



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/02/2021

ITEM NO: 7

DATE: January 25, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve a First Amendment to a Parking Agreement with Tesla, Inc. for the Installation of Eight Additional Charging Stations in the North Parking Lot, Resetting the Term, Establishing Lease Payments to the Town of \$8,000 per Month, and Approve a Revenue Budget Adjustment in the Amount of \$48,000 to Reserve the Lease Proceeds in the General Fund Appropriated Reserve that will be Transferred to the Future Downtown Parking Fund to Collect Parking Revenue for Infrastructure Improvements in Downtown

RECOMMENDATION:

Approve a first amendment (Attachment 1) to a Charging Station Agreement with Tesla, Inc. (Attachment 2) for the installation of eight additional charging stations in the North Parking Lot, resetting the term, establishing lease payments to the Town of \$8,000 per month, and approve a revenue budget adjustment in the amount of \$48,000 to reserve the lease proceeds in the General Fund Appropriated Reserve that will be transferred to the future Downtown Parking Fund to collect parking revenue for infrastructure improvements in downtown.

BACKGROUND:

On December 19, 2017, the Town Council approved an agreement with Tesla, Inc. for the installation of electric vehicle charging stations in the North Parking Lot. This agreement resulted in the installation of 12 quick charge spots for Tesla vehicles and four level two charging spots for non-Tesla users with no fee for charging. The contract established the term as five years with a five-year option for renewal.

During construction, Tesla installed the underground infrastructure for a future addition of another eight charging stations. In early 2020, Tesla approached Town staff on the opportunity for implementing that expansion. Staff told Tesla that it was open to the expanded use, and

PREPARED BY: Matt Morley
Director of Parks and Public Works

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

SUBJECT: Approve a First Amendment to a Parking Agreement with Tesla, Inc.

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BACKGROUND (continued):

that the expansion would require a lease agreement at market rate. Some negotiations on the rate occurred and Tesla determined that they were not interested at that time.

Tesla reached out again to Town staff later in the year having changed their position and offering to accept the market rate Town staff had identified.

DISCUSSION:

The addition of charging stations in the North Parking Lot provides a number of benefits to the Town. Electric vehicles aid in greenhouse gas (GHG) emission reductions. The Tesla stations complement the Town's 14 Chargepoint stations and the recent installation of Charge America stations installed at the Bank of America parking lot on North Santa Cruz Ave. Combined, these demonstrate the Town's commitment to GHG emission reductions. Additionally, the convenience of the charging stations is expected to draw drivers to the downtown, providing increased opportunity for shopping and dining.

The proposed amendment would reset the term of the agreement, restarting the first five-year period, while retaining the five-year option to renew. This is beneficial to the Town for the significant revenue the project is expected to bring in.

The agreement would commit Tesla to payments of \$8,000 per month to the Town. Staff recommends holding the revenue in a newly established Downtown Parking Fund where use of the funds is restricted to downtown parking improvements. Any future parking revenue could also contribute to this fund.

CONCLUSION:

Staff recommends approval of the amendment to the agreement with Tesla, Inc. and the establishment of a Downtown Parking Fund for parking revenue.

COORDINATION:

This item has been coordinated with the Police and Finance Departments.

FISCAL IMPACT:

Approval of the recommendation would establish a new revenue source for the Town of \$96,000 annually and would establish a Downtown Parking Fund for the revenue to fund future downtown infrastructure improvements.

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SUBJECT: Approve a First Amendment to a Parking Agreement with Tesla, Inc.

DATE: January 25, 2021

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. First Amendment to a Charging Station Agreement with Tesla, Inc.
2. Charging Station Agreement

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FIRST AMENDMENT OF CHARGING STATION AGREEMENT

THIS FIRST AMENDMENT OF CHARGING STATION AGREEMENT (this "**Amendment**") is made and entered into as of January __, 2021 (the "**Amendment Effective Date**") by and between The Town of Los Gatos, a local government ("**Counterparty**"), and Tesla, Inc., a Delaware corporation ("**Tesla**").

RECITALS

1. Counterparty and Tesla are parties to that certain Charging Station Agreement dated February 13, 2018 (the "**Agreement**"). Pursuant to the Agreement, Counterparty granted Tesla possession and control of eighteen (18) parking spaces (the "**Existing Premises**") at the Property for the installation and operation of a Charging Station.
2. During the initial construction of the Charging Station, Tesla installed Infrastructure in eight (8) parking spaces ("**Expansion Premises**") adjacent to the Existing Premises.
3. Counterparty and Tesla now desire to expand the Existing Premises extend the Term and amend the Agreement, as more particularly described herein.

TERMS

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants herein contained, and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows, as of the Amendment Effective Date:

1. **Defined Terms.** All capitalized terms used in this Amendment shall have the same meaning given such terms in the Agreement, unless otherwise defined in this Amendment.

