



Staff Report

Date: August 2, 2016

To: City Council

From: Valerie J. Barone, City Manager

Reviewed by: Victoria Walker, Director of Community and Economic Development

Prepared by: Mark Migliore, Associate Civil Engineer
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 (925) 671-3422

Subject: **Considering award of a Construction Contract for the Local Government Electric Vehicle Fleet Project (Project No. 2193) in the Amount of \$146,500 to ABM Electric of Pleasanton and authorize the Mayor to execute such contract subject to City Attorney approval; and authorize staff to utilize the available project contingency for contract change orders up to 10% of the contract amount. (Funded by Surface Transportation Program (STP)/Congestion Management and Air Quality (CMAQ) Grant funds and General Fund)**

This project qualifies for a Categorical Exclusion pursuant to NEPA Section 6004 issued by Caltrans, and a Statutory Exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15601(b)(3) “project not subject to CEQA review.”

Report in Brief

In December 2010, the City of Concord partnered with eight other jurisdictions via a Memorandum of Understanding (MOU) and on April 16, 2014 was awarded \$280,000 as part of a larger \$2.8 million grant toward the Local Government Electric Vehicle Fleet project offered as part of the Metropolitan Transportation Commission Climate Initiative Program. The City of Concord used this grant funding to purchase ten electric vehicles in 2015 and 2016. The procurement and installation of five charging stations to serve these electric vehicles was deferred until Alameda County, the lead agency for the project, completed the design and bid documents for installation.

Following selection of the low bidder and award of the construction contract by Alameda County, each participating jurisdiction has the responsibility to award a construction contract based on those bids. Alameda County received bids in May 2016 and staff transferred sufficient funds to enable construction contract award following City Council approval of the budget transfer action on June 7, 2016.

Recommended Action

Staff recommends that the City Council award a Construction Contract in the amount of \$146,500 to ABM Electrical of Pleasanton to install five dual port charging stations and authorize the Mayor to execute such contract subject to City Attorney approval; and authorize staff to execute construction contract change orders up to 10% of the contract amount, utilizing the available contingency.

Background

In December 2010, the City Council approved the City of Concord's portion of the Local Government Electric Vehicle Fleet project (Project No. 2193) as part of the Metropolitan Transportation Climate Initiatives Program. The scope of the project for Concord included procuring 10 electric vehicles and the installation of 5 dual port charging stations. Each charging station will serve two vehicles and will be installed at three locations: one at the Corporation Yard, two at the Civic Center and two at the Police Department. Vehicle procurement was completed in late 2015 and early 2016. The Memorandum of Understanding executed by the City in 2010 gave the County of Alameda responsibility to act as the lead agency and manage the grant funding for both the procurement of the vehicles as well as the charging stations (See Attachment 1).

In July 2013, the City Council approved an additional Memorandum of Understanding that established Alameda as the lead agency for both the environmental and procurement processes of the project (See Attachment 2).

On June 7, 2016, the City Council approved a budget transfer of \$34,000 needed to fully fund this project.

Procurement Process

As previously addressed in the City Council Agenda Report dated June 7, 2016, Alameda County General Services Agency responsibility for soliciting bids for electric vehicle charging stations. Alameda County issued a bid solicitation for installation of the dual port charging stations and awarded a construction contract to ABM Electrical of Pleasanton.

Environmental Review

As the project lead agency, Alameda County was responsible for evaluation and filing of project environmental documents. Alameda County determined that this project qualifies for a Statutory Exemption under Section 15061 (b) (3) of the California Environmental Quality Act (CEQA) as being exempt from CEQA review. Additionally, since federal

funds are being used in the project, National Environmental Policy Act (NEPA) clearance was also required. Caltrans issued a Categorical Exclusion under NEPA on January 21, 2011.

Financial Impact

With the additional \$34,000 budget transfer approved by the City Council on June 7, 2016 there are sufficient funds in the budget to fully fund the cost of this construction contract, 10% contingency, and associated construction management agreement and staff costs.

Public Contact

The City Council Agenda was posted.

Attachments

1. Memorandum of Understanding No.1 dated April 28, 2011
2. Additional Memorandum of Understanding No. 2 dated July 23, 2013

**Memorandum of Understanding
Local Government EV Fleet Project**

This Memorandum of Understanding ("MOU") is hereby made between the non-profit Bay Area Climate Collaborative and the following public entities: Alameda County and Sonoma County, City & County of San Francisco, City of Fremont, City of Concord, City of Oakland, City of San Jose, and the Marin Municipal Water District. The above public entities shall be collectively referred to as the "Parties", and referred to individually as a "Party".

