Agenda Report Supplement for the July 9, 2014 Planning Commission hearing, Attachment 2 to the Agenda Report Supplement 2 for the July 9, 2014 Planning Commission hearing, and in the Agenda Report for the July 22, 2014 City Council hearing and Attachment 4, Exhibit C thereto.

In short, this condition is an extreme measure, and infeasible as written. There is not a single "refinery turnaround" by the end of 2017. Turnarounds happen for different units and process areas at different times over the course of multiple years. To require all carbon steel susceptible to high temperature sulfidation to be upgraded by the end of 2017 would require un-planned shutdowns only to install these upgrades. It is well-established that hazardous incidents more commonly occur during shut-down conditions, so it is ill-advised to require shut-downs only for metallurgy upgrades particularly if they are not technically warranted. Even the State of California, in its probation terms for Chevron following the August 2012 fire that resulted, in part, from sulfidation corrosion, did not impose a sweeping requirement to replace all older carbon steel in high temperature sulfidation service. It required an inspection program by which Chevron would identify actual pipe thickness conditions and replace or upgrade those for which

such action is warranted based on inspection program findings. This is similar to the approach taken by the EIR.

In addition, the EIR preparers note that the editorial appears to misunderstand the current EIR requirements. The editorial states that "The Planning Commission also recommends replacement of older, corrosion-prone pipe that carries high-sulfur material. Chevron, instead wants to monitor and replace only as deemed necessary." It is unclear from this comment whether the editorial understands that the EIR requires replacement of seventeen (17) circuits and four (4) partial piping components in the crude unit. The replacement requirement mandates a metallurgy upgrade to inherently safer technology that is more corrosion-resistant than the piping materials currently in place. These upgrades are a significant undertaking, and will occur prior to the end of 2017. The City's reliability expert found that no other components affected by the Project warranted replacement or upgrade on technical grounds, and that corrosion risks for such other components would be adequately addressed by the rigorous monitoring and inspection requirements, increased accountability, increased transparency, and funding for increased oversight required by the EIR.

Finally, condition G4a as presently written would require shutdowns and related construction activity, the impacts of which have not been analyzed by the EIR. Moreover, there is not substantial evidence to support a finding that a sweeping requirement to replace all older carbon steel components in high temperature sulfidation service is justified, and therefore the condition would be subject to legal risk. Condition G4a lacks the requisite "rough proportionality" required by law under CEQA.

Thus, the EIR preparers do not recommend adoption of condition G4a as presently written.

Response to Indymedia.com, 7/25/2014 story on the Modernization Project

This Indymedia.com story reports that Chevron's plan for its complex refinery expansion will increase its emissions by another 20% of what they are now, but Chevron is denying that by excluding the emissions that will be produced by PraxAir, an affiliate corporation.

The comment was made with respect to Alternative 11 and refers to emissions associated with the Hydrogen Plant Replacement, which would be operated by PraxAir. This comment inaccurately describes the EIR's analysis of the greenhouse gas emissions associated with Alternative 11.

As disclosed EIR, *Volume 1, Chapter 6* (as revised by EIR, *Volume 3A, Chapter 4*), Alternative 11 would limit greenhouse gas emissions from Refinery operations (including Refinery-related transportation greenhouse gas emissions) to Baseline levels of 4,602,947 metric tons (MT) per year, and thus allow no physical increase in greenhouse gas emissions from the Refinery over Baseline. Because the vast majority of greenhouse gas emission increases associated with the Modernization Project are from the increased production capacity of the Replacement Hydrogen Plant and increased utilization of the Facility, this Alternative would, under the operational scenarios considered in the Unit Rate Model included as *Appendix 4.3-URM*, result in a Facility utilization (i.e., both crude unit and gas oil gateway unit) level for the Project Crude blend of approximately 84.7%.

As shown in EIR, *Volume 1, Chapter 6* (as revised), Table 6-22 (reprinted below), without mitigation, Alternative 11 would have substantially lower unmitigated greenhouse gas emissions than the Project, would result in decreases in emissions for all CAPs compared to Baseline with the exception of a one (1) ton increase in CO, and would not exceed any BAAQMD CEQA threshold in any event. Further emission reductions would occur if

approval of this alternative were predicated on implementation of the emissions-reducing Project Design Features. If the no net increase commitment were implemented, then this alternative would reduce NO_x, PM₁₀, PM_{2.5}, SO_x, and VOC emissions below Baseline levels, and would reduce CO emissions to Baseline levels, and emissions would be lower than the Project, as shown in Table 6-23 (reprinted below).

