



## AGENDA REPORT

**Meeting Date:** September 20, 2011

**Item Number:** F-8

**To:** Honorable Mayor & City Council

**From:** Chad Lynn, Director of Parking Operations

**Subject:**

- A. THE CHARGEPOINT AMERICA STATION AWARD AGREEMENT WITH COULOMB TECHNOLOGIES, INC.; AND
- B. THE CHARGEPOINT AMERICA MASTER SERVICES SUBSCRIPTION AGREEMENT WITH COULOMB TECHNOLOGIES, INC.; AND
- C. AN AGREEMENT WITH CLEAN FUEL CONNECTION, INC. FOR INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS IN CITY PARKING FACILITIES PURSUANT TO THE CHARGEPOINT AMERICA GRANT; AND

ISSUANCE OF A PURCHASE ORDER IN AN AMOUNT NOT TO EXCEED \$200,000

**Attachments:**

- 1. ChargePoint America Station Award Agreement
- 2. ChargePoint America Master Services Subscription Agreement
- 3. Clean Fuel Connection, Inc. Installation Agreement
- 4. Coulomb Technologies Exclusive Distribution Memo

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### RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute the ChargePoint America Station Award Agreement and the ChargePoint America Master Services Subscription Agreement with Coulomb Technologies, Inc. (or Coulomb), accepting the grant of electric vehicle charging stations and the associated costs for operations and maintenance, and authorizing the City Manager to negotiate and execute an agreement between the City and Clean Fuel Connection, Inc. for the installation of such equipment in the City's parking facilities, and approval of the purchase order in the amount not to exceed \$200,000 for the installation.

### INTRODUCTION

The City Council has directed staff to pursue projects which promote both Smart City and Green City initiatives. Accordingly, the Parking Services Division of the Department

of Public Works and Transportation submitted a grant application with ChargePoint America in October of 2010 for twenty-eight (28) electric vehicle (EV) charging stations, including warranties, operating costs, and subscription fees to be located in the City's public parking facilities.

ChargePoint America is a program sponsored by Coulomb, the service provider and original equipment manufacturer of the charging stations, to provide electric vehicle charging infrastructure to nine selected regions in the United States, including the Los Angeles region. This grant, in part, is made possible by the American Recovery and Reinvestment Act through the Transportation Electrification Initiative administered by the Department of Energy (DOE). The objective is to accelerate the development and production of electric vehicles to substantially reduce petroleum consumption, reduce greenhouse gas production, and create jobs.

The City was approved to receive a grant for all twenty-eight (28) charging stations and associated operating, maintenance and networking fees on July 25, 2011. The value of this grant and the associated services is approximately \$155,000.

### **DISCUSSION**

The terms of this grant provide that ChargePoint America will provide the necessary hardware, maintenance, operations and network administration functions for the 28 electric vehicle charging stations as part of the grant program. The City will be responsible for the cost related to necessary upgrades to facility electrical systems and for the on-site installation of each unit.

Once the City accepts the grant for the equipment and its associated operation and maintenance costs, the City will be obligated to keep this equipment in the original place of installation, in continuous operation, and accessible for public use. The City will not be able to move or discontinue service to any of these charging stations until expiration of the program, in January 2014.

Upon completion of the program in January 2014, the City will own all of the associated equipment and may choose to move, expand, discontinue, or make any other operational changes at the discretion of the City. If the City chooses to continue operating the equipment, it may do so independently or as part of the ChargePoint Network. Once this program is completed, the City will be responsible for the ongoing costs of operating and maintaining this system, including network and subscription fees if operating as part of the ChargePoint Network. The cost of operating this equipment in the same manner as it will be operated under the grant program is estimated to be \$30,000 per year.

The equipment and services being provided by Coulomb has been funded through the United States Department of Energy Grant Number DE-EE0003391 and Coulomb was selected by a competitive process. In order for the City to obtain the funding pursuant to the grant program, only authorized Coulomb installers may distribute, install, provision, commission, maintain, operate and warranty the equipment received as part of this grant program. It should be noted that the installation of the equipment is incidental to its acquisition, maintenance, and operation. Further, pursuant to the exclusive agreement between the grantor and the distributor, if the City chooses to receive this equipment as part of the grant program, it would not be practically possible to seek competitive proposals nor would there be potential advantages realized by the City in seeking such proposals.

The City will be required to pay for the incremental use of electricity necessary to charge vehicles as part of the City's standard utility costs. The equipment delivered as part of this program will be capable of assessing fees for connection and charging, and the program permits such fees to be assessed; however, in recognition of the cost of operations being borne by the grant program, staff recommends offering these services free of charge during the grant period. Upon completion of the grant program, staff will reevaluate the ongoing costs associated with the operations and maintenance of this equipment and the level of adoption of the technology by consumers to make future fee recommendations if continuation of operations is so desired.

**FISCAL IMPACT**

The table below lists the location, units and associated costs, including necessary permits, for the installation of the EV charging stations that are part of this grant program.

Parking Facility	Number of Units	Upgrade & Installation Costs
<b>PHASE 1</b>		
438 N. Beverly/439 N. Canon Drive (Crate & Barrel)	2	\$27,341
240 N. Beverly/241 N. Canon Drive (Public Gardens/Montage)	2	\$16,217
216 S. Beverly Drive	2	\$7,006
9510 Brighton Way (Brighton/Rodeo)	2	\$13,381
440 N. Camden Drive	2	\$7,160
461 N. Bedford Drive	2	\$14,601
221 N Crescent Drive (Tennis Center)	2	\$16,709
450 N. Rexford Drive (City Hall/Civic Center)	2	\$10,373
9333 Third Street	2	\$11,273
321 S. La Cienega Drive (Tennis Center)	2	\$6,499
<b>SUB-TOTAL</b>	<b>20</b>	<b>\$130,559</b>
<b>PHASE 2 – FUTURE INSTALLATION</b>		
345 N Beverly Drive	4	\$21,588
333 N Crescent Drive/9361 Dayton Way	4	\$18,729
<b>TOTAL</b>	<b>28</b>	<b>\$170,877</b>

As shown above, the equipment will be accepted and installed in a two phase approach. This approach is in anticipation of an additional grant of \$30,000 through the California Energy Commission (CEC) to be used towards the installation costs of this equipment. The 20 units listed in Phase 1 will be accepted and begin installation immediately. Upon securing and accepting the CEC grant, the City will then accept and install the eight remaining units as part of Phase 2. The facility locations in Phase 2 were selected based on their proximity to adjacent charging stations and the associated cost and complexity of the installation. If the grant from the CEC is not secured, the City will not move forward with Phase 2 of this program.

The 450 Crescent Drive parking facility is not part of this grant program as equipment for this facility was purchased prior to the award of the grant as part of the facility construction efforts.

The estimated value of the equipment and services to be received by the City from this grant is approximately \$155,000.

The total estimated cost for installation is \$170,000 with a \$30,000 contingency, for a total not to exceed amount of \$200,000.

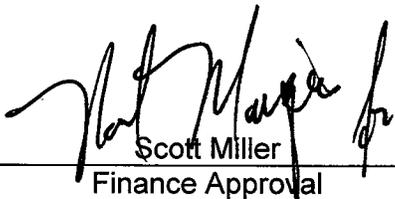
As part of the 2011/2012 CIP budget, Project 0786 - Parking Facility Upgrades will provide \$170,000 to fund the first phase of EV charging station installations and any project contingencies. The second phase of this project will only be initiated by staff after acceptance of the anticipated \$30,000 grant from the CEC and will be funded through the same CIP project.

There are no anticipated operating and maintenance costs, as these will be funded by the grant program until January 2014. After January 2014, the City may choose to fund the continued operations and maintenance of this equipment at an estimated cost of \$30,000 per year through the operating budget.

Increased electrical usage is estimated at \$12,000 per year. At this rate, no additional budget allocation would be required. Although unlikely, based on continuous usage of all charging stations additional electrical usage could reach \$60,000, which would require an appropriation of additional funds.

There are no anticipated revenues from this project at this time.

All funds related to this project are part of the Parking Enterprise Fund. No General Fund dollars are being dedicated to this project.

  
\_\_\_\_\_  
Scott Miller  
Finance Approval

  
\_\_\_\_\_  
David Gustavson  
Approved By

# **Attachment 1**



7/25/2011

Chad Lynn  
Director of Parking Operations  
City of Beverly Hills  
345 Foothill Road  
Beverly Hills, CA 90210

Dear Chad:

Congratulations! Your organization has been awarded one or more Coulomb Technologies, Inc. electric vehicle charging station(s) under the ChargePoint America™ Program. The Program has been funded in part under the terms of Grant number DE-EE0003391 from the United States Department of Energy as part of the American Reinvestment and Recovery Act. In order to receive delivery of the Charging Station(s), you must agree to all of the terms and conditions following. Furthermore, you need to:

1. Countersign at the end of this letter and provide a copy of it back to Coulomb or to the local Coulomb distributor.
2. Provide a \$0 PO to Coulomb Technology for the charging station(s). Please make sure the part numbers on the order correspond to the part numbers on this letter and you provide a requested shipment date, ship to address with a contact name, phone number, and email address.
3. Sign and return the attached Master Services Support Agreement.
4. Please familiarize yourself with the Installation and Reporting Guide. Providing proper documentation of the charger installation to Coulomb is a requirement of the Grant. Our authorized installers are compliant with the reporting requirements and can complete the cost documentation reports on your behalf.
5. Return the documents within 30 days of the date of this award letter.

Please note that delivery of the charging systems will be up to 6–8 weeks of receipt of PO and associated signed documents. We appreciate your participation in this exciting program and look forward to creating an electric vehicle charging infrastructure in your area.

Best regards,



Michael Jones  
Western Region Director  
ChargePoint America Program  
Coulomb Technologies



## CHARGEPOINT AMERICA™ STATION AWARD AGREEMENT

1. **Charging Stations.** Your organization (“You”) has been awarded, and may be awarded from time to time, one or more Coulomb Technologies, Inc. (“CTI”) electric vehicle charging stations under the ChargePoint America™ Program . The Program has been funded in part under the terms of Grant number DE-EE0003391 from the United States Department of Energy (the “DOE”) as part of the American Reinvestment and Recovery Act (“ARRA”). The charging stations will be installed at the locations specified on Appendix A, as amended from time to time to reflect the award of additional Charging Stations under this Station Award Agreement.

Product Name	Product Description	Product Code	Qty	Unit Price	Total Price
CT2003C-GPRS-SIM1-LOCK-CCR	208/240V-30A Wall mount with hanging cord and mounting kit, USA GPRS SIM, locking holster, and credit card reader	CT2003C-GPRS-SIM1-LOCK-CCR	3	\$0.00	\$0.00
CT2003C-LOCK-CCR	208/240V-30A Wall mount with hanging cord and mounting kit with locking holster and credit card reader	CT2003C-LOCK-CCR	5	\$0.00	\$0.00
CT2101C-GPRS-LOCK-CCR	208/240V 30A Max.& 120VAC 16A Max Simultaneous operation, Gateway, Zigbee LAN, Locking holster, Bollard.	CT2101C-GPRS-LOCK-CCR	2	\$0.00	\$0.00
CT2101C-LOCK-CCR	Dual 208/240-30A and 120V-12A Output Bollard with locking holster option and credit card reader	CT2101C-LOCK-CCR	2	\$0.00	\$0.00



**Coulomb  
Technologies**



CT2102C-GPRS-LOCK-CCR	208/240V 30A Max.& 120VAC 16A Max Simultaneous operation, Gateway, Zigbee LAN, Locking holster, Wall mount. ChargePoint America DOE Parts Warranty thru 12/31/2013. UL Listed.	CT2102C-GPRS-LOCK-CCR	1	\$0.00	\$0.00
CT2102C-LOCK-CCR	Dual 208/240-30A and120V-12A Output Pole Mount with locking holster option and credit card reader	CT2102C-LOCK-CCR	1	\$0.00	\$0.00
CT2103C-GPRS-LOCK-CCR	208/240V 30A Max.& 120VAC 16A Max Simultaneous operation, Gateway, Zigbee LAN, Locking holster, Wall mount. ChargePoint America DOE Parts Warranty thru 12/31/2013. UL Listed.	CT2103C-GPRS-LOCK-CCR	7	\$0.00	\$0.00
CT2103C-LOCK-CCR	Dual 208/240-30A and120V-12A Output Wall Mount with locking holster option and credit card reader	CT2103C-LOCK-CCR	7	\$0.00	\$0.00

<b>Grand Total:</b>	<b>\$0.00</b>
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2. **Shipment and Delivery.** CTI will pay for the cost of standard delivery charges of the Charging Stations to the locations designated by You in writing to CTI. CTI shall choose the method by which Charging Stations are to be delivered. If You desire expedited delivery, You will be responsible for the payment of all delivery charges.
  
