The City Council, with certain statutory exceptions, can only take action upon properly posted and listed agenda items. Any writings or documents given to a majority of the City Council regarding any matter on this agenda that the City received after issuing the agenda packet are available for public inspection in the City Clerk's office during normal business hours. Such Documents may also be posted on the City's website at www.elsegundo.org and additional copies will be available at the City Council meeting.

Unless otherwise noted in the Agenda, the Public can only comment on City-related business that is within the jurisdiction of the City Council and/or items listed on the Agenda during the Public Communications portions of the Meeting. Additionally, the Public can comment on any Public Hearing item on the Agenda during the Public Hearing portion of such item. The time limit for comments is five (5) minutes per person.

Before speaking to the City Council, please come to the podium and state: Your name and residence and the organization you represent, if desired. Please respect the time limits.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact City Clerk, 524-2305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

SPECIAL MEETING OF THE EL SEGUNDO CITY COUNCIL
TUESDAY, APRIL 23, 2013 – 7:30 PM

CALL TO ORDER

ROLL CALL

PUBLIC COMMUNICATION – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) Individuals who have received value of $50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing the City Council. Failure to do so shall be a misdemeanor and punishable by a fine of $250.

CLOSED SESSION:
The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City's Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City's Labor Negotiators; as follows:
CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Gov't Code §54956.9(a) -1- matter

1. Willmore vs. City of El Segundo, et al., LASC Case No. BC485025

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code §54956.9(b): -0- matter.

Initiation of litigation pursuant to Government Code §54956.9(c): - 1 - matter.

DISCUSSION OF PERSONNEL MATTERS (Gov’t Code §54957): - 0 - matter

APPOINTMENT OF PUBLIC EMPLOYEE (Gov’t. Code § 54957) – 0 - matter

CONFERENCE WITH CITY’S LABOR NEGOTIATOR (Gov’t Code §54957.6): -0- matter

CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Gov’t Code §54956.8): -0- matter

REPORT OF ACTION TAKEN IN CLOSED SESSION (if required)

OPEN SESSION –

TO COMMENCE AT APPROXIMATELY 8:00 PM BUT NO EARLIER

SPECIAL MATTERS (UNFINISHED BUSINESS)

1. Approval of a Tax Resolution Agreement (TRA) and approval of an Amendment to Administrative Agreement regarding Gas Tax collection with Chevron USA (Fiscal Impact: Estimated - $128 million net new revenue over the next 15 years ($104 million estimated General Fund revenue and $24 million estimated Water Fund revenue))

Recommendation – 1) Approve the Tax Resolution Agreement and Amendment to the Administrative Agreement regarding Gas Tax collection with Chevron USA; Alternatively, discuss and take other action related to this item.

CLOSED SESSION:
The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City’s Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City’s Labor Negotiators.
REPORT OF ACTION TAKEN IN CLOSED SESSION (if required)

ADJOURNMENT

POSTED:

DATE: 4-19-13
TIME: 12:45 pm
NAME: [Signature]


EL SEGUNDO CITY COUNCIL  
AGENDA ITEM STATEMENT  

MEETING DATE: April 23, 2013  
AGENDA HEADING: Unfinished Business  

AGENDA DESCRIPTION:  

Approval of a Tax Resolution Agreement (TRA) and approval of an Amendment to Administrative Agreement regarding Gas Tax collection with Chevron USA (Fiscal Impact: Estimated - $128 million net new revenue over the next 15 years ($104 million estimated General Fund revenue and $24 million estimated Water Fund revenue) )

RECOMMENDED COUNCIL ACTION:  

1. Approve the Tax Resolution Agreement and Amendment to the Administrative Agreement regarding Gas Tax collection with Chevron USA.  
2. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:  
Tax Resolution Agreement and Amendment to the Amendment to the Administrative Agreement regarding Gas Tax collection with Chevron USA  
December 18, 2012 Staff Report

FISCAL IMPACT: TBD  
Amount Budgeted:  
Additional Appropriation:  
Account Number(s):  

PREPARED BY: Greg Carpenter, City Manager  
REVIEWED BY:  
APPROVED BY:  

BACKGROUND & DISCUSSION:  

In December of 2011, the City Council discussed placement of a measure increasing the business license tax rate for refineries on the April 2012 municipal election. The stated intent at that time was to increase revenues from the Chevron refinery in order to address deferred capital maintenance and infrastructure projects. The rationale for the increase at that meeting focused on the perceived imbalance that existed between the revenues collected from refineries in other nearby cities compared to those collected in El Segundo, as well as the revenue collected from other commercial/industrial properties in El Segundo compared to revenues collected from the Chevron refinery.

Based on Chevron’s encouragement, and their commitment to work constructively to resolve the matter, the City Council chose to seek a collaborative resolution of the issue. Rather than placing the business license tax increase on the April 2012 ballot, a City Council Subcommittee (consisting of Mayor Pro Tem Fuentes and Council Member Fisher) was created to participate in the negotiations that lead to this proposed agreement. Negotiations began in April of 2012 with the City’s objectives including:
• Establishing an appropriately valued, reliable, long-term source of revenue;
• Incorporating an appropriate level of escalation of the value of the agreement to keep pace with inflation;
• Extension of the current Recycled Water Surcharge Agreement (set to expire in 2015) to coincide with the term of the TRA agreement;
• Review of the natural gas usage at the refinery and compliance with the 1994 Settlement Agreement between the City and Chevron.

PROPOSED TAX RESOLUTION AGREEMENT

On December 18, 2012, the Council Subcommittee reported that they and Chevron had negotiated a possible agreement and released the general terms of the agreement. The City and Chevron have spent the last several months generating the actual TRA document. As is common in the evolution of general deal points to contract language, there were a number of details to resolve and the contingencies to be discussed and agreed upon. A summary of the attached agreement is as follows:

• **Amount** – Chevron would agree to pay the City 11.1 million dollars in combined “2012 Taxes” and “Additional Funds”. For the purposes of this agreement, “2012 Taxes” would consist of the City’s share of the Property tax, the Electric and Cogenerated Utility Users tax, Water UUT, Sales and Use tax, Business License tax and Gas Utility Users tax generated by the Chevron refinery. “Additional funds would make up the balance between 11.1 million dollars and the 2011/12 taxes. The additional funds to be paid in the first year of the agreement would be more than 5 million dollars* (revised since December to reflect higher than anticipated 2011/12 revenues).

• **Reconciliation and Payment** – In December of each year, the City would provide Chevron with total tax receipts received in the previous fiscal year to be matched against Chevron’s payment records. This amount would be deducted from the escalated total payment and the Chevron would pay the balance of additional funds. The payment would be provided on or about March 31st of each year.

• **Term of the Agreement** – The term of the agreement would be for 15 years, from January of 2013 through January of 2027.

• **Escalation** – The amount to be paid each year would be increased by applying the Consumer Price Index for all Urban Consumers (CPI-U) to the previous year’s payment.

• **Gas User’s Tax Payment and the 1994 Administrative Agreement** - Chevron will continue to pay gas UUT payments based upon the 1994 agreement and the Administrative Determination and Ordinance 1226 which defined the specific uses for which Chevron was obligated to make gas UUT payments. The Gas Agreement will be amended to incorporate the definitions of taxable gas that are incorporated in the City’s Municipal Code (Ordinance 1226) and make the term of the Administrative Agreement consistent with the term of this TRA. The Agreement also provides that Chevron’s annual Gas Utility Users tax payments will be based upon the taxable amounts of consumption for each year rather than the current base amount that is adjusted annually by the CPI.

• **Extension of Recycled Water Surcharge** – Chevron would agree to extend the surcharge to match the term of this TRA agreement. This payment (approximately 1.8 million dollars in 2012) benefits the water fund and all customers of potable water including Chevron by otherwise reducing the amount charged to water customers. If this payment by Chevron were to
end in 2015 pursuant to the current agreement then the City would either need to charge this amount to current water customers (assuming that the customers would not protest the propose increase pursuant to Proposition 218). If this payment were to cease, the need to assess other water customers a fee to ensure the same level service may be necessary.

- **Effect on other Taxes/Termination** – This agreement would not impact the normal collection of taxes and would not serve to restrict the City’s ability to collect or raise taxes or impose new taxes. In the case where, during the December reconciliation, Chevron’s taxes equal or exceed 95% of the future year’s total payment, for two consecutive years, Chevron would reserve the option to cancel the agreement. Chevron’s obligation to pay taxes under the Agreement is not capped. However, if a City Council places a new tax or tax increase on the ballot that materially increases taxes, Chevron has the ability to terminate the agreement and would be entitled to a refund or credit of either 3 million dollars or the last reconciliation payment made by Chevron, whichever amount is greater. The previous provision applies to taxes that become effective during the term of the agreement and that would increase the taxes imposed on Chevron such that the tax would exceed the total of tax reconciliation and recycled water surcharge payments by 110%. The City reserves the right, without triggering termination or repayment, to increase or materially increase taxes during years 13-15 of the agreement, provided the effective date of the new tax is after year 15. This provision allows the City to plan for the post-agreement period during the final years of the Agreement. The Agreement also provides that Chevron can terminate the Agreement upon two years notice if it ceases its refinery operations.

