



AGENDA
CHASKA ECONOMIC DEVELOPMENT AUTHORITY
CHASKA CITY HALL - COUNCIL CHAMBERS & ZOOM
Monday, October 04, 2021
7:00 PM

1. Call to Order
2. Roll Call
3. Adopt Agenda
4. Approve Previous Meeting Minutes
 - A. Approve September 20, 2021 EDA Meeting Minutes
5. Discussion Items
 - A. EV Charge Program License Agreement with Minnesota Municipal Power Agency
6. Other Business
7. Adjourn

- MINUTES -
CHASKA ECONOMIC DEVELOPMENT AUTHORITY
SEPTEMBER 20, 2021

DRAFT

1. Call to Order

President Pro Tem Hatfield called the meeting to order at 8:49 pm.

2. Roll Call

Roll call was taken. Present: Commissioners Hatfield, Hubbard, Grau, Huang, and President Windschitl.

Absent: None.

Also Present: Nate Kabat, Assistant Executive Director and Matt Podhradsky, Executive Director.

3. Agenda

Motion by Commissioner Hatfield, second by Commissioner Grau to adopt the agenda as presented.

Motion carried.

4. Minutes

Motion by Commissioner Hatfield, second by President Windschitl to approve the September 13, 2021 EDA Meeting Minutes as presented.

Motion carried.

5. Adopt Resolution 2021-23, Adopt Resolution Establishing a Preliminary Chaska EDA Maximum Tax Levy for Payable 2022

Executive Director Podhradsky presented this item to the Commission and provided some background.

Motion by Commissioner Hubbard, second by Commissioner Huang to Motion to adopt EDA Resolution 2021-23 establishing a preliminary maximum property tax levy for payable 2022.

Motion carried.

6. Other Business

There was no other business.

7. Adjourn

Motion by Commissioner Hubbard, second by Commissioner Hatfield to adjourn the meeting at 8:58pm.

Motion carried.

REQUEST FOR ACTION CHASKA CITY COUNCIL 10/04/2021

Subject: EV Charge Program License Agreement with Minnesota Municipal Power Agency

Prepared By: Andrew Romine, Interim Electric Director

MMPA is providing each member utility with 2 Electric Vehicle chargers for public use. We have identified the Chaska Curling and Event Center as an ideal location for this charger. When the Chaska Curling and Event Center was initially constructed, we knew EV was on the horizon so installed empty conduits to some day accomplish this task. We will be utilizing those conduits, so impact to the parking lot will be minimal.

The price for charging will be set at \$0.25/kWh with your city receiving \$0.15/kWh and MMPA receiving \$0.10/kWh. The transaction fee for processing credit cards will be split proportional to the sales (i.e. 60/40). If the customer pays with a credit card using the transaction terminal on the pedestal, the transaction fee is 3%. Your city has the option to set an alternative price for charging. The price difference will only affect the city's share of the sales (e.g. if the price is set at \$0.20/kWh, the city receives \$0.10/kWh, less their share of the transaction fee). With alternative pricing, the transaction fee is still split proportionally (e.g. if the price is set at \$0.20/kWh, both the city and MMPA will receive \$0.10/kWh and the transaction fee will be split 50/50).

The ownership of the charger and the maintenance that comes with it will be taken care of by MMPA. Attached is the agreement that will make all of this work seamlessly. This will need to be approved and signed by both the Chaska City Council and the EDA.

LICENSE AGREEMENT **(MMPA EV CHARGER PROJECT)**

This License Agreement ("Agreement") is made effective _____, 2021 (the "Effective Date"), by and between Minnesota Municipal Power Agency ("MMPA"), and the City of Chaska, Minnesota (the "City"). MMPA and the City are each sometimes referred to in this Agreement as a "Party" and are collectively referred to as the "Parties."

