



HUNTSVILLE

The Star of Alabama

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 20.z.

Meeting Type: City Council Regular Meeting

Meeting Date: 9/9/2021

Type of Action: Approval/Action

Agenda Type: CITY COUNCIL

Subject:

Resolution authorizing the Mayor to enter into a Supercharger Agreement between the City of Huntsville and Tesla, Inc. (Urban Development)

Account Number:

City Obligation Amount:

Total Project Budget:

Other Comments:

Grant Funded:

Grant Name - Resolution #:

Resolution #:

ATTACHMENTS:

	Description
□	<u>Tesla Res</u>

RESOLUTION NO. 21-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a Supercharger Agreement between the City of Huntsville and Tesla, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as a "Supercharger Agreement between the City of Huntsville and Tesla, Inc." consisting of twelve (12) pages, and the date of September 9, 2021, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 9th day of September, 2021.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 9th day of September, 2021.

Mayor of the City of
Huntsville, Alabama

SUPERCHARGER AGREEMENT

This Supercharger Agreement (this "**Agreement**") is effective as of the date last signed below by and between the City of Huntsville, a municipal corporation under the laws of the State of Alabama ("**the City**") and Tesla, Inc., a Delaware corporation ("**Tesla**"). Tesla and the City are each referred to herein as a "**Party**" and collectively as the "**Parties**."

WHEREAS, Tesla, through the provision of electric vehicle charging services at the Property, will provide value to the City by attracting electric vehicle drivers to the Property; and

WHEREAS, the City is the sole owner of the Property; and

WHEREAS, the City acknowledges the value of having an electric vehicle charging at the Property.

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

1. **CONTACT INFORMATION:**

City:
City of Huntsville
320 Fountain Circle
Huntsville, Alabama 35801
Attention: Legal Department
Phone: 256-427-5000
Email: marion.riley@huntsvilleal.gov

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

With a copy to:
Email: superchargerhost@tesla.com

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

2. **PREMISES:** The City hereby leases to Tesla, and Tesla hereby leases from Counterparty, twelve (12) parking spaces, and approximately 200-400 square feet of space for equipment, all as depicted on Exhibit A attached hereto (the "**Premises**"), in order to build a Supercharger Station (as defined in Exhibit B), subject to the terms of this Agreement. The Premises are located on the property commonly known as MidCity District, located at 5909 University Dr, Huntsville, AL 35806 (the "**Property**").
3. **FOOTPRINT:** A total of twelve (12) parking spaces shall be outfitted with Superchargers (as defined in Exhibit B) to serve as dedicated charging stalls ("**Dedicated Stalls**").
4. **CONSTRUCTION AND ALTERATIONS:** Tesla shall, at its' sole cost, make alterations to the Premises and construct the Supercharger Station ("**Tesla's Work**"). Tesla acknowledges that Tesla's Work shall only begin after: (a) the City has approved the plans and specifications, including equipment locations (the "**Approved Plans**"); and (b) Tesla has obtained all permits and approvals required by applicable governing bodies. Any alterations to the Approved Plans or Supercharger Station shall be approved in advance by the City. The City's approval of the plans and specifications, and

of any alterations to the Approved Plans or Supercharger Station, may be by e-mail and shall not be unreasonably withheld, conditioned or delayed. Tesla shall promptly repair any damage to the Property caused by Tesla, its agents, contractors and employees while performing Tesla's Work.

