

DCFC EQUIPMENT LEASE AGREEMENT

THIS AGREEMENT ("**Agreement**") is made with effect as of and from the **October 26, 2015** by and

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, having its head office at 333 Dunsmuir Street, Vancouver, British Columbia, V6B 5R3

("BC Hydro" or "**Lessor**")

AND:

CITY OF WEST KELOWNA, a municipal corporation located in West Kelowna, BC.
("City" or "**Lessee**")

WHEREAS:

- A. Lessor and Lessee (each a "**Party**", and collectively, the "**Parties**") are participating in a pilot project involving the acquisition, installation and operation of DC fast charging ("**DCFC**") stations for electric vehicles ("**EVs**") at suitable locations around the province of British Columbia (the "**Program**");
- B. The Program is part of the Clean Energy Vehicle Program which is designed to provide British Columbians with more affordable clean transportation options;
- C. The purpose of the Program is to instil consumer confidence in EV technology by removing one of the main barriers to mass adoption, which is the lack of public charging infrastructure;
- D. The DCFC stations will form part of a grid-aware charging network linked to a centralized data and energy management system;
- E. Lessee has proposed a suitable location for a DCFC station which BC Hydro has selected;
- F. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the DCFC station comprising certain equipment described herein to be installed and operated on Lessee's premises at the selected site for the purposes of the Program.

NOW THEREFORE in consideration of the premises and the mutual covenants, agreements, terms and conditions hereinafter set forth, the Parties hereto agree as follows:

1. Interpretation

- (a) **Definitions.** Unless the context otherwise requires, capitalized terms used herein shall have the meaning assigned to such terms when first defined in parentheses.

(b) **Headings.** The headings in this Agreement are included for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

2. **Lease; Equipment**

Subject to the terms and conditions hereof, Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, one DCFC station comprising the DCFC equipment listed in and meeting the specifications described in Schedule A, together with all additions, parts, attachments and accessories thereto from time to time (collectively, the “**Equipment**”), but excluding any such equipment, additions, parts, attachments and accessories to be installed between Lessor’s meter and the point of interconnection with the DCFC station as indicated in Schedule A (collectively, the “**Lessee’s Infrastructure**”).

Within [ten (10)] days after satisfaction of the condition precedent set out in paragraph 3(a)(i) below, Lessor shall complete and deliver to Lessee an updated copy of Schedule A containing the details applicable to the Equipment and Lessee’s Infrastructure, which updated Schedule A will form an integral part of this Agreement upon its delivery to Lessee.

3. **Conditions Precedent**

(a) **Lessor.** The obligations of Lessor pursuant to this Agreement are subject to the following conditions being fulfilled, performed or waived:

- (i) The Equipment and Lessee’s Infrastructure shall have been delivered to Lessor by the supplier(s) thereof in good working order and otherwise in accordance with the applicable procurement terms; and
- (ii) Lessor and Lessee shall have agreed the date upon which the Equipment will be delivered to Lessee (the “**Commencement Date**”).

Lessee agrees that these conditions are for the sole benefit of Lessor. None of these conditions shall be waived except by written notice from Lessor to Lessee. In the event that these conditions (or any of them) are not satisfied or waived within the time set out above then this Agreement shall terminate.

(b) **Lessee.** The obligations of Lessee pursuant to this Agreement are subject to the following condition being fulfilled, performed or waived:

- (i) Lessor shall have delivered written notice to Lessee confirming the Commencement Date, as approved in advance by Lessee, acting reasonably, together with a completed copy of Schedule A containing the details of the Equipment and Lessee’s Infrastructure as required by section 2 above.

Lessor agrees that this condition is for the sole benefit of Lessee. This condition shall only be waived by written notice from Lessee to Lessor. In the event that this

condition is not satisfied or waived within the time set out above then this Agreement shall terminate.

