

EXHIBIT V to AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND BLINK CHARGING COMPANY FOR PUBLICLY-ACCESSIBLE ELECTRIC VEHICLE (EV) CHARGING INFRASTRUCTURE ON CITY PROPERTY (RFP 20-076)

Blink Charging Company Parking Agreement

Authorizing Ordinance: 2021-02-04-_____

City: City of San Antonio

City's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Chief Sustainability Officer)

Blink: Blink Charging Company

Blink's Address: 407 Lincoln Road, Suite 704, Miami Beach, FL 33139

Background:

The City and Blink, under the authority of Ordinance 2021-02-04-_____, have entered into an Agreement whereby Blink will provide electric vehicle (EV) charging infrastructure on City of San Antonio property at no cost to the City.

To assist in providing EV services, the City is willing to offer Blink access to parking areas controlled by the City.

This Parking Agreement defines the terms and conditions of Blink's use of City-controlled parking areas for the EV program.

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Rights and Obligations:

Now Therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which is acknowledged, the parties agree as follows:

1. Parking Spaces in City-Owned Lots and Garages.

1.01. City Council has designated the spaces in **Exhibit A** as the spaces Blink may potentially use under this agreement, as provided in the RFP. The City Manager, or designee, may, without further council action or authorization, provide parking spaces to Blink on City property and in City-owned garages and lots. For all parking areas Blink will provide the City a revenue share of the receipts received for EV charging at each location. Blink and City will agree on parking locations which should be publicly accessible and suitable for the installation of EV charging equipment.

1.02. Blink will provide one parking sign for each space. City will install the sign. Blink and City will agree on the signs' design, location and installation method. City will police unauthorized parking in Blink's spaces in the same fashion it does other reserved spaces in City parking facilities open to the public. Blink's only remedy for dissatisfaction with City's policing is to notify City of specific vehicles in specific spaces needing ticketing or towing.

1.03. If a lot or garage is sold, torn down, or converted to a use other than public parking, Blink's right to use the lot or garage ceases, as does its obligation to pay for the affected spaces.

2. Parking Spaces on Public Streets and Alleys.

2.01. City Council has designated the spaces in **Exhibit A** as the spaces Blink may potentially use under this agreement, as provided in the RFP, and updated October 22, 2020. The Parties agree that these parking spaces are subject to review for suitability and it is anticipated that some of the locations may change after evaluation. Other spaces may be allocated or designated as being available and suitable for EV charging

equipment. Those spaces will be added to Exhibit A according to the terms of this agreement for use by Blink.

2.02. Without further action by the City Council, City and Blink may agree to amendments to this Parking Agreement to add or remove spaces to Exhibit A. All such amendments must be in writing and signed on behalf of both parties and must set out a revised Exhibit A listing all spaces Blink may then use in its program. Blink acknowledges that only spaces listed on Exhibit A are lawfully reserved to it.

2.03. City will provide and install signs at spaces allocated to Blink. Blink is responsible for towing from public-street or alley spaces at its own expense. Blink and City will agree on the signs' location and installation method.

2.04. City is not responsible for towing or otherwise responsible for policing who parks in public-street-and-alley spaces allocated to Blink hereunder.

3. Electric-Charging Stations.

3.01. The purpose of the Agreement is for Blink to provide electric charging stations for cars with electric capabilities. Blink will provide and install the charging stations including all electrical make ready from City's existing service panel. All EV charging equipment installation and site preparation will be at Blink's sole expense.

3.02. The stations serving spaces on public streets and alleys must not adversely affect passage on the sidewalk such that the sidewalk no longer complies with the Americans with Disabilities Act and other applicable, similar legislation. Blink must comply with all processes and rules of general applicability in installing the electric charging stations, including getting sidewalk-encroachment permits from the applicable City Departments.

3.03. Where possible, Blink will establish a metered account with CPS Energy. Electric Vehicle charging stations at City-owned sites may hook into City's electrical service. Blink is responsible for paying the electricity consumption associated with the use of the electric vehicles back to the City. Blink will provide monthly reports of the electricity usage for each station. The amount charged to Blink is determined by multiplying kilowatt hours used by Blink by the tiered tariff achieved on the applicable utility bill.

