

SUPERCHARGER AGREEMENT

This Supercharger Agreement (the "**Agreement**") is effective as of _____, 2017 (the "**Effective Date**") by and between City of Riverside, a California charter city and municipal corporation ("**Counterparty**") and Tesla, Inc., a Delaware corporation ("**Tesla**").

WHEREAS, Tesla, through the provision of Supercharger services at the Property, will provide value to Counterparty by attracting Tesla vehicle owners and the public to, and providing additional visibility of, the Property and providing three (3) Tesla Level 2 chargers for RPU use at no-cost;

WHEREAS, Counterparty acknowledges the value of Tesla's Supercharger at the Property and desires to grant possession and control of the Premises to Tesla pursuant to the terms set forth herein;

NOW THEREFORE, in consideration of the above and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **CONTACT INFORMATION:**

Counterparty's Address for Notices:

Riverside Public Utilities
3750 University Ave.
3rd Floor
Attention: Girish Balachandran
Phone: (951) 826-8912
Email: GBalachandran@riversideca.gov

Tesla's Address for Notices:

Tesla, Inc.
3500 Deer Creek Road
Palo Alto, CA 94304
Attention: Supercharger Team
Phone: (650) 681-5000
Email: superchargerlease@teslamotors.com

24-hour Technical Support & Service:
877-79-TESLA (877-798-3752)

2. **PREMISES:** Counterparty hereby grants to Tesla possession and control of twenty-four (24) parking spaces, up to five (5) feet of additional parking width to comply with the Americans with Disabilities Act of 1990 and approximately 200-400 square feet of landscaped space for equipment (the "**Premises**") on the property commonly known as Mission Square Parking Garage, located at 3750 University Ave and as depicted on **Exhibit A** attached hereto (the "**Property**") in order to build an electric vehicle supercharging station to charge Tesla vehicles (the "**Supercharger Station**").
3. **CONSTRUCTION:** Upon delivery of possession of the Premises to Tesla, Tesla shall, at its sole expense, construct improvements as described in and pursuant to the procedures set forth in **Exhibit B**, attached hereto and made a part hereof, and will install certain trade fixtures indicated in **Exhibit B** (the "**Trade Fixtures**" as further described and defined in **Exhibit B**). Tesla shall obtain all required construction permits.
4. **INITIAL FOOTPRINT:** A total of twenty-four (24) parking spaces shall be outfitted with charge posts ("**Superchargers**") to charge Tesla vehicles. Initially, twelve (12) parking spaces shall serve

as dedicated charging stalls to be used only by Tesla vehicles ("**Dedicated Stalls**"), and twelve (12) parking spaces shall serve as charging stalls to be used by Tesla vehicles and will also be available for general parking of non-Tesla vehicles for a maximum of thirty (30) minutes ("**Enabled Stalls**"). The Dedicated Stalls and Enabled Stalls and any applicable restrictions shall be identified by signage substantially similar to the signage depicted in **Exhibit B**. Tesla shall have the option to convert Enabled Stalls into Dedicated Stalls on ten (10) days' written notice in order to meet demand for Supercharging services, subject to Counterparty approval, which shall not be unreasonably withheld, conditioned or delayed.