The overall value (existing taxes, additional funds and the extended water surcharge) over the 15 year term is estimated to be 224.5 million dollars, or nearly 15 million per year (this amount may vary based on the CPI-U). The value of net new revenue (above and beyond the future revenues that would be collected by the existing tax rates) is more difficult to estimate due to some of the variables. Based on historic tax growth, historic CPI-U growth, an assumption that the recycled water surcharge would expire in 2015 and an assumption that there would not be any new or changed taxes, staff has estimated net new revenues at 128 million dollars, or 8.5 million dollars per year.

The Agreement only applies to properties that Chevron currently owns or leases. If Chevron acquires new properties in the future, the use and operations on such properties would not factor into this Agreement and Chevron would be required to pay taxes on such properties that would not affect the payments due under this Agreement.

**SUMMARY**

The proposed Agreement would provide significant, long-term stability to the City’s General and Water Funds. This stability would reduce otherwise anticipated budget deficits in the near term and should allow the City to maintain current service levels. In the long term, the added revenues would ideally provide for capital projects and/or expanded services. Staff recommends that the City Council approve the Tax Reconciliation Agreement and the Amendment to Administrative Agreement regarding Gas Tax collection with Chevron USA.
TAX RESOLUTION AGREEMENT
BETWEEN
THE CITY OF EL SEGUNDO
AND
CHEVRON U.S.A. INC.

This TAX RESOLUTION AGREEMENT (the “Agreement”) is dated and entered into as of April ___, 2013 (the “Effective Date”), by and between the CITY OF EL SEGUNDO, a municipal corporation and general law city (“CITY” or “City”) and Chevron U.S.A. Inc., a Pennsylvania corporation (“CHEVRON” or “Chevron”). Chevron and the City shall be collectively referred to as “Parties” or separately as “Party”, as applicable.

RECAPS.

The Parties enter into this Agreement with reference to the following facts and objectives:

A. The CITY’s fiscal condition has been negatively impacted by the unprecedented challenges in the worldwide and national financial markets and the chronic economic recession/difficulties in the national, state, regional and local economies. The on-going economic recession has significantly decreased the CITY’s revenue sources and negatively impacted expenses requiring the CITY to institute various austerity measures including expenditure curtailments for equipment and capital projects, deferring maintenance of CITY infrastructure and reductions in other City services.

B. CITY is and was considering placing a ballot measure on a general municipal election and/or on a special election that would attempt to increase significantly the amount of Taxes (as defined below) paid by Chevron and other similar entities pursuant to El Segundo Municipal Code Section 4-2-17. If a ballot measure were passed/approved by the voters of the City of El Segundo, the new Taxes would generate revenue that would help the CITY address its current and future financial difficulties and further help the CITY’s infrastructure from falling into disrepair and otherwise enhance the City’s ability to maintain City services at current levels.

C. CHEVRON is the largest private property owner in El Segundo and pays more total Taxes to the CITY than any other single taxpayer. Chevron enjoys significant benefits from public services provided by the CITY and therefore recognizes the importance of resolving any Tax controversy with the City.

D. On December 20, 2011, the City Council of El Segundo (“Council” or “City Council”) had a public discussion at a regularly scheduled City Council Meeting regarding whether to place a ballot measure on the April 2012 general municipal election that, if passed by the electorate, could have resulted in Chevron’s Taxes
being increased. The Council directed staff to prepare the necessary documents so that the Council could consider whether to place such a tax measure on the April election. Following the December 20th, Council Meeting, Chevron and City representatives met and discussed the potential of the City and Chevron entering into an agreement whereby Chevron would make additional annual payments to the City if the City were to forego placing a tax measure on the April 2012 ballot.

E. On January 6, 2012, the City Council held a special Council Meeting whereby the Council was presented with the option of either negotiating an agreement with Chevron or placing a tax measure on the April 2012 ballot that would, if passed, result in Chevron paying additional taxes to the City. The Mayor and City Manager of the City at that time recommended, and Chevron representatives expressed a desire, that the City pursue an agreement with Chevron rather than place a tax measure on the April 2012 ballot. The Council approved the recommendation of the Mayor and City Manager.

F. Chevron is entering into this Agreement with the City and agreeing to make annual payments to the City based upon the fact that the City did not place a ballot measure on the April 2012 election and that the City is agreeing, for a period of one hundred and five (105) days after the Effective Date of this Agreement, not to take any action to place a tax measure on an election that, if passed would result in Chevron paying additional taxes to the City. Moreover, Chevron is agreeing to continue making additional annual payments to the City subject to the terms and conditions set forth in this Agreement.

G. Chevron and the City both acknowledge the valuable consideration that is being exchanged in this Agreement by Chevron providing certain additional payments to the City and the City agreeing to not take certain actions in the short term and agreeing that should the City increase Chevron’s taxes such that certain thresholds set forth in this Agreement are exceeded that the City would be required to refund certain amounts to Chevron and this Agreement would terminate. This Agreement results in Chevron making payments that it would not otherwise be required to make in exchange for the City not pursuing a ballot measure that would increase Chevron’s Taxes for a certain period of time and agreeing to certain disincentives (e.g., refunding monies to Chevron) to forgo increasing Taxes to be paid by Chevron as indicated below. Accordingly, Chevron and the City are both receiving an agreed upon level of certainty with regard to certain payments that Chevron will have to make to the City and the amount of certain payments that the City will receive from Chevron.

H. CHEVRON has concluded that the resolutions reached through this Agreement are fair, just, reasonable and advantageous to Chevron for a number of reasons, including, but not limited to, providing certainty and clarity for Chevron with respect to its future obligations to the CITY.

I. CITY has identified significant long term benefits resulting from entering into this
Agreement with Chevron including, but not limited to, achieving certainty in the Tax revenue that it will receive from Chevron over the next fifteen (15) years, and as such, the CITY has concluded that the resolutions reached through this Agreement are fair, just, reasonable and advantageous to CITY, and in addition, the CITY has determined that this Agreement is prompted by the necessity of resolving the Tax issues and collecting the agreed upon and settled Tax amounts imminently rather than prolonging the controversies and incurring the risk of litigation or non-passage of a voter approved ballot measure.

J. The City exercised its right to audit the 1994 Administrative Agreement Regarding Gas Tax Collection between the Parties and dated February 1, 1994 (also referred to herein as the “Administrative Agreement”). In particular, CITY audited CHEVRON’s gas use within the CITY as that term is defined and determined under the Administrative Agreement (the “Audit”) and pursuant to the Settlement Agreement and Mutual General Release Agreement between the Parties dated February 1, 1994 and CITY Ordinance No. 1226 (which is part of and provides definitions and exceptions regarding the application of the City’s Utility User Tax with regard to natural gas usage which is taxed in accordance with Section 3-7-5 of the City Municipal Code). Chevron does not agree on the methodology used by the auditor in the audit for comparing taxable gas consumption but Chevron and the City do agree, as set forth below, on the methodology to be used in the future. Chevron and City also agree that based upon the additional payments to be made by Chevron pursuant to this Agreement that the disagreement between the Parties regarding the audit is monetarily inconsequential.

K. The CITY does not dispute and agrees that Chevron has properly determined and remitted its gas users Tax for the Tax reporting periods ending prior to the Effective Date of this Agreement pursuant to the 1994 Administrative Agreement and the El Segundo Municipal Code (as more specifically defined in Recital J) and the Administrative Agreement.

L. For the reasons set forth above, and in order to avoid the uncertainties associated with proposing and successfully passing a Tax initiative through a ballot measure in an election and to resolve any existing and to attempt to minimize potential future tax controversies between CHEVRON and the CITY, the Parties have agreed, without any Party making any concessions or admissions of any kind, to agree on a formula that results in CHEVRON making additional tax payments to the CITY and to settle all disputes and controversies between them concerning CHEVRON’s Tax payments to the CITY as indicated below.

AGREEMENT

NOW THEREFORE, for valuable consideration of the covenants and agreements heretofore set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree to the following terms and conditions:
1. INCORPORATION OF RECITALS. The above-mentioned recitals are hereby incorporated into, and made a part of, this Agreement.

