



**ELECTRIC VEHICLE SITE HOST AGREEMENT DUKE ENERGY FLORIDA PARK & PLUG PROGRAM**

THIS ELECTRIC VEHICLE SITE HOST AGREEMENT (the "Agreement") is entered into as of this 14<sup>th</sup> day of February, 2018, between DUKE ENERGY FLORIDA, LLC ("Duke Energy") and Pinellas County Board of County Commissioners ("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 *Park & Plug* 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 on an annual basis;

WHEREAS, Host is the owner or operator of that certain property which has an address of [See Exhibit A] (the "Property");

WHEREAS, Host desires to become a participant in the Program and have Duke Energy install EVSE and associated wires, cables and equipment (collectively, the "Equipment") at the Property; and

WHEREAS, Duke Energy is willing to enroll Host in the Program and to install the Equipment at the Property in accordance with the terms of this Agreement and the Program;

WHEREAS, *Greenlots, Inc.* is the provider that Duke Energy has selected 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 shall be determined as set forth in Section 1c(ii) 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 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. 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.

b. Duke Energy shall connect the Equipment to Host's existing electrical panel and electrical service for the meter that serves such panel.

c. To the extent requested by Host or if Duke Energy reasonably believes an upgrade of Host's existing electrical infrastructure is required, Duke Energy install a new meter at the Property, which shall represent a new account and shall be billed at terms of the GS-1 tariff separate and apart from any Duke Energy account currently held by the Host. Host must make application for the new GS-1 service and Host acknowledges that the GS-1 tariff includes a fixed monthly customer charge, a kilowatt hour energy charge and applicable taxes and fees. With respect to the payment for any charging session, Host may elect one of the following two options:

- i. Host Provides EVSE as an Amenity. Pursuant to this option, Host may elect to allow drivers to utilize the EVSE at no charge to such drivers and the Host will be responsible for paying the bill for all electricity used, including that used by drivers utilizing the EVSE, at Host's prevailing rate for such electricity.
- ii. Host Charges Drivers to Use the EVSE. Pursuant to this option, Host may elect to charge drivers the same prevailing rate (including all applicable taxes & fees) paid by Host, plus any associated transaction fees for each charging session. The charges to be paid by such drivers will be collected by the Network Provider. Although Host will be responsible for paying to Duke Energy directly the bill the EVSE for each month in full, the Network Provider will reimburse the Host for the energy charges collected from all drivers, including all applicable taxes and fees (excluding any associated transaction fees collected; provided, however, that such reimbursement shall be determined based upon the GS-1 tariff rate and may differ from (including being less than) the prevailing energy rate paid by Host to Duke Energy.

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 at Duke Energy's expense. Duke Energy shall repair the Equipment promptly following notification from Host. Duke Energy shall have the right to repair, modify or replace the Equipment at any time during the Term of this Agreement. Duke Energy shall schedule access for installation, maintenance and repairs during a mutually agreeable time, except in emergency situations.

e. During the Term, Duke Energy shall pay all network access fees required for the Program to the Network Provider.

## **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.

b. Host agrees to grant Duke Energy permission as needed for Duke Energy to install the Equipment and implement the Program at the Property.

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 if it is put on notice that the Equipment fails to operate or is in need of repair. 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 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 relevant station utilization data

to assist with decisions to invest in additional charging stations by the Host. Additionally, Host shall permit Duke Energy to conduct Demand Response ("DR") events from time to time for the purpose of understanding and evaluating charging stations as a DR resource for the electric power grid, as required and pursuant to guidelines adopted by the Florida Public Service Commission.

e. Host shall provide accessible charging point and nondiscriminatory access to the EVSE in accordance with Host's selected Site Host Segment Type and Accessibility as set forth in Exhibit A. For multi-unit dwelling and workplace, Host shall provide equal access for all tenants and employees, respectively. For public installations, this means a site is available to any electric vehicle driver regardless of affiliation (i.e. a business cannot designate a public charger for their customers only).

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, 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.

g. Host shall use commercially reasonable efforts to maintain the common areas upon which the Equipment is placed in a structurally safe and orderly 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 date of installation of the Equipment and shall continue until Dec 31, 2022 (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.

c. Host shall have the right to terminate this Agreement if Duke Energy is in default of this Agreement, and does not cure said default within thirty (30) days of written a notice of default.