3. **Installation.** (a) Installation of the Charging Stations shall be at your sole cost and expense. Unless specifically agreed in writing, installation of the Charging Stations may only be performed by a CTI Authorized Installer. Should You wish to use your own installer, you shall request CTI's permission, in its reasonable discretion, to do so no more than fifteen (15) days prior to the scheduled installation date. You should be aware, certain requirements must be met by all contractors and subcontractors working to install electric vehicles station equipment (EVSE) as part of the Grant. The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor. For the ChargePoint America program, construction includes all alterations, improvements and/or repair, including painting and decorating, performed on a site in performance of the installation of EVSE. In the event You use your own installer, such installer shall become subject to certain audit and other rights granted to the United States government and to CTI. Also, should you be authorized to use your own contractor to install the charging stations, the contractor will be required to submit to CTI or the applicable CTI Distributor within 5 days of the installation, the applicable DBRA related paperwork including (i) a certified payroll or a properly filled out US government form wh-347 and (ii) an invoice or receipt for the work done to install the charging station(s) including costs for panel rework, trenching, concrete pad placement, fixing the station, and electrical wiring. Furthermore, you shall indemnify and hold harmless CTI from all costs (including, without limitation, reasonable attorneys' fees), losses, charges, fees, fines and other expenses of any sort whatsoever, including, without limitation, the refusal of the DOE to provide reimbursement to CTI in respect of the Charging Stations awarded to you, incurred by CTI as a result of such installer's (i) failure to comply with any applicable law, including, without limitation, the Davis-Bacon Act or (ii) failure to provide CTI such documentation as is reasonably needed by it to comply with applicable DOE requirements. (b) You agree to cause the installation of the Charging Stations within forty five (45) days of their delivery to You. In the event that the Charging Stations have not been installed by the expiration of such forty five day period, CTI reserves the right to reclaim the Charging Stations. In the event that You are having trouble



arranging for the installation of the Charging Stations by an Authorized Distributor or an installer chosen by such Authorized Distributor, please contact CTI as soon as possible so that it can assist you in obtaining prompt installation of the Charging Stations. (c) The Charging Stations are not to be removed from their packaging by any person other than the Installer.

4. **Warranty/Limitation of Liability.** (a) **Warranty.** The Charging Station is covered by the terms of CTI's standard Warranty (the "Warranty") for a period beginning on the date of installation and running until December 31, 2013. A copy of the Warranty is included with this agreement. All applicable warranties with respect to the Charging Station are set forth in the Warranty, and are hereby incorporated by reference into this Agreement. (b) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4 AND IN THE WARRANTY, CTI MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE CHARGING STATION, THE CHARGEPOINT™ NETWORK STANDARD SERVICES OR THE CHARGEPOINT™ NETWORK, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. CTI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS BY THE CHARGING STATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CTI DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE CHARGING STATION. (c) **Limitation of Liability.** (i) REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CTI 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 CHARGING STATION, THE CHARGEPOINT™ NETWORK, ANY CHARGEPOINT™ NETWORK SERVICES, OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY YOU NOT SPECIFICALLY SET FORTH IN THIS ADDENDUM. BECAUSE SOME STATES OR JURISDICTION DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY. (ii) YOUR SOLE REMEDY FOR ANY BREACH BY CTI OF ITS OBLIGATIONS OR WARRANTIES UNDER THIS AGREEMENT SHALL BE LIMITED TO, AT CTI'S OPTION, REPAIR OR REPLACEMENT OF THE CHARGING STATION. (d) **Warranty Exclusions. Exclusive Remedies.** THE REMEDIES CONTAINED IN SECTION 4 ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES YOU MAY HAVE AGAINST CTI WITH RESPECT TO THE



PERFORMANCE OF THE CHARGING STATIONS, THE CHARGEPOINT™ NETWORK STANDARD SERVICES OR THE CHARGEPOINT™ NETWORK.

5. **Access to the Public.** All of the Charging Stations will be installed in a manner and in locations that make them available for access and use by the general public. The Charging Stations, and the facilities in which they are located, shall be kept clean and in good repair. You shall promptly call CTI or an Authorized Distributor in order to arrange for the repair of any non-functioning Charging Stations.
6. **Network Access.** As a part of the award, You will receive a free subscription for ChargePoint™ Network Standard Service, as defined in the ChargePoint™ Master Services Subscription Agreement (the "Master Services Agreement"), that will expire December 31, 2013 (the "Subscription Period"). You must execute a copy of the Master Services Agreement as a part of your obligations under this ChargePoint America™ Station Award Agreement and must keep the Charging Stations connected to the ChargePoint™ Network throughout the entire Subscription Period. CTI offers various other services, such as billing services, which may be accessed through the ChargePoint Network™. All of such services are subject to CTI's standard terms and conditions.
7. **Access to Information.** In consideration of your receipt of the Charging Stations and free subscription to ChargePoint™ Network Standard Service, you agree to provide and release to CTI, the DOE, such other participants and partners of CTI in the Program as CTI shall determine necessary, all data and information relating to You, Your electric vehicles, if any, and their use, the use by others of Your Charging Stations and Your use of the Charging Stations and any public Charging Stations and infrastructure (the "Data"). You acknowledge and agree that the Data may be used by any of the above-described persons for any purpose, including analyzing Your use and charging patterns, the public's use of Your Charging Stations, the effectiveness of infrastructure put in place to meet the needs of drivers of electric vehicles, and the efficacy of the Program. Your performance of this Agreement and willingness to supply and release Data to the persons described in the immediately preceding paragraph is a material condition to CTI's willingness to enter into this Agreement with You and provide the Charging Stations hereunder. You understand, acknowledge and agree that CTI will need Your reasonable cooperation and assistance, and You agree to provide your reasonable cooperation and assistance to CTI, so that CTI can successfully conduct its testing and collect Data from You, the Charging Stations, and public electric vehicle infrastructure utilized by You and others. Except as set forth in this Section 7, the use of the Charging Stations will be subject to CTI's standard privacy policy (the "Privacy Policy"). The Privacy Policy is located on CTI's web site and may be accessed at:



<https://www.chargepointportal.net/index.php/general/uri/privacy.html>

Notwithstanding anything to the contrary contained in this Section 7, or in the Privacy Policy, CTI reserves the right, on behalf of the DOE, to collect certain anonymous information regarding the use and operation of the Charging Stations.

8. **Certain Rights of the United States Government.** Notwithstanding the fact that You are being awarded the Charging Stations under the Program, the United States Government reserves the right to seize the Charging Stations under certain, limited circumstances, including, without limitation, national emergency.
9. **No Right to Remove, Move or Sell the Charging Stations.** The Charging Stations may not be removed, moved or sold from their place of installation, prior to January 1, 2014, without the prior written consent of CTI.
10. **Failure to Comply with Terms of the Program.** In the event that You fail to comply with the terms of the program, including, but not limited to (i) the use of an CTI authorized installer (ii) providing documentation of the installation costs (iii) allowing public access to the station(s), You are liable for losses and/or damages incurred by CTI. If You fail to comply with the program or make restitution within 30 days of receiving a demand notice from CTI, CTI reserves the right to repossess the charging station(s) You received under the grant.
11. **Additional Charging Stations.** In the event that You have purchased Charging Stations that are to become a part of the Program, CTI's standard terms and conditions shall apply.
12. **No 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.
13. **Waiver.** CTI's failure at any time to require your performance of any obligation under this Agreement will in no way affect the full right to require such performance at any time thereafter. CTI's waiver of a breach of any provision of this Agreement will not constitute a waiver of the provision itself. CTI's failure 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 a CTI authorized representative. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.
14. **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 of California shall have exclusive jurisdiction over any claim arising under this Agreement.

15. **Waiver of Jury Trial.** You and CTI each hereby waive any right to jury trial in connection with any action or litigation arising out of this Agreement.
16. **Severability.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either You or CTI will to any extent be determined 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, You and CTI or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.
17. **Assignment.** You may not assign any of your rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of CTI.
18. **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.**

**AWARDEE:**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name:

Name: \_\_\_\_\_

Title:

Title: \_\_\_\_\_



## **APPENDIX A – CHARGING STATION LOCATIONS**

Montague, 241 Cannon:  
2 wall mount CT2100

221 N. Crescent:  
2 wall mount CT2000

~~333 N. Crescent:  
4 wall mount CT2000~~

461 N. Bedford:  
2 wall mount CT2100

438 N. Beverly:  
2 bollard style CT2100

9333 3rd St:  
2 wall mount CT2100

~~345 N. Beverly:  
2 wall mount CT2100  
2 bollard style CT2100~~

9510 Brighton:  
2 post mount CT2100

440 N. Camden:  
2 wall mount CT2100

450 N. Rexford:  
2 wall mount CT2100

La Cienega / Tennis:  
2 wall mount CT2000

216 S. Beverly:  
2 wall mount CT2100

# **Attachment 2**

**CHARGEPOINT®**  
**MASTER SERVICES SUBSCRIPTION AGREEMENT**

**IMPORTANT: PLEASE READ THIS MASTER SERVICES SUBSCRIPTION AGREEMENT (“AGREEMENT”) CAREFULLY.**

**THIS AGREEMENT GOVERNS REGISTRATION OF YOUR CHARGING STATION ON THE CHARGEPOINT NETWORK AND ACTIVATION OF CHARGEPOINT NETWORK SERVICES. SUBSCRIBING FOR A CHARGEPOINT NETWORK SERVICE CONSTITUTES ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND IS BINDING ON YOU AND THE BUSINESS ENTITY YOU REPRESENT (COLLECTIVELY, “SUBSCRIBER” OR “YOU”). 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 AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS; IF NOT, YOU MAY NOT ENTER INTO THIS AGREEMENT AND MAY NOT USE THE CHARGEPOINT SERVICES.**

**YOU MAY NOT ACCESS THE CHARGEPOINT SERVICES IF YOU ARE A DIRECT COMPETITOR OF CTI EXCEPT WITH CTI’S PRIOR WRITTEN CONSENT. IN ADDITION, YOU MAY NOT ACCESS THE CHARGEPOINT 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 “ChargePass™ RFID Card”** means a CTI provisioned radio-frequency identification card issued to a ChargePass Account Holder which permits a User of such card access to the ChargePoint Network for the delivery of Subscriber-provided services and the ChargePass Account Holder to use the ChargePoint Network to manage their ChargePass Account.

**1.3 “ChargePass Account”** means an account registered with CTI that permits a User to prepay for access to Networked Charging Stations utilizing a ChargePassRFID Card.

**1.4 “ChargePass Account Holder”** means a User who has registered with the Network Operator and created a ChargePass Account.

**1.5 “ChargePoint Network”** means the Network Operator provisioned software, firmware, hardware (excluding Charging Stations owned and registered by Subscribers) and services for Subscribers and Users that, among other things, provision, manage, and allow access to Networked Charging Stations by ChargePass Account Holders via the RFID Card and by other Users via the utilization of contactless RFID embedded credit cards, or authorized credit or electronic debit card transactions and permit Subscribers to register, activate, monitor and operate Charging Stations .

**1.6 “ChargePoint Network Standard Service”** means the bundled group of ChargePoint Services that assist in the basic operation of the Networked Charging Stations. The ChargePoint Network Standard Service is required to be subscribed to by Subscriber in order to register and activate a Charging Station on the ChargePoint Network.

**1.7 “ChargePoint Services”** means the ChargePoint Network support services and ChargePoint software applications, as such may be introduced and made available to Subscribers by the

Network Operator from time to time, which provide network support and functionalities for Users and Subscribers and allow Subscribers, among other things, to monitor and control Networked Charging Stations. ChargePoint Services, including, but not limited to, the ChargePoint Network Standard Service, are made available for subscription by Subscribers pursuant to Purchase Orders entered into between Subscriber and CTI.

**1.8** *“Charging Session”* has the same definition as “Session” set forth below.

**1.9** *“Charging Station”* means the electric vehicle charging station(s) installed by Subscriber at the Subscriber Location(s), either manufactured by CTI or by another entity, which have embedded within them CTI proprietary hardware and firmware, enabling Subscriber to register and activate such charging stations on the ChargePoint Network. A charging station may be designated by a Subscriber as a Commercial Charging Station or a Free Charging Station, a Public Charging Station or a Private Charging Station and such designations may be changed at any time with respect to any Networked Charging Station(s) utilizing the ChargePoint Network Standard Service.

**1.10** *“Commercial Charging Station”* means a Charging Station that is designated by the Subscriber as one where Users must pay a Session Fee for access to the Charging Station.

**1.11** *“CTI”* means Coulomb Technologies, Inc., a Delaware corporation.

**1.12** *“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 and ChargePass.

**1.13** *“CTI Intellectual Property”* means all intellectual property of CTI relating to the CTI Marks, the ChargePoint Network, the ChargePoint Services, ChargePass, ChargePass RFID Cards, ChargePass Accounts and all other Intellectual Property Rights of CTI.

**1.14** *“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 by the Network Operator to Subscribers and/or Users in any manner (including on-line).

