RESOLUTION NO. 2011 - 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA, CALIFORNIA, APPROVING AMENDMENT TWO TO THE IMPACTED SOILS REUSE AGREEMENT BETWEEN THE CITY OF SANTA MARIA AND CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY AND UNION OIL COMPANY, COLLECTIVELY KNOWN AS CHEVRON

WHEREAS, the City of Santa Maria operates the Non-hazardous Hydrocarbon Impacted Soil (NHIS) Program at the landfill to:

1) Provide an environmentally safe disposal site for the oil companies to dispose of the NHIS;
2) Utilize the NHIS soil as foundation material for capping the old area of the landfill and protect groundwater;
3) Generate sufficient revenue to fund road improvements and other landfill programs; and

WHEREAS, since inception of the NHIS program in 2002, the City has been able to close 54 acres at the existing landfill using NHIS as part of the rolling closure; and

WHEREAS, the rolling closure has significantly improved groundwater since the Regional Water Quality Board issued a Clean-up or Abatement Order in 1996; and

WHEREAS, the City will continue to provide a source of NHIS for timely closure of the unlined area of the landfill in a judicious and fiscal manner for the community; and

WHEREAS, in beneficially reusing the impacted soils for landfill cover and closure, the NHIS Program has not only improved the landfill water and environmental qualities, but has relocated the impacted soil to a protected environment that can be monitored with the landfill for a minimum of 30 years as required by State and Federal regulations;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Santa Maria, California, as follows:

1. That the City of Santa Maria hereby approve Amendment Two (Exhibit A) to the Impacted Soils Reuse Agreement between the City of Santa Maria and Chevron Environmental Management Company and Union Oil Company, (two corporations sharing common ownership, collectively known as Chevron); and

2. The Director of Utilities, or his/her designee, is hereby authorized and directed to execute Amendment Two, and is further authorized to agree to such minor modifications as may be necessary to fulfill the objectives of the parties to the amended agreement.
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Santa Maria held February 15, 2011.

______________________________
Mayor

ATTEST:

______________________________
Chief Deputy City Clerk

APPROVED AS TO FORM:

BY: ____________________________
   SR. ASSISTANT CITY ATTORNEY

CONTENT:

BY: ____________________________
   DEPARTMENT HEAD

BY: ____________________________
   CITY MANAGER
EXHIBIT A

AMENDMENT TWO
TO THE IMPACTED SOILS REUSE AGREEMENT

This AMENDMENT TWO ("Amendment Two") is made and effective September 1, 2010 ("Amendment Two Effective Date") by and between the CITY OF SANTA MARIA, a California municipal corporation and charter city ("City") and CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY, a California Corporation ("CEMC") and UNION OIL COMPANY OF CALIFORNIA, a California corporation ("Union"). CEMC and Union are herein collectively referred to as "Chevron." City and Chevron may be individually referred to as a "Party," or collectively as the "Parties."

RECITALS

A. Chevron and City have previously entered into that certain IMPACTED SOILS REUSE AGREEMENT dated April 13, 2006 ("Agreement"), and Amendment One to the Agreement dated July 5, 2006 ("Amendment One").

B. Chevron and City desire for the interim term to amend certain provisions of the Contract as set out in this Amendment Two to the Agreement. These terms establish the parties' agreement concerning billing accuracy controls, recordkeeping, inspection by Chevron, avoiding conflict of interest, mutual compliance with law, payments and payment adjustments.

C. Defined Terms used in this Amendment Two are set forth in Section 4 below.

D. The "Agreement", "Amendment One" and "Amendment Two" between Chevron and City are herein referred collectively as "Contract").

In consideration of the mutual promises set out in the Contract, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Chevron and City agree to be bound by the terms of this Amendment Two.

