



STATIONARY BATTERY SERVICES AGREEMENT

This STATIONARY BATTERY SERVICES AGREEMENT (the “Agreement”), dated as of _____ (the “Effective Date”), is entered into by and between Tesla Motors, Inc., a Delaware corporation with a principal place of business located at 3500 Deer Creek Road, Palo Alto, CA 94304 (“Tesla”), and Napa Sanitation District, a California county sanitation district with a principal place of business located at 1515 Soscol Ferry Road, Napa, CA 94558 (“Customer”). Tesla and Customer are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Customer owns certain real property located at 1515 Soscol Ferry Road, Napa, CA 94558 and commonly referred to as Napa Sanitation District (the “Property”);

WHEREAS, Tesla is the developer of certain stationary energy storage systems identified in Exhibit A hereto (the “Equipment”);

WHEREAS, the Parties desire that Tesla install five (5) units of the Equipment at the Property and provide to Customer certain Equipment-related services as described in this Agreement; and

WHEREAS, in connection with the installation of the Equipment and provision of services hereunder, Tesla shall be entitled to, among other things, certain financial incentives under the State of California Self-Generation Incentive Program (“SGIP”) as provided in Section 397.6 of the California Public Utilities Code; and

WHEREAS, Customer is a public agency and is subject to various laws, including without limitation the California Public Records Act, the California Public Contracts Code relating to public projects, and the California Labor Code relating to the payment of prevailing wages on public works.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I **DEFINITIONS**

Section 1.1 Definitions. For purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

“Affiliate” means an entity which controls, is controlled by or is under common control with a Party. As used herein, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Approvals” means all approvals, consents, permits, licenses and certificates, including all corresponding inspections and authorizations, required by any utility, grid service provider or governmental authority in connection with the provision of any Services hereunder.

“Claim” has the meaning set forth in Section 8.1.

“Commencement Date” means the earliest date that the SGIP Program Administrator indicates Tesla has qualified to receive the SGIP Incentives following verification by the SGIP Program Administrator that Customer has completed the Required Upgrades and the Equipment is completely installed, interconnected, permitted and otherwise in compliance with the requirements of the SGIP.

“Confidential Information” means information disclosed by a Party to the other Party under this Agreement, subject to the exceptions in Section 13.6(b), and may include, but is not limited to, Trade Secrets or physical samples, financial, business, sales or technical information, terms of agreements, negotiations or proposals, and such other information disclosed (a) in written or other tangible form and marked “Confidential” or with words of similar import, (b) orally or visually and identified as Trade Secret, confidential or proprietary information at the time of disclosure, or (c) under circumstances by which the receiving Party should reasonably understand such information is to be treated as confidential, whether or not marked “Confidential” or otherwise. For clarity, “Confidential Information” includes any Trade Secret information relating to the Equipment and its performance but does not include any information, regardless of how marked, which is subject to disclosure pursuant to the California Public Records Act, California Government Code section 6250 and following.

“Confirmed Incentive Reservation Date” means the date Tesla receives written confirmation from the SGIP Program Administrator that the SGIP Incentives are approved and reserved.

“Defaulting Party” has the meaning set forth in Section 10.1.

“Deliverables” means the Equipment and Infrastructure.

“Dispute” has the meaning set forth in Section 12.1.

“Effective Date” has the meaning set forth in the Preamble.

“Energy Efficiency Audit” has the meaning set forth in Section 7.3.

“Environmental Laws” means all federal, state and local laws, statutes, ordinances and regulations (including the United States Code of Federal Regulations), now or hereafter in effect, in each case as amended or supplemented from time to time, relating to the regulation and protection of human health, safety, the environment and natural resources, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

“Equipment” has the meaning set forth in the recitals and includes all alterations, modifications, or improvements thereto.

“Equipment Site” means the location of the Equipment at the Property, as further described in Exhibit B hereto.

“Equipment Warranty” means the operational warranty set forth in Exhibit C hereto.

“Force Majeure Event” means any act, event or condition beyond a Party’s reasonable control, including acts of God, fire, explosion, accident, floods, earthquakes, embargoes, epidemics, war, terrorism, nuclear disasters or other similar events.

“Hazardous Materials” means: (a) those substances included within the definitions of any one or more of the terms “hazardous materials,” “hazardous wastes,” “hazardous substances,” “industrial wastes,” and “toxic pollutants,” as such terms are defined under the Environmental Laws; (b) petroleum and petroleum products; (c) asbestos and materials containing asbestos; (d) any other hazardous or radioactive substance, material, pollutant, contaminant or waste; and (e) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation.

“Infrastructure” means the power supply, concrete pads, telecommunications lines and conduits and wiring provided by Tesla in the course of installing and/or maintaining the Equipment.

“Initial Term” has the meaning set forth in Section 2.1.

“ISO” means the California Independent System Operator, or its successor in interest.

“JAMS” has the meaning set forth in Section 12.3.

“Lender” has the meaning set forth in Section 13.10.

“Losses” means all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder.

“OFAC Regulations” has the meaning set forth in Section 13.12.

“Project Cost” means the overall project cost set forth in Exhibit E hereto, as may be amended by the Parties from time to time.

“Proprietary Rights” means patents, trademarks, copyrights, Trade Secrets and any other intellectual or proprietary rights.

“Renewal Term” has the meaning set forth in Section 2.2.

“Required Upgrades” means all energy efficiency measures identified with a 2-year or less payback in the Energy Efficiency Audit.

“Scope of Work” means the scope of work to be performed by Tesla hereunder as described in Exhibit D hereto.

“Service Fee” has the meaning set forth in Section 6.3(a).

“Services” means the following services provided by Tesla to Customer in connection with the Equipment: (i) installation and operation of the Equipment; (ii) maintenance and servicing of the Equipment; (iii) monitoring of Customer’s electricity usage at the Property; (iv) any other actions required to provide any of the foregoing, in each case as more fully described in the Scope of Work.

“SGIP” has the meaning set forth in the Recitals.

“SGIP Incentives” means all financial incentives paid out under the SGIP in connection with the installation and operation of the Equipment at the Property.

“SGIP Program Administrator” means the Pacific Gas & Electric Company.

“Term” has the meaning set forth in Section 2.2.

