

**RESOLUTION NO. 2019 - 2022**

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HURON APPROVING CHARGING STATION PREMISES AGREEMENT AND CONSTRUCTION SERVICES FUNDING AGREEMENT BETWEEN THE CITY OF HURON AND EVGO SERVICES LLC, A LIMITED LIABILITY COMPANY (EVGO)**

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**WHEREAS**, Evgo is proposing to install and operate charging station equipment and assistance to provide charging equipment for electric vehicles, to operate those charging stations or allow for their use by customers, including residents of the City of Huron; and

**WHEREAS**, the provision and installation and operation of charging stations and systems for electric vehicles to be installed on the premises of the Huron Police Department will provide a benefit for the public by allowing for usage of charging stations necessary for operation of electric vehicles and the agreements for construction or installation of the charging stations and their use and operation, according to the agreements, will be at no cost to the City of Huron; and

**WHEREAS**, the City and EVgo desire to enter into the Construction Services Funding Agreement attached and incorporated by reference as Exhibit A and the Charging Station Premises Agreement attached and incorporated by reference as Exhibit B.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. The Construction Services Funding Agreement, Exhibit A, and the Charging Station Premises Agreement, Exhibit B, between the City of Huron and EVgo are approved and the Mayor is authorized to execute each contract on behalf of the City. The City Attorney is authorized to develop and approve administratively, with the approval of the City Manager, the Exhibits that are to be attached to each agreement.

The foregoing Resolution was duly adopted on February 6, 2019, by the following vote:

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AYES: COUNCIL MEMBERS Morales, Solorio, Pimentel, Plasencia

NOES: COUNCIL MEMBERS 0

ABSTAIN: COUNCIL MEMBERS 0


ABSENT: COUNCIL MEMBERS Leon



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Rey Leon, Mayor of the  
City of Huron

ATTEST:



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Juanita M. Veliz, City Clerk

# EXHIBIT A

## CONSTRUCTION SERVICES FUNDING AGREEMENT

Host: City of Huron, a Municipal Corporation

Agreement Date: \_\_\_\_\_, 201988

This Construction Services Funding Agreement ("Agreement") is entered into as of the Agreement Date by Host and EVGO SERVICES LLC, a Delaware limited liability company ("EVgo").

### A. Host Property & Premises

"Host Property": Police Station located at 17051 12<sup>th</sup> Street, Huron, CA 93234

The location where the Installation Activities (defined below) shall take place at the Host Property (the "Premises") is shown on the attached Exhibit A. Host grants to EVgo and its designated agents a non-exclusive license to use and occupy the Premises for, as applicable, the design, development, construction, installation, and other activities set forth in the Agreement.

### B. Scope of Work

1) EVgo shall retain a licensed contractor to perform the Scope of Work identified on Exhibit B attached hereto (the "Installation Activities") for the installation of:

Four (4) Make-Ready Stubs. A "Make-Ready Stub" consists of electric infrastructure, including without limitation conduit, wire, circuit breakers, and junction boxes, as applicable, to support one circuit capable of supporting electric vehicle service equipment, all as set forth in more detail on Exhibit B.

2) EVgo shall be responsible for funding the Installation Activities as set forth in Exhibit B. In the event that the actual cost of the Installation Activities exceeds the amount set forth on Exhibit B, EVgo shall be entitled to terminate this Agreement upon restoring the Premises to its previous condition, ordinary wear and tear excepted.

3) The term of this Agreement shall commence on the Agreement Date. Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party, provided that EVgo shall not terminate following commencement of the Installation Activities and prior to completion (except as provided in paragraph B.2). In addition, if Host terminates the Agreement (other than for cause) prior to completion of the Installation Activities, Host shall reimburse EVgo for all costs incurred by EVgo relating to the Installation Activities within thirty (30) days of EVgo's presentation of an invoice and supporting documentation.

4) Prior to commencing any Installation Activities, EVgo 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. No work will begin until plans have been approved by Host and all applicable permits and certifications have been obtained.

5) EVgo shall designate the contractors and/or other service providers who will be performing the Installation Activities. With respect to such Installation Activities, EVgo shall ensure that it or its designated contractor(s) and service providers:

a. obtain from governmental authorities all licenses, permits, or other approvals (collectively, "Approvals") required to conduct such installations. Host will reasonably cooperate with EVgo's designated contractors and service providers as required to obtain such Approvals;

b. bring on the Premises and permitted adjacent areas of the Host Property only those materials and equipment that are being used directly in the Installation Activities; and

c. perform Installation Activities only during times and days acceptable to Host and in a manner so as to not unreasonably interfere with Host's business operations.

