



Report to the City Council
Council Meeting of September 27, 2016

Agenda Section: Consent

Subject: Consideration and Proposed Adoption of Resolution Authorizing a Site Agreement with EVgo and approving the installation of DC Fast Charging Stations at the Oak Street/Money Way Public Parking Lot in downtown St. Helena at no cost to the City

CEQA Status: Categorically Exempt, Section 15301 minor alterations to existing facilities

Prepared By: Tobias Barr, Public Works Project Manager
Steven Palmer, PE, Director of Public Works/City Engineer

Approved By: Jennifer Phillips, City Manager

BACKGROUND

At the November 11, 2015 City Council meeting, City Council decided to forfeit a grant for a free charging station unit because of the high infrastructure costs that the City was required to fund, and the uncertainty of ongoing management and maintenance of the charging stations. City Council directed staff to pursue installing charging stations as part of the Downtown Public Restroom Project.

In order to install a charging station in conjunction with the Downtown Restroom Project at the lowest cost to the City, City Staff issued a Request for Proposals (RFP) to attract a third party electric vehicle service provider. Since the City of St. Helena has limited resources and no experience managing electric vehicle charging infrastructure, the RFP allowed respondents to propose various strategies for successful partnerships. The RFP did stipulate the City expects potential partners propose Level 2 powered chargers, and strongly prefers a partner who could provide at least one DC Fast Charger. Given the emerging nature of the electric vehicle service provider (EVSP) industry, multiple charging technologies, and variability of business models, EVSPs were allowed to propose any partnership they found appropriate. Staff received three proposals from three different EVSPs, ChargePoint, CarCharging, and EVgo.

1. ChargePoint - Under the proposal from ChargePoint the City would own the stations and would have complete control over pricing and other policies applied to the stations. Management of the stations would be outsourced to ChargePoint. Under this proposal the City would pay for the system outright and purchase the equipment from ChargePoint for an approximate equipment

cost of \$54,058. Equipment purchased would be two (2) Level 2 powered chargers and one (1) DC Fast Charging Station. This cost does not include cost of installation, which can be highly variable and unknown at this time.

2. CarCharging (Blink) – CarCharging proposed a partnership under a revenue share model where CarCharging will provide, own, operate and maintain the charging stations for a period of 7 years. The City of St. Helena will pay the installation costs including all labor and infrastructure – the installation and infrastructure costs are unknown at this time. The City will pay for electricity used by the charging stations and CarCharging will remit to the City 40% of the net revenue generated by the equipment minus any and all taxes, 8% transaction fees, and \$18.00 per charger per month. CarCharging is responsible for setting pricing for use of the chargers.
3. EVgo – EVgo proposed they would install, operate, and maintain two (2) DC Fast Charging Stations at no cost to the City. One (1) Level 2 Charging Station may be added at a later date in EVgo's sole discretion. EVgo would manage and maintain the charging stations, and provide 24-hour customer support for the charging stations; all at no cost to the City under a seven (7) year lease agreement.

Since the City has limited funds for the Downtown Restroom Project, no funding available for electric vehicle charging, no civic capital project fund balance, and limited General Fund Reserves; Staff believes the EVgo proposal to be most favorable, and Staff sought direction from the City Council.

At the August 9, 2016 City Council Meeting, the Public Works Project Manager presented the various proposals to City Council, and asked for direction on whether to negotiate a Site Agreement with EVgo. City Council directed Staff to continue with efforts to provide electric vehicle charging in conjunction with the Downtown Restroom Project, and to negotiate an agreement with EVgo. Following negotiation with EVgo, City Staff and the City Attorney's Office have reach an amenable agreement with EVgo, which is ready for City Councils final consideration.

