ITEM NO. 6

STAFF REPORT

CITY OF OCEANSIDE

DATE: January 16, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Water Department

SUBJECT: **DIRECT CURRENT FAST CHARGER LICENSE AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND ELECTRONIC TRANSPORTATION ENGINEERING CORPORATION FOR ELECTRIC VEHICLE CHARGING STATIONS ON CITY-OWNED PROPERTY**

SYNOPSIS

Staff recommends that the City Council approve a Direct Current (DC) Fast Charger License Agreement with Electronic Transportation Engineering Corporation of Phoenix, Arizona, in an amount of zero dollars to implement electric vehicle charging stations on City-owned property; and authorize the City Manager to execute the agreement.

BACKGROUND

Elected officials at the City of Oceanside participate as members of the San Diego Association of Governments (SANDAG) Board. The City also participates at the staff level on the SANDAG Regional Energy Working Group. The group's purpose is to provide input and feedback on issues related to the Regional Energy Strategy which includes recommendations to regionally reduce energy consumption and to reduce the region's reliance on fossil fuels. One of the implementation projects which helps to accomplish this strategy and which is promoted in the San Diego Region is the addition of Plug-in Electric Vehicle infrastructure.

In alignment with this effort, the San Diego Region has been selected as one of twenty-one major metropolitan areas throughout the nation to support the early deployment of electric vehicle (EV) charging stations. Installations of EV charging stations have been partially funded through a $114.8M grant from the Department of Energy. The effort, known as "The EV Project", is being managed by Electric Transportation Engineering Corporation (ECOtality) in partnership with local governments. In total, the EV Project aims to deploy approximately 14,000 EV charging stations nationwide, thereby creating a network to support and accelerate the development of electric vehicles.

ANALYSIS

Currently, there are seven charging stations within Oceanside city limits located at the Transit Center in the downtown area.

Based on a preliminary evaluation, the most feasible site for initial installation under this program is the Oceanside Harbor parking lot #1, in part due to the close proximity to the I-5 freeway and hotels. Lot #1 is 72-hour free parking; therefore, there would be no revenue loss to the City from conversion of the parking spots to EV charging stations. The proposed parking spaces are depicted on Exhibit A.

The proposed project will require ECOtality to:

a) Provide two DC Fast Chargers (208/480 Volt DC) or two Level 2 EV Chargers (240 Volt/AC) charging equipment that includes ECOtality's units and system called "Blink"™ (DCFC);
b) Cover all costs of installation of the DCFC;
c) Take new SDG&E service out in their name and covers all operational costs including maintenance;
d) Pay City a $100 annual license fee.

The term of the DCFC License Agreement is five years with successive one-year renewal periods. ECOtality will obtain the required permits, inspections and business license.

FISCAL IMPACT

There is no cost to the City for installation and maintenance of the charging systems.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a Direct Current (DC) Fast Charger License Agreement with Electronic Transportation Engineering Corporation of Phoenix, Arizona, in an amount of zero dollars to implement electric vehicle charging stations on City-owned property; and authorize the City Manager to execute the agreement.

PREPARED BY:

M.A. Lahsaiezadeh

Mo Lahsaie
Environmental Officer

SUBMITTED BY:

Peter Weiss

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Cari Dale, Water Utilities Director

