

**ELECTRIC VEHICLE
CHARGING SERVICES AGREEMENT
(EVI Network)**

Host: City of Hagerstown,
a Maryland municipal corporation ("Host")

Agreement Date: _____, 2020

This Charging Services Agreement ("Agreement") is entered into as of the Agreement Date by Host and ELECTRIC VEHICLE INSTITUTE, a Delaware corporation registered to conduct business in the State of Maryland ("EVI"). Capitalized terms not defined herein shall have the meanings given to them in the attached Terms & Conditions, attached as Exhibit A and incorporated by reference herein.

Whereas, the Parties entered into an Electric Vehicle Charging Station Grant Agreement on or about July 13, 2018 ("Grant Agreement") with the term of said Grant Agreement being for a period of five (5) years from completion of completion of the electric vehicle charging station deployment;

Whereas, deployment of four (4) EV Fast Charging Stations (the "Charging Stations") occurred on or about December 10, 2018;

Whereas, the Grant Agreement provided that the Parties may enter into a separate, written agreement regarding transaction fees, revenue splits, etc. with respect to the Charging Stations; and

Whereas the Parties are entering into this Agreement for the purpose of defining their respective rights and obligations with respect to transaction fees , revenue generated by the Charging Stations and related matters

The Parties agree that the Recitals set forth above constitute a substantive portion of this Agreement.

A. Premises

Host Property located at:

- Central Parking Lot, 14 N Potomac Street, Hagerstown, MD 21740

The location(s) where the Charging Stations have been installed at the Host Property (the "Premises") is shown on the attached Exhibit B.

B. Charging Services

1. Term. The term of this Agreement (as extended from time to time, the "Term") shall commence on the Agreement Date, set forth above, and continue for the same term as the Grant Agreement. The Agreement may be extended and/or terminated under the same terms as set forth in the Grant Agreement. .

2. Charging Services. During the Term, EVI shall provide the following services (the "Charging Services"):

a. At EVI's sole cost and expense:

- Four (4) EV Fast Charging Stations ("DFCS") equipped with monitoring and point-of-sale system;
- DFCS point-of-sale system related setup and the payment method; and
- Related hardware, software, signage as well as supporting equipment and structures.

The foregoing is collectively referred to as the "Charging Stations."

b. EVI shall be responsible for the following services applicable to the Charging Stations: operation, monitoring, maintenance, networking and merchant services associated to the credit card payments collected by the point-of-sale system. EVI shall electronically report monthly utilization and transaction data to the Host on a quarterly basis via email. EVI shall be responsible for the credit card processing

system and collection of revenue. EVI shall transfer Net Revenue to the Host on a quarterly basis in accordance with the Terms & Conditions.

c. The Charging Station(s) shall be available to EVI Customers as part of EVI's open network of EV charging stations. If the parties agree in writing, EVI may offer other payment methods (e.g., RFID membership cards, etc.) at additional fees to the Host. EVI Customers will pay for the use of the Charging Stations on a "pay-to-charge model." The initial pay-to-charge model shall be based on a time based pricing model of flat fee of \$2.50 per use, plus a timed rate of \$0.20 per minute. The pay-to-charge model may be updated from time to time as reasonably necessary to reflect increases in the cost of electricity paid by Host over the cost of electricity paid by Host as of the Commencement Date. The pay-to-charge model may otherwise be updated from time to time as mutually determined by the Host and EVI, in writing. The Parties agree that said revisions may be authorized and effected at Staff level by the City

d. Subject to temporary access restrictions resulting from inclement weather, or from construction, maintenance, repair or renovation work within the Host Property, Host shall make the Premises available for use by EVI Customers twenty-four (24) hours per day, seven (7) days per week, and 365/366 days per year. EVI and its employees, contractors, and vendors may, at any time during the Term, access the Premises to maintain, inspect, repair, upgrade or replace any portion of the Charging Station(s).

3. Exclusivity. The Host hereby grants EVI an exclusive right to provide electric vehicle charging services and associated payment, networking and monitoring services at the Host Property during the Term hereof.

