



**Tuolumne County Air Pollution Control District  
Carl Moyer Memorial Air Quality Standards Attainment Program  
Energy Infrastructure Grant Agreement**

This Grant Agreement (CMP-2022-Sonora-EVCS-08-01) (“Agreement”) is made and entered into this 19<sup>th</sup> day of September 2022, by and between the Tuolumne County Air Pollution Control District (“District”) and the City of Sonora Administration Department (“Participant”).

**I. Agreement Term**

The term of this Agreement shall commence effective upon the date of this Agreement and continue for three (3) years following purchase and installation of one (1) vehicle charging station with four (4) Level 2 Chargers. The project also involves associated wiring, labor, and engineering as described in Section B, collectively referred to as electric vehicle charging station (“EVCS”), used for the charging of public and private electric vehicles at the City of Sonora Parking Garage located at 94 N. Washington Street.

Should the purchase of the EVCS and work as specified in the application and Agreement fail to be completed within one (1) year of the Agreement execution date, the District reserves the right to cancel Agreement for cause. All information as contained in the application is included as a part of this Agreement.

**II. Payment**

Participant agrees to accept as full payment an amount not to exceed \$39,103 for the purchase and installation of one (1) *TurnOnGreen* Model EVP1100-WG charging station and associated supporting equipment, including labor and installation (\$36,308.25); design and engineering costs (\$2,252); and, (\$542.75) as outlined in the District approved quote submitted by the Participant, and specified as Eligible Costs in section (D) of Chapter 10 of the Carl Moyer Program 2017 Guidelines (“Guidelines”), subject to the terms of this Agreement.

Participant agrees to submit final signed invoices showing prices from vendors and copies of the bills of sale for all equipment to the District for reimbursement of eligible costs for the EVCS. Payment for the EVCS will not be allowed unless all provisions of this Agreement are met.

**III. Program Criteria and Requirements**

Participant agrees the EVCS covered under this Agreement meets all criteria and eligibility requirements described in Chapters 2 and 10 of the Guidelines.

Participant is prohibited from purchasing the EVCS prior to Agreement execution. Participant acknowledges that the purchase and installation of the EVCS and subsequent operation, hereinafter referred to as “Project”, is not required by any District, State and/or federal rule, regulation, or MOU in effect. Participant acknowledges that the emissions reductions that are realized by this Project

prohibits any application for any form of emissions reduction credits, banking, or trading program for all time, from the District or any other air pollution control district or air quality management district.

The EVCS technology shall be certified or verified for sale in California at the time of purchase and shall be a level 2 or higher system with said technology having been certified by a Nationally Recognized Testing Laboratory and have a minimum one (1) year warranty. The Project must comply with all applicable federal, State, and local laws and requirements including State building, environmental and fire codes.

Participant acknowledges and agrees to operate the EVCS according to the terms of this Agreement and to cooperate with the District and the California Air Resources Board (“CARB”) in any monitoring, enforcement, or other efforts to assure the emissions benefits are real, quantifiable, surplus, and enforceable.

Participant acknowledges that only one application for funding may be applied for this Project through the Carl Moyer Program. Multiple applications or multiple contracts for the same equipment, shall at a minimum, disqualify the Participant from future participation in the Carl Moyer Program and may include the District or CARB to seek fines or penalties in accordance with the California Health and Safety Code.

The term of this Agreement will continue for three (3) years from the date of the post-inspection. In the event Participant does not complete the minimum three-year Agreement term, the Participant shall refund to the District a pro-rated amount of one-third the grant amount for each year less than the Agreement term. Participant understands that the APCO may relieve this obligation to return the funds or a portion thereof depending on the circumstances.

Participant shall use a competitive bidding process for selection of the EVCS, with all work regarding installation being performed by a licensed contractor. The EVCS must at a minimum be accessible to the public during daily regular business hours. Participant agrees to maintain the EVCS at a minimum of 95 percent successful charging rate with 24/7 customer service available on site via a toll free number. The anticipated usage in terms of number of vehicles using the EVCS shall be a minimum of 25 vehicles a week. Participant agrees to report the EVCS to the Department of Energy Alternative Fuel Data Center at <http://www.afdc.energy.gov/locator/stations>.

