

ORDINANCE NO. O-2023- 0024

AN ORDINANCE AUTHORIZING THE EXECUTION A LICENSE AGREEMENT, INCLUDING A LEASE, WITH TESLA, INC. REGARDING THE LEASE AND USE OF AN AREA OF THE DURANGO TRANSIT CENTER PARKING LOT FOR THE INSTALLATION AND OPERATION OF ELECTRIC VEHICLE FAST CHARGING STATIONS AND DECLARING AN EFFECTIVE DATE.

WHEREAS, The City of Durango is the owner of the real property located at 250 West 8th Street in Durango, Colorado, commonly known as the Durango Transit Center; and

WHEREAS, Tesla, Inc. wishes to enter into a license agreement to install, operate, and maintain a Supercharger Station consisting of eight (8) electric vehicle (EV) fast charging stations (“Superchargers”) within a licensed area of said property, together with the right of ingress and egress to the licensed area; and

WHEREAS, Article II, §11(d) of the Charter of the City of Durango, Colorado requires the adoption of an ordinance to convey or lease or authorize the conveyance or lease of any real property owned by the City; and

WHEREAS, City of Durango staff and the City’s Attorney’s Office have reviewed the terms of the license agreement and find it to be a favorable and viable option for expanding EV fast charging within Durango; and

WHEREAS, the Electric Vehicle Readiness Plan adopted by City Council and the Board of Directors of La Plata Electric Association (LPEA) in June of 2021 identifies the goal of expanding electric vehicle (EV) charging infrastructure to incentives and meet the demand of a growing number of electric vehicles owned by residents and visitors; and

WHEREAS, the State of Colorado 2023 EV Plan identifies ambitious goals of EV sales and the recently adopted Colorado Clean Cars standard directs vehicle manufacturers to sell 82% EVs by 2032; and

WHEREAS, Durango sits at the intersection of Highway 160 and Highway 550 which are both are federally designated EV corridors; and

WHEREAS, a public hearing has heretofore been held before the City Council of the City of Durango, and the Council has determined, subsequent to said public hearing, that the proposed license agreement between Tesla, Inc. and the City of Durango under the terms and conditions of the said Agreement, a true and correct copy of which is attached hereto as Exhibit A, would be in the best interests of the citizens of the City of Durango.

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. That the proposed license agreement between Tesla, Inc. and the City of Durango, a true and correct copy of which being attached hereto as Exhibit A, should be and the same is hereby approved.

Section 2. That the City Manager shall have the authority to execute said license agreement.

Section 3. This ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

	CITY COUNCIL OF THE CITY OF DURANGO
Attest:	
<hr/>	<hr/>
City Clerk	Mayor
STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

I, Faye Harmer, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2023-0024 was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the 5th day of December 2023, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the 10th day of December 2023 prior to its final consideration by the City Council.

City Clerk

I further certify that said Ordinance No. O-2023- 0024 was duly adopted by the Durango City Council on the 2nd day of January 2024 and that in accordance with

instructions received from the Durango City Council, said ordinance was published by title only in the Durango Herald on the 7th day of January 2024.

City Clerk

EXHIBIT A

SUPERCHARGER LICENSE AGREEMENT

This License Agreement (this “License”) is effective as of the date it is fully executed (the “Effective Date”) by and between Licensor (as defined below) (“Licensor”) and Tesla, Inc., a Delaware corporation (“Licensee”). Licensor and Licensee are each referred to herein as a “Party” and collectively as the “Parties.” Clause references are to clauses in the Key Terms, and section references are to sections in the General Terms and Conditions (Exhibit B). Exhibit A and Exhibit B are incorporated by reference in this License. In the event of a conflict between the Key Terms and Exhibit B, the Key Terms shall prevail.

Key Terms

- (a)

Licensor

City of Durango, a Colorado Home Rule municipality.
- (b)

Property
(Section 1)

Commonly known as Durango Transit Center, located at 250 W 8th St, Durango, CO 81301 (the “Property”).
- (c)

Licensed Area
(Section 1)

Ten (10) existing parking spaces which will be converted into seven (7) parking spaces, one (1) pull-through space, and eight (8) feet of additional parking width to provide disability access and approximately three hundred (300) square feet of space for equipment on the Property, all as depicted on Exhibit A (the “Licensed Area”).
- (d)

Charging Stalls
(Section 1)

Eight (8) charging stalls.

