

**DONATION AGREEMENT BETWEEN THE
CITY OF DELRAY BEACH AND PLUG IN FLORIDA, INC.**

THIS DONATION AGREEMENT is made this ____ day of _____, 2011, between the **CITY OF DELRAY BEACH**, a Florida municipal corporation (“City”) and **PLUG IN FLORIDA, INC.** a Florida not-for-profit corporation (“Donor”).

W I T N E S S E T H:

WHEREAS, Donor and **City** desire to provide electric vehicle charging stations throughout the **City** to help promote the use of electric cars throughout the **City**; and

WHEREAS, Donor has agreed to fund the purchase and installation of up to six (6) ClipperCreek CS-40 Electric Vehicle Supply Equipment (EVSE) devices to be located within the City of Delray Beach with location of devices to be determined by both **Donor** and **City** according to various site selection criteria, the most important being to provide the lowest installation cost possible.

NOW, THEREFORE, upon the mutual covenants herein provided, the parties agree as follows:

1. **Recitals**. The recitals set forth herein are hereby incorporated as if fully set forth herein.

2. **Donor’s Responsibilities:**

a.) **Donor** agrees to fund the purchase and installation of up to six (6) ClipperCreek CS-40 Electric Vehicle Supply Equipment (EVSE) devices, including labor costs, electrical wires and parts, conduit, pedestal mounts on concrete pads, and protective bollards (2 per charging station), to connect the electric vehicle charging stations to the **City’s** nearest suitable outdoor electrical cabinet or circuit disconnect

switches of appropriate voltage and amperage rating, if and where such electrical cabinet or circuit disconnect switches is or are available, easily and readily accessible, and have ample and sufficient available unused capacity to power the intended number of electric vehicle charging stations, within one hundred (100) feet of the intended location of the electric vehicle charging stations, but excluding any costs of electrical upgrades to the **City's** electrical cabinet at any site where electric vehicle charging stations are to be located, unless explicitly agreed to by both **City** and **Donor**.

b.) The maximum amount of **Donor's** monetary contribution towards funding installation costs will be determined by **Donor**, at **Donor's** sole discretion.

c.) **Donor** may choose to only partially fund installation costs, with the maximum amount of **Donor's** monetary contribution to be determined by **Donor** at **Donor's** sole discretion, at any site where **City** intends electric vehicle charging stations to be used exclusively by **City** employees or **City** fleet vehicles during normal business hours (8 am to 5 pm, Monday to Friday).

d.) Within thirty (30) days of formal approval and authorization by the City Commission of the installation, operation, and use by the public of three (3) electric vehicle charging stations at Banker's Row Parking Lot, **Donor** shall contribute up to Four Thousand Eight Hundred Dollars (\$4,800.00) to the **City** for the costs associated with installing three (3) ClipperCreek electric vehicle charging stations at Banker's Row Parking Lot, located at the 200 Block of NE 1st Avenue. If such formal approval and authorization is not made by the City Commission by May 31, 2012, this paragraph shall expire, no longer remain in force, and any such monetary contribution by **Donor** shall be subject to renegotiation between **Donor** and **City**.

e.) Within ten (10) days of formal approval and authorization by the City Commission of the installation, operation, and use by the public of three (3) electric vehicle charging stations at Banker's Row Parking Lot, **Donor** shall contribute up to One Thousand Two Hundred Dollars (\$1,200.00) to the **City** to have FPL upgrade the electrical service (from 60 Amps/120 Volts to 200 Amps/240 Volts) to the **City's** electrical cabinet located at Banker's Row Parking Lot, in the 200 block of NE 1st Avenue. If such formal approval and authorization is not made by the City Commission by May 31, 2012, this paragraph shall expire, no longer remain in force, and any such monetary contribution by **Donor** shall be subject to renegotiation between **Donor** and **City**.

f.) For a period of five (5) years following the date of original installation, **Donor** agrees to provide **City** free of charge, at no cost to **City**, a replacement ClipperCreek electric vehicle charging station for any ClipperCreek electric vehicle charging station provided and installed under this Agreement that becomes inoperable or unusable due to theft, vandalism, misuse, other damage, or failure of internal parts within the unit, in exchange for the inoperable or damaged charging station, if available (i.e. if not stolen), up to a maximum total number of six (6) free replacement ClipperCreek electric vehicle charging stations in aggregate for all electric vehicle charging stations covered under this Agreement.

g.) For a period of five (5) years following the date of original installation, **Donor** agrees to provide **City** free of charge, at no cost to **City**, a replacement J1772 connector/cable set for any ClipperCreek electric vehicle charging station provided and installed under this Agreement where the external J1772

connector/cable set becomes inoperable or unusable due to theft, vandalism, misuse, other damage or failure of the J1772 connector/cable set, in exchange for the inoperable or damaged J1772 connector/cable set, if available (i.e. if not stolen), up to a maximum total number of twelve (12) free replacement J1772 connector/cable sets in aggregate for all electric vehicle charging stations covered under this Agreement.

