

**AGREEMENT BETWEEN THE CITY OF ANN ARBOR AND THE
DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ANN
ARBOR REGARDING RESPONSIBILITIES AND COST ALLOCATION FOR
THE INSTALLATION OF 80 ELECTRIC VEHICLE CHARGING STATIONS
IN PUBLIC PARKING SPACES**

This agreement ("Agreement") is made and entered into this date of December 9, 2021, by and between the City of Ann Arbor, a Michigan municipal corporation with its principal offices at 301 E. Huron Street, Ann Arbor, Michigan 48104 ("City"), and the Downtown Development Authority of the City of Ann Arbor, a public corporation organized and existing pursuant to the authority of Act 197, Public Acts of Michigan, 1975 MCL 125.1651 *et seq.* with its principal offices at 150 South Fifth Avenue, Suite 301, Ann Arbor, Michigan 48104 ("DDA"), for the purposes of installing, operating, and maintaining 80 public electric vehicle charging stations in City owned/DDA managed parking garages and lots. Relevant details and the scope of the Project are set forth in Exhibit A.

Whereas, City and DDA have expressed interest in working cooperatively on installing 80 public electric vehicle charging stations in City owned/DDA managed garages and lots ("Project");

Whereas, City and DDA have agreed that charging as a service is a viable model for these new electric vehicle chargers, whereby a contractor installs, maintains, and operates the electrical vehicle charging stations;

Whereas, City and DDA have agreed that DDA will award a charging as a service contract to ChargePoint, Inc. hereinafter referred to as "Contractor," to install, operate, and maintain these 80 new electric vehicle charging stations;

Whereas, City and DDA recognize that electrical upgrades will be needed to handle the electrical load associated with installing 80 new electric vehicle charging stations;

Whereas, City has been working with Harper Electric, Inc. ("Electrician") to install charging infrastructure at other City sites and the DDA and City have agreed to work with Electrician to do all electrical upgrades needed at DDA locations identified to receive the 80 electric vehicle charging stations;

Whereas, City will be responsible for funding a portion of the total cost of the Project as established in Exhibit B; and

Whereas, City and DDA have reached an understanding with each other regarding their respective responsibilities for the payment of costs, management, and administration needs for the Project, and desire to enter into this Agreement to memorialize that understanding.

Therefore, in consideration of the promises and of the mutual undertakings of the parties and in conformity with applicable law, City and DDA agree:

1. This Agreement shall become effective on the date of the last signature of the parties and shall remain in effect until satisfactory completion of the Project as set forth in this Agreement.

2. City and DDA shall undertake and complete this Project in accordance with the terms of this Agreement and as described in Exhibit A.
3. The costs of the Project shall be paid by the parties in the manner set forth in Exhibit B. The estimated total cost of the work the Contractor and Electrician will perform, plus oversight and maintenance work related to the Contractor and Electrician's work, and electrical expenses associated with chargers is \$655,271.00. City agrees to pay for the Electrician directly and pay DDA \$367,200.00 in the form of a grant toward the total cost for the work performed by the Contractor as described in Exhibit B. City is responsible for funding its identified share of each work item of the Project as set forth in Exhibit B.
4. The parties understand and agree that the Project costs set forth in Exhibit B are estimates of Project costs and that the actual costs may differ. However, the percentages for cost allocation between City and DDA for each work item identified in Exhibit B are agreed to between the parties and cannot be modified except by a written Amendment to this Agreement. City's obligation to fund its share of the Project includes the obligation to fund change orders authorized in writing by City prior to the work being performed for any work item of the Project that City is funding in whole or in part. All change orders that relate to a work item whose cost is covered in whole or in part by City must be approved by City prior to the work being done. City's approval shall not be unreasonably withheld, and City shall respond promptly to requests for approval. The parties agree that any change order that affects one or more work items of the Project, if approved in writing by City, will be paid by DDA and City in proportion to the percentages identified in Exhibit B for the work item(s), including both increases and decreases in Project costs.
5. DDA will enter into a charging as a service contract with Contractor to install, operate, and maintain the 80 new electric vehicle charging stations for the Project. DDA will administer this contract and related work necessary for the completion of the Project. In accordance with DTE Energy's consent and agreement, payment for electric service is allowed through electricity sales (email dated November 4, 2021). In its contract with the Contractor, DDA shall require that the Contractor indemnify, defend, and hold City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result from any acts or omissions by Contractor or its employees and agents occurring in the performance of the Contractor's work except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement. In its contract with the Contractor, DDA shall also require the Contractor to obtain at its own cost and expense, and keep in full force and effect, during the term of the Project, the following insurance: (1) Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The City shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability shall be required: (1) \$1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined; (b) \$2,000,000 General Aggregate; (c) \$1,000,000 Personal and Advertising Injury.
6. City will enter into a contract with the Electrician for electrical upgrades for the Project. City

