

File No. 110240

Committee Item No. 4
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance SUB-Committee Date: March 23, 2011

Board of Supervisors Meeting Date _____

Cmte Board

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|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |

OTHER (Use back side if additional space is needed)

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Completed by: Victor Young
Completed by: Victor Young

Date: March 18, 2011
Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Accept and Expend Grant - Forty Seven Electric Vehicle Chargers Equipment - \$251,000]

2
3 **Resolution authorizing the San Francisco Department of the Environment to accept**
4 **forty seven (47) electric vehicle chargers and 3 years of service from Coulomb**
5 **Technologies, Inc., as a subaward under Grant DE-EE0003391 using Federal Recovery**
6 **Act Funds from the U.S. Department of Energy to Coulomb for these purposes.**
7

8 WHEREAS, Coulomb Technologies, Inc. ("CTI") has received a grant of \$15 million
9 from the U.S. Department of Energy/NETL (Grant No. DE-EE0003391), as part of the
10 American Reinvestment and Recovery Act of 2009, to fund the "ChargePoint America Project"
11 and provide up to 5,000 electric vehicle chargers to nine metropolitan areas in the United
12 States, including the San Francisco Bay Area; and

13 WHEREAS, CTI has agreed to provide the City with 47 electric vehicle chargers, to be
14 installed at various public locations and in various public facilities throughout the City; and,

15 WHEREAS, The City anticipates assigning 27 of the chargers to the Municipal
16 Transportation Agency and 20 to San Francisco International Airport; and

17 WHEREAS, CTI will provide the City with the necessary services to operate the
18 charging stations, at no cost to the City, until December 31, 2013; and

19 WHEREAS, As a condition of receiving the charging stations and related services, CTI
20 requires the City to enter into a Station Award Agreement and a Master Services Subscription
21 Agreement ("the Agreements"), copies of which are on file with the Clerk of the Board of
22 Supervisors in File No. 110240 , which are hereby declared to be a part of this resolution as if
23 fully set forth within; and
24
25

1 WHEREAS, City Departments involved with the installation and operation of these
2 charging stations are engaged in a collaboration to establish an understanding among
3 themselves of roles and responsibilities related thereto, and to continue an ongoing process to
4 indentify and resolve any questions related to the operation, maintenance and ownership of
5 the equipment during the term of the Agreements, and the continuity of operations of the
6 charging stations and related services after the Agreements expire; and

7 WHEREAS, The subaward does not include indirect costs; now, therefore, be it

8 RESOLVED, That the Board of Supervisors authorizes the Department of the
9 Environment to accept a subaward of 47 electric vehicle chargers from CTI and to accept
10 three years of related services; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the
12 Department of the Environment, or her designee, to apply for and accept up to 15 additional
13 chargers under this grant; and, be it

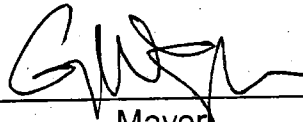
14 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the
15 Department of the Environment, or her designee, to transfer some or all of the chargers to
16 various City departments for implementation of the program; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the
18 Department of the Environment, or her designee, to enter into agreements in substantially the
19 same form as the Agreements on file and to take whatever other steps are necessary to carry
20 out the subaward; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors waives inclusion of indirect
22 costs as part of the subaward.

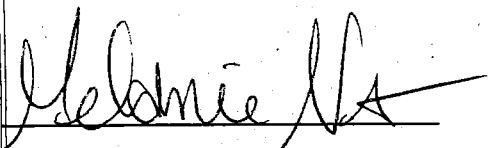
23
24 Recommended:

Approved: _____



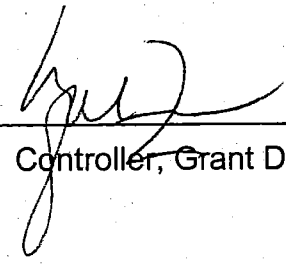
Mayor

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Department Head

Approved:



Controller, Grant Division

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Department of the Environment
DATE: February 11, 2011
SUBJECT: Accept and Expend Resolution for Subject Grant
GRANT TITLE: ChargePoint America Electric Vehicle Chargers

Attached please find the original and 4 copies of each of the following:

Proposed grant resolution; original signed by Department, Mayor, Controller

Grant information form, including disability checklist

Grant budget

Grant application

Grant award letter from funding agency

Other (Explain):

Special Timeline Requirements:

Departmental representative to receive a copy of the adopted resolution:

Name: Rachel Buerkle

Phone: 355-3704

Interoffice Mail Address:

Certified copy required Yes

No X

(Note: certified copies have the seal of the City/County affixed and are occasionally required by funding agencies. In most cases ordinary copies without the seal are sufficient).

