

**STATE OF MINNESOTA  
GRANT AGREEMENT**

This grant agreement (Agreement) is between the State of Minnesota, acting through its Commissioner of Transportation ("State" or "MnDOT"), and [full legal name of the grantee including its address] ("Grantee").

## RECITALS

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1. [Minnesota Statutes, section 174.47](#) authorizes the State to enter into this agreement.
2. The Infrastructure Investment and Jobs Act (IIJA) establishes a National Electric Vehicle Infrastructure (NEVI) formula program to provide funding to states to strategically deploy electrical vehicle (EV) charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliable charging.
3. The purpose of this Agreement is to provide funding to the Grantee to acquire, construct, install, operate, maintain, and own electric vehicle (EV) charging stations using Federal Highway Administration (FHWA) National Electric Vehicle Infrastructure funds. The Grantee shall operate and maintain the EV charging stations for 5 years from the date the MnDOT issues a Notice to Proceed to Task 4.
4. All applicable requirements of Title 23 United States Code (USC) and 2 Code of Federal Regulations (CFR) Part 200 apply to the administration of these funds, which include, but are not limited to: 23 CFR 680, FHWA Federal Form 1273, the Davis Bacon Act, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, the National Environmental Policy Act of 1969 (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Act, Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32, and the Build America, Buy America Act. In addition to these requirements, the Grantee must comply with all other standards and requirements that may be required by federal, state, and local laws.
5. In accordance with 2 C.F.R. 170.220(a) (Federal Funding Accountability and Transparency Act (FFATA)), the terms in Appendix A to 2 C.F.R. Part 170 are incorporated by reference into this agreement.
6. In Phase I of the NEVI program, MnDOT will build EV charging stations throughout 18 clusters located along the two Alternative Fuel Corridors (AFCs) present in the state: I-94 I-35. MnDOT will fund one NEVI compliant charging station in each cluster.
7. Grantee represents that it is duly qualified and agrees to perform all services described in this agreement to the satisfaction of the State. Pursuant to [Minnesota Statutes, section 16B.98, subd. 1](#), Grantee agrees to minimize administrative costs as a condition of this agreement.

## AGREEMENT TERMS

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### 1 Term of Agreement and Survival of Terms.

- 1.1 **Effective Date.** This agreement will be effective on the date the State obtains all required signatures under [Minnesota Statutes, section 16B.98](#). As required by [Minnesota Statutes, section 16B.98, subd. 7](#), no payments will be made to Grantee until this agreement is fully executed. Grantee must not begin work under this agreement until this agreement is fully executed and Grantee has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration Date.** This agreement may not exceed 8 years, or when all obligations have been satisfactorily fulfilled, whichever occurs first. If required, the Grantee can request, in writing, a no-cost time extension from the State. The request shall include an explanation for the time delays and need for time extension. The State has the authority to approve or deny any such request.
- 1.3 **Time.** Grantee must comply with all the time requirements described in this agreement. In the performance of this grant agreement, time is of the essence. If additional time is required to complete a Task as defined in the approved project schedule, the Grantee must submit a request for a time

extension, in writing, to MnDOT providing details as to why additional time is required. MnDOT reserves the right to ask for additional information and approve or deny time extensions at the MnDOT's discretion.

- 1.4 **Limitation.** Under this Agreement, the State is only responsible for receiving and disbursing funds. Nothing in this Agreement will be construed to make the State a principal, co-principal, partner, or joint venturer with respect to the Project(s) covered herein. State may provide technical advice and assistance as requested by the Grantee, however, The Grantee will remain responsible for providing direction to its contractors and consultants and for administering its contracts with such entities. The Grantee's consultants and contractors are not intended to be third party beneficiaries of this Agreement.
- 1.5 **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 1.6 **Certification.** By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.
- 1.7 **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this agreement, including, without limitation, the following clauses: 14. Data Requirements; 16. Liability; 17. Workers Compensation; 18. State Audits; 19. Intellectual Property Rights and Obligations; 20. Publicity and Endorsement; and 24. Governing Law, Jurisdiction, and Venue.

2 **Exhibits.** It is agreed that the following documents are made a part hereof and together with this instrument constitute the Agreement. This Agreement contains all of the terms and conditions agreed upon by the parties hereto.