2. **Amendment of the Agreement:** As of the Amendment Effective Date:

2.1. Expansion of the Existing Premises. Tesla shall, at its sole cost, expand the Existing Premises by installing Trade Fixtures at the Expansion Premises. As of the Amendment Effective Date, all references in the Agreement to the "**Premises**" shall be deemed to include the Existing Premises and the Expansion Premises consisting of a total of twenty-six (26) parking spaces, as depicted on **Exhibit A** attached hereto. For the avoidance of doubt, the Premises shall consist of twenty-six (26) Dedicated Stalls.

2.2. Term. The Possession Date for the work contemplated by this Amendment shall be March 1st, 2021 Upon the opening of the Charging Station (including the Expansion Premises), Tesla shall deliver written notice to Counterparty of the updated Commencement Date and the old Commencement Date, which occurred on September 24th 2018 shall be of no further force or effect. For the avoidance of doubt, the initial term of this Agreement shall begin on the updated Commencement Date and shall expire five (5) years from the last day of the month in which the updated Commencement Date occurs (the "**Initial Term**"). Tesla shall have one (1) option to extend the term of this Agreement for an additional five (5) years (the "**Renewal Term**") and together with the Initial Term, the "**Term**"), upon the same terms contained in the Agreement.

- 2.3. **Confidentiality.** Section 21 of the Agreement shall be deleted and replaced in its entirety with the following:

"21. **CONFIDENTIALITY AND PUBLICITY:** Except as provided below, to the maximum extent permitted by law, Tesla and Counterparty agree that the terms of this Agreement and any non-public, confidential or proprietary information or documentation provided to one Party by the other Party in connection with this Agreement are confidential information, and the Parties agree not to disclose such confidential information to any person or entity during

the Term and for a period of three (3) years thereafter.

Notwithstanding the foregoing, the Parties may disclose information (i) to their respective Affiliates, subcontractors, lenders, employees, financial, legal and space planning consultants, in each case that have a “need to know” such confidential information and have committed to treat the information as confidential under terms no less protective than the terms of this Section 21, and (ii) as required by law, including the California State Public Records Act; provided that if Counterparty receives such a request, then Counterparty shall promptly notify Tesla to allow Tesla to seek a protective order or other appropriate remedy before the Agreement is released.

Neither Party will use the other Party’s name, trademark or logo without obtaining the other Party’s prior written consent.”

2.4. Rent. The following shall be added to the Agreement as Section 31:

“31. RENT: Tesla will pay Counterparty Eight Thousand Dollars (\$8,000.00) per month (the “**Rent**”) for a portion of the Premises on the first business day of each calendar month during the Term. If the Commencement Date is any day other than the first business day of a month, the first rent payment shall include payment for the partial month in which the Commencement Date occurs, prorated based on the number of days in such month. All rent payments shall be made either electronically to an account specified by Counterparty to Tesla in writing, or by check to the Counterparty address provided in Section 1. Tesla shall have no obligation to pay any other charge to Counterparty. For the avoidance of doubt, Tesla shall only pay Rent for the twenty (20) parking spaces occupied by the Level 3 DC fast chargers and Counterparty agrees that the Rent shall not increase during the Term.”

2.5. Incentives. The following shall be added to the Agreement as Section 32:

“32. INCENTIVES: Counterparty agrees that Tesla shall own and receive the benefit of all Incentives derived from the construction, ownership, use or operation of the Charging Station, including, without limitation, from electricity delivered through, stored at or generated by the Charging 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.”

2.6. Exhibit A. Exhibit A of the Agreement shall be deleted in its entirety and replaced by the Exhibit A, attached hereto and incorporated herein.

2.7. Exhibit B. The bullet points on Exhibit B of the Agreement shall be deleted in its entirety and replaced with the following:

- Ten (10) Chargers Cabinets
- Twenty (20) charge posts (Level 3 DC fast chargers)
- Two (2) Level 2 posts (Four (4) parking spaces in total) for all EV use (at no charge to the users)
- Switchgear and meter panel

- Signage

3. Effect. Except as expressly modified by this Amendment, the Agreement shall remain unchanged and in full force and effect. Except as otherwise set forth in this Amendment, nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Agreement.

4. Consent. The parties represent and warrant that there are no consents of third parties (including any lenders) that are necessary for the execution and performance of this Amendment or that each party has obtained all consents of third parties necessary for the execution and performance of this Amendment.

5. Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Any signature to this Amendment that is transmitted electronically through email as a PDF or DocuSign will be deemed an original signature, be binding upon the parties hereto and will have the same force and effect as an original signature.

6. Brokers. Counterparty and Tesla each represents that they have not dealt with any broker and each hereby agrees to indemnify and hold the other harmless from any claims for any broker related commissions or fees.

