

ITEM 4.8

CITY MANAGER'S REPORT NOVEMBER 8, 2021 CITY COUNCIL REGULAR MEETING

ITEM: **APPROVAL OF AGREEMENT AND LEASE BETWEEN TESLA, INC. AND THE CITY OF LATHROP FOR CROSSROADS PARKING**

RECOMMENDATION: **Adopt Resolution Approving an Agreement and Lease between Tesla, Inc. and the City of Lathrop for Crossroads Parking**

SUMMARY:

Tesla, Inc. (Tesla) has an increasing presence in the Crossroads Business Park, with the building located at 700 D'Arcy Parkway being their most recent addition. Most of Tesla's operations are manufacturing, which requires many employees and vehicle parking. The existing parking and area for additional parking at the 700 D'Arcy facility is insufficient for the approximate total of 1,500 employees, who will work in two shifts.

The City owns nine (9) acres of vacant land located at 18800 Christopher Way (APN 198-130-59) adjacent to the City's wastewater treatment plant. The City has no plans or intent to improve or use this land and therefore staff recommends that the Council approve an Agreement and Lease Between Tesla, Inc. and the City of Lathrop for Crossroads Parking (Attachment B) to allow Tesla to use this land for additional employee parking.

BACKGROUND:

Tesla, Inc. (Tesla) has an increasing presence in the Crossroads Business Park, with the building located at 700 D'Arcy Parkway being their most recent addition. The facility will be used to produce Tesla's newest product, Mega Pack, which is a grid-scale battery backup and storage system. Mega Pack will be exclusively manufactured in Lathrop and shipped worldwide to mitigate unstable electrical grids, support renewable energy use in off-peak generation hours and provide back-up power during grid failures. The existing parking and area for additional parking at the 700 D'Arcy Parkway facility is insufficient for the approximate total of 1,500 employees, working in two shifts.

The City owns nine (9) acres of vacant land located at 18800 Christopher Way (APN 198-130-59) adjacent to the City's wastewater treatment plant. The City has no plans or intent to improve or use this land and therefore staff recommends that Council approve an Agreement and Lease Between Tesla, Inc. and the City of Lathrop for Crossroads Parking (Attachment B) to allow Tesla to use this land for additional employee parking.

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CITY OF LATHROP FOR CROSSROADS PARKING

The Agreement and Lease will also allow Tesla to construct improvements on the City property, including but not limited to paving, lighting and striping to facilitate the use of employee parking. The Agreement and Lease will remain active until Tesla terminates their lease for the building located at 700 D'Arcy Parkway as the employees using the parking facility will primarily work at this building. Both the City and Tesla have the option to terminate the Lease Agreement with 90 days' notice, giving flexibility in the City's use of the property.

REASON FOR RECOMMENDATION:

Tesla's presence in Lathrop promotes growth throughout the City by providing jobs, and tax revenue. The manufacturing facility at 700 D'Arcy will create roughly 1,500 jobs in the City as well as additional tax revenue and therefore staff is working to facilitate the maximum operation by providing a parking solution for Tesla employees. Staff recommends that Council approve an Agreement and Lease Between Tesla, Inc. and the City of Lathrop for Crossroads Parking to allow Tesla to use this land for additional employee parking.

FISCAL IMPACT:

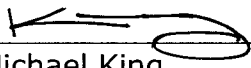
There is no fiscal impact to the City.

ATTACHMENTS:

- A. Resolution Approving an Agreement and Lease between Tesla, Inc. and the City of Lathrop for Crossroads Parking
- B. Agreement and Lease Between Tesla, Inc. and the City of Lathrop for Crossroads Parking

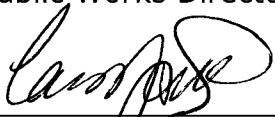
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APPROVALS:



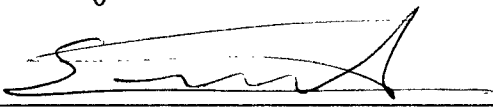
Michael King
Public Works Director

10-26-2021
Date



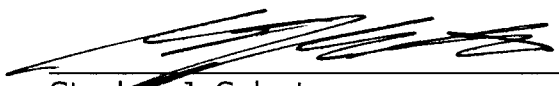
Cari James
Finance Director

10/29/2021
Date



Salvador Navarrete
City Attorney

10-27-2021
Date



Stephen J. Salvatore
City Manager

11.1.21
Date

RESOLUTION NO. 21-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP APPROVING AN LEASE AGREEMENT BETWEEN TESLA, INC. AND THE CITY OF LATHROP FOR CROSSROADS PARKING

WHEREAS, Tesla, Inc. (Tesla) has an increasing presence in the Crossroads Business Park, with the building located at 700 D'Arcy Parkway being their most recent addition. Most of Tesla's operations are manufacturing, which requires many employees and vehicle parking; and

WHEREAS, the existing parking and area for additional parking at the 700 D'Arcy facility is insufficient for the approximate total of 1,500 employees; and

WHEREAS, the City owns nine (9) acres of vacant land located at 18800 Christopher Way (APN 198-130-59), adjacent to the City's wastewater treatment plant. The City has no plans or intent to improve or use this land; and

WHEREAS, therefore staff recommends that the Council approve an Agreement and Lease Between Tesla, Inc. and the City of Lathrop for Crossroads Parking to allow Tesla to use this land for additional employee parking; and

WHEREAS, the Lease Agreement will also allow Tesla to construct improvements on the City property, including but not limited to paving, lighting and striping to facilitate the use of employee parking; and

WHEREAS, the Lease Agreement may remain active until Tesla terminates their lease for the building located at 700 D'Arcy Parkway as the employees using the parking facility will primarily work at this building. Both the City and Tesla have the option to terminate the Lease Agreement with 90 days' notice, giving flexibility in the City's use of the property.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Lathrop hereby approves the Lease Agreement between Tesla, Inc. and the City of Lathrop for Crossroads Parking.

The foregoing resolution was passed and adopted this 8th day of November 2021, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSTAIN:

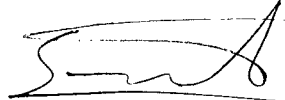
ABSENT:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas
City Clerk

APPROVED AS TO FORM:



Salvador Navarrete
City Attorney

**AGREEMENT AND LEASE BETWEEN TESLA, INC. AND THE CITY OF LATHROP
FOR CROSSROADS PARKING**

This Agreement is entered into this ____ day of _____, 2021 (the "Agreement") by and between Tesla, Inc., a Delaware corporation (hereinafter referred to as "TESLA") and the City of Lathrop, a general law city duly incorporated and existing under the laws of the State of California (hereafter referred to as "CITY"). The CITY and TESLA are referred to herein collectively as the "Parties" and individually as a "Party".

WITNESSETH

WHEREAS, the CITY owns Assessor Parcel Number 198-130-59, located along Christopher Way, in the City of Lathrop, State of California hereinafter referred to as the "PROPERTY" as shown on EXHIBIT "A", attached hereto and incorporated herein. CITY intends to grant an easement and license to a certain communication company for a cell tower installation and access drive as shown on Exhibit B attached hereto (the "Tower Areas"). TESLA shall have no right of access to the Tower Areas. The CITY has the authority, full right and power to make, execute and deliver this Agreement; and

WHEREAS, the CITY agrees to temporary allow TESLA to utilize the PROPERTY, excluding the Tower Areas, for the construction of a vehicle parking facility for the purpose of TESLA's employees, agents, contractors, licensees and invitees' parking to support TESLA's ongoing and future business operations in the Crossroads Industrial Park (the "Permitted Use").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth the Parties agree as follows:

1. The CITY hereby leases to TESLA the PROPERTY to TESLA, and TESLA hereby leases from the CITY the PROPERTY (except for the Tower Areas), to have and hold for the Term, subject to the covenants, terms, and conditions of this Agreement. TESLA shall construct the vehicle parking facility consistent with current City Standards at TESLA's own cost and expenses for the beneficial use of TESLA's operations within the Crossroads Business Park ("TESLA's Improvements"). Such vehicle parking facility is hereinafter referred to as the "PARKING LOT".
2. TESLA agrees the PROPERTY is land upon which exists minor installations and equipment, such as abandoned pipes (the "Installations"), and TESLA accepts both the PROPERTY and the Installations in their present condition. TESLA further agrees that it will construct the PARKING LOT in compliance with applicable laws and legal requirements.

