

ELECTRIC VEHICLE CHARGER AGREEMENT

Contract No. 125943924

This Agreement is between the CITY OF TUPELO, MISSISSIPPI ("**Distributor**"), a Mississippi municipal corporation, and TENNESSEE VALLEY AUTHORITY ("**TVA**"), a corporate agency and instrumentality of the United States of America, created and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended.

Distributor and TVA want to develop electric vehicle ("**EV**") charging infrastructure, including fast charging stations, in Distributor's service territory.

TVA's partnership with Distributor will help TVA achieve its goal of deploying EV charging stations in the Tennessee Valley at a lower cost.

Distributor and TVA want to agree upon the terms and conditions under which TVA will provide Distributor with EV charging stations and Distributor will install and operate an EV fast charging site ("**EV Site**").

Therefore, the parties agree as follows:

SECTION 1 - TERM AND TERMINATION

This Agreement continues in effect for seven years from the effective date, unless sooner terminated as provided below. In an Event of Default, TVA may terminate either all or any portion of this Agreement, in accordance with section 3. TVA will have no further obligations beyond the date of any expiration or termination of this Agreement. However, nothing contained in this Agreement will be construed as relieving either party of its obligations arising or accruing prior to the date of any expiration or termination of this Agreement.

SECTION 2 - OBLIGATIONS

- (a) TVA will provide to Distributor EV charging stations with serial numbers 213815013982 and 213815013993 ("**EV Chargers**").
- (b) The parties understand and agree that the EV Chargers are hereby provided to Distributor "as is," and TVA makes no warranties of any kind whatsoever (including any warranty of merchantability), express or implied, regarding the EV Chargers.
- (c) Unless otherwise agreed to in writing by the parties, TVA will have no funding obligations under this Agreement.
- (d) In exchange for the EV Chargers, Distributor:
 - (1) will install the EV Chargers and provide labor and materials for such installation;
 - (2) will utilize approved EV Site that complies with site selection guidelines;
 - (3) will provide for the continuous operation and maintenance of the EV Chargers for at least five consecutive years from the date upon which Distributor first makes the EV Site publicly available for EV charging services ("**Date of Commission**");
 - (4) will provide the public access to the EV Site free of cost for 24 hours each day and for seven days each week from the Date of Commission;
 - (5) will cooperate with TVA and TVA's authorized representatives, as needed, in evaluating, measuring, and verifying EV Site usage and any other usage information related to the EV Site either (i) by providing TVA all necessary login information to access usage data collected by the network attached to the EV charging equipment; or (ii) by providing TVA an annual station usage report that includes but is not limited to such data as number of users, number of charging sessions, kWh delivered, and uptime metrics;

- (6) will utilize consistent branding, as provided by TVA, on the EV Chargers, any EV charging equipment, other equipment, communication documents, toolkits, and/or other materials, whether at the EV Site or related to the EV Chargers;
- (7) will acquire all necessary easements, rights-of-way, zoning permits, and clearances for the EV Site, as may be required by Applicable Laws;
- (8) will submit to TVA any documents that TVA determines are necessary in discharging applicable obligations under both the National Environmental Policy Act (“**NEPA**”) and Section 106 of the National Historic Preservation Act, and will wait for both TVA’s review of such documents and TVA’s final site approval before any construction begins at the EV Site;
- (9) will comply with all “**Applicable Laws**,” which means all applicable federal, state, or local laws, regulations, permits, orders, or any other legal pronouncements of a governmental authority that have the force or effect of law, including but not limited to, all applicable requirements under the Americans with Disabilities Act, environmental protection laws and regulations, building codes, and safety ordinances;
- (10) will not engage in any activity that would result in an anticipatory breach of TVA’s obligations under NEPA, the National Historic Preservation Act, the Endangered Species Act, Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or other procedural requirements prior to deciding upon or taking a federal action;
- (11) will stop all EV site development and construction and will notify TVA immediately if previously unidentified archaeological resources or human remains are inadvertently discovered during implementation of the Program, and TVA will work with the Distributor to ensure that the EV site is protected to prevent any further disturbance until the parties can make an informed decision about site eligibility and any further steps necessary to meet federal agency obligations under Section 106 of the National Historic Preservation Act; and
- (12) acknowledges full responsibility for remediating, to the extent directed or approved by relevant state or federal authorities, any releases of any hazardous substances that result from the purchase, installation, or maintenance of EV charging equipment installed and operated at the EV Site, and agrees to not seek contribution or response costs from TVA, as a potentially responsible party, an owner, an operator, or under any other potential response cost recovery theory, in any administrative or judicial proceeding.

