

ELECTRIC VEHICLE CHARGING STATION INFRASTRUCTURE PROGRAM

GRANT AGREEMENT

between

The Santa Barbara County Air Pollution Control District

and

Public Entity - [GRANTEE'S NAME][EVCS-]

This Grant Agreement, is made this ___ day of _____ 20__, between the Santa Barbara County Air Pollution Control District, hereinafter referred to as "DISTRICT," and _____, hereinafter referred to as "GRANTEE".

RECITALS

WHEREAS, the DISTRICT is a county air pollution control agency with the primary responsibility for preparing and implementing the Clean Air Plan to achieve and maintain state and federal air quality standards in the County of Santa Barbara as mandated by the California Clean Air Act and Federal Clean Air Act;

WHEREAS, Santa Barbara County does not meet state health-based air quality standards for ozone and particulate matter ("PM₁₀"); and

WHEREAS, oxides of nitrogen and reactive organic gases are precursors to the formation of ozone, and the internal combustion engines used in motor vehicles is one of the main sources of these air pollutants in Santa Barbara County; and

WHEREAS, electric vehicles have no tailpipe emissions and Santa Barbara County is one of the top early adopter markets for electric vehicles in Southern California; and

WHEREAS, the DISTRICT has mitigation funds and wishes to utilize a portion of these funds for an Electric Vehicle Charging Station Infrastructure Program approved by the Board; and

WHEREAS, the DISTRICT is interested in encouraging the purchase and/or installation of electric vehicle charging stations under grant agreements with public entities; and

WHEREAS, the DISTRICT does not require electric vehicle charging station projects to meet cost-effectiveness criteria; and

WHEREAS, GRANTEE is interested in installing and operating an electric vehicle charging station for the purpose of operating and encouraging the operation of electric vehicles in Santa Barbara County; and

WHEREAS, GRANTEE has submitted a proposal that meets the requirements of the DISTRICT'S Electric Vehicle Charging Station Program and, therefore, becomes eligible to receive funds from the DISTRICT; and

WHEREAS, GRANTEE represents it is highly qualified and experienced in its professional field, is able to perform the activities described in the SCOPE OF WORK attached to this Grant Agreement as Attachment A, and will not purchase nor install this equipment until this Grant Agreement is fully executed; and

WHEREAS, the DISTRICT has reviewed and decided to fund GRANTEE's proposal at an amount determined by the Air Pollution Control Officer; and

WHEREAS, the District Board of Directors has delegated authority to the Air Pollution Control Officer to execute certain grant agreements and this Grant Agreement falls within that delegation authority.

NOW, THEREFORE, in consideration of the mutual promises and conditions listed below, it is hereby agreed between the DISTRICT and GRANTEE as follows:

GRANT TERMS AND CONDITIONS

1. Obligations to be Performed Under this Grant Agreement.

Within the time specified in paragraph 2 (Time of Performance), GRANTEE shall perform all of the obligations described in this Grant Agreement and set forth in the SCOPE OF WORK, which is attached hereto as Attachment A and incorporated herein by this reference.

GRANTEE agrees to furnish all labor, materials, equipment, required licenses, permits, fees, and other appropriate legal authorization from all applicable federal, state, and local jurisdictions necessary to perform and complete, per schedule, in a professional manner, the obligations described herein.

2. Time of Performance.

This Grant Agreement shall commence on the date of signing by the GRANTEE and the DISTRICT (either the Board of Directors or the Control Officer).

GRANTEE shall have completed the tasks described in Attachment A (Scope of Work), on or before _____. This time for completion may be extended, in writing, by the Control Officer for good cause. Operation shall commence upon completion of installation and shall continue for three (3) years to the end of the project life.

3. Grant Funding.

DISTRICT hereby agrees to provide funds to GRANTEE in the amount not to exceed \$_____ toward the cost of completing the tasks described in Attachment A (Scope of

Work). GRANTEE shall invoice the DISTRICT in accordance with Attachment B (Grant Invoice Payment). GRANTEE shall provide DISTRICT any information necessary to verify the accuracy of the invoice. The DISTRICT will pay GRANTEE within thirty days of receipt of GRANTEE's invoice. All invoices or other payment documents must include the assigned DISTRICT contract number. Failure to properly reference this contract number may result in a delay of payment.