- 2.1 Exhibit A: MnDOT NEVI Request for Proposals ("NEVI RFP")
- 2.2 Exhibit B: Technical Requirements
- 2.3 Exhibit C: Scope of Work and Deliverables
- 2.4 Exhibit D: Grantee Response to RFP, including Technical Application Form and Cost Proposal Form ("Grantee Response")
- 2.5 Exhibit E: Executed Site Host Agreement
- 2.6 Exhibit F: Letter of Credit
- 2.7 Exhibit G: National Electric Vehicle Infrastructure Standards and Requirements ("NEVI Rule")
- 2.8 Exhibit H: FHWA Form 1273 ("Form 1273")
- 2.9 Exhibit I: Standard Title VI/Non-Discrimination Assurance Form
- 2.10 Exhibit L: State of Minnesota Prevailing Wages as of **DATE – Add before signing contract**
- 2.11 Exhibit M: Federal Davis Bacon Wages as of **DATE – Add before signing contract**
- 2.12 Exhibit N: Request for Funds and Invoice Template (" Grant Progress Report and Invoice Templates")
- 2.13 Exhibit O: Buy America Requirements for EV Chargers ("NEVI BABA Rule")
- 2.14 Exhibit P: Design Recommendations for Accessible EV Charging Stations (Accessibility Recommendations)

3 **Authorized Representatives.**

- 3.1 The State's Authorized Representative is: **[name, title, address, telephone number, email]**, or his/her successor. State's Authorized Representative has the responsibility to monitor Grantee's performance and the authority to accept the services provided under this agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.
- 3.2 Grantee's Authorized Representative is: **[name, title, address, telephone number, email]**. If Grantee's Authorized Representative changes at any time during this agreement, Grantee will immediately notify the State.

4 **Letter of Credit.** Grantee shall provide a Letter of Credit in the amount of 60% of the Maximum Total Project Reimbursement, per the requirements of the Agreement. After each successful year of operations and maintenance the total amount of the Letter of Credit can be reduced by 20% following notification from MnDOT. MnDOT reserves the right to determine if successful operations and maintenance has been met and has sole discretion to provide

such notification.

**5 Grantee's Duties.** Grantee, who is not a state employee, will:

- 5.1 Perform the duties specified in Exhibits listed above which are attached and incorporated into this grant agreement.
- 5.2 Comply with all requirements and regulations specified in Exhibits listed above which are attached and incorporated into this grant agreement.
- 5.3 Submit required reports per Exhibit C. If a required report is past due, payments will not be made until the Grantee has submitted the required report.
- 5.4 Procure all necessary permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incident to the due and lawful prosecution of the Agreement.
- 5.5 Be familiar with all laws, ordinances, and regulations that may in any manner affect those engaged or employed upon the work, or materials or equipment used in or upon the work, or that may in any way affect the conduct of the work. Grantee shall so conduct the work such that conflict with any such laws, ordinances, or regulations will be avoided, and the Grantee shall save harmless MnDOT and its representatives against any claims arising from violation thereof.
- 5.6 Obtain prior approval of the State for any significant changes related to the scope of work. This includes, but is not limited to:
  - 5.6.1 Any significant revision of the scope, schedule, goals, objectives or tasks of the proposal Scope of Work, or related activities (regardless of whether there is an associated budget revision requiring prior approval); and
  - 5.6.2 Changes in key personnel, program manager, or prime contractor.
- 5.7 Comply with all required grants management policies and procedures set forth through Minnesota Statutes, section [16B.97, subd. 4\(a\)\(1\)](#).
- 5.8 Abide by all applicable federal regulations, including 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
- 5.9 Submit written progress reports and expenditure reports at least quarterly, and a final grant closeout report. Quarterly and final closeout reports must be submitted within the timeframes identified in 2 CFR 200.329. Payments will not be made under section 9.5.2 if a progress report is past due unless Grantee has been given a written extension by the State.
- 5.10 Maintain separate accounts for this Project in accordance with generally accepted accounting principles. Accounts must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions. In addition, accounts must be sufficient to allow for the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the federal statutes, regulations, and the terms and conditions of the federal award.
  - 5.10.1 Grantee shall maintain all records for the Project separately and shall make them available to MnDOT for review in a timely manner, if requested.
- 5.11 Submit data through the Federal Highway Administration online reporting platform on the following schedules: quarterly station operation data as required in 680.112 (a), annual data as required in 680.112(b) and one-time data as required in 680.112(c).

