

CHARGING STATION LICENSE AGREEMENT

This Charging Station License Agreement ("Agreement") is entered into as of the ____ day of _____, 2021 ("Effective Date") by and between the City of Oakland, a municipal corporation ("Host") and the East Bay Community Energy Authority, a Joint Power Authority ("EBCE"). Host and EBCE are individually referred to as "Party" and collectively as "Parties".

1. Grant of License. Host is the fee simple owner of certain real property located at 1250 Martin Luther King Junior Way, Oakland, CA ("Property"), which is more particularly depicted on Exhibit A, which is attached hereto and incorporated by reference. Host grants to EBCE for the Term of this Agreement: (i) an exclusive and irrevocable, except as specifically set forth in Section 4 of this Agreement, license to use and occupy a portion of the Property, including the designated parking spaces for charging vehicles ("Charging Stalls"), located on the Premises shown on Exhibit A (the "Premises"), for the Purpose described in Section 2 of this Agreement and (ii) any necessary rights for Installation, maintenance, operation, access and utilities for the Purpose. Host shall not allow the installation or use of new charging stations other than those of EBCE on the Property. Prior to EBCE offering use of the Charging Stalls to the public, EBCE shall submit, for approval to the Planning and Building Director, plans for the manner of operation of the Charging Stalls, including, but not limited to, details regarding the maximum length of time a vehicle may occupy a Charging Stall, and any other such information deemed necessary by the Planning and Building Director ("Operation Plans").

2. Purpose. The Premises may be used by EBCE for any lawful activity in connection with the design, development, construction, installation, maintenance, repair, replacement, removal, security, and operation of electric vehicle chargers and ancillary items, including, without limitation, electrical equipment, hardware, software, signage and all supporting equipment and structures (which may include concrete pads and protective bollards) (collectively, the "Charging Station"), together with any other uses permitted herein ("Purpose"), on the terms and conditions set forth in this Agreement.

3. Term. The term of this Agreement (as extended or renewed from time to time, the "Term") shall commence on the Effective Date and terminate ten (10) years from the date that the Charging Stations are first operational ("Commencement Date"). Following the expiration of the initial Term, the Agreement may be renewed for an additional five (5) year term and then successive one (1)-year terms upon the written agreement of both Parties.

4. Termination. This Agreement may be terminated:

a. by EBCE, upon thirty (30) days' written notice to Host, at any time prior to the submission of the permit application for construction of the Charging Station at the Property, or in the event that EBCE determines that the construction or continued operation of the Charging Station is impracticable or uneconomical; or

b. by EBCE, upon thirty (30) days' written notice to Host, if Host adversely affects EBCE's use of the Premises.

c. by Host, after the initial ten (10)-year Term, upon ninety (90) days' written notice to EBCE, if Host notifies EBCE that it intends to use the Property and/or Premises for another purpose.

d. by Host, upon thirty (30) days' written notice to EBCE, in the event the Commencement Date has not occurred within fifteen (15) months following the Effective Date; provided that the foregoing right shall terminate upon the Commencement Date; or

e. by either Party if the other Party breaches or fails to perform any of its obligations in any material respect, and such breach or failure continues uncured for ten (10) business days after receipt of written notice; provided that if such breach or failure reasonably requires more than ten

(10) business days to cure, this provision shall not be triggered if such breaching Party commences to cure within such period and diligently proceeds to complete such cure; or

f. by either Party, if the other Party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws.

g. by either Party, if any portion of the Property is damaged by fire or other casualty in a manner that adversely affects EBCE's use of the Premises, within thirty (30) days of the date of such fire or other casualty.