Participant will maintain the EVCS according to the manufacturer's recommendations. The Participant is responsible for maintaining replacement value insurance in accordance with the Guidelines and providing Proof of Insurance to the District, if requested. The EVCS, including the fuel/energy meter shall be in operating condition throughout the term of the Agreement term. Failure of the fuel/energy meter must be repaired or replaced as soon as possible and is not considered a maintenance expense and therefore not an eligible cost. If any other equipment fails rendering the EVCS nonfunctional, the Participant has 48 hours to repair and ensure EVCS is operational. The Participant shall notify the District of any downtime beyond 48 hours.

#### IV. District Options for Withholding Payment

The District may withhold payment until final reports and/or invoices required under this Agreement are received and approved by the District. The District may also withhold payment where the Participant is in non-compliance with this Agreement but must release payment otherwise due upon taking necessary steps to complete compliance.

The District reserves the right to cease payment to the Participant for any work not completed, until such time as the Participant demonstrates to the satisfaction of the District that work products scheduled to be completed, have been satisfactorily completed and any services are on schedule and delivery has taken place. Progress payments for this Project will not be allowed by the District.

#### V. Inspections and Auditing

The District will complete a post-inspection of the Project prior to disbursing grant funding to the Participant. District staff shall ensure during the post-inspection that the EVCS is fully operational and capable of charging electric vehicles. During the term of this Agreement, District staff or CARB personnel shall be allowed to inspect the equipment provided the Participant is given a minimum of 24-hours oral or written notice. Participant shall provide District staff or CARB personnel access to the EVCS and any associated records.

#### VI. Recordkeeping and Reporting

The Participant will retain all financial records and administrative documents relative to this Agreement in accordance with applicable District, State, and federal statutes, regulations, ordinances, and policies. All such records shall be returned to the District should Participant become defunct or cease doing business, prior to limitations set forth in such statutes.

The Participant shall also provide annual reports that identify annual usage, number of plug-in events, and unscheduled downtime, duration, and suspected cause. These reports shall be submitted each year, no later than 30 days from the post-inspection anniversary date. The reports shall be signed by the Participant indicating all information is accurate and complete. Records shall be retained for at least two (2) years following the end of the Agreement term. Failure to maintain and provide adequate records of use annually would be grounds for terminating this Agreement and requiring a refund of grant funds.

#### VII. Noncompliance

Noncompliance with this Agreement, Guidelines, or Program requirements may result in the cancellation of this Agreement, recapturing of grant funds, or any other remedy available under the law.

#### VIII. Termination

- A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity.
- B. District reserves the right to terminate this Agreement for convenience upon thirty (30) calendar days' written notice to the Participant.
- C. Should Participant default in the performance of this Agreement or materially breach any of its provisions, District, at its option, may terminate this Agreement by giving written notification to Participant. The termination date shall be the effective date of the notice. For the purposes of this Section, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of District property, dishonesty, or theft.

#### IX. Hold Harmless/Indemnity

- A. Participant shall indemnify, defend, save, protect and hold harmless both District and Tuolumne County, their elected and appointed officials, officers, employees, agents and volunteers from any and all demands, losses, liens, claims, court costs, suits, liabilities, legal fees and expenses for any damage (personal or property), injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Participant, its officers, employees, agents, contractors, consultants, or any person under its direction or control and shall make good to and reimburse District for any expenditures, including reasonable attorney's fees that it may make by reason of such matters and, if requested by District, shall defend any such suits at the sole cost and expense of Participant. Participant's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the District's or any other person; provided, however, that Participant shall not be required to indemnify District for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of District.

