



DRAFT AWARD AGREEMENT WITH TERMS AND CONDITIONS

FORM EVID-03

**DRAFT AWARD AGREEMENT
BETWEEN
“AWARDEE”
AND
THE ARKANSAS DEPARTMENT OF TRANSPORTATION**
In Cooperation with the
U.S. Department of Transportation, Federal Highway Administration
RELATIVE TO
National Electric Vehicle Infrastructure (NEVI) Formula Program

SECTION I: PROJECT INFORMATION

AWARD DETAILS:

Project Name and Number	
Total Project Funding	\$
Federal Funding	\$
Match Funding	\$
Fed-Match Ratio (%)	%
Start Date	
End Date	

AWARDEE CONTACT INFORMATION:

Name / Title	
Organization	
Address, City, State, ZIP	
Phone Number	
Email Address	
Federal ID Number	
Awardee UEI Number	

ARDOT CONTACT INFORMATION:

Name / Title	
Organization	
Address, City, State, ZIP	
Phone Number	
Email Address	



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- A. The 2023 EVID Request for Proposal (RFP) is incorporated by reference into this binding agreement and is available as **Appendix A** to this agreement.
- B. The 2023 EVID Program Requirements are incorporated by reference into this binding agreement and are available as **Appendix B** to this agreement.
- C. The scope of this project is defined in **Appendix C** Any change in project scope requires prior written approval by both Parties.
- D. With acceptance of this Agreement, the Awardee agrees to complete the project identified in **Appendix C** within the Budget **Appendix D** and the time as outlined in this Agreement and in accordance with the terms and conditions of this Agreement.
- E. The Project Cybersecurity Plan is incorporated by reference into this binding agreement and is available as **Appendix F** to this agreement.

SECTION II: PARTIES AND SIGNATURES

This Agreement is made effective and entered into as of the date last signed by Arkansas Department of Transportation, hereinafter referred to as ARDOT, and **{AWARDEE BUSINESS NAME HERE}**, hereinafter referred to as Awardee, and collectively known as Parties.

The individuals signing hereby certify by their signatures that they are authorized to sign this Agreement on behalf of their organization and that the Parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

The Parties hereto have executed this Agreement this _____ day of _____, 20____.

**ARKANSAS DEPARTMENT OF
TRANSPORTATION**

“AWARDEE”

Lorie H. Tudor, P.E.
Director

Chief Executive Officer’s Name
Title



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All Forms referenced in this Agreement are available in digital format on the Department's webpage www.ardot.gov/evplan.

ARKANSAS DEPARTMENT OF TRANSPORTATION NOTICE OF NONDISCRIMINATION

The Arkansas Department of Transportation (ARDOT) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, ARDOT does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in ARDOT's programs and activities, as well as the ARDOT's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the ARDOT's nondiscrimination policies can be directed to Civil Rights Officer Joanna P. McFadden (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203-2261, (501) 569-2298, (Voice/TTY 711), or the following email address: Joanna.McFadden@ardot.gov.

Free language assistance for Limited English Proficient individuals is available upon request.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in braille.

SECTION III: AGREEMENT TERMS AND CONDITIONS

A. PROJECT SCOPE

This Agreement and its appendices constitute the entire Agreement between the ARDOT and the Awardee and may be modified only by written agreement between both Parties.

B. PROJECT PERIOD

Upon signature by ARDOT, the Agreement shall commence on the Start Date and be valid through the End Date as listed in the Project Description Table above. ARDOT will not provide funding for any work outside the Start Date and End Date listed above. Expenses incurred by the Awardee prior to the Start Date or after the End Date of this Agreement are ineligible for reimbursement by ARDOT.

C. CHANGES TO AGREEMENT

Any changes to this Agreement must be requested in writing by Parties and may not be executed without written approval by both Parties. ARDOT reserves the right to refuse requests for changes to the Agreement or to the appendices.



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D. AWARDEE REPORTING REQUIREMENTS

The Awardee is responsible for all reporting requirements as outlined in ARDOT's EVID Program Requirements. Reporting requirements may include, but are not limited to quarterly reports, annual reports, real-time data sharing, and outreach and engagement reports.

ARDOT reserves the right to amend reporting requirements at any time during the period of this Agreement.

