

SUB-RECIPIENT AGREEMENT

This Agreement is made effective upon execution between American Lung Association (“the Company”) with offices at 490 Concordia Avenue, Saint Paul, MN 55103 and City of Saint Paul (“the Contractor”) with offices at 15 W Kellogg Blvd., Saint Paul, MN 55102.

RECITALS

American Lung Association is the recipient of a Cooperative Agreement awarded by the United States Department of Energy (US DOE) for the project Organizing and Supporting Underserved Communities to Design, Implement, and use Electric Vehicle (EV) Charging Infrastructure. This Agreement is being made to specify the Contractor’s responsibilities in regard to receiving funds pursuant to the Cooperative Agreement: Award No. DE-EE0010622.

The Contractor is an organization that has agreed to receive funding to carry out certain work designed and intended to meet the deliverables of the DOE award. The Contractor’s work has been awarded a grant as described below and is subject to the terms and conditions of this Agreement.

PROVISIONS

1. **Grant Award.** This award is made contingent upon satisfactory completion of all work specified herein, and payments shall be made in accordance with the terms and conditions of this Agreement. Payment of any grant funds pursuant to this Agreement is contingent upon the Company receiving funding from US DOE. All billing for work under this contract shall comply with the duties attached as Exhibit A of this agreement.
2. **Independent Contractor.** Subject to the terms and conditions of this Agreement, the Company hereby engages the Contractor as an independent contractor to perform the services set forth herein, and the Contractor hereby accepts such engagement. This Agreement includes and expressly incorporates by reference the US DOE flow down provisions applicable to subrecipients and contractors, attached hereto as Attachment 0 – DOE Special Terms and Conditions EE0010622.

This Agreement shall not render the Contractor an employee, partner, agent of, or joint venture with the Company for any purpose. The Contractor is and will remain an independent contractor in its relationship to the Company. The Company shall not be responsible for withholding taxes with respect to the Contractor’s compensation hereunder. The Contractor shall have no claim against the Company hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

3. **Duties, Term, and Compensation.** The Contractor’s duties, term of engagement, compensation and provisions for payment thereof shall be as set forth in the estimate and hereby attached as Exhibit A, which may be amended in writing from time to time, or supplemented with subsequent estimates for services to be rendered by the Contractor and agreed to by the Company, and which collectively are hereby incorporated by reference.

All interim deliverables shall be delivered on the dates agreed upon during the execution of the contract. If the US DOE work scope is terminated or altered, Grantee shall be bound by the termination or scope alterations and shall not be entitled to any compensation, except that which Company may be able to negotiate with the US DOE.

4. Expenses. During the term of this Agreement, the Contractor shall bill the Company for all reasonable and approved out-of-pocket expenses that are incurred in connection with the performance of the contracted project. Notwithstanding the foregoing, expenses for the time spent by Consultant in traveling to and from Company facilities shall not be reimbursable.
5. Method of Performing Services. Contractor will determine the method, details, and means of performing the described services in Exhibit A.
6. Reports. The Contractor shall provide progress reports for tasks outlined in Exhibit A on a minimum of a quarterly basis. The Contractor also agrees to work with the Company by providing information deemed necessary to furnish all additional reports and requests for information from US DOE related to this award.
7. Confidentiality. Each party acknowledges that it will have access to various trade secrets, inventions, innovations, processes, information, records and specifications owned or licensed by the other party ("Confidential Information").
 - (a) Each party agrees that it will not disclose any of the Confidential Information of the other party, directly or indirectly, or use any of the Confidential Information in any manner, either during the term of this Agreement or at any time thereafter, except as required in connection with this Agreement.
 - (b) Each party shall continue to own its Confidential Information and nothing herein shall be deemed to transfer any ownership or license in such Confidential Property to the other party. Each party shall own all files, records, documents, blueprints, specifications, information, letters, notes, media lists, original artwork/creative, notebooks, and similar items prepared by such party in connection with this Agreement, except to the extent such items contain Confidential Information of the other party. Contractor shall own and may retain data collected by Contractor as part of this Agreement.
 - (c) The confidentiality and limitation on use obligations of this section shall not apply to Confidential Information that the receiving party is able to show: (i) was known to the receiving party prior to disclosure by the disclosing party; (ii) is lawfully received by the receiving party from a third party having a right to disclose it, without confidentiality or limitation on use obligations, to the receiving party, (iii) is or becomes part of the public domain through no wrongful act or omission by (or on behalf of) the receiving party.
8. Conflicts of Interest. Each party represents to the other party that it is free to enter into this Agreement, has the necessary power and authorization to enter into this Agreement, and that this Agreement does not violate the terms of any agreement between such party and any third party. The Contractor, in rendering duties shall not utilize any invention, discovery, development, improvement, innovation, or trade secret in which it does not have a proprietary interest, valid license, or other right to use.

The Contractor is expressly free to perform services for other parties while performing services for the Company.

9. Merger. This Agreement shall not be terminated by the merger or consolidation of the Company into or with any other entity.
10. Successors and Assigns. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.
11. Termination. The Company may terminate this Agreement at any time by 10 working days' written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of the Company, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, the Company at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

Furthermore, payment for this Agreement is made available through grant funds. Therefore, services performed under this contract are subject to availability of continued grant funds. If at any time the grant funding source for this Agreement is either depleted and/or not renewed, this contract will immediately become null and void.

