

Charging Site Host Agreement

This **CHARGING SITE HOST AGREEMENT** (“Agreement”) is made and entered by and between the **CITY OF FORT WORTH** (the “City” or “Charging Site Host”), a Texas home-rule municipal corporation, and **Revitalize Charging Solutions, Inc.** (“Consultant” or “RCS”), a Texas Corporation. City and RCS are each individually referred to herein as a “party” and collectively referred to as the “parties.”

This Agreement is between:

Revitalize Charging Solutions, Inc. (“RCS” or “Consultant”):

Revitalize Charging Solutions, Inc.

P.O. Box 331062, Fort Worth, TX 76163

-and-

Charging Site Host Name (“Charging Site Host” or “City”):

City of Fort Worth, 1000 Throckmorton St., Fort Worth, Texas 76102

Department Contact:	Robert Sturns
Address:	1150 S. Freeway
City, State, Zip Code:	Fort Worth, Texas 76104
Contact Name:	Robert Sturns
Phone(s):	817-212-2663
Email:	Robert.sturns@fortworthtexas.gov

EVSE Site (the “Site”):

Site Address:	1150 S. Freeway
City, State, Zip Code::	Fort Worth, Texas 76104
County:	Tarrant
Electrical Utility:	Oncor Electric

Please use Chart on Attachment A to list multiple locations and denote any known special instructions. Any reference to the Site herein shall include all locations listed on Attachment A.

RCS and the Charging Site Host agree as follows:

1. Term of Agreement; Competitive Process.

This Agreement shall commence on the Effective Date and shall remain in effect for a period of twelve (12) months after the Effective Date (the “Term”), subject to the termination rights as provided in Section 10 herein. Upon expiration of the Term or the earlier termination of this Agreement, the Charging Site Host shall have no obligation to enter into any further agreement with RCS. Furthermore, RCS acknowledges that (i) the Charging Site Host may request proposals on a competitive basis upon the expiration of the Term or earlier termination of this Agreement, and (ii) while RCS shall be eligible to participate in the

competitive process if opened, the Charging Site Host shall have no obligation to select RCS by virtue of entering into this Agreement.

2. Terms and Definitions

The definitions for the following terms that are used throughout this Agreement are as follows:

EVSE	Electric Vehicle Supply Equipment, including, but not limited to, the electric vehicle charging station and all fixtures and components thereto
Media Content	Video, audio, or print messages, information or advertising displayed on the EVSE, including commercial advertising, graphic wraps, labeling, banner advertisements, and movie clips
Site	Mutually agreeable location(s) where the EVSE will be used at the address(es) listed above

3. RCS Goods and Services

In consideration of Charging Site Host entering into this Agreement, RCS agrees to provide the following goods and services:

1. Provide 1 Level II (240 VAC) EVSE for public use;
2. Installation and ongoing maintenance of the EVSE in accordance with the terms set forth herein for the Term of the Agreement; and
3. Bi-weekly usage reports and other pertinent operational information relating to the Site and the EVSE provided to Charging Site Host's Director of Economic Development in a format mutually agreeable to RCS and Charging Site Host.

4. Reimbursement for Cost of Electricity.

Host shall be entitled to reimbursement in the amount equal to the total kilowatts used per month by the EVSE at the Site; provided, however, that Host provides RCS with a monthly statement that evidences, to RCS' satisfaction, the amount of kilowatts used by the EVSE at the Site for each particular month along with the hourly rate charged per kilowatt. Notwithstanding anything to the contrary herein, RCS shall not be obligated to reimburse the Host for any amounts charged that exceed the rate of \$0.12 kilowatt/hour. Furthermore, RCS shall have no obligation to reimburse Host for any other costs or expenses, including, but not limited to, any amounts charged to Host for its use of electricity elsewhere on its property. RCS will provide monthly energy usage report to host, captured from the EVSE integrated energy meter. Report will include kilowatts hours used, driver session usage, and kilowatt hours cost.

