

CHARGING STATION AGREEMENT

This Supercharger Agreement (the "**Agreement**") is effective as of 2/13, 2018 (the "**Effective Date**") by and between The Town of Los Gatos a local government ("**Counterparty**") and Tesla, Inc., a Delaware corporation ("**Tesla**").

WHEREAS, Tesla, through the provision of electric vehicle charging services at the Property, will provide value to Counterparty by attracting Tesla vehicle owners and the public to, and providing additional visibility of, the Property;

WHEREAS, Counterparty acknowledges the value of Tesla's charging station at the Property and desires to grant possession and control of the Premises to Tesla pursuant to the terms set forth herein;

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:**

Counterparty's Address for Notices:

Town of Los Gatos
41 Miles Ave.
Attention: Jim Harbin
Phone: (408) 395-5310
Email: jharbin@losgatosca.gov

Tesla's Address for Notices:

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

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

2. **PREMISES:** Counterparty hereby grants to Tesla possession and control of eighteen (18) parking spaces, up to five (5) feet of additional parking width to comply with the Americans with Disabilities Act of 1990 and approximately 200-400 square feet of landscaped space for equipment (the "**Premises**") on the property commonly known as the North Parking Lot, located between University Ave. and North Santa Cruz Ave., north of Los Gatos – Saratoga Rd., and as depicted on **Exhibit A** attached hereto (the "**Property**") in order to build an electric vehicle charging station to charge Tesla vehicles (the "**Charging Station**").
3. **CONSTRUCTION:** Upon delivery of possession of the Premises to Tesla, Tesla shall, at its sole expense, construct improvements as described in and pursuant to the procedures set forth in **Exhibit B**, attached hereto and made a part hereof, and will install certain trade fixtures indicated in **Exhibit B** (the "**Trade Fixtures**") as further described and defined in **Exhibit B**).
4. **INITIAL FOOTPRINT:** A total of eighteen (18) parking spaces are needed to outfit the charging facility. Twelve (12) parking spaces will be outfitted with charge posts ("**Chargers**") and shall serve as dedicated charging stalls to be used only by Tesla vehicles ("**Dedicated Stalls**"). The four (4)

additional parking spaces shall be outfitted with chargers to be used by all other electric vehicles. Two (2) additional spaces are needed one each for ADA requirements and station infrastructure. The Dedicated Stalls and any applicable restrictions shall be identified by signage substantially similar to the signage depicted in Exhibit B.

5. **POSSESSION DATE:** The first date where Tesla may enter the Premises and Property to begin its work pursuant to the Agreement is January 15, 2018 (the "**Possession Date**").
6. **COMMENCEMENT DATE:** The date that the Charging Station opens to the public (the "**Commencement Date**") shall be within one hundred and fifty (150) days following the Possession Date, provided that no external permitting, utility or other requirements beyond Tesla's control delay the installation, despite the best efforts of Tesla. Tesla shall deliver written notice to Counterparty promptly following the Commencement Date to confirm such date for recordkeeping purposes.
7. **TERM:** The initial term of the Agreement shall expire five (5) years from the Commencement Date (the "**Initial Term**"). Tesla shall have the right to once extend the Agreement and such extension shall be for an additional period of five (5) years (the "**Renewal Term**" and together with the Initial Term, the "**Term**"). Following the Renewal Term, any further renewals will be subject to mutual agreement between Tesla and Counterparty. To extend the Term, Tesla shall deliver written notice of such extension to Counterparty no later than thirty (30) days prior to the expiration of the Term. In the event of a sale or transfer of the Property or Premises by Counterparty while the Agreement is in effect, Tesla's rights shall be conveyed with the Property or Premises.
8. **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. Counterparty grants to Tesla and such public utility companies an easement to install, operate, inspect, maintain and repair such public utility facilities as may be reasonably necessary over the Property to serve the Premises. 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. Counterparty 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 due to Counterparty's gross negligence or willful misconduct.
9. **USE:** Tesla shall use and occupy the Premises during the Term for a Charging Station and incidental purposes, including generating photovoltaic electricity and operating an energy storage system. All use of the Premises by Tesla shall comply with applicable codes, laws, and ordinances.
10. **PAYMENT FOR CHARGING SERVICES:** Counterparty shall have no right to request or accept payment from Tesla, Tesla customers or any other third-parties in connection with Tesla charging services.
11. **MAINTENANCE:** Tesla shall be responsible for maintaining the Trade Fixtures and Infrastructure (as defined in Exhibit B) and Counterparty shall not have any liability for damage to the Trade Fixtures or the Infrastructure unless such damage is caused by Counterparty's gross negligence or willful misconduct. Notwithstanding the foregoing, Counterparty's normal responsibility to maintain the common areas of the Property shall also apply to the Premises, such as for debris and garbage collection and removal. Counterparty agrees to coordinate any parking lot