“Termination Charge” means Tesla’s total cost for installing the Equipment at the Property, as reflected in the “Construction and Installation” line item of the Project Cost, amortized over the five (5) year period between the Commencement Date and expiration of the Initial Term and pro-rated through the date of termination of this Agreement. By way of example, if Tesla’s total installation cost is One Hundred Twenty Thousand Dollars (\$120,000) and this Agreement is terminated by Tesla for cause on the second anniversary of the Commencement Date, the “Termination Charge” shall be Seventy-Two Thousand Dollars (\$72,000).

“Trade Secret” has the meaning set forth in California Civil Code section 3426.1(d).

“Value” has the meaning set forth in Section 6.3(a).

ARTICLE II

TERM

Section 2.1 Initial Term. This Agreement shall commence on the Effective Date and conclude on the fifth (5th) anniversary of the Commencement Date (the “Initial Term”).

Section 2.2 Renewals. The Initial Term may be extended for up to three (3) five (5) year periods (each such five (5) year period, a “Renewal Term” and together with the Initial Term, the “Term”). Each Renewal Term shall run concurrently upon expiration of the Initial Term or previous Renewal Term, as applicable.

ARTICLE III

EQUIPMENT

Section 3.1 Ownership; Disclaimer of Interest.

(a) The Parties agree that the Equipment does not constitute real property or fixtures, regardless of the manner in which the Equipment is installed. The Parties further agree that the Equipment shall at all times remain the sole and exclusive property of Tesla for all purposes. Accordingly, Tesla shall be the sole and exclusive beneficiary of the Equipment Warranty and shall be solely liable for any taxes attributable to ownership of the Equipment.

(b) Except for the rights expressly granted to Customer hereunder, Customer expressly disclaims and waives any rights it may have at law or in equity with respect to any of the Deliverables, including any claims for breach of the Equipment Warranty.

(c) Customer agrees not to grant any liens on or security interests in any of the Deliverables.

Section 3.2 Proprietary Rights; License.

(a) All Proprietary Rights in and to the Equipment shall at all times remain the sole and exclusive property of Tesla. Customer acknowledges that it may learn certain proprietary information

due to its possession of the Equipment and/or receipt of the Services and agrees that such information shall be deemed Tesla's confidential information and Customer's use thereof shall in accordance with Section 13.6.

(b) Tesla hereby grants to Customer, during the Term, a limited, non-exclusive, royalty-free license under Tesla's Proprietary Rights solely as necessary to make use of the Equipment at the Property and to receive the Services, in each case solely in connection with use of the Equipment and receipt of the Services as contemplated under this Agreement.

Section 3.3 Customer Obligations Regarding the Equipment.

(a) Customer shall provide security for the Equipment at the same level it provides for its own personal property of similar value.

(b) Customer shall notify Tesla immediately of any issues or potential issues affecting the Equipment of which Customer becomes aware, including any evidence of malfunction or potential threat to the Equipment.

(c) Customer shall not, directly or indirectly, alter or change in any way the interconnection of the Equipment to the Property's electrical distribution systems without Tesla's prior written consent.

(d) Customer shall not, directly or indirectly, modify, repair, move or otherwise tamper with the Equipment in any manner without Tesla's prior written consent; provided, however, that the foregoing shall not preclude Customer from taking all reasonable action necessary in response to emergency or safety issues at the Property.

Section 3.4 Damage to Deliverables. If Customer, its contractors or agents damage any of the Deliverables, Customer shall be liable to Tesla for all required repairs, including all costs in connection with diagnosing the Deliverables. Any amounts payable by Customer pursuant to this Section 3.4 shall be due within thirty (30) days of Customer's receipt of any corresponding invoice from Tesla.

ARTICLE IV **PROPERTY**

Section 4.1 Access Rights. Customer hereby grants to Tesla, its subcontractors and agents the right and/or license to access the Property for ingress and egress to the Equipment Site for purposes of installing, maintaining and/or removing the Deliverables, in each case solely during Customer's normal business hours or as otherwise mutually agreed between the Parties. For clarity, the foregoing access rights include access to the Interconnection Facilities.

Section 4.2 Hazardous Materials.

(a) The Parties understand and acknowledge that the Equipment's battery cells are classified as Hazardous Materials under applicable Environmental Laws, including Title 49 of the United States Code of Federal Regulations. Accordingly, the rights granted to Tesla pursuant to Section 4.1 above are granted notwithstanding such classification; provided, that Tesla is in compliance with the requirements of all applicable Environmental Laws, including Title 49 of the United States Code of Federal Regulations, at all times during the Term.

(b) In the event Hazardous Materials are identified at the Equipment Site and such Hazardous Materials were not introduced by Tesla, Customer shall promptly begin the process of

eliminating, containing or otherwise remediating such Hazardous Materials in accordance with applicable Environmental Laws. For clarity, Tesla shall not be liable for any costs associated with the foregoing and shall have no obligation to provide or continue providing any Services until such remediation efforts have been completed to Tesla's reasonable satisfaction.

Section 4.3 Maintenance. At all times during the Term, Customer shall maintain the Property, including the Equipment Site, in a clean and safe condition free of any obstructions or hazards that may endanger the Equipment or otherwise impede Tesla's ability to safely perform the Services.

Section 4.4 Change in Conditions. Customer shall promptly notify Tesla of any material plans to alter the Property or change its operations at the Property that could impact the operation or maintenance of the Equipment or the ability to generate utility cost savings at the Property (*e.g.*, changes that may result in a change to the applicable utility tariffs). Notwithstanding the foregoing, Customer shall provide Tesla at least thirty (30) days' notice prior to implementing any such changes; provided, however, that any changes (other than those necessary to address emergency, safety or structural concerns) which could damage or otherwise adversely impact the operation or maintenance of the Equipment shall be subject to Tesla's prior written consent.

Section 4.5 Energy Audit; Required Upgrades. Upon Tesla's request, Customer shall provide to Tesla a copy of the Energy Efficiency Audit. To the extent not implemented prior to the Effective Date, Customer hereby agrees to implement, at its sole cost and expense, all Required Upgrades by no later than Tesla's completion of the Equipment installation. Customer's failure to comply with the foregoing shall be deemed a material breach of this Agreement.

