

**TOWN OF FAIRFAX
STAFF REPORT**

To: Mayor, Members of the Town Council
From: Mark Lockaby, Public Works Manager
Date: July 11, 2012
Subject: Installation of Car Chargers

RECOMMENDATION

Approve the locations for the installation of three electric vehicle charging stations on Town property. Approve the general form of the four agreements necessary to receive grant funding, purchase the electric vehicle charging stations, and install the charging stations. Authorize the Town Manager to execute the following agreements for the installation of three electric vehicle charging stations, subject to review and changes at the discretion of the Town Attorney:

1. Association of Bay Area Governments (ABAG)
2. Transportation Authority of Marin (TAM)
3. Clean Fuel Connection
4. Coulomb Technologies, Inc.

DISCUSSION

Based on available electrical infrastructure staff recommends the following locations for the installation of publicly accessible electric vehicle (EV) charging stations:

- At the Broadway side of the Parkade next to the accessible ramp(two chargers)
- At the current public charging station located in the Town Hall staff parking lot(one charger) optional

Funding for the three charging stations (each with two ports – one 220 volt ‘Level 2’ charger and one 110 volt ‘Level 1’ charger) is part of a regional program to install an electric transportation infrastructure network throughout the Bay Area. In Marin county, the Transportation Authority of Marin (TAM) manages a pool of grant funding received from the Association of Bay Area Governments (ABAG) and the Bay Area Air Quality Management District (BAAQMD) for the installation of EV charging stations in municipalities throughout the county. These grants will provide funding to municipalities to reduce the cost for the purchase and installation of these EV charging stations. TAM has approved grant funding for the Town of Fairfax to install three EV charging stations with the stipulation that the charging stations must be located on public property and must be accessible to the public. As part of the Bay Area wide program, a pre-approved bulk contract was negotiated with Coulomb Technologies and Clean Fuel Connection to supply and install the chargers.

The current charger located at the Town Hall parking lot is designed for the older Toyota electric vehicles and it is not compatible with the new electric vehicles that are being sold today. We do see the charger being used from time to time by owners of the older Toyotas. Originally we we only going to install the two chargers at the

Parkade but there ended up being additional funding for one easy installation. You have the option of having the old style charger replaced with one of the newer ones, or adding a new charger in addition to the older one.

Policy Considerations

Staff recommends the following general policies be in place for the first year that the charging systems are in place:

1. The first year of the program will be treated as a 'Pilot Program' phase to evaluate the usage of the chargers, the operating costs of the program, and the effectiveness of parking policies. Staff will analyze the various aspects of the charging program to determine if further policy and/or legislative actions are necessary to improve the program.
2. The Town will not charge for electrical usage during the first year. Staff will monitor usage data and determine an appropriate usage fee, if warranted. It is anticipated that after the initial one year pilot program, the Town will set the usage cost for the charger such that it will be approximately revenue neutral for the Town. For the sake of comparison, the County of Marin recently installed several chargers and their staff estimates a \$3 fee per charge will cover the costs of charger operation. However, this estimate is preliminary and the Town will base any future fee schedule upon usage data collected during the pilot program, various cost considerations, and market conditions.
3. One parking spot at each charging location will be signed for electric vehicle parking. The parking spots may be non-exclusive for the pilot period as long as multiple spots are available for charging. This policy will be monitored and may be adjusted over time as conditions warrant.
4. Each charging station features two charging ports (both 110 and 220 charging capability) so two cars may charge at the same time. Where feasible, the chargers will be situated to allow access to multiple parking spaces.
5. The electric vehicle charging parking spaces will be signed for 4 hour parking. A 4 hour parking limit allows sufficient time to charge an electric vehicle while also encouraging vehicle turnover to allow usage by multiple vehicles.

FISCAL IMPACT

Staff anticipates that the total cost for the chargers and installation will be \$16,652.00 for the Parkade chargers and \$9,555.00 for the Town Hall charger. Grant funding will cover 100% of the cost of purchasing and installing the chargers. There is an additional \$230.00 needed for a charger wireless network fee for each charger, so the total initial outlay for the pilot program year is anticipated to be \$690.00. The Town may need to pay for the installations before funding is received, but funding will be within a couple of months in the same fiscal year and will not have an effect on cash flow.

As mentioned above, after the initial one year pilot program of free usage, staff intends to recommend making the charging stations cost recovery so it is estimated that there will be no fiscal impact in future years. For the purposes of the pilot program year, staff anticipates with electrical costs included, the total operating cost to be in the range of \$1000.00 to \$2,000.00 for three chargers. This is a rough estimate as it is difficult to project an exact electrical cost since it will depend upon usage patterns and utility rates.

Attachments:

1. Draft Resolution
2. Agreement with Association of Bay Area Governments (ABAG) for the provision of grant funding

3. Agreement with Transportation Authority of Marin for the provision of matching grant funding
4. Agreement with Coulomb Technologies, Inc. for the provision of electric vehicle charging equipment
5. Agreement with Clean Fuel Connection for the installation of three electric vehicle charging stations
6. Photos of charger location

**BAY AREA EV CORRIDOR
SUBRECIPIENT AGREEMENT
- BASE DOCUMENT -**

This SubRecipient Agreement is made and entered into as of the Effective Date by and between the Association of Bay Area Governments (ABAG), a joint powers agency (ABAG) and _____, a _____ (SubRecipient).

RECITALS

- A. In October 2009, the California Energy Commission (Energy Commission) issued solicitation PON-09-006 to fund projects that develop infrastructure necessary to store, distribute, and dispense the following transportation fuels: electricity, E-85, biomass-based diesel, and natural gas;
- B. In January 2010, the ABAG submitted application #20 In response to the solicitation;
- C. The Energy Commission issued a Notice of Award dated May 15, 2010 and revised January 11, 2011 stating that ABAG had been awarded grant funds in the amount of One Million Four Hundred-ninety-three Thousand One Hundred Sixty – five Dollars (\$1,493,165.00) (Award) to implement the EV charging stations project described in the application (Bay Area EV Corridor Project);
- D. Effective August 12, 2011, ABAG accepted the Award for itself and on behalf of all eight subawardees and entered into Grant Agreement No. ARV-10-032 with the Energy Commission;
- E. ABAG and this SubRecipient desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for SubRecipient's participation in the Bay Area EV Corridor Project.

NOW THEREFORE, based upon the foregoing recitals, ABAG and SubRecipient further agree as follows:

1.0 APPLICABLE DOCUMENTS

1.1 The following are attached:

1.1.1 Exhibit 1 SubRecipient Scope of Work

1.1.2 Exhibit 2 Invoicing Procedures

1.1.2 Exhibit 3 Grant Agreement No. ARV-10-032 (Grant Agreement) including the following exhibits that were attached to the Grant Agreement:

Exhibit A, 'Work Statement' [between ABAG and CEC]
Exhibit A-1, 'Schedule of Products and Due Dates'
Exhibit B, 'Budget'
Exhibit C, 'Terms and Conditions'
Exhibit C, Attachment 1, 'Payment Request Form'
Exhibit D, 'Special Terms and Conditions'
Exhibit E, 'Contacts List'
Exhibit F, 'Definitions'

1.2 The SubRecipient Agreement is comprised of this Base Document, Exhibit 1, SubRecipient Scope of Work, Exhibit 2, Invoicing Procedures and Exhibit 3, Grant Agreement and is the complete and exclusive statement of understanding between ABAG and the SubRecipient, and supersedes any and all previous understandings or agreements, whether written or oral, and all communications between the parties relating to the subject matter of this SubRecipient Agreement.