In addition, EVgo shall not permit or suffer any mechanic's or materialmen's liens ("Lien") to attach to the Premises, except for Liens that result from Host's gross negligence or willful misconduct. If a Lien not due to Host's gross negligence or willful misconduct attaches to the Premises, EVgo shall remove or bond over such lien at EVgo's sole cost and expense, within twenty (20) days of EVgo receiving written notice thereof from Host.

6) Host shall reasonably cooperate with EVgo to facilitate the Installation Activities, including the provision of electricity to the Make-Ready Stub.

7) All electric infrastructure installed as part of the Installation Activities shall become fixtures of the Host Property (and not the property of EVgo) upon completion of such installation and the full payment of any applicable costs described above.

**C. Charging Services.** Following completion of Installation Activities, EVgo shall be permitted to offer charging services and subscriptions to Host and Host's designees (which may include, in Host's discretion, tenants, employees, residents, and invitees, as applicable). The parties shall reasonably cooperate with respect to such service offerings, including coordinating installation of charging stations and communications with applicable third parties. Host shall promptly notify EVgo in the event that Host or any other charging service provider utilizes the Make-Ready Stubs.

**D. Public Statements.** EVgo may publicly disclose the name of Host, the address of the Host Property, the number of Make-Ready Stubs at the Host Property, and brief status information about the progress of construction at the Host Property.

**E. Representations, Warranties & Covenants**

1) Each of Host and EVgo hereby represents and warrants to the other that, as of the Agreement 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 its governing documents, any contract to which it is a party, or any law or regulation 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 or similar laws and by general principles of equity; and (f) at all times during the term of the Agreement, it will comply with applicable federal, state, and local laws, rules, regulations in performing its obligations under the Agreement.

2) Host further represents, warrants and covenants that it has obtained or shall obtain prior to the commencement of EVgo's Installation Activities any and all consents or approvals required in order for Host to grant the rights and perform its obligations under the Agreement, and for EVgo to take the actions contemplated in the Agreement.

**F. EVgo Insurance.**

1) During the term of the Agreement, EVgo shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance: (i) Statutory Worker's Compensation Insurance, and Employer's Liability limits of \$1,000,000 per accident per employee; (ii) Commercial General Liability Insurance, written on an occurrence basis, covering bodily injury (including death), personal injury, and property damage,

with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate; (iii) Automobile Liability with a combined single limit of \$1,000,000; and (iv) \$1,000,000 in excess liability coverage per occurrence, which coverage shall sit excess of the scheduled underlying General Liability, and Automobile Liability and Employer's Liability Insurance policies with exclusions that are no more broad than those contained in the underlying policies.

2) With respect to EVgo's Commercial General Liability Insurance, Automobile Liability Insurance and Excess Liability Insurance, Host shall be included as an additional insured with respect to liability arising out of EVgo's performance under the Agreement. EVgo shall consider its own insurance primary, and shall not seek contribution from similar insurance being maintained by the Host as to the acts or omissions of EVgo.

#### **G. Indemnity**

1) **Indemnification.** Each party shall indemnify and hold harmless the other party and its respective affiliates, representatives, agents, officers, directors, managers, members, shareholders, partners, contractors, or employees ("Related Parties") 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 such party or its Related Parties or (ii) any breach by such party of its obligations, representations or warranties under the Agreement.

2) **Waiver.** Anything in the Agreement to the contrary notwithstanding, each party hereby waives every right or cause of action for any and all loss of, or damage to (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible) the Host Property and any improvements thereon, or to the personal property of either party, or its Related Parties, regardless of cause or origin. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation.

3) **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 or its Related Parties for any special, indirect or consequential damages relating to the Agreement. The entire liability of each party for any and all claims of any kind arising from or relating to the Agreement will be subject in all cases to an affirmative obligation on the part of the other party to mitigate its damages. Each party's total liability to the other party and its Related Parties on an aggregate basis arising out of or in connection with the Agreement, whether in contract or in tort, shall not exceed the amount specified on Exhibit B as Total Construction Cost, except as it applies to a party's obligations pursuant to Section G(1).

#### **H. Miscellaneous**

1) **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. For purposes of notice the addresses of the parties shall be as set forth in the Agreement. Each party may change its address for notice by giving notice thereof to the other party.

