




MEMORANDUM

September 1, 2011

TO: City of Franklin Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator 
Vernon Gerth, Assistant City Administrator
Catherine Powers, Director of Planning & Sustainability
Andrew Orr, Sustainability/Grants Coordinator

SUBJECT: Franklin and the Electric Vehicle Project

Purpose

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) to consider and agreement with ECOvality for the installation of electric vehicle charging stations on municipal property.

Background

The Electric Vehicle (EV) Project is a monumental effort to deploy nearly 15,000 charging stations to support the early adoption of electric cars in strategic markets. Tennessee was selected as a test market, including the Knoxville, Chattanooga, Memphis, and Nashville areas. Franklin is well within the project boundary and possesses the demographics to support early EV adoption.

The ultimate goal of the EV Project is to take the lessons learned from this first deployment of electric vehicles (EVs) and the charging infrastructure supporting them, to enable the streamlined rollout of the next 5,000,000 EVs. Managed by ECOtality, the EV Project seeks to install charging stations to provide a much needed service to support the users of these vehicles while also collecting and analyzing data related to vehicle use in diverse topographic and climatic conditions and the effectiveness of charging infrastructure.

ECOtality is currently seeking agreements with commercial, institutional, and municipal entities to serve as host sites for Level 2 chargers. Each charging station requires a 240 volt outlet and will take the current electric vehicles on the road 4-8 hours to reach a 100% state of charge. However, it is expected most EV drivers will use the publicly available chargers to "top off."

Chargers will be installed throughout the Nashville area at large shopping centers, restaurants, parking structures, institutions, tourist destinations, park and rides, parks, and other places with high volumes of pedestrian and vehicular traffic where people will likely want to charge.

Charging Stations on Municipal Property

The City has an opportunity to place Level II chargers on municipal property. City staff used the following factors to identify ideal municipal locations for charging:

- Feasibility of hosting a charging station
- Cost of installation;
- Likelihood of the charger being used;



- Safety/Security/Flooding issues;
- Level of disruption to current parking

The 2nd and 4th Ave Parking Garages and Jim Warren Park fit the criteria.

Financial Impact

ECotality conducted site assessments at both the 2nd and 4th Avenue Parking Garages and the estimates came in below the project budget, meaning no capital outlay will be required for the installation of charging stations. All installations in the EV Project Boundary will be financed by ARRA funds (up to \$2250 per charger). ECotality will own, operate, and maintain all chargers until April 30, 2013. After this date, all ownership, operation, and maintenance will be the responsibility of the City of Franklin.

ECotality will allow up to four charging stations in each garage with no cost to the City. However, staff feels like two charging stations in each garage is most appropriate at this time and the City should investigate the possibility of two chargers at Jim Warren Park. These locations would provide a service for the early adopters of EVs and allow the City to generate revenue.

Installation of Two Charging Stations on Each City Property Listed

Location	Installation Cost (Paid by ECotality)	Estimated User Fee	Estimated Revenue to the City	Cost of Electricity Paid by City	Total Revenue Earned by City
2 nd Ave Garage	\$4,170	\$1.50/hr	\$.75/hr	\$.33/hour	\$.42/hr
4 th Ave Garage	\$3,624	\$1.50/hr	\$.75/hr	\$.33/hour	\$.42/hr
Jim Warren Park	\$4,100 (est)	\$1.50/hr	\$.75/hr	\$.33/hour	\$.42/hr
TOTAL:	\$11,894				

There will be a fee for using the charging stations. The minimum fee will be set by ECotality and revenue will be shared fifty-fifty between the City of Franklin and ECotality. The fee has not been established, but it's estimated to be approximately \$1.50 per hour in the TVA region. The City can increase the fee as desired so long as it is above the minimum price set by ECotality. The City of Franklin will be responsible for paying the increase in the utility bill, but this will be minimal and covered by the revenue generated (Currently, the annual combined electric utility bill for the two parking garages is approximately \$20,000).

