

PARTICIPATING ADDENDUM
for
Electric Vehicle Supply Equipment and Related Services under SOURCEWELL Purchasing
Cooperative Program

Participating Entity:
CONTRA COSTA COUNTY

Contractor: FLO Services USA Inc., d/b/a in California as FLO Charging Solutions USA, Inc.

This Agreement is made and entered into as of August 15, 2023 (“Effective Date”), by and between Contra Costa County, a political subdivision of the State of California (“County”), and FLO Services USA, Inc. (doing business in California as FLO Charging Solutions USA, Inc.), a Delaware corporation, (hereinafter referred to as “FLO”) whose principal place of business is 1270 Pacific Drive, Auburn Hills, Michigan 48326 USA. The County and FLO are sometimes referred to herein together as the “Parties,” and each as a “Party.”

Whereas, FLO offers electric vehicle charging equipment, products, and services under Contract #042221 (“Master Contract”), awarded by Sourcewell, a State of Minnesota public agency, after a competitive bid process, and made available to public agencies nationally.

Whereas, the County has determined that entering into a Participating Addendum under the Sourcewell program provides a benefit to the County, but that certain terms and conditions of the Master Contract must be modified to meet legal requirements that apply to the County.

Now therefore, FLO and the County agree as follows:

1. Term. The term of this Agreement begins on the Effective Date, and it expires on July 20, 2025, unless it is sooner terminated. The County and FLO may agree, by mutual consent, to amend this Agreement to extend its term by up to one additional year, through June 20, 2026, provided that the Master Contract remains in effect as of the date the term of this Agreement is extended. Any extension of the term of this Agreement must be confirmed in a written document signed by both parties and is subject to the prior approval of the County’s Board of Supervisors, its governing body. If the Master Contract is terminated prior to the expiration of the term of this Agreement, or any extension thereof, FLO shall continue to perform under this Agreement through the term of this Agreement, or any extension thereof exercised prior to the termination of the Master Contract.
2. Payment Limit. The County’s total payments to FLO under this Agreement shall not exceed \$800,000 (“Payment Limit”). Nothing in this Agreement obligates the County to make any purchases, or any particular volume of purchases, under this Agreement.
3. No Public Work/No Public Project. FLO shall not perform, and the County will not request, any work under this Agreement that would qualify as a public work and/or public project under the California Labor Code and Public Contract Code. FLO shall be solely responsible for complying with all prevailing wage laws, wage and hour laws, and other laws that apply to any services performed under this Agreement.
4. Changes to Master Contract. For the purposes of this Agreement, the terms of the Master Contract are incorporated in, and made a part of, this Agreement, except for those terms of the Master Contract that are modified by this Agreement, as follows:

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- a. Parties. Each reference to “Sourcewell” in the Master Contract is replaced with “Contra Costa County.”
- b. Authorized Representative. Section 9 of the Master Contract (Authorized Representative) is amended by replacing the first sentence of that section with the following:

“The County’s Authorized Representative is its Purchasing Agent, or designee.”

- c. Audit. Section 10.A. (Audit) of the Master Contract is deleted and replaced with new Section 10.A. to read:

“A. AUDIT. The County shall have the right of access to the books, documents, papers, or other records of Vendor that are relevant to County’s purchases this Contract in order to make audits. During the term of this Contract and for a period of three (3) years following its expiration or earlier cancellation, Vendor shall keep and maintain accurate books, documents, papers, or other records related to the County’s purchases under this Contract, and shall make those record available to County upon request at Vendor’s place of business during Vendor’s business hours.” County undertakes to perform any such Audit in a manner that will not disrupt the operations of Vendor. If County retains the services of third party an auditor, such auditor shall be a recognized accounting firm acceptable to Vendor and shall enter into a non-disclosure agreement acceptable to Vendor prior to being granted access to the above-mentioned books, documents, papers, or other records of Vendor that are relevant to County’s purchases this Contract. County shall have the right to conduct an audit no more than once per contract year and any such audit shall exceed a duration of two (2) business days.