**1.15** *“Free Charging Station”* means a Charging Station that is designated by the Subscriber as one where Users do not pay a Session Fee for access to the Charging Station.

**1.16** *“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.

**1.17** *“Malicious Code”* means viruses, worms, time bombs, Trojan horses and other malicious code, malware, spyware, files, scripts, agents or programs.

**1.18** *“Net Session Fees”* means all Session Fees actually collected on behalf of the Subscriber from Users by Network Operator for use of Networked Charging Stations less Session Authorization Fees and Session Processing Fees, as well as any Taxes and Regulatory Charges, 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.

**1.19** *“Networked Charging Station”* means a Charging Station for which a Subscriber has subscribed for the ChargePoint Network Standard Service and registered and activated such Charging Station on the ChargePoint Network.

**1.20** *“Network Operator”* means the entity responsible for provisioning, managing and maintaining the ChargePoint Network and offering ChargePoint Services. CTI is the Network Operator in North America but is permitted at any time to assign its rights and obligations as Network Operator under this Agreement to another entity.

**1.21** *“Network Web Portal”* means any of the secure Internet web portals established and maintained by the Network Operator which will allow (i) Subscriber through its Subscriber Accounts to access ChargePoint Services for the management and control of Subscriber’s Networked Charging Stations and (ii) ChargePass Account Holders through their respective ChargePass Accounts to track their use of Networked Charging Stations, replenish ChargePass RFID Cards and otherwise manage their ChargePass Account.

**1.22** *“Party”* means the Network Operator and Subscriber.

**1.23** *“Private Charging Station”* means a Charging Station for which access by the general public is restricted (e.g., a Charging Station located in a private parking facility or restricted corporate campus).

**1.24** *“Public Charging Station”* means a Charging Station that is accessible by any User subject only to stated hours of operation.

**1.25** *“Purchase Order”* means the purchase order(s) or other documentation entered into between Subscriber and the Network Operator, its distributors or other authorized representatives for the subscription of ChargePoint Services the terms of which are incorporated herein by reference.

**1.26** *“Purchased ChargePoint Services”* means those ChargePoint Services made available by the Network Operator and for which a Subscription has been purchased by Subscriber with respect to any of Subscriber’s Networked Charging Stations or for which the Subscription Term has automatically been renewed pursuant to Section 8.3 (Automatic Renewal of Subscriptions).

**1.27** *“Regulatory Charges”* is defined in Section 4.6 (Taxes and Regulatory Charges).

**1.28** *“Session”* or *“Charging Session”* means a continuous period of time measuring not less than five (5) minutes commencing when a User has accessed a Networked Charging Station and the delivery of Subscriber provided services has been initiated and terminating upon the cessation by such User of the Subscriber provided services.

**1.29** *“Session Authorization Fees”* means the fees payable by the Subscriber to the Network Operator to pre-authorize a Charging Session at a Commercial Networked Charging Station.

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

**1.31** *“Session Processing Fees”* means the fees charged by the Network Operator for the management, collection and processing of Session Fees on behalf of Subscriber and the remittance of Net Session Fees to Subscribers.

**1.32** *“Session Transaction Fees”* means the complete set of fees, session authorization fees and session processing fees, charged by the Network Operator to the Subscriber for collection of User Session Fees on behalf of the Subscriber, as well as any applicable Taxes and Regulatory Charges.

**1.33** *“Software Application”* means computer programs, including firmware, as provided or otherwise made available to Subscriber by the Network Operator, or its distributors or other authorized representatives, as embedded in or downloaded by Subscriber to the Subscriber’s Charging Stations, related products and any Upgrades.

**1.34** *“Subscriber”* is an owner of one or more Charging Stations for which Subscriber has purchased Subscriptions for ChargePoint Services and registered with and activated on the ChargePoint Network.

**1.35** *“Subscriber Account”* means an account established by a Subscriber.

**1.36** *“Subscriber Location(s)”* means the physical locations where Subscriber has installed Networked Charging Stations registered with the ChargePoint Network.

**1.37** *“Subscription”* means a subscription for ChargePoint Services purchased by a Subscriber.

**1.38** *“Subscription Fees”* means the fees payable by Subscriber to the Network Operator for subscribing to any of the ChargePoint Services.

**1.39** *“Subscription Term”* means the Term for which Subscriber has purchased a Subscription for Purchased ChargePoint Services for a Networked Charging Station.

**1.40** *“Taxes”* is defined in Section 4.6 (Taxes and Regulatory Charges).

**1.41** *“Upgrades”* means any authorized upgrades, updates, bug fixes or modified versions of Software Applications furnished by the Network Operator.

**1.42** *“Users”* means any person using Networked Charging Stations including, without limitation, ChargePass Account Holders.

**1.43** *“You”* or *“Your”* means the company or other legal entity for which you are accepting this Agreement and the Affiliates of that company or entity.

## **2. CTI’S RESPONSIBILITIES AND AGREEMENTS.**

**2.1 NETWORK OPERATION.** The Network Operator shall be solely responsible for: (i) *Provisioning and Operating the ChargePoint Network* – provisioning and operating, maintaining, administration and support of the ChargePoint Network infrastructure (but excluding Subscribers’ Charging Stations and infrastructure for transmitting data from Networked Charging Stations to any ChargePoint Network operations center); (ii) *Provisioning and Operating Network Web Portals* – provisioning and operating, maintaining, administration and support of the Network Web Portals; (iii) *User Acquisition, Administration and Support* -- acquisition and registration of new ChargePass Account Holders, administration and support of ChargePass Accounts and provisioning the support services for Users embodied in the ChargePoint Services, and (iv) *Data Protection* – using commercially reasonable efforts to comply with all applicable laws and regulations of the United States of America and all other governmental entities governing, restricting or otherwise pertaining to the use, distribution, export or import of data, products, services and/or technical data whether such information or data relates to either the Subscriber or Users in connection with the ChargePoint Network.

**2.2 PURCHASED CHARGEPOINT SERVICES.** The Network Operator shall make the Purchased ChargePoint Services available to Subscriber pursuant to this Agreement and the applicable Purchase Orders for each Networked Charging Station during the Subscription Term. The Network Operator represents and warrants that: (i) *Authority* -- it has the power and authority to enter into and be bound by this Agreement, (ii) *Performance of ChargePoint Services* -- the ChargePoint Services shall

perform materially in accordance with the Documentation, (iii) **Support for Purchased ChargePoint Services** – it will provide all support for Purchased ChargePoint Services and technical support and maintenance for all Software Applications as set forth in the Documentation, including, without limitation, Upgrades, (iv) **Continuity of Purchased ChargePoint Services** – It will use commercially reasonable efforts to make the Purchased ChargePoint Services available 24 hours a day, 7 days a week, 365 days per year, except for planned downtime (of which Subscriber shall be given not less than eight (8) hours prior notice via electronic messaging to the email address for notices specified in each Subscriber Account), (v) **No Decrease in Functionality of ChargePoint Services** -- subject to Section 2.3(vi), the functionality of the ChargePoint Services shall not materially decrease during the Subscription Term, and (vi) **Malicious Code** – it will use commercially reasonable efforts to ensure that it does not transmit to Subscriber any Malicious Code (excepting Malicious Code transmitted to CTI or the Network Operator by Subscriber or its Affiliates). Subscriber’s exclusive remedy for a breach of any of the foregoing shall be as provided in Section 8.4 (Termination) and Section 8.5 (Refund or Payment Upon Termination) as set forth below.

**2.3 LIMITATIONS ON RESPONSIBILITY.** Neither CTI, its distributors nor its other authorized representatives nor the Network Operator shall be responsible for, or makes any representation or warranty to Subscriber with respect to the following: (i) **Competing Subscriber Locations** -- specific location(s) or number of Networked Charging Stations now, or in the future, owned, operated and/or installed by Subscribers other than Subscriber, or the total number of Networked Charging Stations that comprise the ChargePoint Network; (ii) **Electrical Service Interruptions** – continuous availability of electrical service to any Networked Charging Stations; (iii) **Cellular and Internet Service Interruptions** – continuous availability of any wireless or cellular communications network or Internet service provider network not operated by CTI or the Network Operator; (iv) **Network Intrusions** – availability of or interruption of the ChargePoint Network attributable to unauthorized intrusions; (v) **Unregistered Charging Stations** -- Charging Stations that are not registered and activated with the ChargePoint Network, and (vi) **Google™ Services** – the continued availability of any Google services incorporated for use with the ChargePoint Services; provided that, if Google ceases to make the Google Application Programming Interface (“API”) or any similar program available on reasonable terms for the ChargePoint Services, the Network Operator shall make commercially reasonable efforts to replace the Google API or such similar program with products providing similar functionalities if such products are available upon terms which the Network Operator, in its reasonable discretion, believes are commercially reasonable; and provided further that, if Google ceases to make the Google API or similar program available, or available on reasonable terms for the ChargePoint Services, the Network Operator may cease providing such features without entitling Subscriber to any refund, credit or other compensation.

**2.4 DISCLAIMER OF WARRANTY.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 2, NEITHER CTI, THE NETWORK OPERATOR NOR ANY OF THEIR RESPECTIVE DISTRIBUTORS OR OTHER AUTHORIZED REPRESENTATIVES AS APPLICABLE, MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY FOR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

### **3. SUBSCRIBER RESPONSIBILITIES AND AGREEMENTS**

**3.1 GENERAL.** Subscriber shall be solely responsible for: (i) **Installation of Charging Stations and/or Related Electrical Vehicle Charging Products** – the purchase and installation of Subscriber’s Charging Stations and other electrical vehicle charging products shall be at Subscriber’s sole cost and expense; (ii) **Registration and Activation of Charging Stations with the ChargePoint Network** – registration with and activation of Subscriber’s Charging Stations on the ChargePoint Network through a

Network Web Portal, including, without limitation, keeping current Subscriber's contact information, email address for the receipt of notices hereunder, billing address for invoices and payment of Subscriber's Net Session Fees due under this Agreement; (iii) **Pricing and Access** -- setting the pricing (including all applicable Taxes and Regulatory Charges) for any Subscriber provided services accessed by Users through Networked Charging Stations that are designated Commercial Charging Stations and any conditions limiting access thereof, (iv) **Update of Registration of Charging Stations** -- if a Networked Charging Station is moved from its registered location Subscriber shall update the registration location of the Networked Charging Station on the appropriate Network Web Portal within five (5) business days of making any change in the Subscriber Location(s); (v) **Identification of Charging Stations and Subscriber Locations** -- provisioning and installation of appropriate signage that clearly and prominently identifies and, where appropriate, provides directions to the Subscriber Locations so that they may be easily located by Users; (vi) **Public Access Level** -- designation of each Networked Charging Station as either a Public Charging Station or a Private Charging Station; (vii) **Commercialization** -- designation of each Networked Charging Station as either a Commercial Charging Station or a Free Charging Station; (viii) **Appearance and Cleanliness** -- keeping Networked Charging Stations and Subscriber Locations(s) clean and free of graffiti, unauthorized advertising, debris and other materials that would obscure, block access or otherwise detract from or cast a negative light on the reputation of the ChargePoint Network; (ix) **Maintenance, Service and Repair of Networked Charging Stations** -- the maintenance, service, repair and/or replacement of Subscriber's Networked Charging Stations as needed, including deactivation of Networked Charging Stations that are non-operational and not intended to be replaced or repaired by Subscriber within ten (10) business days from the ChargePoint Network; (x) **Location of Charging Stations** -- assuring the accessibility, lighting and other factors pertaining to the safety of Users while utilizing the Charging Stations not directly related to the design or manufacture of the Charging Stations themselves; and (xi) **Compliance with Laws** -- operating and maintaining the Subscriber's Networked Charging Stations in a manner that complies with all applicable laws.

**3.2 REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER.** Subscriber represents and warrants to CTI, the Network Operator, their respective its distributors and other authorized representatives that: (i) **Authority** -- Subscriber 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 the Subscriber Location(s); (ii) **No Violation With Subscriber's Electrical Supply or Other Agreements** -- Subscriber assumes all responsibility that the electrical usage consumed by any of Subscriber's Networked Charging Station does 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; (iii) **Installation of Charging Stations Will Not Violate Any Other Agreements or Laws** -- Subscriber will not install or attach 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. Subscriber will observe all legal requirements with respect to vehicle clearances from intersections, points of ingress or egress and public infrastructure such as fire hydrants, lampposts, parking meters, and will otherwise observe all applicable governmental restrictions or restrictions applicable to the Subscriber Locations under any other agreements to which Subscriber is subject; and (iv) **Compliance Laws** -- Subscriber will comply with all applicable laws.