RECITALS:

WHEREAS, MMPA is a municipal power agency, formed pursuant to Minn. Stat. § 453.01- 453.62, as amended; and

WHEREAS, the City is a member of MMPA; and

WHEREAS, MMPA is developing a public electric vehicle charger project, known as the "MMPA EV Charger Project," involving the installation of electric vehicle chargers in its member cities; and

WHEREAS, the Chaska Economic Development Authority (the "EDA") is the owner of certain real property described on Exhibit A attached hereto (the "Property"); and

WHEREAS, the City operates park and recreational facilities on the Property pursuant to a lease with the EDA (the "Lease"); and

WHEREAS, the City has selected a location on the Property for the location of an electric vehicle charger for use by the public; and

WHEREAS, the City has agreed with MMPA to grant a non-exclusive license to MMPA to construct, operate, maintain, repair and replace a Charger on the Property at MMPA's sole expense, subject to the following terms and conditions.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Licenses**. The City hereby grants and conveys to MMPA the following licenses "(the "Licenses"):
 - 1.1. **EV Charger License**. A license (the "EV Charger License") for the purpose of installing, operating, maintaining, repairing, and replacing the EV Charger Facilities depicted on Exhibit B attached hereto. The initial charger facilities will consist of a 73.83-inch tall pedestal with 20-foot

cables, a concrete pad, electrical connection facilities, and other related facilities (collectively, together with any replacements, the "EV Charger Facilities"). The EV Charger Facilities will be placed at the locations shown on the attached Exhibit B to allow the EV Charger Facilities to be utilized by electric cars parked within the two parking spaces designated exclusively for such use on attached Exhibit B (the "EV Parking Spaces").

- 1.2. Utility License: A non-exclusive license (the "Utility License") for utility purposes (including the provision of electrical power to the EV Charger Facilities) over and across that portion of the Property depicted on Exhibit B as the "EV Charger Interconnection."
- 1.3. Access. A non-exclusive license for the use of MMPA and its Permittees (as defined below) for the ingress and egress passage of vehicles over and across the parking and driveway areas of the Property, as the same may from time to time be constructed and maintained for such use (the "Driveways"), for access to the EV Parking Spaces from any public or private road, together with the right to use the parking spaces designated as the EV Parking Spaces. The City also grants to MMPA access to the EV Charger Facilities using the most reasonably direct route possible over Driveways and parking areas, as may be reasonably necessary to construct, maintain, monitor, repair, and/or remove the EV Charger Facilities. As used herein, "Permittee" shall mean the respective officers, directors, officials, employees, agents, contractors, customers, vendors, suppliers, visitors, licensees, and invitees of MMPA.

2. **Terms and Conditions of Licenses.**

- 2.1. Construction. MMPA shall, at its sole expense, construct, operate, monitor, maintain, repair, replace and remove the EV Charger Facilities throughout the term of this Agreement and any extensions thereto. MMPA shall incorporate the City's existing underground conduit located near the location of the EV Charger Facilities in connection with the installation of the EV Charger Facilities. MMPA shall complete its initial installation of the EV Charger Facilities by no later than June 30, 2022. If MMPA fails to complete the installation of the EV Charger Facilities by such date, at any time thereafter until completion of such installation, the City shall have the right to terminate this Agreement. If the City terminates this Agreement pursuant to the previous sentence, MMPA shall restore the portions of the Property in accordance with Section 5.3 below but otherwise, except to the extent that provisions of this Agreement survive termination, the Parties shall have no other duty to one another under this Agreement. In the event of such termination, the City shall not be entitled to damages related to MMPA's failure to install the EV Charger Facilities.
- 2.2. Maintenance and Repair. MMPA shall keep the EV Charger Facilities in good repair and working order, without cost to the City. MMPA shall have

the right to contract with third parties in the exercise of its License rights and shall also have the right to sublicense to third parties any or all of its License rights; provided that any such sublicense shall not relieve MMPA of its obligations hereunder.

- 2.3. Making, Monitoring, and Maintaining Connection. MMPA accepts all responsibility for making, monitoring, and maintaining the connection between the EV Charger and the local electrical distribution system's transformer or junction box, as applicable, at MMPA's sole expense.
- 2.4. Benefits and Term. The Licenses granted by the City to MMPA in this Agreement shall remain in effect for the entire term of this Agreement and any extensions thereto and are personal to MMPA (but subject to assignment in accordance with the terms and conditions of this Agreement).
- 2.5. Obstructions. The free flow of vehicular traffic over the Driveways and access to the EV Parking Spaces for use of the EV Charger Facilities shall not be materially obstructed or interfered with in any way, except to the extent reasonably necessary for repair and maintenance, to accommodate truck deliveries, or traffic regulation and control.
- 2.6. EV Parking Spaces. MMPA shall have the right to mark the EV Parking Spaces with such signage, parking lines, and other similar means in order to designate such EV Parking Spaces for the exclusive use of the EV Charger Facilities. The City shall maintain the EV Parking Spaces in connection with and to the same extent and condition as the City maintains its other parking spaces within the Property.
- 2.7. Work; Restoration of Property. Upon completion of any work requiring damage to the Property, MMPA shall, in all cases, restore the Property to the same or better condition as it was prior to said work. Work shall be completed as promptly as weather permits. If MMPA does not perform and complete the restoration work, remove all dirt, rubbish, equipment and material, and put the Property in the required condition within a reasonable period following completion of the work requiring such damage, the City shall deliver a written demand for such performance and completion to MMPA. If MMPA fails to perform the restoration work within a reasonable period of time following the demand (which period shall not exceed fifteen (15) days), the City shall have the right to make the restoration at the expense of MMPA. MMPA shall reimburse the City's cost of restoration within 30 days of receipt of an invoice for the work. This remedy shall be in addition to any other remedy available to the City.
- 2.8. No Payments. No payments or rent will be paid by MMPA to the City or any other party for the Licenses during the term of this Agreement.

