

# ORIGINAL

## Crystal View Enterprises, Inc.

### Level 2 Electric Vehicle Charging Stations

#### FUNDING AGREEMENT #212-F1611

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado Air Quality Management District, a county air quality management district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"), and Crystal View Enterprises, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 6529 Pony Express Trail, Pollock Pines, California 95726 (hereinafter referred to as "Grantee");

#### WITNESSETH:

**WHEREAS**, the California Clean Air Act requires local air pollution control districts to reduce emissions from motor vehicles; and

**WHEREAS**, the AQMD Board of Directors/County of El Dorado Board of Supervisors has allocated funding in the AQMD 15/16 Operations Budget for public use electric vehicle charging stations in the County of El Dorado; and

**WHEREAS**, Grantee has proposed a Project that has been approved by AQMD for funding; and

**WHEREAS**, Project sites are located along US Highway 50 in Camino and Pollock Pines; and

**WHEREAS**, it is the intent of the parties hereto that such services are in conformity with all applicable federal, state, and local laws; and

**WHEREAS**, Grantee represents that it is willing and able to perform the activities set forth herein;

**NOW, THEREFORE**, AQMD and Grantee mutually agree as follows:

#### ARTICLE I

**Project:** Grantee shall perform all activities and work necessary to complete the Level 2 Electric Vehicle Charging Stations Project (hereinafter referred to as "Project"); as set forth in ARTICLE II, Scope of Work. Grantee agrees to obtain all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, in a professional manner, the services described herein.

#### ARTICLE II

**Scope of Work:** Grantee shall commence performance of work and produce all work products in accordance with this Article unless this Agreement is terminated sooner as provided for in ARTICLE XVI, Termination. Grantee shall:

- Purchase four (4) Level 2 Electric Vehicle Supply Equipment (EVSE) charging stations.
- Install two (2) EVSE at Crystal View Station, 6529 Pony Express Trail, Pollock Pines, California.
- Install two (2) EVSE at Wine Country Station, 3590 Carson Road, Camino, California.
- Provide electricity to the charging stations.
- Make the chargers available for public use on a 24/7 basis. Electricity shall be free of charge to the public for a minimum of two (2) years.
- Maintain according to manufacturer's recommendations, including repairs if any, and make the chargers available for public use for a minimum of five (5) years.
- If Grantee discontinues providing public use of the electric vehicle charging stations or removes them prior to five (5) years after installation, return the chargers to AQMD.
- Allow, at the option of AQMD, the placement of AQMD logo or statement on the Project facilities or equipment. The placement design, style, and color will be determined mutually by the parties.
- Report annually, for five (5) years from the date of execution, charger usage data to AQMD, if charger usage data becomes available.

Title to, and risk of loss, of any electric vehicle charging station or any electric vehicle charging station installation supplies funded by this Agreement shall at all times vest in and with the Grantee. Grantee acknowledges that AQMD did not supply, design, or manufacture any electric vehicle charging station or any installation supplies funded by this Agreement. The electric vehicle charging station and installation supplies are commercially manufactured and sold by a manufacturer.

### **ARTICLE III**

**Term:** This Agreement shall become effective upon execution and shall expire two (2) years thereafter unless terminated earlier in accordance with ARTICLE XVI, Termination.

### **ARTICLE IV**

**Compensation:** AQMD will make one initial advance payment to Grantee in the amount of \$12,500.00 following the full execution of this Agreement. Additional advance payments will not be permitted. Grantee shall provide evidence of expenditure of funds prior to requesting additional payments. After the initial advance payment, payments will be permitted only at which time an equivalent service has been completed. AQMD will reimburse Grantee, in arrears, after receipt, verification, and approval of submitted invoices. AQMD will pay Grantee for installed materials, equipment, labor and permits required for installation.

The total obligation of AQMD under this Agreement shall not exceed \$20,000, inclusive of all expenses.



