

EXHIBIT A

CONCESSION AGREEMENT

BETWEEN

CITY OF MIAMI BEACH, FLORIDA

AND

TESLA, INC.

**TO INSTALL, OPERATE AND MAINTAIN SELF-SERVICE ELECTRIC
VEHICLE SUPERCHARGER STATIONS AT CERTAIN CITY MUNICIPAL
PARKING FACILITIES**

**CONCESSION AGREEMENT
BETWEEN
CITY OF MIAMI BEACH, FLORIDA
AND
TESLA, INC.**

**TO INSTALL, OPERATE AND MAINTAIN SELF-SERVICE ELECTRIC VEHICLE
SUPERCHARGER STATIONS AT CERTAIN CITY MUNICIPAL PARKING FACILITIES**

THIS CONCESSION AGREEMENT (the "Agreement") made on _____, 2018 ("Effective Date"), between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (hereinafter called the "City"), and **TESLA, INC.**, a Delaware corporation, authorized to do business in Florida, with offices at 3500 Deer Creek Road, Palo Alto, California 94304 (hereinafter "Tesla").

WITNESSETH

WHEREAS, On October 18, 2017, the Mayor and City Commission adopted Resolution No. 2017-30048, accepting the recommendation of the Finance and Citywide Projects Committee for Tesla to install, operate, and maintain supercharger stations at certain City Municipal Parking Facilities at the sole expense of Tesla; authorizing the City Manager to negotiate an agreement with Tesla; and further authorizing the Mayor and City Clerk to execute an agreement with Tesla, acceptable to the City Manager and City Attorney; and

WHEREAS, On _____, the Mayor and City Commission adopted Resolution No. 2019-_____, approving, in substantial form, the following non-exclusive Agreement, permitting Tesla, at its sole cost and expense, to install, operate, and maintain self-service electric vehicle supercharger stations ("EV Stations"), for public use on certain municipal parking spaces within City parking facilities; which parking spaces may be jointly used for parking by the general public and for electric vehicle charging services by Tesla vehicles (the "Program"); and

WHEREAS, the "EV Station" shall consist of: (a) necessary utility infrastructure, which may include a utility transformer, metering equipment, conduit, wiring and concrete pads (collectively, the "**Infrastructure**"); and (b) certain trade fixtures as determined by Tesla, which shall include charge posts ("**Superchargers**"), power electronics equipment, switchgear and signage, and may also include, without limitation, fence or other visual barriers, a canopy, solar panels and an energy storage system (collectively, the "**Trade Fixtures**") (The Infrastructure and Trade Fixtures shall be collectively referred to herein as the "**EV Station**"); and

WHEREAS, except for those responsibilities expressly set forth in this Agreement for, respectively, the City Commission and/or the City Manager, the City Contract Manager for purposes of this Agreement shall be the City of Miami Beach Parking Director; and

WHEREAS, the City and Tesla have negotiated the following Agreement, as more particularly set forth herein; and

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt

and adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:

The above recitals are true and correct and are incorporated herein by reference as part of this Agreement.

SECTION 1. TERM.

- 1.1 The Possession Date shall be defined as the first date Tesla may enter the Concession Area(s) on a City Property (as defined in Section 2) to begin installing the EV Stations on the City Property, as more particularly set forth on **Exhibit A**. Tesla will not be provided with possession of the Concession Area(s) until such time as Tesla complies with the Conditions Precedent to Possession, described in Section 3.3.
- 1.2 **Term and Termination due to Tesla's Failure to Perform the Initial Installation for each City Property.** The term (the "Term") of this Agreement shall be staggered for a period of nine (9) Contract Years for each City Property, commencing on the first date that the first EV Station on a City Property is open to the public (the "Commencement Date"); however, the Commencement Date shall be no later than within one hundred eighty (180) days following the Possession Date or three hundred sixty-five (365) days following the Effective Date, whichever occurs first (the "Installation Period"). The Installation Period may be extended by the City Manager, in writing in the City Manager's sole option and discretion; provided that Tesla requests such extension, in writing, at or around the time of an event of delay, and demonstrates, to the reasonable satisfaction of the City Manager, that a delay in the installation was caused as a result of force majeure events or other requirements beyond Tesla's control, despite the best efforts of Tesla.
- 1.3 If Tesla fails to complete the installation of all the EV Stations approved for a Concession Area within a City Property during the Installation Period, the City Manager, in the City Manager's sole option and discretion, shall have the right to terminate the City Property or Concession Area from the Agreement; following which, the City shall be discharged from any and all liabilities, duties and terms arising out of, or by virtue of, such City Property or Concession Area under this Agreement. Upon such termination by the City, Tesla will perform the Removal Process of the EV Stations from the terminated Concession Area(s) or City Property in accordance with Section 15.7 of the Agreement.
- 1.4 For purposes of this Agreement, the first "Contract Year" shall be defined as commencing on the Effective Date and thereafter continuing for twelve (12) full calendar months, ending on the last day of the 12th full calendar month. Thereafter, each subsequent Contract Year shall be defined as that certain 365 day period commencing on the first day of the calendar month following the end of the prior Contract Year.

SECTION 2. CONCESSION SERVICE ZONE AND CONCESSION AREA(S).

The City hereby grants to the Tesla the non-exclusive right, during the Term of this Agreement, to operate the Program, as described herein, generally, in the following Concession Service Zone and, specifically, upon the following Concession Areas (hereinafter such areas shall be referred to individually as a Concession Area, or collectively as the Concession Areas):

- 2.1 **Concession Service Zone.**

The Concession Service Zone shall be defined as those certain municipal parking facilities (individually referred to as a “City Property” or collectively as “City Properties”), where the EV Stations may be installed, as more particularly delineated in **Exhibit A** incorporated herein by reference and attached hereto. Any modification to the list of Properties contained in the Concession Service Zone shall be subject to the prior written approval of the City Commission, in its sole and absolute discretion.