Parking spaces in the Licensed Area shall be outfitted for charging with DC charge posts (“Superchargers”), of which four (4) shall serve as dedicated charging stalls (“Dedicated Stalls”), and four (4) shall serve as charging stalls that allow general parking for up to thirty (30) minutes (“Enabled Stalls”). Licensee shall have the option to convert Enabled Stalls into Dedicated Stalls on ten (10) days written notice in order to satisfy demand for charging services, subject to Counterparty approval, which shall not be unreasonably withheld, conditioned or delayed. All Superchargers installed in the Licensed Area shall be capable of charging both Tesla and non-Tesla vehicles.
- (e)

Due Diligence Period
(Section 2)

365 days following the Effective Date (“Due Diligence Period”)
- (f)

Commencement Date
(Section 4)

Within 365 days following the end of the Due Diligence Period.
- (g)

Base Term
(Section 5)

Ten years from the last day of the month in which the Commencement Date occurs (the “Base Term”).
- (h)

Renewal Term
(Section 5)

Periods of five years (each a “Renewal Term”).
- (i)

Termination Notice
(Section 5)

At least eighteen (18) months (the “Notice Period”).

- (j)

Rent

Licensee will pay one thousand dollars (\$1,000) per month (the “Rent”) for the Licensed Area in advance on the first business day of each calendar month during the Term. If the Term begins any day other than the first business day of a month, the first rent payment shall include payment for the partial month in which the Term begins, prorated based on the number of days in such month. The Rent shall increase by three percent (3 %) on each anniversary of the Commencement Date. Notwithstanding the foregoing, Rent payments shall begin only after Licens or has completed Licensee’s vendor onboarding documentation, and payments shall be made to the account or address specified in such documents.
- (k)

Charging Reports

Licensee shall deliver to Licens or quarterly reports regarding the usage of the Supercharger Station, which state: (a) the average duration of the charging sessions for said period; and (b) the average number of charging sessions for said period. Notwithstanding anything to the contrary, Licens or agrees that Licensee shall own and continue to hold title and all rights to information provided in such reports, including any anonymized information.
- (l)

Temporary Impairment.

Licensee agrees that Licens or may temporarily restrict access to up to fifty percent (50%) of the charging stalls if necessary to accommodate special events and perform maintenance to the paved portions of the Licensed Area, provided that Licens or shall use commercially reasonable efforts to minimize any impairment of the Licensed Area, and except in the case of snow removal, garbage collection or an emergency, Licens or shall provide Tesla at least thirty (30) days advance written notice stating the date, time, duration and scope of the planned impairment or special event.
- (m)

Relocation

Licens or shall have the right to relocate the Licensed Area at any time during the Term upon at least twelve (12) months written notice to Licensee, provided that (a) the new Licensed Area provides for an equivalent footprint for charging stalls and charging equipment, (b) the new Licensed Area can be supplied with equivalent utility service, (c) the new Licensed Area is similar in terms of ease of access, safety, security, and proximity to amenities and (d) Licens or obtains Licensee’s written approval of the new Licensed Area, which shall not be unreasonably withheld, conditioned or delayed. All costs of relocation shall be borne by Licens or. Licens or shall cooperate with Licensee to ensure the new Supercharger Station is open to the public before the former Supercharger Station is decommissioned. In the event the relocation prevents the foregoing from occurring, then Licens or acknowledges and agrees to provide Licensee with space to set up temporary mobile charging stalls during any downtime between the former Supercharger Station and the new Supercharger Station and Licensee’s Term shall be extended by the amount of days of the delay.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have each caused an authorized representative to execute this License as of the date signed below.

LICENSOR:

City of Durango
A Colorado Home Rule municipality

By: _____
Name: _____
Title: _____
Date: _____

E-mail for notices:
Transportation@durangogov.org

Phone number for urgent issues:
970-375-4940

LICENSEE:

Tesla, Inc.
a Delaware corporation

By: _____
Name: _____
Title: _____
Date: _____

E-mail for notices:
superchargerhost@tesla.com

Phone number for urgent issues:
725-223-2400

EXHIBIT A
Licensed Area

Licensed area represented by red areas shown below.

