

Attachment 1

ATTACHMENT 1

Contract with PowerFlex Systems, LLC



**STANDARD TERMS & CONDITIONS
FOR INDEPENDENT CONTRACTORS**

THESE TERMS & CONDITIONS apply to the Contract established between the County of Santa Barbara, a political subdivision of the State of California ("COUNTY") by its Purchasing Division ("Purchasing"), and the individual or entity identified on the Contract form to which this document is attached ("CONTRACTOR"), including CONTRACTOR's agents, employees or sub-contractors. **CONTRACTOR's signature on the Contract form means CONTRACTOR has read and accepted these terms and conditions.**

1. **SCOPE OF SERVICES / COMPENSATION.** CONTRACTOR agrees to provide services to COUNTY, and COUNTY agrees to pay CONTRACTOR, according to the attached Statement of Work. (The term "Statement of Work" refers to all attached language describing the services to be performed and the compensation to be paid, whether found in a Proposal, Estimate, Quote, correspondence, and/or any other attached document, and includes the narrative text appearing on the Contract form, plus any subsequent amendment.) All work is to be performed under the direction of the "Designee" (that is, the person designated by the department identified in the Ship-To box on the Contract form). Payment will be subject to satisfactory performance as determined by the Designee. CONTRACTOR will be entitled to reimbursement for only those expenses specifically identified in the Statement of Work.
2. **STATUS AS INDEPENDENT CONTRACTOR.** CONTRACTOR will perform all of CONTRACTOR's services under this Contract as an independent contractor and not as COUNTY's employee. CONTRACTOR understands and acknowledges that CONTRACTOR will 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 warrants that CONTRACTOR is authorized by law to perform all work contemplated in this Contract, and CONTRACTOR agrees to submit, upon request, verification of licensure or registration, or other applicable evidence of official sanction.
3. **BILLING & PAYMENT.** CONTRACTOR must submit CONTRACTOR invoice(s), which **must include the contract number** COUNTY assigns (see Contract form), to the Bill-To address on the Contract form, following completion of the increments identified in the Statement of Work. Unless otherwise specified in the Contract, COUNTY will pay CONTRACTOR within thirty (30) days from presentation of invoice.
4. **TAXES.** COUNTY will 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 taxes paid plus interest and penalty assessed, if any. These taxes include, but are not limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance. Notwithstanding the foregoing, if CONTRACTOR is using a non-California address or a California P.O. Box address for conducting its business with COUNTY, CONTRACTOR will be subject to required nonresident withholding for services that CONTRACTOR provides in California for COUNTY, unless CONTRACTOR is a government entity or unless CONTRACTOR provides COUNTY with a California withholding form that shows CONTRACTOR is exempt from withholding.
5. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and will not acquire any employment or interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. CONTRACTOR further covenants that in the performance of this Contract, CONTRACTOR will employ no person having any such interest. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest.
6. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** COUNTY will be the owner of the following items incidental to this Contract, upon production and whether or not completed: all data collected, all documents of any type whatsoever (paper or electronic), and any material necessary for the practical use of the data and/or documents from the time of collection and/or production, whether or not performance under this Contract is completed or terminated prior to completion. CONTRACTOR will not release any materials under this paragraph except after COUNTY's prior written approval.
 - A. No materials, inventions or data produced in whole or in part under this Contract will be subject to copyright or other intellectual property rights in the United States or in any other country except as determined at COUNTY's sole discretion.
 - B. Subject to the limitations set forth in Section 19 of the "Special Terms and Conditions" attached hereto, COUNTY will have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Contract. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights provided hereunder. CONTRACTOR warrants that any items provided under this Contract will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims.
 - C. These Ownership of Documents and Intellectual Property and Copyright and Intellectual Property provisions (Section 6, including subdivisions A-C) shall survive any termination of this Contract.
7. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR must keep such business records pursuant to this Contract as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession, and will maintain those records for at least four (4) years following the termination of this Contract. All accounting records must be kept in accordance with generally accepted accounting practices. COUNTY will 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, if this Contract exceeds ten thousand dollars (\$10,000.00), 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 the Contract (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any 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 CONTRACT, 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 audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.
8. **INSURANCE AND INDEMNIFICATION.** CONTRACTOR agrees to the indemnification and insurance provisions as set forth in Exhibit B attached hereto and incorporated herein by reference.
9. **NONDISCRIMINATION.** The County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Contract and is incorporated into the Contract by this reference with the same force and effect as if the ordinance were specifically set out herein, and CONTRACTOR agrees to comply with that ordinance.
10. **NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Contract and that COUNTY has the right to negotiate with and enter into contracts with others providing the same or similar services as those CONTRACTOR provides.

11. **NON-ASSIGNMENT.** CONTRACTOR will not assign any of CONTRACTOR's rights nor transfer any of CONTRACTOR's obligations under this Contract without COUNTY's prior written consent, and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination; provided, however, that CONTRACTOR is hereby permitted to assign all of CONTRACTOR's rights and obligations under this Contract to an affiliate upon written notice to COUNTY.

12. **TERMINATION.**

- A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
1. **For Convenience.** COUNTY may terminate this Contract in whole or in part upon thirty (30) days written notice. During the 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 Contract, 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 Contract, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Contract in whole or in part, with or without a prior notice period. Subsequent to termination of this Contract 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 this Contract or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Contract in whole or in part by written notice. Upon receipt of 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 the 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 A, CONTRACTOR may, at CONTRACTOR's option terminate this Contract 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 deliver to COUNTY all 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 Contract, 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 Contract, COUNTY shall pay CONTRACTOR for satisfactory 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 Contract 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. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

13. **NOTICE.** From CONTRACTOR: CONTRACTOR must send or deliver any required notice to both the Designee and to Purchasing at the addresses appearing on the Contract form. From COUNTY: Either Designee or Purchasing must send or deliver any required notice to CONTRACTOR at the address last known to the sender. *Effective Date:* Notices mailed by US Postal Service first-class, receipt of which is unacknowledged, are effective three days from date of mailing. Other notices are effective upon delivery by hand, proof of delivery by common carrier, or acknowledgement of receipt, whichever is earlier.

14. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Contract, including its attachments, contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Contract may be altered, amended or modified only by an instrument in writing (executed by Purchasing) and by no other means. Each party waives their future right to claim, contest or assert that this Contract was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

15. **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.

16. **CALIFORNIA LAW.** This Contract is governed by the laws of the State of California. Any litigation regarding this Contract or its contents must 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.

17. **PRECEDENCE.** In the event of conflict between the provisions contained in these numbered paragraphs and the provisions contained in the Statement of Work, the provisions of this document shall prevail unless 1) otherwise specified on the Contract form to which this document is attached, or 2) waived by amendment hereon with dated initials of Purchasing staff. Standard terms also prevail over the custom terms that immediately follow these standard terms.

18. **DEBARMENT AND SUSPENSION.** CONTRACTOR certifies to COUNTY that it and its employees and principals are not 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.

19. **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 COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning COUNTY or its projects, without obtaining the prior written approval of COUNTY.

20. **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 Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. **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.

22. **SURVIVAL.** All provisions of this Contract which by their nature are intended to survive the termination or expiration of this Contract shall survive such termination or expiration.

Cap). (Example: the average electricity rate is determined by of the total cost of electricity per year on the electric utility bills, divided by the total amount of kWhs used for the year). PowerFlex will collect a 50% surcharge on energy priced above County's average cost of Electricity.

7. Quarterly Settlements. On a quarterly basis, PowerFlex will submit payments that are actually collected from end users to the County for the base energy costs plus any portion above the County's energy costs that isn't used to pay the surcharge described above.
8. Data. Each party may use any data generated from the PowerFlex system at the Property for its own uses. PowerFlex will provide an owner web portal to County containing all features requested by County that PowerFlex is providing for other installations.
9. Marketing. Each party may mention the other in marketing materials: PowerFlex may list County's property while the system is operational. County may market that PowerFlex's services are available on site. PowerFlex may include branding on the individual chargers utilizing its technology on site. Any additional onsite branding is subject to County's prior written approval.
10. Construction. The installation of the equipment shall be provided by the County of Santa Barbara.
11. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws provision. The parties hereto agree that any action, suit or other legal proceeding involving any differences, controversies or other disputes in any way related to or arising out of this Agreement shall be litigated exclusively in the United States District Court for the Central District of California, or the California state court for the County of Santa Barbara, and the parties hereby consent to the jurisdiction of such courts in respect of any such action, suit or other legal proceeding.
12. Severability. If any provision of this Agreement is held to be void or contrary to law, such provision shall be construed as nearly as possible to reflect the intention of the parties, with the other provisions remaining in full force and effect.
13. Waiver. No waiver of any term or provision of this Agreement shall be valid unless in writing and signed by the party agreeing to such waiver. No consent or waiver, express or implied, by a party of any breach or default by the other party in the performance of such other party of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations under this Agreement of such other party. Failure on the part of a party to complain of any act or failure to act of another party or to declare another party in default, irrespective of how long such failure continues, shall not constitute a waiver by the first mentioned party of its rights under this Agreement.
14. Entire Agreement. This Agreement constitutes the complete and exclusive agreement between the parties regarding the subject matter hereof, and any and all previous representations, discussions and writings are merged and superseded by this Agreement. This Agreement may be modified only by a written document signed by all the parties hereto.
15. Authority. Each party is duly constituted under the laws of its formation. The execution, delivery and performance by each Party of this Agreement and the consummation of the transactions contemplated hereby are within each Party's corporate or other powers of formation and/or existence and have been duly authorized by all necessary corporate or other required action on the part of each Party. Each Party has all legal authority, authorizations and capacity to enter into this Agreement, and to assume the rights and obligations arising hereby. The undersigned officer or representative of Seller is duly authorized to execute and deliver this Agreement. No advice or information, whether oral or written, obtained by either party shall create any warranty or representation not expressly made in this Agreement with regard to the subject matter contemplated herein.