E. AWARDEE RESPONSIBILITIES

Awardee agrees to accept the following responsibilities:

1. Awardee must abide by all applicable local, state, and federal laws, rules, ordinances, and regulations in the execution of this Award.
2. All applicable federal, state and local permits as required are the responsibility of the Awardee.
3. Awardee is responsible for all applicable taxes and fees.

F. USE OF MATERIAL

Awardee may make public, material under this Award, provided proper recognition and citation of funding from ARDOT, U.S. DOT, and the FHWA NEVI Formula Funding Program. ARDOT, and federal awarding agency, if applicable, retains a royalty-free, nonexclusive and irrevocable right to reproduce, publish, and use in whole or in part, and authorize others to do so, any copyrightable material or research data submitted under this Award whether or not the material is copyrighted by the Awardee or another person. The Awardee will only submit materials that ARDOT can use in accordance with this paragraph.

G. ASSIGNMENT

The Awardee may not assign this Agreement or assign or authorize any of its responsibilities or requirements under this Agreement to any other group without written request and approval from ARDOT. ARDOT is in no way responsible for agreements between Awardee and sub-contractors.

H. SUBCONTRACTS

ARDOT reserves the right to refuse the use of any consultant, contractor, advisor, or other person to complete any portion of the project. The Awardee is exclusively responsible for all activities and work performed by sub-contractors under this Agreement. ARDOT will consider the Awardee defined in this project as the sole party responsible for communication, contractual matters,

payments, and charges associated with this project. All subcontractors assigned by the Awardee in relation to the project are subject to the provisions of this Agreement and must be qualified to perform the obligations necessary.

I. NONDISCRIMINATION, EEO, AFFIRMATIVE ACTION

Awardee agrees to abide by all federal and state laws, regulations, and policies regarding nondiscrimination in employment, affirmative action and equal employment opportunity, and shall prohibit discrimination against employment candidates or employees on the basis of race, sex, religion, color or national origin, age, sexual orientation, disability, or Vietnam era status. In addition, Awardee will comply with all rules and regulations attached to this Agreement.

J. LIABILITY

Awardee is responsible for all liabilities of resulting claims, judgments, or expenses arising out of activities attributed to Awardee under this Agreement, if the liability is caused by the Awardee, or any associated party of the Awardee acting within the space of their employment.

K. CONFLICT OF INTEREST

The Awardee covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.

L. LOBBYING

Awardee agrees that none of the funds obligated on the Award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

M. DEBARMENT AND SUSPENSION

Awardee certifies by signing this Agreement that neither Awardee, the organization, nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal government and do not appear on the System for Award Management (www.SAM.gov) exclusions list maintained by the General Services Administration (GSA).

N. AUDIT AND ACCESS TO RECORDS

Associated documentation from Awardee, insofar as they relate to the work performed under this Agreement or funding received pursuant to this Agreement, may be reviewed and audited by ARDOT, or its agents at reasonable times and from time to time during the course of this Agreement

and for a period of thirty-six (36) months from the date of submission of the final expenditure report. In the event that such audit or audits reveal any error or discrepancy of any nature whatsoever, such error or discrepancy will be promptly corrected.

O. INSURANCE AND BONDS

Awardee agrees to provide the following:

1. Awardee shall maintain insurance coverage that is customary for similarly situated organizations performing similar services throughout the term of this Agreement.
2. Awardee will comply with applicable workers' compensation laws while engaging in activities authorized under this Agreement.
3. The Awardee must furnish a surety performance bond or bonds in a sum equal to 100% of the full amount of the contract and a surety Payment bond or bonds in a sum equal to 80% of the full amount of the contract. These warranties shall not only serve to guarantee the completion of the work and payment of all bills and claims by the Awardee, but also to guarantee the excellence of both workmanship and material until the work is finally accepted and the provisions of the Plans, Specifications and Special Provisions are fulfilled and Notice of Acceptance granted.

P. ADDITIONAL FUNDING

In the event the Awardee receives any other additional funding, in excess of the funding identified in Awardee proposal, to complete any part of the project, from any additional source, Awardee agrees to immediately refund ARDOT for duplicate funding.

Q. PREAPPROVAL AND REIMBURSEMENT PAYMENTS

Payments for work done by Awardee in furtherance of this Agreement will be made once expenses are incurred, paid by Awardee, and approved by ARDOT. All reimbursement requests for expenses incurred shall be submitted by Awardee to ARDOT upon completion of project.

