

SECURITIES AND EXCHANGE COMMISSION

FORM SC 13D/A

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities [amend]

Filing Date: **2022-07-14**
SEC Accession No. [0001193125-22-193642](#)

([HTML Version](#) on [secdatabase.com](#))

SUBJECT COMPANY

EVO Transportation & Energy Services, Inc.

CIK:[728447](#) | IRS No.: **371615850** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **SC 13D/A** | Act: **34** | File No.: **005-85966** | Film No.: **221083031**
SIC: **5500** Auto dealers & gasoline stations

Mailing Address

2075 WEST PINNACLE PEAK
RD. SUITE 130
PHOENIX AZ 85027

Business Address

2075 WEST PINNACLE PEAK
RD. SUITE 130
PHOENIX AZ 85027
877-973-9191

FILED BY

Antara Capital LP

CIK:[1750183](#) | IRS No.: **824823093** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **SC 13D/A**

Mailing Address

55 HUDSON YARDS
47TH FLOOR
NEW YORK NY 10001

Business Address

55 HUDSON YARDS
47TH FLOOR
NEW YORK NY 10001
646-762-8580

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. 11)*

EVO Transportation & Energy Services, Inc.
(Name of Issuer)

Common Stock, par value \$0.0001 per share
(Title of Class of Securities)

26928L 107
(CUSIP Number)

Lance Kravitz
Antara Capital LP
55 Hudson Yards, 47th Floor, Suite C
New York, New York 10001
(646) 762 8591

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

July 13, 2022
(Date of event which requires filing of this statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box .

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7(b) for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

CUSIP No. 26928L 107

1	NAME OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSON (ENTITIES ONLY)	
	Antara Capital LP	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS) (a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS (SEE INSTRUCTIONS) OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION Delaware	
Number of shares beneficially owned by each reporting person with	7	SOLE VOTING POWER
	8	SHARED VOTING POWER 24,483,830*
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 24,483,830*
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 24,483,830*	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS) <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 63.5%†	
14	TYPE OF REPORTING PERSON PN, IA	

* Includes (i) 23,884,221 shares of Common Stock (as defined below) issuable upon the exercise of the Warrants owned directly by Antara Capital Master Fund LP, plus (ii) 599,609 shares of Common Stock issuable upon the exercise of the Warrants owned directly by that certain managed account for which Antara Capital LP serves as investment manager (the "Managed Account").

† Based on (i) 15,213,145 shares of Common Stock outstanding as of January 21, 2022, as determined in reliance on disclosure to that effect made by the Issuer in its Form 10-K for the fiscal year ended December 31, 2020, filed with the Securities and Exchange Commission (the "SEC") on February 1, 2022 plus (ii) 23,884,221 shares of Common Stock issuable upon the exercise of the Warrants owned directly by Antara Capital Master Fund LP, plus (iii) 599,609 shares of Common Stock issuable upon the exercise of the Warrants owned directly by the Managed Account.

1	NAME OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSON (ENTITIES ONLY)	
	Antara Capital GP LLC	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS) (a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS (SEE INSTRUCTIONS) OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION Delaware	
Number of shares beneficially owned by each reporting person with	7	SOLE VOTING POWER
	8	SHARED VOTING POWER 24,483,830*
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 24,483,830*
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 24,483,830*	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS) <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 63.5%†	
14	TYPE OF REPORTING PERSON OO, HC	

* Includes (i) 23,884,221 shares of Common Stock (as defined below) issuable upon the exercise of the Warrants owned directly by Antara Capital Master Fund LP, plus (ii) 599,609 shares of Common Stock issuable upon the exercise of the Warrants owned directly by that certain managed account for which Antara Capital LP serves as investment manager (the "Managed Account").