ARTICLE V **SERVICES**

Section 5.1 Condition Precedent. Notwithstanding anything in this Agreement to the contrary, Tesla's obligation to commence the provision of any Services hereunder, including procurement of any Approvals, shall be contingent upon Tesla's receipt of the Confirmed Incentive Reservation Date.

Section 5.2 Installation.

(a) Tesla shall install the Deliverables at the Equipment Site in accordance with the Scope of Work and in accordance with any construction drawings approved by Customer. In furtherance of the foregoing, Customer shall make available to Tesla a mutually satisfactory lay-down and staging area for the Deliverables, and shall provide to Tesla all information reasonably requested by Tesla to safely, efficiently and effectively install the Deliverables (*e.g.*, Property-specific electrical plan drawings and schedule of operations).

(b) At least thirty (30) days prior to installation of the Deliverables and not more than six (6) months after the Effective Date, Tesla shall provide Customer with a report detailing the proposed installation schedule and approximate timing for completion. Tesla shall use commercially reasonable efforts to complete installation of the Deliverables within six (6) months following receipt of the Confirmed Incentive Reservation Date.

(c) Subject to Customer's consent (such consent not to be unreasonably withheld, delayed or conditioned), Tesla may install, at its sole cost and expense, an Internet connection or phone line at the Equipment Site or other location approved by Customer solely for purposes of providing the Services.

(d) Tesla shall be liable for all costs and expenses associated with the installation of the Deliverables, including the “Construction and Installation” line item of the Project Cost.

(e) Tesla shall notify Customer at least five (5) days prior to completing the installation of the Deliverables.

Section 5.3 Maintenance.

(a) During the Term, Tesla shall maintain the Deliverables in good working condition, which may include installing or removing certain equipment, components or other hardware to or from any part of the Deliverables; provided, however, that Tesla shall have no obligation to upgrade or expand the energy storage capacity of the Equipment unless mutually agreed by the Parties in writing.

(b) In the event of any malfunction or failure of the Deliverables, Tesla shall respond within two (2) business days following notification thereof by Tesla’s remote monitoring systems or by Customer. Tesla shall use commercially reasonable efforts to repair and return the Deliverables to good working condition as soon as reasonably possible. All such maintenance and repair shall be conducted in accordance with applicable laws, including Environmental Laws.

(c) Tesla shall have the sole and exclusive responsibility for maintaining and repairing the Deliverables and shall be liable for all associated costs.

Section 5.4 Interruptions. The interruption of electricity storage service to Customer may be necessary in order to install, maintain or remove any of the Deliverables. Tesla shall coordinate with Customer to determine a schedule for any such interruption, and Tesla shall use reasonable efforts to minimize any disruption to Customer. For clarity, in no event will Tesla disrupt grid services to the Property at any time without Customer’s prior written consent.

Section 5.5 Subcontracting. Upon notice to Customer, Tesla may subcontract the provision of any Services hereunder, including removal of any Deliverables, to any Affiliate or third party; provided, that Tesla shall at all times remain responsible for the performance of the Services and for its subcontractors’ compliance with the terms of this Agreement, including the confidentiality provisions set forth herein.

ARTICLE VI
COMPENSATION

Section 6.1 SGIP Incentives. In connection with the installation and operation of the Equipment at the Property, the Parties expect that the SGIP Program Administrator will make the SGIP Incentives available to Tesla. Customer hereby assigns to Tesla any and all interest it has or may have in the SGIP Incentives, and agrees that Tesla shall be entitled to retain the full amount of the SGIP Incentives. In furtherance of the foregoing, Customer agrees to cooperate with Tesla in preparing, executing and filing any applications or other documentation necessary for Tesla to receive final approval of the SGIP Incentives.

Section 6.2 Additional Incentives. Any other incentives, grants, reduced rate financing or other assistance or benefits available for the Equipment or its use, from any federal, state or local governmental authorities, utilities or other entities, shall inure to the sole benefit of Tesla. Customer shall cooperate in good faith as necessary to enable Tesla to obtain all such available incentives.

Section 6.3 Service Fee.

(a) In consideration of the Services provided hereunder, Customer shall pay to Tesla fifty percent (50%) of all Value (such payment, the “Service Fee”). As used herein, “Value” means all incremental electric utility savings and revenue attributable to use of the Equipment at the Property. By way of example, Value can include (i) the reduction in Customer’s electric utility bill at the Property; (ii) payments received by Customer as a result of increased demand response commitments; (iii) payments received by Customer as a result of providing back-up power; and (iv) any other payments received by Customer as a result of providing grid services to the utility, ISO, demand response aggregator or other like entities.

(b) Value shall be determined by comparing Customer’s situation with and without the Equipment. In the case of utility bill savings, Value shall be determined by calculating what Customer’s utility bill would have been without the Equipment and comparing this amount to the actual utility bill. In the case of demand response payments, Value shall be determined by calculating the additional revenue resulting from an increased demand response commitment made feasible by the Equipment and/or by the Parties jointly attributing an agreed upon value to the optionality of not curtailing load during demand response calls. In the case of grid services payments, Value shall be determined by the earnings from the provision of grid services.

(c) Customer shall provide or make available to Tesla, without undue delay, all information reasonably requested by Tesla for purposes of calculating the Service Fee. At the election of Tesla, the Service Fee shall be calculated on a monthly basis or in sync with Customer’s PG&E utility billing cycle.

(d) Tesla shall provide to Customer, either on a monthly basis or in sync with Customer’s utility billing cycle, an invoice setting forth the current Service Fee and supporting data. All invoices shall be paid by Customer within thirty (30) days of the invoice date. In the event Customer disputes in good faith any invoiced amounts, Customer shall pay the undisputed portion of such invoice by the due date notwithstanding such Dispute. Following the resolution of any Dispute pursuant to ARTICLE XII, Customer shall make outstanding payments, if any, within thirty (30) days of such resolution.

Section 6.4 Grid Payments by Tesla to Customer. Subject to receipt of all necessary Approvals, Tesla may use the Equipment to provide grid services to the local utility company or the ISO provided that such grid services do not interfere with Customer’s operations at the Property. Any compensation earned by Tesla through the provision of grid services shall be shared equally with Customer and shall be paid to Customer either on a quarterly/annual basis or in sync with Customer’s utility billing cycle. Tesla shall give Customer notice prior to providing any such grid services.

