

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:



