

LOS ANGELES FIRE DEPARTMENT



RONNIE R. VILLANUEVA
INTERIM FIRE CHIEF

October 6, 2025

BOARD OF FIRE COMMISSIONERS
FILE NO. 25-055

TO: Board of Fire Commissioners

FROM: **RV** Ronnie R. Villanueva, Interim Fire Chief

SUBJECT: AGREEMENT WITH INCHARGE ENERGY, INC. FOR ELECTRICAL
VEHICLE CHARGING AND RELATED SERVICES

FINAL ACTION: ☐ Approved	☐ Approved w/Corrections	☐ Withdrawn
☐ Denied	☐ Received & Filed	☐ Other

SUMMARY

The City of Los Angeles (City), through the Los Angeles Fire Department (LAFD), requires the services of a contractor who is qualified to provide electrical vehicle charging services at various LAFD facilities.

The term of the Agreement with InCharge Energy, Inc. (InCharge) will be from September 1, 2025 through July 19, 2027, for an amount not to exceed \$5,000,000, with an option to extend the term through August 31, 2028, subject to the availability of funds.

RECOMMENDATIONS

That the Board:

1. Approve and authorize the Fire Chief to execute the Agreement with InCharge Energy, Inc., to provide electric vehicle charging and related services, from September 1, 2025 through July 19, 2027, for an amount not to exceed \$5,000,000, with the option to extend the term to August 31, 2028, subject to the availability of funding.
2. Transmit the Agreement to the Mayor for review and approval, in accordance with Executive Directive No. 3.

DISCUSSION

Over the last decade, the Mayor and City Council have directed the City's electrification work, and in 2023, the California Air Resources Board adopted the Advanced Clean Fleets rule, creating statutory electrification requirements for public fleets, which are now the driving force behind the City's efforts.

To meet the City's Electric Vehicle (EV) charging needs, City Departments have worked with Shell Recharge (Shell), formerly Greenlots, since 2015 for EV charging services, under contract ARC 40 59684 5. In December 2024, Shell informed the City that it was exiting the EV charging business in North America, and would be terminating service to the City effective March 1, 2025. This sudden exit by the City's primary service provider has left City Departments in dire need of an Electric Vehicle Service Provider (EVSP) that will provide software support, operations and maintenance services, and design/build services.

Pursuant to Charter Section 371(e)(8), competitive bidding is not required due to a cooperative arrangement with another governmental agency for the utilization of their purchasing contracts and professional, scientific, expert, or technical services contracts. Sourcewell, a State of Minnesota local government agency and service cooperative that offers competitive procurement solutions to government entities, held a competitive process and subsequently entered into a Master Service Agreement (Sourcewell Agreement) with InCharge, for services that include the provision of charging products and related services.

The City Departments have evaluated the Sourcewell Agreement, and found that the services meet or exceed all of the City's electrification needs that were previously provided by Shell. Additionally, the LAFD will be able to access various electric vehicle charging services at the same cost as other participating local governmental agencies utilizing the Sourcewell Agreement. Furthermore, as a Los Angeles-based business that is vertically integrated (i.e., handling engineering, installation, hardware, software, support and maintenance), InCharge provides comprehensive commercial EV fleet charging service benefits that did not exist with Shell. Their list of current private and public fleet customers displays the company's ability to meet the needs of large organizations with varied operational requirements.

The term for the Agreement that is subject of this board report is from September 1, 2025 through July 19, 2027, for a contract amount not to exceed \$5,000,000, with the option to extend the term of August 31, 2028, subject to the availability of funding.

The City Attorney has reviewed and approved the Agreement as to legal form.

FISCAL IMPACT

Funding for this Agreement is available in FY 2024-25 MICLA, Fund 298, Account 38AEVC, and currently has a balance of \$3,000,000. In the event an additional \$2,000,000 in funding is required for change orders, increases to the funding will be requested in subsequent fiscal year budgets.

Board report prepared by Martin Mullen, Battalion Chief, and Christina Torres, Management Analyst, Fire Facilities Section, Training and Support Bureau.

Attachment

AGREEMENT NO. _____

AGREEMENT BETWEEN

THE CITY OF LOS ANGELES

AND

INCHARGE ENERGY, INC.

