

Note: this agreement has been revised from the version included in the draft agenda packet. One revisions located on page 4.

APS LEVEL 2 ELECTRIC VEHICLE CHARGING PILOT AGREEMENT # 231283

This Electric Vehicle Charging Station Pilot Agreement (“Agreement”) between Arizona Public Service Company (“APS”) and City of Flagstaff (“Customer”), is effective as of _____, 2019 (the “Effective Date”).

Customer’s Charging Stations will be located at: 211 W Aspen Street, Flagstaff, AZ 86001

Background

APS is conducting an Electric Vehicle Charging Pilot Program (the “Program”), whereby APS is installing Level 2 charging stations at certain APS Customer’s location. The Program is being conducted in order for APS to assess electric vehicle (“EV”) consumer purchasing, EV driver charging behavior, and other relevant information regarding the use of EV charging stations. APS has selected Customer to participate in the Program.

Customer acknowledges that APS cannot fully determine Customer’s eligibility in the Program until after execution of this Agreement and that Customer eligibility will be determined by APS, in its sole discretion.

APS and Customer Agree as follows:

1. Definitions:

- a. **Charging Station:** A UL/ETL certified electrical device that provides power to an EV using a standard J1772 Plug connector and cable. The Charging Station will be a Level 2 type, capable of providing up to 7kW of power to an EV. The Charging Stations will be either pedestal mounted, with two chargers on each pedestal, or wall mounted. Each Customer will receive a maximum of 4 plugs.
- b. **Charging Station Area:** the area where the Charging Stations are installed and used, and where designated parking spots for EV charging are located.
- c. **Environmental Contamination:** any and all actual or threatened releases, discharges, spills, or the presence of Hazardous Substances within the Property.
- d. **Environmental Laws:** any and all applicable federal, state, local, or municipal law, statute, code, regulation, or policy (including without limitation common law) governing the use, storage, treatment, or disposal of Hazardous Substances or otherwise relating to the protection, conservation, or preservation of the natural environment or natural resources, including ambient air, wildlife or plant species, surface water or groundwater resources, or soil and other subsurface strata.
- e. **Hazardous Substances:** any liquid, solid, or gaseous substance or material (including petroleum and petroleum products) that is designated, classified or regulated as,

either, a solid or hazardous waste, a hazardous substance or material, a contaminant, or a pollutant under any Environmental Law, or which becomes so designated, classified, or regulated

- f. **Infrastructure:** the electrical equipment required to provide power to the Charging Station. The equipment may include a transformer, underground conduits, cables, meters, disconnects (on/off switches), concrete pads, and signage.
- g. **Property:** the entirety of the property owned or leased by Customer that is included in the address listed at the top of the agreement.
- h. **Site:** any part of the Property subject to the Utility Easement with the exception of the meter pedestal, Charger and cable between the two described in Section 3(b).

2. General Terms

- a. Except as set forth in subsection (d) below, APS will, at no cost to Customer, design, construct, and install all necessary Infrastructure and Charging Stations at the Site.
- b. APS will own, operate, and maintain the Infrastructure and Charging Stations. APS's routine maintenance of the Charging Stations will be limited to semi-annual inspections of the Charging Stations, testing, and firmware upgrades. Customer's inspection obligations are set forth in Section 5.
- c. If, for any reason, Customer's existing electrical infrastructure cannot accommodate installation of the Infrastructure or Charging Stations, or there are other technical or Site related issues of any kind that, in APS's sole discretion, prevent APS from installing the Infrastructure or Charging Stations, APS may terminate this Agreement upon written notice to Customer. Termination of this Agreement will be effective as of Customer's receipt of APS's notice of termination.
- d. Based on estimates to install the Infrastructure and Charging Stations, both are being provided at no charge to Customer. In the event that, as a result of an unusual design or technical issue associated with the Site, APS or its subcontractor is required to bill the Customer for any additional costs, APS will notify Customer in writing if additional charges are required to the Customer (the "Customer Cost Allocation"). Customer will have 30 days following receipt of APS's written notice of a Customer Cost Allocation to notify APS in writing, if Customer will pay the Customer Cost Allocation or terminate this Agreement. The signatory on behalf of the Customer must have proper authority to authorize the customer cost allocation on behalf of their company. Customer's notice that it is electing to terminate this Agreement will serve as Customer's termination of this Agreement.
- e. Customer will work with APS and its contractors to schedule and allow for the following activities: site inspection to verify eligibility, necessary permitting and inspections, installation, and all other reasonably necessary activities. Customer will

also provide APS with ; existing as built one-line electrical drawings identifying connections for electrical power; existing electrical load designs and layouts of actual connected loads, and any other documents reasonably requested by APS.