AGREEMENT

1. CONTROLS, RECORDS AND INSPECTION

1.1 Controls. It is understood by the Parties that City and Central Coast Remedial Resources, Inc. a California corporation ("City’s Contractor") have previously entered into that certain "Agreement to Deliver and Accept Impacted Soils" dated April 16, 2002, and "Amended Agreement to Deliver and Accept Impacted Soils" dated March 1, 2005, as amended ("Management Contract"). City has established and will maintain during this Contract certain controls to provide assurance to Chevron that Chevron is receiving accurate invoices for impacted soil it brings to the City of Santa Maria Regional Landfill from the City’s Contractor. In addition to the requirements specified in the Contract, these controls are outlined in Exhibit I of the Management Contract incorporated by reference and described in Section 3 below. Chevron agrees these controls are appropriate, acceptable, and sufficient.
1.2 **Records.** City has established, and will maintain at least for the period specified below, documentation as follows:

(A) Records specified in Sections 3.3, 3.4, 11 and 17 of the Agreement.

(B) Records in paper or electronic form showing the liability for and calculation of all amounts payable by Chevron to City’s Contractor under this Contract. These records consist of:

1. weight tickets from certified scales showing the amount of impacted soil brought to the City by Chevron’s drivers; and

2. bills of lading/manifest documents submitted to City by Chevron’s drivers, showing the origin of the impacted soil; and

3. records of payments received from the City’s Contractor.

1.3 **Retention of Records.** All Records required to be kept by Section 1.2 shall be maintained and retained by City until at least twenty-four months from the end of this Agreement. All Records required to be kept by Section 1.2 shall be maintained in either paper or electronic format; if in electronic format, then the Record must be reproducible onto a printed paper copy. If any dispute arises under this Contract then upon specific written request by Chevron all Records relevant to the Dispute shall be retained at Chevron’s cost at least until the Dispute is finally resolved and all obligations arising out of the resolution of the Dispute are satisfied.

1.4 **Inspection of the Services.**

(A) **Right to Inspect.** Chevron may, at its own cost, inspect the City of Santa Maria Landfill impacted soil operations on reasonable notice at reasonable times during business hours the Santa Maria Regional Landfill is in operation.

(B) **No Waiver of Chevron’s Rights.** Chevron’s inspection of the City of Santa Maria Landfill impacted soil operations does not excuse City from any obligations. Chevron’s failure to inspect, witness, test, discover defects, raise issues concerning or reject Services performed by City that are not in accordance with this Contract or any Service Order does not relieve City from the liabilities and obligations set out in this Contract or a Service Order or raise any defense to the insufficiency of City’s performance.

(C) **Inspection of Records.** Chevron may at any time during business hours, in compliance with the California Public Records Act, inspect and receive copies of public records not exempt from disclosure and in possession of the City.

1.5 **Access and Assistance.** City shall provide all of the following:

(A) Reasonable access to all relevant sites in the City’s control to enable Chevron or its representatives to carry out inspections in accordance with this Section 1,
including access to all relevant material, equipment and personnel used in the provision of the Services. If provision of access results in cost to the City, the access shall be at Chevron’s expense.

(B) At Chevron’s cost, all Records not exempt from disclosure by law, requested by Chevron or its representatives for the purposes of inspection under this Section 1, and all assistance consistent with the California Public Records Act in performing the inspection and accessing those Records.

1.6 Use of Information. Chevron may only use information obtained from inspections under Section 1.4 and 1.4(B) of Amendment Two for the administration or enforcement of this Contract, for tax or audit purposes, or for the resolution of Disputes.

1.7 Confidentiality. Chevron shall keep all information obtained from inspections under Section 1.4 and 1.4(B) of Amendment Two confidential, except that Chevron may disclose the information in each of the following circumstances:

(A) To the extent necessary for the uses permitted by Section 1.6 of Amendment Two.

(B) Where disclosure is required by Applicable Law, court order, stock exchange regulations, or government order, decree, regulation or rule, or where failure to disclose could reasonably result in sanctions or increased sanctions against a member of Chevron.

2. ADDITIONAL OBLIGATIONS

2.1 Error in Information. City will cooperate with Chevron to identify and correct errors and potential errors in information concerning invoicing under this Contract. City will notify Chevron as specified in Section 28.2 of the Agreement (as revised) of any error or potential error as soon as practical after discovery.