Recommendation

It is recommended that the City of Franklin execute a host agreement with ECotality for the installation of two charging stations in the 4th Ave Garage and two in the 2nd Ave parking garage (The City's Legal Department is in the process of finalizing language with ECotality's legal counsel). City staff also believes two chargers could be installed at Jim Warren Park at no expense to the City and seeks guidance on whether or not to pursue this opportunity. If the City has the opportunity to install 2 chargers at Jim Warren Park, a separate agreement would be considered by BOMA.

LICENSE AGREEMENT
COF Contract #2011-0092

This License Agreement is made this ___ day of _____, 2011, by and between THE CITY OF FRANKLIN, TENNESSEE, a Tennessee municipal corporation, (the “City” or “Charging Site Host”) and Electric Transportation Engineering Corporation, d/b/a ECotality North American, _____(address) (“ECotality”).

WITNESSETH:

WHEREAS, the U.S. Department of Energy (“DOE”) has provided funding through the American Recovery and Reinvestment Act (“ARRA”) to accelerate the development and production of electric vehicles (EVs) in order to reduce petroleum consumption; and

WHEREAS, to encourage the adoption of EVs, the DOE has undertaken the development of a large EV charging infrastructure in several U.S. cities through a program known as the EV Project; and

WHEREAS, DOE has selected ECotality as the project manager for the EV Project; and

WHEREAS, the City desires to participate in the EV Project by acting as a host for Electric Vehicle Supply Equipment (“EVSE”) to be installed within publicly available parking spaces within the City.

NOW, THEREFORE, the parties agree as follows:

1. The above recitals are incorporated as if stated fully herein.
2. Licensed Areas. The City agrees to allow ECotality to install four (4) EVSE, at the locations listed on Exhibit A, attached hereto and made a part hereof. The areas listed on Exhibit A shall hereinafter be referred to as the “Licensed Areas.”
3. Entities with Access to the Licensed Areas. The City agrees to allow access to the Licensed Areas to the ECotality and to ECotality-qualified and licensed contractors to be selected by ECotality at ECotality’s sole cost and expense, and to ECotality’s and its contractors’ principals, agents, employees, subcontractors, and consultants, and each of their respective principals and employees (collectively, “sublicensees”).
4. Use of the Licensed Areas. ECotality, its contractors and sublicensees shall be allowed access to the Licensed Areas for the following purposes: (a) to complete design and site preparation work in advance of installation of the EVSE; (b) to construct and install the EVSE; (c) to field-test (i.e., verify operability of) the EVSE; (d) to monitor the EVSE; and (e) to collect data regarding the use and performance of the EVSE, and technical information relating to vehicle charging infrastructure interactions (e.g., grid response).
5. ECotality Goods and Services. In consideration of the City’s participation in the EV Project and for allowing the collection of public usage data defined in Paragraph 5 of this Agreement, ECotality agrees to provide the following equipment and services:

- a. One or more Level II (240 VAC) EVSE system(s) for public use;
- b. Installation of EVSE at the Licensed Areas by ECOTality-qualified and licensed contractors in accordance with local codes, permitting and inspection requirements;
- c. A credit of up to One Thousand, Two Hundred and No/100 Dollars (\$1,200.00) toward the cost of installing the EVSE;
- d. Periodic reports on the public utilization of the EVSE installed at the Licensed Areas;
- e. ECOTality maintenance support during the term of the EV Project.

6. Public Usage Data. In consideration of the EVSE, the EVSE installation services, the City acknowledges and agrees to allow commercially reasonable access to the EVSE, in order for ECOTality to collect data and information from the EVSE regarding public use of the EVSE during the term of this Agreement.

This data will be collected and analyzed to determine the effectiveness of the EV infrastructure deployment, including public use and charging patterns. It will be distributed to EV Project partners, including the University of California Davis, The Ohio State University, and Idaho National Laboratories, for further analysis.