3. **City's Responsibilities:**

a.) **City** agrees to use **Donor's** monetary contribution of Four Thousand Eight Hundred Dollars (\$4,800.00) to install three (3) ClipperCreek electric vehicle charging stations at City's Banker's Row Parking Lot, located at the 200 block of NE 1st Avenue, Delray Beach.

b.) **City** agrees to use Donor's monetary contribution of One Thousand Two Hundred Dollars (\$1,200.00) to have FPL upgrade the electrical service (from 60 Amps/120 Volts to 200 Amps/240 Volts) to the **City's** electrical cabinet located at Banker's Row Parking Lot, in the 200 block of NE 1st Avenue. If the cost of FPL's electrical service upgrade to the **City's** electrical cabinet at Banker's Row Parking Lot is less than One Thousand Two Hundred Dollars (\$1,200.00), **City** may use the remaining balance of the difference between **Donor's** monetary contribution of One Thousand Two Hundred Dollars (\$1,200.00) and FPL's electrical service upgrade cost for other expenses **City** may have associated with the installation of the three (3) ClipperCreek electric vehicle charging stations at Banker's Row Parking Lot, including the **City's** cost of upgrading the electrical panel inside the **City's** electrical cabinet at Banker's Row Parking Lot to a 200 Amp panel.

c.) **City** is responsible for upgrading, at **City's** own cost and expense, the electrical panel inside the **City's** electrical cabinet at Banker's Row Parking Lot to a 200 Amp panel.

d.) Within ten (10) days of **City** awarding the installation contract, **City** shall notify **Donor** of the total dollar amount of the winning bid to install the three (3) ClipperCreek electric vehicle charging stations at Banker's Row Parking Lot, located at the 200 block of NE 1st Avenue. If the winning bid is less than **Donor's** monetary contribution of Four Thousand Eight Hundred Dollars (\$4,800.00), **City** shall refund to **Donor** the difference between **Donor's** Four Thousand Eight Hundred Dollar (\$4,800.00) monetary contribution and the winning bid amount within thirty (30) days of completion of the installation of the three (3) ClipperCreek electric vehicle charging stations at Banker's Row Parking Lot.

e.) **City** agrees to return to **Donor** the three (3) ClipperCreek electric vehicle charging stations, three (3) pedestal mounts, **Donor's** monetary contribution of Four Thousand Eight Hundred Dollars (\$4,800.00) to install the three (3) ClipperCreek electric vehicle charging stations at Banker's Row Parking Lot, located at the 200 block of NE 1st Avenue, and **Donor's** monetary contribution of One Thousand Two Hundred Dollars (\$1,200.00) to have FPL upgrade the electrical service (from 60 Amps/120 Volts to 200 Amps/240 Volts) to the **City's** electrical cabinet located at Banker's Row Parking Lot, if the three (3) ClipperCreek electric vehicle charging stations have not been installed at Banker's Row Parking Lot within one hundred twenty (120) days from the earlier of a.) the date **City** receives from **Donor** the three (3) ClipperCreek electric vehicle charging stations and three (3) pedestal mounts intended for installation at

Banker's Row Parking Lot, b.) the date **City** receives from **Donor Donor's** Four Thousand Eight Hundred Dollar (\$4,800.00) monetary contribution or c.) the date **City** receives **Donor's** One Thousand Two Hundred Dollar (\$1,200.00) monetary contribution, unless **Donor** agrees in writing to extend this one hundred twenty (120) day time limit. Such agreement on a time limit extension will not be unreasonably withheld by **Donor** if installation at Banker's Row Parking Lot is in progress at the end of the one hundred twenty (120) day time limit. Failure or inability by **City** to install the three (3) ClipperCreek electric vehicle charging stations at Banker's Row Parking Lot, under the terms of this paragraph, shall not constitute a breach of this Agreement and shall not affect **City's** rights to install electric vehicle charging stations at other locations provided for under this Agreement.