5. **POSSESSION DATE:** The first date that Tesla may enter the Premises and Property to begin Tesla's Work is two (2) days after the City's approval of the plans and specifications and issuance of the appropriate permits for such work. (the "**Possession Date**").
6. **DUE DILIGENCE PERIOD:** Tesla shall have the option to terminate this Agreement within one hundred eighty (180) days following the Effective Date ("**Due Diligence Period**") in the event that: (a) Tesla is unable to obtain all permits and approvals required by applicable governing bodies; (b) Tesla, in its reasonable business judgment, would incur substantial costs to bring utility services to the Premises or incur other unanticipated costs to construct the Supercharger Station; or (c) the environmental reports obtained by Tesla or delivered to Tesla from the City, if any, reveal environmental contamination at the Property, provided that all such reports shall remain confidential. In the event that Tesla terminates the Agreement pursuant to this Section 6, Tesla shall deliver written notice of termination to the City and this Agreement shall be of no further force or effect.
7. **COMMENCEMENT DATE:** Tesla shall open the Supercharger Station to the public (the "**Commencement Date**") within three hundred and sixty-five (365) days following the Possession Date, provided that such time shall be extended to the extent a delay is due to permitting, utility, or other requirements beyond Tesla's control, or is due to Force Majeure (as defined in Section 33). Tesla shall deliver written notice to the City promptly following the Commencement Date to confirm such date for recordkeeping purposes.
8. **TERM:** The initial term of this Agreement shall begin on the Commencement Date and shall expire five (5) years from the last day of the month in which the Commencement Date occurs (the "**Initial Term**"). Tesla shall have two (2) options to extend the term of this Agreement for an additional five (5) years each (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), upon the same terms contained in this Agreement, provided that no Event of Default (as defined in Section 18) by Tesla exists at the time of extension. Tesla shall exercise the option for each Renewal Term by giving notice to Counterparty no later than thirty (30) days prior to the expiration of the Initial Term or Renewal Term, as applicable.
9. **RELOCATION:** The City shall have the right to relocate the Premises during any Renewal Term, but not the Initial Term, provided that (a) the new Premises provides for an equivalent footprint for charging stalls and charging equipment, (b) the new Premises can be supplied with equivalent utility service, (c) the new Premises is similar in terms of ease of access, safety, security, and proximity to amenities and (d) the City obtains Tesla's written approval of the new Premises, which shall not be unreasonably withheld, conditioned or delayed. All costs of relocation shall be borne by Counterparty. In all relocation scenarios, the relocation plan shall ensure that the new charging station is open to the public before the former charging station is decommissioned.
10. **REMOVAL:** Tesla shall, at its' sole cost, remove the Trade Fixtures (as defined in Exhibit B) promptly following termination of this Agreement and restore the Premises to a condition commensurate with the rest of the Property, subject to exceptions for reasonable wear and tear and damage by casualty or condemnation. The City agrees that all Trade Fixtures and related

intellectual property are and shall remain the personal property of Tesla. The Infrastructure (as defined in Exhibit B) shall be left in a safe condition and shall become the property of the City upon termination of this Agreement (except for Infrastructure that is upstream of the meter, which is and shall remain the property of the utility).

11. **UTILITIES:** Tesla agrees to arrange and pay the charges for all Tesla-related utility services provided or used in or at the Premises during the Term. Tesla shall pay directly to the utility company the cost of installation of any and all such Tesla-related utility services and shall arrange to have the utility service separately metered. The City shall not be responsible for any damages suffered by Tesla in connection with the quality, quantity or interruption of utility service, unless the cause of the disruption or damage was the City's gross negligence or intentional misconduct.
12. **USE:** Tesla shall use and occupy the Premises 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 ("Permitted Use"). Tesla 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.
13. **MAINTENANCE:** Tesla shall be responsible for maintaining the Supercharger Station (including repair and replacement of equipment, as necessary) at its' sole cost, and the City shall have no liability for damage to the Supercharger Station unless caused by the City's gross negligence or intentional misconduct. Notwithstanding the foregoing, the City's normal responsibility to maintain the common areas of the Property shall also apply to the Premises, such as for repaving, restriping, snow removal and garbage collection, and the City agrees to coordinate such maintenance with Tesla pursuant to Section 14. Tesla may, in its discretion and at its sole cost, install security cameras and other equipment to monitor the Premises from off-site.
14. **TEMPORARY IMPAIRMENT:** Tesla agrees that the City shall have the right to temporarily access and/or temporarily restrict access to a portion of the Premises to perform routine parking lot maintenance, provided that the City shall use commercially reasonable efforts to minimize any impairment of the Premises, including, without limitation, by limiting such impairment to times of day and days of the week that are not busy charging periods, and (c) except in the case of snow removal, garbage collection or an emergency, the City shall provide Tesla at least thirty (30) days advance written notice stating the date, time, duration and scope of the planned impairment.
15. **CITY COVENANTS:** The City represents that: (a) it is the owner of the Property and has the power and authority to 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 the City is bound. The City agrees to not take any action that would impair or interrupt the use of the Premises or Supercharger Station, except as permitted in Section 14. The City agrees to notify Tesla within a commercially reasonable time if (x) it has knowledge of third-parties impairing or misusing the Supercharger Station, or (y) it obtains knowledge of a needed repair to the Supercharger Station. If non-Tesla motorists repeatedly park in the Dedicated Stalls, thereby impairing use of the Dedicated Stalls, then the Parties shall reasonably cooperate to allow Tesla to implement an appropriate and effective strategy for preventing such impairment at Tesla's sole cost, which may include, without limitation, alternative signage and painted asphalt.