maintenance with Tesla to ensure that charging stalls remain available as much as is reasonably feasible. Tesla may, in its discretion and at its sole cost, install security cameras and other equipment to monitor the Premises from off-site. All site equipment installed in relation to the charging infrastructure shall be maintained in good condition for the entire term of the agreement.

12. **COUNTERPARTY COVENANTS:** Counterparty represents that they are the owner of the Property and that this Agreement does not violate any agreement, lease or other commitment of Counterparty. Counterparty shall not take any action that would impair or interrupt the use of the Premises or the Trade Fixtures. Counterparty agrees to notify Tesla within a commercially reasonable time if (i) it has knowledge of third-parties impairing or misusing the Premises or Trade Fixtures, or (ii) it obtains knowledge of a needed repair to the Premises or Trade Fixtures. If non-Tesla motorists repeatedly park in the Dedicated Stalls, thereby impairing use of the Dedicated Stalls, then the parties shall together determine and implement an appropriate and effective strategy for preventing such impairment, including, without limitation, alternative signage and painted asphalt. Counterparty shall use commercially reasonable efforts to actively monitor the Premises to ensure that use of the charging stalls is not impaired.
13. **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 Counterparty, 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 company that is controlled by, controls, or is under common control with Tesla.
14. **ALTERATIONS:** Excepting the items of Exhibit B, Tesla shall not make or permit to be made any alterations, changes in or additions to the Premises without the prior written consent of Counterparty, which shall not be unreasonably withheld, conditioned or delayed. Upon termination of this Agreement, unless terminated due to a default of Counterparty, the Infrastructure shall become the property of Counterparty; provided that all Trade Fixtures and all related intellectual property shall at all times remain the property of Tesla and all Trade Fixtures will be promptly removed by Tesla upon termination of the Agreement.
15. **SIGNAGE:** Tesla signage to be installed at the Premises is represented in Exhibit B and shall include signs to identify Dedicated Stalls. Any material revisions or additions to the signage depicted in Exhibit B shall be subject to Counterparty approval, which shall not be unreasonably withheld, conditioned or delayed. All signage shall be professionally prepared, installed and maintained at Tesla's expense.
16. **INDEMNIFICATION:** Except to the extent of any gross negligence or willful misconduct of Counterparty, Tesla hereby agrees to indemnify, hold harmless and defend the Property, Counterparty, its managers, members, agents and representatives from all liability, damages, loss, costs and obligations, including, court costs and attorney's fees, on account of or arising out of or alleged to have arisen out of any claim of any third party directly related to Tesla's use of the Premises. Tesla shall promptly remove or bond any liens placed on the Property as a result of any claims for labor or materials furnished to or for Tesla at or for use on the Premises.

Except to the extent of any gross negligence or willful misconduct of Tesla, Counterparty hereby agrees to indemnify, hold harmless and defend Tesla, its directors, officers, employees, consultants, agents and representatives from all liability, damages, loss, costs and obligations, including, court costs and attorney's fees, on account of or arising out of or alleged to have arisen out of directly or indirectly, any claim of any third party directly related to Counterparty's actions with respect to the Premises.

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

18. **DEFAULT**: Each of the following shall constitute an "**Event of Default**" by Tesla under this Agreement:

(1) the failure by Tesla to perform or observe any material term or condition of the Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof, provided however, that if the nature of such default is such that the same cannot reasonably be cured within said thirty (30) day period, then Tesla shall have such additional time as is reasonably required to cure such failure provided Tesla commences to cure such failure within such thirty (30) day period and proceeds to cure such failure with diligence and continuity; or

(2) 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 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 involuntary actions filed against the Tesla the same are not discharged within sixty (60) days after the date of commencement.