This provision is not intended to create any cause of action in favor of any third party against Participant or District or to enlarge in any way the Participant's liability but is intended solely to provide for indemnification of District from liability for damages or injuries to third parties or property arising from Participant's performance pursuant to this Agreement.

- B. If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend District. This indemnification clause shall survive the termination or expiration of this Agreement.

## X. Insurance

Participant shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the state of California and shall provide evidence of such insurance to District as may be required by the Risk Manager of the County. The Participant's insurance policy(ies) shall be placed with insurer(s) with acceptable Best's rating of no less than A-VII or with approval of the Risk Manager. Participant shall furnish District with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this clause. All certificates and endorsements are to be received and approved by District before work commences, if requested. However, failure to obtain the required documents prior to the work beginning shall not waive the Participant's obligation to provide them. District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### A. Workers Compensation:

1. Worker's Compensation Insurance shall be provided as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
2. If there is an exposure of injury to Participant's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

3. Participant shall require all Subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed with District upon demand.
- B. Commercial General Liability Insurance (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- C. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

If the Participant maintains broader coverage and/or higher limits than the minimums shown in Sections A, B, and C above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the participant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

- D. Other Insurance Provisions: The insurance policies are to contain, or be endorsed to contain, the following provisions:
  1. Additional Insured Status. The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
  2. Primary Coverage. For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  3. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.
  4. Waiver of Subrogation. Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
  5. Self-Insured Retentions. Self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and

- defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.
6. Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
  7. Verification of Coverage. Contractor shall furnish the County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to County before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
  8. Special Risks or Circumstances. County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
  9. Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

## XI. Notices

Any formal notices from either party to the other shall be given in writing, except for onsite inspections, auditing, and normal correspondence. Notice for noncompliance shall be given by certified, express, or registered mail, and shall be effective as of the date of receipt indicated on the return receipt card. All other correspondence between the District and Participant shall be by mail, email, phone/fax, in-person, or other method approved by both parties. Contact persons for this Agreement shall be the following:

City of Sonora  
Chris Gorsky, Admin Services Director  
94 N. Washington Street  
Sonora, CA 95370  
(209) 532-4541 ext. 401  
cgorsky@sonoraca.com

Tuolumne County Air District  
Yousif Zardo, Deputy APCO  
2 South Green Street  
Sonora, CA 95370  
(209) 533-5693  
yzardo@co.tuolumne.ca.us

## XII. Modification

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without in any way affecting the remainder. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by all parties.

### XIII. Severability

Should any of the provisions set forth in this Agreement be determined to be invalid by any court of competent jurisdiction, such determination shall not affect the enforceability of the other provisions herein and to this end provisions of this Agreement are declared to be severable.

### XIV. Independent Contractor

It is understood that Participant, in the performance of this Agreement, shall act as and be an independent contractor and shall not act as an agent or employee of the District. Participant shall obtain no rights to retirement benefits or other benefits which accrue to District's employees, and Participant hereby expressly waives any claim it may have to any such rights. All employees, agents, contractors, subcontractors hired or retained by the Participant are performing in that capacity for and on behalf of the Participant and not the District. The District shall not be obligated in any way to pay any wage claims or other claims made against the Participant by any such employee, agent, contractor or subcontractor, or any other person resulting from the performance of this Agreement.

### XV. No Waiver

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

### XVI. Disputes

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the Parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California.

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

### XVII. Captions

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.

### XVIII. Entire Agreement

This Agreement constitutes the entire agreement between the District and the Participant with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

**XIX. Authority**

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the Agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

The parties hereto have caused this Agreement to be executed as of the day and year first hereinabove written.

Approved: \_\_\_\_\_ Dated: \_\_\_\_\_  
Mellissa Eads, City Administrator

Approved: \_\_\_\_\_ Dated: \_\_\_\_\_  
Kelle Schroeder, Air Pollution Control Officer

Approved as to Legal Form: \_\_\_\_\_ Dated: \_\_\_\_\_  
Maria Sullivan, Deputy County Counsel