DISCUSSION

Following City Council direction City Staff, working with the City Attorney's Office, negotiated a Site Agreement with EVgo. City Council requested that Staff explore cost sharing for profits related to the DC Fast Charging. Options were explored but ultimately cost sharing was not acceptable to EVgo. Their explanation included high installation costs and the cost of maintaining and operating the charging stations. EVgo is a start-up company primarily supported through grants, venture capital firms, and their minority partner, NRG Energy. NRG Energy is funding many of the EVgo charging station installations because they are required to install DC fast charging stations as part of their settlement with the California Public Utilities Commission related to the 2001 California energy crisis. The settlement is related to NRG Energy's purchase of Dynegy generation facility assets in 2010. When NRG Energy purchased generation assets from Dynegy

they guaranteed to the CPUC a timely performance of all obligations to settlement of claims against Dynegy generation facilities. Under this settlement with the CPUC, they are obligated to fund \$100 million dollars of DC fast charging infrastructure in California. Due to the lack of profit from these activities, they do not entertain profit sharing with any of their site host partners.

After learning the complexities of EVgo's existing business model and learning the profit sharing was not amenable, the Public Works Project Manager requested EVgo consider splitting a portion of the Low Carbon Fuel Standard Credits (LCFS), which electric vehicle charging activities qualify for. City Staff proposed that EVgo, whom participates in the market for LCFS, split a portion of the credit proceeds with the City. However City Staff learned that EVgo is not able to track the credits or credit sale values on a station by station basis. Creating such a sharing system could be complicated and cause the proposed project to be delayed. EVgo, who is executing installations on behalf of its minority partner NRG Energy, must have the station installed by the end of 2016. Thus, negotiating a mechanism to share credit proceeds would be complex and inevitability cause EVgo to not meet its obligation schedule to their partner NRG Energy. With this scenario in mind, EVgo stated that negotiating Low Carbon Fuel Standard at this stage would be a deal-breaker for them.

As such, City Staff moved forward with successfully negotiating the liability and risk terms of the agreement and presents this agreement for City Council approval.

FISCAL IMPACT

There is no fiscal impact directly related to this agreement. However, the City is responsible for the enforcement of parking rules in the parking lot. The charging stations will be reserved for electric vehicle charging only. Thus, if vehicles are parked and not charging, enforcement may be necessary. Enforcement activities could result in additional staff time for Police Department and Public Works Department.

RECOMMENDED ACTION

Staff recommends the City Council adopt the resolution authorizing the City Manager to execute the Site Agreement with EVgo, permitting EVgo to install charging stations at the Oak Street/Money Way public parking lot for a term of seven (7) years.

ATTACHMENTS

1. Resolution
2. EVgo Site Agreement

CITY OF ST. HELENA

RESOLUTION No. 2016-

Resolution Authorizing the City Manager to Execute a Site Agreement with EVgo for the Installation, Operation and Maintenance of DC Fast Charging Stations in the Oak Street/Money Way Public Parking Lot for a Term of Seven (7) Years.

RECITALS

- A. The City of St. Helena wishes to promote clean transportation to reduce Greenhouse Gases and other harmful vehicle emissions; and
- B. Electric vehicles have zero tailpipe emissions, and are widely being adopted in California; and
- C. Under California State Clean Air and Greenhouse Gas Reduction Policy, auto manufactures are required to continue to produce and sell electric vehicles in the State of California; and
- D. City Staff released an Request For Proposal inviting Electric Vehicle Service Providers to submit proposals to install electric vehicle charging infrastructure at the Oak Street/Money Way Public Parking Lot in St. Helena; and
- E. Of the three proposals received, EVgo provided a zero cost, turnkey proposal to the City; and
- F. The City Attorney's Office has approved the terms negotiated by City Staff and EVgo.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

- 1. Authorizes the City Manager to execute the Site Agreement with EVgo.
- 2. Approves the installation of EVgo DC Fast Charging Stations at the Oak Street/Money Way Public Parking Lot.

Approved at a Regular Meeting of the St. Helena City Council on September 27, 2016, by the following vote:

Mayor Galbraith: _____
Vice Mayor White: _____
Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

**CHARGING SERVICES AGREEMENT
(EVgo Public Network)**

Host: CITY OF ST. HELENA,

Agreement Date : September 20 2016

a _____

This Charging Services Agreement ("Agreement") is entered into as of the Agreement Date by the City of St. Helena ("Host") and EVGO SERVICES LLC, a Delaware limited liability company ("EVgo"). Capitalized terms not defined herein shall have the meanings given to them in the attached Terms & Conditions, attached as Exhibit A and incorporated by reference herein.