f.) **City** shall ensure that the three (3) ClipperCreek electric vehicle charging stations to be located at Banker's Row Parking Lot are each installed with two protective bollards, at least 4 feet in height above ground level, placed in front of each electric vehicle charging station.

g.) If **City** removes any ClipperCreek electric vehicle charging station installed pursuant to this Agreement within five (5) years of the date of its original installation, **City** shall return to **Donor** the removed ClipperCreek electric vehicle charging station and its pedestal mount within ninety (90) days of removal of such charging station, unless **City** reinstalls such ClipperCreek electric vehicle charging station within ninety (90) days following its removal.

h.) **City** shall bear, at its own expense, all costs associated with rearranging, resizing, and restriping parking spaces and pavement markings related to

the installation of electric vehicle charging stations in any parking lot where electric vehicle charging stations are to be located, including, but not limited to, for reasons related to ADA (Americans with Disabilities Act) compliance issues and requirements and their spillover effects to other parking spaces in the same parking lot.

i.) **City** shall bear, at its own expense, all costs associated with the design, creation, purchase, implementation, and installation of signage and pavement markings establishing and indicating to the public the usage conditions, restrictions, and policies of electric vehicle charging stations to be installed under this Agreement and parking spaces from which such charging stations are accessible, including restrictions limiting usage or parking to various types of vehicles and time restrictions on usage or parking in such spaces, such usage and parking conditions, restrictions and policies being the prerogative of the **City** to decide and determine at its sole discretion.

j.) **City** acknowledges that **Donor** has discussed with and advised **City** on ADA (Americans with Disabilities Act) compliance issues and requirements relating to public charging stations for electric vehicles and **City's** obligations pertaining thereto.

k.) **City** acknowledges that **Donor** has provided **City** with copies of the cut sheet, installation guide, and user manual for the ClipperCreek CS-40 electric vehicle charging station, listing the ClipperCreek CS-40 charging station's UL (Underwriter's Laboratory) approvals and conformance and compliance with all technical and safety standards and requirements of SAE (Society of Automotive Engineers) Standard J1772 for electric vehicle charging stations and National Electrical Code Article 625, and furthermore that **Donor** has provided **City** with a copy of the 2011

edition (currently in force) of National Electrical Code Article 625 governing electric vehicle charging stations.

4. **EV Charging Stations Locations.** Donor has agreed to contribute funds for up to six (6) EV charging stations within the City of Delray Beach. Three (3) of the charging stations shall be located in the City's Banker's Row Parking Lot, as referenced in 3.a. above. The remaining three (3) EV charging stations shall be agreed upon by both parties in writing.

5. **Payment.** Donor agrees that all contributions provided by Donor shall constitute a donation and shall be free of charge to the City. Donor acknowledges that Plug In Florida and its owners, employees, agents, affiliates, and/or representatives shall not receive any payment or benefit from the City of any kind, including no free advertising or services.

6. **Entire Agreement.** This Agreement constitutes the entire agreement between City and Donor and may not be altered, amended, or modified except by an instrument in writing signed by the parties to the agreement with all the same formalities as this agreement.

7. **Governing Laws; Venue.** This Agreement shall be governed by and in accordance with the Laws of Florida. The venue for any action arising from this Agreement shall be in Palm Beach County, Florida.

8. **Notices.** Any notice or communication under this Agreement shall be in writing and may be given by registered or certified mail. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage

prepaid. If given otherwise, than by registered or certified mail, it should be deemed to have been given when delivered to and received by the party to whom it is addressed. The notices and communication shall be given to the particular parties at the following addresses:

City: David Harden, City Manager
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444

Donor: Charles Whalen, Executive Director
Plug In Florida, Inc.
1935 SW 35th Avenue
Delray Beach, FL 33445

9. **Termination or Cancellation of Agreement.** This Agreement may be terminated without cause by either party with at least ten (10) days notice in writing if no work was started and no money has been received by **City**. Once work is started and if **City** terminates agreement, the **City** must notify **Donor** at least ten (10) days prior and it must return any unused contribution money to **Donor** within thirty (30) days of notice of termination.

10. This Agreement is not effective until signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officials on the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

By: _____
City Clerk

By: _____
Nelson S. McDuffie, Mayor

Approved as to Form:

By: _____
City Attorney

WITNESSES:

PLUG IN FLORIDA, INC.

Print Name: _____

By: _____
Charles Whalen, Executive Dir.

Print Name: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by _____ (name of officer or agent, title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification and did (did not) take an oath.

Notary Public - State of Florida