The Parties to this MOU have collectively submitted and received notice of grant award totaling \$2.808 million for federal Surface Transportation Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) through the Metropolitan Transportation Commission (MTC) to purchase electric vehicles, specifically the Nissan Leaf and the Ford Transit Connect models and make ("Subject Vehicles") and associated charging infrastructure ("Chargers").

Alameda County shall have the following responsibilities:

1. Alameda County shall act as the lead agency.
2. Alameda County shall manage all coordination with Caltrans regarding grant requirements.
3. Alameda County shall act as fiscal agent through the project completion.
4. Alameda County shall commit to funding our individual match of \$460,000 as outlined in the Local Government EV Project budget approved by the MTC
5. Alameda County shall seek reimbursement for project and financial management as outlined in the Local Government EV Fleet Project budget.
6. Alameda County shall coordinate the reporting requirements of the grant.

Each individual party shall have the following responsibilities:

1. Each Party shall timely prepare and submit to Alameda County all grant required items or information for Caltrans authorization.
2. Each Party shall commit to funding the individual match amount outlined in the Local Government EV Fleet Project budget approved by MTC. The following is a listing of this match amount:

a. County of Sonoma	\$ 769,700
b. City & County of San Francisco	\$ 300,000
c. City of Fremont	\$ 40,000
d. City of Concord	\$ 180,000
e. City of Oakland	\$ 51,000
f. City of San Jose	\$ 51,000
g. Marin Municipal Water District	\$ 66,000
h. Bay Area Climate Collaborative	\$ 0

This amount has been authorized and approved by the governing body of the City, County, or Authority signing this MOU.

3. Each party may choose to manage purchase of Level 2 chargers and their installations under their own local budget without federal match in which case the match amount above will be reduced by \$11,000 per Level 2 charger as described in the approved project proposal.
4. Each party shall purchase the Subject Vehicles and Chargers directly from the vendor(s) and not through Alameda County.
5. Each party shall issue its own Purchase Order, if necessary, for the purchase of the Subject Vehicles, and Alameda County shall have no responsibility to do so.
6. Each party shall submit qualified claims for reimbursement to Alameda County for purchases of Subject Vehicles and Chargers.
7. Sonoma County shall submit qualified claims for reimbursement to Alameda County for purchases of Subject MPG meters.
8. Bay Area Climate Collaborative shall submit qualified claims for reimbursement to Alameda County for purchases of Program Management, Analytics and Marketing.
9. Each party shall manage its own Agreement after it has been executed with the vendor(s), and Alameda County shall have no responsibility to do so.

The Parties understand and agree that the MTC may have other requirements and conditions which will have to be met by all Parties.

Each party hereby agrees to defend, indemnify, and save harmless the other Parties to this MOU, its County, its City, its Council, Boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, its County, its City, its Council, Boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortious act or omission, or willful misconduct of any other Party, its officers, employees or agents in the performance of any services or work pursuant to this MOU.

ALAMEDA COUNTY

By: _____
 Name: _____
 Title: _____
 Date: _____

SONOMA COUNTY

By: _____
 Name: _____
 Title: _____
 Date: _____

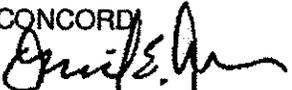
CITY AND COUNTY OF SAN FRANCISCO

By: _____
 Name: _____
 Title: _____
 Date: _____

CITY OF FREMONT

By: _____
 Name: _____
 Title: _____
 Date: _____

CITY OF CONCORD

By: 
Name: Daniel E. Keen _____
Title: City Manager _____
Date: 4/28/11 _____

CITY OF OAKLAND

By: _____
Name: _____
Title: _____
Date: _____

CITY OF SAN JOSE

By: _____
Name: _____
Title: _____
Date: _____

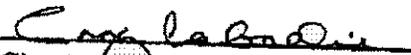
MARIN MUNICIPAL WATER DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

BAY AREA CLIMATE COLLABORATIVE

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:


City Attorney

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AKI K. NAKAO Director

1101 LAKESHORE DRIVE, OAKLAND, CALIFORNIA 94612 510 208 9700 FAX 510 208 9711 www.aegov.org/gsa/

**MEMORANDUM OF UNDERSTANDING FOR LOCAL GOVERNMENT EV FLEET
NATIONAL DEMONSTRATION PROJECT**

This Memorandum of Understanding ("MOU") is entered into as of _____, 2013 (the "Effective Date") by and among the following California jurisdictions: County of Alameda ("Alameda County"), County of Sonoma ("Sonoma County"), City and County of San Francisco ("San Francisco"), City of Concord ("Concord"), Sonoma County Water Agency ("SCWA"), City of Oakland ("Oakland"), City of San Jose ("San Jose"), City of Fremont ("Fremont"), and Marin Municipal Water District ("MMWD"). Signatories to this MOU are referred to herein as "the "Partners" and individually as a "Partner".