R. NON-PERFORMANCE AND NON-COMPLIANCE

If ARDOT determines the Awardee is not in compliance with, or demonstrating non-performance on, any contractual requirements, ARDOT may require the Awardee to submit an action plan detailing to ARDOT how the project will be brought into performance or compliance. Material or repeated non-performance or non-compliance with contractual requirements may be considered an event of default.

Notwithstanding anything to the contrary contained in this 2023 EVID RFP (including its terms and conditions and applicable appendices) or the Award Agreement, if the Awardee is in default of any contractual performance or compliance requirement, ARDOT may terminate the Award Agreement, and if the default occurs within five years following the disbursement of any part of the Award reimbursement, require the Awardee to repay to ARDOT the amount of financial assistance provided or require repayment through the surety performance bond or bonds attached to the project.

S. TERMINATION

This Agreement may be terminated by ARDOT in the event:

1. Any or all the work to be performed under this Agreement has been terminated or abandoned by Awardee.
2. Awardee attempts to assign or subcontract this agreement or any part thereof without the prior written approval of ARDOT.
3. Awardee becomes insolvent or unable to meet its obligations; is adjudicated as bankrupt; has an involuntary petition in bankruptcy filed against it; makes an assignment for the benefit of creditors; files a petition for an arrangement, composition or compromise with its creditors under any applicable laws; or has a trustee or other officer appointed to take charge of its assets.
4. Awardee commits or permits a breach of, or default in, any of its duties, liabilities, or obligations hereunder and fails to fully cure or remedy such failure, breach or default after written notice from ARDOT to Awardee specifying the nature of such failure, breach or default.
5. ARDOT determines that Awardee is refusing or failing to properly perform work required hereunder or is not meeting schedule requirements or that Awardee is performing work under the Agreement in bad faith or not in accordance with the terms hereof.
6. Awardee has performed any part of this Agreement or provided any information in a fraudulent manner.
7. ARDOT does not receive anticipated NEVI Formula Program funding from the FHWA and U.S. DOT.

ARDOT will notify Awardee of any such determination in writing. In the event Awardee fails or refuses to remedy any such default or issue, for any reason, within the time frame established by ARDOT, after receipt of written notice of any such situation, ARDOT may, in its sole discretion,



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terminate the Agreement, withhold any amounts otherwise due under this Agreement, and/or terminate Awardee's right to be reimbursed for project work.

T. LAWS AND REGULATIONS

Awardee agrees to comply with all federal, state, and local laws and regulations with regard to the performance of this Agreement and the employment of Awardee's employees and to pay all federal, state, and local taxes and contributions arising from such employment. Awardee agrees to perform the work in a safe and reasonable manner and adhere to all applicable federal and state safety standards and regulations. In addition, Awardee must document that all subcontractors and vendors are not listed as having an active exclusion on [SAM.gov](https://www.sam.gov).

U. GOVERNING LAW

This Agreement shall be construed in all respects to be in accordance with, and any dispute arising hereunder shall be governed by, the substantive and procedural laws of the State of Arkansas.

V. INDEMNITY

Awardee shall indemnify, defend, protect and forever hold harmless ARDOT from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses, such indemnity covering, but not being limited to, business interruption claims, bodily injury, sickness, disease, death or injury to or destruction of tangible property, arising or resulting from or associated with, directly or indirectly, in whole or in part, the Awardees breach of or noncompliance with any of its obligations, covenants, representations or warranties hereunder, or arising from or associated with the products, deliverables or services provided hereunder.

W. FORCE MAJURE

Neither party will be in breach of this Agreement because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Awardee will not be relieved of a breach or delay caused by its sub-awardees.

X. DISCLOSURE OF LITIGATION OR OTHER PROCEEDING

Awardee must notify ARDOT within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Awardee, a

sub-awardee, or an officer or director of Awardee or sub-awardee, that arises during the term of the Agreement, including:

1. Criminal proceeding;
2. Parole or probation proceeding;
3. Proceeding under the Sarbanes-Oxley Act;
4. Civil Proceeding involving:
 - a. claim that might reasonably be expected to adversely affect Awardee's viability or financial stability; or
 - b. governmental or public entity's claim or written allegation of fraud; or
 - c. proceeding involving any license that Awardee is required to possess in order to perform under this Award.

