



**Interagency Agreement with**

**City Of Lake Forest Park**

**through**

**Washington Electric Vehicle Charging Program (WAEVCP)**

**Contract Number:  
24-92802-016**

**For**

**City of Lake Forest Park Fleet Depot Charging- 1 Site**

**Dated:** Tuesday, October 1, 2024

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## Face Sheet

Contract Number: 24-92802-016

**Energy Division, Clean Transportation Unit  
Washington Electric Vehicle Charging Program (WAEVCP)**

<b>1. Contractor</b> City Of Lake Forest Park 17425 Ballinger Way Ne Lake Forest Park WA 98155		<b>2. Contractor Doing Business As (as applicable)</b> N/A	
<b>3. Contractor Representative</b> Katie Phillips Project Manager 206-957-2812 Kphillips@cityofflp.gov		<b>4. COMMERCE Representative</b> Crystal Ralkey Contract Manger 360-725-5027 Crystal.Ralkey@commerce.wa.gov <span style="float: right; margin-left: 20px;">                     1101 Plum St SE                      PO Box 42525                      Olympia, WA 98504-2525                 </span>	
<b>5. Contract Amount</b> \$75,000.00	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> 10/01/2024	<b>8. End Date</b> 05/01/2025
<b>9. Federal Funds (as applicable)</b> N/A		<b>Federal Agency:</b> N/A <b>ALN</b> N/A	
<b>10. Tax ID #</b> 91-6019059	<b>11. SWV #</b> <Insert number>	<b>12. UBI #</b> 601140623	<b>13. UEI #</b> <Insert number>
<b>14. Contract Purpose</b> To install 10 L2 ports on 1 site in Lake Forest Park.			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" – Site List, Attachment "D" – Sample Application Manual.			
<b>FOR CONTRACTOR</b>  _____ Thomas French, Mayor  _____ Signature  _____ Date		<b>FOR COMMERCE</b>  _____ Michael Furze, Assistant Director  _____ Date  <b>APPROVED AS TO FORM ONLY                  BY ASSISTANT ATTORNEY GENERAL                  APPROVAL ON FILE</b>	

## **Program Specific Terms and Conditions**

### **1. SUBCONTRACTING (REPLACES GENERAL TERMS AND CONDITIONS #15)**

The Contractor, also referred to as Grantee, shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts under this Agreement. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Agreement; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Agreement. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Agreement. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Agreement. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

### **2. TREATMENT OF ASSETS (REPLACES GENERAL TERMS AND CONDITIONS #20)**

The parties do not anticipate that Commerce will furnish property (other than the state funds granted herein) to Grantee for use in Grantee's performance under this Agreement; provided, however, that title to any other property that may be so furnished by Commerce shall remain in Commerce. Commerce claims no ownership for the materials, goods, or services purchased by the Grantee for the completion of this Agreement, regardless of reimbursement status under this agreement.

- A. Any property of Commerce furnished to the Grantee shall, unless otherwise provided herein or approved by Commerce, be used only for the performance of this agreement.
- B. The Grantee shall be responsible for any loss or damage to property of Commerce that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any Commerce property is lost, destroyed or damaged, the Grantee shall immediately notify Commerce and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to Commerce all property of Commerce prior to settlement upon completion, termination or cancellation of this agreement

All reference to the Grantee under this clause shall also include Grantee's employees, agents or subcontractors.

### **3. ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING**

If this Agreement is funded in whole or in part by the Climate Commitment Act, Grantee agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Grantee which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Grant, shall contain the following statement:

"The [PROGRAM NAME / GRANT / ETC.] is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at [www.climate.wa.gov](http://www.climate.wa.gov)."

The Grantee agrees to ensure coordinated Climate Commitment Act branding on work completed by or on behalf of the Grantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- A. Any project related website or webpage that includes logos from other funding partners;
- B. Any publication materials that include logos from other funding partners;
- C. Any on-site signage including pre-during Construction signage and permanent signage at completed project sites; and
- D. Any equipment purchased with CAA funding through a generally visible decal

#### **4. UNILATERAL AMENDMENT**

Commerce may, at any time, by written notification to Contractor, unilaterally amend the scope of work to be performed under this Contract, the period of performance, the site list (Attachment C), and/or the contract amount and budget. These unilateral changes shall be effective as set forth in the amendment or upon signature by Commerce, if no date has been set forth.

