

Council Meeting of
July 15, 2008

SUPPLEMENTAL

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager - Supplemental Information to Item 12D

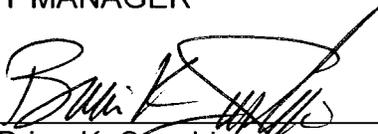
Attached are the material available for Item 12D. The documents attached are:

- Attachment A: Grant Deed with Use Restrictions
- Attachment B: Indemnity Agreement

Both documents meet the needs of the City to secure Open Space, indemnify the City in the event contamination is found due to the previous use and finally allow for certain improvements to the property to enhance the use as passive Open Space as well as the use for water circulation and treatment prior to entering the Madrona Marsh Preserve.

Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By 
 Brian K. Sunshine
 Assistant to the City Manager

CONCUR:


 for  LeRoy J. Jackson
 City Manager

Recording Requested By and
When Recorded Mail To:

GRANT DEED WITH USE RESTRICTIONS

CHEVRON U.S.A. INC., a Pennsylvania corporation and successor in interest to Standard Oil Company of California, a corporation (“Grantor”), hereby agrees to grant to THE CITY OF TORRANCE, a California Charter City located in the County of Los Angeles, State of California (“Grantee”), certain real property described herein, subject to the covenants and use restrictions set forth below.

RECITALS

GRANTOR is the sole owner of the real property located in Los Angeles County, California, fully described in Exhibit A hereto, which exhibit is attached to and made a part of this grant deed by this reference, together with all buildings, structures, fixtures, equipment, improvements and personal property located thereon (the “Property”); and

GRANTOR and GRANTEE agree and acknowledge that the Property has significant natural and scenic value to the general public, that it currently exists in an essentially unimproved, natural state, that it harbors a diversity of plant and animal life in a broad range of habitats (the Property’s “Natural and Scenic Qualities”), that it has great importance to Grantor, Grantee, and to the general public, and that it is worthy of perpetual preservation for public use and enjoyment; and

GRANTOR desires to grant the Property to Grantor to ensure that the Property’s Natural and Scenic Qualities are forever preserved for public use and enjoyment; and

GRANTEE desires to accept this grant and to covenant to forever preserve and maintain the Property’s Natural and Scenic Qualities by restricting the use of the Property for wildlife habitat, public recreation and any other conservation purpose(s) that will not substantially impair the Property’s Natural and Scenic Qualities.

NOW, THEREFORE, GRANTOR and GRANTEE agree and covenant as follows:

GRANT OF PROPERTY

GRANTOR hereby grants the Property to Grantee. The purpose of this grant is to forever preserve the Property’s Natural and Scenic Qualities for public use and enjoyment; and

GRANTOR makes no warranties of any kind, whether expressed or implied, regarding the condition of the Property, and this conveyance is made subject to (a) liens for property taxes and assessments that are not due and payable as of the date of execution of this instrument, (b) all matters shown in the public records, (c) all matters that can be ascertained by a reasonable inspection or survey of the Property; and (d) the Use Restrictions set forth below.

USE RESTRICTIONS

GRANTEE, by virtue of its acceptance of this grant, covenants to honor the intentions of Grantor as set forth above, to act in a manner consistent with the purposes of this grant, and to forever preserve the Property's Natural and Scenic Qualities for public use and enjoyment; and

GRANTEE covenants to take no action with respect to the Property that would substantially impair the Property's Natural and Scenic Qualities. Grantor further covenants to limit the use of the Property to such activities as are consistent with this covenant; and

GRANTEE agrees and acknowledges that each and every term of this grant and Use Restriction is intended for the benefit of the public and is enforceable pursuant to applicable California law. This grant binds Grantee, along with its successors and assigns, and constitutes a servitude and burden on the Property that runs with the land in perpetuity; and

GRANTEE agrees and acknowledges that the purposes, terms, conditions, restrictions, and covenants contained in this Use Restriction may be specifically enforced or enjoined by proceedings in the Superior Court of the State of California, County of Los Angeles, that California law shall govern the interpretation and enforcement of this grant and Use Restriction, and that the terms of this grant and Use Restriction shall be liberally construed in order to effectuate the purposes of this grant.