Recitals

WHEREAS, the Partners and the Bay Area Climate Collaborative ("BACC") have collectively submitted and received notice of a grant award (the "Grant") totaling \$2.808 million for the federal Surface Transportation Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) through the Metropolitan Transportation Commission (MTC) to purchase electric vehicles, including light-passenger sedans and cargo vans ("Electric Vehicles"), purchase and install electric vehicle charging stations ("Chargers"), and for Alameda County and Sonoma County to conduct pilot projects involving MPG meters and for Alameda County and San Jose to conduct pilot projects involving car sharing ("Pilots") to test new products and strategies; and

WHEREAS in approximately November 2010, the Partners entered into a Memorandum of Understanding for Local Government EV Fleet Project ("November 2010 MOU"), which included provisions for Alameda County to act as the lead agency for the solicitation of Electric Vehicles and Electric Vehicle charging station equipment and installation services ("Project"); and

WHEREAS in approximately August 2011, the City of Santa Rosa entered into a Memorandum of Understanding with Alameda County, which included provisions for Alameda County to issue and manage solicitations for the Project and for the City of Santa Rosa to participate in the Project; and

WHEREAS Alameda County has agreed to act as lead agency in this innovative regional collaborative initiative; and

WHEREAS Alameda County Public Works Director has been selected to interact directly with Caltrans related to the Grant, and Alameda County General Services Agency Director is working with the Public Works Director to issue RFQ/RFPs and meet other Grant requirements; and

WHEREAS the Alameda County Board of Supervisors on November 30, 2010 adopted Resolution Number R-2010-453 authorizing its Director, General Services Agency, and its Director, Public Works Agency or designees to execute and file an application with MTC for STP/CMAQ funding for the Local Government EV Fleet Project and commit the necessary non-Federal match, and state the assurance to complete the project; and

WHEREAS Caltrans has approved the environmental application and issued E76 funding obligations to proceed with the procurement process for the purchase and installation of Electric Vehicles and Chargers; and

WHEREAS the Partners, seeking to be reimbursed by Grant funding, desire and intend to purchase Electric Vehicles and Chargers as a group of public entities through the Alameda County RFQs (the "Solicitations") in order to obtain the lowest prices; and

WHEREAS it is cost effective for Alameda County, as the Lead Agency, through the Solicitations to solicit the lowest prices, which may vary from jurisdiction to jurisdiction, for purchases of Electric Vehicles, for Architectural and Engineering (A/E) Professional Design Services, and for purchase and installation of Chargers; and

WHEREAS Caltrans is acting as the funding agent for the Grant and as such has implemented and continues to revise procedures and requirements for reimbursement under the Grant; and

WHEREAS, at the completion of the Solicitation process, subject to the approval of their respective Board, Council or applicable governing body, the Partners may enter into agreements with selected vendors ("Vendors") substantially in the forms of the Partner Terms and Conditions ("Partner Terms and Conditions") to be prepared pursuant to Sections 1.A and 1.B of this MOU.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Partners agree as follows:

SECTION 1. ROLE AND RESPONSIBILITIES OF ALAMEDA COUNTY

- A. Alameda County shall lead three (3) separate Solicitations by (i) preparing and issuing the Solicitations, and acting as lead jurisdiction and point of contact for bidders, (ii) creating Partner Terms and Conditions (the "Partner Terms and Conditions"), and (iii) timely coordinating and communicating with Partners, as necessary throughout the procurement process through recommendation for award and negotiations with the bidders. The Solicitations include the following competitive bid processes, and are subject to change based on Caltrans procedures and requirements for reimbursement under the Grant:
1. RFQ for Electric Vehicles
 2. RFQ for A/E Services
 3. RFP for Chargers
- B. Alameda County will consult with the Partners with respect to the content of the Solicitations and the terms and conditions contained within Partner Terms and Conditions, provided, however, that any comments or concerns must be communicated to Alameda County within the allotted timeframe as provided by Alameda County, with such timeframe that shall be no more than fifteen (15) calendar days from the date the draft is distributed. If any further draft is circulated the Partner shall review and provide comments no more than ten (10) calendar days from the date any further draft is distributed.

