

City of Dunnellon
Agenda Summary Form

Meeting Date: June 8, 2022

1. Responsible Department: Roads and Streets
2. Presenter: Troy Slattery
3. Recommended Action: Authorize the Mayor to sign Agreement #AGR2022-20 Duke Energy Electric Vehicle Fast Charging Site Host Agreement

Subject: Agreement #AGR2022-20 Duke Energy Electric Vehicle Fast Charging Site Host Agreement

Summary Explanation & Background:

We were notified by Dorothy Pernu in October 2021 that Duke Energy had a new EV charging station project coming out in 2022. Staff followed up in February and on March 18, 2022 Troy Slattery met with a Duke Energy representative and identified two locations within the City to host electric vehicle charging stations:

1. Datesman Park (AKA City Hall overflow lot) 12050 S. Ohio Street
2. Ernie Mills Park 11899 Bostick Street

During the 10-year contract term, Duke Energy shall install, maintain and repair all equipment and infrastructure at their expense. Upon the expiration of the agreement, including any extensions thereof, and at Duke Energy's and the City's mutual decision, title to the equipment may transfer to the City at reasonable book or market value.

Duke Energy shall be responsible for the installation of a system by which to charge for all electrical consumption costs derived from the utilization of the charging stations for charging electric vehicles. During the term, the City will not be billed for the electricity.

Duke Energy will provide electricity to the customer during the 10-year term free of charge. At the end of the term, the City will be billed for the electricity with the option to recover the cost by charging the customer for consumption cost.

In the event of early termination of the agreement by the City, pursuant to this Section 3(c), the City shall pay to Duke Energy on the termination date an amount equal to the termination fee calculated by Duke Energy equal the pro rata portion of the depreciated dollar value of the equipment and infrastructure attributable to the portion of the term not completed.

Procurement Method: Host Site Agreement with Duke Energy

Fiscal Information: No cost to the City during the 10-year term of the Agreement

Attorney Review: Yes



ELECTRIC VEHICLE DC FAST CHARGING SITE HOST AGREEMENT

THIS ELECTRIC VEHICLE SITE HOST AGREEMENT (the “**Agreement**”) is entered into as of this _____ day of _____, 2022 (“**Effective Date**”), between DUKE ENERGY FLORIDA, LLC (“**Duke Energy**”) and City of Dunnellon (“**Host**”). Duke Energy and Host may be referred to individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, Duke Energy has created the electric vehicle program (the “**Program**”), pursuant to which Duke Energy will install, own, operate, maintain and support electric vehicle supply equipment (“**EVSE**”) within the Duke Energy Florida service area 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 Duke Energy install and own the EVSE and associated 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, Duke Energy is willing to enroll 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, Duke Energy has selected a company to provide network access for the Program (the “**Network Provider**”) and the Network Provider may charge nominal transaction fees 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. DUKE ENERGY'S OBLIGATIONS

a. Duke Energy 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. Duke Energy and/or its contractors will coordinate location, placement, and connection of the Equipment with Host. Duke Energy Florida’s contractors will obtain electrical permits only. Should the proposed installation schedule require modification, Duke Energy shall notify the Host within a reasonable amount of time of such changes. At the option of Duke Energy, all Equipment shall be Duke Energy branded. Notwithstanding

the foregoing, at Duke Energy’s option, if permitted and reasonably practical, the electric meter, panel, and a portion of the Equipment shall be Duke Energy and Host co-branded, with such specifications to be mutually agreed upon by the Parties.

b. Duke Energy 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. Pursuant to the tariff filed with the Florida Public Service Commission (Duke Energy Tariff FCF-1) Duke Energy shall establish a fee to drivers of the approved rate tariff FCF-1, or 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, Duke Energy and/or its contractors shall maintain and repair the Equipment and Infrastructure at Duke Energy’s expense. Duke Energy shall repair the Equipment and/or Infrastructure promptly following notification from Host. Duke Energy shall have the right to repair, modify or replace the Equipment and/or Infrastructure at any time during the Term of this Agreement. Duke Energy shall schedule access for installation, maintenance and repairs during a mutually agreeable time. In emergency situations, Host will provide Duke Energy access as soon as reasonably possible and, if directed by Duke Energy, will immediately cease the operations of the EVSE or otherwise prohibit use of the EVSE for such time as directed by Duke Energy.

2. HOST'S OBLIGATIONS.

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

c. Host shall grant to Duke Energy and/or its contractors such access to the Property as may be deemed necessary or desirable by Duke Energy 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 Duke Energy 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, Duke Energy shall repair or replace the Equipment at Host's sole expense.

d. Host acknowledges that Duke Energy 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. Duke Energy shall own all rights to such data and information. Host acknowledges that such data and information will be used and disclosed by Duke Energy 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. Duke Energy will make available to the Host, in its sole discretion, 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, Duke Energy 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. Duke Energy may require the Host to submit such copy and materials for pre-approval. Approval shall be granted, unless Duke Energy 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 Duke Energy's best interest. In the event that Duke Energy 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 Duke Energy or any of its affiliates without the prior written consent of Duke Energy.