File Number: _____
(Provided by Clerk of Board of Supervisors)

Grant Information Form
(Effective January 2000)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

1. Grant Title: ChargePoint America Electric Vehicle Chargers 220191 / EVCHRG-11

2. Department: Department of the Environment

3. Contact Person: Rachel Buerkle Telephone: 355-3704

4. Grant Approval Status (check one):

Approved by funding agency

Not yet approved

5. Amount of Grant Funding Approved or Applied for: \$251,000 (equipment, not funding)

6a. Matching Funds Required: \$ 0

b. Source(s) of matching funds (if applicable):

7a. Grant Source Agency: US Department of Energy

b. Grant Pass-Through Agency (if applicable): Coulomb Technologies

8. Proposed Grant Project Summary:

Coulomb Technologies, under a grant from the DOE, is awarding 47 electric vehicle chargers to the Department of the Environment, to be installed in various locations in the city, and made available for use by the general public without charge..

9. Grant Project Schedule, as allowed in approval documents, or as proposed:

Start-Date: March 1, 2011

End-Date: December 31, 2013

10. Number of new positions created and funded: None

11. If new positions are created, explain the disposition of employees once the grant ends?

12a. Amount budgeted for contractual services: None

b. Will contractual services be put out to bid?

c. If so, will contract services help to further the goals of the department's MBE/WBE requirements?

d. Is this likely to be a one-time or ongoing request for contracting out?

13a. Does the budget include indirect costs? Yes No

b1. If yes, how much? \$

b2. How was the amount calculated?

c. If no, why are indirect costs not included?

Not allowed by granting agency

To maximize use of grant funds on direct services

Other (please explain): The grant award is equipment, not funding.

14. Any other significant grant requirements or comments:

****Disability Access Checklist****

15. This Grant is intended for activities at (check all that apply):

Existing Site(s)

Existing Structure(s)

Existing Program(s) or Service(s)

Rehabilitated Site(s)

Rehabilitated Structure(s)

New Program(s) or Service(s)

New Site(s)

New Structure(s)

16. The Departmental ADA Coordinator and/or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities, or will require unreasonable hardship exceptions, as described in the comments section:

Comments:

Departmental or Mayor's Office of Disability Reviewer: *Claudia Molina*
(Name)

Date Reviewed: 2/11/11

Department Approval: *Melanie Natter*
(Name)

Melanie Natter
(Name)

Director
(Title)

[Signature]
(Signature)

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 ChargePass RFID 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 or acquired by Subscriber with respect to any of Subscriber's Networked Charging Stations.

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. The "Subscriber" for purposes of this Agreement shall be the City and County of San Francisco.

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 or acquired by a Subscriber.

1.38 *"Subscription Fees"* means the fees, if any, 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 or acquired a Subscription for Purchased ChargePoint Services for a Networked Charging Station. The subscriber is receiving at no charge a subscription to ChargePoint Network Standard Service which shall be effective from the effective date of this agreement through December 31 2013.

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 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 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. Provided, however, that CTI will provide City through the use of the Network Standard Service applications, at times and in a format mutually agreed upon, with information regarding how the Charging Stations are used, such as: times of use; energy consumption; and, times the Charging Stations are out of operation such as during temporary equipment failure or during repair or servicing.

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.

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 Locations(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 purchased by Subscriber have been terminated or

otherwise have expired. The term of this Agreement shall be from its effective date through December 31, 2013.

8.2 TERM OF PURCHASED SUBSCRIPTIONS. Subscriptions purchased or acquired 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 Intentionally left blank by the parties (Automatic Renewal of Subscriptions).

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 also 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.

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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. ENTIRE AGREEMENT. This Agreement, including the City's Additional Provisions (attached as Appendix C to the Station Award Agreement between CTI and the City, dated _____, and incorporated by this reference), **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, this Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any other documentation (excluding **Schedule 1**) shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void.

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.

Praveen K. Mandal, President

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: _____

Approved as to Form:

Dennis Herrera, City Attorney

By _____

Thomas J. Owen

Deputy City attorney

Schedule 1: Subscriber Session Transaction Fee Schedule¹

<u>Fee Schedule</u>	<u>For Each Charging Session using ChargePass Card</u>	<u>For Each Charging Session Using Credit Card</u>
Session Authorization Fee²	\$0.50 per Session	\$0.50 per Session
Session Processing Fee³	7.5% of Session Fees	7.5% of Session Fees

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

² 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.

