

# CHEHALIS CITY COUNCIL AGENDA

CITY HALL  
350 N MARKET BLVD | CHEHALIS, WA 98532

Anthony E. Ketchum, Sr.  
Mayor

Jerry Lord, District 1  
Daryl J. Lund, District 2  
Kate McDougall, Position at Large No. 1

Dr. Isaac S. Pope, District 4  
Robert J. Spahr, Mayor Pro Tem, Position at Large No. 3  
Kelly Wilson, Position at Large No. 2

**Regular Meeting of Monday, March 14, 2022**  
**5:00 pm**

***To access this meeting via Zoom:***

Meeting ID: 822 5811 8879

Pass Code: 674890

1. Call to Order. (Mayor Ketchum)
2. Pledge of Allegiance. (Mayor Ketchum)
3. Approval of Agenda. (Mayor Ketchum)

## Special Acknowledgments

4. Moment of Silence in Remembrance of Former Chehalis City Manager, David M. Campbell

## PRESENTATIONS

5. Recognition of Retiring Court Administrator, Melody Guenther
6. Proclamation, Declaring March as Red Cross Month
7. Chehalis Community Renaissance Team Update

## CITIZENS BUSINESS (PUBLIC COMMENT)

Individuals wishing to provide public comments in general and on agenda items should submit comments by 4:00 pm on the day of the meeting. All comments received will be acknowledged by the Mayor under Citizens Business of this meeting agenda. Please use the following form to submit comments – <https://www.ci.chehalis.wa.us/contact>. If you do not have computer access or would prefer to submit a comment verbally, please contact Interim City Clerk Cassie Frazier at 360-345-1042 or at [cfrazier@ci.chehalis.wa.us](mailto:cfrazier@ci.chehalis.wa.us). Public comments will be limited to five (5) minutes.

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**CONSENT CALENDAR**

8. <u>Minutes of the Regular City Council Meeting of February 28, 2022.</u> (City Clerk)	APPROVE	1
9. <u>Vouchers and Transfers – Accounts Payable in the Amount of \$178,999.52 Dated February 28, 2022.</u> (City Manager, Finance Director)	APPROVE	5
10. <u>Vouchers and Transfers – Payroll in the Amount of \$877,649.87 Dated February 28, 2022.</u> (City Manager, Finance Director)	APPROVE	7
11. <u>Proposed Easement with Lewis County PUD Providing Power for McFiler’s New Location at 558 N. Market Blvd.</u> (City Manager, Interim Public Works Director)	APPROVE	9

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**OLD BUSINESS**

12. <u>Second and Final Reading, Ordinance No. 1027-B – Establishing 2021 Year End Fund Balance Commitments.</u> (City Manager, Finance Director)	APPROVE	13
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**NEW BUSINESS**

13. <u>Consideration of Site Access Agreement for Parcel Numbers 021612001002 and 005605083005 to National Frozen Foods Corporation for Two Monitoring Wells.</u> (City Manager, Airport Director)	APPROVE	19
14. <u>Consideration of Offer to Lease 8 parking spaces to Tesla, Inc.</u> (City Manager, Airport Director)	APPROVE	31

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**ADMINISTRATION AND CITY COUNCIL REPORTS**

15. <u>Administration Reports.</u>	INFORMATION ONLY	---
a. City Manager Update. (City Manager)		
a. Introduction of the City’s new Court Administrator, Madisen Lester		
16. <u>Councilor Reports/Committee Updates.</u> (City Council)	INFORMATION ONLY	---

**EXECUTIVE SESSION**

17. Pursuant to RCW:
- a. 42.30.110(1)(i) – Litigation/Potential Litigation
  - b. 42.30.110(1)(c) – Sale/Lease of Real Estate

THE CITY COUNCIL MAY ADD AND TAKE ACTION ON OTHER ITEMS NOT LISTED ON THIS AGENDA.  
NEXT REGULAR CITY COUNCIL MEETING IS MONDAY, MARCH 28, 2022.

## Chehalis City Council

Meeting Minutes

February 28, 2022

The Chehalis City Council met in regular session on Monday, February 28, 2022. Mayor Ketchum called the meeting to order at 5:00 pm with the following members present: Jerry Lord, Kate McDougall, Dr. Isaac Pope, Bob Spahr and Kelly Wilson. Councilor Daryl Lund had an excused absence. Staff present included: Jill Anderson, City Manager; Tammy Baraconi, Planning and Building Manager; Lance Bunker, Street/Stormwater Superintendent; Amelia Schwartz, City Planner; Kiley Franz, City Clerk; Cassie Frazier, Interim City Clerk, Erin Hillier, City Attorney; Randy Kaut, Police Chief; Melody Gunther, Court Administrator; Brandon Rakes, Airport Operations Coordinator; Chun Saul, Finance Manager, Devlan Pool, Wastewater Superintendent and Lilly Wall, Parks and Recreation Manager. News media present via Zoom was Dan Warn, The Chronicle.

1. **Approval of Agenda.** A motion to approve the agenda as presented was made by Councilor Spahr. The motion was seconded by Councilor Pope and carried unanimously.

2. **Disaster Assistance Grants- Barbara Nitis.** Barbara Nitis from the Small Business Administration Disaster Assistance branch spoke about the winter flooding that occurred in January and grant assistance that is offered. The SBA offers flood assistance to homeowners, businesses, small businesses, and non-profit organizations suffering adverse financial impacts of the flooding. The deadline to apply for grant assistance for physical damage is April 18<sup>th</sup>. To apply, go online to [disasterloanassistance.sba.gov](https://disasterloanassistance.sba.gov). Those in need of assistance may also go to the SBA Disaster Loan Outreach Center located in the Lewis County Courthouse. The center is available until March 3<sup>rd</sup> for one-on-one help, after March 3<sup>rd</sup>, assistance will be available at the Grays Harbor location. For assistance after the local center closes, the phone number is 1-800-659-2955 and for the Economic Disaster Loan, the deadline is November 15<sup>th</sup>, 2022.

3. **Citizens Business- Edna Fund: Chehalis River Basin Flood Authority.** Edna Fund informed the City Council of a meeting occurring on the 9<sup>th</sup> of March regarding the Chehalis River Basin Flood Authority. The meeting will be conducted via a virtual forum regarding the Skookumchuck Dam. The group is looking at whether to keep it, make alterations, or take it down. Scientific studies continue to be conducted and the group encourages community input and outreach. The monthly meeting will take place on Thursday, March 3<sup>rd</sup> at 9:00am.

4. **Consent Calendar.** Councilor Spahr moved to approve the consent calendar comprised of the following:

- a. Minutes of the regular City Council meeting of February 14, 2022; and
- b. Vouchers and Transfers – February 15, 2022, Claim Vouchers No. 133585 - 133685 and Electronic Funds Transfer Checks No. 1836 - 1861 and 41 Voucher Checks in the amount of \$228,706.36, and Voided Check No. 133459 for the net total of \$228,661.36; and
- c. Parametrix, Inc. for the 2020-2022 Wastewater on-call SCADA Services- Amendment 2; and
- d. Residency exemption and appointment of Casey Forsman to the Historic Preservation Commission; and
- e. Confirm re-appointment of Joe Mano to the Civil Service Commission; and
- f. Amendment to agreement with Gibbs and Olson to designate the firm as the City's interim City engineer;

The motion was seconded by Councilor Lord and carried unanimously.

5. **Review of City Council Committee and Board Assignments.** Mayor Ketchum stated that he had asked the Council to review the list of committee and board assignments; he asked the Council members if they would like to participate on any particular board or committee. Councilor McDougall filled the vacant position on the 911 Dispatch Committee. Mayor Ketchum offered to step down from the Lewis County Historical Museum Board as he had served on the Board for many years. Councilor McDougall volunteered for the position. Councilor Wilson filled the vacant position on the Centralia-Chehalis Transportation Cooperative and will be the alternate for the Lewis County Public Transportation Benefit Area Authority (Twin Transit). Councilor Lord asked to leave the Lewis County Solid Waste Advisory Committee and the Lewis County Solid Waste Disposal District Executive Committee. These committee openings were filled by Councilor Spahr. Councilor Lord filled the vacant Council Growth

Management Committee and will be the alternate to Mayor Ketchum for the Lewis County Transportation Strategy Council. Mayor Ketchum designated himself to the SWW Regional Transportation Planning Organization Board.

**6. Music in the Park Request.** Lilly Wall presented a request from Eli Sports Network requesting additional funding in the amount of \$5,000 for the current contract of \$15,000. The additional \$5,000 brings the total to \$20,000 for the City's portion. Ms. Wall stated that the overall event would cost approximately \$41,000; Eli Sports Network would cover the additional \$21,000 through sponsorship. These events have progressed from cover bands to national artists and brought in an estimated 5000 attendees over three events last year.

Councilor Spahr and Mayor Ketchum expressed their support of the Music in the Park events.

A motion to approve the request from Eli Sports Network for an additional \$5,000 to support Music in the park was made by Councilor Spahr. The motion was seconded by Councilor Lord and carried unanimously.

