

ELECTRIC VEHICLE CHARGING STATION HOST SITE AGREEMENT

This Electric Vehicle Charging Station Host Site Agreement (this “Agreement”), effective as of _____, _____ (the “Effective Date”), is entered into by and between **Michiana Area Council of Governments (“MACOG”)** whose address is 227 W. Jefferson Blvd, 1120 County-City Building, South Bend, IN 46601, and **Town of Bristol (“Site Owner”)**, owning the property located at 303 E Vistula St, Bristol, IN 46507 (Town Hall) (the “Host Site”). **MACOG** and Site Owner are each a “Party” to this Agreement and together are the “Parties.”

Background

Site Owner desires to have a public electric vehicle charging station installed at the Host Site as part of MACOG’s Regional Charging & Fueling Infrastructure Project (the “Project”) funded by the Federal Highway Administration.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

- 1. Term.** The term of this Agreement begins on the Effective Date and ends **5 years following the date that the station is first operational** (the “Term”). The Federal Highway Administration requires that the Project comply with the National Electric Vehicle Infrastructure Standards and Requirements (23 CFR 680), including that stations are maintained for a period of not less than 5 years from the initial date of operation. Site Owner must ensure that this provision is met even if there are changes in ownership of the property. In the event of a change in ownership this may include adding a clause approved by MACOG into a purchase agreement, or establishing an easement prior to the sale of the property. To ensure this occurs, Site Owner shall notify MACOG of a pending transfer of the Host Site not later than ninety (90) days prior to closing on any such transfer. In the event that the Site Owner fails to meet its obligations in this section and the new owner causes the station to be removed or disabled prior to the end of the Term, the prior Site Owner shall be responsible for reimbursing MACOG for the federal share of the project cost, as liquidated damages and not as a penalty.
- 2. Grant Funds.** MACOG will manage all grant funds, procurement, and contracts related to the implementation of this Project. MACOG is not making a sub-award of funding to the Site Owner. However, Site Owner, in order to receive the benefit of hosting Level 2 electric vehicle charging equipment on the Host Site, agrees to its obligations as outlined in this Agreement to ensure that all grant terms and conditions and programmatic requirements are met.
- 3. Equipment.** MACOG will install Level 2 electric vehicle charging equipment capable of simultaneously charging at least four vehicles (together, the “Station”) on the Host Site under the Project. It is currently estimated that installation will

occur on or before December 31, 2025. However, such date is only an estimate, and MACOG shall not be liable for any delay in the estimated installation date.

- 4. Access to Host Site and Station.** During the Term, Site Owner shall provide MACOG and its employees, agents, and contractors with access to the Host Site and Station for installation, maintenance, data collection, and other uses consistent with this Agreement. For maintenance or troubleshooting that requires access to electric service or buildings, MACOG will attempt to give Site Owner at least 48 hours' prior notice before entering the Host Site; however, factors outside MACOG control may not always permit such prior notice. Further, given that a Station is required to be publicly accessible, MACOG staff shall have the right to inspect or test the Station at any time without notice. Site Owner recognizes its obligation to maintain the public accessibility of the Station on the Host Site for the term of this Agreement.
- 5. Access to Information.** Site Owner acknowledges that MACOG will be collecting Station usage data, including charge event information, such as when a charge event occurs, energy transferred during the charge event, duration of the plug-in event, and duration of the charging period, revenue and operating cost information, and other anonymized data (collectively, "Data"). Site Owner acknowledges that the Data may be used and shared by MACOG for any lawful purpose, including, without limitation, analyzing usage and charging patterns, the effectiveness of infrastructure put in place to meet the needs of drivers of electric vehicles, and the efficacy of the Project. Site Owner hereby expressly grants MACOG rights to the Data as described in this paragraph.
- 6. Security.** Site Owner is responsible for installing and maintaining physical security strategies as agreed to in discussion with MACOG that may include lighting, siting and station design to ensure visibility from onlookers, measures to promote driver and vehicle safety, video surveillance, emergency call boxes, and fire prevention. MACOG has made an effort to select sites Host Sites that promote safety and include these measures. MACOG is prohibited from procuring or obtaining certain telecommunications and video surveillance services or equipment under this Award including Huawei Technologies Company or ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company as detailed in Section 889 of Pub. L. No. 115-232 and 2 CFR. 200.216
- 7. Maintenance.** During the Term, MACOG and the Site Owner shall cooperate as follows to ensure the maintenance and reliability of the station meets the 97% minimum uptime as defined in the reliability standards in 23 CFR 680:

 1. Site Owner is responsible for immediately notifying MACOG of any issues resulting in downtime or requiring maintenance within 2 business days of observing the issue or being notified by a user. MACOG may also receive direct notification from Station users.

