

RESOLUTION NO. 07-23
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE 9th
DAY OF January, 2023.

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN ELECTRIC VEHICLE CHARGER
PROJECT PARTNER AGREEMENT WITH THE MIAMI
VALLEY REGIONAL PLANNING COMMISSION FOR
ELECTRIC VEHICLE CHARGERS TO BE LOCATED AT
BENHAM'S GROVE AND STUBBS PARK.**

WHEREAS, the Miami Valley Regional Planning Commission (MVRPC) has approved Carbon Reduction (CR) program funds and is contributing a portion of local funds for a project involving the planning, distribution, and installation of Level 2 Electric Vehicle Chargers at multiple locations throughout the Metropolitan Planning Organizations (MPO) Area (hereinafter the "Project"), which has received Federal Highway Administration ("FHWA") approval and authorization. The Project is identified as PID 117700, and named the MVRPC EV Charger Project; and

WHEREAS, the City of Centerville desires to enter into a contract with MVRPC to administer the design, qualification of bidders, competitive bid letting, use of the improvement on local agency property, construction inspection, research, and acceptance of any projects or transportation facilities, provided the administration of such projects or transportation facilities is performed in accordance with all applicable local, state and federal laws and regulations with oversight by ODOT, specifically including Section 5501.03 of the Ohio Revised Code as to the Ohio Department of Transportation; and

WHEREAS, MVRPC requires the City of Centerville to enter into a Project Partner Agreement to set forth requirements associated with said Project; and

WHEREAS, the City desires to locate a charging station at Benham's Grove and Stubb's Park.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE
HEREBY RESOLVES:

SECTION 1: That the City Manager be and is hereby authorized to enter into a the Electric Vehicle Charger Project Partner Agreement between the City of Centerville and the Miami Valley Regional Planning Commission. A copy of said Agreement is attached hereto and marked as Exhibit "A".

SECTION 2: This Resolution becomes effective at the earliest date allowed by law.

PASSED THIS 9th day of January, 2023.



Mayor of the City of Centerville, Ohio

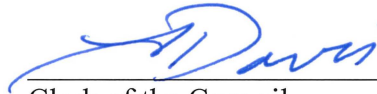
ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 07-23, passed by the Council of the City of Centerville, Ohio on the 9th day of January, 2023.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

Exhibit "A"

Electric Vehicle Charger Project Partner Agreement

THIS AGREEMENT is made effective and entered into as of the date last signed by the parties by and between the **[NAME OF COMMUNITY/ORGANIZATION]**, hereinafter referred to as the **Partner**, *[STREET ADDRESS, CITY, STATE, ZIP]*; and the Miami Valley Regional Planning Commission, herein referred to as **MVRPC**, *10 N. Ludlow Street, Suite 700, Dayton, Ohio, 45402*.

1. PURPOSE

- 1.1 Chapter 23, Section 175 of the United States Code provides states with Federal funds to conduct the Carbon Reduction (CR) program and the funds apportioned to Ohio under 23 U.S.C. 175 are suballocated by the Ohio Department of Transportation ("ODOT") to Metropolitan Planning Organizations (MPOs) in the State.
- 1.2 MVRPC has approved CR program funds and is contributing a portion of local funds for a project involving the planning, distribution, and installation of Level 2 Electric Vehicle Chargers at multiple locations throughout the MPO Area (hereinafter the "Project"), which has received Federal Highway Administration ("FHWA") approval and authorization. The Project is identified as PID 117700, and named the MVRPC EV Charger Project.
- 1.3 The Partner is authorized to enter into a contract with MVRPC to administer the design, qualification of bidders, competitive bid letting, use of the improvement on local agency property, construction inspection, research, and acceptance of any projects or transportation facilities, provided the administration of such projects or transportation facilities is performed in accordance with all applicable local, state and federal laws and regulations with oversight by ODOT, specifically including Section 5501.03 of the Ohio Revised Code as to the Ohio Department of Transportation.
- 1.4 [Partner Name] owns the properties known as and located at **See Attachment A** and agrees to allow use of a portion of that property as a site for installation, operation and maintenance of electric vehicle charging stations under the Project.
- 1.5 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the Project and to establish the responsibilities for MVRPC and the Partner in administration, construction, operation and maintenance of the Project.

