

Attachment 1

AGREEMENT FOR ELECTRIC VEHICLE CHARGING STATIONS

AGREEMENT FOR ELECTRIC VEHICLE CHARGING STATIONS AND SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (including Exhibits A through G, attached hereto and incorporated herein by reference, and all Work Orders, "Agreement"), effective as of the later of the dates beneath the parties' signatures below ("Effective Date") is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and PowerFlex Systems, LLC with an address at 15445 Innovation Drive San Diego, California, 92128 (hereafter CONTRACTOR and, together with COUNTY, collectively, the "parties" and each a "party") wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, COUNTY desires to accelerate the rate of reduction of greenhouse gas emissions in support of the County of Santa Barbara's Climate Action Plan, and improve Santa Barbara County air quality through the increased adoption of zero-emission vehicles (ZEV) in the County Vehicle Fleet;

WHEREAS, COUNTY has entered into previous agreements with CONTRACTOR to procure electric vehicle charging stations and related software to support the adoption of ZEVs in its fleet, and COUNTY desires to further procure equipment from the CONTRACTOR in order to have a homogeneous inventory of electric vehicle chargers to fuel its ZEV fleet to provide a consistent electric vehicle ("EV") charging experience at all County chargers for both employees and the public;

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to provide electric vehicle charging stations and perform the related special services required by COUNTY (installation design, engineering, permitting, incentive management, hardware procurement, networking, software support, remote software maintenance, and remote cloud related services), and COUNTY desires to purchase electric vehicle charging stations from, and retain the services of, CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. DESIGNATED REPRESENTATIVE

Brandon Kaysen at phone number (805) 568-2628 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY ("COUNTY REPRESENTATIVE"). Ross Parker, Sr. Director of Execution West at phone number (207) 890-2809 is the authorized representative for CONTRACTOR. Changes in COUNTY REPRESENTATIVE shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Brandon Kaysen, County of Santa Barbara, 1105 Santa Barbara Street, Courthouse East Wing, 2nd Floor, Santa Barbara, CA 93101
To CONTRACTOR: Ross Parker, 15445 Innovation Drive San Diego, California, 92128

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, each notice and written consent hereunder shall be deemed to be received five (5) days following the deposit of such notice or written consent in the U.S. Postal Service mail. This Notices section shall not be construed as meaning that either party hereto agrees to service of process except as required by applicable law.

3. ELECTRIC VEHICLE CHARGING EQUIPMENT AND SCOPE OF SERVICES

- A. **Equipment**. CONTRACTOR shall deliver to COUNTY electric vehicle charging stations, together with licenses and chargers, pedestals, nexus load management controllers, kiosks and incidental design services (“Design Services”) necessary for installation and use of the EV charging stations by the COUNTY (all of the foregoing deliverables, collectively, the “EV Charging Stations”), as specified in the Statement of Work attached hereto as Exhibit A and incorporated herein by reference (“Statement of Work”). CONTRACTOR shall deliver the EV Charging Stations to the address(es) specified in the Statement of Work or in Work Orders (defined below in 3.C) (the “Delivery Point(s)”) during COUNTY’s normal business hours or as otherwise instructed by COUNTY. All of the EV Charging Stations shall be delivered in undamaged and in good condition in full conformance with all requirements and specifications set forth herein and in the applicable Work Order(s).
- B. **Services**. CONTRACTOR shall provide ongoing services in connection with the EV Charging Stations, including Networking and Maintenance (defined below in Exhibit A, 3.C), access control, software support, billing, reporting, Software updates and maintenance, maintenance of the EV Charging Stations, warranty claims processing, and EV Charging Station management services, as described in greater detail in the Statement of Work and Work Orders (such ongoing services, collectively, the “Services”). For the avoidance of doubt, remote maintenance is included in the rate schedule set forth in Attachment B-2 and any on-site physical maintenance of the EV Charging and ancillary equipment will be provided by Contractor at Time and Materials according to the rate schedule set forth in Exhibit D – Form of Work Order.
- C. **Work Orders**. In addition to the Initial Order (defined below in Exhibit A 11), during the first five (5) years of the Term, COUNTY may purchase additional EV Charging Stations, and order Services for such EV Charging Stations, by submitting to CONTRACTOR a Work Order in the form attached hereto as Exhibit D and incorporated herein by reference (each a “Work Order”); *provided, however*, that (i) each Work Order shall set forth (a) the maximum aggregate dollar amount of payments payable by COUNTY thereunder, (b) the time of performance of Services thereunder, which shall in no event extend beyond the date that is ten (10) years after the Effective Date, and (c) the number of EV Charging Stations to be delivered thereunder, and (ii) no Work Order shall be effective unless and until such Work Order is approved by the COUNTY Board of Supervisors, which approval may with withheld in the sole discretion of the COUNTY Board of Supervisors.

D. Installation. COUNTY shall procure installation of the EV Charging Stations under separate agreement, and shall provide for maintenance of electrical components provided under such separate agreement in connection with such installation of the electric vehicle charging stations; provided, however, that the foregoing provisions of this Section 3.D. shall in no way limit the obligations of CONTRACTOR under Section 3.B., above, including, but not limited to, CONTRACTOR's obligations to provide maintenance services with respect to the electrical components included in the definition of "EV Charging Stations," above (e.g., chargers, pedestals, nexus load management controllers, and kiosks).

4. TERM

The term of this Agreement ("Term") shall commence on the Effective Date and shall terminate on the date that is the tenth (10th) anniversary of the Effective Date, unless earlier terminated in accordance with the provisions of this Agreement.

5. COMPENSATION OF CONTRACTOR

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address for COUNTY given in Section 2, above, following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice. Total payments to CONTRACTOR under this Agreement for the entire term of this agreement, including all Work Orders, shall not exceed the aggregate maximum amount of \$1,000,000 ("Maximum Aggregate Contract Amount").

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR (including all of its officers, agents, and employees), shall perform all of the Services under this Agreement as an independent contractor as to COUNTY, and not as an officer, agent, servant, employee, joint venture, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

7. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to deliver the EV Charging Stations, or to have the EV Charging Stations delivered in accordance with this Agreement on CONTRACTOR's behalf, and perform the Services required under this

Agreement. Accordingly, CONTRACTOR shall ensure the delivery of the EV Charging Stations in accordance with the provisions of this Agreement, and shall perform all of CONTRACTOR's obligations hereunder in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions at COUNTY'S request without additional compensation. All necessary permits and licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that none of CONTRACTOR or its employees and principals are debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR warrants that CONTRACTOR shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the delivery of the EV Charging Stations or the performance of Services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY; TERMS OF USE

- A. This Agreement, the Services provided hereunder, and COUNTY's use of the proprietary cloud enabled application software including the driver application, payments processing, energy management capabilities, adaptive charging functionality, and the "Axxcess" web-access portal and all related data and documentation owned by PowerFlex (collectively, the "PowerFlex Platform") are subject to applicable law and to the CONTRACTOR's standard terms of use attached hereto as Exhibit F (the "Terms of Use") applicable to "User" (as defined therein) and Exhibit G ("Privacy Policy"), which are hereby incorporated by reference into this Agreement; provided, however, that in the event of

any conflict between the Terms of Use set forth in Exhibit F and any other provision(s) of this Agreement, the Terms of Use set forth in Exhibit F shall control and prevail.