FOR

ELECTRIC VEHICLE CHARGING SERVICES

AGREEMENT NO. _____

AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND
INCHARGE ENERGY, INCORPORATED

This Agreement (hereinafter referred to as "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "City"), acting by and through the Los Angeles Fire Department (hereinafter referred to as "Department"), and InCharge Energy, Inc., a Delaware corporation (hereinafter referred to as "Contractor" or "InCharge"), with reference to the following:

WHEREAS, the City maintains a large fleet of vehicles, ranging from sedans to heavy duty work trucks, police cars, fire engines and buses to serve a diverse range of operational needs; and

WHEREAS, the Mayor and City Council have a longstanding history of supporting and requiring low emissions vehicles in the municipal fleet; and

WHEREAS, the City adopted a Zero Emission First vehicle procurement policy in 2020 to ensure that a zero emission vehicle would be the first and preferred option when a vehicle is replaced; and

WHEREAS, the City has installed hundreds of chargers over the last decade to enable fleet electrification; and

WHEREAS, the City is subject to the State's Advanced Clean Fleets rule, which sets near-, medium- and long-term statutory requirements for government fleets to transition to zero emission vehicles; and

WHEREAS, the City has installed, and continues to install, chargers for employees and the public in some municipal parking lots; and

WHEREAS, City requires the services of a qualified Contractor to deliver, install, and, maintain charging stations;

WHEREAS, InCharge is a Los Angeles based company that provides turnkey EV charging solutions, ranging from project design and engineering to equipment and software procurement and installation, as well as attendant product servicing needs, and has experience providing such solutions to government organizations in the United States; and

WHEREAS, pursuant to Los Angeles City Charter Section 371(e)(2), this Agreement is for the performance of professional, scientific, expert, technical, or other special services

of a temporary and occasional character, such that competitive bidding under Charter Section 371 is not practicable or advantageous; and

WHEREAS, in July 2023, Contractor entered into an agreement with Sourcewell (Solicitation Number RFP 0501123), a State of Minnesota local government and service cooperative that offers competitive procurement solutions to, and allows participation in such solutions by, other government entities, including municipalities ("Sourcewell Agreement");

WHEREAS, the scope of the Sourcewell Agreement includes the provision of the charging products and services that are the subject of this Agreement with the City, and the terms provided to City are the same or better than those provided to Sourcewell;

WHEREAS, by pursuant to Charter Section 371(e)(8), the Sourcewell Agreement constitutes a cooperative arrangement with another governmental agency for the utilization of the purchasing contracts and professional, scientific, expert, or technical services contracts, such that competitive bidding is not required; and

WHEREAS, it is neither reasonably practicable nor compatible with the City's best interests to conduct a separate competitive process under Charter Section 372 given that the services can be most economically obtained by contracting with Contractor for the same scope of services at the same or better terms as those provided in the Sourcewell Agreement; and

WHEREAS, pursuant to Charter Section 1022, the City has found that this service can be performed more feasibly by a contractor than by City employees; and

NOW, THEREFORE, the City and the Contractor agree as follows:

1.0 SECTION 1: GENERAL INFORMATION

1.1 Service Overview

The purpose of this contract is to provide electric vehicle charging services at a variety of Department facilities, as determined operationally necessary to advance the City's electrification goals and meet local, state, or federal vehicle regulations. Services will cover full design build projects, software, operation and maintenance, and equipment replacements, dependent upon the needs of the department.

1.2 Work Location

Contractor's Key Personnel, including the Project Manager and technicians, shall be available to work on-site at Department facilities and virtually as needed in order to execute project milestones.

1.3 Representatives of the Parties

1.3.1 Parties to the Agreement

- A. City – The City of Los Angeles, a municipal corporation, chartered by the State of California, acting by and through the Los Angeles Fire Department, having its principal office at:

Los Angeles City Fire Department Headquarters
200 North Main St., 18th Floor
Los Angeles, CA, 90012

- B. Contractor – InCharge Energy, Inc., a Delaware corporation, having its principal office at:

InCharge Energy, Inc.
3760 Motor Ave.
Los Angeles, CA 90034

1.3.2 Representative of the Parties

The representatives of the respective parties authorized to administer this Agreement, and to whom formal notices, demands, and communications shall be given are as follows:

- A. The representative of the City shall be, unless otherwise stated in this Agreement:

Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, CA 90012

With copies to:

Battalion Chief
Fire Facilities Section
Los Angeles Fire Department
201 N. Figueroa Street, Room 1250
Los Angeles, CA 90012

- B. The Contractor's representative is, unless otherwise stated in the Agreement:

Joseph T. Graw, Chief Operating Officer

InCharge Energy, Inc.
1433 Fifth Street
Santa Monica, CA 90401

C. Communication Between Parties

Formal notices, demands, and communication required hereunder by either party shall be made in writing and may be affected by electronic mail, personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing or electronic mail transmission.

2.0 SECTION 2: TERM OF AGREEMENT

2.1 Term

The term of this Agreement shall be from September 1, 2025 through July 19, 2027, unless otherwise terminated by the City as provided for in this Agreement.