Special Terms and Conditions

This agreement is between PowerFlex Systems, LLC ("PowerFlex"), 392 1st Street, Los Altos, CA 94022, and the County of Santa Barbara (the "County" or "Customer"), 105 East Anapamu Street, Santa Barbara, California 93101 for the installation, operation, and maintenance of a vehicle electric charging network at certain County locations to be provided by the County to PowerFlex in writing within five (5) days of the of the execution of this agreement.

1. **General.** PowerFlex is to provide equipment and services at the County locations set by County and provide charging equipment in accordance with Exhibit A - Statement of Work attached hereto.
2. **Equipment.** PowerFlex will provide charging stations and electrical equipment necessary for the EV charging system(s) described in the Statement of Work (each, a "Project"). PowerFlex reserves the right to apply for, and receive the benefit of, grants or subsidies to cover the cost of procurement for the equipment and/or services covered by this Agreement.
3. **Service.** PowerFlex provides ongoing services including access control, billing, reporting, and station management. These services are described in more detail in the Statement of Work attached hereto.
4. **Warranty.** PowerFlex shall use commercially reasonable efforts to enforce the manufacturer's warranty on all purchased EV charger equipment, hardware, and software for five (5) years from the date of acceptance by the County as provided herein. PowerFlex shall comply with all the warranty requirements discussed in Exhibit A - Statement of Work attached hereto.
5. **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. PowerFlex's proprietary open-platform network can track the fueling of electric vehicles. If applicable reporting requirements are met, LCFS credits ("LCFS Credits") are issued by the California Air Resources Board. Any available LCFS Credit may be claimed by certain owners and operators of electric vehicle charging stations. As consideration for the equipment and services and the other terms of this Agreement, County agrees to designate PowerFlex to be the credit generator as allowed by 17 CCR § 95483(c)(2). In order to effectuate this arrangement, County and Powerflex agree as follows:

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 the subject of this Agreement, that it will not elect to be a fuel reporting entity or credit generator. County shall designate PowerFlex to be the credit generator for these FSE. PowerFlex hereby accepts all responsibilities as the designated fuel reporting entity and credit generator pursuant to 17 CCR § 95483(c)(2)(B). County agrees to provide electricity data to PowerFlex as necessary for LCFS reporting pursuant to 17 CCR §§ 95483.2(b)(8), 95491 and 95491.1. PowerFlex 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. PowerFlex shall be responsible for all Annual Compliance Reports and Reporting Requirements to CARB.

This provision shall survive any early termination of this Agreement. However, County reserves the right to remove the equipment in the event of early termination and install new equipment from another supplier or service provider. In that case, any LCFS Credits generated by the new equipment shall not be subject to this provision.