**7. Accepting TIB Arterial Preservation Grant for Pavement Repairs on Main Street.** Lance Bunker informed the City Council that the City has been awarded the TIB Arterial Preservation Grant for Pavement Repairs on Main Street. Lance Bunker requested that the City Council authorize the City Manager to accept the grant funding in the amount of \$586,170 for grind and inlay of Main Street from I-5 to the BNSF railroad tracks, including the City's requirement of 10% match, or \$65,130. Mayor Ketchum asked for clarification if this was a continuation of the previous work on Main Street. Lance Bunker confirmed that it was.

A motion to authorize the City Manager to accept funding offered by TIB for improvements to Main Street in the amount of \$586,170 and authorize the use of funds from the TBD account to cover the \$65,130 local match was made by Councilor Spahr. The motion was seconded by Councilor Lord and carried unanimously.

**8. Engineering Services Agreement with Gibbs and Olson in an Amount Not to Exceed \$76,236 for Design and Bidding the Main Street Resurfacing Project.** Lance Bunker explained that this was to cover the acceptance of the TIB grant and coincide with the previous agreement with Gibbs and Olson. Councilor Spahr stated you can't have one without the other.

A motion to approve the engineering services agreement with Gibbs and Olson in the amount of \$63,530 for design and bidding of the Main Street Resurfacing Project with a 20% cost contingency of \$12,706 for it not to exceed a total of \$76,236; and authorize the City Manager to sign the contract and related documents, including change orders was made by Councilor Spahr. City Manager Jill Anderson wanted to note that an updated copy of the agreement was dispersed to the Council prior to the meeting, the first copy distributed to the City Council was for phase I of the project. The motion was seconded by Councilor Pope and carried unanimously.

**9. Accepting TIB Arterial Preservation Grant for Pavement Repairs on National Avenue.** Lance Bunker explained that this grant would cover grind and inlay on National Avenue from Chamber Way to Kresky Avenue. This grant covers 90% of the project of \$495,504 with a local match of 10% from the TBD fund of \$55,056. Gibbs and Olson would provide the design and bid call on this project as well. In response to a question about funding by Mayor Ketchum, Jill Anderson clarified that the \$15,030 or 20% contingency was added to the Gibbs and Olson consulting agreement, not the TIB grant acceptance for National Avenue.

A motion to authorize the City Manager to accept funding offered by the TIB for improvements to National Avenue in the amount of \$495,504 and also authorize the use of funds from the TBD account to cover the \$55,056 local match was made by Councilor Spahr. Councilor Pope asked to clarify where this project would end. He voiced concern about the heavy dirt moving equipment utilizing the section of road that this project would be upgrading. Jill Anderson and Lance Bunker stated that they could schedule the project around this issue. The motion was seconded by Councilor Lord and carried unanimously.

**10. Engineering Services Agreement with Gibbs and Olson in an Amount Not to Exceed \$90,180 for Design and Bidding the National Avenue Resurfacing Project.** Lance Bunker stated that Gibbs and Olson were selected to complete the design phase and bidding requirements for the National Avenue project. Mayor Ketchum stated that you can't do one without the other.

A motion to approve the engineering services agreement with Gibbs and Olson in the amount of \$75,150 for design and bidding of the National Avenue Resurfacing Project with a 20% cost contingency of \$15,030 for it not to exceed a total of \$90,180; and authorize the City Manager to sign the contract and related documents, including change orders was made by Councilor Spahr. The motion was seconded by Councilor Lord and carried unanimously.

11. **Ordinance No. 1027-B, First Reading- Establish 2021 Year-End Fund Balance Commitments.** Chun Saul presented the finalized Year-End fund balances dispersed into five fund balance categories: non-spendable, restricted, committed, assigned, or unassigned. Ms. Saul asked that the City Council authorize a total of \$3,130,150 of the City's governmental funds' cash and investments (fund balances) as of 12/31/2021, including \$959,500 from the General Fund, to be committed for the amounts and specific purposes and uses as provided, and authorize the City Manager to designate other fund balances as assigned in order to carry out the intent of the City Council.

A motion to pass Ordinance No. 1027-B was made by Councilor Spahr. The motion was seconded by Councilor McDougall and carried unanimously.

12. **Convert the Part-time Judicial Assistant for Sentence Monitoring Position to Full-time.** City Manager Jill Anderson informed the City Council that due to staffing changes and additional requirements set forth by new Washington State laws for municipal courts, additional staffing was necessary. Ms. Anderson explained that it was suggested that the Council approve altering the position from three-quarter time to full time to provide the necessary assistance in this transitional time. Existing salary savings will help bridge any budget impact during this change, the amount being about \$19,000 over 12 months.

A motion to approve the conversion of the Judicial Assistant for Sentence Monitoring from a part-time position to a full-time position and to also authorize the budget adjustments needed to fund the full-time position for the remainder of the fiscal year, which ends on December 31, 2022, was made by Councilor Spahr. The motion was seconded by Councilor Lord and carried unanimously.

13. **Increase Part-time Temporary Records Specialist Position to Full-time Permanent Position.** City Manager Jill Anderson informed the City Council that the increase of public records requests has nearly doubled in the last year. The requests are required to be fulfilled within a specific time period. The majority of the public record requests from last year were for the Planning and Building department where this part-time position was created to assist in these requests. Partnered with the City Clerk leaving for another job, the help for the Building and Planning department is crucial at this time. With the consistently large number of requests, the City does not see the need for this position going away any time soon. If the changes become effective in March, the 2022 budget impact would be approximately \$57,510. Subtracting the current \$25,000 budgeted for the position, an additional approximate \$32,510 would be necessary to fund this position.

A motion to approve the position of Records Specialist to full-time status was made by Councilor Spahr. The motion was seconded by Councilor Wilson and carried unanimously.

#### 14. **Administration Reports.**

##### a. **City Manager Update.**

a. City Manager Anderson let City Council know that City Clerk Kiley Franz's last day will be March 4<sup>th</sup> and there will be a small going away party from 1:00pm-3:00pm. Cassie Frazier, Administrative Assistant to the City Manager will be filling in and training to be the interim City Clerk in the meantime. Ms. Anderson informed the City Council that the Newaukum River is expected to reach moderate flood level. The City has replenished the sand at the 13<sup>th</sup> Street and Market Street location. The City does have some sandbags on hand but recommend that citizens bring their own. The City encourages residents to sign up for Lewis County Alerts to stay up to date on current conditions. Lilly Wall, Parks and Recreation Manager, has been working with many of our sports groups to assist in a clean-up of the ball parks at Stan Hedwall Park.

#### 9. **Councilor Reports/Committee Updates.**

a. **Councilor McDougall.** Councilor McDougall went to a ribbon cutting for the Rotary Club, celebrating 100 years at the Historic Museum. Councilor McDougall also wanted to thank our first responders and their efforts in the community are very much appreciated.

b. **Mayor Ketchum.** Mayor Ketchum informed the Council that he had attended the Mayors' meeting, the Twin Transit Board meeting and the SWW Regional Transportation planning organization meeting. Mayor Ketchum also attended a Lewis County Historical Museum Meeting where an individual came in with a proposal for a "Railfan Park" concept.

Mayor Ketchum also attended a food contest from the students at Orin Smith Elementary School that he was a judge at.

10. **Executive Session.** Mayor Ketchum announced the City Council would take a short recess and then be in executive session pursuant to RCW 42.30.110(1)(i) – Litigation or Legal Risk and RCW 42.30.110(1)(c) – Sale/Lease of Real Estate, not to exceed 7:00 pm and there will be no action taken following conclusion of the executive session. Mayor Ketchum closed the regular meeting at 6:06 pm. and the executive session began at 6:13 pm. Mayor Ketchum adjourned the executive session and reopened the regular meeting at 7:00pm. Mayor Ketchum announced that the executive session would need to be extended, not to exceed 7:15 pm. Mayor Ketchum closed the regular meeting at 7:00pm and reopened executive session. Following conclusion of the executive session at 7:09pm, the regular meeting was reopened and was immediately adjourned.

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Anthony Ketchum, Sr., Mayor

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Cassie Frazier, Interim City Clerk

Approved:

Initials: \_\_\_\_\_

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Chun Saul, Finance Director  
Clare Roberts, Accounting Tech II

**MEETING OF:** March 14, 2022

**SUBJECT:** 2022 Vouchers and Transfers – Accounts Payable in the Amount of  
\$178,999.52

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**ISSUE**

City Council approval is requested for 2022 Vouchers and Transfers dated February 28, 2022.