2. Within 2 business days after notification by a Station user or the Site Owner of an issue that results in downtime, MACOG shall immediately take one or more of the following actions:
 - Coordinate with the Station network provider or hardware manufacture,
 - Visit the Station for inspection, testing, and troubleshooting if necessary,
 - Direct the Site Owner to power cycle the unit, or
 - Initiate a service visit with an electrician.
3. Site Owner shall be responsible for maintaining the area around the Station in good condition, including pavement, vegetation, and parking bumpers and bollards, if any.
4. MACOG shall secure an extended 5 Year Parts and Labor Warranty (“Extended Warranty”) to ensure that the Station is covered during the Term for most issues that may arise during normal use. MACOG shall also identify warranty coverage options that provide coverage in the case of accidents or vandalism.
5. Accidents, Vandalism, and other issues not covered by warranty: For expenses to repair or replace a Station not covered by the Extended Warranty, MACOG shall be responsible for 20% of the cost. The Site Owner shall be responsible for the remainder that is not covered by MACOG’s 20% responsibility. MACOG will make a good faith, reasonable effort to secure funding from other sources (i.e. grants) to cover the remainder, however, MACOG does not guarantee that such additional funding will be available or that MACOG will be able to secure such additional funding. For example if no funding is secured, MACOG shall pay 20% and the Site Owner shall pay 80% of the total cost, inclusive of parts and labor.
 - Exception: If the need for the repairs and maintenance arises out of the negligence or intentional misconduct of Site Owner or its employees, agents, contractors, or invitees, in which event Site Owner shall reimburse MACOG for the full cost of such maintenance and/or repair within thirty (30) days after MACOG’s written request for reimbursement.
6. **Publicity.** Site Owner shall provide MACOG unlimited rights to take, use and publish photographs of the Station and Host Site, which may be included on printed materials or posted on websites in connection with the Project.
7. **Ownership.** Title to the Station shall remain with MACOG during the Term. Upon expiration of the Term, title to the Station shall automatically vest in Site Owner, and MACOG shall execute any documents necessary to effectuate this ownership transfer. Site Owner shall take title to the Station at this time in AS IS WHERE IS condition.

8. **Administrative Rights.** MACOG shall have the highest level of Administrative Rights within the Station software to manage the Station and access the Data. MACOG will not alter the User Fee without the prior written consent of the Site Owner.
9. **No Right to Remove, Move or Sell the Station.** The Site Owner may not sell, retire, dispose of, remove, allow to fall into a non-usable condition, or move any Station from their place of installation during the Term, without the prior written consent of MACOG.
10. **Insurance.** MACOG and Site Owner shall each be responsible for maintaining commercial general liability insurance.
 - MACOG shall maintain commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for property damage, personal injury, and bodily injury (including wrongful death) insuring against any and all liability arising only out of presence or use of the Station.
 - Site Owner shall, at its sole cost and expense, throughout the Term maintain commercial general liability insurance (including contractual liability coverage) with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for property damage, personal injury, and bodily injury (including wrongful death) occurring on or about the Host Site and the Station and insuring against any and all liability arising out of Site Owner's ownership of the Host Site, including but not limited to the presence or use of the Station, insuring on an occurrence basis and naming MACOG as an additional insured. Site Owner shall provide proof of insurance upon request.
11. **Indemnification.** Site Owner and MACOG agree to indemnify and hold each other, and the officers, directors, trustees, employees, agents and affiliates of each other harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, attorneys' fees) suffered or incurred by the indemnified parties and/or third parties resulting from or arising out of the indemnifying party's negligent or intentional acts which result in damage to property or injury to person.
12. **Cost of Electricity & Operating Costs.** Site Owner shall be responsible for the cost of electricity associated with the Station, including the payment of all energy charges, fees, riders, taxes, demand charges, and other expenses billed by the electric utility, and fees deducted from revenue or charged by the network operator or credit card companies. In no case shall MACOG be responsible for reimbursing the Site Owner for operating costs.