2.2 Revised Contact Information. The contact information in Section 28.1 and 28.2 of the Agreement shall be revised to include revised contact names and addresses as shown below:

The City of Santa Maria:

City of Santa Maria Utilities Department
ATTN: Richard Sweet
2065 East Main Street
Santa Maria, CA 93454
Telephone: (805) 925-0951, ext. 7270

Chevron:

Chevron Environmental Management Company
ATTN: Don Culbertson
276 Tank Farm Road
San Luis Obispo, CA 93401

Amendment Two to the Impacted Soils Reuse Agreement
Discussion Draft - Subject to management and legal approval of Chevron
2.3 Conflict of Interest.

(A) Prohibition. The City will do none of the following activities without Chevron’s prior written consent:

(1) Give to or receive from any director, employee or agent of Central Coast Remedial Resources Inc., or of Chevron, or any Affiliate of Central Coast Remedial Resources or Chevron in connection with the performance of this Contract, either of the following:

(a) Any gift, entertainment or other benefit of significant cost or value.

(b) Any commission, fee or rebate.

(2) Enter into any business arrangement with any person known to be director, employee or agent of Central Coast Remedial Resources, Inc. or any known Affiliate of Central Coast Remedial Resources, Inc.—other than as a representative of Central Coast Remedial Resources, Inc. or its Affiliate.

2.4 Improper Influence.

(A) Prohibition. City shall make no payment nor shall give anything of value to any official of any government or Public International Organization (including any officer or employee of any governmental department, agency, company or other instrumentality) to influence the official’s or organization’s decision or to gain any other advantage for Chevron or City arising out of this Contract. In addition, no member of City shall offer or make any payment or offer or give anything of value to any Person if the member knows or has reason to believe that any
portion of the payment or gift will be given directly, indirectly or through a third party to any Government Official, any immediate family member of any Government Official or any political party.

(B) **Limitation.** This subsection shall not be construed to prohibit the City from taking any proper and legal steps, including but not limited to securing lobbying services, to advocate on behalf of issues in the City’s interest that may incidentally be consistent with Chevron’s interest.

2.5 **Compliance with Applicable Laws.** Without limiting any other provision in this Contract, City and Chevron shall comply with all laws applicable to this Agreement. The parties shall cooperate with each other in providing notice of applicable restrictions and regulations, and in obtaining all applicable permits, licenses, authorizations, registrations, concessions and clearances.

2.6 **Subcontractors.** Chevron acknowledges that City is currently under contract for certain duties under the Contract, and as further identified in Section 3 below. City acknowledges that no such subcontract shall relieve it from compliance with the performance of the Agreement.

2.7 **Data Protection.** City shall comply with all reasonable requests of Chevron, consistent with the California Public Records Act as interpreted by City, with respect to protecting Personal Data regarding Chevron employees, contractors, customers, suppliers and others that City receives in connection with its performance of this Contract, including restricting employee and agent/subcontractor access to Personal Data, following Chevron’s instructions in connection with processing Personal Data, not disclosing Personal Data to any third party without Chevron’s written permission, applying appropriate security measures to protect the Personal Data, deleting any Personal Data in its possession or control at the expiration or termination of this Contract, unless agreed between the Parties, and complying with all applicable data protection laws. If the City reasonably believes unauthorized, unlawful, and/or unintended processing, access, disclosure, exposure, alteration, loss or destruction of Personal Data has occurred, City will notify Chevron as soon as practical, cooperate with Chevron’s reasonable requests to investigate and remediate such incident, and provide appropriate response and redress.

