Master Subscription Services Agreement

This Master Subscription Services Agreement (this "**Agreement**") is entered into on **[date]** by and between Gridscape Solutions, Inc., a California corporation ("**Gridscape**") and **Chabot-Las Positas Community College District,** an **accredited institution** (the "**Client**", and together with Gridscape, the "**Parties**" and each a "**Party**").

RECITALS

WHEREAS, Gridscape is a leading smart energy solutions company that specializes in developing and deploying innovative, standards-compliant products for renewable microgrid and electric vehicle charging systems (the "**Products**");

WHEREAS, on or about the date of this Agreement, the Parties have entered into a Master Sale and Integration Management Agreement, which governs the purchase of the Products and integrating them into the Client's energy systems (the Products, as so integrated, the "**Gridscape System**") on the Chabot College Campus, located at 25555 Hesperian Boulevard, Hayward, California 94545, with Products to be installed at the location(s) shown on the map attached hereto and incorporated herein as Exhibit A;

WHEREAS, in connection with its hosting of the Gridscape System, the Client wishes to engage Gridscape to perform Distributed Energy Resource Management Services, Maintenance Services, and Software Services (all as defined herein and collectively, with any Additional Services, the "**Subscription Services**"); and

WHEREAS, the Parties wish to set forth the terms on which the Client may engage Gridscape to provide the Subscription Services.

AGREEMENT

1   Defined Terms

Unless otherwise expressly stated herein, capitalized terms used in this Agreement have the meanings ascribed to them where they are first used. These meanings will apply to both the plural and singular forms, as context may require.

2   Provision of Subscription Services

2.1   *Issuance of Service Orders*. The Parties may enter into an engagement to provide Subscription Services with respect to a Gridscape System owned by the Client by entering into one or more Service Orders in the form attached as Exhibit B. A Service Order is valid and binding on the Parties if it is signed by both Parties and specifies all of the following information:

(a)   a unique "**Service Order Number**",

(b)   the term of the Subscription Services (the "**Service Term**") and the commencement date of such term ((the "**Service Commencement Date**"),

(c)   the address of the site at which the relevant Gridscape System is located (the "**Location**"),

(d)   the fee due monthly for the provision of the Subscription Services (the "**Monthly Subscription Fee**") and any fee escalation rate,

(e)   the "Off-Grid" mode resiliency period (the "**Resiliency Period**"). Resiliency Period is defined as number of hours critical loads can be run from the battery storage (BESS) in the microgrid,

(f)   any maintenance, troubleshooting, administrative or other support services relating to the Software (the "**Software Support Services**").

2.2   *Special Terms of a Service Order*. Unless otherwise specified therein, the Service Order will be for all the Subscription Services described herein and for no other services, guarantees, or purchases. If the Parties agree to any other services, guarantees, or other obligations on the part of Gridscape (any "**Additional Services**"), they shall describe such Additional Services in the Service Order. The Parties may designate an "**Additional Fee**" in the Service Order for such Additional Services.

3   Distributed Energy Resource Management Services

3.1   *Scope of Services*. Gridscape will provide the following services ("**Distributed Energy Resource Management Services**" or "**DERMS**"):

(a)   Ongoing, real-time remote collection and analysis of data provided through the Client's Gridscape System and the remote management of the Gridscape System;

(b)   In "On-Grid" mode, costs savings for the Client through optimal deployment of the Gridscape System's energy storage and distributed energy generation capacity.

(c)   In "Off-Grid" mode, resiliency during grid outages and similar events for the period set forth in the Purchase Order.

3.2   *Client Data*.

(a)   All data about energy usage and environmental conditions collected by Gridscape from the Client's Gridscape System is "**Client Data**". As between Gridscape and the Client, the Client exclusively owns all rights, title, and interest in and to all Client Data except for the right expressly granted herein. The Client grants Gridscape a limited term license to:

(i)   copy, transmit, use and display such Client Data as necessary for Gridscape to provide the DERMS according to this Agreement and to access and use, and permit its service providers to access and use, Client Data to perform Gridscape's obligations in accordance with the terms of this Agreement, to respond to service or technical problems, confirm compliance with the terms of this Agreement, or otherwise at the Client's

direction or request, and as otherwise expressly permitted in this Agreement, and

(ii)   to provide access to Client Data to the Client's authorized end users, vendors, and service providers (e.g., resellers or installers of the Gridscape System and their service providers, Gridscape System component suppliers and maintenance service providers); and

(b)   The Client grants Gridscape a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license:

(i)   to use, modify, adapt and disclose Client Data, provided that any use or disclosure of such Client Data outside of Gridscape and its affiliates and subcontractors shall be solely in an anonymized form removing the personal information of any individual and the identifiers of any entity (including, but not limited to, name and address); and

(ii)   to use or incorporate into its service or product offerings any suggestions, ideas, enhancement requests, feedback, data, recommendations or other information provided by the Client or its authorized end users relating to the features, functionality or operation of the Gridscape System or Subscription Services.

