

DEC 15 2011



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MEMORANDUM

City Manager Memo No. MC12-008

DATE: DECEMBER 15, 2011

TO: MAYOR & CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*

FROM: PAT MCDERMOTT, ASSISTANT CITY MANAGER

SUBJECT: Approval of a License Agreement with ECotality North America (ECotality NA) to host an Electric Vehicle charging station at various city facilities.

RECOMMENDATION: Staff recommends approval of an agreement between ECotality NA and the City of Chandler allowing for the installation of Electric Vehicle charging stations at various city facilities (four locations) for a 12 month pilot project.

BACKGROUND: This item was pulled from the November Agenda when two items in the contract were still not resolved between attorneys from both parties. Those issues have been resolved to staff satisfaction. Additionally the financial model has been changed to a 50/50 sharing of revenues generated from the charging stations. Ecotality will meter the electricity used during recharging of the vehicle. The revenue will be shared with the City.

The US Department of Energy (DOE) has provided funding through the American Recovery and Reinvestment Act (ARRA) to deploy vehicle charging infrastructure to promote the use of Electric Vehicles and to reduce petroleum consumption. ECotality NA was selected by DOE as the Project Manager for the EV Project. Charging stations are being established on private and public property to create a sufficient infrastructure to support electric vehicle owners in their daily commutes and other trips. Placement ensures that such owners will not have to worry about having an adequate charge to complete their trips. The EV Project is a pilot program and one of the purposes of the pilot is to determine users' driving and charging habits, as well as viable payment methods and fee structures for charging facilities. ECotality NA has worked with Maricopa Association of Governments (MAG) to establish standards for siting and building permitting and has begun to install charging stations in the Phoenix and Tucson Metro areas. The agreement allows for the installation of the charging equipment on city property, with provisions for equipment removal and site restoration at the end of the

pilot program, if the City so desires. The City may opt to possess the equipment after the pilot program has concluded, subject to the terms of the license agreement.

The City of Chandler is committed to the continued exploration of sustainable technologies, and views this pilot program as an opportunity to support the evaluation of alternate transportation models.

FINANCIAL IMPLICATIONS: There will be no cost to the City.

PROPOSED MOTION: Move that Council authorizes approval of a License Agreement with ECOtality North America (ECOtality NA) and the City of Chandler to host an Electric Vehicle charging station at various city facilities.

Attachment:

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made effective as of November 18, 2011, between the City of Chandler, an Arizona municipal corporation (the "Licensor"), and Electric Transportation Engineering Corporation, dba ECOtality North America, an Arizona corporation, and its successors and assigns ("Licensee") (collectively the "Parties").

RECITALS:

- A. The Licensor is the fee owner of certain real properties more particularly described on the attached Exhibit A (collectively "Licensor's Properties"), specific portions of which will be licensed to Licensee pursuant to this Agreement (collectively the "Licensed Premises").
- B. Licensee is the owner of the Equipment and Software more particularly described on the attached Exhibit B (collectively the "Equipment").
- C. The United States Department of Energy ("DOE") has provided funding through the American Recovery and Reinvestment Act ("ARRA") to accelerate the development and production of electric vehicles ("EVs") in order to reduce petroleum consumption in the United States.
- D. For the use of EVs to expand, drivers of EVs will require access to sufficient publicly available Electric Vehicle Supply Equipment ("EVSE") stations to provide for convenient re-charging of EVs in locations remote from the drivers' homes.
- E. To encourage the development and use of EVs the DOE is supporting the development of a large publicly available EV charging infrastructure in several cities in the United States, including the Licensor, through a program known as the "EV Project," which will provide EVSE units at publicly available locations in the United States.
- F. Pursuant to the EV Project Licensee has received a grant from DOE (the "DOE Grant") to install EVSE stations and to collect data relating to public use of the EVSE stations. The data collected from publicly available EVSE and EV Project participants will be analyzed to determine vehicle use and charging patterns in a variety of topographies and climate conditions, to evaluate the effectiveness of the charge infrastructure deployed under the EV Project, and to support the future deployment of EV infrastructure in other regions.
- G. Licensor has a long-standing commitment to resource conservation and has been an active participant in energy conservation, energy efficiency and environmental preservation and is committed to protecting the environment and providing a sustainable future for its residents.

H. Licensor is interested in the outcome of the studies and other efforts being undertaken by Licensee as part of the DOE Grant, including the extent to which EVSE stations on the Licensed Premises would affect energy use by Licensor and the use of EVs by members of the public.

I. Licensee desires to obtain from Licensor certain rights over, under and across Licensor's Property for the purpose of installing, maintaining, operating and removing the Equipment to facilitate Licensee's implementation of the DOE Grant.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. *The License.* Licensor hereby grants to Licensee a revocable license to use and occupy the Licensed Premises (the "License"), on the terms and conditions stated in this Agreement, to install, maintain, and operate the Equipment for the limited purpose of implementing the DOE Grant.

1.1. *Limited, Nonexclusive Rights.* This License is a revocable, nonexclusive, and non-possessory authorization for Licensee to enter upon and use the Licensed Premises solely for the limited purposes described in § 1.3 on the terms and conditions stated herein. Licensee may not use the Licensed Premises for any other purpose or in any other manner without Licensor's prior written consent. This License in no way restricts Licensor's use or conveyance of the Licensed Premises, any interest therein, or any improvements thereon, or Licensor's use of the Licensed Premises in any manner not inconsistent with the License. This License is not intended to create or convey to Licensee an interest in real property, and may not be recorded without Licensor's prior written permission.