Section 6.5 Taxes. Each Party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest and other additions thereto) that are imposed on that Party upon or with respect to the transactions and payments under this Agreement. For purposes of clarity, inasmuch as the Equipment remains the property of Tesla, any property taxes levied upon the Equipment shall be paid by Tesla. Tesla may charge and Customer shall pay applicable federal, national, state or local sales or use taxes or value added taxes that Tesla is legally obligated to charge arising from the installation of the Equipment and collection of the Service Fees. The Parties shall jointly pay applicable federal, national, state or local sales or use taxes or value added taxes charged as a consequence of the sale of grid services. Customer may provide Tesla with an exemption certificate acceptable to the relevant taxing authority, in which case, Tesla shall not collect the taxes covered by such certificate. Each Party agrees to reasonably cooperate with the other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

Section 7.1 Mutual. Each Party represents, warrants and covenants to the other Party that: (a) it is a legal entity, duly organized, validly existing, and in good standing; and (b) the execution, delivery and performance of this Agreement (i) is within its powers, (ii) has been duly authorized by all requisite action, and (iii) will not violate any agreement, lease, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.

Section 7.2 By Tesla. Tesla further represents, warrants and covenants to Customer that the Services will be performed in accordance with applicable laws, including Environmental Laws, the SGIP and regulations adopted by the SGIP Program Administrator.

Section 7.3 By Customer. Customer further represents, warrants and covenants to Tesla that (a) it is the sole and exclusive owner of the Property or has otherwise obtained all rights and authorizations necessary to permit Tesla to perform the Services at the Property during the Term (including after the Term with respect to removal of the Equipment) and shall, upon Tesla's request, provide copies of any documents evidencing such rights and authorizations; (b) within the five (5) years immediately prior to the Effective Date, the Property has undergone an energy efficiency audit conducted by an authorized party as determined under the SGIP Handbook (such audit, the "Energy Efficiency Audit"); and (c) the Equipment Site is free of any Hazardous Materials as of the Effective Date, and Customer will not introduce any Hazardous Materials to the Equipment Site at any time during the Term.

ARTICLE VIII
INDEMNIFICATION

Section 8.1 By Tesla. Tesla shall defend, indemnify and hold harmless Customer, its Affiliates and its and their officers, directors, employees, agents, successors and assigns from and against all Losses resulting from any third-party claim, suit, action or proceeding (each, a "Claim") that, if true, would establish:

- (a) bodily injury (including death) or damage to real or tangible personal property caused by the willful, fraudulent or grossly negligent acts of Tesla;
- (b) Tesla's breach of its obligations under Section 7.2;
- (c) Tesla's breach of its confidentiality obligations hereunder;
- (d) that the Equipment, as installed and maintained by or on behalf of Tesla, infringes, misappropriates or otherwise violates any third party's Proprietary Rights; and
- (e) Tesla's breach of its obligations under Section 13.15.

Section 8.2 By Customer. Customer shall defend, indemnify and hold harmless Tesla, its Affiliates and its and their officers, directors, employees, agents, successors and assigns from and against all Losses resulting from any Claim that, if true, would establish:

- (a) bodily injury (including death) or damage to real or tangible personal property caused by Customer's breach of its obligations under Section 3.3 or Section 7.3(c);
- (b) Customer's breach of its obligations under Section 3.1(c) or Section 7.3(a); and

- (c) Customer's breach of its confidentiality obligations hereunder.

Section 8.3 Indemnification Procedures. The Party seeking indemnification hereunder shall promptly notify the indemnifying Party in writing of any Claim and cooperate with the indemnifying Party at the indemnifying Party's sole cost and expense. The indemnifying Party shall immediately take control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the same, at the indemnifying Party's sole cost and expense. The indemnified Party's failure to perform any obligations under this Section 8.3 shall not relieve the indemnifying Party of its obligations under this Article VIII except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified Party may participate in and observe the proceedings at its own cost and expense.

ARTICLE IX LIMITATION OF LIABILITY

Section 9.1 Disclaimer of Certain Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE FORM OF ACTION AND REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE OR WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 9.2 Damages Cap. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED \$648,000.00.

Section 9.3 Exclusions. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.1 AND SECTION 9.2 SHALL NOT APPLY TO DAMAGES ARISING FROM, RELATED TO OR BASED ON: (A) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER OR VIOLATION OF THE OTHER PARTY'S PROPRIETARY RIGHTS; OR (B) A PARTY'S FAILURE TO PAY ANY SERVICE FEES (INCLUDING GRID SERVICE PAYMENTS) OR TERMINATION CHARGE IN ACCORDANCE WITH THIS AGREEMENT.

ARTICLE X TERMINATION; EFFECT OF TERMINATION AND EXPIRATION

Section 10.1 Termination for Cause. Either Party may terminate this Agreement, or suspend its performance hereunder, if the other Party (the "Defaulting Party"):

(a) commits a material breach of this Agreement and such breach is not cured within thirty (30) days following notice thereof; provided, however, that any breach of Section 3.3(d) shall not be subject to any opportunity to cure, and (ii) breaches affecting a Party's Confidential Information or Proprietary Rights, to the extent curable, must be cured within a fifteen (15) day period, and (iii) any breach by Tesla as a result of a Lender's exercise of its rights under Section 13.10 shall be subject to the cure period set forth in Section 13.10; or

(b) (i) becomes insolvent or the subject of any proceedings under any bankruptcy, insolvency or liquidation laws, which proceedings are not resolved favorably to the Defaulting Party or dismissed within sixty (60) days, (ii) makes a general assignment for the benefit of creditors, (iii) ceases conducting business in the normal course or (iv) has a material portion of its assets attached.

Section 10.2 Termination for Convenience. Neither Party may terminate this Agreement for convenience at any time during the Initial Term. During any Renewal Term, either Party may terminate this Agreement for convenience upon ninety (90) days' notice to the other Party.

Section 10.3 Additional Termination Rights.

(a) This Agreement shall automatically terminate in the event that (i) the Commencement Date is more than twelve (12) months after the Effective date or (ii) the Confirmed Incentive Reservation Date is not received within six (6) months following the Effective Date.