**6 Contracting and Bidding Requirements.**

- 6.1 **Anti-Lobbying.** Grantee shall comply with all Anti-Lobbying requirements outlined in Form 1273, which is attached and incorporated into this grant agreement.
- 6.2 **Debarment and Suspension.** Grantee shall comply with all Debarment and Suspension requirements outlined in Form 1273, which is attached and incorporated into this grant agreement.
- 6.3 **Federal Award Uniform Administrative Requirements.** For all procurements of goods and services supported in whole or in part with federal funds, Grantee agrees to comply with the current requirements and standards of the Uniform Administrative Requirements, 2 CFR part 200, which is incorporated by reference into this Agreement.

6.4 **Excluded Parties Listing System.** Before entering into a third-party contract or subcontract, Grantee agrees to check the System for Awards Management at <https://www.sam.gov/portal/public/SAM/> to ensure the selected vendor or contractor has not been excluded from doing business with the federal government or its grantees. Grantee will provide State with evidence that the System for Awards Management website has been checked.

6.5 **Fund Use Prohibited.** The Grantee will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Grantee from utilizing these funds to pay any party who might be disqualified or debarred after the Grantee's contract award on this Project.

6.6 **Procurement of Recovered Materials.** See 2 CFR 200.323 Procurement of Recovered Materials.

7 **Asset Monitoring.** Grantee is required to use the capital asset(s) obtained under this agreement for the NEVI formula program for five years. Any capital assets acquired with grant funds under this agreement are subject to the reporting requirements under 23 CFR 680.112 (c) (3). Grantee may not sell or change the purpose of use for the capital asset(s) obtained with grant funds under this agreement without the prior written consent of the State and an agreement executed and approved by the same parties who executed and approved this agreement, or their successors in office. If disposition of asset(s) obtained under this agreement is approved, any proceeds from the sale of such asset(s) must follow the requirements under 2 CFR 200.311, 2 CFR 200.313, and 2 CFR 200.314, or as specifically identified in federal law or the terms and conditions of the award.

8 **Federal Funds Compliance and Full Financial Responsibility.** Payments under this Agreement will be made from federal and state funds. The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal requirements. If, for any reason, the federal government fails to pay part of the cost or expense incurred by the Grantee, or in the event the total amount of federal funds is not available, the Grantee will be responsible for any and all costs or expenses incurred under this Agreement. The Grantee further agrees to pay any and all lawful claims arising out of or incidental to the performance of the work covered by this Agreement in the event the federal government does not pay the same.

## 9 **Consideration**

9.1 **Consideration.** The State will pay for all services performed by Grantee during the period of performance under this agreement as follows:

9.1.1 **Compensation.** Grantee will be paid through expenditure reimbursements based on actual expenses incurred which will be submitted on a quarterly basis, see Invoices 9.5.1. This must be consistent with the project budget and work plan in Exhibit C and Exhibit D).

9.1.2 **Expenses and scope not included in original project budget or work plan.** Changes in the scope or expenses of Exhibit C and Exhibit D project budget and work plan must occur in compliance with MnDOT Office of Sustainability and Public Health's amendment policy prior to expenses incurring. The overall budget shall not change, but changes may occur between cost items within the Capital Costs and between cost items within the Operating Costs. Changes shall not occur between Capital Costs and Operating Costs. If expenses are incurred prior to the amendment, expenses will be deemed ineligible.

9.1.3 **Eligible Costs.** Grantees shall be reimbursed for Eligible Costs according to Exhibit D and that are deemed eligible according to 23 CFR 680 and federal, state, and local laws.

9.1.4 **Ineligible Costs.** Grantee shall not be reimbursed for costs incurred prior to execution of this Agreement, costs deemed ineligible per 23 CFR 680; federal, state, or local laws; costs that exceed the Total Obligation; or costs incurred for work that does not meet the requirements of this Agreement at the sole discretion of MnDOT.

9.1.5 **Withholding.** MnDOT will withhold 20 percent of the actual costs incurred for each

Construction reimbursement invoice, as detailed in Exhibit D. Of this withholding, 20 percent will be released on an annual basis at the time of final O&M Payment of the year, if all performance requirements and obligations of the Agreement are met.

9.1.6 **Performance Deductions.** If Grantee does not meet the required 97 percent uptime per this Agreement, the following performance deductions will be subtracted from the quarterly O&M payments: \$1,000 will be deducted for every percentage point, or fraction thereof, that the 97 percent uptime is not met on a per-port basis, per the NEVI Rule. If there is no remaining O&M payment for the deduction to be subtracted from, the amount will be deducted from the remaining withholding. Once a Performance Deduction occurs, those funds cannot be recouped and are permanently subtracted from the Total Obligation.