- B. CONTRACTOR may include CONTRACTOR trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations (collectively, "CONTRACTOR Markings") on any deliverables described in the Statement of Work or Work Order(s), including any EV Charging Stations; provided, however, that by including any such CONTRACTOR Markings on or in connection with any deliverable(s) hereunder (including under and Work Order(s)), CONTRACTOR hereby and thereby grants to COUNTY a royalty-free, non-assignable, non-transferable, and non-exclusive license to use all such CONTRACTOR Markings in connection with such deliverable(s).
- C. CONTRACTOR hereby grants to COUNTY a royalty-free, non-assignable, non-transferable, and non-exclusive license to use the PowerFlex Platform and all data, documents, reports, photos, designs, sound or audiovisual recordings, technologies, software, licenses, permissions, and any other materials and authorizations necessary for the use of the EV Charging Stations, and other materials and information provided or made available by CONTRACTOR to COUNTY in connection with this Agreement solely in accordance with the terms of this Agreement, and solely to the extent necessary for COUNTY to receive, access, and use the PowerFlex Platform as permitted herein during the Term. ("PowerFlex License"). CONTRACTOR shall take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the PowerFlex License and other rights provided to COUNTY hereunder. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY and COUNTY's employees, officers, supervisors, and agents against any third-party claim that the PowerFlex Platform, the EV Charging Stations, or any Services, use of the PowerFlex Platform in accordance with this Agreement, or other item(s) provided by CONTRACTOR hereunder infringe upon or misappropriate such third party's intellectual property rights or infringes upon U.S. intellectual property or other proprietary rights of any third party, and CONTRACTOR shall pay all damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Section 11(c) shall survive the expiration or termination of this Agreement.
- D. Solely to the extent necessary for CONTRACTOR to provide the Services and deliverables described in the Statement of Work or Work Order, COUNTY hereby grants to CONTRACTOR a royalty-free, non-assignable, non-transferable, and non-exclusive license during the Term to use COUNTY trademarks, logos, domain names, data collected by, through, or in connection with the EV Charging Stations, and other data and information that COUNTY provides or makes available to CONTRACTOR in connection with this Agreement (the foregoing trademarks, logos, domain names, data collected by, through, or in connection with the EV Charging Stations, and other data and information that COUNTY provides or makes available to CONTRACTOR in connection with this Agreement, collectively, "COUNTY Property"). COUNTY is and at all times shall be the owner of the COUNTY Property. Except as required by law, CONTRACTOR shall not release, distribute, or provide to any third party, or allow any third party to access, any COUNTY Property without the prior written consent of COUNTY in each instance.

12. NO PUBLICITY OR ENDORSEMENT

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY, or otherwise hold itself out in any way as an agent or representative of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects or this Agreement or any of the Services or deliverables hereunder, without obtaining the prior written approval of COUNTY in each instance.

13. FORCE MAJEURE.

- a. **No party hereto shall be considered in default or breach in the performance of such party's respective obligations hereunder to the extent that performance of such party's obligation(s) hereunder is prevented or delayed solely due to the occurrence of a Force Majeure Event (defined below), provided that (i) the delay or prevention, as applicable, of such party's performance of such obligation(s) is in no way attributable to any act or omission of such party, (ii) as soon as reasonably possible after the occurrence of such Force Majeure, such party gives the other party hereto written notice describing the particulars of such Force Majeure, the obligation(s) of such party that such party claims are delayed or prevented by such Force Majeure, the manner in which such party is delayed in or prevented from performing such party's obligation(s) hereunder, and the estimated duration of the delay or prevention of such party's performance of such obligation(s), and (iii) such obligation(s), and such party's liability for failure to perform such obligation(s), shall be suspended solely to the extent that such Force Majeure objectively prevents or delays such party's performance of such obligation(s).**
- b. **For purposes of this Agreement, "Force Majeure Event" shall mean the occurrence of any act or event that delays or prevents a party from timely performing its obligations under this Agreement, or from complying with requirements hereunder, provided that such act or event, despite the exercise of reasonable efforts by such party, cannot be avoided by, and is beyond the reasonable control of, and is in no way attributable to any act or omission of, such party. Force Majeure Events include acts of terrorism, earthquakes, fires, floods, war, riots, and labor disputes. The worldwide COVID-19 pandemic that has occurred and is continuing as of the Effective Date shall not constitute a Force Majeure Event.**
- c. **As of the Effective Date, to the best knowledge of each party, each party hereto can perform its obligations under this Agreement in accordance with the terms and conditions hereof.**

14. COUNTY PROPERTY AND INFORMATION

All of COUNTY's Property, documents, and information provided for CONTRACTOR's use in connection with the Services shall remain COUNTY's property, and CONTRACTOR shall return any and all such items in accordance with the Termination provisions of this Agreement and whenever otherwise requested by COUNTY. CONTRACTOR may use such items only to the extent necessary to provide the Services in accordance with the terms and conditions of this

Agreement. CONTRACTOR shall not disseminate any COUNTY Property, documents, or information without COUNTY's prior written consent in each instance.

15. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records in connection with this Agreement as necessary to document CONTRACTOR's compliance with the terms and conditions of this Agreement, including all Work Orders, and as would otherwise be kept by a reasonably prudent practitioner of CONTRACTOR's profession, and shall maintain all such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under this Agreement, including Work Orders (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in all such audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

16. INDEMNIFICATION, LIMITATIONS AND INSURANCE

CONTRACTOR agrees to the indemnification, limitations and insurance provisions as set forth in EXHIBIT C, attached hereto and incorporated herein by reference.

17. NONDISCRIMINATION

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

18. NONEXCLUSIVE AGREEMENT

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

19. NON-ASSIGNMENT

CONTRACTOR shall not assign, transfer, by operation of law or otherwise, or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY, and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for immediate termination of this Agreement and all Work Orders by COUNTY, in COUNTY's sole discretion. COUNTY's prior written

approval of CONTRACTOR's use of a subcontractor ("Permitted Subcontractor") shall not relieve CONTRACTOR of its obligations under this Agreement, and CONTRACTOR shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees, and for their compliance with all of the terms and conditions of this Agreement, including applicable Work Order(s), as if they were CONTRACTOR's own employees. Nothing contained in this Agreement shall create any contractual relationship between COUNTY and any of CONTRACTOR's subcontractors or suppliers. CONTRACTOR shall ensure that all persons performing Services, whether employees, agents, subcontractors, or anyone acting for or on behalf of CONTRACTOR, are properly licensed, certified or accredited as required by applicable law, and are suitably skilled, experienced and qualified to perform such Services.

20. TERMINATION

- A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
1. **For Convenience.** COUNTY may terminate this Agreement, including the Statement of Work and all Work Orders, in whole or in part, upon thirty (30) days' written notice. During such thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.
 2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the Term.
 3. **For Cause.** Should CONTRACTOR default in the performance of CONTRACTOR's obligations under this Agreement, including under any Work Order(s), or materially breach any of the provisions hereof or thereof, COUNTY may, in COUNTY's sole discretion, terminate or suspend this Agreement in whole or in part upon written notice to CONTRACTOR of such termination or suspension. Upon receipt of such notice, CONTRACTOR shall immediately discontinue all Services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date such notice is received by CONTRACTOR, unless the notice directs otherwise.
- B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

C. Upon termination, CONTRACTOR shall, subject to Section 20 of this Agreement, deliver to COUNTY all County Property and all other data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for Services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

21. SECTION HEADINGS

The headings of the several sections of this Agreement, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

22. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. REMEDIES NOT EXCLUSIVE

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

24. RESERVED

25. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

26. ENTIRE AGREEMENT AND AMENDMENT

This Agreement contains the entire understanding and agreement of the parties hereto with respect to the subject matter hereof, and there have been no promises, representations, agreements, warranties or undertakings by any of the parties hereto, either oral or written, of any

character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party hereto waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel. For the avoidance of doubt, this Agreement is comprised of the following documents:

- A. This Agreement for Electric Vehicle Charging Stations and Services of Independent Contractor;
- B. Exhibit A - The Statement of Work
- C. Exhibit B - Payment Terms
- D. Exhibit C – Insurance, Limitations and Indemnification
- E. Exhibit D - All Work Orders subsequently approved by the COUNTY Board of Supervisors during the Term, if any, in form attached hereto as Exhibit D.
- F. Exhibit E - The Work Order for the Initial Order.
- G. Exhibit F – Terms of Use
- H. Exhibit G – Privacy Policy

27. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

28. COMPLIANCE WITH LAW

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

29. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

30. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

31. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore,

by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

32. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

33. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

[Signatures on Next Page]

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **PowerFlex Systems, LLC**.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
Das Williams,
Chair, Board of Supervisors

Date: _____


RECOMMENDED FOR APPROVAL:

General Services

By:  _____
Kirk Lagerquist
Department Head

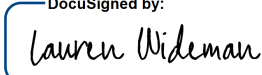
CONTRACTOR:

PowerFlex Systems, LLC

By:  _____
Name: Raphael Declercq
Title: _____

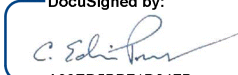
APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

By:  _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

By:  _____
Deputy

APPROVED AS TO FORM:

Greg Milligan, ARM
Risk Manager

By:  _____
Risk Management

EXHIBIT A

STATEMENT OF WORK

Contractor shall procure and deliver up to One Hundred Seventy (170) commercial-grade Level 2 - 7kw to 20kw EV Charging Stations, and up to Eight (8) 50kw to 350kw DC fast EV Charging Stations, Fifteen (15) Nexus Load Management Controllers, Fifteen (15) kiosks, and Eighty-Five (85) 6' Dual Pedestals on County-owned property for public and County fleet use. The County intends to charge the public for use of the electricity; therefore, the EV Charging Stations shall allow for point of sale transactions and revenue remittance to County. In addition to the EV Charging Stations, Contractor shall procure and deliver software, licenses, maintenance, warranties, and controls for the EV Charging Stations, as specified herein. Contractor shall deliver the EV Charging Stations and provide the Services in compliance with all applicable laws and public utilities requirements, including, but not limited to, Title 24 of the California Building Standards Code, Title 20, CalGreen I & II, ADA, Building, Safety, warranties, SCE, PG&E, Lompoc. The County shall procure installation of the EV Charging Stations under separate agreement.

