

# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 2/13/2014

Action Requested By:  
Landscape  
Management

Agenda Item Type  
Resolution

Subject Matter:

"Authorizing Mayor to execute agreement to accept DC Fast Charger donation from Nissan North America, Inc."

Exact Wording for the Agenda:

"Authorizing Mayor to execute agreement to accept DC Fast Charger donation from Nissan North America, Inc."

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

In an effort to strengthen economic and environmental opportunities in the region, enhance leadership in transportation electrification and to further promote the attractiveness of the 100% battery electric LEAF, the donation of electric vehicle charging infrastructure to be deployed in a publically accessible downtown area to (i) reduce barriers of driving electric vehicles in Huntsville, Alabama; (ii) help create a replicable model of EV infrastructure deployment for other stakeholders across the US; (iii) help Nissan identify best practices for

Associated Cost: N/A

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Brian R. Walker

Date: 2/5/2014

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Landscape Management

Council Meeting Date: 2/13/2014

Department Contact: Joy H. McKee

Phone # 256-427-5048

Contract or Agreement: "Authorizing Mayor to execute agreement to accept DC Fast Charger donation ...

Document Name: "Authorizing Mayor to execute agreement to accept DC Fast Charger donation from ...

City Obligation Amount: N/A

Total Project Budget: N/A

Uncommitted Account Balance: N/A

Account Number: N/A

### Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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### Grant-Funded Agreements

<u>Select...</u>	Grant Name:
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Department	Signature	Date
1) Originating	<i>Brian F. Walker</i>	2-5-14
2) Legal	<i>Theresa C. Cates</i>	2-11-14
3) Finance	<i>[Signature]</i>	2/13/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 14-\_\_\_\_\_

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and Nissan North America Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Authorizing Mayor to execute agreement to accept DC Fast Charger donation from Nissan North America, Inc." consisting of four (4) pages and the date of December 23, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
President of the City Council  
Of the City of Huntsville,  
Alabama

**APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

**NISSAN**

**Brendan S. Jones**

Nissan North America, Inc.  
Director  
EV Infrastructure Strategy

**NISSAN NORTH AMERICA, INC.**

One Nissan Way  
Franklin, TN 37067  
Mailing Address: P.O. Box 685001  
Franklin, TN 37068-5001  
Telephone: 615-725-1000

February \_\_, 2014

Dr. Robin Cox  
308 Fountain Cir Sw  
City of Huntsville  
Huntsville, Alabama

Dear Robin:

In an effort to strengthen economic and environmental opportunities in the region, enhance leadership in transportation electrification and to further promote the attractiveness of the 100% battery electric LEAF, the following summary outlines a donation of electric vehicle charging infrastructure to be deployed in a publically accessible downtown area to (i) reduce barriers of driving electric vehicles in Huntsville, Alabama; (ii) help create a replicable model of EV infrastructure deployment for other stakeholders across the US; (iii) help Nissan identify best practices for deploying DC Fast Charging in and around multiple urban economy use cases.

NISSAN NORTH AMERICA, INC., herein "NISSAN" agrees to donate and the city of Huntsville, Alabama herein "COMPANY," agrees to accept those items listed below "AS IS" and in their present condition (the "CHARGERS") upon the following terms and conditions. It is expressly understood that NISSAN makes no representations or warranties with respect to the CHARGER(S) pursuant to this donation. NISSAN assumes no responsibility for Participant's losses, liability, damages, costs or expenses arising directly or indirectly out of the manufacture, installation, maintenance or operation of the CHARGER, including but not limited to, personal injury, property damage or economic damage directly or indirectly caused by the CHARGERS. OTHER THAN THE MANUFACTURERS WARRANTIES THAT MAY BE PROVIDED WITH A PURCHASE OF THE CHARGERS, COMPANY AGREES AND UNDERSTANDS THAT THERE ARE NO WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY shall receive all rights, titles and interest in the CHARGER. Further, consistent

with a donation, NISSAN shall have no obligations for the repair, maintenance, or for the replacement of parts or for providing engineering services, or any other obligations with respect to the CHARGERS. NISSAN will order the CHARGER and pay for all shipping costs in association with the original delivery of the donation to the individual project location provided by COMPANY along with receipt of a copy of a site permit for the installation of the CHARGER. The CHARGER shall be installed, passed all inspections and testing, received all required permits and be operating properly no later than March 22, 2014. The CHARGER must be accessible and available to the general public.