Contractor will be deemed to have accepted any such unilateral amendment unless, within 15 calendar days after the date the amendment is signed by Commerce, the Contractor notifies Commerce in writing of its non-acceptance of such unilateral change. The Contractor and Commerce will then use good faith efforts to negotiate an amendment acceptable to both parties.

Failure to reach agreement shall constitute a dispute concerning a question of fact within the meaning of the Disputes provision contained in this Contract. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as amended. Contractor must continue to provide the contracted services, including any unilaterally amended services, during any period of non-acceptance or negotiation of a unilateral amendment.

## **Special Terms and Conditions**

### **1. AUTHORITY**

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

### **2. CONTRACT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

### **3. COMPENSATION**

COMMERCE shall pay an amount not to exceed the amount shown as contract amount on the face sheet, for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

### **4. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE via the Commerce Contracts Management System, which is available through the Secure Access Washington (SAW) portal.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 24-92802-016. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement. Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

#### **Invoices and End of Fiscal Year**

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

#### **Duplication of Billed Costs**

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

### Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

## **5. SUBCONTRACTOR DATA COLLECTION**

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

## **6. INSURANCE**

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

## **7. FRAUD AND OTHER LOSS REPORTING**

Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

## **8. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Program Specific Terms and Conditions
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Site List
- Attachment D – Sample Application Manual



## General Terms and Conditions

### 1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authority having jurisdiction (AHJ)" shall mean the organization, office, or individual responsible for issuing permits, approving layout drawings, enforcing the requirements of a code or standard or approving materials, an installation, or a procedure.
- B. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- C. "COMMERCE" shall mean the Washington Department of Commerce.
- D. "Central system" shall mean the central system that communicates with one or more chargers, for example, to authorize users, monitor charger status, and/or collect, transmit, record, and manage other information.
- E. "Chargers" shall have the same meaning as "electric vehicle supply equipment (EVSE)". The physical unit controlling the power supply to one or more vehicles during a charging session.
- F. "Charging ports" shall mean an access point for electric vehicle charging that is equivalent to the number of vehicles that can be charged at the listed power level concurrently at the same charger. A single charger may have one or multiple charging ports, and a single charging port may have one or multiple connectors.
- G. "Combined Charging Standard (CCS)" shall mean the plug standardized as SAE J1772 Combo delivering DCFC power between the charger and the on-board vehicle charging equipment.
- H. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Attachments, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- I. "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- J. "Direct current fast charger (DCFC)" shall mean EVSE that supplies at least 100 kilowatts (kW) of electricity through each charging port during a charging session.
- K. "Downtime" shall mean time during which a charging port is not operational as defined in Attachment A: Scope of Work.
- L. "Electric vehicle supply equipment (EVSE)" shall have the same meaning as "charger". The physical unit controlling the power supply to one or more vehicles during a charging session.
- M. "Failed charging session" shall mean an incident when the criteria for a successful charging session are not met following a charging attempt.
- N. "Labor hours" shall mean the total hours of workers receiving an hourly wage who are directly employed on a project site.
- O. "Level 2 charger" shall mean EVSE that supplies at least 7.2 kW of electricity through each charging port during a charging session.
- P. "Multifamily mapping tool" shall mean the mapping tool developed and provided by Commerce during the application phase to determine scoring for multifamily project sites.
- Q. "North American Charging Standard (NACS) connectors" shall mean the plug, currently being standardized as SAE J3400 and also known as the Tesla charging standard, delivering power between the charger and the on-board vehicle charging equipment