4. Revenue Share for City Owned Parking Locations.

Revenues received by Blink Charging are permitted for use by the company to cover project costs related to the agreed upon list of spaces in Exhibit A. Once revenues exceed costs, Blink agrees to transfer a share of the revenue to be deposited in the Office of Sustainability Fund 55001000, Internal Order No. 280005500001, to be earmarked for publicly-accessible EVSE programmatic enhancements. Parties agree to a 50/50 split of revenues that exceed project costs. Parties also agree that the revenue share agreement

- will be reviewed at a minimum every six months to examine current market trends and supplemental funding opportunities that may impact the project.
To use a space shown on Exhibit A, Blink must pay the City the revenue share agreed to in this agreement. The revenue share is due monthly within 15 days of the following month without billing and is payable to the following address:

Finance Department
(Blink Charging Company)
City of San Antonio
P.O. Box 60
San Antonio, Texas 78291-0060

- Revenue Share Procedures:** The Parties agree to a 50/50 charging revenue split, after Provider recoups the Project Costs. The Parties acknowledge that mutually agreed upon adjustments may be made to the revenue share as a better understanding of locations, costs, incentives and other factors are finalized. Blink will evaluate the proposed locations to understand the costs as well as understand the incentives anticipated from the TxVEMP Grant Program to maximize the City of San Antonio's revenue potential and achieve the projects goal of cost neutrality or better.

For the following Revenue Sharing Procedures, Blink is the "Provider" and City of San Antonio would be the "Client":

- Collection of Revenue. Provider will record the Equipment usage and collect all revenue generated by the Equipment.
- Revenue Payment. After recouping the Project Costs, Provider shall remit to Client fifty percent (50%) of the Net Revenues generated by the Equipment ("Revenue Payment").
- "Net Revenues" are defined as the gross revenues generated from the Equipment through EV charging fees and advertising ("Gross Revenues"), minus: (i) project costs; (ii) any and all taxes paid by Provider, (iii) transaction fees of eight percent (8%) of Gross Revenues, (iv) \$18.00 per month, per charging station in network/connectivity fees related to the operation of the Equipment, and (v) Electricity payments or reimbursements by Provider for the period ((ii), (iii), and (iv) being referred to hereinafter as the "Service Fees" or "Fees").
- Provider shall issue the Revenue Payment to Client on or before the fifteenth (15th) day of each month subsequent to the applicable monthly revenue period. An activity report for the reported month detailing: the number of transactions, the Gross Revenues, and the Service Fees, will accompany each Revenue Payment.
- If the Gross Revenues do not cover the Service Fees incurred in a given month, such unpaid Fees will accrue to the following month.
- Client waives all claims for any additional payments beyond the Revenue Payment.
- Client agrees that unless Client executes the ACH Form Schedule V, no Revenue Payment shall be processed to Client unless and until either (i) the aggregate

amount due to Client exceeds \$50.00 or (ii) it is January 15th and there are unpaid Revenue Payments due to Client as of December 31st of the previous year.

- Session Limits. Provider shall be solely responsible for managing issues relating to session time limits, advertising fees or other charges relating to use of the Equipment by any party.
- Electricity. Client Electric Meter. If the Equipment is connected to Client's electric meter, Provider shall reimburse Client for the electricity used by the Equipment (the "Electricity Reimbursement"), in accordance with the usage indicated by the Equipment's internal meter. The meter indicates the exact amount of Kilowatt hours (kWh) that the Equipment utilizes in charging EVs during every calendar month ("Monthly kWh"). Provider will then reimburse the Client for the Monthly kWh at the rate, per kWh, which the utility company charges the Client in its monthly electricity bill. The Electricity Reimbursement shall be issued by Provider to Client on or before the fifteenth (15th) day of each month subsequent to the applicable monthly period of usage. Unless Client executes the ACH Form Schedule V, no Electricity Reimbursement shall be sent to Client unless and until either (i) the aggregate amount due to Client (including the Revenue Payment and the Electricity Reimbursement) exceeds \$50.00 or (ii) it is January 15th and there are unpaid Electricity Reimbursements due to Client as of December 31st of the previous year. Provider Electric Meter. Provider is hereby granted the option, which it may exercise at its sole discretion, to install its own electric meter at the Property and connect the Equipment to such meter at no cost to Client.
- ACH Payments. Client will obtain its monthly Revenue Payments through direct electronic transmissions (ACH Payments), by providing its banking information to Provider and executing the ACH form attached as Schedule V hereof.

5. Relinquishing Parking Spaces.

By signing this agreement, Blink commits to using and paying the revenue share for each space listed from time to time on Exhibit A. If Blink no longer wishes to use one or more of the listed spaces, Blink must deliver 30-days' prior written notice to the City. Blink must further remove all signs and electric-charging stations associated with the relinquished space.

6. Infrastructure at Private Parking Facilities.

Blink may separately arrange for EV charging equipment installation on privately-owned parking facilities on such terms as Blink and the private owner may agree.

