

# **Request for Proposals**

## **El Dorado County Air Quality Management District**

### **Motor Vehicle Emission Reduction**

### **Electric Vehicle Charging Station Projects 2017**

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#### **Background**

In 1990, Assembly Bill 2766 (AB 2766) was adopted into the California Health and Safety Code. AB 2766 authorized the Department of Motor Vehicles (DMV) to collect a motor vehicle registration clean air surcharge of \$4 per vehicle. Revenues generated from the surcharge are utilized by the Air Quality Management District (AQMD) for grant programs that reduce air pollution from motor vehicles in order to implement the California Clean Air Act and internal operations. Grant programs include alternative fueled vehicles, electric vehicle infrastructure, shuttles, park and ride facilities, bike trails, dirt road paving, and others. Internal operations include planning, monitoring, enforcement, and technical studies.

#### **Purpose**

This is a competitive grant program designed to improve air quality. The AQMD's goal is to further reduce motor vehicle emissions by establishing Electric Vehicle Supply Equipment (EVSE) or chargers throughout the County at retail business locations and points of interest. Projects will be evaluated, ranked and presented to the El Dorado County Air Quality Management District Board of Directors for award consideration.

#### **Grant Funding**

Approximately \$175,000 will be available for the grant term. Grant funds will cover the cost of charger equipment and installation up to \$5,000 per Level 2 EVSE charging station. The Board of Directors reserves the right to approve proposals, reject proposals, or fund an amount less than the amount requested. Proposals will be accepted until April 28, 2017.

#### **Matching Funds**

**As a project match, applicants must agree to:**

- Provide electricity to the charging stations.
- Make the chargers available for public use for a minimum of five (5) years.
- Provide electricity free of charge to the public for a minimum of two (2) years.
- Designate parking space(s) for electric vehicles.
- Ensure one of the chargers is ADA van accessible. It does not have to be an exclusive ADA space.
- Make the chargers available for public use during business hours.
- Maintain chargers according to manufacturer's recommendations, including repairs if needed.

#### **Applicant Eligibility**

Retail business operators, owners, and retail commercial property owners located within El Dorado County are eligible to apply for these grants. El Dorado County jurisdictions including:

cities, special districts, other political subdivisions and jurisdictions joined together by JPAs or MOUs, and non-profit organizations are also eligible to apply for these grants.

### **Payment of Grant Funds**

Grantees must obtain a minimum of two quotes from licensed electrical contractors for the purchase and installation of EVSE and provide them to AQMD. Grant funds will provide 80% of the cost (up to \$4,000 per charger) in advance. The balance will be paid on a reimbursement basis for the actual eligible costs directly related to the implementation of the project as approved in the Contract. All payment requests must include an itemization with documentation of claimed expenses (e.g., itemized receipts, proof of payment invoices, etc.). The AQMD shall not under any circumstances reimburse Contractor for commitments made by Contractor for services not performed or materials not received.

### **Reporting Requirements**

The AB 2766 grant is performance based. Periodic performance reports are required to ensure projects are on schedule and within parameters approved by AQMD. Grantees must annually report any equipment breakdowns and an estimate of EVSE usage.

### **Grant Term**

The grant term is from the Notice to Proceed date through one year later. All costs must be incurred during this term. The final payment request is due two months after the end of the grant term. Failure to submit final payment request and final report with appropriate documentation by the due date may result in Payment Request rejection and forfeiture of claims for costs incurred.

### **Proposals**

Proposal submittal constitutes an agreement to all conditions set forth in the RFP. Proposals must include all required information, letters of support, and technical appendices as follows:

Project Summary (Attachment 1) - Provide basic information indicated, including the number of chargers to be installed, a map depicting the approximate locations, an estimate of the number of customer vehicle trips to the site on an annual basis, and an estimate of how many customers will utilize the proposed EVSE on an annual basis.

Public Agency Authorization Letter/Resolution – Public agency applicants must provide a governing body letter/resolution authorizing proposal submittal. Authorization must identify grant administrator. For joint proposals, the authorization must be signed by an authorized representative from each entity.