**DISCUSSION**

The February 28, 2022, Claim Vouchers have been reviewed by a committee of two councilors prior to the release of payments. The administration is requesting City Council approval for Claim Vouchers including Electronic Funds Transfer Checks No. 1862 - 1887 and 42 - 43 and Voucher Checks No. 133686 - 133780 in the amount of \$179,047.52 dated February 28, 2022, and Voided Check No. 133609 for the net total of \$178,999.52 as follows:

- \$ 58,612.70 from the General Fund
  - \$ 13,676.69 from the Street Fund
  - \$ 2,842.36 from the LEOFF 1 OPEB Reserve Fund
  - \$ 3,369.46 from the Public Facilities Reserve Fund
  - \$ 40,193.44 from the Wastewater Fund
  - \$ 11,100.68 from the Water Fund
  - \$ 644.31 from the Storm & Surface Water Utility Fund
  - \$ 48,201.68 from the Airport fund
  - \$ 406.20 from the Firemen's Pension Fund
- \$ 179,047.52 Total for Vouchers for February 28, 2022  
\$ < 48.00 > Voided check for February 24, 2022  
\$ 178,999.52 Net Total Transfers

**RECOMMENDATION**

It is recommended that the City Council approve the Claim Vouchers including Electronic Funds Transfer Checks No. 1862 - 1887 and 42 - 43 and Voucher Checks No. 133686 - 133780 in the amount of \$179,047.52 dated February 28, 2022, and Voided Check No. 133609 for the net total of \$178,999.52.

**SUGGESTED MOTION**

I move that the City Council approve the Claim Vouchers including Electronic Funds Transfer Checks No. 1862 - 1887 and 42 - 43 and Voucher Checks No. 133686 - 133780 in the amount of \$179,047.52 dated February 28, 2022, and Voided Check No. 133609 for the net total of \$178,999.52.



**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Chun Saul, Finance Director  
Deri-Lyn Stack, Payroll Accounting

**MEETING OF:** March 14, 2022

**SUBJECT:** Vouchers and Transfers – Payroll in the Amount of \$877,649.87

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**ISSUE**

City Council approval is requested for Payroll Vouchers and Transfers dated February 28, 2022.

**DISCUSSION**

The administration requests City Council approval for Payroll Vouchers No. 41928-41950, Direct Deposit Payroll Vouchers No. 14484-14597, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 382-385 dated February 28, 2022, in the amount of \$877,649.87, which include the transfer of:

- \$499,990.82 from the General Fund
- \$37,862.79 from the Street Fund
- \$5,197.50 from the LEOFF1 OPEB Reserve Fund
- \$7,838.38 from the Federal Advance Grant Control
- \$106,533.03 from the Wastewater Fund
- \$160,739.98 from the Water Fund
- \$28,277.04 from the Storm & Surface Water Utility Fund
- \$31,210.33 from the Airport Fund

**RECOMMENDATION**

It is recommended that the City Council approve the February 28, 2022, Payroll Vouchers No. 41928-41950, Direct Deposit Payroll Vouchers No. 14484-14597, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 382-385 in the amount of \$877,649.87.

**SUGGESTED MOTION**

I move that the City Council approve the February 28, 2022, Payroll Vouchers No. 41928-41950, Direct Deposit Payroll Vouchers No. 14484-14597, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 382-385 in the amount of \$877,649.87.

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Lance Bunker, Interim Public Works Director

**MEETING OF:** February 28, 2022

**SUBJECT:** Proposed Easement with Lewis County PUD Providing Power for McFiler's New Location at 558 N. Market Blvd

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**ISSUE**

An easement for Lewis County PUD has been prepared for action by the City Council to allow a power line to be connected to the building, commonly known as the Chehalis Movie Theater, that will be home to McFiler's.

**DISCUSSION**

McFiler's is planning on opening on a new venture at the former Chehalis movie theater located at 558 N. Market Blvd. To provide the necessary power needed to operate the business, they need additional power that requires a power line to extend across the City's parking lot behind the theater to the new business.

Therefore, Lewis County PUD has requested an aerial easement so that they are able to provide sufficient power to the building. The power will come from an existing pole located directly behind the old movie theater, cross above the alley, and be attached to the existing services at the rear of the structure.

This attached easement has been reviewed by the City Attorney.

**FISCAL IMPACT**

There are no fiscal impacts to this action.

**RECOMMENDATION**

It is recommended that the City Council authorize the Interim Public Works Director to sign the attached easement.

**SUGGESTED MOTION**

I move that the City Council authorize the Interim Public Works Director to sign the attached easement.

AFTER RECORDING RETURN TO:  
P.U.D. NO. 1 OF LEWIS COUNTY  
P.O. BOX 330  
CHEHALIS, WA. 98532-0330

## DISTRIBUTION LINE EASEMENT

THE GRANTOR(S), CITY OF CHEHALIS, a municipal corporation, for and in consideration of By Way Of Gift and other and valuable consideration, hereby warrants and conveys to GRANTEE, PUBLIC UTILITY DISTRICT NO. 1 OF LEWIS COUNTY, a municipal corporation, and for grantees heirs, successors and assigns, a perpetual non-exclusive easement over, under, across, and upon the following described real property (the "Property" herein) situated in the County of Lewis, State of Washington, to-wit:

Lot 35 , Block 5, of Chehalis Land and Timber Company's Addition to the City of Chehalis, as recorded in volume 2 of plats, page 59, records of Lewis County, Washington, being located within Section 29, Township 14 North, Range 2 West, W.M., Lewis County, Washington.

Tax Parcel Number: 004582-001-000

Except as may be otherwise set forth herein, Grantee's rights shall be exercised upon that portion of the Property (the "Easement Area" herein) described as follows:

The northwesterly 10' of the southeasterly 20' of Lot 35.

**1. Purpose.** Grantee shall have the right, privilege and authority to construct, erect, alter, improve, repair, replace, remove, operate and maintain electric distribution facilities over and under the Easement Area to provide service to District customers. Said facilities may include, but are not limited to: poles, wires, underground lines, braces, guys, anchors, signal and communication wires, insulators, crossarms, transformers, vaults, and any other necessary equipment.

**2. Access.** Grantee shall have the right of access to the Easement Area over and across the Property to enable Grantee to exercise the rights herein granted, provided that the Grantee shall compensate Grantor the reasonable amount of damage to the Property caused by the exercise of said right of access.

**3. Easement Area Clearing and Maintenance.** Grantee shall have the right to remove objects, and to trim, cut and remove all brush and trees growing within the Easement Area which, in the opinion of the Grantee, may constitute a menace or danger to said facilities.

**4. Grantor's Use of Easement Area.** Grantor reserves the right to use the Easement Area for other purposes not a hazard to or which would interfere with Grantee's access, construction, improvement, operation and maintenance of its facilities, including, but not limited to: pasture land, raising crops, roadways, building fences, grazing of livestock, water or sewer lines, ditches, growing of orchards or landscaping where trees are less than 25 feet tall; provided that no trees or other plants shall be placed thereon which would be unreasonably expensive or impractical for Grantee to remove and restore. Grantor shall not build or maintain permanent structures within the Easement Area without written approval from the Manager of the District. Grantor, its successors or assigns, covenants and agrees that it will not excavate within said Easement Area nor do any blasting, or discharge any explosives within a distance of 100 feet of said facilities without giving reasonable notice in writing to the Grantee, its successors or assigns.

**5. Indemnity.** Grantee shall agree to defend and hold the Grantor harmless from any claim by any third party for damages based upon injury to persons or property arising solely out of Grantee's negligence in the use of the above described Property.

**6. Abandonment.** The rights, title, privileges and authority hereby granted shall continue and be in force until such time as the Grantee shall permanently remove said electrical facilities from said Property, or shall otherwise permanently abandon said facilities, at which time all such rights, title, privileges and authority hereby granted shall terminate.



**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Chun Saul, Finance Director

**MEETING OF:** March 14, 2022

**SUBJECT:** Ordinance No. 1027-B, Second and Final Reading -- Establishing 2021 Year-End Fund Balance Commitments

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**INTRODUCTION**

Ordinance No. 1027-B was reviewed and discussed by the City Council on first reading at the City Council meeting held on February 28, 2022. It is now being presented to the City Council for second and final reading. There have been no changes since the first reading.

**ISSUE**

Starting in 2020, the Washington State Auditor's BARS Manual requires beginning and ending cash and investments (fund balances) be classified in five fund balance categories as follows: non-spendable, restricted, committed, assigned, or unassigned.

The Committed fund balance classification requires most binding formal action (Ordinance) by the City Council. Ordinance No. 1027-B has been prepared for in connection with establishing 2021 year-end fund balance commitments.

**NEW FUND BALANCE CLASSIFICATIONS**

The chart below summarizes the fund balance classifications and specific requirements.

<b>Classification</b>	<b>Authority</b>	<b>Purpose</b>
<i>Non-spendable</i>	Inherent	Nonfinancial resources (i.e., endowment fund)
<i>Restricted</i>	External restrictions	Restrictions on the purpose or use of resources imposed by law through constitutional provisions or enabling legislation, or contracts (i.e., creditors, grantors, bond covenants, donors, or other governments).
<i>Committed</i>	Internal commitments	Specific (not generic) limitations that the government imposes upon itself by the governing body through the most binding formal action (i.e., ordinance) and that remains binding unless removed in the same manner.

<b>Assigned</b>	Intended use	Amounts intended to be used by the government for specific purposes that are neither restricted nor committed. Can be done in an informal way such as a motion or other form of directive.  The creation of a fund outside of the general fund is considered at least assigned since the creation of a fund automatically sets aside the monies for a purpose.
<b>Unassigned</b>	Any allowable use and purpose of that fund.	All other funds that are not reported in other categories.