2.2 Concession Area(s).

The Concession Areas shall be defined as the actual parking spaces where the EV Stations will be installed, other areas on the City Properties, or other areas in City-owned properties which are in close proximity to the City Properties, as designated by the City Manager or Contract Manager, in his or her sole discretion, to be used on a non-exclusive basis for the Program. Notwithstanding the foregoing, the City grants to Tesla control of the Concession Area(s) for the construction, alteration, maintenance, repair, replacement and removal of the EV Stations at the City Properties identified in **Exhibit A**. As used in the foregoing sentence, “control” of the Concession Areas shall mean Tesla’s right to restrict access to the Concession Areas, from time to time, for the foregoing purposes for a period not to exceed sixty (60) days (“Permitted Obstruction Period”). Except as related to the removal process described in Section 15.7, any parking spaces obstructed for more than the Permitted Obstruction Period during Tesla’s control of the Concession Areas shall be subject to the maximum daily parking rate at the time. Tesla shall be responsible for payment of said accrued parking fees. Within thirty (30) days from the Effective Date of the Agreement, the City Manager or Contract Manager shall approve, in writing, a site plan containing a list of the initial Concession Areas, as more particularly described and depicted in **Exhibit A** hereto. Any change in the location of the Concession Areas shall be subject to the prior written approval of the City Manager, in the City Manager’s sole and absolute discretion.

SECTION 3. USE(S).

3.1 Electric Vehicle Charging Services.

The City herein approves the type of EV Station for the operation of the Program as defined and described in **Exhibit B** hereto. During the Term of this Agreement, any alterations to the design plans or EV Stations shall be subject to the prior written approval of the City Manager and Tesla shall perform any alterations, at its sole cost and expense. Notwithstanding the above, the City and Tesla hereby acknowledge and agree that the City’s approval in Section 2 above, as to the Concession Areas, and the type of charging station described in **Exhibit B** is given by the City solely in its proprietary capacity, and not in its regulatory capacity. **Notwithstanding such proprietary City approval, Tesla acknowledges and agrees that proposed locations of a Concession Area or the location of an EV Station (as defined in Subsection 11.1), within an approved Concession Area, may also trigger and require review and approval by one (or more) of the City’s regulatory bodies. Accordingly, in such circumstances, Tesla shall be required, at its sole cost and expense, to obtain any and all required final, non-appealable development approvals and/or orders prior to implementation of said EV Station in the approved Concession Areas.**

3.2 Design, Permitting, Delivery, Acceptance and Installation of EV Stations.

3.2.1 Tesla shall provide, at its sole cost and expense, any and all design services including, but not limited to, architectural and engineering services, as reasonably required in connection with the permitting, approval, and installation of the EV

Stations. Tesla herein warrants and represents to the City that any architects utilized by Tesla shall be duly licensed and admitted to practice architecture in the State of Florida pursuant to Chapter 481, Florida Statutes, and additionally possess the requisite occupational licenses from the City and the County. Any and all engineers required herein shall also be duly licensed and certified by the State of Florida to engage in the practice of engineering in Florida.

3.2.2 Tesla agrees to secure, at its sole cost and expense, all required approvals from all governmental authorities having jurisdiction over the Program, in connection with the permitting, installation, operation and maintenance of the EV Stations.

3.2.3 Tesla shall install, at Tesla's sole cost and expense, the EV Stations. Tesla shall perform all installations and work in such a way as to minimize interference with operation of the City Property. Upon completion of the installation of the EV Stations, the City will perform any required painting and striping of the parking spaces located within the Concession Area. Tesla shall promptly repair any damage to the City Properties caused by Tesla, its agents, contractors or employees while performing Tesla's work at the City Properties.

3.3 Conditions Precedent to Commencing Work.

Tesla acknowledges and agrees that Tesla's work shall only begin at each City Property after: (i) the City Manager approves the design plans for the EV Station; (ii) Tesla obtains the required approvals and permits for the installation of the EV Station from the City in its regulatory capacity; (iii) Tesla obtains the insurance required by this Agreement; and (iv) the parties agree, in writing, on a construction schedule for the installation of the EV Station (collectively, "**Conditions Precedent**"). At a minimum, the schedule shall specify (and include specific milestones and timelines for) the permitting phases; fabrication time; commencement and completion of construction of site work and improvements at Concession Area; commencement and completion of installation; and implementation and set-up date. Said schedule, when completed, shall be attached and incorporated as **Exhibit C** hereto (as approved, the Project Schedule). The Project Schedule, or specific dates and/or milestones therein, may be extended by the City Manager or Contract Manager, in writing, in his or her sole discretion, upon written request from the Tesla, which notice shall state the reason for the request and the anticipated period of time requested.

3.4 Additional Electric Vehicle Supercharging Stations.

Notwithstanding any provisions to the contrary herein, and subject further to approval by the City, which approval shall be at the City Managers sole and absolute discretion, the City shall be solely responsible for determining the need (if at all) for installation of additional EV Stations by Tesla on the City Property, based on usage and operational load. In the event that the City determines, and Tesla agrees, that there is a need for the installation of additional EV Stations on the City Property, the City, in its sole discretion, shall determine the additional Concession Area (or Areas) for such EV Station, (and **Exhibit A** hereto shall be amended accordingly to identify any such additional Concession Area(s).