- f. Customer will permit APS to post signage on or near the Charging Stations identifying that the Charging Stations are being provided by APS and otherwise providing pertinent information about the Charging Stations, APS, or the Program.
- g. In order reduce peak demand for electricity and reduce the Customer's bill, the Charging Stations could be shut off during the hours of 3pm and 8pm each weekday.
- h. In the event of an emergency or other situation where APS must gain immediate access to the Site, APS must be able to access the Charging Stations and Infrastructure without delay (*i.e.*, access to the Charging Stations or Infrastructure cannot be locked or gated unless immediately accessible by a Customer representative who is on duty 24 hours a day). In all other situations, Customer will provide APS access to the Charging Stations upon 24 hours verbal notice.
- i. Customer will keep trees, bushes, and hedges trimmed so that the Charging Stations remain unobstructed, as required when initially installed.
- j. Customer will not modify the Site in any way that may impact the operation or use of the Charging Stations without the prior written approval of APS.
- k. In APS's discretion, APS may replace the Charging Stations with new Charging Stations. If Customer paid for any infrastructure or fees for networking the Charging Stations, APS will ensure Customer has comparable functionality.
- l. The APS Charging Stations must remain isolated electrically and separately metered from all other electrical equipment, unless agreed to otherwise by APS in writing.
- m. APS, in collaboration with Customer, will take any action which, in their reasonable judgment, is necessary to ensure the Charging Stations and Infrastructure are being properly maintained and operated, and to ensure the Charging Stations are meeting the objectives of the Program.

3. Certain Other Terms of Service

- a. Customer's monthly APS electric bill for the Charging Stations will include the energy used by the Charging Stations. For the dedicated Charging Stations meter, Customer must enroll in APS's E-32XS Demand Service Plan. APS may, in its sole discretion revise the list of eligible Service Plans at any time. If during the term of this Agreement an EV Service Plan becomes available, APS may require Customer to enroll in that Service Plan. Customers may choose the service plan that works best for them.

This paragraph, 3(b) was revised to add more detail to allow abandonment of the easement if necessary.

- b. Customer must execute an easement to APS in the form and substance of the standard Utility Easement. Among other things, the Utility Easement Agreement will provide APS with the right to leave the Infrastructure in place if the Charging Stations are removed. Notwithstanding the foregoing, after the term of this Agreement as set forth in Sections 7 or any earlier termination provided for in this Agreement, if Customer requests APS to modify or abandon the Utility Easement, APS shall reasonably agree to such requests. All such costs associated with any modification or abandonment of the Utility Easement, including the removal of any equipment (meter, chargers and services), conduit, or otherwise, shall be borne solely by APS. Notwithstanding the foregoing, in no event shall APS be required to modify or abandon any new transformers, and associated infrastructure to install those new transformers as part of this pilot program.
 - c. An officer or Mayor of Customer must sign the Utility Easement and this Agreement.
 - d. If customer is a lessee of the Property, an officer or Mayor of the owner of the Property must sign the Utility Easement Agreement and an officer or Mayor of both the Customer and the owner of the Property must sign this Agreement.
4. Consent to Share Information.
 - a. As part of the Program, APS will collect and use the following information from the dedicated meter installed at the Site: total energy usage of the Charging Stations and information regarding performance of the Charging Stations (uptime, maintenance, utilization, and the like).
 - b. Customer agrees that APS may use the information described in subsection (a) for any reason, so long the information does not identify the Customer.
5. Additional Customer Obligations.
 - a. Customer must perform weekly safety inspections (snow, debris, clear and safe access) of the Charging Station Area and immediately notify APS at the APS phone number listed on APS provided signage, if it observes any of the conditions listed on the APS Charging Station Inspection Checklist, which is attached here as Appendix A.
 - b. Customer must advise employees and any other third persons using the Charging Stations, if the Charging Stations are not available between 3pm and 8pm daily.
 - c. Customer is responsible for all typical parking related matters, including, but not limited to arrangement and painting of parking/painted lines, and the like with the exception that APS will mark the parking spots with “Reserved Electric Vehicle Parking”.