(c)   Gridscape shall use commercially reasonable efforts, consistent with then-current industry standards, to maintain the security and integrity of the DERMS and the Client Data. Gridscape shall comply with all laws applicable to its provision of the Subscription Services.

(d)   Where the DERMS involves Gridscape collecting and storing any Client Data, Gridscape shall be responsible for implementing, maintaining and performing a back-up procedure which completes a full back-up of all Client Data no less frequently than once every 24 hours. In the event of any loss or damage to Client Data then (without prejudice to the Client's other rights and remedies) Gridscape shall use commercially reasonable efforts to restore the lost or damaged Client Data from the latest back-up as soon as possible. Provided that Gridscape uses commercially reasonable efforts to secure and maintain such back-up data, Gridscape will not be liable for the failure, loss, or theft of any such back-up data or for its inability to restore some or all of the Client Data from such back-ups.

3.3   *Client Access to Data; Monitoring App*.

(a)   As part of the DERMS, Gridscape may provide the Client with access to real-time and historical data through a designated web portal or mobile application (any such portals or applications collectively, the "**Monitoring App**"). The level of functionality varies by version of the Monitoring App and is more particularly described in the Monitoring App documentation and users' guides. The Monitoring App is intended to be used for energy monitoring and visualization purposes only and does not control or otherwise influence the operation of any equipment.

(b)   Gridscape grants the Client and the Client's authorized end users the limited right to use the Monitoring App. The Client shall require that each such end user shall, prior to utilizing the Monitoring App (i) be subject to confidentiality requirements that conform with the confidentiality requirements of this Agreement; and (ii) shall comply with this Section 3.3.

(c)   The Monitoring App may allow the Client to retrieve past and ongoing information regarding energy bill and usage from the Client's energy company. If the Client uses this feature, then the Client consents and will allow Gridscape to retrieve this information on the Client's behalf. Gridscape's ability to retrieve the data depends on the availability of this data from the Client's energy company.

(d)   Except as expressly authorized by this Agreement, the Client shall not knowingly allow any unauthorized third party to use or access the Monitoring App. Without limiting the foregoing, the Client shall not:

   (i)   modify, adapt, alter, publicly display, publicly perform, translate, or create derivative works based upon Monitoring App,

   (ii)   distribute, sell, resell, sublicense, lease, rent, loan, or otherwise transfer the Monitoring App, to any non-affiliated third party or use them for the benefit of any non-affiliated third party,

   (iii)   reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Monitoring App,

   (iv)   use the Monitoring App in order to build a competitive product or service or build a product or service using similar ideas, features, or functions of those offered in this Agreement,

   (v)   use any automated process or service to access and/or use the Monitoring App (such as a bot, a spider, periodic caching of information stored by Gridscape, or "meta-searching"),

   (vi)   use any unauthorized means to copy, store, archive, create a database of results from, modify or reroute, or attempt to modify or reroute, the Monitoring App,

   (vii)   damage, disable, overburden, or impair the Monitoring App or the network(s) connected to the Monitoring App, or

   (viii) provide or create links to any external site that violates the Client's confidentially responsibilities.

4   Maintenance Services

4.1   *Maintenance*. During the Service Term and any Renewal Term, Gridscape shall cause the Gridscape System(s) to be operated and maintained in a commercially reliable manner, in accordance with the operations described in any written product material provided by

Gridscape, and in accordance with the warranty of each of the manufacturers of the systems and equipment that comprise the Gridscape System(s). If Gridscape, in the performance of the Subscription Services deems there to be a visual or audible malfunction of the Gridscape System(s) or potential threat to the Gridscape System(s), connected solar or energy storage system, or the Client's property, Gridscape shall promptly notify the Client. The Client shall not, and the Client shall require that its end users shall not, nor shall the Client permit, and shall require that its end users shall not permit, any Person to alter or change the interconnection of the Gridscape System(s) to the Location's metered panel, or to service, maintain, modify, repair, move, alter, or otherwise tamper with the Gridscape System(s) in any manner without Gridscape's prior written consent; provided, any Person shall have the right to take such actions with respect to the Gridscape System(s) as they reasonably deem necessary to respond to an imminent safety hazard.

