



Feb. 10, 2023

To: Kristopher Bates, Purchasing Agent
Sam Anselm, City Administrator
Allison Skinner, City Clerk

From: Brian Mitchell, Transportation Director

Re: Beta Technology host site agreement

Executive Summary

Proposal for an electric aircraft charging station.

Discussion

Beta Technology contacted us over a year ago about installing at no cost to the city or the FAA an aircraft charging station at West Plains Regional Airport. After many meetings between city staff including our attorney, aviation our airport consultants, and Beta staff we have a final agreement and location for this station. It will be just north of our current fuel farm location. It will allow us to be on the cutting edge of this new technology. This charging station is not only for Beta aircraft but has universal charging capabilities to meet FAA guidelines for all manufacturers. This should allow for potential visitors/businesses to our airport and area that would otherwise not stop here for service.

Fiscal Impact

No monetary cost to the city besides allowing the use of a small piece of ground just north of our current fuel farm. It will pay us a percentage payment once a year from the usage fees.

ELECTRIC VEHICLE CHARGING STATION HOST SITE AGREEMENT

This Agreement ("Agreement"), effective as of this ____ day of _____, 20__ (the "Effective Date"), is entered into by and between BETA Technologies, Inc. ("BETA"), a Delaware corporation, and _____, a _____ ("Site Operator"). Collectively, BETA and the Site Operator are each a "Party" to this Agreement or collectively the "Parties."

WHEREAS the Site Operator acknowledges and agrees that it is the fee simple owner of the property located at _____ ("Host Site").

WHEREAS Site Operator desires to have an electric vehicle charging station installed at the Host Site as part of BETA's eVTOL Recharging Network ("Project").

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 ten (10) years after the Station Activation Date (the "Initial Term"). Subject to the terms of this Agreement, this Agreement shall renew automatically for additional one (1)-year periods (each a "Renewal Term" and collectively, the "Renewal Terms") upon the expiration of the Initial Term or any succeeding Renewal Term, provided that each Party each shall have the right not to renew this Agreement by providing the other Party with written notice of non-renewal at least sixty (60) days prior to the expiration of the Initial Term or then-current Renewal Term, as the case may be. For purposes of this Agreement, "Term" shall be deemed to mean the Initial Term and any succeeding Renewal Term.
2. **Equipment.**
 - a. [One DC Fast Charge Commercial Charging Station] (the "Station") outfitted to recharge electronic vehicles, including BETA's ALIA-250 aircraft, will be provided by BETA for installation at the Host Site under this Project. Product specifications are provided in Attachment A. BETA will choose the shipping method and cover the cost for standard delivery of the Station to the Host Site. If Site Operator desires expedited delivery of the Station, the additional cost, over and above the cost of standard delivery, will be the responsibility of Site Operator and BETA will not be responsible for the payment of any delivery charges in excess of standard delivery charges. Site Operator will be responsible for accepting delivery of the Station and storing the Station in a safe manner at the Host Site until the Station is ready for installation pursuant to the terms and conditions of this Agreement. BETA shall have the right from time to time to replace, update, or modify the Station, in BETA's sole discretion.
 - b. In addition, BETA shall have the right from time to time in its discretion to add additional chargers and/or charging stations outfitted to recharge electronic vehicles ("Additional Chargers") in the vicinity of the existing Station, subject to prior written approval of the Site Operator, which shall not be unreasonably withheld, conditioned, or delayed. The Additional Chargers shall be delivered, installed, maintained, and operated on the same terms and conditions of this Agreement and shall otherwise be subject to the same requirements as the Station. Each Party shall have the same rights and obligations concerning the Additional Chargers as they do concern the Station. For avoidance of doubt, should Additional Chargers be added, then all references to the "Station" in this Agreement shall refer to, collectively, the Station and any Additional Chargers, and all references

the “Charging Station Site” in this Agreement shall refer collectively to the site of the Station and any Additional Chargers.

