

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 6, 2021 AGENDA

Subject:	Type:	Submitted By:
CUSTOMER AGREEMENT WITH OPPD – ELECTRIC VEHICLE CHARGING STATIONS	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE DIRECTOR OF PUBLIC WORKS

SYNOPSIS

A resolution has been prepared authorizing execution of a Customer Service Agreement with Omaha Public Power District (OPPD) for purchase and installation of two (2) Electric Vehicle Charging Stations in City Parking Lot District #1 in an amount not to exceed \$20,405.00.

FISCAL IMPACT

Total Project Cost	\$141,078.
NDEE Grant Contribution	\$100,267.
OPPD Contribution	\$20,406.
La Vista Contribution	\$20,405.

The FY21/FY22 Biennial Budget provides funding for the proposed project.

RECOMMENDATION

Approval

BACKGROUND

In late 2019, OPPD made the City aware of grant funding for the installation of electric vehicle charging stations. On February 4, 2020, Council passed a resolution acknowledging the participation in a project to purchase and install two electric vehicle charging stations in City Parking Lot District #1. OPPD accepted bids for the project and selected Green Lots from California as the lower bidder at \$125,334. The City's participation in the project was \$12,533. With the current COVID-19 situation, Green Lots' crews are unable to travel and procure the required equipment. OPPD chose to move forward with the second bidder, Thompson Electric of Omaha. An updated Customer Agreement has been provided by OPPD, changing the total project cost to \$141,078 which in turn increases the City of La Vista's participation to \$20,405. The additional funding for the project will come from savings on other projects in the CIP.

OPPD will administer and oversee all aspects of the project and invoice the City at the end of the project.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A CUSTOMER AGREEMENT WITH OMAHA PUBLIC POWER DISTRICT (OPPD) FOR THE PURCHASE AND INSTALLATION OF TWO (2) ELECTRIC VEHICLE CHARGING STATIONS IN PUBLIC PARKING DISTRICT 1 IN AN AMOUNT NOT TO EXCEED \$20,405.00.

WHEREAS, the Mayor and City Council have determined that the purchase and installation of two (2) electric vehicle charging stations in Public Parking District 1 is in the best interest of the public; and

WHEREAS, Omaha Public Power District (OPPD) shall pay invoices during construction and installation period, then submit to the Nebraska Department of Environment and Energy (NDEE) and the City of La Vista for reimbursements. The total costs of the project is \$141,078.00, and the City's contribution to the project will be \$20,405.00; and

WHEREAS, the FY21/FY22 Biennial Budget provides funding for the project;

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, hereby authorize the execution of a Customer Agreement with OPPD for the purchase and installation of two (2) electric vehicle charging stations in Public Parking District 1 in an amount not to exceed \$20,405.00.

PASSED AND APPROVED THIS 6TH DAY OF APRIL 2021.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

CUSTOMER AGREEMENT

(ELECTRIC VEHICLE CHARGING STATIONS)

OMAHA PUBLIC POWER DISTRICT ("OPPD"), a public corporation and political subdivision of the State of Nebraska, and City of LaVista ("Customer") (each, a "party" and together, the "parties"), agree this ____ day of _____, 20____ (the "Effective Date"), as follows:

1. **Equipment; Access to Customer Property; Ownership of Equipment.** On or about Spring 2021, OPPD shall deliver certain electric vehicle charging station equipment (the "Equipment") as described in Exhibit "A-1" hereto ("Schedule of Equipment") to Customer for installation at Customer's property at a location, and on an estimated date, specified in Exhibit "A-2" hereto. Customer grants OPPD and its employees, contractors, and agents access to Customer's property during normal business hours (Monday through Friday, 7:00 a.m. to 5:00 p.m.) for the delivery and installation (if required hereunder) of the Equipment and all other purposes set forth in this Agreement. Customer shall expect some work to be performed during non-regular business hours and shall provide access to Customer's property during such times by mutual agreement. Upon delivery of the Equipment to Customer's property, Customer accepts title of, risk of loss for, and all liability with respect to the Equipment. Customer shall execute all documents deemed necessary by OPPD to effectuate the transfer of title, risk of loss and liability with respect to the Equipment. During the Term (hereinafter defined) Customer shall allow OPPD to install signage on the Equipment for marketing purposes.
2. **Installation of Equipment.** Installation of the Equipment shall be conducted either by OPPD (or its contractor), or by Customer (or its contractor), as described on Exhibit "B" hereto ("Description of Installation Services").
3. **Additional Services.** If, prior to or during installation of the Equipment, OPPD determines that additional services beyond the Description of Installation Services are needed ("Additional Services"), OPPD shall notify Customer and provide an itemized invoice of the costs for such Additional Services prior to commencing to perform or procure such Additional Services. Customer must pay such invoice to OPPD for the Additional Services before OPPD will commence the Additional Services.
4. **Term; Data Plan.** The term of this Agreement (the "Term") shall commence on the Effective Date and continue until the fifth (5th) anniversary following the date the installation of the Equipment is completed and the Equipment is placed into service. During the Term, Customer shall not remove the Equipment from the designated installation location on the Customer's property and make the Equipment, and two parking stalls adjacent to the Equipment, available for use by the general public 24 hours per day / 7 days per week. Without limiting the generality of the foregoing, Customer hereby grants the general public an access easement over the Customer's property in order to allow vehicles to get to the Equipment and associated parking stalls, to use the Equipment for as long as it reasonably is necessary to charge such person's vehicle using the Equipment and to exit the Customer's property. As a condition of this Agreement, Customer shall (a) enroll its Equipment in a data plan, as described in

Exhibit "C" hereto ("Data Plan"), no later than seven (7) days after the completion of installation of the Equipment, and (b) provide written notice to OPPD of enrollment in the Data PlanCustomer shall provide to OPPD and the Nebraska Department of Environment and Energy (the "NDEE") all data generated from the Data Plan during the Term. At the conclusion of the Term, Customer may choose to continue or terminate the Data Plan.

5. **Cost and Payment.** The total price for the Equipment and installation (if applicable) is as follows:

- a. Equipment: **\$81,930**
- b. Installation Services (by OPPD or its contractor): **\$59,148**
- c. Total Amount: **\$141,078**

The NDEE grant will contribute **\$100,267**

OPPD will contribute **\$20,406**

City of LaVista will contribute **\$20,405**

Total Amount **\$141,078**

OPPD shall pay invoices during construction and installation period, then submit to NDEE and city of LaVista for reimbursements.

6. **Operation and Maintenance of Equipment; Information Sharing; Advertisement.**

Customer shall, at Customer's sole cost and expense, operate the Equipment in accordance with the manufacturer's recommendations and prudent operating practices and shall maintain and repair the Equipment, as needed, and as recommended by the manufacturer and required by prudent operating practices to keep the Equipment in good working order, including but not limited to repairs required due to damage or vandalism. The Customer agrees to use its best efforts to keep the Equipment from being out of service for a period greater than seventy-two (72) hours. Customer agrees to share with OPPD its lessons learned and challenges associated with the operation and maintenance of the Equipment. Customer shall register each charging site location with the Alternative Fuels Data Center Station Locator tool located at <https://afdc.energy.gov>. OPPD and Customer agree that each party may advertise the availability of the Equipment to the public through additional channels, and each party shall provide the other party copies (whether in video, audio, print, or digital form) of any such advertisements. After the Term, Customer's information and data sharing obligations to OPPD and the NDEE shall terminate, and Customer shall continue to have all ownership rights and obligations and liabilities related to the Equipment, including the obligation to properly decommission and dispose of the Equipment. During the Term, Customer must submit annual station utilization data to NDEE. The following information shall be provided for each charger installed:

- Number of charging events
- Number of unique vehicles connected
- Total kWh dispensed
- Average kWh per charging event

- Average peak power (kW) per event
- Peak power demand by month
- Average duration of charging events
- Percent charger downtime

7. **Customer Responsibility for Electric Service; Charges for Use of Equipment.** Customer shall pay OPPD, or the applicable local utility if it is not OPPD, for all electric service and related charges for the Equipment, pursuant to the applicable utility rate schedule, and shall comply with all applicable utility service regulations. Customer may charge its customers for the use of the Equipment on the basis of time used or on a flat fee, but Customer shall not charge based on electricity usage. Customer agrees to comply with all federal, state, and local laws, ordinances, and regulations with respect to the ownership, operation, use, use by customers, maintenance, and repair of the Equipment.

