

## CHARGING STATION LICENSE AGREEMENT

This Charging Station License Agreement ("**Agreement**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("**Agreement Date**") by and between the City of Cupertino, a Municipal Corporation, whose address is 10300 Torre Avenue, Cupertino, CA 95014 ("**CITY**") and \_\_\_\_\_, a \_\_\_\_\_ company, whose address is \_\_\_\_\_ ("**\_\_\_\_\_**").

### RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

1. Grant of License. CITY is the fee simple owner of certain real property located at \_\_\_\_\_, Cupertino, CA 95014 ("**Property**"). CITY grants to \_\_\_\_\_ for the Term of this Agreement: (i) an exclusive and irrevocable license to use and occupy a portion of the Property as more particularly described on Exhibit A hereto (the "**Premises**") for the Purpose, as defined below; and (ii) any necessary easements for access and utilities for the Purpose.
  
2. Purpose. The Premises may be used by \_\_\_\_\_ for any lawful activity in connection with the design, development, construction, installation, maintenance, repair, replacement, removal, security, and operation of electric vehicle chargers and ancillary items, including, without limitation, electrical equipment, hardware, software, signage and all supporting equipment and structures (which may include concrete pads and protective bollards) (collectively, the "**Charging Station**"), together with any other uses permitted herein ("**Purpose**"), on the terms and conditions set forth in this Agreement.
  
3. Term & Termination. The term of this Agreement (as extended or renewed from time to time, the "**Term**") shall commence on the Agreement Date and terminate ten (10) years from the date that the Charging Station is first operational ("**Commencement Date**"). \_\_\_\_\_ shall send CITY notice of the Commencement Date within thirty (30) days of the Commencement Date.
  
4. Renewal. Following the expiration of the initial ten (10)-year Term, this Agreement will automatically renew for successive five (5)-year periods, unless terminated by either party upon at least thirty (30) days prior written notice.
  
5. License Fee. \_\_\_\_\_ shall pay to CITY a one-time fee of \$\_\_\_\_\_ ("**License Fee**") within thirty (30) days of the Commencement Date. Should the Agreement automatically renew

upon the expiration of the initial Term pursuant to Paragraph 4, above, \_\_\_\_\_ shall pay CITY \$\_\_\_\_\_ for each additional five (5) year that the Agreement is renewed within thirty (30) days of each renewal date.

6. Early Termination. This Agreement may be terminated upon thirty (30) days' written notice to either party without penalty or fee:
  - a. in the case of \_\_\_\_\_, at any time prior to the submission of the permit application for construction of the Charging Station at the Property or in the event that \_\_\_\_\_ determines that the construction or continued operation of the Charging Station is impracticable or uneconomical; and
  - b. in the case of CITY, in the event the Commencement Date has not occurred within fifteen (15) months following the Agreement Date; provided that the foregoing right shall terminate upon the Commencement Date.
  
7. Termination for Cause. This Agreement may be immediately terminated for cause by either party under either of the following circumstances:
  - a. 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; or
  - b. the other party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy insolvency laws.
  
8. Maintenance of Premises and Taxes.
  - a. CITY 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 Property.
  - b. CITY shall have no responsibility to maintain \_\_\_\_\_'s Charging Station or related \_\_\_\_\_ equipment, hardware, software, or signage. CITY shall not retain any ownership rights in the Charging Station and related \_\_\_\_\_ equipment. \_\_\_\_\_ is solely responsible for property taxes imposed on the Premises and/or Charging Station. Each party is responsible for its own income, franchise, or similar taxes.
  
9. Installation Activities.
  - a. \_\_\_\_\_ shall, at its sole cost and expense, be responsible for all installation activities (the "**Installation Activities**") required to support the operation of the Charging Station and services therewith, including furnishing and installing all materials, equipment, and labor required for the installation of the Charging Station. This includes but is not limited to all work related to the development of plans and documents for supplying power to the Charging Station per PG&E standards and CITY requirements; the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and

software; and site preparation, trenching, repaving, and landscaping. Following the installation, \_\_\_\_\_ shall activate and test the Charging Station.

\_\_\_\_\_ knows of prevailing wage requirements under the laws of the State of California and shall pay prevailing wages for all Installation Activities in accordance with those laws.