Doug Eddow, Real Estate Manager

Teri Ferro, Financial Services Director

Exhibit A: Site Map
Exhibit B: License Agreement

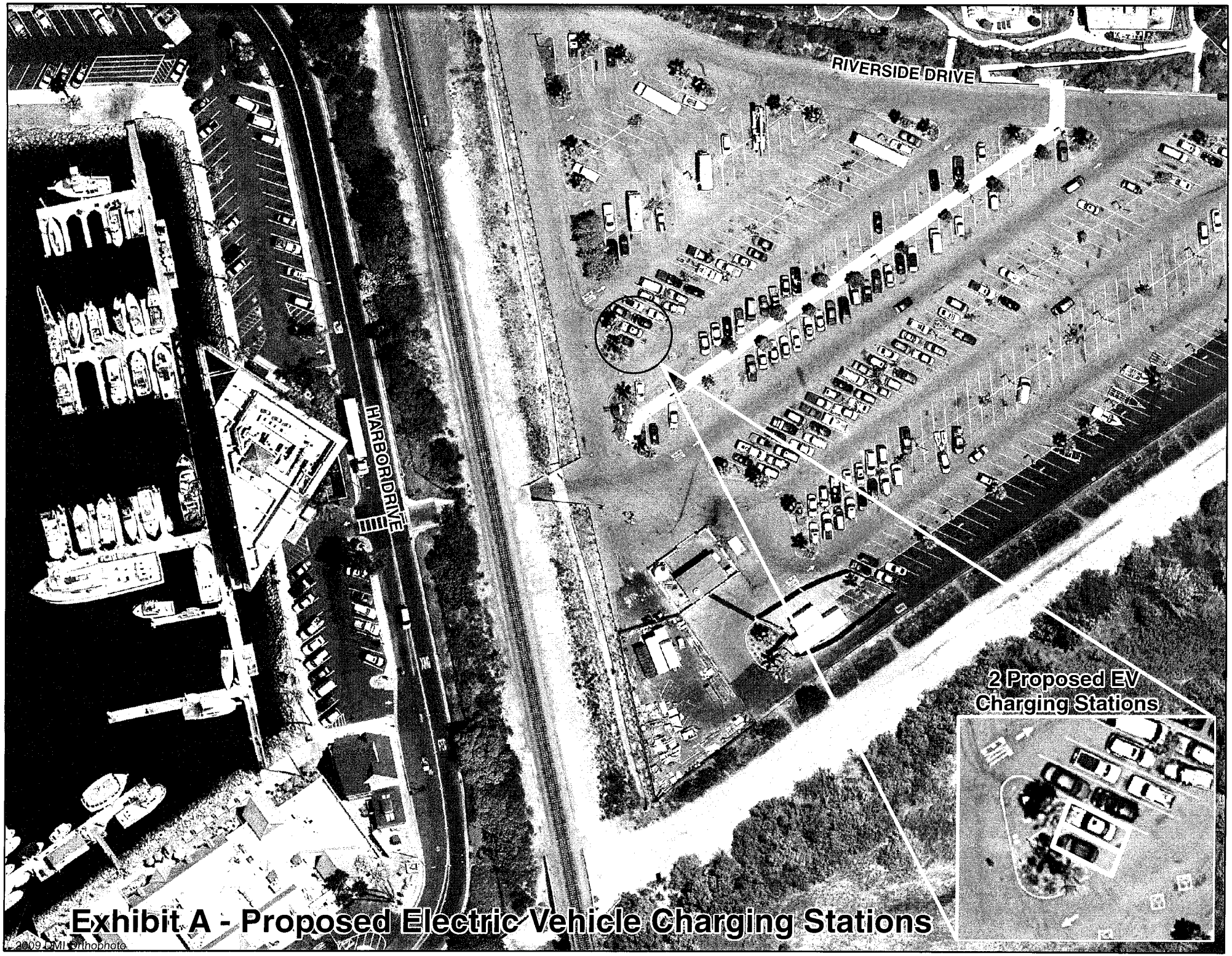

Exhibit A - Proposed Electric Vehicle Charging Stations

DCFC LICENSE AGREEMENT

THIS DCFC LICENSE AGREEMENT (this "**Agreement**") is made effective as of _____, 20_____, between _____ a _____ corporation ("**Licensor**"), and ELECTRIC TRANSPORTATION ENGINEERING CORPORATION, d/b/a ECOtality North America, an Arizona corporation, ("**Licensee**") Each of Licensor and Licensee may hereinafter be referred to individually as, a "**Party**", and collectively, as the "**Parties**".

RECITALS:

A. Licensor possesses and controls that certain real property whose permanent property tax number and legal description are attached hereto and incorporated herein by reference as **Exhibit A** (the "Licensor Property(ies)"), specific portions of which Licensor Property will be licensed to Licensee pursuant to this Agreement which portions are described, depicted and attached hereto as **Exhibit B** (collectively, the "**Licensed Premises**").

B. Licensee is the owner of certain electric vehicle service equipment and related software (collectively, the "EVSE").

C. Licensee desires to obtain from Licensor certain rights over, under and across the Licensor Property for the purpose of installing, maintaining, operating and removing the EVSE.

AGREEMENT

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 license to use and occupy the Licensed Premises (the "License") for the Permitted Uses, on the terms and conditions stated in this Agreement.