1. Equipment. Contractor shall provide EV Charging Stations, together with software, licenses and electrical equipment necessary for installation and use of the EV Charging Stations by the County as described in this Statement of Work and in any applicable Work Order. Contractor shall deliver the EV Charging Stations to the address(es) specified in the applicable Work Order(s) (the "Delivery Point(s)") during the County's normal business hours or as otherwise instructed by the County. Contractor shall ensure that the EV Charging Stations are delivered in undamaged condition, free from defects. Contractor agrees to coordinate delivery and provide instructions as needed with County's chosen installer.
2. Service. Contractor shall provide ongoing Services in connection with each EV Charging Station, including access control, billing, reporting, software maintenance, warranty claims processing, and station management services, as specified in this Statement of Work and all applicable Work Order(s) for a period of five (5) years following the date on which such EV Charging Station is installed on behalf of the County.
3. Electric Vehicle Charging Stations:
 - A. Contractor shall provide to the County of Santa Barbara the EV Charging Stations, Electric Vehicle Controller(s) and kiosks as specified by the County in this Statement of Work and all applicable Work Orders. The County intends to charge the public for use of the electricity used by the EV Charging Stations; therefore, the EV Charging Stations shall deliver point-of-sale transactions, and Contractor shall remit revenue to the County on a quarterly basis as specified below. Contractor shall provide additional EV Charging Stations at the request of County as specified in subsequent Work Orders, which shall be subject to the terms and conditions set forth in this Agreement, including the payment terms provided for in Exhibit B.
 - B. The PowerFlex Platform software provided by Contractor in connection with the EV Charging Stations (the "Software") shall be the latest version of such Software that can provide the following:
 - i. Pricing setting for end users, billing practices, service fees, revenue distribution, and reports

- ii. Activate and test the EV Charging Stations;
 - iii. Process point-of-sale transactions;
 - iv. Network service that would capture data and sale;
 - v. Detailed revenue, and usage reports;
 - vi. Payment options for public access;
 - vii. Provide maintenance services and customer support for each EV Charging Station for five (5) years after installation of such EV Charging Station;
 - viii. All licenses necessary to use such software for the term of the Agreement;
 - ix. The Software regulating the chargers shall throttle the chargers to prevent demand spikes on the utility bills;
 - x. The EV Charging Stations shall have the ability to stop flow of power when not in use. The EV Charging Stations shall have over-current protection to prevent vehicles from drawing too much power.
- C. Contractor shall be responsible for providing and maintaining, as set forth in this Agreement, full functionality of the PowerFlex Platform and the EV Charging Stations and controls, including, but not limited to, providing power control, commissioning, software maintenance, warranty, Software, licenses, website, remote cloud-related services, reports, billing, and watts-per-station regulation in accordance with County requirements provided by County to Contractor in writing (all of the foregoing Contractor responsibilities in this Section 3.C, collectively, "Networking and Maintenance").
- i. For the first year of the Term, the costs of such Networking and Maintenance ("Networking and Maintenance Fees") shall be deemed to be paid in full by virtue of County's assignment of the County LCFS Credits to Contractor pursuant to the LCFS Agreement, as described in Section 7, below.
 - ii. For each year of the Term after the first year of the Term, Contractor shall invoice the County for Networking and Maintenance Fees in accordance with the Networking and Maintenance Fees Rate Schedule set forth in Attachment B2 to Exhibit B, attached hereto and incorporated herein by reference. The Networking and Maintenance Fees Rate Schedule reflects a discount in consideration of the monetary value of the County LCFS Credits assigned by County to Contractor hereunder. In the event that the value of the County LCFS Credits ever exceeds the Networking and Maintenance Fees, Contractor shall provide County with a credit, in the amount by which the value of the County LCFS Credits exceed the Networking and Maintenance Fees, applicable to subsequent Networking and Maintenance Fees payable by County.
 - iii. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, in no event shall the Networking and Maintenance Fees charged to the County by Contractor increase by more than three percent (3%) per year.

4. Software Service Provisions

- A. Data. Contractor shall provide to County an owner interface platform which shall enable and allow the County to access, analyze, synthesize into reports, and otherwise use, in accordance with County's specifications, all data collected by Contractor relating to use of the EV Charging Stations. Contractor shall use data collected by virtue of use of the EV Charging Stations solely to the extent necessary for the provision of Services in accordance with this Agreement. Upon termination of

this Agreement, Contractor shall facilitate portability of such data to enable the County's continuing use of such data with third-party interface platforms following termination of this Agreement. During the Term of this Agreement, Contractor shall comply with all rules, regulations and policies of the County, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by the County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

B. Contractor shall provide the COUNTY with the ability to download the following data reports in CSV form for the periods of time requested for specified EV Charging Stations as requested by COUNTY:

- i. Kilowatt hours
- ii. Quantity of Charge Sessions
- iii. Idle time – Total amount of time one vehicle is connected to the charger without charging
- iv. Charge time – Total amount of time one vehicle is connected to the charger while charging
- v. Session length – Charge time plus dwell time
- vi. Average Utilization – Average number of kilowatt hours used within a period of time
- vii. Quantity of megawatt hours or kilowatt hours accumulated
- viii. Quantity of Unique Drivers – Number of different vehicles which connect to the electric vehicle service equipment.

C. Services provided by Contractor to the County shall include the following:

- i. Bill each EV Charging Station end user for the usage of electricity via such EV Charging Station and any other Dwell Time Fees as specified by the COUNTY in the applicable Statement of Work (e.g., dwell time fees for occupancy of an EV Charging Station parking space by an end user for more than four hours);
- ii. Separate electricity and financial bills for COUNTY Fleet vehicles;
- iii. Separate electricity and financial bills for public usage;
- iv. Separate electricity and financial bills for COUNTY workplace usage;
- v. Prohibit the distribution of electricity of specified electric vehicle service equipment.

5. Software, licenses, controls for electric vehicle charger

A. EV Charging Station Technical Specifications

All EV Charging Stations shall meet or exceed the following specifications and requirements:

- i. UL listed compliant equipment with National Electrical Code and FCC regulations for safety and operation requirements;
- ii. Americans with Disabilities Act (ADA) compliant;
- iii. New equipment;
- iv. Level 2 Chargers connector SAE J1772 with cord management cable;
- v. County access to the EV Charging Station network to allow for the management of charging operations including with respect to access, pricing, power distribution, and charging notifications;

- vi. Accessible for EV charging purposes to all members of the public, with no membership of any kind required for access;
- vii. Accept and process point-of-sale transaction payments via all major credit cards and ATM cards through a secure system;
- viii. Station location and real-time availability visibility to users via website(s) posted on each EV Charging Station;
- ix. PowerFlex support team available Mon-Fri 7:00am-6:00pm Pacific Time, and Saturday and Sunday 9:00am-6:00pm Pacific Time (“normal support hours”); and
- x. Each EV Charging Station shall be covered by a Cybersecurity Insurance Policy, in addition to the insurance requirements set forth in Exhibit C, maintained by PowerFlex that comports with County requirements for protection of the County in the event of a security breach of the mobile payment platform.