4. Non-Partnership.

This Grant Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein.

5. Status of GRANTEE.

GRANTEE and GRANTEE's subcontractors shall perform all services under this Grant Agreement as independent contractors and not as employees, officers or agents of DISTRICT or the County of Santa Barbara.

6. Records.

GRANTEE shall keep and provide to DISTRICT or its agents upon request, accurate financial records (including invoices and published price lists on which this Grant Agreement was based) necessary to enable DISTRICT to review GRANTEE's performance of this Grant Agreement. These records shall demonstrate the grant funding has been used for the completion of the tasks described in Attachment A. GRANTEE shall maintain all such records for at least three years after the termination of this Grant Agreement.

7. Grant Reporting.

GRANTEE shall submit report(s) to the DISTRICT in accordance with the schedule and format specified in Attachment C (Grant Narrative Reports Format). Should GRANTEE fail to submit these reports to the DISTRICT, GRANTEE shall make the Electric Vehicle Charging station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement available for on-site monitoring by the DISTRICT for the term of the Grant Agreement. Such onsite monitoring shall not relieve GRANTEE of its obligation to submit all required reports.

8. Audit and Review.

DISTRICT or its agents shall have the right to audit and review the records identified in Paragraph 6 (Records), above, maintained by GRANTEE pursuant to the terms of this Grant Agreement to the extent necessary to verify the grant has been used in accordance with the terms of this Grant Agreement. Any such audit and review will be conducted by DISTRICT or County of Santa Barbara auditors or, at GRANTEE's option and expense, by a mutually acceptable third party accounting firm.

9. Mutual Indemnification and Insurance.

a) MUTUAL INDEMNIFICATION

XXXX shall defend, indemnify, and hold DISTRICT, its officers, officials, employees or agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of XXXX, its officers, officials, employees or agents.

DISTRICT shall defend, indemnify, and hold XXXX, its officers, officials, employees or agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, officials, employees or agents.

b) INSURANCE

Each party shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement.

10. Nondiscrimination Clause.

GRANTEE shall abide by the Unlawful Discrimination Ordinance, Article XIII of Chapter 2 of the Santa Barbara County Code, which is attached hereto as Attachment D (County Of Santa Barbara Unlawful Discrimination Ordinance) and incorporated herein by this reference.

11. Title to Electric Vehicle Charging Station and Installation Supplies.

Title to, and risk of loss, of any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement shall at all times vest in and with GRANTEE. GRANTEE acknowledges that DISTRICT did not supply, design or manufacture any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement The Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies are commercially manufactured and sold by a manufacturer determined by GRANTEE. DISTRICT specifically disclaims all warranties, express and implied, including the implied warranties of merchantability and fitness for the intended purpose, as to the low emissions equipment, any test equipment, or the field tests. In no event shall DISTRICT be liable to GRANTEE or any third party for any direct, indirect, consequential, special, incidental, or punitive damages for the design, manufacture, operation, maintenance, performance, or demonstration of the low emissions

equipment under any theory, including but not limited to, tort, contract, breach of warranty, or strict liability.

12. Rights to Emission Reductions.

GRANTEE affirmatively certifies to the DISTRICT that the project described in Attachment A (Scope of Work) is not required by any local, state and/or federal rule, regulation or Memorandum of Understanding currently in effect. GRANTEE transfers and conveys to DISTRICT all rights and claim to ownership of the emission reductions achieved through the installation and operation of any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement. GRANTEE shall not use or attempt to use the emission reductions achieved by the project as emission reduction credits. GRANTEE hereby fully and completely relinquishes such rights for the useful life of the project.

13. Termination.

a) DISTRICT. DISTRICT may, in its sole discretion, terminate this Grant Agreement for convenience by giving thirty (30) days prior written notice to GRANTEE. GRANTEE shall not incur any unnecessary expenses or costs which are reimbursable under this Grant Agreement during this period except those absolutely necessary to close out all activities related to the Grant Agreement. Any other charges incurred by GRANTEE during this period will not be compensated by DISTRICT unless approved in writing by the Control Officer.