will administer this contract and related electrical work necessary for the completion of this Project and to allow the Contractor to install the electric vehicle charging stations. City shall require that the Electrician indemnify, defend, and hold DDA, their parking operator (and at the Forest facility, the University of Michigan), and City harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result from any acts or omissions by Electrician or its employees and agents occurring the performance of Electrician's work except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from DDA's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement. City shall also require the Electrician to cover DDA, their parking operator (and at the Forest facility, the University of Michigan), and City as an additional insured on its general liability policy.

7. City and DDA will collaborate to apply for rebates to assist in funding the Project. All such rebates secured by DDA or City will be paid to City.
8. DDA will pay the Contractor for the complete cost of their respective work on the Project, including City's share of the costs. City will grant funds to DDA to cover its share of the Project costs as set forth in Exhibit B in advance of DDA's payment to the Contractor. Such grant funds shall only be used for the Project as outlined in Exhibit A.
9. Charging station fees shall be accounted for in DDA's Parking Fund and, under the Parking Agreement between City and DDA dated July 1, 2011 as amended, shall be included in the calculation of DDA's 20% of gross parking revenue which is required to be paid to City on a quarterly basis.
10. Notwithstanding City's funding of a share of the Project, the parties agree that DDA has the sole responsibility for management of the Project, including all aspects of its contract with the Contractor. However, City may assist with management to the fullest extent possible and where the parties agree that City's support would be beneficial. Further, City remains responsible for management of its contract with Electrician for the electrical work necessary for the Project.
11. Nothing in paragraph 10 precludes City and DDA from mutually agreeing in writing that City will assume responsibility for management of the Project, including the assumption of the DDA's contract with the Contractor. DDA will include this option as a term of its contract with the Contractor.
12. City shall have the option, at its sole discretion, to obtain ownership of the 80 public electric vehicle charging stations.
13. This Agreement and its exhibits represent the entire understanding between City regarding the Project and City's contribution to the Project and supersedes all prior representations or agreements. Neither party has relied on any prior representations in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by DDA and City.
14. Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the

application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties or other circumstances.

15. This Agreement shall be governed and interpreted under the laws of the State of Michigan. The parties agree to venue in a court of appropriate jurisdiction in Washtenaw County for any action arising under this Agreement.
16. The undersigned state that they have the authority to execute this Agreement on behalf of the party for which they sign.
17. The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement. This Agreement may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

CITY OF ANN ARBOR, a Michigan
municipal corporation

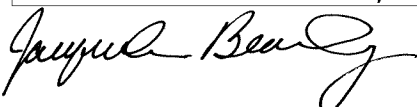
By:  12/14/2021
MILTON DOHONEY JR., INTERIM CITY ADMINISTRATOR

By:  12/14/2021
STEPHEN POSTEMA, CITY ATTORNEY

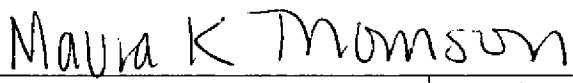
By:  _____

Sustainability and Innovations Director,
City of Ann Arbor

 12/14/2021
CHRISTOPHER TAYLOR, MAYOR

 12/15/2021
JACQUELINE BEAUDRY, CITY CLERK

ANN ARBOR DOWNTOWN
DEVELOPMENT AUTHORITY, a Michigan
municipal corporation

By:  12/10/2021
Interim Executive Director

By:  12/10/2021

EXHIBIT A
Scope for Installation of 80 Electric Vehicle Charging Stations

As detailed in the work items listed in Exhibit B, the City and DDA are looking to install 80 electric vehicle charging stations, and conduct all the necessary electrical upgrades to properly operate charging stations at multiple City owned/DDA managed parking garages and lots.