TESLA shall have the right to maximize the amount of parking spaces located within the PARKING LOT (including but not limited to the right to re-stripe the PARKING LOT at TESLA's discretion) and to install a security enclosure on the Premises around the PARKING LOT at TESLA's sole cost and expense. TESLA at TESLA's discretion shall have the right to install electric vehicle chargers at any time during the Term in the PARKING LOT and otherwise in accordance with applicable laws and the terms of this Agreement.

3. The initial term of this Agreement is for a period commencing on the date first written above and ending on October 31, 2028; thereafter TESLA shall have the right to extend the Term of this Agreement on an annual basis (November 1 – October 31 of each year) upon the same terms, covenants and conditions contained in this Agreement upon a thirty (30)- day advanced written notice to the CITY) as long as TESLA maintains its lease on the building located at 700 D'Arcy Parkway, Lathrop, CA 95330, for a total Term not to exceed 10 additional years (i.e. the last extension period allowed under this Agreement shall be from November 1, 2037 to October 31, 2038). Any extension beyond the October 31, 2038 shall require a separate written extension agreement mutually agreed to and fully executed by the Parties prior to the end of the extension term.

If the Parties sign no such extension agreement prior to the end of the extension term, this Agreement shall be deemed terminated and the Parties shall have no further obligations under this Agreement (except for the surviving obligations that are expressly agreed to in this Agreement). TESLA shall be required to remove all of TESLA's personal property and equipment from the PROPERTY. Notwithstanding any other provision herein, either Party may terminate this Agreement at any time during the Term by providing the other Party written notice of termination at least ninety (90) days in advance of the intended termination date. In the event CITY desires to sell the PROPERTY, TESLA shall have the right of first opportunity or right of first offer or right of first refusal as applicable, and CITY shall inform TESLA of such intent prior to marketing, selling or offering the PROPERTY for sale. TESLA shall inform CITY of its intent to purchase the PROPERTY upon terms and conditions mutually acceptable to both PARTIES, or to waive its right, within thirty (30) days of CITY's written notice.

4. The annual lease payment from TESLA to CITY for the land use is \$1.00 per annum, for each of CITY's fiscal year (which is July 1 – June 30), including any period of time during the planning and permitting process. This annual lease payment requirement shall become effective upon the execution of this Agreement.
5. This Agreement is subject to all existing easements, licenses and rights of way for canals, roads, pole lines, utilities, pipelines and other purposes.

6. CONSTRUCTION OF IMPROVEMENTS

- a. TESLA shall obtain the appropriate land use approval and building permits as required for TESLA's Improvements. All TESLA's Improvements shall be designed by a licensed engineer or architect (or qualified in house engineer or architect) in the State of California and all work shall be done by California licensed contractors. Permits required by any public agency for TESLA's Improvements shall be obtained and paid for by TESLA prior to commencing said activities. TESLA shall submit the plans and specifications for TESLA's Improvement plans to the CITY for review and approval prior to commencing TESLA's Improvements.
 - b. TESLA acknowledges that buildings or any other use than the Permitted Use will not be allowed on the PROPERTY without the prior written approval from CITY.
 - c. All equipment and vehicles on the PROPERTY, whether owned by TESLA or by its employees, agents, contractors, licensees and invitees shall be removed from the PROPERTY, and the PROPERTY shall be restored to the same or improved condition by TESLA at its sole cost and expense and to CITY's reasonable satisfaction within thirty (30) days of the termination of this Agreement, whether a 30-day notice triggers such termination date by either Party or by the expiration of this Agreement, unless CITY and TESLA mutually agree otherwise in writing. Any failure of TESLA to timely remove all equipment and vehicles shall be deemed an abandonment of such items and a waiver of any right to claim compensation for such items by TESLA. Upon a three (3) days' written notice to TESLA, the CITY shall be permitted to enter the PROPERTY and take possession and ownership of all equipment or, at the CITY's sole discretion, the CITY may have such items removed and disposed of and the CITY shall have a right to recover the costs of such removal and disposal from TESLA.
 - d. Prior to the performance of Tesla's Improvements, and if applicable, TESLA shall enter into service or construction agreements with all persons or entities performing Tesla's Improvements at the PROPERTY pursuant to TESLA's standard service agreements.
7. The PARKING LOT shall be maintained by TESLA, and all supplies and equipment needed for the maintenance of the PARKING LOT shall be supplied by TESLA at TESLA's sole cost and expense. TESLA's activities shall not interfere or hinder any other CITY activities, however CITY shall notify TESLA in writing if any such interference occur so that TESLA has the opportunity to cure promptly and diligently following CITY's notice.