- 13. Revenue & User Fees.** Site Owner shall collect all revenue generated by the Station from fees charged to Users (“User Fees”). Site Owner must comply with 23 CFR 680, which requires the pricing structure to be based on the price of electricity (\$/kWh), rather than time (\$/hour). The price structure may include other fees such as Overstay Fees or Idling Fees, when a vehicle exceeds a maximum allotted charging time or continues to be plugged in after fully charged. Site Owner shall not be expected to provide any revenue share to MACOG. However, in establishing the User Fees the Site Owner must comply with the requirements in 23 CFR 680 related to a reasonable return on investment.
- 14. Use of Program Income.** During the Term of this agreement, net income from the Station may only be used for any costs listed in 23 CFR 680 including the improvement and proper operation and maintenance of the EV charging station (reconstruction, resurfacing, restoration, and rehabilitation), and a reasonable return on investment on the funding contributed by Site Owner for the Project as under 23 CFR 680. After the expiration of this agreement, there are no restrictions on the reasonableness of User Fees or the use of program income.
- 15. Verifying Compliance with Program Income Requirements.** Annually, MACOG will compare revenue data and operating costs to verify if the Site Owner is generating a net income. If requested, Site Owner must provide information about electricity costs such as utility bills. Site Owner shall be responsible for submitting to MACOG at least annually any documentation of allowable uses of program income described in 23 CFR 680.
- 16. Provision of Electric Service.** Site Owner shall be responsible for providing power to the station, including arranging for new electric service or connection to existing electric service. The Station shall require a minimum of four (4) 40 amp circuits which will deliver up to 32 amps at 208 to 240 volts. The station must be designed to deliver a minimum of 6 kW to four vehicles simultaneously. This power level may provide about 20 to 25 miles of range per hour of charging. If the Site Owner prefers faster charging, MACOG can scope the project for equipment that delivers 10.5 kW or 19.2 kW. Such a request must be provided in writing to MACOG during preliminary engineering. All additional costs incurred to re-design the project after an initial design has been finalized will be the responsibility of the Site Owner. Costs to upgrade electric service such as transformers, conduit, trenching, new meters, subpanels, circuits, etc. shall be included in the overall scope of the Project installation coordinated by MACOG, and in the total cost of the project in determining the local match.
- 17. Utility accounts.** Any accounts necessary for the provision of electric service shall be in the name of the Site Owner.
- 18. Local Match.** Site Owner shall reimburse MACOG for the required non-federal local match, defined as at least 20% of the total project cost. MACOG shall make an effort to optimize the amount of federal funds available across all projects to

reduce the burden on the Site Owner, as the cost of installation and electric service upgrades may be widely variable. MACOG estimates that the local match will range between \$11,000 to \$15,000 per site. MACOG does not guarantee that this estimate is accurate for any particular Host Site.

- 19. Payment of Local Match.** Site Owner shall not be responsible for paying for any costs of the Project before such costs are incurred by MACOG. MACOG will deliver invoice(s) to the Site Owner to request reimbursement for the local match described in Section 18. MACOG may deliver separate invoices to the Site Owner for the local match for the various phases of the project such as completion of planning and design, purchase of hardware, and substantial completion of construction. Site Owner shall pay any invoice delivered to it by MACOG pursuant to this Section 19 within thirty (30) days. If the Site Owner identifies another entity who will provide the local match (i.e. financial sponsor), Site Owner may request that MACOG direct invoice(s) to the designated entity. The Site Owner shall be responsible for any amount not covered by such designated entity within thirty (30) days.
- 20. Sponsorships and Signage:** MACOG encourages the Site Owner to solicit sponsorships or financial assistance from local businesses, organizations, or the municipality in which it is located, if different from the Site Owner. MACOG shall recognize such sponsors in press releases, social media, and events. Site Owners shall be responsible for paying for and procuring any additional signage recognizing Sponsors. On-premise advertising signs must comply with 23 CFR Part 750 – Highway Beautification.
- 21. Federal Tax Credit.** MACOG as Station Owner reserves the sole right to file for the Section 30C Alternative Fuel Vehicle Refueling Property Credit, or similar state or federal tax incentives. Currently, eligibility for the federal tax credit is limited to low-income census tracts in urban areas and certain non-urban census tracts. If available, MACOG will file for the tax credit in the year following the calendar year in which the Station is placed in service. Currently, the identified site is located in an eligible census tract for the 30C federal tax credit.