8. **Termination.** This Agreement may be terminated by either party, upon thirty (30) days written notice, in the event the other party fails to perform any one of its material obligations hereunder and such failure, as identified in the notice, remains uncured during such thirty (30) day period. In the event of termination by OPPD for breach, OPPD and/or NDEE shall have the right to remove the Equipment from Customer's property, upon which time the title and risk of loss of such Equipment shall transfer to the party removing such Equipment from Customer's property. Customer agrees to execute any document reasonably requested by OPPD and/or NDEE to evidence the transfer of ownership of the Equipment as described in this paragraph. This Agreement shall terminate automatically, without notice, if either party: becomes insolvent or bankrupt, makes a general assignment for the benefit of, or enters into any arrangement with, creditors, files a voluntary petition under any bankruptcy, insolvency, or similar law, or has proceedings under any such laws or proceedings seeking appointment of a receiver, trustee or liquidator instituted against it. Upon such a termination, title and ownership of the Equipment shall automatically transfer to OPPD. Each Party's termination rights shall be without prejudice to the rights or claims it may have hereunder against the other with respect to its performance, nonperformance or breach of obligations hereunder.

9. **Security Interest.** OPPD and Customer agree that OPPD and NDEE each have a security interest in the Equipment from the date of delivery of the Equipment to Customer until the end of the Term in order to secure all of Customer's obligations under this Agreement. Customer hereby grants OPPD and NDEE a security interest in the Equipment and authorizes OPPD and/or NDEE to file all necessary financing statements, or related documentation, to perfect such security interest, at OPPD and/or NDEE's sole expense and cost. Customer acknowledges and agrees that during the Term, Customer will not grant a security interest in, pledge, assign, mortgage, sell, offer to sell, create or permit a lien or levy or encumbrance upon the Equipment.

10. **Liability and Indemnity.** Customer agrees to add the Equipment to its property insurance policy for damage, vandalism and theft and provide proof of insurance to OPPD. Customer acknowledges and agrees that it is responsible for all liability and risk associated with the ownership, operation, use and maintenance of the Equipment, including but not limited to tripping, shock, electrocution, Equipment failure, Equipment damage, vandalism, and damage to a vehicle by a malfunction of the Equipment. Customer accepts this liability and risk with full knowledge of the consequences, and

waives and relinquishes any claims or causes of action, known or unknown, against OPPD, and its directors, officers, employees, and contractors, with respect to the ownership, operation, and maintenance of the Equipment. Furthermore, to the maximum extent permitted by law, Customer shall indemnify, defend and hold harmless OPPD, and its directors, officers, employees, and contractors, against and from all claims, causes of action, damages, expenses (including but not limited to reasonable attorneys' fees and litigation expenses) and liabilities of any kind (collectively, "Liabilities") that arise from or are related to the ownership, operation, use and maintenance of the Equipment, unless such Liabilities are caused by the gross negligence of OPPD or its employees or contractors.

Customer acknowledges that the NDEE may hold OPPD and/or Customer liable for any loss, damage, neglect, or unreasonable deterioration of the Equipment throughout the Term. Customer agrees to indemnify and hold harmless OPPD from any liabilities arising from any such loss, damage, neglect, or unreasonable deterioration of the Equipment. Moreover, if the Equipment is used for a purpose that is not approved by OPPD, or the Customer fails to maintain the Equipment in operation throughout the Term, then Customer agrees to indemnify and hold harmless OPPD for any amounts required to be paid by OPPD to NDEE as a result of any such acts or omissions by Customer.