6. **End User Billing.** PowerFlex will collect and shall be entitled to a 50% surcharge on energy priced above Utility rates from end users. County shall have the sole right to set the energy price for end users in accordance with applicable law. The Charging electricity rate per kilowatt hour will be determined by the County's average cost of electricity. This average rate is determined by the County's energy management software (Energy

16. Independent Parties. The parties remain independent of each other and nothing in this Agreement shall be construed to constitute a partnership or joint venture.
17. Counterparts. This Agreement can be executed in several counterparts, each of which shall be deemed to be originals and all of which together shall be deemed to be one original. This Agreement can be signed by facsimile which shall be deemed to be an original for all purposes.
18. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight carrier, or seven (7) days after being sent by certified or registered mail with successful receipt of delivery, with postage prepaid, addressed to the party to be notified at such party's address listed above {and to the updated address upon written notice by the notifying party}.
19. Title to Property. Subject to the terms of this Section 19, title, care, custody and control to each Project, including any services and deliverables described in the Statement of Work, shall pass from PowerFlex to the County upon final acceptance by the County. The County shall provide written confirmation of final acceptance of a Project promptly following completion of installation. As between PowerFlex and the County, PowerFlex retains and reserves all right, title and interest (including all related intellectual property rights) in and to the PF-Enterprise identified on the attached Statement of Work, including for the avoidance of doubt the open-platform network of electric vehicle charging stations, the vehicle charging applications the network delivers, as well as the applications established and maintained by PowerFlex which will allow the County to access the various cloud services offerings made available. Cloud services shall be subject to the County's IT security requirements.
20. Term; Expiration. The term of this Agreement shall commence on February 11, 2020 and expire on the fifth (5th) anniversary of the date the last Project is accepted by the County as described in Section 19 above, unless terminated earlier pursuant to the terms of this Agreement.

Exhibit A - Statement of Work

Summary of Scope: PowerFlex shall procure and deliver electric vehicle chargers, installation equipment, software, licenses, maintenance, warranties and controls for electric vehicle chargers. Everything provided by PowerFlex shall comply with all codes (Title24, Title24 part6, Title 24 part11, Title20, CalGreen I&II, ADA, Building, Safety, warranties, SCE, PG&E, Lompoc, etc.).

Equipment: Final equipment list is contingent on the final engineering design.

Electric Vehicle Chargers: PowerFlex shall provide sixty-eight (68) level 2 (lvl 2) 7.2kw chargers, three (3) DC fast 50kw chargers, Software and Electric Vehicle Controller and kiosks for four (4) locations to the County of Santa Barbara for its public and fleet use. The County intends to charge the public for use of the electricity; therefore, the EV chargers shall deliver point of sale transactions and PowerFlex will make revenue remittances to the County on a quarterly basis.

The software shall be PowerFlex latest version of software (the "PF-Enterprise") that can provide the following:

- Pricing setting for end users, billing practices, service fees, revenue distribution, and reports
- Activate and test the EV charging stations;
- Process point of sale transactions;
- Network service that would capture data and sale;
- Detailed revenue , sales, expenses, and usage reports;
- Payment options for public access;
- Provide maintenance services, customer support, for five (5) years
- All maintenance and license for five (5) years.
- The software regulating the chargers shall throttle the chargers to prevent demand spikes on the utility bills.
- The EV charger stations shall have the ability to stop flow of power when not in use. The system shall have over-current protection to prevent vehicles from drawing too much power.

PowerFlex shall be responsible for all costs of the Electric Vehicle Charging project controls including, but not limited to power control, commissioning, Maintenance, warranty, software, licenses, website, reports, billing and Watts per station regulation. Each station's outputs shall be limited to the number of Watts based on: (Hour of day, Day of the week, utility rates, utility meter it is connected to demand, County requirements, distribution panel and by the type of customer).

Software Service Provisions

PowerFlex shall provide the COUNTY with data reports in CSV form for the following Reports, for the periods of time requested, for specified electric vehicle service equipment determined by the COUNTY. PowerFlex shall supply the COUNTY with the requested data by electric vehicle service equipment and/or by period of time at any time.

Reports

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

PowerFlex shall supply the COUNTY, and maintain and manage as directed by the COUNTY, the following services:

- Bill each end user for the usage of the electricity and any other parking fees as determined by the COUNTY.
- Provide separate electricity and financial bills for COUNTY Fleet vehicles
- Provide separate electricity and financial bills for the general public usage
- Provide separate electricity and financial bills for COUNTY workplace usage
- Prohibit the distribution of electricity of specified electric vehicle service equipment

Software, licenses, controls for electric vehicle charge

EV Charger Technical Specifications

All EV charging stations shall meet or exceed the following specifications and requirements:

1. UL listed compliant equipment with National Electrical Code and FCC regulations for safety and operation requirements;
2. Americans with Disabilities Act (ADA) compliant;
3. New equipment.
4. Level 2 Chargers connector SAE J1772 with PowerFlex cord management cable.
5. County access to the network to allow for the management of charging operations including access, pricing, power distribution, and charging notifications;
6. Accessible to all members of the public, with no membership to a specific network required for access;
7. Accepting and processing point of sale transaction payments of all major credit cards and ATM cards through a secure system;
8. Station location and real-time available to users on the websites;
9. Available 24/7 customer support for drivers.
10. Cybersecurity Insurance Policy: This policy will protect the County if there is a security breach of mobile payment platform.