(b) At any time during the Initial Term, Tesla may terminate this Agreement upon at least thirty (30) days' notice to Customer in the event that Tesla fails or ceases to receive all or any portion of the SGIP Incentives for reasons not attributable to Customer.

Section 10.4 Automatic Termination. This Agreement shall automatically terminate in the event that: (a) Customer sells the Property; (b) Customer no longer has the authority to grant to Tesla the access rights set forth in Section 4.1; or (c) Customer ceases operations at the Property which results in the cessation of electrical consumption at the Property.

Section 10.5 Effects of Termination or Expiration.

(a) If (i) this Agreement expires, (ii) either Party terminates this Agreement pursuant to Section 10.2, (iii) this Agreement terminates pursuant to Section 10.3 or (iv) Customer terminates this Agreement for cause pursuant to Section 10.1, then, in each case, Tesla shall remove and transport the Deliverables (other than the Infrastructure) from the Property and restore the Equipment Site to its original condition (normal wear and tear excepted) in accordance with a schedule to be mutually agreed between the Parties (but in no event more than ninety (90) days following such expiration or termination). Tesla shall be solely liable for all costs and expenses in connection with the foregoing.

(b) If (i) this Agreement is terminated pursuant to Section 10.4 or (ii) Tesla terminates this Agreement for cause pursuant to Section 10.1, then, in each case, Tesla shall remove and transport the Deliverables (other than the Infrastructure) from the Property and restore the Equipment Site to its original condition (normal wear and tear excepted) in accordance with a schedule to be mutually agreed between the Parties (but in no event more than one-hundred fifty (150) days following such termination). Customer shall be solely liable for all costs and expenses in connection with the foregoing, and (i) if such termination occurs prior to the Commencement Date, Customer shall also be liable for all reasonable construction and installation costs and expenses incurred by Tesla prior to such termination (such costs and expenses not to exceed the "Construction and Installation" line item of the Project Cost); or (ii) if such termination occurs after the Commencement Date but prior to the expiration of the Initial Term, Customer shall also be liable for a Termination Charge.

(c) Within thirty (30) days following the expiration or termination of this Agreement, Customer shall pay to Tesla all outstanding Service Fees accrued prior to such expiration or termination and Tesla shall pay to Customer all outstanding grid payments pursuant to Section 6.4.

Section 10.6 No Prejudice. Termination of this Agreement pursuant to its terms, in whole or in part for any reason, shall not affect any liabilities or obligations of either Party arising before such termination or out of events causing such termination, or any damages or other remedies to which a Party may be entitled under this Agreement, at law or in equity.

Section 10.7 Survival. The provisions of this Agreement which, by their nature and content, are intended, expressly or impliedly, to continue to have effect notwithstanding the termination or expiration of this Agreement shall survive and continue to bind the Parties, including Articles I, VII, VIII, IX, XII and XIII and Sections 3.1, 3.2(a), 3.4, 10.5, 10.6 and 10.7.

ARTICLE XI **INSURANCE**

Section 11.1 Insurance Requirements of Tesla. At all times during the Term, Tesla shall maintain, at its sole cost and expense, the following insurance coverage and shall, upon Customer's request, furnish to Customer a certificate evidencing such coverage:

- (a) commercial general liability insurance, including contractual liability, with a per-occurrence limit of not less than One Million Dollars (\$1,000,000) for bodily injury and/or property damage;
- (b) statutory workers' compensation insurance to the full limit of liability required by applicable law;
- (c) employer's liability insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence; and
- (d) commercial automobile liability insurance on all owned, non-owned and/or hired vehicles with minimum coverage of at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage.

Section 11.2 Insurance Requirements of Customer. At all times during the Term, Customer shall maintain, at its sole cost and expense, commercial general liability insurance, including contractual liability, with a per-occurrence limit of not less than One Million Dollars (\$1,000,000) for bodily injury and/or property damage. Customer shall, upon Tesla's request, furnish to Tesla a certificate evidencing such coverage through either an insurance provider or through a risk management pool, such as the Special Districts Risk Management Authority.

Section 11.3 Additional Requirements.

- (a) Tesla's commercial general liability insurance certificate shall name Customer as an additional insured.
- (b) Tesla's commercial general liability, workers' compensation and employer's liability insurance policies shall include a waiver of subrogation in favor of Customer.
- (c) Each of Tesla's property and casualty policies noted in Section 11.1 above shall be primary and non-contributory and shall be issued by a company with an A.M. Best rating of not less than A:VIII.
- (d) Each Party shall promptly provide to the other Party written notice of any material changes to, or proposed cancellation of, the insurance policies required to be carried by the respective Party.

ARTICLE XII **DISPUTE RESOLUTION**

Section 12.1 Dispute Resolution Procedure. Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement (or the breach or validity thereof) or the performance of the Services hereunder (each, a “Dispute”), shall be resolved in the manner described in this Article XII.

Section 12.2 Escalation of Disputes.

(a) All Disputes shall be initially referred to the appropriate manager/supervisory level personnel for resolution. If such personnel are unable to resolve such Dispute within ten (10) days after referral of the matter to them or such longer period as the Parties may agree, then either Party may request in writing that the Dispute be escalated.

(b) Promptly after receipt of written notice of escalation by either Party pursuant to Section 12.2(a), the Parties shall submit the Dispute to the appropriate senior management of the Parties for resolution. If senior management is unable to resolve the Dispute within five (5) business days from the date such Dispute was submitted for consideration or such longer period as the Parties may agree, then either Party may submit the Dispute to arbitration in accordance with Section 12.3.

Section 12.3 Arbitration. All Disputes not resolved as provided above shall be settled exclusively by final and binding arbitration conducted in accordance with the then-current Commercial Arbitration Rules of the Judicial Arbitration and Mediation Services (“JAMS”). The arbitration will be conducted by a single arbitrator selected by agreement of the Parties or, failing such agreement, appointed in accordance with the JAMS rules. The arbitration will be conducted in the English language in San Francisco, California. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in their discretion, award reasonable costs and fees to the prevailing Party. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction.