2. DEFINITIONS, AGREEMENTS AND COVENANTS.

A. DEFINITIONS.

(i) "Affiliates" means any business entity (including but not limited to a corporation, partnership, limited liability company, or similar organization) that is: (i) controlled by Chevron or (ii) a controlling owner of Chevron or (iii) controlled by a business entity described in (i) or (ii). For purposes of this definition control means owning, either directly or indirectly a majority of the voting stock or other voting interest in such business entity.

(ii) "Property" means all property of Chevron and its Affiliates (including real, personal or intangible) with a current business situs in the City of El Segundo and which are identified on Attachment D.

(iii) "Tax" (or "Taxes") means any levy, charge, fee or exaction of any kind imposed by the City pursuant to the El Segundo Municipal Code Title 3 and Title 4 and as defined under Article XIII(C) of the California Constitution, which includes definitions as to what constitutes a local government tax. However, assessments and fees received by the CITY and imposed pursuant to Government Code Section 66000, Article XIII(D), Section 3, subsections 3 and 4, of the California Constitution, or other applicable laws, shall not be considered Tax payments received by the CITY from CHEVRON (for example, including without limitation, all payments made by Chevron pursuant to the Recycled Water Agreement, water fees and charges, sewer fees and charges, and standard CITY building permit and inspection fees).

(iv) "Tax Authority" means any governmental unit, including federal, state, county, the CITY, community, municipal or regional authority, body or person competent to impose, administer or collect any Taxes on CHEVRON.

(v) "Total Tax Payments" means Tax payments paid or owed to the City by Chevron or its Affiliates that are attributable to the Property or Chevron's or its Affiliates operations on the Property, which includes taxes that are distributed to the City by a Tax Authority other than the City and are attributable and identified as being paid by Chevron or its Affiliates (for example, sales and use taxes collected by the State Board of Equalization and property taxes collected by the County of Los Angeles, and are attributable to Chevron’s Property or Chevron’s operations on the
Property) for the CITY’s fiscal year that immediately precedes the Resolution Payment.

For purposes of clarity, CHEVRON’s Total Tax Payments currently include the business license tax (including acreage, parcel), property taxes (i.e., the CITY’s share of county assessed tax), all utility users Taxes (including but not limited to telephone, water, gas and electricity taxes), Taxes paid in lieu of utility or gas users taxes under the Administrative Agreement and sales & use taxes (i.e., the CITY’s share of state assessed taxes which are determined and remitted to the City by the State Board of Equalization).

Attachment “A” identifies the Taxes and taxes paid to the City by other Taxing Authorities that Chevron or its Affiliates pay that are included in determining CHEVRON’S Resolution Payment(s) as of the date of this Agreement and examples of how the Resolution Payment(s) are to be calculated.

B. RESOLUTION PAYMENTS. For and in consideration of the agreements and covenants set forth in this Agreement, CHEVRON agrees to pay on an annual basis certain Tax payments (the “Resolution Payment(s)”) to the CITY over a fifteen (15) year period commencing with the CITY’s fiscal year starting October 1, 2012 and ending at the completion of the CITY’s fiscal year ending on September 30, 2027.

CHEVRON shall within five (5) business days after the expiration of one hundred and five (105) days from Effective Date of this Agreement, make its first annual Resolution Payment to the CITY. Each Resolution Payment thereafter will be made on or about March 31st of each year. The amount of each annual Resolution Payment shall be determined on the basis of the CITY’s prior fiscal year. Each annual Resolution Payment shall be equal to the Base Payment Amount minus CHEVRON’s Total Tax Payments (as set forth below) to the CITY.

CHEVRON’s Base Payment Amount for each Resolution Payment made by CHEVRON to the CITY is Eleven Million One Hundred Thousand Dollars ($11,100,000). Commencing with the March 31, 2014 Resolution Payment, CHEVRON’S annual Base Payment shall be adjusted annually by the most recent reported December annual percentage of change in the United States Department of Labor, Bureau of Labor Statistics’ Los Angeles-Riverside-Orange County CPI-U for the calendar year ending prior to the applicable Resolution Payment date. For purposes of illustration, for CHEVRON’S 2013 Resolution Payment due on March 31, 2014, the CPI-U December adjustment percentage used or identified for the December 31, 2013 period by the organization identified in this paragraph.
C. CALCULATION OF CHEVRON’S RESOLUTION PAYMENT(S) AND PROCEDURES FOR DOING SO.

In order to determine Chevron’s annual Resolution Payment, the Parties agree as follows:

(1) The CITY shall reconcile its annual financial statement and provide a copy to CHEVRON of the CITY’s calculation of TOTAL TAX PAYMENTS of the preceding fiscal year by December 1st of the fiscal year for which a Resolution Payment is to be paid by CHEVRON.

(2) CHEVRON shall review the CITY’s information and will review its own records and other information to determine what CHEVRON believes to be its TOTAL TAX PAYMENTS for the CITY’s preceding fiscal year. CHEVRON will provide such information on or about January 25th of the year for which a Resolution Payment is to be paid by CHEVRON.

(3) In the event that the information/data from the CITY and CHEVRON is not the same, the CITY and CHEVRON agree to exchange meaningful, non-privileged information, including certain Chevron Confidential Tax Information, and negotiate in good faith to reach an agreement on the amount of Total Tax Payments paid by CHEVRON during the prior year. The CITY shall treat any CHEVRON tax information as “CHEVRON Confidential Information” pursuant to California Civil Code §3426.1(d); Revenue and Taxation Code Sections 7284.6, 7284.7 and 21002 Business and Professions Code Section 11612; Public Utilities Code Section 394.4, and El Segundo’s Municipal Code Section 4-1.34, et al., and other applicable laws.

(4) After the exchange of information, the Parties will meet and negotiate in good faith to determine and try to agree on the amount of CHEVRON’s Total Tax Payments. The Parties agree to exchange information and try to complete the negotiations by February 28th of each year.

(5) If the Parties can agree on the amount of the CHEVRON’s Total Tax Payments, then upon agreement, Chevron shall make its annual Resolution Payment on or before March 31st of each year.

(6) In the event that the Parties cannot agree on the amount of CHEVRON’s Total Tax Payments, the Parties agree as follows:

(a) CHEVRON shall make its annual Resolution Payment to the CITY less the amount in controversy; and
(b) To participate in mediation to try to resolve their disagreement. If the Parties still cannot agree after participating in mediation, the Parties shall submit the matter to binding arbitration. The Parties agree to share equally in the costs of the mediation and arbitration. The mediation and arbitration shall be administered by the Judicial Arbitration & Mediation Services (“JAMS”). The Parties agree to try to complete the mediation, and if necessary, any arbitration by October 1st of the year in which the Resolution Payment at issue was due and payable.

(7) In the event that Chevron’s Total Tax Payments exceed the Base Payment Amount, Chevron shall be obligated to pay the Total Tax Payments subject to Chevron’s termination rights set forth in Section 11 of this Agreement. The Parties further agree that to the extent that any Taxing Authority other than the City increases or decreases any payment that it remits to City based upon an error or adjustment regarding taxes paid by Chevron, including tax payments that preceded this Agreement, that Chevron’s Total Tax Payments will be adjusted in the fiscal year that such Taxing Authority makes an adjustment, if any, rather than the fiscal year in which the actual error was made or the adjustment was based upon.

D. MODIFICATION OF CHEVRON’S GAS USERS TAX PAYMENTS UNDER THE 1994 ADMINISTRATIVE AGREEMENT.

The Parties agree that the Administrative Agreement shall remain in full force and effect but shall be revised and amended pursuant to the agreed upon content of the amendment attached hereto as Attachment C.

The Parties further agree that amending the Administrative Agreement is a condition to entering into this Agreement and the Parties agree to execute a standalone version of the amendment to the Administrative Agreement (attached in Attachment C) at the same time that this Agreement is executed.

In consideration of the Resolution Payments, the CITY further agrees to forego and waive any right to renegotiate, suspend and/or terminate the Administrative Agreement during the term of this Agreement. As stated in the proposed amendment to the Administrative Agreement (Attachment C), Chevron agrees to make its annual gas users tax payments based upon the agreed upon methodology which is consistent with the Administrative Agreement and El Segundo Municipal Code Section 3-7-5, including subsection (d) thereto which was added pursuant to Ordinance 1226. In this regard, the Parties agree that the gas users tax shall only apply to natural gas and shall not apply to gas that
Chevron does not purchase from third parties (e.g., Chevron refinery produced process gas, Chevron produced gas or gas that is produced or owned by an Affiliate). The Parties further agree that gas that is used for non-utility purposes (such as feedstock for the production of hydrogen) and gas used for electric cogeneration purposes are also not subject to the City’s gas users tax.

E. **FORBEARANCE.** The City hereby agrees not to, and shall not, take any action to place a Tax measure on an election for a period of one hundred five (105) days from the Effective Date of this Agreement that, if passed, would result in Chevron paying additional Taxes to the City.