5. EVSE Data

In consideration of RCS entering into this Agreement, Charging Site Host shall provide RCS with a 3'x3' pad space on its property at a mutually-agreed upon location to allow for the installation and operation of the EVSE. Furthermore, Charging Site Host agrees to allow RCS access to the EVSE at the Site, along with any other equipment or systems utilized in connection with the existing sources of electrical energy, so that RCS will be able to collect and transmit EVSE data regarding public use of the EVSE during the Term of this Agreement.

6. Installation; Electricity Supply; Permits and Licensure.

As partial consideration for Charging Site Host to enter into this Agreement, RCS shall provide and install the EVSE at the Site at its own cost and expense. RCS shall arrange for, at its cost and expense, for sufficient electricity to be supplied to the Site to the extent necessary to allow for the EVSE to operate as intended. RCS and Charging Site Host shall cooperate with each other to obtain any licensure and/or permits required for (i) supplying sufficient electricity to the Site and (ii) the installation and operation of the EVSE at the Site. RCS shall be responsible for all cost and expense incurred in obtaining any such licensure and/or permits.

7. Media Content

The Parties acknowledge and agree that RCS shall have control over the solicitation, contracting, and distribution of any and all Media Content data transmitted on the Revitalize Charging Solutions Charging Stations subject to the Charging Site Host's approval as outlined in this section. RCS will take reasonable efforts to avoid distributing Media Content which conflicts with Charging Site Host media and advertising at the Site. RCS will submit to the Charging Site Host's designated representative all advertisement for display on the EVSE during the term of this Agreement for review, prior to displaying any advertisement on the Revitalize Charging Solutions Charging Stations. The Charging Site Host's representative should review and provide feedback within 3 business days from receipt of the advertisement. If Charging Site Host's representative fails to provide feedback within the allotted time, RCS shall contact the Charging Site Host's representative via phone for a discussion. If advertising is satisfactory to Charging Site Host's representative, such individual will respond with written approval, and at such time, RCS will then be authorized to display advertising. Any modifications to the previously approved advertising shall be sent to the Charging Site Host for review and approval.

8. Charging Site Host's Representations and Warranties

Charging Site Host covenants to RCS that the Charging Site Host:

1. Will allow RCS and its employees, agents, and contractors reasonable access during Charging Site Host's normal business hours to the EVSE in order for RCS to collect, use, maintain and distribute the data contained therein, provided there is no access when the gates at the Site are closed, which currently close at 7:00pm on weekdays, 3:00pm on Saturday and closed on Sunday. Times are subject to change by Charging Site Host;
2. Will participate in RCS surveys and provide timely responses to RCS' requests for information from Charging Site Host;
3. Will allow all compatible vehicles to charge at the EVSE;
4. Will allow RCS to display advertising on the touch screen in accordance with Section 6, Media Content, above;
5. Will not allow the EVSE to be maintained, opened, modified, reverse engineered, disassembled on the whole or any part thereof in any manner, or repaired by any employee of the Charging Site Host, except only in emergency situations;
6. Will not transfer, assign, encumber or pledge the EVSE;
7. Assumes all responsibility in obtaining approvals by property owners, landlords, and corporate

offices, as applicable;

8. Will use reasonable efforts, but no less than the same standard of care used to secure their own property, to prevent damage and vandalism to the EVSE by any employee of the Charging Site Host;
9. Will not uninstall or otherwise tamper with the EVSE.

9. Ownership

Title to and ownership of the EVSE will be retained by RCS. The software associated with and that operates the EVSE is exclusively owned by RCS. 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 (in accordance with Section 6 above), text, photographs, images, illustrations, video, html, source and object code, software, data, Internet account access, (collectively, the "Content") is owned by RCS and its affiliates, licensors, or suppliers. The "Content" is protected by copyright, trademark, and other intellectual property laws of the United States of America.

10. Use of Trademarks/Advertising

Neither RCS nor the Charging Site Host shall have the right to use the name and trademarks owned by the other Party.

11. Termination Rights

11.1 RCS' Termination Right: This Agreement may be terminated by RCS, at any time and for any reason, by providing the Charging Site Host with thirty (30) days' prior written notice, whereupon the Parties shall be fully released from their respective duties, rights, obligations and liabilities under this Agreement except as provided below. Notwithstanding anything to the contrary herein, in the event RCS terminates this Agreement due to the EVSE being damaged, altered, or tampered with by Charging Site Host and/or its affiliates, then termination of this Agreement shall be deemed effective immediately.

11.2 Charging Site Host's Termination Right: This Agreement may be terminated by the Charging Site Host immediately upon written notice to RCS.

11.3 Upon such termination of this Agreement under Section 10.1 or 10.2, RCS shall be obligated to disable and remove (at its sole cost and expense) all of the EVSE installed at the Site and terminate the services provided thereto. RCS shall restore the Site and surrounding area to the same condition as prior to the installation of the EVSE. Charging Site Host shall allow RCS thirty (30) days to remove the EVSE installed thereon and restore the Site. In the event RCS does not remove the EVSE within thirty (30) days after termination of this Agreement, the Charging Site Host may remove the EVSE from the Site and RCS shall reimburse Charging Site Host for the cost of removal; provided, however, that Charging Site Host shall make the EVSE available for pickup by RCS during Charging Site Host's regular business hours for ten (10) days after notifying RCS that the EVSE has been removed and if RCS does not pick up the EVSE after ten (10) days, the EVSE shall become the property of the City. The obligations of RCS and Charging Site Host in this Section 10.3 shall survive the termination of this Agreement.

12. EVSE Maintenance

RCS will repair or replace, at RCS' option and its cost and expense, the EVSE or part(s) or component(s) thereof. RCS makes no representation or warranty as to minimum uptime of the EVSE during the Term of

this Agreement.

13. Insurance

13.1 Throughout the Term of this Agreement, RCS shall maintain a commercial general liability insurance policy, in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and two Million Dollars (\$2,000,000.00) annual general aggregate, covering claims arising out of liability for bodily injury, death, personal injury, advertising injury and property damage occurring in and about the property on which the Site is located and otherwise resulting from any acts and operations relative to RCS operations at the site. Additionally, RCS shall cause its insurer to name the City as an additional insured on RCS's Insurance Policy. RCS shall provide the Host with a certificate of insurance regarding RCS Policy within thirty (30) days of execution of this Agreement.

13.2 RCS shall carry the following insurance coverage with a company that is licensed to do business in Texas or otherwise approved by the City:

1. Commercial General Liability
 - A. Combined limit of not less than \$1,000,000 per occurrence; \$2,000,000 aggregate.
 - B. Defense costs shall be outside the limits of liability.
2. Statutory Workers' Compensation and Employers' Liability Insurance requirements per the amount required by statute.

13.3 General Insurance Requirements:

1. All applicable policies shall name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents, and volunteers in respect to the contracted services.
2. The workers' compensation policy shall include a Waiver of Subrogation (Right of Recovery) in favor of the City of Fort Worth.
3. A minimum of Thirty (30) days' notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days' notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the Risk Manager, City of Fort Worth, 1000 Throckmorton, Fort Worth, Texas 76102, with copies to the City Attorney at the same address.
4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A- VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of Risk Management is required.
5. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement.
6. Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to and approved by the City's Risk Management Division prior to execution of this Agreement.

14. Governing Law; Construction.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected but shall be enforced to the extent permitted by law. The captions, headings and titles in this Agreement are solely for convenience of reference and shall not affect its interpretation. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. All terms and words used in this Agreement, regardless of the

number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. Each party hereby consents to the exclusive venue and personal jurisdiction of the courts located in Tarrant County, Texas.

15. Venue

For all actions arising out of this Agreement, venue shall be Tarrant County, Texas and the United States District Court for the Northern District of Texas, as applicable, and all courts competent to hear any appeal therefrom.

16. DISCLAIMER OF REPRESENTATION AND WARRANTY; LIMITATION OF LIABILITY; INDEMNITY.

A. LIABILITY. RCS SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF RCS, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.