3.0 TERM OF AGREEMENT

The SubRecipient Agreement shall commence as of date it is approved by the Energy Commission (Effective Date) and continue until April 30, 2013, or until terminated by the Energy Commission pursuant to the terms of this SubRecipient Agreement.

4.0 SUBAWARD AMOUNT

4.1 Under the terms of the Grant Agreement, ABAG will disburse a portion of the Award to SubRecipient for carrying its responsibilities as part of the Bay Area EV Corridor Project as described in section 6 and Exhibits 1 and 3. The maximum amount to be funded by the Energy Commission and disbursed through ABAG to SubRecipient shall be _____ Dollars (\$_____) (Subaward Amount).

4.2 In accordance with the procedures set forth in section 4.5 and Exhibit 2, ABAG will pay SubRecipient for the acquisition of EV chargers as described in Exhibit 1.

4.3 In accordance with the procedures set forth in section 4.5 and Exhibit 2, ABAG will pay SubRecipient for the installation of EV chargers as described in Exhibit 1.

4.4 In accordance with section 4.5 and Exhibit 2, ABAG will pay SubRecipient for non-installation services based on the hourly rates for the individuals, or categories of individuals, as the case may be, all as described in Exhibit 1.

4.5 ABAG will review all invoices submitted and approve or disapprove each invoice in total, or in part, as the case may be, within ten (10) business days of receipt. ABAG will promptly forward all approved invoices to CEC for

disbursement. CEC will review and approve or disapprove each invoice in total or in part. ABAG will promptly notify SubRecipient of any disapproval(s) by CEC. ABAG will promptly forward disbursements received from the CEC and in accordance with section 5.1.

5.0 ABAG OBLIGATIONS

5.1 ABAG shall be the program lead and fiscal agent for the Bay Area EV Corridor Project. ABAG shall disburse CEC Award funds as required or permitted by the Grant Agreement. Notwithstanding the foregoing, ABAG is not obligated to disburse any funds to SubRecipient unless and until such are authorized and disbursed from CEC to ABAG.

5.2 ABAG shall coordinate the activities of all subrecipients, including this SubRecipient, so as to implement the Bay Area EV Corridor Project in accordance with the terms of the Grant Agreement.

5.2.1 ABAG shall promptly notify SubRecipient of any notices given or actions taken by the Energy Commission if such notices or actions are likely to affect SubRecipient's performance, duties, obligations or funding under this ~~SubRecipient Agreement. To the extent practicable, ABAG shall consult with~~ SubRecipient in carrying out ABAG's responsibilities.

6.0 SUBRECIPIENT OBLIGATIONS

6.1 SubRecipient is, and at all times will continue to be, in full compliance with the terms and conditions of the Grant Agreement that are applicable to it. SubRecipient understands and agrees that for purposes of the foregoing, any requirements imposed upon ABAG as Recipient in the Grant Agreement are hereby passed-through and adopted by SubRecipient as obligations of SubRecipient, excepting only ABAG's obligations as defined in section 5.

6.1.1 Without limiting subsection 6.1, SubRecipient shall comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of the Subaward Amount; and

6.2 SubRecipient shall carry out all the tasks set forth in Exhibit 1 as it may be amended or modified. SubRecipient shall carry out all tasks in accordance with the Grant Agreement.

6.2.1 SubRecipient acknowledges that pursuant to the Grant Agreement, the Energy Commission has the right to modify tasks and budgets and to approve changes in personnel, subcontractors and vendors through ABAG. SubRecipient shall comply with any requirements imposed as a result of the Energy Commissions exercise of such rights.

6.3 SubRecipient shall not cause ABAG to be in violation of the Grant Agreement, whether by act or omission.

6.4 SubRecipient shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time. Any such laws, rules, regulations, ordinances, and directives required thereby to be included in this Subaward Agreement are incorporated herein by reference.

7.0 INDEMNIFICATION AND INELIGIBLE CLAIMS

7.1 Notwithstanding any provision to the contrary, whether expressly or by implication, SubRecipient agrees to indemnify, defend, and hold harmless the Energy Commission, ABAG, its members (excepting this SubRecipient), and their respective elected and appointed officers, employees, and agents from and against any and all liability resulting from SubRecipient's act(s) and/or omission(s) arising from and/or relating to the Grant Agreement or this SubRecipient Agreement, and as such would be imposed in the absence of Government Code section 895.2.

~~7.1.2 Without limiting the scope of subsection 7.1, such liability includes but is not limited to the following: any funding disallowance; audits; demands; claims; actions; liabilities; damages; fines; fees, costs, and expenses, including attorney, auditor, and/or expert witness fees.~~

7.3 SubRecipient understands and agrees that it is solely responsible for any and all of the Subaward Amount that the Energy Commission determines to be ineligible under the Grant Agreement. Immediately upon request by Energy Commission or ABAG, the SubRecipient shall return any funds that have been disbursed to the extent that their use has been disallowed.

8.0 TERMINATION

8.1 SubRecipient acknowledges that pursuant to section 13 of Exhibit C to the Grant Agreement, the Energy Commission has the right to terminate the Grant Agreement in accordance with its terms.

8.1.1 Upon termination of the Grant Agreement, this Subaward shall terminate effective the same date as the Grant Agreement and in accordance with the terms and conditions for the termination of the Grant Agreement.

9.0 NOTICES AND ADMINISTRATIVE CONTACTS

9.1 All notices or notifications under this SubRecipient Agreement shall be in writing addressed to the persons set forth in this section 9.0

9.2 All notices or notifications to ABAG shall be sent to:

Jerry Lahr, Principal Investigator
Association of Bay Area Governments
P. O. Box 2050
Oakland, CA 94604-2050
JerryL@abag.ca.gov

9.3 All notices or notifications to the SubRecipient shall be sent to:

10.0 AMENDMENTS AND CHANGES

Except for changes described in subsections 5.2.1 and 6.2.1, this SubRecipient Agreement may be changed only by a written amendment duly signed by ABAG and SubRecipient.

11.0 ASSIGNMENT AND DELEGATION

SubRecipient shall not assign its rights or delegate its duties under this SubRecipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this SubRecipient Agreement.

12.0 GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. SubRecipient further agrees and consents that the venue of any action brought between SubRecipient and ABAG shall be exclusively in the County of Alameda.

13.0 VALIDITY AND SEVERABILITY

If any provision of this SubRecipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this SubRecipient Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14.0 NO WAIVER

No waiver by either party of any event of breach and/or breach of any provision of this SubRecipient Agreement shall constitute a waiver of any other event of breach and/or breach. Either party's non-enforcement at any time, or from time

to time, of any provision of this SubRecipient Agreement shall not be construed as a waiver thereof.

15.0 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

15.1 SubRecipient shall maintain accurate and complete financial records of its activities and operations relating to this SubRecipient Agreement in accordance with the Grant Agreement and generally accepted accounting principles.

15.2 SubRecipient agrees that ABAG, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this SubRecipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the SubRecipient and shall be made available to ABAG during the term of this SubRecipient Agreement and for a period of five (5) years thereafter unless ABAG's written permission is given to dispose of any such material prior to such time.

~~15.3~~ If an audit of the SubRecipient is conducted specifically regarding this SubRecipient Agreement by any Federal or State auditor, or by any auditor or accountant employed by the SubRecipient or otherwise, then the SubRecipient shall file a copy of such audit report with ABAG within thirty (30) days, unless otherwise provided by applicable Federal or State law or under this SubRecipient Agreement.