Y. SEVERABILITY

In the event that one or more of the terms and conditions of this Agreement should be held invalid by a court of competent jurisdiction, the validity of the remaining terms and conditions of this Agreement shall not be affected; provided, however, that ARDOT may elect to terminate this Agreement if a material term or condition hereof is so deemed invalid.

Z. CONFIDENTIALITY

The Parties acknowledge that they will acquire Confidential Information and knowledge respecting the confidential affairs of one another and their affiliates in various phases of their businesses. The Parties agree to keep secret and retain in the strictest confidence all such Confidential Information and not to disclose the same to anyone outside such party, whether during or after the term of this Agreement, except in the course of and to the extent necessary to perform the obligations hereunder.

Confidential Information shall be used only to carry out the obligations of the Parties hereunder and not for the benefit of any other party or in the furtherance of any other purpose. Awardee shall not disclose any information unless it has the expressed right to disclose such information and if it owes no duty of confidentiality to a third party with respect to such information. The receiving party shall:

1. use Confidential Information only for the purposes described in this Agreement or such other purposes as the disclosing party may approve in writing, and

2. restrict access and use of Confidential Information to its employees and agents, for whom such access and use is required to conduct the Services and who are bound by obligations of confidentiality at least as strict as those set forth in this Section.

The obligation of confidentiality under this paragraph shall extend for a period of ten (10) years after the disclosure of Confidential Information under this Agreement. In the event a receiving party is required by court or administrative order, applicable law to disclose any Confidential Information, it may do so without liability hereunder.

SECTION IV: FEDERAL AID HIGHWAY FUNDING STATUTORY REQUIREMENTS

All applicable Federal statutory and regulatory requirements apply to the EV charger projects. These requirements include, but are not limited to:

- A. All statutory and regulatory requirements that are applicable to funds apportioned under [chapter 1 of Title 23, United States Code](#), and the requirements of [2 CFR part 200](#) apply. This includes the applicable requirements of 23, United States Code, and [Title 23, Code of Federal Regulations](#), such as the applicable Buy America requirements at [23 U.S.C. 313](#) and Build America, Buy America Act (Pub. L. No 117-58, div. G sections 70901-70927).
- B. As provided at [23 U.S.C. 109\(s\)\(2\)](#), projects to install EV chargers are treated as if the project is located on a Federal-aid highway. As a project located on a Federal-aid highway, [23 U.S.C. 113](#) applies and Davis Bacon Federal wage rate requirements included at [subchapter IV of chapter 31 of Title 40, U.S.C.](#) must be paid for any project funded with NEVI Formula Program funds.
- C. The American with Disabilities Act of 1990 (ADA), and implementing regulations, apply to EV charging stations by prohibiting discrimination on basis of disability by public and private entities. EV charging stations must comply with applicable accessibility standards adopted by the Department of Transportation into its ADA regulations ([49 CFR part 37](#)) in 2006, and adopted by the Department of Justice into its ADA regulations ([28 CFR parts 35](#) and [36](#)) in 2010.
- D. Title VI of the Civil Rights Act of 1964, and implementing regulations, apply to this program to ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- E. All applicable requirements of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and implementing regulations, apply to this program.

- F. The Uniform Relocation Assistance and Real Property Acquisition Act at [49 CFR part 24](#), and implementing regulations, apply to this program by establishing minimum standards for federally funded programs and projects that involve the acquisition of real property (real estate) or the displacement or relocation of persons from their homes, businesses, or farms.
- G. The National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA implementing regulations, and applicable agency NEPA procedures apply to this program by establishing procedural requirements to ensure that Federal agencies consider the consequences of their proposed actions on the human environment and inform the public about their decision making for major Federal actions significantly affecting the quality of the human environment.