B. Service Provider(s)/Data Capture

The EV Charging Station network shall process, transfer, and backup all EV Charging Station data. The EV Charging Station network shall provide the following information for each EV Charging Station transaction, at each EV Charging Station, and must comply with all local, state and federal regulations:

- i. Charging data such as date and time of usage (start and stop time) and utilization rates;
- ii. Total kWh and Total kW draw;
- iii. Total dollar amount charged to each end user;
- iv. Station status and health in real time;
- v. EV Charging Station malfunction and operating errors.

6. Maintenance, Warranties

A. Maintenance and Communications

The Contractor shall provide remote maintenance services to ensure all EV Charging Station equipment is properly monitored, tested, and activated for proper operation throughout the Term of this Agreement. The network communications system service provided shall remotely monitor the EV Charging Stations for any error or malfunction 24 hours per day, seven days per week. County will have access to PowerFlex support team Mon-Fri 7:00am-6:00pm Pacific Time, and Saturday and Sunday 9:00am-6:00pm Pacific Time (“normal support hours”) via the PowerFlex support email support@powerflex.com and, for electrical vehicle charger issues, via telephone at 833-479-7359, (ii) conduct remote troubleshooting, and (iii) provide prompt notice to County of unplanned outages identified via remote data analysis within 3 hours during normal support hours and within 24 hours outside of normal support hours. In the event of an equipment or hardware malfunction or failure, an on-site maintenance crew shall respond to the site within three (3) business days from the time such issue is reported to Contractor.

B. Warranties

- i. Contractor shall examine the sites, plans and specifications provided by County for each EV Charging Station site to confirm that the EV Charging Stations will function as specified herein at each such location.

- ii. Contractor shall use commercially reasonable efforts to enforce the original equipment manufacturer's warranty ("OEM Warranty" or "OEM Warranties") on all EV Charging Station equipment and hardware, for the duration of such OEM Warranties ("OEM Warranty Period"), subject to the terms and conditions of such OEM Warranties. Concurrently with each EV Charging Station delivery hereunder, Contractor shall deliver to County true and correct copies of each OEM Warranty applicable to such EV Charging Station(s). In the event of any error or failure of EV Charging Station equipment during the OEM Warranty Period, Contractor shall commence repair or replacement within three (3) business days from the date Contractor is notified of such effort or failure, and shall diligently pursue and complete the necessary repair or replacement of such components within five (5) business days of such notification. Activities covered under said warranty shall be performed by local service providers, where possible (defined as a service provider based within the Santa Barbara region which includes San Luis Obispo, Ventura, and Santa Barbara Counties).
- iii. Contractor warrants to County that, for the duration of the OEM warranty, the EV Charging Stations shall (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by County, as set forth in this Statement of Work; (c) be fit for their intended purpose and operate as intended and in accordance with the specifications set forth in this Statement of Work and applicable Work Order(s). These warranties shall survive delivery, inspection, acceptance and payment of or for the EV Charging Stations by the County. To the extent within the OEM Warranty period, Contractor shall correct any and all errors, omissions and other breaches of the warranty set forth in this Section 6.B.iii, at the County's request, without additional compensation. To the extent that the OEM Warranty period extends beyond the Term, this Section 6.B shall survive the termination of this Agreement, but Contractor's obligations to facilitate any corrections or claims pursuant to such OEM warranty does not survive.
- iv. Contractor shall pass through to the County the benefit of all OEM Warranties applicable to the EV Charging Station equipment and hardware provided by Contractor in its performance of this Agreement ("Covered Components"), to the extent permitted by the terms and conditions of such OEM Warranties. Promptly following receipt of the County's request for warranty service hereunder, Contractor shall submit a warranty claim to the OEM and use commercially reasonable efforts to enforce and administer such warranty claim, all on Client's behalf and for Client's benefit. For the avoidance of doubt, Contractor shall have no obligation to pursue litigation or to expend or incur any out-of-pocket costs in connection with its enforcement of the OEM Warranty. Contractor shall comply with all the warranty requirements set forth in the Agreement. In the event that this Agreement is terminated prior to expiration of an OEM Warranty with respect to any of the Covered Components, Contractor shall, to the extent allowable under the terms of such OEM Warranty, assign to the County the right to enforce such OEM Warranty with respect to such Covered Components.

- v. Contractor represents that it has the skills, expertise, licenses and permits necessary to ensure delivery of the EV Charging Stations and perform the Services required under this Agreement. Contractor warrants to County that it shall (a) perform the Services using personnel of required skill, experience and qualifications, and in a professional and workmanlike manner in accordance with to the standards observed by a competent practitioner of the same profession in which Contractor is engaged; (b) devote adequate resources to meet its obligations under this Agreement; and (c) ensure that all of Contractor's equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the County.
- vi. Contractor certifies to the County that none of Contractor and its employees and principals and subcontractors are debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. Contractor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

THE WARRANTIES SET FORTH IN THIS SECTION 6.B ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, FOR PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, OR UNDERSTANDINGS WHICH EXTEND BEYOND THOSE SET FORTH IN THIS CONTRACT WITH RESPECT TO THE SERVICES AND DELIVERABLES.

- vii. Any applicable statute of limitations runs from the date of the County's discovery of the noncompliance of the EV Charging Stations or Services with the foregoing warranties. If the County gives Contractor notice of noncompliance pursuant to this Section, Contractor shall, to the extent required by this Section, promptly (i) replace or repair the defective or nonconforming EV Charging Stations and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Contractor and the delivery of repaired or replacement EV Charging Stations to the County, and, if applicable, (ii) repair or re-perform the applicable Services.
7. Low Carbon Fuel Standard (LCFS) Credits. California's Low Carbon Fuel Standard ("LCFS") was enacted to ensure that the mix of fuels sold by California oil refiners and distributors meets applicable greenhouse gas emissions targets. If applicable reporting requirements are met, LCFS credits ("LCFS Credits") are issued by the California Air Resources Board, and may be claimed by certain owners and operators of electric vehicle charging stations. As consideration for EV Charging Station Networking and Maintenance, including, but not limited to, Software, Software support, networking, remote Software maintenance, remote cloud-related services, and the other terms of this Agreement, the County agrees to designate Contractor to be the credit generator with respect to such EV Charging Stations during the Term of this Agreement, as allowed by 17 CCR § 95483(c)(2),

and, Contractor will claim and County hereby assigns to Contractor, all available LCFS Credits issued during the Term and generated from use of EV Charging Stations delivered pursuant to this Agreement ("County LCFS Credits"). In order to effectuate this arrangement, the County and Contractor agree as follows for the Term of this Agreement, provided that Contractor is not in breach of any of the terms of this Agreement:

- i. In accordance with 17 CCR § 95483(c)(2), the County as the Fuel Supply Equipment (FSE) owner agrees, with respect to the FSE that are subject to this Agreement, that it will not elect to be a fuel reporting entity or credit generator. The County shall designate Contractor to be the credit generator for these FSE. Contractor hereby accepts all responsibilities as the designated fuel reporting entity and credit generator pursuant to 17 CCR § 95483(c)(2)(B). The County agrees to provide electricity data to Contractor as necessary for LCFS reporting pursuant to 17 CCR §§ 95483.2(b)(8), 95491 and 95491.1. Contractor shall be responsible for accurately reporting the LCFS data needed to obtain CARB's allocation of credits pursuant to 17 CCR § 95491 and any other applicable regulation or statute. Contractor shall be responsible for all Annual Compliance Reports and Reporting Requirements to CARB.
 - ii. Notwithstanding the foregoing or any other provisions of this Agreement, upon termination of this Agreement, the County reserves the right to remove the EV Charging Stations and install other electric vehicle charging station equipment, in which case, such other electric vehicle charging station equipment, and any LCFS Credits that may be generated by such other electric vehicle charging station equipment shall not be subject to this Section 7.
8. Title to Property. Subject to the terms of this Section 8, title to, custody and control of each EV Charging Station, shall pass from Contractor to the County upon final acceptance by the County.
 9. EV Charging Station Ancillary Equipment. Contractor shall deliver to the County the ancillary EV Charging Station equipment listed below:
 - Kiosk
 - Nexus (load management controller)
 - Pedestals
 - Triangle wall mounts, if required
 10. Suspension for Convenience. COUNTY REPRESENTATIVE may, without cause, order CONTRACTOR in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 60 days. COUNTY shall incur no liability for suspension under this Section 10, and such suspension shall not constitute a breach of this Agreement. Similarly, CONTRACTOR shall incur no liability or be financially, or otherwise, responsible for any rebates that may not be received as a result of any delay, suspension, or interruption of services that occurs at the direction of the COUNTY and/or COUNTY REPRESENTATIVE.
 11. Initial Order. Contractor shall deliver to the County Sixty (60) commercial-grade Level 2 EV 7kw EV Charging Stations, Twenty-four (24) 6" Dual Pedestals, Three (3) Nexus

Controllers, and one (1) Kiosk, for public and County fleet use at the County's Betteravia Campus, located at 2115 Centerpointe Pkwy, Santa Maria, California 93455 ("Initial Order"). A Work Order for the Initial Order is attached hereto as Exhibit E and incorporated herein by this reference.

