



Interoffice Memorandum

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Terry Devitt, Deputy Director, OCCC
Contact: (407) 685-9867

A handwritten signature in black ink, appearing to be "Terry Devitt", written over a horizontal line.

DATE: November 11, 2022

RE: **Consent Agenda Item – November 29, 2022**
Electric Vehicle Charging Site Host Agreement

In partnership with Orlando Utilities Commission (OUC), Orange County is utilizing the Florida Department of Environmental Protection grant funds from the Volkswagen Diesel Emission Settlement that are intended to construct electric vehicle charging stations throughout the state.

The Electric Vehicle Site Host Agreement allows OUC to install, own, operate, maintain, and support level 3, DC Fast Charging electric vehicle charging stations at the Orange County Convention Center that is open to the public.

ACTION REQUESTED: Approval and execution of Electric Vehicle DC Fast Charging Site Host Agreement by and between the Orlando Utilities Commission and Orange County, Florida.

C: Byron W. Brooks, AICP, County Administrator
Mark Tester, Executive Director, OCCC
Ray Walls, Deputy Director, OCCC

ELECTRIC VEHICLE DC FAST CHARGING SITE HOST AGREEMENT

THIS ELECTRIC VEHICLE SITE HOST AGREEMENT (the "**Agreement**") is entered into as of this 29th day of November, 2022 ("**Effective Date**"), between the ORLANDO UTILITIES COMMISSION ("**OUC**") and ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida ("**Host**"). OUC and Host may be referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, OUC is launching an electric vehicle charging infrastructure program (the "**Program**"), pursuant to which OUC will install, own, operate, maintain and support electric vehicle supply equipment ("**EVSE**") and will record system data to evaluate charging behavior and provide Program evaluations to the Florida Public Service Commission;

WHEREAS, Host desires to become a participant in the Program and have OUC install, own, and maintain the EVSE and associated signage, wires, cables, electric meter and panel and other behind-the-meter equipment (collectively, the "**Equipment**") and associated front-end electric infrastructure, including wires, cables, conduits, transformers and related accessories and other equipment (the "**Infrastructure**") on the properties identified in the Statements of Work attached hereto as Exhibit A (each, a "**Statement of Work**"), which is incorporated herein by reference (individually or collectively referred to as the "**Property**");

WHEREAS, OUC wishes to partner with Host in the Program and to install the Equipment and Infrastructure at the Property in accordance with the terms of this Agreement and the Program; and

WHEREAS, OUC has selected a company to provide network access for the Program (the "**Network Provider**") and the Network Provider may charge nominal transaction fees to drivers for charging sessions, the payment of which is set forth in Section 1(c) below.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. OUC's OBLIGATIONS.

a. OUC and/or its contractors shall design and construct the Equipment and Infrastructure in compliance with the Program terms, as well as all applicable local, state and federal laws and regulatory requirements. OUC and/or its contractors will coordinate location, placement, and connection of the Equipment with Host. OUC Florida's contractors will obtain electrical permits only. Should the proposed installation schedule require modification, OUC shall

notify the Host within a reasonable amount of time of such changes. At the option of OUC, all Equipment shall be OUC branded. Notwithstanding the foregoing, at OUC's option, if permitted and reasonably practical, the electric meter, panel, and a portion of the Equipment shall be OUC and Host co-branded, with such specifications to be mutually agreed upon by the Parties.

b. OUC shall install and own a new electric meter and panel at the Property, which shall represent a separate new account independent from that of the Host.

c. OUC shall charge the prevailing approved rate in effect at the time. The charges to be paid by such drivers will be collected by the Network Provider.

d. During the Term (as defined in Section 3 below) of this Agreement, subject to Section 2(c) below, OUC and/or its contractors shall maintain and repair the Equipment and Infrastructure at OUC's expense. OUC shall repair the Equipment and/or Infrastructure promptly following notification from Host. OUC shall have the right to repair, modify or replace the Equipment and/or Infrastructure at any time during the Term of this Agreement. OUC shall schedule access for installation, maintenance and repairs during a mutually agreeable time. In emergency situations, Host will provide OUC access as soon as reasonably possible and, if directed by OUC, will immediately cease the operations of the EVSE or otherwise prohibit use of the EVSE for such time as directed by OUC.