3.5 City's Request to Relocate EV Station.

At any time during the Term of this Agreement, to the extent that the City requires the relocation of an EV Station to a different location, based upon good cause, such as a result of a City construction project, or in connection with addressing a public health, welfare or

safety issue, as determined by the City Manager, in the City Manager's sole discretion (collectively, "good cause"), the City shall notify Tesla in writing. In such event, the City and Tesla shall cooperate, in good faith, to identify a suitable new location for the Concession Area; however, should the parties not be able to reach an agreement, the decision of the City Manager shall be deemed final. Upon a determination by the City Manager of the new location of the Concession Area, **Exhibit A** shall be amended accordingly. The removal and relocation costs of the EV Station (the "Relocated EV Station") shall be at the City's sole cost and shall be subject to the terms and conditions of Subsection 15.7. The installation of the Relocated EV Station at the new approved Concession Area shall be performed pursuant to the terms of Section 3.

3.6 Price Schedules.

The EV Station rates will not exceed the rates which are customarily charged to Tesla vehicle owners pursuant to Tesla's policies and procedures.

3.7 Ownership of Electric Vehicle Charging Stations.

The EV Stations and all related intellectual property shall remain the sole and exclusive property of Tesla; provided that at the expiration of the Term, at the City's option, as confirmed in writing by the City Manager, the Infrastructure shall become the property of the City and any EV Station which is not removed by Tesla pursuant to Section 15.7 shall be deemed abandoned by Tesla and may be discarded by the City, in the City Manager's sole discretion, without liability to Tesla.

3.8 Collection of Revenue.

Tesla will arrange for and is authorized to collect revenue generated by the EV Stations. Other than parking fees charged to all users of the City Property, the City shall have no right to request or accept payment from Tesla, Tesla Customers or any other third-parties in connection with the use of the EV Stations.

3.9 Session Limits.

The City agrees that Tesla shall be solely responsible for issues relating to session time limits or other charges relating to use of the Concession Area Improvements by any party.

3.10 Utilities.

Tesla agrees to arrange and pay the charges for all Tesla-related utility services provided or used pursuant to this Agreement during the Term including, without limitation, in or on the Concession Areas and Transformer Units. Tesla shall pay directly to the utility company the cost of the installation of any and all such Tesla-related utility services and shall arrange to have the utility service separately metered. The City shall not be responsible for any damages suffered by Tesla in connection with the quality, quantity or interruption of utility service.

SECTION 4. INTEREST; SALES AND USE TAX.

4.1 Interest for Late Payment.

Although there is no consideration being paid by Tesla for the use of the Concession Area(s), any additional amounts which Tesla is required to make to City, which is not paid on or before the respective date provided for in this Agreement, shall be subject to interest at the rate of eighteen percent (18%) per annum, or the maximum interest allowable pursuant to Florida law, whichever is less, from the due date of payment until such time as payment is actually received by the City.

4.2 Sales and Use Tax.

Tesla shall be responsible for payment of any required Florida State Sales and Use Tax due in connection with the operation of the EV Stations.

SECTION 5. (INTENTIONALLY OMITTED)

SECTION 6. (INTENTIONALLY OMITTED)

SECTION 7. INSPECTION AND AUDIT.

Tesla shall maintain its financial records pertaining to its operations herein for a period of three (3) years after the expiration or other termination of this Agreement, and such records shall be open and available to the City Manager or Contract Manager, as deemed necessary by them. Tesla shall maintain all such records at its principal office, currently located at 3500 Deer Creek Road, Palo Alto, CA 94304, or, at the City Manager's request, made available, at Tesla's expense, to a location in Miami Beach, within ten (10) days' notice (written or verbal) from the City.

The City Manager or Contract Manager shall be entitled to audit Tesla's records pertaining to its operations, as often as he deems reasonably necessary throughout the Term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement (regardless of whether such termination results from the natural expiration of the Term or for any other reason). The City shall be responsible for paying all costs associated with such audits.

It is Tesla's intent to stay informed of comments and suggestions by the City regarding Tesla's performance under the Agreement. Upon written notice from the City Manager, Tesla shall meet with the City Manager or Contract Manager to review Tesla's performance under the Agreement for the previous Contract Year. At the meeting, Tesla and City may discuss quality, operational, maintenance and any other issues regarding Tesla's performance under the Agreement.

SECTION 8. TAXES, ASSESSMENTS.

- 8.1 Tesla agrees and shall pay before delinquency all taxes and assessments of any kind levied or assessed upon a Concession Area or the Concession Areas, and/or on Tesla by reason of this Agreement, or by reason of Tesla's business and/or operations of the EV Stations within a Concession Area(s). Tesla will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax by appropriate proceedings diligently conducted in good faith. Tesla may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law. However, if, as a result of such contest, additional delinquency charges become due, Tesla shall be responsible for such delinquency charges, in addition to payment of the contested tax, if so ordered.

Tesla shall also be solely responsible (at its sole cost and expense) for obtaining and maintaining current any applicable licenses or permits, as required for the operations contemplated in this Agreement including, without limitation, any occupational licenses required by law for the proposed uses contemplated in Section 3 and for each Concession Area (if required).

8.2 Procedure If Ad Valorem Taxes Assessed.

If ad valorem taxes are assessed against a Concession Area or the Concession Areas (or any portion thereof) by reason of Tesla's business and/or operations thereon, Tesla shall be solely responsible for prompt and timely payment of same.

8.3 Notice to Tesla.

The City will provide Tesla with notice of any tax notices which it receives which are purported to relate to Tesla's operations.

SECTION 9. COVENANTS.

9.1 City represents that: (a) it is the owner of the City Properties and has the power and authority enter into this Agreement on the terms hereof; (b) it has obtained any required consents to enter into this Agreement; (c) the Property is subject to no conditions, restrictions or covenants incompatible with the permitted use; and (d) this Agreement does not violate any agreement, lease or other commitment by which City is bound.