- C. After consideration of any comments and suggestions, Alameda County shall finalize each RFQ for publication and solicitation per Alameda County's public bidding process.
- D. Alameda County shall manage the procurement process in compliance with all applicable laws including, State Public Contracting Code and federal funding regulations ("Regulations"). These Regulations include, but are not necessarily limited to, a prohibition on local preference for bidders, Federal prevailing wage requirements (as determined by the U.S. Department of Labor in accordance with the Department of Labor Regulations 29 Code of Regulations), and inclusion of workforce diversity requirements.
- E. The Partners agree that Alameda County shall be the single point of contact for Vendors and necessary third parties throughout the group Solicitation process, except for any third parties that the Partners interact with as individual organizations, in order to avoid the potential for confusion. Alameda County agrees to provide the Partners with all relevant information in a timely manner.
- F. Alameda County shall receive bids, review the bids received for factors such as completeness and satisfaction of minimum qualifications and will make recommendations to each Partner for award of contracts based on the lowest, responsible, responsive bids received.
- G. Alameda County will enter into contract with the awarded bidder for A/E Services. This vendor will provide A/E Services for all of the Partner locations for the creation of design specifications to be used in the RFP for Chargers. Alameda County will be solely responsible for the cost of the A/E Services.
- H. Alameda County shall have no liability to any Partner related to A/E Services, contracting or purchases.
- I. Alameda County shall have no liability for failure of any Partner to comply with Federal funding regulations. Alameda County will review all Partner Terms and Conditions prior

to bid release and all contract documents prior to execution to provide a final check for compliance with Federal funding regulations. Any document prepared by a Partner that violates Federal funding regulations will be withheld from reimbursement and that Partner will not receive reimbursement. Alameda County agrees to notify any such Partner of the violation and provide the Partner with twenty working days to correct the same. If the violation can be corrected in a way that is acceptable with Federal regulations, then Alameda County will submit for reimbursement.

- J. Alameda County agrees to contract with the Bay Area Climate Collaborative ("BACC"), a non-profit agency, for marketing and data analytics services in the amount of \$145,000, as outlined in the Grant application. Alameda County will submit for reimbursement from Caltrans for the expense.
- K. In addition to participating as the lead jurisdiction under this MOU, Alameda County is also a participant in the Grant for Electric Vehicles, Chargers, and Pilots. As such, Alameda County is included as a partner in the solicitation documents.

SECTION 2. ROLES AND RESPONSIBILITIES OF THE PARTNERS

- A. Each Partner has undertaken its own due diligence prior to entering into this MOU to determine the feasibility of Electric Vehicles, Chargers and Pilots in its jurisdiction.
- B. Each Partner is responsible for meeting their individual legal, procedural and other requirements for these Solicitations.
- C. Each Partner shall review the draft RFQ/RFPs, including confirming that the number of units, local tax, FOB terms, and other related terms and specific requirements for Partner are accurately contained in the draft RFQ/RFPs by the deadlines established by Alameda County. Alameda County is not responsible for any errors in the RFQ/RFP, including those related to specific requirements of Partner.

- D. The Partners shall procure their own Testing and Inspection, Subsurface Utility Engineering ("SUE"), and building power assessments prior to Alameda County entering into contract for A/E Services and provide this information to Alameda County. The Partners shall also procure any other consultants they need for the Project.
- E. If a Partner fails to provide information on Testing and Inspection, SUE, building power assessments, and any other information necessary for A/E Services prior to Alameda County entering into contract for A/E services, the Partner acknowledges that Alameda County will not produce site design specifications for the locations of its Chargers and thus will not be included in the installation component of the RFP for Chargers. The Partner can choose to perform installation of the Chargers in-house or hire a contractor of its choosing. The Partner may not be able to be reimbursed for installation services through the Grant if it chooses to perform installation of Chargers in-house or through a contractor, although the Partner will still be able to purchase and seek reimbursement for the Chargers. Partners choosing to perform installation in-house or hire a contractor include, but may ultimately not be limited to:
1. City of Fremont
 2. San Francisco RPD
 3. San Francisco GSA
 4. City of San Jose
- F. The Partners shall be responsible for obtaining all necessary permits for any portion of the Project within their jurisdiction. Alameda County is not responsible for obtaining permits at any location except those under the responsibility of Alameda County.
- G. The Partners shall provide any information regarding the presence of lead paint and/or other hazardous materials to Alameda County, as requested, and perform any necessary hazardous materials testing and abatement for building site locations within their jurisdictions where Chargers will be installed, prior to release of the RFP for Chargers.

- H. The Partners agree to participate in the Solicitations under the lead role of Alameda County and agree to work cooperatively and promptly with Alameda County throughout the Solicitation process. The Partners agree that time is of the essence; and failure of a Partner to provide the required information in the requested format and within the reasonable deadlines established by Alameda County may result in termination of that Partner's participation in the Solicitations. In any such case, Partner shall not be liable for any damages to any of the other Partners based upon such termination.
- I. Upon conclusion of the Solicitation process, the Partners may, subject to the approval of their respective Board, Council or applicable governing entity, where required, enter into binding agreements, substantially in the form of the Partner Terms and Conditions, with the selected Vendors, provided that each Partner determines, to its satisfaction, that the Vendors are responsible, and comply with the Partner's terms, conditions and requirements. The Partners may also negotiate with Vendors in order to conform the Partner Terms and Conditions with requirements of law, regulation and policy. Alameda County shall not be responsible for reference checks, performance, or for compliance with any agreement, regulations, laws or policies, except as to this MOU and any contracts between Alameda County and Vendor(s). Partners are not required to contract with any Vendor.
- J. Any agreement that the Partner executes, including contract(s), with any bidder(s) shall comply with all federal funding regulations. These regulations include, but are not necessarily limited to, a prohibition of local preference given in bidding documents and contracts, federal prevailing wage requirements [as determined by the U.S. Department of Labor in accordance with the Department of Labor Regulations 29 CFR (Code of Regulations)], and workforce diversity requirements.
- K. Each Partner shall be fully responsible for all payments owed to any Vendors(s) they contract with, including directly issuing Partner Purchase Orders or other payment methods.

- L. Caltrans requires that a certified Resident Engineer (“Resident Engineer”) review and supervise projects. Partner is responsible for obtaining, at its sole cost, a Caltrans certified Resident Engineer. A Resident Engineer will be included as part of the RFQ for A/E Services. Partners may select the Resident Engineer retained through the RFQ for A/E Services; select their own in-house Resident Engineer; or select a third-party Resident Engineer. Partner must notify Alameda County within ten (10) calendar days of making the Resident Engineer selection. Partners may have the option to seek reimbursement for Resident Engineer services, as part of that Partner’s designated grant funds for Charging Station and Installation, if these services are performed in-house by that Partner’s organization or through a third-party if that third-party was selected in a manner compliant with federal funding regulations.

- M. The Partners are responsible for submitting project closeout checklists by the Resident Engineer and other project closeout documentation to Alameda County.

- N. The BACC has been identified in the Grant as the organization that is responsible for marketing and data analytics for the Grant project. Partner agrees to fully cooperate with BACC and supply all data and reports to them as requested, if such data and reports are available and not otherwise exempt from disclosure.

- O. Each Partner understands that Caltrans has specific procedures and policies related to purchases and reimbursement procedures under the Grant, and such procedures and policies are subject to change. Each Partner will fully cooperate with all requests of Caltrans and supply any and all available information or assistance to Alameda County related to policies, procedures and requests from Caltrans.

- P. Each Partner shall promptly provide invoices and any required information to Alameda County. The Partner understands that Caltrans has specific deadlines for funding and if invoices are not timely submitted, they may not be reimbursed.