15.4 Failure of SubRecipient to comply with this section 15 shall constitute a material breach of this SubRecipient Agreement, upon which ABAG may terminate or suspend under section 9.0 (Termination for Default).

16.0 AUTHORIZATION WARRANTY

SubRecipient represents and warrants that the person executing this SubRecipient Agreement on its behalf is an authorized agent who has actual authority to bind SubRecipient to each and every term, condition, and obligation herein.

END OF BASE DOCUMENT
SIGNATURE PAGE TO FOLLOW

BAY AREA RETROFIT BAY AREA
SUBRECIPIENT AGREEMENT

* * * * *

AUTHORIZED SIGNATURES

IN WITNESS WHEREOF, SubRecipient has duly executed this Agreement, or caused it to be duly executed, and ABAG, under the authorization of its Executive, has caused this Agreement to be duly executed on its behalf by the Executive Director, or his designee.

SubRecipient

Name, Title

Approved as to form:

Name, Title

Association of Bay Area Governments

Ezra Rapport, Executive Director

Approved as to Form:

Kenneth K. Moy, Legal Counsel

ELECTRIC VEHICLE CHARGING STATION FUNDING AGREEMENT NO. _____

This **Funding Agreement** is effective on the date shown below between the Transportation Authority of Marin, hereinafter referred to as "TAM," and the _____, hereinafter referred to as the "RECIPIENT."

SECTION 1. Purpose of Funding Agreement

The Purpose of this Funding Agreement, hereinafter referred to as "AGREEMENT," is to specify the terms and conditions for the distribution of Transportation Fund for Clean Air (TFCA) funds made available to TAM for the implementation of charging stations for electric vehicles.

SECTION 2. Scope and Obligations

TAM shall reimburse RECIPIENT up to \$4148 in TFCA funds per electric vehicle charging station. An electric vehicle charging station is defined as a charging station capable, at a minimum, of providing a level 2 charge point (220 volt). RECIPIENT shall implement electric vehicle charging station(s) even if the total cost of the project exceeds TAM's maximum cumulative payment obligation.

RECIPIENT agrees to implement ____ (no.) electric vehicle charging station(s) at the following location(s):_____.

RECIPIENT shall make electric vehicle charging station (s) accessible to the public at all reasonable time.

RECIPIENT shall complete implementation of the electric vehicle charging station(s) by October 6, 2012. RECIPIENT shall submit a written request for approval to extend the terms of this AGREEMENT if RECIPIENT cannot complete implementation by October 6, 2012.

RECIPIENT agrees to accept ownership, control, and ongoing maintenance of the electric vehicle charging station(s). RECIPIENT shall provide for ongoing maintenance of the project with non-TFCA funds.

RECIPIENT shall request payment from TAM for reimbursement of costs associated with the implementation of the electric vehicle charging station(s) by submittal of a request letter signed by the department head or his/her official designee with attached invoices and supporting documentation.

SECTION 3. Reimbursement of Cost

RECIPIENT shall return any funds realized from the sale of equipment purchased with TFCA funds to TAM if RECIPIENT no longer provides said service with the equipment or if such reuse or sale occurs within the industry standards for the manufactures stated useful life from the date of initiation of service. The amount of the funds returned to TAM shall be proportional to the percentage of TFCA funds originally used to purchase and/or install the equipment. Section 3 survives Section 4 until the expiration of the useful life period.

SECTION 4. Term of Funding Agreement

This AGREEMENT shall remain in effect on the date shown below until: 1) the scope of work is completed and the final reimbursement request has been approved by TAM, 2) this AGREEMENT has been terminated as provided in Section 5, "Termination," or 3) the expiration date, October 6, 2012, as provided in Section 2 has lapsed, which ever comes first.

SECTION 5. Termination

Either party may terminate this AGREEMENT at any time by giving written notice of termination to the other party, which shall specify the effective date thereof. Notice of termination under this article shall be given at least ninety (90) days before the effective date of termination. In the event that RECIPIENT terminates this AGREEMENT and fails to implement the electric charging station(s), TAM shall not reimburse RECIPIENT for any uncompleted portion of the project.

SECTION 6. Emissions Performance Evaluation

RECIPIENT shall maintain records for a period of three years from the initiation of service of usage, including number of charges and energy consumed (in kilowatts), of the charging station(s) in order to expedite evaluation of emissions reductions achieved from the implementation of this project.

SECTION 7. Identification

RECIPIENT shall affix a BAAQMD-approved sign on each charging station identifying the Transportation Fund for Clean Air, the Bay Area Air Quality Management District, and TAM as funding sources for the project. RECIPIENT shall credit the Bay Area Air Quality Management District and TAM as funding sources in any related articles, news releases or other publicity materials for the projects funded under this AGREEMENT that are implemented directly by RECIPIENT.

SECTION 8. Audit and Inspection of Records

RECIPIENT shall allow TAM, the Bay Area Air Quality Management District (BAAQMD), or an independent auditor to audit all expenditures and to inspect all records relating to project performance in implementing the project described in Attachment A for the duration of this AGREEMENT and for three (3) years following the initiation of service. TAM shall provide timely notice prior to conducting an audit of project costs.

SECTION 9. Indemnification

RECIPIENT shall indemnify and save harmless TAM, its directors, officers, agents, and employees from all claims, suits or actions resulting from the performance by RECIPIENT of its duties under this AGREEMENT. TAM shall indemnify and save harmless RECIPIENT, its directors, officers, agents, and employees from all claims, suits or actions resulting from the performance by TAM of its duties under the AGREEMENT.

SECTION 10. Miscellaneous

RECIPIENT performs the terms and conditions of this AGREEMENT as an entity independent of TAM. None of RECIPIENT'S agents or employees shall be agents or employees of TAM.

This AGREEMENT may not be assigned or delegated by either party without the express written consent of the other party.

Each party shall be solely responsible for and shall bear all of its own respective legal expenses in connection with any dispute arising out of this AGREEMENT and the transactions hereby contemplated. RECIPIENT may not use GRANT funds, or other TAM programmed funds, for the aforementioned purpose.

The parties have entered into this Electric Vehicle Charging Station Funding Agreement No. ____ to be executed as dated below.

RECIPIENT

TRANSPORATION AUTHORITY OF MARIN

Name (Print)

Signature

Title

Date

Signature

DRAFT
MASTER INFRASTRUCTURE AND INSTALLATION CONTRACT
AB 118 Alternative and Renewable Fuel and Vehicle Technology Program

THIS INFRASTRUCTURE AND INSTALLATION CONTRACT ("Agreement") dated as of 01/15/10 is entered into by and between Clean Fuel Connection, Inc. (CFCI), Associated Bay Area Governments (ABAG) and (insert name of site owner—(OWNER or NAME OF ENTITY ACTING AS AGENT OF PROPERTY OWNER) with respect to electric vehicle charging stations.