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation (with attached Schedule of Fees)

- A. The amount payable to CONTRACTOR under this Agreement for each accepted delivery of EV Charging Stations, Software, ancillary equipment, and Design Services in connection with such EV Charging Stations pursuant to a Work Order that has been approved by the Board of Supervisors of the COUNTY shall be the amount, including cost reimbursements, set forth in such approved Work Order, which amount shall be equal to the price of the EV Charging Stations and Software to be delivered pursuant to such Work Order (the "Work Order Price". The initial rates applicable to the Initial Order and all other Work Orders during the first year of the Term are set forth in Attachment B1 to this Exhibit B, attached hereto and incorporated herein by reference. The prices set forth in Attachment B1 and applicable to all Work Orders hereunder shall not increase more than three percent (3%) each year.
- B. Payment of each Work Order Price shall be made by COUNTY to CONTRACTOR as follows:
- i. Upon CONTRACTOR's delivery of all EV Charging Stations, Software, and Design Services necessary for the installation of such EV Charging Stations and Software, in accordance with the terms, conditions, and specifications set forth in the Agreement and in the applicable Work Order ("Delivery"), payment by COUNTY will be made to CONTRACTOR in the amount of 50% of the Work Order Price specified in the applicable Work Order with respect to such Delivery ("Initial Payment"). Following installation of such Delivery, COUNTY REPRESENTATIVE shall evaluate the quality and compliance of the Delivery and, if found to be satisfactory, shall initiate payment processing of the outstanding amount of the Work Order Price for such Delivery; *provided, however*, that if COUNTY REPRESENTATIVE determines that all or any part of such Delivery is not in full compliance with the terms, conditions, and specifications set forth in the Agreement and in the applicable Work Order, or is not otherwise satisfactory to COUNTY, COUNTY shall provide to CONTRACTOR written notice of such unsatisfactory Delivery and shall not initiate payment processing of the outstanding amount of such Work Order Price until Contractor cures such Delivery defect(s) to the satisfaction of COUNTY; *provided further* that, in the event that CONTRACTOR fails to cure such Delivery defect(s) to the satisfaction of COUNTY within 30 days after delivery of such written notice, COUNTY may reject any or all components of such defective Delivery and CONTRACTOR shall, upon COUNTY's request, provide to COUNTY a refund of the Initial Payment for such Delivery in the amount of the Initial Payment allocable to such rejected components of such defective Delivery. COUNTY shall pay invoices for satisfactory delivery of each Delivery within 30 days of completion of COUNTY's installation, testing and acceptance of such Delivery.
 - ii. COUNTY shall pay invoices for CONTRACTOR's satisfactory performance of Services under a Work Order within 30 days of COUNTY REPRESENTATIVE's receipt of a correct and complete invoice from CONTRACTOR for such Services, along with all required substantiating documentation, and reflecting the assigned Board Contract Number, provided that CONTRACTOR shall submit such invoices to COUNTY no more

frequently than monthly. Such invoices will include a credit equal to the value of the County LCFS Credits as outlined in section 7 of Exhibit A.

- C. Payment for Services and/or reimbursable costs shall be made upon CONTRACTOR's satisfactory performance, as reasonably determined by COUNTY, based upon the terms, conditions, and specifications set forth in this Agreement, including the Scope of Work and all applicable Work Orders. Payment for Services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as set forth in **Attachment B1** ("Schedule of Fees"). Invoices submitted by CONTRACTOR for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of such invoiced charges and shall include supporting documentation if required in this Agreement or otherwise requested by COUNTY. The prices and labor rates set forth in Attachment B1 shall apply to all purchase of such items and services under this Agreement during the first year of the Term and, thereafter, shall apply to all purchases of such items and services, subject to annual increases of no more than three percent (3%) per year.
- D. CONTRACTOR shall submit to the COUNTY REPRESENTATIVE an invoice or certified claim on the County Treasury for the Services performed over the period specified. Such invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the Services performed and if found to be satisfactory and in accordance with the terms, conditions, and specifications of this Agreement, including the Schedule of Fees, shall initiate payment processing. COUNTY shall pay such invoices or claims for satisfactory work within 30 days of receipt of such correct and complete invoices or claims from CONTRACTOR.
- E. End-User Billing. COUNTY shall have the sole right and discretion to set the energy price for end users of the EV Charging Stations in accordance with applicable law and COUNTY policies.
- F. Quarterly Settlements. On a quarterly basis, CONTRACTOR shall pay to COUNTY an amount equal to the aggregate amount of all payments collected from end users of the EV Charging Stations.
- G. COUNTY's failure to discover or object to any unsatisfactory work or invoices prior to payment shall not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or invoices, or to seek any other remedy under law or equity.

Attachment B1

Schedule of Fees for all Work Orders (Term Year One)

Hardware	Unit Description	Unit Price
Webasto DX 15' EV Charger		\$ 1,400
Delta 100 kW CCS/CCS	129A 480V 94% Eff. 100kW CC	\$ 47,400
6' Dual Pedestal	6'x4"x4" Aluminum Pedestal	\$ 500
Nexus Controller	Adaptive Load Management	\$ 2,500
Kiosk		\$ 9,000
Shipping		\$ <1,200
Design and Permitting		\$ 5,000

Attachment B2

Networking and Maintenance Fees Rate Schedule

<u>Networking and Maintenance Fee</u>	<u>Unit Price</u>
First Year	\$0
Second Year	\$210

The Networking and Maintenance Fees Unit Price is the price of one year of Networking and Maintenance in connection with one EV Charging Station (including the PowerFlex Platform). The Networking and Maintenance Fees Unit Price for all years after the second year shall be subject to annual increases of no more than three percent (3%) per year. For example, the Networking and Maintenance Fees Unit Price for the third year shall not exceed \$216.30.

EXHIBIT C

Indemnification, Limitations and Insurance Requirements (For Information Technology Contracts)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising from CONTRACTOR's negligent acts, errors or omissions, including the negligent acts, errors or omissions of any of CONTRACTOR's subcontractors, agents, employees, officers or directors, in connection with this Agreement and arising from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any claim, accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

LIMITATIONS

Each Party's aggregate liability arising under this Agreement with respect to the work and services performed thereunder shall not exceed an amount equal to two times the total contract amount set forth in Exhibit B of this Agreement; provided, however, that the foregoing limitation shall not relieve either Party to the extent liability arises from such Party's willful misconduct or fraud.

EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY 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. THE FOREGOING LIMITATION UPON THE TYPES OF DAMAGES AND AMOUNTS OF LIABILITY SHALL NOT APPLY TO CONTRACTOR'S INDEMNITY OR ANY INDEMNITY OBLIGATIONS STATED IN THIS CONTRACT.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Such insurance coverage shall be at least as broad as:

- 1. Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL or equivalent on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate. Required limits may be provided through any combination of primary and excess/umbrella liability policies if the total amount of insurance meets the required amounts.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **(Not required if CONTRACTOR provides written verification that it has no employees)**
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
5. **Cyber Liability Insurance:** Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the CONTRACTOR in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required herein shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof

of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, with the exception of Cyber Liability Insurance, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

EXHIBIT D

Form of Work Order

WORK ORDER

EV Charging Stations, Support & Software Services

This Work Order (this “Work Order”) is entered into pursuant to the AGREEMENT FOR ELECTRIC VEHICLE CHARGING STATIONS AND SERVICES OF INDEPENDENT CONTRACTOR (“MSA”) dated _____ (“Work Order Effective Date”) by and between County of Santa Barbara, a political subdivision of the State of California (“COUNTY”) and PowerFlex Systems, LLC (“Contractor” or “PowerFlex”), and consists of this Work Order, the MSA, and any other attachments referenced herein and therein, which are incorporated herein by reference (the foregoing, collectively, the “Contract”). All capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the MSA. By this Work Order, COUNTY retains Contractor to perform and provide, and Contractor agrees to perform and provide, the Services and the Deliverables on the terms and subject to the conditions set forth in the Contract.