These classifications indicate “the extent to which the government is bound to honor constraints on the *specific purposes for which amounts in the fund can be spent.*” The classifications reflect these limitations and inform management and financial statement users how much of the government’s resources are reserved for a specific purpose or use and how much is freely available for any allowable purpose of that fund.

Budget documents approved by resolution or ordinance do not meet criteria for classifying balances as committed because the budget only represents the government’s authorized spending during the period, rather than a constraint on remaining balances at year end. In other words, a budget deals with plans for anticipated revenues and expenditures – resources not yet collected, and expenditures not yet incurred – whereas an internal commitment imposes a permanent constraint on **currently existing** financial resources.

Merely creating “reserve” funds through resolution or ordinance to set money aside for a different purpose or circumstance (i.e., emergency fund or rainy-day fund) does not automatically classify the entire fund balance as committed.

The government may establish a policy for its intended order of use of classification balances when an expenditure is incurred in which *restricted, committed, and assigned* cash and investment balances can be used to pay the expenditure. In absence of an approved policy, it is assumed that the government will use the most restricted cash and investment balance first.

**PROPOSED COMMITMENTS FOR 2021 YEAR END FUND BALANCE**

**General Fund:** The preliminary ending cash and investment (fund balance) of the City’s General Fund as of 12/31/2021 is \$2,704,784, which is about 24.0 % of the 2021 general fund actual revenues.

A total of \$154,177 of the total fund balance is restricted which includes the drug seizure fund, municipal court bail deposit, and unspent donations received for parks and recreation programs. The remaining cash and investments can be classified as committed, assigned, or unassigned.

On February 23, 2022, the City Manager and Finance Director met with the City Council Budget Committee members and discussed whether a portion of the General Fund’s ending fund balance as of 12/31/2021 should be committed for specific purposes. The Council Budget Committee recommended a total of \$959,500 of the General Fund ending fund balance be Committed for the following purposes:

- \$200,000 for reserve for permanent fire station A & E and related costs
- \$100,000 for general facilities improvements and major repairs.
- \$300,000 for vehicle and equipment replacements
- \$150,000 for City’s financial software upgrade
- \$ 80,000 for police evidence garage acquisition

- \$ 50,000 for Recreation & Finance building interior remodeling
- \$ 55,000 for remaining temporary fire station project commitment
- \$ 24,500 for 2011 LTGO Bonds (city hall) debt service
- \$959,500 Total

The Committee recommended that the remaining cash and investments be classified as unassigned. This will allow replenishing the \$462,210 beginning reserves used to balance the 2022 budget and to maintain the City Council goal of 10% operating reserves at about \$1,128,897.

**Reserve Funds:** In addition to the General Fund, the City maintains the following reserve funds that are primarily funded with the City's general revenues. These funds are managerial funds in nature and are rolled-up into the general fund for financial reporting purposes. The total ending fund balances of these funds are classified as assigned by default except any portion that is designated as Committed by the City Council. It is recommended that the ending fund balances of these funds as of 12/31/2021 be designated as *Committed* for the following specific purposes:

- \$247,000 Compensated Absences Reserve Fund – future retiree accrual cash outs
- \$ 66,000 LEOFF 1 OPEB Reserve Fund - LEOFF1 retiree medical and long-term care benefits
- \$183,000 Automotive/Equipment Reserve Fund – vehicle/equipment replacements
- \$100,000 Automotive/Equipment Reserve Fund – Financial Software/System Upgrade

**Restricted Governmental Funds:** The ending cash and investments (fund balances) in the Arterial Street Fund, Transportation Benefit District (TBD) Fund, Lodging Tax Fund, CDBG Fund, HUD Block Grant Fund, Federal Advance Grant Control Fund, and REET Funds are reported as *restricted* as the revenue sources have statutory limitations or specific limitations from the granting agencies how they can be used, except for the following amounts that are committed for specific purposes:

- \$ 71,300 is committed for 2019 LTGO (Recreation Park) debt service (Lodging Tax Fund)
- \$120,000 is committed for purchase of police body cameras (Federal Advance Grant Control Fund)
- \$900,000 is committed for salaries and benefits for filling one police officer and two firefighter positions that were left unfilled since 2020. (Federal Advance Grant Control Fund)
- \$130,500 is committed for 2020 LTGO (Temporary Fire Station) debt service (1Q REET Fund)
- \$ 73,200 is committed for 2011 LTGO (City Hall) debt service (2Q REET Fund)
- \$1,295,000 Total

**Public Facilities Reserve Fund:** The ending cash and investment as of 12/31/2021 is \$477,066. A \$194,897 of the total is for donations received for the Recreation Park Renovation project which is reported as restricted. The remaining fund balance is committed for the following specific purposes:

- \$ 40,000 is committed for future improvements for Westside and Lintott/Alexander Parks.
- \$240,000 is committed for remaining work to be done for the temporary fire station project
- \$280,000 Total

**Enterprise Funds:** Fund balances in enterprise funds (utilities and Airport) will include restricted amounts for refundable customer deposits and minimum debt service reserves required by debt covenants. The remaining amounts will be reported as assigned balances that can be spent for that enterprise fund activity.

**SUMMARY**

In summary, the following portions of the City’s governmental funds’ cash and investments (fund balances) as of December 31, 2021, are designated as Committed:

- \$200,000 is committed for permanent fire station A&E and related expenses
- \$100,000 is committed for future major repairs and improvements of general facilities
- \$483,000 is committed for vehicle/equipment replacements
- \$250,000 is committed for financial software/system upgrades
- \$ 80,000 is committed for acquisition of police evidence garage
- \$ 50,000 is committed for interior remodeling of Recreation/Finance building
- \$295,000 is committed for completion of temporary fire station project
- \$ 97,700 is committed for 2011 LTGO Bonds (city hall) debt service payments (General Fund and 2Q REET)
- \$ 71,300 is committed for 2019 LTGO Bonds (Rec Park) debt service (Lodging Tax)
- \$130,500 is committed for 2020 LTGO Bonds (Fire) debt service (1Q REET)
- \$ 40,000 is committed for future improvements of Westside Park and Lintott/Alexander Park
- \$120,000 is committed for purchase of police body cameras (ARPA Funds)
- \$900,000 is committed for payrolls for one police officer and two firefighter positions for next three years (2022 – 2024) (ARPA Funds)
- \$247,000 is committed for accrued leave cash out payments for retiring employees
- \$ 66,000 is committed for LEOFF 1 OPEB
- \$3,130,050 Total

Additional details are provided in the below table.

2021 Year-End Committed Fund Balance	Fund 001	Fund 107	Fund 110	Fund 115	Fund 199	Fund 301	Fund 302	Fund 305	Fund 306	Total Committed 12/31/2021 (Proposed)
<b>Proposed Commitments &amp; Purposes:</b>										
Reserve for permanent fire station A&E (in 2022 Budget)	200,000									200,000
Reserve for future general facilities improvements	100,000									100,000
Reserve for vehicle/equipment replacements	300,000						183,000			483,000
Reserve for financial software/system upgrades	150,000						100,000			250,000
Acquisition of police evidence garage*	80,000									80,000
Recreation/Finance building interior remodeling *	50,000									50,000
Temp Fire Station contracts remaining	55,000					240,000				295,000
Debt Service for city hall bonds (in 2022 Budget)	24,500								73,200	97,700
Debt Service for Rec Park bonds (in 2022 Budget)		71,300								71,300
Debt Service for Fire bonds (in 2022 Budget)								130,500		130,500
Reserve for parks improv (Westside & Lintott/Alexander)						40,000				40,000
Purchase of police Body cameras					120,000					120,000
Payroll: 1 Police Officer & 2 Firefighters (2022-2024)					900,000					900,000
Reserve for compensated absences			247,000							247,000
Reserve for LEOFF 1 OPEB				66,000						66,000
<b>Total Proposed Commitments</b>	<b>959,500</b>	<b>71,300</b>	<b>247,000</b>	<b>66,000</b>	<b>1,020,000</b>	<b>280,000</b>	<b>283,000</b>	<b>130,500</b>	<b>73,200</b>	<b>3,130,500</b>

\*Budgeted in Fund 301 but transfer of funding was not included in the 2022 budget.

**RECOMMENDATION**

It is recommended that the City Council authorize a total of \$3,130,050 of the City’s governmental funds’ cash and investments (fund balances) as of 12/31/2021, including \$959,500 from the General Fund, to be Committed for the amounts and specific purposes and uses as provided above, and authorize the City Manager to designate other fund balances as Assigned in order to carry out the intent of the City Council, and pass Ordinance No. 1027-B on first reading.

**SUGGESTED MOTION**

I move that the City Council pass Ordinance No. 1027-B on first reading.



