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Title: CONSIDER APPROVAL OF SUPERCHARGER LEASE AGREEMENT BETWEEN THE CITY OF CARSON AND TESLA, INC. FOR AN ELECTRIC VEHICLE CHARGING STATION AND APPROVAL OF RESOLUTION NO. 22-043, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DECLARING CERTAIN PUBLIC PROPERTY AS EXEMPT SURPLUS LAND, PURSUANT TO GOVERNMENT CODE SECTION 54220, ET SEQ." (CITY COUNCIL)

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Attachments: 1. Resolution Declaring Exempt Surplus Land Tesla Lease, 2. Tesla Lease

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Report to Mayor and City Council

Tuesday, March 15, 2022

Discussion

SUBJECT:

CONSIDER APPROVAL OF SUPERCHARGER LEASE AGREEMENT BETWEEN THE CITY OF CARSON AND TESLA, INC. FOR AN ELECTRIC VEHICLE CHARGING STATION AND APPROVAL OF RESOLUTION NO. 22-043, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DECLARING CERTAIN PUBLIC PROPERTY AS EXEMPT SURPLUS LAND, PURSUANT TO GOVERNMENT CODE SECTION 54220, ET SEQ."

I. SUMMARY

The City has had a long-standing interest in developing and constructing electric vehicle charging stations for its own fleet and for members of the public. This action recommends approving a lease agreement with Tesla, Inc. ("Tesla") for a maximum of fifteen (15) years for twenty (20) EV charging spaces at the Community Center. The type of EV chargers proposed by Tesla are Level 3 Superchargers; the location for the charging stations is the northeast corner of the parking lot at the Community Center. Two of these stalls will be ADA compliant. The lease is for approximately 4,500 square feet.

Tesla will pay for all the specific upgrades the City requires for their EV charging stations,

including the Tesla equipment and its installation. In addition to paying for the Tesla infrastructure, an additional \$75,000 payment to City has been negotiated for a one-time surface improvement in and around the parking lot for the proposed EV charging project area.

The land to be leased is “exempt surplus property” pursuant to Government Code 54221(f) (1)(B) of the Surplus Land Act. Adoption of Resolution No. 22-043 will serve the purpose of City Council formally declaring such land as exempt.

Carson is an ideal location for this group of EV car owners as there is a significant gap of Tesla supercharger stations in the South Bay and the site is convenient to the 405 freeway and close to nearby commercial businesses which owners can frequent while their cars charge.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE Resolution No. 22-043, “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DECLARING CERTAIN PUBLIC PROPERTY AS EXEMPT SURPLUS LAND, PURSUANT TO GOVERNMENT CODE SECTION 54220, ET SEQ.”
2. APPROVE a Supercharger Lease Agreement with Tesla, Inc. for lease of approximately 4,500 square feet of land for EV Chargers and additional space to provide disability access for the development of an EV Supercharger program at the Community Center, subject to modifications as directed by the City Council.
3. AUTHORIZE the Mayor to execute the Supercharger Lease Agreement following approval as to form by the City Attorney.

III. ALTERNATIVES

1. DO NOT APPROVE “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DECLARING CERTAIN PUBLIC PROPERTY AS EXEMPT SURPLUS LAND, PURSUANT TO GOVERNMENT CODE SECTION 54220, ET SEQ.”
2. DO NOT APPROVE the Supercharger Lease Agreement.
3. TAKE another action the City Council deems appropriate and consistent with the requirements of the law.

IV. BACKGROUND

As part of its EV Charging Station efforts, the City inquired of Tesla if there was an interest in them installing their EV chargers in the City of Carson and leasing land from the City for this purpose. A general discussion was held in November 2021 between City staff and Tesla to gauge Tesla's interest. There was an immediate interest shown by Tesla and it was decided that Tesla would further evaluate the prospective City site to be leased and determine the number of EV chargers that would make the project viable for them.

In January 2022, Tesla gave a presentation to the City Council about the EV chargers proposed to be installed and operated on a site to be leased from the City, and the City Council expressed interest and requested that the location initially presented be moved away from the International Sculpture Garden to the currently proposed location.

The lease proposes that Tesla enter into a lease agreement with City for a maximum of 15 years (initial 5-year term with two Tesla 5-year options to extend, with the initial 5-year period technically being more than 5 years due in part to a 365 day due diligence period leading up to commencement of the initial period), whereby Tesla would lease 20 parking spaces to allow it to install and operate 20 EV charging spaces at the Community Center, with two of the stalls to be ADA-compliant, along with up to five (5) feet of additional parking width to provide disability access and approximately 200-400 square feet of space for equipment. The EV chargers are the Level 3 Supercharger type; the location for the charging stations is the northeast corner of the parking lot at the Community Center. The leased space is for approximately 4,500 square feet.

While City will not charge Tesla any rent, Tesla will pay for all the specific upgrades at the City required for their EV charging stations, including the Tesla equipment. In addition to paying for the Tesla infrastructure, an additional \$75,000 has been negotiated as a one-time surface improvement in and around the parking lot for the proposed EV charging project area within the property. Improvements include, but are not limited to drought tolerant landscape, irrigation, shade trees, asphalt resurfacing, curb and gutter modifications, equipment screening, painting, and striping and lighting. Tesla has also agreed to pay all prevailing wages legally required to be paid in association with installation and maintenance of its improvements.

Carson is an ideal location for this group of EV car owners as there is a significant gap of Tesla charging stations in the South Bay and along the 405 and also close to nearby commercial businesses which owners can frequent while their cars charge.

Legal Analysis

It should be noted, however, that staff does have a couple concerns over the negotiated lease agreement terms, which are discussed below:

1. Tesla will not provide professional liability insurance even though there's a design component to the charging stations. However, Tesla has the affirmative obligation to repair any damage to the property in carrying out Tesla's installation work, construction, operation, use or maintenance of the charging stations. Given Tesla's financial wherewithal, the City's Risk Manager has determined that such indemnity obligations

provide City with sufficient protection notwithstanding any absence of professional liability insurance.

2. More concerning is that the lease proposed by Tesla purports to absolve Tesla from any responsibility arising from damage to City real property caused by Tesla's customers even though Tesla will derive revenue from these customers. Tesla's position is that it does not indemnify for acts or omissions of invitees/customers, as Tesla does not have the ability to control its drivers. While some validity can be given to this position, Staff's concern is that City should not have to bear the burden of damage to its property from use of Tesla's chargers by Tesla's customers. Nor does it appear that a middle ground can be reached in this regard from a practicable application standpoint. Council's input is sought to help resolve this pending item. If Council decides it wants Tesla to be held responsible for its customers damaging City property, Sections 13 and 23 of the lease agreement will need to be modified accordingly and still would need Tesla approval. At this juncture, it doesn't appear Tesla is able to approve a lease containing such obligations placed on Tesla.

Finally, because the proposed lease of land is less than 5,000 square feet, the leased property is "exempt surplus property" pursuant to Government Code 54221(f)(1)(B) of the Surplus Land Act ("Act"). Accordingly, Council approval of the attached Resolution No. 22-043 declaring the land exempt will enable City to be exempt from the requirements under the Act and permit the City to enter into the lease agreement without having to comply with the requirements thereunder.

V. FISCAL IMPACT

There is no fiscal impact. Tesla will pay all costs associated with the installation and operation of the superchargers and also make a \$75,000 payment to the City.

VI. EXHIBITS

1. Tesla Supercharger Lease Agreement

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| 2. | Resolution | No. | 22- |
| 043 | | | |

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