2. FUNDING

- 2.1 MVRPC shall use the above-mentioned federal funding and the local share that MVRPC is providing to pay for all eligible items at a rate of 100% participation to implement the Project as scoped, including all expenses associated with preliminary engineering, design, planning, construction and construction administration activities.
- 2.2 Unless otherwise agreed to in writing between the parties, Partner shall not be responsible for any costs of the development and construction of the Project, including costs related to preliminary engineering, environmental engineering, design and plans, construction contractor costs for purchase and installation of EV charging station equipment and software, site preparation, marking of parking spaces, extension of electric supply lines and connection to the charging stations.

3. NOTICE

3.1 Notice under this Agreement shall be directed as follows:

MVRPC and the Partner shall designate a point of contact for all communications associated with performance of the Project. The point of contact shall be responsive to all communications in the performance of the Project. As of the Effective Date of this Agreement, the parties designate the following contacts:

MVRPC:

Paul Arnold
MVRPC
10 N. Ludlow St. (700)
Dayton, OH 45419
parnold@mvrpc.org
(937) 223-6323

PARTNER:

[CONTACT NAME]
[COMMUNITY/ORGANIZATION NAME]
[STREET ADDRESS]
[CITY, STATE, ZIP]
[EMAIL]
[PHONE NUMBER]

4. TERM

The Term of this Agreement shall begin on the above-stated effective date and, unless otherwise terminated as provided in this Agreement, shall last for a period of five (5) years, which period shall coincide with the duration of the Project funding period with FHWA.

5. EXPIRATION AND TERMINATION PROVISIONS

5.1 This Agreement and obligation of the parties herein may be terminated by either party with thirty (30) days advance written notice to the other party. In the event of termination during construction, MVRPC shall order a cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs at the site, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as MVRPC and/or ODOT may require.

6. OBLIGATIONS/RESPONSIBILITIES OF MVRPC

6.1 MVRPC will service as the Local Public Agency ("LPA") for the project, assuming all responsibilities to FHWA and ODOT in adherence to all requirements contained with the Locally Administered Transportation Projects Manual of Procedures. MVRPC will engage the services of any consultants and contractors necessary to perform the Project provided under this Agreement.

6.2 MVRPC will, in coordination with the Partner, assess potential sites to determine level of scope, costs, and schedule for charger installation at the identified site.

6.3 MVRPC will be responsible for:

- a. Development of detailed project scope and location identification as well as an engineer's estimate identifying all costs necessary for implementation of the Project.
- b. Development of the Plans, Specifications and Estimate (PS&E) package in accordance with ODOT Project Development Process (PDP) requirements, including:

- Environmental (NEPA) Documentation
- Right of Way Certification to ODOT
- Design Plans (Consultant, proposed Design-Build)
- Construction Specifications (Design-Build Scope)
- Bidding Documents

- c. Procurement and contract award for charging station equipment, electrical upgrades, and all labor necessary for proper installation
 - d. Directly or through a consultant perform construction inspection
 - e. Directly or through its Project contractor, obtain any applicable zoning and building permits, certificate of occupancy or other license, permit and approval. To the extent necessary to obtain such permit, license or approval, Partner will cooperate with MVRPC or its contractor in obtaining such permit, license or approval as may be necessary.
- 6.4 MVRPC shall provide copies of its plans, drawings, specifications for the construction and installation of the EV charging stations at Partner's site for review and acceptance,
- 6.5 MVRPC shall require of its construction contractor that it indemnify and hold harmless the State of Ohio and ODOT and that such contractor maintain those levels of liability, motor vehicle and Worker's Compensation insurance coverage that are provided in Section 107.12, of ODOT's Construction & Materials Specifications (Jan. 2019, as amended).
- 6.6 Typical construction items for which MVRPC is responsible depending on site conditions, include:
- New charging station units and associated equipment.
 - Conduit, signage at the parking spot, bollards, cable/wiring and electrical service box disconnects.
 - Concrete or asphalt addition or replacement.
 - Paint striping and stenciling of the charging station parking spaces.
 - Charging station installation labor (electrical, trenching, etc.)
 - Annual network fees for up to 5 years included in the original purchase price
 - Warranty costs for the charging equipment (at least 2 years warranty required) included in the original purchase price
 - Construction inspection
- 6.7 MVRPC shall require that its contractor or vendor cooperate with the Partner in setting up multiple pay options which users may employ to pay for any fee that may be charged for use of the EV charging stations under Section 12.
- 6.8 MVRPC or its contractor or vendor will be responsible for registering the location, hours of availability and other details about the EV charging stations in any mapping or other relevant EV charging station database.
- 6.9 MVRPC will ensure compliance with all federal requirements associated with project implementation, including environmental review, coordination of right of way or rights to

