



City of Palo Alto

City Council Staff Report

(ID # 11740)

Report Type: Action Items

Meeting Date: 6/21/2021

Summary Title: Supercharger License Agreement with Tesla, Inc.

Title: Approve and Authorize the City Manager or Their Designee to Execute a Seven-year License Agreement With Two Five-year Renewal Options and Monthly Rent Payments of \$2,100 Between the City and Tesla, Inc. for a 19-stall Tesla Supercharging Station in the Bryant/Lytton Garage at 445 Bryant Street; Review and Provide Direction on a Draft Administrative Policy on Unsolicited Proposals

From: City Manager

Lead Department: Administrative Services

Recommendation

Staff recommends that the City Council:

1. Approve and authorize the City Manager, or their designee, to sign a license agreement (Attachment A), with Tesla, Inc. to install and operate a 19-stall Tesla Supercharging Station within a portion of the city-owned Bryant/Lytton Garage located at 445 Bryant Street for an initial term of seven years, with two options to extend for five years each, and a monthly rent of \$2,100; and
2. Delegate authority to the City Manager, or their designee, to execute on behalf of the City, any documents necessary to administer the agreement.
3. Review the attached framework regarding Unsolicited Proposals for Use of City Property and provide direction to staff.

Executive Summary

Achieving the City's Sustainability and Climate Action Plan is heavily dependent on dramatic growth in electric vehicles. A key tool for supporting this growth, particularly among multifamily and rental residents, is the availability of charging in centrally located public facilities. Convenient, fast charging provides an amenity for customers that supports economic recovery and growth of downtown retail and service businesses. The recommended agreement advances all of these goals.

On January 19, 2021, City Council authorized Staff in Closed Session to negotiate, and potentially return for Council approval, a license agreement to permit Tesla to use and occupy on a non-exclusive basis a portion of the third floor of the Bryant/Lytton Garage, located at 445 Bryant Street, for a new Tesla V3 Supercharging Station. Staff has since negotiated a seven-

year license agreement with two automatic five-year renewal options. The monthly rent will be \$2,100 and Tesla will be responsible for the cost of utilities and maintenance of the Supercharger Station. The City's normal responsibility to maintain the common areas of the Property will apply to the paved portions of the Premises. This report also outlines a framework for handling of unsolicited proposals for the use of City property providing a predictable process while allowing for new innovations or unexpected partnerships in the interest of the City's goals.

Background

The City of Palo Alto electric vehicle market share continues to be dominated by Tesla vehicles, with an estimated 50 percent market share. City staff has been in discussion with Tesla on prospective supercharger locations for more than two years. While initially focused on providing origin-to-destination connectivity, Tesla's supercharging priorities have evolved to include urban area chargers to support Tesla drivers' ability to conduct daily activities while charging. In addition, Tesla recognizes that home-based charging is unavailable for many renters and that nearly 50 percent of Palo Alto residents are renters.

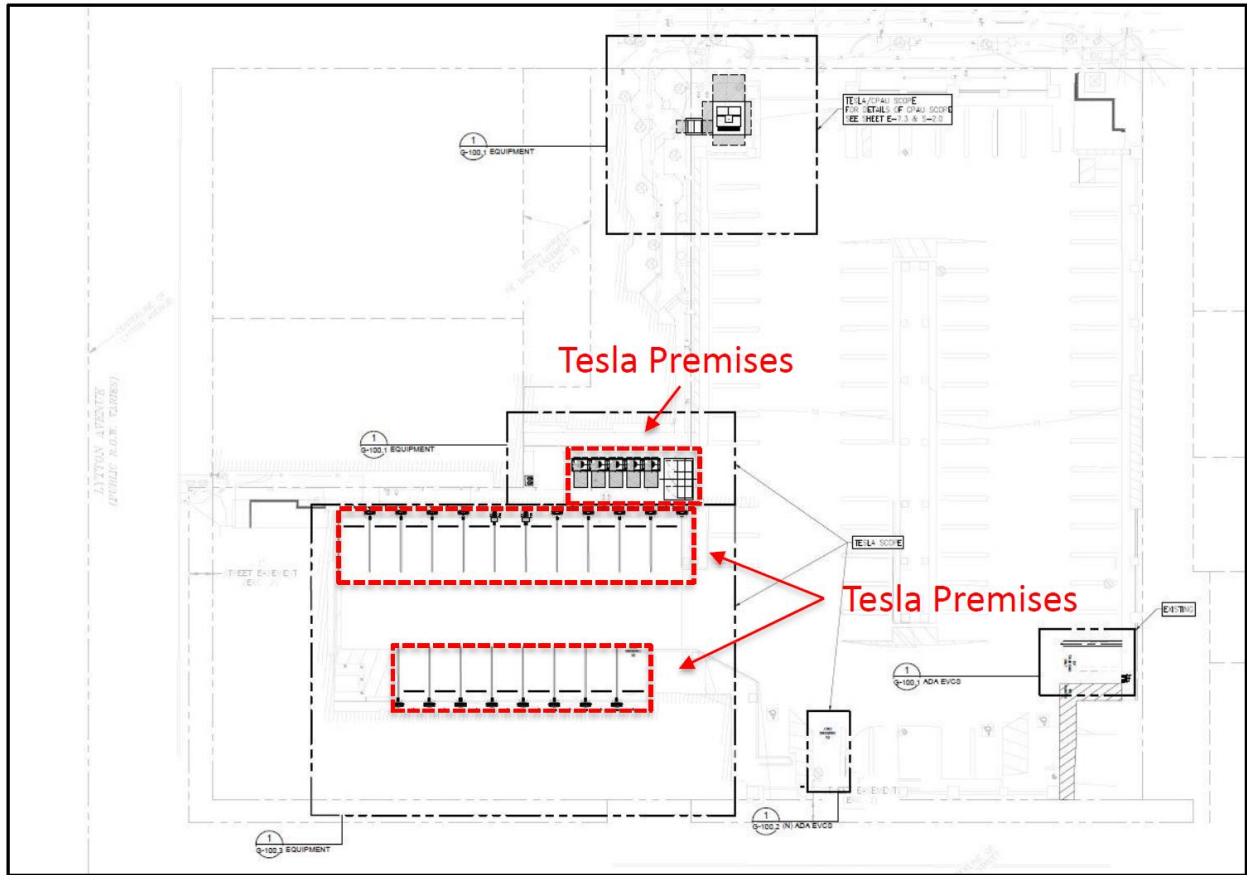
There is an existing 12-stall, Level 2, ChargePoint and PowerFlex charging station located on the second floor of the Bryant/Lytton Garage, directly beneath Tesla's proposed location. These stations on the second level were heavily used by Tesla vehicles prior to the pandemic. Providing superchargers on the third floor would draw Tesla traffic up to the third floor, allowing for additional EV capacity for all types of vehicles. This installation would provide an additional amenity to downtown customers and residents, and support the City's sustainability goals.