3. **FINANCIAL MATTERS**

3.1 **Agent and Operator for City**

(A) It is understood and agreed by the Parties that City’s Contractor performs duties as described in Exhibit 1 of the amended Management Contract. Per Section 3. COMPENSATION and Exhibit 2 of the amended Management Contract, City’s Contractor will receive payment for the delivery and handling services as set forth in “Exhibit 2” in Section B. and C. of the amended Management Contract, as follows:

(1) Monthly, City’s Contractor shall remit to City’s treasurer payment for the NHIS received at the Santa Maria Regional Landfill and paid for over the period specified. The City’s Contractor shall retain fifty percent
(50%) of the revenues derived from the base disposal fee for NHIS delivered to the Santa Maria Regional Landfill.

(2) At the discretion of City, City may require City’s Contractor to include in price quotations for disposal an additional fee, over and above the base disposal fee, for reimbursement of the cost to construct NHIS cells. This additional fee shall be 100% payable to the City with no City’s Contractor participation. This includes the LCRS Fee as shown in Section 18.2 of the Agreement and the Hauling Fee as described in Section 3.6 below.

(B) It is understood by the Parties that City has contractually authorized payment to City’s Contractor in the Management Contract and that City agrees that any and all payment for goods and services related to Contract may be made to City’s Contractor directly, and accepted as payment for goods and services delivered as part of this Contract.

3.2 Compensation. Chevron shall pay City’s Contractor in accordance with the Service Order as full compensation for the services satisfactorily performed by City either directly or through City’s Contractor. Service Orders shall be generated by Chevron which will allow the City’s Contractor to invoice and receive payment for impacted soils received at the Santa Maria Regional Landfill from Chevron.

3.3 Adjustments to Compensation. Section 18.1.1 of the Agreement is deleted in its entirety and replaced with the following:

(A) Calculation of Adjustment: Beginning July 1, 2006 and on July 1 each year thereafter (“Adjustment Date”), Chevron shall pay the City an adjusted price per ton as compensation for the City’s receipt of impacted soils from Chevron. The price adjustment shall be calculated as shown in equation format as follows:

\[
\text{Amount of Adjustment} = A \times \left( \frac{C - B}{B} \right)
\]

where

\[
A = \text{Price Per Ton in effect immediately prior to the Adjustment Date}
\]

\[
B = \text{Published Index nearest to the Adjustment Date from the previous 12-month period}
\]

\[
C = \text{Published Index on or closest day before the Adjustment Date}
\]

(B) Negative Adjustment: Should the Amount of Adjustment result in a negative number, then there shall be no adjustment made for one year, and the following year’s adjustment shall replace B as follows:

\[
\text{Amount of Adjustment} = A \times \left( \frac{C - B_0}{B_0} \right)
\]

where
A = Price Per Ton in effect immediately prior to the Adjustment Date

B₀ = Published Index nearest to the Adjustment Date from the previous 24-month period

C = Published Index on or closest day before the Adjustment Date

3.4 Index Adjustment to Base Price Per Ton. Effective September 1, 2010 the City will reduce Base Price Per Ton by 1.3% to $14.41 per ton which reflect the 2010 readjustment to account for the negative percent change in the Index from 2008 to 2009.

3.5 Index Adjustment to LCRS Fee Per Ton. Effective September 1, 2010 the City will reduce LCRS Fee Per Ton by 1.3% to $1.90 per ton which reflect the 2010 readjustment to account for the negative percent change in the Index from 2008 to 2009.

3.6 Catch-up Hauling Fees Payment to the City. The volume of impacted soils has exceeded 1,000,000 tons from the Guadalupe Restoration Project to the Santa Maria Regional Landfill which triggers an additional payment clause in Section 6 of Amendment One. As of December 24, 2010, a catch-up payment of $24,889.79 for the Chevron Guadalupe Restoration Project and $55,038.12 for the non-Guadalupe Restoration Projects shall be charged to Chevron through City’s Contractor. These catch-up payments shall be made to the City by April 1, 2011. Impacted Soils brought from Chevron after December 24, 2010 shall be subject to Section 3.7 of Amendment Two.