12. Insurance. The Contractor will carry liability insurance (including malpractice insurance, if warranted), relative to any service that Contractor performs for the Company and hereby agrees to hold Company free and harmless from any and all claims arising from any such negligent act or omission.
13. Contractor representations, warranties, and indemnification. The Contractor represents and warrants that services and resulting products produced or used under this contract do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. The Contractor shall indemnify and defend the Company at the Contractor's expense from any action or claim brought against the Company to the extent that it is based on a claim that all or part of the Contractor's services and resulting products produced or used under this contract infringe upon the intellectual property rights of another or for any failure to pay subcontractors for the services and resulting products produced or used under this contract. The Contractor shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees which are attributable to such claims or actions.
14. Company representations, warranties, and indemnification. Company has not made any representation or warranty, express or implied, regarding the materials, the project, any subcontractors hired by Contractor, and any products bought by Contractor under this agreement. The Company shall indemnify and defend the Contractor at the Company's expense from any action or claim brought against the Contractor to the extent that it arises from a misrepresentation by the Company of the Contractor's services and resulting products under this contract.
15. Workers' Compensation. Contractor agrees to provide workers' compensation insurance, if applicable, to cover any individual's employed by Contractor for the purpose of fulfilling this Agreement.
16. Choice of Law. The laws of the state of Minnesota shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

17. Arbitration. Any controversies arising out of the terms of this Agreement or its interpretation shall be settled in accordance with the rules of the American Arbitration Association, and the judgment upon award may be entered in any court having jurisdiction thereof.
18. Waiver. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.
19. Assignment. The Contractor shall not assign any of its rights under this Agreement, or delegate the performance of any of its duties hereunder, without the prior written consent of the Company.
20. Notices. Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

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| If to the Contractor: | <u>City of Saint Paul</u> <u>Attn: Russ Stark</u> <u>15 W Kellogg Blvd.</u> <u>Saint Paul, MN 55102</u> |
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| If to the Company: | <u>American Lung Association</u> <u>Attn.: Jon Hunter</u> <u>490 Concordia Avenue</u> <u>Saint Paul, MN 55103</u> |
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Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

21. Modification or Amendment. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.
22. Entire Understanding. This document and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
23. Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.
24. Counterparts. The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

25. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

City of Saint Paul

American Lung Association

By: _____
Director of Public Works

Signature

Date: _____

By: _____
Director of Financial Services

Deborah Brown
Name

Date: _____

Chief Mission Officer
Title

By: _____
Director of HREEO

Date: _____

Date

By: _____
Mayor

Date: _____

Approved as to form:

By: _____
Assistant City Attorney

EXHIBIT A

City of Saint Paul

DUTIES, TERM, AND COMPENSATION

Organizing And Supporting an Under-Served Community to Design, Implement, and Use EV Charging Infrastructure project will engage underserved communities to discuss how investments in EV chargers can benefit the community. Residents of the east side of Saint Paul disproportionately bear the burdens of our transportation energy system and do not equitably experience the benefits of access to clean, affordable, and reliable transportation. The project will engage and work with four community organizations to identify potential sites and install 10 new EV charging hubs with 40 Level 2 charge ports in the public right of way. Two series of workshops will be held to evaluate whether the EV chargers provide the anticipated benefits. The Development of a Community-Driven EV Charger Deployment Report will be completed for each community.

DUTIES/RESPONSIBILITIES:

1. Recruit and contract with a facilitator representing impacted communities to spearhead the community engagement process. The US DOE Contracting Officer must approve the facilitator selection prior to any funding being provided to the selected party.
2. Assist participating community councils in their hiring processes, including the development of position descriptions and onboarding.
3. Assist with the development of project materials for awareness and outreach efforts.
4. Work with project partners and facilitator to design and execute engagement workshops.
5. Support project coordination with community organizations.
6. Coordinate installation of ten Level 2 EVSE (20 charging ports) and supporting infrastructure at identified community EV Charging Hub locations in the East Side communities and along the Gold Line.
7. Secure and coordinate temporary or mobile Level 2 EVSE if needed to test potential sites when there are questions about where an EV charging hub should be located following community engagement activities.
8. Secure in-kind project support of \$54,967 via staff support and/or other non-federally funded contributions to the project.
9. Work with all subrecipients to ensure deliverables are completed.
10. Document all project related expenses.
11. Provide required reports on project implementation, expenses, subrecipient and partner involvement, and event plans and summaries to American Lung Association on at least a quarterly basis and as requested by the Lung Association and/or US DOE.
12. Abide by the applicable U.S. Department of Energy's flow down terms and conditions found in the Attachment 0: Special Terms and Conditions DE-EE0010622 document.

TERM:

This engagement shall commence upon execution of this Agreement and shall continue in full force and effect until 12/31/2026, unless terminated earlier by operation of and in accordance with this Agreement. The Cooperative Agreement between the U.S. Department of Energy and American Lung Association (DE-EE0010622) has a start date of 10/01/2023 for eligible expenses, which carries through for this agreement.

COMPENSATION:

City of Saint Paul is awarded funding in the amount of \$560,844, for use as detailed in the budget document provided to US DOE and outlined below, and contingent upon satisfactory completion of all work.

| CATEGORY | Total Costs |
|--|--------------------|
| a. Personnel | \$112,937 |
| b. Fringe Benefits | \$27,907 |
| c. Travel | |
| d. Equipment | \$190,000 |
| e. Supplies | |
| f. Contractual Sub-recipient Vendor | |
| | \$200,000 |
| Total Contractual | \$200,000 |
| g. Construction | |
| h. Other Direct Costs | \$30,000 |
| Total Direct Costs | \$560,844 |
| i. Indirect Charges | |
| Total Costs | \$560,844 |

Reimbursement will be made after expenses are incurred, documented to a level of detail deemed sufficient by US DOE. City of Saint Paul will invoice the Lung Association at least once a quarter. All expenses occurring within each American Lung Association's fiscal year (July 1 to June 30) must be included on invoices submitted no later than 30 days after the end of that fiscal year (i.e. by July 30). Payment shall be made to City of Saint Paul in accordance with instructions on the submitted invoices.