

LICENSE AGREEMENT

This License Agreement (this “Agreement”) is made by and between the City of Napa, a California charter city, (the “City”), and Napa Valley Transportation Authority, a public agency (“Licensee”) effective as of the Effective Date identified on the signature page.

RECITALS

- A. The City is the owner of real property located at 720 Jackson Street, Napa, CA 94559 and more particularly described as Assessor’s Parcel No. 003-030-021 & 003-030-012 (“Property”); and
- B. Licensee rented the property for use as a maintenance facility until May 2024. While leasing the property, Licensee installed a dual-port ChargePoint Express 250 charger (the “Charging Station”). Upon mutual termination of the lease by Licensee, Licensee did not remove the Charging Station, and Charging Station remaining were transferred to City.
- C. Licensee desires to use a portion of the Property and Charging Station for the purpose of parking, storing and charging electric buses to operate NVRTA’s Vine bus service; and
- D. City is willing to grant a revocable license to Licensee upon the terms and conditions set forth herein to allow Licensee to use of those portions of City Property described and depicted on Exhibit “A” (Site Plan Exhibit “A”), for the purposes stated herein.

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

- 1. **Prior Agreement.** This Agreement supersedes any prior existing agreement between City and Licensee, or their predecessors in interest, pertaining to the subject matter identified herein.
- 2. **Grant of License; Acceptance of Property.** City grants to Licensee and its authorized representatives a revocable, non-exclusive, temporary license to use property in the City Property as shown on Site Plan Exhibit “A” (“Premises”) for the purposes of:
 - a) Temporary access to, parking, storing, and charging up to two (2) buses for the Vine transit system in the event that a bus experiences an unexpected charge below 20%.
 - b) No modifications may be made by Licensee to the Property, including the existing parking lots, signage or striping without express written consent from the City, which may be withheld in its sole discretion, except as expressly provided by this Agreement.
 - c) Licensee may use a portion of the Property or Charging Station as depicted in Exhibit “A” provided that such use of the Property or Charging Station by Licensee does not interfere with City’s use of the Property or Charging Station or any City operations.
 - d) City’s use of the Property shall at all times have priority over Licensee’s use.
 - e) Failure to comply with the permitted use of the Premises may result in termination of the Agreement.

Licensee accepts the Premises and all existing improvements in their present “as is, where is” condition, with all faults. City makes no representation or warranty regarding the

condition, capacity, fitness, availability, or suitability of the Premises or charger equipment for Licensee's intended use.

City and Licensee acknowledge that the existing Charging Station and related existing equipment located on the Property are the sole property of City as of the Effective Date. Licensee has no ownership interest in such existing equipment or infrastructure.

3. **Term of License.** This Agreement shall commence on the Effective Date shown on the signature page of this Agreement and shall continue in effect unless terminated in accordance with Paragraph 13. In the event that the useful life of any improvements installed by Licensee after the Effective Date extends beyond the term of this Agreement and any such improvements are still located on the Premises, City may, in its sole discretion, agree to extend this Agreement on a month-to-month basis on the same terms and conditions. Upon expiration of the term (as may be extended) Licensee shall remove any improvements made during the term of the Agreement (for avoidance of doubt, except the Charging Station related to the dual-port ChargePoint Express 250 charger) and restore the Premises in accordance with Paragraph 13 unless otherwise agreed by the parties.
4. **Consideration.** The rights granted herein to Licensee by City are done in consideration of the Licensee's agreement to comply with the terms set forth herein. City and Licensee agree that no rent or fee shall be charged by City or paid by Licensee for the rights granted pursuant to this Agreement except as described herein.
5. **Conditions of License.** City grants the license to Licensee subject to the following conditions:
 - a. Licensee acknowledges that the Premises is currently utilized as a City owned parcel and that public facilities and public utilities including, but not limited to, gas, electrical, water, storm drainage, sanitary sewer, telephone, fiber optic, and cable television facilities may exist either now or in the future within the Premises, pursuant to the authority granted by the State of California or other existing agreements with City. The rights granted Licensee by this Agreement are strictly subject to the rights of City and other public utility providers, and Licensee shall use Charging Station in such a manner as to not impede, obstruct, or preclude use of the Premises by City and/or any public utility provider. Nothing in this Agreement shall preclude or limit City's right, at its sole discretion, to access, construct, and maintain public utilities and/or improvements on the Premises, nor shall existing rights held by public utilities or others be impaired or limited by Licensee's use of the Premises. City reserves the right at all times to enter, use, maintain, repair, alter, improve, or close all or any portion of the Property, with or without notice, as determined by City in its sole discretion. City may temporarily suspend Licensee's access to the Premises for maintenance, emergency conditions, public purposes, construction, or operational needs.
 - b. Licensee shall provide the City with Kilowatt hours (kWh) usage for the EV chargers located on site on a quarterly basis. The City shall supply NVTa with the Pacific Gas & Electric (PG&E) rate schedule for the kWh used. Upon receipt of kWh report, the City shall generate an invoice for the number of kWh used by NVTa to charge buses, at the specified rate provided by PG&E for the specific time/rate the charging occurred. Licensee shall reimburse the City within thirty (30) days after receipt of an invoice for the kWh consumed by the charging of NVTa electric buses. If applicable, the invoiced amount may include energy charges,