5. Electricity. Unless otherwise agreed by the Parties, EBCE shall be responsible for all electricity costs of the Charging Stations by obtaining separately metered electricity service. Host shall reasonably cooperate with EBCE's efforts regarding the provision of electricity to the Charging Stations. Neither Host nor EBCE has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of distribution utilities furnished to the Charging Station. Host grants to EBCE the right to establish and/or receive utility services including but not limited to electric, and the right for the distribution utility service supplier to construct, reconstruct, install, inspect, maintain, replace, remove, and use said utility services to serve the Charging Stations together with the right for the utility service supplier to ingress to and egress from said utility service facilities across the Host Property. Host grants the right for the distribution utility and the service utility to trim, cut down, and clear away or otherwise control any trees or brush within five (5) feet of said route upon Host's written consent prior to such action, which shall not be unreasonably withheld, conditioned or delayed.

6. Maintenance of Premises. Host shall cause the Premises, including EBCE Charging Stalls, to be reasonably maintained in a clean, safe, and orderly condition to at least the same standard as adjacent areas of the Property that are under Host control are maintained. Host shall have no responsibility to maintain EBCE's Charging Station or related to EBCE equipment, hardware, software, or signage. Host shall not retain any ownership rights in the Charging Station and related EBCE equipment. EBCE and its employees, contractors, and vendors may, at any time during the Term, access the Premises and Property to maintain, inspect, repair, upgrade, remove or replace any portion of the Charging Stations.

7. EBCE Customers: Access. EBCE will provide access to the Charging Stations to customers ("EBCE Customers"), which may include members of the public, as well as commercial fleet and rideshare vehicles, who shall be charged in amounts reasonably determined by EBCE, which may change from time to time in EBCE's sole discretion. EBCE Customers shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, and 365/366 days per year. Host shall notify EBCE at least forty-eight (48) hours in advance, or as soon as reasonably practical in the event that forty-eight (48) hours' advance is impractical due to emergency, of any need to limit access to the Premises due to maintenance, safety, or other unforeseen reasons.

8. Signage & Promotional Activities. EBCE may stripe and place appropriate signage at the Premises and mark the Charging Station and Charging Stalls and related EBCE equipment with Host's prior approval, which shall not be unreasonably withheld, conditioned or delayed. In addition, subject to Host's prior approval, not to be unreasonably withheld, EBCE may place signage, marks, or advertising devices in, on, or about and around the Premises within the Host Property at EBCE's sole cost and subject to applicable laws and regulations. At no time may Host place any signage on EBCE property without EBCE's prior approval.

9. Promotional Activities. During the Term of the Agreement, EBCE may promote the availability of the Charging Station through traditional and/or electronic media, including providing the address to the Property and a description thereof. No Party shall use the other Party's trade or service marks, logos, or other proprietary materials without the prior written consent of the other Party.

10. Construction. EBCE shall, at its sole cost and expense, be responsible for all installation activities required to support the operation of the Charging Station and services therewith, including the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping. Before beginning any installation activities, EBCE shall provide a copy of the construction schedule and installation plans to Host for its approval, which approval shall not be unreasonably delayed or withheld. EBCE shall ensure that it or its designated contractor(s) and/or service providers: obtain from governmental authorities all licenses, permits, or other approvals (collectively, "Approvals") required to conduct such installation activities. Host will reasonably cooperate with EBCE's designated contractors and service providers to obtain such Approvals. EBCE shall not permit or suffer any mechanic's or materialmen's liens to attach to the Premises. If such a lien attaches to the Premises, EBCE shall remove or bond over such lien at EBCE' s sole cost and expense, within twenty (20) days of EBCE receiving written notice thereof from Host. EBCE shall ensure that it or its designated contractors, subcontractors and/or service providers pay prevailing wages for any construction, installation work or maintenance contracts related to the Charging Station and related equipment, as those wages are determined pursuant to Labor Code Section 1720 *et seq.*, and Sections 1774 and 1775, to employ apprentices as required by Labor Code Section 1777.5 *et seq.*, and EBCE shall cause the contractor and subcontractors to comply with all other applicable provisions of the Labor Code and the implementing regulations of the Department of Industrial Relations (the "DIR").