19. **REMEDIES**: Counterparty and Tesla acknowledge and agree that each party shall have all remedies available at law or in equity if the other party is in default under the terms of this Agreement. If an Event of Default has occurred and is continuing, then Counterparty, in addition to any other remedies given at law or in equity, may:

(A) continue this Agreement in effect by not terminating Tesla's right to possession of said Premises and thereby be entitled to enforce all Counterparty's rights and remedies under this Agreement; or

(B) bring an action to recover and regain possession of said Premises in the manner provided by the laws of eviction of the State where the Premises are located then in effect.

20. **INSURANCE**: Tesla shall carry commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000) for bodily injury or death and property damage and an umbrella insurance policy of not less than Five Million Dollars (\$5,000,000). A certificate evidencing such insurance shall be delivered to Counterparty upon the execution of this Agreement and from time to time thereafter as may be requested by Counterparty. Upon request, Tesla shall include Counterparty as additional insured on its commercial general liability and umbrella insurance

policies. Tesla will also carry worker's compensation insurance in accordance with state and federal law.

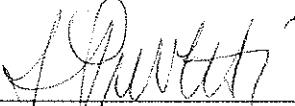
21. **CONFIDENTIALITY AND PUBLICITY:** Neither party will use the other party's name, trademark or logo without such other party's prior written consent.
22. **EXCLUSIONS:** Notwithstanding anything herein to the contrary, Tesla shall not be liable for, and Counterparty expressly releases Tesla from any claims from, speculative, indirect, consequential or punitive damages, including any lost sales or profits of Counterparty.
23. **ENVIRONMENTAL MATTERS:** To the best of Counterparty's knowledge, Counterparty believes that the Premises shall be delivered free of environmental contamination. Tesla shall have no liability for any environmental contamination unless caused by Tesla, its agents, employees or contractors. During the Term, Counterparty is responsible for remediating any pre-existing contamination or any contamination not caused by Tesla, its agents, contractors or employees, except for disposal of any contaminated materials that may result from the construction of the project and limited to any excavated contaminated soil that will be properly disposed of. The cost to Tesla of the disposition of any such excavated contaminated soil will be capped at five thousand dollars (\$5,000). Tesla shall have no liability for diminution in value of the Property as it relates to environmental contamination.
24. **NOTICES:** All notices or demands shall be in writing and shall be deemed duly served or given only if delivered by prepaid (i) U.S. Mail, certified or registered, return receipt requested, or (ii) reputable, overnight courier service (such as UPS or FedEx) to the addresses of the respective parties as specified in Section 1 above. Counterparty and Tesla may change their respective addresses for notices by giving notice of such new address in accordance with the provisions of this paragraph.
25. **BROKERS:** Counterparty and Tesla represent to each other that each has dealt with no broker and each hereby agrees to indemnify and hold the other harmless from any claims for any such commissions or fees.
26. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and shall inure to the benefit of Counterparty and Tesla and their respective successors and assigns.
27. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State where the Premises are located.
28. **TIME:** Time is of the essence in this Agreement.
29. **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. Signed copies transmitted electronically in PDF or similar format shall be treated as originals.
30. **TERMINATION:** Counterparty shall retain the right to terminate the Agreement by providing one hundred and eighty (180) days written notice. If Counterparty exercises its right to early

termination, then Counterparty shall pay Tesla an early termination fee on or before such early termination date equal to the unamortized costs to construct the Charging Station (including the costs of Trade Fixtures, Infrastructure and construction), calculated as of the early termination date based on straight-line depreciation over a ten (10) year period.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have each caused an authorized representative to execute this Agreement as of the Effective Date first written above.

Town of Los Gatos by:




Laurel Prevetti, Town Manager

TESLA:

Tesla, Inc.

a Delaware corporation

Recommended by:



Matt Morley, Director of Parks and Public Works

By: See Attached

Name: _____

Title: _____

Approved as to Form:



Robert Schultz, Town Attorney

AGR: Tesla Charging Station

IN WITNESS WHEREOF, the parties hereto have each caused an authorized representative to execute this Agreement as of the Effective Date first written above.