- d. Customer agrees to encourage employees to participate in APS provided surveys regarding the Charging Stations and provide APS with related information regarding charging usage and the like, as reasonably requested by APS.
 - e. Customer agrees that APS may use the information described in subsection (d) for any reason, so long the information does not identify the Customer.
- 6.
7. Term. The Program is intended to be in effect for five years following installation of the Charging Stations. APS, however, reserves the right to terminate this Agreement at any time, without liability to Customer. Unless terminated earlier as set forth in this Agreement, this Agreement will terminate on the fifth anniversary of the In-Service Date.
8. Shut Off and Termination for Cause.
- a. If, in APS's reasonable opinion, a safety condition related to the Infrastructure or Charging Stations exists, APS may immediately shut off the Charging Stations and any impacted Infrastructure.
 - b. If: (i) a safety conditions exists that is not being caused by APS or (ii) Customer is otherwise in default of this Agreement (each of (i) or (ii) being a "Default"), then Customer will have 30 days following receipt of APS's written notice identifying the Default to remedy the same. If Customer has not remedied the Default within the 30 day cure period, APS may terminate this Agreement immediately, upon Customer's receipt of APS's notice of termination.
9. Termination. Upon termination of this Agreement for any reason, APS will notify Customer in writing of termination of this Agreement and Customer will notify APS within 30 days of receipt of APS's written notice whether it intends to take ownership of the Charging Stations or require that APS remove the Charging Stations.
- a. If Customer notifies APS that it is electing to have APS remove the Charging Stations, APS will remove the Charging Stations within 60 days after receipt of Customer's written notice and APS will disconnect and abandon the Infrastructure in place or remove it as it deems fit (pursuant to the Utility Easement).
 - b. If Customer notifies APS that it is electing to take ownership of the Charging Stations after five years, APS will transfer title to Customer. Upon transfer of title of the Charging Stations, Customer will assume sole and full responsibility for the operation and maintenance of the Infrastructure and Charging Stations. Prior to the transfer of title to Customer, APS will perform a fair market value analysis of the Charging Stations and provide the information to Customer in writing.

10. Tax Implications. If Customer elects to take ownership of the Charging Stations and the Charging Stations have a fair market value, Customer may incur a tax burden as a result of taking possession of the Charging Stations. APS advises that Customer should consult a tax advisor regarding possible tax liability resulting from the transfer of ownership (please note: current U.S. tax code requires APS to generate a Form 1099 if the System value is \$600 or more). APS will still maintain ownership of the Infrastructure and easement of the Infrastructure.

11. Exclusion of Damages. Neither party will be liable to the other party for any indirect, consequential, special, or punitive damages for any actions resulting from or arising out of this agreement, whether based on contract, tort (including negligence), strict liability, contribution, or otherwise.

12. Environmental Liability.

- a. APS shall retain all liability arising from and responsibility to address, and the Customer shall not any assume such liability or responsibility for, Environmental Contamination caused by APS's installation, operation, and maintenance of the Infrastructure or Charging Stations, including any and all losses, costs, damages, or obligations (including without limitation any environmental remediation or corrective action obligations).
- b. Customer shall retain all liability arising from and responsibility to address, and APS shall not any assume such liability or responsibility for, pre-existing Environmental Contamination within the Site prior to the Effective Date or any Environmental Contamination caused by Customer after the Effective Date, including any and all losses, costs, damages, or obligations (including without limitation any environmental remediation or corrective action obligations).

The indemnification obligations in this paragraph will survive any expiration or termination of this Agreement.

COMPANY

ARIZONA PUBLIC SERVICE COMPANY

By: _____

By: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

PROPERTY OWNER

(If different from company)

By: _____

Title: _____

Signature: _____

Appendix A

APS Take Charge AZ – Customer Charger Inspection

To be Performed Weekly

Date: _____

Time: _____

Name of Inspector: _____

Location of Chargers: _____

ENSURE A SAFE WORK AREA PRIOR TO INSPECTION.

If there are critical safety concerns with your charges, please contact APS immediately!

Walk down all charging stations, inspect for the following:

- i. Any signs of damage or physical contact with vehicle
- ii. Note damage or issues in comment box

Detail	Good	Bad	Comment
Charger Body			
Charger Cord			
Connector/Plug			
Any Exposed Wiring			
Meter			
Meter Pedestal			