2. HOST'S OBLIGATIONS.

a. Host shall provide OUC, its representatives, Network Provider, contractors, and designees access to the Program site for purposes of design and installation of the Equipment and Infrastructure.

b. Host agrees to grant OUC permission as needed for OUC to install the Equipment and Infrastructure and implement the Program at the Property. If determined by OUC, as a requirement for Host's participation in the Program, Host agrees to execute a OUC easement as required by OUC in order to grant it sufficient rights for the installation, maintenance, repair and replacement of the Infrastructure.

c. Host shall grant to OUC and/or its contractors such access to the Property as may be deemed necessary or desirable by OUC for the assessment, installation, and the maintenance, repair and/or replacement of all or any portion(s) of the Equipment throughout the Term of this Agreement. In the event the Equipment fails to operate or otherwise requires repairs, Host shall notify OUC promptly. Host shall not damage, disable, modify or tamper with the Equipment in any way except to the extent required by an emergency situation.

If Host violates the preceding sentence, OUC shall repair or replace the Equipment at Host's sole expense.

d. Host acknowledges that OUC and/or its contractors will gather data and information from the Equipment with respect to vehicle charging activity, vehicle usage and technical performance of the vehicle and Equipment. OUC shall own all rights to such data and information. Host acknowledges that such data and information will be used and disclosed by OUC and third parties for the purpose of understanding and evaluating the impact of electric vehicles on transit systems and the electric power grid, for use in regulatory reporting, industry forums, case studies or other similar activities, in accordance with applicable laws and regulations. OUC will make available to the Host, relevant station utilization data to assist with decisions to invest in additional charging stations by the Host.

e. Host shall provide public, nondiscriminatory access to the EVSE year-round, 24 hours a day, seven days a week and shall ensure that the charging point is accessible during such times.

f. Host shall be permitted to promote and advertise the Program; provided, however, OUC reserves the right to review and approve any and all advertising, marketing, co-branding or promotional copy or materials developed or used by the Host which references the Host's participation in the Program. OUC may require the Host to submit such copy and materials for pre-approval. Approval shall be granted, unless OUC in its sole discretion, reasonably determines that the copy or materials are misleading, in error, or fail to meet the requirements of the Program terms and conditions, or is not in OUC's best interest. In the event that OUC does not approve, Host agrees to remove from circulation or otherwise discontinue the use of any such materials. Host shall not use, reproduce or display any trademark owned or held by OUC or any of its affiliates without the prior written consent of OUC.

g. Host shall use commercially reasonable efforts to maintain the electric vehicle parking area in safe condition, to at least the same standard as it customarily maintains the common areas at the Host Property. Host shall take reasonable measures to enforce applicable parking codes and statutes to discourage and prevent anyone other than an EV driver or to whom a particular EVSE has been dedicated from parking in such space, including, without limitation, towing.

3. TERM AND TERMINATION.

a. This Agreement shall be effective as of the date of execution by both Parties. The term shall commence on the Effective Date and shall continue for ten (10) years (the "Term"), unless sooner terminated or extended as provided herein. OUC shall have the right to extend the Term of this Agreement for one year by giving Host written notice of such extension at least thirty (30) days prior to the end of the Term. Upon expiration or an extension of the Term, OUC in its sole discretion, may either remove the Equipment or transfer title to the Equipment to Host as set forth in Section 5 below.

b. Notwithstanding anything herein to the contrary, OUC shall have the right to terminate this Agreement at any

time upon thirty (30) days written notice to Host, which shall be effective as of the effective date of termination set forth in such notice. In addition, in the event OUC determines that the Property is not technically compatible for the purposes hereunder, OUC shall have the right to terminate this Agreement immediately upon written notice to Host. Unless otherwise agreed to by the Parties, OUC shall remove the Equipment following any such termination and return the area to normal parking, in each case at OUC's sole expense; provided, however, that OUC shall have the option but not the obligation to remove any Infrastructure.

c. Notwithstanding anything herein to the contrary, Host shall have the right to terminate this Agreement at any time after the fifth (5th) term year upon ninety (90) days written notice to OUC, which shall be effective as of the effective date of termination set forth in such notice (the "Termination Date"). In the event of a termination of this Agreement pursuant to this Section 3(c), Host shall pay to OUC on the Termination Date an amount equal to the Termination Fee (as defined below). Unless otherwise agreed to by the Parties, OUC shall remove the Equipment following any such termination and return the area to normal parking, in each case at Host's sole expense; provided, however, that OUC shall have no obligation to remove any Infrastructure.

d. The "Termination Fee" shall be calculated by OUC and shall equal the pro rata portion of the depreciated dollar value of the Equipment and Infrastructure attributable to the portion of the Term not completed. For informational purposes only, OUC's good faith estimate of the full dollar value of the Equipment and Infrastructure for a particular Property as of the date of a particular Statement of Work shall be included in the Statement of Work for such Property; provided, however, that such estimate shall have no impact on the actual calculation of the Termination Fee.

e. In no event shall the duration of the use of Host's Property under any Statement of Work exceed the Term of this Agreement.