**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 be responsible for the electrical consumption costs as set forth in to Section 1(b) above. 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, curtailment, 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 shall remain with Duke Energy and are not to 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 option, title to the Equipment may transfer to Host at no cost and with no warranties. 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 upon 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 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 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 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 facility as may be dictated by design constraints, by law or regulation or by local jurisdictional authorities.

**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, due to any unsafe, inoperable or damaged Equipment.

**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. AUTHORITY.** Host represents and warrants that 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.

**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.

**13. INDEMNIFICATION.** 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 contained herein is intended to nor shall be construed to waive any immunity from or limitation of liability that Host is entitled to under the doctrine of sovereign immunity or section 768.28, Florida Statutes.

**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 no cost to Host. 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. 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.

**16. FISCAL FUNDING.** Pursuant to Article VII, Section 10 and Article VII section 12 of the Florida Constitution, and Florida Statutes §129.06 and §129.07, this Agreement is based on Host's annual appropriation of funding. In the event funds are not appropriated by or on behalf of the Host in any succeeding fiscal year for the purposes described herein, thus preventing the Host from performing its contractual duties, then this Agreement shall be deemed to terminate at the expiration of the fiscal year for which the funds were appropriated and expended, without penalty or expense to Host. Host agrees to give as much advanced notice as possible of such termination to Duke.

**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.

**18. ENTIRE AGREEMENT.** 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. This Agreement may be amended or modified only by a written instrument duly executed by each of the Parties.

**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, fax 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:**

Andrew W. Pupke

Director, Pinellas County Real Estate Management Department

509 East Avenue South, Clearwater, FL 33756

Phone: 727-464-3237

**Duke Energy Florida, LLC**

ATTN: Park & Plug Program Manager

PO Box 14042, St Petersburg, FL 33733

Phone - 800-700-8744

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

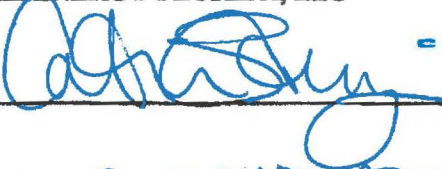
**24. COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have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

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

DUKE ENERGY FLORIDA, LLC

By: 

Print Name: CATHERINE STEMPIEN

Title: STATE RESIDENT, FLORIDA

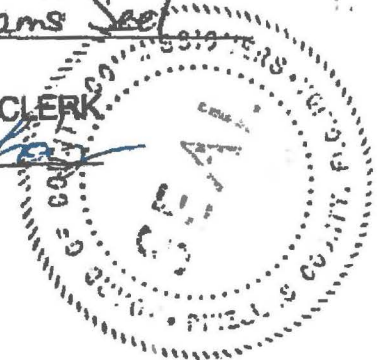
HOST:

By: Karen Williams Seal

Print Name: Karen Williams Seal

ATTEST: KEN BURKE, CLERK

By:   
Deputy Clerk



APPROVED AS TO FORM

By:   
Office of the County Attorney

## **Exhibit A**

### **Site Host Segment Type and Availability Requirements**

**Site Host Segment Type and Availability: (Check which applies)**

**Multi Unit Dwelling (Level Two 208v-240v single phase, Multifamily residences and installed in the commons areas)**

**Describe access to residents and the time period(s) available for charging**

**Workplace (Level Two 208v-240v single phase, Provided for the use of an organization's employees)**

**Describe employee eligibility to use charging station**

**Public Level 2 (Level Two 208v-240v single phase available for general public access)**

**List any limitations of public access to the station(s) - Indicate days and times of day station will be publicly available:**

1. 545 1<sup>st</sup> Ave St Petersburg, FL
2. 10750 Ulmerton Rd Largo, FL
3. 12520 Ulmerton Rd Largo, FL
4. 14250 49<sup>th</sup> St Clearwater, FL
5. St Petersburg Airport

**Public DC Fast - (208v - 480v 3 Phase units with Chademo and CCS Combo connectors, available for general public access)**

**List any limitations of public access to the station(s) - Indicate days and times of day station will be publicly available**

1. St Petersburg airport