2) **Assignment.** The Agreement is binding on and inures to the benefit of the parties and their respective heirs, successors, assigns, and personal representatives.

3) **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.

4) **Governing Law; Waiver of Jury Trial.** The Agreement shall be governed by and interpreted in accordance with the internal laws of the state where the Host Property is located without giving effect to conflict of law rules. The parties hereby waive any and all rights to request or require that a jury determine any fact, matter, dispute or litigation between them, or render any judgment or decision, in any way concerning the Agreement, and agree that any and all litigation between them arising from or in connection with the Agreement shall be determined by a judge sitting without a jury.

5) **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.

6) **Force Majeure; Change in Law.** 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, act or omission of carriers or other similar causes beyond the party's control. If any rule, directive, order, decision or law adversely impacts the ability for EVgo to perform its obligations under the Agreement without becoming licensed or otherwise regulated by a public utility commission or analogous agency in the relevant jurisdiction, EVgo may, at its option, immediately suspend performance under the Agreement and/or terminate the Agreement upon notice to Host and without penalty.

7) **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.

8) **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.

9) **Integration; Amendments.** The Agreement contains all agreements, promises and understandings between the parties, and that there are no verbal or oral agreements, promises or understandings between the parties. Any amendment, modification or other change to the Agreement shall be ineffective unless made in a writing signed by the parties hereto.

10) **Counterparts; Construction.** The Agreement may be executed in any number of counterparts with the same effect as if all the parties had signed the same document. 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.

The parties have executed this Agreement as of the date first set forth above.

**HOST:**

CITY OF HURON,  
A Municipal Corporation

**EVGO:**

EVGO SERVICES LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address:

City of Huron  
36311 Lassen Ave.  
Huron, CA 93234

Title: \_\_\_\_\_

Notice Address:

11390 West Olympic Blvd., Suite 250  
Los Angeles, CA 90064  
Attn: CEO

with a copy to:

11390 West Olympic Blvd., Suite 250  
Los Angeles, CA 90064  
Attn: Director of Legal Affairs



Exhibit A

Premises

**Exhibit B**

**Scope of Work**

# EXHIBIT B

## CHARGING STATION PREMISES AGREEMENT

**Host:** City of Huron  
a municipal corporation

**Agreement Date:** August \_\_, 2018

This Charging Station Lease Agreement ("Agreement") is entered into as of the Agreement Date by Host and EVGO SERVICES LLC, a Delaware limited liability company ("EVgo").

### I. AGREEMENT TERM SUMMARY

Host Property:	Parking garage located at: City of Huron Police Station 17051 12 <sup>th</sup> Street, Fresno, CA 93234 (" <u>Host Property</u> ")
Premises: <i>See II.A</i>	Host hereby grants to EVgo the right to the premises designated on <u>Exhibit A</u> (the " <u>Premises</u> ") as set forth herein for the purposes described below.
Exclusivity	Host grants to EVgo the exclusive right to provide DC fast-charging at the Host Property during the Term.
Term: <i>See II.B.</i>	The initial term shall commence on the Agreement Date and continue for a period of two (2) years following the date the Charging Station (defined below) is first operational (the " <u>Commencement Date</u> ") (the " <u>Initial Term</u> "). The Initial Term and any extension term(s) are collectively, the " <u>Term</u> ".
Number of EVgo Charging Stalls:	Two (2)
Charging Station Equipment:	EVgo currently intends to install one (1) FC chargers
Electricity <i>See II.D</i>	EVgo shall use Host's electricity and reimburse Host an amount computed as provided by this Agreement and, as measured on EVgo's Charging Station Equipment.
EVgo Customers <i>See II.E</i>	The Charging Station shall be available for exclusive use by EVgo Customers as determined in EVgo's reasonable discretion. EVgo may use appropriate signage and striping to indicate and restrict permitted users of the Charging Station and Charging Stalls.
Operation & Maintenance <i>See II.A.3</i>	EVgo is responsible for operating and maintaining the Charging Station in good working order and repair. EVgo is responsible for installation and maintenance of Charging Station Equipment that accurately measures and records the electricity usage.
Construction <i>See II.G</i>	EVgo shall be responsible for all installation of the Charging Station, ancillary equipment, and supporting infrastructure.

## II. AGREEMENT

### A. Premises Rights, Use and Maintenance.

1. Grant of rights. Host is the fee simple owner of the Host Property, and grants to EVgo for the Term of this Agreement, in each case for the purposes set forth herein: (i) the exclusive right to possess, control and occupy the EVgo Charging Stalls described on Exhibit A attached hereto, (ii) the right to use and occupy the other areas of the Premises described on Exhibit A attached hereto, including without limitation for the installation, maintenance and operation of electric vehicle charging stations and related equipment.