11. Modification. EBCE may, at any time during the Term and in its discretion modify, including, without limitation, upgrade, replace, and/or remove all or a portion of the Charging Station (collectively, "Modifications"), whether or not said items are considered fixtures and attachments to the Premises under applicable laws; provided, however, before any such Modifications, EBCE shall provide at least sixty (60) days prior written notice to Host.

11. Removal. Within ninety (90) days following the termination of this Agreement, EBCE shall remove the Charging Stations and all of EBCE's other equipment and personal property from the Premises, but not electric infrastructure, which shall remain with the Property. This provision shall survive the termination of this Agreement.

12. Representations, Warranties & Covenants. Host and EBCE each hereby represent and warrant to the other that, as of the Effective Date: (a) it has all necessary power and authority to execute, deliver, and perform its obligations hereunder; (b) the execution, delivery, and performance of the Agreement have been duly authorized by all necessary action and do not violate any of the terms or conditions of its governing documents, any contract to which it is a party, or any law, regulation, order, or other legal determination applicable to it; (c) there is no pending or, to its knowledge, threatened litigation or proceeding that may adversely affect its ability to perform the Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization; (e) the Agreement constitutes a legal, valid and binding obligation of such Party, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and by general principles of equity. Both Parties shall comply with all federal, state, and local laws, rules, regulations (including, without limitation, all zoning ordinances and building codes, nondiscrimination laws) and as amended from time-to-time in performing its obligations under the Agreement.

13. Indemnity. Each Party shall indemnify and hold harmless the other Party, and their respective affiliates, representatives, officials, agents, officers, directors, managers, members, partners, contractors, consultants, or employees, from and against all third-party claims, demands, causes of action, liabilities, costs, damages, losses, penalties, fines, judgments or expenses, including reasonable attorneys' fees and costs of collection (collectively, "Losses") that arise out of or result from (i) any willful misconduct or negligence of the indemnifying Party in connection with this Agreement, (ii) any breach by the indemnifying Party of its obligations, representations or warranties

under this Agreement, or (iii) the indemnifying Party's operation of the Premises or Property, except to the extent arising out of or resulting from any willful misconduct or negligence of the indemnified Party. The obligations of the Parties under this Section shall survive the expiration, cancellation, or termination of this Agreement and the Term.

14. Insurance. During the Term, EBCE shall maintain insurance in full force and effect, at its cost and expense, as set forth in Exhibit B, attached hereto and incorporated herein by this reference. The insurance limits required of EBCE may be satisfied through self-insurance or a JPA, as designated in Exhibit B. Prior to the execution of the Agreement, EBCE shall provide proof of insurance required. EBCE shall make best efforts to provide Host thirty (30) days prior written notice of termination or material change in coverage and ten (10) days prior written notice of cancellation for non-payment. The City of Oakland, its Council Members, directors, officers, agents and employees shall be named as additional insureds. EBCE shall provide Host with an additional insured certificate for each such insurance coverage.

15. Limitation of Liability. In no event shall either Party be liable (in contract or in tort, including negligence and strict liability) to such other Party for any special, indirect or consequential damages relating to this Agreement. The provisions of this Section shall apply to the full extent permitted by law and shall survive termination of this Agreement.

16. Miscellaneous.

a. Notice. Any notice provided or permitted to be given under the Agreement must be in writing and be served either by (i) deposit in the mail, addressed to the Party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or (ii) deposit with an internationally-recognized overnight delivery carrier, with notice of delivery to the recipient Party. Notice given by registered or certified mail or overnight carrier shall be deemed delivered and effective on the date of delivery shown on the return receipt or proof of receipt. Each Party may change its address for notice by giving notice thereof to the other Party. For purposes of notice the addresses of the Parties shall be as follows: [CONTACT INFORMATION]

b. Assignment. In the event the Premises is transferred or Host ceases to have the requisite level of control over the Premises necessary to fulfill its obligations under the Agreement (each, a "Transfer Event"), and the Agreement is not first terminated pursuant to Section 4 of this Agreement, Host shall assign its rights and obligations under the Agreement to the person or entity which would be able to comply with Host's obligations following such Transfer Event. Further, Host agrees that any such Transfer Event shall not affect, terminate or disturb EBCE's right to possession of the Premises under the terms of the Agreement or any of EBCE's other rights under the Agreement, so long as EBCE is not then in default under any of the terms, covenants or conditions of the Agreement.