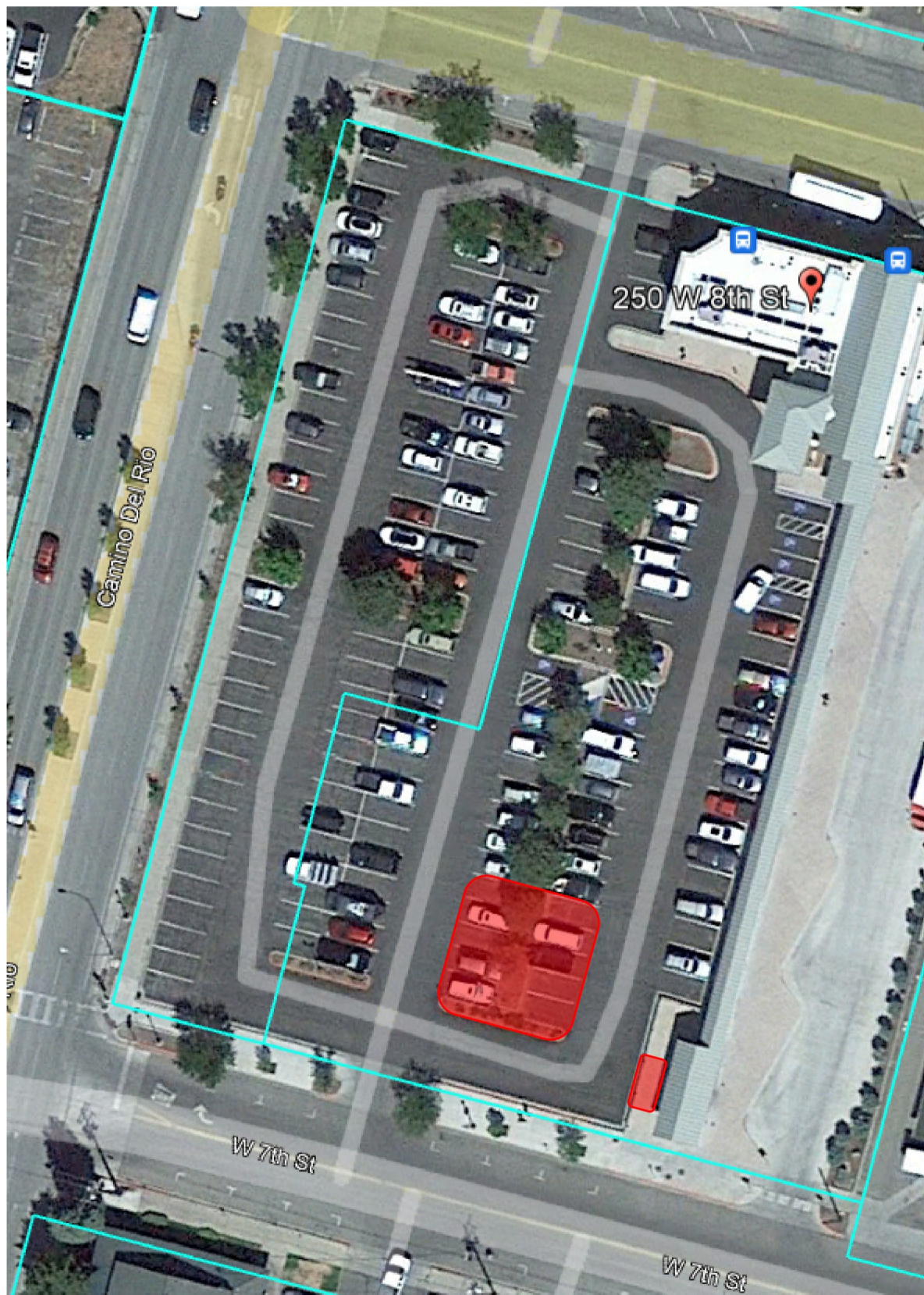


Exhibit B
General Terms and Conditions

1. **Licensed Area.** Licensors hereby grants to Licensee the right to use the Licensed Area pursuant to Section 6, to install, operate and maintain a Supercharger Station (defined below), together with the right of ingress and egress to the Licensed Area. This License shall not create any leasehold interest in the Property.

