

# SDG&E Power Your Drive for Parks Public EV Charging Program Participation Agreement



This CUSTOMER PARTICIPATION AGREEMENT (“Agreement”) is by and between SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation (“SDG&E”) and City of Escondido (“Program Participant”). SDG&E and Program Participant are referred to individually as a “Party” and collectively as the “Parties.”

## RECITALS

- A. In support of California’s goal to reach 1.5 million zero-emission vehicles by 2025 and infrastructure to support more than 5 million zero-emission vehicles by 2030, Program Participant will permit, and SDG&E will own, install, operate and maintain electric vehicle charging stations at qualifying and selected Park & Beaches as part of SDG&E’s Power Your Drive for Parks Public EV Charging Program (“Program”) and as approved by the California Public Utilities Commission (CPUC).
- B. In general, the Program provides: no cost design, installation and operation of SDG&E infrastructure and EV Charging Equipment at no cost to Program Participant for a period of eight (8) years. SDG&E agrees to facilitate billing to EV Drivers using EVSPs as more fully described in Section 1.1 below.
- C. Pursuant to AB1083, Program Participant and SDG&E are entering into this Agreement for participation in the Program; and for installation and operation of public EV charging infrastructure at Grape Day Park, 321 N. Broadway, Escondido, CA 92025 (“Facility”).

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### 1.0 GENERAL PROGRAM PARTICIPATION REQUIREMENTS:

To participate in the Program, Program Participant agrees to comply with the following requirements:

- 1.1 Have dedicated parking for the electric vehicles;
- 1.2 Execute and deliver an SDG&E approved easement which shall be recorded in the office of the County Recorder for the County of San Diego.
- 1.3 Cooperate with SDG&E to ensure the Facility meets applicable accessibility requirements of the Americans with Disabilities Act (ADA);
- 1.4 Notify SDG&E in cases of vandalism, damaged or non-functioning equipment. Program Participant is not obligated to perform any inspection or maintenance of installed EVSE;
- 1.5 Submit Owner Authorized Agent (OAA) Form. OAA approves SDG&E to act as Program Participant’s agent as it relates to obtaining any required permits for the installation of the EV infrastructure (**Exhibit A**) and;
- 1.6 Support data collection efforts as part of this Program.

### 2.0 DEFINITIONS

**ADA:** Americans with Disabilities Act.

**Disadvantaged Community:** Communities identified by census tract as being in the top quartile within SDG&E service territory as scored by the CalEPA EnviroScreen tool and as approved per SDG&E Advice Letter 2876-E, Submittal of Definition of Disadvantaged Communities for Electric Vehicle-Grid Integration (VGI) Pilot Program Pursuant to Commission Decision 16-01-045.

**Easement:** A real property instrument hereto grant right of way for SDG&E to construct, maintain, operate and repair any SDG&E owned infrastructure.

**Effective Date:** The date that this Agreement is dually signed and executed.

**EV:** Electric Vehicle.

**EV Driver:** An EV operator who parks at and uses the EVSE at the Facility.

**EVSE:** Electric Vehicle Supply Equipment. All equipment needed to charge an EV including the EV charging station, switches, fuses, meters and other associated equipment.

**EVSP:** Electric Vehicle Service Provider. The third party selected by SDG&E to providing charging and billing services to EV Drivers.

**Facility:** The premises, where the EV infrastructure will be located.

**Grantor:** The fee simple owner of the real property where the Facility is to be located pursuant to the Easement.

**Implementers:** SDG&E, its contractors, vendors, representatives, or other persons or entities responsible for implementing the Program on behalf of SDG&E.

**Intellectual Property Rights:** All trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

**In Service Date:** The date that Project is energized and project commissioning complete.

**Job or Project:** The installation of the approved EVSE at the Facility identified above.

**Power Your Fleet for Parks Public EV Charging Program (or Program):** All facets of the Power Your Fleet for Parks Public EV Charging Program.

**Program Participant:** The SDG&E Customer that enters into this Agreement.

**Rate:** The billing rate for use of charging at a Facility.

**Removal Cost:** EVSE removal costs which are the sum of (a) SDG&E's full cost and expense to remove the EVSE, (b) an amount equal to the portion of the undepreciated cost of the EVSE remaining at the time of removal, (c) the portion of the undepreciated amount of the installation costs remaining at the time of removal.