**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 the Network Operator, CTI, and their respective distributors and authorized representatives, as applicable, as follows: (i) **Display of CTI Marks** -- 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 the Networked Charging Stations for so long as such Charging Stations are Networked Charging Stations; (ii) **Use of Network Web Portals** -- Subscriber shall comply with, and shall have responsibility for and cause all other persons accessing or using Network Web Portals to comply with, all of the rules, regulations and policies of the Network Operator, as well as other networks and computer systems used to access Network Web Portals, whether operated by Subscriber, its suppliers or others and Subscriber agrees to indemnify and hold the Network Operator, CTI, and their respective distributors and authorized representatives, directors, shareholders, officers, agents, employees, permitted successors and assigns harmless from any third party notices, allegations, claims, suits or proceedings (each, a "Claim") resulting from Subscriber's use of Network Web Portals and the ChargePoint Services in violation of the terms of this Section 3.3(ii) or of Section 3.3(iii); (iii) **Use of the ChargePoint Network and ChargePoint Services** -- Subscriber shall be responsible for use of the ChargePoint Services in compliance with this Agreement, and in particular, shall: (A) use its commercially reasonable efforts to prevent unauthorized access to Purchased ChargePoint Services, (B) use the Purchased ChargePoint Services only in accordance with the Documentation and applicable laws and government regulation, (C) shall not sell, resell, rent or lease the Purchased ChargePoint Services, (D) shall not interfere with or disrupt the integrity of the ChargePoint Network, the ChargePoint Services or any third party data contained therein, and (E) shall not attempt to gain unauthorized access to the ChargePoint Network or the ChargePoint Services or their related systems or networks; (iv) **Future ChargePoint Services** -- Purchase Orders are not contingent on the delivery of any future functionality or features, nor dependent on any oral or written comments anticipating future functionality or features; (iv) **Ownership of Data** -- All data collected by the Network Operator in connection with the operation of the ChargePoint Network shall be owned by CTI and the Network Operator and Subscriber acknowledges and agrees that Subscriber shall have no right of access or the use of such data for any purpose other than the management of Subscriber's Networked Charging Stations while registered with the ChargePoint Network.

#### **4. FEES AND PAYMENT FOR PURCHASED CHARGEPOINT SERVICES.**

**4.1 SUBSCRIPTION FEES.** Subscriber shall pay the Subscription Fees set forth on any Purchase Order for Purchased ChargePoint Services. Except as otherwise specified herein or in any Purchase Order, (i) Subscription Fees are quoted in and payable in U.S. Dollars, (ii) Subscription Fees are based on ChargePoint Services purchased and not on actual usage, (iii) payment obligations are non-cancelable and are non-refundable, and (iv) Subscriptions are non-transferable (provided, that any Subscription may be transferred to a Charging Station that is purchased by Subscriber to replace a previously Networked Charging Station). Subscription Fees are based on annual periods that begin on the date of the Subscription start date and end each annual anniversary thereafter.

**4.2 INVOICING AND PAYMENT.** Subscriber shall provide the Network Operator with valid and up to date credit card information if Subscriber is subscribing for ChargePoint Services online through the applicable Network Web Portal. In all other cases, payment of Subscription Fees shall be made under the terms of any accepted Purchase Order pursuant to a method of payment reasonably acceptable to the Network Operator. Where Subscriber provides credit card information to the Network Operator through such Network Web Portal for the payment of Subscription Fees, Subscriber hereby authorizes the Network Operator to charge such credit card for all Purchased ChargePoint Services for the initial Subscription Term and the automatic renewal of Subscription Term(s) as set forth in Section 8.3 (Automatic Renewal of Subscriptions). All credit card charges shall be made in advance, either annually or in accordance with the terms of the accepted Purchase Order. If the Purchase Order specifies that payment shall be made by a method other than credit card, the Network Operator, its

distributors or authorized representatives, as applicable, shall invoice Subscriber in advance in accordance with the accepted Purchase Order (including the automatic renewal of Subscription Term(s)) and invoiced charges shall be due within thirty (30) days of the invoice date.

**4.3 OVERDUE SUBSCRIPTION FEES.** If any invoiced Subscription Fees are not received by the Network Operator by the due date, then such charges: (i) may accrue late interest at the 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) the Network Operator may condition future Subscription renewals and acceptance of Purchase Orders on payment terms other than those set forth herein.

**4.4 ACCELERATION AND SUSPENSION OF CHARGEPOINT SERVICES.** If any amount owing by Subscriber under this Agreement for Subscription Fees for Purchased ChargePoint Services or under any other agreement between the Network Operator and Subscriber is more than thirty (30) days overdue (or, in the event that Subscriber has authorized the Network Operator to charge the amount owing to Subscriber's credit card and payment under such credit card has been declined, more than 5 days has passed since Subscriber has received notice from the Network Operator of such event), the Network Operator may, without otherwise limiting the Network Operator's rights or remedies, accelerate Subscriber's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend the use by Subscriber of the Purchased ChargePoint Services until such amounts are paid in full.

**4.5 PAYMENT DISPUTES.** The Network Operator shall not exercise its rights under Section 4.3 (Overdue Subscription Fees) or Section 4.4 (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.

**4.6 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 hereunder in connection with Purchased ChargePoint Services, Session Fees, Session Authorization Fees and Session Processing Fees; *provided*, that the Network Operator is solely responsible for all Taxes and Regulatory Charges assessable based on the Network Operator's income, property and employees. Where the Network Operator 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 in accordance with this Section 4 and deducted by the Network Operator from Session Fees, unless Subscriber has otherwise provided the Network Operator with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.

**5. FLEX-BILLING SERVICE FOR NETWORKED CHARGING STATIONS.**

**5.1. SESSION FEES.** Subscriber shall have sole authority to determine and set in real-time a User's Session Fees (which shall include all applicable Taxes and Regulatory Charges) applicable to Subscriber's Networked Charging Stations that are designated as Commercial Charging Stations.

**5.2 SESSION TRANSACTION FEES.** In exchange for the Network Operator collecting Session Fees on behalf of the Subscriber, the Subscriber hereby authorizes the Network Operator to deduct from all Session Fees collected: (i) a Session Authorization Fee, and (ii) a Session Processing Fee, each in the amount and subject to the terms and conditions as set forth in **Schedule 1**.

**5.3 PAYMENT TO SUBSCRIBER OF NET SESSION FEES.** The Network Operator shall remit 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 all Net Session Fees.

**5.5 NO COMMERCIALIZATION OF CHARGING STATIONS PRIOR TO JULY 1, 2010.** Subscriber acknowledges and agrees that prior to July 1, 2010, Networked Charging Stations shall not be commercialized, *i.e.*, no Session Authorization Fee will be paid by Subscribers and no Session Fees will be collected from Users.

**6. PROPRIETARY RIGHTS.**

**6.1 RESERVATION OF RIGHTS.** Subject to the limited rights granted expressly hereunder, 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 Subscribers or Users relating to the ChargePoint Services.

**6.2 RESTRICTIONS ON USE.** Neither Subscriber nor any of its Affiliates shall: (i) permit any third party to access the ChargePoint Services except as otherwise expressly provided herein or in any Purchase Order, (ii) create derivative works based on the ChargePoint Services, (iii) copy, frame or mirror any part or content of the ChargePoint Services, other than copying or framing on Subscribers own intranets or otherwise for Subscriber's own internal business purposes, (iv) reverse engineer any Charging Station or Software Application, or (v) access the ChargePoint Network, any Network Web Portal or the ChargePoint Services in order to (A) build a competitive product or service, or (B) copy any features, functions, interface, graphics or "look and feel" of any Network 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 the Networked Charging Stations installed by Subscriber. Subscriber warrants that it shall not use any of the CTI Marks for any products other than the Networked Charging Stations at the Subscriber Location(s). CTI may provide trademark usage guidelines with respect to Subscriber's use of the CTI Marks which will be made available on a Network Web Portal, in which case Subscriber thereafter must 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.** Neither Subscriber nor any of its Affiliates will take any action, directly or indirectly, to register or apply for or cause to be registered or applied in Subscriber's favor or in the favor of any third party any CTI Marks or any patent, trademark, service mark, copyright, trade name, domain name or registered design that is substantially similar to a patent, trademark, service mark, copyright, trade name or registered design of CTI or the Network Operator, or that is licensed to, connected with or derived from confidential, material or proprietary information imparted to or licensed to Subscriber by CTI or the Network Operator .

(c) **USE OF CTI MARKS BY SUBSCRIBER ON INTERNET.** Subscriber shall be entitled to use the CTI Marks to promote the ChargePoint Network on Subscriber-owned websites and through the Internet advertising of Subscriber and its Affiliates, *provided*, that Subscriber is limited to using the CTI Marks in connection with the Internet as follows: (i) **Compliance with Law** -- the use must be in compliance with local rules regarding advertising of the Networked Charging Stations and the ChargePoint Network on the Internet; (ii) **No Domain Name** -- no license is granted to use or register any domain name containing "CTI", the name of the Network Operator or the CTI Marks; and (iii) **Notice of License** – Subscriber and its Affiliates, as applicable, will at all times indicate that each of the CTI Marks is a mark of CTI and used under license, as appropriate.

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

**6.4 FEDERAL GOVERNMENT END USER PROVISIONS.** CTI provides the ChargePoint Services, including Software Applications and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the ChargePoint Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 11.211 (Technical Data) and FAR 11.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial items) and DFAR 226.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with CTI to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable Purchase order, contract or other agreement.

## **7. INDEMNIFICATION**

**7.1 INDEMNIFICATION OF SUBSCRIBER BY CTI.** CTI shall defend at its expense any third party notices, allegations, claims, suits, or proceedings ("**Claim**") against Subscriber and its Affiliates, and their respective directors, shareholders, officers, agents, employees, permitted successors and assigns, to the extent alleging that the use of any of the ChargePoint Services as permitted hereunder or the CTI Marks as furnished hereunder infringes or misappropriates the Intellectual Property Rights of any third party, and to pay costs and damages finally awarded in any such suit or agreed to by CTI in settlement with such third party (including reasonable attorney's fees and expenses), provided that CTI is notified promptly in writing of the suit and at CTI's request and at its expense is given control of said suit and all requested reasonable assistance for defense of same. CTI agrees that it shall not settle any Claim unless Subscriber and its Affiliates, as applicable, are unconditionally released from any liability as part of any settlement. This indemnity does not extend to any suit based upon any infringement or alleged infringement of any Intellectual Property Rights by the combination of a product (including the ChargePoint Services) furnished by CTI with other elements not furnished by CTI if such infringement would have been avoided by the use of the CTI product (including in conjunction with the CTI furnished ChargePoint Services) alone.

**7.2 INDEMNIFICATION OF CTI AND THE NETWORK OPERATOR BY SUBSCRIBER.** Subscriber shall defend CTI, the Network Operator, and their respective distributors, authorized agents, directors, shareholders, officers, agents, employees, permitted successors and assigns against any Claim brought by a third party (i) as a result of Subscriber's negligence or willful misconduct or (ii) alleging that Subscriber's or any of its Affiliates' use of the ChargePoint Network or ChargePoint Services in violation of this Agreement infringes or misappropriates the Intellectual Property Rights of any third party or

violates applicable law, and to pay costs and damages finally awarded in any such suit or agreed to by Subscriber in settlement with such third party (including reasonable attorney's fees and expenses), provided that Subscriber is notified promptly in writing of the suit and at Subscriber's request and at its expense is given control of said suit and all requested reasonable assistance for defense of same. Subscriber agrees that it shall not settle any Claim unless CTI, the Network Operator, and their respective distributors and/or other authorized representatives, as applicable, are unconditionally released from any liability as part of any settlement.

**7.3 LIMITATION OF LIABILITY.** Except for liability for indemnification against third party claims for infringement or misappropriation of intellectual property rights, the Network Operator and CTI's aggregate liability under this Agreement shall not exceed the aggregate Subscription Fees paid by Subscriber to the Network Operator in the calendar year prior to the event giving rise to the Claim. THE FOREGOING DOES NOT LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS FOR THE PURCHASED CHARGEPOINT SERVICES.

**7.4 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 CTI, THE NETWORK OPERATOR OR THEIR RESPECTIVE DISTRIBUTORS OR OTHER AUTHORIZED REPRESENTATIVES 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 AND EVEN IF CTI, THE NETWORK OPERATOR OR THEIR RESPECTIVE DISTRIBUTORS, OTHER AUTHORIZED REPRESENTATIVES, SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTION DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

**7.5 EXCLUSIVE REMEDY.** The foregoing states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party with respect to any Claim described in this Section 7.

**7.6 ELECTRICAL, CELLULAR AND INTERNET SERVICE INTERRUPTIONS.** None of CTI, the Network Operator, any of their respective distributors, other authorized representatives, or 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 or the Network Operator. This includes the loss of data resulting from such electrical, wireless, cellular or Internet service interruptions.

## **8. TERM AND TERMINATION.**

**8.1 TERM OF AGREEMENT.** This Agreement shall become effective on the date of acceptance and continues until all Subscriptions (including any automatic renewals thereof) purchased by Subscriber have been terminated or otherwise have expired.