F. **RECYCLED WATER AGREEMENT.** On or about February 2, 1999, the Parties entered into a Water Service Agreement regarding recycled water fees and charges (CITY Agreement No. 2677 and referred herein as the “Recycled Water Agreement”). The Parties agree, by separate instrument executed within sixty (60) days, to extend the term (without modifying the substantive terms and conditions of the Recycled Water Agreement, including without limitation the methodology by which Chevron’s payments to the City are calculated) of the Recycled Water Agreement to coincide with the term of this Agreement. For purposes of clarity, the Recycled Water Agreement between the Parties shall expire on September 30, 2027 and any renewal of the Recycled Water Agreement must be agreed upon by the Parties through a separate, written document signed by authorized representatives of each Party. Notwithstanding the foregoing, should this Agreement terminate for any reason prior to the end of the Term, CHEVRON may also terminate the Recycled Water Agreement upon thirty (30) days’ notice without further liability to the CITY.

G. **TAX CODE CLARIFICATIONS.** Ordinance 1226 was adopted by the City in 1994 and was ratified by the voters in April 1996 and has not been amended by the City since such time. The CITY agrees that it shall take all necessary steps, including exercising its codification authority pursuant to El Segundo Municipal Code Section 1-1-4 and California Government Code Sections 50022.1 to 50022.10, to ensure that Section 3-7-5 of the CITY Tax Code governing the obligations to pay a gas users Tax shall reflect the CITY’s Ordinance 1226, dated August 2, 1994, and a copy of which is attached hereto as Attachment “B”.

H. **AIR LIQUIDE.** Air Liquide has a hydrogen facility on CHEVRON’s El Segundo Refinery and CHEVRON provides gas to Air Liquide in order for Air Liquide to provide hydrogen to CHEVRON. The Parties agree that the manner in which transfers of gas from CHEVRON to Air Liquide result in a non-taxable event and are not subject to the CITY’s gas users tax (i.e., the CITY’s Municipal Code 3-7-5 and the CITY’s Ordinance 1226) as such gas is being utilized for non-utility/feedstock purposes. Notwithstanding the foregoing, in the event that the CITY or any third party asserts either the transfers of gas from CHEVRON to Air Liquide or that the purchase of hydrogen from Air Liquide by Chevron are
taxable events and subject to the CITY’s gas users Tax and Air Liquide pays such taxes then such will be included in the calculation of the Total Tax Payments.

For purposes of clarity, CHEVRON represents that it is currently the only customer of Air Liquide and all natural gas provided by CHEVRON to Air Liquide is used for non-utility/feedstock purposes and delivered back to CHEVRON in the form of hydrogen feedstock for CHEVRON to be used as a component part of a finished product or used elsewhere in the El Segundo Refinery as part of the manufacturing process.

3. RELEASE OF CHEVRON. In consideration of the agreements, covenants set forth herein, and subject to all duties and obligations imposed on the Parties under this Agreement, the CITY hereby, and does hereby release, acquit and forever discharge CHEVRON, successors, affiliates and subsidiaries and all officers, directors, employees, agents, representatives and attorneys of each such entity (collectively the “Released Parties”) from any and all claims, damages, causes of action, demands, debts, liabilities, injuries, suits and actions of whatsoever kind or character, whether in contract or tort, at law or in equity, known or unknown, presently due or contingent, liquidated or unliquidated, accrued or unaccrued, asserted or unasserted, developed or undeveloped, which the CITY has or may have, arising out of or in any way related to El Segundo utility users Taxes and other Taxes for periods prior to the date the Agreement is executed ("Released Claims"). The Released Claims include any and all claims that were asserted at any time in any utility users Tax audit conducted by the CITY, and any and all Tax underpayment or Tax non-payment claims that might have been brought concerning the Released Claims based on any theory and any claims based on:

(i) Unpaid or underpaid Taxes;
(ii) Taxability of gas as a feedstock (e.g., gas used for non-utility purposes) for hydrogen production;
(iii) Taxability of natural gas used in the production of co-generated power;
(iv) Taxability of refinery process gas produced (e.g., self-produced gas by the refinery) at the CHEVRON El Segundo refinery;
(v) Incorrect reporting of natural gas or refinery process gas volumes;
(vi) Non-payment or late payment of taxes;
(vii) Any and all claims for penalties;
(viii) Any and all claims for interest;
(ix) Any and all claims for punitive damages; and
(x) Any and all claims for attorneys’ fees, expert fees, consultant fees and other audit costs.

The foregoing releases shall be final and unchallengeable except upon a finding of fraud or misrepresentation of a material fact by CHEVRON.

4. RELEASE OF CITY. In consideration of the agreements, covenants set forth herein, and subject to all duties and obligations imposed on the Parties under this Agreement, CHEVRON does hereby release, acquit and forever discharge the CITY, successors, affiliates and subsidiaries and all elected officials, officers, directors, employees, agents, representatives
and attorneys of each such entity (collectively the “Released Parties”) from any and all claims, damages, causes of action, demands, debts, liabilities, injuries, suits and actions of whatsoever kind or character, whether in contract or tort, at law or in equity, known or unknown, presently due or contingent, liquidated or unliquidated, accrued or unaccrued, asserted or unasserted, developed or undeveloped, which CHEVRON may have, regarding prior Tax payments (except Property taxes paid by Chevron to the County) or arising out of or in any way related to the CITY’s release of gas or utility user Tax and other Tax information for the period of November 1, 2011 through the Effective Date of this Agreement.

5. TERM & APPLICABLE CITY TAX YEARS. The term of this Agreement shall be for fifteen (15) years, commencing on October 1, 2012 and ending on September 30, 2027 (the “Term”). This Agreement shall cover the City’s fiscal tax years from 2013 to 2027.

6. FINALITY. This Agreement shall be considered final and unchallengeable except upon a finding of fraud or misrepresentation of a material fact.

7. NO ADMISSION OF LIABILITY. CHEVRON and CITY make no acknowledgement or admission of any liability to the other Party or anyone else based on entering into this Agreement. It is expressly understood by the Parties that in agreeing to this resolution and settlement neither Party has made any concessions regarding the merits of its positions or the merits of the other Party’s position with respect to any disputed matter.

8. MUTUAL DRAFTING. The Parties agree that the negotiation and drafting of this Agreement was the product of the joint and mutual efforts and participation of the CITY, CHEVRON and each of their counsels. Therefore, in the event of any ambiguity herein, such ambiguity shall not be resolved against or in favor of any particular Party on the basis of who prepared or drafted this document.

9. WARRANTY. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein and they have full authority to make and enter into this Agreement. With respect to the CITY, the CITY is authorized to enter into this Agreement by the CITY Council for the CITY.

10. APPROVAL OF AGREEMENT BY CITY. CHEVRON acknowledges that this Agreement is subject to approval by the El Segundo CITY Council, which decision may be taken and reported in a public CITY Council meeting and, if approved, shall be a public record.

11. TERMINATION. The rights of each Party to terminate or suspend this Agreement are set forth below as follows:

A. TERMINATION FOR BREACH. Chevron may terminate this Agreement if (i) the City takes action within one hundred and five (105) days of the execution of this Agreement to place a ballot measure in an election which would increase the amount of Taxes paid by Chevron, or (ii) for a material breach of this Agreement upon one hundred eighty (180) days written notice of termination to the other
Party in the event the other Party breaches a material term of this Agreement and the specified breach is incurable or remains uncured at the end of the one hundred eighty (180) days following the date of such notice. For purposes of this subsection (ii) of this provision, “material breach” by the CITY shall mean the issuance of any Tax assessments by the CITY that are not based on applicable law and is in excess of fifty percent (50%) of the Resolution Payment. In the event of such a material breach by the City then Chevron in addition to having the right to terminate this Agreement shall also have the right to seek recovery of any payment it made as a result of the material breach.

B. CHEVRON’S TOTAL TAX PAYMENT EQUALS OR EXCEEDS 95% OF THE BASE PAYMENT AMOUNT. In the event that CHEVRON’S Total Tax Payments in two (2) consecutive fiscal years to the CITY during the Term of this Agreement equal or exceed ninety-five (95%) of the Base Payment Amount, CHEVRON may terminate this Agreement upon ninety (90) days written notice to the CITY.