SECTION V: FEDERAL NEVI PROGRAM STANDARDS AND REQUIREMENTS

This Agreement includes and expressly incorporates by reference the FHWA Federal Register Final Rule 88 FR 12724. The final NEVI rule governs the following aspects of this agreement:

- A. Procurement Process Transparency: § 680.106(a)
- B. Number and Type of Chargers: § 680.106(b)
- C. Connector Type: § 680.106(c)
- D. Power Levels: § 680.106(d)
- E. Availability: § 680.106(e)
- F. Payment Methods: § 680.106(f)
- G. Equipment Certification: § 680.106(g)
- H. Security: § 680.106(h)
- I. Long Term Stewardship: § 680.106(i)
- J. Qualified Technician: § 680.106(j)
- K. Customer Service: § 680.106(k)
- L. Customer Data Privacy: § 680.106(l)
- M. Use of Program Income: § 680.106(m)
- N. Interoperability of Electric Vehicle Charging Infrastructure: § 680.108
- O. Traffic Control Devices or on-premises signs: § 680.110



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- P. Data Submittal: § 680.112
- Q. Charging Network Connectivity: § 680.114
- R. Communication of Price: § 680.116(a)
- S. Minimum Uptime: § 680.116(b)
- T. Third-Party Data Sharing: § 680.116(c)
- U. Title 23, 2 CFR 200, and Buy America: § 680.118(a)
- V. Davis Bacon Federal Wage Rate: § 680.118(b)
- W. ADA Requirements: § 680.118(c)
- X. Title VI of the Civil Rights Act of 1964: § 680.118(d)
- Y. Title VIII of the Civil Rights Act of 1968: § 680.118(e)
- Z. Uniform Relocation Assistance and Real Property Acquisition Act: § 680.118(g)
- AA. National Environmental Policy Act of 1969 (NEPA): § 680.118(h)

SECTION VI: STATE EVID PROGRAM REQUIREMENTS

This Agreement includes and expressly incorporates by reference the ARDOT EVID Program Requirements, which supplements Part 680 of the NEVI Program Standards and Requirements contained with the FHWA Final Program Rule. ARDOT's EVID Program Requirements provide specification on the following components of EV charging stations to be allocated funding in Arkansas:

- A. EV Charging Station Site Planning
- B. EV Charging Station Electrical Safety
- C. EV Charging Station Fire Prevention and Safety
- D. EV Charging Station Cybersecurity
- E. EV Charging Station Load Management and Demand Response
- F. Additional EV Charging Station Site Requirements

SECTION VII: AGREEMENT APPENDICES

- A. 2023 EVID Request for Proposals
- B. EVID Program Requirements

- C. Awardee Project Description
- D. Awardee Project Budget
- E. Project Management Plan (PMP)
- F. Project Cybersecurity Plan
- G. Data Sharing Agreement
- H. Reporting Template
- I. Operations and Maintenance (O&M) Plan
- J. Preliminary Design Documentation
- K. Environmental Clearances

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MEMORADUM OF UNDERSTANDING

BETWEEN

“EVID AWARDEE”,

“SITE HOST”,

AND

THE ARKANSAS DEPARTMENT OF TRANSPORTATION

In Cooperation with the

U.S. Department of Transportation, Federal Highway Administration

RELATIVE TO

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI) FORMULA PROGRAM

PARTIES AND SIGNATURES

This Agreement is made effective and entered into as of the date last signed by Arkansas Department of Transportation, hereinafter referred to as ARDOT, {**EVID AWARDEE BUSINESS NAME HERE**}, hereinafter referred to as EVID Awardee, and {**Site Host where EVID will be located**}, hereinafter referred to as “Site Host”, and collectively known as Parties.

The individuals signing hereby certify by their signatures that they are authorized to sign this Agreement on behalf of themselves or their organization and that the Parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

The Parties hereto have executed this Agreement this _____ day of _____, 20____.

**ARKANSAS DEPARTMENT OF
TRANSPORTATION**

EVID AWARDEE

Lorie H. Tudor, P.E.

Director

Authorizing Agent’s Name

Title

SECTION 1: ARDOT’S RIGHTS OF ACCESS TO EVSE SITES AWARDED FUNDING

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

1.1.1 “EVID Awardee” shall mean the entity responsible for the installation and maintenance of the EVSE and the recipient of the grant issued by the ARDOT.

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

1.1.3 “Electric Vehicle Supply Equipment (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, person holding 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 EVID Awardee, ARDOT, and the public to access the Site.