TABLE 6-22 UNMITIGATED REDUCED SULFUR PROCESSING/NO INCREASED GREENHOUSE GAS REFINERY EMISSIONS ALTERNATIVE EMISSIONS COMPARED TO UNMITIGATED PROJECT (93% UTILIZATION) EMISSIONS

| Emissions Category | Emissions (Tons/Year) | | | | | | Greenhouse Gases (Tonnes CO ₂ e/Year) |
|--|-----------------------|-----------------|------------------|-------------------|-----------------|-------|--|
| | CO | NO _x | PM ₁₀ | PM _{2.5} | SO _x | VOC | |
| Baseline | 525 | 1,303 | 503 | 502 | 373 | 973 | 4,602,947 |
| Reduced Sulfur Processing/ No Increased Greenhouse Gas Refinery Emissions Alternative (84.7% Utilization) | 526 | 1,172 | 456 | 454 | 340 | 959 | 4,599,848 |
| Unmitigated Emissions | | | | | | | |
| Project (93% Utilization) Unmitigated Emissions | 575 | 1,320 | 501 | 500 | 358 | 1,002 | 5,328,526 |

Notes: CO = carbon monoxide; PM₁₀ = respirable particulates; SO_x = sulfur oxides; VOC = volatile organic compound.

TABLE 6-23 REDUCED SULFUR PROCESSING ALTERNATIVE/NO INCREASED GREENHOUSE GAS REFINERY EMISSIONS ALTERNATIVE EMISSIONS (MITIGATED TO NNI) COMPARED TO PROJECT EMISSIONS (MITIGATED TO NNI)

| Emissions Category | Emissions (Tons/Year) | | | | | | Greenhouse Gases (Tonnes CO ₂ e/Year) |
|---|-----------------------|-----------------|------------------|-------------------|-----------------|-----|--|
| | CO | NO _x | PM ₁₀ | PM _{2.5} | SO _x | VOC | |
| Baseline | 525 | 1,303 | 503 | 502 | 373 | 973 | 4,602,947 |
| Reduced Sulfur Processing/No Increased Greenhouse Gas Refinery Emissions Alternative (84.7% Utilization) Emissions (Mitigated to NNI) | 525 | 1,172 | 456 | 454 | 340 | 959 | 4,599,848 |
| Project Emissions (Mitigated to NNI) | 525 | 1,269 | 501 | 499 | 359 | 973 | 4,602,947 |

Notes: CO = carbon monoxide; PM₁₀ = respirable particulates; SO_x = sulfur oxides; VOC = volatile organic compound; NNI = no net increase

As further disclosed in EIR, *Volume 1, Chapter 6* (as revised), unlike the Modernization Project, Alternative 11 would not allow the Facility to operate at 100% capacity due to the new greenhouse gas emission constraint precluding Refinery greenhouse gas emissions

to exceed Baseline levels, without regard to imposition of off-site mitigation measures (e.g., AB 32 Cap and Trade compliance instruments). However, as disclosed in the EIR, Alternative 11 would continue to allow for the potential future export of hydrogen *if* Praxair obtains permits for and builds its export pipeline. As explained in the EIR, Alternative 11 would thus also include the potential that the Replacement Hydrogen Plant would operate up to its maximum 100% permitted capacity, and require mitigation (inclusive of AB 32 Cap and Trade Allowances and Credits, and the CAPCOA greenhouse gas exchange credits) to have less than significant greenhouse gas emissions and achieve no net increase consistent with the Project objectives. With the Project crude blend, the URM calculated that under normal operating conditions approximately 70 MMSCF/day would be available for potential export. EIR, *Volume 1, Chapter 6* (as revised,) Table 6-24 (reprinted below) discloses the unmitigated emissions associated with this additional hydrogen production. These emissions, however, would be mitigated per the no net increase project objective, though they would result in physical emissions over Baseline. Nevertheless, because Alternative 11 results in a lower level of Facility utilization relative to the Project, and thus lower levels of refinery activity and transportation, even with the Hydrogen Plant Replacement operating at 100% capacity, this alternative results in lower CAP, TAC and greenhouse gas emissions relative to the Project.