C. MATERIAL IMPACTS.

i. SUSPENSION. CHEVRON has the right to suspend this Agreement upon thirty (30) days written notice if the CHEVRON El Segundo Refinery is materially impacted as a result of an unplanned event, including an operational accident, fire, flood, earthquake, storm, hurricane or other natural disaster, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, or government sanction, blockage, embargo, or interruption or failure of electricity or other utility service. A material impact in the operation of the Refinery would be deemed to have occurred in any circumstance where a major operating unit (e.g., including, but not limited to, the crude unit) causes the El Segundo Refinery’s average throughput of barrels of oil processed per day – “BPD”) to fall below fifty percent (50%) of the average total barrels of oil processed by the El Segundo Refinery (currently that is approximately 265,000 BPD and this figure can be found on the El Segundo Refinery’s public website) for one hundred eighty (180) days. For purposes of this paragraph, the El Segundo Refinery’s average throughput shall be determined by calculating the average total annual BPD processed by the El Segundo Refinery for the preceding three (3) calendar years prior to the date of the suspension. In such an event:

(a) CHEVRON’s Resolution Payment shall be reduced in a pro-rata portion from the date the material impact event occurred and/or for the portion of the year in which the Agreement was suspended. For purposes of example, if the Agreement was suspended for a period of six (6) months, then CHEVRON’s Resolution Payment would be reduced by fifty percent (50%).
(b) In the event that this Agreement is suspended, this Agreement shall be extended for the equivalent length of time this Agreement has been in a suspended status. For purposes of example, if the Agreement was suspended for a period of six (6) months, the term of the Agreement shall extended for an additional six (6) months, and for that extended period of six (6) months, CHEVRON would only be responsible for a pro rata portion of the Resolution Payment in the extended period (i.e., fifty percent (50%) of an annual Resolution Payment for the extended term of six (6) months).

ii. TERMINATION. In the event that CHEVRON decides to cease operating the El Segundo Refinery as a refinery and shuts down the refinery operation (that is, Chevron announces its intention to and does reduce the BPD of crude oil production to less than ten percent (10%) of Chevron's prior year's BPD on an on-going basis). CHEVRON may terminate this Agreement upon two (2) years written notice to the CITY. During the two year notice period, Chevron shall still be obligated to make Resolution Payments (i.e., the actual termination date is in the middle of a given year, Chevron shall be obligated to pay a pro rata portion of that year's Resolution Payment). Upon the effective date of the termination of this Agreement, CHEVRON shall then only be liable for its Total Tax Payments and shall no longer be liable for any Resolution Payment. In the event that Chevron terminates this Agreement pursuant to this paragraph, the City may place a tax ballot measure in and for an election (general, special or otherwise) and not trigger any refund obligation as stated in Section 11(D) provided that the tax ballot measure, if passed, does not become effective until the after the effective date of the termination of this Agreement.

D. TERMINATION FOR A NEW TAX AND REFUND OF RESOLUTION PAYMENT. CHEVRON, in its sole discretion, may terminate this Agreement upon thirty (30) days notice to the CITY if:

(i) the CITY Council;

(a) during the first twelve (12) years of this Agreement places a Tax ballot measure in and for any election (general, special or otherwise), which if passed would result in a Tax increase or new Tax, either of which would be imposed and materially increase the Taxes paid by Chevron during or after the term of the Agreement, or

(b) during or after year thirteen (13) of this Agreement places a Tax ballot measure in and for any election (general, special or otherwise), which if passed would result in a Tax increase or new
Tax, either of which would be imposed and materially increase the Taxes paid by Chevron during the term of the Agreement; or

(ii) an initiative petition circulated by a registered voter in the City results in a Tax ballot measure in any election (general, special or otherwise) and the measure is passed by the voters and is legally effective, and which would result in a Tax increase or new Tax, either of which would be imposed and materially increase the Taxes paid by Chevron during the term of the Agreement.

A material increase in Taxes shall be deemed to occur if the total Taxes to be paid by Chevron during the fiscal year immediately following the proposed effective date of the new Tax or Tax increase equals or exceeds an amount that is one hundred and ten percent (110%) of the sum of the Base Payment Amount calculated for the last Resolution Payment paid prior to the date a tax ballot measure is placed in an election plus the total amounts paid to the City pursuant to Recycled Water Agreement during that same fiscal year.

If Chevron exercises its right to terminate this Agreement, the CITY shall refund to Chevron the greater of: (i) three million dollars ($3,000,000); or (ii) the amount of last Resolution Payment paid prior to the date of such termination. The refund shall be provided to Chevron within thirty (30) days of the date of the termination of this Agreement. Notwithstanding the foregoing, Chevron and the CITY may enter into a written agreement to substitute such refund amount otherwise due to Chevron for Tax credits against Chevron’s future Tax liabilities to the City.

The CITY shall be deemed to place and have placed a Tax ballot measure in and for an election when it adopts a resolution to submit to the City of El Segundo voters a new Tax or Tax increase. A Tax ballot measure initiative by a registered voter of the City shall be deemed to have been passed and become legally effective when the City Council passes a resolution confirming the election results regarding the initiative unless the City takes formal and public action not to impose the Tax within sixty (60) days thereof.

E. EFFECT OF TERMINATION. In the event of that this Agreement is terminated pursuant to any provision in this Section 11, CHEVRON shall be relieved from any further liability to the CITY under this Agreement and of making any future payment due under this Agreement. For purposes of clarity, in the event this Agreement is terminated, CHEVRON shall no longer be required to make any Resolution Payments under this Agreement but shall be required to make any and all Tax payments to the City pursuant to applicable law.

12. SPECIFIC PERFORMANCE; ENFORCEMENT COSTS. The Parties agree that failure to perform under this Agreement cannot be adequately relieved by pecuniary compensation. Accordingly, either Party may compel specific performance of this Agreement in accordance with Civil Code §§ 3384, 3386, or 3389, and any other applicable law, should the other Party fail
to fully perform its obligations under this Agreement. If successful in compelling specific performance, the enforcing Party will be entitled to recover all costs associated with such enforcement including, without limitation, reasonable attorneys’ fees.

13. NOTICES. All communications to either Party by the other Party will be deemed made when received by such Party at its respective name and address as follows:

**If to CHEVRON:**

Attention: General Manager – El Segundo Refinery
324 West El Segundo Blvd.
El Segundo, CA 90245

Copies to:

(i) Manager of State and Local Tax Counsel
Chevron Corporation
6001 Bollinger Canyon Rd.
San Ramon, CA 94583

(ii) Chevron Downstream Law Dept.
6001 Bollinger Canyon Road, Buidling T
San Ramon, CA 94583
Attn: VP General Counsel
Fax: (925) 842-8595

(iii) Finance Manager – El Segundo Refinery
324 West El Segundo Blvd.
El Segundo, CA 90245

(iv) Public Affairs Department
General Manager – El Segundo Refinery
324 West El Segundo Blvd.
El Segundo, CA 90245

**If to CITY:**

CITY of El Segundo
250 Main Street
El Segundo, CA , 90245
Attention: City Manager

Any such written communications shall be by First-Class, certified mail with return receipt requested and will be conclusively deemed to have been received by the addressee upon signature of the communication properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.
14. NO LIMITATION ON THE CITY’S MUNICIPAL POWERS. Nothing in this Agreement is intended to, nor can it, act as a limitation on CITY’s present or future exercise of municipal powers in accordance with the California Constitution and applicable law.

15. YEAR 12 NEGOTIATIONS. At time of the commencement of Year 12 of this Agreement, the Parties hereby agree that during Year 12 of this Agreement and upon receipt of thirty (30) days’ notice from either Party, the Parties agree to enter into negotiations to determine if the term of this Agreement can be extended. There is no obligation for either Party to agree to extend the term of the Agreement.

16. NO THIRD PARTY BENEFICIARIES. This Agreement and every provision herein are generally for the exclusive benefit of CHEVRON and the CITY and not for the benefit of any other Party.

17. WAIVER. CITY’s acceptance of payment from CHEVRON under this Agreement will not be construed to operate as a waiver of any rights the Parties may have under this Agreement or of any cause of action arising from their performance. A waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement is not deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

18. ASSIGNMENT. Except as expressly provided by this Section, neither Party may transfer, assign or hypothecate its rights under or interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld. Any attempted transfer, assignment, or hypothecation without such written consent is void and confers no rights upon any third person and constitutes a default. No transfer, assignment or hypothecation releases a Party from its obligations under this Agreement. Notwithstanding, CHEVRON may assign, transfer or hypothecate its rights or interests in this Agreement to any of its Affiliates without the prior consent of CITY.

19. SUCCESSORS. All the terms, conditions and covenants of this Agreement will inure to the benefit of and be binding upon the Parties’ successors and assigns. The provisions of this Section will not be deemed as a waiver of any of the conditions against assignment as set forth herein.

20. INTERPRETATION; GOVERNING LAW; & JURISDICTION/VENUE. This Agreement was drafted in and 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. If the Parties are unsuccessful in their good faith attempt to otherwise resolve any dispute arising out of this Agreement, except for the dispute the resolution process set forth in Section 2(C) of this Agreement, the Parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of either (a) Los Angeles County in the State of California, or (b) the federal courts of the Central District of California, for any actions, suits or proceedings arising out of or relating to this Agreement (and
the Parties each agree not to commence any action, suit or proceeding relating thereto except in such courts).