4.2   *Access Rights*. To ensure minimal disruption to Client's operations, Gridscape shall provide Client with reasonable notice of Gridscape, or its contractors, subcontractors, or third-party designee's need to access the sites in order to provide the Maintenance Services. Upon such notice, Gridscape or its third-party designee shall schedule access to the sites at the Client's convenience in order to provide the Maintenance Services. Subject to the foregoing, Gridscape shall have, as an appurtenant right to its use of the sites, the right to enter upon and to access such portions of the sites and such utility lines, gas lines, ductwork, electrical lines, metering equipment and the like as are reasonably necessary for the maintenance, care, repair, operation, monitoring and removal of the Gridscape System(s), and to carry out the Maintenance Services. Subject to the foregoing, Gridscape shall have the right to enter any area of the sites where the Gridscape System(s) is installed or where required in connection with the implementation of the Maintenance Services. In the event of an emergency or material malfunction, however, Gridscape shall be granted access to make repairs or corrections as it may, in its reasonable discretion, determine are needed. Gridscape shall exercise its access rights in such a manner as to not materially interfere with the Client's operations at the Location, including the operations of any tenants. At all times, Gridscape shall have remote access to performance data generated by the Gridscape System(s), the Client and its end users with respect to the Gridscape System(s) and Gridscape shall have the right to install its own reasonable monitoring equipment at Gridscape's sole cost. Gridscape will protect any of the Client's load data that is collected per the terms of its customer privacy standards.

4.3   The Client shall use commercially reasonable efforts to ensure that other Persons allowed access to the Location by the Client do not interfere with the Gridscape System(s) or the performance of the Maintenance Services during those times that Gridscape, or its contractors, subcontractors, or third-party designee, will be accessing the site. Gridscape shall use commercially reasonable efforts to ensure that Gridscape, its contractors, subcontractors, and third-party designees do not interfere with Client's operations on the sites.

5   Software Services

5.1   In this Agreement, the "**Software**" means any software which is provided by Gridscape or its agents or contractors to the Client in connection with or otherwise embedded in the

Products, any Gridscape System, or any Subscription Services, including without limitation any Monitoring Apps.

5.2   Gridscape warrants that during the applicable Service Term, the Software will perform materially in accordance with its applicable documentation when used in accordance with such documentation and the applicable Service Order.

5.3   Gridscape will provide the Client with regular corrections, bug fixes, enhancements, updates, upgrades, or other modifications to the Software (the "**Software Improvements**") on the terms set forth herein.

5.4   "**Intellectual Property Rights**" means copyrights, trademarks, patents, and trade secrets, including without limitation rights as to their design, functionality, and embedded or provided software. All Intellectual Property Rights in the Software and the Software Improvements Gridscape's sole and exclusive property or, where applicable, the property of Gridscape's suppliers and affiliates. Gridscape reserves all rights not expressly granted herein, including without limitation, all rights to modifications and derivative works based on such property.

5.5   Gridscape hereby grants to the Client a limited, personal, non-sub licensable, non-transferable, non-exclusive license to use Intellectual Property Rights in the Software and the Software Improvements. The Client shall not (i) copy, make available, provide access to, or distribute, license or otherwise transfer, directly or indirectly, any Intellectual Property rights in the Software Improvements to any third-party; (ii) decompile, disassemble, reverse-assemble, analyze or otherwise examine such property, equipment, or software for reverse engineering thereof; (iii) unless otherwise agreed to in writing, use any Software Improvements or the Intellectual Property Rights therein to develop other products, devices, inventions, hardware or software; or (iv) use, test or analyze the Software Improvements for comparison or competitive testing or "benchmarking" (except for the Client's confidential internal purposes) or publish, disclose or disseminate Gridscape's Confidential Information.

5.6   The Software Improvements together with any Software Support Services provided in the Service Order are the "**Software Services**".