1.2. *Rights of Others.* Nothing in this License may be construed as Licensor's representation, warranty, approval, or consent regarding rights in the Licensed Premises held by other parties, and Licensee is responsible for ascertaining the rights of all third parties in the Licensed Premises and obtaining their consent to the activities described in this License as necessary or appropriate. Licensee agrees to obtain, at its sole expense, such other licenses, permits, consents and agreements as may be required to address the rights of others by other appropriate agreements, easements, privileges or other rights, whether recorded or unrecorded, and shall make its own arrangements with holders of such prior rights.

1.3. *Scope of License; Permitted Uses.* During the term of this Agreement Licensee shall have reasonable access to the Licensed Premises for the limited purpose of installing, maintaining, using, operating, repairing, and removing the Equipment. Licensee may not use the Equipment located on the Licensed Premises for any purpose other than to provide for EV charging and to collect data relating to the use of the EVSE. Licensee may not display any logo, advertisement, or other information on the Equipment, other than instructions regarding the operation and use of the Equipment, without Licensor's prior written approval.

1.4. *Condition of Premises.* Licensee agrees to accept the Licensed Premises "As Is," without warranty of any kind, express or implied. Licensee acknowledges that Licensor is not obligated to construct or install any improvements or facilities of any kind on the Licensed Premises. Licensee must use commercially reasonable efforts to maintain the Licensed Premises and any Equipment installed on the Licensed Premises in a condition satisfactory to the Licensor, including the removal from the Equipment and from any areas that are inaccessible to Licensor of graffiti and other unsightly, dangerous or offensive conditions and must not cause or permit any generation of hazardous waste. During the term of this Agreement Licensee will have primary and ultimate responsibility for maintaining the condition of the Licensed Premises at Licensee's sole expense, but Licensor will cooperate with Licensee to implement appropriate, mutually agreed upon procedures to assure that the Licensed Premises are maintained in a condition that is satisfactory to both Licensor and Licensee.

1.5. *Condition of Licensee's Equipment.* During the term of this Agreement Licensee must maintain the Equipment in a reasonable, safe and operable condition at all times when the Equipment is installed on Licensor's Property. Licensor will have no right or responsibility to repair, maintain, or operate the Equipment. Licensor will cooperate with Licensee to implement appropriate, mutually agreed upon measures to assure that the Equipment is maintained in operable condition and that if the Equipment is damaged or becomes inoperable that Licensee is promptly notified. Licensee will repair or replace, at Licensee's option and at Licensee's sole expense, the Equipment or parts or components thereof as Licensee deems necessary and appropriate. Licensee will not be responsible for the condition of the Equipment after the expiration or termination of this Agreement.

1.6. *Environmental Hazards.* Licensee agrees not to use or store, or permit to be used or stored, on the Licensed Premises, gasoline or petroleum products, hazardous or toxic substances or inflammable materials, herbicides, pesticides, fungicides, algacides. Licensee may not engage in the production, location, transportation, storage, treatment, discharge, disposal, or release upon or under the Licensed Premises of any substance regulated under any local, state or federal environmental protection law or regulation.

1.7. *Waste, Nuisance.* Licensee shall not commit or suffer to be committed any waste or impairment of the Licensed Premises and covenants that it shall not do, nor permit to be done, on or about the Licensor's Properties any acts which may be a nuisance.

1.8. *Compliance with Laws.* In the exercise of any privilege granted by this License, Licensee must comply with all applicable state, municipal and local laws, and the rules, orders, regulations and other legal requirements, including laws and regulations relating to occupational safety and health and environmental protection, and all orders, writs, judgments, injunctions, decrees or awards of any court or governmental authority with jurisdiction over Licensee or the Licensed Premises. Licensee must obtain promptly and maintain in effect throughout the term of the License all licenses, permits, authorizations, registrations, rights and franchises necessary to conduct the actions required or permitted by the License. Furthermore, Licensee will not encourage or permit any use in or upon the Licensed Premises, or any part thereof, in violation of any applicable laws, statutes, rules or regulations of any federal, state or local authority.

1.9. *Compliance with Licensor Requirements.* Any use made of the Licensed Premises pursuant to this License, and any construction, maintenance, repair, or other work performed thereon by the Licensee, including the installation and removal of any article or thing, shall be accomplished in a manner satisfactory to the Licensor.

1.10. *Structures.* Licensee may not place or construct upon, over or under the Licensed Premises any installation or structure of any kind or character, except such as are specifically authorized herein or in writing signed by Licensor.

1.11. *Alterations; Damage; Restoration.* No alterations may be made by Licensee to the Licensed Premises without first obtaining the prior written consent of Licensor and, if applicable, any other person or entity having an interest in or right to use or occupy the Licensed Premises. Licensee will bear all costs and expenses associated with performing any such alterations, including, without limitation, costs of construction and any increased operating costs resulting from such alterations. Except as may be otherwise provided in this Agreement, Licensee may not alter, destroy, displace or damage any of Licensed Premises or any neighboring property in the exercise of the privileges granted by this Agreement without the prior written consent of Licensor and any other affected landowner, and the express agreement of Licensee promptly to replace, return, repair and restore any such property to a condition satisfactory to Licensor and any other affected landowner upon demand, and at Licensee's sole cost and expense.