**8.2 TERM OF PURCHASED SUBSCRIPTIONS.** Subscriptions purchased by Subscriber commence on the start date specified in the Purchase Order and shall continue for the applicable

Subscription Term specified therein for each Subscription or until the Purchased ChargePoint Services provided pursuant to any Subscription are otherwise terminated, changed or canceled by the Network Operator or Subscriber as allowed by the terms and conditions set forth herein.

**8.3 AUTOMATIC RENEWAL OF SUBSCRIPTIONS.** Unless otherwise specified in the applicable Purchase Order, all purchased Subscriptions shall automatically be renewed for a period equal to that of the expiring Subscription, unless either party gives the other notice of non-renewal not less than thirty (30) days prior to the schedule expiration date for the relevant Subscription Term. The per-unit pricing for any renewal term shall be the same as during the prior term unless the Network Operator shall have given Subscriber notice to the email address for the Subscriber Account that Subscriber has provided hereunder of any increase in pricing for Subscriptions not less than thirty (30) days prior to the end of such expiring Subscription, in which case the price increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed ten percent (10%) over the pricing for the relevant Purchased ChargePoint Services in the prior term, unless the pricing for such expiring Subscription was designated in the applicable Purchase Order as promotional or a one-time offer.

**8.4 TERMINATION.**

**(a) BY THE NETWORK OPERATOR.** This Agreement and the Purchased ChargePoint Services furnished hereunder may be immediately suspended or terminated: (i) if Subscriber is in material violation of any of Subscriber's obligations under this Agreement, provided, that Subscriber shall be given written notice of such violation and if cured within thirty (30) days of such notice, any suspension or termination of Purchased ChargePoint Services shall be restored and this Agreement shall continue in effect, (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, or (iv) if, pursuant to the terms of this Agreement, the Network Operator is permitted the right to terminate upon the occurrence of an event or events.

**(b) BY SUBSCRIBER.** This Agreement may be terminated by Subscriber for cause: (i) upon thirty (30) days written notice given to the Network Operator alleging a material breach of this Agreement and the alleged breach remains unremedied at the expiration of such period, or (ii) the Network Operator 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 upon the voluntary deactivation and removal from registration via the applicable Network Web Portal of all Networked Charging Stations owned by Subscriber and its Affiliates from the ChargePoint Network, at which time this Agreement shall terminate effective immediately; provided, that Subscriber shall not be entitled to any refund of prepaid Subscription Fees as a result of such termination.

**8.5 REFUND OR PAYMENT UPON TERMINATION.** Upon any termination of this Agreement for cause by Subscriber pursuant to Section 8.4(b)(i), or (ii) or the election of the Network Operator to terminate this Agreement pursuant to Section 8.4(a)(iii), the Network Operator shall refund to Subscriber the pro-rata portion of any pre-paid Subscription Fees for the remainder of the applicable Subscription Term for all Subscriptions after the effective date of termination. Upon any termination for cause by the Network Operator pursuant to Section 8.4(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 Subscription Fees covering the remainder of the Subscription

Term for any accepted Purchase Orders. In no event shall any termination relieve Subscriber of any liability for the payment of Subscription Fees or Session Processing Fees for any period prior to the termination date.Subscriber

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; *provided*, that subject to any applicable Purchase Order the Network Operator may change the Session Authorization Fee and/or the Session Processing Fee as provided in **Schedule 1**.

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 the Network Operator 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 (the "***Applicable Law***") and the state and federal courts of 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 the Network Operator (not to be unreasonably withheld). In the event of any purported assignment in breach of this Section 15, the Network Operator 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 Subscription Fees covering the remainder of the Subscription Term for any accepted Purchase Orders. In no event shall any termination relieve Subscriber of any liability for the payment of Subscription Fees or Session Processing Fees for 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 and the Network Operator may each assign its rights and obligations under this Agreement. Within ninety (90) days of any such assignment, CTI or the Network Operator, as the case may be, shall provide written notice to Subscriber of the fact of such assignment.

**17. NO AGENCY OR PARTNERSHIP CREATED BY THIS AGREEMENT.** CTI, in the performance of this Agreement, and in its role as the Network Operator, 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 any Subscriber to be created by this Agreement.

**18. ENTIRE AGREEMENT.** This Agreement, **Schedule 1** and the applicable Purchase Orders of Subscriber contain the entire agreement between the Parties and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings in respect to the subject matter hereof. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any Purchase Order, the Purchase Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any other documentation (excluding **Schedule 1** and Purchase Orders) 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:**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SUBSCRIBER:**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**On Behalf of:**

\_\_\_\_\_  
(Print Name of Company or Other Legal Entity)

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

E-Mail Address for Notices: \_\_\_\_\_

**Schedule 1: Subscriber Session Transaction Fee Schedule<sup>1</sup>**

<b><u>Fee Schedule</u></b>	<b><u>For Each Charging Session using ChargePass Card</u></b>	<b><u>For Each Charging Session Using Credit Card</u></b>
<b>Session Authorization Fee<sup>2</sup></b>	\$0.50 per Session	\$0.50 per Session
<b>Session Processing Fee<sup>3</sup></b>	7.5% of Session Fees	7.5% of Session Fees

<sup>1</sup> Subscriber is required to separately subscribe for the ChargePoint™ Network Standard Service in order to activate its Charging Stations on the ChargePoint™ Network.

<sup>2</sup> 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.

<sup>3</sup> CTI may increase the Session Processing Fee payable pursuant to this Agreement at any time after July 1, 2011, 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.

**(Fill out Appendix A only if you intend to enable Flex Billing)**

**Appendix A: Account Information Form for Flex Billing Services**

Complete and fax this form to Coulomb Technologies Sales Operations (+1-214-716-1244) to sign up for Flex Billing services. All fields are required (except where noted).

**Business Info**

Business Legal Name: \_\_\_\_\_

Business Legal Address: \_\_\_\_\_  
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Business Federal Tax ID: \_\_\_\_\_

**Individual Point of Contact**

Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_

Contact Fax: \_\_\_\_\_

Contact Email Address: \_\_\_\_\_

**Bank Account Info**

Bank Name: \_\_\_\_\_

Bank Address: \_\_\_\_\_  
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Bank Routing number or Swift Code: \_\_\_\_\_

Bank's Account number (if applicable): \_\_\_\_\_

Business's Account Number: \_\_\_\_\_

Business's Account Name: \_\_\_\_\_  
(Remit To Name, if different than Business Legal Name)

Business's Account Address: \_\_\_\_\_  
(Remit To Address, if different than Business Legal Address)

Business's Federal Tax ID: \_\_\_\_\_  
(if Remit To Entity is if different than Business Legal Entity)

**Additional Information (for Non-US Customers Only)**

Intermediary Bank Name: \_\_\_\_\_

Intermediary Bank Address: \_\_\_\_\_  
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Intermediary Bank Routing or Swift Code: \_\_\_\_\_

Intermediary Bank' Account number if applicable: \_\_\_\_\_

# **Attachment 3**

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND CLEAN FUEL CONNECTION, INC. FOR  
INSTALLATION OF ELECTRIC VEHICLE CHARGING  
STATIONS IN CITY PARKING FACILITIES PURSUANT TO  
THE CHARGEPOINT AMERICA GRANT

NAME OF CONTRACTOR: Clean Fuel Connection, Inc.

RESPONSIBLE PRINCIPAL  
OF CONTRACTOR: Enid Joffe, President

CONTRACTOR'S ADDRESS: 127 La Porte Street, Unit M  
Arcadia, CA 91006  
Attention: Enid Joffe, President

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: Chad Lynn, Director of Parking  
Operations

COMMENCEMENT DATE: September 20, 2011

TERMINATION DATE: June 30, 2012

CONSIDERATION: Fee: \$171,000.00 as more fully described in  
Exhibit A  
Contingency for additional work not to exceed  
\$29,000.00, as more fully described in Exhibit B  
Total not to exceed \$200,000.00 (includes all  
applicable sales tax); and more particularly  
described in Exhibit B

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND  
CLEAN FUEL CONNECTION, INC. FOR INSTALLATION OF  
ELECTRIC VEHICLE CHARGING STATIONS IN CITY PARKING  
FACILITIES PURSUANT TO THE CHARGEPOINT AMERICA  
GRANT

THIS AGREEMENT (or "Contract") is made by and between the City of Beverly Hills (hereinafter called "CITY"), a municipal corporation, and Clean Fuel Connection, Inc. (hereinafter called "CONTRACTOR"), a California corporation.

RECITALS

A. CITY desires to obtain services of a contractor to perform work as described in Exhibit A ("Project"), attached hereto and incorporated herein.

B. CONTRACTOR represents that it is licensed, qualified and able to perform the services.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONTRACTOR's Services. CONTRACTOR shall perform and complete in good and workmanlike manner, satisfactory to CITY, the Scope of Work described in Exhibit A. The Work shall be done in accordance with the provisions of the most current edition of "**STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION**" (commonly known as "the GREEN BOOK") including Supplements, prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Associated General Contractors of California, which specifications are hereinafter referred to as the "Standard Specifications" and are incorporated herein by this reference. In the event of a conflict, the provisions of CITY Specifications shall apply and/or shall supersede, as the case may be, provisions of the Standard Specifications.

Section 2. Term of Agreement. This Agreement shall commence on September 8, 2011 and shall terminate on June 30, 2012, unless extended in writing by the City Manager or his designee pursuant to the same terms and conditions of the Agreement.

Section 3. Time of Performance. CONTRACTOR shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY. CONTRACTOR shall complete the services in conformance with the project timeline established by the City Manager or his designee. CONTRACTOR shall complete all services required by this Agreement prior to December 19, 2011.

Section 4. Compensation.

(a) Payment. In consideration of the Work as defined herein, CITY agrees to pay CONTRACTOR for the satisfactory performance by CONTRACTOR of all Work required under this Contract and CONTRACTOR agrees to accept as full consideration of all Work required under this Contract the sum of **One Hundred Seventy One Thousand Dollars (\$171,000.00)**, and not to exceed **Twenty Nine Thousand Dollars (\$29,000)** as a **Contingency**, as defined in Exhibit B.

(b) Payable as provided in Exhibit C "Payment Procedures" attached hereto and incorporated herein.

(c) In accordance with the payment procedures in Exhibit C, ten percent (10%) of any progress payment will be withheld as a retention. Pursuant to Section 22300 of the Public Contract Code, at the request and expense of CONTRACTOR, securities equivalent to the amount withheld may be deposited with CITY or with a state or federally chartered bank as the escrow agent, and CITY shall then pay such moneys to CONTRACTOR. If CONTRACTOR elects to place into escrow securities as provided for by this section, CONTRACTOR shall execute an "Escrow Agreement for Security Deposit in Lieu of Retention," in the form provided as Exhibit D, attached hereto and incorporated herein.

Section 5. PERFORMANCE PERIOD. CONTRACTOR shall commence Work within twenty-four (24) hours of receipt of Notice to Proceed from the City Engineer, and CONTRACTOR agrees to complete all Work in accordance with the schedule set forth in Exhibit B, attached hereto and incorporated herein.

If all the contract work is not completed in full within the time specified in this section, CITY shall have the right to grant or deny an extension of time for completion, as may seem best to serve the interest of CITY.

CONTRACTOR shall not be assessed with liquidated damages during any delay in the completion of the work caused by acts of God or of the Public Enemy, acts of the State, fire not due to acts of contractors or subcontractors, floods, epidemics, quarantine, restrictions, strikes, freight embargo or unusually or severe weather, or delays of subcontractors due to such causes, provided that the CONTRACTOR shall, within ten (10) days from the beginning of such delay, notify CITY, in writing, of the cause of the delay. CITY will ascertain the facts and the extent of the delay, and the findings thereon shall be final and conclusive.

Section 6. Method of Payment. Unless otherwise provided for herein, CONTRACTOR shall submit to CITY a detailed invoice, on a monthly basis or less frequently as approved by CITY, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period reflecting the actual amount of work completed or the percentage of the completed work and the amount due. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice.

Section 7. Liquidated Damages: Time is of the essence on this Contract and should CONTRACTOR fail to finish the work on or before the time stated above, CONTRACTOR shall be charged by CITY, as liquidated and ascertained damages, the sum of One Thousand Dollars (\$1,000) assessment for each calendar day that the work remains incomplete beyond the time specified it being hereby expressly impracticable and extremely difficult to fix the actual damage which would or will be suffered in the event that CONTRACTOR should fail fully to complete the work within the time specified, and it would be further agreed that the charges per day as aforementioned shall be reasonable and proper in premise. The amount so charged shall be deducted by CITY from any monies which otherwise are or become payable to CONTRACTOR.

Section 8. Legal Relations and Responsibility to CITY

(a) **Laws To Be Observed.** CONTRACTOR shall be knowledgeable of all existing and pending State and national laws and all municipal ordinances and regulations of

CITY, which in any manner affect those employed in the work, or the material used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. CONTRACTOR shall particularly observe all ordinances of CITY in relation to the obstruction of streets or conduct of the work, keeping open passageways and protecting the same where they are exposed or dangerous to traffic.