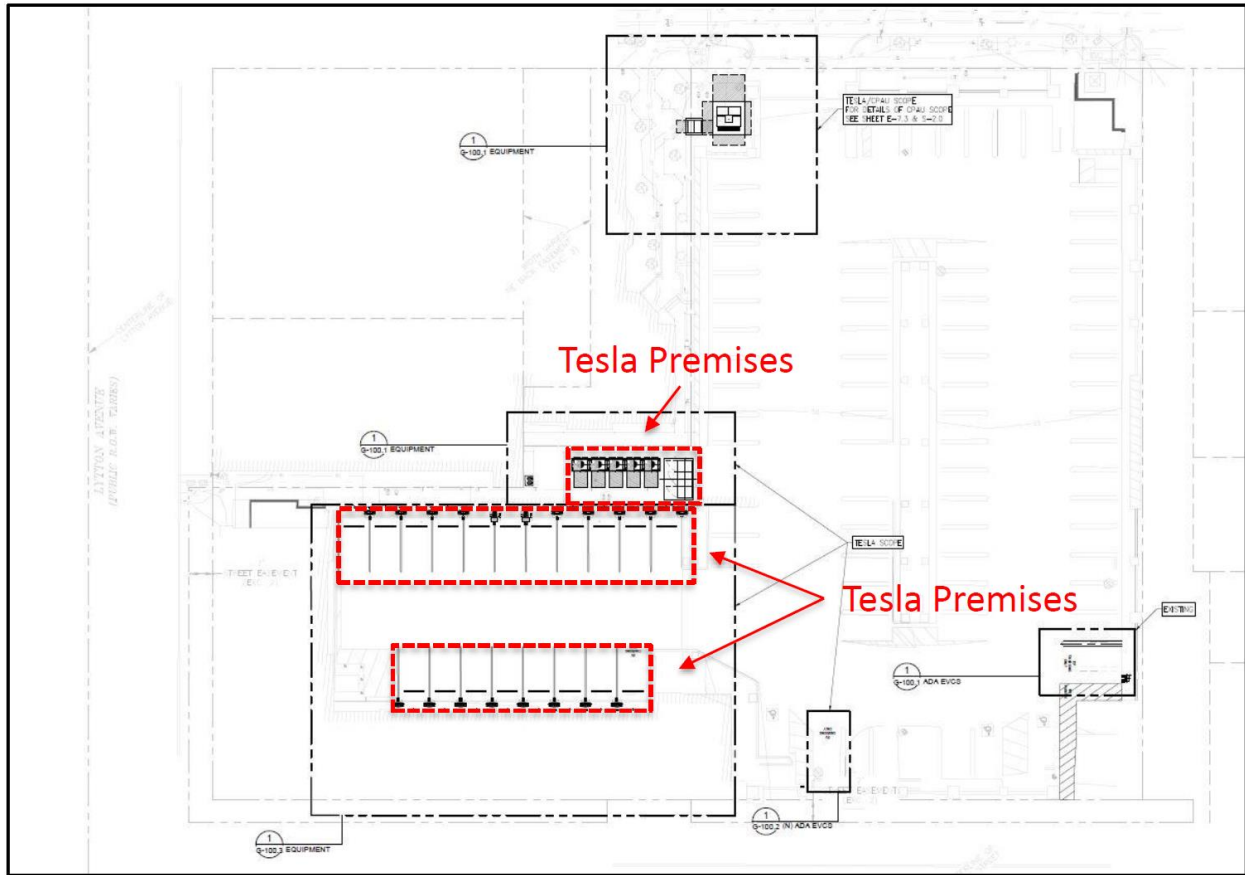
The existing supercharger station nearest the Bryant/Lytton Garage is the 20-stall Tesla Supercharging Station at the Stanford Shopping Center. That station opened on November 4, 2019 and is reportedly one of Tesla's busiest stations. Given downtown destinations and more than 500 residential parcels within a quarter-mile, Tesla is optimistic that the proposed Bryant/Lytton Supercharging Station will support hundreds and eventually thousands of monthly visits as an amenity for Tesla owners locally and from all over the Bay Area. This additional amenity will support recovery efforts by providing another destination to attract visitors to support downtown retail businesses as well as prospectively the fiscal benefit of Tesla sales and support for the electrification and mobility focus priorities of the City's sustainability goals.

Discussion

Staff negotiated a license agreement (Attachment A) with Tesla under the basic terms listed below.

Premises: The premises consist of approximately 200 to 400 square feet of space on the exterior of the first floor of the garage for equipment and 21 existing parking spaces located on the third floor of the Bryant/Lytton Garage that will be converted to 19 Supercharger stalls, as shown in the image below. The Supercharger stalls are wider than the existing stalls, resulting in a loss of two parking spaces due to adjusted stripping, but all stalls will continue to be available for general parking in addition to Tesla charging.





Term: Seven-year initial term automatically extended for two additional consecutive five-year terms, provided that either party may terminate the agreement at any time after the initial term for any reason with at least 90 days' written notice. This is to provide assurance to prospective vehicle buyers living or working downtown that the station would not be at-risk of removal in the near term.

Rent: \$2,100 per month.

Utilities: Tesla arranges and pays.

Maintenance: Tesla is responsible for maintaining the Supercharger Station and Premises, subject to City's normal responsibility to maintain the common areas of the garage which will apply to the paved portions of the Premises.

The project's scope of work is listed below.

- Install five Tesla Supercharger cabinets
- Install 19 Tesla V3 Supercharger posts
- Install one Level 2 charger on the second floor
- Upgrade one utility transformer
- Install one precast transformer pad
- Install one switchgear assembly

- Install one poured in place switchgear pad
- Install one transition cabinet
- Install one poured in place cabinet pad
- Install Tesla provided signage, conductors, and precast foundations
- Restripe parking stalls
- Demo and resurface curb
- Route four, five-inch conduits to a pad mounted switch near the corner of Bryant Street and Lytton Avenue

The City will be responsible for upgrading the transformer on the Property, adjacent to the Florence Street entrance, at its cost using Low Carbon Fuel Standard (LCFS) funds, up to a maximum amount of \$200,000. Tesla will be responsible for excess costs.