3. Charging Station Site.

- a. The exact location of the Station on the Host Site shall be hereinafter referred to as the “Charging Station Site.” In the event the location of the Charging Station Site is not set forth in advance on Attachment B hereto, Site Operator, **Jviation (site operator’s aviation consultant)** and BETA shall promptly work together in good faith to mutually select the Charging Station Site. BETA may inspect and must approve the Charging Station Site prior to the installation of the Station. The Charging Station Site must provide adequate space for installation and operation per Attachment B. Site Operator and Jviation shall permit reasonable efforts to modify the Host Site in order to accommodate the proper and safe installation and operation of the Station.
- b. The following plans, specifications, and attachments have been reviewed and approved by the Site Operator:
 - i. Attachment B: Site plans and design work

4. **Installation.** BETA shall be responsible for the installation of the Station on the terms and conditions set forth herein, and BETA will select and engage a company (“Installer”) to install the Station at the Host Site at BETA’s cost. Installation of the Station will include the following, as applicable: foundation or pad for the Station; site work for the placement of the Station; and any trenching for wiring and interconnection of the Station to the Host Site electric power network. BETA will be responsible for Charging Station Site validation and Station activation, and final electrical connection of the Station to power and making the Station ready for operation may only be performed by the Installer. The date that the Station is fully connected to electrical power and ready for operation and use shall hereinafter be referred to as the “Station Activation Date.” The Station is not to be removed from its packaging by any person other than the Installer. Some Station protection (bollards, tire stop, curb, or an elevated wall-mount) is required and signage must comply with BETA’s requirements. BETA shall require that the Installer carries commercially reasonable general liability insurance. BETA will not permit nor suffer the filing of any mechanics liens against the Host Site with respect to work performed by or on behalf of BETA and in the event any liens are filed with respect to such work BETA shall promptly cause them to be removed at its own cost and expense.

5. Utilities.

- a. As part of BETA’s installation of the Station, BETA will at its cost and expense bring electric utility service to the Charging Station Site sufficient to operate the Station, as reasonably determined by BETA. Site Operator will cooperate in good faith to permit BETA to bring electric utility service to the Charging Station Site. Except for the Station or any Additional Chargers provided by Beta pursuant to the terms of this Agreement, neither Site Operator nor any third party shall be permitted to install any other electric vehicle charging station on the Host Site without the prior written consent of BETA.]
- b. BETA shall be responsible for the actual cost of the electrical current used by the Station.

6. **Access to Host Site and Station.** The Site Operator shall at all times provide adequate physical and technological access of the Host Site and Station to BETA and the Installer consistent with the purpose of the Project. BETA or the Installer will attempt to give the Site Operator a minimum of 48 hours’ notice prior to conducting any visit to the Host Site; however, factors outside of BETA’s or the Installer’s control may not always permit this advance notice.

- 7. Network Access.** BETA will provide to Site Operator a BETA Network subscription **at no charge**, for use with the Station provided by this Project, which subscription commences on the Station Activation Date and will expire upon the expiration or termination of this Agreement. The Site Operator agrees at all times during the term of this Agreement to not interfere with the Station's connection to the BETA Network, and Site Operator's use of the BETA Network shall at all times be in accordance with any terms or conditions imposed by BETA or any operator of the BETA Network. If Site Operator violates any such terms or conditions, BETA may, at its option, terminate Site Operator's BETA Network subscription.
- 8. Access to Information.** Site Operator acknowledges that BETA will be collecting Station usage data and charge event information, including, without limitation, when a charge event occurs, energy transferred during the charge event, duration of the charge event, and duration of the charging period (collectively "Data"). Site Operator acknowledges that the Data may be used by BETA for any reasonable purposes, 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. BETA shall not disclose any personal information identifying any third party who may utilize the Station.
- 9. Operation and Maintenance.** Site Operator shall take all commercially reasonable measures to ensure the Charging Station Site and the Station are kept secure, free of snow and ice, cleared of any obstructions impeding access to the Station or the Charging Station Site, and clean (collectively, the "Site Operator Maintenance Obligations"). Site Operator shall promptly notify BETA of any Station malfunction known to Site Operator in order that BETA may arrange for the repair of any non-functioning charging port on the Station. The responsibility of maintaining and repairing the station, and the costs thereof, shall be the responsibility of BETA, except as otherwise set forth herein. Site Operator shall not attempt any maintenance or repair of the Station unless directed or approved of in advance by BETA.
- 10. Publicity.** Site Operator shall provide BETA unlimited rights to take, use and publish photographs of the Station and the Charging Station Site, as well as any information related to the Project, which may be included on printed materials or posted on websites. BETA will not use Site Operator's name or logo without the prior written consent of Site Operator, which shall not be unreasonably withheld, conditioned, or delayed. Site Operator shall not make any public statements regarding this Agreement or the Station without the prior written consent of BETA. All third-party vehicle registration numbers (including tail number on aviation aircraft) are to be removed from photographs prior to publishing.
- 11. Ownership.** BETA shall at all times retain title and fee simple ownership to the Station, and Site Operator hereby expressly waives any and all statutory liens or any other liens which Site Operator may have or otherwise acquire by law with respect to the Station. Site Operator hereby provides BETA with a license to use the Charging Station Site for the Station and the non-exclusive right to use such other portions of the Host Site as may be necessary from time to time for (i) ingress and egress to the Charging Station Site by BETA and its employees, agents, contractors, invitees, and customers, and the Installer; (ii) installation, maintenance, repair, replacement, and/or removal of the Station; and (iii) any other purposes necessary to effectuate the purposes contemplated in this Agreement. BETA shall have the right, in its sole and absolute discretion, at any time to remove or replace the Station, and for purposes of calculating the Station Margin, the date of removal of the Station shall be the final date of operation of the Station included in the Station Margin calculation.
- 12. No Right to Remove, Move or Sell the Station.** The Station may not be sold, encumbered, retired, disposed of, removed, or moved by Site Operator from its place of installation, without the prior written consent of BETA.