1.2 EVID Awardee Responsibilities.

1.2.1 During the Term of this Agreement, an EVID Awardee shall acquire and maintain all rights necessary:

1.2.1.1 For an EVID Awardee and EVID Awardee-Team members to have access and controls of the EVSE site for maintenance and operations purposes;

1.2.1.2 To perform all EVSE required work at the Site;

1.2.1.3 To permit all activities at the Site required or otherwise reasonably contemplated by the Project for operation of EVSE; and

1.2.1.4 During the Operating Period, for the public, including without limitation subscribers, customers, vendors, guests, licensees, and invitees of EVID Awardee or of any EVID Awardee-Related Entity, to be able to enter and use the Site and the Project EVSE as contemplated by the Project and required by the Award Agreement Documents.

1.3 Compliance with Section 1.2 responsibilities can be evidenced by:

1.3.1 Fee simple deed; or

1.3.2 If the Site is not owned by EVID Awardee in fee simple, by:

1.3.2.1 Easement granted by the Site Host; or

1.3.2.2 Lease with the Site Host; and

1.3.2.3 A Site Host agreement granted or conveyed, in each case, to the EVID Awardee by Site Host;

1.4 Document or documents provided in response to Section 1.3:

1.4.1 Shall be provided by the EVID Awardee to ARDOT for approval prior to execution of this Agreement.

1.4.2 Meet the approval of ARDOT in its sole discretion; and

1.4.3 Shall be attached to this agreement as Exhibit 1 as a true and correct copy.

1.5 During the Term of this Agreement, EVID Awardee or Site Host shall not amend, modify, supplement or replace the terms of the document or documents provided under Section 1.3 in a manner that limits, restricts, eliminates or otherwise adversely affects EVID Awardee's ability to access the Site or to complete the Work, or any rights or interests of ARDOT under the document or documents provided under Section 1.3 without prior written consent of ARDOT.

1.6 EVID Awardee and Site Host hereby grant to the ARDOT the right during the Term (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 EVID Awardee, the Site Host, or any other party, to observe, inspect, photograph or otherwise document, and, if necessary, in the sole judgment and opinion of ARDOT, and in connection with its exercise of remedies under this Agreement.

1.7 To the extent EVID Awardee is not the Site Host, EVID Awardee shall ensure the Site Host Agreement, at all times during the Terms of the Agreement, provides:

1.7.1 For the unrestricted rights of ARDOT described in Section 1.1.2; and

1.7.2 That before rights may be exercised by the Site Host under the document provided under Section 1.3 and preserved in the agreement between the Site Host and the EVID Awardee, the Project or any related EVSE or EVID Awardee's rights therein, arising from a breach or default under the Site Host Agreement, 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 the Site Host Agreement within such thirty (30) day period, provided that the ARDOT shall have no obligation to cure any such breach or default. To the extent ARDOT is not a party to the Site Host Agreement, it shall be designated as a third-party beneficiary of those provisions thereof providing rights in favor of ARDOT under this Section 1.3. The requirements of this

Section 1.3 shall be deemed satisfied if the Site Host Agreement incorporates the applicable provisions set forth on Exhibit 2 with only such changes as are acceptable to the ARDOT in its sole discretion.

1.8 EVID Awardee 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 this Agreement (without giving effect to any Early Termination) acknowledge and provide:

1.8.1 For the unrestricted rights of ARDOT described in Section 1.3, irrespective of any competing or superior interest in the Project or any related EVSE under any Encumbrance Agreement, and

1.8.2 That before any right may be exercised thereunder against the Project or any related EVSE or EVID Awardee’s rights therein, arising from a breach or default under such Encumbrance Agreement, ARDOT shall be given:

1.8.2.1 At least thirty (30) days’ prior written notice of such exercise; and

1.8.2.2 An opportunity, if ARDOT so elects, to cure such breach or default under such Encumbrance Agreement within such thirty (30) day period, provided that the ARDOT shall have no obligation to cure any such breach or default. To the extent the 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 the ARDOT under this Section 1. EVID Awardee has provided copies of each Encumbrance Agreement as in effect on the Effective Date to ARDOT meeting all the requirements of this Section 1. The requirements of this Section 1.1.3 shall be deemed satisfied if all Encumbrance Agreements incorporate the provisions set forth on Exhibit 2 applicable to Encumbrance Agreements, with only such changes as are acceptable to the ARDOT in its sole discretion.

1.9 Promptly upon request from ARDOT, EVID Awardee shall provide such other information as ARDOT deems necessary in connection with the rights required under this Section 1. This may include personal property lien searches and the creation of a plan showing all real property acquired by EVID Awardee’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 EVID Awardee has established a property



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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.