6   Grid-Supporting Services

From time-to-time, either Gridscape or the Client may discover opportunities to use the Gridscape System to provide services to third parties, including grid operators, in exchange for additional revenue (the "**Grid-Supporting Services**"). Once such a potential additional revenue stream is identified by Gridscape or the Client, Gridscape shall determine potential additional revenues, any additional costs to provide such additional services, and any potential impacts to the Client and may propose to the Client a plan for providing such Grid-Supporting Services. No Grid-Supporting Services shall be provided until the Parties have an agreement in writing regarding the same, which each Party may agree to in its sole discretion.

7   Insurance

7.1   *Insurance in Connection with Subscription Services*. Prior to entering the Location and/or the commencement of any work, each Party shall procure and maintain at its sole expense throughout the Services Term and any Renewal Term the following forms of insurance, either through insurance policies or acceptable self-insurance retentions:

(a)   Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, and

(b)   Commercial General Liability Insurance with limits of not less than $4,000,000 general aggregate, $1,000,000 per occurrence.

7.2   *Certificates of Insurance*. Each Party shall furnish current certificates evidencing that the insurance required under the previous Section is being maintained. If requested, Gridscape will pursue commercially reasonable efforts to list the Client, its end users, or its financing parties as additional insured.

7.3   *Insurer Qualifications*. All such policies shall be with financially sound and reputable insurance companies that have an A.M. Best rating of A- and a financial strength category of "VII" or higher.

8   Term

8.1   *Term of Agreement*. This Agreement is effective as of the Effective Date and will continue until terminated in accordance with Article 13.

8.2   *Service Terms and Renewal Terms*. The Service Term of Subscription Services with respect to a Service Order will be specified by the Parties in such Service Order. Unless either Party delivers a notice within 180 days of the expiry of the current Service Term indicating that they wish for the Service Term to expire, the Service Term will automatically renew for additional one-year periods (each a "**Renewal Term**"). All Service Terms and Renewal Terms will terminate on the effective date of any termination of this Agreement.

9   Billing and Payments

9.1   *Monthly Subscription Fees*. Unless otherwise expressly provided in the relevant Service Order, Monthly Subscription Fees in the amount indicated in the Service Order will become payable in advance on the Service Commencement Date and each anniversary thereof until the end of the Service Term.

9.2   *Additional Fees*. Additional Fees will become payable in the amounts and at the times set forth in the relevant Service Order. The Additional Fees together with the Monthly Subscription Fees are the "**Fees**".

9.3   *Invoices*. When any Fee becomes payable, Gridscape will issue an invoice to the Client setting forth the amount due. The Client shall pay one hundred percent (100%) of each invoice within no less than thirty (30) calendar days following the date of the invoice. If

the Client disputes an invoice in good faith, the Client will promptly notify Gridscape and the amount payable shall exclude the disputed portion of the invoice.

9.4 *Overdue Payments.* Any payment not received by Gridscape by the due date and not subject to a good faith dispute may accrue, at Gridscape's option, late charges at the lesser of 1.0% of the outstanding balance per month, or the maximum rate permitted by law, from the date such payment was due until the date paid.

9.5 Taxes. Unless otherwise stated in the Service Order, the Fees do not include any direct or indirect local, state, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). The Client is responsible for paying all Taxes associated with its purchases hereunder, excluding any taxes based on Gridscape's net income or property.

10 Indemnification; Limitation of Liability

10.1 *Indemnification by Gridscape*.

(a) Subject to this Agreement, Gridscape shall indemnify, defend, and hold the Client harmless from and against any claims, demands, suits or proceedings ("**Claims**") made or brought by a third party against the Client:

(i) alleging that the use of the Subscription Services as authorized infringes a valid patent, copyright, or trademark issued as of the Effective Date or misappropriates such third party's trade secrets,

(ii) arising out of personal injury or damage to real or tangible personal property caused by the gross negligence or willful misconduct of Gridscape or its personnel, or

(iii) pursuant to which the Client is liable for any royalty obligation to a third party as a result of Gridscape's use of open source code or other software code or component that is subject to a "copyleft" license or other agreement that requires as a condition of use, modification or distribution of such code, that such code or other software code combined or distributed with such code, be:

A. disclosed or distributed in source code form;

B. licensed for the purpose of making derivative works; or

C. redistributable at no cost.

(b) Gridscape shall have no indemnification obligation hereunder with respect to any infringement claim based upon:

(i) use of any Software in an application or environment or on a platform or with devices, hardware or business processes for which it was not designed or contemplated as set forth in the Documentation;

(ii)   modifications, alterations, combinations or enhancements of the Software not created by or for Gridscape;

(iii)   the Client's continuing allegedly infringing activity after being notified thereof, or its continuing use of any version after being provided modifications that would have avoided the alleged infringement;

(iv)   to the extent the alleged infringement arises from Gridscape's compliance with designs, specifications or instructions provided by the Client; or

(v)   solely based on Client Data or materials provided to Gridscape.