On behalf of a coalition of electric vehicle charging equipment providers, local governmental jurisdictions and private parties, the Associated Bay Area Governments has applied to the California Energy Commission (CEC) for funding under PON-09-006, Alternative and Renewable Fuel and Vehicle Technology Program. Contingent upon receipt of funding from the CEC, this agreement covers the provision and installation of electric vehicle charging equipment at site address or addresses if multiple sites (PROJECT). In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CFCI, ABAG and Owner agree as follows:

1. **The Project.** CFCI agrees to install, provide and construct the Project in accordance with all federal, state and local laws, ordinances, codes and regulations and orders of public authorities. OWNER acknowledges that CFCI may utilize a Subcontractor(s) to complete the Project. CFCI and its Subcontractor(s) will provide all construction, labor, materials, equipment, tools, vehicles, transportation, utilities and other items and services required for the proper execution and completion of the Project (Work). CFCI and its Subcontractor(s) shall construct and complete the Project and the Work in a good, workmanlike and substantial manner and in accordance with industry standards. CFCI shall supervise and direct the Work using CFCI's best skill and attention, and CFCI shall be responsible for and have control over construction means, methods, techniques, sequences and procedures involved in the Work, and for coordinating all portions of the Work. CFCI shall enforce discipline and good order among its employees, Subcontractor(s) and agents, including appropriate dress and courteous behavior towards OWNER, lessees, operators and the general public on or about the Project site(s). OWNER and CFCI and its Subcontractor(s) shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent injury or loss to, persons who may be at or about the Project site(s), the Project and the materials and equipment to be incorporated therein. Where required by OWNER, CFCI will pay prevailing wages as determined by the State of California and provide any required wage reports such as certified payroll.

2. **Commencement and Completion Dates.** The date when Work will be mutually agreed upon date by CFCI and OWNER. It is estimated that Work will be performed between approximately October 1, 2010 and April 30, 2011.

3. **Scope of Work and Cost.** The proposed Scope of Work indicated is the provision and installation of one or more electric vehicle chargers manufactured by Coulomb Technologies Inc. (CTI). The specific Scope of Work and Cost is indicated in Appendix A.

a. **Total Cost.** The total cost for the work (per the Scope and Cost in Appendix A) is (insert number). This Agreement is based upon the parties' assumption that all funding for the work will be provided by the California Energy Commission under the AB 118 Alternative and Renewable Fuel and Vehicle Technology Program. All of CFCI's obligations hereunder are conditioned upon ABAG's and the OWNER's receipt of funding for the project.

The sources of funds are expected to be as follows:
(insert breakdown from CEC budget)

CEC (cash)
Owner (cash)
Match (cash—list source)
Match (in-kind—list source)

b. **Estimate of Cost.** The cost for the work is based on the OWNER's and CFCI's best estimate of cost, however since not all sites could be visited prior to the application deadline, there may be site conditions that cause the cost to change. If this is the case, CFCI will endeavor to find a solution that meets the not-to-exceed cost in Appendix A and is satisfactory to OWNER and CFCI. Such a change will be recorded as an amendment to this contract. If such a resolution is not possible, owner will be released from any obligation under this contract. CFCI will not start work until a firm fixed price and Scope of Work has been agreed upon.

c. **Extra Work.** If additional work is required, there may be a cost to the OWNER. CFCI shall provide OWNER with prompt written notice if it contends that any services, labor or materials required by OWNER to be furnished by CFCI should be paid for as extra work. Change Orders become part of the contract once the order is prepared in writing and signed by the parties prior to the commencement of work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments. Contractor's failure to comply with the requirements of this paragraph does not preclude the recovery

of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

d. **Concealed Conditions.** Since CFCI has not visited each proposed installation site, this Agreement is based solely on the information provided by Owner and CFCI's historical experience. If concealed conditions are discovered once the Work has commenced, which were not visible at the time of CFCI's bid, CFCI and/or its Subcontractor(s) will stop Work and notify OWNER of such concealed conditions to OWNER so that OWNER and CFCI can execute an appropriate Change Order.

4. Payment

Upon completion of the work, Owner will sign off that the work has been done to their satisfaction. CFCI will submit to ABAG all invoices and required documentation for billing to the CEC. CFCI (or ABAG) will also bill any third parties who are providing cost share.

Payment including payment for extra work commissioned pursuant to any Change Order(s), shall be due to CFCI from ABAG ten (10) days after the payment is received from CEC. Payment of any matching funds is due to CFCI thirty (30) days after completion. Payments should be mailed to Clean Fuel Connection, Inc, 127 La Porte Street Unit M, Arcadia, CA 91106.

Permits. CFCI and/or its Subcontractor(s) shall secure all necessary permits for the operation of the wall box charging system at the site. OWNER shall cooperate in connection with obtaining any governmental approvals and permits necessary for the installation of the Project, including the prompt execution of such documents as may be deemed necessary by governmental authorities.

5. **Matching Existing Finishes.** Where the Work involves the matching of existing finishes or materials, CFCI and its Subcontractor(s) shall use best efforts to provide such a match. However, OWNER acknowledges that an exact match is not guaranteed by CFCI or its Subcontractor(s) due to such factors as discoloration due to aging, difference in dye lots, and the difficulty of exactly matching certain finishes, materials, colors and planes.

6. **Indemnification.** CFCI agrees to indemnify, defend and hold harmless OWNER from any and all liabilities, obligations, claims, losses, lawsuits, damages, injuries, costs and expenses (including attorneys' fees and costs), arising from CFCI's negligence or willful misconduct arising out of or in connection with the Project, the Work and the performance or non-performance by CFCI of any of its obligations hereunder.

OWNER agrees to indemnify, defend and hold harmless CFCI from any and all liabilities, obligations, claims, losses, lawsuits, damages, injuries, costs and expenses (including attorneys'

fees and costs), arising from OWNER's negligence or willful misconduct arising out of or in connection with the Project, the Work and the performance or non-performance by OWNER of any of its obligations hereunder.

7. **Work Stoppage, Termination of Agreement for Default.** CFCI shall have the right to stop all Work on the Project if OWNER repeatedly fails or refuses to furnish CFCI or its Subcontractor(s) with access to the Site or information necessary for the advancement of the Work. Simultaneous with any work stoppage, CFCI shall give OWNER written notice of the nature of OWNER's default and shall give OWNER a fourteen (14) day period in which to cure the default specified.

8. **Warranty.** Coulomb Technologies Inc. provides a 1-year limited warranty for its equipment. (Appendix B and Appendix C--attached). CFCI provides a one year Warranty on labor and workmanship. Additional equipment and installation warranties are available at an additional cost. No warranty is provided by CFCI on any materials furnished by OWNER for installation. No warranty is provided on any existing materials that are moved and/or reinstalled by CFCI or its Subcontractor(s) at the Site (including any warranty that existing/used materials will not be damaged during the removal and reinstallation process).

9. Insurance.

a. **General Liability Insurance.** CFCI carries commercial general liability insurance written by Admiral Insurance Company. You may call Admiral Insurance Company at 800-750-BOND ext 304 to check the contractor's insurance coverage.

b. **Worker's Compensation Insurance.** CFCI carries worker's compensation insurance for all employees.

10. **Contractors' State License Board (CSLB).** Information about the Contractors' State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors. Contact CSLB for information about the licensed contractor you are considering, including information about disc losable complaints, disciplinary actions, and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees.

For more information:

Visit CSLB's Internet Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826.

11. **Miscellaneous.** This Agreement (a) shall be construed and enforced in accordance with California law, (b) contains the final agreement between the parties relating to the subject matter hereof and (c) may only be amended, extended or modified in a writing executed by CFCI and OWNER. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any such waiver operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial

exercise of any right, power or privilege hereunder preclude any other or further exercise thereof of any other right, power or privilege hereunder. If any party commences an action against the other party arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party in such action shall be entitled to have and recover from the other party actual attorneys' fees and costs. The headings used in this Agreement are for purposes of reference only and shall not be used for limiting or interpreting the meaning of any part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year herein above written.