TABLE 6-24 ADDITIONAL CAP AND GREENHOUSE GAS EMISSIONS FROM MAXIMUM HYDROGEN PRODUCTION FOR THE REDUCED SULFUR PRODUCTION/NO INCREASE IN REFINERY GREENHOUSE GAS EMISSIONS ALTERNATIVE

| Additional Hydrogen (mmscf/day) | Additional CAP Emissions (tons/year) | | | | | Additional Greenhouse Gas Emissions (tonnes CO ₂ e/year) |
|---------------------------------|--------------------------------------|-----------------|------------------|------------------------------|---------|---|
| | CO | NO _x | PM ₁₀ | SO _x ^a | ROG/VOC | |
| 66.9 | 18 | 15 | 6 | -- | 6 | 555,199 |

Notes: Hydrogen export would not result in increased SO_x emissions, as both cases already require fuel gas treatment to limit SO_x emissions from fuel gas to 49.09 tons/year.

Response to CBE 7-25-2014 Submittal of "Attachment 2" to Letter Dated July 22, 2014 from Nine Organizations

As summarized in the Agenda Report for the July 29, 2014 City Council hearing, a letter was submitted on July 22, 2014 by nine organizations (Commenters) commenting on Chevron's appeal. The July 22, 2014 letter referenced an "Attachment 2" (the "CBE Attachment") that was not included with the letter and was submitted to the City by Communities for a Better Environment (CBE) on July 25, 2014. The CBE Attachment is offered by the Commenters as support for their position that: "Safety demands, and, the City should require, that a single corporate management, presumably Chevron, shall operate the facility, including the hydrogen plant." The EIR preparers responded to this general assertion in Attachment 4 to the July 29, 2014 Agenda Report. This supplemental response addresses the additional information included in the CBE Attachment submitted on July 25, 2014.

The commenter states, “in recent years multiple recurring incidents involving third party hydrogen plants were serious enough to require significant flaring at two Bay Area refineries alone.” According to the Contra Costa Health Services, three Bay Area Refineries contain hydrogen plants operated by third parties.¹ These include a plant operated by Air Liquide at the Phillips 66 (formerly ConocoPhillips) San Francisco Refinery in Rodeo, and Air Products plants at both the Shell and Tesoro Golden Eagle (Tesoro) refineries in Martinez. None of these incidents occurred at a hydrogen plant operated by Praxair - the intended operator of the Project's new hydrogen plant.

The EIR preparers reviewed the flare reports provided in Attachment 2 of the comment letter, as well as the Flare Minimization Plans (FMPs) and annual updates for each refinery, prepared as a requirement of BAAQMD Rule 12-12, for causal analysis of any flaring events at these third-party hydrogen plants. The results are summarized in the table below. Based on this review, and consistent with the earlier response included with the July 29, 2014 Agenda Report, the EIR preparers conclude that none of these flaring incidents, which include the October 2010 incidents highlighted by the Commenters, were caused by operational management issues (i.e., issues related to coordination, cooperation or communication) between the refineries and the third-party hydrogen plant operators. The CBE Attachment does not constitute substantial evidence that third party-operated hydrogen plants present any more risk than those under common operational management as the remainder of the refinery at which they are located.

Flaring Events related to Third-Party Hydrogen Plants

| PDF Page # (first page of report) | Incident Date | Refinery Name | Identified Causes of Flaring | Operational Management issue noted in causal analysis? |
|--------------------------------------|---------------|-----------------|--|--|
| 14 | 4/27/2010 | Conoco Phillips | Unplanned shutdown of hydrogen plant. From the FMP: shutdown due to a technician taking leak detection and repair (LDAR) measurements and accidentally tripped a fail-safe of a valve. | No |
| 39 | 9/13/2010 | Conoco Phillips | The hydrogen plant was shut down due to a faulty thermocouple. This occurred when the other hydrogen plant (refinery-operated) was down for maintenance, causing refinery fuel gas (RFG) and hydrogen imbalances that needed to be flared. | No |