4. **Term and Termination**

- (a) **Term.** Subject to earlier termination or extension in accordance with the provisions hereof, the term (the “**Term**”) of this Agreement is five years, commencing on the Commencement Date and ending on the day before the fifth anniversary thereof (the “**Initial Term**”); however all obligations of the Parties under this Agreement shall continue until they have been performed in full.
- (b) **Extension.** Unless Lessee has delivered to Lessor written notice on or before the day that is one month before the end of the Initial Term terminating this Agreement at the end of the Initial Term, this Agreement shall automatically extend on a month-to-month basis unless and until terminated in accordance with the provisions hereof.
- (c) **Termination.** If Lessee is operating the DCFC station at a loss and is unable to recover its costs of operating the DCFC station more than two years after the Commencement Date, then Lessee shall be entitled to terminate this Agreement on not less than one full calendar month’s written notice to Lessor. At any time after the Initial Term, either Party shall be entitled to terminate this Agreement for any reason whatsoever on not less than one full calendar month’s written notice to the other Party.

5. **Rent**

The rent for the use of the Equipment is \$1 per month for the Term, which shall be paid by Lessee, together with any applicable taxes, in advance on the Commencement Date and on the first day of each succeeding month throughout the Term, to Lessor at:

333 Dunsmuir Street, 9th Floor
Vancouver, BC V7X 1V5

or at such other place as Lessor may designate in written notice to Lessee from time to time. Lessee may prepay the rent for the Initial Term or any portion thereof on an annual basis.

6. **Lease Absolute**

This Agreement may not be cancelled or terminated except as expressly provided herein. Lessee’s obligation to pay rent and other amounts due or to become due hereunder is absolute and unconditional and is not subject to any reduction, delay, set-off, withholding, defence, claim, counterclaim or recoupment for any reason at all, including any failure, destruction, repossession or theft of the Equipment, loss of use of the Equipment, or any past, present or future claims of Lessee against Lessor under this Agreement or otherwise.

7. **Site**

The site which has been selected for the installation and operation of the Equipment is located at: **3678 Brown Road** (the “**Site**”).

Lessee represents and warrants to Lessor that Lessee owns, occupies and has full rights to access the Site, that the Site is located within the **City** boundaries of Lessee, and that there are no other third parties (such as landlords, tenants or lenders) who have any legal interest in the Site. **[NOTE: if this is not true, need to consider the fixtures disclaimer/ LTO fixture filings and whether any acknowledgements are required from such third parties.]** Lessee shall not change the location of the Equipment from the Site without the prior written consent of Lessor, such consent not to be unreasonably withheld but which may be conditional upon Lessor's approval of the new location, acting reasonably, and Lessee's agreement to be responsible for the costs and expenses associated with the move, and/or or other reasonable terms.

Once installed at the Site and/or affixed to the Equipment, Lessee shall not remove, conceal or alter, any labels, plates, signs or other identification supplied by Lessor indicating Lessor's ownership of the Equipment, provided that such labels, plates, signs and identification is in compliance with Lessee's signage bylaws in force from time to time.

8. Delivery and Installation

Lessor shall arrange for delivery of the Equipment and Lessee's Infrastructure to the Site on the Commencement Date. Lessor shall also be responsible for engaging qualified individuals, which may include third party contractors, to install and commission the Equipment and Lessee's Infrastructure at the Site. Delivery and installation of the Equipment and Lessee's Infrastructure shall be for and at Lessor's account and expense, and Lessor shall use reasonable efforts to complete installation by **January 31, 2016** or such later date as the Parties may agree in writing; provided, however, that if in Lessor's estimation such expenses will or are reasonable likely to exceed a maximum aggregate amount of **\$40,000**, then Lessor may suspend its obligations under this section and any related provisions upon written notice to Lessee until Lessor and Lessee mutually agree to an alternate site and amend this Agreement accordingly to reflect the new site and any associated delays. In the event Lessor and Lessee are unable to agree on a mutually acceptable site within thirty (30) days after delivery of Lessor's notice to Lessee provided pursuant to this section (or such longer period as the Parties may agree in writing), then this Agreement shall terminate.

9. Acceptance

Upon receipt of written notice from Lessor confirming the completion of installation of the Equipment and Lessee's Infrastructure, Lessee shall inspect the Equipment and Lessee's Infrastructure and shall, within ten (10) days after receipt of notice of completion of installation, deliver written notice to Lessor if Lessee rejects any of the installed Equipment or Lessee's Infrastructure or otherwise asserts that such Equipment or Lessee's Infrastructure is unsatisfactory. Any such notice shall contain sufficient detail regarding the asserted defects in order to permit Lessor to verify, respond to and, if required, rectify same. In the event that Lessee fails to deliver any such notice within the time provided, Lessee will be conclusively deemed to have accepted the Equipment and Lessee's

Infrastructure and to have acknowledged that such Equipment and Lessee's Infrastructure is as ordered, satisfactory to Lessee and in good condition and repair suitable for purposes of Lessee.