c. No Agency Relationship. Nothing in the Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the Parties for any purpose set forth in this Agreement, and the employees of one party shall not be deemed to be the employees of the other Party. Except as otherwise stated in the Agreement, neither Party has any right to act on behalf of the other, nor represent that it has such right or authority.

d. Severability. If any term of the Agreement is held by any court of competent jurisdiction to be invalid, such invalidity shall not invalidate the remainder of the Agreement and the Agreement shall be construed and deemed reformed to the extent necessary to render valid such term and the rights and obligations of the parties shall be enforced accordingly.

e. Governing Law. This Agreement shall be governed by the laws of California and the City of Oakland with venue in Alameda County.

f. No Waiver. The failure of a Party to insist on strict performance of any provision of the Agreement does not constitute a waiver of or estoppel against asserting the right to require performance in the future and a waiver or estoppel given in any one instance does not constitute the same with respect to a later obligation or breach.

g. Remedies. The rights and remedies provided by the Agreement are cumulative, and the use of any right or remedy by any Party does not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights a Party may have under any applicable law, in equity or otherwise.

h. Force Majeure. Neither Party is responsible for any delay or failure in performance of any part of the Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, pandemic, act or omission of carriers or other similar causes beyond the Party's control.

i. Attorneys' Fees. If either Party institutes a suit against the other for violation of or to enforce any covenant, term or condition of the Agreement, the prevailing party shall be entitled to reimbursement of all of its costs and expenses, including, without limitation, reasonable attorneys' fees.

j. No Third Party Beneficiaries. The Agreement does not confer any rights or remedies on any person other than the Parties and their respective successors and permitted assigns.

k. Integration; Amendments. The Agreement contains all agreements, promises and understandings between the Parties as to the subject matter of this Agreement. Any amendment, modification or other change to the Agreement shall be ineffective unless made in a writing signed by the Parties hereto.

l. Counterparts. The Agreement may be executed in any number of counterparts with the same effect as if all the Parties had signed the same document.

m. Construction. All documents or items attached to, or referred to in, the Agreement are incorporated into the Agreement as fully as if stated within the body of the Agreement. Each Party has cooperated in the drafting, negotiation and preparation of the Agreement and nothing herein shall be construed against either Party on the basis of that Party being the drafter of such language.

In witness thereof, the Parties have entered into this Agreement as of the Effective Date set forth above.

[signature block]

**EXHIBIT A
PROPERTY AND PREMISES**

EXHIBIT B INSURANCE

The following minimum levels of insurance coverage shall be provided during the term of this Contract.

The City of Oakland, its Council Members, directors, officers, agents and employees shall be named as additional insureds. EBCE shall provide Host with an additional insured certificate for each such insurance coverage.

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| A. | <u>Professional Liability Insurance.</u> | \$2,000,000 per claim / \$6,000,000 in aggregate |
| B. | <u>Worker's Compensation Insurance.</u> | \$1,000,000 |
| C. | <u>Automobile Insurance</u> | \$1,000,000 |
| D. | <u>General Liability and Property Damage Insurance.</u> | \$4,000,000 (single limit per occurrence) |

EBCE shall notify Host within one (1) business day after it has been served or notified of any claim or legal action that in any way involves EBCE, and Host, even if Host is not named in the claim or as a defendant in any legal action, if such notification comes to EBCE from any source other than Host. EBCE shall also promptly provide Host, within the same time period set forth in the prior sentence, with copies of any document or information it has regarding such claim or legal action.