

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF PERRYVILLE, MISSOURI, TO EXECUTE A CONTRACT BY AND BETWEEN THE CITY AND **BETA TECHNOLOGIES, INC.** RELATIVE TO **ELECTRIC VEHICLE CHARGING STATION HOST SITE AGREEMENT**; FURTHER SAID ORDINANCE SHALL AUTHORIZE AND DIRECT THE CITY CLERK TO ATTEST THE SIGNATURE OF THE MAYOR.

WHEREAS, the Mayor and Board of Aldermen have heretofore reviewed a contract, marked Exhibit A and attached hereto and incorporated herein as if fully set forth; and,

WHEREAS, the Mayor and Board of Aldermen of the City of Perryville, Missouri, deem it advisable to enter into said contract;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF PERRYVILLE, MISSOURI, AS FOLLOWS:

1. That the Mayor and Board of Aldermen of the City of Perryville approve the contract in its substantial form, marked Exhibit A and attached hereto and incorporated herein as if fully set forth between the City of Perryville, a municipal corporation, and **BETA Technologies, Inc.** It is the belief of the Mayor and Board of Aldermen that it is in the best interest of the citizens of the City of Perryville, that the City enters into said contract.

2. That the Mayor be and he is hereby authorized and directed to execute said contract for and on behalf of the City of Perryville, Missouri.

3. That the City Clerk of the City of Perryville is hereby authorized and directed to attest the signature of the Mayor on the attached contract.

4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

5. This ordinance shall take effect and be in force from and after its passage and approval.

FIRST READING: _____.

SECOND READING: _____.

PASSED AND APPROVED this ____ day of _____, 2021, by a vote of ____ ayes,
____ nays, ____ abstentions, and ____ absent.

CITY OF PERRYVILLE, MISSOURI

By: _____
Mayor

ATTEST:

City Clerk

ELECTRIC VEHICLE CHARGING STATION HOST SITE AGREEMENT

This Agreement ("Agreement"), effective as of this ____ day of _____, 2021 (the "Effective Date"), is entered into by and between BETA Technologies, Inc. ("BETA"), a Delaware corporation, having an office and place of business at 1150 Airport Drive South Burlington, VT 05403 and CITY OF PERRYVILLE, MISSOURI, ("Site Owner"), owning the property at 1856 Highway H, Perryville, Missouri 63775 ("Host Site"). Collectively, BETA and the Site Owner are each a "Party" to this Agreement or collectively the "Parties."

WHEREAS, Site Owner desires to have an electric vehicle charging station installed at the Host Site as part of BETA's eVTOL Recharging Network ("Project").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

- 1. Term.** The term of this Agreement begins on the Effective Date and ends ten (10) years after the Station Activation Date. Either Party may at any time terminate this Agreement with or without cause by providing sixty (60) days prior written notice of termination to the other Party.
- 2. Equipment.** One DC Fast Charge Commercial Charging Station ("Station") will be provided to the Site Owner for installation at the Host Site under this Project. Product specifications are provided in Attachment A. BETA will choose the shipping method and cover the cost for standard delivery of the Station to the Host Site. If Site Owner desires expedited delivery, BETA will not be responsible for the payment of any expedited delivery charges.
- 3. Installation.** BETA will select and engage a company ("Installer") to install the electric vehicle charging station at the Host Site. Final electrical connection of the Station to power (the "Station Activation Date") may only be performed by this Installer. Other installation work prior to the final electrical connection of the Station to power can be performed by Installer or the Site Owner in collaboration with the Installer. The Station is not to be removed from its packaging by any person other than the Installer. Some Station protection (bollards, tire stop, curb, or an elevated wall-mount) is required and signage must comply with BETA'S requirements. Responsibilities and Costs are as stated in Section 19. Installer must provide the City of Perryville proof of public liability, property damage, and workmen's compensation insurance. Minimum amounts for public liability and property damage shall be \$1,000,000 per occurrence and \$2,000,000 aggregate with the City of Perryville named as insured. BETA will not permit nor suffer the filing of any mechanics liens against the Host Site and in the event any liens are filed shall promptly cause them to be removed at its own cost and expense.
- 4. Access to Host Site and Station.** The Site Owner shall at all times provide adequate physical and technological access of the Host Site and Station to BETA and the Installer. Such access must be consistent with the purpose of the Project. BETA or the Installer will attempt to give the Site Owner a minimum of 48 hours' notice prior to conducting any visit to the Host Site; however, factors outside of BETA's or the Installer's control may not always permit this.
- 5. Network Access.** Site Owner will receive, for use with the Station provided by this Project, a BETA Network subscription that will expire upon termination of this Agreement. The Site Owner agrees at all times during the term of this Agreement to not interfere with the Station's connection to the BETA Network.
- 6. Access to Information.** Site Owner acknowledges that BETA will be collecting Station usage data, including charge event information, such as when a charge event occurs, energy transferred during the charge event, duration of the plug-in event, and duration of the charging period (collectively "Data"). Site Owner acknowledges that the Data may be used by BETA for any reasonable purposes, including, without limitation, analyzing usage and charging patterns, the effectiveness of infrastructure put in place to meet the needs of drivers of electric vehicles, and the efficacy of the Project. Using the BETA station management software. BETA shall not disclose any non-public personal information related to any third parties who utilize the facility.
- 7. Operation and Maintenance.** Site Owner shall take all commercially reasonable measures to ensure the Station and the facility in which it is located are kept secure, operational, and clean. Site Owner shall promptly call BETA to arrange for the repair of any non-functioning charging port on the Station.
- 8. Publicity.** Site Owner shall provide BETA unlimited rights to take, use and publish photographs of the Station and the Host Site, as well as any information related to the Project, which may be included on printed materials or posted on websites. Site Owner shall not make any public statements regarding this Agreement or the Station without the prior written consent of BETA. All third party tail numbers are to be removed from photographs prior to publishing.