B. INDEMNIFICATION. RCS HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CHARGING SITE HOST, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO RCS'S BUSINESS, AND ANY RESULTING LOST PROFITS) PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, AND DAMAGES FOR CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF RCS, ITS OFFICERS, AGENTS, SUBCONTRACTORS, SERVANTS OR EMPLOYEES.

D. INTELLECTUAL PROPERTY INFRINGEMENT –

(i) RCS warrants that all Deliverables, or any part thereof, furnished hereunder, including but not limited to: programs, documentation, software, analyses, applications, methods, ways, and processes (in this Section 15D each individually referred to as a “Deliverable” and collectively as the “Deliverables,”) do not infringe upon or violate any patent, copyrights, trademarks, service marks, trade secrets, or any intellectual property rights or other third party proprietary rights, in the performance of services under this Agreement.

(ii) RCS shall be liable and responsible for any and all claims made against the Charging Site Host for infringement of any patent, copyright, trademark, service mark, trade secret, or other intellectual property rights by the use of or supplying of any Deliverable(s) in the course of performance or completion of, or in any way connected with providing the services, or the Charging Site Host's continued use of the Deliverable(s) hereunder.

(iii) RCS agrees to indemnify, defend, settle, or pay, at its own cost and expense, including the payment of attorney's fees, any claim or action against the Charging Site Host for infringement of any patent, copyright, trade mark, service mark, trade secret, or other intellectual property right arising from Charging Site Host 's use of the Deliverable(s), or any part thereof, in accordance with this Agreement, it being understood that this agreement to indemnify, defend, settle or pay shall not apply if the Charging Site Host modifies or misuses the Deliverable(s). So long as RCS bears the cost and expense of payment for claims or actions against the City pursuant to this section 15, RCS shall have the right to conduct the defense of any such claim or action and all negotiations for its

settlement or compromise and to settle or compromise any such claim; however, Charging Site Host shall have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect the Charging Site Host's interest, and Charging Site Host agrees to cooperate with RCS in doing so. In the event Charging Site Host, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against the Charging Site Host for infringement arising under this Agreement, the Charging Site Host shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, RCS shall fully participate and cooperate with the Charging Site Host in defense of such claim or action. Charging Site Host agrees to give RCS timely written notice of any such claim or action, with copies of all papers Charging Site Host may receive relating thereto. Notwithstanding the foregoing, the Charging Site Host's assumption of payment of costs or expenses shall not eliminate RCS's duty to indemnify the Charging Site Host under this Agreement. If the Deliverable(s), or any part thereof, is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, RCS shall terminate this Agreement, upon which the parties shall be released of all future obligations under this Agreement. RCS'S OBLIGATIONS HEREUNDER SHALL BE SECURED BY THE REQUISITE INSURANCE COVERAGE AND AMOUNTS SET FORTH IN SECTION 12 OF THIS AGREEMENT.

17. Notices

All notices given under this Agreement (each, a "Notice") shall be in writing and delivered to the addresses of the parties as applicable, by one or more of the following methods, (i) given by certified mail, postage prepaid, return receipt requested, and is deemed given on the third (3rd) business day after the date of posting in a United States Post Office, (ii) given by a nationally recognized overnight courier and is deemed given one day after delivery to the overnight courier, or (iii) given by personal delivery and is deemed given upon receipt by the notified party. At any time, either party may designate in writing to the other party a different notice address.

18. Changes

This Agreement cannot be modified or amended except by a written instrument signed by the Parties.

19. Waiver

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.

20. Assignment

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors, and permitted assigns. This Agreement may be assigned by RCS only with the prior written consent of Charging Site Host. Any assignment which does not satisfy the requirement of the preceding sentence shall be null and void.

21. Survival of Obligations and Liabilities

Termination of this Agreement shall not relieve either party of any obligation under this Agreement which expressly or by implication survives termination of this Agreement including its obligations under the following section headings: Termination of this Agreement, Insurance, Limitation of Liability, Governing Law, and Venue. 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.