Invoices shall itemize costs for all labor, installed materials, equipment and permits, shall set forth the work completed pursuant to this Agreement, and shall reference this Agreement number on their faces. Invoices shall be mailed to AQMD at the following address:

County of El Dorado  
Air Quality Management District  
330 Fair Lane, Building A  
Placerville, CA 95667  
Attn: Dave Johnston, Air Pollution Control Officer

Upon receipt of proper documentation and verification that Grantee has satisfactorily completed the work for which compensation is sought, and that the work is in accordance with ARTICLE II, Scope of Work, AQMD will issue payment to Grantee within forty-five (45) calendar days of verification and approval.

The amount to be paid to Grantee under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by Grantee. Grantee shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

Concurrently with the submission of any claim for payment, Grantee shall certify (through copies of invoices issued, checks, receipts, and the like) that complete payment has been made to any and all subcontractors as provided.

It is understood that all expenses incidental to Grantee's performance of services under this Agreement shall be borne exclusively by Grantee.

Any compensation under this Agreement, which is not expended by Grantee pursuant to the terms and conditions of this Agreement by the Project completion date, shall automatically revert to AQMD. Only expenditures incurred by the Grantee in the direct performance of this Agreement will be reimbursed by AQMD.

#### **ARTICLE V**

**Taxes:** Grantee certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Grantee to County of El Dorado or AQMD. Grantee agrees that it shall not default on any obligations to County of El Dorado or AQMD during the term of this Agreement.

#### **ARTICLE VI**

**Rights to Emission Reductions:** Grantee transfers and conveys to AQMD all rights and claim to ownership of the emission reductions achieved through the installation and operation of any electric vehicle charging station or any installation supplies funded by this Agreement. Grantee shall not use or attempt to use the emission reductions

achieved by the Project as emission reduction credits. Grantee hereby fully and completely relinquishes such rights for the useful life of the Project.

#### **ARTICLE VII**

**Accident Prevention:** Grantee shall exercise all reasonable and necessary precautions for the protection of persons and property. All care shall be employed to ensure that the work proceeds under the highest standards of safety and prudence, and in compliance with all applicable laws and regulations.

#### **ARTICLE VIII**

**Compliance with Applicable Laws:** Grantee shall comply with all federal, State, and local laws and ordinances which are or may be applicable to the Project to be undertaken by Grantee including but not limited to California Health and Safety Code sections 44220 et seq, all Air Resources Board and AQMD criteria thereunder, prevailing wage and work day definitions where applicable, Government Code Section 8546.7, contracting license requirements and permits.

#### **ARTICLE IX**

**Non-Allocation of Funds:** The terms of this Agreement and the services to be provided thereunder are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified or this Agreement terminated at any time by giving Grantee thirty (30) days prior written notice.

#### **ARTICLE X**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the Contract Administrators. Said amendments shall become effective only when in writing and fully executed by the Contract Administrators.

#### **ARTICLE XI**

**Contractor to AQMD:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from AQMD and its staff. It is further agreed that in all matters pertaining to this Agreement, Grantee shall act as contractor only to AQMD and shall not act as contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Grantee's responsibilities to AQMD during term hereof.

#### **ARTICLE XII**

**Confidentiality:** Grantee shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Grantee, and all Grantee's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to AQMD for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.



### **ARTICLE XIII**

**Independent Contractor Liability:** Grantee is, and shall be at all times, deemed as an independent contractor and shall be wholly responsible for the acts of Grantee's employees, associates, and subcontractors, in connection with the implementation of the Project, and in performance of the work, duties and obligations by Grantee under this Agreement.

Grantee shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. AQMD shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Grantee or its employees. AQMD shall retain the right to administer this Agreement so as to verify that Grantee is performing its obligations in accordance with the terms and conditions thereof.

ARTICLE XIII, Independent Contractor Liability, shall survive any termination of this Agreement.

### **ARTICLE XIV**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that AQMD may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of AQMD business, AQMD will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, AQMD shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and AQMD released from any further liability hereunder.

In addition to the above, should the Board of Directors during the course of a given year for financial reasons reduce or order a reduction in the budget for AQMD for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of AQMD, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

### **ARTICLE XV**

**Audits, Inspections and Enforcement:** Grantee shall at any time during regular business hours, and as often as AQMD may deem necessary, make available to AQMD for examination all of Grantee's records and data with respect to the matters covered by this Agreement. Grantee shall, and upon request by AQMD, permit AQMD to audit and inspect all of such records and data necessary to ensure Grantee's compliance with the



terms of this Agreement. Grantee shall be subject to an audit by AQMD or its authorized representative to determine if the revenues received by Grantee were spent in accordance with the terms and conditions of this Agreement. If, after audit, AQMD makes a determination that funds provided Grantee pursuant to this Agreement were not spent in conformance with this Agreement or any other applicable provisions of law, Grantee agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions.