16. **PAYMENT:** Other than parking fees charged to all users of the Property, the City shall have no right to request or accept payment from Tesla, users of the Supercharger Station or any other third-parties in connection with the Supercharger Station.
17. **SIGNAGE:** Subject to applicable Laws (as defined in Section 35), Tesla shall install signage for the Dedicated Stalls substantially similar to the signage represented in Exhibit B ("Signage"). Any material revisions or additions to the Signage shall be subject to City approval, which shall not be unreasonably withheld, conditioned or delayed.
18. **DEFAULT:** Each of the following shall constitute an "Event of Default" under this Agreement:
 - A. **Breach:** The failure by either Party to perform or observe any material term or condition of this Agreement 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.
 - B. **Bankruptcy; Insolvency:** The appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tesla located at the Premises if possession is not restored to Tesla within sixty (60) days; or a general assignment by Tesla for the benefit of creditors; or any action or proceeding is commenced by or against Tesla under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors and, in the case of actions filed against Tesla, is not discharged within sixty (60) days.
19. **REMEDIES:** The City and Tesla acknowledge and agree that each Party shall have all remedies available at law or in equity if an Event of Default by the other Party has occurred and is continuing. In addition, if an Event of Default by Tesla has occurred and is continuing, then the City, may: (a) continue this Agreement in effect by not terminating Tesla's right to lease of said Premises and thereby be entitled to enforce all City's rights and remedies under this Agreement; or (b) provide thirty (30) days prior notice of termination of the lease should Tesla not provide an Action Plan to rectify any Event(s) of Default under this Agreement.
20. **EXCLUSIONS:** Notwithstanding anything herein to the contrary, each Party expressly releases the other from any claims for, speculative, indirect, consequential or punitive damages, including any lost sales or profits of the other Party.
21. **ASSIGNMENT:** Tesla shall not assign this Agreement voluntarily or by operation of law, or any right hereunder, nor sublet the Premises or any part thereof, without the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed; provided that the foregoing prohibition shall not limit Tesla's ability to transfer this Agreement to a Tesla Affiliate for the ongoing primary use as set forth in this Agreement. "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.

22. **INDEMNIFICATION:**

- A. City: Except to the extent a claim arises from any negligence or willful misconduct of a City Indemnified Party, Tesla hereby agrees to indemnify, hold harmless and defend the City, its Affiliates and their respective directors, officers, managers, members, employees, agents and representatives (each a "**Counterparty 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) Tesla's use of the Premises; (ii) Tesla's breach of this Agreement; or (iii) bodily injury or damage to real or tangible personal property caused by the use of the Trade Fixtures.
- B. Tesla: Except to the extent a claim arises from any negligence or willful misconduct of a Tesla Indemnified Party, to the degree allowed under Alabama law, the City hereby agrees to indemnify, hold harmless and defend Tesla, its Affiliates and their respective directors, officers, managers, members, employees, agents and representatives (each a "**Tesla 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 the City's entry onto the Premises.

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

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

25. **INSURANCE**: Tesla shall carry commercial general liability insurance with limits of not less than Two Million Five Hundred Thousand dollars (\$2,500,000) per occurrence for bodily injury or death and property damage and an umbrella insurance policy with a limit of not less than Five Million dollars (\$5,000,000) per occurrence. The total limits required above may be met by any combination of primary and excess liability insurance. A certificate evidencing such insurance shall be delivered to the City upon the execution of this Agreement and from time to time thereafter as may be requested by the City. Upon request, Tesla shall include the City, and its officers, agents and employees as additional insureds on its commercial general liability and umbrella insurance policies. Tesla will also carry worker's compensation insurance in accordance with state and federal law.

26. **CONFIDENTIALITY AND PUBLICITY:**

- A. Confidentiality: Tesla and the City agree that any non-public, confidential or proprietary information or documentation provided to one Party by the other Party in connection with the terms of this Agreement are confidential information, and the Parties both parties agree not to disclose such confidential information to any person or entity during the Term other than (i) financial, legal and for space planning consultants that have a period of three (3) years thereafter "need to know" such confidential and have agreed to abide by confidentiality terms no less protective than the terms of this Agreement, (ii) as required by law, or (iii) as required due to the City's nature as a public entity.

