

AGREEMENT BETWEEN THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY AND COUNTY OF MONTEREY FOR OWNERSHIP AND TRANSFER OF ELECTRIC VEHICLE CHARGING STATION

THIS AGREEMENT is entered into this 10th day of April, 2015, by and between **THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY** (hereinafter referred to as "TAMC") and **COUNTY OF MONTEREY**, a political subdivision of the State of California, hereafter referred to as "County" (hereinafter referred to as "RECIPIENT").

RECITALS

WHEREAS, TAMC has entered into a grant agreement ("the GRANT") with Monterey Bay Unified Air Pollution Control District (the "MBUAPCD") No. 11-04, by which TAMC and the International Brotherhood of Electrical Workers Local 234 ("IBEW") have agreed to install at least seven electric vehicle charging stations; and

WHEREAS, RECIPIENT has indicated RECIPIENT's willingness to accept an electrical vehicle charging station on RECIPIENT's property and to allow the public use of such charging station on the terms set forth below; and

WHEREAS, TAMC wishes to enter into an Agreement with RECIPIENT for satisfying, in part, TAMC's obligations under the GRANT for the installation and transfer of ownership for an electric vehicle charging station to be installed on the RECIPIENT's property as more specifically identified as described below; and

WHEREAS, RECIPIENT has submitted a letter of commitment to TAMC stating RECIPIENT's intent to receive an electric vehicle charging station on RECIPIENT's property and to contribute \$2,500 towards the installation of the equipment; and

WHEREAS, pursuant to an agreement between TAMC and IBEW, TAMC shall supply the charging station and the IBEW shall cause the installation of the station by qualified personnel.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS: TAMC shall provide, and IBEW shall cause the installation of, one functional and operational electric vehicle charging station on property owned by the RECIPIENT located at 1488 Shilling Place Annex Salinas, CA 93901. The RECIPIENT shall perform those services described below and shall comply with all relevant conditions as set forth in the AGREEMENT.

TAMC will provide to the RECIPIENT:

- A. One functional and operational electric vehicle charging station
- B. Installation of the electric vehicle charging station by a qualified contractor selected and approved by IBEW.
- C. A waiver of one (1) year of electric vehicle charging station networking fees from SemaConnect, (hereinafter referred to as "VENDOR")

- D. Transfer of ownership of the station installed on RECIPIENT's property, including an extended five year warranty therefor provided by VENDOR.

The RECIPIENT will provide to TAMC:

- E. Documentation acceptable to TAMC that RECIPIENT owns, or has the agreement of the owner of, the property upon which the electric vehicle charging station will be installed.
- F. Access to all the data collected from each charger for the lifetime of the charger. Data from the electric vehicle chargers will also be made available to the MBUAPCD. TAMC shall be granted access to this data on an annual basis.
- G. A \$2,500 contribution towards the installation costs of the electric vehicle charging station, payable within ten (10) business days of final execution of this Agreement by all parties.

The RECIPIENT will also agree to:

- H. The continued operation of the public charging station until at least June 30, 2019.
- I. Pay all permitting fees associated with the installation of the electric vehicle charging station.
- J. Provide a publicly-accessible location that is equipped with the necessary energy (208-240 VAC +/-10%, 30 or 28 Amps), and allows parking duration of at least two to four hours, and either wireless IEEE 802.11b/g or LAN (Ethernet) communication.
- K. Pay the networking fee of \$20/charger/month to VENDOR for the remaining four years of the agreement with VENDOR (until 2019), at which time the RECIPIENT will have the opportunity to renegotiate the contract with VENDOR.

2. **COORDINATION.** RECIPIENT shall assign a Project Manager to personally participate in, and implement this Agreement in compliance of Grant requirements. The Project Manager will be responsible for conveying annual data obtained from the electric vehicle charging station to TAMC, and to do so within five (5) business days of the anniversary of the installation of the station on the Property. The Project Manager will also ensure the continued operation of the electric vehicle charging station until at least June 30, 2019. If maintenance is required, the Project Manager will utilize the contacts at VENDOR, as necessary, to ensure the proper function of the station. TAMC will not have a role in the day to day activities of the electric vehicle charging station.