2.2 Amendments

This Agreement may be extended, at City's sole discretion, through August 31, 2028. Any amendment must be in writing and entered into pursuant to the amendment process described in Section PSC-5, Amendment, of Attachment A – Standard Provisions for City Contracts (Rev. 1/25 [v.2]), attached hereto and incorporated by reference herein. Any amendment to extend the term of this Agreement is contingent on the availability of funds and the Contractor having provided satisfactory services under this Agreement.

2.3 Ratification of Agreement

To the extent that the Contractor may have begun performance of the services before the date of execution at the City's request and due to the immediate needs of the Department, the City hereby ratifies and accepts those services performed in accordance with this Agreement and authorizes payment as provided by the terms of this Agreement. Notwithstanding this Section, the term of this Agreement and commencement date will remain as stated above.

3.0 SECTION 3: SCOPE OF WORK

Contractor shall provide the City electric vehicle charging products and services at a variety of Department facilities, as determined operationally necessary to

advance the City's electrification goals and meet local, state, or federal vehicle regulations. Services will cover full design build projects, software, operation and maintenance, and equipment replacements, dependent upon the needs of the department.

3.1 Equipment, Products, or Services

Contractor shall provide the Equipment, Products, or Services set forth in Contractor's Master Price List ("Master Price List"), which is attached as Exhibit A and incorporated by reference into this Contract. Contractor shall notify the City's designated contact a minimum of 60 days prior to a revision of the Master Price List. Construction quotes for custom work that will be performed by InCharge will follow the pricing set forth in the Master Price List.

All Equipment and Products provided under this Contract must be new and the current model. Contractor may offer close-out or refurbished Equipment or Products if they are clearly indicated in Contractor's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as fully operational to the City's site.

Contractor shall maintain adequate parts and equipment in stock to prevent delays in delivery or service.

3.2 Competitive Bids for Cost Plus Services

For each custom installation or other service for which the price is listed as "cost +" in the Master Price List, Contractor will solicit at least three competitive bids. Contractor will share all bids with the City and recommend the lowest cost satisfactory bid to the City for approval. The City reserves the right to reject the recommended bid, or all bids. The City reserves the right to contract such work through another contractor, or to do the work itself (such as by the Construction Forces Division of the Department of General Services), including after having rejected bids solicited by Contractor, in which case no price will be paid to Contractor.

3.3 Construction

All construction and equipment installations shall be done to industry standards, adhering to applicable codes and permitting requirements, while ensuring a minimum quality of work, maintaining a safe work zone, and not damaging City property over the course of the project.

A project will not be considered complete and final payment will not be remitted until Contractor provides the City with all required closeout materials, including as-built drawings, permits, including building card and

final approvals, CAD or similar files, special inspections if applicable, tests / reports (megger test or commissioning checklist), manuals and warranties, RFI's, change orders, submittals and photos.

3.4 Licensing

The Contractor hereby grants City a license to access and use any purchased software and all of its constituent components. City's license to access and use the System includes an unlimited number of end-user licenses for the Department to use for its governmental purposes.

3.5 In Scope Services

The project scope includes the following systems:

- InCharge Software - InControl

The project scope includes the following services for each system:

- Project Management
- System Design and Configuration
- System Installation and Testing
- System Training
- System Implementation Support
- System Warranty, Maintenance and Support

3.6 Out of Scope Services

Unless mutually agreed to by both parties by way of an amendment to this Agreement, any other services not specifically listed in this Agreement are considered out of scope. The City shall only be responsible for payment for services or items it orders through a written order specifically referencing items on the Master Price List. For the sake of clarity the City shall not be responsible for payment for any service or item unless it is on the Master Price List and City has submitted a written order referencing the item number on the Master Price List. The City shall not be responsible to pay Contractor for any out of scope work not described in this Agreement, and not agreed to by the parties in writing by way of an amendment to this Agreement. Contractor shall immediately notify the City in writing of any work that is requested to be performed that is outside of the original scope of work covered by this Agreement. If it is determined that the request is outside of the scope of work, Contractor shall not perform the requested work unless and until (i) the City approves the request in writing and authorizes the use of any contingency funds for the work, and (ii) an amendment providing for an adjustment in Contractor's compensation and the scope of work is approved and executed by both parties.

4.0 SECTION 4: OPTIONAL SERVICES

From time to time, additional services may be required that are not included within the scope of this Agreement. Any such services that may be needed in the future will be addressed with a separate scope of work, cost and schedule, and may be included in this Agreement by amendment.

5.0 SECTION 5: PAYMENT AND INVOICING

5.1 Total Payment Amount

City will pay Contractor for satisfactory services rendered in a total amount not to exceed \$5,000,000 based on the rates specified in the Master Price List.