- B. **Publicity:** Neither Party will use the other Party's name, trademark or logo without obtaining the other Party's prior written consent.
27. **ENVIRONMENTAL MATTERS:** The City represents and warrants that the Premises shall be delivered free of environmental contamination that violates any applicable environmental law. Tesla shall have no liability for any environmental contamination unless caused by Tesla, its agents, employees or contractors. During the Term, The City is responsible for remediating any pre-existing contamination and any contamination not caused by Tesla, its agents, contractors or employees, but only to the extent required by applicable environmental law.
28. **NOTICES:** All notices, demands and approvals shall be in writing and shall be delivered by prepaid first class certified mail, or by a reputable overnight delivery service, to the addresses of the respective Party as specified in Section 1. Notice given by certified mail shall be deemed given on the second business day after deposit in the United States Mail, and any notice given by overnight delivery service shall be deemed given on the next business day after deposit with such overnight delivery service. Copies of notices, demands and approvals shall also be delivered if a "copy to" e-mail or other address is specified in Section 1. Notwithstanding the foregoing, as provided in Section 4, the City may approve the plans and specifications by e-mail. Either Party may change their respective address for notices by giving written notice of such new address in accordance with the provisions of this Section 28.
29. **BROKERS:** Each Party represents to the other Party that it has not dealt with any broker and each Party hereby agrees to indemnify and hold the other Party harmless from all losses and liabilities, including court costs and reasonable attorneys' fees, arising out of any claims for commissions or fees related to any broker, finder or similar person with whom the indemnifying Party has dealt, or purportedly has dealt, in connection with this Agreement.
30. **SALE OR TRANSFER:** In the event of a sale or transfer of all or a portion of City's interest in the Property or Premises while this Agreement is in effect, Tesla's rights shall be conveyed with the Property or Premises 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.
31. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and shall inure to the benefit of the City and Tesla and their respective successors and assigns.
32. **SUBORDINATION:** Subject to Section 15 above, this Agreement is subject to and subordinate to all ground or superior leases and to all mortgages which may now or hereafter affect such leases or the real property of which the Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such ground or superior leases and mortgages; provided that Tesla's rights under this Agreement shall not be disturbed by such subordination so long as no Event of Default by Tesla exists. This Section 32 shall be self-operative and no further instrument of subordination or non-disturbance shall be required by any ground or superior lessor or by any mortgagee, affecting any lease or the Property.
33. **FORCE MAJEURE:** If either Party's performance of its obligations under this Agreement is delayed by Force Majeure, then such Party's time of performance will be extended by a corresponding number of days. As used in this Agreement, "**Force Majeure**" means an act, event, condition or

requirement beyond such party's reasonable control, including, without limitation, labor disputes, governmental restrictions, natural disasters, fire, flood, inclement weather, pandemic, disease or other outbreak of infectious disease or any other public health crisis, inclusive of quarantine, shelter order or similar restrictions on employees or travel, declaration of national, regional or local state of emergency, explosion, embargoes, war, terrorism, civil disturbance or other similar events.

34. **INCENTIVES**: City agrees that Tesla 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. Counterparty will cooperate with Tesla in obtaining all Incentives, provided that Counterparty is not obligated to incur any out-of-pocket costs in doing so unless reimbursed by Tesla. If any Incentives are paid directly to Counterparty, Counterparty agrees to immediately pay such amounts over to Tesla. "**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.
35. **COMPLIANCE WITH LAW**: Each Party shall comply with all applicable codes, laws and ordinances ("**Laws**") in fulfilling its respective obligations under this Agreement. Each Party represents that it is in good standing under the Laws of the state of its organization.
36. **GOVERNING LAW**: This Agreement shall be governed by the Laws of the state where the Premises are located.
37. **WAIVER OF JURY TRIAL**: CITY AND TESLA 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 AGREEMENT.
38. **NON-DISCRIMINATION**: The Parties are against discrimination, harassment and unfair treatment of individuals, and therefore each Party agrees that it shall not discriminate against or segregate any person, or group of persons on account of sex, marital status, sexual orientation, gender identity, disability, race, age, color, religion, creed, veteran status, national origin or ancestry in the performance of their respective obligations in this Agreement, or knowingly permit any such practice by its directors, officers, managers, members, employees, agents, representatives or contractors in connection with this Agreement that is in violation of applicable Laws.
39. **INTERPRETATION**: The headings and defined terms in this Agreement are for reference purposes only and may not be construed to modify the terms of this Agreement. Neither Party shall have the right to unilaterally revoke or terminate this Agreement, unless such revocation or termination is pursuant to the explicit terms of this Agreement.