3. **Use of License Areas by City.** The areas subject to the Licenses are located within the City's parking area for use by the City and the public in connection with the City's park and recreational facilities. In recognition of this, the City agrees with MMPA as follows:
 - 3.1. **No Interference with EV Charger Facilities.** The City will not permit any use in the areas where the EV Charger Facilities are located that materially interferes with the use of the EV Charger Facilities or the EV Parking Spaces, or the maintenance, monitoring, operation or repair of such facilities.
 - 3.2. **Safety Near Charger.** No structures, fences, trees, or other improvements that could potentially interfere with the safety of the EV Charger Facilities shall be built, installed or planted in the areas in which the EV Charger Facilities are located without the prior written consent of MMPA, which may be granted or withheld in MMPA's reasonable discretion.
 - 3.3. **Maintenance.** The City shall maintain, at the City's expense, all grass or other landscaping around the EV Charger Facilities in a manner consistent with its maintenance of the grass and landscaping in the remainder of the parking area.
4. **Term.** The Term of this Agreement shall commence on the effective date and continue thereafter for a 10-year period, ending on the tenth (10th) anniversary of the Effective Date. The Agreement may be extended by MMPA, at its option, beyond said Term for up to two additional five-year periods. The right to extend may be exercised by delivery of a written notice of extension at least ninety days prior to the expiration of the Term or any existing extension thereof.
5. **Ownership of EV Charger Facilities.**
 - 5.1. **Ownership Rights of MMPA.** MMPA shall have all ownership rights in the EV Charger Facilities.
 - 5.2. **No Ownership of EV Charger Facilities by the City.** The City shall have no ownership or other interest in EV Charger Facilities and MMPA may remove or replace any or all EV Charger Facilities at any time. MMPA shall provide the City with 60 days' written notice before decommissioning and removing the EV Charger Facilities.
 - 5.3. **Removal of EV Charger Facilities.** Upon the termination of this Agreement and subject to any agreement to convey the EV Charger Facilities to the City, MMPA shall, at its own expense, remove all above-ground EV Charger Facilities, including the foundation, and provide such grading and paving as may be required to restore the Property to the same or better condition as existed prior to the installation of the EV Charger Facilities. MMPA shall have no responsibility to remove the City-installed

underground conduit that will be used in connection with the EV Charger Facilities.

6. **MMPA's Covenants.** MMPA hereby covenants to the City that:

- 6.1. **Indemnification.** MMPA shall indemnify, keep, hold and defend the City, the EDA, and their officials, employees and agents free and harmless from any and all liability loss, cost, damage, liability or expense, including reasonable attorneys' fees, suffered or incurred by the City, the EDA or their officers, employees, or agents, arising out of MMPA's negligence or willful acts or omissions or the negligence or willful acts or omissions of its employees, agents or contractors related to MMPA's use of the Property. The City and the EDA shall not be indemnified for losses or claims occasioned through the City's own negligence or misconduct.
- 6.2. **Insurance.** MMPA shall maintain liability insurance, insuring MMPA, the City and the EDA if loss caused by MMPA's use of the Property under this Agreement (the "Policy"). The Policy shall provide for a coverage limit of two million dollars (\$2,000,000.00). Under the Policy, the City and the EDA will be named as an additional insured by endorsement with respect to operations or activities of MMPA on the Property. No coverage is provided for liability arising out of the City's or its tenants, invitees, or permittees' own negligence or misconduct. MMPA shall require each of its contractors, consultants or agents performing work on behalf of the MMPA to procure and maintain comparable insurance coverage that meets the requirements of this Section 6.2. MMPA agrees to supply the City with a certificate of insurance that shows insurance coverage provided under the Policy, as the City may reasonably request. The City and MMPA each agree that nothing in this section regarding indemnity or insurance shall be a waiver of any immunity that either the City or MMPA may have under Minnesota statutes, except to the extent that valid and collectible insurance exceeds applicable limits and covers the claim, as set forth in Minnesota Statute Section 466.06.
- 6.3. **Requirements of Governmental Agencies.** MMPA, at its expense, shall comply in all material respects with valid and applicable laws, ordinances, statutes, orders and regulations of any governmental agency in connection with the installation and operation of the EV Charger Facilities. MMPA shall have the right and sole discretion to contest by appropriate legal proceedings, brought in the name of MMPA or in the name of both MMPA and the City where appropriate and required, the validity or applicability to the Property or EV Charger Facilities of any law, ordinance, statute, order, regulation, property assessment or the like, now or hereafter made or issued by any federal, state, county, local, or other governmental unit or entity. The City shall cooperate in every reasonable way in such contest, at no out-of-pocket expense to the City. Any contest

or proceeding, including any maintained in the name of the City, shall be controlled and directed by MMPA.

7. **City's Covenants.** The City hereby covenants as follows:

- 7.1. **City's Authority.** Under the terms of the Lease, the City has the exclusive right to the use of the surface of the Property. The Lease is in full force and effect and, to the knowledge of the City (a) there is no breach or default of any term or condition of the Lease and (b) there is no condition or event that exists or that has occurred which, with the passage of time or the giving of notice, would constitute an event of default under the Lease. The City is authorized under the Lease to grant the Licenses. Each person signing this Agreement on behalf of the City is authorized to do so. When signed by the City, this Agreement constitutes a valid and binding agreement enforceable against the City and the Property in accordance with its terms.
- 7.2. **No Condemnation or other proceedings.** The City warrants and represents that there are no pending or, to the City's knowledge, threatened condemnations or similar proceedings, lawsuits or other claims that may affect the areas of the Property subject to the Licenses.
- 7.3. **No representations or warranties regarding the Property.** MMPA accepts the license areas in their "as is," "where is," "with all faults" condition. MMPA acknowledges it has had an opportunity to inspect the physical condition of the Property and title to the Property. The City makes no representation or warranties regarding the condition of the Property, title to the Property, or the suitability of the license areas for MMPA's intended use. No license described herein shall be expanded or enlarged by implication. MMPA is not being granted, nor shall it claim, any right, title, or interest in the Property.
- 7.4. **Requirements of Governmental Agencies; Cooperation.** The City shall assist and fully cooperate with MMPA, at no out-of-pocket expense to the City, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews, or any other permits or approvals required for the construction, installation, relocation, replacement, maintenance, operation or removal of EV Charger Facilities on the License Areas, including execution of applications for such permits or approvals if required. In connection with any applications for such approvals, the City agrees at MMPA's request to support such application (at no out-of-pocket expense to the City) at any administrative, judicial or legislative level. In the event that any laws, rules, regulations or ordinances of any governmental agency provide for setbacks or otherwise restrict the location of any EV Charger Facilities to be installed on the Charger License Area, the City shall cooperate with MMPA in obtaining waivers of such setbacks and shall execute any documents reasonably

requested by MMPA to evidence such waiver of such setbacks. The City provides no guarantees of the approval of any applications, waivers, variances or other matters presented to the City.

- 7.5. Indemnity. Subject to the tort liability limits provided under Minn. Stat. chapter 466, the City hereby agrees to indemnify and hold MMPA against liability for physical damage to property and for physical injuries to any person, to the extent caused by the negligence or willful acts or omissions of the City or its employees, agents or contractors. The MMPA shall not be indemnified for losses or claims occasioned through the MMPA's own negligence or misconduct.

8. **Termination.**

- 8.1. MMPA Right to Terminate. MMPA shall have the right to terminate this Agreement, as to all or any part of the Property at any time and/or for any reason, effective upon not less than 90 days' prior notice to the City from MMPA.