The “Supercharger Station” shall consist of: (a) Superchargers, Wall Connectors (if indicated in Clause (d)), signage and power electronics equipment to provide charging to the charging stalls described in Clause (d) and other trade fixtures determined by Licensee that may include, without limitation, a canopy, solar panels, an energy storage system and fence or other visual barriers (collectively, the “Trade Fixtures”); and (b) necessary utility infrastructure, which may include, without limitation, a utility transformer, metering equipment, switchgear, conduit, wiring and foundations (collectively, the “Infrastructure”).
2. **Due Diligence Period.** Licensee shall have the option to terminate this License within the Due Diligence Period in the event that: (a) Licensee is unable to obtain all permits and approvals required by applicable governing bodies; or (b) Licensee, in its reasonable business judgment, determines that it would incur substantial unanticipated costs to complete Licensee’s Work (defined in Section 3) or that there is insufficient demand for charging to justify building the Supercharger Station. In the event that Licensee terminates the License pursuant to this Section 2, Licensee shall deliver written notice of termination to Licensors and this License shall be of no further force or effect.
3. **Alterations.** Licensee shall, at its’ sole cost, make alterations to the Licensed Area to install the Supercharger Station (“Licensee’s Work”). Licensee’s Work shall only occur after: (a) Licensors has approved the plans and specifications in writing; and (b) Licensee has obtained all permits and approvals required by applicable governing bodies. Once Licensee’s Work begins, it shall proceed with diligence and continuity until complete. Licensee may upgrade or replace its Trade Fixtures in its sole discretion during the Term, provided that any other alterations to the Supercharger Station shall be approved in advance by Licensors. Licensors’ approval of the plans and specifications shall not be unreasonably withheld, conditioned or delayed. Licensee shall promptly repair any damage to the Property caused by Licensee, its agents, contractors and employees (collectively, “Licensee Parties”) while performing Licensee’s Work. In addition to Licensee’s Work, Licensee shall replace a concrete pad adjacent to Licensed Area with a non-charging parking space; provided that such additional work shall be included on the approved plans and after the completion of such work Licensee shall have no further obligations with respect to such work.
4. **Commencement Date.** The Supercharger Station shall be operational (the “Commencement Date”) within the time period specified in Clause (f) of the Key Terms, provided that such time shall be extended to the extent a delay is due to permitting, utility, or other requirements beyond Licensee’s control. Licensee shall deliver written notice to Licensors promptly following the Commencement Date to confirm such date as the start of the Base Term for recordkeeping purposes.
5. **Term and Termination.** The term of this License shall begin on the Commencement Date and shall expire at the end of the Base Term. Upon expiration of the Base Term, this License shall automatically renew for successive Renewal Terms (Renewal Term(s) together with the Base Term, the “Term”), subject to termination pursuant to this Section 5. Either Party, in its sole discretion and without cause, may terminate this License during any Renewal Term by delivering advance written notice of termination to the other Party specifying a termination date that follows the Notice Period and occurs during a Renewal Term.
6. **Use.** Licensee may use and occupy the Licensed Area during the Term to install, operate and maintain a Supercharger Station and for incidental purposes, which may include generating

photovoltaic electricity and operating an energy storage system, and for any other lawful use (the “Permitted Use”). Licensee is authorized to operate and collect payment for use of the Supercharger Station year round, twenty-four (24) hours per day and seven (7) days per week.