COUNTERPARTY:

a _____

By: See Attached

Name: _____

Title: _____

TESLA:

Tesla, Inc.

a Delaware corporation

By: 

Name: CAL LANKTON

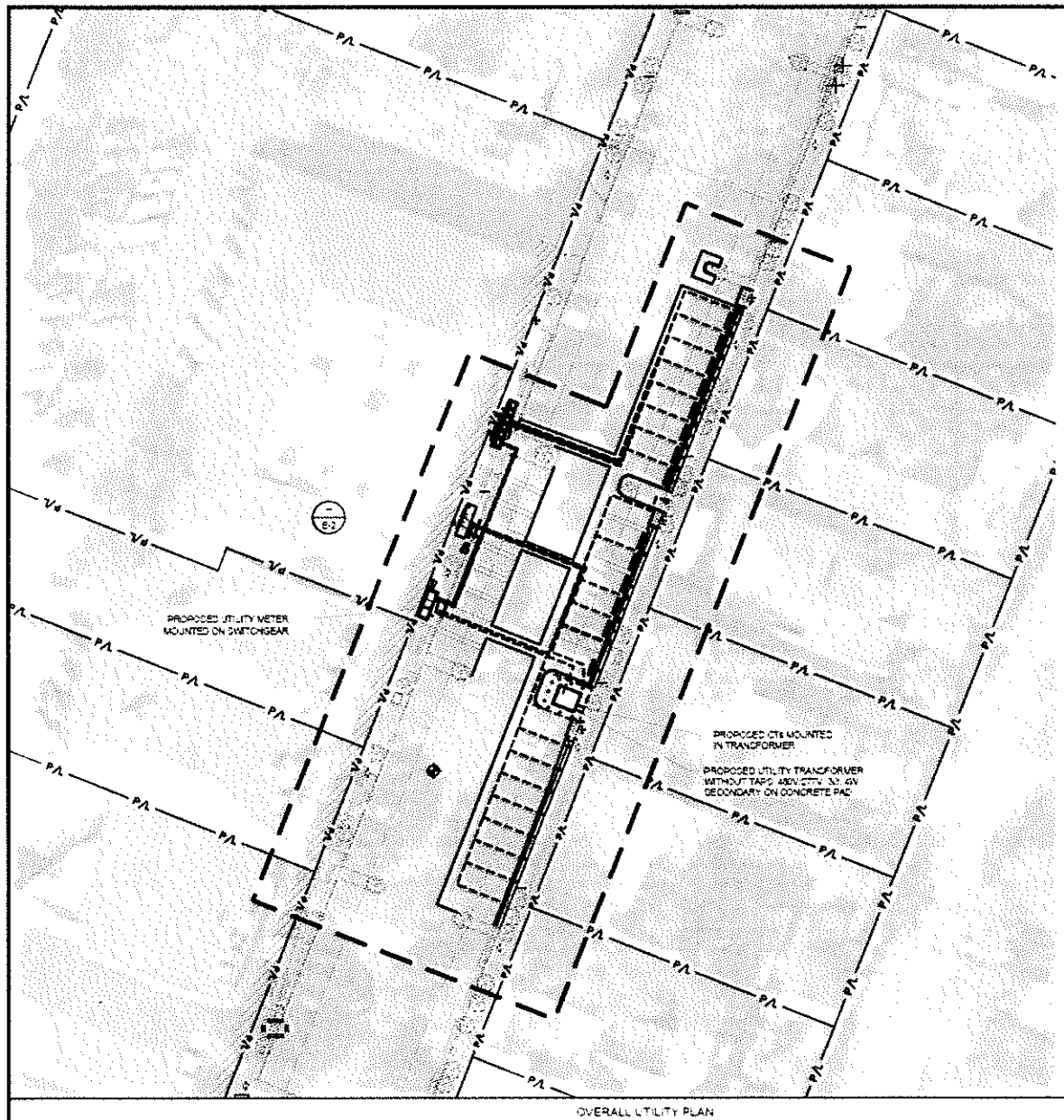
Title: VP, ENERGY SALES and
OPERATIONS

AGR: Tesla Charging Station

EXHIBIT A

Premises and Property Depiction and Address

Premises and Property Depiction: Northside Parking Lot – Town of Los Gatos, CA





PROPOSED TESLA CHARGING STATIONS

LOCATION MAP

NOT TO SCALE

EXHIBIT B

Tesla Improvements

Tesla shall install the Charging Station on the Premises pursuant to the terms of this **Exhibit B**. Tesla installation shall include the installation of the infrastructure for the Charging Station, which may include power supply, utility connections, concrete pads, conduit and wiring (the **“Infrastructure”**).

The Charging Station will also include certain trade fixtures as determined by Tesla, which may include, without limitation, the charger cabinets (**“Charger Cabinets”**), charge posts, switchgear, signage, , and an energy storage system (the **“Trade Fixtures”**). The type of charge posts installed at the Charging Station shall be Level 3 DC fast chargers (capable of delivering up to 73 kW of power).