9.2 **Program Income.** For the purposes of program income or revenue earned from the operation of an EV charging station, all revenues received from operation of the EV charging facility shall only be used for:

9.2.1 Debt service with respect to the EV charging station project, including funding of reasonable reserves and debt service on refinancing;

9.2.2 A reasonable return on investment of any private person financing the EV charging station project, as determined by the State or other direct recipient;

9.2.3 Any costs necessary for the improvement and proper operation and maintenance of the EV charging station, including reconstruction, resurfacing, restoration, and rehabilitation;

9.2.4 If the EV charging station is subject to a public-private partnership agreement, payments that the party holding the right to the revenues owes to the other party under the public-private partnership agreement; and

9.2.5 Any other purpose for which federal funds may be obligated under Title 23 USC.

9.3 **Reasonable Return on Investment.** Grantee shall not make more than a Reasonable Return on Investment on the Project. Reasonable Return on Investment on the project is defined as no more than 15 percent annual profit on the Project. This Profit is defined as the remainder of all revenue received from the operation of the Project and reimbursements (Total Revenue) after all eligible expenses (reimbursable or non-reimbursable) have been deducted. For this calculation only, the Total Capital Costs of the Project shall be applied as an expense divided equally between the first 5 years.

*Profit %*

$$= \frac{(Revenue\ from\ Operations\ +\ Reimbursements) - (Eligible\ Expenses\ +\ \frac{Total\ Capital\ Costs}{5})}{Eligible\ Expenses\ +\ \frac{Total\ Capital\ Costs}{5}}$$

× 100%

**Revenue:** Revenue received from the operation of the Project and Reimbursements

**Expense:** All eligible expenses (reimbursable or non-reimbursable) and 20 percent of Total Capital Costs

Any profit over 15 percent must be returned to MnDOT. Grantee shall provide a letter signed by a certified public accountant (CPA) with each invoice stating the profit amount earned. If more than 15 percent profit was earned, the difference will be subtracted from the amount owed to the Grantee. If this amount exceeds the final payment, the Grantee shall return the required amount to MnDOT in a means determined by MnDOT. MnDOT may ask the Grantee to provide documentation as to the amount of profit earned.

9.4 **Total Obligation.** The total obligation of the State for all capital reimbursements to Grantee under this Agreement will not exceed \$[ ] or [ ] percent of the total incurred eligible capital costs.

The total obligation of the State for all O&M reimbursements to Grantee under this Agreement will not exceed \$[ ] or [ ] percent of the total incurred eligible O&M costs.

The total obligation of the State for all compensation and reimbursements to Grantee under this agreement will not exceed a federal participation rate of 70%, state participation rate of 20%. See Exhibit D for site specific project cost caps.

## 9.5 Payment.

- 9.5.1 **Invoices.** Grantee will submit invoices for payment by on a quarterly basis using Exhibit M. If actual expenses are less than the costs included in Exhibit C, the Grantee will be reimbursed for no more than their Requested Reimbursement Percentage (%) of eligible costs for both capital and operations and maintenance (O&M) costs. The State's Authorized Representative, as named in this agreement, will review each invoice against the approved grant budget, grant expenditures to-date, and the latest written progress report before approving payment. The State will promptly pay Grantee after Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services.
- 9.5.2 **Payment schedule.** Quarterly payments: Expenses may begin occurring no earlier than the date of contract execution. All expenses for a calendar quarter should be submitted by the last day of the next month following the end of a quarter. For example, a contract that was executed on January 16 would need to submit quarterly expenses for reimbursement from January 16 to March 31, the request for reimbursement should be submitted no later than April 30. MnDOT will review and approve the expenses per 9.5.5 State payment requirements.
- 9.5.3 **Data Submittal Requirement.** During the life of the project Grantee must submit reports as required by Exhibit C. Applicable reports shall be submitted through the online reporting platform provided by the Federal Highway Administration. Data submittals must be reviewed and approved by the State's Authorized Representative before processing invoices.
- 9.5.4 **All Invoices Subject to Audit.** All invoices are subject to audit, at State's discretion. Audits will be conducted using the cost principles and procedures set forth in 2 Code of Federal Regulations – (CFR) part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 9.5.5 **State's Payment Requirements.** State will promptly pay all valid obligations under this Agreement as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Grantee's invoices and progress reports for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Grantee within ten days of discovering the error. After State receives the corrected invoice, State will pay Grantee within 30 days of receipt of such invoice.
- 9.6 **Monitoring Visit and Financial Reconciliation.** For agreements of \$50,000 or more, the State will make at least one monitoring visit and conduct annual financial reconciliations of Grantee's expenditures during the period of performance. For agreements of \$250,000 or more, the State will make an annual monitoring visit.
- 9.6.1 The State's Authorized Representative will notify Grantee's Authorized Representative where and when any monitoring visit and financial reconciliation will take place, which State employees and/or contractors will participate, and which Grantee staff members should be present. Grantee will be provided with at least seven calendar days of notice prior to any monitoring visit or financial reconciliation.
- 9.6.2 Following a monitoring visit or financial reconciliation, Grantee will take timely and appropriate action on all deficiencies identified by State.
- 9.6.3 At least one monitoring visit and one financial reconciliation must be completed prior to final payment being made to Grantee.
- 9.7 **Unexpended Funds.** The Grantee must promptly return to the State at grant closeout any unexpended funds that have not been accounted for in a financial report submitted to the State. Any funds that remain at the end of the Project shall revert to MnDOT's NEVI Formula Funding Program.
- 9.8 **Repayment of Funds.** Grantee shall repay any and all funds received as a result of this Agreement in the event of default or unlawful use of funds. MnDOT may request for the repayment of funds from the Grantee or MnDOT may make a claim against the Letter of Credit provided to the Department, at the Department's sole discretion.
- 9.9 **Closeout.** Grantee must liquidate all obligations incurred under this Agreement and submit all financial,

