

GOVERNMENTAL SERVICES AGREEMENT

for Storey County Economic Diversification District No. 1 (Tesla)

between Storey County, Storey County Fire Protection District, and Tesla

This Governmental Services Agreement (the "Agreement") is made and entered into as of this 16 day of June, 2015, to be retroactive to October 17, 2014 (the "Effective Date") by and among **TESLA MOTORS, INC.**, a Delaware corporation, having offices at Electric Avenue, Sparks, Nevada 89434 ("Tesla" or "Lead Participant"), **STOREY COUNTY, NEVADA** a political subdivision of the State of Nevada (the "County") and the **STOREY COUNTY FIRE PROTECTION DISTRICT**, a political subdivision of the State of Nevada (the "Fire District"). Tesla and the County and the Fire District are referred to as the "Parties."

RECITALS

Whereas, pursuant to S.B. 1, 28th (2014) Special Session of the Nevada Legislature, (the "Economic Diversification Act"), the County has the power to create an economic diversification district for the development of property within the jurisdiction of the County for the purpose of acquiring, improving, equipping, and developing a qualified project; and

Whereas, pursuant to the Economic Diversification Act, section 35, the County may enter into an agreement with an owner of any interest in property located within an economic diversification district, pursuant to which that owner would agree to make payments to the County or other local government that provides services within the economic diversification district, to defray in whole or in part the cost of providing governmental services within the district; and

Whereas, pursuant to the Economic Diversification Act, section 31, the Board of County Commissioners of Storey County, Nevada (the "Board") has adopted Ordinance No. 14-260, the Economic Diversification District Creation Ordinance (the "Ordinance") creating Storey County Economic Diversification District No. 1 (Tesla) in Storey County, Nevada (the "District") which becomes effective on approval and execution of this Agreement; and

Whereas the County and the Fire District will provide governmental services within the District including, but not limited to, fire protection, sheriff, assessor and emergency medical; and

Whereas, the Parties all acknowledge that, as a result of the abatement of sales and use tax and property tax that the County would normally receive to pay for governmental services within the district, there is a resulting budgetary difficulty facing the County and the Fire District in providing governmental services within the District; and

Whereas, Tesla, as the Lead Participant in the District, desires to assist the County by making payments to the County intended to enable the County and the Fire District to provide governmental services in the District during this period of budgetary difficulty; and

Whereas, in an effort to address the situation just described and to fulfill the Economic Diversification Act, Section 35, Tesla, together with the County and the Fire District, all desire to set forth the terms pursuant which Tesla will make payments to the County to defray

in whole or in part the cost of providing the governmental services within the District during the term of this Agreement.

Now, therefore, in consideration of the premises set forth above and the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Term. This Agreement will remain in effect (the “Term”) from the Effective Date until June 30, 2024, unless sooner terminated under the provisions of this Agreement.

2. Governmental services to be provided. The County and Fire District, including, as applicable, such divisions of the County as the sheriff’s office, the assessor’s office, emergency management and fire protection and emergency medical services units, shall provide the following “Governmental Services” to the standard and in the quantities described in this Agreement, and in any event, at a service level not less than provided by the County to other commercial enterprises located within the County (the “Base Level of Services”).

Governmental Services means the following services, as more particularly described on Exhibit A to this Agreement, which will be provided by the County and Fire District, as applicable, within and throughout the District for the benefit of all Participants in the District:

- Sheriff services,
- Fire protection and emergency medical services,
- Assessor and tax appraisal services,
- Road maintenance and clearing services on County-owned roads with public access, and
- Administrative assistance within the recording office, community development office, Sheriff’s office, District Attorney’s office, and emergency management office.

3. Compliance with Base Levels of Services.

(a) In the absence of extenuating circumstances and subject to the factors described elsewhere in this Section 3, the County and Fire District agree to provide the Base Level of Services for each of the Governmental Services throughout the Term of this Agreement.