- R.** “Office of Minority and Women’s Business Enterprises (OMWBE) contractor” shall mean small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons as certified by OMWBE.
- S.** “Open Charge Point Interface (OCPI)” shall mean a communications protocol between charging network central management systems intended to facilitate customers roaming between networks.
- T.** “Open Charge Point Protocol (OCPP)” shall mean an open-source communication protocol that specifies communication between chargers and the charging networks that remotely manage the chargers.
- U.** “Operational or in operation” shall have the following meaning: A charging port is considered operational or in operation when its hardware and software are both online and available for use, or in use, and the charging port successfully dispenses electricity as expected.
- V.** “Overburdened community” shall mean a Census tract with a rating of 9 or 10 on the Environmental Health Disparities map as maintained by the Washington State Department of Health.
- W.** “Preventive maintenance” shall mean any maintenance that is carried out prior to failure detection and is aimed at preventing a charging port from becoming non-operational.
- X.** “Personal Information” shall mean information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- Y.** “Project Labor Agreement (PLA)” shall mean pre-hire collective bargaining agreements negotiated between one or more construction unions and one or more construction employers (subcontractors) that establish the terms and conditions of employment for a specific construction project.
- Z.** “Project site” shall have the same meaning as a charging station. A single property parcel, or part of a single property parcel, where one or more EVSE funded by the Washington Electric Vehicle Charging Program are located. A project site includes the EVSE, ports, connectors, parking areas served by the EVSE, and lanes for vehicle ingress and egress.
- AA.** “Public mapping tool” shall mean the mapping tool developed and provided by Commerce during the application phase to determine scoring for publicly available project sites.
- BB.** “Society of Automotive Engineers (SAE) J1772 connectors” shall mean the plug standardized as SAE J1772 delivering Level 2 power between the charger and the on-board vehicle charging equipment.
- CC.** “Site owner” shall mean the property owner of the land where the charger is physically located. The site owner may or may not be the owner of the charger.
- DD.** “Site number” shall mean the number assigned to each site during application submission that will be used for identification throughout this contract. “State” shall mean the state of Washington.
- EE.** “Subcontractor” shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms “subcontractor” and “subcontractors” mean subcontractor(s) in any tier.
- FF.** “Successful charging session” shall mean an incident when, following a charge attempt, a customer’s electric vehicle battery is charged to the state of charge the customer desires and is disconnected manually by the customer or by the EV’s onboard software system terminating the charging session, without an additional charge attempt.

- GG.** "UL" shall mean the entity, formerly known as "Underwriters Laboratories", that provides testing and certifications for product safety. Level 2 EVSE must meet UL 2594 certification, and DCFC EVSE must meet UL 2202 or UL 9741, as determined by a nationally recognized testing laboratory (NRTL) participating in the Occupational Safety and Health Administration NRTL program.
- HH.** "Underserved community" shall mean a Census tract with a rating of 9 or 10 on the "underserved" scoring factor as defined in the application manual and determined on the public mapping tool.
- II.** "Uptime" shall mean time during which a charging port is operational as defined in ATTACHMENT A: SCOPE OF WORK

## **2. ALL WRITINGS CONTAINED HEREIN**

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

## **3. AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

## **4. ASSIGNMENT**

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

## **5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION**

**A.** "Confidential Information" as used in this section includes:

- i.** All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
- ii.** All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
- iii.** All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

**B.** The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

**C.** Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## **6. COPYRIGHT**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

## **7. DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

## **8. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **9. INDEMNIFICATION**

Each party shall be solely responsible for the acts of its employees, officers, and agents.

## **10. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

## **11. RECAPTURE**

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

## **12. RECORDS MAINTENANCE**

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## **13. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

## **14. SEVERABILITY**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

## **15. SUBCONTRACTING (REPLACED BY PROGRAM-SPECIFIC TERMS AND CONDITIONS #1)**

~~The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.~~

~~If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.~~

~~Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.~~

## **16. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

## **17. TERMINATION FOR CAUSE**

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

## **18. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days' written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

## **19. TERMINATION PROCEDURES**

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A.** Stop work under the contract on the date, and to the extent specified, in the notice;
- B.** Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C.** Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to

settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

**20. TREATMENT OF ASSETS (REPLACED BY PROGRAM-SPECIFIC TERMS AND CONDITIONS #2)**

~~Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.~~

- ~~A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.~~
- ~~B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.~~
- ~~C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.~~
- ~~D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.~~
- ~~E. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.~~

**21. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

## **Attachment A: Scope of Work**

Terms used in Attachment A: Scope of Work (Scope of Work) shall have the same meaning as in subsection **2.1 DEFINITIONS** in the **GENERAL TERMS AND CONDITIONS**.

### **1. Project overview**

#### **1.1 Purpose**

The purpose of this contract is as described on the Face Sheet of this contract.

#### **1.2 Partners**

The Grantee shall include an updated list of project partners in the project management report and all subsequent quarterly report updates.

#### **1.3 Site list**

The Grantee shall complete installations for the sites, chargers, ports, connectors, and stub-outs as detailed in **Attachment C: Site List**. The Grantee may request changes to sites and equipment consistent with the change order process as detailed in subsection 2.3 of the Scope of Work.