Contractor further understands and agrees that execution of this Agreement does not guarantee that any or all of these funds will be expended.

Notwithstanding any other provision of this Agreement, including any exhibit or attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the City shall have no obligation to make any payments to Contractor unless the City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in said Agreement. Contractor agrees that services provided by Contractor, purchases made by Contractor, or expenses incurred by Contractor in excess of said appropriation(s) shall be free and without charge to City and City shall have no obligation to pay for said services, purchases or expenses. Contractor shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until City appropriates additional funds for this Agreement.

5.2 Travel Expenses

Contractor shall not bill City for, and City shall have no liability to Contractor for, any travel or travel expenses incurred as a result of Contractor performing the services and providing the products and deliverables of this Agreement. Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter Section 262(a), which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

5.3 Invoicing

5.3.1 The Contractor shall submit its invoices to:

Battalion Chief
Fire Facilities Section
Los Angeles Fire Department
201 N. Figueroa Street, Room 1250
Los Angeles, CA 90012

The invoice must contain the following:

- a. Name and address of company or firm;
- b. Name and address of the contracting department;
- c. Date of the invoice and period covered;
- d. Reference to contract number;
- e. Reference to purchase order number;
- f. Description of the item, service, or completed task and amount due for the task;
- g. Line item number from Master Price List
- h. Copy of invoices and payments to third parties, if any;
- i. Certification by a duly authorized officer of the Contractor;
- j. Discounts and terms (if applicable);
- k. Remittance address (if different from company address); and
- l. Percentage of maximum allowable compensation against which services have been billed to date, and percentage of maximum allowable compensation remaining.

6.0 SECTION 6: DATA, MANAGEMENT, SECURITY, AND PRIVACY

6.1 Data Ownership and Use

The City is the sole and exclusive owner of all data and information that is managed or contained within the system and/or provided to the Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor ("City Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement. Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City's benefit and to improve or enhance the services provided by Contractor.

6.2 Confidential Data

City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit City Data. Contractor shall not possess or assert any lien or other right against or to City Data. City may request an export of City Data stored within the systems or held by Contractor in CSV, JSON or Microsoft Excel format at no charge to City.

6.3 Data Protection in General

The protection of personal privacy and personally identifiable data shall be an integral part of the business activities of Contractor, and Contractor shall use all reasonable efforts to prevent inappropriate or unauthorized use of City Data at any time and safeguard the confidentiality, integrity, and availability of City Data.

6.4 Data Protection Unauthorized Access

Contractor shall implement and maintain appropriate administrative, technical and organizational security measures in order to safeguard against unauthorized access, disclosure, or theft of City Data. Contractor shall protect City Data using no less than the means and technology necessary to meet the standard of care relevant to the data at issue, and in any event, security measures no less stringent than the measures Contractor applies to its own personal or confidential data.

6.5 Data Protection Encryption

Unless otherwise stipulated in writing, Contractor shall encrypt all City Data at rest and in transit with controlled access. The Contractor shall apply and support encryption solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Whenever and wherever applicable, Contractor shall apply and support industry standards or better for tokenization, fraud-use protection, format-preserving encryption, and data encryption technology.

6.6 Data Protection Copying

At no time shall any City data be copied, disclosed, or retained by Contractor or any party related to Contractor, including its subcontractors, for use in any process, publication, or transaction that is not specifically authorized by the City in writing.

6.7 Data Protection Hacking

Contractor shall secure and protect all City Data from hacking, viruses, ransomware, and denial of service and related attacks.

6.8 On Shore Development and Access

Contractor shall provide its services to the City and its end users solely from data centers in the continental United States of America. Storage of City Data at rest shall be located in the continental United States of America. Contractor shall not allow its personnel or subcontractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America headquarters or data centers. Contractor may permit its personnel and subcontractors to access City Data remotely only as required to provide Contracted Services. Contractor shall neither access nor allow a third-party access to City Data from any location outside of the continental United States of America. Contractor shall not provide any services under this Agreement from a location outside of the continental United States of America, absent receipt of City's express approval.

6.9 Access Limitations

Contractor shall use precautions, including, but not limited to, physical software and network security measures, personnel screening, training and supervision, and appropriate agreements to prevent anyone other than authorized City personnel, users and subcontractors with a specific need to know, for a purpose authorized under this Agreement, from monitoring, using, gaining access to City Data. The Contractor shall also protect appropriate copies of City Data from loss, corruption, or unauthorized alteration and prevent the disclosure of City and Contractor usernames, passwords, API keys, and other access control information to anyone other than authorized City personnel.