performance, and other reports as required by the terms of this Agreement and the Federal award within 90 calendar days of the end date of the period of performance. The State will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with grant funds will continue following grant closeout.

9.10 **Conditions of Payment.** All services provided by Grantee under this agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

9.11 **Matching Funds.** Any cost sharing or matching funds required of Grantee in this agreement must comply with 2 CFR 200.306.

## 10 **Build America and Buy America (BABA) Act,**

10.1 **General Requirements.** Equipment used for EV charging must comply with both the Title 23 Buy America clause (23 U.S.C. § 313) and the Build America, Buy America Act (Pub. L. No 117-58, div. G §§ 70901–70927). FHWA has provided a phased waiver to the Buy America provisions for NEVI EV charging equipment (88 FR 10619) to allow for a smoother transition while the market adjusts to the Buy America conditions. This waiver is broken into two phases. The first phase includes equipment manufactured before July 1, 2024, and installed before October 1, 2024. The second phase includes equipment manufactured and/or installed after these dates until a future date to be determined by FHWA. For the purposes of this Agreement, all proposed equipment and costs will assume compliance with the second phase of the waiver, regardless of when equipment is planned to be procured and installed. However, if, after award, equipment is purchased and installed prior to the deadlines of the first phase of the waiver, the first phase requirements may be used for this equipment.

10.2 **NEVI BABA Rule.** Exhibit N is attached and incorporated into this grant agreement.

## 11 **Civil Rights and Non-Discrimination Requirements.**

11.1 **Title VI of the Civil Rights Act.** Exhibit H is attached and incorporated into this Agreement.

11.2 **Equal Employment Opportunity.** Exhibit H is attached and incorporated into this Agreement.

11.3 **Other Federal Nondiscrimination Requirements.** Exhibit H is attached and incorporated into this Agreement.

### 11.4 **Discrimination Prohibited Americans with Disabilities Act of 1990 (ADA).**

11.4.1 **General Requirements.** The ADA and implementing regulations, apply to EV charging stations by prohibiting discrimination on the basis of disability by public and private entities. EV charging stations must comply with applicable accessibility standards adopted by the Department of Transportation into its ADA regulations (49 CFR part 37) in 2006, and adopted by the Department of Justice into its ADA regulations (28 CFR parts 35 and 36) in 2010.

11.4.2 **Accessible EV Charging Stations.** Exhibit O is attached and incorporated into this Agreement.

11.5 **Fair Housing Act, Title VII of the Civil Rights Act.** All applicable requirements of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and implementing regulations, apply to this program.

11.6 **Discrimination Prohibited by Minnesota Statutes §181.59.** Grantee will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) that no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) that a

violation of this section is a misdemeanor; and 4) that this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

## 12 Prevailing Wages and Labor Standards.

12.1 **Davis-Bacon Act, as amended.** Exhibit H is attached and incorporated into this Agreement.