11. Exclusion of Warranties; Limitation of Damages.

CUSTOMER UNDERSTANDS AND AGREES THAT OPPD MAKES NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY, AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT FOR FRAUD OR WILLFUL MISCONDUCT, OPPD SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR REVENUE, LOSS OF THE USE OF EQUIPMENT, LOSS OF GOODWILL, COST OF SUBSTITUTE EQUIPMENT, COST OF CAPITAL, COST OF TEMPORARY EQUIPMENT OR SERVICES, COST OF REPLACEMENT POWER, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY.

12. Nondiscrimintation. The Nebraska Fair Employment Practice Act prohibits discrimination against any employee, or applicant for employment, in the performance of such Agreements, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability or national origin. Customer represents and warrants compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement.

13. New Employee Work Eligibility. Customer is required and hereby agrees to use, and require subcontractors to use, a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal

immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

The Customer understands and agrees that lawful presence in the United States is required and the Customer may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

14. **Waiver.** The failure of a party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such party. Any waiver at any time by either party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement.
15. **Severability.** If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction (a) such portion or provision shall be deemed separate and independent, (b) the parties shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling, and (c) the remainder of this Agreement shall remain in full force and effect.
16. **No Third-Party Beneficiaries.** Except for the NDEE, this Agreement is not intended to and does not create rights, remedies, or benefits of any kind whatsoever in favor of any persons, corporations, associations, or entities other than the parties, and the obligations herein assumed are solely for the use and benefit of the parties, their successors in interest and where permitted, their assigns.
17. **No Partnership.** This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the parties or to impose any partnership obligation or partnership liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other party.
18. **Contractors.** Nothing in this Agreement shall prevent a party from utilizing the services of any contractor as it deems appropriate to perform its obligations under the Agreement; provided, however, that each party shall require its contractors to comply with all applicable terms and conditions of the Agreement in providing such services and each party shall remain primarily liable to the other party for the performance of this Agreement.
19. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, in the event that Customer desires to sell or otherwise transfer the relevant Customer property during the Term to another party, then Customer must first obtain

agreement from OPPD to allow Customer to assign its rights and obligations under this Agreement, which consent will not be unreasonably withheld, and thereafter, Customer must deliver to OPPD a signed assignment and assumption agreement from its proposed successor, in a form reasonably acceptable to OPPD, assigning all rights under this Agreement and assuming all obligations set forth hereunder as well as in the bill of sale delivered by OPPD to Customer associated herewith.

20. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Nebraska, without regard to its conflict of laws principles. Any civil action to enforce this Agreement or to adjudicate any dispute between the parties hereto relating to the subject matter of this Agreement shall be brought and maintained in the District Court of Douglas County, Nebraska or the United States District Court for the District of Nebraska, located in Douglas County, Nebraska. The parties hereby waive any objection based on venue or forum non conveniens with respect to any legal action or proceeding instituted in connection with or related to this Agreement.
21. **Notices.** Unless otherwise expressly provided herein, all notices, certificates, requests, demands and other communications in connection with this Agreement shall be in writing and shall be (a) personally delivered, (b) sent by first class United States certified mail, (c) sent by a nationally recognized overnight courier, or (d) transmitted by trackable electronic mail, in each case addressed to the party to whom notice is being given at its address or email address set forth below or at any other address hereafter designated by that party in a written notice to the other party:

OPPD:

Omaha Public Power District
444 South 16th Street Mall
Omaha, Nebraska 68102-2247

Attn: _____

Email:

Phone:

CUSTOMER:

With a copy to:
Fraser Stryker PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, Nebraska 68102-2663
Attn: Stephen M. Bruckner, Esq.
Email: sbruckner@fraserstryker.com
Phone: 402-341-6000

22. **Entire Agreement.** This Agreement, a Bill of Sale associated with this Agreement, and the attached Exhibits constitute the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, statements and negotiations are hereby superseded. This Agreement may be amended only by a writing signed by each party. This Agreement may be executed by the parties on one or more counterparts, each of which shall be part of one Agreement.

[Signature Pages Follow].