1.12. *Operation and use of Equipment.* Licensee must confine activities on the Licensed Premises strictly to those necessary for the enjoyment of the privilege hereby licensed, and must refrain from marring or impairing the appearance of the Licensed Premises, obstructing access thereto, interfering with the transaction of Licensor's business and the convenience of the public, or jeopardizing the safety of persons or property, or causing justifiable public criticism.

1.13. *Expense.* Any cost, expense or liability connected with or in any manner incident to the granting, exercise, enjoyment, or relinquishment of this License will be assumed and paid or discharged by the Licensee. Such costs shall include, but shall not be limited to, costs to install or remove the Equipment, costs to install electricity or other power supplies to serve and operate the Equipment, and costs to keep the Equipment free of graffiti and debris.

1.14. *Assignment.* Licensee may not assign this License nor sub-license all or any portion of the Licensee's right to use and occupy the Licensed Premises, and any purported assignment or sub-license by Licensee is void. This License does not confer on or convey to Licensee any possessory interest in the Licensed Premises, any right to exclusive possession or occupancy of the Licensed Premises, or any right of quiet enjoyment. The privileges granted to Licensee by this Agreement are personal to Licensee and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express and written consent of Licensor.

1.15. *Cancellation.* This License is subject to cancellation by Licensor pursuant to the provisions of Section 38-511, Arizona Revised Statutes, as amended.

1.16. *Responsibility for Others.* Licensee will be responsible for the conduct and discipline of its employees, contractors, subcontractors, invitees, licensees, and other persons entering upon or using the Licensed Premises pursuant to this Agreement.

1.17. *Subordination.* This Agreement and the License granted herein is subject and subordinate to the terms of all ground leases, superior leases, mortgages, deeds of trust, other security instruments, and any other prior rights and matters of record now or hereafter affecting Licensor's interest in Licensed Premises.

2. *Term of License.* The License and rights granted by this Agreement will become effective as of November 18, 2011 (the "Commencement Date") and unless otherwise agreed in a writing signed by both Parties will automatically expire and terminate on December 31, 2012 ("Expiration Date").

3. *Consideration for License.* As consideration for the License and the use of electricity used for the charging of EVs using EVSEs located on the Licensed Premises, Licensee agrees to pay the sum of \$1.00 upon execution of this Agreement. In addition, Licensee agrees that EVs in Licensor's fleet and EVs driven by Licensor's employees may use the EVSE during the term of this License at no charge. In addition, Licensee will provide Licensor reports and other information relating to the License and the use of the EVSEs, including data collected from or relating to the use of EVSE's on the Licensed Premises, provided, however, that Licensee will not be required to and will not provide to Licensor any information that is proprietary or confidential.

3.1 *EVSE Offset*

3.1.1. ECotality will provide The City with fifty percent (50%) of the revenue received by ECotality from Charger access fees at each Site to offset the City's cost of hosting the Chargers (the "Charger Offset"). The Charger Offset will be paid quarterly within thirty (30) days of the end of each calendar quarter. ECotality will establish a baseline (minimum) consumer cost for Charger access (in minutes or hours), which ECotality may, from time-to-time, adjust. Notwithstanding the foregoing, the City may charge consumers more than this baseline cost for Charger access.

3.1.2. Revenue used to calculate the EVSE Offset will not include any revenue from the use of the EVSE by customers participating in any free, unlimited, fixed-fee, test, or validation charging program.

3.1.3. The Parties agree to meet and confer in good faith on or before March 31, 2012 to discuss the viability of the charging program, the revenue model, and alternative models and methods for optimizing Licensor's participation in the EV Project and building a sustainable business model.

3.2. *Maintenance.* Licensee shall, at its sole cost, keep the EVSE and infrastructure located on the Project Sites properly maintained, clean and in good repair during the term of this Agreement. Licensor shall not authorize any entity other than

Licensee and its contractors to maintain, open, modify or repair EVSE located at the Project Sites during the term of this Agreement and shall not modify, revise, disassemble, uninstall, assign or encumber EVSE from the Project Sites during the term of this Agreement.

3.3. *Security.* Licensee acknowledges and agrees that Licensor is not responsible for inspecting or providing security for EVSE placed on the Project Sites and does not warrant in any way that EV owners using or attempting to use EVSE will properly use EVSE or that EVSE will not be damaged or vandalized after installation on the Project Site.

3.4. *Power Supply and Internet Availability.* While the Project Site is equipped with a power supply source and some WIFI internet capacity, Licensor makes no warranty that such power supply or internet capacity will be uninterrupted or will always be available during the term of this Agreement. Any modifications to the existing power supply deemed necessary by Licensee to operate EVSE at the Project Sites shall be completed at Licensee's sole cost. Licensor shall be responsible for the power costs incurred as a result of recharging vehicles with the EVSE during the term of this Agreement.

3.5. *Notice of Fee.* Licensee shall provide Licensor a thirty (30) day prior notice before charging a fee of any sort for use of EVSE at the Project Sites.

4. *Surrender; Removal of the Equipment.* On the expiration or any earlier termination of this Agreement, Licensee shall vacate the Licensed Premises and surrender possession of the Licensed Properties to Licensor.