12.2 **Contract Work Hours and Safety Standards Act.** Exhibit H is attached and incorporated into this Agreement.

12.3 **Minnesota Prevailing Wage Act.** Grantee will comply with prevailing wage provisions of Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120. Failure to comply may result in civil or criminal penalties.

12.4 **Prevailing Wages Exhibit.** Exhibit L is attached and incorporated into this Agreement.

## 13 State and Federal Environmental Laws.

### 13.1 Environmental Review.

13.1.1 **General Requirements.** 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. The Minnesota Environmental Policy Act (MEPA) requires environmental review when a proposed development project has the potential for significant environmental impacts. The MEPA environmental review process takes place prior to the permitting processes so that environmental review may provide decision makers with usable information concerning the primary environmental effects of the proposed project. The requirements for environmental review are based on the nature, size, and location of the proposed project, and are described in Minnesota Rules 4410.

13.1.2 **Roles and Responsibilities.** The State will conduct environmental review for the proposed site work related to EV charger installation as required by NEPA. Grantee will be responsible for all permitting responsibilities and third-party agreements for the site. Grantees shall also provide access and right-of-entry to MnDOT as requested for purposes of environmental review and due diligence. Any amendments to the obtained NEPA clearances will be the responsibility of the Grantee.

13.1.3 **Conditional Award.** The State will conduct an environmental review at the State's expense, in compliance with NEPA. If the State determines NEPA review will take additional time and/or would result in an undue cost to MnDOT, or the NEPA review determines the Project would significantly impact the environment, the State may withdraw the Conditional Award.

13.2 **Clean Air Act and the Federal Water Pollution Control Act.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued under the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## 14 Data Requirements

14.1 **Minnesota Data Practices Act.** Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this agreement. The civil remedies of Minn. Stat. §13.08 apply to the release of the data referred to in this clause by either Grantee or the State. If Grantee receives a request to release the data referred to in this section 10.1, Grantee must immediately notify the State. The State will give Grantee instructions concerning the release of the data to the requesting party before the data is released.



Grantee's response to the request shall comply with applicable law.

- 14.2 **Data Disclosure.** Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

## 15 Additional Federal Requirements

- 15.1 **Uniform Relocation Assistance and Real Property Acquisition Act.** The Uniform Relocation Assistance and Real Property Acquisition Act, and implementing regulations, apply to this program 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.
- 15.2 **Telecommunications Certification.** By signing this agreement, Contractor certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, Contractor will not use funding covered by this agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Contractor will include this certification as a flow down clause in any contract related to this agreement.
- 15.3 **Appendix II 2 CFR Part 200 Federal Contract Clauses.** Grantee agrees to comply with the following federal requirements as identified in 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and agrees to pass through these requirements to its subcontractors and third-party contractors, as applicable. In addition, the Grantee shall have the same meaning as "Contractor" in the federal requirements listed below.
- 15.4 **Remedies.** Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 15.5 **Termination.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- 15.6 **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- 15.7 **Drug-Free Workplace.** In accordance with 2 C.F.R. § 32.400, Grantee will comply with the Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32.
- 15.8 **Federal Funding Accountability and Transparency Act (FFATA).** In accordance with 2 C.F.R. 170.220(a), the terms in Appendix A to 2 C.F.R. Part 170 are incorporated by reference into this agreement.
- 16 **Liability.** In the performance of this Agreement, and to the extent permitted by law, Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by Grantee or Grantee's agents or employees. This clause will not be construed to bar any legal remedies Grantee may have for the State's failure to fulfill its obligations under this agreement.

## 17 Insurance Requirements

### 17.1 Notice to Grantee

- 17.1.1 The Grantee is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Agreement.
- 17.1.2 Grantee will not commence work under the Agreement until they have obtained all the insurance described below and the State has approved such insurance. Grantee will maintain such insurance in force and effect throughout the term of this Agreement, unless otherwise specified in this Agreement.
- 17.1.3 The failure of the Grantee to provide a Certificate of Insurance for the policies required under this Agreement or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Agreement, will not constitute a waiver by the State to the Grantee to provide such insurance.
- 17.1.4 The State reserves the right to immediately terminate this Agreement if the Grantee is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Grantee. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's Authorized Representative upon written request.

### 17.2 Notice to Insurer

- 17.2.1 The Grantee's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 17.2.2 Insurance certificate holder should be addressed to the Agency's Authorized Representative.