21. COMPLIANCE WITH LAW. CHEVRON and the CITY agree to comply with all federal, state, and local laws applicable to this Agreement.

22. RULES OF CONSTRUCTION. Each Party hereto and its counsel has had an opportunity to independently review this Agreement and revise (or request and/or discuss revisions of) this Agreement. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party and the Parties agree that it shall not be presumed that any ambiguities are to be resolved against the drafting Party in the construction and interpretation of this Agreement or any amendments or attachments hereto. Headings of Sections and other parts of this Agreement are for quick reference only and are not to be construed as part of this Agreement.

Unless the context otherwise requires: (i) references to Sections and Attachments are to sections of, and attachments to, this Agreement; (ii) references in the singular shall include the plural and vice versa; (iii) references to one gender shall include the other genders; (iv) a reference to a Party includes its successors and permitted assigns; (v) a reference to a document or agreement includes all its subsequent amendments, any novation and supplemental agreements; and (vi) a reference to any legislation or law is a reference to that legislation as amended, extended or re-enacted from time to time.

23. SEVERABILITY. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

24. MODIFICATIONS. This Agreement may be modified only by written amendment that is signed by authorized representatives of each Party. In the case of the City, any amendment must be approved by the City Council.

25. COUNTERPARTS. This Agreement may be executed in two or more counterparts and, as executed, shall constitute one agreement binding on all Parties hereto, even if all of the Parties are not signatories to the original or the same counterparts. Moreover, electronic, scanned or facsimile copies of signatures shall be accepted as valid and binding.

26. SURVIVAL. Expiration or earlier termination of this Agreement shall not impair or affect any liability or obligation of CHEVRON or the CITY that has accrued on or before the date of expiration or earlier termination of this Agreement. Further, unless otherwise specifically provided in this Agreement, all provisions of this Agreement which by their nature contemplate performance after the expiration or earlier termination hereof, including all provisions that contain obligations of confidentiality, representations, warranties, waiver or release made by any Party to this Agreement, shall survive such expiration or earlier termination of this Agreement.
27. EFFECT OF WAIVER OF PERFORMANCE. The waiver of, or failure to require, the performance of any covenant or obligation contained herein shall not be deemed to constitute a waiver of a similar later breach.

28. ENTIRE AGREEMENTS; MODIFICATIONS AND AMENDMENTS. This Agreement constitutes the entire agreement of the Parties hereto with respect to its subject matter and except as set forth herein supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement, in duplicate, through their authorized representatives as evidenced by the signatures below.

CITY OF EL SEGUNDO

By: ____________________________
Carl Jacobsen
Mayor
Date: ____________________________

ATTEST:

______________________________
Tracy Weaver,
CITY Clerk

APPROVED AS TO FORM:
MARK D. HENSLEY, CITY Attorney

By: ____________________________

CHEVRON U.S.A. INC.

By: ____________________________
Print: ____________________________
Title: ____________________________
Date: ____________________________
ATTACHMENT A

(Primary Taxes Included in Determining CHEVRON’S Resolution Payment(s) and an Example of How Future Resolution Payment(s) are to be Calculated)

(A) IDENTIFICATION OF TAXES. As of the Effective Date of the Agreement and for purposes of illustration only, Chevron’s Total Tax Payments include:

- Property Taxes (City’s Share)
- Electricity UUT (Cogen)
- Electricity UUT (Edison)
- Water UUT (Fresh Water)
- Business License Tax
- Sales and Use Taxes
- Franchise Fees
- Gas Users Tax (UUT) (including payments made pursuant to the 1994 Administrative Agreement as amended)

Note: UUT reflects the generic term of “utility users Tax”.

(B) CALCULATION PROCEDURE. Based upon the initial Base Year Amount of $11.1 million, the calculation of CHEVRON’S subsequent Resolution Payment(s) shall be as follows:

(i) Step One: The CITY and CHEVRON agree as to the amount of CHEVRON’S Total Tax Payments (i.e., calculate/determine CHEVRON’S Total Tax Payments, which is the sum of the Taxes received by the CITY from CHEVRON).

(ii) Step Two: The Parties agree/determine CPI-U Annual percentage change in December (e.g., 3%).

(iii) Step Three: Calculate the adjusted Base Year Amount (e.g., $11.1 million X 3%) + $11.1 million = $11,433,000).

(iv) Step Four: Calculate Resolution Payment [Step Three (e.g., $11,433,000) – CHEVRON’S Total Tax Payments (i.e., Step 1 number)].

---

1 If the Total Tax Payments exceed the Base Payment, then Chevron shall remit the amount of the Total Tax Payments (subject to Chevron’s termination rights set forth in Section 11 of this Agreement) and Chevron shall not be required to make Resolution Payment.
ORDINANCE NO. 1226

AN ORDINANCE OF THE CITY OF EL SEGUNDO, CALIFORNIA, AMENDING SECTION 3.24.040 OF TITLE 3 OF THE EL SEGUNDO MUNICIPAL CODE REGARDING APPLICATION OF GAS USERS TAX

THE CITY COUNCIL OF THE CITY OF EL SEGUNDO, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Subsection (d) is hereby added to Section 3.24.040 of Chapter 3.24 of Title 3 of the El Segundo Municipal Code to read as follows:

"(d) The tax imposed by this section is not intended to apply to gas not purchased from third party vendors and gas used for non-utility purposes.

(1) For the purposes of this subsection (d), the phrase "gas not purchased from third party vendors" shall mean gas which is produced and owned by the same legal entity where ownership is not the result of a sale or purchase transaction.

(2) For the purposes of this subsection (d), the phrase "gas used for non-utility purposes" shall mean gas which is a component part of a manufactured product produced by an entity which is subject to the utility users tax."

SECTION 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance or any part thereof. The El Segundo City Council hereby declares that it would have passed each and every section subsection, subdivision, paragraph, sentence, clause, or phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 3. This ordinance shall become effective immediately upon adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance; shall cause the same to be entered in the book of original ordinances of said city; shall make a note of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted; and shall within 15 days after the passage or adoption thereof cause the same to be published or posted in accordance with the law.

PASSED, APPROVED, AND ADOPTED on August 2, 1994.

MAYOR OF THE CITY OF EL SEGUNDO

ATTEST: CITY CLERK

APPROVED AS TO FORM: CITY ATTORNEY
STATE OF CALIFORNIA  }
COUNTY OF LOS ANGELES  }  SS
CITY OF EL SEGUNDO  }

I, Cindy Mortesen, City Clerk of the City of El Segundo, California, DO HEREBY
CERTIFY that the whole number of members of the City Council of the said City is five;
that the foregoing ordinance, being ORDINANCE NO. 1226 is a full, true correct original
of ORDINANCE NO. 1226 of the said City of El Segundo, California, entitled:

AN ORDINANCE OF THE CITY OF EL SEGUNDO, CALIFORNIA,
AMENDING SECTION 3.24.040 OF TITLE 3 OF THE EL SEGUNDO
MUNICIPAL CODE REGARDING APPLICATION OF GAS USERS TAX.

which was duly passed and adopted by the said City Council, approved and signed by
the Mayor or said City, and attested by the City Clerk of said City, all at a regular
meeting of the said Council held on the _2ND_ DAY OF AUGUST, 1994, and the same
was so passed and adopted by the following vote:

AYES: Mayor Jacobson, Mayor Protem Weston, Councilman
Robbins, Councilman Switz, and Councilwoman
Friedkin.

NOES: None

ABSENT: None

NOT PARTICIPATING: None

I do hereby further certify that pursuant to the provisions of Section 36933 of the
Government Code of the State of California, that the foregoing ORDINANCE NO. 1226,
was posted and/or published in the manner prescribed by law.