If available, MACOG intends to utilize the refund to support the success of this project which may include maintenance, reporting, etc.
- 22. Utility Incentives.** Site Owner has the exclusive right to pursue any available utility incentives related to electric vehicle charging and apply those funds towards the local match requirement, provided that the source of the utility incentives are non-federal funds. For example, Indiana Michigan Power’s program may provide eligible small commercial customers with discounted off-peak charging rates and a \$500 rebate, but they cannot have distributed energy (i.e. solar panels) on the account. Larger commercial and industrial customers may be eligible for a similar incentive, if the Station serves as workplace charging (one or more employees has an EV), fleet (electric vehicles are operated by Site

Owner), or it serves Multi-Unit Dwelling residents. Certain restrictions apply and Site Owner is responsible for verifying eligibility. Currently, NIPSCO does not have any EV Charging incentive programs for electric customers.

- 23. Utility Tariffs.** Site Owner is responsible for identifying the appropriate tariff for the Station, defined as the structured pricing plan that determines the cost of the electricity service, whether a new meter is installed or the station is added to an existing meter. Site Owner is responsible for maintaining the terms of any tariff, including the impact of adding the Station to an existing meter that may have qualified for an exemption to sales tax or a special tariff such as for Street Lighting. MACOG recommends identifying whether tariffs that reduce demand charges or special plug-in vehicle tariffs are more favorable to the Site Owner. Examples include NIPSCO's Rate 521 General Service – Small which does not have demand charges, and the Indiana Michigan Power Tariff G.S.- PEV General Service Plug-in Electric Vehicle which provides for discounted off-peak charging (currently 40% reduction). Restrictions may apply such as a minimum or maximum total kWh usage per month on the account, or in the case of Indiana Michigan Power the customer may not operate distributed generation resources or participate in the Company's Net Metering Service Rider (i.e. solar). Site Owner is responsible for verifying eligibility and enrolling in the selected tariff.
- 24. Public Use.** During the Term, Site Owner shall provide public access to the Station on the Host Site at least as frequently as the business operating hours of the Site Owner. ("Public Access Times"). During Public Access Times, any member of the public may use the Station to charge electric vehicles, subject to payment by such member of the public through the Station software, if applicable.
- 25. Station Use Time Limits.** Site Owner may establish time limits for Station use in alignment with applicable parking time limitations in the same parking lot or right-of-way that would otherwise be applicable. The time limits shall not be more restrictive than the time limits that would be applicable if the parking spaces were available for general use. If a vehicle is plugged in, the Site Owner may set up the software to collect an overstay fee when the time limit is exceeded. If a vehicle is not plugged in or a driver initiates a new session to avoid the overstay fee, no fee is able to be collected and alternative enforcement measures may be needed.
- 26. Enforcement of Station Policies.** Site Owner is responsible for creating and enforcing Station policies in compliance with this Agreement and applicable federal regulations. MACOG recommends creating policies during the design phase, so that time limits if applicable can be reflected in Station signage. Site Owner may establish ordinances or rules prohibiting the use of the parking spaces by vehicles other than plug-in vehicles, and establishing fees for violation if the Site Owner has the authority to issue parking citations at the Project site.

Site Owners are responsible for verifying their authority to ticket or tow vehicles for violations of Site Owner's Station policies.