³ 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.



12/17/2010

Melanie Nutter, Director
San Francisco Department of the Environment
11 Grove Street
San Francisco, CA 94102

Dear Ms. Nutter:

Congratulations! You have been awarded 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"). In order to receive delivery of the Charging Stations, 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 charger(s). Please make sure the part numbers on the order are correct and provide a ship to address with a contact name, phone number, and email.
3. Sign and return the attached Master Services Support Agreement
4. Return the documents within 30 days of the date of this award letter

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

Coulomb Technologies, Inc. • 1692 Dell Ave. • Campbell, CA 95008-6901



1. **Charging Stations.** You ("You") have been awarded 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 and the station models will be specified in Appendix B, as updated and/or amended from time to time. You agree to take delivery of the charging stations awarded to you on or before March 1, 2011.

Product Name	Product Description	Product Code	Qty	Unit Price	Total Price
CT-2XXX (See Appendix B)	CHARGEPOINT AMERICA DOE EVSE PACKAGE	CT-2XXX (See Appendix B)	47	\$0.00	\$0.00

Grand Total:	\$0.00
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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. No Charging Stations will be delivered until CTI has received written confirmation that You have obtained all applicable permits for the installation of the Charging Stations. A CTI representative, or one of its authorized distributors ("Authorized Distributors") will assist You in obtaining the necessary permits.

3. **Installation.** (a) Unless specifically agreed in writing, installation of the Charging Stations may only be done by an Authorized Distributor or one or more installers chosen by such Authorized Distributor. 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, however, that your installer may be subject to the provisions of the Davis Bacon Act (FAR 52.222-6). The Davis Bacon Act is a federal law that requires certain private contractors working on federal construction projects to pay their workers a wage at least equal to locally prevailing wages, as determined by the United States Department of Labor, for the type of work being performed. It is likely that the installation of Charging Stations would be treated as a federal construction project requiring observance of the Davis Bacon Act requirements. Union pay scales have frequently been used as a guide by the Department of Labor when determining locally prevailing wages. In addition, because the Charging Stations are being awarded to You under a federal program, 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. YOU SHOULD CONTACT CTI IMMEDIATELY FOR A COMPLETE EXPLANATION OF THE APPLICABLE REPORTING, AUDITING



AND OTHER REQUIREMENTS THAT APPLY TO YOU OR YOUR INSTALLER SHOULD YOU WISH TO USE YOUR OWN INSTALLER TO INSTALL THE CHARGING STATIONS.

(b) You agree to cause the installation of the Charging Stations within forty five (45) days of their delivery to You; provided, that the parties agree that if the City needs additional time to complete installation of the Charging Stations, it may request an extension or extensions of the 45-day period from CTI and CTI shall not unreasonably withhold its consent to such requests. In the event that the Charging Stations have not been installed by the expiration of such forty five day period and the parties have not agreed to an extension or extensions of the 45-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. (a) The Charging Stations will be 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. Should You wish to obtain an extended warranty, You should contact CTI or an Authorized Distributor. A copy of the Warranty is attached hereto as Appendix D and incorporated by this reference.

(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 STATIONS, 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 STATIONS.

(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 JURISDICITON DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY. THE PROVISIONS OF THIS SECTION 4(C)(I) SHALL NOT APPLY TO THIRD PARTY INJURIES OCCURRING AS A RESULT OF A MALFUNCTIONING CHARGING STATION.



(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™ APPLICATION STANDARD SERVICES OR THE CHARGEPOINT™ APPLICATIONS 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 free 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. The use of the Charging Stations will be subject to CTI's standard privacy policy (the "Privacy Policy"), which may be accessed at <https://www.chargepointportal.net/index.php/general/uri/privacy.html>. Notwithstanding anything to the contrary contained in the immediately preceding sentence, 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 or Sell the Charging Stations. The Charging Stations may not be sold or removed from their place of installation, prior to January 1, 2014, without the prior written consent of CTI.

10. 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.

11. 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.



12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **Entire Agreement; Counterparts.** This Agreement, including the City's Additional Provisions (attached hereto as Appendix C and incorporated by this reference), constitutes the entire agreement between the parties.

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.