(b) The Base Level of Services assumes an average level of demand and activity, and the Parties recognize that Governmental Services provided on any particular day or period may vary based upon special circumstances. However, the expectation is that the County and Fire District will perform each of the Governmental Services at no less than the Base Level of Service, except as otherwise provided herein.

(c) The Base Level of Services may be adjusted to reflect new methodologies and policies, provided that the basic intent of this Agreement is maintained in any adjustment.

(d) In the event of extreme emergency, as declared by the Chairman of Board of County Commissioners or the Governor of the State of Nevada, Governmental Services may be

temporarily suspended in all or part of the District, to the extent required by such emergency. The Parties acknowledge that such circumstances are likely to be highly unusual and temporary in nature.

4. Computation of Governmental Services Amount. Each year during the term of this Agreement, Tesla, as an owner of a property interest within the District, agrees to pay the amount determined pursuant to Section 5 below to defray, in whole or in part, the costs of the Governmental Services provided by the County and Fire District in the District. The Parties agree the amounts to be paid by Tesla will be used primarily by the County and Fire District to provide Governmental Services in the District.

5. Payment for Governmental Services.

(a) Tesla agrees to pay the following annual amounts, based upon a June 30th fiscal year, to the County to defray, in whole or in part, the cost of the Governmental Services provided in the District by the County and Fire District during the term of this Agreement:

	<u>Annual Fee</u>	<u>Projected Truck P & I</u>
2016	\$ 785,037	\$ 96,166
2017	\$ 851,224	\$ 96,166
2018	\$ 867,838	\$ 96,166
	<u>Projected Annual Fee</u>	<u>Projected Truck P & I</u>
2019	\$ 348,856	\$ 96,166
2020	\$ 381,454	\$ 96,166
2021	\$ 388,166	\$ 96,166
2022	\$ 471,617	\$ 96,166
2023	\$ 479,954	\$ 96,166
2024	\$ 488,458	\$ 96,166

(b) On or about April 1, 2018 and again on or about April 1, 2021, the Parties agree to meet to re-determine Tesla’s annual fee payments to the County to defray, in whole or in part, the cost of the Governmental Services provided in the District by the County and the Fire District during the next succeeding three years of the term of this Agreement (County Fiscal Years ending in 2019-2021 and 2022-2024).

The amount of Tesla payments under this Section 5 shall be initially re-determined using the average of two equally weighted factors measured as of February 28, 2018 and again as of February 28, 2021.

(1) The District’s proportionate share of the total occupancy, measured through full-time equivalent (“FTE”) headcount, of the Tahoe Reno Industrial Center.

(2) The District’s proportionate share of the total assessed value of all real and personal property located in the Tahoe Reno Industrial Center.

Factor (1) above shall be determined using FTE employment data obtained by the County from County business license filings.

Factor (2) above shall be determined using the assessed value found on the County property tax rolls.

The Parties will then adjust the amount of the payments determined using the preceding calculation by taking into account such other factors as they consider relevant in determining the Participant's fair share of the costs of providing Governmental Services in the District.

Other factors which the Parties must consider in this re-determination include, without limitation: (i) the Fire District and the County's current budgetary condition and their resulting ability to provide Governmental Services in the District without financial assistance from Tesla; (ii) the incremental development that has occurred in the Tahoe Reno Industrial Center since the Effective Date of this Agreement; (iii) the resulting impact this incremental development has had on County and Fire District revenues; (iv) any increase in the level of Governmental Services provided in the District that is agreed upon by the Parties; (v) Tesla's historical usage of Governmental Services in the District; (vi) Tesla's proportionate share of the total square footage under roof in the Tahoe Reno Industrial Center; and (vii) an assessment of the financial impact of the District on the provision of local governmental services, including, without limitation, services for police protection and fire protection in the County. Tesla understands that if budgetary conditions within the District continue in years beyond 2018, Tesla will be asked to continue making payments at levels above the actual factored amount. The County understands that Tesla is under no obligation to make payments above the factored amount.

Exhibit B to this agreement contains the methodology and calculations for the projected annual fees in this Section 5 and an example illustrating the application of the methodology.