9.2 Tesla represents that: (a) it has the power and authority enter into this Agreement on the terms hereof; (b) it has obtained any required consents to enter into this Agreement; and (c) this Agreement does not violate any agreement, lease or other commitment by which Tesla is bound.

SECTION 10. HOURS OF OPERATION.

Except as permitted herein, all Concession Areas and operations thereon shall be open everyday of the year, and shall be open to the public 24 hours per day, 365 days per year.

SECTION 11. IMPROVEMENTS MAINTENANCE REPAIR and OPERATION

The Tesla accepts the use of any and all Concession Areas provided in this Agreement "**AS IS**," "**WHERE IS**," and "**WITH ALL FAULTS**," existing as of the Effective Date.

11.1 Improvements.

In addition to the specific procedures set forth in Subsection 3.2 for the design, fabrication, construction, and installation of the EV Stations, Tesla shall also be solely responsible (including cost) and shall pay for the design, fabrication, construction, and installation of any and all EV Stations for each Concession Area, necessary for the operation of the EV Stations, including, without limitation, all site preparation work and the improvements described on **Exhibit B**.

11.2 Maintenance/Repair.

11.2.1 During the Term, Tesla, its employees, agents, contractors and vendors may enter upon a City Property at any time, subject to providing the City's Contract Manager with twenty-four hours prior written or verbal notice, for purposes of installing, inspecting, servicing, and maintaining the EV Stations. The Tesla, at its sole cost and expense, shall install, inspect, service and maintain the EV Stations (as required to operate the Program). Notwithstanding the foregoing, the City shall maintain the parking spaces within the Concession Areas, including the repaving, painting and striping of the parking spaces where a Concession Areas are located.

11.2.2 During the Term, Tesla shall be solely responsible for the day to day operation, and to service, maintain, repair and replacement of the EV Stations, as necessary. Tesla shall maintain the EV Stations, in good condition and proper working order. Tesla shall keep the EV Stations, including all signage installed by Tesla free of graffiti. Many small/light maintenance items may be done on-site by Tesla and/or its approved subcontractors to eliminate or minimize unit downtime, while moderate to heavy maintenance may require the EV Stations to be removed from circulation and serviced at Tesla's repair center.

All damage of any kind to an EV Station shall be the sole obligation of Tesla, and shall be repaired, restored or replaced promptly by Tesla, at its sole cost and expense, to the reasonable satisfaction of the City Manager or Contract Manager. All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work (or equipment) and shall be done in good and workmanlike manner. It shall be Tesla's sole obligation to insure that any renovations, repairs and/or improvements made by Tesla to the Concession Areas comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

11.2.3 Notwithstanding the foregoing, the City shall have the right to temporarily access and/or temporarily restrict access to the Concession Areas to perform routine parking lot maintenance provided that the City shall use commercially reasonable efforts to minimize any impairment to the Program.

11.2.4 The City, at its sole cost and expense, agrees to pay for all garbage disposal generated by its operations.

11.3 Report of Usage and Maintenance.

Tesla shall submit a quarterly usage reports (or as reasonably requested by the City Manager or Contract Manager) reflecting the amount of charge sessions that occur at the EV Station at the Concession Areas listed on **Exhibit A**.

Additionally, upon the request of the City Manager or Contract Manager, Tesla shall submit a quarterly (or at such greater intervals, i.e. biannually or annually, as requested by the City) maintenance report reflecting routine maintenance performed on the Concession Area Improvements, including any repairs performed on any of the EV Stations.

11.4 No Dangerous Materials.

Except for hazardous materials in compliance with applicable environmental law, Tesla agrees not to use or authorize the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida, on or within any of the Concession Areas, or on any City property and/or right of way.

Tesla shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tesla of any "hazardous substance" or "petroleum products" on, under, in or upon the Concession Areas as those terms are

defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder, to the extent caused by Tesla, its agents, employees or contractors, or caused by the use and operation of the EV Station. The provisions of this Subsection 11.3 shall survive the termination or earlier expiration of this Agreement.

11.5 Security.

The Tesla shall be responsible, at its sole option, to employ or provide reasonable security measures, as it may deem necessary to protect the Concession Area and any Concession Area Improvement thereon. Tesla shall not employ any recorded video surveillance without the prior written approval of the City Manager.

Under no circumstances shall the City be responsible for any stolen or damaged Concession Area Improvement, nor shall the City be responsible for any stolen or damaged personal property of Tesla's employees, contractors, agents, patrons, guests, invitees, and/or other third parties.

11.6 Inspection.

The Tesla agrees that any Concession Area (including, without limitation, any Concession Area Improvement thereon) may be inspected at any time by the City Manager or Contract Manager, or by any other municipal, County, State officer, or officers of any other agency(ies) having responsibility and/or jurisdiction for inspections of such operations.

11.7 Signage.

Tesla shall provide, at its sole cost and expense, any signs utilized for its Program. Upon installation of the EV Station, Tesla shall have the right to install signage in the Concession Area or Areas and on the City Property identifying the Concession Area Improvement as an "EV Supercharging Station;" with such signage to be substantially in the form attached hereto as **Exhibit B**. Notwithstanding **Exhibit B**, all signage and postings by Tesla shall be subject to the written approval, of the City Manager, in the City Manager's sole and absolute discretion, as to size, shape and placement of same, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Tesla shall pay all costs and expenses associated with the approvals, creation, installation, maintenance and removal of all signage.

Tesla shall ensure the EV Station is clearly marked with Tesla's or a designated contact party's information for complaints, notification and service issues.

City shall be responsible to provide, at its sole cost and expense, and as (or if) it deems necessary, in its sole and reasonable judgment and discretion, any traffic, regulatory or public safety signs, whether related directly or indirectly to the Program.