10. Use and Operation; Security

Lessee shall make the Equipment available for use and operation to provide EV charging services to end-users as contemplated by the Program throughout the Term in accordance with all applicable laws, including without limitation any applicable provisions of Lessor's Electric Tariff pursuant to which Lessee will purchase the electricity which it will sell to the end-users of the EV charging service at the DCFC station, and the Lessor's operating order pertaining to the Equipment which Lessor will prepare and deliver to Lessee and which must be approved by Lessee, acting reasonably (the "**Operating Order**"). Lessee shall be responsible for billing and collection of charges from end-users for the use of the EV charging service provided through the Equipment, for payment of any costs, charges and expenses associated with the payment system included in the Equipment (such as transaction costs or network fees), and for payment of all electricity charges (including demand charges) incurred by Lessee and owing to Lessor pursuant to its Electric Tariff in accordance with the applicable terms and conditions thereof. Lessee shall routinely inspect and monitor the Equipment and Lessee's Infrastructure, in any event not less than daily on weekdays. Lessee shall ensure the Site is properly lit, patrolled by security (if otherwise available), and otherwise employ all reasonable measures to ensure the Equipment is reasonably secure at the Site, including any measures identified in writing by Lessee and Lessor in the Site selection or design process or set out in the Operating Order. Lessee shall report any misuse or loss of, damage or required repairs to the Equipment to Lessor in writing within 24 hours of becoming aware thereof, and immediately after becoming aware thereof in case of any dangerous or emergency situation (which may initially be provided orally, to be followed by written notification).

11. Data, Metering and Pricing Support

Lessor shall assist Lessee, and Lessee will work together with Lessor, to develop pricing structures and options for the EV charging service to determine the appropriate charge in accordance with the principles of the Program. The Parties acknowledge that Lessee's incremental revenues from providing and charging end-users for the EV charging service shall not materially exceed its incremental costs of providing the EV charging service, and the Parties will re-evaluate, and if necessary Lessee will adjust, the pricing structure from time to time to ensure this is the case. The Equipment shall contain a separate meter so that the EV charging service provided at the DCFC station is separately metered to allow for a pricing structure based on the amount of electricity consumed by the end-user in any given transaction. Lessor shall be entitled to collect and analyse meter and payment data and Lessee will cooperate with Lessor from time to time to engage in activities which demonstrate Lessor's ability to remotely control the Equipment load. Lessor shall report and share the results of its analysis with Lessee on a periodic basis and upon reasonable request.

12. Condition; Repairs and Maintenance

Lessee shall routinely monitor and inspect the condition of the Equipment and Lessee's Infrastructure and shall, at its own cost and expense, be responsible for routine maintenance or upkeep to comply with any warranty requirements identified by Lessor in the Operating Order and to keep the Equipment and Lessee's Infrastructure clean. Lessee shall report any additional service, repairs or maintenance required to Lessor (or its designated contractor) in writing within 24 hours of becoming aware thereof, and shall make arrangements for such service, maintenance or repairs with Lessor's designated contractor(s) to provide or procure any and all parts and labour required to service or repair the Equipment or keep it in good mechanical working order (normal wear and tear and solely cosmetic repairs excepted). In the event that such service, maintenance or repairs are not covered by applicable third party warranties or funded by Lessee's insurance, Lessee shall obtain Lessor's written approval of the estimated costs of such service, maintenance or repairs in advance, and Lessor shall pay for such service, maintenance or repairs (excluding any solely cosmetic repairs that do not affect the functionality of the Equipment or Lessee's Infrastructure), provided that the actual costs thereof do not materially exceed the approved estimate, and subject to:

- (a) a Program-wide annual maximum amount of \$15,000 per fiscal year, allocated on a first need basis (subject to paragraph (b) below);
- (b) a per Site annual maximum amount of \$3,000 per fiscal year; and
- (c) termination of the Program by, or lack of available funding from, federal funding sources.

In the event that the annual thresholds above are exceeded (or met), Lessor may defer any required service, repairs or maintenance to the next fiscal year, or, at Lessee's request, will perform the required service, repairs or maintenance at Lessee's cost and expense.