SECTION 3 - EVENTS OF DEFAULT

An occurrence of any one of the following constitutes an “**Event of Default**”:

- (a) Distributor provides notice to TVA to terminate the Power Contract; and
- (b) Distributor fails to comply with any requirements set forth under section 2;

If an Event of Default occurs, TVA shall notify Distributor in writing of the occurrence. If Distributor does not cure the default within 60 days, TVA may terminate all or any portion of this Agreement (i) immediately; (ii) effective as of the date of the occurrence of the Event of Default, as determined by TVA; or (iii) effective as of a date that TVA determines, and that is after the occurrence of the Event of Default.

If this Agreement terminates due to an Event of Default, Distributor will pay to TVA an amount equal to \$117,777.69, which is the cost of the EV Chargers, within 60 days of the date of termination. Distributor will make such payment to TVA in accordance with the attached Billing and Payment terms.

SECTION 4 - CONFIDENTIAL INFORMATION

The parties will not disclose to third parties either the terms and conditions of this Agreement or any information provided by one party to the other party that is clearly marked as confidential, sensitive, proprietary, or similar (“**Confidential Information**”) without the prior written consent of the disclosing party.

Confidential Information does not include information that: (i) at the time of disclosure, is generally known or readily available to the public other than as a result of a violation or breach of this Agreement by the receiving party; (ii) a party is legally required to disclose; (iii) is known to the receiving party prior to the time of disclosure by the disclosing party, or is independently developed by the receiving party without access to the Confidential Information; and (iv) is known by or is in the possession of the receiving party without any confidentiality or use restriction prior to being disclosed by the disclosing party under this Agreement. The receiving party will safeguard the disclosing party’s Confidential Information as it would its own.

SECTION 5 - NOTICE

For purposes of this Agreement, the parties’ representatives are:

Distributor:

City of Tupelo Water & Light Department
320 North Front Street
Post Office Box 588
Tupelo, Mississippi 38802-0588
662-841-6460

TVA:

EV Program Manager
Tennessee Valley Authority
26 Century Blvd, Suite 100
Nashville, TN 37214
423-751-7060
EV@tva.gov

The parties will deem any notice required by this Agreement to be given properly if a party delivers the required notice in writing to the address specified above, by one of the following delivery methods: (i) personal delivery; (ii) recognized overnight courier service; (iii) United States Mail, postage prepaid; or (iv) electronic mail.

Either party may change either the designation of any person or the address of any such person at any time and from time to time by similar notice.

SECTION 6 - INCORPORATION OF ATTACHMENT

The parties agree that the attachment entitled “Billing and Payment Terms” is made a part of this Agreement. In the event of any conflict between the body of this Agreement and the attachment, the former controls.

SECTION 7 - SEVERABILITY

If any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable. If said modification is not permitted by law, then that provision will be disregarded. If a provision is modified or disregarded in accordance with this section, then the rest of the Agreement will remain in effect as written, and any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

SECTION 8 - ENTIRE AGREEMENT

This Agreement represents the parties' complete and final agreement and supersedes all informal understandings, whether written or oral, relating to the subject matter of this Agreement.

SECTION 9 - AMENDMENTS AND WAIVERS

No amendment of this Agreement will be effective unless it is both in writing and signed by the parties' authorized representatives.

No waiver of any provision under this Agreement or any subsequent agreements will be effective unless that waiver is both in writing and signed by the parties' authorized representatives. The parties agree that any failure to enforce any provision of this Agreement is not a waiver and does not prevent future enforcement of those provisions. A waiver of any breach or default of this Agreement does not constitute a waiver of any subsequent breach or default.

SECTION 10 - ASSIGNMENT

Neither party may transfer or assign this Agreement, in whole or in part, without prior, written consent of the other party.

SECTION 11 - GOVERNING LAW

Federal law will govern the validity, interpretation, and enforceability of this Agreement.

SECTION 12 - ELECTRONIC SIGNATURES

The parties may each execute this Agreement, and any amendments thereto, through electronic means and electronic signatures. The parties agree that electronic signatures have the same force and effect as handwritten signatures.

SECTION 13 - PUBLICITY

Distributor must obtain TVA's written approval prior to making any public disclosures or communications, relating to or referencing TVA related to this Agreement, including without limitation, any oral, written, or electronic communication on or through social media, press, or news release(s), video, marketing materials, or other comparable materials. Nothing in this Agreement grants Distributor a license or right to use TVA's name, trademark, logo or images without first obtaining TVA's express written consent.

SECTION 14 - DISCLAIMERS

To the fullest extent allowed by law, TVA, its agents, and its employees do not assume any liability either to Distributor or to any third party for any damages to property, both real and personal, or personal injuries, including physical injury and death, arising out of or in any way connected with Distributor's acts or omissions under this Agreement, including but not limited to, any damages related to the release of any hazardous or toxic chemicals or any other materials from the EV chargers.

The effective date of this Agreement is the date of TVA's signature.

CITY OF TUPELO, MISSISSIPPI

By _____

Title: _____

Date: _____

TENNESSEE VALLEY AUTHORITY

By _____

Director
Power Customer Contracts