Grantee shall retain all records and data for activities performed under this Agreement for at least three (3) years from the date of final payment under this Agreement or until all state and federal audits are completed for that fiscal year, whichever is later.

Grantee acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Grantee shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records, and documentation necessary to demonstrate performance under the Agreement.

The obligations set forth in this ARTICLE XV, Audits, Inspections and Enforcement, shall survive any termination of this Agreement.

#### **ARTICLE XVI**

**Termination:** AQMD may immediately suspend or terminate this Agreement for cause, in whole or in part, where in the determination of AQMD there is:

1. An illegal or improper use of the grant funds;
2. A failure to comply with any term of this Agreement;
3. A substantially incorrect or incomplete report submitted to AQMD; or
4. Improperly performed services.

In no event shall any payment by AQMD constitute a waiver by AQMD of any breach of this Agreement or any default, which may then exist on the part of Grantee. Neither shall such payment impair or prejudice any remedy available to AQMD with respect to the breach or default. AQMD shall have the right to demand of Grantee the repayment to AQMD of any funds disbursed to Grantee under this Agreement which in the judgment of AQMD were not expended in accordance with the terms of this Agreement. Grantee shall promptly refund any such funds upon demand.

In addition to immediate suspension or termination, AQMD may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

Either party may terminate this Agreement for any or no reason at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate.

In such case, AQMD shall, subject to ARTICLE IV, Compensation, pay it's pro rata share of the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination. Upon such termination, the entire work product produced by Grantee and any unexpended funds shall be promptly delivered to AQMD.

#### **ARTICLE XVII**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices shall be in duplicate and addressed as follows:

To AQMD:

County of El Dorado  
Air Quality Management District  
330 Fair Lane, Building A  
Placerville, California 95667

Attn: Dave Johnston, Air Pollution Control Officer

or to such other location as AQMD directs.

Notices to Grantee shall be addressed as follows:

Crystal View Enterprises, Inc.  
6529 Pony Express Trail  
Pollock Pines, California 95726

Attn: Tooraj Agahi, CEO

or to such other location as Grantee directs.

#### **ARTICLE XVIII**

**Change of Address:** In the event of a change in address for Grantee's principal place of business, Grantee's Agent for Service of Process, or Notices to Grantee, Grantee shall notify AQMD in writing as provided in ARTICLE XVII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by AQMD's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XIX**

**Time is of the Essence:** It is understood that for Grantee's performance under this Agreement, time is of the essence. The parties reasonably anticipate that Grantee shall, to the reasonable satisfaction of AQMD, complete all activities outlined in ARTICLE II, Scope of Work.



## **ARTICLE XX**

**Indemnity:** Grantee shall defend, indemnify, and hold AQMD, its Board, officers, agents, and employees harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, AQMD employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with or resulting from public use of the charging stations or the performance by Grantee, its officers, agents, subcontractors or employees of Grantee's duties under this Agreement, unless such claim, loss, damage, injury or death is the result of the sole or active negligence of AQMD. This duty of Grantee to indemnify and save AQMD harmless includes the duties to defend set forth in California Civil Code Section 2778. Except as provided in this Article, in no event shall AQMD be liable to Grantee or any third party for any direct, indirect, consequential, special, incidental, or punitive damages for the design, manufacture, operation, maintenance, performance, or demonstration of the electric vehicle charging stations under any theory, including but not limited to tort, contract, breach of warranty, or strict liability.

This indemnification obligation shall survive any termination of this Agreement.