7. **Removal.** On or before the final day of the Term, Licensee shall, at its’ sole cost, remove the Trade Fixtures, leave the Infrastructure in a safe condition, and restore the Licensed Area to the condition that existed as of the first day of the Term, subject to exceptions for reasonable wear and tear. Licensor agrees that the Trade Fixtures are and shall remain the property of Licensee, and the Infrastructure shall become the property of Licensor upon termination of this License (except that Infrastructure upstream of the meter is and shall remain the property of the utility).
8. **Utilities.** Licensee agrees to arrange and pay the charges for all Licensee-related utility services provided or used in or at the Licensed Area during the Term. Licensee shall pay directly to the utility company the cost of installation of any and all such Licensee-related utility services and shall arrange to have the utility service separately metered. Licensor shall not be responsible for any damages suffered by Licensee in connection with the quality, quantity or interruption of utility service, unless the cause of the disruption or damage was Licensor’s gross negligence or intentional misconduct.
9. **Maintenance.** Licensee shall be responsible for maintaining the Supercharger Station at its’ sole cost (including repair and replacement of equipment, as necessary). Notwithstanding the foregoing, Licensor’s normal responsibility to maintain the common areas of the Property shall also apply to the Licensed Area, such as for trash removal, snow removal, repaving and restriping, and Licensor agrees to coordinate with Licensee on maintenance that will prevent the use of the Supercharger Station. If Licensee determines that the Licensed Area needs additional trash cans, or if Licensor requests additional trash cans, Licensee shall provide such trash cans to Licensor at Licensee’s sole cost.
10. **Licensor Covenants.** Licensor represents that: (a) it owns or leases the Property and has the power and authority to enter into this License; (b) it has obtained any required consents to enter into this License; (c) the Property is not subject to any conditions, restrictions or covenants incompatible with the Permitted Use; (d) this License does not violate any agreement, lease or other commitment by which Licensor is bound; (e) it will not lease, license or commit the parking spaces within the Licensed Area to any third party during the Term; and (f) it will not perform or allow excavation in the Licensed Area during the Term without Licensee’s advance written consent, other than superficial repaving.
11. **Default.** It shall be an “Event of Default” under this License if either Party fails to perform or observe any material term or condition of this License and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party, provided, however, that if the nature of such default is such that it cannot reasonably be cured within such thirty (30) day period and the defaulting Party commences to cure within the thirty (30) day period and proceeds with diligence and continuity, then such Party shall have additional time to cure as is reasonably required.
12. **Remedies.** The Parties acknowledge and agree that, if an Event of Default by the other Party has occurred and is continuing, the non-defaulting Party may: (a) terminate this License upon thirty (30) days advance written notice; or (b) exercise any other remedy available at law or in equity.
13. **Exclusions.** Notwithstanding anything herein to the contrary, each Party expressly releases the other from any claims for speculative, indirect, consequential or punitive damages, including, without limitation, any lost sales or profits.
14. **Indemnification.** Except to the extent a claim arises from any negligence or willful misconduct of an Indemnified Party, or any breach or alleged breach of Section 24 by Licensor, Licensee hereby agrees to indemnify, hold harmless and defend Licensor, its directors, officers, managers, members,

employees, agents and representatives (each an “Indemnified Party”) from all losses and liabilities, including court costs and reasonable attorneys’ fees, on account of or arising out of or alleged to have arisen out of any third party claim directly related to: (i) Licensee’s use of the Licensed Area; (ii) Licensee’s breach of this License; or (iii) bodily injury or damage to real or tangible personal property caused by the use of the Trade Fixtures.

15. **Insurance.** Through the duration of this License, Licensee shall maintain commercial general liability insurance with limits of not less than Two Million Five Hundred Thousand US Dollars (\$2,500,000 USD) per occurrence and Four Million US Dollars (\$4,000,000 USD) aggregate for combined single limit for bodily injury or third party property damage. The total limits above may be met by any combination of primary and excess liability insurance. A certificate evidencing such insurance shall be delivered to Licensors upon the execution of this License and upon reasonable request by Licensors. Licensee shall include Licensors as additional insured on its commercial general liability and, if applicable to meet limit requirements, umbrella and/or excess insurance policies, with respect to liability for services provided under this License. Licensee will maintain worker’s compensation insurance in accordance with state and federal law. This requirement may be waived by Licensee if Licensee is a qualified self-insured in the state where the Licensed Area is located. Insurance shall be maintained with responsible insurance carriers with a Best Insurance Reports rating of “A-” or better or through a formal self-insurance mechanism that has either (a) a Best Insurance Reports rating of “A-” or better; or (b) a financial size category of “VI” or higher, provided, that if such self-insurance program does not meet either (a) or (b), then Licensee’s use of self-insurance for the required coverages shall be subject to Licensors’ approval, not to be unreasonably withheld, conditioned or delayed.
16. **Environmental Matters.** Licensors represents and warrants that, to the best of its knowledge, the Licensed Area shall be delivered free of contamination that violates any applicable environmental law. Notwithstanding any provision in this License to the contrary, Licensors agrees that Licensee shall have no liability for any contamination of the Property, unless caused by Licensee Parties. Licensors is responsible for remediating to the extent required by applicable environmental law any contamination not caused by Licensee Parties, including any contamination encountered by Licensee Parties during construction.
17. **Confidentiality.** The Parties agree that the terms of this License and any non-public, confidential or proprietary information or documentation provided to one Party by the other Party in connection with this License are confidential information, and the Parties agree not to disclose such confidential information to any person or entity during the Term and for a period of three (3) years thereafter. Notwithstanding the foregoing, the Parties may disclose information (i) to their respective Affiliates, subcontractors, lenders, employees, financial, legal and space planning consultants, in each case that have a “need to know” such confidential information and have committed to treat the information as confidential under terms no less protective than the terms of this Section 17, provided that the Party disclosing such confidential information shall be liable for any disclosure by such authorized recipients, (ii) as permitted in Section 20, and (iii) as required by law, including but not limited to any public disclosure requests due to Licensors being a public entity subject to the Colorado Open Records Act, Sections 24-72-201 to -206, C.R.S (CORA), provided that prior to releasing this License, Licensors shall promptly notify Licensee to allow Licensee to seek a protective order or other appropriate remedy under CORA to redact certain terms in this License, if permitted by law, before the License is released. “Affiliate” of a Party is an entity that controls, is controlled by or is under common control with that Party, where “control” means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, through ownership of voting securities, by contract or otherwise.
18. **Publicity.** Neither Party will use the other Party’s name, trademark or logo without obtaining the other Party’s prior written consent.