(c)   If the Products, Gridscape System, Subscription Services, or Software are held or likely to be held infringing, Gridscape shall have the option, at its expense to:

(i)   replace or modify the Products, Gridscape System, Subscription Services, or Software with a non-infringing substitute,

(ii)   obtain a license for the Client to continue using the Products, Gridscape System, Subscription Services, or Software, or

(iii)   terminate the applicable Subscription Services and refund any prepaid, unused fees applicable to the remaining portion of the Services Term or Renewal Term of the applicable Service Order following the effective date of termination.

(d)   This Section 10.1 states Gridscape's entire liability and the Client's exclusive remedy for any claim of intellectual property infringement.

10.2   *Indemnification by the Client*.

(a)   Subject to this Agreement, the Client shall indemnify, defend, and hold Gridscape harmless from and against any Claims made or brought by a third party against Gridscape:

(i)   alleging that the Client's Gridscape System or the Client's use of Products or Subscription Services in violation of this Agreement, infringes a valid patent, copyright, or trademark of a third party issued as of the Effective Date or misappropriates such third party's trade secrets,

(ii)   alleging that Client Data violates applicable laws or a third party's property or privacy rights or

(iii)   arising out of personal injury or damage to real or tangible personal property caused by the gross negligence or willful misconduct of the Client or its personnel.

10.3   *Attorneys' Fees; Settlement of Claims*.

(a)   With respect to either Party's indemnification obligations as set forth in Sections 10.1 and 10.2 above, the indemnifying Party shall indemnify and hold the indemnified Party harmless against all costs (including reasonable attorneys' fees) finally awarded against the indemnified Party by a court of competent jurisdiction, or agreed to in a written settlement agreement signed by the indemnifying Party, in connection with such Claims.

(b)   The indemnifying Party shall not settle any claims in which the indemnified Party is held liable in any aspect without the indemnified Party's written approval.

(c)   Promptly upon receiving notice of a Claim, the indemnified Party shall:

(i)   give the indemnifying Party prompt written notice of the Claim;

(ii)   give the indemnifying Party sole control of the defense and settlement of the Claim (provided that the indemnifying Party may not settle or defend any claim unless it unconditionally releases the indemnified Party of all liability); and

(iii)   provide to the indemnifying Party, at the indemnifying Party's cost, all reasonable assistance in the defense or settlement of such Claim.

(d)   The indemnifying Party's indemnification obligation shall be offset to the extent its ability to defend or settle a Claim is jeopardized by the indemnified Party's failure to comply with its obligations in this Section 10.3.

10.4   *Disclaimer of Indirect Damages*. In no event will either Party be liable to the other Party for any indirect, special, incidental, exemplary, punitive or consequential damages, lost revenue, profits or business, or loss of or damage to data, whether based on breach of contract, tort (including negligence) or otherwise, arising from or related to this Agreement or the Services, regardless of whether the first Party has been advised, knew or should have known of the possibility of such damages.

10.5   *Limitation of Liability*. Liability shall not exceed the applicable insurance coverage as stated in Article 7 of this Agreement.

11   Representations and Warranties

11.1   *Representations*. Each Party represents that:

(a)   it is an entity organized, validly existing, and in good standing under the laws of its organization and each other jurisdiction where it is required to be so qualified in connection with the transactions contemplated under this Agreement; and

(b)   it has the right to enter into this Agreement and its execution of this Agreement will not violate the terms of any contract, obligation, law, regulation or ordinance to which it is subject.

11.2   *Compliance with Law*.

(a) Each Party shall comply with all applicable state, national and international laws, rules, treaties, and regulations in the execution of this Agreement and use of the Products.

(b) A Party will notify the other Party within fourteen (14) days if it receives written notification of non-compliance with any laws from any Person or entity in connection with the Subscription Services or this Agreement.

12 Confidentiality

12.1 *Disclosing and Receiving Parties*. For the purposes of this Agreement, a Party that provides Confidential Information (as defined in Section 12.2) to the other Party is the "**Disclosing Party**" and the party receiving such information is the "**Receiving Party**."

12.2 *Confidential Information*.