1. **COUNTY Federal EIN #:** _____
2. **Work Order Effective Date:** _____
3. **Work Order Termination Date:** The earlier of (i) the five (5) year anniversary of the Project’s Final Completion Date, or (ii) the date that is ten (10) years after the Effective Date of the MSA. The Project’s “Final Completion Date” means the date on which a Notice of Completion is recorded with the County Clerk-Recorder with respect to installation of the EV Charging Stations delivered under this Work Order.
4. **Compensation for Services:** Payment by Assignment of LCFS - Assignment of 100% of the County LCFS Credits generated during the Term, as more specifically described in Section 9, below.
5. **Project:**

- **Project Name**

- **Project Site**

- **Delivery Point Address**

- **Project Host**

- **County Capital Project Number**

- **Summary of Services (the “Work”)** Provision of the type and number of EV Charging Stations) set forth below in this Section 5, pedestals, nexus load management controllers, kiosks, and Design Services necessary for installation and use of the EV Charging Stations, software, and certain ongoing support and software services as described in Section 7, below (the “Project”):

XX - Level 2 Electric Vehicle Charging Stations

XX - Level 3 Electric Vehicle Charging Stations

XX - Pedestals

X - Nexus Load Management Controllers

X - Kiosks

Design and Permitting Services

6. **Reference Proposal (if any):** Attached hereto as Exhibit 1

7. **Detailed Scope of Work pursuant to this Work Order and Frequency (“Deliverables”):**

Delivery of Electric Vehicle Charging Stations and Software

1. Deliver the following in accordance with all Contract terms, conditions, and specifications:

Level 2 Electric Vehicle Charging Stations: _____

Level 3 Electric Vehicle Charging Stations: _____

Pedestals: _____

Nexus Load Management Controllers: _____

Kiosks: _____

Software: _____

Delivery date(s) and time(s): _____

Other delivery instructions:

Provide Design Services and coordination with County's EV Charging Station Installation

Contractor:

1. Provide electrical and installation design and permitting for project location.
2. Work with Installation Contractor as needed.

Ongoing software services as indicated below:

1. Procure and maintain internet connectivity and access to PowerFlex system components onsite and offsite.
2. Provide the EV Charging Stations with access to PowerFlex's suite of controls features including driver app, payments processing, facility manager portal, and energy management capabilities such as adaptive charging.

Ongoing remote monitoring and support services to COUNTY and drivers as indicated below:

1. Access to PowerFlex support team Mon-Fri 7:00 am-6:00 pm Pacific Time, and Saturday and Sunday 9:00 am-6:00 pm Pacific Time ("normal support hours") via the PowerFlex support email support@powerflex.com and phone line 833-479-7359.
2. Remote monitoring and remote troubleshooting of load management controller.
3. Provide prompt notice to COUNTY of unplanned outages identified via remote data analysis within 3 hours during normal support hours and within 24 hours outside of normal support hours.

Additional onsite maintenance Services as indicated below:

1. Conduct physical maintenance and repair of EV Charging Stations upon COUNTY's request at the rates detailed below.
2. Respond onsite within 72 hours from notice to COUNTY and COUNTY's request for onsite support.

8. Energy Cost Recovery.

During the Work Order Term, Contractor shall collect and delivery to COUNTY in accordance with the terms of this Contract applicable charging fees from Project end-users via the PowerFlex network.

Contractor shall prepare and deliver within thirty (30) days following each calendar quarter a report (the “**Energy Reimbursement Report**”) documenting energy delivered and revenues collected (if any) from the Project during the immediately preceding calendar quarter.

Contemporaneously with delivery of the Energy Reimbursement Report, Contractor shall remit to COUNTY all Base Fees collected from end-users of the System during the immediately preceding calendar quarter.

Base Fees. The following shall be the base fee (the “**Base Fees**”) charged to Project end-users, until such time that COUNTY requests in writing that Contractor makes an adjustment to the Base Fees:

- i. COUNTY has directed Contractor to collect Dwell Fees from Project end-users via the PowerFlex Driver app at a rate of \$0.10 per minute after end-user has been in such parking space for more than four hours, regardless of whether charging has been completed or not; provided, however, that no Dwell Fees shall be collected from any Project end-user for the time such Project end user is parked in a Project parking space between the hours of 9:00 pm and 7:00 am Pacific Time.

9. Compensation for Ongoing Services

Contemporaneously with the execution of this Work Order, the Parties have entered into that certain Assignment of LCFS Credits Agreement dated as of the date hereof, attached hereto as **Exhibit 2** (the “**LCFS Agreement**”) pursuant to which the County LCFS Credits in connection with the Electric Vehicle Charging Stations to be delivered hereunder have been assigned to Contractor in payment for ongoing Services associated with the EV Charging Stations hereunder including, but not limited to, access control, Software support, maintenance, and updates, billing, reporting, maintenance of the EV Charging Stations, warranty claims processing, Networking and Maintenance, and EV Charging Station management services,

- i. For the first year of the Term, the costs of the remote Networking Services shall be deemed to be paid in full by virtue of County’s assignment of County LCFS Credits to Contractor pursuant to the LCFS Agreement. Onsite Maintenance will be billed at Time and Materials according to the rate schedule below.
- ii. For Services performed after the first year of the Term, no more than monthly, Contractor shall invoice the County for (a) the costs of such Services (“Service Fees”) in accordance with the Networking and Maintenance Fees Rate Schedule set forth in Attachment B-2 to Exhibit B to the Agreement, incorporated herein by reference, less (b) the monetary value of the County LCFS Credits; *provided, however*, that in the event that the value of the County LCFS Credits exceed the such Service Fees, Contractor shall provide County with a credit, in the amount by which the value of the County LCFS Credits exceed the such Service Fees, which credit shall be applicable to payment of subsequent Service Fees payable by County.
- iii. Notwithstanding the foregoing or any other provision of the Contract to the contrary, in no event shall the Services Fees charged to the County by Contractor increase by more than three percent (3%) each year.

The parties hereto further acknowledge and agree that Contractor is exclusively entitled to claim, receive, and retain all right, title and interest to the County LCFS Credits generated from use of EV Charging Stations specified in this

Work Order during the Work Order Term. The parties hereto agree to cooperate in providing all such other and additional instruments, notices and other documents, and to perform such other acts as may be reasonably necessary to carry out the intent and accomplish the purpose of the parties' foregoing agreement regarding the County LCFS Credits.

Onsite maintenance services detailed in the Scope of Work and Schedule of Fees, will be billed by Contractor to COUNTY in accordance with the labor rates set forth below, which shall be subject to an increase of 3% on an annual basis, plus the reasonable and documented costs incurred by Contractor for all materials, equipment, expendables, and tool rental necessary to provide the Services and Deliverables under this Work Order + 10%:

(I)	Technician	\$100/hr
(II)	Electrician	\$125/hr
(III)	Engineer	\$150/hr
(IV)	Dispatch	\$250/truck roll
(V)	Subcontractor services	Cost + 10%

Notwithstanding any other provision of this Contract, the amounts payable by COUNTY to Contractor under this Work Order, including for all onsite maintenance services, shall not exceed the maximum aggregate amount of \$_____ (“Maximum Work Order Price”).

10. Term; Expiration. The term of this Work Order shall commence on the Work Order Effective Date and continue until the Work Order Termination Date set forth above (the “**Work Order Term**”).