### 17.3 Additional Insurance Conditions. The following apply to the Grantee, or the Grantee's subcontractor:

- 17.3.1 Grantee's policy(ies) will be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Grantee's performance under this Agreement.
- 17.3.2 If Grantee receives a cancellation notice from an insurance carrier affording coverage herein, Grantee agrees to notify the State within five business days with a copy of the cancellation notice, unless Grantee's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty days advance written notice to the State;
- 17.3.3 Grantee is responsible for payment of Agreement related insurance premiums and deductibles;
- 17.3.4 If Grantee is self-insured, a Certificate of Self-Insurance must be attached;
- 17.3.5 Grantee's policy(ies) must include legal defense fees in addition to its policy limits with the exception of professional liability.
- 17.3.6 Grantee's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.
- 17.3.7 An Umbrella or Excess Liability insurance policy may be used to supplement the Grantee's policy limits to satisfy the full policy limits required by the Agreement.

### 17.4 Coverages. Grantee is required to maintain and furnish satisfactory evidence of the following insurance policies:

- 17.4.1 **Commercial General Liability Insurance.** Grantee is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Agreement whether the operations are by the Grantee or by a subcontractor or by anyone directly or indirectly employed by the Grantee under the Agreement. Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence
- \$2,000,000 – annual aggregate
- \$2,000,000 – annual aggregate – applying to Products/Completed Operations

The following coverages must be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- State of Minnesota named as an Additional Insured, to the extent permitted by law

**17.4.2 Commercial Automobile Liability Insurance.** Grantee is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Agreement, and in case any work is subcontracted the Grantee will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile. Evidence of Subcontractor insurance must be filed with the Grantee.

**17.4.3 Workers' Compensation Insurance.** Statutory Compensation Coverage. Except as provided below, Grantee must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Grantee will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:

- \$100,000 – Bodily Injury by Disease per employee
- \$500,000 – Bodily Injury by Disease aggregate
- \$100,000 – Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts Grantee from Workers' Compensation insurance or if the Grantee has no employees in the State, Grantee must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Grantee from the Minnesota Workers' Compensation requirements.

If during the course of the Agreement the Grantee becomes eligible for Workers' Compensation, the Grantee must comply with the Workers' Compensation Insurance requirements herein and provide the State with a certificate of insurance.

Any deductible will be the sole responsibility of the Grantee and may not exceed \$50,000 without the written approval of the State. If the Grantee desires authority from the State to have a deductible in a higher amount, the Grantee will so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Grantee to cover the deductible from its own resources. The retroactive or prior acts date of such coverage must not be after the effective date of this Agreement and Grantee must maintain such insurance for a period of at least three years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Grantee to fulfill this requirement.

**17.4.4 Network Security and Privacy Liability Insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Grantee must maintain insurance to cover claims which may arise from failure of Grantee's security resulting

in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:

- \$2,000,000 per occurrence
- \$2,000,000 annual aggregate

The following coverage must be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

- 18 **Workers Compensation.** Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party because of any act or omission on the part of these employees are in no way the State's obligation or responsibility.
- 19 **State Audits.** Under Minn. Stat. § 16B.98, Subd.8, Grantee's books, records, documents, and accounting procedures and practices of Grantee, or other party relevant to this grant agreement or transaction, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. Grantee will take timely and appropriate action on all deficiencies identified by an audit.
- 20 **Publicity and Endorsement.**
- 20.1 **Publicity.** Grantee must contact the State with a draft of the publicity regarding the subject matter of this agreement and provide the State the opportunity to decide if it will be identified as the sponsoring agency. Any publicity must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant agreement. All projects primarily funded by state grant appropriation must publicly credit the State of Minnesota, including on the Grantee's website when practicable.
- 20.2 **Endorsement.** Grantee must not claim that the State endorses its products or services.
- 20.3 **Disclaimer.** Grantee must include the following statement in all plans, studies and reports funded under this contract: "The preparation of this report has been funded in part by the U.S. Department of Transportation and Federal Highway Administration. The contents of this document reflect the views of the authors who are responsible for the facts or accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the U.S. Department of Transportation. The report does not constitute a standard, specification, or regulation."
- 21 **Termination and Suspension.**
- 21.1 **Termination by the State.** The State may terminate this agreement at any time, with or without cause, upon written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 21.2 **Termination for Cause.** The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that Grantee has been convicted of a criminal offense relating to a state grant agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.
- 21.3 **Termination for Insufficient Funding.** The State may immediately terminate this agreement if:

- 21.3.1 It does not obtain funding from the Minnesota Legislature; or
- 21.3.2 If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State will provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.
- 21.4 **Suspension.** The State may immediately suspend this agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Grantee during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

#### 21.5 Procedures upon Termination.

- 21.5.1 **Notice.** MnDOT shall provide written notice to the Grantee of the decision to terminate, the reason(s) for the termination, and the effective date of the termination. If there is a partial termination due to a reduction in funding, the notice will set forth the change in funding and the changes in the approved budget. The Grantee shall not incur new obligations beyond the effective date and shall cancel as many outstanding obligations as possible. MnDOT's share of non-cancellable obligations, which MnDOT determines were incurred properly prior to notice of cancellation, will be allowable costs, subject to this Agreement.
- 21.5.2 **Rights in Products.** All finished and unfinished documents, data, reports, or other material prepared by the Grantee under this Agreement shall, at MnDOT's option, become the property of MnDOT.
- 21.5.3 **Return of Funds.** Any costs paid previously by MnDOT, which are subsequently determined to be unallowable through audit, monitoring, or closeout procedures, shall be returned to MnDOT within 30 days of the disallowance.

## 22 Default.

### 22.1 Events of Default. The following shall constitute Events of Default under this Agreement:

- 22.1.1 **Material Misrepresentation.** If at any time any representation, warranty, or statement made or furnished to MnDOT by, or on behalf of, the Grantee in connection with this Agreement or to induce MnDOT to make an award to the Grantee shall be determined by MnDOT to be incorrect, false, misleading or erroneous in any material respect when made or furnished and shall not have been remedied to MnDOT's satisfaction within 30 days after written notice by MnDOT is given to the Grantee.
- 22.1.2 **Noncompliance.** If there is a failure by the Grantee to comply with any of the covenants, terms, or conditions contained in this Agreement.
- 22.1.3 **Misspending.** If the Grantee expends grant proceeds for purposes not described in the Proposal, this Agreement, or as authorized by MnDOT.
- 22.1.4 **Lack of Capacity.** If the Grantee demonstrates a lack of capacity to carry out the approved activities and services in a timely manner and with the funds awarded, at the sole discretion of MnDOT.
- 22.1.5 **Abandonment.** If the Grantee abandons any activities or services assisted under this Agreement.
- 22.1.6 **Failure to Comply with Laws.** If the Grantee has failed to verify compliance with any state or federal laws, rules, regulations, guidance, or orders.

### 22.2 Notice of Default. MnDOT shall issue a written notice of default providing therein a 15-day period in which the Grantee shall have an opportunity to cure, provided that cure is possible and feasible.

### 22.3 Remedies upon Default. If the default remains after the opportunity to cure, MnDOT shall have the right, in addition to any rights and remedies available by law, to do one or more of the following:

- 22.3.1 **Reduce Payment.** Reduce the level of funds the Grantee would otherwise be entitled to receive under this Agreement,

- 22.3.2 **Repayment.** Require immediate repayment of up to the full amount of funds disbursed to the Grantee under this Agreement, including making a claim against the Letter of Credit provided to the Department, up to the full amount of the Letter of Credit. MnDOT shall have sole discretion to determine the amount of the claim.
- 22.3.3 **Conditional Payments.** Refuse or condition any future disbursements upon conditions specified in writing by MnDOT.

**23 Assignment Amendments, Waiver, and Grant Agreement Complete.**

- 23.1 **Assignment.** Grantee may neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 23.2 **Amendments.** Any amendments to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 23.3 **Waiver.** If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or the State's right to subsequently enforce it.

**24 Grant Agreement Complete.** This grant agreement contains all negotiations and agreements between the State and Grantee. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**25 Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this agreement. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**26 Notice of Proceedings**

- 26.1 Grantee shall notify the State within 30 days of the initiation of any claims, lawsuits, or proceedings brought against the Grantee.
- 26.2 In the event Grantee becomes aware of any material alteration in the Project, initiation of any investigation or proceeding involving the Project, or any other similar occurrence, the Grantee shall notify the State promptly.

**[The remainder of this page has intentionally been left blank]**

**STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15 and § 16C.05.*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

SWIFT Contract/PO No(s). \_\_\_\_\_

**GRANTEE**

*The Grantee certifies that the appropriate person(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION  
CONTRACT MANAGEMENT**

By: \_\_\_\_\_

Date: \_\_\_\_\_