- d. Public Records Act. Section 12 (Government Data Practices) of the Master Contract is deleted in its entirety and replaced with new Section 12, to read:

“12. PUBLIC RECORDS ACT AND BETTER GOVERNMENT ORDINANCE

Notwithstanding anything to the contrary in this Contract, this Contract and all records produced or exchanged under this Contract will be considered disclosable public records under the California Public Records Act and the County’s Better Government Ordinance, unless the County, in its sole discretion, determines the record is exempt from disclosure.” Notwithstanding the preceding, County shall not disclose any record or portion of this contract that would be detrimental to Vendor’s competitive position without having provided thirty (30) days advance written notice of any such disclosure and County shall discuss in good faith with Vendor exemption from disclosure of any sensitive records having regard to the Vendor’s competitiveness.

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- e. Governing Law. Section 14 (Governing Law) of the Master Contract is deleted and replaced with new Section 14, to read:

“14. GOVERNING LAW, JURISDICTION, AND VENUE

This Contract is made in Contra Costa County, California, and California law shall govern the interpretation and enforcement of this Contract. Any litigation to interpret or enforce this Contract shall be filed in a state or federal court in California with jurisdiction over the parties and the subject matter of the litigation.”

- f. Certificates of Insurance. Section 18.B. (Certificates of Insurance) is hereby amended by deleting the second sentence of that section and replacing it with the following:

“Prior to expiration of any policy of insurance required under Section 18, a renewal certificate must be mailed to: Contra Costa County, Attn: Purchasing Manager, 255 Glacier Drive, Martinez, CA 94553.”

- g. RFP Responses. Contractor’s response to the Request for Proposals 042221 (“RFP 042221”) connected with the Master Contract are incorporated in and made a part of this Agreement by reference.
- h. FLO Global Management Services. The terms and conditions attached hereto as Exhibit B shall govern FLO’s provision of global management services on behalf of the County. Provided, however, that Exhibit B is modified as follows:

(1) Sections 7(a) (Initial Term), 7(b) (Renewal), and 7(c) (Termination) here hereby deleted and of no further force or effect. The term and termination provisions of this Agreement shall govern.

(2) Section 13 (Arbitration and Class Action Waiver) in Exhibit B is hereby deleted and replaced by the following:

“ Section 13 (Class Action Waiver)

Proceedings to resolve or litigate a dispute in any forum will be conducted on an individual basis. Neither you nor FLO will seek to have a dispute heard as a class action, private attorney general action, or in any other proceeding in which either party acts or proposes to act in a representative capacity. If the class action waiver is found to be illegal or unenforceable as to all or some parts of a dispute, those parts will be severed and proceed in a court of law, with the remaining parts proceeding in arbitration.”

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- (3) Section 14(f) is hereby amended to read: The laws of the state of California shall govern the GMS terms in all respects, without giving effect to conflict of laws principles applicable therein.
- i. Software License. The End User Software License Agreement attached hereto as Exhibit C shall govern the County's use of Subscription Software and Data as defined in Exhibit C. Provided, however, that Exhibit C is modified as follows:
- (1) Section 15 (Arbitration and Class Action Waiver) in Exhibit C is deleted in its entirety and replaced by the following:

“ Section 15 (Jury Trial and Class Action Waiver)

BY AGREEING TO THIS EULA, YOU AGREE THAT YOU ARE
REQUIRED TO RESOLVE ANY CLAIM THAT YOU MAY HAVE
AGAINST FLO ON AN INDIVIDUAL BASIS. THIS WILL PRECLUDE YOU
FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE
ACTION AGAINST FLO, AND ALSO PRECLUDE YOU FROM
PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT
OR FUTURE CLASS, COLLECTIVE, CONSOLIDATED, OR
REPRESENTATIVE ACTION BROUGHT AGAINST FLO BY SOMEONE
ELSE.

You acknowledge and agree that you and FLO are each waiving the right to a
trial by jury or to participate as a plaintiff or class member in any purported class

If any portion of this Arbitration Agreement is found to be unenforceable or
unlawful for any reason, the unenforceable or unlawful provision shall be severed
from this EULA.”

- j. Warranties. Pursuant to Table 9A of the RFP, the Contractor shall provide warranties substantially in the form attached hereto as Exhibit D. Provided, however, that Exhibit D is modified as follows:
- (1) Section 10 (Conflict of Terms) in Exhibit D is deleted and replaced with the following: “10. Conflict of Terms. In the event of a conflict between any provision of this Warranty and any provision of the Agreement that incorporates this Warranty as an exhibit, the terms of the Agreement shall govern and supersede.”
- (2) Section 12 (Governing Law and Arbitration) in Exhibit D is deleted in its entirety.”
- (3) Any additional warranties purchased by the County: (a) shall include the same “Conflict of Terms” provision set forth above; (b) shall not include any

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Governing Law clause that conflicts with this Agreement; and (c) shall not include any arbitration clause, mandatory or otherwise.”