### **2. Project management**

#### **2.1 Project kickoff**

The Grantee shall identify a primary point of contact to COMMERCE, including name, email address, and phone number, and attend a “kickoff” webinar or meeting with COMMERCE within 30 days of contract execution to discuss contract requirements and grantee expectations.

#### **2.2 Project management report**

The Grantee shall submit a project management report to COMMERCE within 60 days of contract execution, using a template provided by COMMERCE, to describe planned project activities and milestones broken out by site. The report shall align with **Attachment B: Budget** and describe any changes to expected costs and funds following contract execution. The report will also describe plans to comply with funding requirements and state and federal laws and regulations, including but not limited to the Americans with Disabilities Act (ADA).

The Grantee shall issue updates to the project management report on a quarterly basis to COMMERCE, starting no later than four months following contract execution and until all sites are fully installed and a final report has been submitted and approved. The quarterly report shall be submitted no later than 15 days after the end of each quarter, using the reporting template provided by COMMERCE.

##### **2.2.1 Project activities and milestones**

The Grantee shall include project activities and milestones achieved to date and anticipated in the next quarter, and any changes to the project management report, project partner list, risks and issues mitigated, and lessons learned. Activities and milestones must include:

- Information received from the electric utility serving each project site on expected electrical make-ready (on both the utility and customer sides of point of service delivery) and interconnection activities, costs, and timing.
- Expected permitting activities, costs, and timing.

##### **2.2.2 Project expenditures**



The Grantee shall include an updated milestone/invoicing schedule with invoices completed to date and anticipated milestone completion dates for the duration of the grant. While Commerce does not anticipate requiring more detailed expenditure information as part of quarterly reporting, Grantee shall maintain project fiscal records in alignment with Generally Accepted Accounting Principles (GAAP) and in sufficient detail to show that a) grant funding has been spent only on eligible costs as outlined in **Attachment D: Sample Application Manual**, and b) grant funds have not been comingled with any non-grant (match) funds.

### **2.3 Change orders**

Changes to **Attachment A: Scope of Work** and/or **Attachment C: Site List** may be requested by the Grantee using the change order request template provided by COMMERCE. Within the limits defined in Subsections 2.3.1-2.3.4 of **Attachment A: Scope of Work**, Commerce may consider and accept such changes. For change order forms affecting only information contained in **Attachment A: Scope of Work** and/or **Attachment C: Site List**, a change order will be considered to be accepted by COMMERCE once the applicable COMMERCE representative has signed the form. Change orders affecting contract information outside of **Attachment A: Scope of Work** and/or **Attachment C: Site List** (including but not limited to: grant amount, start date, or end date) require a formal contract amendment.

#### **2.3.1 Grant amounts**

Change orders may be accepted by COMMERCE if such orders change the scope of work in a way that requires a lower or same COMMERCE grant amount as the current contract. Commerce will not consider change order requests if the scope of work changes such that projects can only be successfully completed with a higher grant amount than the original contract.

Change orders that remove sites, reduce the quantity of charging ports, or result in removed adders must also reduce the maximum grant amount in this contract consistent with the award process as detailed in the **Attachment D: Sample Application Manual**.

#### **2.3.2 Site changes**

The Grantee may request changes to one or multiple sites, including site removal, following contract execution for consideration by COMMERCE. COMMERCE may choose to accept or reject requests for any reason.

COMMERCE will only consider site change requests if they meet one or more of the following conditions:

- The Grantee has exhausted all reasonable options to make the original site work and COMMERCE has determined that project success is either impossible or unlikely to occur;
- Ownership of the original site changes, or site owner no longer agrees to host chargers on their property;
- Conditions of the original site change such that a charger installation on the site can no longer satisfy all requirements of the contract; or
- Previously anticipated non-program funding is no longer available to support the site.

COMMERCE will only consider site change requests that move grant funding from one or multiple sites to new one or multiple sites if new identified sites have the same or higher score on the site-related scoring criteria (as described in **Attachment D: Sample Application Manual**), as described in the application manual, as the lowest score receiving an award.

The Grantee may request site changes in any combination as long as the new project sites can be completed with costs eligible for reimbursement within the current grant amount as outlined in **Attachment D: Sample Application Manual**.