(a) "**Confidential Information**" means non-public information relating to the business of the Disclosing Party obtained by virtue of this Agreement that either is marked or identified as confidential, is identified as confidential at the time of disclosure either orally or in writing, or due to its character and nature, a reasonable person under like circumstances would understand to be confidential, including without limitation, information relating to the Client's and Gridscape's planned or existing computer systems and systems architecture, including computer hardware, computer software, source code, object code, documentation, and methods of processing and operational methods.

(b) Notwithstanding the foregoing, Confidential Information shall not include information which Receiving Party can demonstrate (i) was rightfully in its possession, without confidentiality obligations, before receipt; (ii) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed the Disclosing Party; (iii) is disclosed to Receiving Party, without confidentiality obligations, by a third party who has the right to disclose such information; or (iv) was independently developed without reliance on any Confidential Information of the Disclosing Party.

12.3 *Restrictions*. The terms of this Section 12.3 shall apply during the term of this Agreement and for two years following termination. The Receiving Party may use Confidential Information solely to exercise its rights and fulfill its obligations hereunder. The Receiving Party shall instruct and require all of its employees, agents, contractors advisors and consultants ("**Representatives**") who have access to the Confidential Information of the Disclosing Party to maintain the confidentiality of the Confidential Information, and Receiving Party shall exercise at least the same degree of care, but not less than reasonable care, to safeguard the confidentiality of the Confidential Information as the Receiving Party would exercise to safeguard the confidentiality of the Receiving Party's own confidential property. The Receiving Party shall not disclose the Confidential Information, or any part or parts thereof, except on a "need to know" basis to those of its Representatives who are bound to confidentiality obligations at least as protective of the Confidential Information as those set forth herein.

12.4   *Compelled Disclosure*. The Receiving Party may disclose the Disclosing Party's Confidential Information to the extent required by a valid order by a court or other governmental body or by applicable law, provided, however, that unless legally prohibited from doing so, the Receiving Party will notify the Disclosing Party of the obligation to make such disclosure in advance of the disclosure so that the Disclosing Party will have a reasonable opportunity to object to such disclosure. The Receiving Party agrees to undertake whatever action is reasonably necessary to remedy any breach of the Receiving Party confidentiality obligations set forth herein or any other unauthorized disclosure or use of the Confidential Information by the Receiving Party or its Representatives.

12.5   *Remedies*. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

13   Default and Termination

13.1   *Termination*. This Agreement may be terminated by the non-defaulting Party in accordance with the following (each a "**Default**"):

(a)   if a Party defaults on any material term of this Agreement and fails to cure such Default within thirty (30) days after receipt of written notice of termination for reasons of Default from the non-defaulting Party, or

(b)   if a Party becomes insolvent or a receiver or receiver-manager is appointed for any part of the property of that Party, or the other Party makes an assignment, proposal or arrangement for the benefit of creditors or proceedings are commenced by or for the other Party under any bankruptcy, insolvency or debtor's relief law that are not terminated within sixty (60) days.

13.2   *Effect of Termination*. Immediately upon termination, Gridscape's obligation to perform all Subscription Services will terminate. Termination shall not relieve the Client of its obligation to pay any fees accrued or payable to Gridscape for the Subscription Services provided prior to the effective date of termination, and the Client shall immediately pay to Gridscape all such undisputed fees upon the effective date of termination. Any monthly or other periodic fees will be for the pro-rated amount of such fee accrued as of the effective date of termination. Termination shall not limit either party from pursuing any other available remedies.

13.3   *Return of Data and Destruction of Confidential Information*. Gridscape shall make available to the Client a file for download of Client Data stored electronically by Gridscape, within thirty (30) days of the effective date of termination. Upon termination of this Agreement and upon request of the Disclosing Party, the Receiving Party will return or destroy any and all Confidential Information which it received from the Disclosing Party and upon written request provide a letter certifying that all such Confidential Information has been returned or destroyed, excluding computer records that have been created by automatic archiving and back-up procedures, as consistently applied by the Receiving Party, and a single copy retained in its legal files for legal compliance purposes.

13.4   *Survival*. Any sums due from either Party that by the terms herein would be payable, or are incapable of calculation until, after the termination of this Agreement, shall survive and remain a continuing obligation until paid. Additionally, the following provisions of the Agreement shall survive termination: Article 9 (Billing and Payments), Article 10.4 (Indemnification; Limitation of Liability), Article 12 (Confidentiality), this Section 13.4 (Survival), Article 14 (Governing Law; Dispute Resolution), Article 15 (Notices), and Article 16 (General Provisions).