Section 12.4 Injunctive Relief. Each Party will have the right to apply at any time to a judicial authority for appropriate injunctive relief (or other interim or conservatory measures), and by doing so will not be deemed to have breached its agreement to arbitrate or to have impaired the powers reserved to the arbitrator.

ARTICLE XIII **MISCELLANEOUS**

Section 13.1 Interpretation. Section and Exhibit references are to Sections and Exhibits of this Agreement. The section headings in this Agreement are for reference purposes only and may not be construed to modify or restrict any of the terms of this Agreement. This Agreement will be deemed to have been written by both Parties. Unless the context requires otherwise, (a) “including” (and any of its derivative forms) means including but not limited to, (b) “may” means has the right, but not the obligation to do something and “may not” means does not have the right to do something, and (c) “will” and “shall” are expressions of command, not merely expressions of future intent or expectation.

Section 13.2 Entire Agreement. This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between Tesla and Customer with respect to the subject matter hereof, superseding any prior agreement or representation, oral, electronic, or written.

Section 13.3 Amendment; Modification; Waiver. This Agreement may not be modified or amended, except in a writing signed by duly authorized representatives of both Parties. No waiver of any breach or provision of this Agreement will be binding unless it is in a writing signed by a duly authorized representative of the waiving Party. The waiver, or failure to enforce, any right resulting from any breach or provision of this Agreement will not be deemed a waiver of any right relating to a subsequent breach, any other provision or any other right hereunder.

Section 13.4 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to implement the intent of the Parties, and the remainder of the Agreement will continue in full force and effect.

Section 13.5 Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of California, without regard to any conflicts of laws principles. In any action arising from this Agreement, venue shall be in the Superior Court of California in San Francisco County, California.

Section 13.6 Confidentiality.

(a) Each Party shall keep confidential and shall not use, make available or disclose any Confidential Information of the other Party. Notwithstanding the foregoing, Confidential Information may be disclosed on an as needed basis to Affiliates, personnel, subcontractors and/or agents of the receiving Party as required for the purpose of fulfilling the receiving Party's obligations under this Agreement, including as required to provide or receive the Services. Each Party shall ensure that any Confidential Information it discloses in accordance with this Section 13.6(a) is treated as confidential by the person or entity to whom it is disclosed and shall require such person or entity to enter into a confidentiality agreement which imposes confidentiality obligations no less protective of the Confidential Information than those imposed upon under this Agreement.

(b) The provisions of this Section 13.6 shall not apply to any Confidential Information which: (i) is or becomes commonly known within the public domain other than by breach of this Agreement or any other agreement that the disclosing Party has with any party; (ii) is obtained from a third party who is lawfully authorized to disclose such information free from any obligation of confidentiality; (iii) is independently developed without reference to any Confidential Information; or (iv) is known to the receiving Party without any obligation of confidentiality prior to its receipt from the disclosing Party.

(c) Nothing in this Section 13.6 shall prevent either Party from disclosing Confidential Information where it is required to be disclosed by law (including without limitation the California Public Records Act, California Government Code section 6250 and following), or judicial, administrative, governmental or regulatory orders; provided, however, that each Party shall, if legally permitted, give the other Party prior notice, as soon as possible, of such required disclosure so as to enable the other Party to seek relief from such disclosure requirement or to take measures to protect the confidentiality of the disclosure.

(d) The receiving Party shall immediately inform the disclosing Party in the event that it becomes aware of the possession, use or knowledge of any Confidential Information of the disclosing Party by any person or entity not authorized to possess, use or have knowledge of such Confidential Information and shall, at the request of the disclosing Party, provide such reasonable assistance as is required by the disclosing Party to mitigate any damage caused thereby.

(e) Failure by a Party to comply with this Section 13.6 shall constitute a material breach of this Agreement.

Section 13.7 Publicity. Each Party further agrees not to, without the prior written consent of the other Party, use the name or any trademarks of the other Party in any marketing literature, web sites, articles, press releases or any other document or communication published in electronic or paper form. Following initial prior written permission, if either Party objects to any particular use of its trademarks or names by the other Party, the other Party shall immediately modify or cease the use as requested by the objecting Party.

Section 13.8 Independent Contractors. The Parties are independent contractors, and nothing in this Agreement creates an employer-employee relationship, a partnership, joint venture or other relationship between the Parties. Neither Party has authority to assume or create obligations of any kind on the other Party's behalf.

Section 13.9 Assignment; Successors and Assigns. Customer may not assign this Agreement, by contract, operation of law or otherwise, without the prior written consent of Tesla. Tesla may assign this Agreement or any of its rights and obligations under this Agreement to any Affiliate or third party upon written notice to Customer. Any attempted assignment in violation of the foregoing shall be null and void. All provisions of this Agreement by and for the benefit of the Parties shall bind and inure to the benefit of their respective permitted successors and assigns.

Section 13.10 Lender Rights; Third Party Beneficiary. Customer acknowledges that Tesla has, as of the Effective Date, or may, anytime thereafter, grant to a third-party lender ("Lender") a lien on or security interest in the Equipment. Accordingly, upon receipt of a written notice from Lender certifying an event of default under the applicable credit and security agreement between Tesla and Lender, Customer hereby grants to Lender the right and/or license to access the Property for ingress and egress to the Equipment Site for purposes of removing the Equipment. The foregoing access rights shall be contingent upon Lender providing Customer with reasonable assurances that the Equipment Site shall be restored to its original condition (normal wear and tear excepted). It is expressly agreed between the Parties that (a) Lender is and shall be a third-party beneficiary under this Section 13.10, and (b) the exercise by Lender of its foregoing rights shall give Customer the right to terminate this Agreement for cause to the extent Tesla fails to replace the Equipment within ninety (90) days following such removal by Lender.

Section 13.11 Force Majeure. If either Party is prevented from performing one or more of its non-monetary obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall promptly notify the other Party in writing specifying in reasonable detail the nature of the Force Majeure Event and its expected duration. The affected Party shall use commercially reasonable efforts to avoid or overcome the Force Majeure Event with the least possible delay. The obligations of the affected Party shall be reduced or suspended during the continuance of the Force Majeure Event; provided, that such obligations shall be reduced only to the extent that the adverse effects of the Force Majeure Event cannot be mitigated by the affected Party's diligent efforts. If a Force Majeure Event is anticipated to prevent a Party from performing its obligations under this Agreement for a period of three (3) months or more, the Parties shall meet to determine the appropriate course of action.