SECTION 12. INSURANCE.

- 12.1** Tesla shall not commence any work and/or services under this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City's Risk Manager. The maintenance of proper insurance coverage is a material element of the Agreement. Tesla shall carry and maintain the following insurance coverages during the Term of this Agreement:

12.1.1 Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440, and Employer Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

12.1.2 Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate.

12.1.3 Automobile Liability Insurance covering any automobile, if vendor has no owned automobiles, then coverage for hired and non-owned automobiles, with limit no less than \$1,000,000 combined per accident for bodily injury and property damage.

12.1.4 Installation Floater Insurance against damage or destruction of the materials or equipment in transit to, or stored on or off the Project Site, which is to be used (installed into a building or structure) in the Project. *(City of Miami Beach shall Named as a Loss Payee on this policy, as its interest may appear. This policy shall remain in force until acceptance of the project by the City.)*

12.1.5 Excess Liability Insurance in an amount no less than \$3,000,000 per occurrence. The excess coverage must be as broad as the primary General Liability coverage.

12.2 Additional Insured - City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the contractor's insurance.

12.3 Notice of Cancellation - Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

12.4 Waiver of Subrogation – Vendor agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

12.5 Acceptability of Insurers – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

12.6 Verification of Coverage – Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the

right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

CERTIFICATE HOLDER MUST READ:

CITY OF MIAMI BEACH
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 – ECM #35050
New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

Certificates-miamibeach@riskworks.com

12.7 Special Risks or Circumstances - The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

12.8 Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

12.9 Termination upon Destruction of Concession Area(s). Any destruction of the EV Stations or Concession Area shall, at City's or Tesla's written election, within thirty (30) days of such destruction, terminate this Agreement. In the event of any partial damage or destruction of the Concession Areas that does not result in the termination of this Agreement, then Tesla shall repair, restore, rebuild, or replace the EV Stations, and all proceeds from the insurance required to be maintained by Tesla shall be made available to Tesla in connection with such repair and restoration. Any repair and restoration to be made by Tesla under shall commence only after the City restores the Concession Areas to the condition in which it existed prior to the Effective Date, ordinary wear and tear excepted.

SECTION 13. INDEMNITY.

13.1 In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and except to the extent of any third party claim arising from the gross negligence or intentional misconduct of the City, Tesla shall indemnify, hold harmless and defend the City, its officials, directors, members, employees, contractors, agents, and servants from and against any and all actions (whether at law or inequity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from third party claims related to: (1) wholly or in part from the negligent acts, errors, omissions or other misconduct of Tesla, its officers, director, members, employees, agents, contractors, subcontractors in connection with this Agreement; (2) Tesla's breach of the terms of this Agreement or its representations and warranties herein; (3) the operation of the Program; or (4) the use of the EV Stations. To that extent, Tesla shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals.

SECTION 14. FORCE MAJEURE.

- 14.1 Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:
- a. Any act or chain of related acts resulting in destruction, vandalism or theft of the EV Stations or Concession Areas;
 - b. Earthquake; hurricane; flood; act of God; direct act of terrorism; or civil commotion occurring which prevents either party from performing or that renders the EV Stations at the Concession Areas unusable; and
 - c. Any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war which prevents either party from performing or which renders the EV Stations or the Concession Areas unusable.
- 14.2 Labor Dispute.
In the event of a labor dispute which results in a strike, picket or boycott affecting the EV Stations or the Concession Areas, neither party shall be deemed to be in default or to have breached any part of this Agreement.
- 14.3 Waiver of Loss from Hazards.
Each party hereby expressly waives all claims against the other party for loss or damage sustained by such party resulting from any Force Majeure contemplated in Subsection 14.1 and Labor Dispute in Subsection 14.2 above, and each party hereby expressly waives all rights, claims, and demands against the other party and forever releases and discharges the other party, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 15. DEFAULT AND TERMINATION.

Subsections 15.1 through 15.4 shall constitute events of default under this Agreement. An event of default by Tesla shall entitle the City to exercise any and all remedies described as City's remedies under this Agreement, including but not limited to those set forth in Subsection 15.5, provided that the City and Tesla acknowledge and agree that an event of default at one City Property will not impact all of the City Properties listed on Exhibit A. For the avoidance of doubt, nothing herein shall be interpreted as a cross-default clause.

- 15.1 Bankruptcy.
If either the City or Tesla shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.
- 15.2 Monetary Default.

If any sums and accumulated penalties are not received within ten (10) days after the payment due date, and such failure continues five (5) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract; and may begin procedures to collect the surety bond described in Section 16 herein.

15.3 Non-Monetary Default.

In the event that Tesla or the City fails to reasonably perform or observe the non-monetary covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Tesla cures any default pursuant to this subsection, it shall promptly provide the City Manager with written notice of same.

15.4 City's Remedies for Tesla's Default.

If any of the events of default, as set forth in this Section, shall occur, the City may, after expiration of the notice and cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to give to Tesla a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Tesla; which shall be no less than sixty (60) days from the date of such notice, and on the date so specified, Tesla shall then quit and surrender the Concession Area(s) to City pursuant to the provisions of Subsection 15.7. Upon the termination of this Agreement, all rights and interest of Tesla in and to the Concession Area(s) and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Tesla under this Agreement including, but not limited to, the Surety Bond in Section 16 herein.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Tesla; and/or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Tesla's default.

15.5 (INTENTIONALLY OMITTED)

15.6 If an event of default by the City shall occur, Tesla may, after expiration of the cure periods, as provided above, terminate this Agreement upon written notice to the City. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Tesla specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Tesla shall quit and surrender the Concession Area(s) to City pursuant to the provisions of Subsection 15.7.