**SDG&E:** San Diego Gas & Electric Company.

### 3.0 RIGHT TO ACCESS

**3.1 Design and Installation:** Program Participant shall provide SDG&E and its Implementers access to the project location for purposes of design and installation of the EVSE. SDG&E and its Implementers shall make reasonable accommodations to minimize all impacts to Program Participant operations

**3.2 Operation of Facility:** Program Participant shall provide SDG&E and its Implementers reasonable access to the Facility at all times.

**4.0 EASEMENT REQUIREMENTS**

Program Participant executes and shall deliver the Easement within 120 days of presentation by SDG&E. If Easement is not approved by SDG&E, Program Participant forfeits Program eligibility.

**5.0 INSTALLATION OF EQUIPMENT**

SDG&E and its Implementers will design and construct the infrastructure in compliance with the terms of this Agreement, as well as all applicable local, state and federal laws and regulatory requirements. Design layout is coordinated at the site walk, where both SDG&E and Program Participant provide input. Final design will be emailed to Program Participant for approval.

Program Participant shall have nine (9) EV Charging Stations; nine (9) Level 2 and zero (0) DC Fast Chargers.

**6.0 AMERICANS WITH DISABILITES ACT (ADA) REQUIREMENTS**

Program Participant acknowledges that electric vehicle charging infrastructure is required to comply with ADA, if applicable, and California Building Standards, which may impact parking layouts and design.

**7.0 ELECTRIC VEHICLE SERVICE PROVIDER (EVSP)**

**7.1 EVSP:** SDG&E shall select an EVSP to provide charging and payment services to EV Drivers.

**7.2 Additional EVSP Services:** Separate and apart from this Agreement, the EVSP may offer and provide any additional or complementary services, as long as these services do not directly interfere with the objectives of the Program. Specifically, such services may not include activities, agreements, arrangements, policies or procedures that inhibit the ability of the EV Drivers to respond to the pricing signal of the EV Rate. The costs of any additional EVSP services will be borne by Program Participant.

**8.0 RELOCATIONS**

**8.1 Removal:** Except as otherwise provided herein or in the Easement, at any time during the Term of this Agreement, should Program Participant require removal of the EVSE or parts thereof, other than those specifically contemplated herein, Program Participant shall bear full Removal Cost of all infrastructure installed pursuant to this Agreement, including utility owned infrastructure.

Program Participant requesting removals shall be responsible for costs as identified in the Removal Cost Schedule:

Removal Cost Schedule	
Year	Program Participant Percentage Responsibility
1	88%
2	75%
3	63%
4	50%
5	38%

6	25%
7	13%
8	0%

**8.2 Relocations:** Except as otherwise provided herein or in the Easement, at any time during the course of this Agreement or the duration of the Easement, whichever is longer, should Program Participant require relocation of the infrastructure installed pursuant to this Agreement including Utility owned infrastructure or parts thereof, such relocation shall be by mutual agreement of the Parties. Should SDG&E approve relocation of such infrastructure, such relocation shall be at sole expense of Program Participant regardless of whether Utility owned or Program Participant owned, and in accordance with any Program requirements, laws, regulations, or other applicable jurisdictional requirements in effect at the time of relocation. Additionally, at SDG&E's discretion, upon a relocation, Program Participant shall either amend the Easement to include the legal description of the new location or enter into a new Easement with SDG&E.

**9.0 RATE**

EV Drivers will be charged the EV-TOU Rate, and the EVSP will manage the EV Driver's payment.

**10.0 DATA COLLECTION & USE**

Program Participant shall support the data collection requirements of the Program. Data collection requirements will conform with the requirements of the CPUC. Program Participant consents to the use and disclosure, by SDG&E, its agents and representatives of data gathered as part of the Program for use in regulatory reporting, industry forums, case studies or other similar activities.