In addition to the proposed License Agreement, staff have attached a draft framework regarding Response to Unsolicited Proposals for Use of City Property, which sets forth guidelines for staff when responding to similar proposals in the future. The draft framework will be incorporated into the City's Policy and Procedures manual, which is adopted and updated from time to time under the City Manager's authority. Staff welcome any Council feedback on the draft framework. Staff plans to use this framework to update and modernize an existing policy regarding the leasing of City property last updated in October 2006.

Timeline

Tesla will need to obtain permits, approval, and insurance, as well as conduct a walk through with City prior to beginning the construction. The project is expected to be completed and open to the public within 180 days from commencement. Tesla has committed to keep the City informed as to the status and completion and will promptly notify City of any delays outside of Tesla's control.

Resource Impact

The City will upgrade the existing transformer at a current estimated cost of between \$150,000 to \$200,000 and is recommended to be funded by Low Carbon Fuel Standard (LCFS) funds appropriated in the Electric Fund. The ongoing operational revenue to the City from Supercharging Station electricity usage will benefit the Electric Fund, sales taxes associated with electric vehicle sales will benefit the General Fund, and rental payments of \$2,100 will benefit the General Fund. Staff will return to Council after the installation is complete to recognize the rental revenue in FY 2022, presumably as part of the FY 2022 Mid-Year Budget Review. Rental revenue in subsequent years will be budgeted as part of the annual budget process, subject to Council's approval. As a comparison, annual parking permits available to employees of businesses in the downtown parking assessment district for long-term parking is currently \$806, for 21 parking spaces, that equates to \$1,410 per month.

Policy Implications

The Bryant/Lytton garage was funded by the issuance of tax-exempt debt serviced by receipt from an assessment fee in the downtown core. Therefore, restrictions in public use versus private use must be evaluated. As a non-exclusive agreement, the City's Bond Counsel, Jones Hall, has determined that the installation of the Supercharging Station under the proposed terms would be allowable under the City's tax-exempt financing obligations.

Entering into a new license agreement with Tesla to install and operate a Supercharging Station is consistent with the Sustainability Implementation Plan 2018 – 2020 goals to accelerate electric vehicle growth for both Palo Alto and inbound vehicles and make “Going EV” more convenient and economical than using fossil fueled vehicles. The agreement is also consistent with the strategic move to buildout public infrastructure to support rising EV use and key action to publicize CPAU-funded transformer upgrades and expanding EV charging infrastructure on publicly-owned property.

Article VII, Section 7 of the Charter of the City of Palo Alto, Palo Alto (Lease of city land), permits Council to lease real property owned by the city for a period not to exceed fifty years. In addition to the attached framework on Response to Unsolicited Proposals, staff is in the process of modernizing other policies and procedures related to leased use of City land/facilities to ensure that decisions regarding the leased use of City real property are made effectively and efficiently.

Stakeholder Engagement

As the proposal by Tesla was unsolicited and there is currently no framework in place to respond to unsolicited proposals, Staff is proposing the attached policy “Response to Unsolicited Proposals” for Council consideration and potential future approval to respond to similar proposals (Attachment B). The policy respects private party interests while also reinforcing public transparency as part of the decision-making process.

Environmental Review

Approval of the Agreement does not require review under the California Environmental Quality Act for the installation of EV Chargers, which is categorically exempt pursuant to CEQA Guidelines section 15303 (construction and location of limited numbers of new, small facilities and structures) and CEQA Guidelines section 15301 (existing facilities).

Attachments:

- Attachment A: Supercharger License Agreement
- Attachment B: Draft Framework - Response to Unsolicited Proposals

Attachment A

SUPERCHARGER LICENSE AGREEMENT

This Supercharger License Agreement (this “**Agreement**”) is effective as of the date last signed below (“**Effective Date**”) by and between the City of Palo Alto, a California chartered municipal corporation (“**City**”) and Tesla, Inc., a Delaware corporation (“**Tesla**”). Tesla and City are each referred to herein as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, Tesla desires to construct and operate an electric vehicle charging station at the Property (as defined below) owned by City; and

WHEREAS, Tesla, at its sole cost and expense, desires to construct an electric vehicle charging station at the Property and City desires to grant a license to Tesla to use the Premises (as defined below) 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:**

City:

City of Palo Alto
250 Hamilton Ave
Palo Alto, CA 94301
Attention: Real Property Manager
Phone: 650-329-2264

Tesla:

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

With a copy to:

Email: real.property@cityofpaloalto.org

With a copy to:

Email: superchargerhost@tesla.com

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

2. **PREMISES:** City hereby grants to Tesla a revocable (after the Initial Term only and pursuant to the express terms of this Agreement), personal, non-exclusive, and non-possessory license (upon the terms expressly provided herein) to enter upon, use, encroach, and improve twenty-one (21) parking spaces, up to five (5) feet of additional parking width to provide disability access located on the 3rd floor of the garage and approximately 200-400 square feet of space for equipment on the exterior of the 1st floor of the garage (the “**Premises**”) on the property commonly known as the Bryant/Lytton Garage, located at 445 Bryant St, Palo Alto, CA 94301 and as depicted on Exhibit A attached hereto (the “**Property**”) for the sole purposes of building and operating a Supercharger Station (as defined in Exhibit B) subject to the terms and conditions of this Agreement. The right of access across the Property to and from the Premises shall be the most direct route and/or least likely to interfere with City and public uses. Tesla accepts the Premises “as is” in the current condition as on the Entry Date and the City shall not have any obligation to make any alterations, repairs, maintenance or improvements to the Premises except for the City’s Work.
3. **FOOTPRINT:** Within the Premises, a total of nineteen (19) parking spaces shall be outfitted with Superchargers (as defined in Exhibit B). The nineteen (19) parking spaces shall serve as both

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charging stalls for electric vehicles and general parking for all vehicles ("**Enabled Stalls**"). The Enabled Stalls shall be clearly marked on the Signage (as defined in Section 16). For the avoidance of doubt, the Premises shall consist of twenty-one (21) parking spaces to be reconfigured to nineteen (19) spaces which are outfitted with Superchargers.