Praveen K. Mandal, President

AWARDEE:

By: _____
(Signature)

Name: _____

Title: _____

Approved as to form:

Dennis J. Herrera, City Attorney

By: _____
Deputy City Attorney



APPENDIX A - CHARGING STATION LOCATIONS

The following list will be amended or updated in writing by consent of both parties as required to comply with the terms and conditions of the ChargePoint America program.

	Name	Address (San Francisco)	# of EVSEs
GARAGE	Civic Center	355 McAllister	5
	Ellis O'Farrell	123 O'Farrell St	1
	Fifth & Mission	833 Mission St	3
	Golden Gateway	250 Clay St	2
	Japan Center	1610 Geary Blvd	1
	Lombard	2055 Lombard St	2
	Moscone Center	255 Third St	2
	Performing Arts	360 Grove St	2
	Polk Bush	1399 Bush St	1
	Portsmouth Square	733 Kearny	2
	SF General Hospital	2501 23rd St	2
	Sutter Stockton	444 Stockton St	2
	PARKIN G LOT	SF International Airport	Domestic Garage and International Garage
Pierce Street @ Lombard		3252 Pierce ST	2
		TOTAL	47



APPENDIX B - CHARGING STATION MODELS

Product Name	Product Description	Product Code	Qty	Unit Price	Total Price
				\$0.00	\$0.00

Appendix C: CITY'S ADDITIONAL PROVISIONS

1. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

2. Taxes

a. CTI recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles CTI to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

1) CTI, on behalf of itself and any permitted successors and assigns, recognizes and understands that CTI, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) CTI, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. CTI accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) CTI, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). CTI accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) CTI further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

3. Independent Contractor; Payment of Taxes and Other Expenses



a. **Independent Contractor.** CTI or any agent or employee of CTI shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. CTI or any agent or employee of CTI shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. CTI or any agent or employee of CTI is liable for the acts and omissions of itself, its employees and its agents. CTI shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to CTI's performing services and work, or any agent or employee of CTI providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and CTI or any agent or employee of CTI. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of CTI's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which CTI performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that CTI is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by CTI which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by CTI for City, upon notification of such fact by City, CTI shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to CTI under this Agreement (again, offsetting any amounts already paid by CTI which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, CTI shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that CTI is an employee for any other purpose, then CTI agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that CTI was not an employee.

4. Insurance

a. Without in any way limiting CTI's liability pursuant to the "Indemnification" section of this Agreement, CTI must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.



b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, CTI hereby agrees to waive subrogation which any insurer of CTI may acquire from CTI by virtue of the payment of any loss. CTI agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the CTI, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, CTI shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, CTI shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of CTI hereunder.

5. Liability of City. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.



6. **Conflict of Interest.** Through its execution of this Agreement, CTI acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

7. **Proprietary or Confidential Information of City.** CTI understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, CTI may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. CTI agrees that all information disclosed by City to CTI shall be held in confidence and used only in performance of the Agreement. CTI shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

8. **Notices to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: Bob Hayden
 SF Department of the Environment
 11 Grove Street
 San Francisco, CA 94012
 bob.hayden@sfgov.org

To CTI:

Any notice of default must be sent by registered mail.

9. **Audit and Inspection of Records.** CTI agrees to maintain and make available to the City, during regular business hours and no more than four times per year, accurate books and accounting records relating to its work under this Agreement. CTI will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. CTI shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

10. **Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**11. Nondiscrimination; Penalties**

a. **CTI Shall Not Discriminate.** In the performance of this Agreement, CTI agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** CTI shall incorporate by reference in all subcontracts the provisions, excuted after the date hereof, of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. CTI's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** CTI does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, CTI shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. CTI shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, CTI understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against CTI and/or deducted from any payments due CTI.

12. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until



and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

13. Limitations on Contributions. Through execution of this Agreement, CTI acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. CTI acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. CTI further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of CTI's board of directors; CTI's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in CTI; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by CTI. Additionally, CTI acknowledges that CTI must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. CTI further agrees to provide to City the names of each person, entity or committee described above.

14. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, CTI may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. CTI agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event CTI violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit CTI from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider CTI's use of profit as a violation of this section.

15. Compliance with Laws. CTI shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

16. Protection of Private Information. CTI has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. CTI agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the CTI pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the CTI.



17. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.