A. Premises

Host Property: City of St. Helena Public Parking Lot located at: 1301 Money Way, St. Helena, CA 94574

The location where the Charging Stations shall be installed at the Host Property (the "Premises") is shown on the attached Exhibit B.

B. Charging Services

1. Term.

- a. The term of this Agreement (as extended from time to time, the "Term") shall commence on the Agreement Date, subject to the Terms & Conditions, and continue until seven (7) years following the date the Charging Stations are first operational (the "Commencement Date"). The Agreement will automatically renew for successive one (1)-year periods, unless terminated by either party upon at least thirty (30) days prior written notice. EVgo shall send to Host notice of the Commencement Date within a reasonable period following the occurrence of such date.
- b. This Agreement may be terminated upon (30) days' written notice to either party without penalty or fee:
 - i) in the case of EVgo, at any time prior to EVgo's submission of a permit application for construction at the Host Property or in the event that EVgo determines that the construction or continued operation of the Charging Stations is impracticable or uneconomical; and
 - ii) in the case of Host, in the event the Commencement Date has not occurred within twelve (12) months following the Agreement Date; provided that Host's rights shall terminate upon the Commencement Date.

2. Charging Services During the Term, EVgo shall provide the following services (the "Charging Services") :

- a. EVgo shall install, at its sole cost and expense:
 - i) Two (2) DC Fast Charging Stations. The two fast charging stations will be compatible with CHAdeMO and SAE Combined Charging System standards.
 - ii) One (1) Level 2 Charging Station which may be added at a later date in EVgo's sole discretion;
 - iii) Related equipment, hardware, software, signage and supporting equipment and structures. This includes obtaining adequate electrical service to the charging stations.

It is EVgo's responsibility to install any infrastructure needed to provide adequate electrical service from existing facilities to the proposed charging stations.

The foregoing is collectively referred to as the "Charging Stations."

- b. EVgo shall, at its sole cost and expense, be responsible for all operation and maintenance of the Charging Stations.
 - c. The Charging Stations shall be available to EVgo Customers as part of its public network of EV charging stations. The Charging Stations will also be available to the general public, subject to reasonable fees for non-EVgo Customers.
 - d. EVgo Customers shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, and 365/366 days per year and EVgo and its employees, contractors, and vendors may, at any time during the Term, access the Premises and Host Property to maintain, inspect, repair, upgrade or replace any portion of the Charging Stations, except during special circumstances in which access to the Premises is limited or restricted to accommodate City of St. Helena sponsored events. Host, by way of a publically accessible shared calendar and/or PlugShare or like medium, will provide reasonable advance notice of scheduled event dates where access to the Premises and Host Property is limited or restricted.
3. Exclusivity. Host hereby grants EVgo an exclusive right to provide, service and operate DC Fast Charging Stations at the Host Property during the Term hereof. Host retains the right to: (i) install (or permit the installation of) Level 2 charging stations at the Host Property, and (ii) have charging stations of any type installed at locations other than the Host Property that is the subject of this Agreement.
4. Electricity. Unless otherwise agreed by the parties, EVgo shall be responsible for all electricity costs of the Charging Stations. Host shall reasonably cooperate with EVgo's efforts regarding the provision of electricity to the Charging Stations; provided, however, that any cooperation by Host shall be at no cost to Host. Neither Host nor EVgo has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of utilities furnished to the Charging Stations, unless the cause of the interruption is covered by the party's indemnity provided for in the Terms and Conditions.
5. Removal Upon Termination. Promptly following the expiration or termination of this Agreement, EVgo shall remove the Charging Stations and all of EVgo's other property associated with the Premises from the Host Property. EVgo shall restore the Host Property to a condition reasonably acceptable to the Host, including, without limitation, removal of electrical equipment, utility lines, hardware, and software; and undertaking site repairs, repaving, patching, and landscaping that is reasonably necessary to restore the Host Property to its original condition, with the exclusion for ordinary wear and tear.

C. Installation Activities.

1. Subject to the requirements of the Terms and Conditions, EVgo shall, at its sole cost and expense, conduct all installation activities (the "Installation Activities") required to support the installation and operation of the Charging Stations and Charging Services, including the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping, and all other work necessary to complete the Installation Activities and restore the Host Property to its original condition, with exclusion for ordinary wear and tear.
2. On completion of the installation of the Charging Stations, EVgo shall retain all ownership rights therein and shall have the right to remove all or a portion of the same at any time during the Term, whether or not said items are considered fixtures and attachments to the Premises under applicable laws.

D. Other Provisions. NONE.

HOST:

CITY OF ST. HELENA,

a _____

By: _____

Name: _____

Title: _____

Notice Address:

1480 Main Street
St. Helena, California 94574
Attn: Director of Public Works

EVGO:

EVGO SERVICES LLC,
a Delaware limited liability company

AG

By: Jason Backlund

Name: JASON BACKLUND

Title: VP, Site Development

Notice Address:

1000 North Post Oak Road, Suite 240
Houston, Texas 77055
Attn: COO

with a copy to:

11390 West Olympic Blvd., Suite 250
Los Angeles, CA 90064
Attn: Director of Legal Affairs

Exhibit A

Terms and Conditions

See attached.

TERMS & CONDITIONS

A. GENERAL

1) Premises.

a) During the Term (as defined in the Agreement), Host grants to EVgo a license to use and occupy the Premises for, as applicable, the design, development, construction, installation, and other activities set forth in the Agreement, including without limitation the installation, operation, maintenance, repair, security, replacement, and removal of Charging Stations, signage and associated equipment within the Premises. In addition, Host grants to EVgo the right to use and occupy areas of the Host Property adjacent to the Premises for the construction and installation of the Charging Stations, and shall confine its operations strictly to those sites permitted by applicable law, ordinances, permits and Host.

b) Host shall cause the Premises to be maintained in a clean, safe, and orderly condition, to at least the same standard as other areas at the Host Property that are under Host control are maintained. Unless otherwise specified in the Agreement.

2) Charging Services. During the Term, EVgo shall provide the Charging Services described in the Agreement.

a) Charging Stations on EVgo's public network shall be accessible to all EVgo subscribers and customers ("EVgo Customers"), who shall be charged in amounts reasonably determined by EVgo, which may change from time to time in EVgo's sole discretion. Charging Stations not on public networks shall be accessible only to authorized EVgo Customers in the manner determined by the parties and in accordance with EVgo's product offerings.

b) Host will have access to the same customer support that EVgo generally provides to EVgo Customers, which includes phone support and attempted diagnosis of any technical issue encountered in using any Charging Station. The applicable customer support phone number shall be displayed on or near each Charging Station.

3) Operation and Maintenance.

a) Subject to the terms and conditions of the Agreement, EVgo will operate the Charging Stations for the benefit of EVgo Customers and shall use commercially reasonable efforts to maintain the Charging Stations in good working order and repair.

b) To the extent Host has actual knowledge of the same, Host shall promptly notify EVgo and, as appropriate, emergency response personnel regarding any malfunction of a Charging Station.

4) Taxes. EVgo is solely responsible for personal property, sales, and/or use taxes that are or may be imposed on the Charging Stations. Each party is responsible for its own income, franchise and similar taxes.

5) Method of Payment. For any amounts owed by EVgo to Host, on or before the forty-fifth (45th) day following the applicable due date (or at the end of each calendar month in the case of monthly payments), EVgo shall make a payment to Host of such amount by check or wire transfer or other electronic method mutually agreed upon by EVgo and Host. For any amounts owed by Host to EVgo, EVgo shall invoice Host and Host shall pay such amounts within forty-five (45) days of receipt,

or the parties shall make other mutually acceptable payment arrangements. EVgo may net any amounts owed to it by Host against any amounts it owes Host in determining payment amounts.

6) Termination.

a) The Agreement may be immediately terminated for cause by either party in the event of the following:

i) Breaches. The other party breaches or fails to perform any of its obligations in any material respect, and such breach or failure continues uncured for ten (10) business days after receipt of written notice.

ii) Insolvency. The other party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws.

b) Within sixty (60) days following the termination or expiration of the Agreement, EVgo shall remove its property associated with the Premises from the Host Property.