7. Interruption in Parking Spaces.

7.01. As a municipality, City may from time to time exercise municipal powers unrelated to this agreement that will nevertheless adversely affect Blink. Such actions may include redirection of traffic, street closures, prohibiting parking in various areas, or

other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by City as a municipality is a breach of City's duties under this agreement or entitles Blink to any relief under this agreement. Likewise, no breach of contract or other duty by municipal utility providers is a breach of City's duties as City or entitles Blink to any relief under this agreement.

7.02. City will try to notify Blink ten days in advance of an interruption in Blink's ability to use a parking space, but it cannot guarantee that it will not fail to do so, either because of emergency or oversight.

8. Prohibited Interests in Contracts.

8.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

8.02. Blink warrants and certifies as follows:

- (i) Blink and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Blink has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

8.03. Blink acknowledges that City's reliance on the above warranties and certifications is reasonable.

9. Compliance.

Blink must comply with all applicable federal, state, and local laws, rules, and regulations in its operations hereunder.

10. Insurance.

10.01. As provided in the referenced Agreement and contract documents.

11. Indemnity.

11.01. As provided in the referenced Agreement and contract documents.

12. Term, Termination.

12.01. This agreement lasts until the earlier to occur of (a) expiration or other termination of the Agreement between Blink and the City authorized by Ordinance 2021-02-04-____ or (b) 60 days' prior written notice of termination by either party.

12.02. Upon termination, Blink must remove all EV charging stations and associated equipment for which City requests removal in writing. Upon removal, Blink must restore the area in which the station was installed to the condition it was in before installation. All electric charging stations not removed at termination become the property of City. Blink agrees to maintain all equipment in working order and update hardware and software as technology improvements come online. Should the agreement be terminated prior to the end of the 5th anniversary, Blink and City will evaluate the current condition of the network and consider options for continued operation by Blink or City or removal of equipment by Blink. Funds accumulated in the Sustainability Fund from the revenue-share may be used to pay for equipment and/or removal costs.

In the event this Agreement is terminated early by actions of the City, the parties may negotiate purchase by the City of installed charging equipment at amortized cost, assuming a five-year amortization period. The City will not be obligated to purchase the equipment and may choose that the equipment be removed at the City's expense. Site preparation elements may remain, or the City may require that sites be returned to pre-installation condition at City's expense.

In the event this Agreement is terminated early by the actions of Blink, the parties may negotiate purchase by the City of the installed charging equipment at amortized cost, assuming a five-year amortization period. The City will not be obligated to purchase the equipment and may choose that the equipment be removed at Blink's expense. Site preparation elements may remain, or the City may require that sites be returned to pre-installation condition at Blink's expense.

13. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to

appropriate money for this project in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

14. Default, Remedies for Default.

14.01. *Events of Default.* If Blink permits or fails to prevent any of the following occurrences, it is an event of default:

14.01.01. Blink fails to pay when due any installment of revenue share, and such default continues for five days after written notice from City, but Blink is not entitled to more than one notice of a delinquency in regularly recurring rent installments during any 12-month period. After the first such delinquency, Blink is in default for failure to pay revenue share timely even if City does not give notice.

14.01.02. Blink fails to comply with any term, provision or covenant of this Agreement, other than the payment of revenue share and does not cure such failure within 30 days after written notice thereof to Blink.

14.01.03. Blink deserts, vacates or abandons all or any of the parking spaces, and continuously operate its EV charging business on city property, or fails to commence business operations in the city or before 30 days after the effective date of the ordinance authorizing this agreement.. If Blink removes or makes preparations to remove its signs or electric charging stations (other than in the normal course of business) in amounts sufficient to indicate a probable intent to substantially vacate the location, Blink's breach is established conclusively.

14.01.04. The business operated by Blink is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Blink, or normal business holidays.

14.01.05. This Agreement is transferred to, or passes to, any other person or entity, except in a manner permitted herein.

14.02. *Remedies for Default.* Upon the occurrence of any Blink event of default, City may immediately terminate this Agreement and all rights of Blink under it. Upon termination, Blink must immediately surrender all parking spaces to City. If Blink fails to do so, City may, without prejudice to any other remedy, remove all Blink's signs and equipment without being liable for prosecution or any claim of damages. City may also seek to collect past-due revenue share by all lawful means.

15. Dispute Resolution.

15.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants

must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

15.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

15.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

15.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

15.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

15.06. Mediator fees must be borne equally.

15.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

16. Miscellaneous.

16.01. *Applicable Law.* The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas. But the Texas conflicts of law rules must not be used to cause the application of the laws of a jurisdiction other than Texas. Both parties' obligations hereunder are performable in San Antonio, Bexar County, Texas.