Lessee may not alter or modify the Equipment or Lessee's Infrastructure without the prior written consent of Lessor.

Except for Lessee's Infrastructure (and all additions, parts, attachments, accessories and replacements thereto or thereof), all additions, parts, attachments, accessories and replacements of the Equipment, whether by substitution, repair, alteration, addition or improvement, shall immediately become the property of Lessor and part of the Equipment for all purposes thereto.

13. Warranty Disclaimer

LESSOR DISCLAIMS AND SHALL NOT BE LIABLE FOR ANY WARRANTIES, EXPRESS OR IMPLIED, IN RESPECT OF THE EQUIPMENT OR LESSEE'S INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding the foregoing, Lessor shall at its expense enforce, for its own and Lessee's benefit, any warranties provided by the Equipment suppliers or manufacturers, or

third party contractors responsible for installation or maintenance or performing any other work or services in respect of the Equipment, and shall assign any warranties provided by the suppliers or manufacturers of, or third party contractors responsible for installation or maintenance or performing any other work or services in respect of, Lessee's Infrastructure to Lessee. Lessee agrees to cooperate with Lessor in such regard. Within thirty (30) days after the Commencement Date, Lessor shall deliver to Lessee copies of all supplier or manufacturer warranties in respect of the Equipment and Lessee's Infrastructure, as well as copies of any warranties provided by third party contractors in respect of the installation, maintenance or performance of other services related to the same.

14. Insurance

Lessee shall obtain and maintain at its expense continuously throughout the Term:

- (a) Comprehensive public liability insurance in respect of claims by third parties for personal injury, death, or property damage arising from the use or operation of the Equipment and Lessee's Infrastructure as contemplated by this Agreement, in an amount not less than five million dollars (\$5,000,000) per incident, which shall name Lessor as an additional insured; and
- (b) Broad form insurance covering loss of or damage to the Equipment for which Lessee is legally liable or responsible, in an amount equal to the full replacement value of the Equipment (\$50,000), and shall provide primary coverage for the protection of Lessee and Lessor without regard to any other coverage carried by Lessee or Lessor protecting against similar risks.

The insurance shall be in such form and with such limits and providers as are acceptable to Lessor, acting reasonably, shall provide at least thirty (30) days advance written notice to Lessor of any cancellation or change in amount of coverage. Lessee shall provide Lessor, upon Lessor's request, with a certificate evidencing such insurance; however, no failure to request or provide such evidence shall relieve Lessee from any obligation to maintain such insurance required in accordance with the terms hereof. Lessee may self-insure or obtain commercial insurance, or a combination of both, to satisfy these requirements, in which case Lessee shall provide a letter of self-insurance to that effect to Lessor which shall be acceptable to Lessor and Lessee, acting reasonably. If Lessee fails to obtain or maintain the insurance as required hereunder, Lessor may, but shall not be required to, obtain such insurance itself and the cost of the insurance shall be for the account of Lessee and due on demand by Lessor.

Lessor shall self-insure liabilities to Lessee for personal injury, death, or property damage for which Lessor is legally liable or responsible pursuant to the provisions hereof, and shall, prior to the Commencement Date, provide a letter of self-insurance to that effect to Lessee which shall be acceptable to Lessor and Lessee, acting reasonably.

15. **Possession and Surrender or Return**

Notwithstanding Lessor's retention of title, Lessee shall have possession and control of the Equipment throughout the Term. Upon the expiry or earlier termination of this Agreement, Lessee shall return the Equipment to Lessor, free of all Encumbrances (as defined below), by surrendering possession and notifying Lessor in writing that the Equipment is ready for pick-up.

Lessor shall be responsible for removing the Equipment within ninety (90) days after receipt of such notice and for terminating the electrical connection in accordance with applicable laws. In the event that (i) Lessee has terminated this Agreement prior to the end of the Initial Term; or (ii) Lessor has terminated this Agreement as a result of Lessee's breach or default at any time, all costs and expenses for removing the Equipment and related electrical work shall be for the account of Lessee at its expense. Otherwise, in all other circumstances, such removal and related electrical work shall be for and at Lessor's account and expense. In any event, Lessor shall not have any obligation to undertake any restoration of the Site upon removal of Equipment or to remove any of Lessee's Infrastructure upon the termination or expiry of this Agreement, all of which shall be for and at Lessee's account and expense should it wish to do so.