7) Promotional Activities. During the Term of the Agreement, EVgo may promote the availability of the Charging Stations (to the extent they are on EVgo's public network of EV charging stations) through traditional and/or electronic media, including providing the address of the Host Property and a description thereof. No party shall use the other party's trade or service marks, logos or other proprietary materials without the prior written consent of the other party.

8) Signage. Subject to Host's prior approval, EVgo may place EVgo-branded signage within the Host Property and around the Premises at EVgo's sole cost and subject to applicable laws and regulations. At no time may Host place any signage on EVgo property.

9) Installation Activities. The term "Installation Activities" shall refer to the installation activities described in the Agreement.

a) At least fifteen (15) days before beginning the Installation Activities, EVgo shall provide a copy of the construction schedule and installation plans to Host for its approval, which approval shall not be unreasonably delayed or withheld. No work will begin until plans have been approved by Host and all applicable permits and certifications have been obtained.

b) For Installation Activities to be performed by EVgo, EVgo shall:

i) designate the contractors or other service providers and be solely responsible for supervising such Installation Activities;

ii) cause its designated contractors and service providers to obtain from governmental authorities all licenses, permits, or other approvals (collectively, "Approvals") required to conduct such Installations. Host will reasonably cooperate with EVgo's designated contractors and service providers as required to obtain such Approvals;

iii) bring on the Premises and permitted adjacent areas of the Host Property only those materials and equipment that are being used directly in the Installation Activities;

iv) cause designated contractor(s) to include Host as an additional insured on its Commercial General Liability Insurance,

Automobile Liability Insurance and Excess Liability Insurance, with respect to liability arising out of designated contractor's performance of the Installation Activities. Said Insurance shall be primary to Host's insurance and shall not seek contribution from similar insurance being maintained by the Host as to the acts or omissions of designated contractor(s), and shall contain provisions whereby designated contractor's insurer waives all rights of subrogation against the Host on each of the coverages required herein.

v) perform Installation Activities only during times and days acceptable to Host and in a manner so as to not unreasonably interfere with Host's business operations;

vi) not permit or suffer any mechanic's or materialmen's liens to attach to the Premises. If such a lien attaches to the Premises, EVgo shall remove or bond over such lien at EVgo's sole cost and expense, within twenty (20) days of EVgo receiving written notice thereof from Host.

c) Host shall reasonably cooperate with EVgo to facilitate EVgo's Installation Activities, including the provision of electricity to the Charging Stations; provided, however, that any cooperation by Host shall be at no cost to Host. With respect to any Installation Activities not performed by EVgo or its agents, EVgo shall have no responsibility or liability for any such activities, including obtaining Approvals.

B. REPRESENTATIONS, WARRANTIES & COVENANTS

1) General. Each of Host and EVgo hereby represents and warrants to the other that, as of the Agreement Date: (a) it has all necessary power and authority to execute, deliver, and perform its obligations hereunder; (b) the execution, delivery, and performance of the Agreement have been duly authorized by all necessary action and do not violate any of the terms or conditions of its governing documents, any contract to which it is a party, or any law, regulation, order, or other legal determination applicable to it; (c) there is no pending or, to its knowledge, threatened litigation or proceeding that may adversely affect its ability to perform the Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization; (e) the Agreement constitutes a legal, valid and binding obligation of such party, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and by general principles of equity; and (f) at all times during the Term, it will comply with all federal, state, and local laws, rules, regulations (including, without limitation, all zoning ordinances and building codes) in performing its obligations under the Agreement.

2) Consents and Approvals. Host further represents, warrants and covenants that it has obtained or shall obtain prior to the commencement of EVgo's Installation Activities or Charging Services any and all consents or approvals required in order for Host to grant the rights and perform its obligations under the Agreement, and for EVgo to take the actions contemplated in the Agreement.