- b. \_\_\_\_\_ may, at any time during the Term and in its discretion modify, including, without limitation, upgrade, replace, and/or remove all or a portion of the Charging Station (collectively, "**Modifications**"), whether or not said items are considered fixtures and attachments to the Premises under applicable laws; provided, however, before any such Modifications, \_\_\_\_\_ shall provide at least sixty (60) days prior notice to CITY and, to be included in such notice, supporting documentation of the Charging Station's customer utilization justifying the need for any such Modifications.
  - c. Before beginning any Installation Activities, \_\_\_\_\_ shall provide a copy of the construction schedule, Charging Station specifications, and installation plans to CITY for its approval, which approval shall not be unreasonably delayed or withheld. No work will begin until plans have been approved by CITY and all applicable permits and certifications have been obtained from CITY.
  - d. With respect to its Installation Activities, \_\_\_\_\_ shall ensure that it or its designated contractor(s) and/or service providers perform Installation Activities only during times and days acceptable to CITY and in a manner so as not to unreasonably interfere with CITY's business operations.
  - e. On completion of any Installation Activities under this Agreement, CITY shall not retain any ownership rights of the Charging Station and related equipment, hardware, software, signage, and supporting equipment and structures at the Property.
10. Electricity. Unless otherwise agreed by the parties, \_\_\_\_\_ shall be responsible for all electricity costs of the Charging Station by obtaining separately-metered electricity service. CITY shall reasonably cooperate with \_\_\_\_\_'s efforts regarding the provision of electricity to the Charging Station. Neither CITY nor \_\_\_\_\_ has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of utilities furnished to the Charging Station, unless the cause of the interruption is covered by the party's indemnity.
11. Charging Services, Operation and Maintenance.
- a. \_\_\_\_\_'s network on the Charging Station shall be accessible to \_\_\_\_\_'s subscribers, customers, agents, employees, contractors, vendors, guests, and invitees ("**Customers**"), who shall be charged in amounts reasonably determined by \_\_\_\_\_, which may change from time to time in \_\_\_\_\_'s sole discretion.

- b. \_\_\_\_\_ shall provide maintenance services to ensure all equipment is properly checked, tested, and activated for safe and proper operation. \_\_\_\_\_ shall create a network communications system capable of monitoring the Charging Station for errors or malfunction at all times.
- c. The Charging Station shall have the ability to stop flow of power when not in use. The system shall have over-current protection to prevent vehicles from drawing too much power.
12. Access. The Property is a public parking lot, which shall allow \_\_\_\_\_ Customers complimentary access to the Premises at all times during the Term of this Agreement, except during times at which the CITY must close the parking lot for maintenance, safety, special events, and other unforeseen reasons in the discretion of the CITY. The CITY shall use best efforts to notify \_\_\_\_\_ at least forty-eight (48) hours in advance of such a closure. Subject to all other provisions and obligations of this Agreement and applicable permitting requirements, \_\_\_\_\_ and its employees, contractors, and vendors may access the Premises and Property to maintain, inspect, repair, upgrade, or replace any portion of the Charging Station.
13. Customer Use. Upon CITY's request, \_\_\_\_\_ shall provide CITY a report detailing the Charging Station's utilization. If, upon review of the report, the parties mutually determine that (i) complimentary access to use the Charging Station resulted in frequent abuse of CITY-prescribed parking time limits for the parking stalls located at the Property and, (ii) parking meters would mitigate such abuse, then \_\_\_\_\_, at its sole cost and expense, shall install parking meters at the CITY's parking stalls servicing the Charging Station. \_\_\_\_\_ and CITY shall mutually agree on the parking time limits and fees associated with such parking meters.
14. Signage and Striping. Subject to CITY's prior approval, \_\_\_\_\_ may paint, place, erect, or project signage, marks, or advertising devices in, on, about, or around the Premises at \_\_\_\_\_'s sole cost and subject to applicable laws and regulations. At no time may CITY place any signage on \_\_\_\_\_'s property. \_\_\_\_\_ shall install electric vehicle parking stall pavement striping and markings per the plans approved by the CITY. All signage and pavement markings must be consistent with industry standards for electric vehicle parking, CITY requirements, and State and Federal guidelines. \_\_\_\_\_ shall furnish and install all materials, equipment, and labor for the Charging Station signage and pavement markings.
15. Promotional Activities. During the Term of the Agreement, \_\_\_\_\_ may promote the availability of the Charging Station through traditional and/or electronic media, including providing the address to the 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.
16. Restoration of Premises. Upon the expiration of the Term, or other termination of this

Agreement, \_\_\_\_\_ shall remove the Charging Station and all \_\_\_\_\_'s other property from the Premises and Property within ninety (90) days. \_\_\_\_\_ shall return the Premises, and the Property to the extent \_\_\_\_\_'s work has damaged or altered the Property, to its original condition prior to the execution of this Agreement, reasonable wear and tear excepted. These obligations shall survive the termination of this Agreement and shall not be excused for any reason, including but not limited to termination due to \_\_\_\_\_'s insolvency.