4. **CONSTRUCTION AND ALTERATIONS:** Tesla shall provide notice to City not less than (a) one (1) business day prior to any work in and to the Premises and (b) three (3) business days prior to any drilling, excavating, and other work in connection with any portion of the Premises likely to cause material noise and/or vibrations within the Property, and in all events Tesla shall cause its contractors to perform such work as expeditiously as possible in order to minimize the interference with the use and quiet enjoyment of the Property. Tesla shall, at its sole cost, construct, maintain, alter, and remove the Supercharger Station in accordance with the terms of this Agreement ("**Tesla's Work**"). In addition to Tesla's Work, Tesla shall outfit one (1) parking space on the 2nd floor of the Property with a Level 2 connector ("**ADA Stall**") for the benefit of the City and Property in accordance with the Approved Plans (as defined below); provided that the City acknowledges and agrees that Tesla shall have no obligations, including but not limited to, any indemnity, utility, or maintenance obligations arising from the ADA Stall or the Level 2 connector. During the Term (as defined below), the City shall be solely responsible for all matters arising from or related to the ADA Stall. Tesla acknowledges that Tesla's Work and the work at the ADA Stall shall only begin after: (a) City has approved the plans and specifications for Tesla's Work and the ADA Stall, including equipment and signage locations and the approval of Tesla's general contractor by City, such approval not to be unreasonably withheld, conditioned, or delayed (the "**Approved Plans**"); (b) Tesla has obtained all permits and approvals required by applicable governing bodies for Tesla's Work and the work related to the ADA Stall (c) Tesla has provided proof of insurance, as more specifically described in Section 24; and (d) Tesla and City have conducted an onsite walk-through and agreed on a construction schedule and the storage locations of any equipment and materials required for the performance of Tesla's Work (including the work Tesla is performing at the ADA Stall) following the completion of City's Work. Any alterations to the construction schedule shall be approved in advance by City; in the event of alterations to the construction schedule, Tesla shall additionally provide notice to City not less than three (3) business days prior to any drilling, excavating, and other work in connection with any portion of the Premises likely to cause material noise and/or vibrations within the Property. City's approval of the Approved Plans, any alterations to the Approved Plans or Supercharger Station, and acceptance of the ADA Stall may be by e-mail from City Manager or designee. Tesla shall promptly repair any damage to the Property to the extent caused by Tesla, its agents, contractors and employees while performing Tesla's Work or the installation of the ADA Stall and restore the Property. Tesla shall perform Tesla's Work in accordance with the construction schedule and all applicable Laws (as defined in Section 34), including any prevailing wage requirements, and during the performance of Tesla's Work at the Property, Tesla shall use commercially reasonable efforts to minimize any impairment to the ingress, egress, business operations or quiet enjoyment of the Property by the public or the City's other tenants or occupants. Prior to the Entry Date, City will perform such work to deliver the Premises in compliance with Laws and make such installations, if any, in the Property as are expressly set forth in Exhibit C as the responsibility of City (such work and installations are called "**City's Work**" and Exhibit C is called the "**Work Letter**"). The cost of City's Work shall be paid as provided in the Work Letter.

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5. **ENTRY DATE:** The first date that Tesla may enter the Premises and Property to begin Tesla's Work shall be mutually agreed upon by both Parties and such approval shall not be unreasonably withheld, conditioned, or delayed by either Party (the "**Entry Date**").
6. **COMMENCEMENT DATE:** Tesla shall open the Supercharger Station to the public (the "**Commencement Date**") within one hundred eighty (180) days following the Entry Date, provided that such time shall be extended to the extent a delay is due to permitting, utility, or other requirements beyond Tesla's control, or is due to Force Majeure (as defined in Section 32). Tesla shall keep City informed as to the status and completion of Tesla's Work and shall promptly notify City of any delays outside of Tesla's control that may reasonably cause Tesla's Work to exceed such one hundred eighty (180) day period. Tesla shall deliver written notice to City promptly following the Commencement Date to confirm such date for recordkeeping purposes. In the event that the Commencement Date has not occurred within fifteen (15) months following the Entry Date, City may immediately terminate this Agreement in its sole discretion upon at least thirty (30) days written notice to Tesla.
7. **TERM AND TERMINATION:** The initial term of this Agreement shall expire seven (7) years from the last day of the month in which the Commencement Date occurs (the "**Initial Term**"). At the end of the Initial Term, this Agreement shall automatically renew for two (2) consecutive five (5) year extensions (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), upon the same terms contained in this Agreement, provided that no Event of Default (as defined in Section 17) by Tesla exists at the time of extension; and provided further that either Party may terminate this Agreement at any time after the Initial Term or during any Renewal Term for any reason by sending the other Party at least ninety (90) days' written notice of its intention to terminate this Agreement.
8. **REMOVAL:** Tesla shall, at its' sole cost, remove the Trade Fixtures (as defined in Exhibit B) promptly following termination of this Agreement and restore the Premises to a condition commensurate with the rest of the Property, subject to exceptions for reasonable wear and tear and, except to the extent caused by Tesla, damage by casualty or condemnation. City agrees that all Trade Fixtures and related intellectual property are and shall remain the personal property of Tesla. The Infrastructure (as defined in Exhibit B) shall be left in good and safe condition and shall become the property of City upon termination of this Agreement. If Tesla fails to remove the Trade Fixtures within thirty (30) days of the termination or expiration of this Agreement, then City shall deliver written notice to Tesla, and if Tesla fails to commence the diligent removal of the Trade Fixtures within ten (10) days of the notice, then City shall have the right (without any obligation) to remove, ship and/or store the Trade Fixtures and restore the Premises at Tesla's sole cost and expense. If Tesla fails to perform its obligations as provided in this Section 8, Tesla shall reimburse City for the reasonable costs so incurred within thirty (30) days written notice, which notice shall be accompanied by paid receipts.
9. **INTENTIONALLY OMITTED.**
10. **RENT:** Tesla will pay the City Two Thousand One Hundred Dollars (\$2,100.00) per month (the "**Rent**") for the Premises in advance 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

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either electronically to an account specified by City to Tesla in writing, or by check to the City at City of Palo Alto, Attention: Revenue Collections, 250 Hamilton Avenue, Palo Alto, CA 94301, or to such other places as City may from time to time designate in a written notice to Tesla. Tesla hereby acknowledges that late payment by Tesla of Rent will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any Rent shall not be received by City within ten (10) days after such amount is due, then, Tesla shall pay to City a one-time late charge equal to ten percent (10%) of said Rent as a late charge. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of such late payment. Acceptance of such late charge by City shall in no event constitute a waiver of Tesla's Event of Default (as defined in Section 17) with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder.