Service Provider(s)/Data Capture

The EV charger stations shall handle, transfer, and backup data. The network communications shall provide the following information for each charging transaction, at each charging location, and must comply with all state and federal regulations:

- Charging data such as date and time of usage (start and stop time) and utilization rates;
- Total kWh and Total kW draw;
- Total dollar amount charged to the user;
- Station status and health in real time;
- Malfunction or operating error.

Maintenance, Warranties

Maintenance and Communications

The PowerFlex shall provide maintenance services to ensure all equipment is properly checked, tested, and activated for proper operation on an annual basis throughout the term of this Agreement. The network communications system service provided shall monitoring the EV chargers for any error or malfunction 24 hours a day, seven days a week. Maintenance of the EV charger stations should be performed by local service providers who have the capability to notify and respond in the following manner and time frame:

- The service provider shall be notified of the malfunction and immediately notify the County and/or its staff of such malfunction or operating error within one hour.
- In the event of an equipment or hardware malfunction or failure, a maintenance crew shall respond to the site within one business day from the time the issue is reported.
- The PowerFlex shall examine carefully the site of the work contemplated, the plans and specifications to make sure their software, commutation and software will work at each location.

Warranty

PowerFlex shall use commercially reasonable efforts to enforce the manufacturer's warranty on all purchased EV charger equipment, hardware, and software for five (5) years from the date of acceptance by the County. The warranty must include all materials, equipment, parts, tools, labor and incidentals, as well as all vendor- or manufacturer-recommended upgrades. Warranty shall cover complete repairs or replacements, and site visits, as necessary. For activities covered under the warranty, where possible, the County's preference is to use a local service provider (defined as within the Santa Barbara Area region). If there is a failure of the EV charger during the warranty period, PowerFlex shall agree to pursue the replacement of such components or parts within three (3) business days of notification. The PowerFlex shall identify any and all local contractor(s) who will be providing all warranty and services to the EV charger stations.

Installation equipment

PowerFlex shall pay for Equipment listed in Exhibit A. If the County during engineering decides to alter this list of materials, The County shall pay the difference in the Costs. PowerFlex shall not order or provide any of the following equipment until the County agrees with engineering on the final equipment needed for installation.

IN WITNESS WHEREOF, the parties have executed this Agreement for Services of Independent Contractor between the County of Santa Barbara and PowerFlex Systems, LLC to be effective on the date executed by COUNTY OF SANTA BARBARA.

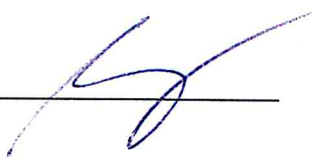
COUNTY

By: _____
GREGG HART, CHAIR
BOARD OF SUPERVISORS

ATTEST:
MONA MIYASATO
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

CONTRACTOR, POWERFLEX SYSTEMS, LLC
GEORGE LEE

By: _____
Deputy

By: _____


APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM
BETSY M. SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED AS TO FORM:
RAY AROMATORIO,
RISK MANAGER

RECOMMENDED FOR APPROVAL
JANETTE D. PELL, DIRECTOR
GENERAL SERVICES DEPARTMENT

By: _____
Risk Manager

By: _____
Department Head

EXHIBIT B

Indemnification and Insurance Requirements (For Power Flex Agreement)

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 out of this Agreement 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. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

EXCLUSION OF CONSEQUENTIAL AND OTHER INDIRECT DAMAGES

Except for third party and breach of confidentiality claims in no event shall either party be liable, for any special, consequential, punitive, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement.

LIMITATION OF LIABILITY

CONTRACTOR'S aggregate liability under this Agreement is limited to the coverage actually afforded by the CONTRACTOR'S insurance policy, described under the INSURANCE section in this Exhibit.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any 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.

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

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** 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.
1. **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 Vendor in this agreement and shall include, but not be limited to, claims involving 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, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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 above 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 effect 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, 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.