Section 13.12 OFAC. Customer acknowledges that the Deliverables and Services supplied to Customer by Tesla under this Agreement may be subject to restrictions on sale, transfer and supply to third parties under regulations issued by the United States Treasury Department's Office of Foreign Assets Control ("OFAC Regulations"). Customer shall strictly comply with all applicable provisions of the OFAC Regulations in the transfer of any Tesla products or services. Without limiting the generality of this Section 13.12, Customer will not export, re-export, sell, transfer, supply, dispose of, or otherwise make

available any Tesla product or service directly or indirectly to (a) any country that is subject to a United States Government embargo under the OFAC Regulations; (b) any person that is a national or resident of, or any entity that is located within, any such embargoed country; or (c) any person or entity listed on the OFAC list of specially designated nationals and blocked persons, except as specifically authorized by or under the OFAC Regulations.

Section 13.13 Notices. Any notices allowed or required under the Agreement must be in writing addressed to each Party's principal place of business as set forth above (attention: Legal Department) and will be effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

Section 13.14 Further Assurances. Each Party shall execute and deliver instruments and assurances and do all things reasonably necessary and proper to secure all necessary Approvals in a timely manner and to otherwise carry out the terms of this Agreement.

Section 13.15 Public Project. Customer makes no representation as to the applicability of the bidding requirements of the California Contract Code nor the prevailing wage requirements of the California Labor Code (collectively, the "California Public Contract Regulations"). Notwithstanding the foregoing, to the extent the California Public Contract Regulations are applicable to this Agreement, Tesla shall comply with the same in connection with the installation and operation of the Deliverables.

Section 13.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which will be considered one and the same instrument.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, each of the undersigned Parties has caused its duly authorized representative to execute this Stationary Battery Services Agreement as of the date first above written.

Tesla Motors, Inc.

Napa Sanitation District

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

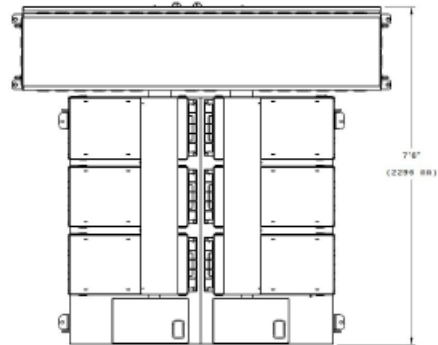
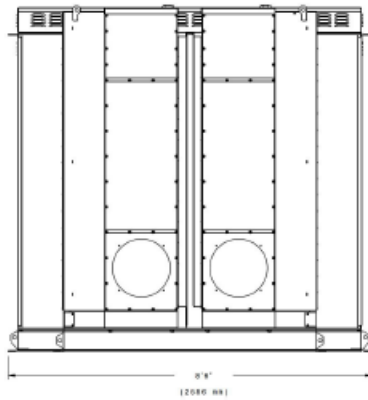
EXHIBIT A

EQUIPMENT

TESLA MOTORS - 400kWh Stationary Storage

June 2014

SPECIFICATIONS

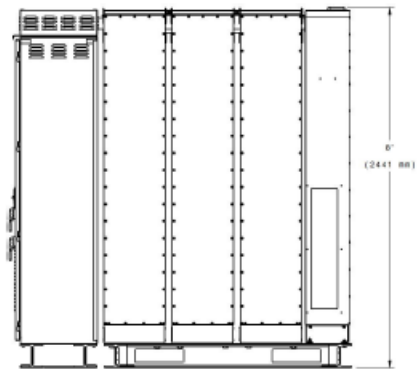


Mechanical and Mounting

Packaging	Steel Pallet
Weight	7,750 kg / 17,000 lbs
Dimensions	L: 7' 8" (2286mm) W: 8' 6" (2580mm) H: 8' (2441mm)

Regulatory

Lithium-Ion Cells	UL 1642
Power Electronics	UL 1741
System (planned)	UL 1973



Electrical

Voltage	208 or 480 VAC
Continuous Charge/Discharge Power	200kW (2hr) or 100kW (4hr)
Rated Storage Capacity*	400kWh
System Efficiency @ C/2	89%/80% 1 way/Roundtrip
System Efficiency @ C/4	93%/86% 1 way/Roundtrip

*Net energy delivered in AC Voltage

Communications

Modbus
DNP3

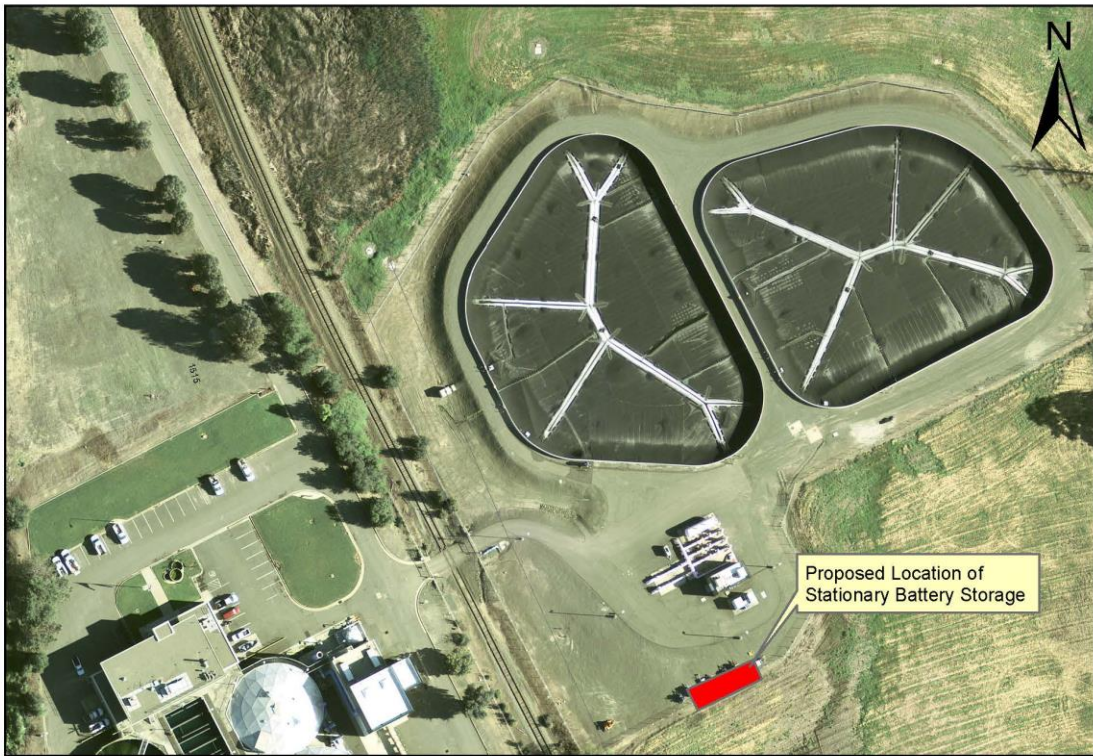
TESLA MOTORS, INC 3500 Deer Creek Rd. Palo Alto CA 94304 © COPYRIGHT 2014