1.10 EVID Awardee may assign to its lenders and other financing parties as collateral security its rights under the Site Host Agreement 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 Section 1 under the Site Host Agreement, and under all applicable Encumbrance Agreements (collectively, the "ARDOT Property Interest").

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EXHIBIT 1.

EVID PROJECT SITE HOST AGREEMENT

INSERT FINAL SITE HOST AGREEMENT

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EXHIBIT 2.**ARDOT PROPERTY INTEREST MEMORADUM OF UNDERSTANDING**

- 1) Reference is made to (a) that certain EVID Award Agreement (the "Award Agreement"), between [EVID Awardee] ("EVID Awardee"), "SITE HOST", and the State of Arkansas, acting by and through the Department of Transportation, its authorized agents and representatives (collectively, "ARDOT"), dated as of _____, 2023, and (b) the Site identified therein, with an address at: _____, Arkansas, _____.
- 2) Capitalized terms not otherwise defined in this Addendum shall have the meanings ascribed to them in the EVID Award Agreement.
- 3) Reference is also made to the Site Host Agreement identified in and attached as Exhibit 1 to the EVID Site Host Agreement and Right of Way Memorandum of Understanding, pursuant to which _____ (the "Site Host") has agreed, subject to the terms of the Site Host Agreement, to provide EVID Awardee with access to the Site for at least the duration of the Term.
- 4) This Right of Way Memorandum of Understanding (MOU) is attached to and forms a part of the Site Host Agreement, binding on all parties thereto. The provisions of this MOU shall apply notwithstanding any other provision of the Site Host Agreement and, in the event of conflict, ambiguity or inconsistency with other terms of the Site Host Agreement, shall take precedence over such other terms.
- 5) ARDOT and the State are third party beneficiaries of all EVID Awardee's rights under the Site Host Agreement and all provisions of this Addendum to the Site Host Agreement. Without the written approval of ARDOT, the Site Host Agreement shall not in any way be amended, modified, or supplemented in a manner that limits, restricts, eliminates or otherwise adversely affects any of the ARDOT's rights or interests set forth in this MOU.
- 6) At all times during the Term (without giving effect to any Early Termination, unless ARDOT otherwise agrees in writing), ARDOT and its designated representatives shall have a perpetual right to access the Site and the Project, with such access being as expansive as the access and possessory rights of EVID Awardee under the Site Host Agreement, for the purpose of, among other things, observing, inspecting, photographing or otherwise documenting the Project and enforcing ARDOT's rights and remedies under the EVID Award Agreement. ARDOT shall provide ten (10) days' prior written notice to the Site Host of any planned entry onto the Site for the purpose of enforcing remedies under the EVID Award Agreement, which

notice shall set forth the planned date of entry and, if known, the intended duration. EVID Awardee hereby waives any right of notice from Site Host or ARDOT with respect to Site Host's grant of access to the Site as set forth herein.

- 7) Site Host waives in favor of ARDOT (a) all rights of distraint, levy and execution that Site Host may now or hereafter have against any personal property of EVID Awardee relating to the Project, (b) all statutory liens, security interests or other liens that Site Host may now or hereafter have in any personal property of EVID Awardee relating to the Project, and (c) all other interests or claims of every nature whatsoever, that Site Host may now or hereafter have in or against any personal property of EVID Awardee relating to the Project for any rent, license fees, storage charges, or other sums due, or to become due, to Site Host by EVID Awardee. The foregoing waivers are being given exclusively for the benefit of ARDOT and do not excuse, extend, or waive any obligations owed by EVID Awardee to Site Host under the Site Host Agreement.
- 8) Prior to Site Host terminating EVID Awardee's rights of access or possession under the Site Host Agreement or evicting EVID Awardee from the Site for a breach or default of the Site Host Agreement, Site Host shall give ARDOT not less than thirty (30) days' prior written notice of such action, and an opportunity, if ARDOT so elects, to cure such breach or default, provided, however, that ARDOT shall have at least thirty (30) days following receipt of said notice to cure such breach or default. ARDOT shall have no obligation to cure any such breach or default. The cure of any such breach or default by ARDOT on any one occasion shall not obligate ARDOT to cure any other breach or default or to cure such default on any other occasion.