14   Governing Law; Dispute Resolution

14.1   *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the conflicts of laws provisions thereof.

14.2   *Submission to Jurisdiction*. The Parties agree that in the event that any action or proceeding arises seeking to enforce any provision of, or based on any matter arising out of or in connection with this Agreement, the Parties shall attempt to resolve their disputes informally, in discussion involving the decisionmakers for each of the Parties. If these discussions are not successful, the Parties shall retain a mediator to solve the dispute, with the mediation to be held within thirty (30) days of the date the dispute arises. If mediation is not successful, either Party shall have the right to bring the dispute before a federal court located in **Alameda County**, California or, if such courts lack jurisdiction, in a California state court located in **Alameda County**, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of California, and each of the Parties hereby irrevocably consents to the nonexclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such action or proceeding in any such court or that any such action or proceeding which is brought in any such court has been brought in an inconvenient forum. Each Party shall be responsible for their own costs, or portion thereof, for the dispute resolution including, but not limited to, attorney's fees, discovery costs, and a pro-rata share of fees incurred in connection with such action or proceeding.

15   Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been given if delivered by hand, by mail or courier provided the method of delivery permits the delivery to be verified, or by e-mail (upon confirmation of receipt thereof) to the address of each Party set forth below (or to such other address as either Party may designate by notice in accordance with this Article 15).

If to Client:

Chabot-Las Positas Community College District
Address: 7600 Dublin Boulevard, 3rd Floor, Dublin, CA 94568
Attention: Owen Letcher, Vice Chancellor Facilities, Bond Programs and Operations
Email: oletcher@clpccd.org

If to Gridscape:

Gridscape Solutions, Inc.
Address: **46711 Fremont Boulevard, Fremont, CA 94538**
Attention: **Vipul Gore**
Email: **vipulgore@grid-scape.com**

16   General Provisions

16.1   *Force Majeure*. An "**Event of Force Majeure**" includes any circumstance beyond such party's reasonable control, including, for example, (a) damage caused by fluctuation of electrical power, accident, fire, water, lightning or other act of God, (b) damage caused by third-party acts, (c) damage caused by abnormal operating conditions such as high or low temperatures or humidity, (d) failure of any connection to the internet or failure of ancillary equipment or equipment not supplied by such party or not approved by such party. Neither party shall be liable for, and each party's obligations under the terms of this Agreement do not include, the provision of services, repairs or replacements necessitated by or related to, an Event of Force Majeure.

16.2   *Relationship of the Parties*. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither party shall have the power to bind the other nor shall either party take any action reasonably likely to lead the public to think that it is the agent or representative of the other. This Agreement is non-exclusive. Nothing in this Agreement limits the ability of either party (i) to enter into other agreements with third parties with respect to arrangements similar in nature to or the same as those covered under this Agreement, or (ii) to provide goods or services that compete with the goods or services of the other party. There are no third-party beneficiaries of this Agreement.

16.3   *Cooperation and Further Assurances*. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, estoppels, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof, including but not limited to building permit applications, utility interconnection applications, and utility rebate forms. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this Section 16.3.

16.4   *Assignment*. This Agreement is not assignable without mutual consent, in writing by the Parties, not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Gridscape may, without the Client's consent, assign all its rights or obligations under this Agreement to an affiliate or financing party. Any assignment in violation of the foregoing will be null and void, shall be deemed a breach of the assigned agreement, and the non-assigning Party shall have the right to terminate such assigned agreement. Subject to the foregoing, this Agreement will inure to the benefit of, and be binding upon, the Parties hereto and their representatives, successors, permitted assigns, and other legal representatives.

16.5   *Amendment or Modification*. No amendment or modification to this Agreement or a Service Order will be binding unless in writing and signed by an authorized representative of each Party.

16.6   *Service Order Supersedes*. In the event of any inconsistency between any Service Order and this Agreement, the terms in the Service Order shall supersede.

16.7   *Headings*. Headings used in this Agreement are provided for convenience only and are not intended to construe meaning or intent.

16.8   *Joint Preparation*. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other.

16.9   *Entire Agreement*. This Agreement and its exhibits and attachments (and any terms and documents incorporated herein by reference, including written reference to information contained in a URL or documentation) is the Parties' entire agreement relating to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any communication between the Parties relating to its subject matter.