**ORDINANCE NO. 1027-B**

**AN ORDINANCE OF THE CITY OF CHEHALIS, WASHINGTON,  
ESTABLISHING FUND BALANCE DESIGNATION AS PROVIDED BY  
WASHINGTON STATE AUDITOR'S BARS MANUAL FOR CASH BASIS  
ENTITY FOR YEAR END 2021.**

**WHEREAS**, the Washington State Auditor's Office Cash Basis BARS Manual established a new classification system in 2020 requiring the beginning and ending cash and investments (fund balances) to be classified as "non-spendable," "restricted," "committed," "assigned," or "unassigned"; and

**WHEREAS**, these classifications indicate "the extent to which the government is bound to honor constraints on the specific purposes for which amounts in the fund can be spent"; and

**WHEREAS**, the Committed fund balance classification identifies internal fund commitments with limitations that the City imposes upon itself through formal binding action by the City Council; and

**WHEREAS**, the Assigned fund balance classification identifies funds intended to be used for specific purposes that are neither restricted, nor committed, and do not require formal binding action by City Council; and

**WHEREAS**, the City Council finds it beneficial to designate certain fund balances as Committed for specific purposes or projects and for the City Manager to designate certain other fund balances as Assigned in order to carry out the intent of the City Council.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** The fund balances of the City of Chehalis designated in this Ordinance are Committed for the specific purposes indicated. Amendments or modifications of the Committed fund balances set forth herein shall require formal action by the City Council.

**Section 2.** The City Council authorizes the City Manager to categorize other fund balances as Assigned in order to carry out the intent of the City Council.

**Section 3.** The following portions of the City's December 31, 2021, fund balances are designated as Committed:

- \$200,000 is committed for permanent fire station A&E and construction
- \$100,000 is committed for future major repairs and improvements of general facilities
- \$483,000 is committed for vehicle/equipment replacements

- \$250,000 is committed for financial software/system upgrade
- \$ 80,000 is committed for acquisition of police evidence garage (Public Facilities Reserve Fund)
- \$ 50,000 is committed for remodeling of Recreation/Finance building interior (Public Facilities Reserve Fund)
- \$295,000 is committed for completion of temporary fire station project (Public Facilities Reserve Fund)
- \$ 97,700 is committed for 2011 LTGO Bonds (city hall) debt service payments
- \$ 71,300 is committed for 2019 LTGO Bonds (Rec Park) debt service payments.
- \$130,500 is committed for 2020 LTGO Bonds (Temp Fire) debt service Payments
- \$ 40,000 is committed for future improvements of Westside Park and Lintott/Alexander Park
- \$120,000 is committed for purchase of police body cameras
- \$900,000 is committed for payrolls for one police officer and two firefighter positions for next three years (2022 – 2024)
- \$247,000 is committed for accrued leave cash out payments for retiring employees
- \$ 66,000 is committed for LEOFF 1 OPEB
- \$3,130,050 Total

**Section 4.** This Ordinance hereby revokes any remaining orders or committed fund balances from the 2020 year-end Ordinance No. 1017-B.

**PASSED** by the City Council of the City of Chehalis, Washington, and **APPROVED** by its Mayor at a regularly scheduled open public meeting thereof this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form and content:

\_\_\_\_\_  
City Attorney

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Brandon Rakes, Airport Operations Coordinator

**DATE:** March 14, 2022

**SUBJECT:** Consideration of Site Access Agreement for Parcel Numbers 021612001002 and 005605083005 to National Frozen Foods Corporation for Two Monitoring Wells

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**ISSUE**

The City of Chehalis has received a request from National Frozen Foods for access to two areas of City property for the purpose of installing and monitoring two groundwater monitoring wells. The two proposed locations of the wells are shown on attachment B of the proposed Site Access Agreement.

**INTRODUCTION**

National Frozen Foods Corporation is located in Chehalis and is part of the Fruit and Vegetable Preserving and Specialty Food Manufacturing Industry. National Frozen Foods is working with the Washington Department of Ecology to perform a background groundwater study in the area adjacent to its fields.

As part of the study the Washington State Department of Ecology is requiring National Frozen Foods to install and monitor groundwater wells upgradient of agricultural land it irrigates near the Chehalis River. Ecology will use data from these upgradient wells to evaluate compliance with State Waste Discharge Permit Number 6122.

All development costs will be paid by National Frozen Foods.

The proposed locations are not anticipated to impact commercial development.

**TERMS OF THE PROPOSAL**

The following key terms are laid out by the Site Access Agreement. The entire agreement is attached for your reference.

1. **Agreement Term.** This Agreement shall become effective upon execution by all Parties and shall remain in effect for thirty-six (36) months from the Effective Date or until the Work has been completed and the wells installed on behalf of National Frozen Foods are removed, whichever is earlier. The Parties agree that this Agreement may be extended by written consent if National Frozen Foods needs additional time to complete the Work.

2. **Grant of Access.** City hereby agrees to allow National Frozen Foods and its agents reasonable access to the City Property during mutually convenient times for the purposes of the Work. The Work shall be limited to a license to enter the property for the installation, monitoring, maintenance,

and sampling of the groundwater monitoring wells, but only in a manner so as not to interfere with City's use and enjoyment of its Property. Any required well will be appropriately covered at grade and removed as soon as National Frozen Food's requirement to sample upgradient wells ceases. At that point, any disturbed area on the City Property will be returned to its condition prior to monitoring.

National Frozen Foods agrees to have the work performed so as to minimize interference with the activities of City. City agrees to reasonably cooperate with National Frozen Food's agents regarding the work, which will be conducted at no expense to City. City agrees not to damage or in any way alter the equipment or make any attempt to interfere with National Frozen Food's sampling. When National Frozen Food's agents leave the City Property, they will fill in any holes, remove equipment and leave the Property in a condition substantially equivalent to before their access.

This Access Agreement shall grant National Frozen Food access until this Agreement is terminated. Upon termination, National Frozen Food shall properly close any well it installed on the City Property. National Frozen Food shall not have any obligation to make any improvements to the Property but shall leave the Property in as close to the condition it was in prior to National Frozen Food's Work.

3. **Rent.** National Frozen Foods shall pay \$75.00 per month, per test well site, to the City of Chehalis on the 1<sup>st</sup> day of each month (\$150.00 total per month for two test wells) plus any applicable taxes.

4. **Results of Sampling and Analysis.** At City's request, National Frozen Food shall promptly provide to City a copy of all final lab results related to the Work.

5. **Termination.** Both Parties recognize that the City can terminate authorization by providing sixty (60) day's written notice to Grantee at any time. Termination shall not limit access to retrieve equipment.

#### **FISCAL IMPACT**

If the proposed Lease is accepted, the City will receive lease revenue in the amount of \$150.00 per month.

#### **RECOMMENDATION**

It is recommended that the City Council approve acceptance of the Site Access Agreement for Parcel Numbers 021612001002 and 005605083005 with National Frozen Foods Corporation for two monitoring wells and authorize the City Manager to execute the documents.

#### **SUGGESTED MOTION**

I move that the City Council approve acceptance of the Site Access Agreement for Parcel Numbers 021612001002 and 005605083005 with National Frozen Foods Corporation for two monitoring wells and authorize the City Manager to execute the documents.

## SITE ACCESS AGREEMENT

This Access Agreement (“Agreement”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”), by and between City of Chehalis (hereafter “City” or “Grantor”), and National Frozen Foods Corporation (“NFF” or “Grantee”), each a “Party” and collectively, “Parties”, as follows:

### Recitals

- A. City is the owner of real property located in Chehalis, Washington and more specifically identified as Tax Parcel Numbers 021612001002 and 005605083005 (the “City Property”).
- B. The Washington State Department of Ecology (“Ecology”) is requiring NFF to install and monitor groundwater wells upgradient of agricultural land it irrigates near the Chehalis River. Ecology will use data from these upgradient wells to evaluate NFF’s compliance with State Waste Discharge Permit Number 6122 (“Permit”). Select pages of the Permit are attached as Attachment A.
- C. Pursuant to Ecology’s requests, NFF seeks access to City Property to install two groundwater monitoring wells and begin monitoring by October 15, 2021 (the “Work”), or as soon thereafter as possible. The two proposed groundwater monitoring well locations on City Property are shown on Attachment B (well numbers BW-2 (or BW-2 alt) and BW-3).
- D. NFF has hired the consulting firm of Brown & Caldwell (“B&C”) to oversee the Work.
- E. NFF desires and City agrees to grant NFF and its agents, including B&C and its subconsultant, access to the City Property to perform the work but only pursuant to the terms of this Agreement.

### Agreement

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions hereof, the Parties agree as follows:

1. **Agreement Term.** This Agreement shall become effective upon execution by all Parties and shall remain in effect for thirty-six (36) months from the Effective Date or until the Work has been completed and the wells installed on behalf of NFF are removed, whichever is earlier. The Parties agree that this Agreement may be extended by written consent if NFF needs additional time to complete the Work.

2. **Grant of Access.** City hereby agrees to allow NFF and its agents reasonable access to the City Property during mutually convenient times for the purposes of the Work. The Work shall be limited to a license to enter the property for the installation, monitoring, maintenance and sampling of the groundwater monitoring wells, but only in a manner so as not to interfere with City’s use and enjoyment of its Property. Any required well will be appropriately covered at grade and removed as soon as NFF’s requirement to sample upgradient wells ceases. At that point, any disturbed area on the City Property will be returned to its condition prior to monitoring.