CLEAN FUEL CONNECTION, INC.
State Contractor's License #: 770564

OWNER

By: _____

By: _____

Title: President

Title: _____

Printed Name: Enid Joffe

Printed Name: _____

CHARGEPOINT®
MASTER SERVICES AND SUBSCRIPTION AGREEMENT

IMPORTANT: PLEASE READ THIS MASTER SERVICES AND SUBSCRIPTION AGREEMENT AND FLEX BILLING ATTACHMENT (COLLECTIVELY, "AGREEMENT") CAREFULLY.

THIS AGREEMENT GOVERNS REGISTRATION OF YOUR CHARGING STATION (OR THE CHARGING STATIONS OF THE ORGANIZATION YOU REPRESENT) ON THE CHARGEPOINT NETWORK AND ACTIVATION OF CHARGEPOINT NETWORK SERVICES ON YOUR CHARGING STATIONS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO BIND SUCH COMPANY OR OTHER LEGAL ENTITY TO THESE TERMS AND CONDITIONS; IF NOT, YOU MAY NOT ENTER INTO THIS AGREEMENT AND MAY NOT USE THE CHARGEPOINT SERVICES.

SUBSCRIBER AGREES THAT IT MAY NOT AND WILL NOT ACCESS THE CHARGEPOINT NETWORK SERVICES FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSE.

1. DEFINITIONS. The following terms shall have the definitions set forth below when used in this Agreement:

1.1 "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control", for purposes of this definition, means direct or indirect ownership or control of fifty percent (50%) or more of the voting interests of the subject entity.

1.2 "ChargePoint® Network" means the open-platform network of electric vehicle charging stations and the vehicle charging applications it delivers, that is operated and maintained by CTI (as defined below) in order to provide various services to, among others, Subscriber and its employees.

1.3 "ChargePoint Services" means, collectively, the various software as a service offerings made available for subscription by CTI.

1.4 "ChargePoint Web Portal" means any of the secure Internet web portals established and maintained by CTI which will allow Subscriber to access ChargePoint Services.

1.5 "Charging Station" means the electric vehicle charging station(s) purchased by Subscriber, whether manufactured by CTI or by another CTI licensed entity, which have embedded within them CTI hardware and/or firmware, enabling Subscriber to register and activate such charging stations on the ChargePoint Network.

1.6 "CTI" means Coulomb Technologies, Inc., a Delaware corporation.

1.7 "CTI Marks" means the various trademarks, service marks, names and designations used in connection with the CTI manufactured Charging Stations and/or the ChargePoint Network, including, without limitation, ChargePoint.

1.8 "CTI Intellectual Property" means all Intellectual Property Rights of CTI relating to the CTI Marks, the ChargePoint Network, the ChargePoint Services, ChargePoint Radio Frequency Identification Cards, ChargePoint Accounts and all other Intellectual Property Rights of CTI, regardless of the nature of such rights.

1.9 "Documentation" means written information (whether contained in user or technical manuals, product materials, specifications or otherwise) pertaining to ChargePoint Services and/or the ChargePoint Network and made available from time to time by CTI to Subscriber in any manner (including on-line).

1.10 *“Effective Date”* means the date this Agreement is executed by Subscriber.

1.11 *“Intellectual Property Rights”* means all intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, inventories, know-how, trade secrets, Subscriber lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, development tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records.

1.12 *“Malicious Code”* means viruses, worms, time bombs, Trojan horses and all other forms of malicious code, including without limitation, malware, spyware, files, scripts, agents or programs.

1.13 *“Party”* means each of CTI and Subscriber.

1.14 *“Cloud Services”* means the various “software as a service” offerings made available for subscription to Subscriber by CTI.

1.15 *“Services Fees”* means the fees payable by Subscriber to CTI for subscribing to any ChargePoint Services as set forth in an applicable purchase order issued by Subscriber and accepted by CTI. Services Fees shall also include all fees payable by Subscriber, if any, pursuant to the provisions of the Flex Billing Attachment set forth at the end of this Agreement.

1.16 *“Subscriber Authorized User”* means any person authorized by Subscriber to access and use its Charging Stations.

2. CTI’S RESPONSIBILITIES AND AGREEMENTS.

2.1 NETWORK OPERATION. CTI agrees to provide and shall be solely responsible for: (i) provisioning and operating, maintaining, administering and supporting the ChargePoint Network infrastructure (other than Subscriber’s Charging Stations and infrastructure for transmitting data from Networked Charging Stations to any ChargePoint Network operations center); (ii) provisioning and operating, maintaining, administering and supporting the ChargePoint Web Portal; and (iii) operating the ChargePoint Network in compliance with all applicable laws.

2.2 LIMITATIONS ON RESPONSIBILITY. CTI shall not be responsible for, and makes no representation or warranty with respect to the following: (i) Specific location(s) or number of Charging Stations now, or in the future, owned, operated and/or installed by persons other than Subscriber, or the total number of Charging Stations that comprise the ChargePoint Network; (ii) Continuous availability of electrical service to any of Subscriber’s Charging Stations; (iii) Continuous availability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation by CTI of the ChargePoint Network; (iv) Availability of or interruption of the ChargePoint Network attributable to unauthorized intrusions; and/or (v) Charging Stations that are not registered with and activated on the ChargePoint Network.

3. SUBSCRIBER’S RESPONSIBILITIES AND AGREEMENTS.

3.1 GENERAL. Subscriber shall be solely responsible for: (i) Keeping current its contact information, email address for the receipt of notices hereunder, and billing address for invoices; (ii) updating on the ChargePoint Web Portal, within five (5) business days, the registered location to which any of Subscriber’s Charging Stations are moved; (iii) The non-warranty maintenance, service, repair and/or replacement of Subscriber’s Networked Charging Stations as needed, including informing CTI of the existence of any Networked Charging Stations that are non-operational and not intended to be replaced or repaired by Subscriber; (iv) registration of and activation of Subscriber’s Charging Stations

on the ChargePoint Network; and (v) Operating and maintaining Subscriber's Networked Charging Stations in compliance with all applicable laws.

3.2 REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER. Subscriber represents and warrants to CTI that: (i) It has the power and authority to enter into and be bound by this Agreement and to install the Charging Stations and any other electrical vehicle charging products to be registered and activated on the ChargePoint Network at Subscriber Location(s); (ii) The electrical usage to be consumed by Subscriber's Networked Charging Stations will not violate or otherwise conflict with the terms and conditions of any applicable electrical purchase or other agreement including, without limitation, any lease, to which Subscriber is a party; and (iii) It has not installed or attached Charging Stations on or to infrastructure not owned by Subscriber without proper authority, or in a manner that will block any easement or right of way.

3.3 FURTHER AGREEMENTS OF SUBSCRIBER MADE IN CONNECTION WITH REGISTRATION OF CHARGING STATIONS ON THE CHARGEPOINT NETWORK AND USE OF CHARGEPOINT SERVICES. Subscriber further acknowledges and agrees with CTI that: (i) Subscriber will not remove, conceal or cover the CTI Marks or any other markings, labels, legends, trademarks, or trade names installed or placed on the Networked Charging Stations or any peripheral equipment for use in connection with Subscriber's Charging Stations; (ii) Subscriber shall comply with, and shall have responsibility for and cause its employees and agents accessing or using ChargePoint Web Portals to comply with, all of the rules, regulations and policies of CTI; (iii) Subscriber shall be responsible for using the ChargePoint Services in compliance with this Agreement, and in particular, shall: (A) use commercially reasonable efforts to prevent unauthorized access to Purchased ChargePoint Services, (B) not sell, resell, license, rent, lease or otherwise transfer the ChargePoint Services to a third party, (C) not interfere with or disrupt the integrity of the ChargePoint Network, the ChargePoint Services or any third party data contained therein, and (D) not attempt to gain unauthorized access to the ChargePoint Network or the ChargePoint Services or their related systems or networks. All data collected by CTI in connection with the operation of the ChargePoint Network shall be owned by CTI; provided that Subscriber Shall have the right to access and use such data, as it pertains to Subscriber's Charging Stations, through a subscription to one or more ChargePoint Services.

