

**NEVI MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**SPONSOR**

**AND**

**SITE HOST**

In Cooperation with the

U.S. Department of Transportation, Federal Highway Administration

**RELATIVE TO**

**NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE FORMULA PROGRAM**

**(NEVI)**

Implementation of **Job XXXX, Job Name XXXX** (hereinafter called the “Project”) as an Arkansas NEVI project.

This Memorandum of Understanding is made effective and entered into as of the date last signed by **SPONSOR** (hereinafter called the “Sponsor”) and **SITE HOST** (hereinafter called the “Site Host”) and collectively known as the “Parties”.

**THE ARKANSAS DEPARTMENT OF TRANSPORTATION’S RIGHTS OF ACCESS TO ELECTRIC VEHICLE SUPPLY EQUIPMENT SITES AWARDED FUNDING**

**1.1 Definitions.** As used in this document the following terms are defined as:

**1.1.1** “Sponsor” shall mean the entity responsible for the installation and maintenance of the Electric Vehicle Supply Equipment (EVSE) and the recipient of the grant issued by the Arkansas Department of Transportation (hereinafter called “ARDOT”).

**1.1.2** “Site” shall mean the real property location where the EVSE is located.

**1.1.3** “EVSE” shall mean all equipment, public charging equipment, and surface area occupied by the equipment for the electric charging of vehicles.

**1.1.4** “Site Host” shall mean the entity or person holding the fee simple, title, or lease, with the authority to authorize the placement and maintenance of the EVSE on the Site identified by the Site Host, and the authority to allow the Sponsor, ARDOT, and the public to access the Site.

**1.1.5** “Project” shall mean any action or work executed within the scope of the Agreement between the Sponsor and ARDOT.

**1.1.6** “Agreement” shall mean the Agreement of Understanding between the Sponsor and ARDOT relating to the NEVI Formula Program.

**1.2** During the Term of the Agreement, the Sponsor or Site Host shall not amend, modify, supplement or replace the terms of any agreements between the Parties in a manner that limits, restricts, eliminates or otherwise adversely affects the Sponsor’s ability to access the Site or to complete the Project, or any rights or interests of ARDOT without prior written consent of ARDOT.

**1.3** The Sponsor and Site Host hereby grant to ARDOT the right during the Term of the Agreement (without giving effect to any Early Termination) to enter upon any portion of the Site and all other properties upon which Project-related EVSE may from time to time be located, at any time and without notice to or consent or approval of the Sponsor, Site Host, or any other party, to

observe, inspect, photograph or otherwise document, and, if necessary, in the sole judgment and opinion of ARDOT, in connection with its exercise of remedies under the Agreement.

**1.4** The Site Host waives in favor of ARDOT (a) all rights of distraint, levy and execution that the Site Host may now or hereafter have against any personal property of the Sponsor relating to the Project, (b) all statutory liens, security interests or other liens that the Site Host may now or hereafter have in any personal property of the Sponsor relating to the Project, and (c) all other interests or claims of every nature whatsoever, that the Site Host may now or hereafter have in or against any personal property of the Sponsor relating to the Project for any rent, license fees, storage charges, or other sums due, or to become due, to the Site Host by the Sponsor. The foregoing waivers are being given exclusively for the benefit of ARDOT and do not excuse, extend, or waive any obligations owed by the Sponsor to the Site Host under any agreements between the Parties.

**1.5** To the extent the Sponsor is not the Site Host, the Sponsor shall ensure that, at all times during the Terms of the Agreement:

**1.5.1** ARDOT maintains the unrestricted rights described in this document; and

**1.5.2** That before rights may be exercised by the Site Host under any agreement between the Parties, the Project or any related EVSE or the Sponsor's rights therein, arising from a breach or default under any agreements between the Parties, ARDOT shall be given at least thirty (30) days' prior written notice of such exercise and an opportunity, if ARDOT so elects, to cure such breach or default under any agreements between the Parties within such thirty (30) day period, provided that ARDOT shall have no obligation to cure any such breach or default. To the extent ARDOT is not a party to any agreement between the Parties it shall be designated as a third-party beneficiary of those provisions thereof providing rights in favor of ARDOT under this document.

**1.6** The Sponsor and Site Host shall ensure any financing arrangement, lease agreement, or other indebtedness secured by an interest in the Project or any related EVSE, and any other similarly relevant agreement or instruments (each an "Encumbrance Agreement" and, collectively, the "Encumbrance Agreements") shall at all times during the Terms of the Agreement (without giving effect to any Early Termination) acknowledge and provide:

**1.6.1** For the unrestricted rights of ARDOT described in this document, irrespective of any competing or superior interest in the Project or any related EVSE under any Encumbrance Agreement; and

**1.6.2** That before any right may be exercised thereunder against the Project or any related EVSE or the Sponsor's rights or the Site Host's rights therein, arising from a breach or default under such Encumbrance Agreement, ARDOT shall be given:

**1.6.2.1** At least thirty (30) days' prior written notice of such exercise; and

**1.6.2.2** An opportunity, if ARDOT so elects, to cure such breach or default under such Encumbrance Agreement within such thirty (30) day period, provided that ARDOT shall have no obligation to cure any such breach or default. To the extent ARDOT is not a party to any Encumbrance Agreement, it shall be designated as a third-party beneficiary of those provisions of such Encumbrance Agreement providing rights in favor of ARDOT under this document. The Sponsor or Site Host has provided copies of each Encumbrance Agreement as in effect on the Effective Date to ARDOT meeting all the requirements of this document. The requirements of this document shall be deemed satisfied if all Encumbrance Agreements incorporate the provisions set forth in this document, with only such changes as are acceptable to ARDOT in its sole discretion.

**1.7** Promptly upon request from ARDOT, the Sponsor or Site Host shall provide such other information as ARDOT deems necessary in connection with the rights required under this document. This may include personal property lien searches and the creation of a plan showing all real property acquired by the Sponsor or Site Host’s predecessors in title for the Site, including a designation of the nature of the predecessors' interests (*i.e.*, whether in fee, easement or otherwise) and a notation of where the instruments conveying those interests are located. ARDOT cannot issue a Notice to Proceed until such time as the Sponsor or Site Host has established a property interest in the Site, and all other property affected by the Site, sufficient to comply with the standards set forth in the NEVI Formula Program and by the Federal Highway Administration (FHWA), in ARDOT's sole judgment and opinion.

**1.8** The Sponsor or Site Host may assign to its lenders and other financing parties as collateral security its rights under the Site Host Memorandum of Understanding and may grant liens and security interests to its lenders and other financing parties in Project EVSE, provided that any such assignment, grant, fixture filing, securitization agreement, or other collateralization agreement is subject to, and gives full effect, to all of the rights in favor of ARDOT under this document, under any agreements between the Parties, and under all applicable Encumbrance Agreements (collectively, the “ARDOT Property Interest”).

**PARTIES AND SIGNATURES**

The individuals signing hereby certify by their signatures that they are authorized to sign this Memorandum of Understanding on behalf of themselves or their organization and that the Parties will fulfill the terms of this Memorandum of Understanding.

**IN WITNESS WHEREOF**, the parties thereto have executed this Memorandum of Understanding on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SPONSOR**

**SITE HOST**

\_\_\_\_\_  
**Sponsor Authorizing Agent’s Name**  
**Title**

\_\_\_\_\_  
**Site Host Authorizing Agent’s**  
 Signature

\_\_\_\_\_  
**Site Host Authorizing Agent’s Printed**  
 Name

\_\_\_\_\_  
**Title**