NFF agrees to have the work performed so as to minimize interference with the activities of City. City agrees to reasonably cooperate with NFF's agents regarding the work, which will be conducted at no expense to City. City agrees not to damage or in any way alter the equipment or make any attempt to interfere with NFF's sampling. When NFF's agents leave the City Property they will fill in any holes, remove equipment and leave the Property in a condition substantially equivalent to before their access.

This Access Agreement shall grant NFF access until this Agreement is terminated. Upon termination, NFF shall properly close any well it installed on the City Property. NFF shall not have any obligation to make any improvements to the Property but shall leave the Property in as close to the condition it was in prior to NFF's Work.

3. **Rent and Leasehold Tax.** NFF shall pay \$75.00 per month, per test well site, to the City of Chehalis on the 1st day of each month (\$150.00 total per month for two test wells). In addition to rent, there is a leasehold tax of 12.84% on the annual value of the lease (\$1800.00) totaling \$231.12 per year, payable to the City on a quarterly basis.

4. **Results of Sampling and Analysis.** At City's request, NFF shall promptly provide to City a copy of all final lab results related to the Work.

5. **Insurance.** Grantee or its agent shall, at its sole expense, carry and maintain in force before entering the City Property pursuant to this Agreement and at all times during the term of this Agreement, maintain in full force and effect, and name the City as an additional insured on the commercial general liability and automobile liability policies. Upon request furnish proof of a policy or policies of, insurance covering work under this Agreement in the following amounts:

- a. Workers' compensation insurance with limits required by applicable law;
- b. Commercial general liability insurance with a combined limit of \$1,000,000 per occurrence for (i) bodily injury, death, and property damage, including damage to the City Property resulting from the Work; and (ii) contractual liability; and
- c. Automobile liability insurance with a minimum limit of \$1,000,000 per occurrence for bodily injury, death, and property damage with respect to any vehicles used in connection with the Work.

6. **Compliance with Laws.** Grantee's agent shall at all times in conducting the Work comply with all applicable federal, state and local laws, regulations and ordinances.

7. **Termination.** Both Parties recognize that the City can terminate authorization by providing sixty (60) day's written notice to Grantee at any time. Termination shall not limit access to retrieve equipment. If City elects to terminate this Agreement after signing it, City will provide written notice of termination, giving the appropriate name, address, and best telephone number to contact City during business hours (in order to make arrangements to remove the monitoring equipment) and the effective date of termination.

8. **Entire Agreement.** This Agreement is the entire agreement of the Parties. This Agreement may not be modified, amended or assigned without the written consent of the Parties.

the remaining provisions shall remain in full force and effect. The obligations to indemnify Grantor in Section 9 shall survive termination of this Agreement.

9. **Indemnification.** Grantee agrees to indemnify, defend, and hold Grantor and its officers, directors, employees, tenants, successors and assigns, harmless from and against any and all claims, liabilities, or damages of any nature whatsoever, which may be imposed upon or incurred by Grantor, and its officers, directors, employees, tenants, successors and assigns, which may be asserted by any party or person (including without limitation, a governmental entity) to the extent they arise out of or in connection with: (i) Grantee's breach of any provision of this Agreement; or (ii) the other acts or omissions, whether or not negligent or wrongful, of Grantee and its employees, agents, representatives, consultants, contractors or subcontractors, in the entry upon the City Property and the performance of the Work pursuant to this Agreement.

10. **Severability.** In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. **Governing Law.** This Agreement shall be governed by the laws of the State of Washington.

12. **Notices.** Any notice provided for herein or otherwise required to be given hereunder shall be deemed received when personally served or three (3) days after mailing by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile machine with transmission and receipt confirmed, or by nationally recognized overnight delivery service, addressed as follows:

To: City of Chehalis  
1321 South Market Blvd.  
Chehalis, WA 98532

With a copy to:

Erin L. Hillier  
Hillier, Scheibmeir, Kelly & Satterfield, PS  
P.O. Box 939  
Chehalis, WA 98532

To: National Frozen Foods Corporation  
c/o Steven Schossberger  
Oregon Potato Company  
P.O. Box 3110  
Pasco, WA 99302

With a copy to:

Robert E. Miller  
Davis Wright Tremaine LLP

920 Fifth Avenue, Suite 3300  
Seattle, WA 98104

The person and the place to which notices are to be mailed may be changed by any Party by providing them written notice of same to the other Party.

13. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties' respective representatives and successors. As used in the foregoing sentence, "successors" shall refer to the successors in title to the City Property and to the Parties' successors by merger or consolidation. City shall promptly notify NFF of any transfer of its interest in the City Property and shall provide a copy of this Agreement to any and all transferees.

14. **No Waiver.** Notwithstanding any term, provision, promise, or language in this Agreement, the Parties do not waive any claims, actions or causes of action, actual, potential or otherwise, that may exist or develop between the Parties, including but not limited to any claims arising out of the presence of hazardous substances at or in the vicinity of the City Property.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement.

16. **Authority.** Each Party hereto represents and warrants to the other Parties that (i) the person or persons executing this Agreement on behalf of such Party is duly authorized to execute this Agreement on behalf of such Party; and (ii) such Party has the right, power and authority to execute and deliver this document to the other Party and to perform its obligations as set forth herein.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized representative on the date first written above.

**City of Chehalis**

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By:  
Title

**National Frozen Foods Corporation**

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By:  
Title:



**Attachment A**

**Table 4 from State Waste Discharge Permit Number 6122 that Lists Groundwater Monitoring Requirements for NFF**

B. Groundwater Monitoring

Well Number	Latitude	Longitude
MW-1A	46.68919	-122.9660
MW-1B	46.69063	-122.96788
MW-2A	46.68771	-122.9763
MW-2C	46.69603	-122.9787
MW-2D	46.69104	-122.9783
MW-2ER	46.68850	-122.9724
MW-2F	46.69247	-122.9763
MW-3B	46.69872	-122.9747
OW-1	46.69261	-122.9785
MW7A	46.68775	-122.9773
MW-7B	46.68837	-122.9886
MW-7C	46.68490	-122.99368
MW-8A	46.68036	-122.9856
MW-8B	46.68261	-122.9943
MW-8C	46.68470	-122.9893

The Permittee must monitor ground water according to the following schedule and limits at wells: MW-1A, MW-1B, MW-2A, MW-2C, MW-2D, MW-2ER, MW-2F, MW-3B, OW-1, MW-7A, MW-7B, MW-7C, MW-8A, MW-8B, and MW-8C. Table 4, permit limits do not apply to OW-1.

The Permittee must notify Ecology when it cannot conduct sampling due to high water conditions.

Parameter	Units	Daily Maximum	Sampling Frequency	Sample Type
Ferrous Iron	+/- or mg/L	Report	Quarterly <sup>1</sup>	Field Test
pH	S.U.	Report	Quarterly	Field Test
Temperature	°C	Report	Quarterly	Field Test
Conductivity	Micromhos/cm	Report	Quarterly	Field Test
Dissolved Oxygen	mg/L	Report	Quarterly	Field Test
Total Coliform Bacteria	Cfu/100 mL	Report	Quarterly	Grab
Total Dissolved Solids	mg/L	500	Quarterly	Grab

**Table 4: Groundwater Monitoring Program**

Parameter	Units	Daily Maximum	Sampling Frequency	Sample Type
TKN	mg/L	Report	Quarterly <sup>1</sup>	Grab
NH3-N <sup>3</sup>	mg/L	Background	Quarterly	Grab
NO3+NO2-N	mg/L	10	Quarterly	Grab
Total Nitrogen <sup>2,3</sup>	mg/L	Background	Quarterly	Grab
Orthophosphate	mg/L	Report	Quarterly	Grab
Chloride	mg/L	250	Quarterly	Grab
Dissolved Organic Carbon	mg/L	Report	Quarterly	Grab
BOD5 <sup>3</sup>	mg/L	Background	Quarterly	Grab
Iron (Total)	mg/L	Report	Quarterly	Grab
Manganese (Total)	mg/L	Report	Quarterly	Grab
Calcium	mg/L	Report	Quarterly	Grab
Magnesium	mg/L	Report	Quarterly	Grab
Sodium	mg/L	Report	Quarterly	Grab
Potassium	mg/L	Report	Quarterly	Grab
Carbonate	mg/L	Report	Quarterly	Grab
Bicarbonate	mg/L	Report	Quarterly	Grab
Sulfate	mg/L	Report	Quarterly	Grab

<sup>1</sup>Quarterly is defined as January-March, April-June, July-September and October-December. Quarterly sampling results must be reported on the DMR no later than the 25th day of the month following the completed reporting quarter. The Chehalis River is flood prone, frequently experiencing floods that interfere with ground water sampling during late November or December. The Permittee must complete required 4th quarter groundwater monitoring and sampling during October or early November (before November 15th), prior to the onset of heavy fall/winter rains and subsequent river flooding.