4. ELECTRIC SERVICE COST/INTERRUPTION OF SERVICE. OUC shall be responsible for the installation of a system by which to charge for all electrical consumption costs derived from the utilization of EVSE for charging electric vehicles. During the Term, Host will not be billed for the electricity utilized by the EVSE, other than pursuant to its utilization of the EVSE in accordance with Section 1(c). The Parties acknowledge and agree that, pursuant to the tariff on file with the Florida Public Service Commission, OUC does not guarantee continuity of service to the EVSE and is not responsible or liable for interruption, failure, or defect in the supply or character of electricity furnished to facilities or Equipment.

5. TITLE TO EQUIPMENT. At all times during the Term of this Agreement, title to the Equipment and Infrastructure shall remain with OUC and neither the Equipment nor the Infrastructure shall be considered fixtures or in any way the property of Host. Upon the expiration of this Agreement, including any extensions thereof, and at OUC's and Host's mutual decision, title to the Equipment may transfer to Host at reasonable book or market value and with no representations

or warranties or recourse against OUC. Upon transfer of title to the Equipment to Host, (i) Host releases OUC from any liabilities, including, but not limited to, any claim or action for bodily injury or property damage resulting from or related to the Equipment or the use of the Equipment whether arising prior to or after such transfer and (ii) Host will be responsible for electrical consumption costs, network access fees, maintenance costs, and any repair costs thereafter. Risk of loss to the Equipment and Infrastructure shall remain solely with OUC until such time that title to the Equipment and Infrastructure shifts to the Host.

6. **GOVERNMENTAL APPROVALS.** It is understood and agreed that OUC's ability to install the Equipment and Infrastructure is contingent upon its obtaining after the execution date of this Agreement all of the applicable permits and other approvals that may be required by any federal, state or local authorities (collectively the "Governmental Approvals"). Host shall cooperate with OUC in its effort to obtain such Governmental Approvals. In the event that any of such applications for such Governmental Approvals should be finally rejected or OUC determines that such Governmental Approvals may not be obtained in a timely manner or any Governmental Approval issued to OUC is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, OUC shall have the right to terminate this Agreement immediately upon written notice to Host.

7. **ACCESSIBILITY REQUIREMENTS.** Host understands and accepts that electric vehicle charging facilities that are publicly accessible shall comply with the Americans with Disabilities Act (ADA) and any applicable State of Florida building standards. Host understands and accepts that such standards may impact parking layouts and potentially change the number of non-accessible parking spaces available. Host understands and accepts that changes to initial design representations may occur during the design, construction and operational phases of the Program and may be dictated by design constraints, by law or regulation or by local jurisdictional authorities. Host shall be responsible for any construction upgrades to the Property required in order for the Property to be ADA compliant and hereby agrees that OUC will not be responsible for any construction upgrades required for the EVSE or the Property to be ADA compliant, including but not limited to, the construction of ADA-compliant ramps or the inclusion of certain signage or paint markings. In the event construction upgrades to the Property are required in order for the Property to be ADA compliant, Host shall have the right, in its sole discretion, to terminate this Agreement immediately upon written notice to OUC.

8. **DUTY TO NOTIFY.** Host shall have the duty to notify OUC promptly regarding any unsafe, inoperable or damaged equipment that Host becomes aware of. In addition, Host shall promptly report all claims and/or incidents to OUC or its designated representative(s), and promptly thereafter confirm in writing, the occurrence of any injury, loss, or damage incurred.

9. **COMPENSATION.** Under no conditions shall Host or EV drivers receive compensation of any kind, either by cash, in-

kind services, or otherwise, for any duties or requirements provided for in these terms and conditions or for participation in any way as part of the Program, including but not limited to: use of data for lawful purposes, loss of business activity during construction or maintenance activities, or any other inconvenience or loss, without limitation, related to participation in the Program.

10. **CHANGES.** OUC may initiate changes to the Program as circumstances dictate.