(c) In addition to the annual fees set forth in the chart on the preceding page, Tesla is responsible for reimbursing the County for the principal and interest costs the Fire District incurs by purchasing and equipping a quintuple combination pumper fire service apparatus valued at approximately \$750,000 upon acquisition; provided, however, that the County must receive advance concurrence from Tesla with the financial terms of the truck purchase and that such concurrence may not be unreasonably withheld by Tesla. Anticipated terms of the truck purchase which are presumptively acceptable to Tesla are annual payments in the amount of \$96,166 based on an annual percentage rate of 2.99% amortized over a 9-year term. Actual payments will be determined based on the final acquisition price and loan terms concurred with by Tesla (which concurrence cannot be unreasonably withheld); provided, however, that in no event shall such annual payments be in excess of \$100,000 over a 9-year term.

In the event that, at any time during the term of this Agreement, one or more additional facilities are constructed in the Tahoe-Reno Industrial Center with building heights exceeding 55', the County hereby agrees to proportionately reduce, on a prospective basis, Tesla's obligation to reimburse the County for the principal and interest costs of the truck purchase. Such reduction shall begin with the first month after the end of the quarter in which a certificate of occupancy is issued by the County for the new facility and continue for the remaining term of this Agreement.

For example, suppose a new building exceeding 55' in height is issued a certificate of occupancy by the County on May 1, 2018. Tesla's obligation to reimburse the County for the remaining principal and interest costs on the truck purchase as of the beginning of the following quarter (in this example, the quarter beginning July 1, 2018) shall be reduced by 50%. Suppose

further that on February 1, 2022, another new building exceeding 55' in height is issued a certificate of occupancy by the County. Tesla's obligation to reimburse the County for the remaining principal and interest costs of the truck purchase as of the beginning of the following quarter (in this example, the quarter beginning April 1, 2022) shall be reduced by 66 2/3%.

(d) Tesla shall pay in advance each annual amount provided for in this Section 5. Such payments shall be made to the County on behalf of the Fire District and the County is responsible for the disbursement of funds to the Fire District as appropriate. Such payments shall be made in four equal installments on a quarterly basis (July 1, October 1, January 1, and April 1).

6. Cooperation, non-exclusivity, conflict.

(a) The County and Fire District agree to cooperate and work together to provide Tesla with the Governmental Services in the District. The Governmental Services provided by the County and Fire District are for health, safety and welfare of the residents and businesses of the County and payments under this agreement do not give Tesla any exclusive rights to the Governmental Services provided.

(b) Conflict. Any conflict between the provisions of this Agreement and any present or future lawful exercise of the County's police powers shall be resolved in favor of the latter.

7. Public Records Law. Tesla acknowledges and agrees that, subject to the limitations and protections of the Economic Diversification Act, all records, documents, drawings, plans, specifications and other materials in the County's possession, including materials submitted by Tesla, are subject to the provisions of the Nevada Public Records Law (NRS 239.005 *et seq.*). Tesla shall be solely responsible for all determinations made by it under such law, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret", "Proprietary" or "Confidential" as it determines to be appropriate.

8. Defaults and remedies.

The following shall constitute an Event of Default by Tesla under this Agreement:

(a) Any representation, covenant or warranty contained in this Agreement which proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the County after expiration of the cure period set forth below; or

(b) A court having jurisdiction has made or entered any decree or order (1) adjudging Tesla to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of Tesla or seeking any arrangement for Tesla under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Tesla in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of Tesla; or

(c) Tesla shall have assigned its assets for the benefit of its creditors (other than pursuant to a security instrument) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event; or

(d) Any violation of a material provision of this Agreement, which remains uncured within the time set forth below.

Upon the occurrence of an Event of Default hereunder, the County shall first notify Tesla in writing of its purported breach or failure, giving Tesla sixty (60) days from receipt of such notice

to cure or, if cure cannot be accomplished within sixty (60) days, to commence to cure such breach, failure or act. In the event Tesla does not then so cure, or commence to cure, within sixty (60) days, the County shall have the right to terminate this Agreement and pursue all rights and remedies available in law and in equity.