16. **Access and Inspection**

Lessor and its authorized contractors and representatives shall have access to the Site at any and all times on reasonable notice to Lessee for purposes of inspecting the Equipment or carrying out any required repairs or maintenance, or for purposes of allowing other prospective lessees to inspect the Equipment prior to the termination or expiry of this Agreement. Lessor will use reasonable efforts to accommodate any reasonable requests of Lessee to reschedule planned access where it is not an emergency situation and such access would conflict or interfere with Lessee's or other activities at the Site, including without limitation civic functions.

17. **Encumbrances**

Lessee shall keep the Equipment free and clear of all security interests, liens, taxes, assessments, charges, fees, fines, levies and encumbrances of every nature and kind whatsoever ("**Encumbrances**") and shall cause the same to be released or discharged promptly upon notice thereof. Lessee shall, or Lessor at Lessee's expense may, report, pay and discharge when due all Encumbrances assessed on the Equipment or arising from or in connection with the possession, use or operation of the Equipment, together with any interest or penalties thereon, imposed by a governmental authority, whether or not the same shall be assessed against or in the name of Lessor or Lessee. However, Lessee shall not be required to pay or discharge any such Encumbrance so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of Lessor to the Equipment; provided that Lessee shall reimburse Lessor for any damages or expenses resulting from such failure to pay or discharge. Any amounts owed by Lessee to Lessor pursuant to this provision shall be payable by Lessee to Lessor with the next instalment of rent, and any

failure to reimburse same shall be subject to the same consequences, including without limitation interest on overdue payments, as failure to pay any instalment of rent.

18. Title; Personal Property

Lessee's Infrastructure procured and installed by Lessor at its expense pursuant to this Agreement shall become the property of Lessee upon completion of installation, and Lessor hereby conveys, sells, assigns and transfers Lessee's Infrastructure and all right, title and interest in and to Lessee's Infrastructure to Lessee effective as of and from such time.

Lessor represents and warrants that it has or will have full and unencumbered title to the Equipment and the right to lease it to Lessee in accordance with the terms of this Agreement. The Equipment is, and shall at all times be and remain, the sole and exclusive property of Lessor; and Lessee shall have no right, title or interest therein or thereto except the right of possession and use in accordance with the terms of this Agreement. Without limiting the foregoing, the Equipment shall be deemed to be personal property of Lessor and shall not, by reason of attachment, affixation or connection to Lessee's Infrastructure, the Site or any land or building thereon, become or be deemed a fixture or appurtenant to the Site or such land or building or to Lessee's Infrastructure or any other personal property located on the Site, and shall at all times be severable therefrom despite the fact that all or any part of the Equipment may be resting upon, imbedded in, attached or affixed to the Site.

Lessee shall take such steps as may be required to prevent any person from acquiring any rights in any Equipment by reason of the Equipment being claimed or deemed to be real property. In addition, Lessee shall use all reasonable efforts to obtain and deliver to Lessor such waivers, in registrable form (if necessary), as Lessor may reasonably request from the owners, landlords and mortgagees of any real property upon which any Equipment may be located.

19. Capacity and Authority

Lessee represents and warrants to Lessor that Lessee is excluded from the definition of "public utility" under the *Utilities Commission Act* (British Columbia) in respect of the EV charging services it will provide in connection with the Program, that the end-users of the EV charging service are not tenants of Lessee (or are not being offered or making use of the EV charging service in their capacity as tenants of Lessee), and that Lessee has the capacity and authority to enter into this Agreement and perform its obligations as contemplated hereunder, including providing the EV charging service to public customers for a fee as contemplated by this Agreement and the Program.

Lessor represents and warrants to Lessee that Lessor has the capacity and authority to enter into this Agreement and perform its obligations as contemplated hereunder.

In the event that any of the foregoing becomes untrue at any time throughout the Term as a result of a change in applicable laws, regulations or policies (excluding internal policies of either Party), either Party shall be entitled to terminate this Agreement upon written notice to the other.