5. **POSSESSION DATE:** The first date where Tesla may enter the Premises and Property to begin its work pursuant to the Agreement is October 1, 2017 (the "**Possession Date**").
6. **COMMENCEMENT DATE:** The date that the Supercharger Station opens to the public (the "**Commencement Date**") shall be within one hundred and fifty (150) days following the Possession Date, provided that no external permitting, utility or other requirements beyond Tesla's control delay the installation, despite the best efforts of Tesla. Tesla shall deliver written notice to Counterparty promptly following the Commencement Date to confirm such date for recordkeeping purposes.
7. **TERM:** The initial term of the Agreement shall expire five (5) years from the Commencement Date (the "**Initial Term**"). Tesla shall have the right to twice extend the Agreement and each extension shall be for an additional period of five (5) years (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). To extend the Term, Tesla shall deliver written notice of such extension to Counterparty no later than thirty (30) days prior to the expiration of the Term. In the event of a sale or transfer of the Property or Premises by Counterparty while the Agreement is in effect, Tesla's rights shall be conveyed with the Property or Premises.
8. **UTILITIES:** Tesla agrees to arrange and pay the charges for all Tesla-related utility services provided or used in or at the Premises during the Term. The current charges for Tesla-related utility services shall be Schedule TOU, Large General and Industrial Service, and Counterparty may adjust such rates from time to time, or bill Tesla under an existing Electric Rate Schedule. Tesla shall pay directly to the utility company the cost of installation of any and all such Tesla-related utility services and shall arrange to have the utility service separately metered. Counterparty shall not be responsible for any damages suffered by Tesla in connection with the quality, quantity or interruption of utility service, unless the cause of the disruption or damage was due to Counterparty's gross negligence or willful misconduct.
9. **USE:** Tesla shall use and occupy the Premises during the Term for a Supercharger Station and incidental purposes, including generating photovoltaic electricity and operating an energy storage system. All use of the Premises by Tesla shall comply with applicable codes, laws, and ordinances.
10. **PAYMENT FOR CHARGING SERVICES:** Counterparty shall have no right to request or accept payment from Tesla, Tesla customers or any other third-parties in connection with Tesla Supercharging services, with the understanding that Tesla customers will be subject to applicable parking rates for use of the Mission Square Parking Garage.
11. **MAINTENANCE:** Tesla shall be responsible for maintaining the Trade Fixtures and Infrastructure (as defined in **Exhibit B**) and Counterparty shall not have any liability for damage to the Trade

Fixtures or the Infrastructure unless such damage is caused by Counterparty's gross negligence or willful misconduct. Notwithstanding the foregoing, Counterparty's normal responsibility to maintain the common areas of the Property shall also apply to the Premises, such as for snow removal and garbage collection. Counterparty agrees to coordinate any parking lot maintenance with Tesla to ensure that charging stalls remain available for vehicle charging at all times. Tesla may, in its discretion and at its sole cost, install security cameras and other equipment to monitor the Premises from off-site.

12. **COUNTERPARTY COVENANTS:** Counterparty represents that they are the owner of the Property and that this Agreement does not violate any agreement, lease or other commitment of Counterparty. Counterparty shall not take any action that would impair or interrupt the use of the Premises or the Trade Fixtures. Counterparty agrees to notify Tesla within a commercially reasonable time if (i) it has knowledge of third-parties impairing or misusing the Premises or Trade Fixtures, or (ii) it obtains knowledge of a needed repair to the Premises or Trade Fixtures. If non-Tesla motorists repeatedly park in the Dedicated Stalls, thereby impairing use of the Dedicated Stalls, or if motorists repeatedly park in the Enabled Stalls for greater than the permitted duration, then the parties shall together determine and implement an appropriate and effective strategy for preventing such impairment, including, without limitation, alternative signage and painted asphalt. Counterparty shall use commercially reasonable efforts to actively monitor the Premises to ensure that use of the Supercharging stalls is not impaired.
13. **ASSIGNMENT:** Tesla shall not assign this Agreement voluntarily or by operation of law, or any right hereunder, nor sublet the Premises or any part thereof, without the prior written consent of Counterparty, which shall not be unreasonably withheld, conditioned or delayed; provided that the foregoing prohibition shall not limit Tesla's ability to transfer this Agreement to a company that is controlled by, controls, or is under common control with Tesla.
14. **ALTERATIONS:** Excepting the items of Exhibit B, Tesla shall not make or permit to be made any alterations, changes in or additions to the Premises without the prior written consent of Counterparty, which shall not be unreasonably withheld, conditioned or delayed. Upon termination of this Agreement, unless terminated due to a default of Counterparty, the Infrastructure shall become the property of Counterparty; provided that all Trade Fixtures and all related intellectual property shall at all times remain the property of Tesla and all Trade Fixtures will be promptly removed by Tesla upon termination of the Agreement.
15. **SIGNAGE:** Tesla signage to be installed at the Premises is represented in Exhibit B and shall include signs to identify Dedicated Stalls and Enabled Stalls. Any material revisions or additions to the signage depicted in Exhibit B shall be subject to Counterparty approval, which shall not be unreasonably withheld, conditioned or delayed. All signage shall be professionally prepared, installed and maintained at Tesla's expense.
16. **INDEMNIFICATION:** Except to the sole gross negligence or willful misconduct of Counterparty, Tesla hereby agrees to indemnify, hold harmless and defend the Property, Counterparty, its managers, members, agents and representatives from all liability, damages, loss, costs and obligations, including, court costs and attorney's fees, on account of or arising out of or alleged to have arisen out of any claim of any third party directly related to Tesla's use of the Premises.