6.10 Least Privilege

Contractor shall authorize access only to the minimum amount of resources required to fulfil the Contractor's responsibilities in this contract.

6.11 Separation of Duties

The Contractor shall, as much as practical, divide functions among its staff members to reduce the risk of creating an undue dependency on one key person and reducing the risk of fraud being undetected.

6.12 Role-Based Security

The Contractor shall restrict access to authorized users and base access control on the role a user plays in the Contractor's organization.

6.13 Credential Restrictions

Contractor shall restrict the use of, and access to, administrative credentials for accounts and system services accessing City Data, to only those of Contractor's personnel and subcontractors whose access is essential for the purpose of providing the Contracted Services or performing obligations under this Agreement. Contractor shall require personnel and subcontractors to log on using an assigned user-name and password when administering City accounts or accessing City Data. These controls must enable Contractor to promptly revoke or change access in response to terminations or changes in job functions, as applicable. Contractor shall encrypt all passwords, passphrases, and PINs, using solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. If City desires to change user access or credentials beyond the software's built-in capabilities, Contractor shall implement any City request by authorized personnel to revoke or modify user access within twenty-four (24) hours or the next business day of receipt of City's request. Contractor shall disable user accounts after, at most, ten (10) consecutive invalid authentication attempts.

6.14 Physical and Environmental Security

Contractor facilities that process City Data must provide a physically secure environment from unauthorized access, damage, and interference.

6.15 Operational Controls

Contractor shall implement operational procedures and controls designed to ensure that technology and information systems are configured and maintained according to prescribed internal standards and consistent with applicable Industry Standard Safeguards. Examples of Industry Standard Safeguards are ISO/IEC 27002:2005, NIST 800-44, Microsoft Security Hardening Guidelines, OWASP Guide to Building Secure Web Applications, SOC 2 Type 2, and the various Center for Internet Security Standards. Moreover, Contractor shall use application security and software development controls designed to eliminate and minimize the introduction of security vulnerabilities.

6.16 Antivirus

Contractor shall have and maintain antivirus protection configured to automatically search for and download updates (daily, at a minimum) and perform continuous virus scans. Malware and threat detection must be updated continuously, and software patches provided by vendors must be downloaded and implemented in a timely manner. If Contractor is unable to implement these controls in a timely manner, Contractor shall notify City in writing.

6.17 Vulnerability Management and Patching

Contractor shall employ vulnerability management and regular application, operating system, and other infrastructure patching procedures and technologies designed to identify, assess, mitigate, and protect against new and existing security vulnerabilities and threats, including viruses, bots, and other malicious code.

6.18 Network Controls

Contractor shall have, shall implement, and shall maintain network security controls, including the use of firewalls, layered DMZs and updated intrusion detection and prevention systems, reasonably designed to protect systems from intrusion or limit the scope or success of any attack or attempt at unauthorized access to City Data.

6.19 Logging and Monitoring

Unless prohibited by applicable law, Contractor shall, and shall require subcontractors to, continuously monitor its networks and personnel for malicious activity and other activity that may cause damage or vulnerability to City Data. Contractor shall maintain logs of administrator and operator activity and data recovery events related to City Data.

6.20 Changes in Service

Contractor shall notify the City of any changes, enhancement, and upgrades to the System Administration and Network Security, or changes in other related services, policies, and procedures, as applicable, which can adversely impact the security of City Data.

6.21 Policies

Contractor shall, and shall require subcontractors to, establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards, and procedures (collectively

“Information Security Policy”), and communicate the Information Security Policy to all of its respective personnel in a relevant, accessible, and understandable form. Contractor shall regularly review and evaluate the Information Security Policy to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks. Upon execution of this Agreement and thereafter within three (3) days of City’s request, Contractor shall make available for review by the City Contractor’s Information Security Policy and any related SOC audits or other evidence that Contractor has in place appropriate policies and procedures regarding information protection and security.

6.22 Vulnerability and Risk Assessments

At least annually, Contractor shall perform vulnerability tests and assessments of all systems that contain City Data. Within sixty (60) days of attestation, Contractor shall provide the City with a written “Vulnerability and Risk Assessment Report” that describes the last vulnerability and risk assessment conducted within one year, including the methods and results. The Contractor shall provide the City with each annual report thereafter.

6.23 Right of Audits by City/Security Review Rights

City and its agents, auditors (internal and external), regulators, and other representatives as City may designate, may inspect, examine, and review the facilities, books, systems, records, data, practices, and procedures of Contractor (and any personnel and subcontractors that Contractor may use) that are used in rendering services to City to verify the integrity of City Confidential Information and to monitor compliance with the confidentiality and security requirements for City Confidential Information. In lieu of an on-site audit, at City’s discretion and upon request by the City, the Contractor agrees to complete, within fourteen (14) days of receipt, an audit questionnaire provided by the City regarding the Contractor’s data privacy and information security program. Contractor shall comply with all recommendations that result from such inspections, tests, and audits within reasonable and agreed upon timeframes.