The DISTRICT may also terminate this Grant Agreement for cause should GRANTEE default in the performance of this Grant Agreement or materially breach any of its provisions. Such termination shall be by written notice and shall be effective upon receipt by GRANTEE. The DISTRICT may seek whatever legal, equitable, and other remedies available under State law for the GRANTEE's failure to comply and fully perform under the Grant Agreement.

b) GRANTEE. GRANTEE may terminate its obligation funded under this Grant Agreement for good cause, provided that, if requested by the Control Officer, GRANTEE shall reimburse the DISTRICT for the Grant funding specified in Paragraph 3 (Grant Funding), as follows:

<u>Termination Date</u>	<u>Reimbursement Due to District</u>
Prior to Operation	100 percent of Grant Funding
Year 1 of Operation	100 percent of Grant Funding
Year 2 of Operation	66 percent of Grant Funding
Year 3 of Operation	33 percent of Grant Funding
After year 3 of Operation	0 percent of Grant Funding

The year of the operation shall be determined in reference to Paragraph 2 (Time of Performance). GRANTEE'S notice of termination shall be in writing and shall be effective upon completion of the terms of this paragraph. Such notice shall terminate GRANTEE's obligation under Paragraphs 1 (Obligations to be Performed Under this Grant Agreement) and

2 (Time of Performance) of this Grant Agreement.

14. Taxes.

GRANTEE shall be responsible for payment of all taxes due as a result of the Grant Agreement. GRANTEE's Federal Tax Identification Number or Social Security Number shall be on file with DISTRICT prior to payment of grant funds.

15. Project Logos.

At the option of the DISTRICT, GRANTEE shall allow the placement of a DISTRICT logo on project facilities or equipment. The placement design, style and color will be determined mutually by DISTRICT and GRANTEE.

16. Public Education.

GRANTEE, upon request of DISTRICT, will participate in and assist with a one day public education and demonstration concerning the GRANTEE's project. GRANTEE will allow reasonable access by DISTRICT and the public to project facilities and equipment during this demonstration.

17. Remedies Not Exclusive.

No remedy herein conferred upon or reserved to DISTRICT is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

18. Publication.

GRANTEE shall publicize the location of the electric vehicle charging station on GRANTEE's web site, if GRANTEE has one. GRANTEE also consents to the publication of the location of the electric vehicle charging station on other public agency and public information websites that disseminate such information.

19. Waivers.

The waiver by either party to this Grant Agreement of any term, covenant, or condition of this Grant Agreement or of any provision, ordinance, or law, shall not be deemed to be a continuing waiver of such term, covenant, condition, or law, or of any subsequent breach or violation of the same, or of any other term, covenant, ordinance of law.

20. Amendment.

This Grant Agreement may only be amended in writing executed by the DISTRICT Board

and GRANTEE or, where authorized by the Board, by the Control Officer and GRANTEE.

21. California Law to Apply.

This Grant Agreement shall be construed under and in accordance with the laws of the State of California. All obligations created under this Grant Agreement are performable in California.

22. Assignment.

This Grant Agreement shall not be assigned by GRANTEE without the prior written consent of the Control Officer. In the event GRANTEE desires to sell, lease, or otherwise transfer any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement, GRANTEE shall promptly notify DISTRICT and shall provide the potential buyer or other transferee with a copy of this Grant Agreement. The buyer or other transferee must agree in writing to abide by the terms of this Grant Agreement prior to GRANTEE closing any such sale, lease or other transfer.

23. Grant Agreement Integrated.

This Grant Agreement represents the entire and integrated Grant Agreement between DISTRICT and GRANTEE and supersedes any and all other negotiations, representations, and/or agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Grant Agreement which is not contained herein shall be valid or binding.

24. Conflicts Between Grant Agreement and Incorporated Attachments.

With the exception of the County's Unlawful Discrimination Ordinance, to the extent that any provisions in any of the other attachment(s) which are incorporated into this Grant Agreement by reference, conflict with any provision contained in this Grant Agreement, the provision of this Grant Agreement shall take precedence and govern.

