

January 18, 2024

Ms. Hope Knight
President & CEO
Empire State Development
633 Third Avenue – Floor 37
New York, NY 10017

Mr. David Anderson
President
NYCREATES
257 Fuller Road
Albany, NY 12203

RE: Letter of Intent

Dear Ms. Knight & Mr. Anderson:

I am pleased to present on behalf of Tesla, Inc. ("Tesla") the following non-binding, confidential letter of intent ("LOI") to enter into a Thirteenth Amendment to the Amended and Restated Agreement for Research & Development Alliance on Triex Module Technology ("Agreement") or a new successor agreement fully replacing the existing Agreement. Capitalized terms used but not defined in this letter shall have the meanings set forth in the Agreement.

In amending the Agreement or entering into a new successor agreement as described herein, all parties recognize that Tesla neither negotiated nor was an original party to the Agreement and the annual job commitments contained in the Agreement were premised upon the original negotiating party, Silevo, Inc., having unfettered and full access to the consumer markets of New York State. It is further recognized that existing marketplace limitations on Tesla product sales within the State could reasonably and foreseeably prevent the company from meeting the job requirements that would begin on January 1, 2024, under the Agreement.

This LOI is not binding but rather intended to be a guideline for accelerating the negotiations and execution of an amendment or successor agreement(s), if any. As the information contained herein concerns Tesla business decisions related to the deployment of critical computing infrastructure and disclosure of the LOI could cause substantial injury to the competitive position of Tesla, Tesla expects this LOI will receive confidential treatment subject to applicable law and Fort Schuyler Management Corporation's ("FSMC") records access policy, and that FSMC shall be permitted to make disclosures in compliance with, and as contemplated by, the New York Freedom of Information Law.

As described herein, Tesla anticipates that the amendment or successor agreement(s) will contain terms reflecting the following:

NEW INVESTMENT IN GIGAFACTORY NEW YORK MANUFACTURING FACILITY

1. **Tesla Supercomputing Cluster:** Tesla will locate a supercomputing cluster, including its in-house designed and engineered Dojo supercomputer for machine learning, in approximately 100,000 square feet of the Gigafactory New York manufacturing facility. Modification of the facility and construction of the supercomputing cluster site will begin in calendar year 2024, and operation of such supercomputing cluster is anticipated to begin in the spring of 2024.
2. **New Tesla Supercomputing Investment and Spend:** To be contained in Tesla's annual reporting requirements, the amended or successor agreement will reflect that Tesla commits to an additional cumulative investment and spend of \$500 Million in and at the Gigafactory New York manufacturing facility associated with the installation, operation, and maintenance of Tesla's supercomputing capabilities. Tesla will agree that at least \$350 Million of this cumulative investment and spend will occur by December 31, 2025. Tesla further will agree that the remaining \$150 Million of this additional cumulative investment and spend will occur by December 31, 2029.

Tesla's cumulative supercomputing investment and spend at Gigafactory New York will be provided to Empire State Development ("ESD") as a separate requirement and line item on an annual basis in Tesla's required annual reporting under the amended agreement or successor agreement.

Any Tesla supercomputing cumulative investment and spend exceeding \$500 Million will apply toward Tesla's existing \$5 Billion cumulative investment and spend milestones contained in Exhibit G and Section 4.3 of the existing Agreement.

3. **Recognition of Tesla's Commitment to Workforce Development:** It is further recognized by the parties that Tesla, in mutual agreement with ESD, commits to an annual investment of \$250,000 in workforce development programs and activities in New York State, including but not limited to Tesla's Manufacturing Development Program. No Program Payments, penalties, or rent increases of any kind will be applicable or used to enforce this non-binding commitment.

ADJUSTMENT OF TRIEX MODULE AGREEMENT'S CURRENT TERMS

1. **Extension of the Agreement:** The amended agreement or its successor agreement will reflect that Tesla's occupancy of Gigafactory New York, and employment commitments will be extended five years from the current expiration date (December 31, 2029) to December 31, 2034. It is further recognized that the Program Payment provisions contained in the Agreement's Exhibit G, Section 4.4, and elsewhere in the existing Agreement will continue to remain in the place through December 31, 2029. The Program Payment provisions will cease after 2029 and be replaced with the applicable terms described herein. No other Program Payments, penalties, or rent increases of any kind will exist, except as described herein.
2. **Adjustment to Employment and Investment Targets:** The employment and investment commitments contained in Exhibit G and Section 4.4 of the existing Agreement will be modified to reflect that starting

on January 1, 2024, Tesla's annual New York State employment commitment will be 2,750 jobs and, starting on January 1, 2025, 3,000 jobs annually for each subsequent year contained in the amended or successor agreement.