27. **Americans with Disabilities Act Compliance.** In furtherance of the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336 (codified at 42 U.S.C. 12101-12213), and Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified at 29 U.S.C. 794), not later than one year after the date of this agreement, the Recipient shall develop a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards and are involved in, or closely associated with, the Project. Consistent with 49 C.F.R. part 27, even in the absence of prior discriminatory practice or usage, MACOG must compel the Site Owner to take action to ensure that no person is excluded from participation in or denied the benefits of the project on the basis of disability. MACOG will follow the latest version of the guidance applicable to electric vehicle charging published by the U.S. Access Board, and available at <https://www.access-board.gov/tad/ev/>. The U.S. Access Board recently closed a public comment period on a notice of proposed rulemaking to amend the accessibility guidelines for buildings and facilities covered by the ADA for EV charging, which is available at 89 FR 71215. To provide for an access aisle and at least one van accessible space, Site Owners should expect to provide for a van accessible space 11 feet in width, a 5 foot access aisle, and three additional EV charging spaces of standard width. When all spaces are located adjacent to each other with perpendicular "nose in" parking, a total width of about 43 feet is needed. Other parking configurations such as parallel parking, angled parking, or pull-through parking may have different space requirements to comply with ADA.
28. **Civil Rights.** Title VI of the Civil Rights Act of 1964, and implementing regulations, apply to this project to ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
29. **Uniform Relocation Act.** Site Owner must notify MACOG if the Host Site is not currently owned by the Site Owner and will be purchased for the Project. The Uniform Relocation Assistance and Real Property Acquisition Act, and implementing regulations, apply to the Project by establishing minimum standards for federally funded programs and projects that involve the acquisition of real property (real estate) or the displacement or relocation of persons from their homes, businesses, or farms.
30. **NEPA.** The National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA implementing regulations, and applicable agency NEPA procedures apply to this program by establishing procedural requirements to ensure that Federal agencies consider the consequences of their proposed actions on the human environment and inform the public about their decision making for major Federal actions significantly affecting the quality of the human

environment. Site Owner shall cooperate with MACOG in providing required information for NEPA-related compliance. If the Project site is not eligible for a Categorical Exclusion, this Agreement may be terminated without penalty to the Site Owner.

31. **Equipment Disposition.** If at the end of the Term, the Site Owner elects to dispose of the equipment, the Site Owner shall dispose of that equipment in accordance with 2 C.F.R. 200.313 and 1201.313, which stipulates that equipment with a current fair market value of \$10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity.
32. **Failure to Comply with Terms of the Program.** In the event that Site Owner fails to comply with any term in this Agreement, MACOG shall provide a written notice requesting that the Site Owner address the issue to comply with the Agreement terms. If Site Owner is not in compliance with the Agreement terms within thirty (30) days after delivery of such notice from MACOG, MACOG reserves the right to repossess the Station (enter onto the Host Site and remove all equipment provided as part of the Project) and to terminate this Agreement.
33. **No Amendment or Modification.** No modification, amendment or waiver of this Agreement shall be effective unless in writing and either signed or electronically accepted by MACOG and the Site Owner.
34. **Waiver.** Either Party's failure at any time to require the other Party's performance of any obligation under this Agreement will in no way affect the full right to require such performance at any time thereafter. Either Party's waiver of a breach of any provision of this Agreement will not constitute a waiver of the provision itself. Either Party's failure to exercise any of its rights provided in this Agreement will not constitute a waiver of such rights.
35. **Termination.** Either party may elect to terminate this agreement without penalty if after preliminary engineering and design is completed, the estimated local match requirement exceeds \$15,000 or if the Project is not eligible for a Categorical Exclusion under NEPA. The Site Owner shall issue a notice of termination in writing to MACOG. In this case, the Site Owner shall not be responsible for reimbursing MACOG for planning costs incurred. If the Site Owner terminates this agreement for any other reason after costs are incurred by MACOG, the Site Owner is responsible for paying 100% of the costs incurred. Federal funds may not be available to projects that are not completed.
36. **Applicable law; jurisdiction and venue.** This Agreement will be construed, and performance will be determined, according to the laws of the State of Indiana without reference to such state's principles of conflicts of law. Installation of the Station, and its operation, will be conducted in compliance with all local, state of Indiana, and federal laws and regulations. Any dispute arising out of or relating

to this Agreement shall be brought solely and exclusively in the state courts located in St. Joseph County, Indiana, and the parties hereto expressly consent to the sole and exclusive jurisdiction and venue of these courts.

37. **Assignment.** Site Owner may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of MACOG. If Site Owner transfers the Host Site to a third party, MACOG shall have the option to remove the Station from the Host Site and terminate this Agreement.

38. **Priority.** To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any other Project document, this Agreement shall prevail. To the extent of any conflict or inconsistency between this Agreement and regulations applicable to the Project, the applicable regulation shall prevail and this Agreement shall be interpreted to have been revised to come into compliance with said regulation.

MACOG

Town of Bristol (Site Owner)

By: _____
(signature)

By: _____
(signature)

Name: **James Turnwald**

Name: _____

Title: **Executive Director**

Title: _____

Date: _____

Date: _____