40. **SEVERABILITY:** If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected, and each provision shall be valid and enforceable to the fullest extent permitted by law.
41. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together will constitute one agreement. Electronic signatures and other signed copies transmitted electronically in PDF or similar format shall be treated as originals.

[Signature page follows.]

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

CITY OF HUNTSVILLE:

a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

TESLA:

Tesla, Inc.
a Delaware corporation

By: _____

Name: _____

Title: _____

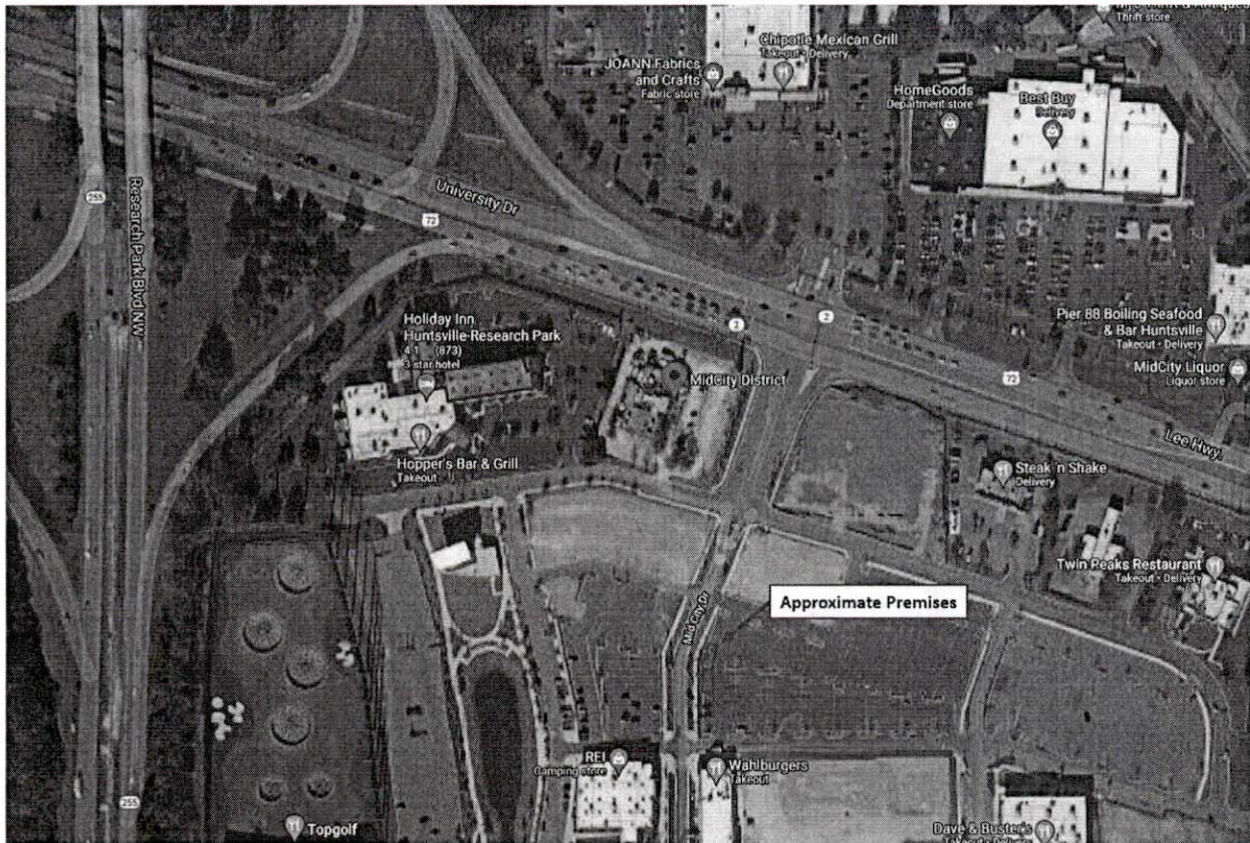
Date: _____

EXHIBIT A

Premises and Property Depiction and Address

Property Address: 5909 University Dr, Huntsville, AL 35806

Premises and Property Depiction:



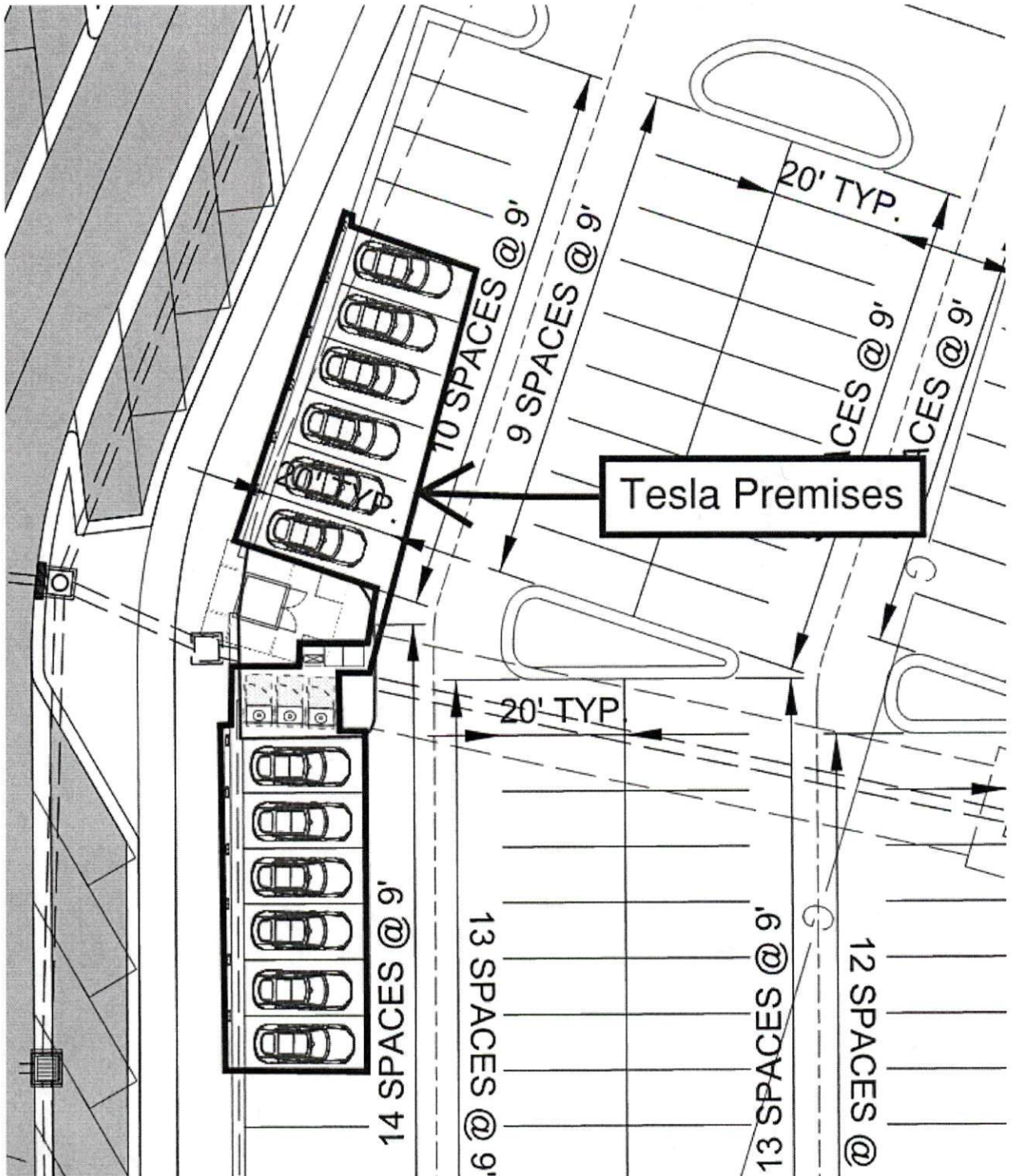


EXHIBIT B**Supercharger Station**

Tesla shall install the Supercharger Station on the Premises pursuant to the terms of this Agreement and the Approved Plans.

The "**Supercharger 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 twelve (12) 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**").

Signage**Dedicated Stall Sign Example**