4.1. *Licensor's Option to Retain the Equipment upon Expiration of the Term.* Upon the expiration of the Term, Licensor, in its sole and absolute discretion, may elect to retain the Equipment. Licensor shall notify Licensee in writing delivered to Licensee not less than thirty (30) days prior to the expiration of this Agreement, whether Licensor desires to retain the Equipment on some or all of the Licensed Premises. If Licensor fails to deliver such written notice within such thirty (30) day period, Licensor will be deemed to have elected to retain the Equipment at the Licensed Premises. If Licensor elects to retain the Equipment installed at some or all of the Licensed Premises, Licensor shall become entitled to acquire from Licensee all rights, title, and interest in and to such Equipment at no additional cost, and Licensee agrees to execute and deliver to Licensor such documents as Licensor may reasonably request to evidence the transfer of title.

4.2. *Removal of the Equipment by Licensee upon Expiration of the Term.* If Licensor elects not to retain the Equipment at the Properties, Licensee shall remove (at Licensee's sole cost and expense) any or all of the Equipment, and must restore the Licensed Premises to a safe and reasonable condition, as more specifically described in § 4.4 hereof. Should the Licensor elect to continue ECotality Blink Network and Equipment support, following the Term or earlier termination thereof, such additional services shall be subject to a new written agreement to be entered into between the parties.

4.3. *Removal of the Equipment by Licensor.* If Licensor timely notifies Licensee of Licensor's election to have Licensee remove the Equipment from the Licensed

Premises, Licensee will promptly remove the Equipment and restore the condition of Licensed Premises as provided in § 4.4. If Licensee does not remove the Equipment and restore the condition of the Licensed Properties within said thirty day period, Licensor may cause the Equipment to be removed and the condition of the Licensed Premises restored, and may recover from Licensee all expenses reasonably incurred in connection with such removal and restoration. Licensee agrees to pay all expenses of removal promptly upon receipt of demand for such payment. In addition, the Equipment will be deemed abandoned by Licensee and title shall automatically be vested in Licensor, which may use or dispose of the Equipment in its sole discretion.

4.4. *Restoration.* Upon expiration or termination of the License and removal of the Equipment Licensee will, at Licensee's sole expense and to Licensor's satisfaction, restore the affected portions of the Licensed Premises (surface and subsurface) to the condition they were in on the Commencement Date, ordinary wear and tear, fire and other casualty excepted.

5. *Termination.* This Agreement and the License may be terminated by either Party, in that Party's sole discretion, for any reason or no reason, upon delivery of 30 days written notice of termination to the other Party, in the manner provided herein.

6. *Indemnification.* Licensee shall indemnify, defend, save and hold harmless the Licensor and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, arising out of or related to Licensee's occupancy and use of the Licensed Premises. It is the specific intention of the parties that the Licensor shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Licensor, be indemnified by Licensee from and against any and all claims. It is agreed that Licensee will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Licensed Premises, the Licensee agrees to waive all rights of subrogation against the Licensor, its officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Licensed Premises. The obligations of Licensee under this Section shall survive the expiration or termination of this Agreement.

7. *Insurance Requirements.* Licensee shall procure and maintain for the duration of the License, insurance against claims for injury to persons or damage to property which may arise from or in connection with the License. The insurance requirements herein are minimum requirements for the License and in no way limit the indemnity covenants contained in this Agreement. Licensor in no way warrants that the minimum limits contained herein are sufficient to protect the Licensee from liabilities that might arise out of the License. Licensee is free to purchase such additional insurance as Licensee determines necessary.

7.1. *Minimum Scope and Limits of Insurance:* Licensee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

7.1.1. *Commercial General Liability – Occurrence Form*

Policy shall include bodily injury, property damage and broad form contractual liability coverage

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000
- Excess Insurance \$3,000,000
- Business Auto \$1,000,000
- Fire Damage (Damage to Licensed Premises) * \$100,000

a. The policy shall be endorsed to include the following additional insured language: "The City of Chandler shall be named as an additional insured with respect to liability arising out of the use and/or occupancy of the property subject to this License."

7.1.2. *Property Insurance*

- Coverage for Licensee's Equipment and any associated improvements Replacement Value
- Coverage on building (required if Licensee is sole occupant) Replacement Value

a. Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement.

b. Licensor shall be named as a loss payee on property coverage for tenant improvements.

c. If property coverage on the building is required, "the City of Chandler shall be named as a loss payee".

d. Policy shall contain a waiver of subrogation against the Licensor.

7.1.3. *Additional Insurance Requirements.* The policies shall include, or be endorsed to include, the following provisions:

a. On insurance policies where the Licensor is named as an additional insured, the Licensor shall be an additional insured to the full limits of liability purchased by the Licensee even if those limits of liability are in excess of those required by this Agreement.

b. The Licensee's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

7.1.4 *Worker's Compensation and Employer's Liability.* Licensee shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit. In case any work is subcontracted, Licensee will require the SUBCONTRACTOR to provide Workers' Compensation

7.1.5. *Notice of Cancellation.* For each insurance policy required by the insurance provisions of this Agreement, the Licensee must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand delivered or sent by facsimile transmission to Dave Nakagawara, Mail Stop 401, Post Office Box 4008, Chandler AZ, 85244-4008, Fax 480-782-3415.