11. Project Contact Information:

<p>COUNTY Representative:</p> <p>Name: _____</p> <p>Phone Number: _____</p>	<p>Contractor Representative:</p> <p>Name: _____</p> <p>Phone Number: _____</p>
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THIS WORK ORDER IS AGREED TO AND ACCEPTED as of _____, by and between:

County of Santa Barbara

POWERFLEX SYSTEMS, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit 1

Reference Proposal

Exhibit 2

Assignment of LCFS Credits Agreement

Site Address:

System Description: As defined below

System Owner:

System Owner Address:

System Owner's Federal EIN:

PowerFlex Systems, LLC Federal EIN: 82-3070669

This Assignment of LCFS Credits Agreement (“**Assignment**”) is entered into as of _____, 2023 by and between the County of Santa Barbara (the “**Assignor**”), and **PowerFlex Systems, LLC** (the “**Assignee**”), both of whom agree to be bound by this Assignment. Assignor and Assignee are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Assignor and Assignee are parties to that certain Agreement for Electric Vehicle Charging Stations and Services of Independent Contractor dated _____, 2023 (the “**MSA**”);

WHEREAS, under the MSA, the Parties entered into that certain Work Order dated _____, 2023 (the “**Work Order**”) for the delivery by Assignee of electric vehicle charging stations and related ancillary equipment, services, and software (the “**System**”);

WHEREAS, California’s Low Carbon Fuel Standard (“**LCFS**”) was enacted to ensure that the mix of fuels sold by California oil refiners and distributors meets applicable greenhouse gas emissions targets, and an available LCFS credit may be claimed by certain owners and operators of electric vehicle charging stations;

WHEREAS, Assignor and Assignee acknowledge that if applicable reporting requirements are met, California Air Resources Board (or other applicable agency, “**CARB**”) may issue LCFS credits for the System; and

WHEREAS, under the Work Order, Assignee will provide certain software and ongoing Services for the System during the term specified therein (the “**Work Order Term**”) in exchange for assignment from Assignor to Assignee of the rights to claim any LCFS credits arising from charging electric vehicles using the System during the Term (the “**LCFS Credits**”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the obligations set forth in the Work Order, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **EFFECTIVENESS:** This Assignment shall become effective upon the Final Completion Date as such is specified in the Work Order (the “**Work Order Effective Date**”) and shall remain in effect for the duration of the Work Order Term. This Assignment shall terminate without further action of either Party upon any termination of the Work Order.
2. **ASSIGNMENT:** As of the Work Order Effective Date, the Parties acknowledge and agree that Assignee may report and claim LCFS Credits for the System during the Term and Assignor hereby assigns to Assignee all its interests, rights and title in and to the LCFS Credits during the Work Order Term. As of the Work Order Effective Date, Assignee hereby assumes all of Assignor’s interests, rights and title in and to the LCFS Credits and agrees to be solely responsible for all reporting and other administrative obligations necessary to generate such LCFS Credits.
3. **ASSIGNOR’S REPRESENTATIONS:** Assignor warrants that:
 - a. the LCFS Credits transferred in this Assignment are free of lien, encumbrance, prior transfer or adverse claim; and
 - b. In accordance with 17 CCR § 95483(c)(2), Assignor as the System owner agrees, with respect to the System, that it will not elect to be a fuel reporting entity or credit generator. Assignor shall designate Assignee to be the credit generator for the System. Assignee will be solely responsible for all reporting and other administrative obligations necessary to generate such credits.
4. **BINDING EFFECT:** The covenants and conditions contained in the Assignment shall apply to and bind the Parties and their heirs, legal representatives, successors and permitted assigns.
5. **GOVERNING LAW:** This Assignment shall be governed by and construed in accordance with the laws of the State of California.
6. **WAIVER:** The failure of either Party to enforce any provisions of this Assignment shall not be deemed a waiver or limitation of that Party’s right to subsequently enforce and compel strict compliance with every provision of this Assignment.
7. **COUNTERPARTS:** This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. If any signature hereof is delivered by facsimile transmission, by e-mail as an attached, scanned document or electronically affixed such as through DocuSign, such signature shall create a valid and binding obligation of the Party executing the same with the same force and effect as if such e-mailed, facsimile, or electronic signature page were an original thereof.

IN WITNESS WHEREOF, the authorized representatives of the Parties have caused this Assignment to be executed effective as of the Effective Date.

County of Santa Barbara

By: _____

Name: _____

Title: _____

PowerFlex Systems, LLC

By: _____

Name: _____

Title: _____

\$endif

Exhibit E - Initial Work Order**Schedule of Fees for Initial Work Order – Betteravia Campus**

Hardware	Qty	Unit Price	Discount	Discounted Unit Price	Total Price										
Webasto DX 15' EV Charger	60	\$ 1,700	\$ 18,000	\$ 1,400	\$ 84,000										
6' Dual Pedestal	24	\$ 500		\$ 500	\$ 12,000										
Nexus Controller	3	\$ 2,500		\$ 2,500	\$ 7,500										
Kiosk	1	\$ 9,000		\$ 9,000	\$ 9,000										
				Shipping	\$ 1,124										
				Subtotal	\$ 113,624										
Design and Permitting					\$ 5,000										
				Sales Tax	\$ 8,719										
				Total	\$ 127,343										
<p>Onsite maintenance services other than Networking and Maintenance will be billed by Contractor to COUNTY in accordance with the labor rates set forth below, plus the reasonable and documented costs incurred by Contractor for all materials, equipment, expendables, and tool rental necessary to provide such onsite maintenance services under this Work Order + 10%:</p> <table> <tr> <td>Technician</td> <td>\$100/hr</td> </tr> <tr> <td>Electrician</td> <td>\$125/hr</td> </tr> <tr> <td>Engineer</td> <td>\$150/hr</td> </tr> <tr> <td>Dispatch</td> <td>\$250/truck roll</td> </tr> <tr> <td>Subcontractor services</td> <td>Cost + 10%</td> </tr> </table>						Technician	\$100/hr	Electrician	\$125/hr	Engineer	\$150/hr	Dispatch	\$250/truck roll	Subcontractor services	Cost + 10%
Technician	\$100/hr														
Electrician	\$125/hr														
Engineer	\$150/hr														
Dispatch	\$250/truck roll														
Subcontractor services	Cost + 10%														

Exhibit F – PowerFlex Terms of Use

These Terms of Use (“Terms of Use”) govern the use of the PowerFlex Platform by County of Santa Barbara.

1. **PowerFlex Platform Services Warranty.** PowerFlex Systems, LLC (“PowerFlex”) shall use reasonable efforts consistent with prevailing industry standards to maintain the PowerFlex Platform and provide the Services and Deliverables in a manner which minimizes errors and interruptions. The PowerFlex Platform may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by PowerFlex or by third-party providers, or because of other causes beyond PowerFlex’s reasonable control, including but not limited to cellular, data network or equipment failures, but PowerFlex shall use best efforts to provide at least 48 hours advance notice in writing or by e-mail of any scheduled service disruption including the anticipated duration and reason for such service disruption. HOWEVER, POWERFLEX DOES NOT WARRANT THAT THE POWERFLEX PLATFORM OR THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE POWERFLEX PLATFORM OR THE ACCURACY OF THE DATA AND INFORMATION PROVIDED VIA THE POWERFLEX PLATFORM EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE POWERFLEX PLATFORM IS PROVIDED “AS IS” AND, WITH RESPECT TO THE POWERFLEX PLATFORM, POWERFLEX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, UNINTERRUPTED SERVICE, WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE AND NON-INFRINGEMENT.
2. **User Responsibilities; Limits on Use.** User will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the PowerFlex Platform; modify, translate, or create derivative works based on the PowerFlex Platform (except to the extent expressly permitted by PowerFlex or authorized within the PowerFlex Platform); sell, resell, rent, lease or otherwise transfer the PowerFlex Platform or any data collected or maintained by PowerFlex in connection with the operation of the PowerFlex Platform to any third party; use the PowerFlex Platform for timesharing or service bureau purposes or otherwise for the benefit of a third-party; knowingly interfere with disrupt the integrity of the PowerFlex Platform; copy, frame or mirror any part of the PowerFlex Platform, other than copying or framing on User’s own intranets or otherwise solely for User’s use and purposes in accordance with this Agreement; access or allow a third party to access the PowerFlex Platform, for any competitive purpose or for any improper purpose whatsoever; upload, transmit or introduce any malicious code to the PowerFlex Platform; utilize the PowerFlex Platform for any purpose other than as set forth in this Agreement; or remove any proprietary notices or labels.
3. **User Covenants.** User represents, covenants, and warrants that User will use the PowerFlex Platform only in compliance with this Agreement and all applicable laws and regulations, including but not limited to regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. User hereby agrees to indemnify and hold harmless PowerFlex against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from a violation of the foregoing from User’s use of the PowerFlex Platform. Although PowerFlex has no obligation to monitor User’s use of the PowerFlex Platform, PowerFlex may do so and may prohibit any use of the PowerFlex Platform in violation of the foregoing.
4. **Internet Connectivity.** If PowerFlex has procured Internet Connectivity in order to connect the Cloud Edge Infrastructure to the PowerFlex Platform, User shall be responsible for any damage to