Beginning on January 1, 2024, the annual commitment for jobs in Buffalo, New York, will be modified to reflect a requirement of 1,800 jobs for each subsequent year contained in the amended or successor agreement.

Exclusive of the Supercomputer investment and spend, the cumulative investment and spend milestones contained in Exhibit G and Section 4.3 of the existing Agreement will remain \$5 Billion ending on December 31, 2029.

Consistent with existing ESD guidelines, Tesla's annual reporting on job totals will provide job numbers for each quarter of the reporting year. The amendment or its successor agreement will reflect that ESD may enforce the penalties described therein for failure to meet job commitments consistent with ESD's standard practices including enforcement of penalties only if Tesla fails to achieve at least eighty-five percent of the required annual job commitments for New York State and Buffalo. No penalties will be imposed on Tesla for failing to meet job commitments unless the shortfall has been reviewed by ESD in accordance with its standard procedures including review by its Workout Committee.

- 3. Escalation of Employment Targets:** The amendment or successor agreement's modification of the annual job targets will reflect that the annual New York State employment commitment will escalate by 250 jobs for each time Tesla obtains the right and approval from New York State to license and locate five additional retail sales locations within New York State. This job commitment modification will begin on January 1st of the calendar year after any such right and approval is obtained provided such right and approval occurs prior to October 1st of the preceding calendar year. The total number of additional jobs under this escalation clause will be limited to an increase of 500 additional jobs over the course of the amendment or successor agreement.

ADJUSTMENT OF GIGAFACTORY NEW YORK LEASE TERMS, BASE RENT, AND ADDITIONAL RENT

- 1. Revised Annual Base Rental Payment.** The amendment or successor agreement and modifications to the existing lease between Fort Schuyler Management Corporation and Silevo, LLC, will establish a new annual base rent payment for Tesla's occupation and use of the Gigafactory New York manufacturing facility beginning on January 1, 2024. The amendment or successor agreement and revised lease will reflect annual Tesla rental payments for use and occupancy on the manufacturing facility as follows:

For each calendar year starting January 1, 2024, through the year ending December 31, 2029, the annual base rent payment shall be \$2 Million; *and*

For each calendar year starting from January 1, 2030, through the year ending December 31, 2034, the annual base rent payment shall be \$5 Million.

It is intended that the base rental payments will provide a source of revenue to ensure the continued maintenance and repair of the Gigafactory New York manufacturing facility to the extent such requirement is imposed on FSMC under the existing Agreement, existing and modified lease, and any amendment or successor agreement.

It is expected that, at a minimum, for each year during 2024–2029, at least \$250,000 of the annual rent will be dedicated by ESD to support workforce development initiatives, as determined by ESD. For each year during, 2030–2034, \$1M of the annual rent will be dedicated to support workforce development. This allocation of rental revenue is separate and additional to Tesla's aforementioned workforce development commitment.

It is further recognized that under the amendment or successor agreement, notice will be given that the existing balance of unused funds, as described in the existing Agreement Section 5.1 (c), will be unencumbered, and will remain available to make modifications and improvements to the manufacturing facility and for other purposes consistent with any amendment or successor agreement.

It is further recognized that, beginning on January 1, 2030, the revised lease agreement will reflect that FSMC may accelerate the remaining base rent and additional rental payments and compel Tesla's departure from the manufacturing facility should Tesla be found to have abandoned the manufacturing facility.

2. **Additional Annual Rent Payment for Failure to Meet Supercomputer Investment and Spend:** Should Tesla not obtain the level of additional supercomputing cumulative investment and spend in the time period provided above, the annual base rent payments provided herein will be doubled in each year up until the agreed to levels of supercomputing investment and spend have been met, on a pro rata basis for the time period during which the levels of supercomputing investment and spend were not met. If Tesla meets agreed levels of supercomputing investment and spend later than the timeline indicated above, then the rent will revert to the original rent level (without the increase indicated in this paragraph) as of the date when levels of supercomputing investment and spend were met.
3. **Additional Annual Payment for Failure to Meet Employment Commitments for the Extension Period Covering January 1, 2030 through December 31, 2034:** Subject to ESD's enforcement discretion, should Tesla fail to achieve either of the annual job commitments (Buffalo and New York State) in any calendar year between January 1, 2030, and December 31, 2034, an annual additional rent payment will be calculated using a pro rata rate based upon the larger of the difference between the applicable specific job requirements and the actual number of jobs reported. The additional rent payment will be due the following year using pro rata rate of \$10 Million/3,000 jobs for each job below the existing target for the period during which Tesla has failed to meet the employment commitment. If Tesla meets the employment commitment later than the timeline indicated above, then the rent will revert to the original rent level (without the increase indicated in this paragraph) as of the date when the employment commitment was met. The following examples are provided as illustrative of the application of this provision:

Example 1: Tesla Does Not Meet the Annual New York State Jobs Requirement

- In 2030, Tesla reports over 1,800 Buffalo jobs but only 2,500 NY State jobs. Tesla falls short of 85% (2,550) on the New York State job requirement of 3,000. Tesla's additional rent payment for 2031 would be 500 jobs x \$3333 = \$1,666,500.

Example 2: Tesla Does Not Meet the Annual Buffalo Jobs Requirement

- In 2030, Tesla reports 1,400 jobs Buffalo falling short of 85% of the 1,800 jobs requirement (1,530) but reports over 2,550 jobs in New York State. Tesla's additional rent payment for 2031 would be 400 jobs x \$3333 = \$1,333,200.

Example 3: Tesla Does Not Meet Both the Annual New York State and Buffalo Job Requirements

- In 2030, Tesla reports 1,400 jobs in Buffalo falling short of 85% of the 1,800 requirement (1,530) and only 2,000 total New York State jobs. There is no double counting and the greater of the difference between the two targets is the used to calculate the additional rent increase. Tesla's additional rental payment for 2031 would be 1,000 jobs x \$3333 = \$3,333,300.

Example 4: Tesla Exceeds 85% of Both the Annual New York State and Buffalo Job Requirements

- In 2030, Tesla reports 1,531 jobs in Buffalo and 2,551 jobs in New York State. Tesla will have exceeded 85% of both jobs targets and will not be subject to enforcement and will not be subject to any additional rental payment for 2031.

4. **Other Terms:** This letter is not intended to be a recitation of all material terms of the contemplated transactions, or consents and approvals that may be required to carry out the contemplated transactions (e.g., the consent of the Research Foundation for the State University of New York), and the parties acknowledge that the amendment or successor agreement(s) may reflect, as agreed to by the parties, the amendment, elimination, or addition of new and existing material terms, including but not limited to force majeure, as the parties find necessary to complete such amendment or successor agreement(s). The amendment or successor agreement(s) will not provide for any additional penalties, program payments, or increases in rent beyond what is described in this letter.

ESD COMMITMENT TO FACILITATE RAPID APPROVALS AND PERMITTING: ESD agrees to provide an appropriate state authority having jurisdiction ("AHJ") to facilitate the rapid and efficient permitting as needed to install and place in service supercomputing capabilities and other infrastructure projects at the manufacturing facility and the Riverbend Development Site consisting of approximately 88.24 acres currently described in Exhibits H-1 and H-2 of the existing Agreement. ESD further agrees that such AHJ shall be identified and in place no later than 180 days after execution of the amendment or successor agreement. Tesla's commitment to locate supercomputing capabilities at the Gigafactory New York manufacturing facility is premised upon ESD ensuring rapid and efficient permitting and a State commitment not to unreasonably withhold or delay all approvals, consents, permits, modifications or waivers necessary or appropriate for the construction of Tesla's improvements, the installation of Tesla's supercomputer cluster, and any and all work necessary or appropriate for the operation of Tesla's business or ability to conduct supercomputing use at the Gigafactory New York manufacturing facility.

EFFECTIVE DATE OF THE NEW AGREEMENT: Tesla and ESD agree that the effective date of the amended agreement or successor agreement will begin upon Tesla reporting to ESD that it has purchased and delivered to the Gigafactory New York manufacturing facility, supercomputing equipment, commenced construction of the supercomputing cluster, and achieved an initial cumulative investment and spend associated with the supercomputing report of \$175 Million.