CINDY MORTENSEN
City Clerk of the
City of El Segundo, California

(SEAL)

The foregoing instrument is a full, true, and
correct copy of the original on file in this
Office:
ATTEST: 18th day of April 2013

City Clerk, City of El Segundo
ATTACHMENT C
(Form of Amendment to Administrative Agreement Regarding Gas Tax Collection)

AMENDMENT NO. 1
TO THE
ADMINISTRATIVE AGREEMENT REGARDING GAS TAX COLLECTION
(CONTRACT REFERENCE NUMBER: ____________)
BETWEEN
CHEVRON U.S.A. INC.
AND
THE CITY OF EL SEGUNDO

This Amendment No. 1 ("Amendment") is dated and made effective as of April __, 2013 ("Amendment Effective Date") by and between Chevron U.S.A. Inc., a Pennsylvania corporation ("Company" or "Chevron"), and the City of El Segundo, a municipal corporation (the "City" or the "CITY"). This Amendment constitutes an amendment to the ADMINISTRATIVE AGREEMENT REGARDING GAS TAX COLLECTION between Chevron and the City, dated and made effective as of February 1, 1994 (referred to in this Amendment as the "1994 Administrative Agreement"). Company/Chevron and the City may sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, the Parties entered into the 1994 Administrative Agreement and an agreement entitled the "Settlement Agreement and Mutual General Release" in or about February 1994 to resolve a dispute between the Parties as to how the City's gas utility user tax ordinance applied to Chevron; and

WHEREAS, at the time that the Parties entered into the 1994 Administrative Agreement and the Settlement Agreement and Mutual General Release, the Parties believed that such agreements were fair, just, reasonable and advantageous to both Parties, and the Parties further believe that these two agreements are still fair, just, reasonable and advantageous to both Parties; and

WHEREAS, the City decided to exercise its right to audit, and did conduct an audit in 2012, pursuant to the terms of the 1994 Administrative Agreement. In particular, the CITY audited CHEVRON's gas use within the CITY as that term is defined and determined under the 1994 Administrative Agreement (the "Audit"). The City also conducted the audit pursuant to the Settlement Agreement and Mutual General Release Agreement between the Parties dated February 1, 1994 and CITY Ordinance No. 1226 (which is part of and provides definitions and exceptions regarding the application of the City's Utility Users Tax with regard to natural gas usage which is taxed in accordance with Section 3-7-5 of the City Municipal Code). Chevron does not agree on the methodology used by the auditor in the audit for comparing taxable gas consumption. However, in the Tax Resolution Agreement and this Amendment, Chevron and the City agree to apply a methodology, as set forth below, to be used in the future. The Parties agree that Chevron shall make annual gas users tax payments based upon the methodology that is consistent with what the auditors determined was equitable – that Chevron's taxable gas payments with respect to gas that is purchased from a third party (non-equity gas) based upon a pro-rata allocation of such gas to all of Chevron's taxable and non-taxable gas consumption to determine the amount of gas utilized for taxable gas consumption; and

WHEREAS, as a result of a tax dispute between the City and Chevron, the Parties have entered into a Tax Resolution Agreement to fully resolve the tax dispute and Chevron's payment of City taxes and the Parties now desire to amend the 1994 Administrative Agreement to provide clarifications as to how the City's gas users tax ordinance is applied to Chevron's El Segundo Refinery.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree to amend the 1994 Administrative Agreement as follows:
A. **Chevron U.S.A. Inc.** The City and Chevron agree that the correct and applicable Party to the 1994 Administrative Agreement is and always has been "Chevron U.S.A. Inc."

B. **Term.** Paragraph "2" of the 1994 Administrative Agreement is deleted and replaced with the following:

2. **Term.** The Parties agree that the new term of this 1994 Administration Agreement shall be coterminous with the Tax Resolution Agreement entered into between the City and Chevron on or about April ___, 2013. Accordingly, the Parties agree that the term of this 1994 Administration Agreement shall be extended up to and including ending on September 30, 2027, or in the event that the Tax Resolution Agreement is terminated early or extended in accordance with its terms, then the term of the 1994 Administration Agreement shall be extended or terminated so that the 1994 Administration Agreement shall terminate or expire on the same day as the Tax Resolution Agreement.

C. **Payment of Tax.** Paragraph "4" of the 1994 Administrative Agreement is deleted and replaced with the following:

4. **Payment of Tax.** Chevron agrees to make its annual gas users tax payments based upon the following agreed upon methodology which is consistent with the 1994 Administrative Agreement and El Segundo Municipal Code Section 3-7-5, including subsection (d) which was added pursuant to Ordinance 1226. In this regard, the Parties agree that the gas users tax shall only apply to natural gas and shall not apply to gas that Chevron does not purchase from third parties (e.g., Chevron refinery produced process gas, Chevron produced gas or gas that is produced or owned by an Affiliate (as that term is defined in the Tax Resolution Agreement). The Parties further agree that gas that is used for non-utility purposes (such as feedstock use for the production of hydrogen) and gas used for electric cogeneration purposes are also not subject to the City’s gas users tax. Chevron shall pay the gas users tax for each year based upon a pro-rata allocation of third party (also known as non-equity) natural gas to all of Chevron’s taxable and non-taxable gas consumption to determine the amount of gas utilized for taxable gas consumption in accordance with Section 2(D) of the Parties’ Tax Resolution Agreement, El Segundo Municipal Code Section 3-7-5, including Subsection (d) thereof which was adopted pursuant to City Ordinance No. 1226.

D. **Annual Adjustment.** Paragraph "6" of the 1994 Administrative Agreement is deleted and replaced with the following:

6. **Statute of Limitation on Assessments.** Chevron acknowledges that City will conduct audits of UUT Gas Tax payments during the term of the 1994 Administrative Agreement (as extended by this Amendment) and agrees to cooperate with City auditors. City agrees that in addition to following the other terms of this Agreement a three year statute of limitations shall strictly apply to additional UUT Gas Tax assessments. The three year statute of limitations period begins to run the day after Chevron pays its annual UUT Gas Tax payment to the City.

E. **Notification of Change of Notices to Chevron.** The Parties agree that with respect to any notices provided under this Administrative Agreement that need to be provided from the City to Chevron, the City shall direct such notices in accordance with the 1994 Administrative Agreement to the following addresses:

(i) To the following personnel at the El Segundo Refinery:
General Manager – El Segundo Refinery  
Finance Manager – El Segundo Refinery  
Public Affairs Manager – El Segundo Refinery  

324 West El Segundo Blvd.  
El Segundo, CA 90245  

(ii) Attention: Corporate Tax -- Managing Tax Counsel  
Chevron U.S.A. Inc.  
6001 Bollinger Canyon Rd.  
San Ramon, CA 94583  
Attn: Manager, State & Local Tax Counsel  

(iii) Attention: Chevron Downstream Law Dept.  
Chevron U.S.A. Inc.  
6001 Bollinger Canyon Road, Building  
San Ramon, CA 94583  
Attn: VP General Counsel  

F. **Effect of the Amendment.** Except as expressly amended, supplemented and modified herein, nothing in this Amendment in any way alters or amends the restrictions, rights or obligations under the 1994 Administrative Agreement that are not expressly amended herein, and all other provisions in the 1994 Administrative Agreement are hereby ratified, confirmed and remain in full force and effect. This Amendment shall prevail and control with respect to any inconsistency between the interpretation of the 1994 Administrative Agreement, this Amendment and any other addendum or prior amendment.  

**IN WITNESS WHEREOF,** the Parties have executed this Amendment through their authorized representatives as evidenced by the signatures below.  

**CITY OF EL SEGUNDO**  
By:  
Carl Jacobson  
Mayor  
Date:  

**CHEVRON U.S.A. INC.**  
By:  
Print:  
Title:  
Date:  

**ATTEST:**  

_________________________________  
Tracy Weaver,  
City Clerk  

**APPROVED AS TO FORM:**  
MARK D. HENSLEY, City Attorney  
By:  

---

Tax Resolution Agreement  
City of El Segundo and Chevron U.S.A. Inc.
ATTACHMENT D
(Identification of Real Property Parcels Currently Owned or Leased by Chevron in the City of El Segundo)
(attached)
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EL SEGÚNDO CITY COUNCIL
AGENDA ITEM STATEMENT

MEETING DATE: December 18, 2012
AGENDA HEADING: Unfinished Business

AGENDA DESCRIPTION:

Update on the status of negotiations with the Chevron Corporation and consideration of terms for an Alternative Tax Agreement (ATA) (Fiscal Impact: Estimated - 134 million net new revenue over the next 15 fiscal years)

RECOMMENDED COUNCIL ACTION:

1. Receive and file report and direct staff to prepare an Alternative Tax Agreement with the Chevron Corporation for City Council consideration
2. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:
Documents relating to the 1988 voter approved tax measure, the 1991 extension by the City Council of the 1988 voter approved tax measure, the 1994 Chevron Agreement and related documents, and the 1996 ballot measure and related documents.

FISCAL IMPACT: TBD

Amount Budgeted:
Additional Appropriation:
Account Number(s):

PREPARED BY: Greg Carpenter, City Manager
REVIEWED BY:
APPROVED BY:

BACKGROUND & DISCUSSION:

In December of last year, the City Council discussed placement of a measure increasing the business license tax rate for refineries on the April 2012 municipal election. The stated intent at that time was to increase revenues from the Chevron refinery in order to address deferred capital maintenance and infrastructure projects. The rationale for the increase at that meeting focused on the imbalance that existed between the revenues collected from refineries in other nearby cities compared to those collected in El Segundo, as well as the revenue collected from other commercial/industrial properties in El Segundo compared to revenues collected from the Chevron refinery.