Tesla shall promptly remove or bond any liens placed on the Property as a result of any claims for labor or materials furnished to or for Tesla at or for use on the Premises.

Except to the extent of any gross negligence or willful misconduct of Tesla, Counterparty hereby agrees to indemnify, hold harmless and defend Tesla, its directors, officers, employees, consultants, agents and representatives from all liability, damages, loss, costs and obligations, including, court costs and attorney's fees, on account of or arising out of or alleged to have arisen out of directly or indirectly, any claim of any third party directly related to Counterparty's actions with respect to the Premises.

17. **DESTRUCTION:** Any total destruction of the Premises shall, at Counterparty's or Tesla's written election within thirty (30) days of such destruction, terminate the Agreement.

18. **DEFAULT:** Each of the following shall constitute an "**Event of Default**" by Tesla under this Agreement:

(1) the failure by Tesla to perform or observe any material term or condition of the Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof, provided however, that if the nature of such default is such that the same cannot reasonably be cured within said thirty (30) day period, then Tesla shall have such additional time as is reasonably required to cure such failure provided Tesla commences to cure such failure within such thirty (30) day period and proceeds to cure such failure with diligence and continuity; or

(2) the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tesla located at the Premises if possession is not restored to Tesla within sixty (60) days; or a general assignment by Tesla for the benefit of creditors; or any action or proceeding commenced by or against Tesla under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors and in the case of involuntary actions filed against the Tesla the same are not discharged within sixty (60) days after the date of commencement.

19. **REMEDIES:** Counterparty and Tesla acknowledge and agree that each party shall have all remedies available at law or in equity if the other party is in default under the terms of this Agreement. If an Event of Default has occurred and is continuing, then Counterparty, in addition to any other remedies given at law or in equity, may:

(A) continue this Agreement in effect by not terminating Tesla's right to possession of said Premises and thereby be entitled to enforce all Counterparty's rights and remedies under this Agreement; or

(B) bring an action to recover and regain possession of said Premises in the manner provided by the laws of eviction of the State where the Premises are located then in effect.

20. LIABILITY INSURANCE:

20.1 Minimum Scope. Prior to Counterparty's execution of this Agreement and Tesla's commencement of Work, Tesla shall secure, submit proof of and shall thereafter maintain without interruption, through the term of the Agreement, such commercial general and automobile liability insurance as shall protect Tesla and the Additional Insured's from any and all claims for damages for personal injury, including accidental death, as well as any and all claims for property damage to the extent of Tesla's indemnification obligations pursuant to this Agreement which may arise from or which may concern operations under the Agreement, whether such operations be by or on behalf of Tesla, any subcontractor or anyone directly or indirectly employed by, connected with or acting for or on behalf of any of them.

20.2 Carrier Ratings. All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A- or higher and a Financial Class of VII or larger.

20.3 Minimum Limits. Tesla shall maintain limits of insurance as follows:

20.3.1 Commercial General Liability: Tesla's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including premises operations liability, independent contractors' liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence, and an aggregate limit in the amount not less than \$2,000,000.

20.3.2 Automobile Liability Insurance: Tesla's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Tesla's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Tesla's performance of this Agreement, which vehicles shall include, but are not limited to, Tesla owned vehicles, and Tesla leased vehicles, Tesla's employee vehicles, non-Tesla-owned vehicles and hired vehicles.

20.3.3 Installation Floater Insurance. Tesla shall obtain, at Tesla's expense, and keep in effect during the term of this Agreement, a Builder's Risk Installation Floater for coverage of Tesla's labor, materials and equipment to be used for completion of the work performed under this Agreement. The minimum amount of coverage to be carried shall be equal to the full amount of the Tesla's labor, equipment, materials, or fixtures to be installed, in transit, or stored off-site or on-site during the performance of this Agreement. The policy shall include as loss payee, Counterparty of Riverside, the Tesla, and its sub- contractors as their interest may appear. Counterparty shall not be responsible for the theft of any materials, equipment in the possession and control of Tesla.