IN WITNESS WHEREOF, Grantor and Grantee have caused the execution of this instrument as of July ____, 2008.

GRANTOR: CHEVRON U.S.A. INC.

By: _____
Its:

GRANTEE: THE CITY OF TORRANCE

CITY OF TORRANCE,
a Municipal Corporation

Dated: _____, _____

By: _____
Name: Frank Scotto, Mayor

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By: _____

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT 6 IN BLOCK 315 OF TRACT NO. 1952, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 23 PAGE(S) 83 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE EASTERLY 105 FEET (MEASURED ALONG THE NORTHERLY LINE) OF SAID LOT 6.

ALSO EXCEPTING THEREFROM THE WESTERLY 30 FEET.

PARCEL 2:

THAT PORTION OF LOT 1 OF TRACT NO. 10778, IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 184 PAGE(S) 12 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 6 IN BLOCK 315 OF TRACT 1952 AS SHOWN ON MAP RECORDED IN BOOK 23 PAGE 83 OF MAPS IN SAID OFFICE OF THE COUNTY RECORDER; THENCE NORTH 89° 25' 50" EAST ALONG THE NORTHERLY LINE OF SAID LOT 6 A DISTANCE OF 195 FEET; THENCE NORTH 0° 04' EAST PARALLEL WITH THE WESTERLY LINE OF SAID LOT 1 A DISTANCE OF 74.80 FEET; THENCE SOUTH 89° 25' 50' WEST PARALLEL WITH SAID NORTHERLY LINE OF LOT 6 A DISTANCE OF 195 FEET TO SAID WESTERLY LINE OF LOT 1; THENCE SOUTH 0° 04' WEST ALONG SAID WESTERLY LINE 74.80 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THE WESTERLY 30 FEET.

EXCEPT ALL MINERALS, PETROLEUM, OIL, ASPHALTUM, GAS AND/OR HYDROCARBON SUBSTANCES, INCLUDING HELIUM, WITHIN OR UNDERLYING THE ABOVE DESCRIBED REAL PROPERTY, AT A DEPTH OF MORE THAN TWO HUNDRED (200) FEET BELOW THE SURFACE, TOGETHER WITH THE RIGHT OF PROSPECTING AND/OR DRILLING FOR, PRODUCING AND/OR REMOVING THE SAME THEREFROM AND THEREUNDER, PROVIDED, HOWEVER, THAT GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT TO ENTER UPON THE SURFACE OF SAID REAL PROPERTY FOR THE PURPOSE OF PROSPECTING AND/OR DRILLING FOR, PRODUCING AND/OR REMOVING THE SAME THEREFROM AND THEREUNDER, NOR FOR ANY PURPOSE IN CONNECTION THEREWITH, AS RESERVED BY CHANSLOR-WESTERN OIL AND DEVELOPMENT COMPANY, A CORPORATION, BY DEED RECORDED SEPTEMBER 22, 1959 AS INSTRUMENT NO.3468 IN BOOK D 610 PAGE 100, OF OFFICIAL RECORDS.

ASSESSOR'S PARCEL NO: 7359-002-031

END OF LEGAL DESCRIPTION

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT ("**Agreement**") is entered into by and between **CHEVRON U.S.A. INC.**, a Pennsylvania corporation ("**Chevron**"), and **CITY OF TORRANCE** ("**City**"), a Municipal Corporation.

RECITALS

A. Chevron holds record title to certain real property located at 3323 Sepulveda Boulevard, in the City of Torrance, County of Los Angeles, State of California (the "**Property**").

B. Chevron and its predecessor in interest, Standard Oil Company of California ("**Standard**"), previously operated a retail service station facility, commonly known as Service Station No. 9-6015, on the Property.