7.1.6. *Acceptability of Insurers.* Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than A- VIII. The Licensor in no way warrants that the above-required minimum insurer rating is sufficient to protect the Licensee from potential insurer insolvency.

7.1.7. *Verification of Coverage.* Licensee shall furnish the Licensor with certificates of insurance (ACORD form or equivalent approved by the Licensor) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the Licensor before the License commences. Each insurance policy required by this Lease must be in effect at or prior to commencement of this License and remain in effect for the duration of the License. Failure to maintain the insurance policies as required by this License or to provide evidence of renewal is a material breach of contract.

All certificates required by this License shall be sent directly to Dave Nakagawara, Mail Stop 401, Post Office Box 4008, Chandler AZ, 85244-4008, Fax 480-782-3415. The City Department, License agreement number and location description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this

Lease at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE LICENSOR'S RISK MANAGEMENT DIVISION.

7.1.8. *Approval.* Any modification or variation from the insurance requirements in this Lease must have prior approval from the Licensor, whose decision shall be final. Such action will not require a formal lease amendment, but may be made by administrative action.

8. *Notices.* All notices or other communications required or permitted to be provided pursuant to this License must be in writing and may be hand delivered, sent by United States Mail, postage prepaid, or delivered by a nationally recognized courier service. Any notice will be deemed to have been given when delivered if hand delivered, when received if sent by courier, or forty-eight (48) hours following deposit in the United States Mail. Notices shall be addressed as follows:

To Licensor:

City of Chandler
Attn: Mr. Dave Nakagawara
Mail Stop 401
Post Office Box 4008
Chandler, AZ 85244-4008

To Licensee:

Electric Transportation Engineering Corporation,
dba ECotality North America
Attn: Mr. Marc Sobelman
430 South 2nd Avenue
Phoenix, AZ 85003-2418

9. *Governing Law.* This Agreement will be interpreted according to, and governed by, the procedural and substantive laws of the State of Arizona. The successful party in any court action brought to enforce or interpret any provision of this Agreement will be entitled to recover its reasonable attorney's fees and court costs from the unsuccessful party.

10. *Interpretation.* The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. When a reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated.

11. *Entire Agreement.* This Agreement and the exhibits and schedules referenced or attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter hereof. This Agreement is not intended to confer upon any Person other than the Parties hereto any rights or remedies hereunder.

12. *Severability.* If any terms or other provision of this Agreement or the schedules or exhibits hereto shall be determined by a court, administrative agency or arbitrator to be invalid, illegal or unenforceable, such invalidity or unenforceability shall not render the entire Agreement invalid. Rather, this Agreement shall be construed as if not containing the particular invalid, illegal or unenforceable provision, and all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent permitted under applicable law.

13. *Information.* Subject to applicable law and privileges, each Party hereto covenants with and agrees to provide to the other Party all information regarding itself and transactions under this Agreement that the other Party reasonably believes is required to comply with all applicable federal, state, county and local laws, ordinances, regulations and codes.

14. *Further Agreements.* The Parties shall execute or cause their applicable affiliates to execute such additional agreements between the Parties and/or their respective affiliates as may be reasonably necessary to effectuate the intent of this Agreement.

15. *Binding Effect.* This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may be amended at any time by mutual consent of Licensor and Licensee, evidenced by an instrument in writing signed on behalf of each of the Parties.

16. *Amendment and Modification.* This Agreement may be amended, modified or supplemented only by a written agreement signed by all of the Parties hereto.

17. *Failure or Indulgence Not Waiver; Remedies Cumulative.* No failure or delay on the part of either Party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

18. *Authority.* Each of the Parties represent to the other Party that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and

validly executed and delivered this Agreement and (d) this Agreement is its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

19. *Third Party Beneficiaries.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party, including any creditor of any Person. No such third party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any claim in respect of any liability (or otherwise) against either Party hereto. Notwithstanding the foregoing, it is understood that the Licensee's rights hereunder shall inure to the benefit of Licensee's affiliates and their officers, directors and employees.

20. *Default; Remedies.* The actual or prospective failure of either party to satisfy any material obligation under this Agreement, and the breach of any material representation or warranty stated in this agreement, will be an event of default. If a party's default continues without cure for thirty (30) days after delivery of a written notice of default in the manner provided in Section 9, the other party will be entitled to terminate this Agreement for cause, and to all other remedies available at law or in equity, including damages and specific performance. The rights and remedies set forth in this agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist in law or equity or by statute or otherwise. Failure or delay by the Licensor to exercise any right, power or privilege will not be deemed a waiver thereof.

21. *Attorney's Fees.* If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

22. *Iran and Sudan.* Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, contractor certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Iran or Sudan.

23. *Confidentiality and Data Security.* Personal identifying information, financial account information, or restricted Licensor information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Licensee must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted Licensor information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

24. *Data Collection for DOE Grant Purposes.* During the Term of this Agreement Licensor will allow Licensee reasonable access to the Equipment, the Licensed Premises, and existing sources of electrical energy as reasonably necessary to enable Licensee to collect and transmit data regarding public use of the Equipment as may be required by the DOE Grant.

25. *Miscellaneous.* Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. Except as expressly provided herein to the contrary, when a Party is required to do something by this Agreement, it shall do so at its sole cost and expense without right of reimbursement from the other Party. Whenever one Party's consent or approval is required to be given as a condition to the other Party's right to take any action pursuant to this Agreement, unless another standard is expressly set forth, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

26. *Counterparts.* This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement.