4. FEES AND PAYMENT FOR PURCHASED CHARGEPOINT SERVICES.

4.1 SERVICES FEES. Subscriber shall pay all Services Fees within thirty (30) days of its receipt of an invoice with respect thereto. Except as otherwise specified herein, (i) Services Fees are quoted in and payable in U.S. Dollars, (ii) Services Fees are based on Subscriber's choice of subscription to the ChargePoint Services and not on actual usage, (iii) payment obligations are non-cancelable and are non-refundable, and (iv) Services are non-transferable; provided that, Services may be transferred to a Charging Station that is purchased by Subscriber to replace a de-commissioned, previously networked, Charging Station.

4.2 OVERDUE SERVICES FEES. If any invoiced Services Fees are not received by CTI by the due date, then such charges: (i) may accrue late interest at the rate ("Interest Rate") of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until paid, and (ii) in the event Subscriber has not paid Services Fees within thirty (30) days of the due date, CTI may condition future Services renewals and acceptance of purchase orders for additional ChargePoint Services on payment terms other than those set forth herein.

4.3 ACCELERATION AND SUSPENSION OF CHARGEPOINT SERVICES. If any amount owing by Subscriber under this Agreement is more than thirty (30) days overdue, CTI may, without otherwise

limiting CTI's rights or remedies, terminate this Agreement, and/or suspend the use by Subscriber of the ChargePoint Services until such amounts are paid in full.

4.4 PAYMENT DISPUTES. CTI shall not exercise its rights under Section 4.2 (Overdue Services Fees) or Section 4.3 (Acceleration and Suspension of ChargePoint Services) if the applicable charges are under reasonable and good faith dispute and Subscriber is cooperating diligently to resolve the dispute.

5. AVAILABLE SERVICES. A description of the various ChargePoint Services currently available for subscription is included in the ChargePoint web site <http://www.mychargepoint.net>. CTI may make other ChargePoint Services available from time to time, and may amend the features offered with respect to any ChargePoint Service at any time and from time to time.

6. PROPRIETARY RIGHTS.

6.1 RESERVATION OF RIGHTS. CTI reserves all right, title and interest in and to the ChargePoint Services, including all related Intellectual Property Rights. No rights are granted to Subscriber hereunder except as expressly set forth herein. CTI shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the ChargePoint Services any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber or Subscriber Authorized Users relating to the ChargePoint Services.

6.2 RESTRICTIONS ON USE. Subscriber shall not: (i) create derivative works based on the ChargePoint Services, (ii) copy, frame or mirror any part or content of the ChargePoint Services, other than copying or framing on Subscriber's own intranets or otherwise for Subscriber's own internal business purposes, (iii) reverse engineer any Charging Station or Cloud Service, or (iv) access the ChargePoint Network, any ChargePoint Web Portal or the ChargePoint Services for any improper purpose whatsoever, including, without limitation, in order to (A) build a competitive product or service, or (B) copy any features, functions, interface, graphics or "look and feel" of any ChargePoint Web Portal or the ChargePoint Services.

6.3 GRANT OF LIMITED LICENSE FOR CTI MARKS.

(a) LICENSE GRANT. Subscriber is granted under this Agreement the nonexclusive privilege of displaying the CTI Marks during the Term of this Agreement in connection with Subscriber Charging Stations. Subscriber warrants that it shall not use any of the CTI Marks for any products other than its Networked Charging Stations. From time to time, CTI may provide updated trademark usage guidelines with respect to Subscriber's use of the CTI Marks which will be made available on a ChargePoint Web Portal, in which case Subscriber thereafter shall comply with such guidelines. If no such guidelines are provided, then for each initial use of the CTI Mark, Subscriber must obtain CTI's prior written consent, which shall not be unreasonably withheld or delayed, and after such consent is obtained, Subscriber may use the CTI Mark in the approved manner. The CTI Marks may not be used under this Agreement as a part of the name under which Subscriber's business is conducted or in connection with the name of a business of Subscriber or its Affiliates.

(b) NO REGISTRATION OF CTI MARKS BY SUBSCRIBER. Subscriber shall not directly or indirectly register or apply for or cause to be registered or applied for any CTI Marks or any patent, trademark, service mark, copyright, trade name, domain name or registered design that is substantially similar to a CTI Mark, patent, trademark, service mark, copyright, trade name, domain name or registered design of CTI, or that is licensed to, connected with or derived from confidential, material or proprietary information imparted to or licensed to Subscriber by CTI .

(c) **TERMINATION AND CESSATION OF USE OF CTI MARKS.** Upon termination of this Agreement, Subscriber will immediately discontinue all use and display of the name "CTI" and the CTI Marks.

7. LIMITATIONS ON CTI'S AND SUBSCRIBER'S LIABILITY.

7.1 LIMITATION OF LIABILITY. CTI's aggregate liability under this Agreement shall not exceed the greater of (i) aggregate Services Fees paid by Subscriber to CTI in the calendar year prior to the event giving rise to the Claim or (ii) Ten Thousand Dollars (\$10,000).

7.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST REVENUE OR PROFIT, LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE CHARGEPOINT NETWORK, ANY CHARGEPOINT SERVICES, THIS AGREEMENT OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY SUBSCRIBER NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT. BECAUSE SOME STATES OR JURISDICITON DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY; PROVIDED THAT, IN SUCH INSTANCES, CTI'S LIABILITY IN SUCH CASES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.3 EXCLUSION OF WARRANTIES. THE CHARGEPOINT NETWORK AND THE CHARGEPOINT SERVICES ARE PROVIDED "~~AS IS~~" AND "~~AS AVAILABLE~~" FOR SUBSCRIBER'S USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY; PROVIDED THAT, IN SUCH INSTANCES THE IMPLIED WARRANTIES GRANTED BY CTI SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.4 ELECTRICAL, CELLULAR AND INTERNET SERVICE INTERRUPTIONS. Neither CTI nor Subscriber shall have any liability whatsoever to the other with respect to damages caused by: (i) electrical outages, power surges, brown-outs, utility load management or any other similar electrical service interruptions whatever the cause; (ii) interruptions in wireless or cellular service linking Networked Charging Stations to the ChargePoint Network; (iii) interruptions attributable to unauthorized ChargePoint Network intrusions; or (iv) interruptions in services provided by any Internet service provider not affiliated with CTI. This includes the loss of data resulting from such electrical, wireless, cellular or Internet service interruptions.

7.5 CELLULAR CARRIER RESTRICTIONS. IN ORDER TO DELIVER THE CHARGEPOINT SERVICES, CTI HAS ENTERED INTO CONTRACTS WITH ONE OR MORE UNDERLYING WIRELESS SERVICE CARRIERS (THE "UNDERLYING CARRIER"). SUBSCRIBER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING CARRIER AND SUBSCRIBER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN CTI AND THE UNDERLYING CARRIER. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER HAS NO LIABILITY OF ANY KIND TO SUBSCRIBER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. SUBSCRIBER AGREES TO INDEMNIFY AND HOLD HARMLESS THE UNDERLYING CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH USE, FAILURE TO USE, OR INABILITY TO USE THE WIRELESS

SERVICES EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY WILL SURVIVE THE TERMINATION OF THE AGREEMENT. SUBSCRIBER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED. SUBSCRIBER UNDERSTANDS THAT CTI AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES. THE SUBSCRIBER MAY NOT RESELL THE SERVICE TO ANY OTHER PARTY.

8. TERM AND TERMINATION.

8.1 TERM OF AGREEMENT. This Agreement shall become effective on the Effective Date and shall continue until the expiration of all of Subscriber's subscriptions to ChargePoint Services.

8.2 SUBSCRIPTION TERM. Subscriptions to ChargePoint Services acquired by Subscriber shall commence on (i) if such services are acquired for use with a new Charging Station, the earlier to occur of (x) the date such new charging station is installed and provisioned on the ChargePoint Network or (y) forty five (45) days after the date such new charging station is installed and (ii) in all other cases, the start date specified in the purchase order related thereto. ChargePoint Services subscribed to by Subscriber shall continue for the applicable subscription term (the "Subscription Term"), unless this Agreement is otherwise terminated, changed or canceled by CTI or Subscriber as allowed by the terms and conditions set forth herein.

8.3 TERMINATION.

(a) BY CTI. This Agreement, all Subscription Terms and Subscriber's continuing access to ChargePoint Services may be immediately suspended or terminated: (i) if Subscriber is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days, or five (5) days in the case of any payment default, of the date of its receipt of written notice thereof, (ii) Subscriber becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors, (iii) upon the determination by any regulatory body that the subject matter of this Agreement is subject to any governmental regulatory authorization or review that imposes additional costs of doing business upon CTI, or (iv) if, pursuant to the terms of this Agreement, CTI is otherwise permitted the right to terminate upon the occurrence of an event or events.

(b) BY SUBSCRIBER. This Agreement may be immediately terminated by Subscriber without prejudice to any other remedy of Subscriber at law or equity: (i) if CTI is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days of the date of its receipt of written notice thereof, or (ii) CTI becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors. This Agreement may be terminated by Subscriber for convenience upon the voluntary deactivation and removal from registration via the applicable ChargePoint Web Portal of all Networked Charging Stations owned by Subscriber from the ChargePoint Network, at which time this Agreement shall terminate effective immediately; provided, that Subscriber shall not be entitled to any refund of any Service Fees as a result of such termination for convenience.

8.4 REFUND OR PAYMENT UPON TERMINATION. Upon any termination of this Agreement for cause by Subscriber pursuant to Section 8.3(b)(i), or (ii) the election of CTI to terminate this Agreement pursuant to Section 8.3(a)(iii), CTI shall refund to Subscriber a pro-rata portion of any pre-paid Service Fees based upon the Subscription Term for which such fees were paid and the remaining period of such Subscription Term. Upon any termination for cause by CTI pursuant to Section 8.3(a)(i), (ii) or (iv) or upon the voluntary removal from registration and activation of all of Subscriber's Network

Charging Stations from the ChargePoint Network, Subscriber shall pay any unpaid Service Fees covering the remainder of all Subscription Terms. In no event shall any termination relieve Subscriber of any liability for the payment of Service Fees for any period prior to the termination date.

9. **AMENDMENT OR MODIFICATION.** No modification, amendment or waiver of this Agreement shall be effective unless in writing and either signed or electronically accepted by the party against whom the amendment, modification or waiver is to be asserted.

10. **WAIVER.** The failure of either Party at any time to require performance by the other Party of any obligation hereunder will in no way affect the full right to require such performance at any time thereafter. The waiver by either Party of a breach of any provision hereof will not constitute a waiver of the provision itself. The failure of either Party to exercise any of its rights provided in this Agreement will not constitute a waiver of such rights. No waiver will be effective unless in writing and signed by an authorized representative of the Party against whom such waiver is sought to be enforced. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.

11. **FORCE MAJEURE.** Except with respect to payment obligations, neither CTI nor Subscriber will be liable for failure to perform any of its obligations hereunder due to causes beyond such party's reasonable control and occurring without its fault or negligence (a "*Force Majeure Event*"). A Force Majeure Event will include, but not be limited to, fire, flood, earthquake or other natural disaster (irrespective of such party's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits a party from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.

12. **APPLICABLE LAW.** This Agreement will be construed, and performance will be determined, according to the laws of the State of California without reference to such state's principles of conflicts of law and the state and federal courts located in Santa Clara County, California, shall have exclusive jurisdiction over any claim arising under this Agreement.

13. **WAIVER OF JURY TRIAL.** Each Party hereby waives any right to jury trial in connection with any action or litigation arising out of this Agreement.

14. **SURVIVAL.** Those provisions dealing with the Intellectual Property Rights of CTI, limitations of liability and disclaimers, restrictions of warranty, Applicable Law and those other provisions which by their nature or terms are intended to survive the termination of this Agreement will remain in full force and effect as between the Parties hereto as contemplated hereby.

15. **SEVERABILITY.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby. If, however such invalidity or unenforceability will, in the reasonable opinion of either Party cause this Agreement to fail of its intended purpose and the Parties cannot by mutual agreement amend this Agreement to cure such failure, either Party may terminate this Agreement for cause as provided herein above.

16. **ASSIGNMENT.** Subscriber may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of CTI (not to be unreasonably withheld). In the event of any purported assignment in breach of this Section 15, CTI shall be entitled, at its sole discretion, to terminate this Agreement upon written notice given to Subscriber. In the event of such a termination, Subscriber shall pay any unpaid Service Fees covering the remainder of the Service

Term for any accepted Purchase Orders. In no event shall any termination relieve Subscriber of any liability for the payment of Service Fees attributable to any period prior to the termination date. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. CTI may assign its rights and obligations under this Agreement.

17. NO AGENCY OR PARTNERSHIP CREATED BY THIS AGREEMENT. CTI, in the performance of this Agreement, is an independent contractor. In performing its obligations under this Agreement, CTI shall maintain complete control over its employees, its subcontractors and its operations. No partnership, joint venture or agency relationship is intended by CTI and Subscriber to be created by this Agreement.

18. ENTIRE AGREEMENT. This Agreement (including the attached Flex Billing Attachment) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings. All purchase orders issued by Subscriber shall state that such purchase orders are subject to all of the terms and conditions of this Agreement, and contain no other term other than the type of Subscription, the number of stations for which such Subscription is ordered, the term of such subscriptions and applicable subscription fees. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any purchase order, the Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any other documentation shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void.

19. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.

COULOMB TECHNOLOGIES, INC.

Subscriber

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

Company Name: COULOMB TECHNOLOGIES, INC.

Company Name: _____

Street: 1692 Dell Ave.

Street: _____

City: Campbell

City: _____

State: CA Zip Code: 95008

State: _____ Zip Code: _____

Email for Notices: jkaplan@coulombtech.com

Email for Notices: _____

Date: _____

Date: _____

Instructions: Complete, sign and fax this form to Coulomb Technologies (+1-214-716-1244) or Email to MSSA@coulombtech.com. If activating Flex Billing service, you must also complete Appendix A. All fields are required (except where noted).