16.02. *Severability.* If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

16.03. *Successors.* This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

16.04. *Integration.* **This Written Agreement, together with the Electric Vehicle Infrastructure Agreement Referred to in the Background Facts at the Beginning of This Agreement, Represents The Final Agreement Between The Parties And May Not Be Contradicted**

By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

16.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

16.06. *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. It has no third party beneficiaries.

16.07. *Notices.* As provided in the referenced Agreement and contract documents.

16.08. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, the counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

16.09. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, can alter the rights or obligations of the parties as contained in this agreement.

16.10. *Assignment.* Blink may not assign this agreement in whole or in part.

16.11. *Administrative Actions and Agreements.* The City Manager, or designee, may, without further council action, agree to, sign, and deliver on behalf of the City, all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults, including terminating this agreement. This paragraph does not authorize material amendments without council authorization, except as expressly provided for in 1.01, 2.02 and 5.

17. Incorporation of Exhibits.

Each exhibit referenced in this agreement is incorporated herein by reference for all purposes as if it were fully set forth.

18. Public Information.

Blink acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

Agreed, Consented to and Executed on the date indicated below.

City of San Antonio,
a Texas municipal corporation

Blink Charging Company

By: _____

By:  _____

Printed
Name: _____

Printed
Name: Brendan Jones

Title: _____

Title: Chief Operating Officer

Date: _____

Date: 2-2-2021

Approved As To Form:

Andrew Segovia
City Attorney

By: Assistant City Attorney

**Exhibit A to Blink Charging Company Parking Agreement.
Potential EVSE Sites, all Publicly-Accessible.**

Site Owner	Property Name	Address
City of San Antonio	City Hall	100 Military Plaza, San Antonio, TX 78205
City of San Antonio	Alamodome	100 Montana St, San Antonio, TX 78203
City of San Antonio	One-Stop/San Antonio Development Services Dept.	1901 S Alamo St, San Antonio, TX 78204
City of San Antonio	Henry B. Gonzalez Convention Center	900 E Market St, San Antonio, TX 78205
City of San Antonio	Houston Street Garage	240 E Houston St, San Antonio, TX 78205
City of San Antonio	Central Library Garage	600 Soledad St, San Antonio, TX 78205
City of San Antonio	Convention Center Garage	850 E Commerce St, San Antonio, TX 78205
City of San Antonio	St. Mary's Street Garage	400 N St Mary's St, San Antonio, TX 78205
City of San Antonio	Martinez Lot	S Alamo St & Martinez St, San Antonio, Tx 78205
City of San Antonio	S. Alamo Lot	418 S Alamo St, San Antonio, TX 78205
City of San Antonio	Durango Federal Lot	700 E César E. Chávez Blvd, San Antonio, TX 78205
City of San Antonio	Houston/Nolan Lot @ Elm	E Houston St, San Antonio, TX 78202
City of San Antonio	Market Square Lot	612 W Commerce St, San Antonio, TX 78204
City of San Antonio	I35 Lots	Interstate 35 between Commerce Street and Martin Street, San Antonio, TX 78207
City of San Antonio	I37 Lot	Interstate 37, 10st & Austin St. San Antonio, Tx 78202
City of San Antonio	Pre-K 4 SA North Education Center	3635 Medical Dr, San Antonio, TX 78229
City of San Antonio	Pre-K for SA North Bus Depot 1- Cody Branch Library	11441 Vance Jackson Rd, San Antonio, TX 78230
City of San Antonio	Pre-K 4 SA North Bus Depot 4- John Igo Community Center/Branch Library	13330 Kyle Seale Pkwy, San Antonio, TX 78249

City of San Antonio	Pre-K 4 SA North Bus Depot 5- Great Northwest Library	9020 Wellwood St, San Antonio, TX 78250
City of San Antonio	Pre-K 4 SA East Education Center	5230 Eisenhower Rd, San Antonio, TX 78218
City of San Antonio	Pre-K 4 SA East Bus Depot 6- MacArthur Park	1611 NE Interstate 410 Loop, San Antonio, TX 78217
City of San Antonio	Pre-K 4 SA East Bus Depot 7- Julia Yates Semmes Library	15060 Judson Rd, San Antonio, TX 78247
City of San Antonio	Pre-K 4 SA East Bus Depot 8- Thousand Oaks Library	4618 Thousand Oaks, San Antonio, TX 78233
City of San Antonio	Collins Garden Library	200 N Park Blvd, San Antonio, TX 78204
City of San Antonio	District 4 Heritage Community Center	
City of San Antonio	District 9 Senior Center	835 W. Rhaspody, San Antonio, TX 78216
City of San Antonio	Airport Integrated Control Center	