9. **Ownership.** BETA shall at all times retain title ownership to the Station. Site Owner hereby provides BETA with a license to use the Host Site for the Station. BETA shall have all legal rights as a licensee to at any time enter upon the Host Site to evaluate and maintain (or in its discretion remove) the Station.
10. **No Right to Remove, Move or Sell the Station.** The Station may not be sold, encumbered, retired, disposed of, removed or moved by Site Owner from its place of installation, prior to the conclusion of this Agreement, without the prior written consent of BETA.
11. **Failure to Comply with Terms of the Program.** In the event that Site Owner fails to comply with any term in this Agreement, including maintaining all ports on the Station in good operating condition and providing access to the Station to others as agreed upon by the Parties ("Breach"), BETA may provide written notice of Breach and request that the Site Owner address the issue to BETA'S satisfaction in order to comply with the Agreement terms. If Site Owner does not cure a Breach to be in compliance with the Agreement terms within thirty (30) calendar days after receiving a Breach notice from BETA, BETA reserves the right to repossess the Station provided under the Project. In the event of an uncured Breach, the Site Owner shall also be subject to the recapture of funds previously paid by BETA to Site Owner under Section 18. Recapture payments for any charging port placed out of service or due to another uncured Site Owner's Breach under this Agreement shall be calculated per port and pro-rated as follows: $\$4,000 * (\text{expected \# of operational months for the port} - \text{actual \# of months the charging port properly operated}) / \text{expected \# of operational months for the port}$. The expected number of operational months is determined to be the time length between the Station Activation Date and the end of the stated term of this Agreement.

The expected operational months for this Project is 120 months after the Station Activation Date. Site Owner shall indemnify BETA and its officers, directors, agents and employees to the fullest extent allowed by law from and against any and all demands, claims, losses, damages, liability, costs, expenses (including the payment of attorneys' fees and costs actually incurred, whether or not litigation is commenced), judgments or obligations, fines, penalties, assessments, actions or causes of action whatsoever ("Losses"), in each case, to the extent arising from or in connection with use of the Station (whether by Site Owner or another third party), any inaccuracy in any of the representations or warranties made by Site Owner in this Agreement, or any breach or nonfulfillment of any of the covenants, obligations or agreements made by Site Owner in this Agreement. BETA shall indemnify Site Owner and its officers, directors, agents and employees to the fullest extent allowed by law from and against any and all (i) Losses to the extent arising from or in connection with any inaccuracy in any of the representations or warranties made by BETA in this Agreement or any breach or nonfulfillment of any of the covenants, obligations or agreements made by BETA in this Agreement, and (ii) third party Losses to the extent directly caused by product defects in the Station.

IN NO EVENT SHALL EITHER PARTY OR ITS REPRESENTATIVES BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES CALCULATED BASED ON LOST PROFIT OR REVENUES, ARISING OUT OF OR UNDER THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, WITH RESPECT TO LOSSES FOR WHICH INSURANCE COVERAGE IS AVAILABLE, EACH PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS OF RECOVERY FROM THE OTHER PARTY WITH RESPECT TO SUCH LOSSES