2. Use of Premises. The Premises may be used by EVgo in connection with the development, construction, installation, maintenance, repair, replacement, removal, 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, on the terms and conditions set forth in this Agreement.

#### 3. Maintenance of Premises.

a. Host shall cause the Premises, including EVgo Charging Stalls, to be maintained in a clean, safe, and orderly condition, to at least the same standard as other areas at the Host Property that are under Host control are maintained.

b. For purposes of clarification, Host shall have no responsibility to maintain EVgo's Charging Station or related EVgo equipment, hardware, software, or signage. Host shall not retain any ownership rights in the Charging Station and related EVgo equipment. EVgo is solely responsible for personal property taxes imposed on the Charging Station.

### B. Term & Termination.

1. Renewal. Following the expiration of the initial Term, this Agreement will automatically renew for successive one (1) year periods, unless terminated by either party upon at least ninety (90) days prior written notice.

2. Early Termination. This Agreement may be terminated upon EVgo's written notice to Host at least thirty (30) days in advance (i) at any time prior to the Commencement Date without penalty or fee; or (ii) after the Commencement Date, in the event EVgo determines the construction or continued operation of the Charging Station is impracticable or uneconomical.

3. Termination for Cause. This Agreement may be terminated for cause by either party in the event of the following:

a. Breach. 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.

b. Insolvency. 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.

C. **Payment Terms.** For any amounts owed by EVgo to Host, on or before the thirtieth (30th) day following the applicable due date (or prior to the fifth (5<sup>th</sup>) day of the calendar month for Rent Payments), EVgo shall make a payment to Host of such amount by ACH or other method mutually agreed upon by EVgo and Host. Prior to Host receiving any accrued payments owed under this Agreement and in order to facilitate such payments, EVgo shall formally request and Host shall provide EVgo certain information, including, without limitation, a completed Form W-9 and valid ACH payment information.

D. **Electricity.**

1. EVgo shall pay to Host, beginning on the Commencement Date and continuing thereafter throughout the Term, a fee to compensate Licensor for electricity usage (the "Reimbursement Amount") equal to the product of the deemed rate of \$0.25 ("Rate") and the number of actual kilowatt-hours used and measured by the Charging System. At or before the end of each calendar year, to compensate Licensor for electricity usage, EVgo shall pay to host the difference between the amount charged to Licensor by the utility providing electricity for actual kilowatt-hours used and measured by the Charging System and the reimbursement amount ("the True Up Amount"). Throughout the Term, Host shall obtain and maintain metered electricity service that will service the Charging Station. Host shall reasonably cooperate with EVgo's efforts regarding the provision of electricity to the Charging Station. Neither Host nor EVgo has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of utilities furnished to the Charging Station, unless the cause of the interruption is due to the non-breaching party's negligent act or omission.

2. Host grants to EVgo the right to receive utility services including but not limited to electric, and Host will ensure the utility service supplier constructs, installs, inspects, maintains, and replaces, as required said utility services to serve the Charging Station.

E. **EVgo Customers; Access.**

1. **EVgo Customers.** EVgo may provide access to the Charging Station and EVgo Charging Stalls to its subscribers, customers, agents, employees, contractors, vendors, guests and invitees ("**EVgo Customers**"), who shall be charged in amounts reasonably determined by EVgo, which may change from time to time in EVgo's sole discretion. EVgo Customers may include members of the public, as well as commercial fleet and rideshare vehicles.

2. **Access.** EVgo Customers shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, and 365/366 days per year. EVgo and its employees, contractors, and vendors may, at any time during the Term, access the Premises and Host Property to maintain, inspect, repair, upgrade, remove or replace any portion of the Charging Station.

F. **Signage & Promotional Activities.**

1. **Signage; Branding.** EVgo may stripe and place appropriate signage at EVgo Charging Stalls, and mark the Charging Station and related EVgo equipment in EVgo's sole discretion. In addition, subject to Host's prior approval, not to be unreasonably withheld, EVgo may place signage, marks, or advertising devices in, on, or about and around the Premises within the Host Property at EVgo's sole cost and subject to applicable laws and regulations. At no time may Host place any signage on EVgo property.