¹ Contra Costa Health Services (CCHS). 2014. Risk Management Plans. Available at: http://cchealth.org/hazmat/rmp/#f_j

| PDF Page # (first page of report) | Incident Date | Refinery Name | Identified Causes of Flaring | Operational Management issue noted in causal analysis? |
|---|------------------|--------------------|--|--|
| 31 | 10/6/2010 | Conoco Phillips | A valve in the pressure swing adsorber of the hydrogen plant stuck, forcing a shutdown due to high firebox pressure in the reformer heater. This occurred when the other hydrogen plant (refinery-operated) was down for maintenance, causing RFG and hydrogen imbalances that needed to be flared. | No |
| 34 | 10/22/2010 | Conoco Phillips | The hydrogen plant was shut down due to a trip of the main electrical supply breaker. This occurred when the other hydrogen plant (refinery-operated) was down for maintenance, causing RFG and hydrogen imbalances that needed to be flared. | No |
| 42 | 10/27/2010 | Conoco Phillips | During startup following the October 22 event, pressure buildup from a hydrate plug formation in the debutanizer tower required additional flaring. The hydrogen plant was not involved. | No |
| 10 | 2/21/2011 | Conoco Phillips | An electrical outage at the Diethylene Glycol Amine pumps in Powerhouse #3 caused an increase in hydrogen sulfide (H ₂ S) concentrations in the fuel gas system. Since RFG is used as both feed and fuel in the hydrogen plant, RFG feed was shut off to prevent damage. The resulting fuel gas imbalance required flaring. | No |
| 2 | 12/5/2011 | Conoco Phillips | Unplanned shutdown of hydrogen plant due to broken weld on ID Fan Jack Shaft | No |
| 6 | 1/18/2012 | Conoco Phillips | Liquids in RFG A and E-424 temperature outlet too low (ambient temperature was lower than normal). Higher than normal liquids in the fuel gas to their Reformer Heater. Air Liquide (Hydrogen plant) determined it was necessary to change the filter in their feed gas coalescer. During this activity the Hydrogen Plant is more susceptible to liquid water in their feed forming and impacting their Feed Gas Compressor. Air Liquide proactively blocked out RFG A feed from the plant. | No |

| PDF Page # (first page of report) | Incident Date | Refinery Name | Identified Causes of Flaring | Operational Management issue noted in causal analysis? |
|--|-------------------------|------------------|---|--|
| 18 | 3/25/2012 | Phillips 66 | An increase in liquids in the RFG feed to the hydrogen plant required the coalescer filter to be changed. To prevent liquids from entering and damaging downstream equipment, RFG feed was reemptively shut off by the hydrogen plant. The RFG imbalance was flared. | No |
| 22 | 4/25/2012 | Phillips 66 | RFG feed to the hydrogen plant was cut off in preparation for planned turnaround activity in the plant that generates RFG feed to the hydrogen plant. The RFG imbalance was flared. | No |
| 27 | 8/27/2012 | Phillips 66 | RFG feed to the hydrogen plant was cut off due to higher than normal levels of sulfur in the RFG. Sulfur is normally scrubbed from the RFG with a caustic solution, but higher than normal levels of carbon dioxide (CO ₂) in the supplemental natural gas were reacting with the caustic instead of the sulfur. | No |
| 45 | 9/10/2012 | Phillips 66 | The hydrogen plant shut down due to a ruptured boiler water feed line. During the subsequent startup, excess hydrogen from the other hydrogen plant (refinery-operated) was vented in order to reduce necessary flaring. During the vent process, static electricity caused the vented hydrogen to ignite, and hydrogen was then routed to the flare to control the flames. | No |
| Flare Management Plan, 4th Annual Update | 7/1/2010 - 6/30/2011 | Shell | Two separate, small events that did not require full causal analyses. Described as equipment problems. | No |
| 50 | 9/13/2008 | Tesoro | The hydrogen plant was shut down due to compressor high vibration. Flaring occurred during the subsequent start up, to purge low-purity hydrogen. | No |
| 57 | 9/17/2008 | Tesoro | The hydrogen plant was shut down due to compressor high vibration. Flaring occurred during the subsequent start up, to purge low-purity hydrogen. In order to prevent similar shut downs, additional | No |