- Q. Each Partner has full access to the Grant application and its requirements and agrees to abide by all terms of the Grant. The Partners understand that the Grant requirement and related Federal rules, regulation and policies are subject to change at the discretion of the Federal government, including but not limited to the Department of Transportation. Each Partner understands that such changes are beyond the control of Partners and agrees to abide by all changes and additional requirements as they become known.
- R. Each Partner understands that they will only be reimbursed up to the funding amounts that were submitted as part of the original Grant application. A summary of these funds are listed in Section 3 of this MOU. Partners can seek reimbursement up to their Total Construction Phase amount.
- S. Each Partner has committed to a quantity of Electric Vehicles, Chargers, and Pilots and funds from the Grant have been allotted to each Partner to pay for all or a portion of these expenses. Any adjustment in quantity by a Partner (e.g. number of Electric Vehicles or Charging Stations) must be absorbed by any other Partner or multiple Partners so that there is no net loss in the total quantity of 90 Electric Vehicles and 90 Charging Stations among all Partners. Any adjustments in quantities must also be approved by all Partners. If a Partner purchases less than the quantity it has agreed to in the Grant application, then the Partner will only be reimbursed for the quantity actually purchased.
- T. The Remaining Partners must pick-up any Electric Vehicles, Chargers, and/or Pilots from a Partner that purchases less than the quantity they have agreed to in the Grant application. If multiple Partners are interested, priority in the selection process will be based on and given to Partners with the greatest to least financial commitment to the Grant. If no Partners are interested, other local governments will be solicited to participate in the Grant, pending approval of this MOU. If no Partners or any other local governments are interested, Alameda County will pick up the remaining Electric Vehicles, Chargers, and/or Pilots.

U. Each Partner understands that the Grant has conditions and if not all conditions are met, or funds are withdrawn, reduced or not awarded for any reason each Partner shall bear their own costs and expenses.

V. Any Partner may separately pursue its own solicitation of Electric Vehicles, Chargers or Pilots. Partners choosing to do so are waiving their right to be reimbursed by Grant funding.

W. In the event that Grant funding is still available after all Partners have submitted their fund reimbursements and all 90 Electric Vehicles and 90 Chargers and Pilots have been completed, Partners may request additional reimbursement from the Grant funding. Priority in the selection process for additional reimbursement will be based on and given to the Partners with the greatest to least financial commitment to the Grant with the first Partner seeking reimbursement and then remaining Partners seeking reimbursement, if funds are still available, until funding has been exhausted.

SECTION 3. GRANT FUNDING AVAILABLE FOR CONSTRUCTION PHASE AS OF JANUARY 7, 2013 AND PARTNER MATCH FUNDING

Budget Breakdown

	Alameda County (GSA)	Concord	Fremont	Oakland	San Francisco	San Jose	Sonoma County Water Agency	Sonoma County	Marin Municipal Water District	Total
Vehicles Charging Stations & Installation	\$460,000	\$170,000	\$30,000	\$54,000	\$230,000	\$54,000	\$51,966	\$264,462	\$99,000	\$1,413,428
MPG Meters (a)	\$12,500							\$12,500		\$25,000
Total CON	\$736,500	\$280,000	\$52,000	\$87,000	\$384,000	\$87,000	\$106,966	\$518,962	\$132,000	\$2,384,428
Marketing (b)	\$100,000									\$100,000
Data Analytics (b)	\$45,000									\$45,000
Administration (c)	\$59,147									\$59,147

Car Share Pilot (d)	\$62,500					\$62,500				\$125,000
Total CE	\$266,647	\$0	\$0	\$0	\$0	\$62,500	\$0	\$0	\$0	\$329,147
Total CE/CON	\$1,003,147	\$280,000	\$52,000	\$87,000	\$384,000	\$149,500	\$106,966	\$518,962	\$132,000	\$2,713,575

Partner vehicle count, number of charging stations, and matching funds breakdown:

Partner Name	# Vehicles	# Charging Stations	Matching Funds
County of Alameda	24	24	\$ 460,000
County of Sonoma	22	22	\$ 547,400
City & County of San Francisco	14	14	\$ 300,000
City of Fremont	2	2	\$ 40,000
City of Concord	10	10	\$ 180,000
City of Oakland	3	3	\$ 51,000
City of San Jose	3	3	\$ 51,000
Marin Municipal Water District	3	3	\$ 66,000
Sonoma County Water Agency	5	5	\$ 123,500
Bay Area Climate Collaborative	0	0	\$ 0

SECTION 4. SOLICITATION BID PROTEST(S)

- A. Each Partner shall cooperate with any Partner if a bid protest is brought against Partner or Alameda County, or any other Partner. Alameda County is not obligated to defend a bid protest in any matter, including the provision of legal advice or services to Partner.
- B. Partner shall fully cooperate with Alameda County in the event of a bid protest brought against Alameda County, but Partner is not obligated to defend the bid protest in any matter, including the provision of legal advice or services to Alameda County.

SECTION 5. MODIFICATION OF NOVEMBER 2010 MOU

- A. Alameda County and Partner, specifically agree that this MOU is a supplement to and modification of the November 2010 MOU. To the extent there is any conflict between the two agreements, this MOU shall control.