2. Promotional Activities. During the Term of this Agreement, EVgo may promote the availability of the Charging Station (to the extent it is on EVgo's network of EV charging stations) through traditional and/or electronic media, including providing the address of the Host 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.

**G. Construction.**

1. Installation Activities. EVgo shall, at its sole cost and expense, be responsible for all installation activities (the "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.

2. Plans. Before beginning any Installation Activities, EVgo 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.

3. Contractor Activities. EVgo shall ensure that it or its designated contractor(s) and/or service providers:

a. obtain from governmental authorities all licenses, permits, or other approvals (collectively, "Approvals") required to conduct such installations. Host will reasonably cooperate with EVgo's designated contractors and service providers as required to obtain such Approvals;

b. bring on the Premises and permitted adjacent areas of the Host Property only those materials and equipment that are being used directly in the Installation Activities;

c. perform Installation Activities only during times and days acceptable to Host and in a manner so as to not unreasonably interfere with Host's business operations;

d. not permit or suffer any mechanic's or materialmen's liens to attach to the Premises. If such a lien attaches to the Premises, EVgo shall remove or bond over such lien at EVgo's sole cost and expense, within twenty (20) days of EVgo receiving written notice thereof from Host.

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

**III. LEGAL PROVISIONS**

**A. Representations, Warranties & Covenants.**

1. General. Each of Host and EVgo hereby represents and warrants to the other that, as of the Agreement Date: (a) it has all necessary power and authority to execute, deliver, and perform its obligations hereunder; (b) the execution, delivery, and performance of this 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 this Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization; (e)

this 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; and (f) at all times during the Term, it will comply with all federal, state, and local laws, rules, regulations (including, without limitation, all zoning ordinances and building codes) in performing its obligations under this Agreement.

2. Consents and Approvals. Host further represents, warrants and covenants that it has obtained or shall obtain prior to the commencement of EVgo's Installation Activities or operation and maintenance of the Charging Station, any and all consents or approvals required in order for Host to grant the rights and perform its obligations under this Agreement.

**B. Insurance.**

1. EVgo Insurance.

a. During the Term, EVgo shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance: (i) Statutory Worker's Compensation Insurance, and Employer's Liability limits of \$1,000,000 per accident per employee; (ii) Commercial General Liability Insurance, written on an occurrence basis, covering bodily injury (including death), personal injury, and property damage, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate; (iii) Automobile Liability with a combined single limit of \$1,000,000; and (iv) \$1,000,000 in excess liability coverage per occurrence, which coverage shall sit excess of the scheduled underlying General Liability, and Automobile Liability and Employer's Liability Insurance policies with exclusions that are no more broad than those contained in the underlying policies.

b. With respect to EVgo's Commercial General Liability Insurance, Automobile Liability Insurance and Excess Liability Insurance, Host shall be included as an additional insured with respect to liability arising out of EVgo's performance under this Agreement. EVgo shall consider its own insurance primary, and shall not seek contribution from similar insurance being maintained by the Host as to the acts or omissions of EVgo.

2. Host Insurance. During the Term, Host shall maintain at its cost and expense: (i) full replacement cost Property Insurance (written on an "all-risk/special perils" basis) for (1) the Host Property and all improvements thereon (but excluding any EVgo property); and (2) all personal property and trade fixtures owned by Host located at the Host Property; and (ii) Commercial General Liability Insurance, written on an occurrence basis, covering bodily injury (including death), personal injury, and property damage, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

3. Policy Requirements. The insurance policies required under Sections III(B)(1) and (B)(2) shall: (a) be issued by insurance companies licensed to do business in the state in which the Host Property is located, with a general policyholder's ratings of at least "A-" and a financial rating of at least "Class VIII," in the most current Best's Insurance Reports available on the Agreement Date; if the Best's ratings are changed or discontinued, the parties shall agree to a comparable method of rating insurance companies; and (b) contain provisions whereby each party's insurers waive all rights of subrogation against the other party on each of the coverages required herein. From time to time upon request, each party shall provide the other with a certificate of insurance, evidencing the required coverages.

4. Waiver. Anything in this Agreement to the contrary notwithstanding, each party hereby waives every right or cause of action for any and all loss of, or damage to (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible) the Host Property and any improvements thereon, the Charging Station, or to the personal property of either party, or its Related Parties, as defined in Section III(C)(1), regardless of cause or origin. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation.