22. Entire Agreement, Relationship

This Agreement contains the entire agreement and understanding between the parties relative to the subject matter herein, and supersedes any prior agreements and understandings between the parties relating to such subject matter, whether verbal or written. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same document. The parties agree that signatures transmitted by facsimile or e-mail (electronically scanned) shall be binding as if they were original signatures.

23. Governmental Powers

It is understood and agreed that by execution of this Agreement, the Charging Site Host does not waive or surrender any of its governmental powers.

24. Review of Counsel

The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

25. Disclosure of Conflicts and Confidential Information

25.1 Disclosure of Conflicts. RCS hereby warrants to the Charging Site Host that RCS has made full disclosure in writing of any existing or potential conflicts of interest related to RCS's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, RCS hereby agrees immediately to make full disclosure to the Charging Site Host in writing.

25.2 Confidential Information. The Charging Site Host acknowledges that RCS may use products, materials, or methodologies proprietary to RCS. The Charging Site Host agrees that RCS's provision of services under this Agreement shall not be grounds for the Charging Site Host to have or obtain any rights in such proprietary products, materials, or methodologies unless the parties have executed a separate written agreement with respect thereto. Each party, for itself and its respective officers, agents and employees, agrees that it shall treat all information provided to it by the other party ("Confidential Information") as confidential so long as it is marked "Proprietary and Confidential" and shall not disclose any such information to a third party without the prior written approval of the other party unless required to do so under Texas law.

25.3 Unauthorized Access. Each party shall store and maintain Confidential Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt Confidential Information in any way. Each party shall notify the other party immediately if the security or integrity of any Confidential information has been compromised or is believed to have been compromised, in which event, the parties shall, in good faith, use all commercially reasonable efforts to cooperate with each other in identifying what information has been accessed by unauthorized means and shall fully cooperate with each other to protect such information from further unauthorized disclosure.

26. Right to Audit

RCS agrees that the Charging Site Host shall, until the expiration of the Term this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and

records of RCS involving transactions relating to this Agreement at no additional cost to the Charging Site Host. RCS agrees that the Charging Site Host shall have access during normal working hours to all necessary RCS facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The Charging Site Host shall give RCS not less than 10 days written notice of any intended audits.

RCS further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the Charging Site Host shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that Charging Site Host shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. Charging Site Host shall give subcontractor not less than 10 days written notice of any intended audits.

27. Independent Contractor

It is expressly understood and agreed that RCS shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the Charging Site Host. Subject to and in accordance with the conditions and provisions of this Agreement, RCS shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. RCS acknowledges that the doctrine of *respondeat superior* shall not apply as between the Charging Site Host, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors and subcontractors. RCS further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between Charging Site Host and RCS. It is further understood that the Charging Site Host shall in no way be considered a Co-employer or a Joint employer of RCS or any officers, agents, servants, employees or subcontractors of RCS. Neither RCS, nor any officers, agents, servants, employees or subcontractors of RCS shall be entitled to any employment benefits from the Charging Site Host. RCS shall be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees or subcontractors.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives to be effective this ____ day of _____, 2017 (“Effective Date”).

CITY OF FORT WORTH:

By: _____
Jesus Chapa
Assistant City Manager

Date: _____

REVITALIZE CHARGING SOLUTIONS, INC.,
a Texas corporation

By: _____
Name: Edward Morgan
Title: Chief Executive Officer

Date: _____

ATTEST:

By: _____
Mary Kayser
City Secretary

ATTEST:

By: _____
Name
Title

APPROVED AS TO FORM AND LEGALITY:

By: _____
Leann Guzman
Assistant City Attorney

CONTRACT AUTHORIZATION:

M&C:

Date Approved:

ATTACHMENT A

Additional Installation Addresses (If Applicable)

This form is intentionally left blank.

EVSE: _____
Installation Address: _____
City, State, Zip:
County:
Electrical Utility:

EVSE: _____
Installation Address: _____
City, State, Zip:
County:
Electrical Utility:

EVSE: _____
Installation Address: _____
City, State, Zip:
County:
Electrical Utility:

EVSE: _____
Installation Address: _____
City, State, Zip:
County:
Electrical Utility:

Special Instructions (If Applicable)