NON-BINDING: Except for the provisions of confidentiality above, this LOI is nonbinding and shall not constitute an offer, acceptance, final proposal, or agreement. This LOI does not contain all the material terms and conditions of any arrangement contemplated hereunder, including those that would be included in the amended or successor agreement(s) if the parties elect to negotiate the amendment or new successor agreement. Each party agrees that it is proceeding with the contemplated amendment or successor agreement(s) at its sole cost and expense, which such terms and conditions shall only be as set forth in any definitive agreement the parties might reach. Neither party will be bound unless and until the definitive agreements, including an amended agreement or successor agreement if any has been duly authorized, including without limitation by the FSMC's Board of Directors, fully executed and delivered by the parties and received by the parties. The submission of this LOI does not constitute a final agreement. Each party waives any right it has at law or otherwise to claim that this LOI is binding or that it relied on this LOI in incurring any cost or taking any action prior to final execution.

This LOI shall be of no further force and effect if not agreed to and accepted by Empire State Development and NYCREATES (as sole member of Fort Schuyler Management Corporation) on or before midnight January 31, 2024.

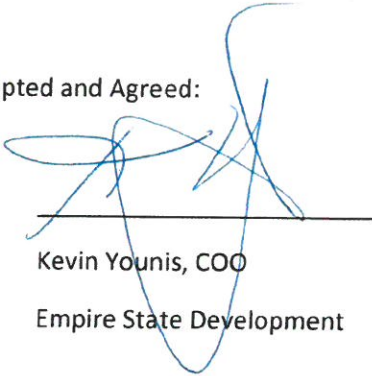
Sincerely,



Rohan Patel
Vice President, Public Policy & Business Development

Accepted and Agreed:

By:

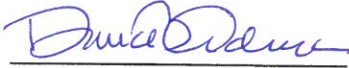


Kevin Younis, COO
Empire State Development

Date:

1/19/2024

By:



NYCREATES

Date:

1/21/2024



May 13, 2024

Jeffrey Munson
Director, Treasury & Capital Markets
Tesla, Inc.
1 Tesla Road
Austin, Texas 78725

Re: Tesla Gigafactory – Buffalo, New York

Dear Mr. Munson:

I am reaching out to you to inquire about the future plans for Tesla's facility in Buffalo following the recent layoffs and reports that Tesla's supercharger unit has been disbanded. The Gigafactory in Buffalo represents a significant investment in the Western New York region, and while to-date Tesla has met all employment and investment commitments required by the various project agreements, the recent layoffs and reports raise concerns about Tesla's plans in Buffalo and New York State.

In order to ensure transparency, I am eager to understand how Tesla intends to move forward and support both the affected employees and ongoing operations of Tesla's New York facilities. As such, I would request that Tesla provide the following information: 1) the number of employees laid-off to-date at all Tesla's New York locations; 2) any efforts to assist or benefits provided to Tesla's displaced workers; 3) the future plans for Tesla's operations in New York and specifically the Buffalo facility, including the status of the supercharger production and other product lines in Buffalo; 4) Tesla's expected full-time employment projections for New York and the Buffalo facility; 5) Tesla's expected investment projections in New York; 6) the status and future plans for the Dojo supercomputer in Buffalo; and 7) any other information that will assist ESD in understanding Tesla's future plans for its New York operations.

I believe it is essential to maintain communication and collaboration to maximize the positive impact of Tesla's presence in New York and would offer to meet with you and your staff concerning the issues raised above. Thank you for your attention to this matter, and I look forward to hearing more about Tesla's future plans in New York.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hope Knight".

Hope Knight
President and CEO

cc: Joseph Mendelson, Senior Counsel (jmendelson@tesla.com)
Shatorah Roberson, Staff Policy Advisor (sharoberson@tesla.com)
Emily Eads, Senior Counsel (eeads@tesla.com)

May 29, 2024

Ms. Hope Knight
President & CEO
Empire State Development
633 Third Avenue – Floor 37
New York, NY 10017

Dear Ms. Knight:

Thank you for Empire State Development's (ESD) continued engagement and interest in Tesla's ongoing performance and investment in its operations both at Gigafactory New York in Buffalo and at other locations throughout New York State. Pursuant to your letter dated May 13, 2024, Tesla appreciates the opportunity to respond to your concerns.

First and foremost, it is important to note that the recent actions cited in your letter were taken by Tesla across all its operations both in the United States and around the world. While these events have unfortunately impacted Gigafactory New York, Tesla wants to assure you that these actions were not directed to any specific condition in New York State or Buffalo. Rather, the recent reductions in headcount were taken to address current market conditions, to improve operational efficiencies across the entire company, and to refocus the company on its future priorities. We are focused on profitable growth, including by leveraging existing factories and production lines to introduce new and more affordable products.