time-of-use charges, taxes, and other utility charges reasonably attributable to Licensee's use.

6. **Taxes.** Licensee recognizes that this Agreement may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee shall pay, before delinquency, all taxes, assessments, fees, and other charges ("taxes") that are levied or assessed during the term against Licensee's interest in the Premises or Licensee's Charging Station. The foregoing notwithstanding, Licensee shall have the right, at no cost or other detriment to City, to contest with the taxing authorities the imposition or amount of any such taxes.
7. **Insurance.** Without limiting Licensee's indemnification provided herein, Licensee shall take out and maintain, throughout the term of this Agreement, the following policies of insurance against injury and or death to persons or damage to property which may arise from or in connection with the activities hereunder of Licensee, its agents, employees or subcontractors:
 - a. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000.00 per occurrence/\$2,000,000 aggregate. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:
 - (1) The City, its officers, employees and agents, are covered as additional insured for liability arising out of the operations performed by or on behalf of Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, agents and employees.
 - (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
 - (3) For claims related to Licensee's use of the Premises, the Licensee's insurance is primary coverage to the City, and any insurance or self-insurance programs maintained by the City is excess to Licensee's insurance and will not be called upon to contribute with it.
 - (4) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to City, its officers, employees and agents.
 - b. Licensee shall maintain Automobile Liability Insurance covering owned, hired, and non-owned vehicles used in connection with this Agreement, with limits of not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - c. Licensee shall furnish City with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms provided by City or as approved by City Attorney. Any deductible or self-insured retention over \$100,000.00 shall be disclosed to and approved by City.

If Licensee does not keep all required insurance policies in full force and effect, City may, in addition to other remedies under this Agreement, take out the necessary insurance, and Licensee agrees to pay the cost of said insurance.

8. **Compliance with Laws; Uses prohibited.** Licensee shall comply with all applicable federal, state, and local laws, regulations, manufacturer requirements, and safety standards relating to its vehicles, charging activities, and use of the Premises, the Property, including fire and life safety requirements. The Premises shall not be used or permitted to be used in whole or in part during the term of this Agreement for any purpose or use in violation of the laws or ordinances applicable thereto. Licensee agrees at all times during the term of this Agreement to maintain the Premises in compliance with any and all federal, state, or local laws, regulations or ordinances concerning the Premises or the conduct of Licensee in and on the Premises. Licensee shall not use, nor permit said Premises, or any part thereof, to be used, for any purpose other than the purpose set forth in Paragraph 2. Except as expressly permitted in Paragraph 2, Licensee shall not make, or cause to be made, any alterations to the Premises without the prior and express written consent of the City.
9. **Maintenance and Repairs.** Licensee shall, at Licensee's own expense, keep the Premises and Charging Station in good order, repair and condition at all times during the term of the Agreement, which repair obligations shall include, without limitation, the obligation to promptly and adequately repair all damage to the Premises and Charging Station as a result of the acts or omissions of Licensee, its agents, contractors, employees, invitees, or users and clean and free of debris arising from its use. Licensee shall promptly repair, or reimburse City for the cost to repair, any damage to the Premises, pavement, striping, fencing, gates, utilities, charger equipment, or other City improvements caused by Licensee or its employees, agents, contractors, or invitees. Any work affecting electrical systems or charger equipment shall be performed only with City's prior written approval and, if approved, by properly licensed and qualified contractors. If Licensee fails to make such repairs/maintenance as required under this Paragraph 9 after thirty (30) days' notice and opportunity to cure, provided however, that if the nature of the required work is such that it cannot reasonably be completed within said thirty (30) day period, Licensee shall not be in default so long as Licensee commences such work within such period and diligently prosecutes it to completion, City may, but need not, perform such repairs/maintenance and/or routine maintenance activities. If City performs any maintenance, repair, cleanup, or restoration work required due to Licensee's use, Licensee shall reimburse City within thirty (30) days after invoice.
10. **No liens.** Licensee shall keep the Premises free from any and all liens arising out of the Project, Licensee's use of the Premises, materials furnished, or obligations incurred by Licensee. Licensee shall promptly remove or bond around any lien arising from Licensee's use of the Premises or work performed by or on behalf of Licensee.
11. **Indemnification.** To the fullest extent permitted by law, Licensee shall indemnify, hold harmless, release, and defend City, its elected and appointed officials, officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature (collectively, "Liability") that may be asserted by any person or entity including Licensee arising out of Licensee or its agents, employees, contractors, and invitees, acts or omissions hereunder, including Licensee's construction, operation or maintenance of the Charging Station, Licensee, its agents, employees, contractors, and invitees use of the Premises or Licensee's failure to comply with the terms set forth herein, excepting only Liability due to the sole and active gross negligence or willful misconduct of City. This indemnification obligation is not limited in any way by any limitation on the amount or type