Based on Chevron’s request, and their commitment to work constructively to resolve the matter, the City Council chose to seek a negotiated resolution of the issue. Rather than placing the business license tax increase on the April 2012 ballot, a City Council Subcommittee (consisting of Mayor Pro Tem Fuentes and Council Member Fisher) was created to participate in the negotiations. There was no clear agreed upon financial goal from the negotiations by the City Council. While there was some information disseminated by the former City Manager that the amount would be $5 million per year there is no information that the prior Council approved such amount or whether such $5 million...
included the water surcharge amount paid by Chevron (currently approximately $1.8 million per year).

Since January, a number of significant changes/events have occurred including:

- City Council election in April and the appointment of two new Council members
- A significant loss of anticipated revenues to the City, coupled with increased costs led to the adoption of FY 2012-2103 Budget that relies heavily on the use of one-time funds.
- The forecast of budget deficits over the next three years of approximately 5-6 million dollars each.

With this background, the City Council Subcommittee, staff and Chevron representatives began negotiations in April with the mutual understanding that both sides would maintain confidentiality for the purposes of open discussion and resolution of potential disputes as well as legal restrictions regarding tax payer information. The discussions can be characterized as professional and constructive. The Subcommittee's principal objectives in these negotiations included:

- Establishing an appropriately valued, reliable, long-term source of revenue,
- Incorporating an appropriate level of escalation of the value of the agreement to keep pace with inflation,
- Extension of the current Recycled Water Surcharge Agreement (set to expire in 2015) to coincide with the term of the ATA agreement.
- Review of the natural gas usage at the refinery and compliance with the 1994 Settlement Agreement (including, Ordinance 1226 and the 1994 Administrative Tax Agreement) between the City and Chevron

**PROPOSED ALTERNATIVE TAX AGREEMENT**

The Council Subcommittee and Chevron have negotiated a possible agreement that would include the following basic terms:

- **Amount** – Chevron would agree to pay the City $11.1 million dollars in combined “2012 Taxes” and “Additional Funds”. For the purposes of this agreement, “2012 Taxes” would consist of the City’s share of the property tax, the Electric and Cogenerated Utility Users tax, Water UUT, sales and use tax, business license tax and Gas Utility Users tax generated by the Chevron refinery. “Additional Funds” would make up the balance between 11.1 million dollars and the 2011/12 taxes. The additional funds to be paid in the first year of the agreement would be approximately 6.1 million dollars.

Chevron will continue to pay gas UUT payments based upon the 1994 agreement and the Administrative Determination and Ordinance 1226 which defined the specific uses for which Chevron was obligated to make gas UUT payments.

- **Term of the Agreement** – the term of the agreement would be for 15 years, from January of 2013 through January of January of 2027.

- **Escalation** – The amount to be paid each year would be increased by applying the Consumer Price Index for all Urban Consumers (CPI-U) to the previous year’s total payment (Taxes and Additional Funds).

- **Reconciliation and Payment** – In December of each year, the City would provide Chevron with total tax receipts received in the previous fiscal year to be matched against Chevron’s payment records. This amount would be deducted from the escalated total payment and the Chevron
would pay the balance of Additional Funds. The payment would be provided in January of each year.

- **Extension of Recycled Water Surcharge** – Chevron would agree to extend the surcharge to match the term of the ATA agreement. This payment benefits the water fund and all customers of potable water including Chevron by otherwise reducing the amount charged to water customers. If this payment by Chevron were to end in 2015 pursuant to the current agreement then the City would either need to charge this amount to current water customers (assuming that the customers would not protest a proposed increase pursuant to Proposition 218). If this payment were to cease and water customers were to protest a fee increase the general fund would need to pay into the water enterprise fund an amount roughly equivalent to the amount currently paid by Chevron.

- **Effect on other Taxes/Cancellation** – This agreement would not impact the normal collection of taxes and would not serve to restrict the City’s ability to collect or raise taxes or impose new taxes. In the case where, during the December reconciliation, Chevron’s taxes equal or exceed 95% of the future year’s total payment, for two consecutive years, Chevron would have the right to cancel the agreement. In no event would Chevron be entitled to a refund or credit for previous payments made by Chevron.

The overall value (existing taxes, additional funds and the extended water surcharge) over the 15 year term is estimated to be 224.5 million dollars, or nearly 15 million per year (this amount may vary based on the CPI-U). The value of net new revenue (above and beyond the future revenues that would be collected by the existing tax rates) is more difficult to estimate due to some of the variables. Based on historic tax growth, historic CPI-U growth, an assumption that the recycled water surcharge would expire in 2015 and an assumption that there would not be any new or changed taxes, staff has estimated net new revenues at 134 million, or 8.93 million per year.

**1994 SETTLEMENT AGREEMENT RELATED TO GAS USERS TAX**

There have been media reports and public comments regarding a 1994 agreement that the City entered into with Chevron regarding Chevron’s UUT gas charges and payments. The proposed agreement is not intended to alter the methodology of such payments set forth in the 1994 Agreement and the related Administrative Agreement and Ordinance 1226 all of which were approved at public meetings and collectively provide that Chevron will not be charged a UUT for gas it owns and uses on site, gas used for its cogeneration facility (it is important to note that the City also receives UUT for the electricity produced by cogeneration plant which is explicitly set forth in the ESMC) and gas that Chevron uses for producing other products on site (referred to as "feedstock" gas"). As directed by City Council, the City undertook an audit of Chevron’s natural gas usage in accordance with the 1994 agreement earlier this year. While the audit results must remain confidential, the information was considered as part of the negotiations for the proposed Alternative Tax Agreement.

The records located by the City regarding the 1994 Agreement show that the City had not received voter approval for any of the taxes which were approved by the voters in 1988 and were being paid by businesses in the City and that were to expire in 1991 but were extended by the Council in 1991. The California Supreme Court in 1995 held that such taxes were required to be approved by the voters and the City acknowledged the potential exposure ($72 million) of not receiving such voter approval when in 1996 the voters were asked to ratify the City’s existing taxes. The documents provided to the voters stated that there was no intention to raise the City’s current taxing rates or amounts and the ballot measure was only intended to preserve existing tax revenues. Specifically, in the ballot argument in
favor of the 1996 ballot measure that was written and signed by the five sitting Council Member at that time, it stated:

“TAXES ARE NOT BEING INCREASED. No one, whether they are a business or a private citizen will experience any additional taxes as a result of Measure H.”

Moreover, the ballot measure did not purport to supersede the Chevron agreement, the Administrative Tax Agreement or Ordinance 1226 which defined the gas UUT amounts to be paid by Chevron. Attached are documents relating to the 1988 voter approved tax measure, the 1991 extension by the City Council of the 1988 voter approved tax measure, the 1994 Chevron Agreement and related documents, and the 1996 ballot measure and related documents.

Additionally it should be acknowledged that while the City could have audited Chevron's gas consumption prior to the current audit, it did not do so and such may simply be attributable to the numerous changes in City staff and City Council makeup since 1994. While the City cannot legally disclose the results of the audit, the results of the audit were included for consideration of the negotiations of the Additional Payment that will result from the proposed agreement.

Finally, it should also be noted that if the City had negotiated a more favorable agreement with Chevron in 1994 that it is unknown whether Chevron would have entered into the 1998 water surcharge agreement which has resulted in significant financial support to the City's Water Enterprise Fund (currently approximately $1.8 million a year). The public presentation made regarding this issue in December 2011 did not accurately reflect the benefit the City received from the water surcharge agreement.

SUMMARY

Assuming that there are not substantial deviations from current revenue and expenditure forecasts, the proposed agreement would provide significant, long-term stability to the City's general and water funds. This stability would reduce otherwise anticipated budget deficits in the near term and should allow the City to maintain current service levels. In the long term, the added revenues would ideally provide for capital projects and/or expanded services. Staff recommends that the City Council approve the basic terms listed previously, and direct staff to prepare a draft agreement, and any other necessary actions for City Council consideration. It is anticipated that staff would return to Council for approval of a final agreement in late January or early February.
FOR SUPPORTING DOCUMENTS (ATTACHMENTS)
FOR THE DECEMBER 18, 2012 STAFF REPORT

PLEASE REFER TO:
CITY OF EL SEGUNDO WEBSITE
( www.elsegundo.org )
LINKS
AGENDAS & MINUTES
COUNCIL AGENDAS
“Council Meeting Agenda Packet REV 12-18-12”

OR
THE DOCUMENTS ARE AVAILABLE FOR REVIEW
IN THE CITY CLERK’S OFFICE