The City's execution of this Agreement and willingness to provide EV access and electrical energy to enable the collection and transmission of EVSE data is a material condition of this Agreement. The City understands and acknowledges that ECOTality will need reasonable cooperation and assistance, and the City agrees to provide its reasonable cooperation and assistance to ECOTality, so that ECOTality can successfully conduct its testing and collect data from publicly accessible EVSE.

7. ECOTality Equipment Description. The EVSE equipment product number is attached for information. This equipment provides an internal electricity meter for the measurement and collection of energy usage information important for the data evaluation during the EV Project. It also contains communications equipment to transmit this information to the ECOTality data center and an RFID access control system.

8. License Fee. The City shall charge ECOTality no fee for this license.

9. Ownership of Charging Stations. Title to the EVSE and all components thereof shall remain with ECOTality during the term of this Agreement. At the end of the term, ownership of the EVSE may be transferred to and vested in the City. If the City elects not to retain the EVSE after the term of this Agreement, ECOTality will remove any and all EVSE and EVSE-related equipment installed on City-

owned property. ECOTality agrees that it will restore the sites to a safe and reasonable condition following removal of the EVSE and EVSE-related equipment, with the electricity to the EVSE installation locations capped, the breakers turned off, and the EVSE anchor/mounting bolts cut flush/removed. ECOTality and the City agree that they will enter into negotiations regarding EVSE disposition at least three (3) months prior to the end of the term of this Agreement.

10. Maintenance and Repair. Maintenance and repair of the EVSE shall be the sole responsibility, and shall be at the sole cost and expense, of the party maintaining title to the EVSE at the time the relevant maintenance or repair requirement arises. Without limiting the generality of the preceding sentence, the maintenance and repair requirements set forth herein include the obligation to implement any reasonably required hardware and software upgrades to the EVSE or the components thereof. Following transfer of title of the EVSE to the City, the City agrees to make commercially reasonable efforts to support and maintain the EVSE at least through the term of this License Agreement. Nothing contained in this Paragraph 6 is intended to limit the warranty requirements set forth in Paragraph 7.

11. Warranties. ECOTality shall transfer or assign any warranties and service, maintenance or repair plans provided to ECOTality by its contractor(s) or any sublicensee, to the extent such warranties and plans are transferable or assignable, upon transfer of title of the EVSE to the City. ECOTality shall use commercially reasonable efforts to ensure that any such warranties and plans are freely transferable and assignable. Any claims by the City under any such warranty or plan shall be made directly to the ECOTality's contractor(s) or sublicensee, as appropriate, and ECOTality shall have no obligations or responsibilities relating to such claims.

12. Notice; Condition and Protection of Property. ECOTality, its contractor(s) and sublicensees shall provide verbal notification to the City in advance of any required access to the Licensed Areas. ECOTality shall, and shall require its contractor(s) and all sublicensees to, use commercially reasonable efforts to minimize any adverse impact to the normal operation of the Licensed Areas as a parking garage, or parking lot or parking area, as applicable, including any impacts to the traffic patterns therein. ECOTality shall require its contractor(s) and all sublicensees to keep the Licensed Areas free from accumulations of waste materials. Upon completion of the installation and field-testing phases of the project, ECOTality shall require its contractor(s) and all sublicensees to remove from the Licensed Areas any rubbish, tools, scaffolding, equipment and materials that will not be transferred to the City as set forth herein. The City shall use commercially reasonable efforts to avoid any adverse impact, including theft or vandalism, to any personal property of ECOTality, its contractor(s) or sublicensees, or, prior to transfer of title to the City, to the charging stations or any components thereof, that are stored at the Licensed Areas, provided such property or equipment is appropriately stored and commercially reasonable steps have been taken by ECOTality, its contractor(s) or sublicensees to secure such property or equipment.

13. Insurance. ECOTality shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better.

a. **Commercial General and Umbrella Liability Insurance;** occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000.00 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than two times the occurrence limit.

