

SITE HOST AGREEMENT

This Site Host Agreement (this “Agreement”), made upon the date of its full execution (“Effective Date”), is entered into by and between the County of Oneida (“County”), a New York municipal corporation with offices at 800 Park Avenue, Utica, New York 13501, and the Upper Mohawk Valley Memorial Auditorium Authority (“Site Host”), a New York public benefit corporation with offices at 400 Oriskany Street West, Utica, New York, 13502. The County and the Site Host are each a “Party,” and together, the “Parties”.

RECITALS

WHEREAS, the County has applied to the United States Department of Transportation, Federal Highway Administration, for a Charging and Fueling Infrastructure grant to install electric vehicle charging stations throughout Oneida County; and

WHEREAS, the Site Host is the owner of the Adirondack Bank Center at the Utica Memorial Auditorium (the “Auditorium”), an auditorium for live events including concerts, amateur and professional sports, and other programming of local, state, and national interest; and

WHEREAS, the Site Host owns that certain parking lot located north of the Auditorium across Whitesboro Street in the City of Utica, more particularly depicted in the site plan annexed as Exhibit A hereto (the “Property”); and

WHEREAS, the Parties wish to enter into this Agreement for the County and/or its contractor to install electric vehicle charging stations and infrastructure on the Property, such charging stations to be for public use and to promote the development of electric vehicle charging infrastructure and to promote public attendance at Auditorium events.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration the sufficiency of which the Parties expressly acknowledge, the Parties agree as follows:

1. The Property. Site Host grants to the County and its contractor(s), as applicable, the rights to: (a) install, inspect, operate, maintain, repair, replace, and upgrade ten (10) dual port electric vehicle charging stations and associated physical security features (each, a “Charging Station” and collectively, the “Charging Stations”), mounted on concrete piers and servicing twenty parking spaces, at the Property as more particularly depicted in the site plan annexed as Exhibit A, and in such final location and design as to be determined by the Site Host in its reasonable discretion; (b) install, operate, maintain, repair, and replace utility poles and underground conduit and wire (collectively, the “Infrastructure Improvements”) to provide electricity to the Charging Stations, such right to include the right to trench and dig upon the Property, as necessary; (c) install, maintain and repair bollards to protect each Charging Station from collision; and (d) install signage and other markings identifying the Charging Stations and reserving parking adjacent to the Charging Stations for electric vehicles.

2. Construction, Installation, Operations, Maintenance, Repairs, Replacements, and Upgrades. The County or its contractor(s), as applicable, shall construct and install the Charging Stations and all other improvements and signage within six months of the Effective Date of this Agreement and shall be responsible for all operation, maintenance, repair, replacement, or upgrades to the Charging Stations. The determination to repair, replace, or upgrade a Charging Station shall be made by the County in its sole discretion.
3. Public Use and Access. The Site Host shall provide to the public unrestricted and unobstructed access to the Charging Stations as necessary for charging of electric vehicles by any electric vehicle owner or operator. The Site Host shall ensure such access during all hours of its regular operations and Auditorium events, and for all such additional times as the Site Host shall determine, in its reasonable discretion. The County understands and agrees that the Site Host may charge a fee to enter the parking area for Adirondack Bank Center or Utica University Nexus Center events.
4. Ownership of Charging Stations. The Charging Stations shall remain at all times the personal property of County or its contractor, as applicable. The Infrastructure Improvements shall remain at all times the personal property of the County, utility company, or contractor, as applicable. Upon termination of this Agreement, the County or its contractor shall remove the Charging Stations and return the Property to its condition as existed immediately before the Effective Date, provided, however, that all Infrastructure Improvements shall remain.
5. Term of Agreement. The term of this Agreement shall begin upon the Effective Date and continue for five (5) years ("Term"). The Parties may renew this Agreement for one additional five (5) year term upon the same terms and conditions.
6. Termination. This Agreement shall terminate upon the conclusion of the Term or renewal term, as applicable. Either party may terminate this Agreement effective thirty (30) days after giving written notice of intent to terminate, upon the occurrence of a material breach, provided that such breach continues for thirty days (30) after receipt of written notice of such breach.
7. Destruction. Either Party may terminate this Agreement upon written notice to the other Party upon destruction of the Property or Charging Stations or other casualty rendering the Property or Charging Stations unfit for use for the parking and charging of electric vehicles.
8. Security. County and/or its contractor, as applicable, shall employ physical and cybersecurity strategies to ensure that Charging Station operations protect consumer data and protect against the risk of harm to, or disruption of, charging infrastructure and the electrical grid. The Site Host shall employ such security measures as reasonably customary to protect the Charging Stations from tampering, theft, damage, and destruction. Neither Party shall be responsible for securing electric vehicles or their contents against tampering, theft, damage and destruction.
9. Snow and Ice Removal, Cleaning. The Site Host shall keep parking spaces served by the Charging Stations free and clear of snow and ice. The Site Host shall not allow snow and

ice to be mounded on or around the Charging Stations. The Site Host shall keep the Property clean and shall maintain the space surrounding the Charging Stations in a safe, neat and orderly condition.