8. CITY reserves the right to dedicate easements and install improvements for CITY and non-CITY utilities within the PROPERTY upon advance written notice to TESLA and the opportunity for TESLA to discuss with CITY in the event such encumbrances will materially interfere with TESLA'S PARKING LOT. TESLA acknowledges the CITY will in the near future dedicate an easement to PG&E for high voltage transmission poles along the frontage as described on Exhibit C as well as a telecom tower at the far east edge of the PROPERTY, as described on Exhibit B.
9. TESLA shall submit demolition plans, obtain CITY approval and abandon and dispose of all existing irrigation and other existing items that are in conflict with PARKING LOT prior to constructing improvements.
10. CITY owns all soil on PROPERTY and therefore CITY must be consulted prior to the export and/or modification of any soil; any soil export shall require CITY's approval in writing prior to the export of any soil by TESLA (if any). TESLA shall submit grading plans for CITY for review and approval prior to commencing any grading activities.
11. PROPERTY shall be maintained, repaired and operated by TESLA at its sole cost and expense. TESLA shall pay all expenses in connection with the use of the PROPERTY hereunder and the rights and privileges granted herein including, without limitation by reason of enumeration, utilities, insurance, repairs, maintenance, permit fees, licenses fees, and assessments lawfully leveled or assessed upon TESLA's operation at and from the PROPERTY. TESLA will secure all permits and licenses required by any ordinance or statute or other government regulation. All utilities servicing TESLA PARKING LOT shall be separately metered with the utility provider of TESLA'S choice.
12. TESLA shall obtain and maintain continuously in effect at all times during the term hereof at TESLA's sole expense, general liability insurance protecting the City of Lathrop, elected officials, employees, agents and volunteers against liability which may accrue against CITY by reason of TESLA's conduct and use of the PROPERTY, pursuant to TESLA's standard insurance policies, including Workers' Compensation in the amounts and as required by the state of California. Such insurance must include the CITY and its agents as additional insured hereunder. TESLA may provide any insurance required hereunder under so-called blanket policies covering other parties and locations so long as the coverage required hereunder is not diminished. TESLA may self-insure for the insurance required in this section TESLA shall promptly supply CITY with a certificate of insurance ("COI") evidencing compliance with the above requirements. TESLA shall not be permitted to commence any activity or operate on the PROPERTY unless a COI is provided to the CITY.

13. TESLA shall indemnify, defend and hold CITY its elected officials, employees, agents and volunteers harmless from and against any and all liability, third party claims, suits, actions, damages and causes of action arising out of any personal injury, bodily injury, loss of life or damage to property of any violation of any federal state or municipal law or ordinance to the extent caused by the willful misconduct or negligent acts or omissions of TESLA, its employees, contractors, subcontractors or agents or on account of the performance or character of TESLA's Improvements, except for any claim arising out of the negligence or willful misconduct of CITY, its elected officials, employees, agents, contractors, subcontractors, or volunteers. It is understood that the duty of TESLA to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve TESLA from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not insurance policies shall have been determined to be applicable to any of damages or claims for damages.