equipment used to provide the Internet Connectivity, unless such damage was due to the negligence of PowerFlex. User shall also be responsible for maintaining the security of the equipment used to provide the Internet Connectivity, User account, User passwords and files, and for all uses of User account or the equipment used to provide the Internet Connectivity. User shall provide to PowerFlex sufficient physical access to the Site to enable PowerFlex to trouble shoot or remedy and issues with the Internet Connectivity.

5. Electricity Use. User represents and warrants that it has the power and authority to utilize, without restriction, the electricity connected to its Equipment.
6. Retention of Ownership. PowerFlex shall own and hold all right, title and interest in and to (a) the PowerFlex Platform, all improvements, enhancements or modifications thereto, (b) all PowerFlex marks, (c) all other PowerFlex-supplied material developed or provided by PowerFlex for User's use in connection with the PowerFlex Platform and (b) all intellectual property rights related to any of the foregoing.
7. Data. Notwithstanding anything to the contrary, PowerFlex shall have the right to collect and analyze data and other information relating to the System, Cloud Edge Infrastructure and use thereof, electrical meters and provision, use and performance of various aspects of the PowerFlex Platform and related systems and technologies and any other data transmitted to the PowerFlex Platform (collectively, "Data"), and PowerFlex has the right to use the Data consistent with applicable law. No rights or licenses are granted except as expressly set forth herein. If the Data or any data or information provided to User in connection with User's provision of the Services & Deliverables contains personal information, each of PowerFlex's and User's access and use of any such shall comply with PowerFlex's privacy policy set forth at <https://www.powerflex.com/privacy> and with applicable law. Except as required by law or as set forth in this Agreement, PowerFlex shall not have the right to disclose or disseminate County data to third parties without the County's prior written consent.
8. Access. User acknowledges and agrees that PowerFlex, its affiliates and/or its designated agent may check and access and provide instructions to the Cloud Edge Infrastructure or their components and may provide upgrades or supplements to such software that may be automatically downloaded to the Cloud Edge Infrastructure.
9. License to PowerFlex. Only upon receipt of prior consent from User, PowerFlex may use User trademarks, logos and domain names, and any content or services that User provides for use in connection with PowerFlex's provision of Services and or to advertise that User is using the PowerFlex Platform. PowerFlex shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the PowerFlex Platform services any suggestions, enhancement requests, recommendations or other feedback provided by User relating to the PowerFlex Platform.

Exhibit G

Privacy Policy

PowerFlex Systems is committed to protecting your privacy. The PowerFlex mobile app provides services that helps its users to efficiently charge their electric or plug-in vehicles using our open-platform network of electric vehicle charging stations. Our Privacy Policy helps explain our information practices.

When we say “PowerFlex,” “our,” “we,” or “us,” we’re talking about PowerFlex Systems, Inc. and its applicable affiliates. This Privacy Policy (“Privacy Policy”) applies to all of our apps, services, features, software, and website (together, “Services”) unless specified otherwise.

Please review this Privacy Policy from time to time. By using or otherwise accessing our Services, you agree to this Privacy Policy. If you do not agree to this Privacy Policy, please do not access or use our Services.

Information We Collect

PowerFlex receives or collects information when we operate and provide our Services, including when you install, access, or use our Services. Please note that we need certain types of information to provide our Services to you. If you do not provide us with such information, or if you ask us to delete that information, you may no longer be able to access or use certain parts of our Services.

Information You Provide

- **Your Information.** You provide your email address to create a user account with PowerFlex. You provide us with details about your energy demand, such as how far you will need to travel, how much time you have to charge your car, and how efficiently you drive. You will also capture QR codes using the built-in camera. These QR codes represent identifiers for the electric vehicle charging stations you use.
- **Customer Support.** You may provide us with information related to your use of our Services, including app details and how to contact you so we can provide you customer support. For example, you may send us an email with information related to our app performance or other issues.

Automatically Collected Information

- **Usage and Log Information.** We may collect service-related, diagnostic, and performance information. This includes information about your activity (such as session data and how you use our Services), your electric vehicle (including the make, model, and year of your vehicle), log files, and diagnostic, crash, website, and performance logs and reports.
- **Transactional Information.** If you pay for our Services, we may receive information and confirmations, such as payment receipts, including from app stores or other third parties processing your payment.

- **Device and Connection Information.** We may collect device-specific information when you install, access, or use our Services. This includes information such as hardware model, operating system information, browser information, IP address, mobile network information, and device identifiers.
- **Cookies.** We use cookies to operate and provide our Services, improve your experiences, understand how our Services are being used, and customize our Services. For example, we use cookies to remember your choices, such as details about your energy demand.

Third-Party Information

We work with third-party providers to help us operate, provide, improve, customize, support, and market our Services. For example, we work with companies to distribute our apps and process payments. These providers may provide us with information about you in certain circumstances; for example, app stores may provide us with reports to help us diagnose and fix service issues.

Children's Privacy

The Services are intended for licensed operators of electric vehicles and are not directed to children under the age of 18. PowerFlex does not knowingly collect personal information from children under the age of 18 and if we become aware that we have inadvertently collected personal information from children under the age of 18 without parental consent, we will take reasonable steps to remove such information.

How We Use Information

We use all the information we have to help us operate, provide, improve, understand, customize, support, and market our Services.

- **Our Services.** We operate and provide our Services, including providing customer support, and improving, fixing, and customizing our Services. We understand how people use our Services, and analyze and use the information we have to evaluate and improve our Services, research, develop, and test new services and features, and conduct troubleshooting activities. We also use your information to respond to you when you contact us. We use cookies to operate, provide, improve, understand, and customize our Services.

Other Data. We create or maintain aggregated, anonymized or de-identified information, which we may use and disclose without restriction.

- **Third Parties.** We share information we collect with our affiliates, advisors, consultants, contractors, service providers, site hosts and customers in connection with providing our Services and where such disclosure is customarily provided in corporate transactions involving PowerFlex.
- **Regulatory Compliance.** We share information we collect where we are legally obligated to do so to the government or other authorities having jurisdiction, and where we otherwise believe it appropriate in order to protect our rights and property or the rights and property of others.

- **No Ads.** We do not allow ads in our app and have no intention of introducing them. We have not sold personal information in the preceding twelve (12) months.

Data Security

While we are committed to protecting personal information, no security measures can be 100% secured, so we cannot guarantee the security of such information. The transmission of information via the internet or other forms of electronic communication is not completely secure or private. If you have any reason to believe that your account with PowerFlex has been compromised, please notify us immediately at support@powerflex.com.

Updates To Our Policy

We may amend or update our Privacy Policy from time to time. We will provide you notice of amendments to this Privacy Policy, as appropriate, and update the “Last Modified” date at the top of this Privacy Policy. Your continued use of our Services confirms your acceptance of our Privacy Policy, as amended. If you do not agree to our Privacy Policy, as amended, please discontinue using our Services.

Requests and Inquiries

You may have certain rights regarding information we collect and/or maintain about you. If you would like to manage personal information we have about you in accordance with applicable law, please submit a request to support@powerflex.com. You will be required to verify your identity with us before we proceed with your request. If you have any other questions regarding this Privacy Policy, please contact us.

PowerFlex Systems, Inc.

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Los Altos, CA 94022
United States of America
(650) 469-3392
info@powerflex.com