13. Failure to Comply with Terms of Program.

- a. In the event that Site Operator fails to comply with any term in this Agreement, including, without limitation, the Site Operator Maintenance Obligations ("Site Operator Breach"), BETA may provide written notice of the Site Operator Breach to Site Operator and request that the Site Operator cure the Site Operator Breach to BETA'S satisfaction in order to comply with the Agreement terms. If Site Operator does not cure a Site Operator Breach within ten (10) calendar days after receiving written notice thereof from BETA, BETA shall have the right to (i) cure such Site Operator Breach, and Site Operator shall reimburse BETA for the reasonable costs incurred by BETA with respect to such cure, or (ii) terminate this Agreement and remove the Station. The rights and remedies of BETA set forth herein shall expressly survive the termination of this Agreement. In the event BETA terminates this Agreement as the result of an uncured Site Operator Breach, Site Operator shall pay to BETA, within thirty (30) days of BETA's written request (a) all Margin Sharing Payments previously made to Site Operator with respect to the Station, and (b) an Investment Return Fee. The "Investment Return Fee" shall be calculated on a per charging port basis and pro-rated as follows: $\$4,000 \times \frac{\text{number of charging ports on the Station}}{\text{expected \# of operational months for the charging port} - \text{actual \# of months the charging port was actually available for use}}$. For purposes hereof, the "expected # of operational months of the charging port" is determined to be the length of time between the Station Activation Date and the end of the Initial Term of this Agreement.
- b. In the event that BETA fails to comply with any term in this Agreement ("BETA Breach"), Site Operator may provide written notice of the BETA Breach to BETA and request that BETA cure the BETA Breach in order to comply with the Agreement terms. If BETA does not cure a BETA Breach within thirty (30) calendar days after receiving written notice thereof from Site Operator (provided, however, if the nature of the BETA Breach is such that more than thirty (30) calendar days are reasonably required to cure, then such default shall be deemed to have been cured if BETA commences efforts to cure and thereafter diligently completes the cure in a reasonable time), Site Operator's sole and exclusive remedy shall be to terminate this Agreement and BETA shall thereafter remove the Station within sixty (60) days after the date of such termination.

- 14. Liability.** Site Operator shall indemnify BETA and its officers, directors, agents and employees to the fullest extent allowed by law from and against any and all demands, claims, losses, damages, liability, costs, expenses (including the payment of attorneys' fees and costs actually incurred, whether or not litigation is commenced), judgments or obligations, fines, penalties, assessments, actions or causes of action whatsoever ("Losses"), in each case, to the extent arising from or in connection with the Site Operator's use of the Station; any inaccuracy in any of the representations or warranties made by Site Operator in this Agreement; any breach or nonfulfillment of any of the covenants, obligations or agreements made by Site Operator in this Agreement; or the negligence or willful misconduct of Site Operator, its agents, employees, representatives, or contractors.