- 15.7 Surrender of Concession Areas / Removal by Tesla of Concession Area Improvements. Upon expiration, or earlier termination of this Agreement, Tesla shall surrender the Concession Areas and restore the Concession Areas to the same condition as the Concession Areas were prior to the Effective Date, subject to exceptions for reasonable wear and tear and damage by casualty or condemnation. The City shall grant Tesla the right, upon the expiration or earlier termination of this Agreement, to enter upon the City Property locations, pursuant to an agreed upon schedule ("Removal Schedule"), executed by the parties, for the removal of the EV Stations, Infrastructure, Trade Fixtures and all related intellectual property installed on the City Property; provided that the Infrastructure, or a portion thereof, at the City's option, as confirmed in writing by the City Manager, may become property of the City (collectively, "Tesla's Property"). Tesla shall, at its sole expense and at no charge to the City, remove all of Tesla's Property from the Concession Areas, (1) no later than sixty (60) days after the conclusion of the Term, (or from the date of other termination of this Agreement), or (2) the scheduled removal date as set forth in the Removal Schedule for each City Property location, whichever is later, unless a longer time period is agreed to, in writing, by the City Manager (collectively, the "Removal Period"). Tesla shall coordinate the removal of the Concession Area Improvements with the City and shall also, in conjunction with such removal, at its sole cost and expense, restore the City Property to its original (or better) condition prior to the Effective Date of this Agreement, including repairing any damage caused from such removal (the removal of the Concession Area Improvements and restoration of the Concession Areas shall be collectively referred to herein as the "removal process"). Tesla shall perform the removal process in such a way as to minimize interference with the operation of the City Property. In particular, Tesla shall ensure that, during the removal process, no parking space shall be obstructed for more than sixty (60) days. Any parking space obstructed for more than thirty (30) days shall be subject to the maximum daily parking rate at the time. Tesla shall be responsible for payment of said accrued parking fees.

Tesla's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of any Concession Areas after termination of the Agreement (unless otherwise agreed to pursuant to the signed Removal Schedule) shall constitute trespass by the Tesla, and may be prosecuted as such. In addition, the Tesla shall pay to the City One Thousand (\$1,000.00) Dollars per day per Concession Area as liquidated damages for such trespass and holding over.

- 15.8 Substitute Performance. In the event that the Tesla fails to properly perform the removal of Tesla's Property during the Removal Period and restoration of the Concession Areas in accordance with the terms of the Agreement, then the City shall have the right to undertake and/or purchase, as the City Manager deems appropriate, any such supplies, materials, services, etc., covered herein and to charge Tesla for all actual costs thereby incurred by the City in connection with performing the removal process on behalf of Tesla. Tesla shall be responsible for paying all of said costs.

SECTION 16. SURETY BOND OR ALTERNATE SECURITY.

Tesla shall, within thirty (30) days from Effective Date, furnish to the City Manager or Contract Manager a Surety Bond in the penal sum stated below for the payment of which Tesla shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Surety Bond, in the amount of Thirty Thousand (\$30,000.00) Dollars, shall be provided by Tesla in faithful

observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager or Contract Manager, in his sole and reasonable discretion. The form of the Surety Bond or alternate security shall be approved by the City's Chief Financial Officer. In the event that a Certificate of Deposit is approved, it shall be a Thirty Thousand (\$30,000.00) Dollar one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by the City's Chief Financial Officer. Tesla shall be so required to maintain said Surety Bond or alternate security in full force and effect throughout the Term of this Agreement. Concessionaire shall have an affirmative duty to notify the City Manager or Contract Manager, in writing, in the event said Surety Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Tesla, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

Notwithstanding the foregoing, in the event that the Program is expanded, through the addition of EV Stations or City Properties, the City may require that the amount of the Surety Bond be increased, proportionately, by \$3,000 per additional parking space added to the Agreement.

SECTION 17. ASSIGNMENT.

Tesla shall not mortgage, pledge, hypothecate or otherwise transfer or assign all or any portion of its costs or obligations under this Agreement without the prior written consent of the City Manager, in the City Manager's sole discretion. Tesla shall notify the City Manager of any proposed assignment, in writing, at least sixty (60) days prior to the proposed effective date of such assignment. In the event that any such assignment is approved by the City Commission, the assignee shall agree to be bound by all the covenants of this Agreement required of Tesla. Notwithstanding the foregoing, Tesla may transfer this Agreement to a Permitted Tesla Affiliate without the City's consent. A "**Permitted Tesla Affiliate**" means an entity which is controlled by Tesla, Inc, where "control" means that more than fifty percent (>50%) of the controlled entity's shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by Tesla, Inc.

In the event of a sale or transfer of all or a portion of City's interest in the City Properties while this Agreement is in effect, Tesla's rights shall be conveyed with the City Property and the City warrants that any transferee shall be bound by all terms and conditions of this Agreement and shall obtain any necessary documents to confirm such assignment.

SECTION 18. SPONSORSHIPS AND PUBLICITY.

The City reserves unto itself all present and future rights to negotiate all forms of endorsement and/or sponsorship agreements based on the marketing value of any City trademark, property, brand, logo and/or reputation. Any and all benefits derived from an endorsement and/or sponsorship agreement based on the marketing value of a City trademark property, brand, logo and/or reputation, shall belong exclusively to the City. Tesla shall be specifically prohibited from entering into, or otherwise creating any, sponsorships and/or endorsements with third parties which are based solely or in any part on the marketing value of a City trademark, property, brand, logo and/or reputation.