C. The Property is currently vacant and Chevron is willing to donate the Property to the City pursuant to a Grant Deed to be executed by the parties.

D. City plans to construct a passive water treatment system on the Property to enhance the treatment of storm water and urban runoff into the adjacent Madrona Marsh Nature Preserve, including installing subsurface conduit and piping for electrical and irrigation, as well as footings for fencing and signage, landscaping, and concrete and rock work inclusive of appurtenances for pathways, walkways, and/or berms ("**City's Development**").

E. Chevron's consultant, SECOR, performed a baseline site assessment on the Property which is documented in the *Baseline Site Assessment Report* dated June 1, 2007 (the "**Report**"), a copy of which was provided to City. The Report concluded that none of the soil samples that were analyzed contained levels of petroleum hydrocarbons or fuel oxygenates above laboratory reporting limits. Chevron currently does not have an open environmental case with the local governmental agency.

F. Covered Contamination as defined below in Paragraph 3 (*Covered Contamination*) may be present on or under the Property that is subject to regulation by governmental agencies having jurisdiction over environmental matters (collectively "**Agency**").

G. The parties enter into this Agreement in order to establish Chevron's willingness to:
 (i) provide for Chevron's investigation and, if necessary, cleanup of Covered Contamination; and
 (ii) provide the indemnification contemplated in Paragraph 6 (*Indemnity*).

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the foregoing and of the mutual promises set forth below, the parties agree as follows:

1. EFFECTIVE DATE

This Agreement is effective upon the date the Property is transferred to City (“*Effective Date*”).

2. REPRESENTATIONS

City warrants and represents that it will not operate a service station on the Property. In the event that City or its Successors (as defined in Paragraph 4 [*Cleanup*] below) elects to operate a service station on the Property, in addition to any other remedies available to Chevron, Chevron’s indemnity obligations under Paragraph 6 (*Indemnity*) shall terminate.

3. COVERED CONTAMINATION

As used herein, “*Covered Contamination*” means petroleum hydrocarbon and motor vehicle fuel additive contamination that: (a) originated from Chevron’s or Standard’s operations and activities on the Property prior to the Effective Date; (b) must be remediated pursuant to applicable federal, state or local laws and regulations in effect on the Effective Date; and (c) is located on the Property on the Effective Date or has migrated from the Property.

4. CLEANUP

(a) Chevron shall, at its sole cost and expense, perform or cause to be performed such investigation, monitoring, and cleanup of Covered Contamination, as may be validly directed by the Agency (the “*Work*”). Chevron shall have the right to challenge any Agency directive, order or request and not assume responsibility therefore if its challenge is based on a good faith belief that the contamination which is the subject of the directive, order or request does not meet the definition of Covered Contamination for which Chevron would be liable under this Agreement. Said Work may include, but not be limited to: (i) installation, maintenance, replacement, periodic sampling and abandonment of wells; (ii) installation, maintenance, replacement and removal of remediation or recovery systems and associated equipment; and (iii) other work deemed necessary by Chevron or the Agency.

(b) Except as is otherwise provided in Paragraph 6 (*Indemnity*) below, Chevron’s obligation under this Paragraph 4 shall cease when a no further action letter or its equivalent (“*NFA Letter*”) is issued for the Property by the Agency.

(c) Chevron’s obligation to cleanup the Covered Contamination shall extend to parties who take title to the Property prior to the issuance of an NFA Letter or within fifteen (15) years of the Effective Date of this Agreement, whichever occurs first (“*Successors*”).

5. MANNER OF PERFORMANCE

(a) The Work. Except as may otherwise be provided herein, Chevron shall perform the Work in a manner and at times which will not unreasonably interfere with City’s use of the Property. Prior to the installation of any new equipment on the Property, Chevron and City shall work together to determine the appropriate location for the new equipment. City agrees to cooperate with Chevron, including the execution of additional documents, if necessary, in order to

obtain permits or other documents from the Agency required to install, abandon or remove Chevron's equipment.