7. Successors. The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

[Signatures appear on following page]

IN WITNESS WHEREOF, Counterparty and Tesla have executed this Amendment as of the Amendment Effective Date.

COUNTERPARTY:

Town of Los Gatos
a local government

By: _____

Name: Laurel Prevetti

Title: Town Manager

By: _____

Name: Matt Morley

Title: Director of Parks and Public Works

By: _____

Name: Robert Schultz

Title: Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

TESLA:

Tesla, Inc.
a Delaware corporation

By: _____

Name: Maximilien de Zegher

Title: Senior Manager, Global Charging Infrastructure

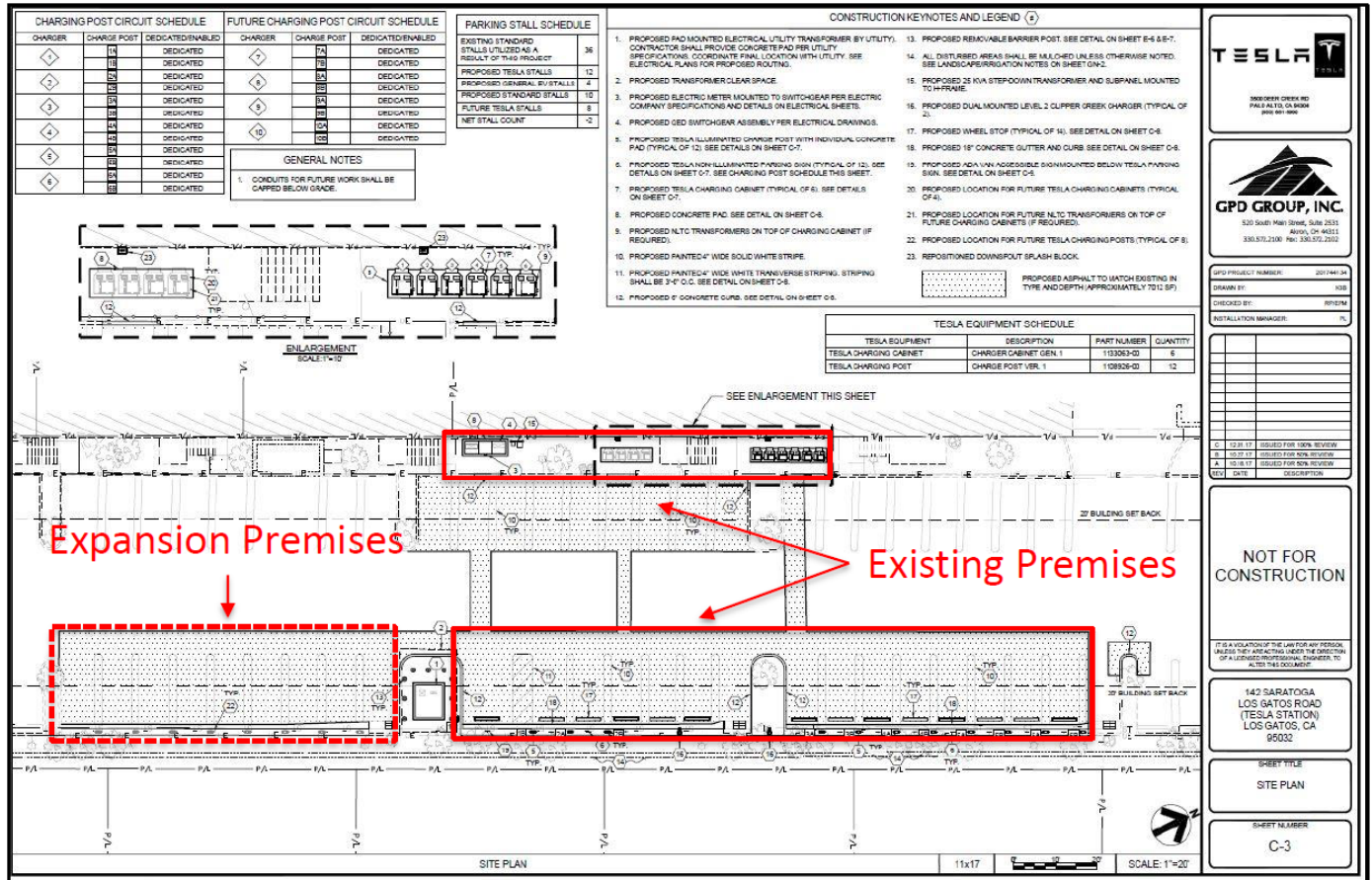
EXHIBIT A

Premises Depiction and Address

Northeast Parking Garage Address –Northside Paring Lot - Town of Los Gatos, CA – 142 Los Gatos-Saratoga Rd, Los Gatos, CA 95032

Premises Depiction:





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.