FLEX BILLING ATTACHMENT

In order for Subscriber to charge Users fees for the use of Subscriber's Networked Charging Stations, Subscriber must (1) subscribe to a ChargePoint™ Service Plan that includes CTI's management, collection and/or processing services related to such fees ("Flex Billing"), and (2) activate and continuously use Flex Billing services pursuant to the terms of this Flex Billing Attachment. See Attachment A Activation Form for instructions on activating Flex Billing.

TERMS AND CONDITIONS.

1. DEFINITIONS. The following defined terms shall apply for purposes of this Flex Billing Attachment (this "Attachment")

"Net Session Fees" means the total amount of Session Fees collected on behalf of the Subscriber by CTI less Session Authorization Fees, Session Processing Fees and Taxes and Regulatory Charges (as defined below), if any, required by law to be collected by CTI from Users in connection with the use of Networked Charging Stations. Except as required by law, Subscriber shall be responsible for the payment of all Taxes and Regulatory Charges incurred in connection with the Networked Charging Stations.

"Session" or **"Charging Session"** means a session during which a User is using Subscriber's Networked Charging Station to charge his or her electric vehicle for a continuous period of time not less than ten (10) minutes commencing when a User has accessed such Networked Charging Station and ending when such User has terminated such access.

"Session Authorization Fees" means the fees payable by the Subscriber to CTI to pre-authorize a Charging Session at a Commercial Networked Charging Station. The Session Authorization Fees is set forth below.

"Session Fees" means the fees set by the Subscriber for a Charging Session, including any applicable Taxes and/or Regulatory Charges.

"Session Processing Fees" means the fees charged by CTI for the management, collection and processing of Session Fees on behalf of Subscriber and the remittance of Net Session Fees to Subscribers. The Session Processing Fee is set forth below.

"User" means any person using Networked Charging.

2. FLEX-BILLING SERVICE FOR NETWORKED CHARGING STATIONS.

2.1. SESSION FEES. Subscriber shall have sole authority to determine and set in real-time the Session Fees (which shall include all applicable Taxes and Regulatory Charges, each as defined below) applicable to Subscriber's Networked Charging Stations. Subscriber shall be solely responsible for determining and charging Session Fees in compliance with all applicable laws and regulations (including without limitation any restriction on Subscriber's use of per-kWh pricing). Subscriber acknowledges that CTI is not responsible for informing Subscriber of applicable laws or changes thereto, and CTI will not be liable to Subscriber or any third party for any failure of Subscriber to comply with such applicable laws and regulations.

2.2 DEDUCTIONS FROM SESSION FEES. In exchange for CTI collecting Session Fees on behalf of the Subscriber, the Subscriber hereby authorizes CTI to deduct from all Session Fees collected: (i) a Session Authorization Fee; (ii) a Session Processing Fee; and (iii) to the extent required by Section 3, applicable Taxes and Regulatory Charges. The Session Authorization Fee and the Session Processing Fees shall be charged in an amount and subject to the terms set forth in this Attachment.

2.3 PAYMENT TO SUBSCRIBER OF NET SESSION FEES. CTI shall remit Net Session Fees to Subscriber not more than thirty (30) days after the end of each calendar month to the address set forth in Subscriber's Account information registered on the applicable Network Web Portal.

3. TAXES AND REGULATORY CHARGES. Unless required by law or otherwise stated herein, Session Authorization Fees and Session Processing Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value added, sales, local, city, state or federal taxes ("**Taxes**") or any fees or other assessments levied or imposed by any governmental regulatory agency ("**Regulatory Charges**"). Subscriber is responsible for the payment of all Taxes and Regulatory Charges incurred in connection with Session Fees; *provided that*, CTI is solely responsible for all Taxes and Regulatory Charges assessable based on CTI's income, property and employees. Where CTI is required by law to collect and/or remit the Taxes or Regulatory Charges for which Subscriber is responsible, the appropriate amount shall be invoiced to Subscriber and deducted by CTI from Session Fees, unless Subscriber has otherwise provided CTI with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.

4. APPLICABLE FEES. The following fee schedule sets forth the Session Authorization Fees and Session Processing Fees to be charged by CTI in connection with the provision of Flex Billing services.

<u>Fee Schedule</u>	<u>Transaction Volume</u>	<u>For Each Charging Session using ChargePoint Card (per Host)</u>	<u>For Each Charging Session Using Credit Card (per Host)</u>
Session Authorization Fee¹	<1,500/month	\$0.40 per Session	\$0.45 per Session
	<3,000/month	\$0.35 per Session	\$0.40 per Session
	<6,000/month	\$0.30 per Session	\$0.35 per Session
	>6,000/month	\$0.25 per Session	\$0.30 per Session
Session Processing Fee²	<1,500/month	5.0% of Session Fees	6.0% of Session Fees
	<3,000/month	4.5% of Session Fees	5.5% of Session Fees
	<6,000/month	3.5% of Session Fees	4.0% of Session Fees
	>6,000/month	3.0% of Session Fees	3.5% of Session Fees

¹ The Session Authorization Fee may not be increased more than once in any twelve (12) month period nor more than the greater of (i) ten percent (10%) or (ii) the Consumer Price Index rate of change promulgated by the United State Bureau of Labor Statistics with respect to the 12-month period just then ended when any notice of change is given by CTI to Subscribers.

² CTI may increase the Session Processing Fee payable pursuant to this Agreement at any time upon not less than one hundred eight (180) days notice (the "**Notice Period**") given by electronic notice posted to the Subscriber Portal and sent to each individual Subscriber Account, and any such change shall thereafter be binding and enforceable with respect to Subscriber after the expiration of such Notice Period; *provided, further*, that the Session Processing Fee may not be increased by more than one percentage point in any twelve (12) month period, nor in the aggregate, increased to more than twenty percent (20.00%) of Session Fees at any time.

Appendix A - Flex Billing Activation Form

Instructions: Complete, sign and fax this form to Coulomb Technologies Accounts Payable (+1-214-716-1244) or Email to MSSA@coulombtech.com to activate the Flex Billing service. All fields are required (except where noted).

Subscriber's Legal Name:	
Subscriber's Business Name, if different from above:	
Business Category: <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Exempt Payee <input type="checkbox"/> Other _____	
Subscriber's Federal Tax ID or Social Security Number:	
Subscriber's Legal Address:	
Contact Name:	Contact E-mail:
Contact Phone:	Contact Fax:
Remit Payment By: <input type="checkbox"/> Check <input type="checkbox"/> ACH (electronic transfer)	
Check Remittance Address if different from above:	

ACH Subscribers only (skip to signature below if selecting payment by Check):

<p><i>I hereby authorize Coulomb Technologies, Inc., hereinafter referred to as CTI, to initiate ACH credit entries to my account indicated below at the depository financial institution named below. If an overpayment is made to my account that is not valid, I agree to refund the overpayment to CTI. I acknowledge that the origination of ACH transactions to my account must comply with the provisions of NACHA rules and U.S. law. This authorization shall remain in effect unless and until CTI has received written notification from me that this authorization has been terminated in such time and manner to afford CTI and financial institution reasonable opportunity to act on it. Undersigned represents and warrants to CTI that the person executing this Release is an authorized signatory on the account referenced below and all information regarding the Account and account owner is true and correct.</i></p>	
Bank Name:	
Bank Address:	
ABA Routing Number:	
Account Number:	Account Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings
ACH Subscribers - please attach a pre-printed voided check	

Subscriber agrees to activate Flex Billing:

Signature:	Date:
Print Name:	Title:

OFFICE USE ONLY: Vendor ID: _____ Entered by: _____ Date: _____