B. Alameda County and Partner specifically agree that through the execution of this MOU, the November 2010 MOU is amended and modified as follows:

a. All references to Sonoma County refer only to Sonoma County. Sonoma County and the Sonoma County Water Agency are now acting as separate Partners.

b. In the second paragraph on the first page of the MOU, the following is deleted:

“specifically the Nissan Leaf and the Ford Transit Connect models and make (“Subject Vehicles”)”

and replaced with the following:

“including light-passenger sedans and cargo vans (“Electric Vehicles”)”

c. Paragraph 2(a) under the header “Each individual party shall have the following responsibilities:” on the first page of the MOU is revised to delete “County of Sonoma \$769,700.00” and replace it with the following, which amounts total \$670,900.00:

(a)(i). County of Sonoma	\$ 547,400
(a)(ii). Sonoma County Water Agency	\$ 123,500

SECTION 6. TERM OF MOU.

The term of this MOU shall commence on the Effective Date.

SECTION 7. GOVERNING LAW AND VENUE.

The law governing this MOU shall be that of the State of California. In the event that suit shall be brought by any Partner to this MOU, the Partners agree that venue shall be exclusively vested in the State’s courts of Alameda County or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, Oakland, California.

SECTION 8. WARRANTY DISCLAIMER; LIABILITY; WAIVER.

A. No warranty, express or implied, is provided by any Partner as to results or success of the Solicitations, this MOU, or any agreements ultimately entered into by the Partners. Each Partner acknowledges that the others have not made, and are not making, any assurances, guaranties or promises with respect to the subject matter of this MOU and that each

Partner is ultimately responsible for conducting its own due diligence with respect to feasibility, pricing, technology, third parties and all other matters in any way related to the subject matter of this MOU.

- B. In no event shall any Partner, nor its officers, agents, employees, or representatives be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services, loss of use, data, or profits, or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way, directly or indirectly, from this MOU, participation in the Solicitations, or any agreement(s) between a Partner and any third party, even if advised of the possibility of such damage.
- C. Each Partner is responsible for negotiation, execution, administration and enforcement of any contract with a Vendor or third party related to the subject matter of this MOU. Any agreement ultimately entered into by each Partner and breached shall not be grounds for default in a separate agreement with a Vendor and any other Partner to this MOU. Likewise, each vehicle purchased by a Partner via a separate agreement with a Vendor shall not serve as collateral for any other Partner's agreement with the same vendor. The Partners acknowledge and agree that each Partner's contract with each Vendor is separate and distinct from any other Partner's agreement with the same Vendor.
- D. No waiver by any Partner to this MOU of any breach or violation of any term or condition of this MOU shall be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

SECTION 9. NOTICES.

Notices shall be deemed effective on the date delivered if delivered by personal service or nationally recognized overnight delivery service, or, if mailed, three (3) days after deposit in the U.S. Postal Service mail. All notices and other communications required or permitted to be given under this MOU shall be in writing and shall be personally served, delivered by overnight

service, or by mail, first class, certified or registered postage prepaid and return receipt requested, addressed to the respective Partners as follows:

To: County of Alameda, GSA
1401 Lakeside Drive, 10th Floor
Oakland, CA 94612
Attn: Doug Bond

To: County of Sonoma

Attn:

To: City and County of San Francisco

To: City of Concord

Attn:

Attn:

To: Sonoma County Water Agency

Attn:

To: City of Oakland

To: City of San Jose

Attn:

Attn:

To: City of Fremont
39550 Liberty St.
P.O. Box 5006
Fremont, CA 94538
Attn: Amy Rakley

To: Marin Municipal Water District

Attn:

SECTION 10. MISCELLANEOUS PROVISIONS.

- A. If any term, condition or covenant of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this MOU shall be valid and binding on the Partners.
- B. This MOU may be executed in counterparts and will be binding as executed.
- C. All changes or extensions to this MOU shall be in writing in the form of an amendment executed by all Partners.

- D. This MOU is entered into only for the benefit of the Partners executing this MOU and not for the benefit of any other individual, entity, or person.

SECTION 11. WITHDRAWAL.