IN AGREEMENT, each of the parties hereto has caused this Agreement to be duly executed as of the day and year first set forth above.

LICENSOR:

CITY OF CHANDLER, a municipal
corporation

By: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

LICENSEE:

ELECTRIC TRANSPORTATION
ENGINEERING CORPORATION

By: 
Tom Jacobson
Director of Sales

EXHIBIT A
Description of Licensor's Properties and Licensed Premises

NOTE: This Exhibit A may be amended from time to time to add or delete properties

<u>Location No.</u>	<u>Property Address</u>
1. Chandler City Hall Garage	725 S. Arizona Ave, Chandler 85225
2. Chandler Public Library 85225	22 S. Delaware St., Chandler AZ
3. Chandler Office Center 85225	55 N. Arizona Place, Chandler AZ
4. Park Side Street	NE corner San Marcos/Buffalo

EXHIBIT A (Continued)

Description of Licensed Premises

Location No. 1 - Chandler City Hall Garage - 725 S. Arizona Ave, Chandler 85225

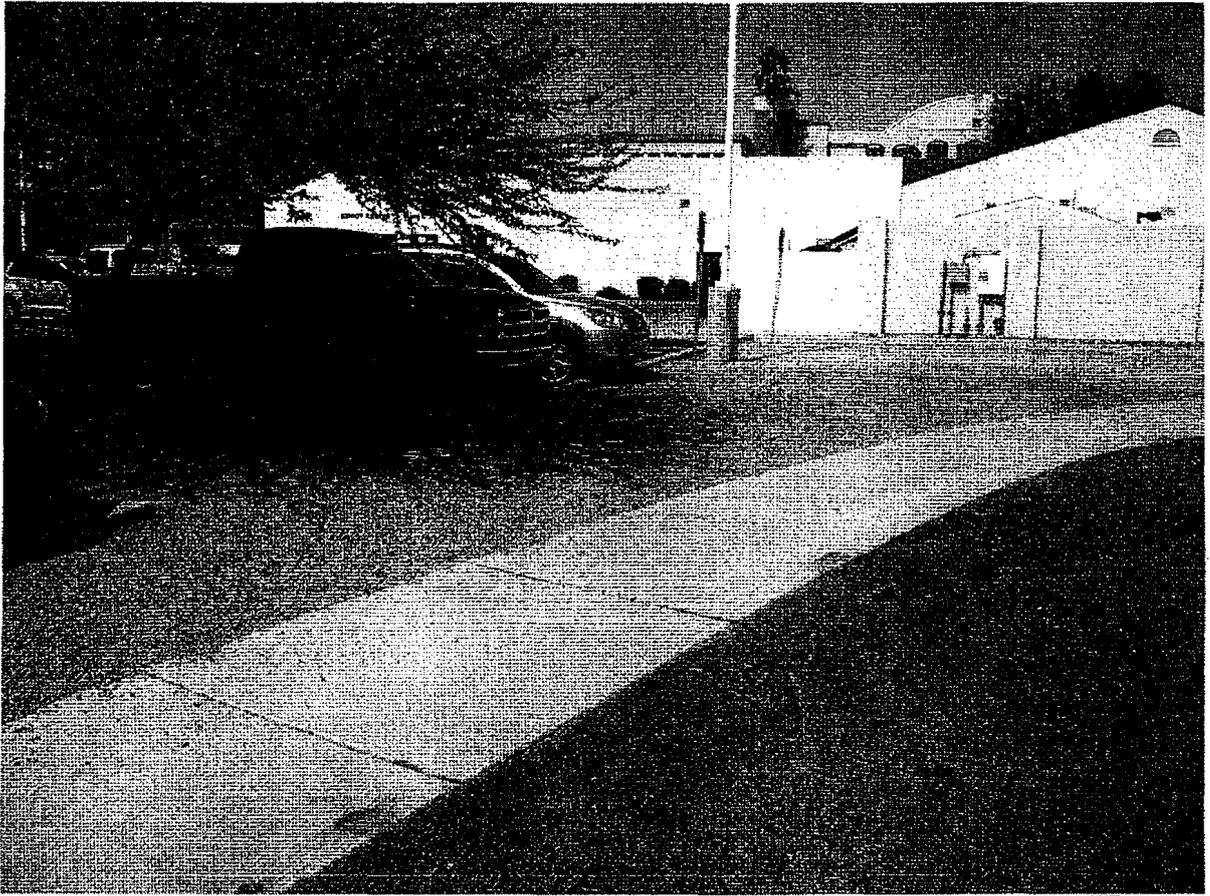
EVSE will be installed from Electrical Room to immediate East.