4. Electricity. The Host shall be responsible for providing electricity to the Charging Stations at Host's sole cost and expense (but subject to updates to the pay-to-charge model to account for increases in such costs and expenses), with such electricity delivered at a sufficient load to permit the ordinary operation of the Charging Stations. Unless otherwise agreed by the parties, EVI shall, at its sole expense, ensure that the Charging Station(s) are operational and monitored on a 24/7 basis. Neither Host nor EVI has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of electrical utilities furnished to the Charging Station(s), unless such interruption is caused by the gross negligence or willful misconduct of the other party.

5. Removal Upon Termination. Promptly following the expiration or termination of this Agreement, EVI shall remove the Charging Stations and all of EVI's other property from the Host Property and restore the Host Property, all as set forth in the Grant Agreement.

C. Installation Activities

1. EVI shall retain all ownership rights in and of the Charging Stations.

D. Other Provisions. NONE.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]HOST:

EVI:

CITY OF HAGERSTOWN,
a Maryland municipal corporation

ELECTRIC VEHICLE INSTITUTE,
a Delaware corporation

By: _____
Name: Robert E. Bruchey, II
Title: Mayor

By: _____
Name: Matthew Wade
Title: President

Notice Address:

City of Hagerstown
Attn: Eric Deike
1 East Franklin Street
Hagerstown, MD 21740
Email: edeike@hagerstownmd.org

With a courtesy copy to:

Jason Morton
Salvatore & Morton, LLC
82 West Washington Street
Suite 100
Hagerstown, MD 21740
Email: jmorton@salvatoremorton.com

Notice Address:

Electric Vehicle Institute
Attn: President
1120 North Charles Street, Fourth Floor
Baltimore, Maryland 21201
Email: wadem@ev-institute.com

Exhibit A

Terms & Conditions

See Attached

A. GENERAL

1) Premises. During the Term (as defined in the Agreement), Host grants to EVI 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, including without limitation the installation, operation, maintenance, repair, security, replacement, and removal of Charging Stations, signage and associated equipment within the Premises. Host shall cause the Premises to be maintained in a clean, safe, and orderly condition, to at least the same standard as other parking areas at the Host Property that are under Host control are maintained. Unless otherwise specified in the Agreement, Host shall take reasonable measures to discourage and prevent anyone other than authorized EVI Customers (defined below) from parking in the Premises.

2) Charging Services. During the Term, EVI shall provide the Charging Services described in the Agreement. Charging Stations on EVI's open network shall be accessible to all customers ("EVI Customers"). Host will have access to the same customer support that EVI generally provides to EVI Customers, which includes phone support and attempted diagnosis of any technical issue encountered in using any Charging Station. The applicable customer support phone number shall be displayed on or near each Charging Station. EVI shall provide Host with an emergency contact number.

3) Operation and Maintenance. Subject to the terms and conditions of the Agreement, EVI will operate the Charging Stations for the benefit of EVI Customers and shall use commercially reasonable efforts to maintain the Charging Stations in good working order and repair. Host shall promptly notify EVI and, as appropriate, emergency response personnel regarding any malfunction of a Charging Station.

4) Taxes. EVI is solely responsible for any personal property taxes imposed on the Charging Stations. Host is solely responsible for any real property taxes imposed on the Host Property, including the Premises. Each party is responsible for its own income, franchise and similar taxes.

5) Calculation and Method of Payment. No later than the fifteenth (15th) day following the end of each calendar quarter, EVI shall make a payment to Host of the Host's share of the quarterly Net Revenue for such quarter by check or wire transfer or other electronic method mutually agreed upon by the Host and EVI. "Net Revenue" is the sum total of payments by EVI Customers collected through the point-of-sale system. The Host's share of the Net Revenue shall be Fifty Percent (50%).

6) Termination. The Agreement may be terminated in accordance with the terms set forth in the Grant Agreement.

7) Promotional Activities. During the Term of the Agreement, EVI may promote the availability of the 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 consent of the other party.