APPENDIX D: STANDARD WARRANTY

COULOMB TECHNOLOGIES, INC. Limited Product Warranty

This Limited Product Warranty applies to you, a customer who has purchased COULOMB's ChargePoint™ Networked Charging Stations and/or related products ("**Products**") from COULOMB TECHNOLOGIES, INC. ("**COULOMB**") or one of its authorized distributors and not for resale.

LIMITED ONE-YEAR WARRANTY: Subject to the exclusions from warranty coverage set forth below, COULOMB warrants that the Product will be free from any defects in materials and/or workmanship (the "**Limited Warranty**") for a period of one (1) year after the date of the initial installation of the Product (the "**One-Year Warranty Period**"). If the Product becomes defective in breach of the Limited Warranty, COULOMB will, upon written notice of the defect received during the One-Year Warranty period, either repair or replace, at Coulomb's election, the Product if it proves to be defective; *provided*, that COULOMB will not be responsible for the cost of any labor associated with the repair or replacement of any defective Product.

COULOMB's Options: You acknowledge that replacement products provided by Coulomb under each of the Limited Warranty and the Five-Year Extended Warranty may be remanufactured or reconditioned Products or, if the exact Product is no longer manufactured by COULOMB, a Product with substantially similar functionality ("**Replacement Products**"). Any Replacement Products so furnished will be warranted for the remainder of the original Warranty Period or ninety (90) days from the date of delivery of such Replacement Product, whichever is greater. Should COULOMB be unable to repair or replace the Product, COULOMB will refund the purchase price of the Product.

EXCLUSIONS FROM LIMITED WARRANTY IMPORTANT: The Limited Warranty on your Product shall not apply to defects, or service repairs, resulting from any of the following:

- Alteration or modification of the Product in any way not approved in writing by COULOMB.
- Vandalism.
- Abuse, damage or otherwise being subjected to problems caused by negligence (including but not limited to physical damage from being struck by a vehicle) or misapplication, or use of the Products other than as specified in the applicable COULOMB documentation.
- Installation or relocation of the Products unless performed by COULOMB or by a Coulomb authorized installer or service provider.
- Improper site preparation or maintenance.
- Damage as a result of accidents, extreme power surge, extreme electromagnetic field, acts of nature or other causes beyond the control of COULOMB.
- Use of the Product with software, interfacing, parts or supplies not supplied by COULOMB.

You are responsible for the proper installation and maintenance of the Product. Any service or repairs beyond the scope of the Limited Warranty or the Five-Year Extended Warranty above are subject to COULOMB's then prevailing current labor rates and other applicable charges.

Third Party Products. The above Limited Warranty is exclusive of products manufactured by third parties ("**Third Party Products**"). If such third party manufacturer provides a separate warranty with respect to the Third Party Product, COULOMB will include such warranty in the packaging of the COULOMB Product.



OBTAINING WARRANTY SERVICE

To obtain warranty service you must: (a) obtain a return materials authorization number ("RMA#") from COULOMB by contacting 1-877-370-3802 (or for customers outside the U.S., contact 408-370-3802) and ask for Customer Service, and (b) deliver the Product, in accordance with the instructions provided by COULOMB, along with proof of purchase in the form of a copy of the bill of sale including the Product's serial number, contact information, RMA# and detailed description of the defect, in either its original package or packaging providing the Product with a degree of protection equivalent to that of the original packaging, to COULOMB at the address below. You agree to obtain adequate insurance to cover loss or damage to the Product during shipment.

If you obtain an RMA# and return the defective Product as described above, COULOMB will pay the cost of returning the Product to COULOMB. Otherwise, you agree to bear such cost, and prior to receipt by COULOMB, you assume risk of any loss or damage to the Product. COULOMB is responsible for the cost of return shipment to you if the COULOMB Product is found to be defective.

Returned products which are found by COULOMB to be not defective, returned out-of-warranty or otherwise ineligible for warranty service will be repaired or replaced at COULOMB's standard charges and shipped back to you at your expense. At COULOMB's sole option, COULOMB may perform repair service on the Product at your facility, and you agree to provide COULOMB with all reasonable access to such facility and the Product, as required. On-site repair service is not available outside the United States. All replaced parts, whether under warranty or not, are the property of COULOMB.