| PDF Page # (first page of report) | Incident Date | Refinery Name | Identified Causes of Flaring | Operational Management issue noted in causal analysis? |
|---|------------------|------------------|--|--|
| | | | hardware was replaced. | |
| 74 | 2/13/2009 | Tesoro | A pressure swing adsorption (PSA) control valve positioner failed, requiring two of the twelve beds to be taken offline. Gas from the two beds was flared to allow for maintenance and repairs. Feed was reduced at hydrogen-consuming units in the refinery to adjust for the lowered hydrogen production and reduce necessary flaring. | No |
| 81 | 3/3/2009 | Tesoro | During startup following the February 13 event, a control system logic error tripped the plant offline. When the plant was offline, the excess hydrogen was flared. | No |
| 139 | 4/21/2009 | Tesoro | #3 Hydrodesulfurization (HDS) plant was venting gas to flare in order to reduce an abnormally large pressure drop across a reactor. This reduced the hydrogen demand at the unit, causing a hydrogen imbalance. Until hydrogen production could be reduced to meet the new demand, excess hydrogen was flared to avoid pressure build-up. | No |
| 89 | 6/5/2009 | Tesoro | A purge gas valve unexpectedly failed closed, causing high pressure, high volume gas to hit the purge gas pot. Normally this valve allows purge gas to flow from the PSA unit to the steam methane reforming unit. During the attempted restart of the hydrogen plant, the force draft fan on the steam methane reformer (SMR) furnace tripped offline several times, forcing a shutdown. During shutdown, the hydrogen plant depressurized through flaring. | No |
| 97 | 6/30/2009 | Tesoro | A shear pin in the ID fan failed, causing the furnace to trip offline. Flaring occurred during the subsequent startup, to purge low-purity hydrogen. | No |

| PDF Page # (first page of report) | Incident Date | Refinery Name | Identified Causes of Flaring | Operational Management issue noted in causal analysis? |
|---|------------------|------------------|--|--|
| 104 | 7/20/2010 | Tesoro | On July 19, a high vibration switch failed and tripped the compressor offline. The switch was replaced, and flaring occurred during the subsequent startup to purge low-purity hydrogen. | No |
| 66 | 8/3/2010 | Tesoro | The hydrogen plant was shut down due to compressor high vibration indication. Technicians added a third vibration switch and upgraded the emergency shutdown logic to require two out of three voting on the vibration switches. Flaring occurred during the subsequent start up, to purge low-purity hydrogen. | No |
| 112 | 11/20/2010 | Tesoro | On November 19, a pressure safety valve (PSV) on the boiler feed water system lifted, tripping the hydrogen plant offline. The PSV was replaced, and flaring occurred during the subsequent startup to purge low-purity hydrogen. | No |
| 117 | 3/31/2011 | Tesoro | A vent gas line leak was discovered in one of the PSA beds of the hydrogen plant, which required six beds to go offline. The gas vented from these six beds was routed to the flare header and was recovered by the flare gas recovery system (FGRC), where it was discharged to the #5 Gas Plant for amine treatment and fuel gas recovery. The large volume of gas caused operational issues at the gas plant, so operators followed procedure and allowed the gas to flare. | No |
| 147 | 6/18/2011 | Tesoro | On June 17, hydrogen production rates were cut in order to make repairs on a natural gas compressor. The plan was to switch to butane only mode during repairs, but a logic error in the controls forced a complete shutdown. The logic error was fixed, and the ensuing startup required flaring to purge low-purity hydrogen. | No |

| PDF Page # (first page of report) | Incident Date | Refinery Name | Identified Causes of Flaring | Operational Management issue noted in causal analysis? |
|---|------------------|------------------|--|--|
| 131 | 4/11/2012 | Tesoro | A solenoid failure caused the hydrogen plant to shut down. Rates on hydrogen consuming units were reduced to account for the loss of hydrogen production. Flaring occurred during the subsequent startup to purge low-purity hydrogen. | No |

Sources:

Conoco Phillips. 2011. Flare Minimization Plan (Non Confidential Version), Revision 7. October. Available at:
<http://www.baaqmd.gov/~media/Files/Compliance%20and%20Enforcement/Flares/2011%20COP%20Flare%20Minimization%20Plan%20-%20Non%20Conf%20Update.ashx?la=en>

Shell. 2011. Flare Minimization Plan Redacted Version. October. Available at:
<http://www.baaqmd.gov/~media/Files/Compliance%20and%20Enforcement/Flares/Redacted%20Update%20with%20certification.ashx?la=en>

Communities for a Better Environment (CBE). 2014. Response to Chevron's Appeal of the Conditions of Approval of the Chevron Modernization Project dated July 22.