8) Signage. Subject to Host's prior approval, which shall not be unreasonably delayed or withheld, EVI may place EVI-branded signage within the Premises. Additionally, subject to Host's prior approval, at Host's sole and absolute discretion, EVI may place EVI-branded signage outside the Premises and within the Host Property. All of EVI's signage shall be installed and maintained in good order and condition at EVI's sole cost and in compliance with applicable laws and regulations. EVI shall, immediately upon removing any of EVI's signage, restore the Host Property upon which such signage was placed to the condition that existed immediately prior to the placement of such signage. At no time may Host place any signage on the Charging Stations or any EVI property, except for "Electric Vehicle Charging Only in this Space," or words to that effect.

B. REPRESENTATIONS, WARRANTIES & COVENANTS

1) General. Both Host and EVI 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 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 and is authorized to conduct business in the State of Maryland; (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; 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 the Agreement.

C. INSURANCE

1) EVI Insurance. During the Term, EVI shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance: (i) 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 \$500,000 per occurrence, \$1,000,000 aggregate; and (ii) \$500,000 in excess liability coverage per occurrence, which coverage shall sit excess of the scheduled underlying General Liability policies with exclusions that are no more broad than those contained

in the underlying policies. With respect to EVI's Commercial General Liability Insurance, Host shall be included as an additional insured with respect to liability arising out of EVI's performance under the Agreement. EVI 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 EVI.

2) Host Insurance. During the Term, Host shall maintain in full force and effect, 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 EVI 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 \$500,000 per occurrence, \$1,000,000 aggregate.

3) Policy Requirements. From time to time upon request, each party shall provide the other with a certificate of insurance, evidencing the required coverages.

4) Casualty and Condemnation. If any portion of the Host Property is damaged by fire or other casualty in a manner that materially adversely affects EVI'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 the 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 quasi-public use that materially adversely affects EVI's use of the Premises, then either party may elect to terminate the Agreement effective as of the date title to the condemned portion of the Host Property is transferred to the condemning authority.

D. INDEMNITY

1) Indemnification. Subject to Section D(2) hereof, each party shall indemnify and hold harmless the other party and its Related Parties from and against all 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 gross negligence of such party or its Related Parties, (ii) any breach by such party of its obligations, representations or warranties under the Agreement; and (iii) in the case of EVI, the use of the Premises by EVI or its Related Parties, except to the extent arising out of or resulting from any willful misconduct or gross negligence of Host or its Related Parties. Nothing in the Agreement shall be construed to require Host to indemnify EVI or insure EVI for its negligence or to assume any liability for EVI's negligence.

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 the Agreement. The entire liability of each party for any and all damages 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..

E. 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. Neither party may assign its rights and/or obligations under the Agreement, without the written consent of the other, said consent not to be unreasonably withheld. The Agreement is binding on and inures to the benefit of the parties and their respective heirs, successors, assigns, and personal representatives. 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"), 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.

3) 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, 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.

4) Conflict; Severability. In any conflict between the Agreement and these Terms & Conditions, the Agreement shall control. 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 obligation of the parties shall be enforced accordingly.

5) Survival. The provisions of Sections), D, and E(6) shall survive termination of the Agreement.

6) Governing Law; Waiver of Jury Trial. The Agreement shall be governed by and interpreted in accordance with the internal laws of the Maryland, without regard to its conflicts of laws principles. 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. Venue in the event of any dispute shall be in the District Court of Maryland of Washington County or the Circuit for Washington County, Maryland.

7) 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.

8) 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.

9) 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 Host to perform its obligations under the Agreement or for EVI 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, then the party so adversely impacted may, at its option, immediately suspend performance under the Agreement and/or terminate the Agreement upon notice to the other party and without penalty.

10) 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.

11) 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.

12) 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, except separate executed Grant Agreement.

13) 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. The Agreement may be executed and distributed by facsimile or electronically by pdf and a copy of the Agreement executed and distributed by facsimile or electronically by .pdf shall be deemed an original for all purposes.

14) 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.

15) Non-Discrimination. EVI shall comply and shall require that all subcontractors comply with the provisions of the Local Ordinances.

Exhibit B

Premises

See Attached

Detailed Depiction of Premises and General Area of Premises Within Host Property:

Central Parking Lot, 14 N Potomac Street, Hagerstown, MD 21740
Four (4) EV Charging Stations