9. Remedies Cumulative. The rights and remedies of the Parties under this Agreement are cumulative, and the exercise or failure to exercise one or more of these rights or remedies by either Party will not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default.

10. No Waiver. No failure or delay by either Party in asserting any of its rights or remedies hereunder shall operate as a waiver of any default or of any such right or remedy, nor deprive such Party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies. Without limiting the generality of the foregoing, the failure or delay by either Party in providing a notice of default shall not constitute a waiver of any default.

11. Prohibition on Assignment or Transfer. Except as provided below, Tesla shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or hypothecation (collectively "Transfer") of the whole or any part of this Agreement without the prior written approval of the County, which will not be unreasonably withheld or delayed. Any such attempt to Transfer this Agreement without the County's consent will be null and void and will confer no rights or privileges upon the purported assignee and will constitute an Event of Default. Notwithstanding the foregoing, Tesla's rights hereunder with respect to the Governmental Services may be transferred to (i) any affiliate of Tesla; or (ii) any person or entity to whom the Tesla's rights with respect to the Gigafactory Project are transferred in compliance with the transfer/assignment provisions of any applicable agreement between Tesla and the County.

12. No Third-party Rights. The Parties expressly disclaim the creation of any right in any third party whatsoever under this Agreement, except those third parties that are also Participants in the District. There are no third-party beneficiaries other than the Participants in the District. Each participant in the District is deemed to be a third party beneficiary of this Agreement.

13. Notices. All notices and other communications to be given by either Party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate Party as follows:

To Tesla: Tesla Motors, Inc.
3500 Deer Creek Road
Palo Alto, California 94304
Attn: Deepak Ahuja
Phone: (650) 681-5100

With Copy to: Alex B. Leath
Bradley Arant Boult Cummings LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203
Phone: (205) 521-8899

arbitrator, the dispute shall be arbitrated and the proceedings shall be governed by the rules and regulations established by the arbitrator. The location of the arbitration shall be in the County unless otherwise agreed by the Parties, and shall be governed by the laws of the State of Nevada. All decisions by the arbitrator(s) so chosen shall be final and binding upon both Parties and may be enforced by either Party in a court of competent jurisdiction. To the extent possible, the Party found to be at fault shall pay the cost of any such mediation or arbitration. If the Parties cannot agree upon an arbitrator, the dispute shall be submitted to the First District Court of the State of Nevada. The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Agreement; however, either Party may at any time seek a preliminary injunction or other preliminary judicial relief from the appropriate court or other jurisdictions as the circumstances require to prevent irreparable or immediate damage. Nothing contained herein, shall restrict either Party's right to seek monetary damages in addition to or independent of injunctive relief. Despite such action, the Parties will continue to participate in good faith in the procedures specified herein, which shall survive any termination of this Agreement.

21. Entire agreement. This Agreement is the entire Agreement of the Parties and supersedes all prior negotiations whether written or oral.

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In witness whereof, the Parties have executed this Agreement the day and year first above written.


TESLA:

THE COUNTY AND FIRE DISTRICT


TESLA MOTORS, INC.

STOREY COUNTY, NEVADA

By: 
Attest: D. J. Williams
Name: D. J. Williams

By: 
Attest: _____
Marshall McBride, Chair
Board of County Commissioners
Board of Fire Commissioners

ATTEST:

By: 
Attest: Vanessa Stephens
County Clerk

APPROVED AS TO FORM


By: 
District Attorney's Office

EXHIBIT A

Governmental Services

In consideration of the annual payment by Tesla for governmental services set out in this Agreement the County and the Fire District will provide the following services:

1. The Fire District will staff and operate a fire department at Storey County Fire Station No. 75 during the term of this Agreement to the following minimum standards:
 - a. Provide 6 full-time firefighter/paramedic (minimum) staffing level, with 2 personnel working 48 hours on duty followed by 96 hours off duty;
 - b. Maintain a minimum of 3 of the 6 personnel at a paramedic level certification, which equates to at least 1 paramedic working for 48 hours on duty followed by 96 hours off duty;
 - c. Fire District will maintain this level of staffing unless an emergency exists as declared by the Board of Fire Commissioners;
 - d. Fire District is responsible for providing adequate and appropriate training for all fire fighter, EMS and paramedic personnel at their own expense;
 - e. Fire District will maintain one ALS equipped ambulance;
 - f. Fire District will maintain a Type I and/or Type II engine at this fire station;
 - g. Fire District will be responsible to purchase and maintain all customary and usual EMS gear as is provided in comparable fire departments/districts; and,
 - h. Fire District will strive to maintain at all times an ISO Public Protection Classification Rating of 3 or less for fire suppression services.
2. Storey County will provide sheriff services for the District.
3. Storey County will provide emergency management services on an as-needed basis for the District.
4. Storey County will provide the following administrative functions for the District:
 - a. Recording, assessor and appraiser services for real and personal property.

EXHIBIT B

Re-determination of Annual Fee Payments

The Projected Annual Payments in Section 5 were determined utilizing the following assumptions and methodologies. Assume the following facts all as of February 28, 2018: The total occupancy in the District is 1,500 people. The total occupancy in the Tahoe Reno Industrial Center is 7,000 people. The total assessed value of all real and personal property located in the District is \$350 Million. The total assessed value of all real and personal property located in the Tahoe Reno Industrial Center is \$639.8 Million. Assume the following facts all as of February 28, 2021: The total occupancy in the District is 2,500 people. The total occupancy in the Tahoe Reno Industrial Center is 10,000 people. The total assessed value of all real and personal property located in the District is \$700 Million. The total assessed value of all real and personal property located in the Tahoe Reno Industrial Center is \$1.062 Billion.

The projected budgets for providing Governmental Services in the District by the County and the Fire District are:

Fiscal Year ending in 2019:	\$ 916,437
Fiscal Year ending in 2020:	\$1,002,071
Fiscal Year ending in 2021:	\$1,019,702
Fiscal Year ending in 2022:	\$1,037,686
Fiscal Year ending in 2023:	\$1,056,030
Fiscal Year ending in 2024:	\$1,074,740

Factor calculations are as follows:

2018

Occupancy factor	–	21.43% (1,500/7,000)
Property factor	–	54.70% (\$350 Million/\$639.8 Million)
Payment factor	–	38.07% (76.13/2)

2021

Occupancy factor	–	25% (2,500/10,000)
Property factor	–	65.9% (\$700 Million/\$1.062 Billion)
Payment factor	–	45.45% (90.9/2)

The initial calculation of Tesla's payments to the County under this Section 5 would be as follows:

For the Fiscal Year ending in 2019:	\$348,856 (38.07% of \$ 916,437)
For the Fiscal Year ending in 2020:	\$381,454 (38.07% of \$1,002,071)
For the Fiscal Year ending in 2021:	\$388,166 (38.07% of \$1,019,702)
For the Fiscal Year ending in 2022:	\$471,617 (45.45% of \$1,037,686)
For the Fiscal Year ending in 2023:	\$479,954 (45.45% of \$1,056,030)
For the Fiscal Year ending in 2024:	\$488,458 (45.45% of \$1,074,740)

The initial amounts above will then be adjusted by the Parties by taking into account other factors in determining the Participant's fair share of the costs of providing Governmental Services in the District.

For example, suppose that subsequent development in the Tahoe Reno Industrial Center has generated significant additional revenue to the County by Fiscal year 2019. Suppose further that this additional revenue has improved the County's financial position to the point that the County can fund \$700,000 of the \$916,437 budget for Fiscal Year 2019. Assuming no other factors suggest otherwise, Tesla's payment to the County for Fiscal Year 2019 would be reduced from \$348,856 to \$216,437.