It is further acknowledged that the name, likeness, equipment, concepts, logos, designs and other intellectual property rights of Tesla shall remain in the exclusive possession and control

of Tesla at all times; and neither party will use the other party's name, trademark or logo for promotional purposes or otherwise without obtaining the other party's written consent.

SECTION 19. NO ADVERTISING/PROMOTIONAL ASSISTANCE.

19.1 **No Advertising.**

Tesla understands that City of Miami Beach regulations strictly prohibit Tesla from advertising on any part of the Concession Area or EV Stations, and expressly agrees not to conduct any advertising hereunder unless expressly approved in writing by the City Manager, in the City Manager's sole and absolute discretion.

19.2 **Promotional Assistance.**

The City and Tesla agree to make good faith efforts to promote the use of EV Stations within the City of Miami Beach under the terms of this Agreement. Any placement of advertisement or other form of promotion of the Program, including City Property locations which are the subject of the Program, shall be subject to the prior written approval of the City Manager and Tesla. Tesla will provide the City with their approved promotional materials which the City, upon the approval of the City Manager, will be permitted to disseminate. Notwithstanding the foregoing, the City shall be permitted to list the location of the Tesla EV Stations on its public media forums, including, without limitation, the City web page, magazine and TV station.

SECTION 20. (INTENTIONALLY OMITTED)

SECTION 21. NOTICES.

Any notice required to be given or otherwise given pursuant to this Contract shall be in writing and shall be hand delivered, mailed by certified mail, return receipt requested or sent recognized overnight courier service as follows:

If to TESLA:

Tesla, Inc.
3500 Deer Creek Road
Alto, California 94304
Attn: Supercharger Team

If to the CITY:

City of Miami Beach Parking Department
c/o Parking Director
1755 Meridian Avenue, Suite 200
Miami Beach, Florida 33139

With copy to

City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL. 33139
Attention: City Manager

Notwithstanding the foregoing, the City expressly authorizes Tesla to notice its designated Contract Manager, City of Miami Beach Parking Director, with a mailing address of 1755 Meridian Avenue, Suite 200, Miami Beach, Florida 33139, (hereinafter "Manager") with regard to all matters

pertinent to this Agreement, except with respect to any alleged defaults, which will require notice to the parties set forth in section 15.

SECTION 22. LAWS.

22.1 Compliance.

Tesla shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations, including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.

22.2 Governing Law.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any civil action arising in any way from this Agreement or the activities of the parties under this Agreement shall be brought only in a court of competent jurisdiction located in Miami-Dade County, Florida.

22.3 Equal Employment Opportunity.

Neither Tesla nor any affiliate of Tesla performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability (as defined in Title I of ADA). Tesla will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

22.4 No Discrimination.

Tesla agrees that there shall be no discrimination as to as to race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, marital and familial status, or age, or handicap, in the operations referred to in this Agreement; and, further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Concession Areas. All operations and services offered in the Concession Areas shall be made available to the public, subject to the right of the Tesla and the City to establish and enforce reasonable rules and regulations to provide for the safety, orderly operation, and security of the Concession Areas and EV Stations and Infrastructure thereon.

Tesla, by executing this Agreement, certifies that it will comply fully with Chapter 62, of the Miami Beach City Code entitled "Human Relations", as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial

SECTION 23. MISCELLANEOUS.

23.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Tesla.

23.2 Modifications.

This Agreement cannot be changed or modified except by Agreement in writing executed by all parties hereto. Tesla acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where

such authority has been expressly provided herein to the City Manager or Contract Manager.

23.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and Agreements of whatsoever nature or kind existing between the parties with respect to Tesla's operations, as contemplated herein.

23.4 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

23.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

23.6 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

23.7 Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified shall.

23.8 Right of Entry.

The City, at the direction of the City Manager, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Concession Area(s) for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.

23.9 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the Tesla, that it is a Tesla and not a lessee; that the Tesla's right to operate the concession shall continue only so long as this Agreement remains in effect.

23.10 Procedure for Approvals and/or Consents.

In each instance in which the approval or consent of the City Manager or Contract Manager is allowed or required in this Agreement, it is acknowledged that such authority has been expressly provided herein to the City Manager or Contract Manager by the Mayor and City Commission of the City. In each instance in which the approval or consent of the City Manager or Contract Manager is allowed or required in this Agreement, Tesla

shall send to the City Manager a written request for approval or consent (the "Approval Request").

The City Manager or Contract Manager shall use reasonable efforts to provide written notice to Tesla approving of consent to, or disapproving of the request, within thirty (30) days from the date of Approval Request (or within such other time period as may be expressly set forth for a particular approval or consent under this Agreement). However, the City Manager or Contract Manager's failure to consider such request within this time provided shall not be deemed a waiver, nor shall Tesla assume that the request is automatically approved and consented to. The City Manager or Contract Manager shall not unreasonably withhold such approval or consent. This subsection shall not apply to approvals required herein by the Mayor and City Commission.

23.11 No Waiver.

It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect. A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

The receipt of any sum paid by Tesla to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as rent, unless such breach be expressly waived in writing by the City.

23.12 No Third Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, including, but not limited to subcontractors, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

23.13 No Lien.

In the event any notice or claim of lien shall be asserted against the interest of the City on account of or arising from any work done by or for Tesla, or any person claiming by, through or under Tesla, or for improvements or work, the cost of which is the responsibility of Tesla, Tesla agrees to have such notice or claim of lien cancelled and discharged within thirty (30) days after written notice to Tesla by City. In the event Tesla fails to do so, City may terminate this Agreement for cause without liability to City.