6.24 Data Backup and Emergency Recovery

Contractor shall employ a multilayered approach to backups and disaster recovery, including the use of a primary data center and a backup data center. Contractor shall perform both local and remote backups of the complete server infrastructure, including server operating systems, applications, and data. Contractor shall perform Disaster Recovery Tests no less than annually. Contractor shall maintain and comply with a reasonable written plan (the “DR Plan”) setting forth procedures for (a) mitigating disruption to systems during and after an earthquake, hurricane,

other natural disaster, war, act of terrorism, act of cyberterrorism, and other natural or man-made disaster, including without limitation Force Majeure Events (as that term is used in PSC-6, Excusable Delays, of the Standard Provisions for City Contracts (Rev. 10/17)[v.3] (collectively, a "Disaster"); and (b) restoring Service functionality promptly after a Disaster. The DR Plan will include procedures no less protective than industry standard, and Contractor shall update the DR Plan as the industry standard changes.

6.25 Data Return and Destruction

At the conclusion of the Agreement and as instructed by City, Contractor shall (at its sole cost) return, delete, or destroy City Data then in its possession or under its control including, without limitation, originals, and copies of such City data. The following types of information are excluded from this requirement: (i) City Data that becomes a part of the public domain, including through court filings; and (ii) City Data that Contractor is required to maintain, by law, regulations, or by the terms of this Agreement, but only for the time period required. For the avoidance of doubt, anything that is stored on routine backup media solely for the purpose of disaster recovery will be subject to destruction in due course rather than immediate return or destruction pursuant to this paragraph, provided that Personnel are precluded from accessing such information in the ordinary course of business prior to destruction.

Contractor shall implement and utilize appropriate methods to ensure the destruction of City Data. Such methods shall be in accordance with recognized industry best practices and shall leave no data recoverable on Contractor's computers or other media.

Contractor agrees to certify that City Data has been returned, deleted, or destroyed from its systems, servers, off-site storage facilities, office locations, and any other location where Contractor maintains City Data within forty-five (45) days of receiving City's request that the information be returned, deleted, or destroyed. Contractor shall document its verification of data removal, including tracking of all media requiring cleaning, purging or destruction.

6.26 Data Breach

Contractor shall notify City in writing as soon as reasonably feasible, but in any event within twenty-four hours, or if later, the next business day after Contractor's discovery of any unauthorized access of City Data or Contractor becoming reasonably certain that such unauthorized access has occurred (a "Data Breach"), or of any event that compromises the integrity, confidentiality or availability of City Data (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or

degradation due to computer malware or virus. Contractor shall begin remediation immediately. Contractor shall provide daily updates if requested by City, and, in any event, reasonably frequent updates, regarding findings and actions performed by Contractor until the Data Breach or Security Incident has been resolved to City's satisfaction. Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share a report of the investigation findings with City. At City's sole discretion, City and/or its authorized agents shall have the right to conduct an independent investigation of a Data Breach. Contractor shall cooperate fully with City and its agents in that investigation. If the City is subject to liability for any Data Breach or Security Incident, the Contractor shall fully indemnify and hold harmless the City and defend against any resulting actions.

6.27 Confidentiality

6.27.1 City's Confidential Information

For purposes of this Section 6.28, "Confidential Information" means any nonpublic information whether disclosed orally or in written or digital media, received by Contractor that is either marked as "Confidential" or "Proprietary" or which the Contractor knows or should have known is confidential or proprietary information. City Data shall be treated as Confidential Information by Contractor under this Agreement, even if such data is not marked "Confidential" or "Proprietary" or was obtained by or transferred to Contractor prior to the effective date of this Agreement.

6.27.2 Protection of Confidential Information

Except as expressly authorized herein, Contractor shall (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement or performing the contracted services. Contractor shall limit access to Confidential Information to Contractor personnel and subcontractors that are previously disclosed to City and, (1) who have a need to know such information for the purpose of Contractor performing its obligations or exercising its rights under this Agreement, or performing Contracted Services; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, the Contractor shall protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the City's request or upon termination or expiration of this Agreement, the Contractor shall return to the City any Deliverables not provided to the City and Contractor shall destroy (or permanently erase

in the case of electronic files) all copies of Confidential Information, and Contractor shall, upon request, certify to City its compliance with this sentence.