BETA shall defend Site Operator any and all demands, claims, losses, damages, costs, expenses (including the payment of attorneys' fees and costs actually incurred, whether or not litigation is commenced), judgments or obligations, fines, penalties, assessments, actions or causes of action whatsoever ("Losses") arising out of or in relation to its work in connection with this contract. Further, Beta shall indemnify Site Operator and its officers, directors, agents and employees to the fullest extent allowed by law from and against any and all Losses (i) to the extent arising from or in connection with any inaccuracy in any of the representations or warranties made by BETA in this Agreement; (ii) arising from damage to the Host Site to the extent directly caused by the installation of the Station; and (iii) the negligence or willful misconduct of BETA, its agents, employees, representatives, or contractors.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY OR ITS REPRESENTATIVES BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES CALCULATED BASED ON LOST PROFIT OR REVENUES, ARISING OUT OF OR UNDER THIS AGREEMENT

Any coverage provided BETA to the Site Operator as an additional insured does not apply to any claim or lawsuit which is barred by the doctrines of sovereign immunity, qualified immunity, and/or official immunity although defense of such actions will be provided. No provision of this condition of coverage or endorsement will constitute a waiver or the right of the insurer to assert a defense based on the doctrines of sovereign immunity, qualified immunity, and/or official immunity.

15. **No Amendment or Modification.** No modification, amendment or waiver of this Agreement shall be effective unless in writing and either signed by, or electronically accepted by affirmative action of, BETA and the Site Operator.
16. **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. No waiver will be effective unless in writing and signed by an authorized representative of BETA or the Site Operator. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.
17. **Applicable law.** Installation of the Station, and its operation, will be conducted in compliance with all local, state, and federal laws and regulations **including FAA approval and sign off.** The Parties agree that any claims or actions initiated pursuant to this Agreement may only be brought in the State of Missouri.
18. **Assignment.** Site Operator 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 BETA, which such consent shall not be unreasonably withheld. Any successor or assign of the Host Site must agree in writing to the terms of this Agreement prior to any assignment of this Agreement by Site Operator. BETA shall have the right to freely assign this Agreement to (i) any entity which shall be an affiliate, subsidiary, parent, or successor of BETA, (ii) any entity which may acquire all or substantially all of the assets of BETA, or with which BETA may merge or consolidate, or (iii) any entity controlled by, controlling, or under common control with BETA.
19. **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.
20. **Surrender.** At the end of the Term BETA will remove the Station, including its concrete foundations. BETA will surrender the Charging Station Site in a clean and neat condition, including backfilling any holes with dirt and re-seeding the Charging Station Site with grass, if applicable. BETA shall have no obligation to remove any buried conduit or wiring, or remove any electrical power service provided to the Charging Station Site.
21. **Project Requirements.** This Agreement is subject to the following requirements:
 - a. Prior to installation of the Station, BETA must procure:

- i. To the extent applicable, a letter of approval for the design package from the governmental authorities having jurisdiction over the Charging Station Site and Station.
- b. As part of the Station installation and provisioning, the Site Operator must collaborate with the Installer to obtain:
 - i. Approval from local agencies of the installation prior to provisioning based **upon FAA airspace review**, codes, ordinances, state, and federal laws, and
 - ii. Certification by BETA of at least one (1) officer or designee of Site Operator that he/she has been trained in the proper and safe operation, care, and use of the Station. All costs for such certification and recertification shall be covered by Beta.
- c. Site Operator shall, at its sole cost and expense, throughout the Term maintain insurance in the following types and amounts:
 - i. General liability insurance for bodily injury liability, including death and property damage liability, incurred in connection with the performance of the Agreement, with minimum limits of \$3,000,000 per occurrence and aggregate.
 - ii. Personal and advertising injury with minimum limits of \$3,000,000 per occurrence and aggregate
- d. BETA shall, at its sole cost and expense, throughout the Term maintain insurance in the following types and amounts:
 - i. General liability insurance for bodily injury liability, including death and property damage liability, incurred in connection with the performance of the Agreement, with minimum limits of \$3,000,000 per occurrence and aggregate.
 - ii. Personal and advertising injury with minimum limits of \$3,000,000 per occurrence and aggregate; and,
 - iii. Property Insurance sufficient for the replacement cost value of BETA's property in the event of a covered loss or event.
- e. Site Operator shall permit BETA signage at the Charging Station Site and reasonable wayfinding signage on the remainder of the Host Site for purposes of consumers locating the Station and such signage will conform to current city code.