Funding Request/Breakdown of Cost - Include amount of money requested from AB 2766 DMV Surcharge fund and total project cost. Itemize the equipment to be purchased and the installation labor cost.

Match Requirement – State commitment to comply with the matching requirement and agree to acknowledge that project was funded by AQMD, by allowing the placement of a sign on the EVSE equipment.

## **Evaluation**

Proposals will be evaluated based upon the number of customer vehicle trips and the distance from other public chargers located in El Dorado County. AQMD will, in its sole discretion, determine which project(s) will make the best use of grant funds.

Respondents are advised that:

- Responses will be accepted on a continuous basis after RFP is released up until the deadline.
- Incomplete responses will not be accepted.
- All components of the proposal are mandatory.
- Failure to include all requested information may result in rejection.
- Minor or inconsequential deviations may be waived by the Air Pollution Control Officer.
- AQMD reserves the right to reject any and all of the responses to the RFP.

## **Order of Precedence**

In the event of any conflict between or among the terms and conditions of this Request for Proposals and documents referred to herein, such conflict shall be resolved by giving precedence in the following order of priority:

- (1) Request for Proposals
- (2) Attachment 2 - Sample Contract
- (3) Attachment 1 - Project Summary

## **Eligible Costs**

Eligible costs are direct costs associated with implementing the project, which are incurred after receiving the Notice to Proceed and by the end of the grant term. AQMD reserves the right to make, in its sole discretion, final determinations regarding cost eligibility for each project.

## **Ineligible Costs**

Any costs not directly related to the project are ineligible for grant or matching funds. Ineligible costs using grant or matching funds include, but are not limited to:

- Costs not specifically identified in the Proposal, unless approved in writing by the Air Pollution Control Officer (APCO) prior to costs being incurred;
- Costs covered by another government grant, contract, or loan;
- Expenses incurred for meetings, workshops, or training not associated with the project;
- Personnel travel or per diem costs, unless approved in writing by the APCO prior to the costs being incurred;
- Food or beverages;
- Overhead expenses such as costs for utilities, office supplies, and other miscellaneous costs incurred during the project;
- Overtime costs (except for local government staffing during evening or weekend events when law or labor contract requires overtime compensation), unless approved in writing by the APCO prior to the costs being incurred.
- Any personnel costs not directly related to salaries and/or benefits;
- Any personnel costs incurred as a result of any employee assigned to the project funded by the grant while not actually working on the project (i.e., working on other tasks, use of accrued sick leave, vacation, etc.)
- Any costs not consistent with local, state, and federal guidelines and regulations;
- Interest charges or payments on bonds or indebtedness required to finance project costs;
- Fines or penalties due to violation of federal, state, or local laws, ordinances, or regulations;

- Cameras, cell phones, electronic personal data devices, and/or pagers;
- Costs connected with contractor claims against the grantee; and
- Any costs not deemed appropriate by the APCO.

**Audit Requirements**

All grantees are required to comply with the following:

1. **Audit/Records Access:** Grantees agree that AQMD, El Dorado County Auditor, California Air Resources Board, Bureau of State Audits, or their designated representative(s) shall have the right to review and copy any records and supporting documentation pertaining to contract performance. Grantees agree to maintain such records for a minimum of three years after final payment, unless a longer period of records retention is stipulated or required by law, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute, or audit, whichever is later. Grantees agree to allow designated representative(s) access to such records during normal business hours and allow interviews of any employees who might reasonably have information related to such records. Further, grantees agree to include a similar right to audit records and interview staff in any contract or subcontract related to contract performance.
2. **Personal Jurisdiction Waiver:** If as a result of an audit finding, AQMD seeks reimbursement of costs paid to a grantee, the grantee hereby waives any jurisdictional defenses as a defense to any action in any court of the State of California for recovery of such funds.

**Limitations:**

This RFP does not commit AQMD to award contracts, pay any proposal presentation costs, or procure or contract for services or supplies. Respondents are entirely responsible for proposal development costs. All proposals become AQMD property and will not be returned.