(b) **Social Security Requirements.** CONTRACTOR shall furnish to CITY satisfactory evidence that he/she and all subcontractors are complying with all requirements of the Federal and State Social Security legislation. CONTRACTOR, at any time on request, shall satisfy CITY that the Social Security and Withholding Tax are being properly reported and paid.

(c) **Penalties.** CONTRACTOR shall comply with Labor Code Section 1775 and shall forfeit, as a penalty to CITY, the sum of fifty (\$50.00) dollars for each calendar day or portion thereof during which CONTRACTOR or any subcontractor has paid to any worker employed in the project an amount less than that required by the provisions of the preceding subsection.

(d) **Drawings, Warranties and Service Manuals.** CONTRACTOR shall submit as-built drawings, warranties and service manuals upon completion of the work.

New and unforeseen work will be classed as extra work only when said work is not covered and cannot be paid for under any of the various items or combination of items for which a bid price appears on the proposal form. CONTRACTOR shall not do any extra work except upon written order from the City Engineer. Compensation for such extra work shall be previously agreed upon in writing between CONTRACTOR and the City Engineer.

Extra work, when ordered and accepted pursuant to paragraph 1 of this subsection, shall be paid for under a written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon between CONTRACTOR and prepared by the City Engineer. All extra work shall be adjusted daily upon report sheets prepared by the City Engineer, furnished to CONTRACTOR, and signed by both parties, and said daily reports shall be considered thereafter the true record of extra work done.

(e) **Payroll Records.** CONTRACTOR's attention is directed to Section 1776 of the Labor Code, relating to accurate payroll records, which imposes responsibility upon CONTRACTOR for the maintenance, certification, and availability for inspection of such records for all persons employed by CONTRACTOR or by the subcontractors in connection with the project. CONTRACTOR shall agree through the Contract to comply with this section and the remaining provisions of the Labor Code.

(f) **Working Hours.** CONTRACTOR shall forfeit, as penalty to CITY, the sum of twenty-five (\$25.00) dollars for each worker employed in the execution of the Agreement by CONTRACTOR or subcontractors for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, in violation of the provisions of Article 3, Chapter 1, Part 7, Division 2 of the Labor Code (Section 1810 et seq.).

(g) **Apprentices.** Attention is directed to the provisions of Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by CONTRACTOR or

any subcontractor. CONTRACTOR and all subcontractors shall comply with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards and administration of the apprenticeship program may be obtained from the Department of Industrial Relations, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

(h) **Fair Employment Practices/Equal Opportunity Acts.** In the performance of the Work described in this Contract, Contractor and every supplier of materials and services shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. §§ 200e-217), whichever is more restrictive.

(i) **Registration Of Contractors.** Only a Contractor licensed in accordance with the provisions of Chapter 9, Division 3 of the Business and Professions Code shall be permitted to enter into an Agreement with CITY for any public improvement. CONTRACTOR shall at all times possess a valid California Contractor's License Class BI or other appropriate license classification under the State Contracting Code.

(j) **Patents.** CONTRACTOR shall assume all responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices, or processes used on or incorporated in the work, and shall defend, indemnify, and hold harmless CITY, and each of its officers, agents, and employees from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses, of whatsoever kind or nature, arising from such use.

(k) **Dispute Resolution Meetings.** In the event of any damage or injury caused by Contractor or its subcontractors in the performance of the Agreement, CONTRACTOR shall attend dispute Resolution Meetings With CITY And Interested Parties As Required By CITY.

(l) **Resolution Of Claims And Disputes.** Public Contract Code Sections 20104 et seq. apply to this Agreement. Those Public Contract Code Sections are attached hereto as Exhibit E. In any arbitration to resolve a dispute relating to or arising out of this Agreement, the arbitrator's award shall be supported by law and substantial evidence. The arbitrator shall file a written decision with the court and serve a copy of it on each of the parties. The written decision shall contain a summary of the evidence, reasons underlying the decision, and unless the parties otherwise agree, findings of fact and conclusions of law.

(m) **Assignment of Unfair Business Practices.** In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, CONTRACTOR or a subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arises from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to CONTRACTOR, without further acknowledgment by the parties.

Section 9. Prosecution and Progress of the Work

(a) **Subletting and Assignment.**

1) CONTRACTOR shall give personal attention to the fulfillment of this Contract and shall be in control of the work. CONTRACTOR shall not assign, transfer nor sublet any part of the Work, nor shall the Contract be assigned, transferred, or sublet, in whole or in part, without the written consent of CITY by the City Engineer and of the Surety of CONTRACTOR's bond, and such consent of Surety, together with a copy of the subcontract, shall be filed with the City Engineer. No assignment, transfer or subletting, even though consented to, shall relieve CONTRACTOR of liability under the Agreement. Subcontractors shall not be recognized as such, and all persons engaged in the project will be considered as employees of CONTRACTOR, their work being subject to the provisions of the Agreement and the specifications. Should any subcontractor fail to perform work to the satisfaction of the City Engineer, said subcontractor shall be removed immediately from the project upon request by the City Engineer and shall not again be employed on the work, and CONTRACTOR shall be held liable for the deficient work.

2) CONTRACTOR shall submit to CITY a list with the names, addresses, and telephone numbers of all subcontractors.

3) Any assignment, transfer or subletting of the Contract in violation of this subsection A is null and void.

(b) **Character of Workman** - CONTRACTOR shall employ none but competent foremen, laborers, and mechanics. Any overseer, superintendent, laborer or other person employed on the work by CONTRACTOR who is intemperate, incompetent, troublesome, or otherwise undesirable, or who fails or refuses to perform the work in the manner specified herein, shall be discharged immediately and such person shall not again be employed on the work.

(c) **Agents or Foreperson** - In the absence of CONTRACTOR from the site of the project, even if such is only of a temporary duration, CONTRACTOR must provide and leave at the site a competent and reliable agent or foreperson in charge. All notices, communications, orders, or instructions given, sent to, or served upon, such agent or foreperson by the City Engineer shall be considered as having been served upon CONTRACTOR.

(d) **Temporary Stoppage Of Construction Activities** – The City Engineer shall have the authority to suspend the contract work wholly or in part, for such a period of time as he may deem necessary, due to unsuitable weather, or to such other conditions as he considers unfavorable for the proper prosecution of the work, or for such time as he may deem necessary due to failure on the part of CONTRACTOR to carry out orders or to perform any of the requirements of this Contract. CONTRACTOR shall immediately comply with such an order from the City Engineer and shall not resume operations until so ordered in writing.

Section 10. Control of the Work.

(a) **Authority Of the City Engineer.** The City Engineer shall decide any and all questions that may arise as to the quality and acceptability of materials furnished and work performed, as to the manner of performance and rate of progress of the work, and any and all questions which may arise as to the interpretation of the plans and specifications. The City

Engineer shall likewise decide any and all questions as to the acceptable fulfillment of the contract on the part of CONTRACTOR, and all questions as to claims and compensations. The decision of the City Engineer shall be final and he shall have relative authority to enforce and make effective such decisions and actions as CONTRACTOR fails to carry out promptly.

(b) **Protection Of The Work.** CONTRACTOR shall continuously maintain adequate protection of all work from damage, and CITY will not be held responsible for the care or protection of any material, equipment, or parts of work, except as expressly provided for in the specifications.

(c) **Access To Residents Driveways.** CONTRACTOR shall notify residents of property adjoining the location of the work, sufficiently in advance of construction, as of the date when such construction work will start. In case of work requiring excavation of the roadway which may interfere with the use by residents of their driveways, suitable provisions shall be made by CONTRACTOR to make it possible for residents to gain access to their driveways until such time as the exigencies of construction may demand a temporary blocking of said driveways. Efforts shall be made by CONTRACTOR to minimize the duration of said blocking and to notify the residents of this need well in advance, thus allowing them to make suitable arrangements to keep their automobiles elsewhere.

(d) **Protection Of Survey Monument.** All survey monuments existing along the portions of any street where work is to be done shall be carefully protected and preserved by CONTRACTOR. Any displacement or damage to said monuments resulting from carelessness in spotting their location during the progress of the work or from negligent use of equipment in their vicinity shall be corrected by CONTRACTOR at CONTRACTOR's expense.

(e) **Removal Of Interfering Obstructions.** CONTRACTOR shall remove and dispose of all debris, abandoned structures, tree roots, and obstructions of any character met during the process of excavation.

(f) **Procedure In Case Of Damage To Adjoining Work.** Any portions of adjoining curb, gutter, sidewalk or any other CITY improvements damaged by CONTRACTOR during the course of construction shall be replaced by CONTRACTOR at CONTRACTOR's expense, free of all charges to CITY.

(g) **Avoidance Of Patchwork Appearance.** New PCC work shall conform in grade, finish and color to the adjoining portions. Any sections of said work having a patchwork appearance will be rejected by the City Engineer and CONTRACTOR shall replace them at CONTRACTOR's expense. To insure a neat break line between existing and new portions of PCC work, CONTRACTOR will be required to use a concrete cutting saw of a type approved by the City Engineer. Likewise, whenever adjoining PCC work is damaged during the process of new construction, the damaged portions shall be removed in such a way that a neat, straight joint is provided between the new portions and existing work.

(h) **Care Of Gutters Adjacent To Areas To Be Paved.** During the process of resurfacing the roadways or construction of new pavement, CONTRACTOR shall exercise particular care to remove all excess resurfacing material which may be deposited upon the PCC gutters. Whenever specifications call for the resurfacing material to overlap the existing gutters the overlapping portions shall not exceed the dimensions shown on the plans and a wavy overlapping line shall be avoided. Any undulation of the overlapping line accidentally resulting

from the application of the paving or resurfacing material shall be corrected by CONTRACTOR before the work is accepted by the City Engineer.

(i) **Trash Removal.** Rubbish, debris, waste, dust or surplus materials shall not be allowed to accumulate and shall be removed continuously and disposed of by CONTRACTOR as the work progresses. Specific rubbish removal companies are allowed to operate within CITY, a list of these companies may be obtained by calling Norberto Bento at 310-285-2806.

(j) **Depth Of The Required Excavation.** When the contract work requires excavation and removal of existing pavement and excess of underlying soil, these materials shall be removed to the depth specified by the City Engineer. Whenever the subgrade exposed after the removal of the excess underlying soil is found to be of the desirable kind, excavation need not proceed below the depth specified by the City Engineer. However, if the excavation discloses the fact that there is mud or any other soft material in the subgrade, said material shall be removed to a minimum depth of six inches (6"), at the discretion of the City Engineer. Backfill of the additional excavated portions shall be made with select material removed from other portions of the work, provided said material is found suitable by the City Engineer. The volume in place of the additional soil excavation will be determined by the field representatives of the City Engineer, and CONTRACTOR will be entitled in this case to extra payment in an amount agreed upon in advance by CONTRACTOR and the City Engineer based on the additional number of cubic yards excavated. Should imported material be required for the backfill, the unit cost per cubic yard of said imported material shall be agreed in advance, in writing, between CONTRACTOR and the City Engineer, and extra payment for said material will be made to CONTRACTOR for the actual volume used, as verified in the field by representatives of the City Engineer.

(k) **Sequence Of The Work Of Excavation.** Whenever the contract work calls for excavation of existing pavement and excess soil and for construction of base material, the process of excavation shall be conducted by CONTRACTOR so that, at the end of any working day, the area where excavation is proceeding shall not be more than 300 feet in advance of the area where the untreated rock base over sections already excavated is being laid, unless otherwise indicated in the specifications.

(l) **Avoidance Of Dust Nuisance.** During the process of breaking, excavating and removing any material from the site of the project and until completion of the work, CONTRACTOR shall take every precaution to avoid the nuisance of unnecessary dust by using any measures advocated by the City Engineer.

(m) **Maintenance Of Traffic And Safety Requirement.** If Contractor must perform work in a street right-of-way, Contractor shall conduct operations so as to cause the least possible obstruction and inconvenience to public traffic and safety, and shall take all necessary measures to maintain an adequate traffic flow, to prevent accidents, to protect the site of the work and to keep streets open and in passable condition for emergency vehicles at all times. During construction CONTRACTOR shall, as far as practicable, keep the project free of rubbish and debris and in as clean a condition as possible.

A suitable width of any intersecting street shall be kept in reasonably good condition for traffic, including the necessary provisions for proper drainage. Should the requirements of construction demand closing the full width of an intersection, such closing shall be allowed only after CONTRACTOR has secured permission from the City Engineer and the

duration of the closing must be for the minimum length of time possible. After said permission is granted, CONTRACTOR shall make the necessary arrangements to provide temporary crossings, or to reroute traffic away from said intersection and provide and maintain barriers, guards, directional signs, watchpersons, and lights at all detour points, in order to give adequate warning to the public at all times that the streets are under construction and of the dangerous conditions as a result thereof. CONTRACTOR shall also erect and maintain such additional warning and directional signs as may be furnished by CITY.