C. INSURANCE

1) EVgo Insurance.

a) During the Term, EVgo shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance: (i) Statutory Worker's Compensation Insurance, and Employer's Liability limits of \$1,000,000 per accident per employee; (ii) Commercial General Liability Insurance, written on an occurrence basis,

covering bodily injury (including death), personal injury, and property damage, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate; (iii) Automobile Liability with a combined single limit of \$1,000,000; and (iv) \$2,000,000 in excess liability coverage per occurrence, which coverage shall sit excess of the scheduled underlying General Liability, and Automobile Liability and Employer's Liability Insurance policies with exclusions that are no more broad than those contained in the underlying policies.

b) With respect to EVgo's Commercial General Liability Insurance, Automobile Liability Insurance and Excess Liability Insurance, Host shall be included as an additional insured with respect to liability arising out of EVgo's performance under the Agreement. EVgo shall consider its own insurance primary, and shall not seek contribution from similar insurance being maintained by the Host as to the acts or omissions of EVgo.

2) Host Insurance, Not Used.

3) Policy Requirements. The insurance policies required under Sections C(1) and C(2) shall: (a) be issued by insurance companies licensed to do business in the state in which the Host Property is located, with a general policyholder's ratings of at least "A-" and a financial rating of at least "Class VIII," in the most current Best's Insurance Reports available on the Agreement Date; if the Best's ratings are changed or discontinued, the parties shall agree to a comparable method of rating insurance companies; and (b) contain provisions whereby each party's insurers waive all rights of subrogation against the other party on each of the coverages required herein. From time to time upon request, each party shall provide the other with a certificate of insurance, evidencing the required coverages.

a) Waiver. Anything in the Agreement to the contrary notwithstanding, EVgo hereby waives every right or cause of action for any and all loss of, or damage to (whether or not such loss or damage is caused by the fault or negligence of the Host or anyone for whom the Host may be responsible) the Charging Stations, or to personal property of EVgo, or its Related Parties, as defined in Section (D)1, regardless of cause or origin. This waiver and release shall also apply to any claims under or through EVgo as a result of any asserted right of subrogation.

b) Casualty and Condemnation. If any portion of the Host Property is damaged by fire or other casualty in a manner that adversely affects EVgo's use of the Premises, then either party may, within thirty (30) days of the date of such fire or other casualty elect to terminate the Agreement on written notice to the other party. If any portion of the Host Property is condemned or taken in any manner for a public or quasipublic use that could adversely affect EVgo's use of the Premises, then EVgo may elect to terminate the Agreement effective as of the date title to the condemned portion of the Host Property is transferred to the condemning authority.

D. INDEMNITY

1) Indemnification. Subject to Section D(2), hereof, each party shall indemnify and hold harmless the other party and its respective affiliates, representatives, agents, officers, directors, managers, members, shareholders, partners, contractors, or employees ("Related Parties") from and against all claims, demands, causes of action, liabilities, costs, damages, losses, penalties, fines, judgments or expenses, including reasonable attorneys' fees and costs of collection (collectively, "Losses") that arise out of or result from (i) any willful misconduct or negligence of such party or its Related Parties, (ii) any

breach by such party of its obligations, representations or warranties under the Agreement; and (iii) in the case of EVgo, the use of the Premises by EVgo or its Related Parties, except to the extent arising out of or resulting from any willful misconduct or active or sole negligence of Host or its Related Parties.

2) **Limitation of Liability (LOL).** In no event shall either party be liable (in contract or in tort, including negligence and strict liability) to such other party or its Related Parties for any special, indirect or consequential damages including, without limitation, lost profits, relating to the Agreement. Subject to EVgo's obligations in paragraph 5 of the Agreement, of which EVgo remains solely responsible, and subject to the parties indemnity obligations arising out of third party claims in Section D.1), the entire liability of each party for any and all claims of any kind arising from or relating to the Agreement will be subject in all cases to an affirmative obligation on the part of the other party to mitigate its damages. Each party's total liability to the other party and its Related Parties on an aggregate basis arising out of or in connection with the Agreement, whether in contract or in tort, and except as it applies to a party's obligations (if any) pursuant to **Section C [INSURANCE]** and the parties indemnity obligations in Section D(1), shall not exceed the following: in the case of EVgo, the value of the Installation Activities; in the case of Host, the reasonable value of the license rights for EVgo's use of the Host Property.