**11.0 CONTACT INFORMATION**

Facility contact persons for Program Participant shall be as follows:

**11.1 Designated Program Participant Contact Person for Operations**

Primary - Name: \_\_\_\_\_  
 Job Title: \_\_\_\_\_  
 Agency: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Phone: \_\_\_\_\_

Back-up - Name: \_\_\_\_\_  
 Job Title: \_\_\_\_\_  
 Agency: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Phone: \_\_\_\_\_

**11.2 Designated SDG&E Contact Person for Operations**

Primary - Name: Joe Bielawski  
 Job Title: Project Manager, Operations  
 Agency: SDG&E  
 Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123

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Email: Jbielaw1@sdge.com  
Phone: (858) 276-9980

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Back-up - Name: Anthony Aguirre  
Job Title: Project Manager, Power Your Drive for Parks  
Agency: SDG&E  
Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123  
Email: Aaguirre@sdge.com  
Phone: (619) 416-2311

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## 12.0 COMPENSATION

Except as otherwise provided in this Agreement, under no conditions shall Program Participant receive compensation of any kind, either by cash, in-kind services, or otherwise, for any duties or requirements provided for in this Agreement or for participation in any way as part of the Program, including but not limited to:

- Easement;
- Use of data for lawful purposes;
- Loss of activity during construction or maintenance activities, or
- Any other inconvenience or loss, without limitation, related to participation.

## 13.0 CONFIDENTIALITY

During the term of this Agreement, Program Participant may be provided with information of a confidential nature (“Confidential Information”) by SDG&E or its Implementers.

**13.1 Duty of Confidentiality.** Throughout and after the duration of this Agreement, Program Participant shall hold all Confidential Information in strict confidence. Without SDG&E’s prior written approval, Program Participant shall not use, disclose, reproduce, distribute, or otherwise misappropriate any Confidential Information, nor shall Program Participant take any action that may cause, or fail to take any action necessary to prevent causing, any Confidential Information to lose its character as Confidential Information.

**13.2 Return of Materials.** Upon the termination or conclusion of this Agreement for any reason, or upon earlier request by SDG&E, its Implementers or other designated representatives, Program Participant shall promptly erase and destroy or otherwise return all Confidential Information and other documents or data that contain Confidential Information.

**13.3 Customer Information.** Program Participant acknowledges and agrees that all information Program Participant collects or obtains from SDG&E, its Implementers or other designated representatives with regard to EV Drivers, including but not limited to names, addresses, telephone numbers, account numbers, utility bill data, energy usage, demographics, financial data, or any other personal information (“Customer Information”), shall be deemed Confidential Information.

**13.4. Data Security.** Program Participant will establish and diligently maintain safeguards and security practices to protect against the destruction, loss, or disclosure of any Confidential Information in its custody or possession. If Program Participant discovers a breach of security, it shall immediately notify SDG&E (use Contact Information included in Section 11.2) and use its best efforts to mitigate the breach and prevent any disclosure or loss of Confidential Information.

Notwithstanding the foregoing, SDG&E understands that Program Participant is a public entity and subject to federal, state and local regulation governing public records, including the California Public Records Act. SDG&E understands and agrees that Program Participant shall comply with all such regulations, including the disclosure of Confidential Information, if legally required.

#### **14.0 INTELLECTUAL PROPERTY**

Nothing in this Agreement or the Parties' performance of it is intended to or shall be deemed to convey any Intellectual Property Rights to Program Participant. All Intellectual Property Rights relating to the Program are expressly reserved to SDG&E, its Implementers or other designated representatives and their respective licensors.

#### **15.0 WAIVER**

No provision of this Agreement may be waived unless agreed to by SDG&E and Program Participant in writing. SDG&E's or Program Participant's failure to insist upon strict performance of any provision of the Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Agreement.

#### **16.0 DISPUTE RESOLUTION**

**16.1 Meet and Confer:** In the event of a dispute relating to this Agreement, Program Participant and SDG&E, its Implementers or other designated representatives shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute.

**16.2 Arbitration:** In the event the Parties fail to resolve by negotiation any dispute arising out of or relating to this Agreement, such dispute shall be resolved by binding arbitration administered by JAMS (formerly known as Judicial Arbitration and Mediation Services) under its then current rules. The arbitration shall be conducted in San Diego County, California. The Parties hereby irrevocably waive any right to have such disputes tried before a jury. If either Party refuses or fails to participate in arbitration after receiving notice, then the arbitrator shall make an award based on the evidence presented to him or her. The arbitrator shall award the prevailing Party its fees and costs. Any arbitration award shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. In no event may arbitration be demanded on any claim after the applicable statute of limitation for commencing litigation has expired.

#### **17.0 GOVERNING LAW**

This Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for any litigation arising from or relating to this Agreement shall be in San Diego County, California.