† Based on (i) 15,213,145 shares of Common Stock outstanding as of January 21, 2022, as determined in reliance on disclosure to that effect made by the Issuer in its Form 10-K for the fiscal year ended December 31, 2020, filed with the Securities and Exchange Commission (the "SEC") on February 1, 2022 plus (ii) 23,884,221 shares of Common Stock issuable upon the exercise of the Warrants owned directly by Antara Capital Master Fund LP, plus (iii) 599,609 shares of Common Stock issuable upon the exercise of the Warrants owned directly by the Managed Account.

1	NAME OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSON (ENTITIES ONLY)	
	Himanshu Gulati	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS) (a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS (SEE INSTRUCTIONS) OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION New York	
Number of shares beneficially owned by each reporting person with	7	SOLE VOTING POWER
	8	SHARED VOTING POWER 24,483,830*
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 24,483,830*
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 24,483,830*	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS) <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 63.5%†	
14	TYPE OF REPORTING PERSON IN, HC	

* Includes (i) 23,884,221 shares of Common Stock (as defined below) issuable upon the exercise of the Warrants owned directly by Antara Capital Master Fund LP, plus (ii) 599,609 shares of Common Stock issuable upon the exercise of the Warrants owned directly by that certain managed account for which Antara Capital LP serves as investment manager (the "Managed Account").

† Based on (i) 15,213,145 shares of Common Stock outstanding as of January 21, 2022, as determined in reliance on disclosure to that effect made by the Issuer in its Form 10-K for the fiscal year ended December 31, 2020, filed with the Securities and Exchange Commission (the "SEC") on February 1, 2022 plus (ii) 23,884,221 shares of Common Stock issuable upon the exercise of the Warrants owned directly by Antara Capital Master Fund LP, plus (iii) 599,609 shares of Common Stock issuable upon the exercise of the Warrants owned directly by the Managed Account.

AMENDMENT NO. 11 TO SCHEDULE 13D

This Amendment No. 11 (this “Amendment No. 11”) amends the Schedule 13D originally filed on September 27, 2019 (the “Original Schedule 13D”, as amended by Amendment No. 1 filed on October 18, 2019 (“Amendment No. 1”), Amendment No. 2 filed on March 2, 2020 (“Amendment No. 2”), Amendment No. 3 filed on March 24, 2020 (“Amendment No. 3”), Amendment No. 4 filed on January 25, 2021 (“Amendment No. 4”), Amendment No. 5 filed on February 9, 2022 (“Amendment No. 5”), Amendment No. 6 filed on February 9, 2022 (“Amendment No. 6”), Amendment No. 7 filed on March 16, 2022 (“Amendment No. 7”), Amendment No. 8 filed on June 1, 2022 (“Amendment No. 8”), Amendment No. 9 filed on July 1, 2022 (“Amendment No. 9”), Amendment No. 10 filed on July 11, 2022 (“Amendment No. 10”) and, together with this Amendment No. 11, this “Schedule 13D”). This Amendment No. 11 relates to the common stock, par value \$0.0001 (“Common Stock”) of EVO Transportation & Energy Services, Inc. (“EVO” or the “Issuer”). The address of the principal executive office of EVO is 8285 West Lake Pleasant Parkway, Peoria, Arizona 85382.

Except as specifically provided herein, this Amendment No. 11 does not modify any of the information previously reported in the Original Schedule 13D. Capitalized terms used but not otherwise defined in this Amendment No. 11 shall have the meanings ascribed to them in the Original Schedule 13D, as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6, Amendment No. 7, Amendment No. 8, Amendment No. 9, and Amendment No. 10.

Item 4. Purpose of Transaction.

Item 4 is hereby amended to add the following:

The Reporting Persons are filing this Amendment No. 11 to report that on July 13, 2022, the Board of Directors of the Issuer adopted a resolution creating a new series of Series D Non-Participating Preferred Stock (the “Series D Preferred”) that was issued on that date to Antara Master Fund (the “Lender”), as required pursuant to the terms of that certain Third Extension Agreement, dated July 8, 2022, among the Issuer, certain specified subsidiaries of the Issuer (the “Guarantors”), the Lender and certain current and former executives of the Issuer, or funds affiliated with such executives (the “Third Extension Agreement”), to that certain Senior Secured Loan and Executive Loan Agreement dated March 11, 2022, as amended by that certain Extension Agreement dated May 31, 2022, that certain Second Extension Agreement dated June 30, 2022 and the Third Extension Agreement (as further amended from time to time, the “Loan”).