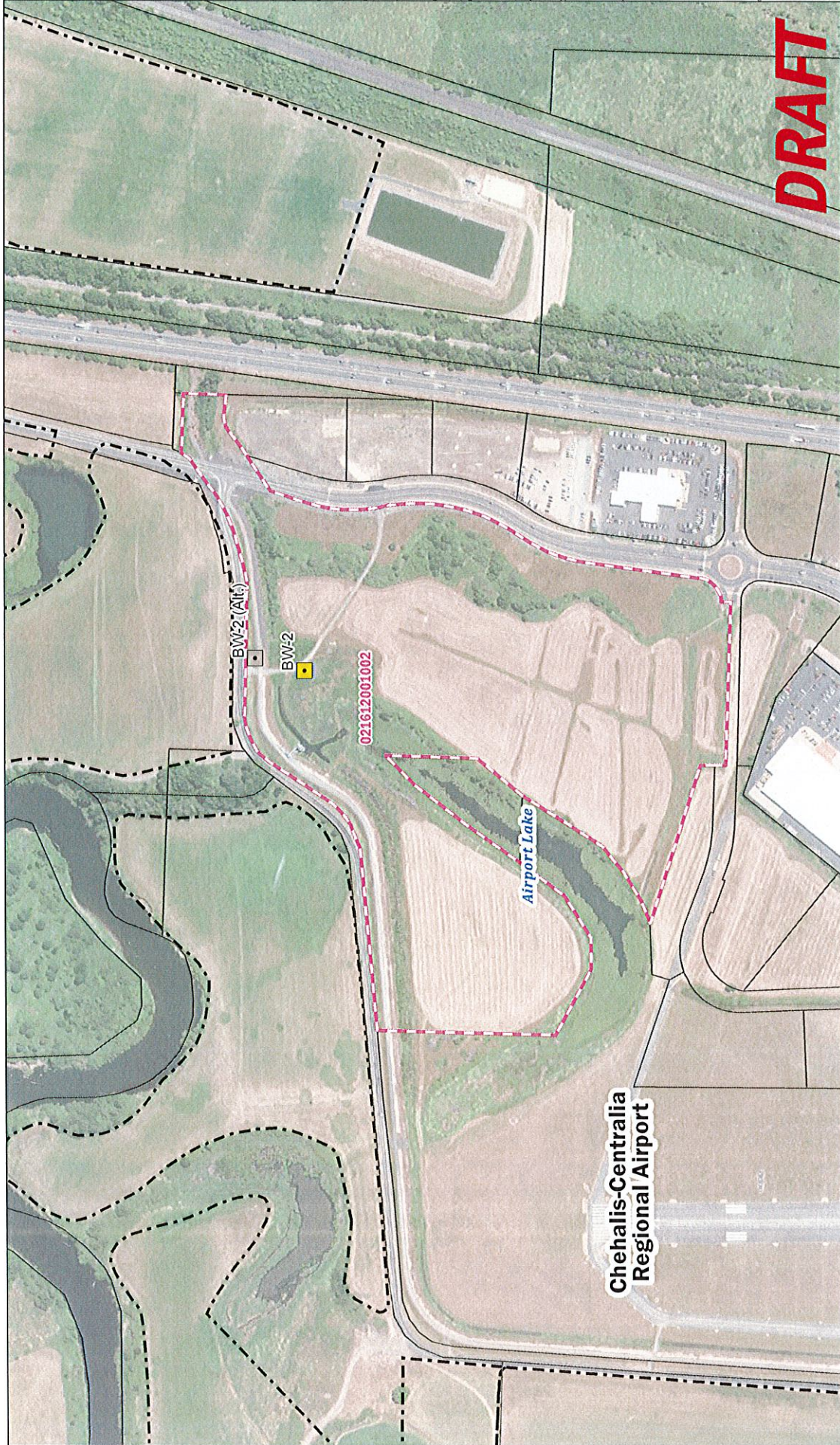
<sup>2</sup>Total Nitrogen=TKN+NO3-N+NO2-N

<sup>3</sup>Submit groundwater background monitoring wells plans and specifications to Ecology for review or any other alternative that would represent the background water which is representative of conditions without the impacts of the NFFC's activity (Implementation Guidance for the Groundwater Quality Standards, Revised October 2005, Publication # 96-02). More details about the background groundwater are provided under permit condition S9, compliance schedule, page 26.

The Permittee must measure water levels according to the following schedule at wells MW-1A, MW-1B, MW-2A, MW-2C, MW-2D, MW-2E, MW-2F, MW-3B, MW-7A, MW-7B, MW-7C, MW-8A, MW-8B, MW-8C and OW-1:

**Attachment B**

**Proposed Well Locations on Tax Parcel Number 021612001002 and Tax Parcel Number  
005605083005**



**DRAFT**

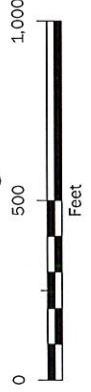
**Proposed Monitoring Well Location (BW-2)**  
 Groundwater Background Study  
 National Frozen Foods Corporation  
 Chehalis, Washington

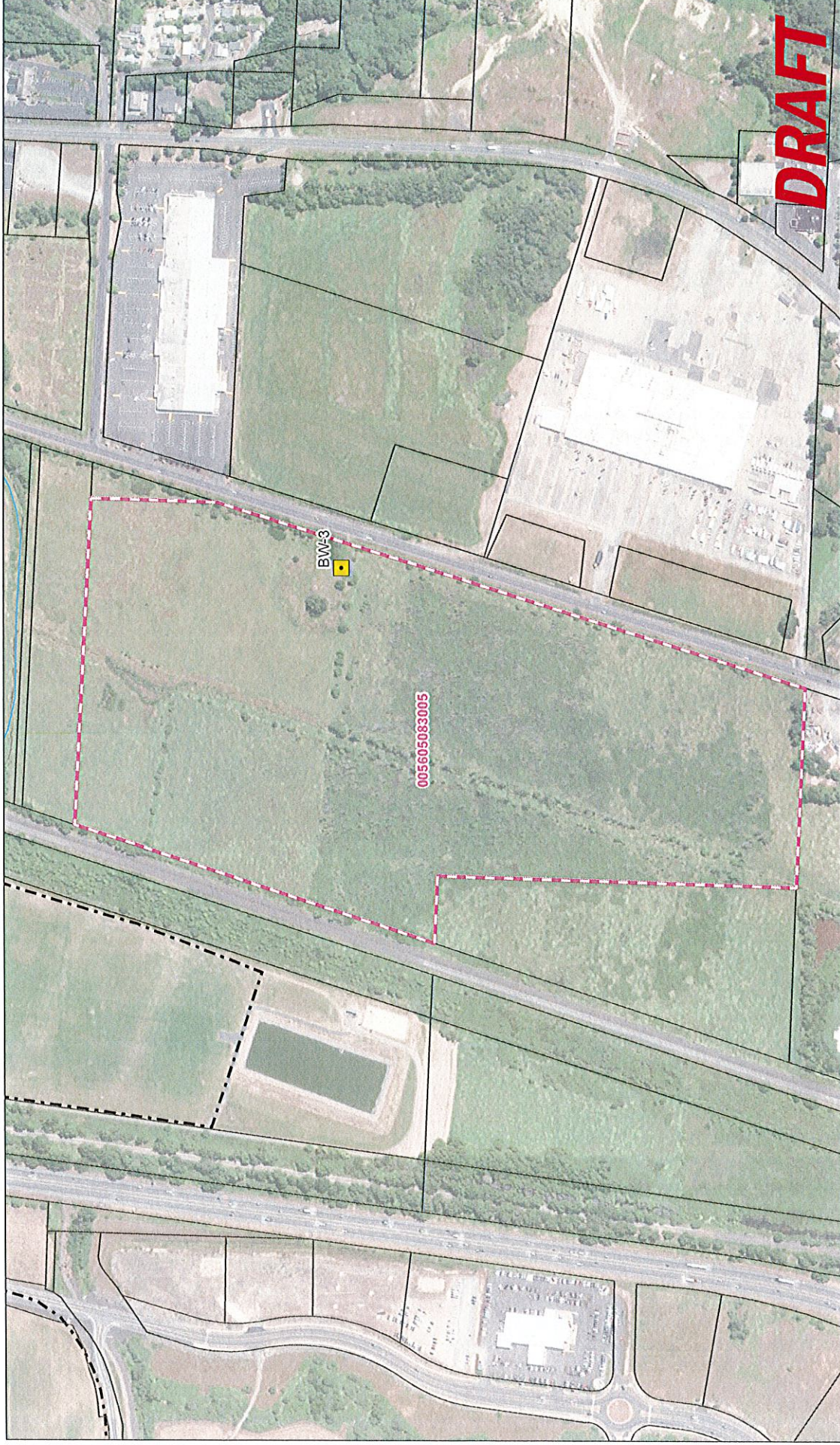


AUG-2021  
 PROJECT NO. 1805311  
 BY: JCB  
 REVISED BY: JCB

FIGURE NO. **1**

- National Frozen Foods Property
- Your Property
- Proposed Background Monitoring Well Location
- Proposed Background Monitoring Well (Alternate Location)
- Lewis County Tax Parcels





**Proposed Monitoring Well Location (BW-3)**  
 Groundwater Background Study  
 National Frozen Foods Corporation  
 Chehalis, Washington

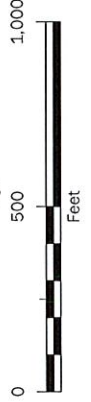


OCT-2021  
 PROJECT NO. 180311

REV. JCB  
 REVISED BY: JCB

FIGURE NO. **2**

- National Frozen Foods Land Application Field
- Your Property
- Proposed Background Monitoring Well Location
- Lewis County Tax Parcels



**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Brandon Rakes, Airport Operations Coordinator

**DATE:** March 14, 2022

**SUBJECT:** Consideration of Offer to Lease 8 parking spaces to Tesla, Inc.

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**ISSUE**

The Chehalis-Centralia Airport has received an offer to lease eight parking spaces and approximately 400 square feet of space for equipment located adjacent to 700 NW Arkansas Way, Chehalis by Tesla, Inc. The purpose of this lease is to construct a Supercharger Station for electric vehicles. This parcel is located on the airport's property between Home Depot and Walmart.