5. Governing Law. Notwithstanding anything to the contrary in the Master Contract, this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law principles. Any litigation to enforce or interpret this Agreement shall be filed and prosecuted in a state or federal court in California where venue is proper and that has jurisdiction over the parties and the subject matter of the litigation.
6. No Joint Venture. At all times during the term of this Agreement, neither party will function as or represent it to be the other party or its agent, and no officer, employee or agent of one party shall hold himself or herself out to be an officer, employee or agent of the other party. This Agreement does not create any rights or obligations between the parties other than those expressly set forth herein and nothing in this Agreement shall be construed as conferring any rights upon any third parties or any other party other than the County and Grainger.
7. Amendment. This Agreement may be amended or modified at any time by mutual agreement of the parties in writing.
8. Termination. Notwithstanding anything to the contrary in the Master Contract, either the County or FLO may terminate this Agreement at any time upon sixty (60) days written notice to the other party at the other party's address specified in Section 10 below (Notices).
9. Performance. FLO affirms that there are no encumbrances or obstacles, which will prohibit its performance pursuant to the terms of this Agreement. FLO shall be solely responsible for guaranteeing any of its dealers, distributors, or subcontractors perform in accordance with the requirements of the Master Contract. If the County issues any purchase orders to acquire goods or services under the Master Contract, to the extent that there is any conflict between the terms of the purchase order and a term in the Master Contract, the term of the Master Contract shall govern and prevail over the conflicting term in the purchase order.
10. Notices. Notices to the parties shall be provided to:

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FLO Services USA Inc., d/b/a in California as FLO Charging Solutions USA, Inc.

1270 Pacific Drive, Auburn Hills, Michigan 48326 USA
Telephone: (831) 239-2479
Contact: Geoff Arnold – Business Development Manager – Western US
Email: Geoff.Arnold@flo.com
Cc: legalnotices@flo.com

County:

Contra Costa County-Purchasing Services
40 Muir Road, 2nd floor
Martinez, CA 94553
Telephone: (925) 957-2495
Contact: Cynthia Shehorn, Procurement Services Manager
Email: cindy.shehorn@pw.cccounty.us

All notices shall be in writing and personally delivered, delivered by overnight carrier with delivery charges for next day deliver prepaid by the sending party, or sent by First Class, certified mail return receipt required, U.S. Mail, with postage prepared by the sending party. A courtesy copy of a notice may be given by email, but giving a courtesy copy of a notice by email does not relieve the sending party of its obligation to give notice to the receiving party in the manner required by this section. A notice given in accordance with this section shall be deemed received by the receiving party on (a) the same day, if personally delivered, (b) the next business day if timely deposited with an overnight carrier and with delivery charges prepared to ensure next day delivery, and (c) on the fifth day after mailing if mailed by First Class, certified mail, return receipt required, U.S. Mail with postage prepaid.

11. Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. This Agreement may not be assigned by either party without the express written permission of the other party, which shall be within that party's sole discretion to provide.

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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the Effective Date.

Participating Entity: Contra Costa County	Contractor: FLO Services USA Inc., d/b/a in California as FLO Charging Solutions USA, Inc.
Signature:	Signature: <u>Louis Tremblay</u> Signed: 7/26/2023
Name: Cynthia Shehorn CPPB	Name: Louis Tremblay
Title: Procurement Services Manager	Title: President and CEO

Approved as to form:
Thomas Geiger, County Counsel

By: _____
Deputy County Counsel

Attachments:

- Exhibit A – Master Contract
- Exhibit B – FLO Global Management Services
- Exhibit C – End User Software License Agreement
- Exhibit D – Warranties

Record of Signing

For
Name
Title

Louis Tremblay

Signed on 2023-07-26 18:45:57 GMT

Secured by Concord™
DocumentID: N2JiNmVhODAtZj
SigningID: MmMzODZkYTEtNj
Signing date: 7/26/2023
IP Address: 207.96.243.92
Email: ltremblay@flo.com



Signed with www.concordnow.com