WARRANTY LIMITATIONS

THE LIMITED WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY COULOMB, TO THE MAXIMUM EXTENT PERMITTED BY LAW. THERE ARE NO OTHER WARRANTIES RESPECTING THE PRODUCT AND DOCUMENTATION AND SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF COULOMB OR DISTRIBUTOR HAS BEEN INFORMED OF SUCH PURPOSE) OR AGAINST INFRINGEMENT. Some states or jurisdictions do not allow the exclusion of express or implied warranties so the above exclusions may not apply to you. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN SUCH IMPLIED WARRANTY SHALL BE LIMITED IN DURATION TO THE LIMITED WARRANTY PERIOD DESCRIBED ABOVE. NO WARRANTIES APPLY AFTER THE TOTAL WARRANTY PERIOD. Some states or jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you. NO AGENT OF COULOMB IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF COULOMB. COULOMB SPECIFICALLY DOES NOT WARRANT THAT ANY SOFTWARE WILL BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION. THE REMEDIES IN THIS LIMITED PRODUCT WARRANTY ARE YOUR SOLE AND EXCLUSIVE REMEDIES.

LIMITATIONS OF LIABILITY

You acknowledge and agree that the consideration which you paid to COULOMB or one of its authorized distributors does not include any consideration by COULOMB or one of its authorized distributors of the risk of consequential, indirect or incidental damages which may arise in connection with your use of, or inability to use, the Product. THUS, COULOMB OR ONE OF ITS AUTHORIZED DISTRIBUTORS WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST BUSINESS, LOST DATA, LOSS OF USE, OR COST OF COVER INCURRED BY YOU ARISING OUT OF OR RELATED TO YOUR PURCHASE OR USE OF, OR INABILITY TO USE, THIS PRODUCT OR THE SERVICES, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF COULOMB KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE CUMULATIVE LIABILITY OF COULOMB OR ONE OF ITS AUTHORIZED DISTRIBUTORS FOR ALL CLAIMS WHATSOEVER RELATED TO THIS PRODUCT OR THE SERVICE WILL NOT EXCEED THE PRICE YOU PAID FOR THIS PRODUCT. THE LIMITATIONS SET FORTH HEREIN ARE INTENDED TO LIMIT THE LIABILITY OF COULOMB AND SHALL APPLY NOTWITHSTANDING ANY



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FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Some states or jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. THIS LIMITED PRODUCT WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

ADDITIONAL INFORMATION

This Limited Product Warranty is valid for U.S.A. and Canada only. This Limited Product Warranty shall be governed by and construed in accordance with the laws of the State of California, U.S.A., exclusive of its conflict of laws principles. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. This Limited Product Warranty is the entire and exclusive agreement between you and COULOMB with respect to its subject matter, and any modification or waiver of any provision of this statement is not effective unless expressly set forth in writing by an authorized representative of COULOMB. The Limited Product Warranty is not transferable by you to anyone else.

All inquiries or claims made under this Limited Product Warranty must be sent to COULOMB's address as follows:

Coulomb Technologies, Inc.
1692 Dell Avenue.
Campbell, California 95008-6901
Tel: 408-370-3802
Fax: 408-370-3847
Email: service@coulombtech.com

Electric Vehicle Chargers - ChargePoint America					
			Columb Technologies	Match	TOTAL Project
Personnel					
					\$ -
	Total Personnel		\$ -	\$ -	\$ -
Fringe Benefits			\$ -	\$ -	\$ -
Contractor					
	Total Contractor		\$ -	\$ -	\$ -
Equipment					
		47 Electric Vehicle Chargers	\$ 251,000		\$ 251,000
	TOTAL Equipment		\$ 251,000	\$ -	\$ 251,000
	TOTAL PROJECT DIRECT		\$ 251,000	\$ -	\$ 251,000
Total Indirect costs					
			\$ -	\$ -	\$ -
TOTAL PROJECT COST			\$ 251,000	\$ -	\$ 251,000

Note: The grant award is the actual equipment. The amount shown above is the equivalent value.

Electric Vehicle Chargers - ChargePoint America					
			Columb Technologies	Match	TOTAL Project
Personnel					
	Total Personnel		\$ -	\$ -	\$ -
Fringe Benefits			\$ -	\$ -	\$ -
Contractor					
	Total Contractor		\$ -	\$ -	\$ -
Equipment					
		47 Electric Vehicle Chargers	\$ 251,000		\$ 251,000
	TOTAL Equipment		\$ 251,000	\$ -	\$ 251,000
	TOTAL PROJECT DIRECT		\$ 251,000	\$ -	\$ 251,000
Total Indirect costs					
			\$ -	\$ -	\$ -
TOTAL PROJECT COST			\$ 251,000	\$ -	\$ 251,000

Note: The grant award is the actual equipment. The amount shown above is the equivalent value.