(b) Access Granted. City shall provide Chevron, its employees, agents, representatives, consultants and contractors with access to the Property to perform the Work. With the exception of routine maintenance of Chevron's equipment on the Property, Chevron shall provide City with advance notice of its intended schedule for access.

(c) Agency Communications. Each party shall promptly provide the other with copies of all final reports, laboratory test results, and other communications submitted to the Agency. If City shall for any reason request a meeting with any Agency regarding the Property or the performance of the Work, City shall provide Chevron with reasonable advance notice of any such requested meeting, such that Chevron may attend.

(d) Risk Based Cleanup. City acknowledges that Chevron may request authority from the Agency to leave a portion of the Covered Contamination in excess of the Agency cleanup levels on the Property, based upon a risk based cleanup study and report submitted to and approved by the Agency. City agrees that it shall not interfere with or challenge the Agency's acceptance of the use of a risk based cleanup approach.

(e) Notice to Chevron Prior to Construction. City shall provide a copy of its construction plans and any subsequent revisions to Chevron. Not less than five (5) calendar days prior to any pre-construction meeting, City shall notify Chevron, by giving notice in accordance with Paragraph 10 (*Notices*), to allow Chevron an opportunity to respond to any concerns. In addition, while Chevron is obligated to perform the Work pursuant to the terms of this Agreement, City shall give Chevron reasonable advance notice of any future development not contemplated in Recital D that involves subsurface activities on the Property.

(f) Notice to Chevron re: Covered Contamination. If during the course of City's development, City encounters any Chevron equipment or Covered Contamination, City will immediately notify Chevron in accordance with Paragraph 10 (*Notices*) and the parties agree to cooperate in good faith to address the issue.

(g) Compliance. Chevron agrees, at its sole cost and expense, to conduct and perform the Work in a prompt, safe, efficient and workmanlike manner and in compliance with all Agency requirements.

(h) Restoration. If entry onto the Property by Chevron, or exercise by Chevron of any of its rights or obligations under this Agreement, result in any physical damage to the Property (ordinary wear and tear excepted), Chevron shall promptly repair and restore the portions of the Property damaged to substantially the same condition as existed prior to the damage or exercise of such right or obligation.

6. INDEMNITY

(a) Chevron agrees to indemnify, defend and hold City harmless from and against any liabilities, damages, costs, or losses arising from: (i) claims or lawsuits by third parties relating to the Covered Contamination or the performance of the Work by Chevron on the Property; and (ii) an Agency demand or requirement to perform an investigation or cleanup action for Covered Contamination. Chevron shall not be responsible for any liabilities, damages, costs, or losses to the extent caused by the reckless, negligent or intentional acts or omissions of any party asserting any right under this Paragraph 6. In the event underground storage tanks are installed on the Property subsequent to the date Chevron vacated the Property, this indemnity is voided for any claims arising after the date of said tank installation.

(b) Except as otherwise specified below, Chevron's indemnity obligation shall extend to Successors, as defined in Paragraph 4 (*Cleanup*).

(c) Chevron shall not be liable to City or Successors for (i) any such claims described in Chevron's indemnity under Paragraph 6(a) that are attributable to or arise from exacerbation of Covered Contamination resulting from construction on the Property, excluding City's Development, following the date of this Agreement that involve subsurface excavation, soil movement, or special handling, treatment or disposal of groundwater, or (ii) special, incidental or consequential damages including, without limitation, construction delays, loss of business, diminution in the value of the Property, or loss of goodwill by City or Successors.

(d) Any party claiming a right to be indemnified by Chevron under this Agreement shall not be entitled to such indemnification unless: (i) said party agrees in writing to be bound by the terms of this Agreement; and (ii) after receiving notice of any such claim described in Chevron's indemnity under Paragraph 6(a), said party provides Chevron with reasonable advance written notice of the claim and a demand that Chevron honor its indemnity obligations.

(e) Any person benefiting from the indemnification set forth in this Paragraph 6, at any point in time, shall be deemed not to be a third person or party.

