

MEMORANDUM OF AGREEMENT TRANSFERRING OPERATION OF THE CALIFORNIA OIL MUSEUM TO THE CALIFORNIA OIL MUSEUM FOUNDATION

THIS MEMORADNUM OF AGREEMENT (“Agreement”) is entered into as March XX, 2017, (“Effective Date”) by and between the City of Santa Paula, a municipal corporation (“City”) and the California Oil Museum Foundation, a non-profit entity (“Foundation”) and consented to by Chevron U.S.A. Inc, a corporation (“Chevron”).

RECITALS

A. City and Chevron are parties to that Lease Agreement dated July 1, 1993 (the “Lease Agreement”) by which City leases certain buildings, land, and exhibits located at 1001-1003 East Main Street in the City of Santa Paula (the “Premises”) for the purposes of operating the California Oil Museum (“Museum”).

B. Pursuant to Paragraph 34 of the Lease Agreement, City may assign the Lease Agreement to a non-profit entity formed for the purpose of operating and maintaining the Museum at the Premises and Chevron shall consent to the assignment to the non-profit entity.

C. The Foundation is a non-profit entity formed for the purpose of operating and maintaining the Museum at the Premises.

D. City has assigned to Foundation all of its rights, interests and obligations in the Lease Agreement to Foundation in order to continue the operations of the Museum at the Premises and Chevron has consented to such assignment.

E. In order to facilitate the smooth transition of operational responsibility from the City to the Foundation and to promote the continued public purpose served by the Museum, this Agreement shall govern the transfer of funds and employees for the operation of the Museum as well as the Foundation’s responsibilities to take over all relevant duties in order for the Museum to continue to operate totally independent from the City

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Foundation do hereby agree as follows:

1. Transfer of Museum Administrator and Employees. Foundation shall hire the current Museum Administrator and all other part time employees of the Museum as employees of the Foundation for a period of at least 6 months. The City shall provide a roster of employees to the Foundation who shall be subject to this section. Upon expiration of this 6-month period, the employees subject to this section shall be treated as any other Foundation employee. The Foundation shall provide a waiver, executed in favor of, and in a forma acceptable to, the City, for any claims against the City by each Museum employee as a condition of employment by the Foundation.

2. Assumption of Utilities. Within thirty (30) days of the Effective Date, Foundation shall cause to be transferred or assigned all of the relevant utility accounts servicing

the Museum, including, but not limited to: gas service, electricity services, security alarm, telephone/internet/cable services, and water and sewer services. Upon the completion of the transfer of all utility accounts, Foundation shall provide to City proof of such transfer.

3. Transfer of Funds. Within thirty (30) days of Foundation submitting proof of the transfer of all pertinent utility accounts, City shall transfer to Foundation all funds allocated for the Museum. As of the Effective Date, this amount is approximately (**INSERT AMOUNT**)

4. Use of Funds. Foundation shall only use the funds for the operation and related purposes of the Museum (the “Fund”) and in compliance with this Agreement. Any other use of the funds transferred to the Foundation by the City shall constitute a violation of this Agreement and any funds transferred to the Foundation from the City shall be returned to the City.

- a. The Foundation shall have all powers necessary to carry out the purposes of the Fund, including, but not limited to, the power to retain, invests and reinvest the funds transferred in any manner with the “prudent person” standard and the power to commingle the asset of the Fund with those of other funds for investment purposes. The Foundation shall retain a professional investment advisor to manage the investment of the assets of the Fund, subject to final approval by the City. The annual investment expenses of the Fund shall not exceed 1% of the total assets of the Fund.
- b. The earnings of the Fund shall be committed, granted, or extended for, or in furtherance of, the purposes of the Fund, and for no other purpose. Earnings of the Fund shall be distributed to the Foundation for the financial support of the Museum on an annual or semiannual basis, or as otherwise deemed appropriate by the Foundation. Earnings may be reinvested instead of being distributed if deemed appropriate by the Foundation.
- c. It is the intent of the Parties and this Agreement that the Fund be a permanent endowment, of which only the earnings are distributed. There shall be no provision for withdrawal of the principal.
- d. The Fund is protected from obsolescence. Should the purpose for which it was created become obsolete or incapable of fulfillment, the Fund shall be transferred back to the City.

5. Access to Records. Upon 48 hours written notice, City shall be allowed to review all of Foundation’s financial records reflecting the use of the funds transferred pursuant to this Agreement, including but not limited to, bank statements, invoices, and operating budget to ensure use of funds transferred to the Foundation is in compliance with this Agreement. In the event the City has reason to believe that the financial viability of the Museum is at-risk, the City shall give the Foundation three (3) day’s written notice of its reasons to doubt the financial viability of the Museum. During the three (3) day written notice period, the City shall be allowed to review all of the Foundation’s financial records reflecting the use of all funds, including but not limited to, bank statements, invoices, and operating budget.

6. Operational Responsibility. Upon execution of this Agreement, Foundation shall be solely and entirely responsible for the operation, maintenance and any other required responsibilities for the Museum. The City shall have no further responsibilities related to the operation of the Museum except for those stated in this Agreement.

7. Indemnification. Foundation agrees to indemnify, defend (with counsel satisfactory to the City) and hold City, its partners, officers, directors and employees harmless from any claim, loss, cost, liability or expense, including attorney fees and court costs, relating to this Agreement, including, but not limited to, any claim by a Museum employee who becomes a Foundation employee as a result of Section 1 of this Agreement.

5. Notice. Any notice required to be made or given pursuant to the provisions of the Agreement may be either personally served upon the party or deposited in the United States mail, postage prepaid to:

California Oil Museum Foundation
[INSERT ADDRESS]
ATTN: PRESIDENT

City of Santa Paula
Attn. City Manager
970 Ventura Street
Santa Paula, CA 93060

6. Miscellaneous

(a) **Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

(b) **Waivers.** No waiver or breach of any covenant or provision shall be deemed a waiver of any other covenant or provision, and no waiver shall be valid unless in writing and executed by the waiving party.

(c) **Construction.** Headings are solely for the parties' convenience, are not a part of this Agreement, and shall not be used to interpret this Agreement. The singular form shall include plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

(d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

(e) **Amendment.** This Agreement may not be amended or altered except by a written instrument executed by City and Foundation.

(f) **Further Assurances.** Whenever requested to do so by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary or proper to complete the assignments contemplated by this Agreement, and/or to carry out the intent and purpose of this Agreement.

(g) **Third-Party Rights.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.

(h) **Governing Law.** This Agreement shall be governed and construed in accordance with California law and any suit or action initiated by either party shall be brought in Ventura County, California.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the Effective Date written above.

California Oil Museum Foundation,
a non-profit entity

City of Santa Paula,
a municipal corporation

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____