16.10   *Execution and Counterparts*. This Agreement may be signed in two or more counterparts each of which together will be deemed to be an original and all of which together will constitute one and the same instrument. The signing of this Agreement and transmission by facsimile, electronic document transfer, or email will be acceptable and binding upon the Parties hereto.

16.11   *Waiver*. Any express waiver or failure to exercise promptly any right under this Agreement or Service Order will not create a continuing waiver or any expectation of non-enforcement.

16.12   *Severability*. If any part of this Agreement is held unenforceable, the validity of the remaining provisions shall not be affected. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. To the extent that any and all provisions of this Agreement (including its exhibits or attachments) shall exclude or limit any statutory liability which, according to mandatory provisions of applicable law cannot be contractually excluded or limited by mutual agreement of the Parties, then such provision shall be given only such effect, if any, as is permitted by the applicable law.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Gridscape Solutions, Inc.   Chabot-Las Positas Community College District

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

Vipul Gore
President & CEO

EXHIBIT A

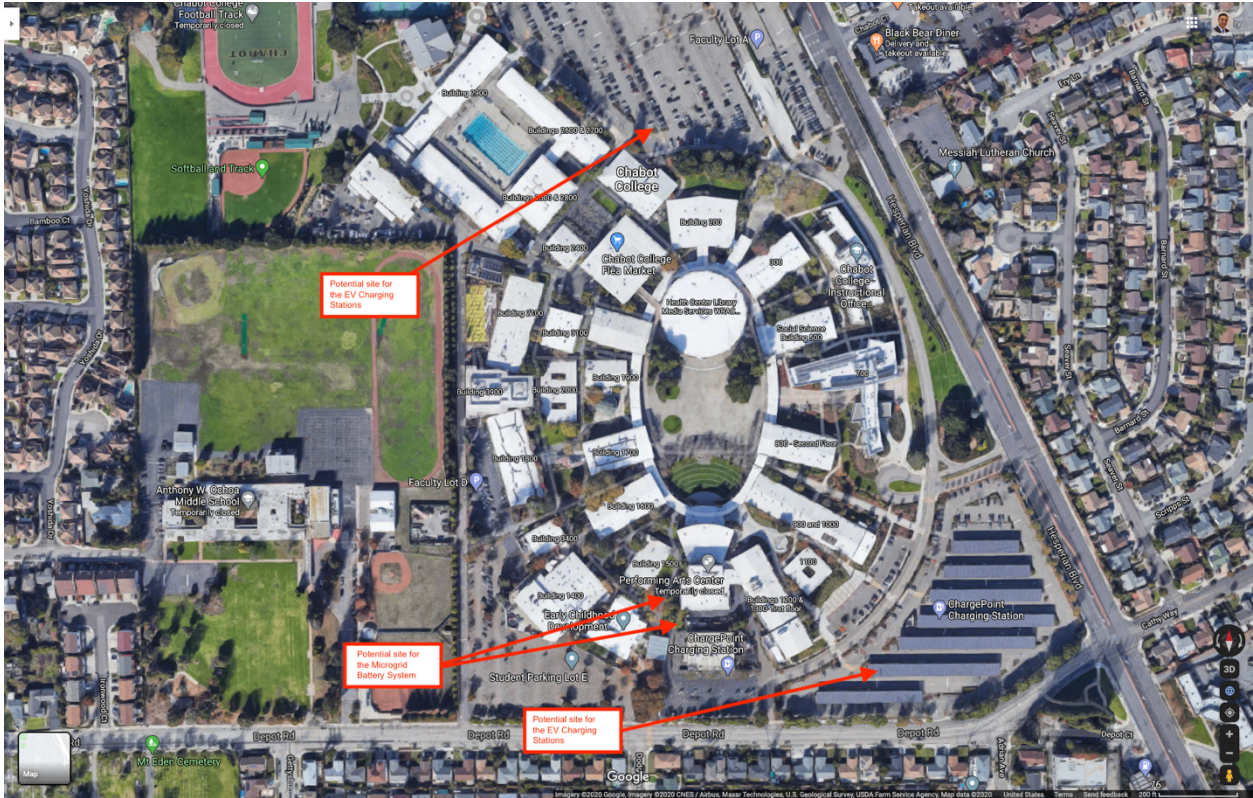## Map of the Potential location of the Microgrid Battery System and the EV Charging Stations

EXHIBIT B

Service Order #1 Attached

355-5/4668778.1