7. RELEASE

In exchange for the indemnity Chevron has provided under this Agreement, City and Successors hereby release and forever discharge Chevron from any and all liabilities, claims, lawsuits, damages, losses that City now has or that City or Successors may have in the future arising out of or in any way related to the Covered Contamination, except with regard to Chevron's compliance with its obligations under this Agreement. The claims released herein shall include, without limitation, any and all unknown claims relating to Covered Contamination. City and Successors hereby waive any and all rights they may have under any and all statutes or laws that purport to limit the scope of the general release, including, without limitation, Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if

known by him or her must have materially affected his or her settlement with the debtor.

City

8. INSURANCE

In lieu of insurance coverage, Chevron maintains a self-administered claims program with respect to its duties hereunder. Chevron shall require contractors who perform the Work under this Agreement to maintain liability insurance coverage in accordance with Chevron's standard practices.

9. LIENS

Chevron shall discharge at once or bond or otherwise secure against all liens and attachments that are filed in connection with the Work, and shall indemnify and save City and the Property harmless from and against any and all loss, damage, injury, liability and claims thereof resulting directly from such liens and attachments.

10. NOTICES

Any notices required to be made under this Agreement shall be made in writing to the address of the appropriate party as set forth below. All such notices shall be deemed to have been duly given and received upon mailing, delivery by courier or personal delivery service. Parties may alter or modify their notice address by delivery of written notice pursuant to the terms of this Agreement.

To Chevron:

Chevron Corporation
Policy, Government and Public Affairs
324. W. El Segundo Blvd.
El Segundo, CA 90266
Attn.: Rod Spackman, Manager
Phone: (310) 615-5281

With a copy to:

Chevron Environmental Management Company
Marketing Business Unit
145 S. State College Blvd.
Brea, CA 92821-5818
Attn.: Sharon Vasquez, Property Specialist, SS # 9-6015
Phone: (714) 671-3262

To City:

City of Torrance
3031 Torrance Boulevard
Torrance, CA 90503
Attn.: City Clerk
Phone: (310) 618-2870

11. APPLICABLE LAW

This Agreement shall be interpreted, and any dispute arising hereunder shall be resolved, in accordance with the substantive laws of the State of California, without reference to choice of law rules.

12. ALTERNATIVE DISPUTE RESOLUTION (ADR)

If a dispute arises between the parties relating to this Agreement, the parties agree to use the following procedure prior to pursuing other legal remedies:

- (a) A meeting among the parties shall promptly be held in California, attended by individuals with decision-making authority regarding the dispute, who will attempt in good faith to negotiate a resolution of the dispute.
- (b) If within fifteen (15) days after the meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation using a mediator who is mutually acceptable, and to bear equally the costs of the mediation.
- (c) The parties agree to participate in good faith in the mediation process related to their dispute for a period of thirty (30) days from the commencement of mediation. If the parties are not successful in resolving the dispute through mediation, then:
 - (1) the parties may agree to submit the matter to binding arbitration or a private adjudication; or
 - (2) either party may initiate litigation upon ten (10) days advance written notice to the other party.

13. COUNTERPARTS

This Agreement may be executed in counterparts, all of which together shall constitute one and the same agreement.

14. INTEGRATION

This document represents the entire agreement between the parties. No modification of the terms hereof shall be effective unless in writing and duly executed by the authorized representatives of the respective parties.

15. MUTUALLY DRAFTED AGREEMENT

This Agreement has been negotiated at arm's-length and between parties represented by counsel. Accordingly, any rule or law (including California Civil Code §1635 et seq.) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted the applicable provision is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

21. WARRANTY OF AUTHORIZED SIGNATORIES

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the last date set forth below.

CHEVRON:

CHEVRON U.S.A. INC.,
a Pennsylvania corporation

Dated: _____, _____

By: _____

Name: _____

Its: _____

CITY:

CITY OF TORRANCE,
a Municipal Corporation

Dated: _____, _____

By: _____

Name: Frank Scotto, Mayor

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By: _____