20.4 Notice of Cancellation and Renewals. Tesla shall provide Counterparty with at least thirty (30) days' prior written notice of cancellation of any required insurance, with the exception for ten (10) days' prior written notice for nonpayment of premium. Tesla agrees that upon receipt of any notice of cancellation, Tesla shall procure other policies of insurance similar in all respects to the policy or policies to be cancelled before the effective cancellation date. Tesla shall furnish to Counterparty copies of certificates of insurance that are subsequently issued evidencing the new coverage or limits within fourteen (14) days of the amendment.

20.5 All Coverages. The insurance policy or policies shall also comply with the following provisions:

- a. Policies shall include premises/operations, independent contractors, owners and Tesla's protection, explosion, collapse, underground hazard, broad form contractual, personal injury, and broad form property damage.
- b. The policy shall be endorsed to waive any right of subrogation against Counterparty and its employees, officers and directors for work performed under this Agreement.
- c. If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for **five (5) years** after completion of the construction work under this Agreement. The retroactive date of the coverage must also be listed.
- d. The policy shall specify that the insurance provided by Tesla will be considered primary and not contributory to any other insurance available to Counterparty of Riverside to the extent of Tesla's indemnification obligations pursuant to this Agreement. Tesla shall provide Form No. CG 20010413 or an equivalent to Counterparty.
- e. All policies of insurance shall include Counterparty as an Additional Insured and shall contain the following language on the certificate of insurance: "Solely with respect to work done by and on behalf of the name insured for City of Riverside, it is agreed that City of Riverside, and its officers and employees are added as additional insureds under this policy."

20.6 Certificates of Insurance, Additional Insured Endorsements and Deductibles. Prior to execution of the Agreement, and thereafter upon Counterparty's request, Tesla shall furnish Counterparty with original certificates of insurance and additional insured endorsements setting forth evidence of all insurance coverage required by this Article. Each certificate and endorsement is to be signed by a person authorized by that insurer to bind coverage on its behalf.

20.7 Tesla's Failure to Provide Required Insurance. Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Tesla shall immediately notify Counterparty and cease all work under this Agreement until further directed by Counterparty. In the absence of satisfactory insurance coverage, Counterparty may, at its discretion and sole option: (a) procure insurance with collection rights for premiums, attorneys' fees and costs against Tesla by way of set-off or recoupment from sums due Tesla; (b) immediately terminate or suspend Tesla's performance of the Agreement; (c) pay Tesla's premiums for renewal of Tesla's coverage; or (d) self-insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorneys' fees and costs, being collectible from Tesla, by way of set-off or recoupment from any sums due Tesla. Upon demand, Tesla shall repay Counterparty for all sums that Counterparty paid to obtain, renew, reinstate or replace the insurance, or Counterparty may offset the cost against any monies that Counterparty may owe Tesla.

20.8 Verification of Coverage. Counterparty shall have the right to obtain endorsements or certificates required under this Agreement, upon request.

20.9 Reassessment of Insurance Requirements. At any time during the duration of this Agreement, Counterparty may reasonably require that Tesla, within ninety (90) days upon the request, obtain, pay for, and maintain more or less insurance depending on Counterparty's assessment of any one or more of the following factors: (1) Counterparty's risk of liability or exposure arising out of, or in any way connected with, Tesla's services under this Agreement; (2) the nature or number of accidents, claims, or lawsuits

arising out of, or in any way connected with, Tesla's services under this Agreement; or (3) the availability, or affordability, or both, of increased liability insurance coverage.

20.10 Tesla's Insurance for Other Losses. Unless to the extent caused by Counterparty's gross negligence or willful misconduct, Tesla shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Tesla's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Tesla, as well as to any temporary structures, scaffolding and protective fences.

20.11 No Limitation. Tesla's maintenance of insurance as required by the Agreement Documents shall not be construed to limit the liability of Tesla to the coverage provided by such insurance, or otherwise limit Counterparty's recourse to any remedy available at law or in equity.

20.12 Subcontractors' Insurance. Tesla shall ensure all of its subcontractors procure and maintain insurance as required by Tesla.