11. **UTILITIES:** Tesla agrees to arrange and pay the charges for all Tesla-related utility services provided or used in or at the Premises during the Term. Tesla shall pay directly to the utility company the cost of installation of any and all such Tesla-related utility services and shall arrange to have the utility service separately metered. City shall not be responsible for any damages suffered by Tesla in connection with the quality, quantity or interruption of utility service, unless the cause of the disruption or damage was City's gross negligence or intentional misconduct.
12. **USE:** Tesla shall use and occupy the Premises during the Term for a Supercharger Station and incidental purposes ("**Permitted Use**"). Tesla is authorized to operate and collect payment for use of the Supercharger Station year round, twenty-four (24) hours per day and seven (7) days per week. City acknowledges and agrees that the Premises shall not be outfitted with non-Tesla charging equipment; provided, however, nothing herein shall be interpreted to prevent City from installing non-Tesla charging equipment at any location on the Property, including immediately adjacent to the Premises. Tesla understands, acknowledges, accepts and agrees that City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing herein shall limit in any way Tesla's obligation to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.
13. **MAINTENANCE AND TEMPORARY IMPAIRMENT:** Tesla shall be responsible for maintaining the Supercharger Station (including repair and replacement of equipment, as necessary) at its' sole cost, and City shall have no liability for damage to the Supercharger Station unless caused by City's gross negligence or willful misconduct. City's normal responsibility to maintain the common areas of the Property which shall also only apply to the paved portions of the Premises and City agrees to coordinate maintenance that will impair the Premises with Tesla; provided that City shall use commercially reasonable efforts to minimize any impairment of the Premises, including, without limitation, by limiting such impairment to times of day and days of the week that are not busy charging periods, and except in the case routine maintenance that will not impair the Premises or an emergency, City shall provide Tesla at least three (3) days advance written notice stating the date, time, duration and scope of the planned impairment.
14. **CITY COVENANTS:** City represents that: (a) it is the owner of the Property and has the power and authority to enter into this Agreement on the terms hereof; (b) it has obtained any required consents to enter into this Agreement; (c) during the Term, it will not lease, license or commit the

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parking spaces within the Premises to a third party; (d) the Property is subject to no conditions, restrictions or covenants incompatible with the Permitted Use; and (e) this Agreement does not violate any agreement, lease or other commitment by which City is bound. Nothing herein shall prevent City from installing non-Tesla charging equipment at any location on the Property, including immediately adjacent to the Premises; provided that such equipment shall not be installed within the Premises. City agrees to notify Tesla within a commercially reasonable time if it obtains knowledge of a needed repair to the Supercharger Station. If non-Tesla motorists repeatedly park in the Enabled Stalls, then the Parties shall reasonably cooperate to explore, but City shall have no obligation to approve an effective strategy for preventing such impairment if the City determines, in its sole discretion, that such strategies violate applicable laws or will materially impair the Property or access thereto, which may include, without limitation, alternative signage and painted asphalt; provided that, if a strategy is approved, Tesla shall, at its sole cost and expense, implement such strategy in compliance with all Laws.

15. **PAYMENTS TO CITY:** Nothing in this Agreement limits City's ability to collect fees for parking or otherwise regulate public access to the Premises or Property subject to Section 10, provided, however, that City shall have no right to request or accept payment from Tesla, Tesla customers or any other third-parties for Tesla customers' use of the Supercharger Station itself.
16. **SIGNAGE:** Subject to applicable Laws (as defined in Section 34), Tesla shall install signage for the Enabled Stalls substantially similar to the signage represented in Exhibit B ("**Signage**"). Any material revisions or additions to the Signage shall be subject to City approval, which shall not be unreasonably withheld, conditioned, or delayed.
17. **DEFAULT:** Each of the following shall constitute an "**Event of Default**" under this Agreement:
 - A. **Breach:** The failure by either Party to perform or observe any material term or condition of this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party, provided, however, that if the nature of such default is such that it cannot reasonably be cured within such thirty (30) day period and the defaulting Party commences to cure within the thirty (30) day period and proceeds with diligence and continuity, then such Party shall have additional time to cure as is reasonably required. Notwithstanding the foregoing, Tesla's failure to pay Rent when due that continues for at least ten (10) days shall be an Event of Default.
 - B. **Bankruptcy; Insolvency:** The appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tesla located at the Premises if possession is not restored to Tesla within sixty (60) days; or a general assignment by Tesla for the benefit of creditors; or any action or proceeding is commenced by or against Tesla under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors and, in the case of actions filed against Tesla, is not discharged within sixty (60) days.
18. **REMEDIES:** City and Tesla acknowledge and agree that each Party shall have all remedies available at law or in equity if an Event of Default by the other Party has occurred and is continuing. In addition, if an Event of Default by Tesla has occurred and is continuing, then City, may at its option: (a) continue this Agreement in effect by not terminating Tesla's right to use said Premises and thereby be entitled to enforce all City's rights and remedies under this Agreement;

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- (b) terminate this Agreement and City shall be entitled to recover from Tesla the unpaid Rent which had been earned at the time of termination and any cost of recovering possession of the Premises, including necessary renovation and alteration of the Premises as more particularly described in Section 8, and any reasonable and documented attorneys' fees, and/or (c) 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.
19. **EXCLUSIONS:** Notwithstanding anything herein to the contrary, each Party expressly releases the other from any claims for, speculative, indirect, consequential or punitive damages, including any lost sales or profits of the other Party.
20. **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 City; provided that the foregoing prohibition shall not limit Tesla's ability to transfer this Agreement to a Tesla Affiliate. "**Affiliate**" means an entity which: (a) controls or is controlled by a Party hereto or (b) is under common control with a Party hereto: where "control" means that more than fifty percent (>50%) of the controlled entity's shares or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity.
21. **INDEMNIFICATION:**
- A. **City:** Except to the extent a claim arises from any negligence or willful misconduct of a City Indemnified Party, Tesla hereby agrees to indemnify, hold harmless and defend City, its elected and appointed officials, officers, managers, members, employees, agents and representatives (each a "**City Indemnified Party**") from and against any and all demands, claims, legal or administrative proceedings, penalties, fines, judgments, losses, and liabilities ("**Claims**"), including court costs, experts' fees, and reasonable attorneys' fees, arising out of third party claims related to (a) any injury to or death of any person or damage to or destruction of any property caused by the use of the Trade Fixtures (b) Tesla's breach of this Agreement, (c) Tesla's Work (excluding the ADA Stall and Level 2 Connector) the use of the Premise or any activities conducted thereon by Tesla, its agents, contractor, employees or subcontractors. For the avoidance of doubt, Tesla shall have no obligation to indemnify the City for any claims related to the ADA Stall or the Level 2 connector.
- B. **Tesla:** Except to the extent a claim arises from any negligence or willful misconduct of a Tesla Indemnified Party, City hereby agrees to indemnify, hold harmless and defend Tesla, its Affiliates and their respective directors, officers, managers, members, employees, agents and representatives (each a "**Tesla Indemnified Party**") from all Claims arising out of or alleged to have arisen out of third party claims related to: (a) City's entry onto the Premises or the City's Work; or (b) City's breach of this Agreement.
22. **LIENS:** Within thirty (30) days of written notice thereof from City, Tesla shall pay all claims relating to a lien arising from labor or materials due to Tesla's Work. If Tesla shall contest the validity of any such lien, claim or demand, then Tesla shall, at its sole expense indemnify, defend, and hold City harmless from and against any third party costs related to or resulting from such lien filed against the Premises or Property due to Tesla's Work except to the extent caused by the negligence or willfully misconduct of the City. In the event Tesla fails, within thirty (30) days of