6.27.3 Exceptions

The confidentiality obligations set forth in Section 6.28 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Contractor; (b) is lawfully provided to the Contractor by a third party free of any confidentiality duties or obligations; (c) was already known to the Contractor at the time of disclosure free of any confidentiality duties or obligations; or (d) the Contractor can demonstrate was independently developed by personnel of the Contractor without reference to the Confidential Information. In addition, the Contractor may disclose Confidential Information to the extent that such disclosure is necessary for the Contractor to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Contractor promptly notifies the City in writing of such required disclosure, cooperates with the City if it seeks an appropriate protective order, and the Contractor discloses no more information that is legally required.

6.28 Compliance with Privacy Laws

Contractor is responsible for ensuring that Contractor's performance of its obligations and exercise of its rights under this Agreement complies with all applicable local, state, and federal privacy laws and regulations, as amended from time to time. If this Agreement or any practices which could be, or are, employed in performance of this Agreement become inconsistent with or fail to satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and Contractor shall complete and deliver any documents necessary to show such compliance. The City acknowledges and agrees that Contractor is not responsible for giving any notices to or obtaining any consents from any other party in order for Contractor to process the City Data as contemplated by this Agreement.

7.0 SECTION 7: REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants that:

7.1 Compliance with Law

The services that the Contractor provides pursuant to this Agreement will comply with all applicable laws, including, without limitation, federal, state, and local.

7.2 Authority to Contract and No Pending Litigation

The Contractor has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

7.3 Intellectual Property Warranty

(i) The Contractor's performance under this Agreement does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity or proprietary information; and (ii) the Contractor is the owner of the intellectual property rights for the services provided pursuant to this Agreement and of each and every component thereof, or has a valid license for the services provided, as described in Subsection 7.3.1.

7.3.1 Third Party Software

In the event the Contractor provides any third-party software ("Third-Party Software"), including Open Source Software, to the City in connection with this Agreement:

7.3.1.1 The Contractor has and will maintain the right to license and provide access to any Third-Party Software licensed to the City, or otherwise provided to the City under this Agreement;

7.3.1.2 The Third-Party Software does not, and the use of the Third-Party Software by the City as contemplated by this Agreement will not, infringe any intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade

secrets, rights of publicity, and proprietary information, of any third party in any way;

7.3.1.3 The City is not obligated to pay any third party any fees, royalties, or other payments for the City's use of any Third-Party Software in accordance with the terms of this Agreement;

7.3.1.4 To the extent permitted by law or contract, the Contractor shall pass through to the City the warranties for the Third-Party Software; and

7.3.1.5 Contractor shall provide the City license to access and use any Third-Party Software necessary for the functionality of the System at no additional cost, and inclusive of licensing for an unlimited number of users. Contractor shall ensure that any required third-party licenses are maintained within fully supported versions, and that any custom developed system software continues to function on any new versions of required third-party software (e.g., server, desktop and mobile operating system, browser, database, application servers, etc.) as they become available. To the extent permitted by law or contract, the Contractor shall pass through to the City the warranties for the Third-Party Software.

7.3.2 Definition of Open Source Software

For purposes of this section, "Open Source Software" means any software, programming, or other intellectual property that is subject to (i) the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including, but not limited to, those licenses listed at www.opensource.org/licenses, or (ii) any agreement with terms requiring any intellectual property owned or licensed by the City to be (a) disclosed or distributed in source code or object code form; (b) licensed for the purpose of making derivative works; or (c) redistributable.

7.3.3 Third-Party and Open Source Software.

With regard to open-source software and any third-party software embedded system, all such software shall be considered, as appropriate, part of and included in the definition of "the System" and subject to all warranties, indemnities, and other requirements of this Agreement, including scope of license and maintenance and support.

7.4 Conformity to Specifications

The System will perform materially as described in Section 3: Scope of Work.

7.5 Workmanlike Performance

All professional services will be performed in a professional and workmanlike manner, according to at least prevalent industry standards, and performed by competent personnel.

7.6 Disabling Code Warranty

No software or services to which the City is provided access and use hereunder contains any undisclosed disabling code (defined as computer code designed to interfere with the normal operation of the software or the City's hardware or software) or any program routine, device or other undisclosed feature, including, but not limited to, a time bomb, virus, drip-dead device, malicious logic, worm, Trojan horse, or trap door which is designed to delete, disable, deactivate, interfere with or otherwise harm the software or the City's hardware or software.

7.7 Virus/Malicious Software Warranty

The Contractor has used its best efforts to scan for viruses within the software, and no malicious system will be supplied under this Agreement.