22. Margin Sharing. At the conclusion of each calendar year, BETA will compute the margin of the Station. This will be calculated by BETA's gross revenue from the Station minus BETA's operating expenses for the Station, including without limitation, utility expenses (collectively the "Station Margin"). Expenses such as depreciation, insurance, and marketing will not be included in the Station Margin calculation. During the Term, BETA will provide payment to Site Operator equal to 10% of the Station Margin actually received for the Station in the prior year (the "Margin Sharing Payment").]

23. Right to Audit. During the term of this Agreement and not more than once per year, Site Operator may audit BETA's margin calculation specific to this Station. The audit rights are limited to expense and revenue records for the Station covered by this Agreement for the purpose of Station Margin calculation set forth in this Agreement.

24. Mutual Confidentiality. Neither party to this agreement shall disclose to any third party any confidential or non- public information related to either Party, the Project, or the Station. BETA acknowledges that the City of West Plains will comply with the Missouri Sunshine Law Chapter 610.

25. Severability. If any term or provision of this Agreement is held invalid, illegal, or incapable of being enforced by any rule of law or public policy, all of the other conditions and provisions of this Agreement will nevertheless remain in full force and effect, so long as the economic or legal substance of the transactions

contemplated hereby is not materially and adversely affected, as determined by BETA in its commercially reasonable discretion. Upon such determination that any term or provision is invalid, illegal, or incapable of being enforced, the Parties hereto will negotiate in good faith to modify this Agreement so as to reflect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transaction contemplated hereby is fulfilled to the extent possible.

26. **Notices.** To be effective under this Agreement, written notice by the Parties shall be sent to the addresses set forth below by hand, recognized national overnight delivery service, or by certified mail, return receipt requested. Any such notice shall be deemed to be given to and received by the party intended to receive such notice (a) when delivered, if hand delivered, (b) one (1) day after being deposited with a nationally recognized overnight delivery service, or (c) three (3) days after such notice shall have been deposited, postage prepaid, to the United States mail, certified, return receipt requested, properly addressed to the addresses for notices set forth below. If delivery of any such notice is rejected or refused or if the courier, overnight delivery service or U.S. Postal Service is unable to deliver the same because of changed address of which no notice was given, such notice shall be deemed given and effective on the first date of such rejection, refusal, or inability to deliver. In the event of a change of address by either party, such party shall give written notice thereof in accordance with the foregoing.

As to BETA:

BETA Technologies, Inc.
1150 Airport Drive
South Burlington, Vermont 05403

With a copy to:

Baker & Hostetler LLP
1170 Peachtree Street, Suite 2400
Atlanta, Georgia 30309
Attention: Stephen Floyd, Esq.

As to the Site Operator :

27. **Miscellaneous.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one single agreement binding upon the Parties. The Parties further agree that if the signature of any Party on this Agreement or any counterpart of this Agreement is a digital, mechanical, or electronic reproduction (such as, but not limited to, a photocopy, email, PDF, Adobe image, jpeg), then, such digital, mechanical, or electronic reproduction shall be enforceable, valid, and binding as an original. The Parties further agree that this Agreement (and any and all attachments attached hereto) constitute and contain the sole and entire agreement of Site Operator and BETA, and prior oral or written representations, inducements, expectations, promises or

agreements between Site Operator and BETA not specifically set forth in this Agreement shall be of no force or effect. No modification or amendment of this Agreement shall be binding upon the Parties unless such modification or amendment is in writing and signed by the Parties.

[Signature page follows]

BETA TECHNOLOGIES, INC.

Site Operator

[TYPE COMPANY NAME]

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A

PRODUCT SPECIFICATIONS AND SIGNAG

ATTACHMENT B

UTILITY AND HOST SITE SPECIFICATIONS

RESOLUTION 2023-05

RESOLUTION 2023-05

A RESOLUTION OF THE CITY OF WEST PLAINS, MISSOURI,
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN
AGREEMENT WITH BETA TECHNOLOGIES FOR AIRCRAFT
ELECTRIC CHARGING STATIONS AT THE AIRPORT.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST
PLAINS, MISSOURI AS FOLLOWS;

Section 1: The City Administrator is authorized and directed to execute
an agreement with BETA Technologies for aircraft electric charging stations at
the airport at no cost to the city.

Section 2: This Resolution shall be in full force and effect from and after
the date of its passage and approval.

PASSED AND APPROVED THIS _____ DAY OF FEBRUARY 2023

CITY OF WEST PLAINS, MISSOURI

BY: _____
MAYOR MICHAEL TOPLIFF

ATTEST:

CITY CLERK ALLISON SKINNER