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written notice from City, to pay such claims or inform City of its intent to contest such claims and indemnify City in accordance with Section 21A, City may, in its sole discretion, take all commercially reasonable steps to remove a lien from the Property and recover the reasonable and documented costs thereof from Tesla.

23. **DESTRUCTION**: Any total destruction of the Premises shall, at City's or Tesla's written election within thirty (30) days of such destruction, terminate this Agreement.
24. **INSURANCE**: Tesla shall carry commercial general liability insurance with limits of not less than Two Million Five Hundred Thousand dollars (\$2,500,000) for bodily injury or death and property damage and an umbrella insurance policy of not less than Five Million dollars (\$5,000,000). The total limits required above may be met by any combination of primary and excess liability insurance. A certificate evidencing such insurance shall be delivered to City upon the execution of this Agreement and from time to time thereafter as may be requested by City. Upon request, Tesla shall include City 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.
25. **PUBLICITY**: Neither Party will use the other Party's name, trademark or logo without obtaining the other Party's prior written consent.
26. **ENVIRONMENTAL MATTERS**: "**Hazardous Substance**" or "**Hazardous Material**" means any substance, material, waste, pollutant or contaminant, which is regulated by law now or in the future as being hazardous, toxic, flammable, carcinogenic, explosive or radioactive, or is potentially injurious to the public health, safety or welfare or the environment. Tesla shall not use, produce, manage, contain, store, treat or dispose of Hazardous Substances in, on or about the Premises, provided that Tesla's internal combustion engine vehicles may access the property, in compliance with all applicable Laws, during the initial construction of Tesla's Work; without the express prior written consent of City and timely compliance with all applicable Laws. City may condition its consent as City reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability related to Hazardous Material.

In the event that any Hazardous Material is spilled, leaked or otherwise released on the Premises or its vicinity caused by the Trade Fixtures, or by Tesla, its agents, contractor, employees or subcontractors, Tesla shall, at its sole costs, promptly undertake all necessary actions to remediate or remove such contaminating material or substance from the Premises or vicinity thereof in compliance with all applicable laws and requirements at no cost to City.

City represents and warrants that the Premises shall be delivered free of environmental contamination that violates any applicable environmental law. City agrees that it will indemnify and hold Tesla harmless from all costs from, and Tesla shall have no liability for, any environmental contamination of the Property, unless caused by Tesla, its agents, employees or contractors or as the result of the use of the Trade Fixtures, as provided herein. During the Term, City is responsible for remediating any pre-existing contamination and any contamination not caused by Tesla, its agents, contractors, subcontractors or employees, but only to the extent required by applicable environmental law.

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27. **NOTICES:** All notices, demands and approvals shall be in writing and shall be delivered by prepaid first class certified mail, or by a reputable overnight delivery service, to the addresses of the respective Party as specified in Section 1. Notice given by certified mail shall be deemed given on the second business day after deposit in the United States Mail, and any notice given by overnight delivery service shall be deemed given on the next business day after deposit with such overnight delivery service. Copies of notices, demands and approvals shall also be delivered if a “copy to” e-mail or other address is specified in Section 1. Notwithstanding the foregoing, as provided in Section 4, City may approve the plans and specifications by e-mail. Either Party may change their respective address for notices by giving written notice of such new address in accordance with the provisions of this Section 27.
28. **BROKERS:** Each Party represents to the other Party that it has not dealt with any broker and each Party hereby agrees to indemnify and hold the other Party harmless from all losses and liabilities, including court costs and reasonable attorneys’ fees, arising out of any claims for commissions or fees related to any broker, finder or similar person with whom the indemnifying Party has dealt, or purportedly has dealt, in connection with this Agreement.
29. **SALE OR TRANSFER:** In the event of a sale or transfer of all or a portion of City’s interest in the Property or Premises while this Agreement is in effect, Tesla’s rights shall be conveyed with the Property or Premises and City warrants that any transferee shall be bound by all terms and conditions of this Agreement, and shall obtain any necessary documents to confirm such assignment.
30. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and shall inure to the benefit of City and Tesla and their respective successors and assigns.
31. **SUBORDINATION:** This Agreement is subject to and subordinate to all ground or superior leases and to all mortgages which may now or hereafter affect such leases or the real property of which the Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such ground or superior leases and mortgages; provided that Tesla’s rights under this Agreement shall not be disturbed by such subordination so long as no Event of Default by Tesla exists. This Section 31 shall be self-operative and no further instrument of subordination or non-disturbance shall be required by any ground or superior lessor or by any mortgagee, affecting any lease or the Property.
32. **FORCE MAJEURE:** If either Party’s performance of its obligations under this Agreement is delayed by Force Majeure, then such Party’s time of performance will be extended by a corresponding number of days; provided that Force Majeure shall not excuse timely payments when due under this Agreement, except that Rent shall abate to the extent the Permitted Use is completely frustrated as a direct result of a Force Majeure event in spite of Tesla’s good faith and diligent efforts. As used in this Agreement, “**Force Majeure**” means an act, event, condition or requirement beyond such party’s reasonable control, including, without limitation, labor disputes, governmental restrictions, natural disasters, fire, flood, inclement weather, explosion, embargoes, war, terrorism, civil disturbance or other similar events.
33. **INCENTIVES:** City agrees that Tesla shall own and receive the benefit of any Incentives derived from the construction, ownership, use and operation of the Supercharger Station. City will cooperate with Tesla in obtaining all Incentives, provided that City is not obligated to incur any

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out-of-pocket costs in doing so unless reimbursed by Tesla. If any Incentives are paid directly to City, City agrees to immediately pay such amounts over to Tesla. **"Incentives"** means (i) electric vehicle charging or renewable energy credits or certificates, carbon credits and any similar environmental or pollution allowances, credits or reporting rights, (ii) rebates or other payments based in whole or in part on the cost or size of equipment, (iii) performance-based incentives paid as periodic payments, (iv) tax credits, grants or benefits, and (v) any other attributes, commodities, revenue streams or payments, in each of (i) through (v) under any present or future law, standard or program, or paid by a utility or any governmental, regulatory or administrative authority.