Location No. 2 - Chandler Public Library
AZ 85225

22 S. Delaware St., Chandler

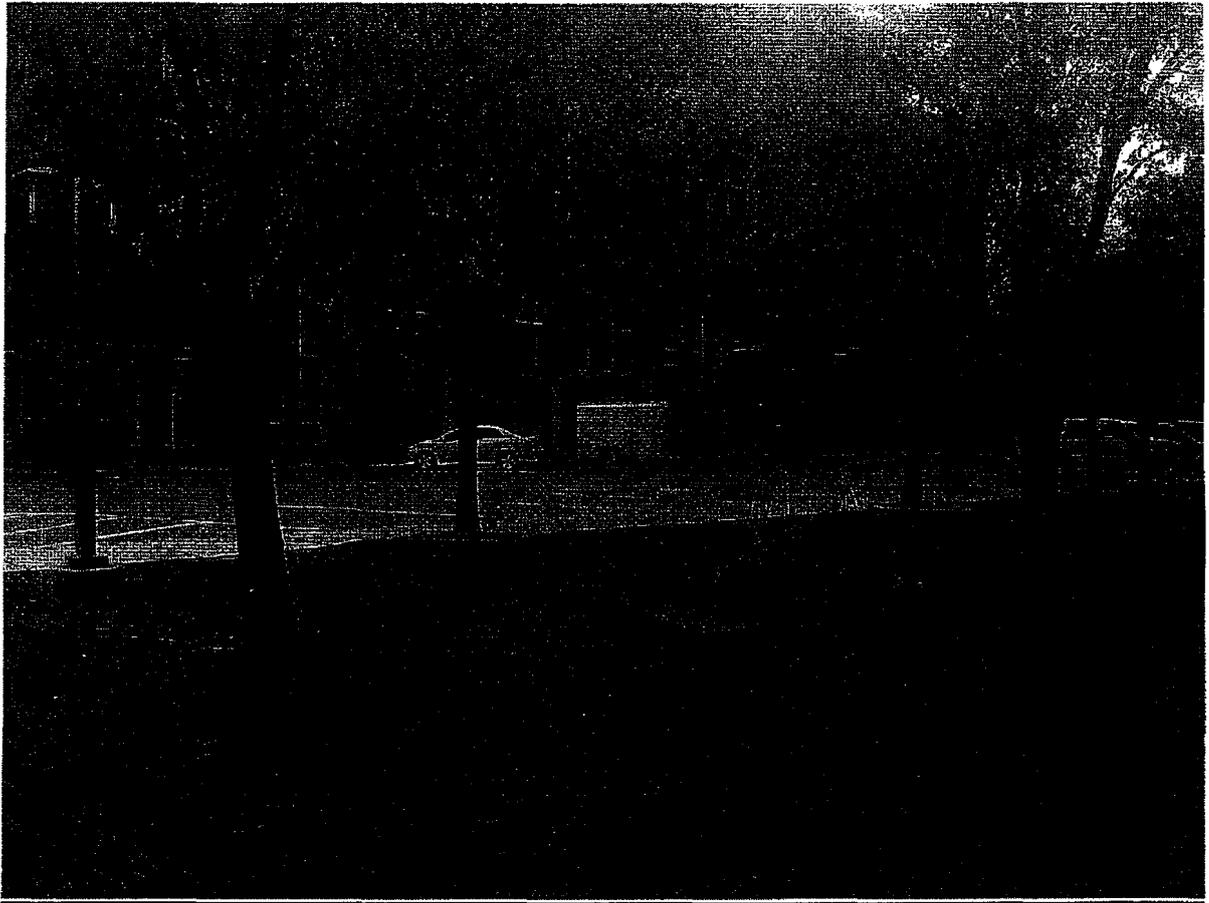
EVSE will be located in between parking spaces from available electric panel.



Location No. 3 - Chandler Office Center
85225

55 N. Arizona Place, Chandler AZ

EVSE will be located in between far left parking spaces from the electrical box on left.



Location No. 4 - Park Side
Street

NE corner San Marcos/Buffalo

EVSE will be located between these two spaces run from the silver electrical box in background.