The Series D Preferred grants the Lender certain voting rights with respect to the Issuer’s voting capital stock that are further described in Item 6.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Item 6 is hereby amended to add the following supplemental information:

The Reporting Persons are directly or indirectly party to the following arrangements with the Issuer:

(a) Series D Non-Participating Preferred Stock

Under the Certificate of Designations with respect to the Series D Preferred (the "Series D Certificate of Designations"), prior to a payment default under the Loan (a "Bridge Loan Triggering Event"), and on and following the date on which all principal and accrued interest (including default interest) payable under the Loan has been paid-in-full (the date of such payment-in-full, the "Bridge Loan Discharge Date"), the holder of Series D Preferred shall vote together with the holders of the Issuer's common stock as a single class on any matter presented to the holders of the Issuer's common stock for their action or consideration at any meeting of stockholders of the Issuer (or by written consent of stockholders in lieu of meeting) or on which such holders of common stock are otherwise entitled to act (each, a "Shareholder Matter"), and the holders of Series D Preferred shall be entitled to cast a number of votes on any Shareholder Matter equal to the total number of votes of all non-holders of Series D Preferred entitled to vote on any such Shareholder Matter plus 10. In addition, the Series D Certificate of Designations provides that governance mechanisms that could have the effect of limiting, reducing or adversely affecting the Series D Preferred holders' voting rights under the Series D Certificate of Designations shall require the consent of holders of a majority of the then outstanding Series D Preferred (the "Series D Majority"). When considered together with the existing Series C Preferred held by Lender (as described in Amendment No. 7, including the form of the corresponding Certificate of Designation adopted by the Board of Directors of the Issuer and filed with the Secretary of State of Delaware on March 11, 2022 (the "Series C Certificate of Designations") filed as an exhibit thereto), the Series D Preferred will provide Lender with majority control of the Issuer's voting capital stock.

The Series D Majority may elect to waive or decline to exercise any or all voting rights granted under the Series D Certificate of Designations, in whole or in part, on either a revocable or irrevocable basis.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the text of the Series D Certificate of Designations, filed herewith as Exhibit 99.1 and incorporated herein by reference.

Item 7. Material To Be Filed as Exhibit

99.1 Certificate of Designation of Series D Non-Participating Preferred Stock adopted by the Board of Directors of the Issuer and filed with the Secretary of State of Delaware on July 13, 2022.*

99.2 Third Extension Agreement dated July 8, 2022 among the Issuer, the Guarantors, the Lender and certain current and former executives of the Issuer, or funds affiliated with such executives.**

99.3 Second Extension Agreement dated June 30, 2022 among the Issuer, the Guarantors, the Lender and certain current and former executives of the Issuer, or funds affiliated with such executives.***

99.4 Extension Agreement dated May 31, 2022 among the Issuer, the Guarantors, the Lender and certain current and former executives of the Issuer, or funds affiliated with such executives.****

99.5 Senior Secured Loan and Executive Loan Agreement dated March 11, 2022 among the Issuer, the Guarantors, the Lender and certain current and former executives of the Issuer, or funds affiliated with such executives (including the form of the Series C Certificate of Designation adopted by the Board of Directors of the Issuer and filed with the Secretary of State of Delaware on March 11, 2022).*****

- * Filed herewith.
- ** Filed as Exhibit 99.1 to Amendment No. 10.
- *** Filed as Exhibit 99.1 to Amendment No. 9.
- **** Filed as Exhibit 99.1 to Amendment No. 8.
- ***** Filed as Exhibit 99.1 to Amendment No. 7.