of damages or compensation payable by or for Licensee under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Licensee and shall continue to bind the parties after expiration or termination of this Agreement.

12. **Hazardous Materials.**

A. Licensee shall not cause or permit any Hazardous Material (as defined herein) to be generated, brought onto, used, stored, released or disposed of on, under, about or within the Premises by Licensee, or its employees, agents, contractors, tenants, sub-tenants, or invitees or other third parties.

B. If either party becomes aware of any actual or threatened release of Hazardous Materials on, under, or about the Premises or any inquiry, investigation, proceeding or claim by any agency or person regarding the presence of Hazardous Materials on, under, or about the Premises, that party shall promptly give the other party notice of the same upon learning of it and shall simultaneously furnish the other party copies of any claim, notices of violation, reports, or other writings received. Licensee shall immediately notify City of any spill, leak, discharge, fire, battery event, or other hazardous condition arising from Licensee's use of the Premises and shall immediately take all actions required by law to contain and respond to the condition.

C. To the fullest extent permitted by law, Licensee shall, with counsel reasonably acceptable to City, indemnify, defend, release, and hold harmless City, its elected and appointed officials, officers, agents, and employees, from any and all Liability arising out of or resulting from Licensee's use or storage of any Hazardous Materials on the Premises, the release of any Hazardous Material in or about the Premises or the violation of any environmental law by Licensee, its employees, agents, contractors, tenants, sub-tenants, or invitees. This indemnification obligation shall survive the expiration or termination of this Agreement.

D. If the presence of any Hazardous Material brought onto the Premises by Licensee or Licensee's employees, agents, contractors, tenants, sub-tenants, and/or invitees results in contamination of the Premises, Licensee shall promptly take all necessary actions, at Licensee's sole cost and expense, to return the Premises to the condition that existed prior to the introduction of such hazardous material. Licensee shall first obtain the City's written approval of the proposed remediation action. Remediation shall not limit Licensee's indemnification obligation set forth above.

E. As used herein, "Hazardous Materials" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the federal, state or local government, including:

(1) "Hazardous substances" and "pollutants and contaminants" as defined in CERCLA, 42 USC §§960114 and (33) and regulations issued pursuant thereto;

(2) "Extremely hazardous substances," "hazardous chemicals," and "toxic chemicals" as defined in the Emergency Planning and Community Right to Know Act, 42 USC §§1102(a), 1121(e) and 1122(c) and regulations issued pursuant thereto;

(3) "Hazardous chemicals" within the meaning of OSHA's Hazard Communication Rules, 29 CFR §1910.1200;

(4) Any such materials regulated under state or local environmental laws and regulations similar to the foregoing federal authorities listed in 1-3 above; and

(5) Any materials not covered by, or exempted from, the sources listed in subsections 1-4 above that may nevertheless pose a threat to human health or welfare or to the environment including, without limitation, petroleum, including crude oil or any fraction thereof, radon, PCB's, radioactive material, toxic pesticides and herbicide, volatile solvents, materials containing asbestos or formaldehyde.