#### **18.0 PROGRAM PARTICIPANT REPRESENTATIONS**

Program Participant represents it is an independent entity from SDG&E, its affiliates, contractors, vendors, representatives, designees and nothing herein shall be construed as creating any agency, partnership, or other form of joint enterprise between Program Participant and SDG&E, its affiliates, contractors, vendors, representatives or designees nor create any obligations or responsibilities on their behalf except as otherwise provide herein, nor make any representations of any kind to this effect. Program Participant represents that it is the fee title owner and has the ability to grant the Easement.

## **19.0 THIRD PARTY BENEFICIARIES**

This Agreement and any related documents are solely between the Parties and no third parties are intended beneficiaries.

## **20.0 SEVERABILITY**

If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of lawful jurisdiction, such invalidity shall not affect other provisions of the Agreement which can be given effect without the invalid provision.

## **21.0 MARKETING & BRANDING (SDG&E BRAND or EVSP BRAND)**

**22.1 Disclaimer:** All marketing, advertising or promotional materials which reference SDG&E, its Implementers or other designated representatives or the Program itself, shall include a disclaimer which shall state that Program Participant is not an agent or affiliate of any and all of SDG&E, its Implementers or other designated representatives.

**22.2 Logos/ Trademarks:** Program Participant shall not use the logos, trademarks or service marks of SDG&E, its Implementers or other designated representatives in any of Program Participant's marketing, advertising, or promotional materials without express written approval from SDG&E, its Implementers or other designated representatives as appropriate.

**22.3 Signage:** Neither SDG&E nor its Implementers or other designated representatives or the Program itself shall be allowed to erect signage or other marketing materials on Program Participant property without prior express approval.

**22.4 Marketing Materials:** SDG&E must pre-approve all Program marketing materials.

**22.5 Endorsements:** Program Participant shall not state or imply endorsement on the part of SDG&E, its contractors or other designated representatives or the Program.

**22.6 Right to Review Materials:** SDG&E, its contractors or other designated representatives reserves the right to review and approve any and all advertising, marketing, or promotional copy or materials developed or used by the Program Participant which references the Program Participant's participation in this Agreement or the Program, financing and other SDG&E programs or those of the contractors or other designated representatives. At its sole discretion, SDG&E, its contractors or other designated representatives may require the Program Participant to submit such copy and materials for pre-approval. Approval shall be granted, unless SDG&E, its contractors or other designated representatives, in its sole discretion, determines that the copy or materials are misleading, in error, or fail to meet the requirements of this Agreement. The Program Participant agrees to remove from circulation or otherwise discontinue the use of any such materials.

## **22.0 CHANGES**

SDG&E, its Implementers or other designated representatives may initiate changes to the Program as circumstances dictate. SDG&E, its Implementers or other designated representatives will make every effort to provide at least 30 calendar days written notice of changes that affect Program activities. In the event SDG&E, its Implementers or other designated representatives materially change the Program to the detriment of Program Participant, Program Participant may terminate this Agreement or rescind the Easement upon 30 days written notice to SDG&E, subject to the terms of this Agreement.

Design Changes, Program Participant acknowledges and agrees that any infrastructure installed by SDG&E may vary from the Conceptual Design, if, in SDG&E's sole discretion, actual Site conditions or municipal requirements dictate such changes. Program Participant may be responsible for incremental costs associated with changes to design requested by Program Participant for convenience after acceptance of design.

### **23.0 TERMINATION AND TRANSFER**

**23.1 Term:** This Agreement shall be in effect from the Effective Date ("Effective Date") through a period of eight (8) years from the In-Service Date ("In-Service Date"), unless the parties agree in writing to cancel or extend the Term ("Term").

**23.2 SDG&E Right to Terminate:** SDG&E may terminate, or for any duration suspend, this Agreement and Program Participant's participation in the Program, or operation of the infrastructure, with or without cause, at any time, and for any reason, such reasons may include but are not limited to:

- Failure to provide or maintain terms of the Easement
- Breach of Agreement in whole or in part
- Permitting issues
- Exceptional installation costs
- Environmental concerns
- Program no longer authorized by the CPUC
- Any other reason(s) not in Program or ratepayers' best interest

**23.3 Termination:** Program Participant may terminate this Agreement upon thirty (30) days notice should SDG&E materially breach any material term of this Agreement or fail to perform any material its obligations hereunder, after notice and a reasonable opportunity to cure. Should a sale of property or other circumstance result in Program Participant losing ability to perform its obligations per this Agreement, Program Participant shall immediately notify SDG&E in writing and without delay within ten (10) days of Program Participant knowledge of such a possibility and notwithstanding anything to the contrary contained herein, this Agreement shall terminate. Notwithstanding anything contained in this Agreement, if Program Participant terminates the Agreement for any reason other than an SDG&E material breach prior to the eight (8) year period, Program Participant will be responsible for the Removal Cost as calculated pursuant to the Removal Cost Schedule in Section 8.1.