   1.1. *Scope of License; Permitted Uses.* The Licensed Premises is licensed for the purpose of installing, maintaining, operating, improving, supplementing, posting advertising (whether physically, digitally or via other remotely changeable technology), repairing, repositioning and/or removing EVSEs, including, without limitation, fixture connections, electrical and broadband supply and connections and any other equipment and accessories as Licensee may place thereon (collectively, the "**EVSE Equipment**"). This License includes all necessary rights of ingress and egress over the Licensor Property. Licensee may license the use of the EVSE Equipment, or any portion thereof, for any lawful purpose.

   1.2. *Limitations.* This License is nonexclusive authorization for Licensee to enter upon and use the Licensed Premises solely for the Permitted Uses on the terms and conditions stated herein.

   1.3. *Rights of Others.* 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. Licensee must confine activities on the Licensed Premises strictly to those necessary for the enjoyment of the rights 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. Except as may be otherwise provided for in this Agreement, Licensee will bear the costs and expenses, associated with the

operation and use of the EVSE, including, without limitation, any increased electrical operating costs resulting from the EVSE.

1.4. *Condition of Licensed Premises.* Licensee acknowledges that Licensor is not obligated to construct or install any improvements or facilities of any kind on the Licensed Premises. Further, Licensee shall pay to install and maintain a separate service panel to the Licensed Premised for the EVSE. Licensee must use commercially reasonable efforts to maintain the Licensed Premises in good and clean condition, including the removal from the Licensed Premises of any unsightly, dangerous or offensive conditions and must not cause or permit any generation of hazardous waste. During the term of this Agreement Licensor will cooperate with Licensee to implement reasonable and appropriate, mutually agreed upon procedures to assure that the Licensed Premises are maintained in a satisfactory condition. Licensees agrees not to use or store, or permit to be used stored, on the Licensed Premises, gasoline or petroleum products, hazardous or toxic substances or inflammable materials, herbicides, pesticides, fungicides, algaecides. 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. Except as otherwise expressly set for in this Agreement, Licensee will bear the costs and expenses, associated with performing any alterations to the Licensed Premises, including, without limitation, costs of construction and any increased electrical operating costs resulting from such alterations. In the event of any alterations to the Licensed Premises, Licensee shall promptly replace, return, repair and restore any such property to a condition satisfactory to Licensor and any other affected landowner at Licensee's sole cost and expense.

1.5. *Condition of EVSE.* During the term of this Agreement Licensee must maintain the EVSE situated on the Licensed Premises in a reasonable, safe and operable condition at all times. Licensor will have no right or responsibility to repair, maintain, or operate the EVSE. Licensor will cooperate with Licensee to implement appropriate, mutually agreed upon measures to assure that the EVSE is maintained in operable condition and that if the EVSE 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 EVSE or parts or components thereof as Licensee deems necessary and appropriate.

1.6. *Compliance with Laws.* In the exercise of any right granted by this Agreement, Licensee must comply with all applicable State, municipal and local laws, and the rules, orders, regulations and other legal requirements. 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.

2. *Term of License.* This Agreement shall be in effect for an initial term of five (5) years, commencing on _____ the date last signed below (the "**Commencement Date**") and shall automatically renew thereafter for successive one (1) year periods, unless Licensor gives Licensee written notice of termination ninety (90) but not more than one hundred fifty (150) days prior to the expiration of the then existing term.

3. *License Fee.* Licensee shall pay Licensor a license fee in the amount of One Hundred Dollars ($100.00) per year payable in full upon the Commencement Date and each anniversary date thereafter for the period of time prior to complete construction of the EVSE Equipment and receipt by Licensee of all necessary governmental authorizations for operation of the EVSE Equipment. On the date construction is completed and Licensee receives all necessary governmental authorizations for full operation of the EVSE Equipment.

4. *Removal of the EVSE.* On the expiration or any earlier termination of this Agreement, Licensee shall vacate the Licensed Premises.

   4.1. *Removal of the EVSE by Licensee upon Expiration of the Term.* Licensee shall remove (at Licensee's sole cost and expense) all of the EVSE, and must restore the Licensed Premises to a safe and reasonable condition, as more specifically described in § 4.2 hereof.

   4.2. *Restoration.* Upon expiration or termination of the License and removal of the EVSE Licensee will, at Licensee's sole expense, restore the affected portions of the Licensed Premises (surface and subsurface) to a safe condition, with the electricity to the EVSE locations capped, the breakers turned off, and the EVSE anchor/mounting bolts cut flush/removed.