34. **COMPLIANCE WITH LAW:** Each Party shall comply with all applicable codes, laws and ordinances (**"Laws"**) in fulfilling its respective obligations under this Agreement. Each Party represents that it is in good standing under the Laws of the state of its organization. To the extent the Infrastructure or Trade Fixtures installed by Tesla are considered a "public work," as defined in Labor Code § 1720, et. seq., Tesla shall comply with the state prevailing wage law, California Labor Code §§ 1720 et seq. and 8 CCR § 16000 et seq. for any "public work" (as that term is defined in the statutes) performed pursuant to this Agreement. For purposes of compliance with prevailing wage law, Tesla shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes, without limitation, payment of at least prevailing rates as determined by the Director of Industrial Relations, overtime and working hour requirements, apprenticeship obligations, payroll record-keeping requirements, and other obligations as required by law. Each Party accepts and shall enforce the statements of policy set for in Palo Alto Municipal Code Section 9.73.010 with respect to all of the activities conducted upon the Premises and Property. The Premises have undergone an inspection by a Certified Access Specialist (CASp), and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. To the best of City's knowledge, there have been only minor modifications or alterations completed or commenced between the date of the inspection and the Effective Date which have further impacted the Premises' compliance with construction-related accessibility standards. City has provided, at least forty-eight (48) hours prior to execution of this Agreement, a copy of such CASp report to Tesla. Because a disability access inspection certificate, as described in subdivision (e) of Section 55.53 of the California Civil Code, was not issued for the Premises. Tesla is advised of the following (pursuant to Section 1938 of the California Civil Code): "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." The Parties hereby agree that Tesla shall have the right, but not the obligation, to have a CASp ordered to further inspect the Premises. If Tesla elects to obtain a CASp inspection, Tesla shall be responsible for the payment of the CASp inspection. Additionally, if Tesla elects to make any repairs directly related to Tesla's Work necessary to correct violations of construction-related accessibility standards, Tesla may do so, at its sole cost and expense, subject to Section 4 hereof. Notwithstanding anything herein to the contrary, the City may choose to make any structural alterations or repairs to correct any such non-compliance applicable to construction-related

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accessibility standards referenced above and in no event will Tesla incur any liability or be required to make any structural repairs or alterations to the Premises to the extent the modifications are required because of any non-compliance (even if “grandfathered”) that existed before the Commencement Date except to the extent solely required by the performance of Tesla’s Work (specifically excluding the ADA Stall).

35. **POSSESSORY INTEREST TAXES:** Tesla understands and acknowledges that the license granted in this Agreement may be subject to possessory interest taxes pursuant to Section 107 of the Revenue and Taxation Code, Section 33673 of the Health and Safety Code, or other provision of state or local law. Tesla shall be solely responsible and liable and shall promptly pay such taxes directly to the administering government agency when due. Tesla shall have the right to challenge such tax. In the event City receives any notices or other documents relating to possessory interest taxes owed by Tesla due to this Agreement or the Supercharger Station, City shall provide such information to Tesla within five (5) working days.
36. **GOVERNING LAW AND JURISDICTION:** This Agreement shall be governed by the Laws of California and any dispute with respect to this Agreement shall be subject to the jurisdiction of the Superior Court of Santa Clara County.
37. **WAIVER OF JURY TRIAL:** CITY AND TESLA EACH WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT.
38. **INTERPRETATION:** The headings and defined terms in this Agreement are for reference purposes only and may not be construed to modify the terms of this Agreement. Neither Party shall have the right to unilaterally revoke or terminate this Agreement, unless such revocation or termination is pursuant to the explicit terms of this Agreement.
39. **SEVERABILITY:** If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected, and each provision shall be valid and enforceable to the fullest extent permitted by law.
40. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together will constitute one agreement. Electronic signatures and other signed copies transmitted electronically in PDF or similar format shall be treated as originals.

Signature page follows.

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

CITY:

City of Palo Alto,
a California chartered municipal corporation

By: _____

Name: Ed Shikada

Title: _____

Date: _____

TESLA:

Tesla, Inc.
a Delaware corporation

By:  _____

Name: Max de Zegher

Title: Sr Manager, Charging North America

Date: 6/2/2021

APPROVAL AS TO FORM:

By: _____

Name: Albert Yang

Title: _____

Date: _____

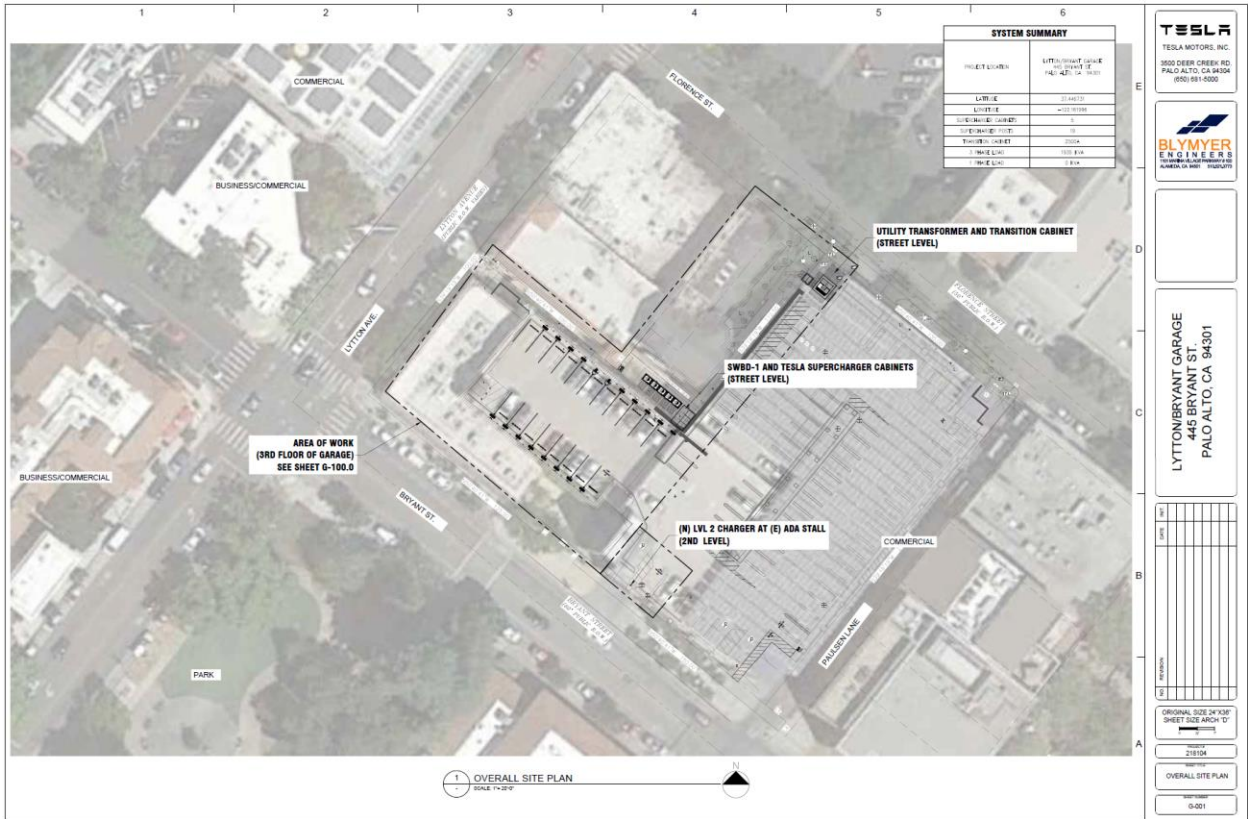
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EXHIBIT A

Premises and Property Depiction and Address

Property Address: 445 Bryant St, Palo Alto, CA 94301

Premises and Property Depiction:





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EXHIBIT B

Supercharger Station

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

The “**Supercharger Station**” shall consist of: (a) necessary utility infrastructure, which may include a utility transformer, metering equipment, conduit, wiring and concrete pads (collectively, the “**Infrastructure**”); and (b) certain trade fixtures as determined by Tesla and approved by City, which shall include twenty (20) charge posts (“**Superchargers**”), power electronics equipment, switchgear and Signage, and may also include, without limitation, fence or other visual barriers that do not impair the use of the Premises as parking for the general public (collectively, the “**Trade Fixtures**”).

Signage

Enabled Stall Sign Example



Work Letter

Prior to the Entry Date, City will perform City’s Work in the Property as are expressly set forth in this Work Letter. The City shall be responsible for maintaining the equipment installed pursuant to the City’s Work (including repair and replacement of equipment, as necessary) at its’ sole cost, and Tesla shall have no liability for damage to such equipment unless caused by Tesla’s gross negligence or willful misconduct. The cost of City’s Work shall be paid as provided in this Work Letter and the City shall be responsible for obtaining all necessary permits and approvals related to the City’s Work. City shall upgrade the transformer in the Property, adjacent to the Florence Street entrance, consisting of the items shown below. City’s Work shall be completed with new and suitable materials, free of defects and in a good and workmanlike manner and in compliance with all permits, approvals, and Laws. The cost of City’s Work shall be paid for by City up to a maximum amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) (“**City’s Work Cap**”). The City shall notify Tesla in writing before incurring any costs that

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exceed the City's Work Cap, which notice shall include an explanation for the changes to the City's Work and reasonable evidence for the costs in excess of the City's Work Cap. Upon Tesla's written approval (not to be unreasonably withheld, conditioned, or delayed), Tesla shall pay such cost in excess of the City's Work Cap within thirty (30) days' of Tesla's written approval of such costs in excess of the City's Work Cap.

1. Labor to Install/ Removal Transformer
2. Labor to Install Switch / New transformer
3. Splices, Elbows, Fault Indicators, racks
4. 6X12 vault, 3'X5' vault, and transformer pad, Primary cable
5. Engineer , Estimator, Inspection
6. Special Facility Cost
7. Cost of Switch (lead time 6 months)
8. Cost of Transformer
9. Invoice for Tesla in the event the City exceeds the City's Work Cap

RESPONSE TO UNSOLICITED PROPOSALS

POLICY STATEMENT

The purpose of this policy is to establish a framework for the City to respond to unsolicited proposals for use of City property, where such proposals have the likelihood of advancing the City's goals and operations. This policy ensures public transparency in a timely manner appropriate to public discussion of the merits, tradeoffs, and possible alternatives to the proposed use as part of the decision-making process.

BACKGROUND

City staff occasionally receive unsolicited proposals for the use of City property. This policy and procedure is intended to address situations in which a private party (potentially a non-profit or for-profit organization) expresses an interest in making use of a City-owned property or facility in a manner that provides benefit to the Palo Alto community.

PROCEDURES

1. Staff shall forward unsolicited proposals to their Department Director or designee(s) for review and consideration.
2. The Department Director shall have the discretion to forward unsolicited proposals to the City Manager for further review if the proposal appears to advance common goals in support of the City's strategy and operations.
3. The City Manager, or their designee(s), shall be authorized to hold initial discussions with a proposer to develop sufficient detail regarding the proposal and may seek modifications to improve its ability to advance common goals.
4. Through initial discussions, the City Manager shall strive to gather sufficient detail regarding the purpose of the proposal, a description of the project, the proposed terms, and any other relevant information to make an informed decision on whether a proposal is of interest to the City and whether it would produce operational, financial, or other advantage for the City to publicly solicit alternative proposals for the property at issue.
5. If the proposed terms are outside of the City Manager's authority, the City Manager will bring forward the information gathered to the City Council at the earliest practical opportunity.
6. For projects that exceed the City Manager's authority, no commitment to proceeding with a proposal will be granted outside an open session of the City Council.

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7. Should the City Council approve the proposal, the City Manager and appropriate staff will proceed with implementing actions consistent with City Council direction and applicable delegation of authority.

NOTE: Questions and/or clarification of this policy should be directed to the Administrative Services Department