3. **OWNERSHIP OF INFRASTRUCTURE AND NETWORK USE**

- A. Ownership of all infrastructure components, as a result of this Agreement, whether or not completed, shall vest with the RECIPIENT upon the installation of the electric vehicle charging station.
- B. TAMC shall have the right to access any construction drawings and diagrams, as well as ongoing collected data and reporting from the electric vehicle charging station. Data from the electric vehicle chargers will also be made available to the MBUAPCD.
- C. Use of the VENDOR network to operate the deployed infrastructure shall be open to the RECIPIENT, TAMC and MBUAPCD.
- D. Use of the VENDOR network to access collected data shall be open to the RECIPIENT, TAMC and MBUAPCD.

4. **TERM OF AGREEMENT.** The term of this Agreement shall be from the date of its execution until June 30, 2019. TAMC's and MPUAPCD's access to data from the charging station shall survive termination of this Agreement, and last for the life of the charging station.

6. **NOTICES.** All notices shall be made in writing and may be given by personal delivery or by certified mail. Notices sent by mail should be addressed as follows:

TO TAMC: Debra L. Hale, Executive Director
55B Plaza Circle, Salinas, CA 93901

TO RECIPIENT: Michael R. Derr Contracts/Purchasing Officer
1488 Schilling Place
Salinas, CA 93901
Email: derrm@co.monterey.ca.us
Phone: (831) 755-4992

When so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this Paragraph.

9. **RECORDS OF PERFORMANCE/DATA.** The RECIPIENT shall maintain adequate records of contract performance costs, expenses, etc., and make these records available for inspection, audit, and copying by TAMC during the term of the Agreement and for the duration of the life of the electric vehicle charging station.

10. **ASSIGNMENT.** The Agreement shall not be assigned by the RECIPIENT in whole or in part, without the written consent of TAMC.

11. **INDEMNIFICATION.** To the extent permitted by law, the parties agree to save, indemnify, defend, and hold harmless each other from any and all liability, claims, suits, or actions, as well as any losses, expenses, injury or damage of any kind whatsoever incurred in relation to, as a consequence of, or arising out of the performance of this Agreement and attributable to the fault or negligence of the other.

12. **MERGER.** This Agreement, together with MBUAPCD Grant Agreement No. 11-04, and that agreement between TAMC and IBEW dated April 23, 2014, shall constitute the entire Agreement between the parties and shall supersede any previous agreements, whether verbal or written, concerning the same subject matter. No modification of this Agreement shall be effective unless and until evidenced by a writing signed by both parties.

13. **DEFAULT.** If the RECIPIENT should fail to perform any of his obligations hereunder within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, TAMC may, after providing notice of the default and allowing 30 days in which to cure any such default, terminate this Agreement by giving the RECIPIENT written notice of such termination, stating the reason for such termination. In such event, the RECIPIENT shall, at RECIPIENT's own costs for de-installation, return the electric vehicle charging station equipment in proper working order (reasonable wear and tear excepted).

14. **NO WAIVER OF BREACH; TIME.** The waiver by TAMC of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement. Time is of the essence in carrying out the duties hereunder.

15. **THIRD PARTY BENEFICIARIES.** The MBUAPCD is a designated third party beneficiary of this agreement, and shall be entitled to enforce RECIPIENT'S obligations hereunder should TAMC decline or fail to do so. Except specifically set forth, nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties. RECIPIENT acknowledges receipt of a copy of the Grant agreement, attached hereto.

16. **ATTORNEYS' FEES, APPLICABLE LAW AND FORUM.** In the event either party brings an action or proceeding for damages arising out of the other's performance under this Agreement or to establish the right or remedy of either party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as part of such action or proceeding, whether or not such action or proceeding is prosecuted to judgment. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Monterey.

17. **TAXES.** The RECIPIENT agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes, fees and other obligations, including, but not limited to, state and federal income and FICA taxes. The RECIPIENT agrees to indemnify and hold TAMC harmless from any liability which it may incur to the United States or to the State of California as a consequence of the RECIPIENT's failure to pay, when due, all such taxes and obligations.

18. **INTERPRETATION.** Notwithstanding the fact that one or more provisions of this Agreement may have been drafted by one of the parties to this Agreement, such provisions shall be interpreted as though they were a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

TAMC:

Signature:

Name: Debra L. Hale
Title: Executive Director
Transportation Agency for Monterey County

RECIPIENT:

County of Monterey

Signature.

Name: Michael R. Derr
Title: Contracts/Purchasing Officer

APPROVED TO AS TO FORM:

By: _____