5. *Ownership.* Licensee is and shall remain the owner of the EVSE Equipment until Licensee no longer has any rights to use or possess the Licensed Premises whether (1) under this Agreement, or any extension, renewal, or modification of this Agreement; (2) by operation of law; or (3) as such right is otherwise held by Licensee, provided, however, that Licensee has the right to remove the EVSE Equipment at any time or within ninety days (90) following the termination of such right to use or possess the Licensed Premises. If for any reason, Licensee's EVSE Equipment are removed, materially damaged or destroyed, all license fee payments shall cease until the EVSE Equipment are rebuilt and all necessary governmental authorizations are obtained to operate the EVSE Equipment. Licensee has the sole right to make any necessary applications with, and obtain permits from, governmental entities for the construction, use and maintenance of the EVSE Equipment. All of the information, content, services and software displayed on, transmitted through, or used in connection with the use and operation of the EVSE, including, but not limited to advertising, text, photographs, images, illustrations, video, html, source and object code, software, data, Internet account access, and the like (collectively, the "Content") is owned by ECOtality and its affiliates, licensors, or suppliers.

6. *Media Content.* The Parties acknowledge and agree that ECOtality shall have control over the solicitation, contracting, and distribution of any and all media content placed on, through or in connection with the EVSE. The Parties will work together in a good faith effort to resolve any objections that the Licensor may have with the subject matter, time of display, and format of media content. Licensor and Licensor's tenants, agents, employees, or other persons acting on Licensor's behalf shall not place or maintain any object on or within ten (10) feet of the EVSE displays which, in Licensee's sole opinion, would obstruct the information displays on the EVSE displays.

7. *Termination.*

   7.1 Without Cause. This Agreement may be terminated by Licensee in writing to the Licensor, without cause, at any time and for any reason, whereupon the Parties shall be fully released from their respective duties, rights, obligations and liabilities under this Agreement except as provided below.

7.2 With Cause. This Agreement may be terminated in writing by either Party for cause if either Party violates any term of this Agreement and fails to cure the same within thirty (30) days of receiving written notice of such default.

8. *Indemnification.* Licensee shall indemnify and hold Licensor harmless from all injuries to the Licensor Property or third persons caused by Licensee, Licensee's employees, agents, licensees and contractors.

9. ***LIMITATION OF LICENSEE'S LIABILITY.*** **LICENSEE MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED, IMPLIED, ORAL OR STATUTORY, TO THE LICENSOR OR ANY THIRD PARTY, WITH RESPECT TO THE SOFTWARE OR THE EVSE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION OR REPRESENTATION: (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE; OR (B) THAT THE OPERATION OF ANY SOFTWARE SUPPLIED WILL BE UNINTERRUPTED OR ERROR FREE.**

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY CLAIMS FOR DAMAGES BY EITHER PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ACTUAL RECOVERIES UNDER SUCH PARTY'S INSURANCE POLICIES.

10. *Insurance Requirements.* Licensee shall procure and maintain a commercial liability policy and/or umbrella policy with coverage of ten million dollars ($10,000,000) for the duration of the License. Limit may be achieved by use of GL and Excess Liability policy.

11. *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:

Company: _____

Attn: _____

Title: _____

Address: _____

_____

Fax Number: _____

To Licensee:

Electric Transportation Engineering Corporation dba ECOtality North America

Attn: Legal Department

Address: 430 S. 2nd Avenue
Phoenix, AZ 85003-2418

Fax Number: 602-443-9007

12. *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.

13. *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.

14. *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.

15. *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.

16. *Assignment.* This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors, and permitted assigns. Licensor agrees not to assign this Agreement to any competitor of Licensee without Licensee's prior written permission. Licensee shall have the absolute right to assign or sublet this Agreement and/or the EVSE. Any assignment which does not satisfy the requirement of this section shall be null and void.

17. *Binding Effect.* This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, assigns and successors.

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

19. *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.

20. *Authority.* Each of the Parties represent to the other Party that it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement. Licensor represents that it is the owner (or owner's authorized agent) of the Licensor Property.

21. *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.

22. *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.

23. *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.

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:

_____ a _____ corporation

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

Electric Transportation Engineering Corporation dba ECOtality North America

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A: Description of Licensor's Property(ies)

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

Location No.	Property Address	Assessor's Parcel No.

EXHIBIT B: Description and/or Depiction of Licensed Premises

Location No. 1

[Insert metes and bounds or other narrative description, size, etc.]

See diagram attached as Exhibit B-1

Location No. 2

[Insert metes and bounds or other narrative description, size, etc.]

See diagram attached as Exhibit B-1