SIGNATURE

After reasonable inquiry and to the best of their knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: July 14, 2022

ANTARA CAPITAL LP

By: Antara Capital GP LLC, its general partner

By: /s/ Himanshu Gulati

Name: Himanshu Gulati

Title: Managing Member

ANTARA CAPITAL GP LLC

By: /s/ Himanshu Gulati

Name: Himanshu Gulati

Title: Managing Member

By: /s/ Himanshu Gulati

Name: Himanshu Gulati

Title: Managing Member

CERTIFICATE OF DESIGNATIONS
OF
SERIES D NON-PARTICIPATING PREFERRED STOCK
OF
EVO TRANSPORTATION & ENERGY SERVICES, INC.

EVO TRANSPORTATION & ENERGY SERVICES, INC., a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), DOES HEREBY CERTIFY AS FOLLOWS:

The Board of Directors of the Corporation (including any committee thereof, the “Board of Directors”), at a meeting duly called and held on July 13, 2022, adopted the following resolution creating a series of Preferred Stock of the Corporation designated as “Series D Non-Participating Preferred Stock”:

RESOLVED, that pursuant to Section 151 of the Delaware General Corporation Law and the Certificate of Incorporation and the Bylaws, the Board of Directors hereby establishes a series of Preferred Stock, par value \$0.0001 per share, of the Corporation and fixes and determines the voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof as follows:

Section 1. Designation. The distinctive serial designation of such series is “Series D Non-Participating Preferred Stock” (“Series D”). Each share of Series D shall be identical in all respects to every other share of Series D.

Section 2. Number of Designated Shares. The number of designated shares of Series D shall be 1. The Corporation shall not authorize or issue any additional shares of Series D unless approved by the Holders of the Series D in accordance with Section 7(b). Shares of Series D that are redeemed, purchased or otherwise acquired by the Corporation shall be cancelled and shall revert to authorized but unissued shares of Preferred Stock undesignated as to series. On the date hereof, the Corporation shall issue 1 share of Series D to Antara Master Capital Fund LP (the “Initial Holder”).

Section 3. Definitions. As used herein with respect to Series D:

(a) “Accruing Cash Dividends” has the meaning set forth in Section 4(a).

(b) “Affiliate” means, with respect to any Person, any Person who, directly or indirectly, controls, is controlled by or is under common control with that Person, and the term “control” (including the terms “controlled”, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract (including proxy) or otherwise.

(c) “Board of Directors” has the meaning set forth in the Preamble.

(d) “Bridge Loan” means the Senior Secured Loan and Executive Loan Agreement dated March 11, 2022 between and among the Corporation and its guarantor subsidiaries named therein, Antara Capital Master Fund LP and the Executive Lenders party thereto, as amended, amended and restated, supplemented or otherwise modified from time to time.

(e) “Bridge Loan Discharge Date” means the date on which all principal and accrued interest (including default interest) payable under the Bridge Loan has been paid in full.

(f) “Bridge Loan Triggering Event” means the occurrence of an “Event of Default” under Section 9(a) of the Bridge Loan.

(g) “Bylaws” means the Bylaws of the Corporation as amended, amended and restated or otherwise modified from time to time.

(h) “Certificate of Incorporation” means the Certificate of Incorporation of the Corporation, dated as of October 22, 2010, as amended, amended and restated or otherwise modified from time to time.

(i) “Common Stock” means the common stock, \$0.001 par value per share, of the Corporation.

(j) “Corporation” has the meaning set forth in the Preamble.

(k) “Dividend Payment Date” means each March 31, June 30, September 30 and December 31, commencing with September 30, 2022 or if any such date is not a business day, the business day immediately following such date.

(l) “Dividend Period” means the period commencing on, and including a Dividend Payment Date to, and excluding the next Dividend Payment Date, provided that the first Dividend Period shall commence on the date of the effectiveness of this Certificate of Designations.

(m) “Holder” means the Initial Holder as defined in Section 2 herein or any permitted transferee thereof pursuant to Section 10.