- 8.2. Terminations by the City. If MMPA breaches this Agreement, the City may provide MMPA with notice of the breach. If MMPA fails to fully cure the breach within 30 days of the date such notice is given, the City may immediately terminate this Agreement and the licenses described herein by giving MMPA notice of termination, which termination shall be effective when notice is deemed given. In addition, the City may terminate this Agreement and the licenses described herein, without cause, at any time by providing 90 days' prior notice of termination to MMPA and paying a termination fee equal to MMPA's actual cost to initially install the EV Charger Facilities and to remove the EV Charger Facilities, excluding MMPA staff time, prorated based upon the remaining term of the Agreement. For example, if 2 years remain on a 10-year term, the termination fee will be 20% of the cost of initial installation and removal. MMPA shall, upon the City's request, provide documentation that proves the cost of initially installing the EV Charger Facilities. Sections 5.3, 6.1, 7.5 and 9 of this Agreement shall survive any termination or expiration of this Agreement. In addition to the rights described above, if MMPA breaches this Agreement the City may seek damages or any other remedy available at law or in equity.

9. **Arbitration.** All disputes which in any manner arise out of or relate to this Agreement or the subject matter hereof, shall be resolved in the first instance amicably by meetings among members of designated representatives of the City and MMPA. If such meetings are unsuccessful, then such dispute shall be resolved exclusively by arbitration pursuant to the rules and procedures of the American Arbitration Association (the "AAA") conducted in Minnesota pursuant to the laws of the state of Minnesota.

10. **Notices.** All notices, requests, demands, waivers, approvals, consents, and other communications required or permitted by this Agreement shall be given in writing by personal delivery (confirmed by courier delivery service), or first class U.S. mail, postage prepaid, return receipt requested, certified, addressed as follows:

If to the City:

City of Chaska
Attn: Electric Director
1 City Hall Plz.
Chaska, MN 55318-1950

If to MMPA:

Minnesota Municipal Power Agency
c/o Avant Energy Services, Inc.
220 South Sixth St., Ste.1300
Minneapolis, MN 55402

Each notice shall be deemed given on the day it is sent.

11. **Miscellaneous.**

- 11.1. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the City and MMPA.
- 11.2. This Agreement may be signed in counterparts by the parties hereto.
- 11.3. MMPA may, at any time and without the EDA's consent, assign this Agreement to the City or any department, division, agency, or commission responsible for the City's electric service. Upon assumption of the Agreement by the City or any department, division, agency, or commission responsible for the City's electric service, MMPA shall be released from any obligations related to this Agreement arising after the date of assignment. MMPA may not assign this Agreement at any time to any other person without the City's consent, which consent shall not be unreasonably withheld, conditioned or delayed.
- 11.4. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of the Agreement, which shall continue in full force and effect.
- 11.5. Headings set forth herein are for convenience, only and are not to be construed against the content of any paragraphs herein.
- 11.6. This Agreement shall be construed in accordance with the laws of Minnesota.
- 11.7. This Agreement may not be modified or changed except by the written agreement of both Parties.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

City of Chaska

Minnesota Municipal Power Agency

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

and

By: _____

Name: _____

Title: _____

Consent of EDA

The Chaska Economic Development Authority (the “EDA”) hereby consents to the above Agreement and agrees that if the EDA takes possession of the Property because of the expiration or termination of the Lease, so long as MMPA complies with and performs its obligations under the Agreement and no event of default has occurred under this Agreement, then the EDA agrees that (a) the EDA will not terminate, impair or disturb the rights of MMPA under this Agreement, except pursuant to the terms of the Agreement and (b) the Agreement will continue in full force and effect as a direct agreement between the EDA and MMPA, upon and subject to all of the terms, covenants and conditions of the Agreement (including any termination rights), for the balance of the term of the Agreement (as the same may be extended).

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2021, _____, as the _____ of _____, a _____ of the State of _____, on behalf of said _____.

Notary Public

Name: _____
My Commission Expires: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2021, by _____, as the _____ of Minnesota Municipal Power Agency, a political subdivision of the State of Minnesota, on behalf of said Agency.

Notary Public

Name: _____
My Commission Expires: _____

ACKNOWLEDGMENT

State of _____)
County of _____) ss.

This instrument was acknowledged before me on this ____ day of _____, 2021, by _____, as the _____ of the Chaska Economic Development Authority.

Notary Public

This Instrument was drafted by:
Stinson LLP (RLS)
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Phone: (612) 335-1500

EXHIBIT A:

Description of Property

Block 1, Lot 2 and 3 Firemens Park Addition Chaska, Minnesota

EXHIBIT B:

Site Map Depicting License Areas,
EV Charging Facilities, and EV Parking Spaces