Such insurance shall:

i. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of ECOTality including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

ii. For any claims related to this project, ECOTality's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of ECOTality's insurance and shall not contribute with it.

iii. At the sole discretion of the City, dedicated limits of liability for this specific project may be required.

d. **Other Insurance Requirements.** ECOTality shall:

i. Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the Risk Manager, City of Franklin, P.O. Box 305, Franklin, Tennessee 37065.

ii. Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.

iii. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.

iv. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.

v. Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by ECOTality's insurance) in the same manner as specified for ECOTality.

vi. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Franklin prior to the commencement of

services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.

vii. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by ECotality for the City.

viii. All policies must be written on an occurrence basis. Use of policies written on a claims made basis must be approved by the City and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed.

13. Term. This License Agreement shall commence upon execution by both parties and shall terminate at 11:59 p.m. on April 30, 2013, unless extended by mutual agreement of the Parties or terminated early in accordance with Paragraph 11.

14. Termination; Modification. Except as provided in Paragraph 10 herein, this License Agreement shall remain in full force and effect unless terminated, in writing, by mutual agreement of both Parties; provided, however, that ECotality may unilaterally terminate this License Agreement upon written notice to the City in the event that DOE terminates or withdraws funding for ECotality's portion of the EV Project described herein. This License Agreement shall not be modified except by mutual agreement, in writing, of both Parties.

15. Permits; Compliance with Law. ECotality shall be responsible to require that it, the its contractor(s) and/or the sublicensees, as appropriate, obtain all necessary permits, licenses and approvals to complete the installation of the EVSE. The City shall be responsible for obtaining any necessary permits, licenses or approvals to operate the charging stations following transfer of title to the City. ECotality shall at all times comply with all federal, state, county and city statutes, laws, regulations and codes, and shall be responsible to require that its contractor(s) and the sublicensees also comply therewith.

16. Issues Resolution. Issues may arise which cannot be resolved between project personnel at ECotality and the City. Such issues should be raised to supervisory or managerial personnel for direct communication between the parties to seek resolution. If a satisfactory resolution cannot be obtained at this level, the designated points-of-contact will take the issues to their respective organizational leaders for guidance in seeking a mutually agreeable resolution.

18. Release from Liability; Hold Harmless; Indemnification. ECotality agrees to release the City from liability for any claims ECotality may have against the City, based upon or relating to allegations of personal injury or property damage, that arise from ECotality's activities pursuant to this License Agreement during the period that Licensee retains title to the EVSE or any components thereof.

ECotality shall defend, indemnify and hold harmless the City, its officers, employees and agents from any and all liabilities which may accrue against the City, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act

or omission of ECOTality in performance of this Agreement or from ECOTality's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole or to the extent caused by the contributory negligence of the City, its agents or employees.

ECOTality shall save, indemnify and hold the City harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and ECOTality shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon prompt written notice and demand for same by the City. ECOTality will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as ECOTality may request. ECOTality will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

The City agrees that upon transfer of title of the EVSE to the City, the City will thereafter release and, only to the extent permitted by Tennessee law and to the extent authorized by the Tennessee Governmental Tort Liability Act, *Tenn. Code Ann.* § 29-20-101, *et seq.* hold harmless Licensee from, and shall indemnify Licensee for, any and all liabilities based upon or relating to allegations of personal injury or property damage that arise from the operation of the EVSE except for those liabilities caused by the sole negligence of Licensee.

19. LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES STATED HEREIN FOR THE CHARGING SITE HOST, NO WARRANTY, CONDITION OR REPRESENTATION, EXPRESSED, IMPLIED, ORAL OR STATUTORY, IS PROVIDED TO THE CHARGING SITE HOST OR ANY THIRD PARTY, 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; (B) THAT THE PRODUCTS WILL BE FREE FROM INFRINGEMENT OR VIOLATION OF ANY RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES; OR (C) THAT THE OPERATION OF ANY SOFTWARE SUPPLIED WILL BE UNINTERRUPTED OR ERROR FREE. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE CHARGING SITE HOST'S SOLE AND EXCLUSIVE REMEDIES HEREUNDER AND THE ONLY LIABILITY OF ECOTALITY IS EXPRESSLY LIMITED TO THE TERMS OF THE AGREEMENT. ECOTALITY SHALL NOT BE LIABLE TO THE CHARGING SITE HOST, OR ANY THIRD PARTY, FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION, LITIGATION COSTS, LOSS OF DATA, PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. FOR PURPOSES OF THIS PROVISION, ECOTALITY INCLUDES ECOTALITY'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, SUBCONTRACTORS AND SUPPLIERS.