13. **Default and Termination; Surrender.** This Agreement may be terminated by either party for any reason upon 60 days' notice to the other party. This Agreement may be terminated immediately by City for cause if the City has a good faith belief that the Licensee and/or Licensee's authorized representatives are not complying with any covenants, conditions, or provisions of this Agreement. In such event, City shall give written notice of the default (with reasonable specificity) to Licensee and demand the default to be cured within ten days of the notice. If: (a) Licensee fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and Licensee fails to give adequate written assurance of due performance to City within ten days of the notice, then City may either: (1) terminate this Agreement upon written notice to Licensee, in which case the termination of this Agreement shall be effective on the date set forth in the notice, or (2) remedy the default and charge Licensee costs incurred by City, or (3) exercise any other remedy available at law or equity. The Charging Station shall remain property of the City upon termination of this Agreement. Notwithstanding the foregoing, City may immediately suspend or terminate Licensee's right to use the Premises upon written notice, or verbal notice followed by written confirmation, if City determines that Licensee's use creates an unsafe condition, interferes with City operations, or poses a threat to public health, safety, or property.

Upon termination of this Agreement, Licensee shall immediately cease use of the Premises, remove all buses, vehicles, equipment, and personal property of Licensee, and shall restore any damage caused by Licensee's use and leave the Premises in a clean condition. Any property not removed by Licensee may be removed by City at Licensee's cost.

14. **Notices.** Any notice or other communication under this Agreement shall be in writing and either served personally or sent by prepaid, USPS certified mail or overnight service (tracking), addressed to the other party at the following addresses:

City: Public Works Director
City of Napa
P. O. Box 660
Napa, CA 94559-0660

Licensee: Executive Director
Napa Valley Transportation Authority
625 Burnell Street
Napa, CA 94559

Each party may designate an operational contact and emergency contact for day-to-day coordination regarding access, incidents, and charger use.

15. **No Liability.** City shall not be liable for any loss, damage, cost, or interruption arising from any failure or interruption of electrical service, charger malfunction, network outage, closure of the Property, or inability of Licensee to access or use the Premises.
16. **General Provisions.**
- a. **Headings.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
 - b. **Severability.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
 - c. **Governing Law, Jurisdiction, and Venue.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.
 - d. **Attorneys Fees.** In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorneys' fees, costs, and expenses incurred, whether or not such action or proceeding is prosecuted to judgment.
 - e. **Assignment and Delegation.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Licensee's duties be delegated, without the written consent of City, which shall be made in City's sole discretion. Any attempt to assign or delegate this Agreement without the written consent of City shall be void and of no force or effect. A consent by City to one assignment shall not be deemed to be a consent to any subsequent assignment.
 - f. **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
 - g. **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. Any temporary accommodation, permission, or failure by City to enforce a provision of this Agreement shall not limit City's right to later enforce that provision or any other provision of this Agreement.
 - h. **Time.** Time is of the essence in carrying out the duties hereunder. Each Party shall, upon request by the other party, execute, acknowledge, and deliver such documents or take such action as may be necessary or convenient to carry out the terms and conditions of this Agreement.
 - i. **Entire Agreement.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written

or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

- j. **Each Party's Role in Drafting the Agreement.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.
- k. **Authorization.** The parties to this Agreement each warrant and represent that this Agreement and the performance of obligations hereunder are duly authorized, executed and are legal, valid and binding obligations of Licensee and City, respectively, and do not violate any provision of any agreement or judicial order to which Licensee or City is a party or to which Licensee, the City, or the Property is subject and that no consent of any third party not heretofore obtained is required for City to enter into this Agreement.
- l. **Signatures.** The individual executing this Agreement represent they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Licensee and City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- m. **No Property Interest.** This Agreement is a revocable license only. It does not grant any leasehold, easement, or other real property interest to Licensee, and does not give Licensee exclusive possession of any portion of the Property.

Licensee:

NAPA VALLEY TRANSPORTATION AUTHORITY, a Public Agency

By: _____
Danielle Schmitz, Executive Director

CITY:

CITY OF NAPA, a California charter city

By: _____
Jessica Lowe, Public Works Director

APPROVED AS TO FORM:

COUNTERSIGNED:

By: _____
Christopher Diaz, Interim City Attorney

By: _____
Erika Leahy, Auditor

ATTEST:

By: _____
Tiffany Carranza, City Clerk

Effective Date

EXHIBIT "A"
Premises