11. **HOST REPRESENTATIONS.** Host represents and warrants that: (a) it is the owner or authorized manager of the proposed Property and has the power, authority and capacity to bind itself to undertake the Program terms and conditions; and to perform each and every obligation required of Host under the Program, (b) the Property is subject to no conditions, restrictions or covenants incompatible with the installation, maintenance, repair, replacement or use of the Equipment or Infrastructure; and (c) the Property is free of environmental contamination that violates any laws.

12. **DAMAGE TO PROPERTY.** OUC shall be responsible for repairing any damage to the Property directly caused by the installation, maintenance and/or repair of the Equipment/Infrastructure.

13. **INDEMNITY.** Each party agrees to defend, indemnify, and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorneys' fees) arising from the indemnifying party's own negligent acts or omissions, or those negligent acts or omissions of the indemnifying party's officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Each party's indemnification is expressly limited to the amounts set forth in Section 768.28(5), Florida Statutes as amended by the Florida State Legislature. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability of any kind for the acts, omissions, and/or negligence of the other party, its officers, officials, employees, agents, or contractors.

14. **SALE OF PROPERTY.** Host shall notify OUC at least thirty (30) days prior to any sale of the Property. Within thirty (30) days following receipt of such notice, OUC, in its sole discretion, may elect to permit the Host to transfer this agreement and all obligations of the Host to the new owner or to remove the Equipment at Host's sole expense. If OUC elects to remove the Equipment, this Agreement shall be deemed to be automatically terminated without any further action required by either Party as of the earlier of (a) the date the sale of the Property is consummated or (b) the date the Equipment is removed.

15. **TAXES/TAX CREDITS.** To the extent the installation or ownership of the Equipment generates any tax credits, such credits shall be the sole property of and shall inure to the benefit of OUC for the period for which it owns the Equipment

provided under this Agreement. If, for any reason, any such credits are not received by OUC, but are instead received by Host, Host agrees to promptly pay the dollar amount of any such credits to OUC.

16. **LIMITATION OF LIABILITY.** In no event shall either Party be liable for consequential, special, incidental, exemplary, punitive, or any indirect damages of any nature arising at any time, from any cause whatsoever. Except for its fraud, willful misconduct or intentional misrepresentation, each Party's aggregate liability relating to this Agreement shall not exceed Two Hundred Thousand dollars (\$200,000) per person and Three Hundred Thousand dollars (\$300,000) per incident.

17. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to its conflict of laws principles. Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida.

18. **ENTIRE AGREEMENT; AMENDMENTS; ORDER OF PRECEDENCE.** This Agreement represents the entire agreement between OUC and Host with respect to the subject matter hereof and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral, with respect to the subject matter hereof. The Parties may modify and replace any Statement of Work upon mutual agreement in writing. This Agreement may be amended or modified only by a written instrument duly executed by an authorized representative of each Party. The Manager of the Host's Real Estate Management Division is hereby authorized, on behalf of the Host, to furnish any notice required or allowed hereunder, or to issue written approval of any amendment or modification to this Agreement or any Statement of Work without the need to seek further approval of the Host's Board of County Commissioners so long as: (1) the amendment or modification or change in a Statement of Work are determined by the Manager of the Host's Real Estate Management Division to be in line with the purpose and intent of this Agreement; and (2) the Host's Risk Management Division reviews and approves the amendment or modification or revised Statement of Work without requiring a change in the insurance, liability, or indemnification provisions of this Agreement. The "Agreement" shall mean and shall consist of the following documents, listed in their order of priority in the event of a conflict: (a) any amendment signed by both Parties; (b) any Statement of Work; (c) the terms of this document; (d) any exhibit(s), schedule(s), or descriptions and specifications incorporated into the Agreement.

19. **SUCCESSORS AND ASSIGNS.** Neither Party may assign, convey or transfer all or any part of this Agreement without the prior written consent of the other. This Agreement shall be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns.

20. **NO WAIVER.** No course of dealing or failure of OUC or Host to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.

21. **SURVIVAL.** All sections of this Agreement providing for indemnification or limitation of or protection against liability of either Party shall survive the termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

22. **SEVERABILITY.** If any provision of this Agreement or the application of this Agreement to any person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement and the application of that provision to persons or circumstances other than those as to which it is specifically held invalid or unenforceable shall not be affected, and every remaining provision of this Agreement shall be valid and binding to the fullest extent permitted by laws.