EXHIBIT B

EQUIPMENT SITE

The proposed equipment site for this installation is denoted in red on the diagram below.

Stationary Battery Storage Proximity Map



1 inch = 100 feet

RG 2015-02-25

EXHIBIT C

EQUIPMENT WARRANTY

The Equipment includes a ten (10) year operational warranty commencing on the Commencement Date (the “**System Warranty**”). The System Warranty guarantees that the Equipment will deliver rated power output for the duration of the System Warranty, and that the battery management system (BMS), and communications and control hardware, firmware, and software will enable dispatchable charge and discharge cycles for the duration of the System Warranty. Tesla’s sole obligation under the System Warranty is to repair or replace the Equipment, at Tesla’s election; however, such obligation shall not be construed to limit Tesla’s indemnification obligations under the Agreement. The System Warranty shall include system support, problem diagnosis, on-site repair and preventative maintenance.

The System Warranty does not cover any damage, costs or malfunction directly or indirectly caused by, due to or resulting from normal wear or deterioration, abuse, misuse, negligence, accident, lack of or improper maintenance, operation or installation, including, but not limited to, any of the following:

- A Force Majeure Event, including electric grid power surges;
- Electrical overloading of the Equipment, or external electrical shorts;
- Repairs, modifications or alterations to the Equipment or its performance done by Customer or any service provider (other than by Tesla or Tesla’s contractors) without prior authorization from Tesla;
- Physically damaging the Equipment or intentionally attempting, either by physical means, programming, or other methods, to extend (other than as specified in the owner documentation) or reduce the life of the Equipment’s batteries;
- Exposing the Equipment to direct flame;
- Immersing any portion of the Equipment in water or fluids;
- Opening the Equipment’s battery enclosures unless otherwise directed by Tesla;
- General appearance, noise and vibration or maintenance services that do not impact Equipment performance as otherwise guaranteed by the System Warranty;
- Damage that occurs after the expiration or termination of the System Warranty period or that is reported after the expiration or termination of the System Warranty period; and
- All repair or replacement costs, including but limited to teardown, disassembly, assembly and shipping of any part of the Equipment, ***if warranty coverage cannot be applied.***

EXHIBIT D
SCOPE OF WORK

Summary:

Tesla Motors, Inc. (“Service Provider”) will install a battery storage system at a location on Napa Sanitation District (“Customer”) Property. This system will be electrically connected to a main distribution panel downstream of the utility meter. All equipment and controls required to perform demand reduction are provided. This Scope of Work includes all activities required to plan, permit, prepare the site, install, and commission the equipment. Follow-up data services are also provided, as well as lifetime performance monitoring and algorithm upgrades.

Detailed Scope of Work

Details:

Planning and Permitting

1. Prepare electrical single line diagram.
2. Work with Customer to determine equipment location. Equipment must be installed outside, at least 5 feet away from any other structures and with no overhanging structures or tree limbs above the location. If possible, the equipment should be installed close to the point of interconnection with the building wiring.
3. Perform civil/structural analysis and design concrete mounting pad.
4. Procure permit, interact with all authorities having jurisdiction (AHJ), coordinate inspections, close permits. This includes applying for and negotiating an interconnection agreement with Pacific Gas & Electric Company.

Site work

5. All trenching and conduit routing to interconnect equipment
6. Construction of concrete pad
7. Backfilling and reinstatement of any areas disturbed by trenching

Equipment and installation

8. Provide and install battery storage system. Battery storage system includes:
 - a. Battery
 - b. Inverter and power electronics
 - c. AC disconnect
 - d. AC wiring and conduit between connection point and inverter
 - e. Breaker to wire into main panel

- f. If main panel does not have room for additional circuit, add secondary panel in parallel with main panel
- g. Electrical meter and control system
- h. Equipment for data collection and communication
- i. Any other equipment or materials required to create a functional and code compliant installation

Commissioning

9. Utility interconnection and initial bring-up of the system after installation.
10. The system operates autonomously in a mode to reduce utility demand charges. The performance of the system will be closely monitored by Service Provider, and upgraded algorithms for improved performance/savings will be provided throughout the life of the installation.

Ongoing data services

11. Record performance data on at least 15 min intervals, communicate data to Service Provider's servers, and store/backup data.
12. Provide a report at least quarterly detailing the operation of the unit including:
 - a. Estimated bill savings
 - b. Monthly kWhr battery throughput
 - c. Chart of the monthly operation of the battery on 15 min intervals showing:
 - i. State of charge and discharge of the battery
 - ii. Panel electric load

EXHIBIT E
PROJECT COST

SGIP Eligible Project Costs	Total
Self Generation Equipment	\$ 2,073,746.69
Planning and Feasibility Study	\$ 13,097.35
Engineering and Design	\$ 34,926.26
Permitting	\$ 7,094.40
Construction and Installation	\$ 255,398.28
Interconnection	\$ 1,135.10
Metering, Monitoring, Data Acquisition	\$ 14,188.79
Warranty	\$ 654,867.38
Maintenance Contract	\$ 109,144.56
Cost of capital	\$ 76,401.19
Total	\$ 3,240,000.00