20. Signage and Parking Policies

Lessor shall provide and install station signage and other informational and educational signage developed for the Program regarding the Equipment, the Program and EVs which shall comply with applicable bylaws of Lessee. Lessee shall provide and install way-finding signage on roads over which it has authority to direct drivers coming from nearby highways and freeways to the Site, and shall also provide additional informational and educational signage related to EVs, energy and community sustainability. Lessee shall create and enforce, or cause to be enforced, reasonable parking policies for the Site to facilitate and encourage appropriate use of the EV charging service.

21. Announcements and Publicity

Lessee shall promote the DCFC station and the Program in community materials. Lessee shall acknowledge the support and funding provided by the province of British Columbia and the support of Lessor in any media releases, publications, events, and print or web-based material associated with the Program, and shall provide the province of British Columbia and Lessor an opportunity to comment on and approve any such materials or events in advance with reasonable notice thereof, which shall, in any event, not be less than 24 hours notice. Notwithstanding the foregoing, in the event that the content of any such release, publication, speech or material relating to the province of British Columbia and Lessor has previously been approved by the province of British Columbia and Lessor, Lessee shall not be required to seek further approval for or provide notice of subsequent releases, publications, speeches or materials using the same content, unless the province of British Columbia or Lessor has subsequently delivered written notice to Lessee withdrawing such prior approval or indicating a desired change to previously approved content.

22. Liability; Indemnity

- (a) Lessor shall not be liable for, and Lessee shall release, indemnify and hold harmless Lessor and its directors, officers, employees, consultants, agents, contractors and representatives (collectively, the “**BCH Indemnified Parties**”, and each a “**BCH Indemnified Party**”) from and against any and all costs, expenses, damages, injuries, losses and liabilities of every nature and kind whatsoever, including without limitation reasonable legal fees on a solicitor and own client basis, suffered or incurred by Lessee (or those for whom it is responsible at law) or arising out of or in connection with third party claims, actions, causes of action, suits, or proceedings at any time suffered or incurred by, or brought or made against the BCH Indemnified Parties (or any one or more of them), relating to Lessee’s possession, use, operation, maintenance or return of the Equipment or Lessee’s Infrastructure, whether or not arising as a result of any fault, act, error, omission, breach or default of Lessee or those for whom it is responsible at law, except to the extent directly caused or contributed to by the negligence or wilful misconduct of a BCH Indemnified Party.
- (b) Without limiting paragraph (a) above but subject to paragraph (c) below, the liability of any BCH Indemnified Party under this Agreement or relating to Lessee’s possession, use or the operation of the Equipment or Lessee’s Infrastructure shall be limited to any costs,

expenses, damages, injuries, losses and liabilities suffered or incurred by Lessee to the extent directly caused or contributed to by the negligence or wilful misconduct of a BCH Indemnified Party.

- (c) Neither Party shall be liable to the other for any loss of profit, loss of revenues or other pure economic loss under any circumstances whatsoever.

23. Default and Remedies

If Lessee fails to pay any rent or any other amount payable hereunder within ten (10) days after the same is due and payable, or if Lessee fails to observe, perform or discharge any other obligation under or provision of this Agreement required to be observed, performed or discharged by Lessee within ten (10) days after receiving notice thereof from Lessor, or if Lessee becomes bankrupt or insolvent or makes an assignment for the benefit of its creditors or has a trustee or receiver appointed that has authority to take possession or control of the Equipment, or if any proceedings under bankruptcy, insolvency, restructuring or creditor protection legislation are commenced by or against Lessee, the Equipment or any material part thereof is seized, confiscated, sequestered or attached or if a distress is levied thereon, or if Lessor in good faith believes and has commercially reasonable grounds to believe itself insecure, that the prospect of payment or performance by Lessee hereunder is about to be impaired or that the Equipment is or about to be placed in jeopardy, then Lessor shall have the right to exercise any one or more of the following remedies:

- (a) To declare the entire amount of rent hereunder immediately due and payable without notice or demand to Lessee;
- (b) To sue for and recover all rents and other payments then accrued or thereafter accruing;
- (c) To cure any default of Lessee at Lessee's cost and expense and recover such amounts pursuant to paragraph (b) above;
- (d) To take possession of and/or remove the Equipment, without demand or notice, without any court order or other process of law, and for that purpose enter any premises where the Equipment is located, and Lessee hereby waives any and all damages occasioned by such taking of possession or removal or entering any premises for such purposes;
- (e) To terminate this Agreement immediately with or without notice; or
- (f) To pursue any other remedy available at law or in equity.