Counterparty reserves the right to request certificates of insurance from the Tesla for each subcontractor. Tesla acknowledges that regardless of insurance obtained by its subcontractors, Tesla will be responsible to Counterparty for any and all acts of its subcontractors.

20.13 Tesla may satisfy all or part of these requirements by showing proof that Tesla maintains a program of self-insurance at commensurate levels.

- 21. PUBLICITY:** Neither party will use the other party's name, trademark or logo without such other party's prior written consent.
- 22. EXCLUSIONS:** Notwithstanding anything herein to the contrary, each party shall not be liable for, and each party expressly releases the other party from any claims from, speculative, indirect, consequential or punitive damages, including any lost sales or profits of either party.
- 23. ENVIRONMENTAL MATTERS:** Counterparty represents and warrants that the Premises shall be delivered free of environmental contamination. Tesla shall have no liability for any environmental contamination unless caused by Tesla, its agents, employees or contractors. During the Term, Counterparty is responsible for remediating any pre-existing contamination or any contamination not caused by Tesla, its agents, contractors or employees. Tesla shall have no liability for diminution in value of the Property as it relates to environmental contamination, unless such contamination is caused by Tesla, its agents, employees or contractors.
- 24. NOTICES:** All notices or demands shall be in writing and shall be deemed duly served or given only if delivered by prepaid (i) U.S. Mail, certified or registered, return receipt requested, or (ii) reputable, overnight courier service (such as UPS or FedEx) to the addresses of the respective parties as specified in Section 1 above. Counterparty and Tesla may change their respective addresses for notices by giving notice of such new address in accordance with the provisions of this paragraph.
- 25. BROKERS:** Counterparty and Tesla represent to each other that each has dealt with no broker and each hereby agrees to indemnify and hold the other harmless from any claims for any such commissions or fees.

26. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and shall inure to the benefit of Counterparty and Tesla and their respective successors and assigns.
27. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State where the Premises are located.
28. **TIME:** Time is of the essence in this Agreement.
29. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together will constitute one agreement. Signed copies transmitted electronically in PDF or similar format shall be treated as originals.

IN WITNESS WHEREOF, the parties hereto have each caused an authorized representative to execute this Agreement as of the Effective Date first written above.

COUNTERPARTY:

TESLA:

City of Riverside,
a California charter city and municipal corporation

Tesla, Inc.
a Delaware corporation

By: _____
City Manager

By: _____

Name: _____

Title: _____

Attest: _____
City Clerk

Approved as to Form:

By: _____
Assistant City Attorney

APPROVED AS TO FORM:

BY: 
ASSISTANT CITY ATTORNEY

EXHIBIT A

Premises and Property Depiction and Address

Property Address:

Mission Square Parking Garage, 3750 University Ave, Riverside, CA 92501

Premises and Property Depiction:



EXHIBIT B

Tesla Improvements

Tesla shall install the Supercharger Station on the Premises pursuant to the terms of this **Exhibit B**. Tesla installation shall include the installation of the infrastructure for the Supercharger Station, which may include power supply, utility connections, concrete pads, conduit and wiring (the “**Infrastructure**”).

The Supercharger Station will also include certain trade fixtures as determined by Tesla, which may include, without limitation, the charger cabinets (“**Supercharger Cabinets**”), Superchargers, switchgear, signage, fence or other visual barriers, canopy, solar panels, and an energy storage system (the “**Trade Fixtures**”).

The Trade Fixtures to be installed as of the Commencement Date will include the following:

- Twelve (12) Superchargers Cabinets
- Twenty-four (24) Superchargers
- Switchgear and meter panel
- Signage

The installation of the Infrastructure and the Trade Fixtures is collectively referred to as the “**Tesla Improvements**.” Tesla will not perform the Tesla Improvements until the plans and specifications, including exact locations, have been approved by Counterparty, which approval may be by e-mail communication and shall not be unreasonably withheld, conditioned or delayed. All Tesla Improvements shall at all times comply with applicable laws, codes and ordinances and Infrastructure and Trade Fixtures shall be installed, maintained and replaced at Tesla’s sole cost.

Signage

Dedicated Stall Sign Example



Enabled Stall Sign Example