locate on specific properties, design, contracting and reporting.

- 6.10 MVRPC will include provisions in its Project or construction contract requiring that routine troubleshooting of the EV charging equipment and network upgrades are included under that contract for the five (5) year useful life of the charging units.

7. OBLIGATIONS/RESPONSIBILITIES OF PARTNER

- 7.1 As provided in Section 8, Partner will provide access to a specific location on its property for the construction, maintenance and use of the EV charging stations for the duration of the project, which coincides with the life expectancy of the charging stations of five (5) years.

- 7.2 Partner will coordinate with MVRPC in:

- a. The assessment of potential sites to determine level of scope, costs, and schedule for charger installation at each identified site:
- b. The development of detailed project scope and location identification.
- c. The development of an engineer's estimate identifying all costs necessary for implementation.
- d. The certification of availability of necessary property to comply with FHWA regulations for federally funded projects.

- 7.3 Partner will within this Agreement grant MVRPC a right of entry onto its property to perform inspections or surveys in the planning of construction and for the full construction/installation of the EV charging station equipment at Partner's site. In the event that any additional or supplemental instrument or conveyance is needed to allow such construction as well as troubleshooting and installation of network updates, during the term of this Agreement, Partner will cooperate to provide such instrument.

- 7.4 Partner will allow for the installation of any additional electrical service facilities across its property which may be necessary to provide a power source to the EV charging stations.

- 7.5 Partner will maintain public access to the EV charging stations site for no less than twelve (12) hours per day for the useful life of the equipment of five (5) years.

8. RIGHT OF ENTRY AND LICENSE

- 8.1 The Partner hereby grants a temporary license and permission for a Right of Entry to MVRPC, its consultants, contractors and subcontractors, and utility providers ("Agents") for entry onto the work areas located at (**See Attachment A**), for the purpose of making surveys and tests and constructing the Project, including installation of electric vehicle supply equipment ("EVSE"), necessary site and utilities improvements to operate the EVSE.

- 8.2 This Temporary Right of Entry and License shall commence on the effective date of this Agreement and shall continue until the date of final construction completion and mutual acceptance (the "Term"), unless extended in writing pursuant to the mutual agreement of the parties hereto, at which time MVRPC and its Agents shall vacate the property.
- 8.3 Use of the Work Area and the installation of the Project shall be in compliance with the requirements of all applicable Federal, State and local laws, ordinances, rules and regulations.
- 8.4 MVRPC and its Agents shall coordinate all Improvements onsite with the designated Partner contact for the Work Area by telephone or by email.
- 8.5 MVRPC, and its Agents shall notify the Partner contact at least 72 hours prior to entry onto the Work Area, and immediately if any unusual conditions are encountered. MVRPC, or its Agents, shall provide the following information to the Partner contact at the time of notification:
- (i) Access routes to and from the Work Area;
 - (ii) Type, size and number of vehicles and crews to be used to perform the work; and
 - (iii) Copies of all plans, drawings, permits, etc., including, but not limited to permits related to sediment and erosion control and storm-water management.
- 8.6 Any and all proposed trimming of trees, cutting of timber and/or clearing of the Work Area by MVRPC and its Agents, will be reviewed, approved and inspected by the Partner before any work is begun, to ensure that all such proposed work is permitted and within the Work Area.
- 8.7 MVRPC and its Agents shall take any and all precautionary measures to protect any sensitive and threatened or endangered species and habitats.
- 8.8 In the event that historical, cultural or archeological resources are uncovered during the course of construction, work shall be halted immediately and MVRPC shall contact State and Federal oversight agencies for guidance.