Omaha Public Power District

Signature: _____

Name: Kirk Estee

Title: Customer Alternative Energy Solutions Manager

Date: _____

[Customer Name]

Signature: _____

Name: _____

Title: _____

Date: _____

2389556

Exhibit "A-1"

Schedule of Equipment

One (1) Chargepoint CT4021 Level 2 Electric Vehicle Charger, including 5-year maintenance plan, 5-year service contract and 5-year data plan.

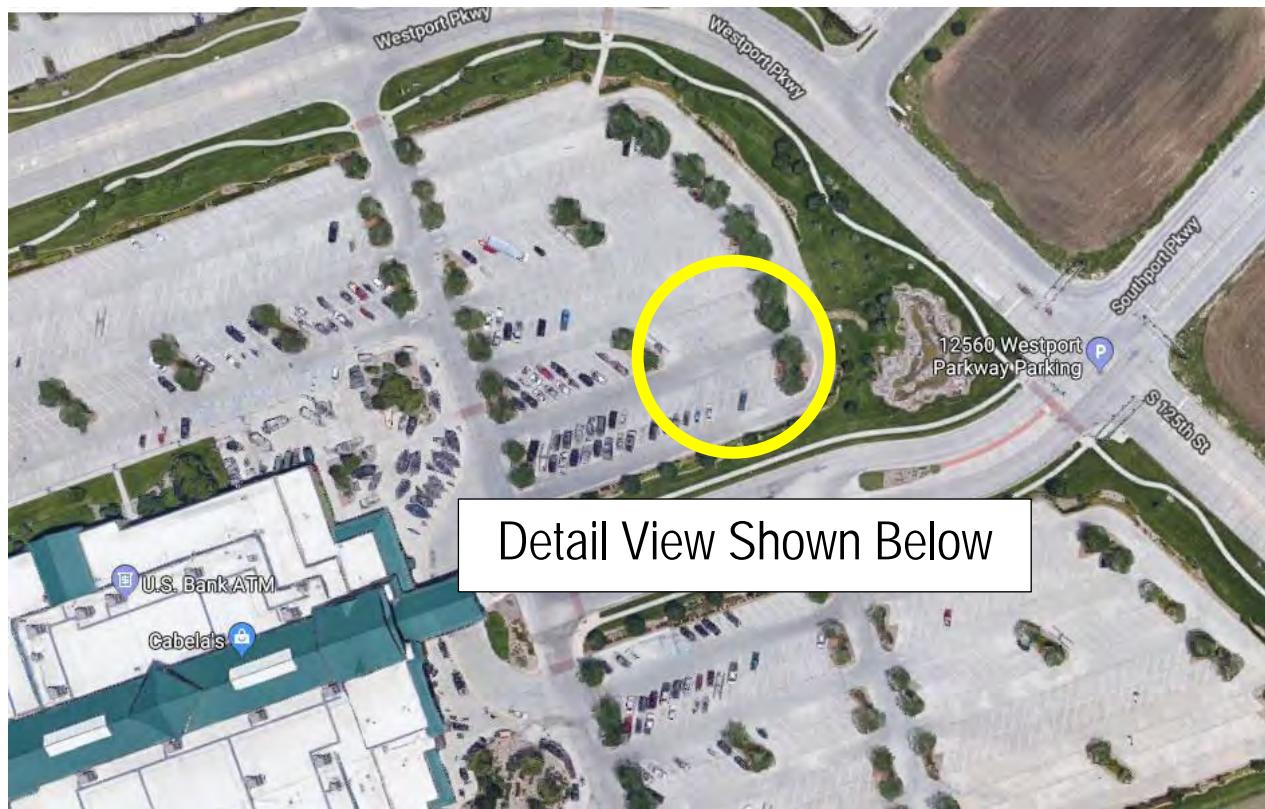
One (1) Chargepoint CPE250 Level 3 DC Fast Charger, including 5-year maintenance plan, 5-year service contract and 5-year data plan.