### **2.3.3 Charging port quantity changes**

The Grantee may request changes to the quantity of equipment to be installed, including Level 2 charging ports, DCFC charging ports, and stub-outs, in one or multiple sites following contract execution for consideration by COMMERCE. COMMERCE may choose to accept or reject requests for any reason.

COMMERCE will only consider equipment quantity change requests if:

- New information learned by the Grantee following contract execution indicates site conditions will add cost or otherwise add risk to project success if contract implementation moves forward unchanged;
- The requested new quantity of Level 2 charging ports, DCFC charging ports, and combination of Level 2 and DCFC charging ports at each affected site does not exceed limits as described by the application manual; and
- The project site score for all affected sites continues to be the same or higher on the site-related scoring criteria (as described in **Attachment D: Sample Application Manual**) as the lowest score receiving an award.

### **2.3.4 Scope of Work requirement exemptions**

The Grantee may request exemptions to equipment, installation, and operations and maintenance requirements in **Attachment A: Scope of Work** following contract execution for consideration by COMMERCE. COMMERCE may choose to accept or reject requests for any reason.

## **2.4 Progress meetings**

The Grantee shall participate in any progress calls requested by COMMERCE, to be scheduled within a month of the request.

## **2.5 Project final report**

The Grantee shall submit a final report to COMMERCE that:

- Describes the project's purpose, approach, activities performed, results; and
- Includes the project's maintenance and operations service contract or plan.

## **3. Equipment requirements**

### **3.1 Chargers**

#### **3.1.2 Level 2 chargers**

All Level 2 chargers installed at covered project sites shall:

- Be networked through Wi-Fi, cellular (4G and above), or Ethernet;
- Be capable of at least a 7.2 kW power output;
- If requiring payment, have a mobile payment device physically located on each charger dispenser or on a kiosk serving the charger dispensers. This requirement only applies to publicly available chargers, not residential or fleet/workplace, unless those projects will be publicly available in addition to their residential/work purpose
- Be capable of using OCPP 1.6 or later;
- Be capable of using OCPI version 2.1.1 or 2.2 standards;
- Be ENERGY STAR certified in the ENERGY STAR product database;
- Be certified by a nationally recognized testing laboratory to UL 2594; and

- Comply with all relevant state laws and rules in effect, including but not limited to Department of Agriculture rules in WAC 16-662-200, WAC 16-662-210, WAC 16-662-215, and WAC 16-662-220.

All public site (as defined in **Attachment D: Sample Application Manual**) Level 2 chargers installed at covered project sites shall:

- Support remote start capabilities for, at minimum, payment via a toll-free number; and
- Not require a membership for use.

### **3.1.2 DCFC chargers**

All DCFC chargers installed at covered project sites shall:

- Be networked through Wi-Fi, cellular (4G and above), or Ethernet;
- Be capable of at least a 100 kW power output;
- Support remote start capabilities for, at minimum, payment via a toll-free number;
- If requiring payment, have a mobile payment device physically located on each charger dispenser or on a kiosk serving the charger dispensers;
- Not require a membership for payment.
- Be capable of using OCPP 1.6 or later;
- Be capable of using OCPI version 2.1.1 or 2.2 standards;
- Be certified by a nationally recognized testing laboratory to UL 2202 or UL 9741; and
- Comply with all relevant state laws and rules in effect, including but not limited to Department of Agriculture rules in WAC 16-662-200, WAC 16-662-210, WAC 16-662-215, and WAC 16-662-220.

### **3.2 Connectors**

At least 33% of Level 2 connectors at each project site must be SAE J1772 connectors, and at least 33% of DCFC connectors at each project site must be CCS1 connectors. Connector types other than SAE J1772, CCS1, and NACS may be installed at project sites, but are not factored into the grant award amount.

### **3.3 Stub-outs**

The Grantee shall only receive reimbursement for costs on up to three stub-outs per site as listed in **Attachment C: Site List**. To qualify for the future proofing adder, Level 2 installations must either meet the definition above or install a Level 2 receptacle. DCFC stub-out installations must meet the definition of "Stub Out" in subsection **2.1 DEFINITIONS** in the **GENERAL TERMS AND CONDITIONS** of this contract.

## **4. Installation requirements**

### **4.1 Labor requirements**

#### **4.1.1 Prevailing wage**

The Grantee shall comply with prevailing wage requirements as detailed in this agreement, and/or as required by law.