25. Provisions Required by Law Deemed Inserted.

Each and every provision of law and clause required by law to be inserted in this Grant Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon application of either party, this Grant Agreement shall forthwith be physically amended to make such insertion or correction.

26. Unusual Circumstances.

The parties shall be excused from performing their respective obligations in the event they are prevented from performing so by reason of circumstances beyond their control, including, but not limited to, strikes and other labor disputes, wars, civil commotion, natural calamity,

fire, equipment breakdown or failures. In the event of any delay described above, the time for performance may be extended by mutual agreement for a period equal to the length of the delay.

27. Point of Contact.

All notices referenced in this Grant Agreement shall be in writing and shall be given by first class mail addressed as follows, or at such other address or to such person that the parties may from time to time designate in writing:

GRANTEE

DISTRICT

Santa Barbara County
Air Pollution Control District
301 E. Cook Street, Suite L
Santa Maria, California 93454
Attn: Jim Fredrickson

28. Equipment Maintenance.

GRANTEE will maintain and operate any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement according to manufacturer's recommendations.

29. Equipment Operating Area.

GRANTEE shall install and operate any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement within Santa Barbara County. GRANTEE may change the location of the Electric Vehicle Charging Station within the County if the new location meets the District's site location requirements and is approved by the Control Officer in writing.

GRANTEE shall ensure that all charging station components are operational and publicly accessible 24 hours per day, every day, with the exception of closures due to safety or security concerns or necessary maintenance. Stations may not be located in locations with limited access or availability such as behind a fence or in a gated parking lot closed to the public after hours.

30. On-Site Inspections and Audits.

GRANTEE shall allow the DISTRICT or designee to inspect any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement and associated records during the contract term. GRANTEE shall maintain and retain the project records for at least two years after contract expiration or three years after final project payment, whichever is later.

This Grant Agreement between Santa Barbara County Air Pollution Control District and _____ was executed at Santa Barbara, California on the day and year first written above.

SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT,
STATE OF CALIFORNIA

ATTEST:

CLERK OF THE BOARD

By _____
Air Pollution Control Officer

By _____
Deputy

GRANTEE: _____

APPROVED AS TO FORM
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By _____
Name
[Title]

By _____
Deputy County Counsel

Date: _____

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By _____
Risk Manager

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA, CPFO
AUDITOR-CONTROLLER

By _____
Division Chief
Advanced/Specialty Accounting

ATTACHMENT A
SCOPE OF WORK

TO BE PROVIDED BY THE GRANTEE

ATTACHMENT B
GRANT INVOICE PAYMENT

GRANTEE shall invoice the DISTRICT as follows:

- Not-to-exceed (NTE) total of \$_____ upon completion of all the grant obligations, as specified above in Attachment A (Scope of Work).
- Attach a copy of vendors' invoice to GRANTEE with proof of payment for the Electric Vehicle Charging Station (include identification information) and/or itemized breakdown of all labor and materials used for the installation of Electric Vehicle Charging Station(s).
- Attach a copy of the equipment manufacturers proof of warranty.
- GRANTEE is to invoice DISTRICT for the project specified above. Attach the invoice information to a cover letter with GRANTEE's letterhead and include the Grant Agreement number [EVCS-]

ATTACHMENT C
GRANT NARRATIVE REPORTS FORMAT

GRANTEE shall submit an annual narrative report to the District after the first year of operation of the Electric Vehicle Charging Station. . The purpose of these reports is to provide the DISTRICT with feedback as to GRANTEE's experience with the Electric Vehicle Charging Station Charging Station. The reports shall include the following items:

1. Name, address, and telephone of GRANTEE;
2. Make and model and location of equipment purchased;
3. Usage for the Electric Vehicle Charging Station for the most recent 12 months of operation;
4. Discussion of condition of equipment including any repairs, problems, or benefit with the Electric Vehicle Charging Station.
5. Any conditions (e.g., weather) that significantly affected the annual usage of the Electric Vehicle Charging Station from routine service.