As requested, Tesla provides the following updates responding to the specific questions presented in your correspondence:

1. Number of Employees Laid-off To Date at All Tesla's New York Locations:

Prior to the layoffs, on April 14, 2024, Tesla employed 2,844 people throughout New York State. As of May 23, 2024, Tesla now employs 2,394 people throughout the state. In sum, the layoffs dating from April 17 through May 14, 2024, affected 450 workers.

2. Efforts To Assist or Benefits Provided to Tesla's Displaced Workers:

Consistent with New York State requirements, Tesla filed Worker Adjustment and Retraining Notices (WARN) for the Western New York region on the following dates: April 17, 2024, May 1, 2024, May 3, 2024, May 7, 2024, and May 14, 2024.¹ As these notices provide, 345 workers in total were affected in Western New York. Pursuant to the individual notices, the affected workers will remain on payroll with benefits for such periods ending between July 15, 2024, and August 11, 2024.

After the layoffs become effective, each former employee will be provided severance equating to between eight and twelve weeks of full employment. The length of severance each worker will receive is dependent upon the length of time each individual worker had been employed at Tesla.

3. Future Plans for Tesla's Operations in New York and Specifically the Buffalo Facility, Including the Status of the Supercharger Production and Other Product Lines in Buffalo:

¹ New York State, Department of Labor, WARN Notices, Tesla, available at <https://dol.ny.gov/warn-notice> (last visited May 23, 2024).

Tesla continues to view Gigafactory New York as an essential manufacturing facility supporting the company's future. The recent layoffs have not impacted the use of the facility for the existing and diverse array of products it produces – including remaining the principal location for vehicle charging equipment manufacturing, Solar Roof, various Power Electronics, Cybertruck Powershare² hardware, East Coast vehicle battery remanufacturing, and support for Tesla's autonomous vehicle (full-self driving) program. Additionally, Tesla continues to evaluate opportunities to bring additional manufacturing capabilities to the Buffalo facility.

Gigafactory New York remains the company's manufacturing site for its electric vehicle DC fast charging (DCFC) equipment. While Tesla's deployment strategy for its expansion of the Supercharger network is evolving, the build plans for Gigafactory New York have not changed. The Supercharger manufacturing work continues at its existing cadence and will be further supported by, among other things, the adoption of the North American Charging Standard (NACS) by all major manufacturers of electric vehicles.³ Indeed, Gigafactory New York manufactures the NACS adapters that will enable other OEMs to gain access to the Tesla Supercharger network.

Tesla also notes that earlier this year, the company made substantial investments to build out and open a Tesla Service Center in Buffalo across from Gigafactory New York. This new facility is one of the largest in New York State, remains operational, and the company expects its utilization to grow commensurate with the number of Tesla vehicles deployed in the state.

4. *Tesla's Expected Full-Time Employment Projections for New York and the Buffalo Facility.*

As noted in ESD's letter, Tesla has consistently met and exceeded all the annual employment and investment requirements under its existing agreement with New York State. Currently, Tesla has 2,394 employees throughout New York State with 1,684 of those employees located in Buffalo. Based upon our current and anticipated level of operations, Tesla expects to meet all the requirements under the agreement.

5. *Tesla's Expected Investment Projections in New York:*

As reported for the end of 2023, Tesla had accumulated an investment and spend of almost \$2.3 billion in New York State and Buffalo. This amount totals more than \$780 million over Tesla's existing obligation. Tesla expects its rate of investment in the state to continue to significantly outpace any requirements.

Additionally, as highlighted by Governor Hochul, Tesla has committed to a new investment of \$500M in Gigafactory New York to support deployment of its Dojo Supercomputer.⁴

In the fall of 2023, Tesla also opened its East Coast Regional Distribution Center in Newburgh, NY. The facility supports the company's operations throughout the East Coast (and eventually Europe) with vehicle parts distribution to Tesla service centers and collision centers, and it represents a significant expansion of Tesla's presence in the state.

6. *The Status and Future Plans for the Dojo Supercomputer in Buffalo:*

Tesla's plans and investment for deploying the Dojo Supercomputer in Buffalo remain unchanged. Construction, deployment, and operation of Dojo remains on schedule. The complete system will consist of 8 exapods. The first exapod became operational in early May. Tesla remains on schedule for all 8 of the exapods to be installed and operational by the end of 2024.