If after signing this Agreement, Program Participant withdraws from the Program prior to the site being activated, then SDG&E reserves the right to recover all fees and costs incurred by it and its Implementers after the Effective Date including, but not limited to, design cost, site walk costs, etc.

**23.4 Transfer of Agreement:** Under no circumstance may this Agreement or parts thereof be assigned, transferred or otherwise conveyed without prior reasonable written approval of the other Party.

### **24.0 OPTION TO PURCHASE EVSE**

At the end of the eight (8) year term of this Agreement, Program Participants may have the option to purchase EVSE located at: Grape Day Park, 321 N. Broadway, Escondido, CA 92025, SDG&E may sell EVSE to Program Participant at fair market value, subject to regulatory approval. Program Participant must notify SDG&E in writing of its interest to purchase EVSE within thirty (30) days of completing the eight (8) year period term of this Agreement.



**25.0 NOTICES**

Any notice provided under this Agreement shall be sent via certified U.S. Mail, signature required. Notice is deemed effective on the third day after it is deposited in the U.S. Mail. Notice pursuant to this Agreement shall be sent to:

**25.1 Program Participant:**

Primary - Name: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

Back-up - Name: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

**25.2 SDG&E:**

Primary - Name: Anthony Aguirre  
Job Title: Project Manager, Power Your Drive for Parks  
Agency: SDG&E  
Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123  
Email: Aaguirre@sdge.com  
Phone: (619) 416-2311

Back-up - Name: Chris Faretta  
Job Title: Clean Transportation Programs Manager  
Agency: SDG&E  
Address: 8306 Century Park Court, CP 42F, San Diego, CA 92123  
Email: Cfaretta@sdge.com  
Phone: (858) 547-3091

**26.0 AUTHORITY**

The undersigned represents and warrants that it has the requisite power, legal authority and capacity to enter into this Agreement and to perform each and every obligation required of Program Participant under this Agreement.

**27.0 MISCELLANEOUS**

This Agreement, including the Exhibits attached hereto and all items incorporated herein by reference and any written modification shall represent the entire and integrated agreement between the Parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the Parties' agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. If any provision of this Agreement is in any way deemed unenforceable, then the remainder of this Agreement and the application of

such term or provision to persons or circumstances other than those to which it is held unenforceable, shall not be affected, and each term and provision shall be enforceable to the fullest extent permitted by law.

At any time either Party is aware of, any ambiguity in, or conflict between or within this document, said Party shall immediately bring such ambiguity to the attention of the other Party or its designated representative for clarification and resolution.

**28.0 ACKNOWLEDGEMENT**

Program Participant represents and warrants that it has the requisite power, legal authority and capacity to enter into this Agreement and to perform each and every obligation required of Program Participant under this Agreement. In addition, the undersigned warrants and represents that the person signing this Agreement on the Party's behalf has and shall have all requisite power and legal authority to bind the Party on whose behalf he/she is signing to the Party's obligations under this Agreement.

Program Participant acknowledges that it has provided all required information and documentation truthfully and accurately.

This Agreement shall become effective as of the Effective Date.

**PROGRAM PARTICIPANT**

**SAN DIEGO GAS & ELECTRIC**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Name of Agency

Date: \_\_\_\_\_ Site ID#: 83210082 Site Name: Grape Day Park

**EXHIBIT A: Owner Authorized Agent Form**

I, \_\_\_\_\_, hereby authorize San Diego Gas & Electric to act as my agent in all documents / forms as it relates to obtaining Agency permits for the installation of AB 1082/AB 1083 Electric Vehicle charging infrastructure at the property listed below.

**SITE HOST TO COMPLETE**

Property Address:

Grape Day Park, 321 N. Broadway, Escondido, CA 92025  
\_\_\_\_\_

Agent Name, Address & Telephone Number:

Anthony Aguirre, Project Manager SDG&E  
8306 Century Park Court, CP 42F, San Diego, CA 92123  
aaguirre@sdge.com, (619) 416-2311

Property Owner Name, Address, & Telephone Number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_