SECTION 24. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement placing the operation and management of the Concession Area(s) in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of One Hundred Thousand (\$100,000.00) Dollars. Tesla hereby expresses its willingness to enter into this Agreement One Hundred Thousand (\$100,000.00) Dollars limitation on recovery for any action for breach of contract. Accordingly,

and in consideration of the separate consideration of One Hundred Thousand (\$100,000.00) Dollars, the receipt of which is hereby acknowledged, the City shall not be liable to Tesla for damages to Tesla in an amount in excess of One Hundred Thousand (\$100,000.00) Dollars, for any action for breach of contract arising out of the performance or on-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

SECTION 25. VENUE.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

CITY AND TESLA HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND TESLA MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA(S).

SECTION 26. CONFLICT OF INTEREST.

Tesla agrees to adhere to and be governed by the Miami-Dade County Ethics and Conflict of Interest laws, as same may be amended from time to time, and by the City of Miami Beach Charter and Code, as same may be amended from time to time, in connection with the performance of the Services.

Tesla covenants that it presently has no interest and shall not acquire any interest, direct or indirectly, which would conflict in any manner or degree with the performance of the work and services contemplated in this Agreement. The Tesla further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Tesla.

SECTION 27. FLORIDA PUBLIC RECORDS LAW.

- (A) Tesla shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if Tesla meets the definition of "Contractor" as defined in Section 119.0701(1)(a), Tesla shall:
 - (1) Keep and maintain public records required by the City to perform the service;
 - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119,

- Florida Statutes or as otherwise provided by law;
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Tesla does not transfer the records to the City;
 - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Tesla or keep and maintain public records required by the City to perform the service. If Tesla transfers all public records to the City upon completion of the Agreement, the Tesla shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Tesla and maintains public records upon completion of the Agreement, Tesla shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(D) REQUEST FOR RECORDS; NONCOMPLIANCE.

- (1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify Tesla of the request, and Tesla must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- (2) Tesla's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may avail itself of the remedies set forth under the Agreement and/or any available remedies at law or in equity.
- (3) If Tesla fails to provide the public records to the City within a reasonable time may be subject to penalties under s. [119.10](#).

(E) CIVIL ACTION.

- (1) If a civil action is filed against Tesla to compel production of public records relating to the City's contract for services, the court shall assess and award against Tesla the reasonable costs of enforcement, including reasonable attorney fees, if:
 - a. The court determines that Tesla unlawfully refused to comply with the public records request within a reasonable time; and
 - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that Tesla has not complied with the request, to the City and to Tesla.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to Tesla at Tesla's address listed on its contract with the City or to Tesla's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- (3) If Tesla complies with a public records request within 8 business days after the

notice is sent is not liable for the reasonable costs of enforcement.

- (F) **IF TESLA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TESLA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

CITY OF MIAMI BEACH

ATTENTION: RAFAEL E. GRANADO, CITY CLERK

1700 CONVENTION CENTER DRIVE

MIAMI BEACH, FLORIDA 33139

E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV

PHONE: 305-673-7411

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their Agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

Date: _____

Attest:

TESLA, INC.

Print Name and Title

Print Name and Title

Date: _____

Exhibit A

Concession Service Zones (City Properties), Concession Areas and Possession Dates

1. PENNSYLVANIA AVENUE GARAGE

- a. **Concession Service Zone:** The Program shall be located on the City Property commonly known as the Pennsylvania Avenue Garage, located at 1661 Pennsylvania Avenue, Miami Beach, FL 33139, as depicted below on Paragraph 1d of this **Exhibit A**.
- b. **Concession Area:** ____ () parking spaces shall be outfitted with Superchargers to serve as charging stalls for use by the public to charge Tesla electric vehicles and for general parking ("**Enabled Stalls**").
- c. **Possession Date:** The Possession Date, as defined in Subsection 1.1 shall be _____, 20__.
- d. **Concession Area Depiction:**

[TESLA TO INSERT DEPICTION OF THE CONCESSION AREA]

2. _____

- a. **Concession Service Zone:** The Program shall be located on the City Property commonly known as _____, located at _____, as depicted below on Section 1d.
- b. **Concession Area:** Tesla shall outfit ____ () parking spaces with Superchargers to serve as charging stalls for use by the public to charge Tesla electric vehicles and for general parking ("**Enabled Stalls**").
- c. **Possession Date:** The Possession Date, as defined in Subsection 1.1 shall be _____, 20__.
- d. **Concession Area Depiction:**

[TESLA TO INSERT DEPICTION OF THE CONCESSION AREA]

3. _____

- a. **Concession Service Zone:** The Program shall be located on the City Property commonly known as _____, located at _____, as depicted below on Section 1d.
- b. **Concession Area:** Tesla shall outfit ____ () parking spaces with Superchargers to serve as charging stalls for use by the public to charge Tesla electric vehicles and for general parking ("**Enabled Stalls**").
- c. **Possession Date:** The Possession Date, as defined in Subsection 1.1 shall be _____, 20__.

d. Concession Area Depiction:

[TESLA TO INSERT DEPICTION OF THE CONCESSION AREA]

DRAFT

Exhibit B
EV STATION

Tesla shall install the Supercharger Station on the Concession Area pursuant to the terms of this Agreement and the design plans approved by the City, as more specifically described in Section 3.

The “EV Station” shall consist of: (a) necessary utility infrastructure, which may include a utility transformer, metering equipment, conduit, wiring and concrete pads (collectively, the “**Infrastructure**”); and (b) certain trade fixtures as determined by Tesla, which shall include charge posts (“**Superchargers**”), power electronics equipment, switchgear and signage, and may also include, without limitation, fence or other visual barriers, a canopy, solar panels and an energy storage system (collectively, the “**Trade Fixtures**”) (The Infrastructure and Trade Fixtures shall collectively be referred to herein as the “**EV Station**”).

Exhibit C

PROJECT SCHEDULE

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