(n) **Barriers, Lights, Etc.** The above-mentioned barriers, safety lights, warning and regulatory signs, guards, temporary crossovers, and watchpersons shall also be provided and maintained by CONTRACTOR at CONTRACTOR's expense over all portions of the work during construction and until completion. Provisions shall be made by CONTRACTOR to insure operation of the safety lights throughout the evenings without interruption. No safety lights using the inflammable liquids shall be permitted during the progress of the work, and only electric battery operated safety lamps will be approved for this purpose.

(o) **Removal Of Defective Or Unauthorized Work.** It is the intent of the specifications that only first class work, materials, and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by CONTRACTOR in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans or established by the City Engineer, or any extra work done without written authority will be considered as unauthorized and will not be paid for. Upon failure on the part of CONTRACTOR to comply forthwith with any order of the City Engineer made under the provisions of this paragraph, the City Engineer shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any monies due or to become due CONTRACTOR. If the work is found to be in compliance with these specifications, the City Engineer will furnish CONTRACTOR with a certificate to that effect.

(p) **Supervision.** All manufactured products, materials, and appliances used and installed and all details of the work done shall at all times be subject to the supervision, test, and approval of the City Engineer or his authorized representatives. CITY Engineer or his authorized representatives shall have access to the work at all times during construction, and shall be furnished with every reasonable facility for securing full knowledge with regard to the progress, workmanship and character of the materials used or employed in the work.

(q) **Inspectors.** CONTRACTOR shall prosecute work only in the presence of Inspectors appointed by the City Engineer and any work done in the absence of said Inspectors will be subject to rejection. All instructions given to CONTRACTOR by such assistants shall be regarded as having been given directly by the City Engineer. CONTRACTOR shall make a written application for an Inspector at least twenty-four (24) hours before his services are required on the work. Whenever the cost of an improvement or the cost of any portion thereof is defrayed from the Gas Tax Funds allocated to CITY by the County of Los Angeles, or by the State of California, Inspectors appointed by the State or County shall likewise be given full access to the site of the work in order that they may perform their inspection duties efficiently and without interference. The inspection of the work shall not relieve CONTRACTOR of any of his obligations to fulfill the contract as prescribed. Defective work shall be made good and unsuitable materials rejected, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked by the Inspectors and accepted or estimated for payment.

(r) **Final Cleaning Up.** Upon completion of the project and before making application to the City Engineer for acceptance of the work, CONTRACTOR shall clean all the streets and grounds occupied by him in connection with the project, of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the work in a neat presentable condition.

(s) **Loss Or Damage.** Any loss or damage arising from any omission or act of CONTRACTOR or any agent or person employed by him or by any action which had not been authorized in the provisions of the specifications, shall be sustained by CONTRACTOR.

Section 11. Assignment. This Agreement shall not be assigned in whole or in part by CONTRACTOR without the prior written approval of CITY. Any attempt by CONTRACTOR to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 12. Responsible Principal(s).

(a) CONTRACTOR's Responsible Principal set forth above shall be principally responsible for CONTRACTOR's obligations under this Agreement and shall serve as principal liaison between CITY and CONTRACTOR. Designation of another Responsible Principal by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 13. Personnel. CONTRACTOR represents that it has, or shall secure at its own expense, all personnel required to perform CONTRACTOR's services under this Agreement. All personnel engaged in the work shall be qualified to perform such work.

Section 14. Changes to the Scope of Services

(a) CITY may by written notice initiate any change within the scope of the Contract. If Contractor desires to make any change, Contractor must submit a written request for that change to CITY, but Contractor may make that change only upon written order of CITY. The changes may or may not result in a change in the amount of Work. When CONTRACTOR considers that any change order in writing by CITY involves extra work, CONTRACTOR shall immediately notify CITY in writing as to when and where extra work is to be performed and shall make claim for compensation therefor each month not later than the first day of the month following that in which the work claimed as extra work was performed. If the changes do, in the opinion of CITY, change the amount of Work, the Contract Price shall be adjusted as "extra work".

Section 15. Interests of CONTRACTOR. CONTRACTOR affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONTRACTOR.

Section 16. Insurance.

(a) CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General

Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONTRACTOR.

(b) CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit, covering any vehicle utilized by CONTRACTOR in performing the services required by this Agreement.

(c) CONTRACTOR agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

(d) CONTRACTOR shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(e) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(f) CONTRACTOR agrees that if it does not keep the aforesaid insurance in full force and effect, CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONTRACTOR's expense, the premium thereon.

(g) At all times during the term of this Agreement, CONTRACTOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit H, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONTRACTOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance required by this Agreement shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(h) The insurance provided by CONTRACTOR shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(i) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONTRACTOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONTRACTOR shall procure a bond guaranteeing payment of losses and expenses.

**Section 17. Bonds.** Prior to the execution of this Agreement, CONTRACTOR shall file with CITY the bonds and certificates of insurance specified herein.

(a) **Payment Bond.** CONTRACTOR shall file with CITY a Payment (Labor and Materials) Bond in a form acceptable to CITY in the amount of 100% of the Contract Price, attached hereto as Exhibit F and incorporated herein.

(b) **Requirement for acceptance of sureties.**

1) The surety on any bond or undertaking must be a corporation authorized by the Insurance Commissioner of the Department of Insurance of the state to transact surety business in the state; and

2) There must be on file with the City Clerk of the City of Beverly Hills or submitted with the bond, a copy, duly certified by the proper authority and attested by the seal of the corporation, of the transcript or record of appointment entitling or authorizing the person or persons purporting to execute an undertaking or bond for and on behalf of such corporation to act in the premises.

Section 18. Indemnification. CONTRACTOR agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claims, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR or any person employed by CONTRACTOR in the performance of this Agreement.

Section 19. Termination.

(a) **For Cause.** Upon notice to Contractor, CITY may terminate the Work or any part thereof immediately for cause, without any prior notification to Contractor.

(b) **Without Cause.** CITY may terminate the Work or any part thereof upon five (5) days prior notice to Contractor.

(c) **Payment.** Upon termination of the Contract in whole or in part, CITY shall pay Contractor, subject to all provisions of the Contract for retention of funds, for all Work completed prior to the date of termination.

Section 20. Notice. Any notice, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 21. Prevailing Wages. Contractor shall comply with and adhere to all applicable labor laws, such as, but not limited to, alien labor, prevailing wages, etc. Contractor shall comply with the provisions of Sections 1770-1777.5 of the California Labor Code, and Section 7-2 of the Standard Specifications, entitled "Labor."

(a) In accordance with the provisions of Section 1770 et seq., of the Labor Code, the Director of the Department of Industrial Relations of the State of California has ascertained the general prevailing rate of wages applicable to the work to be done under contract for public improvement. CONTRACTOR shall pay to all employees on the project

sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1."

(b) A copy of said documents is on file and may be inspected in the office of the City Engineer in Room G10 of the Beverly Hills City Hall located at 455 North Rexford Drive, Beverly Hills, California 90210.

(c) CONTRACTOR shall execute simultaneously with the execution of this Agreement a statement acknowledging obligation to comply with California Labor Law requirements. That statement is attached as Exhibit G and incorporated herein by reference.

Section 22. Affirmative Action in Contracting Policy. CITY is an equal opportunity employer. Qualified firms owned by women, minorities and disabled persons are encouraged to submit bids or proposals. CONTRACTOR expressly agrees to comply with the CITY's ordinances and regulations concerning Equal Opportunity Employment and Affirmative Action principles. CONTRACTOR and every supplier of materials and services shall be an "Equal Opportunity Employer" as defined by Section 2000(E) of Chapter 21 of Title 42 of the United States Code and Federal Executive Order #11375, and as such shall not discriminate against any person by reason of race, creed, color, religion, age, sex or physical handicap with respect to the application for employment, hiring, tenure, or terms or conditions of employment of any person.

Section 23. Materials and Workmanship. CITY shall have the right to inspect any material used. Material furnished shall be new, complete, ready-for-use and of the latest model, shall not have been used in demonstration or other services and shall have all the usual equipment as shown by its manufacturer's current specifications and catalogs, unless otherwise specified. Equipment, supplies or services that fail to comply with the Agreement requirements regarding design, material or workmanship may be rejected at the option of CITY. Any materials rejected shall be removed from CITY premises at the CONTRACTOR's sole expense.

Section 24. Licenses and Permits. Except as provided herein below, CONTRACTOR shall obtain and pay for all permits and licenses required by federal, state or local law, rule or regulation. Costs for obtaining CITY permits required under this Agreement will be waived. All requirements for obtaining permits (including CITY permits) remain in effect and are not waived; only the costs of CITY permits are waived.

Section 25. Assignment of Unfair Business Practices. In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, CONTRACTOR or its subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arises from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to CONTRACTOR, without further acknowledgment by the parties.

Section 26. Safety and Protection of Workers. Pursuant to Public Contract Code Section 7104, if any work under this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface:

(a) CONTRACTOR shall promptly, and before the following conditions are disturbed, notify CITY, in writing, of any:

1) Material that CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, II, or Class III disposal site in accordance with provisions of existing law.

2) Subsurface or latent physical conditions at the site differing from those indicated.

3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Agreement.

(b) CITY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of, or the time required for, performance of any part of the work shall be in the form of a written amendment to the Agreement.

(c) In the event that a dispute arises between the CITY and CONTRACTOR, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in CONTRACTOR's cost of, or time required for, performance of any part of the work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement. CONTRACTOR shall retain any and all rights provided either by the Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

#### Section 27. Special Conditions.

(a) Hours of Work. All construction activity shall be performed only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday. For any construction activity to be performed after these hours or on weekends, CONTRACTOR shall obtain the prior written approval of the CITY's representative.

(b) Conduct of the Work. Workmen shall behave, at all times, in a courteous, professional manner. While on site, or entering or exiting the site, there shall be no loud noise, shouting or other extraneous activity that might cause disruption to staff or patrons as the case may be. The operations of describe location i.e. city hall, etc. will remain open throughout the construction period.

(c) Storage will be limited to the Project area.

(d) CONTRACTOR shall have a competent representative on the Project site at all times work is in progress. Communication given to the representative shall be binding as if given to the CONTRACTOR. CONTRACTOR shall immediately replace any individual who ceases to perform his duties satisfactorily, in the opinion of the CITY's representative, with a qualified, competent replacement acceptable to the CITY's representative.

(e) CONTRACTOR shall submit schedule information to the CITY's representative for integration into the overall Project schedule. Activity information shall be of

sufficient detail to ensure adequate coordination, planning and execution of the work within the Time of Performance required by the Agreement.

(f) Rubbish, debris, waste, dust or surplus materials, shall not be allowed to accumulate and shall be removed continuously and disposed of by the CONTRACTOR as the work progresses. The CITY may elect if required, upon written notice to the CONTRACTOR, to perform cleanup, the cost for which will be deducted from the Agreement amount.

Section 28. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded

Section 29. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONTRACTOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONTRACTOR.

Section 30. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 31. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 32. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONTRACTOR.

Section 33. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_ 2011, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

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JEFFREY KOLIN  
City Manager

[Signatures continue]

CONTRACTOR:  
CLEAN FUEL CONNECTION, INC

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ENID JOFFE  
President

---

RICARDO COSTIGLILO  
Chief Financial Officer

APPROVED AS TO FORM:

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LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT

---

DAVID GUSTAVSON  
Director of Public Works & Transportation

---

KARL KIRKMAN  
Risk Manager

## EXHIBIT A

### SCOPE OF WORK

CONTRACTOR shall perform the following services to the full satisfaction of CITY:

1. Certify in writing that CONTRACTOR is a pre-selected vendor for ChargePoint America and Coulomb Technologies.
2. Perform installation in compliance with all terms and conditions contained in the agreement between CITY and ChargePoint America, Attachment 1 to Exhibit A, and the Coulomb Technologies ChargePoint America Compliance Summary as set forth in Attachment 2 to Exhibit A
3. Perform all duties related to the installation and communications contained in the agreements between CITY and ChargePoint America and Coulomb Technologies, Attachments 1 and 2, respectively, to this Exhibit.
4. Provide detailed specifications in compliance with and for approval by the CITY's Community Development Department for each specific location and installation.
5. Work shall include all labor and materials necessary to complete the installation.
6. Ensure all work is ADA compliant.
7. Properly protect and secure all pedestrians and private and personal property as necessary to complete the work.
8. Return all surrounding areas to the same condition as such areas were found at the time work commenced.

Specific locations and equipment as more fully described in Attachment 3 to Exhibit A.

### SCHEDULE OF WORK:

CONTRACTOR shall complete all services required by this Agreement prior to December 19, 2011.

### WARRANTY:

CONTRACTOR shall provide CITY with a labor and product warranty as attached as Attachment 2 to Exhibit A.