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 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. Duke Energy 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, Duke Energy in its sole discretion, may transfer title to the Equipment to Host as set forth in Section 5 below.

b. Notwithstanding anything herein to the contrary, Duke Energy 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 Duke Energy determines that the Property is not technically compatible for the purposes hereunder, Duke Energy shall have the right to terminate this Agreement immediately upon written notice to Host. Unless otherwise agreed to by the Parties, Duke Energy shall remove the Equipment following any such termination and return the area to normal parking, in each case at Duke Energy's sole expense; provided, however, that Duke Energy 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 upon thirty (30) days written notice to Duke Energy, 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 Duke Energy on the Termination Date an amount equal to the Termination Fee (as defined below). Unless otherwise agreed to by the Parties, Duke Energy 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 Duke Energy shall have no obligation to remove any Infrastructure.

d. The "**Termination Fee**" shall be calculated by Duke Energy 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, Duke Energy'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.

4 **ELECTRIC SERVICE COST/INTERRUPTION OF SERVICE.** Duke Energy 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, Duke Energy 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 Duke Energy 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 Duke Energy'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 Duke

Energy. Upon transfer of title to the Equipment to Host, (i) Host releases Duke Energy 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.

6 GOVERNMENTAL APPROVALS. It is understood and agreed that Duke Energy'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 Duke Energy 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 Duke Energy determines that such Governmental Approvals may not be obtained in a timely manner or any Governmental Approval issued to Duke Energy is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, Duke Energy 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 complaint and hereby agrees that Duke Energy 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.

8 DUTY TO NOTIFY. Host shall have the duty to notify Duke Energy promptly regarding any unsafe, inoperable or damaged equipment that applicant becomes aware of. In addition, Host shall promptly report all claims and/or incidents to Duke Energy 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. Duke Energy 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. Duke Energy shall be responsible for repairing any damage to the Property directly caused by the installation, maintenance and/or repair of the Equipment/Infrastructure.

13 INDEMNIFICATION. Subject to the limitations set forth in the Agreement, each Party shall indemnify and hold the other harmless against any claim of liability or loss from bodily injury or property damage resulting from or arising out of the negligence of such Party, its servants or agents, excepting, however, such claims or damages as may be due to or caused by the acts or omissions of the other Party, its servants or agents. Nothing herein shall be deemed a waiver of Host's sovereign immunity beyond that described in Section 768.28.

14 SALE OF PROPERTY. Host shall notify Duke Energy at least thirty (30) days prior to any sale of the Property. Within thirty (30) days following receipt of such notice, Duke Energy, 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 Duke Energy 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 and (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 Duke Energy for the period for which it owns the Equipment provided under this Agreement. If, for any reason, any such credits are not received by Duke Energy, but are instead received by Host, Host agrees to promptly pay the dollar amount of any such credits to Duke Energy.

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 and Fifty Thousand dollars (\$250,000). Nothing herein shall be deemed a waiver of Host's sovereign immunity per Section 768.28, Florida Statutes.

17 GOVERNING LAW. 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 legal action shall be deemed to lie in Marion County, Florida.

18. ENTIRE AGREEMENT; AMENDMENTS; ORDER OF PRECEDENCE. This Agreement represents the entire agreement between Duke Energy 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 "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. Host may not assign, convey or transfer all or any part of this Agreement without Duke Energy's prior written consent. This Agreement shall be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns. Duke Energy may assign this Agreement or any benefit, interest, right or cause of action arising under the Agreement to any person without restriction.

20. NO WAIVER. No course of dealing or failure of Duke Energy 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): 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 Duke Energy to enter the Property to take photographs or video of the Equipment. Duke Energy 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 Duke Energy's use and disclosure of such photographs or videos of the Property.

[SIGNATURE PAGE FOLLOWS]

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

Host: City of Dunnellon

Attn: Troy Slattery
Public Works Manager

Phone: 352-208-9021

Duke Energy: Duke Energy Florida, LLC
Attn: Program Manager - Park &
Plug PO Box 14042
St Petersburg, FL 33733
Phone: 800-700-8744

DUKE ENERGY FLORIDA, LLC

By: _____

Print Name: _____

Title: _____

HOST:

By: _____

Print Name: _____

Title: _____

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 DUKE ENERGY Electric Vehicle Site Host Agreement for installation of DC Fast charger(s) dated _____ (“**Agreement**”) between City of Dunnellon. (“**Host**”) and DUKE ENERGY Florida, LLC (“**Duke Energy**”). At the following site location listed below. Each site location shall be issued a separate SOW.

Site Location: 11899 Bostic St. Dunnellon, FL 34432 & 12050 South Ohio St. Dunnellon, FL 34431

	Deliverable	Description
1	Equipment	TBD
2	Infrastructure to be installed/upgraded (Site map attached)	. <i>This would also be area to describe any “make-ready” work DEF will provide</i>
3	Permits/Notice of Commencement	<ul style="list-style-type: none"> • Duke Energy electrical contractors will obtain required electrical permits • Site host to provide Duke Energy Notice of Commencement
4	Site host responsibilities	
5	Anticipated Value of Equipment and Infrastructure* *For informational purposes only	[\$*]
6	Exceptions and Miscellaneous	<ul style="list-style-type: none"> • Duke will replace landscaping damaged by installation process • Standard Duke signage and pavement markings • Duke may employ 3rd party service to regularly inspect, maintain, and address issues with equipment