9. OWNERSHIP OF PROJECT EQUIPMENT

- 9.1 Upon completion of installation and construction EV charging station at the Partner's site and confirmation that the equipment is fully operational, the selected Vendor will be considered to be the owner of the charging stations and thereafter responsible for providing maintenance as covered in Section 10, including maintenance of an electric power supply.
- 9.2 The selected Vendor shall be required to maintain the charging stations at its site for a period of five (5) years. Upon the expiration of that five year period, coinciding with the expiration of this Agreement, Partner may choose to retain the equipment in place and to operate it; or choose to have the equipment removed and discontinue making the charging stations available to the public.

9.3 In the event that Partner determines to retain and operate the equipment following the expiration of the five year period, the Partner will be responsible for maintaining an agreement with a vendor for management of, receipt and disbursement of fees charges.

10. PROJECT MAINTENANCE

10.1 23 United States Code, Section 116 requires a formal agreement to provide for the maintenance of the PROJECT for the useful life of five (5) years, beginning from the date the facility is open to the public. The selected Vendor shall be responsible for the maintenance of the PROJECT under this agreement. This includes the maintenance of electrical vehicle supply equipment and associated site improvements to allow for continued operation and functionality. In turn, the Partner shall also maintain public access to the site for 12 hours or more per day for the full useful life.

10.2 Maintenance under this Section shall include maintaining an electric power supply to the charging equipment and paying the costs of such electric service.

10.3 The Project will be included for review under MVRPC's annual Project Maintenance Monitoring Policy. If selected for maintenance review, MVRPC will coordinate with the Partner and selected Vendor to perform a site maintenance review in accordance with the policy, which may result in corrective plans and action to ensure the facility continues to be functional and accessible for public utilization.

10.4 Following the term of this Agreement, in the event that Partner chooses to retain the electric vehicle charging equipment in place and operate and manage that equipment, Partner will be required to enter into a new, separate agreement for a party to manage collection of fees and disbursement of revenue.

11. INDEMNIFICATION

11.1 MVRPC, to the extent allowable under law in the State of Ohio, and its Project contractor shall indemnify and save harmless the Partner against and from all expenses, liabilities, obligations, damages, penalties, claims, accidents, costs and expenses, including reasonable attorneys' fees paid, suffered or incurred for death or damage or injury to persons or property in whole arising out of the carelessness, negligence, or improper conduct of MVRPC or its contractor or subcontractors, its agents, servants, employees or licensees resulting from its performance of its obligations under this Agreement or its use and occupancy of the Premises. Partner's liability shall be determined in accordance with Ohio Revised Code Chapter 2744. Notwithstanding anything to the contrary in this Agreement, no party shall be required to indemnify another party from or against such other party's intentional acts or omissions or negligence.

11.2 This provision may be met by maintaining liability insurance policies as outlined in Section 107.12 of the ODOT CMS and providing to Partner copies of certificates of insurance coverage.

13. GENERAL

13.1 Neither this contract, nor any rights, duties or obligation described herein shall be assigned by either party hereto without the prior express written consent of the other party. Any

change to the provisions of this agreement must be made in a written amendment executed by both parties.