14. **NOTICES**

Any demand or notice which any Party shall be required or may desire to make upon or give any other concerning this Agreement shall be in writing and shall be delivered via electronic delivery to:

LESSEE: TESLA, Inc.
Attn: leaseadmin@tesla.com

With a copy to: TESLA, Inc., attn: lease administration, 901 Page Ave.
Fremont, CA 94538
And an electronic copy to: leaseadmin@Tesla.com

LESSOR: City of Lathrop
Attention: City Manager
390 Towne Centre Drive
Lathrop, CA 95330

CC: City of Lathrop
Attention: City Clerk
390 Towne Centre Drive
Lathrop, CA 95330

15. TESLA shall permit CITY and its agents at all times upon 24 hours written notice to TESLA (except in the event of an emergency) to enter upon the PROPERTY to perform inspections.
16. TESLA shall not commit or permit others to commit waste, nuisance, or any other act that could disturb the quiet enjoyment of adjoin or neighboring lands and dwellings.
17. TESLA shall dispose of all waste and rubbish consistent with local regulations. TESLA will keep the PROPERTY free and clean of all rubbish, litter, and any other discarded materials that would cause the PROPERTY to appear unclean or unkempt.
18. TESLA shall conduct all operations on the PROPERTY in strict conformity to applicable ordinances and regulations that are now or may hereafter be enacted or adopted by any governmental agency as it relates to the Permitted Use.
19. Nothing herein shall be deemed to make either TESLA an employee, agent, or joint venture of any with CITY.
20. The failure of any Party to this Agreement to insist upon the performance of any of the terms and conditions of their Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions. The same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
21. It is agreed that this Agreement shall be governed by, construed and enforced according to State of California law. In the event that any legal action is filed in relation to this Agreement, each Party shall be responsible to paying their own attorney fees.
22. CITY reserves the right to withdraw all or parts of the PROPERTY from this Agreement if such lands are in Judgment of CITY or required for CITY purposes provided that at least 180 days' prior written notice is given to TESLA.
23. The invalidity of any portion of this Agreement will not be deemed to affect the validity of any other provision in the event that any provision of this Agreement is held to be invalid the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by all Parties subsequent to the expungement of the invalid provision.
24. If TESLA fails or defaults in the faithful keeping or performance of any of the agreements herein contained, then CITY at its option may terminate and end this Agreement after 180 days' written notice to TESLA and reenter the PROPERTY and remove all persons and property therefrom.

25. Any modification or assignment of this Agreement or additional obligation assumed by any Party in connection with this Agreement shall be binding only if placed in writing, and signed by each Party or any authorized representative of each Party. TESLA shall not, without the written consent of the CITY having first been obtained, assign or encumber this Agreement or any part of the PROPERTY.

IN WITNESS HEREOF the CITY of Lathrop, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk on the date first written above.

"CITY"
City of Lathrop, a municipal corporation

"TESLA"
Tesla, Inc., a Delaware corporation

BY: _____
Stephen J. Salvatore
City Manager

BY: _____
Tesla, Inc.

BY: _____
Tesla, Inc.

ATTEST:

BY: _____
Teresa Vargas
City Clerk

**APPROVED AS TO FORM BY THE CITY OF
LATHROP CITY ATTORNEY:**

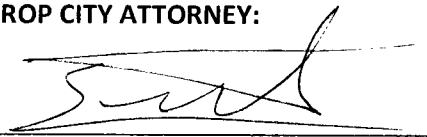
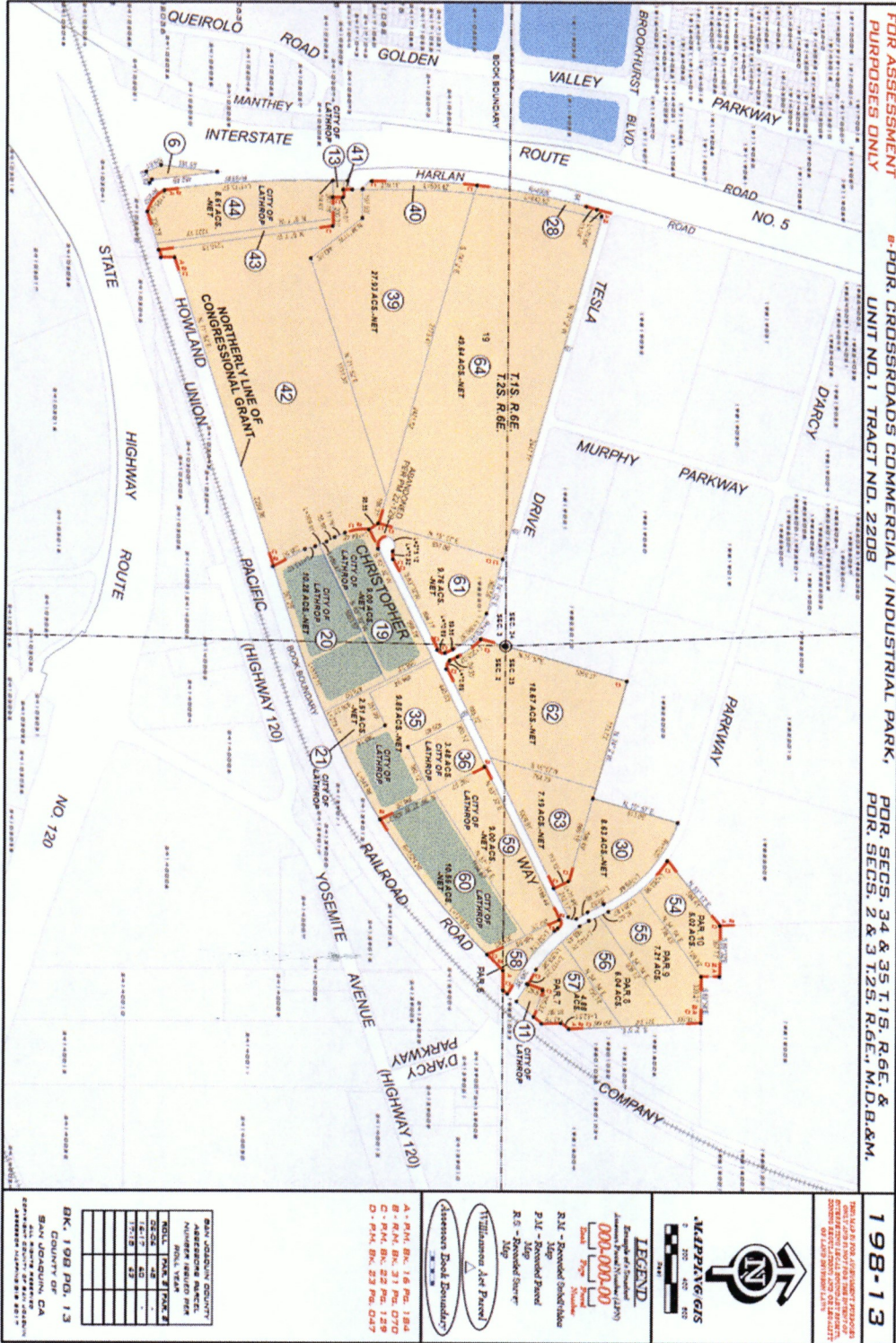
BY: 
Salvador Navarrete
City Attorney

EXHIBIT A



DISCLAIMER
The sole purpose of this document is for the assessment and collection of County property taxes. County makes no representation or warranty, express or implied, about the completeness, accuracy, reliability or authenticity of the information set forth in this document. Therefore, this document should not be relied upon to determine the legal ownership of any specific parcel(s), nor to facilitate any real property transaction(s) between private parties. County is not liable for any loss or damage whatsoever arising from or in connection with the use of or reliance upon this document(s).



San Joaquin County

Assessor's Parcel	Number	Parcel	Value
0-1	1		
0-2	2		
0-3	3		
0-4	4		
0-5	5		
0-6	6		
0-7	7		
0-8	8		
0-9	9		
0-10	10		