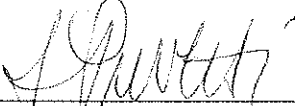
21. **CONFIDENTIALITY AND PUBLICITY:** Neither party will use the other party's name, trademark or logo without such other party's prior written consent.
22. **EXCLUSIONS:** Notwithstanding anything herein to the contrary, Tesla shall not be liable for, and Counterparty expressly releases Tesla from 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

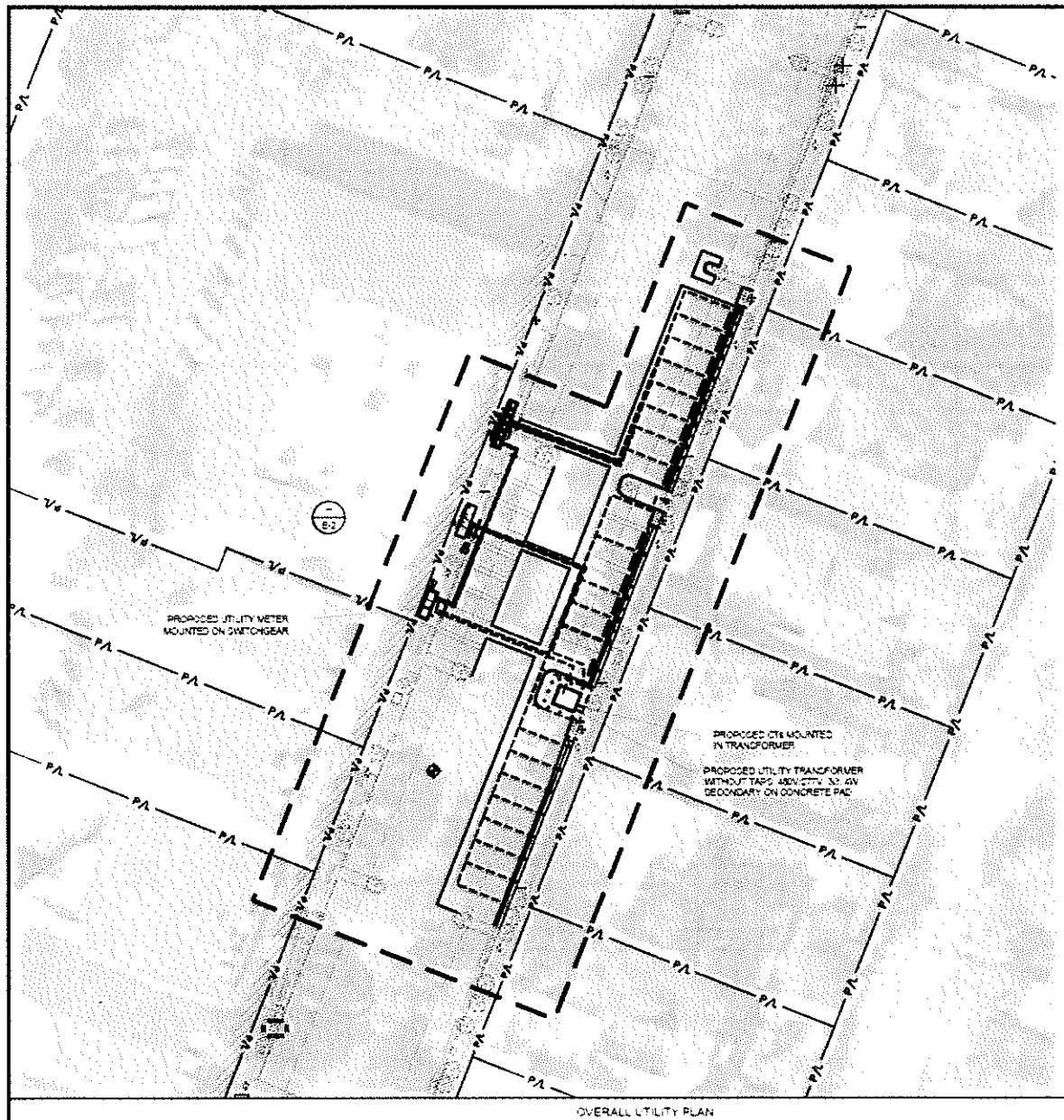
Title: VP, ENERGY SALES and
OPERATIONS

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).

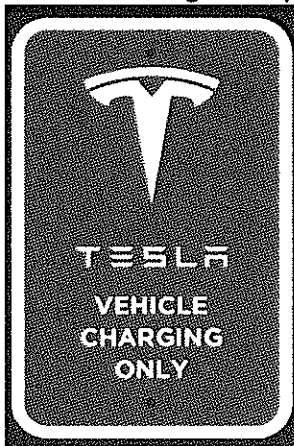
The Trade Fixtures to be installed as of the Commencement Date will include the following:

- 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

PAGE 2 OF 2

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