20. Notices. Any notice required to be given hereunder shall be deemed to have been given when received by the party to whom it is directed by personal service, hand delivery, certified U.S. mail, return receipt requested or facsimile, at the following addresses:

TO THE CITY OF FRANKLIN: Andrew Orr, Sustainability Coordinator, 109 3rd Avenue South, Franklin, Tennessee 37064

TO ECOTality: Legal Department, 430 S. 2nd Avenue, Phoenix, AZ 85003.

21. Governing Law; Choice of Forum/Venue. This Agreement shall be governed by the laws of the State of Tennessee. The choice of forum and venue shall be exclusively in the Courts of Williamson County, Tennessee.

22. Transfer of Agreement. This Agreement may be transferred to DOE or its designee upon termination of ECOTality's Prime Contract with DOE.

23. Charger Offset

- a) ECOTality is developing multiple revenue models for setting Charger access fees to consumers, including fees based on time spent charging at a specific Charger. If ECOTality implements such a revenue mode, ECOTality will provide Charging Site Host with fifty percent (50%) of the revenue received by ECOTality from Charger access fees at each Site to offset Charging Site Host's cost of hosting the Chargers (the "Charger Offset"). The Charger Offset will be paid quarterly within thirty (30) days of the end of each calendar quarter. ECOTality will establish a baseline (minimum) consumer cost for Charger access (in minutes or hours), which ECOTality may, from time-to-time, adjust. Notwithstanding the foregoing, Charging Site Host may charge consumers more than this baseline cost for Charger access.
- b) Revenue used to calculate the Charger Offset will not include any revenue from the use of the Chargers by customers participating in any free, unlimited, fixed-fee, test, or validation charging program.

The Parties agree to meet and confer in good faith on or before December 31, 2012 to discuss the viability of the charging program, the revenue model, and alternative models and methods for optimizing Charging Site Host's participation in the EV Project and building a sustainable business model.

24. Miscellaneous.

- a. This Agreement contains the entire agreement and understanding between the parties relative to the subject matter herein, and supersedes and prior agreements and understandings between the parties relating to such subject matter, whether verbal or written.
- b. Warranties/Limitation of Liability/Waiver. Other than the express Limitations of Liability in this Agreement, the City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable. This Agreement cannot be modified or amended except by a written instrument signed by the parties.

- c. The invalidity, illegality, or unenforceability of any one or more provisions of this Agreement will not affect or impair the validity, legality or enforceability of the remaining provisions, which will remain in full force and effect.
- d. The remedies reserved to the parties will be cumulative and in addition to all other or further remedies provided by law.
- e. No waiver by either party of any breach, default or violation of any term, warranty, representation, agreement, covenant, condition or provision of this Agreement will constitute a waiver of any subsequent breach, default or violation of the same or other term, warranty, representation, agreement, covenant, condition or provision of this Agreement.
- f. This Agreement shall inure to the benefit of and be binding upon, the parties hereto and their respective successors, permitted assigns, legal representatives and heirs. This agreement may not be assigned by either party without the consent of the other, such assignment being void.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year herein first above written.

ECotality, North America

CITY OF FRANKLIN:

By: _____
 Name: _____
 Title: _____

By: _____
DR. KEN MOORE
 Mayor

Attest:

By: _____
ERIC S. STUCKEY
 City Administrator

APPROVED AS TO FORM:

 Kristen L. Corn, Staff Attorney