ATTACHMENT D
COUNTY OF SANTA BARBARA UNLAWFUL DISCRIMINATION ORDINANCE

Sec. 2-95. Prohibition of unlawful discrimination in employment practices. The County of Santa Barbara reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) for goods and/or services entered into by the County of Santa Barbara or by its joint powers, agencies or agents with the consent of the other parties (hereinafter called "contractor") including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the county finds that the contractor is discriminating or has discriminated against any employee or applicant for employment in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical handicap when otherwise qualified, Vietnam era veteran/disabled, or age.

Such finding may only be made after contractor has had a full and fair hearing on notice of thirty (30) days before an impartial hearing officer at which hearing contractor may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the county. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, contractor may move in the appropriate court of law for damages and/or to compel specific performance of a contractor or agreement if any the above procedures are not afforded to the contractor. If contractor is not found to have engaged in unlawful discriminatory practices, county shall pay all costs and expense of such hearing, including reasonable attorneys' fees to contractor in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If contractor is found to have engaged in such unlawful discriminatory employment practices, contractor shall pay all such costs, expenses and attorneys' fees.

Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the contractor shall forthwith reimburse county for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid contractor under the terms of the contract or agreement.

Nothing in this section 2-95 shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to contractor, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.

Employment practices shall include, but are not limited to employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation selection for training and apprenticeship and probationary periods.

Contractor shall permit access at all reasonable time and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of

investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to contractor reasonably prior to the time contractor is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agent of the county. No records or copies of such records may be removed from the premises of contractor and no disclosure, oral or written of such record, may be made to third parties except as provided within the agreement.

Provided, however, that in the event of a hearing to determine whether or not contractor is engaging in unlawful discrimination in employment practices as defined herein, the board of supervisors of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available to the hearing.

Failure to fully comply with any of the foregoing provisions relating to unlawful discrimination in employment practices shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the county shall be notified that this chapter applies to their contract or agreement with the County of Santa Barbara. (Ord. No. 2946, SS 1; Ord. No. 2993, SS 1; Ord. No. 3018, SS 1)

Sec. 2-95.5. Exceptions. Notwithstanding any other provisions in this article, any party contracting with the County of Santa Barbara having an affirmative action program which has been approved within thirty-six (36) months from the date of the contract by an agency of the federal government shall be deemed to be in compliance with the provisions of this article upon furnishing documentary evidence of such approval satisfactory to the county affirmative action officer. Loss of such approval shall be immediately reported by such party to the county affirmative action officer.

Sec. 2-96. Purchase orders. Purchase orders shall contain the following clause as grounds for termination of such purchase order.

"If complaint is made that seller is engaging in discriminatory employment practices made unlawful by applicable state and federal laws, rules or regulations, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this order." (Ord. No. 2946, § 1)

Sec. 2-97. Affirmative action officer. At the discretion of the county affirmative action officer, he or she shall promptly and thoroughly investigate, or cause to be investigated reports and complaints from whatever source, that any party contracting with the County of Santa Barbara is engaging, or during the term of a contract or agreement with the County of Santa Barbara has engaged, in any unlawful discriminatory employment practices as described in Section 2-95 of this Code. If the investigation discloses reason to believe such unlawful discrimination does exist or has existed and the conditions giving rise thereto have not been changed so as to prevent further such unlawful discrimination, and the said party shall not forthwith terminate such unlawful discrimination, take all appropriate steps to prevent a recurrence of such or other unlawful

practices, and compensate the person or persons unlawfully discriminated against for any and all loss incurred by reason of such unlawful discrimination, all to the satisfaction of the affirmative action officer, then the affirmative action officer shall cause the matter to be presented for action to the State Fair Employment Practices Commission or the Federal Equal Employment Opportunities Commission, or both, and to any other concerned state or federal agencies or officers.

If and when it has been finally determined by the affirmative action officer, county counsel, or state or federal regulatory agencies that such unlawful discriminatory employment practice has in fact so occurred or are being carried on, then the affirmative action officer shall forthwith present the entire matter to the board of supervisors of the county, together with all damages, costs and expense related thereto and incurred by county, for appropriate action by the board of supervisors in accord with the intent and purposes of this article and of the affirmative action program of the County of Santa Barbara (Ord. No. 2946, § 1).