**Contacts:**

Technical  
 Dave Johnston, Air Pollution Control Officer  
 Air Quality Management District  
 360 Fair Lane  
 Placerville, CA 95667  
 (530) 621-7578

Administrative  
 Scott Wilson  
 Air Quality Management District  
 360 Fair Lane Court  
 Placerville, CA 95667  
 (530) 621-7554

**Submission of Proposals:**

Two copies of all responses to this RFP must be received by 4:00p.m. April 28, 2017, in the Air Quality Management District office at 360 Fair Lane, Placerville, CA 95667. Responses must be marked **Attn. Scott Wilson, Time Critical, please hand deliver.**

**Proposal Withdrawal and Modifications**

Applicants may withdraw their proposal by submitting a written request to the APCO, signed by the applicant or authorized agent at any time prior to the proposal submission deadline. The respondent may thereafter submit a new proposal prior to the deadline. Proposal modifications, oral or written, will not be considered after the deadline. Applicants are not to initiate contact with and lobby AQMD during the project evaluation phase about proposed projects.

**Notification:**

The AQMD will notify applicants within one week of AQMD Board of Directors decision.

**Contract:**

Projects chosen for funding will be required to enter into a contract with AQMD and failure to timely execute the contract may result in a loss of the grant funds. Grantees must comply with County vendor and insurance requirements for service agreements. AQMD may require a proposal to be modified prior to being included as an attachment to a contract to help clarify the project commitment.

# Attachment 1

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## PROJECT SUMMARY

**Applicant:**

**Contact Person:**

**Address:**

**Telephone:**

**FAX:**

**Email:**

**Project Description:**

**(attach map)**

**Match Commitment and Acknowledgement:**

**By signing below the applicant acknowledges that if the proposal is awarded, the contract will require compliance with the match and acknowledgement requirements.**

**X**

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Applicant Signature and Date

## Funding Request Cost Breakdown

Expand Table as necessary to itemize all expenditures

|                      |  |  |
|----------------------|--|--|
| Materials & Supplies |  |  |
| Equipment            |  |  |
| Labor                |  |  |

**PROJECT GRAND TOTAL: \$** \_\_\_\_\_

# Attachment 2

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## SAMPLE CONTRACT

XXXXXX, Inc.

Level 2 Electric Vehicle Charging Stations

FUNDING AGREEMENT #XXX-XXXX

**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 XXXXX, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is XXXXX, California 95XXX (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 at XXXXX; 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:

**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 the "Scope of Work" Article. 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. Grantee shall ensure that any contract it executes with a subcontractor (hereinafter referred to as "Subcontractor") for the Project shall include all the obligations, promises, and

responsibilities of Grantee under this Agreement.

**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 the "Termination" Article. Grantee shall:

- Purchase XXXXX Level 2 Electric Vehicle Supply Equipment (EVSE) charging stations.
- Install XXXXX EVSE at XXXXX, California.
- Provide electricity to the charging stations.
- Make the chargers available for public use during business hours. 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.

**Term:** This Agreement shall become effective upon execution and shall expire five (5) years thereafter unless terminated earlier in accordance with the "Termination" Article.

**Compensation:** AQMD will make one initial advance payment to Grantee in the amount of \$XXXXXX 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.

Any costs not directly related to the project are ineligible for grant or matching funds. Ineligible costs using grant or matching funds include, but are not limited to:

- Costs not specifically identified in the Proposal, unless approved in writing by the Air Pollution Control Officer (APCO) prior to costs being incurred;
- Costs covered by another government grant, contract, or loan;
- Expenses incurred for meetings, workshops, or training not associated with the project;
- Personnel travel or per diem costs, unless approved in writing by the APCO prior to the costs being incurred;
- Food or beverages;
- Overhead expenses such as costs for utilities, office supplies, and other miscellaneous costs incurred during the project;
- Overtime costs (except for local government staffing during evening or weekend events when law or labor contract requires overtime compensation), unless approved in writing by the APCO prior to the costs being incurred.
- Any personnel costs not directly related to salaries and/or benefits;
- Any personnel costs incurred as a result of any employee assigned to the project funded by the grant while not actually working on the project (i.e., working on other tasks, use of accrued sick leave, vacation, etc.)
- Any costs not consistent with local, state, and federal guidelines and regulations;
- Interest charges or payments on bonds or indebtedness required to finance project costs;
- Fines or penalties due to violation of federal, state, or local laws, ordinances, or regulations;
- Cameras, cell phones, electronic personal data devices, and/or pagers;
- Costs connected with contractor claims against the grantee; and
- Any costs not deemed appropriate by the APCO.

The total obligation of AQMD under this Agreement shall not exceed \$XXXXX, 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 or delivered to AQMD at the following address:

County of El Dorado  
Air Quality Management District  
360 Fair Lane, Building B  
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 the "Scope of Work" Article, 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.

**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.

**Rights to Emission Reductions:** Grantee transfers and conveys to AQMD all rights and claims 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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

The "Independent Contractor Liability" Article, shall survive any termination of this Agreement.

**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.

**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 "Audits, Inspections and Enforcement" Article, shall survive any termination of this Agreement.

**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 and sole discretion 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 the "Compensation" Article, 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.

**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:

XXXXX, Inc./LLC/etc.  
XXXXX  
XXXXX, California 95XXX

Attn: XXXXX, Title

or to such other location as Grantee directs.

**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 the "Notice to Parties" Article. 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.

**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 the "Scope of Work" Article.

**Indemnity:** Grantee shall defend, indemnify, and hold AQMD and El Dorado County, their 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 or El Dorado County 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 the installation, maintenance, or 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 or El Dorado County. This duty of Grantee to indemnify and save AQMD and El Dorado County 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 or El Dorado County 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.

**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. Before the commencement of any work required in the performance of the Agreement, Grantee shall provide documentation of Subcontractor's policy of insurance satisfactory to County of El Dorado's Risk Management Division evidencing that Subcontractor maintains insurance that meets the following requirements:
  - 1. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Subcontractor as required by law in the State of California.
  - 2. 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.
  - 3. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Subcontractor in the performance of the Agreement.
  - 4. The Subcontractor's insurance companies shall have no recourse against AQMD, its officers and employees or any of them, or the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

Unless otherwise agreed by the parties, Grantee shall cause all of its Subcontractors to maintain the insurance coverages specified in this Insurance section and name Grantee as an additional insured on all such coverages as well as AQMD, its officers, officials, employees, and volunteers and the County of El Dorado, its officers, officials, employees, and volunteers as provided for in Section F.2 of this provision. Evidence thereof shall be furnished as El Dorado County may reasonably request.

- C. Grantee shall furnish certificates of insurance satisfactory to County of El Dorado's Risk Management Division as evidence that the insurance required above is being maintained.
- D. 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.

- E. 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.
- F. The certificates 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.
- G. The insurance coverage required herein 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.
- H. 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.
- I. 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.
- J. 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.

- K. Grantee's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- L. 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.
- M. The certificates 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.

**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 the "Termination" Article, herein.

**Nondiscrimination:**

- A. This Agreement involves funding from the state and, as a consequence, Grantee and any of its subcontractors shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Grantee and its employees, representatives, and subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status; Grantee shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); and the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee, its employees, representatives, and subcontractors shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Grantee shall include these nondiscrimination and compliance

provisions in any of its agreements that affect or are related to the services performed under this Agreement.

- C. Grantee's signature shall provide any certifications necessary under the laws of the State of California, including but not limited to Government Code Section 12990.

**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.

**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.

**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.

**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.

**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.

**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 XXXXXXXX, title, or successor.

**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.

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

**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.

**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.

**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.

**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: \_\_\_\_\_

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

Dave Johnston  
Air Pollution Control Officer

**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. Mitrisin  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk

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

**-- XXXXXX, I N C. --**

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

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

"Grantee"