

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

**Host:** City of Temecula Sixth Street Parking Lot

**Agreement Date:** June 14, 2016

This Charging Services Agreement ("Agreement") is entered into as of the Agreement Date by Host and NRG EV 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, incorporated by reference herein.

**A. Premises**

**Host Property:** City of Temecula Sixth Street Parking Lot;   **Located at:** 41952 6<sup>th</sup> Street, Temecula, Ca. 92590

The location where the Charging Station(s) shall be installed at the Host Property (the "Premises") is shown on the attached Schedule I.

**B. Charging Services**

1.     Term. The term of this Agreement (as extended from time to time, the "Term") shall commence on the Agreement Date and continue until seven (7) years following the date of 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.

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:
- [ 1 ] DC Fast Charging Station(s);
  - Related equipment, hardware, software, signage and supporting equipment and structures.

The foregoing is collectively referred to as the "Charging Station(s)."

b.     EVgo shall be responsible for all operation and maintenance of the Charging Station(s).

c.     The Charging Station(s) shall be available to the public as part of EVgo's public network of EV charging stations.

d.     Drivers shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, and 365/366 days per year. 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 Station(s). Access to the Premises shall not apply to times when special events are scheduled, such as but not limited to, the Farmer's Market, Rod Run, Santa's Parade, and July 4th Parade.

3.     Electricity. EVgo shall be responsible for all electricity costs of the Charging Station(s). Unless otherwise agreed by the parties, EVgo shall, at its sole expense, ensure that the Charging Station(s) are separately-metered with EVgo as the customer of record for such meter. 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 Station(s), unless the cause of the interruption is covered by the party's indemnity provided for in the Terms and Conditions.

4. 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.

**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 Station(s) 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.

2. On completion of the installation of the Charging Station(s), 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 TEMECULA  
A municipal corporation



Michael S. Naggar  
Mayor

Attest:



Randi Johi  
City Clerk

Approved As to Form:



Peter M. Thorson  
City Attorney


Notice Address:

City of Temecula  
41000 Main Street  
Temecula, CA 92590

**EVGO:**

NRG EV SERVICES LLC,  
a Delaware limited liability company

KL

By: 

Name: ARUN BANSKOTA

Title: President

Notice Address:

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

with a copy to:

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

## TERMS & CONDITIONS

### A. GENERAL

#### 1) Premises.

a) During the Term (as defined in the Agreement), Host grants to EVgo a non-exclusive 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 non-exclusive 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, Host shall take reasonable measures to discourage and prevent anyone other than authorized EVgo Customers (defined below) from parking in the Premises.

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 taxes 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) This 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 this Agreement, EVgo shall remove its property associated with the Premises from the Host Property.

7) Promotional Activities. During the Term of this 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) 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) 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;

v) 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. 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 this 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 this Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization; (e) this 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 this 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 this Agreement, and for EVgo to take the actions contemplated in this 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) \$1,000,000 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 EVgo's Commercial General Liability Insurance,

Automobile Liability Insurance and Excess Liability Insurance, include Host as an additional insured with respect to liability arising out of EVgo's performance under this 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.** During the Term, Host shall maintain in full force and effect, at its cost and expense: (i) full replacement cost Property Insurance (written on an "all-risk/special perils" basis) for (1) the Host Property and all improvements thereon (but excluding any EVgo property); and (2) all personal property and trade fixtures owned by Host located at the Host Property; and (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.

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.

### 4) **Intentionally Omitted.**

5) **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 this 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 this 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 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 this 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 negligence of Host or its Related Parties.

2) **Limitation of Liability.** 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 relating to this Agreement. The entire liability of each party for any and all claims of any kind arising from or relating

to this 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 this Agreement, whether in contract or in tort, shall not exceed \$1,000,000; provided that the foregoing limitation shall not apply with respect to: (i) indemnification obligations for third party claims (including any claim of bodily or personal injury or death), or (ii) damages covered by insurance required to be maintained hereunder.

#### E. MISCELLANEOUS

1) **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 the Agreement. Each party may change its address for notice by giving notice thereof to the other party.

2) **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 Host ceases to have the requisite level of control over the Premises necessary to fulfill its obligations under this Agreement (each, a "Transfer Event"), Host shall assign its rights and obligations under this Agreement to the person or entity which would be able to comply with Host's obligations following such Transfer Event.

3) **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.

4) **Conflict; Severability.** In any conflict between the Agreement and these Terms & Conditions, the Agreement shall control. If any term of this Agreement is held by any court of competent jurisdiction to be invalid, such invalidity shall not invalidate the remainder of this Agreement and this 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 this Agreement.

6) **Governing Law; Waiver of Jury Trial.** This 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 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.

7) **No Waiver.** The failure of a party to insist on strict performance of any provision of this 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 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.

9) **Force Majeure; Change in Law.** 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. If any rule, directive, order, decision or law adversely impacts the ability for EVgo to perform its obligations under this 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 this Agreement and/or terminate this Agreement upon notice to Host and without penalty.

10) **Attorneys' Fees.** If either party institutes a suit against the other for violation of or to enforce any covenant, term or condition of this Agreement, the prevailing party shall be entitled to reimbursement of all of its costs and expenses, including, without limitation, reasonable attorneys' fees.

11) **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.

12) **Integration; Amendments.** This 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 this Agreement shall be ineffective unless made in a writing signed by the parties hereto.

13) **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.

14) **Construction.** All documents or items attached to, or referred to 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.

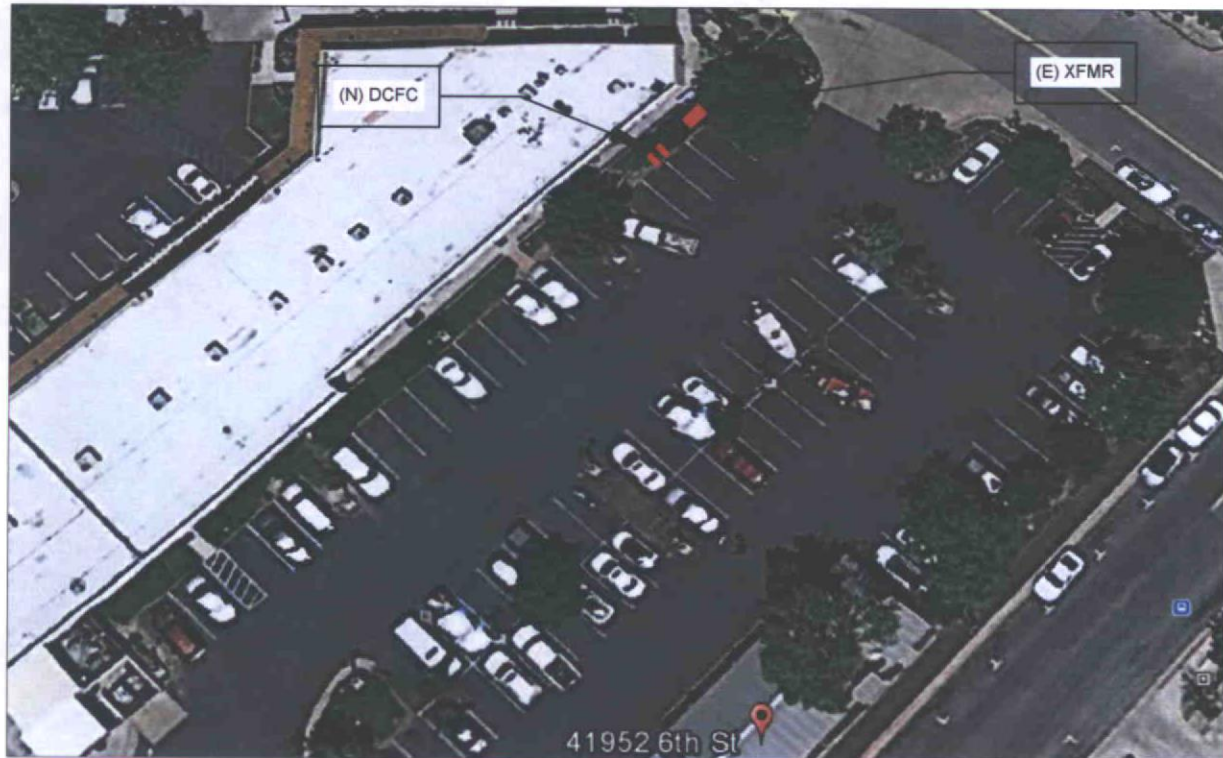
**Schedule I**

**Premises**

**See attached drawing.**



## VICINITY MAP



## SITE MAP



www.cleanfuelconnection.com

11800 CLARK ST  
 ARGADIA, CA 91006  
 (626) 445-1445



### Legend

- UNDERGROUND CONDUIT RUN
- CONDUIT RUN

### CITY OF TEMECULA FARMERS MARKET

41952 6TH ST,  
 TEMECULA, CA 92590

DC FAST CHARGER  
 PRELIMINARY SITE PLAN