17. Indemnity. This Agreement is made upon the express condition that \_\_\_\_\_ shall indemnify, defend, keep, and save harmless CITY, and its directors, officers, agents, and employees against any and all suits, claims, or actions arising out of any injury or injuries to, or death or deaths of, persons or damage to third party property that may occur, or that may be alleged to have occurred, to the extent caused by \_\_\_\_\_'s use of the Property and/or Premises or the negligent acts or omissions of \_\_\_\_\_, its agents, employees or contractors, except where caused by the negligence or willful misconduct of CITY, its employees, contractors, or agents. \_\_\_\_\_'s responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.
18. Insurance. During the Term of this Agreement, \_\_\_\_\_ shall maintain in full force and affect the following insurance policies:
- a. Commercial general liability policy (bodily injury and property damage); and
  - b. Commercial automobile liability insurance policy.

These policies shall be maintained with respect to employees and vehicles using the Property with coverage amounts and including the required endorsements, certificates of insurance and coverage verifications as defined in **Exhibit D** attached and incorporated by this reference.

19. Representations, Warranties, and Covenants. \_\_\_\_\_ and the CITY each 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 actors and none of the Agreement's provisions violate any term or condition of its governing documents, contracts to which it is a party, or any law, regulation, order, or other applicable legal determination; (c) there is no pending or known 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, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and general principle of equity; and (f) at all times during the Term, it will comply with all applicable Federal, State, and local laws, rules, and regulations (including, without limitation, all zoning ordinances and building codes) in performing its obligations under the Agreement.

20. Notice. Any notice provided or permitted to be given under this 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 this Agreement. Each party may change its address for notice by giving notice thereof to the other party.

**City:**

City Manager, City of Cupertino  
103000 Torre Avenue  
Cupertino, CA 95014-3202

**Company Name:**

21. Property Rights; Assignment. This 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 CITY ceases to have the requisite level of control over the Premises necessary to fulfill its obligations under this Agreement (each, a "**Transfer Event**"), CITY shall assign its rights and obligations under this Agreement to the person or entity which would be able to comply with CITY's obligations following such Transfer Event. Further, CITY agrees that any such Transfer Event shall not affect, terminate, or disturb \_\_\_\_\_'s right to use of the Premises under the terms of this Agreement or any of \_\_\_\_\_'s other rights under this Agreement, so long as \_\_\_\_\_ is not then in default under any of the terms, covenants, or conditions of this Agreement.
22. Casualty and Condemnation. If any portion of the Property is damaged by fire or other casualty in a manner that adversely affects \_\_\_\_\_'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 by written notice to the other party. If any portion of the Property is condemned or taken in any manner for a public or quasi-public use that could adversely affect \_\_\_\_\_'s use of the Premises, then \_\_\_\_\_ may elect to terminate the Agreement effective as of the date title to the condemned portion of the Property is transferred to the condemning authority.

23. No Agency Relationship. Nothing in this 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 this Agreement, neither party has any right to act on behalf of the other, nor represent that it has such right or authority.
24. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement. 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.
25. Governing Law; Waiver of Jury Trial. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of California without giving effect to conflict of law rules. Venue shall be in County of Santa Clara. 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 this Agreement, and agree that any and all litigation between them arising from or in connection with this Agreement shall be determined by a judge sitting without a jury. In the event of litigation between or among the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable expenses of litigation of the successful party, including attorneys' fees, experts' fees, and expenses.
26. No Waiver. No waiver by CITY or \_\_\_\_\_ of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by CITY or \_\_\_\_\_ of the same or any other provision. CITY's consent to, or approval of any act shall not be deemed to render unnecessary the obtaining of CITY's consent to or approval of any subsequent act by \_\_\_\_\_.
27. Remedies. The rights and remedies provided by this 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.
28. Force Majeure. Neither party is responsible for any delay or failure in performance of any part of this 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.

- 29. No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person other than the parties and their respective successors and permitted assigns.
- 30. Integration; Amendments. This Agreement contains all agreements, promises, and understandings between the parties, and there are no verbal or oral agreements, promises, or understandings between the parties. Any amendment, modification, or other change to this Agreement shall be ineffective unless made in a writing signed by the parties hereto.
- 31. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all the parties had signed the same document.
- 32. Construction. All documents or items attached to, or referred in, this Agreement are incorporated into this Agreement as fully as if stated within the body of this Agreement. Each party has cooperated in the drafting, negotiation, and preparation of this Agreement and nothing herein shall be construed against either party on the basis of that party being the drafter of such language.
- 33. Recording of Agreement. \_\_\_\_\_ shall record this Agreement with the County of Santa Clara County Recorder.

IN WITNESS WHEREOF, the parties execute this Agreement as of the date first above written.

**CITY OF CUPERTINO,**  
A Municipal Corporation

**COMPANY NAME**

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

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

Name: Pamela Wu

Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**ATTEST:**

\_\_\_\_\_  
City Clerk