10. Notice of Problems. In the event that the Site Host becomes aware of any Charging Station failure, damage, or other problem requiring repair, replacement, adjustment or maintenance, the Site Host shall notify the County, or a person designated by the County, within twenty-four (24) hours of first becoming aware of such failure or problem. The Site Host will not permit anyone, other than an authorized representative or designee of the County to perform any service or repair work on the Charging Stations without County's prior written approval. The County or contractor(s) shall at any reasonable time have the right to enter into and upon the Property for the purpose of inspecting, repairing, maintaining, or upgrading the Charging Stations and observing their use.
11. Utilities. The Site Host shall be responsible for and pay all electricity charges, and all other utilities, for the Charging Stations.
12. Payments for Charging Services. The County or its contractor, as applicable, shall reimburse the Site Host for electricity charges, and shall be entitled to receive all net revenue and fees collected by the Charging Stations.
13. Site Host Representations and Warranties. The Site Host represents and warrants that: (a) it is the owner or lessor of the Property and shall continue to own or lease the Property for the Term and any renewal term of this Agreement; and (b) there are no actions, suits, or proceedings pending or threatened that could have a material adverse effect on the Site Host's ability to perform under this Agreement, and there is no action, suit, or proceeding by any governmental authority pending or, to the Site Host's knowledge, threatened which questions the legality, validity, or propriety of the transactions described in this Agreement;.
14. Taxes and Charges. The Site Host shall be responsible for all taxes and charges against the Property.
15. Indemnification. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and such other Party's members, officers, employees, and agents (each, an "Indemnified Party") from and against any and all claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including attorneys', investigators' and consulting fees, court costs and litigation expenses (collectively, "Claims") suffered or incurred by such Indemnified Party, arising from: (a) physical damage to the Indemnified Party's property to the extent caused by the Indemnifying Party or any of its members, officers, employees, and agents; (b) physical injuries or death to or of the Indemnified Party or the public, to the extent caused by the Indemnifying Party or any of its members, officers, employees, and agents; (c) any breach of any covenant, and any failure to be true of any representation or warranty, made by the Indemnifying Party under this Agreement; (d) the presence or release of asbestos containing materials, petroleum, explosives or other substances, materials, or waste which are now or hereafter classified or regulated as hazardous or toxic under any law

("Hazardous Materials") in, under, on or about the Property, which are or were brought or permitted to be brought onto or beneath the Property by the Indemnifying Party or any of its members, officers, employees, or agents; or (e) the violation of any health, safety, or environmental laws by the Indemnifying Party or any of its members, officers, employees, or agents; provided, however, that in no event shall the Indemnifying Party be responsible for defending, indemnifying or holding harmless any Indemnified Party to the extent of any Claim caused by, arising from or contributed to by the negligence or willful misconduct of such Indemnified Party.

16. Insurance Requirements. the County shall maintain a policy of insurance covering loss or destruction of the electric vehicle charging stations. The Authority shall maintain a policy of general commercial liability insurance covering the site in an amount no less than one million dollars per occurrence. The Authority shall name the County of Oneida as an additional insured for such policy.
17. Assignment and Successors and Assigns. The Site Host shall not assign, transfer, convey, or otherwise dispose of this Agreement, or of its right, title, or interest therein, or its power to execute such Agreement, to any other person or corporation without the previous consent in writing of the County. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Whenever a reference is made herein to a Party, such reference shall include the Party's permitted successors and assigns.
18. Notices. All notices required hereunder shall be in writing and shall be deemed properly served if sent by registered or certified mail to the following addresses (or to such other address as either Party may subsequently designate in writing):

If to County:

County of Oneida, Department of Planning
Attention, Commissioner of Planning
321 Main Street
Utica, New York 13501

If to Site Host:

Upper Mohawk Valley Memorial Auditorium Authority
Attn: Shawn Weiman, Chairman
400 Oriskany Street West
Utica, New York 13502.

All notices required hereunder shall be deemed received on the date two (2) days after such notice is deposited in the U.S. mail.

19. Severability. In the event that any provision(s) of this Agreement is (are) determined to be legally invalid, the Parties agree that that particular provision shall be null and void, but that the remainder of this Agreement shall remain in full force and effect.

20. No Third-Party Beneficiary. This Agreement is not intended and shall not be construed so as to grant, provide or confer any benefits, rights, privileges, claims, causes of action or remedies to any person or entity as a third-party beneficiary under any statutes, laws, codes, ordinances or otherwise.
21. No Waiver. No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof.
22. Entire Agreement. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements between the Parties concerning the subject matter hereof. This Agreement may be amended only by an instrument in writing, which expressly refers to the Agreement and specifically states that it is intended to amend it. No Party is relying upon any warranties, representations or inducements not set forth herein.
23. Applicable Law and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any principles of conflicts of laws. In the event of any dispute concerning the interpretation or enforcement of this Agreement, such dispute shall be raised in a court of competent jurisdiction located in Oneida County, New York, and each Party consents to such jurisdiction and waives any claim that venue in Oneida County, New York is inconvenient.
24. Headings; Interpretation. Descriptive headings are for convenience only and will not control or effect the meaning or construction of any provision of this Agreement. Whenever the context of this Agreement requires, words used in the singular will be construed to include the plural and vice versa, and pronouns of whatsoever gender will be deemed to include and designate the masculine, feminine, or neuter gender.
25. Entire Agreement and Amendment. The Agreement constitutes the entire Agreement of the Parties with respect to the matters contained herein. No modification of or amendment to the Agreement shall be effective unless such modification or amendment is in writing and signed by both Parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of the Agreement, are of no force or effect.
26. Authority. Each Party represents to the other that: (a) it has the authority to execute, deliver and perform this Agreement; (a) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary municipal or company action and no such further action is required; and (c) it has duly and validly executed and delivered this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

COUNTY OF ONEIDA

UPPER MOHAWK VALLEY MEMORIAL
AUDITORIUM AUTHORITY

Anthony J. Picente, Jr.
County Executive

Shawn Weiman
Chairman

Date:

Date:

Approved:

Andrew Dean, Esq.
Deputy County Attorney-Administration

Exhibit A

(Site Plan)

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