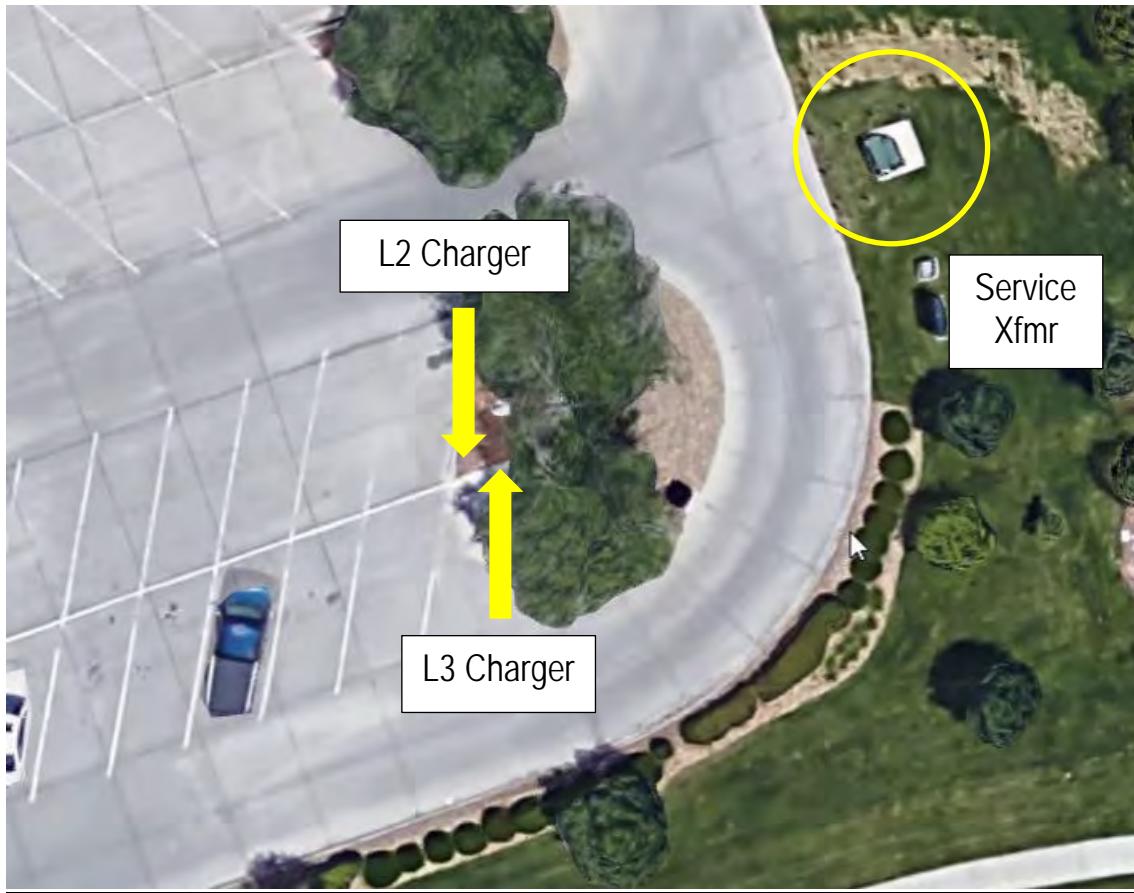
Exhibit "A-2"

Location of Equipment and Estimated Delivery/Installation Dates

Location of Equipment:

Cabela's Parking Lot: 12703 Westport Parkway, LaVista, NE





Estimated Date to Commence Installation of Equipment:

All work associated with this contract must be completed by the grant deadline of March 31, 2022. Actual schedule to be determined through coordination between city of LaVista, OPPD and the installation contractor.

Exhibit "B"

Description of Installation Services

OPPD, or OPPD's contractor, will provide labor and materials to install the Equipment in a workmanlike manner in compliance with all applicable grant requirements, legal requirements, manufacturer recommendations, and industry practices. Customer will reimburse OPPD as shown in Section 5 of this agreement.

Exhibit "C"

Data Plan

Charging equipment must be connected to a network by Wi-Fi or cellular connection. Customer must maintain appropriate charging network service that includes capabilities for remote diagnostics, remote start of the equipment, and collecting and reporting usage data.