COMPANY shall contract with Pro Electric, Inc. to install the Eaton DC Fast Charger described herein. Pro Electric, Inc. has executed an indemnification agreement in favor of Nissan of North America, Inc. which is attached hereto and incorporated herein by reference as Exhibit "A".

**Donation description:**

Quantity of one (1) – Eaton DC Fast Charger configured for 40kW with a standard 208V three phase electrical input, credit card reader from USA Technologies and CHAdeMO connector assembly. Installation and hardware commissioning are not included. NISSAN will provide COMPANY manufacturer contact information for support.

NISSAN will provide Company with a Form 1099 as applicable for tax purposes no later than January 31, 2015. Company will provide NISSAN a form W-9 prior to accepting delivery of the CHARGER.

**Marketing and Press.** COMPANY shall not acquire any rights under this Agreement to use the name "Nissan North America, Inc." or "Nissan" or "Infiniti" or any variation thereof, in any advertising, publicity or promotion, without NISSAN's prior written consent. COMPANY agrees to seek guidance and NISSAN approval prior to making any public commentary, including any original or subsequent press release, website posting, or other social media channels. At no time should details of this agreement be discussed with any third parties in explicit or implicit terms.

If the foregoing is in accordance with COMPANY's understanding, please indicate COMPANY's agreement by signing, printing signatory name, dating and returning the original of this letter to NISSAN who will administer the agreement.

This Agreement may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute the same Agreement. Any signed copy of the Agreement made by photocopy, facsimile or PDF Adobe format shall be considered an original.

Accepted and Agreed to:

CITY OF HUNTSVILLE, ALABAMA

By:

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Name:

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Date:

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Accepted and Agreed to:

NISSAN NORTH AMERICA, INC.

By:

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Name:

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Date:

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**INDEMNITY AGREEMENT**

Exhibit A

In Favor Of

**NISSAN NORTH AMERICA, INC.  
One Nissan Way  
Franklin, TN 37067**

In connection with the letter donation agreement dated February 6, 2014 between Nissan North America Inc. ("NNA") and the city of Huntsville, Alabama (the "City") pursuant to which NNA is donating an Eaton DC Fast Charger (the "Charger") to the City NNA requires [Electrical contractor] installing the Charger on behalf of the City, Contractor hereby undertakes and agrees to indemnify, defend and hold NNA, its officers, directors, employees, parents, subsidiaries and affiliates, harmless from and against any and all claims, demands, causes of action, suits, proceedings, damages, judgments, fines, penalties, losses, liabilities, costs and expenses, including attorneys' fees and in-house counsel fees, related to, in connection with, arising from or alleged to arise from, any faulty or defective installation of the Charger.

The validity, interpretation and construction of this Indemnity Agreement and all other matters related to this Indemnity Agreement, will be governed and interpreted by the laws of the State of Tennessee. Any action brought to enforce this Indemnity Agreement shall be brought in state court in Williamson County, Tennessee or federal court as provided below. Contractor consents to the exclusive jurisdiction of the appropriate state court in Williamson County, Tennessee or, if original jurisdiction can be established, in the federal court in the U.S. District Court for the Middle District of Tennessee in connection with any action with respect to the violation this Agreement.

Executed this 6 day of February, 2014,

[NAME] Pro Electric Inc

By: Gary Hillis

Title: FR President

Date: 2-06-2014

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By: Gary Hillis

Title: IB President

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Executed this 6 day of February, 2014,

[NAME] Pro Electric Inc

By: Gary Hillis

Title: ITB President

Date: 2-06-2014