23. **NOTICES.** All notices hereunder must be in writing and shall be deemed validly given if sent by U.S. mail, commercial courier, personal delivery or email, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

Host: Orange County, Florida
Attn: Manager, Real Estate Man. Division
400 E. South Street, 5th Floor
Orlando, Florida 32801

With copy to: Orange County, Florida
Attn: County Attorney's Office
201 S. Rosalind Avenue, 3rd Floor
Orlando, Florida 32801-1393

OUC: Orlando Utilities Commission
Attention: Peter Westlake
100 West Anderson Street
Orlando, FL 32801

With copy to: OUC Legal Department
100 West Anderson Street
Orlando, FL 32801

Notice shall be effective upon receipt or such later date specified in the notice.

24. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery of manually signed documents in person.

25. NO JOINT VENTURE. The Parties intend by this Agreement to establish the basis upon which they will cooperate together, but on an independent basis. This Agreement does not constitute or create a joint venture, partnership, or any other similar arrangement between the Parties. Each of the Parties is independent and none of them are an agent of, nor has the authority to bind the other for any purpose. No Party shall bind any other, or represent that it has the authority to do so.

26. PHOTOS/VIDEO OF EQUIPMENT. Host agrees, upon reasonable notice to allow OUC to enter the Property to take photographs or video of the Equipment. OUC shall own all copyright and other intellectual property rights of such photographs or videos. To the extent the Property appears in any such photographs or videos, Host consents to OUC's use and disclosure of such photographs or videos of the Property.

27. ATTORNEY'S FEES; WAIVER OF JURY TRIAL. The parties expressly agree that each party shall bear the cost of its own attorney and legal fees in connection with any dispute arising out of this Agreement, or the breach, enforcement, or interpretation of this Agreement, regardless of whether such dispute results in mediation, arbitration, litigation, all or none of the above, and regardless of whether such attorney and legal fees are incurred at trial, retrial, on appeal, at hearings or rehearings, or in administrative, bankruptcy, or reorganization proceedings. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION HEREWITH.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

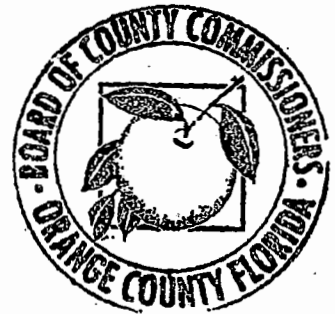
ORLANDO UTILITIES COMMISSION

By: Clint Bullock
Print Name: Clint Bullock
Title: General Manager and CEO

Approved as to form and legality
OUC Legal Department
Date: 11/8/22 By: [Signature]

HOST:
ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Jerry L. Demings
Print Name: Jerry L. Demings
Title: Orange County Mayor



ATTEST: Phil Diamond, CPA, County Comptroller,
as Clerk of the Board of County Commissioners

By: [Signature]
Deputy Clerk **Katie Smith**
Printed Name

**EXHIBIT A
STATEMENT OF WORK
Site Specific Electric Vehicle Infrastructure**

This **STATEMENT OF WORK** ("SOW" or "Statement of Work") effective _____ is issued pursuant to the ORLANDO UTILITIES COMMISSION Electric Vehicle Site Host Agreement for installation of DC Fast charger(s) dated _____ ("Agreement") between ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida ("Host") and ORLANDO UTILITIES COMMISSION ("OUC"). At the following site location listed below. Each site location shall be issued a separate SOW.

Site Location: 9899 International Dr. Orlando, FL 32819

	Deliverable	Description
1	Equipment	<u>Power Electronics NB240 dual-dispenser charging units (3)</u>
2	Infrastructure to be installed/upgraded (Site map attached)	<u>Transformer (size TBD) and switchgear</u> <u>Hardscape improvements, as required</u> <u>Landscape improvements, as required</u> <u>Site Lighting improvements</u>
3	Permits/Notice of Commencement	<u>Orange County</u> <u>Water management district (TBD)</u>
4	Site host responsibilities	<u>Provide OUC and contractors site access for design, installation, and maintenance/replacement of equipment and infrastructure.</u> <u>Maintain 24/7 access for at least 5 years for public charging.</u> <u>Grant OUC and contractors rights to data collection and disclosure.</u> <u>Allow OUC ability to review advertising and marketing materials related to the equipment and infrastructure.</u> <u>Maintain parking area in a safe condition and alert OUC to any unsafe, inoperable, or damaged equipment.</u>
5	Anticipated Value of Equipment and Infrastructure* *For informational purposes only	<u>\$356,000</u>
6	Exceptions and Miscellaneous	