#### **4.1.2 Electrical apprenticeship utilization rate**

The Grantee shall meet or exceed an electrical apprenticeship utilization rate specified for each site in **Attachment C: Site List**. This requirement shall be waived by COMMERCE if the Grantee demonstrates that one electrician is sufficient to complete all work required by the contract.

Electrical apprentices must be enrolled in an apprenticeship program registered with the Department of Labor and Industries to count towards the utilization rate. The utilization rate shall

be calculated as a percent of the total labor hours performed by electrical apprentices divided by the total labor hours performed by all electrical workers, including apprentice and journey level workers, employed upon all project sites covered in the contract.

Grantee shall submit, on a site-by-site basis, total labor hours by all electrical contractor workers, total labor hours by electrical apprentices, and apprentice identification for all electrical apprentices working on the grant project to COMMERCE in quarterly reports as required in Section 4 of **Attachment A: Scope of Work**.

#### **4.1.3 Project labor agreement**

If the Grantee committed to using project labor agreements in their application, the Grantee shall submit to COMMERCE a project labor agreement or agreements covering project sites for which such a commitment was made. All project labor agreements must have been made with at least one labor union, regional council, or association affiliated with the Washington State Building and Construction Trades Council. For any sites covered by a project labor agreement, neither site preparation nor construction work may begin until a project labor agreement is in place.

#### **4.1.4 Office of Minority and Women's Business Enterprises certified contractor**

If, in their grant application, the Grantee committed to contracting with Office of Minority and Women's Business Enterprises (OWMBE)-certified contractor(s), the Grantee shall hire one or more contractors to complete work on the covered project sites that are certified as small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons by the Office of Minority and Women's Business Enterprises. The Grantee shall note such contractors on their project management report and quarterly report updates.

### **4.2 Installation deadlines**

The Grantee shall complete installation and begin operations of all charging ports on each project site according to the required timelines:

- Level 2 charging ports only: within 270 days following contract execution;
- DCFC charging ports only: 580 days following contract execution; and
- Combination of at least one Level 2 charging port and at least one DCFC charging port: within 580 days following contract execution.

The Grantee may request extensions and COMMERCE may grant extensions consistent with Section 2.4 of **Attachment A: Scope of Work**.

## **5. Operations and maintenance requirements**

### **5.1 Operations and maintenance service agreements**

The Grantee shall enter into an operations and maintenance service contract, including a Service Level Agreement (SLA), with a qualified partner to meet requirements of this section of the scope of work.

COMMERCE may waive this requirement if the Grantee demonstrates qualifications and a plan to perform this task without contracting with an external partner.

### **5.2 Operations requirements**

#### **5.2.1 Operations duration**

The Grantee shall maintain reliable operations of all Level 2 charging ports during all typical project site operational hours for at least four years, and all DCFC charging ports for at least six years, following their first day of operations.

### 5.2.2 Uptime

The Grantee shall ensure all charging ports installed are operational no fewer than 97 percent of the charging site's standard hours of operation, as measured by uptime percentage rate, throughout the each charging port's required operations duration.

Uptime percentage rate shall be calculated as  $U = \frac{T-D+E}{T} * 100\%$ , with:

- U = Uptime reporting percentage for the reporting period.
- T = Total time of project site operational hours during the reporting period.
- D = Total downtime during the reporting period, including excluded downtime.
- E = Excluded downtime during the reporting period.

Downtime shall be measured as any period of time within the standard hours of operation in which a charger is not operational, including:

- A period in which the charging port's response to the central system's request for notification of operative status indicates that the connector or charging port is in an inoperative state; and
- A period in which maintenance logs show initial notice of a physical or otherwise non-networked issue that results in a non-operational status prior until maintenance logs show repairs have returned the charging port to an operational status.

Excluded downtime shall be defined as a period of downtime caused by any of the following reasons:

- Downtime before initial installation;
- Electric grid power loss that cuts off power supply to the charging port;
- Any failure to charge due to the fault of the vehicle;
- Preventive maintenance, up to 24 hours per year;
- Physical damage to hardware caused by a third party, including vandalism or theft, up to five days for each event;
- Telecommunication network outages beyond the control of the Grantee; and
- Extraordinary events, including natural disasters that are unforeseeable and impossible to plan for in advance.