BK. 198 PG. 13
 COUNTY OF
 SAN JOAQUIN, CA
 DATE 08/15/2008
 BY 00000000

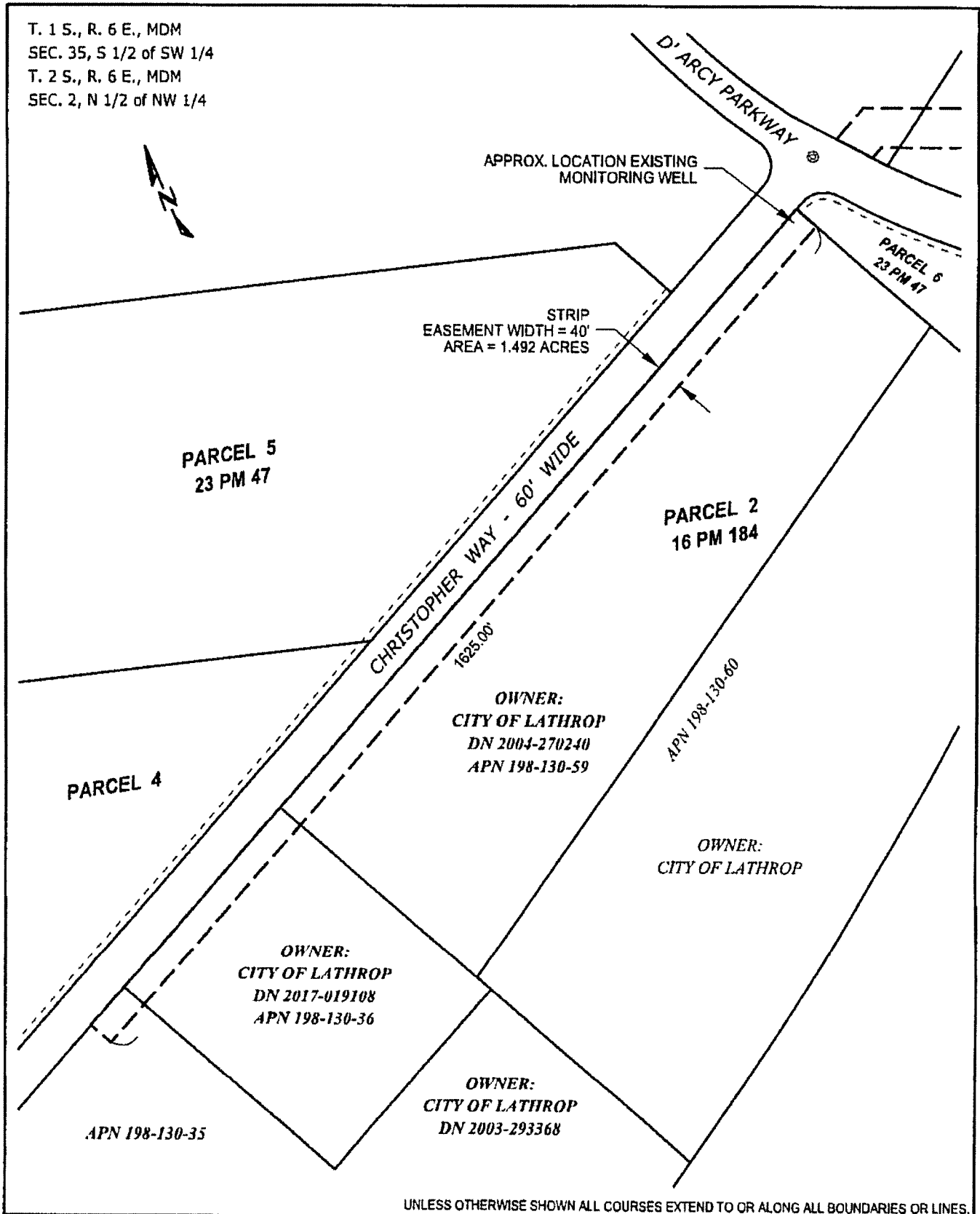
EXHIBIT B

TOWER AREAS

EXHIBIT C

PGE Easement

T. 1 S., R. 6 E., MDM
 SEC. 35, S 1/2 of SW 1/4
 T. 2 S., R. 6 E., MDM
 SEC. 2, N 1/2 of NW 1/4




UNLESS OTHERWISE SHOWN ALL COURSES EXTEND TO OR ALONG ALL BOUNDARIES OR LINES.

AUTHORIZATION
74014761

BY
DR EKF2
CH CXOQ
O.K. EKF2
DATE 9/15/2020

VIERRA LOOPING
CITY OF LATHROP
LATHROP, CA

PACIFIC GAS AND ELECTRIC COMPANY
San Francisco California



JCN	06-15-072
AREA	N. VALLEY
COUNTY	SAN JOAQUIN
SCALE	NONE
SHEET NO.	1 OF 1
DRAWING NUMBER	CHANGE
SL-1593	

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