- 13.2 This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.
- 13.3 Performance by the Partner as a political subdivision of the State of Ohio and in the event that the Agreement requires the payment of money, the Agreement is subject to Section 5705.41 requiring the certification of availability of funds by the Fiscal Officer of the political subdivision.
- 13.4 Any person executing this Agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 13.5 MVRPC agrees for itself and its project contractors that it is in compliance with the requirements of R.C. § 125.111.
- 13.6 MVRPC certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. MVRPC understands that failure to comply with Ohio's ethics and conflict of interest laws is grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
- 13.7 MVRPC affirms that it is compliant with R.C. § 3517.13.
- 13.8 MVRPC affirms that it has read and understands Executive Order 2019-12D issued by Ohio Governor Mike DeWine. MVRPC has signed and completed the Standard Affirmation and Disclosure Form and shall abide by those requirements in the performance of this Agreement and perform no services required under this Agreement outside of the United States. The Executive Order can be accessed at the following website: <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/2019-12d>.
- 13.9 Pursuant to R.C. § 9.76 (B), MVRPC warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.
- 13.10 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. Signatures delivered electronically (by facsimile or electronic mail) shall be deemed originals for all intents and purposes. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.
- 13.11 While this Agreement is captioned as Partner Agreement, neither that title nor any provision of this Agreement creates any agency, partnership, employer/employee, joint venture or other relationship between the Partner and MVRPC.
- 13.12 If any term, covenant or condition of this Agreement or the application thereof to any part, person or circumstances shall, to any extent, be invalid or unenforceable, the remainder

of this Agreement or the application of such term, covenant or condition shall be valid and shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

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| MIAMI VALLEY REGIONAL PLANNING COMMISSION | MIAMI VALLEY REGIONAL PLANNING COMMISSION |
| By: | By: |
| Legal Counsel | Executive Director |
| Date: | Date: |
| PARTNER: [COMMUNITY/ORGANIZATION NAME] | PARTNER: [COMMUNITY/ORGANIZATION NAME] |
| By: | By: |
| Legal Counsel | [AUTHORIZED REPRESENTATIVE] |
| Date: | Date: |

Attachment A: Site Locations

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| City of Bellbrook | Winter Library 57 West Franklin Street Bellbrook, Oh 45305 |
| City of Brookville | City of Brookville Public Parking Lot - 700 Arlington Road |
| City of Centerville | Benham's Grove 166 North Main Street Centerville, OH 45459 |
| | Stubbs Park 255 W Spring Valley Pike, Centerville, OH 45458 |
| Centerville-Washington Park District | Forest Field Park 2100 East Centerville-Station Road Centerville, OH 45458 |
| | Oak Grove Park 1790 East Social Row Road Centerville, OH 45458 |
| City of Dayton | Greater Dayton Recreation Center 2021 West Third Street Dayton, OH 45417 |
| | Lohrey Recreation Center 2366 Glenarm Avenue Dayton, OH 45420 |
| | Northwest Recreation Center 1600 Princeton Drive Dayton, OH 45406 |
| Dayton Metro Library | Dayton Metro Library - Miami Township Branch 2718 Lyons Road Miamisburg, OH 45342 |
| | Dayton Metro Library - Southeast Branch 21 Watervliet Avenue Dayton, OH 45420 |
| | Dayton Metro Library - Trotwood Branch 855 East Main Street Trotwood, OH 45426 |
| | Dayton Metro Library - Vandalia Branch 330 S Dixie Drive Vandalia, OH 45377 |
| Five Rivers Metro Park | Adventure Central / Wesleyan Metro Park 2222 North James H McGee Boulevard Dayton, OH 45417 |
| | Carriage Hill Metro Park 7800 Shull Road Dayton, OH 45424 |
| | Cox Arboretum Metro Park 6733 North Springboro Pike Dayton, OH 45449 |
| | Eastwood Metro Park 4347 Springfield Street Dayton, OH 45431 |
| | Englewood Metro Park 100 National Road Vandalia, OH 45377 |
| | Possum Creek Metro Park 4790 Frytown Road Dayton, OH 45417 |
| | Sugarcreek Metro Park 4178 Conference Road Bellbrook, OH 45305 |
| | Twin Valley Metro Park - Twin Valley Welcome Center 6910 Boomershine Road Germantown, OH 45327 |
| Wegerzyn Gardens Metro Park 1301 E Siebenthaler Avenue Dayton, OH 45414 | |
| City of Kettering | City of Kettering Government Center 3600 Shroyer Road Dayton, OH 45429 |
| | Governor's Place - City of Kettering 1400 W Dorothy Ln, Dayton, OH 45409 |
| Miami County Park District | Lost Creek Reserve 2645 East State Route 41 Troy, OH 45373 |
| | Twin Arch Reserve 3147 North County Road 25A Troy, OH 45373 |