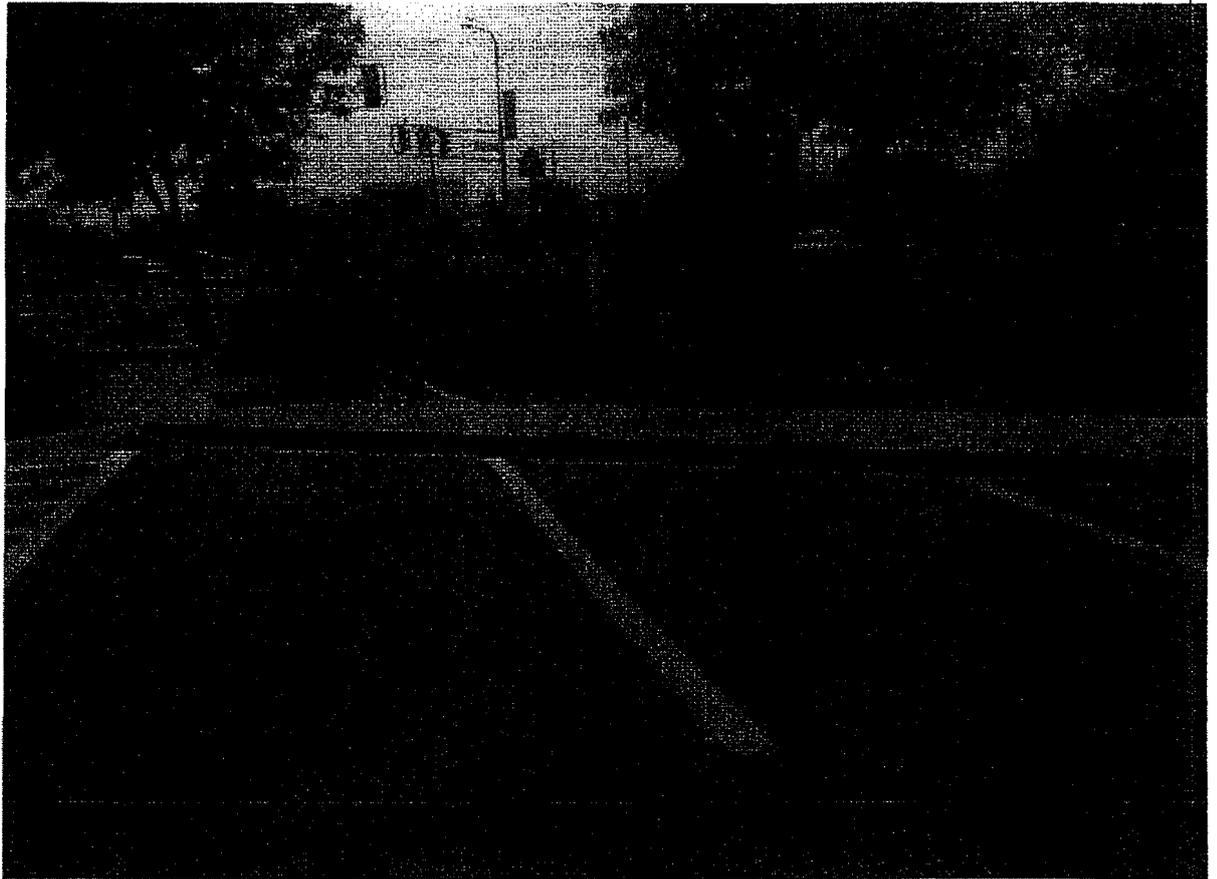


Exhibit B – Level 2 Specifications and Data

Blink™ Level 2 Electric Vehicle Supply Equipment

Blink™ Level 2 Electric Vehicle Supply Equipment (EVSE) provides the transfer of electrical energy from the utility to the vehicle. Level 2 charging (240 volt AC input) is the primary and preferred method for charging vehicles in residential and commercial facilities. The Blink EVSE design provides intelligent, user-friendly features to easily and safely charge electric vehicles.

Specifications, Standards, and Certifications

Input Voltage	208VAC to 240VAC +/- 10%
Input Phase	Single
Frequency	50/60 Hz
Input Current	30 Amps (maximum); 12A, 16A, 24A available
Breaker Size	40 Amps; settings at 15A/20A/30A available
Output Voltage	208VAC to 240VAC +/- 10%
Output Phase	Single
Pilot	SAE J1772-compliant
Operational Sequence	SAE J1772-compliant
Connector/Cable	SAE J1772-compliant; UL rated at 30A maximum
Cable Length	18 feet (estimated)
Exterior Dimensions	Wall Mount: 18" W x 22" H x 5-9/16" D Cord Mount: 18" diameter Pedestal: 66" H x 20" W x 17" D (ADA-compliant height available)
Temperature Rating	-22° F (-30° C) to +122° F (+50° C)
Enclosure	NEMA Type 3R; sun- and heat-resistant
Mounting	Wall-mount or pedestal

Blink Level 2 EVSE complies with the following standards and certifications:

- SAE J1772-compliant
- NEC Article 625 electric vehicle charging system
- UL and ULc to 2594

Blink™ – Simply Smart Pedestal Design



Figure 1 – Blink Level 2 Pedestal EVSE

Benefits of Blink's unique binary design:

- 1 Dramatic, timeless, stylish appearance
- 2 Ease of installation
- 3 Specified advertising space on pedestal
- 4 Convenient cable management for long reach and storage between uses
- 5 Connector holster for protection and storage
- 6 Intuitive connector docking
- 7 Selective height design for convenient compliance with ADA requirements
- 8 360° beacon light for easy way finding

blink – Simply Smart Wall Mount Design

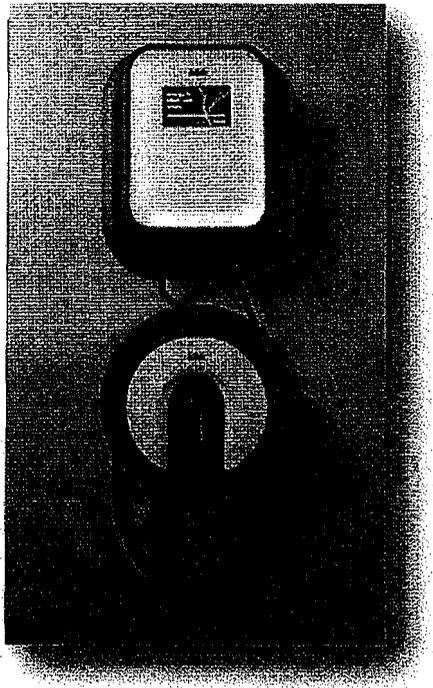


Figure 2 – blink Level 2 Wall Mount EVSE

Benefits of **blink**'s unique binary wall mount design:

- Simplifies the installation process
- Convenient configuration for a wide variety of physical layouts Including Pole Mount Option
- Easy to use, ADA-compliant
- Convenient cable management for long reach and storage between uses
- Connector holster for protection and storage
- Intuitive connector docking