19. **Notices.** All notices, demands and approvals shall be in writing and shall be delivered to the electronic mail addresses provided on the signature page, and shall be deemed given on proof of transmission. Either Party may change their respective address for notices by giving written notice of such new address in accordance with this Section 19.
20. **Incentives.** Licensor agrees that Licensee shall own and receive the benefit of all Incentives derived from the construction, ownership, use or operation of the Supercharger Station, including, without limitation, from electricity delivered through, stored at or generated by the Supercharger Station. Licensor will cooperate with Licensee in obtaining all Incentives, provided that Licensor is not obligated to incur any out-of-pocket costs in doing so unless reimbursed by Licensee. If any Incentives are paid directly to Licensor, Licensor agrees to immediately pay such amounts over to Licensee. “Incentives” means (a) electric vehicle charging or renewable energy credits or certificates, carbon credits and any similar environmental or pollution allowances, credits or reporting rights, (b) rebates or other payments based in whole or in part on the cost or size of equipment, (c) performance-based incentives paid as periodic payments, (d) tax credits, grants or benefits, and (e) any other attributes, commodities, revenue streams or payments, in each of (a) through (e) under any present or future law, standard or program and whether paid by a utility, private entity or any governmental, regulatory or administrative authority. Licensor agrees that Licensee may disclose a redacted copy of this License if necessary to obtain Incentives.
21. **Governing Law.** This License shall be construed and enforced in accordance with the laws of the state in which the Licensed Area is located.
22. **Entire Agreement.** Each Party acknowledges and agrees that it has read and understood this License, and that it represents the entire agreement and understanding of the Parties with respect to the subject matter herein and supersedes all prior agreements, communications, or understandings, whether oral or written, with respect to the subject matter herein.
23. **Assignment.** Licensee shall not assign this License nor sublicense the Premises without the prior written consent of Licensor, which shall not be unreasonably withheld, conditioned or delayed; provided that the foregoing prohibition shall not limit Licensee’s ability to transfer this Agreement to a Licensee Affiliate.
24. **Miscellaneous.** This License may be executed in counterparts, each of which shall be deemed an original and all of which together will constitute one agreement. Electronic signatures and other signed copies transmitted electronically in PDF or similar format shall be treated as originals. If any provision of this License is invalid or unenforceable, the remainder of this License shall not be affected, and each provision shall be valid and enforceable to the fullest extent permitted by law. Any outstanding payment obligations and the terms of Section 17 shall survive termination of this License. This License shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Unless this License is terminated as expressly provided herein, this License shall survive any sale or transfer of Licensor’s interest in the Property or Licensed Area. Each Party shall comply with all applicable codes, laws and ordinances in fulfilling its respective obligations under this License. Licensee shall promptly remove or bond any liens placed on the Property as a result of any claims for labor or materials furnished to Licensee at the Licensed Area. This License is subject and subordinate to all ground or superior leases and to all mortgages which may now or hereafter affect such leases or the Property, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided that Licensee’s rights under this License shall not be disturbed by such subordination so long as no Event of Default by Licensee exists beyond all notice and cure periods. LICENSOR AND LICENSEE EACH WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON OR RELATED TO, THE SUBJECT MATTER OF THIS LICENSE.