3.7 Hauling Fee Per Ton. Section 6 of Amendment One is amended to read: Effective December 25, 2010 Chevron shall be charged a Hauling Fee rate of $1.10 per ton for impacted soils originating from Guadalupe Restoration Project and shall be charged a rate of $0.35 per ton for each ton of impacted soil originating from non-Guadalupe Restoration Projects accepted at the Santa Maria Regional Landfill. In accordance with a separate agreement between City and County of Santa Barbara, City will collect the Hauling Fee on behalf of Santa Barbara County and will either remit the collected Hauling Fees in full to Santa Barbara County or apply the collected Hauling Fees toward the actual cost of capital improvements and maintenance made to the roadways of County of Santa Barbara by City. Chevron shall have no obligation other than to remit the Hauling Fee when due.

4. Definitions. As used in this Contract, these words or expressions have the following meanings:

4.1 “Affiliate” means any legal entity which controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to “control” another if it owns directly or indirectly at least fifty percent of either of the following:

(A) The shares entitled to vote at a general election of directors of such other entity.

(B) The voting interest in such other entity if such entity does not have either shares or directors.

4.2 Affiliates of Company expressly include Chevron Corporation (“Chevron”).
4.4 “Person” means an individual, corporation, company, state, statutory corporation, government entity or any other legal entity.

4.5 “Personal Data” means any information that can be used directly or indirectly, alone or in combination with other information, to identify an individual.

4.6 “Public International Organization” means an international organization formed by states, governments, or other public international organizations, whatever the form of organization and scope of competence.

4.7 “Records” means information in any recorded form, whether electronic or otherwise, including books, papers, documents, contracts, financial accounts, ledgers, recordings, purchase orders, invoices, vouchers, receipts, manifests, correspondence, memoranda, instructions, plans, drawings, personnel records, timesheets, payroll records, inspection records, registers, statements, reports, written and other information on procedures and Controls, computer data and other data.

4.8 “Service Order” means the written documentation that is entered into by Chevron and City to specify the Services that City agrees to perform. The Service Order shall be either in substantially the form of Exhibit A - Service Order Form, or in the form of requests for Services initiated and agreed to electronically between the Parties that contain substantially the same information as Exhibit A - Service Order Form. Except for the specific Services to be performed as stated in the Service Order, in no event shall any Service Order operate to amend the terms of this Contract. The particular Services requested of City at a given location shall be detailed in the Service Order.

5. **No Further Modification.** Except as expressly modified and amended by this Amendment Two, the Agreement and Amendment One shall remain unmodified and in full force and effect.

6. **Counterparts.** This Amendment Two may be executed in any number of counterparts, each of which will be deemed an original, and which together shall constitute one and the same instrument; provided that neither Party shall be bound to this Contract unless and until both Parties have executed a counterpart.

7. **Entire Agreement.** The Contract constitutes the entire agreement between the Parties as to the subject matter hereof. No subsequent agreement, representation or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

8. **Term of Agreement.** This Amendment Two is effective upon execution until December 31, 2011, after which the Contract will continue to remain in effect until amended in writing by the parties, or terminated as provided in paragraph 6 of the Agreement.
The Parties have executed this Second Amendment in triplicate as evidenced by the following signatures of the authorized representatives of the Parties:

CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY
a California corporation

CITY OF SANTA MARIA
a municipal corporation

Signature: _____________________________
Name: Greta I. Becker
Title: President

Signature: _____________________________
Name: Richard G. Sweet, P.E.
Title: Director of Utilities

UNION OIL COMPANY OF CALIFORNIA
a California corporation

CITY OF SANTA MARIA
ATTEST

Signature: _____________________________
Name: Ron Culbertson
Title: Assistant Secretary

Signature: _____________________________
Name: Patricia A. Perez
Title: Chief Deputy City Clerk

CITY OF SANTA MARIA
APPROVED AS TO CONTENT:

Signature: _____________________________
Name: Tim S. Ness
Title: City Manager

CITY OF SANTA MARIA
APPROVED AS TO FORM:

Signature: _____________________________
Name: Wendy Stockton, Senior Assistant
Title: City Attorney/Utilities Counsel

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