- A. No Partner may withdraw from this MOU during the period from thirty (30) calendar days before the issuance of the Solicitations and the date that Vendor(s) have been selected. The date of the Solicitation will be pursuant to the schedule developed by Alameda County in collaboration with the Partners for such Solicitations.
- B. Withdrawal by any Partner from this MOU shall not preclude the remaining Partners from continuing the Solicitations contemplated under this MOU and from using the Partner Terms and Conditions created by any Partner to this MOU, unless otherwise prohibited by law.
- C. Notice of withdrawal must be provided in writing to Alameda County GSA.
- D. Remaining Partners must pick-up any Electric Vehicles, Chargers, and/or Pilots from a Partner that has withdrawn. If multiple Partners are interested, priority in the selection process will be based on and given to Partners with the greatest to least financial commitment to the Grant. If no Partners are interested, other local governments will be solicited to participate in the Grant, pending approval of this MOU. If no Partners or any other local governments are interested, Alameda County will pick up the remaining Electric Vehicles, Chargers, and/or Pilots.

SECTION 12. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed on the Partners pursuant to Government Code Section 895.6, the Partners agree that all losses or liabilities incurred by a Partner that are in any way related to this MOU shall not be shared pro rata but, instead, the Partners agree that, pursuant to Government Code Section 895.4, each of the Partners hereto shall fully indemnify and hold each of the other Partners, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Partner, its officers, employees, or agents, under or in connection with or arising out of any

work, authority, or jurisdiction delegated to such Partner under this MOU. No Partner, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of another Partner hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Partner under this MOU.

SECTION 13. NON-DISCRIMINATION

The Partners shall comply with all applicable Federal, State, and local laws, regulations and policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Partners shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Partners discriminate in performing its obligations under this MOU because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

SECTION 14. DISPUTE RESOLUTION

Any dispute arising out of this MOU may be submitted to mediation, subject to agreement by each of the parties to the dispute. Nothing in this Section shall limit the legal remedies available to the Partners, including the right to seek immediate judicial intervention.

In the event of a dispute regarding this MOU each party to bear its own attorney's fees and costs.

IN WITNESS WHEREOF, the Partners have executed this MOU as of the Effective Date
County of Alameda

AYES:

NOES:

EXCUSED:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

By _____

By _____

CITY OF CONCORD

By: Valerie J. Bardge
Valerie J. Bardge, City Manager

ATTEST:
By: Mary Rae Lehman
Mary Rae Lehman, City Clerk

APPROVED AS TO FORM:

By: Mark S. Coon
Mark S. Coon, City Attorney

COUNTY OF SONOMA

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

SONOMA COUNTY WATER AGENCY

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF OAKLAND

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF SAN JOSE

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF FREMONT

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

MARIN MUNICIPAL WATER DISTRICT

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CERTIFIED COPY ORIGINAL

BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

A Resolution Authorizing the Execution of an
Updated Memorandum of Understanding

Resolution No. 13-67

WHEREAS, the City of Concord has partnered with nine other local jurisdictions and been awarded \$350,000 as part of a larger \$2.8 million grant toward Project No. 2193, Local Government Electric Vehicle (EV) Fleet Project, through the 2010-11 Innovative Grant under the Metropolitan Transportation Commission's Climate Initiatives Program; and

WHEREAS, the City of Concord will receive ten Nissan Leaf sedan electric vehicles to be deployed within the City's fleet and serve as replacements to our current vehicles; and

WHEREAS, each participating agency is required to execute an updated Memorandum of Understanding which more clearly defines the roles and responsibilities for each participating agency and names the County of Alameda as the project's lead agency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES
RESOLVE AS FOLLOWS:

Section 1. Authorize the City Manager, or his designated representative, to execute the Memorandum of Understanding.

Section 2. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Concord on July 23, 2013, by the following vote:

AYES: Councilmembers - E. Birsan, T. Grayson, L. Hoffmeister, R. Leone, D. Helix

NOES: Councilmembers - None

ABSTAIN: Councilmembers - None

ABSENT: Councilmembers - None

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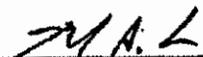
Res. No. 13-67

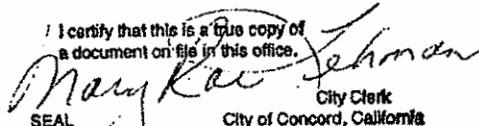
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I HEREBY CERTIFY that the foregoing Resolution No. 13-67 was duly and regularly adopted at a regular meeting of the City Council of the City of Concord on July 23, 2013.


Mary Rae Lehman, CMC
City Clerk

APPROVED AS TO FORM:


Mark S. Coon
City Attorney

I certify that this is a true copy of a document on file in this office.

SEAL City Clerk
City of Concord, California

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