ChargePoint has been selected as the vendor to provide the chargers as well as support with operation and maintenance of the charging infrastructure. ChargePoint is providing this service under the auspices of 'charging as a service', which is available for procurement through cooperative purchasing platforms, including Sourcwell, which the City regularly uses.

ChargePoint has quoted the DDA and City an annual fee of \$73,440 to administer the charging as a service package, for a term of 5-years. Given operational and staffing constraints at the DDA and the City, it was decided that charging as a service is the most viable pathway to rapidly increase the number of chargers in the parking system. Moreover, the City has been investing in ChargePoint charging infrastructure for its municipal fleet of electric vehicles, meaning that any additional ChargePoint chargers can support public and fleet charging.

To receive these additional 80 electric vehicle chargers, significant electrical upgrades will have to be conducted. The City has an existing contract with Harper Electric for electrical work associated with preparing for electric vehicle charging. Given this, the City contacted Harper Electric to get a quote for the costs to upgrade electrical infrastructure at the sites identified for placement of electrical vehicle charging. This quote was for \$263,071.

To support the installation of 80 electric vehicle charging ports, the City and DDA will work with Harper Electric to upgrade the electrical infrastructure at multiple sites (seven initially identified), with the City leading this work. Once complete, the DDA will enter into a charging as a service agreement with ChargePoint to install, operate, and maintain 80 electric vehicle charging ports at the locations where the electrical upgrades are complete.

Below are the specific roles and responsibilities, broken down between the City and DDA.

City of Ann Arbor will:

- Work with electrician to get quotes to upgrade electrical systems, as needed, at each of the seven sites.
- Contract with an electrician, and pay all associated fees, to upgrade electrical needs at each of the identified sites.
- Acquire any necessary permits for electrical work at each site.
- Coordinate applications for rebates for charging infrastructure.
- Allocate a grant to the DDA to fund the 5-year charging as a service contract.
- In consultation with DDA, City traffic engineers, and Community Standards, have a TCO written to cover enforcement of these electric vehicle charging stations in the parking system.
- Assist DDA in evaluating the condition of Clipper Creek units and if interested, acquire the units from the DDA at no charge for use elsewhere.
- Support the DDA in completing any reporting (or other) requirements that are part of necessary rebates.
- Update website with new electric vehicle charging station information.

- Use its communication channels to share project news and promote usage of electric vehicle charging stations.

Downtown Development Authority will:

- Coordinate with the City's electrician to provide access to parking facility electrical service panels as needed.
- Receive grant funds from the City and use the grant funds as agreed.
- Enter into an agreement with ChargePoint for charging as a service for a 5-year period.
- Coordinate with City electrician and ChargePoint as needed, for installation of chargers, including blocking off needed parking spaces.
- Work in coordination with installation team to remove existing Clipper Creek units.
- Reimburse the City in an amount equal to the total amount of any electric vehicle charging rebates secured.
- Pay for and install all electric vehicle charging stations related signage that is located inside the public parking facilities.
- Pay all electricity costs associated with use of the electric vehicle chargers for the entire 5-year period.
- Record all charging station fees in its Parking Fund and include those fees in the calculation of the DDA's 20% of gross parking revenue which is required to be paid to the City on a quarterly basis.
- Ensure that, over the initial 5-year period, any reporting (or other) requirements that are part of necessary rebates, are met.
- Work with the City and other entities to confirm any required insurance coverage updates are in place and name the appropriate parties.
- Update website with new electric vehicle charging station information.
- Use its communication channels to share project news and promote usage of electric vehicle charging stations.