## **ARTICLE XXI**

**Insurance:** Grantee shall provide proof of a policy of insurance satisfactory to County of El Dorado's Risk Management Division and documentation evidencing that Grantee maintains insurance that meets the following requirements:

- A. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- B. Grantee shall furnish a certificate of insurance satisfactory to County of El Dorado's Risk Management Division as evidence that the insurance required above is being maintained.
- C. The insurance will be issued by an insurance company acceptable to County of El Dorado's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- D. Grantee agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Grantee agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Grantee agrees that no work or services shall be performed prior to the giving of such approval. In the event Grantee fails to keep in effect at



all times insurance coverage as herein provided, the County of El Dorado and/or AQMD may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- E. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without prior written notice to County of El Dorado and AQMD; and
  - 2. AQMD, its officers, officials, employees, and volunteers and the County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- F. Grantee's insurance coverage shall be primary insurance as respects County of El Dorado, AQMD, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County of El Dorado, AQMD, their officers, officials, employees, or volunteers shall be in excess of Grantee's insurance and shall not contribute with it.
- G. Any deductibles or self-insured retentions must be declared to, and approved, by the County of El Dorado and AQMD. At the option of the County of El Dorado and AQMD, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County of El Dorado, AQMD, their officers, officials, employees, and volunteers; or Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- H. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County of El Dorado, AQMD, their officers, officials, employees, or volunteers.
- I. The insurance companies shall have no recourse against the County of El Dorado, AQMD, their officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- J. Grantee's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- K. In the event Grantee cannot provide an occurrence policy, Grantee shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- L. The certificate of insurance shall meet such additional standards as may be determined by the County of El Dorado and AQMD, either independently or in

consultation with County's Risk Management Division as essential for protection of the County of El Dorado and AQMD.

#### **ARTICLE XXII**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Grantee attests that it has no current business or financial relationship with any AQMD employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. AQMD represents that it is unaware of any financial or economic interest of any public officer or employee of Grantee relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE XVI, Termination, herein.

#### **ARTICLE XXIII**

**California Residency (Form 590):** Grantee shall submit a Form 590 prior to execution of this Agreement, or seven (7) percent of each payment made to Grantee will be withheld during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

#### **ARTICLE XXIV**

**County Payee Data Record Form:** Grantee shall file a County Payee Data Record Form with County of El Dorado, unless Grantee has on file with County of El Dorado a Department of the Treasury Internal Revenue Service Form W-9.

#### **ARTICLE XXV**

**Licenses:** Grantee represents that it and any and all subcontractors, if any, employed under this Agreement are duly certified or licensed in good standing by the State of California to perform the services contemplated under this Agreement, and that Grantee and all subcontractors shall maintain said certificates and licenses in good standing throughout the term of this Agreement.

#### **ARTICLE XXVI**

**Business License:** County of El Dorado's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County of El Dorado business license unless exempt under County Ordinance Code Section 5.08.070. Grantee warrants and represents that it shall comply with all of the requirements of County of El Dorado's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXVII**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be



brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**ARTICLE XXVIII**

**Contract Administrator:** The AQMD Officer or employee with responsibility for administration of this Agreement is Dave Johnston, Air Pollution Control Officer, or successor. The Grantee Officer or employee with responsibility for administration of this Agreement is Tooraj Agahi, Chief Executive Officer, or successor.

**ARTICLE XXIX**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

**ARTICLE XXX**

**Partial Invalidity:** If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE XXXI**

**Binding on Successors:** This Agreement, including all covenants and conditions contained therein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, assigns, and legal representatives.

**ARTICLE XXXII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

**ARTICLE XXXIII**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**ARTICLE XXXIV**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

**Requesting Agreement Administrator Concurrence:**

By:   
Dave Johnston  
Air Pollution Control Officer

Dated: 11/30/15

**IN WITNESS WHEREOF**, the parties hereto have executed this Funding Agreement on the dates indicated below.

**--COUNTY OF EL DORADO  
AIR QUALITY MANAGEMENT DISTRICT--**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Board of Directors  
"AQMD"

Attest:  
James S. Mitrison  
Clerk of the Board

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Deputy Clerk

**--CRYSTAL VIEW ENTERPRISES, INC.--**

By: 

Tooraj Agahi  
Chief Executive Officer  
"Grantee"

Dated: NOV. 23, 2015

By: 

Adorea C. M. Agahi  
Chief Financial Officer

Dated: 11.23.15