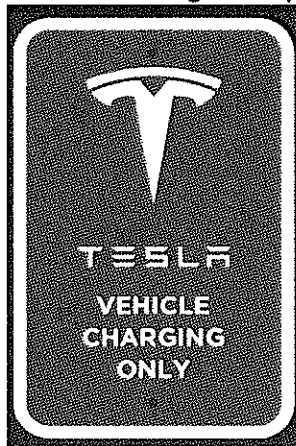
The Trade Fixtures to be installed as of the Commencement Date will include the following:

- Six (6) Chargers Cabinets
- Twelve (12) charge posts (Level 3 DC fast chargers)
- Two (2) Level 2 posts (Four (4) parking spaces in total) for all EV use (at applicable rates)
- Switchgear and meter panel
- Signage

The installation of the Infrastructure and the Trade Fixtures is collectively referred to as the **“Tesla Improvements.”** Tesla will not perform the Tesla Improvements until the plans and specifications, including exact locations, have been approved and permitted by Counterparty, which approval is may be by e-mail communication and shall not be unreasonably withheld, conditioned or delayed. All Tesla Improvements shall at all times comply with applicable laws, codes and ordinances and Infrastructure and Trade Fixtures shall be installed, maintained and replaced at Tesla’s sole cost.

Signage

Dedicated Stall Sign Example





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/19/2017

ITEM NO: 10

DATE: DECEMBER 7, 2017
TO: MAYOR AND TOWN COUNCIL
FROM: LAUREL PREVETTI, TOWN MANAGER
SUBJECT: AUTHORIZE THE TOWN MANAGER TO EXECUTE A CHARGING STATION AGREEMENT WITH TESLA, INC. TO PROVIDE ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND SERVICES AT THE NORTH PARKING LOT

RECOMMENDATION:

Authorize the Town Manager to execute a Charging Station Agreement (Attachment 1) with Tesla, Inc. to provide electric vehicle charging infrastructure and services at the North Parking Lot.

BACKGROUND:

In 2012, four electric vehicle (EV) charging stations were installed in various locations in downtown Los Gatos, funded in part by grants through the Department of Energy and the California Energy Commission. Four additional stations were installed in 2014, bringing the total Town inventory to 8 stations with 14 charging ports. The stations are managed by ChargePoint, Inc. through a Master Services and Subscription Agreement.

Electric vehicles are popular in California, especially in the Bay Area, and charging station locations are a key factor in determining destinations for EV drivers. Los Gatos EV stations experience high use overall and Tesla approached the Town with this opportunity based on the high volume of Tesla vehicles that have been tracked in the downtown area.

PREPARED BY: Jim Harbin
Facilities & Environmental Programs Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Parks and Public Works Director

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SUBJECT: AUTHORIZE THE TOWN MANAGER TO EXECUTE A CHARGING STATION AGREEMENT WITH TESLA, INC. TO PROVIDE ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND SERVICES AT THE NORTH PARKING LOT
DECEMBER 7, 2017

DISCUSSION:

The North Lot, located north of Highway 9 between University Avenue and North Santa Cruz Avenue, provides an ideal location due to its size, proximity to sufficient power, and underutilized parking spaces. In addition, staff anticipates that having an additional charging station destination in downtown will further attract drivers to dine and shop in the area.

Tesla would enter into the agreement with the Town to construct improvements and install equipment necessary to provide EV charging at Tesla's sole expense. The scope of this project includes all work necessary to install 12 Tesla Supercharger charging ports for Tesla electric vehicles and four additional ports for all other electric vehicles. The station footprint would utilize 18 existing parking spaces to facilitate the 16 charging ports, an ADA parking space, and the necessary electrical equipment.

Completion of this EV charging station will more than double the inventory of charging ports in the Town from 14 to 30. Staff feels the opportunity to more than double the number of EV charging ports is worth the loss of two parking spaces especially given the underutilized nature of the North Lot. If authorized, the work is anticipated to begin in January 2018.

CONCLUSION:

Staff recommends that the Town Council authorize the Town Manager to execute a Charging Station Agreement with Tesla, Inc. to provide electric vehicle charging services at the North Parking Lot.

COORDINATION:

This report was coordinated with the Town Manager's Office and Parks and Public Works Department.

FISCAL IMPACT:

There is no fiscal impact from this project.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Charging Station Agreement