5. Casualty and Condemnation. If any portion of the Host Property is damaged by fire or other casualty in a manner that adversely affects EVgo's use of the Premises, then either party may, within thirty (30) days of the date of such fire or other casualty elect to terminate this Agreement on written notice to the other party. If any portion of the Host Property is condemned or taken in any manner for a public or quasipublic use that could adversely affect EVgo's use of the Premises, then EVgo may elect to terminate this Agreement effective as of the date title to the condemned portion of the Host Property is transferred to the condemning authority.

**C. Indemnity.**

1. Indemnification. Each party shall indemnify and hold harmless the other party and its respective affiliates, representatives, agents, officers, directors, managers, members, shareholders, partners, contractors, or employees ("Related Parties") 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 such party or its Related Parties, and (ii) any breach by such party of its obligations, representations or warranties under this Agreement.

2. 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 or its Related Parties for any special, indirect or consequential damages relating to this Agreement. The entire liability of each party for any and all claims of any kind arising from or relating to this Agreement will be subject in all cases to an affirmative obligation on the part of the other party to mitigate its damages. Each party's total liability to the other party and its Related Parties on an aggregate basis arising out of or in connection with this Agreement, whether in contract or in tort, shall not exceed the total amount expended by the other party directly in connection with this Agreement, except as it applies to a party's obligations pursuant to Section III(C)(1).**

**D. Miscellaneous.**

1. Notice. Any notice provided or permitted to be given under this 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. For purposes of notice the addresses of the parties shall be as set forth in this Agreement. Each party may change its address for notice by giving notice thereof to the other party.

2. Property Rights; Assignment.

a. The rights granted to EVgo in this Agreement shall constitute covenants running with the land as to the interests in real property which are made subject hereto and shall bind Host's successors and assigns. EVgo may record this Agreement or memorandum thereof in the public records of any public office.

b. This Agreement is binding on and inures to the benefit of the parties and their respective heirs, successors, assigns, and personal representatives. EVgo may assign this Agreement and any or all of its rights and obligations hereunder and/or sublease the Premises or any portion thereof to General Motors Company or its affiliate, including, but not limited to Maven Drive LLC, at any time without consent.

c. In the event the Premises are transferred, or Host ceases to have the requisite level of control over the Premises necessary to fulfill any or all of its obligations under this Agreement (each, a "Transfer Event"), Host shall promptly attempt to assign all of its rights and obligations under this Agreement to the person or entity with control over the Property ("Transfer Host"). In the event Transfer Host fails to immediately assume Host's obligations pursuant to this Agreement, or in the event Host breaches this Agreement, EVgo may immediately

terminate this Agreement, remove the Charging Stations and Host will reimburse EVgo for all reasonable costs, fees and expenses arising out of such removal.

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

4. Severability. If any term of this Agreement is held by any court of competent jurisdiction to be invalid, such invalidity shall not invalidate the remainder of this Agreement and this 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.

5. Survival. The provisions of Sections III(B)(4), III(C), and III(D)(6) shall survive termination of this Agreement.

6. Governing Law; Waiver of Jury Trial. This Agreement shall be governed by and interpreted in accordance with the internal laws of the state where the Host Property is located without giving effect to conflict of law rules. The parties hereby waive any and all rights to request or require that a jury determine any fact, matter, dispute or litigation between them, or render any judgment or decision, in any way concerning this Agreement, and agree that any and all litigation between them arising from or in connection with this Agreement shall be determined by a judge sitting without a jury.

7. No Waiver. The failure of a party to insist on strict performance of any provision of this 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.

8. Remedies. The rights and remedies provided by this 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.

9. Force Majeure. Neither party is responsible for any delay or failure in performance of any part of this 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, act or omission of carriers or other similar causes beyond the party's control.

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

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

12. Integration; Amendments. This Agreement contains all Agreements, promises and understandings between the parties, and that there are no verbal or oral Agreements, promises or understandings between the parties. Any amendment, modification or other change to this Agreement shall be ineffective unless made in a writing signed by the parties hereto.

13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all the parties had signed the same document.

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

IN WITNESS WHEREOF, the parties execute this Agreement as of the date first above written.

**HOST:**

CITY OF HURON  
a Municipal Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address:

City of Huron  
36311 Lassen Ave.  
Huron, CA 93234

**EVGO:**

EVGO SERVICES LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address:

11390 West Olympic Blvd., Suite 250  
Los Angeles, CA 90064  
Attn: Site Development

with a copy to:

11390 West Olympic Blvd., Suite 250  
Los Angeles, CA 90064  
Attn: Legal Department

Exhibit A

Premises

**Exhibit B**

**Scope of Work**