Notwithstanding any repossession or any other action taken by Lessor, Lessee shall be and remain liable to Lessor for the full performance of all obligations on the part of Lessee to be performed under this Agreement. Lessor's remedies hereunder are cumulative, and may be exercised concurrently or separately.

24. Dispute Resolution

If any dispute arises under or in relation to this Agreement, that dispute shall be referred to and finally resolved by arbitration by a single arbitrator pursuant to and in accordance with the *Commercial Arbitration Act* (British Columbia). The place of arbitration shall be Vancouver, British Columbia. The decision of the arbitrator shall be final and binding on the Parties. Notwithstanding the foregoing, the Parties are entitled to seek interim measures of protection, including injunctions and other equitable relief or remedies, from a court of competent jurisdiction pending commencement or completion of any arbitration, and may also seek from a court of competent jurisdiction any equitable relief or remedy that the arbitrator does not have the jurisdiction to grant.

25. Security Interests

Without limiting the title retention provided for above or any other security obtained by Lessor, Lessee grants to Lessor a security interest in all Equipment and all proceeds (as defined in the *Personal Property Security Act* (BC)) thereof as security for the payment and performance of all present and future indebtedness, obligations and liabilities of Lessee to Lessor under this Agreement. Lessee hereby acknowledges having received an executed copy of this Agreement in effect on the date hereof and waives all rights to receive from Lessor a copy of any financing statement, financing statement (transition), financing change statement or verification statement filed at any time in respect of this Agreement.

26. Further Assurance

At its own expense, upon the request of the other Party, each Party shall promptly execute and deliver, and use all reasonable efforts to promptly require any third parties to execute and deliver, such further and other documents and instruments and do such further and other acts and things as the other Party may reasonably require for the purpose of implementing, giving full effect to and carrying out the intent of this Agreement or for purposes of recording or filing to protect the interest of Lessor in the Equipment or Lessee in the Lessee's Infrastructure.

27. Time

Time is of the essence of this Agreement.

28. Notices

Any notices required or permitted to be given under this Agreement must be in writing and delivered personally or by facsimile addressed to the recipient as follows:

(a) If to BC Hydro:

British Columbia Hydro and Power Authority
333 Dunsmuir Street, 9th Floor
Vancouver, BC V6B 5R3

Attention: Alec Tsang
 Senior Technology Strategist, Office of the Chief Technology Officer
 Facsimile No.: (604) 623-4203

(b) If to Lessee:

City of West Kelowna
 2760 Cameron Road
 West Kelowna, BC V1X 2T6

Attention: Erin Goodwin, Facilities Manager
 Email: erin.goodwin@westkelownacity.ca

or to such other address or number as a Party may from time to time provide written notice to the other. Notices delivered by facsimile shall be deemed to be received on the next business day following the date of transmission.

29. Invalidity and Severability

Each of the provisions contained in this Agreement is distinct and severable and a determination of illegality, invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof and the remainder of this Agreement shall continue in full force and effect, unless as a result of such determination this Agreement would fail in its essential purposes.

30. Entire Agreement; Amendment

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior understandings, documents, agreements and instruments, whether oral or written. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be amended only by an instrument in writing signed by each of the Parties hereto. For greater certainty, nothing herein affects or in any way amends Lessor's Electric Tariff or any provisions thereof, including without limitation, with respect to Lessor's supply and Lessee's purchase of electricity pursuant thereto.

31. Assignment; Inurement

Lessee shall not assign this Agreement, any rights hereunder or its interest in the Equipment without the express prior written consent of Lessor, which it may withhold in its sole discretion. Lessor shall not assign this Agreement, any rights hereunder or its interest in the Equipment without the express prior written consent of Lessee, not to be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

32. Waiver

No failure by a Party to enforce any provision of this Agreement or waiver by any Party of any default, breach or non-observance by the other Party at any time or times in respect of any covenant, provision, term or condition herein shall be effective against that Party unless waived in writing, or operate as a waiver of or affect that Party's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, and no waiver shall be inferred from or implied by anything done or omitted to be done by the Party having those rights. The acceptance of rent by Lessor does not waive Lessor's right to enforce any provisions of this Agreement.