(n) “Law”, with respect to any Person, means (a) all provisions of all laws, statutes, ordinances, rules, regulations, permits, certificates or orders of any governmental authority applicable to such Person or any of its assets or property or to which such Person or any of its assets or property is subject, and (b) all judgments, injunctions, orders and decrees of any governmental authority in proceedings or actions in which such Person is a party or by which it or any of its assets or properties is or may be bound or subject.

(o) “Liquidation Preference” has the meaning set forth in Section 6.

(p) “Majority in Interest” means Holders holding a majority of the issued and outstanding shares of Series D.

(q) “Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “Person” under this Certificate of Designations.

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- (r) “Series C” has the meaning set forth in Section 5.
- (s) “Series D” has the meaning set forth in Section 1.
- (t) “Shareholder Matter” has the meaning set forth in Section 7(a).

(u) “Subsidiary” means, with respect to any Person, any other Person of which a majority of the securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time Beneficially Owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such first Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Corporation.

Section 4. Distributions; No Participation; Certain Restrictions.

(a) Whether or not earned or declared by the Board of Directors or there are funds legally available for the payment of dividends, from and after the date of the effectiveness of this Certificate of Designations, each share of Series D shall accumulate daily in arrears dividends (the “Accruing Cash Dividends”) at a rate of five percent (5%) per annum on its Liquidation Preference. In respect of a Dividend Period, the Accruing Cash Dividend shall be payable (and the Board of Directors shall declare and cause the Corporation to pay, subject to the Delaware General Corporation Law) in cash on each Dividend Payment Date. Any such quarterly payment shall be prorated for any partial calendar quarter based on the number of days which the Accruing Cash Dividends shall have accrued during such quarter.

(b) The Series D shall not be entitled to participate in any distributions or payments to the holders of the Common Stock or any other class of stock of the Corporation.

Section 5. Ranking. The Series D shall, with respect to the right to be paid upon any liquidation, dissolution or winding up of the Corporation, rank (i) senior to all classes of Common Stock; (ii) pari passu to the Corporation’s Series C Non-Participating Preferred Stock (the “Series C”); and (iii) junior to all other classes or series of Preferred Stock of the Corporation (if any).

Section 6. Liquidation Rights. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the Holders of the Series D shall (A) rank (i) senior to the holders of the Corporation’s Common Stock; (ii) pari passu to the holders of the Corporation’s Series C; and (iii) junior to all other classes or series of Preferred Stock of the Corporation (if any); and (B) be entitled to receive from the Corporation, prior to the holders of shares of Common Stock, an amount equal to \$1.00 (the “Liquidation Preference”) plus any accrued but unpaid Accruing Cash Dividends then outstanding.

Section 7. Voting Rights.

(a) *General.* Prior to the occurrence of a Bridge Loan Triggering Event, and on and following the Bridge Loan Discharge Date, the Holders of Series D shall vote together with the holders of Common Stock as a single class on any matter presented to the holders of Common Stock for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting) or on which such holders of Common Stock are otherwise entitled to act (each, a “Shareholder Matter”), and the Holders of the Series D shall be entitled to cast a number of votes on any Shareholder Matter equal to the total number of votes of

all non-Holders entitled to vote on any such Shareholder Matter plus 10 (which voting rights shall be ratably allocated among Holders of Series D to the extent there is more than one Holder, provided that such ratably allocation shall in no event result in the Series D Holders having less than an absolute majority of the voting power on any Shareholder Matter). From the occurrence of a Bridge Loan Triggering Event to (but excluding) the Bridge Loan Discharge Date, the Holders of Series D (in their capacity as such) will have no voting rights except as set forth below or as otherwise required by Law.