² Tesla, Powershare available at <https://www.tesla.com/powershare>

³ See, Motor Trend, The Great NACS Migration: Who Is Switching to Tesla's Charging Port? (Jan. 19, 2024) available at <https://www.motortrend.com/features/tesla-nacs-charging-port-automaker-compatibility/>

⁴ See, Buffalo News, Hochul: Tesla to install \$500M supercomputer in Buffalo, while UB will host new AI computing center (Jan. 26, 2024) available at https://buffalonews.com/news/local/hochul-tesla-to-install-500m-supercomputer-in-buffalo-while-ub-will-host-new-ai-computing/article_197a36ac-bc69-11ee-8de4-13f44e760ac2.html

7. *Any Other Information That Will Assist ESD in Understanding Tesla's Future Plans for Its New York Operations:*

Tesla remains committed to being an employer of first choice for residents of New York State. Consistent with this is its ongoing relationship with Buffalo's Northland Workforce Training Center. Through this partnership, Tesla has established and funded its Manufacturing Development Program (MDP) at Northland. This manufacturing pathway program is designed to provide graduating high school seniors with the financial resources, coursework, and experience they need to start a successful manufacturing career at Tesla. Upon completion of the program, MDP graduates are converted to full time Production Associates at Gigafactory New York. To date, Tesla remains the largest employer of Northland graduates. The recent layoffs do not impact Tesla's ongoing delivery of its MDP effort.

As previously communicated, Tesla's job growth and expansion may be hampered unless the state and local jurisdictions throughout the state eliminate regulatory and operational barriers to electric vehicle sales, vehicle charger installations, and solar and energy storage deployment. Should Tesla be allowed to obtain further retail licenses, the company would substantially grow its retail presence in the state.

Tesla continues to value its ongoing relationship and partnership with Empire State Development and reiterates that the recent events do not change the company's ongoing and vibrant presence at Gigafactory New York and throughout the state. The company looks forward to working with you to make Gigafactory New York a world-class advanced manufacturing center and a continued success.

Sincerely,



Sendil Palani
Vice President, Finance
Tesla, Inc.

July 25, 2024

Sendil Palani
Vice President, Finance
Tesla, Inc.
1 Tesla Road
Austin, Texas 78725

Re: Tesla Gigafactory – Buffalo, New York

Dear Mr. Palani:

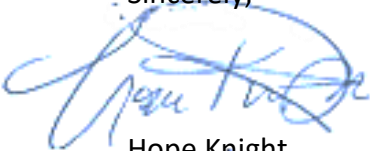
Thank you for your response to my letter of May 13, 2024. It is encouraging to hear that Tesla is continuing to move forward with the Dojo supercomputer in Buffalo and committed to New York State. New York's history of investment at Riverbend reflects our belief in the positive long-term benefits of this project and our partnership, particularly for Western New York. However, due to the recent layoffs by Tesla, there is significant concern by the State partners that the company will not be able to meet its commitments contained in the various project agreements.

Furthermore, as you are aware, ESD, Tesla and NY CREATES recently signed a non-binding letter of intent ("LOI") regarding Tesla's Dojo supercomputer project and the future of the Buffalo gigafactory. The proposed agreement amendments outlined in the LOI were designed to support Tesla's future investments and workforce growth in New York, which are critically important for us. In light of the significant change in circumstances since execution of the LOI, namely, the recent layoffs that have actually reduced Tesla's workforce and the apparent fact that at this point, Tesla will be unable to meet the employment targets referenced in the LOI, ESD will not move forward with the project revisions outlined in the LOI.

Recognizing the significant interest ESD has in this project, and the positive economic impact Tesla has made in New York State, ESD proposes that the parties engage in further discussions to ensure the future of Tesla's operations in Buffalo and New York with the goal of entering a revised LOI that accurately reflects Tesla's future plans, prioritizes ESD's economic development objectives at Riverbend, and protects the investment that New York taxpayers have made in the project.

Thank you for your attention to this matter, and I look forward to working with you to solidify Tesla's future in New York.

Sincerely,



Hope Knight
President and CEO

cc: Joseph Mendelson, Senior Counsel (jmendelson@tesla.com)
Shatorah Roberson, Staff Policy Advisor (sharoberson@tesla.com)
Emily Eads, Senior Counsel (eeads@tesla.com)