8.0 SECTION 8: MISCELLANEOUS

8.1 Not a Waiver

Contractor acknowledges and agrees that nothing contained in this Agreement is, represents, or is intended to be construed as: a release, compromise, settlement, or waiver by City of any cause of action that City may have against Contractor. City reserves its rights in full, including, but not limited to, the right to bring any claim, cause of action, or request for reimbursement against Contractor in relation to this Agreement and other transactions between City and Contractor.

8.2 Audit Rights

In addition to those rights available to City elsewhere in this Agreement, including pursuant to PSC-16, Retention of Records, Audit and Reports, of Attachment A – Standard Provisions for City Contracts (Rev. 1/25 [v.2]). Contractor shall provide City, or City's duly authorized representatives, access for the purposes of audit and investigation, to any and all books,

documents, papers, records, deliverables, and software documentation pertaining to any past, current, or future (i) transactions between City and Contractor, (ii) work requested to be performed of Contractor, or (iii) demands for payment by Contractor.

8.3 Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, in no way lessens the liability of Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of this work, equipment or materials may not have been apparent or detected at the time the payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and upon rejection must be replaced by Contractor without delay.

8.4 Publicity/Case Studies

Contractor shall refer all inquiries from the news media to City, shall immediately contact City to inform City of the inquiry, and shall comply with the procedures of City's Public Affairs staff regarding statements to the media relating to this Agreement or Contractor's services hereunder. Contractor shall not use City as a reference or case study absent receipt of City's prior written approval. Contractor shall further provide City with the opportunity to review and approve any such reference or case study prior to publication. In no event may Contractor use any City marks in conjunction with a reference or case study.

9.0 SECTION 9: NON-EXCLUSIVE AGREEMENT

City and Contractor understand and agree that this is a non-exclusive Agreement to provide services and products to the City and the City reserves the right to enter into an agreement with other Contractors to provide similar services and products during the term of this Agreement.

10.0 SECTION 10: CITY CONTRACTING REQUIREMENTS

10.1 Standard Provisions

Contractor shall comply with the Standard Provisions for City Contracts (Rev. 1/25 [v.2]), attached hereto as Attachment A and incorporated by reference as though fully set forth herein.

10.2 Disclosure of Border Wall Contracting Ordinance

Contractor shall comply with Los Angeles Administrative Code (LAAC) Section 10.50 *et seq.*, "Disclosure of Border Wall Contracting Ordinance." City may terminate this Agreement at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

11.0 SECTION 11: ORDER OF PRECEDENCE

This Agreement, and any exhibits, attachments or documents incorporated herein by inclusion or by reference constitutes the complete and entire Agreement between the City and the Contractor. In the event of any inconsistency between the body of this Agreement and the Attachment and Exhibit, the order of precedence shall be as follows:

- 1) This Agreement between the City of Los Angeles and InCharge Energy, Inc.
- 2) Attachment A – Standard Provisions for City Contracts (Rev. 1/25 [v.2])
- 3) Exhibit A – Master Price List

12.0 SECTION 12: ENTIRE AGREEMENT

This Agreement contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement. No-shrink-wrap, click-wrap, privacy policy, or other terms and conditions or agreements ("Additional Contractor Software Terms") provided with any products, services, documentation, or software provided by Contractor to City hereunder shall be binding on the City, even if use of the foregoing requires an affirmative "acceptance" of those Additional Contractor Software Terms before access is permitted. All such Additional Contractor Software Terms will be of no force or effect and will be deemed rejected by the City in their entirety.

13.0 SECTION 13: COUNTERPARTS/ELECTRONIC SIGNATURES

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

THE CITY OF LOS ANGELES,
A Municipal Corporation

INCHARGE ENERGY, INC.,
A Delaware Corporation

By signing below, the signatory attests that they have no personal, financial, beneficial or familial interest in this contract.

By: _____
Ronnie R. Villanueva
Fire Chief

By: _____
Joseph T. Graw
Chief Operating Officer

Date: _____

Date: _____

APPROVED AS TO FORM:
HYDEE FELDSTEIN SOTO, City Attorney

By: _____
Name: _____
Title: _____

By: _____
Samuel W. Petty
Deputy City Attorney

Date: _____

Date: _____

ATTEST:
PATRICE Y. LATTIMORE, City Clerk

By: _____
Deputy City Clerk

Date: _____

*Approved signature methods for California Corporations:

A. Two signatures: One of the Chairman of the Board of Directors, President, or Vice President, and one of the Secretary, Chief Financial Officer, or Assistant Treasurer. The signature of a single individual holding offices in each category is also acceptable.

Or

B. One signature of a corporate-designated individual together with a properly attested resolution of the Board of Directors or copy of the Bylaws authorizing the individual to sign.

Agreement Number: _____