ATTACHMENT 1 TO EXHIBIT A  
CHARGEPOINT®  
(Master Subscription Agreement)

ATTACHMENT 2 TO EXHIBIT A  
COULOMB TECHNOLOGIES  
(ChargePoint America Installation Compliance Summary)

ATTACHMENT 3 TO EXHIBIT A  
CHARGING STATION LOCATIONS

Montague, 241 Cannon:	2 wall mount CT2100
221 N. Crescent	2 wall mount CT2000
333 N. Crescent	4 wall mount CT2000
461 N. Bedford	2 wall mount CT2100
438 N. Beverly	2 bollard style CT2100
9333 3 <sup>rd</sup> Street	2 wall mount CT2100
345 N. Beverly	2 wall mount CT2100 2 bollard style CT2100
9510 Brighton	2 post mount CT2100
440 N. Camden	2 wall mount CT2100
450 N. Rexford	2 wall mount CT2100
La Cienega/Tennis	2 wall mount CT2000
216 S. Beverly	2 wall mount CT2100

EXHIBIT B

RATES or UNIT COSTS

CITY shall compensate CONTRACTOR for the satisfactory performance of the work described in this Agreement in an amount not to exceed One Hundred and Seventy One Thousand Dollars (\$171,000.00).

Beverly Hills	Units	Permit Valuation	Est. Permit Cost Reimbursement	Total Cost
1. Montage Parking	1	\$15,956.00	\$261.26	\$16,217.26
2. 221 N Crescent	2	\$16,440.00	\$269.19	\$16,709.19
3. 438 N Beverly Dr.	2	\$27,000.00	\$340.76	\$27,340.76
4. 461 N Bedford	2	\$14,350.00	\$250.90	\$14,600.90
5. 9510 Brighton	2	\$13,140.00	\$241.39	\$13,381.39
6. 440 N Camden Dr.	2	\$6,980.00	\$179.81	\$7,159.81
7. 345 N Beverly Dr.	4	\$21,280.00	\$308.35	\$21,588.35
8. 216 Beverly Dr.	2	\$6,826.00	\$179.49	\$7,005.49
9. 450 N Rexford	2	\$10,159.00	\$214.28	\$10,373.28
10. 333 N Crescent/9361 Dayton	2	\$18,442.00	\$287.28	\$18,729.28
11. La Cienega S	2	\$6,320.00	\$178.41	\$6,498.41
12. 9333 3rd St	2	\$11,050.00	\$223.09	\$11,273.09
<b>TOTAL</b>	<b>25</b>	<b>\$167,943.00</b>	<b>\$2,934.21</b>	<b>\$170,877.21</b>

Contingency in an amount not to exceed Twenty Nine Thousand Dollars (\$29,000.00) is for additional, unforeseen and unanticipated work outside the scope of work described in Exhibit A, and shall not be undertaken without the prior express direction by the CITY in writing. Compensation for said additional work shall be mutually agreed upon by the parties in writing. In no event shall the Fee and the Contingency together exceed Two Hundred Thousand Dollars (\$200,000.00).

## EXHIBIT C

### PAYMENT PROCEDURES

#### 1.0 PROGRESS PAYMENTS

1.1 Based upon Applications for Payment submitted to CITY, CITY shall make progress payments on account of the Contract Sum as set forth in Section 1 of the Contract to CONTRACTOR as provided below.

1.2 The period covered by each Application for Payment shall be one calendar month.

1.3 CITY shall make payment to CONTRACTOR within thirty (30) days after receipt of a proper Application for Payment.

1.4 Each Application for Payment shall be based upon the approved Schedule of Values submitted by CONTRACTOR. The Schedule of Values shall allocate the entire Contract Sum among the Various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as may be required.

1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for payment.

1.6 The amount of each progress payment shall be computed as follows:

1.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retention of ten percent (10%).

1.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by CITY, suitably stored off the site at a location agreed upon in writing), less retention of ten percent (10%).

1.6.3 Subtract the aggregate of previous payments made by CITY.

1.7 Reduction or limitation of retainage, if any, shall be upon written request by CONTRACTOR. CITY, at its discretion, may reduce the total retention withheld or release retention for a specific item of work where extended withholding of retention is not warranted.

1.8 Securities may be provided in lieu of retainage as follows:

1.8.1 At the request and expense of CONTRACTOR, upon execution of a proper escrow agreement, securities equivalent to the amount withheld shall be deposited with the public agency as the escrow agent, or with a state or federally chartered bank as the escrow agent, and the public agency shall then pay such monies to CONTRACTOR.

1.8.2 Upon satisfactory completion of the contract, the securities shall be returned to CONTRACTOR.

1.8.3 Securities eligible for investment under this section shall include those listed in Section 16430 of Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by CONTRACTOR and CITY.

1.8.4 CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

1.8.5 The escrow agreement to be used hereunder is attached hereto.

## **2.0 FINAL PAYMENT**

2.1 Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by CITY to CONTRACTOR when (1) the Contract has been fully performed by CONTRACTOR except for CONTRACTOR's responsibility to correct nonconforming Work as agreed to between CITY and CONTRACTOR; and (2) a final Certificate for Payment has been submitted by CONTRACTOR and approved by CITY; and (3) the work has been accepted by the City Council of the City of Beverly Hills; and (4) a Notice of Completion has been filed. Final payment shall be made by CITY not more than forty (40) days after completion of the above, but only to the extent that no stop notices or other requirements to withhold funds are then in effect.

EXHIBIT D

ESCROW AGREEMENT FOR SECURITY DEPOSITS  
IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between whose address is \_\_\_\_\_ (hereinafter called "CITY"), \_\_\_\_\_ whose address is \_\_\_\_\_ (hereinafter called "CONTRACTOR"), and \_\_\_\_\_ whose address is \_\_\_\_\_, (hereinafter called "Escrow Agent").

For consideration as hereinafter set forth, Owner, CONTRACTOR, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, CONTRACTOR has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by CITY pursuant to the Construction Contract entered into between CITY and CONTRACTOR for \_\_\_\_\_ in the amount of \_\_\_\_\_, dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). When CONTRACTOR deposits the securities as a substitute for Contract earnings, the Escrow agent shall notify CITY within ten days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between CITY and CONTRACTOR. Securities shall be held in the name of \_\_\_\_\_, and shall designate CONTRACTOR as the beneficial owner.

(2) CITY shall make progress payments to CONTRACTOR for such funds which otherwise would be withheld from progress payment pursuant to the Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.

(3) Alternatively, CITY may make payments directly to Escrow Agent in the amount of retention for the benefit of Owner until such time as the escrow created hereunder is terminated.

(4) CONTRACTOR shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by CONTRACTOR and Escrow Agent.

(5) Interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to CITY.

(6) CONTRACTOR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from CITY to Escrow Agent that CITY consents to the withdrawal of the amount sought to be withdrawn by CONTRACTOR.

(7) CITY shall have the right to draw upon the securities in the event of default by CONTRACTOR. Upon seven days' written notice to Escrow Agent from CITY of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by CITY.

(8) Upon receipt of written notification from CITY certifying that the Contract is final and complete, and that CONTRACTOR has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to CONTRACTOR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from CITY and CONTRACTOR pursuant to Sections (4) to (6), inclusive, of this agreement and CITY and CONTRACTOR shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of CITY, CONTRACTOR, and Escrow Agent in connection with the foregoing, and exemplars of their respective signatures are as follows:

CITY:

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

Escrow Agent:

\_\_\_\_\_

At the time the Escrow Account is opened, CITY and CONTRACTOR shall deliver to Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by the proper officers on the date first set forth above.

CITY:

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

Escrow Agent:

\_\_\_\_\_

## EXHIBIT E

### PUBLIC CONTRACT CODE SECTIONS 20104 ET SEQ.

#### Public Contract Code § 20104.

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

#### Public Contract Code § 20104.2.

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

#### Public Contract Code § 20104.4.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of

Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

Public Contract Code § 20104.6.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

EXHIBIT F  
PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS, the City of Beverly Hills, hereinafter "CITY", has awarded to

\_\_\_\_\_ ,  
hereinafter designated as "Principal," a Contract for the WATER VALVE REPLACEMENTS ON WATER LINES WITHIN THE CITY OF BEVERLY HILLS, CALIFORNIA;

WHEREAS, said Principal is required under the terms of the Contract and the California Civil Code, to secure the payment of claims of laborers, mechanics, materialmen and other persons, as provided by law;

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_ ("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto CITY in the penal sum of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), this amount being not less than one hundred percent (100%) of the total Contract Price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, its heirs, executors, administrators, successors, assigns, or subcontractors shall fail to pay any of the persons named in Section 3181, of the California Civil Code, or any amounts due under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of CONTRACTOR and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to work or labor performed under the Contract, the Surety will pay for the same in an amount not exceeding the penal sum specified in this bond; otherwise, the above obligation shall be null and void.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or other assigns in any suit brought upon the bond.

In case suit is brought upon this bond, the said Surety will pay all court costs and reasonable attorneys' fees in an amount to be fixed by the court.

FURTHER the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Contract Documents, or of the work to be performed thereunder, shall in any way affect the obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration, addition or modification of the Contract Documents or to the work or specifications thereunder. Surety hereby waives the provisions of California Civil Code § 2845 and 2849.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by the Principal and Surety named herein, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

DATE: \_\_\_\_\_

"PRINCIPAL"

"SURETY"

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its \_\_\_\_\_

BY: \_\_\_\_\_  
Its \_\_\_\_\_

BY: \_\_\_\_\_  
Its \_\_\_\_\_

BY: \_\_\_\_\_  
Its \_\_\_\_\_

{ SEAL }

{ SEAL }

NOTE: THIS BOND MUST BE EXECUTED IN TRIPLICATE AND DATED. ALL SIGNATURES MUST BE NOTARIZED, AND EVIDENCE OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT MUST BE ATTACHED.

## EXHIBIT G

### STATEMENT ACKNOWLEDGING OBLIGATION TO COMPLY WITH CALIFORNIA LABOR LAW

[Labor Code § 1720, 1773.8, 1775,  
1776, 1777.5, 1813, 1860, 1861, 3700]

I, the undersigned CONTRACTOR, certify that I am aware of and will fully comply with the following provisions of California law:

CONTRACTOR acknowledges that this Contract is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and the awarding public agency ("Agency") and agrees to be bound by all provisions thereof as though set forth in full herein.

CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1773.8 which require the payment of travel and subsistence payments to each worker needed to execute the work, to the extent required by law.

CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1774 and 1775 concerning the payment of prevailing wages to workers and the penalties for failure to do so. CONTRACTOR shall, as a penalty to the Agency, forfeit not more than fifty dollars (\$50) for each calendar day or portion thereof, for each worker paid less than the prevailing rates, as determined by the Director of Industrial Relations, for the work or craft in which the worker is employed for any public work done under the contract by CONTRACTOR or any subcontractor.

CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1776 which require CONTRACTOR and each subcontractor to (1) keep accurate payroll records, (2) certify and make those payroll records available for inspection as provided by Section 1776, and (3) inform the Agency of the location of the records. CONTRACTOR is responsible for compliance with Section 1776, by itself and all of its subcontractors.

CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and CONTRACTOR further agrees that CONTRACTOR is responsible for compliance with Section 1777.5 and for the compliance of all of its subcontractors.

CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. CONTRACTOR shall, as a penalty to the Agency, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by CONTRACTOR or by any subcontractor for each calendar day during which such worker was required or permitted to work more than 8 hours in any one calendar day or 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.

California Labor Code Sections 1860 and 3700, provide that every CONTRACTOR will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, CONTRACTOR hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

EXHIBIT H

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below :

**NAMED INSURED**

**COMPANIES AFFORDING COVERAGE**

**ADDRESS**

- A.
- B.
- C.

COMPANY (A.B.C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKER'S COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE : \_\_\_\_\_ BY : \_\_\_\_\_  
 \_\_\_\_\_ Authorized Insurance Representative

AGENCY : \_\_\_\_\_ TITLE : \_\_\_\_\_  
 \_\_\_\_\_ Address : \_\_\_\_\_  
 \_\_\_\_\_

# **Attachment 4**



9/12/11

Chad Lynn  
Director of Parking Operations  
City of Beverly Hills  
345 Foothill Road  
Beverly Hills, CA 90210

Dear Chad:

Coulomb Technologies ChargePoint America™ Program has been funded in part under the terms of Grant number DE-EE0003391 from the United States Department of Energy through the American Reinvestment and Recovery Act. The Grant was awarded as part of a competitive solicitation under FOA-0000028 from the Department of Energy.

The program was designed to use only authorized Coulomb installers. Coulomb has an agreement with Clean Fuel Connection, Inc. as the exclusive distributor for products and installation. The installation of the stations is comprised of a number of steps: Site planning, site inspection, construction, station assembly, station provisioning, customer training, etc. As such, the use of independent contractors constitutes a portion of the overall project labor and costs and does not represent all the steps necessary to properly install stations.

Best regards,

Handwritten signature of Michael Jones in black ink.

Michael Jones  
Western Region Director  
ChargePoint America Program  
Coulomb Technologies