33. Governing Law; Attornment


This Agreement shall be governed by, construed and enforced in accordance with the laws of the province of British Columbia and the laws of Canada applicable therein. Each Party attorns irrevocably and unconditionally to the exclusive jurisdiction of the courts of the province of British Columbia, and to courts to which appeals therefrom may be taken.

34. Counterparts and Delivery

This Agreement may be executed in counterparts and may be delivered by facsimile or other electronic means such as an email attachment in portable document format (.pdf), each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the duly authorized representative(s) of each Party has executed and delivered this Agreement as of the date set out above.

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: 
 Authorized Representative
 Name: Alec Tsang
 Title: Senior Technology Strategist

CITY OF WEST KELOWNA

Per: Mayor and Corporate Officer
 Authorized Representative
 Name: 
 Doug Findlater, Mayor
 Title: Shacey Patt
 Corporate Officer

SCHEDULE A

DCFC Equipment and Lessee's Infrastructure (to be completed by Lessor after installation)

DCFC Equipment:

Manufacturer: _____

Model: _____

Serial Number: _____

Specifications: (one of the following set of equipment specifications will apply depending on the manufacturer and model listed above)

Table 2. QC45 Dual Connectors Charger, Efacec

QC45 Specifications

- ♥ 50 kW peak output - up to 500 VDC and 125 Amps. non-simultaneously
- ♥ NEMA 3R enclosure – 24" x 24" x 74.5" high
- ♥ Yazaki Generation 2 CHAdeMO connector
- ♥ REMA SAE Combo CCS Type 1 connector
- ♥ Input Voltage – 480Δ v, 3 ph, 60 Hz @ 80 Amps
- ♥ Efficiency - >93%
- ♥ Power Factor – 0.98
- ♥ Forced fan ventilation
 - Fans only operate when charger is in use, and even then only when activated by a thermostat.
- ♥ 6.4" TFT color HMI screen
- ♥ Push button controls
- ♥ Optional 3G cellular router/modem
- ♥ Imbedded software for OCPP v1.5 network communication
- ♥ RFID reader for Mifare Classic
 - Also works with No Charge to Charge cards

Table 2. Terra 53 Fast Charging Station, ABB

Technical specifications

System	Multi-standard DC charging station
Environment	Indoor / outdoor
Operating temperature	-35 °C to +50 °C
Storage temperature	(dis-rating characteristic applies) -40 °C to +70 °C
Compliance and safety	cULus
Input	
AC power connection	3P + PE
Input voltage range	480 V _{LL} +/-10% (60 Hz)
Max. rated input current & power	75A, 60 kW
Power factor (full load)	> 0.96
Efficiency	95% at nominal output power
DC output	
Maximum output power	50 kW
Output voltage range	200 – 500 V _{DC} (Combo-1) 50 – 500 V _{DC} (CHAdeMO)
Maximum output current	165 A _{DC} +/-5% (Combo-1) 120 A _{DC} (CHAdeMO)
General	
DC connection standard	EN61851-23 / DIN 70121 Combo-1 and/or CHAdeMO 1.0
DC cable length	12 ft (optional: 20 ft)
DC plug type	Combo-1 / CHAdeMO
RFID system	ISO/IEC14443-A/B, ISO/IEC15693, FeliCa™ 1, NFC reader mode
Network connection	GSM / CDMA modem 10/100 Base-T Ethernet
Power consumption idle	25 W (max)
Protection	Type SF
Operational noise level	< 55 dBA
Dimensions (D x W x H)	30" x 21" x 75" 760 mm x 525 mm x 1900 mm
Weight	880 lbs / 400 kg

Lessee's Infrastructure:

In the case of scenario 1 where the power for the charging station is fed from a dedicated electrical service from BC Hydro, the Lessee's infrastructure includes all electrical equipment downstream of the BC Hydro owned meter such as transformers, cabinets containing electrical equipment, all equipment contained within the cabinet and conductors leading up to the connection point within the charging station, or

in the case of scenario 2 where the power for the charging station is fed from an existing shared service, the Lessee's infrastructure includes all electrical equipment such as that described in scenario 1 above and installed for the purpose of supplying power to the charging station, both upstream and downstream of, but excluding the BC Hydro owned meter.