### 5.3 Maintenance requirements

The Grantee shall:

- Perform regular preventive maintenance, including visual inspection, performance testing, functional validation, and reporting;
- Monitor network performance;
- Dispatch maintenance technicians in a timely manner and address malfunctions and repairs within 48 hours of initial notice; and
- Provide charging station users with call center service at all times of operation that will assist users with any technical issues encountered at the stations.

### 5.4 Distribution of educational materials

The Grantee shall work with site owners to ensure residents of multifamily buildings and/or employees at commercial buildings served by multifamily and workplace project sites (as defined in **Attachment D: Sample Application Manual**) under this contract are aware of the opportunity to use chargers. To satisfy this requirement, the Grantee shall ensure partner site owners distribute educational materials to residents and/or employees and offer timely responses to questions on use of chargers.

The Grantee shall ensure any educational materials distributed to residents of multifamily buildings and/or employees at commercial buildings meet requirements detailed in **the term “Acknowledgement of Climate Commitment Act Funding”** of this agreement.

This requirement does not apply if the contract does not include any multifamily or workplace project sites.

### **5.5 Utilization and reliability reporting requirements**

Following submission of the final report, the Grantee shall submit an operations report with data on each charger once every six months until the end of the operational duration. The Grantee shall submit the report no later than 15 days after the end of each six-month period with the following data for the quarter and cumulatively over total operations:

- Average hours per day the charger drew power.
- Average hours per day the charger was connected to an electric vehicle.
- Average kWh per day the charger port dispensed.
- Uptime percentage rate per charger, with all data needed to verify calculations including an itemized summary of the date, duration, and category all excluded downtime being claimed for a reporting period.
- The percentage of successful charging sessions to the total number of charge attempts for each charger.
- All instances of preventative maintenance.
- Time log with information on reported charger malfunctions and corresponding repairs.
- Proof of network monitoring and call center service.

### **6. Scope of work violations**

Nothing in subsections 6.1-6.3 shall be interpreted to limit, alter, or supersede Commerce's rights under the **GENERAL TERMS AND CONDITIONS, SPECIAL TERMS AND CONDITIONS**, and the **PROGRAM SPECIFIC TERMS AND CONDITIONS** of this agreement.

#### **6.1 Failure to submit reports or attend meetings**

Failure to submit required reports or attend required meetings will be treated as a default, which left uncured, may result in COMMERCE's right to recapture disbursed funds and terminate any obligation to disburse additional funds.

#### **6.2 Violation of equipment and installation requirements**

Costs incurred on any activity subject to this contract that result in a violation of requirements, including variances from project information in the scope of work, shall be considered disallowed costs and treated as a default, which left uncured, may result in COMMERCE's right to recoup disbursed funds and terminate any obligation to disburse additional funds for the site(s) for which the violation occurred.

#### **6.3 Violation of operations and maintenance requirements**

The first failure to meet operations and maintenance requirements will result in a warning and required improvement plan explaining how improvement will be made in future reporting periods. Repeat violations will result in COMMERCE's right to recoup up to ten percent of disbursed project costs.

### Attachment B: Budget

Site/Milestone	Milestone/Deliverable	Deliverable Description	Expected Completion	Percent of Grant Budget	Applicant Match	Amount of Grant
<b>0</b>	<b>Project Management/Planning</b>		<b>11/30/2024</b>	<b>10%</b>	<b>\$0.00</b>	<b>7,500.00</b>
	Project management report	Project management report completed, meeting all requirements described in Attachment A: Scope of Work				
<b>Fleet Site #1</b>				<b>90%</b>	<b>\$135,000.00</b>	<b>67,500.00</b>
<b>F1.A</b>	Procure services needed for installation	Copy of subcontract for installation services	10/2024			20,250.00
<b>F1.B</b>	Procure EV Charging equipment	Paid EV Charging equipment invoice.	11/2024			20,250.00
<b>F1.C</b>	Site Completion Report	Photo(s) of completed site installation with all installed EV Charging Equipment and stub-outs (as applicable). Copies of completed construction and commissioning reports.	01/2025			27,000.00
			<b>Totals</b>	<b>100%</b>	<b>\$135,000.00</b>	<b>75,000.00</b>

<b>Grant Amount</b>	\$75,000.00
<b>Project Total</b>	\$210,000.00