E. MISCELLANEOUS

1) **Notice.** Any notice provided or permitted to be given under the Agreement must be in writing and be served either by (i) deposit in the mail, addressed to the party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or (ii) deposit with an internationally-recognized overnight delivery carrier, with notice of delivery to the recipient party. Notice given by registered or certified mail or overnight carrier shall be deemed delivered and effective on the date of delivery shown on the return receipt or proof of receipt. For purposes of notice the addresses of the parties shall be as set forth in the Agreement. Each party may change its address for notice by giving notice thereof to the other party.

2) **Assignment.** The Agreement is binding on and inures to the benefit of the parties and their respective heirs, successors, assigns, and personal representatives. In the event the Premises is transferred or Host ceases to have the requisite level of control over the Premises necessary to fulfill its obligations under the Agreement (each, a "**Transfer Event**"), Host shall assign its rights and obligations under the Agreement to the person or entity which would be able to comply with Host's obligations following such Transfer Event. EVgo shall not assign this Agreement without Host Party's prior written consent, and such unauthorized assignment shall, subject to the Host Party's sole discretion, become null and void; provided, however, that EVgo may assign its rights and obligations in and under this Agreement to a successor by merger or acquisition or successor to all or substantially all of its assets at any time and without consent.

3) **No Agency Relationship.** Nothing in the Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose, and the employees of one party shall not be deemed to be the employees of the other party. Except as otherwise stated in the Agreement, neither party has any right to act on behalf of the other, nor represent that it has such right or authority.

4) **Conflict; Severability.** In any conflict between the Agreement and these Terms & Conditions, the Agreement shall control. If any term of Rev. 080615

the Agreement is held by any court of competent jurisdiction to be invalid, such invalidity shall not invalidate the remainder of the Agreement and the Agreement shall be construed and deemed reformed to the extent necessary to render valid such term and the rights and obligations of the parties shall be enforced accordingly.

5) **Survival.** The provisions of Sections A(6)(b), C(4), D, and E(6) shall survive termination of the Agreement.

6) **Governing Law; Waiver of Jury Trial.** The Agreement shall be governed by and interpreted in accordance with the Internal laws of the state where the Host Property is located without giving effect to conflict of law rules. The parties hereby waive any and all rights to request or require that a jury determine any fact, matter, dispute or litigation between them, or render any judgment or decision, in any way concerning the Agreement, and agree that any and all litigation between them arising from or in connection with the Agreement shall be determined by a judge sitting without a jury.

7) **No Waiver.** The failure of a party to insist on strict performance of any provision of the Agreement does not constitute a waiver of or estoppel against asserting the right to require performance in the future and a waiver or estoppel given in any one instance does not constitute the same with respect to a later obligation or breach.

8) **Remedies.** The rights and remedies provided by the Agreement are cumulative, and the use of any right or remedy by any party does not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights a party may have under any applicable law, in equity or otherwise.

9) **Force Majeure; Change in Law.** Neither party is responsible for any delay or failure in performance of any part of the Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond the party's control. If any rule, directive, order, decision or law adversely impacts the ability for EVgo to perform its obligations under the Agreement without becoming licensed or otherwise regulated by a public utility commission or analogous agency in the relevant jurisdiction, EVgo may, at its option, immediately suspend performance under the Agreement and/or terminate the Agreement upon notice to Host and without penalty.

10) **Attorneys' Fees.** Not used.

11) **No Third Party Beneficiaries.** The Agreement does not confer any rights or remedies on any person other than the parties and their respective successors and permitted assigns.

12) **Integration; Amendments.** The Agreement contains all Agreements, promises and understandings between the parties, and that there are no verbal or oral Agreements, promises or understandings between the parties. Any amendment, modification or other change to the Agreement shall be ineffective unless made in a writing signed by the parties hereto.

13) **Counterparts.** The Agreement may be executed in any number of counterparts with the same effect as if all the parties had signed the same document.

14) Construction. All documents or items attached to, or referred to in, the Agreement are incorporated into the Agreement as fully as if stated within the body of the Agreement. Each party has cooperated in the drafting, negotiation and preparation of the Agreement and nothing herein shall be construed against either party on the basis of that party being the drafter of such language.