(b) *Special Class Voting.* Notwithstanding the foregoing or any other provision of the Certificate of Incorporation, given in writing or by vote at a meeting of stockholders called for such purpose, the Corporation shall not: (i) alter or change the provisions of the Certificate of Incorporation (whether by amendment, merger or otherwise) so as to directly or indirectly adversely affect the voting powers, board-appointment rights, preferences or special rights of the Series D as in effect on the date of the effectiveness of this Certificate of Designations, (ii) increase the authorized number of shares of Series D; (iii) directly or indirectly authorize, create, issue or increase the authorized or issued number of shares of any other class or series of capital stock or any other security convertible into or exercisable for shares of any other class or series of capital stock; or (iv) create or issue additional shares of Series D. Without limitation, the introduction, adoption or implementation of any governance mechanisms that could have the effect of limiting, reducing or adversely affecting the Series D Holders' voting rights shall require the consent of a Majority in Interest. Notwithstanding the foregoing, and for the avoidance of doubt, if any corporate action not specified herein as requiring the consent of a Majority in Interest could adversely affect any Holder's interests in its Series D in a manner that is disproportionate to the effect on the other Holder's interests in the Series D, the consent of the Holder so affected shall be required.

(c) A Majority in Interest may elect to waive or decline to exercise any or all voting rights granted by this Section 7, in whole or in part, on either a revocable or irrevocable basis. If all of the Series D is held by a single Holder and such Holder provides written notice of such election or waiver to the Corporation, the Corporation may disregard the Series D for quorum and voting purposes to the extent expressly provided in such written notice.

Section 8. Reserved

Section 9. Reserved

Section 10. Transfer Restrictions. No Holder of shares of Series D may offer, sell, assign or transfer any portion of such Holder's shares of Series D without the approval of the Board of Directors, which consent the Board of Directors may not unreasonably withhold, condition or delay; provided, that, any Holder may offer, sell, assign or transfer (including by operation of law) any shares of Series D to its successor by way of merger, consolidation, reorganization or sale of all or substantially all of its assets or to any of its Affiliates and may pledge all or any portion of its shares of Series D for the benefit of any lender thereto or debt holder thereof. Each certificate (if any) evidencing shares of Series D shall bear a legend indicating (i) that such shares of Series D are subject to the restrictions on transfer set forth herein and (ii) legends relating to any transfer restrictions under applicable securities laws and regulations.

Section 11. Expenses. All reasonable costs and expenses (including fees of outside counsel) incurred by any Holder in seeking to enforce its rights in accordance with the terms of this Certificate of Designations shall be promptly reimbursed by the Corporation.

Section 12. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series D may deem and treat the record holder of any share of Series D as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 13. Notices. All notices or communications in respect of the Series D will be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law.

Section 14. No Other Rights or Privileges. The shares of Series D will not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation.

Section 15. Certificates. The Corporation may at its option issue shares of Series D without certificates.

Section 16. Interpretation. Whenever possible, each provision of this Certificate of Designations shall be interpreted in a manner as to be effective and valid under applicable law and public policy. If any provision set forth herein is held to be invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions of this Certificate of Designations, and a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision. No provision herein set forth shall be deemed dependent upon any other provision unless so expressed herein. If a court of competent jurisdiction should determine that a provision of this Certificate of Designations would be valid or enforceable if a period of time were extended or shortened, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law. References herein to any payment shall mean a payment in cash in United States Dollars by wire transfer of immediately available funds to an account designated by the applicable payee.

Section 17. Enforcement. To the fullest extent permitted by law, the provisions of this Certificate of Designations shall remain in full force and effect irrespective of (i) the failure of any Person to assert any claim or demand or to enforce any right or remedy under this Certificate of Designations or otherwise or (ii) any change in the corporate existence, structure or ownership of the Corporation or any of its Affiliates, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Corporation or any of its Affiliates.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by Patrick Seul, its Executive Vice President, General Counsel and Secretary this 13th day of July, 2022.

**EVO TRANSPORTATION & ENERGY SERVICES,
INC.**

By: /s/ Patrick Seul

Name: Patrick Seul
Title: Executive Vice President, General Counsel
and Corporate Secretary