12. **No Amendment or Modification.** No modification, amendment or waiver of this Agreement shall be effective unless in writing and either signed by, or electronically accepted by affirmative action of, BETA and the Site Owner.
13. **Waiver.** Either Party's failure at any time to require the other Party's performance of any obligation under this Agreement will in no way affect the full right to require such performance at any time thereafter. Either Party's waiver of a breach of any provision of this Agreement will not constitute a waiver of the provision itself. Either Party's failure to exercise any of its rights provided in this Agreement will not constitute a waiver of such rights. No waiver will be effective unless in writing and signed by an authorized representative of BETA or the Site Owner. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.
14. **Applicable law.** This Agreement will be construed, and performance will be determined, according to the laws of the State of Missouri without reference to such state's principles of conflicts of law. Installation of the Station, and its operation, will be conducted in compliance with all local, state and federal laws and regulations. The Parties agree that any claims or actions initiated pursuant to this Agreement may only be brought in the State of Missouri.
15. **Assignment.** Site Owner may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of BETA, which such consent shall not be unreasonably withheld. Any purchaser of the Host Site must agree in writing to the terms of this Agreement prior to closing of the sale.
16. **Priority.** To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any other Project document, this Agreement shall prevail subordinate to the airport lease.

17. BETA Requirements. The following requirements are imposed upon the Site Owner under and pursuant to the terms of the Project:

- a. BETA may inspect and must approve the proposed location for the installation of Site Owner's Station prior to the installation. Site Owner shall permit reasonable efforts to modify the Host Site in order to accommodate the proper and safe installation of the Station. The following attachments have been reviewed and approved by the Site Owner:
 - i. Attachment B: Site plans and design work, and
- b. Prior to installation, the BETA must also procure:
 - i. Letter of approval for the design package from the governmental authorities having jurisdiction over the Host Site and Station
- c. As part of the Station installation and provisioning, the Site Owner must collaborate with the Installer to obtain:
 - i. Approval from local agencies of the installation prior to provisioning, and
 - ii. Certification by at a minimum one (1) site owner officer or designee that he/she has been trained in the proper and safe operation, care, and use of the Station.
- d. Site Owner acknowledges and agrees that, except as otherwise stated in this Agreement, BETA shall have no liability to the Site Owner relating to the installation and operation of the Station.
- e. Site Owner shall, at its sole cost and expense, throughout the term of the Agreement maintain insurance in the following types and amounts: general liability insurance for bodily injury liability, including death and property damage liability, incurred in connection with the performance of the Agreement, with minimum limits of \$3,000,000 in respect of claims arising out of personal injury, sickness or death of any one person, \$3,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$3,000,000 in respect of claims arising out of property damage in any one accident or disaster.
- f. Site Owner shall permit applicable BETA approved signage with the Station.

18. Margin Sharing. At the conclusion of each calendar year, BETA will compute the margin of the charging Station. This will be calculated by BETA'S revenue minus BETA'S utility bills for the Station. Other expenses such as depreciation, insurance, and marketing will not be included in this margin calculation. During the term of this Agreement, BETA will provide payment to Site Owner equal to 10% of the simple margin actually received for the Station in the prior year.

19. Right to Audit. During the term of this Agreement and not more than once per year Site Owner may audit BETA's margin calculation specific to this Station. The audit rights are limited to expense and revenue records for the Station covered by this agreement for the purpose of Margin Sharing calculation.

20. Responsibilities and Costs. BETA will provide and be responsible for the following items to the Site Owner upon complete execution of this Agreement and BETA'S approval of the Host Site:

- a. One DC Fast Charge Commercial Charging Station outfitted to recharge BETA's ALIA-250 aircraft
- b. BETA network subscription from the Station Activation Date until the end of the term of this Agreement.
- c. Site validation and station activation.
- d. Installation costs including the foundation, trenching, and site work for the placement of the Station and interconnection of the Station to Host Site provided power.
- e. Electricity to operate the station BETA.
- f. At the end of the Term BETA will remove the Station, including its concrete foundations, and restore the installation area to its pre-existing appearance.

To participate in this Project, the Site Owner must provide:

- a. Utility service per Attachment B brought to the Station installation location.
- b. Adequate space for installation per Attachment B.
- c. Unobstructed parking access for users of the Station.

21. Mutual Confidentiality. Neither party to this agreement shall disclose to any third party any confidential or non-public information related to either party. Parties acknowledge that City of Perryville is subject to the requirements of the State of Missouri Sunshine Law.

[Signature page follows]

BETA TECHNOLOGIES, INC.

Site Owner

CITY OF PERRYVILLE, MISSOURI

By: _____
(Signature)

By: _____
Ken Baer, Mayor

Name: _____

Attest: _____
Tracy Prost, City Clerk

Title: _____

Date: _____

Date: _____

ATTACHMENT A
PRODUCT SPECIFICATIONS AND SIGNAGE

ATTACHMENT B
UTILITY AND HOST SITE SPECIFICATIONS