**INTRODUCTION**

Tesla, Inc. is a leading electric vehicle manufacturer with over 30,000 supercharger sites. Tesla is looking to expand its charging options in our area and along the I-5 corridor.

**TERMS OF THE PROPOSAL**

Tesla is proposing the following terms:

- **Premises:** Tesla wishes to lease 8 parking spaces and approximately 200 to 400 square feet of space for equipment shown on Exhibit A in the Lease Agreement for the purpose of creating an Electric Vehicle Supercharging Station.
- **Construction and Alterations:** Tesla shall, at its sole cost make all improvements necessary to the site for the purposes of operating an Elective Vehicle Charging Station.
- **Possession Date:** Tesla would take possession of the site on September 1, 2022.
- **Due Diligence Period:** Tesla will have 365 days following the Effective Date to complete Due Diligence.
- **Commencement Date:** Tesla shall open the Supercharger Station to the public within 365 days from the Possession Date.
- **Term:** The initial term shall expire 5 years from the last day of the month in which the Commencement Date occurs. Tesla shall have two options to extend the term of this Agreement for an additional 5 years each.
- **Rent:** Tesla shall pay a total of \$600 per month plus any applicable taxes. Currently, Electric Vehicle Charging Stations are exempt under Washington State Law from Leasehold Tax. However, this exemption is scheduled to expire on July 1, 2025.

**FISCAL IMPACT**

If the proposed Lease is accepted, the City will receive lease revenue in the amount of \$7,200 annually that would be restricted for the operation of the Chehalis-Centralia Airport.

**RECOMMENDATION**

It is recommended that the City Council approve acceptance of the Lease for 8 parking spaces located at 700 NW Arkansas Way by Tesla, Inc. and authorize the City Manager to execute the documents.

**SUGGESTED MOTION**

I move that the City Council approve acceptance of the Lease for 8 parking spaces located at 700 NW Arkansas Way by Tesla, Inc. and authorize the City Manager to execute the documents.



## SUPERCHARGER LEASE AGREEMENT

This Supercharger Agreement (this "**Agreement**") is effective as of the date last signed below by and between The City of Chehalis, a Municipal Corporation ("**Counterparty**") and Tesla, Inc., a Delaware corporation ("**Tesla**"). Tesla and Counterparty are each referred to herein as a "**Party**" and collectively as the "**Parties.**"

**WHEREAS**, Tesla, through the provision of electric vehicle charging services at the Property, will provide value to Counterparty by attracting electric vehicle drivers to the Property; and

**WHEREAS**, Counterparty is the sole owner of the Property; and

**WHEREAS**, Counterparty acknowledges the value of having an electric vehicle charging at the Property.

**NOW THEREFORE**, in consideration of the above and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **CONTACT INFORMATION:**

**Counterparty:**

City Chehalis  
Chehalis-Centralia Airport  
P.O. Box 1344  
Chehalis, WA 98532  
Attention: Airport Manager  
Phone: (360) 748-1230  
Email: brakes@ci.chehalis.wa.us

**Tesla:**

Tesla, Inc.  
3500 Deer Creek Road  
Palo Alto, CA 94304  
Attention: Supercharger Team  
Phone: (650) 681-5000

**With a copy to:**

Email: superchargerhost@tesla.com

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24-hour Technical Support & Service:  
877-79-TESLA (877-798-3752)

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2. **PREMISES:** Counterparty hereby leases to Tesla, and Tesla hereby leases from Counterparty, eight (8) parking spaces, and approximately 200-400 square feet of space for equipment, all as depicted on Exhibit A attached hereto (the "**Premises**"), in order to build a Supercharger Station (as defined in Exhibit B), subject to the terms of this Agreement. The Premises are located on the property commonly known as City of Chehalis Parking Area, located at 700 NW Arkansas Way, Chehalis, WA 98532 (the "**Property**").
3. **FOOTPRINT:** A total of eight (8) parking spaces shall be outfitted with Superchargers (as defined in Exhibit B) to serve as dedicated charging stalls ("**Dedicated Stalls**").
4. **CONSTRUCTION AND ALTERATIONS:** Tesla shall, at its' sole cost, make alterations to the Premises and construct the Supercharger Station ("**Tesla's Work**"). Tesla acknowledges that Tesla's Work shall only begin after: (a) Counterparty has approved the plans and specifications, including equipment locations (the "**Approved Plans**"); and (b) Tesla has obtained all permits and approvals required by applicable governing bodies. Any alterations to the Approved Plans or Supercharger

Station shall be approved in advance by Counterparty. Counterparty's approval of the plans and specifications, and of any alterations to the Approved Plans or Supercharger Station, may be by e-mail and shall not be unreasonably withheld, conditioned or delayed. Tesla shall promptly repair any damage to the Property caused by Tesla, its agents, contractors and employees while performing Tesla's Work.

5. **POSSESSION DATE:** The first date that Tesla may enter the Premises and Property to begin Tesla's Work is September 1<sup>st</sup>, 2022 (the "**Possession Date**").
6. **DUE DILIGENCE PERIOD:** Tesla shall have the option to terminate this Agreement within three hundred sixty-five (365) days following the Effective Date ("**Due Diligence Period**") in the event that: (a) Tesla is unable to obtain all permits and approvals required by applicable governing bodies; (b) Tesla, in its reasonable business judgment, would incur substantial costs to bring utility services to the Premises or incur other unanticipated costs to construct the Supercharger Station; or (c) the environmental reports obtained by Tesla or delivered to Tesla from Counterparty, if any, reveal environmental contamination at the Property, provided that all such reports shall remain confidential. In the event that Tesla terminates the Agreement pursuant to this Section 6, Tesla shall deliver written notice of termination to Counterparty and this Agreement shall be of no further force or effect.
7. **COMMENCEMENT DATE:** Tesla shall open the Supercharger Station to the public (the "**Commencement Date**") within three hundred and sixty-five (365) days following the Possession Date, provided that such time shall be extended by written agreement of the parties to the extent a delay is due to permitting, utility, or other requirements beyond Tesla's control, or is due to Force Majeure (as defined in Section 33). Tesla shall deliver written notice to Counterparty promptly following the Commencement Date to confirm such date for recordkeeping purposes.
8. **TERM:** The initial term of this Agreement shall begin on the Commencement Date and shall expire five (5) years from the last day of the month in which the Commencement Date occurs (the "**Initial Term**"). Tesla shall have two (2) options to extend the term of this Agreement for an additional five (5) years each (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), upon the same terms contained in this Agreement, provided that no Event of Default (as defined in Section 18) by Tesla exists at the time of extension. Tesla shall exercise the option for each Renewal Term by giving notice to Counterparty no later than thirty (30) days prior to the expiration of the Initial Term or Renewal Term, as applicable.
9. **RENT:** Tesla will pay six hundred dollars and 00/100 cents (\$600.00) per month for the Premises in advance on the first business day of each calendar month during the Initial Term, (ii) six hundred sixty dollars and 00/100 cents (\$660.00) per month during the first Renewal term, and (iii) seven hundred twenty dollars and 00/100 cents (\$726.00) per month, during the second Renewal Term (collectively, the "**Rent**"), plus any applicable taxes. If the Commencement Date is any day other than the first business day of a month, the first rent payment shall include payment for the partial month in which the Commencement Date occurs, prorated based on the number of days in such month. All rent payments shall be made either electronically to an account specified by Counterparty to Tesla in writing, or by check to the Counterparty address provided in Section 1. Tesla shall have no obligation to pay any other charge to Counterparty.

10. **REMOVAL:** Tesla shall, at its' sole cost, remove the Trade Fixtures (as defined in Exhibit B) promptly following termination of this Agreement and restore the Premises to a condition equal to the condition of the Property at the Commencement Date. Counterparty agrees that all Trade Fixtures and related intellectual property are and shall remain the personal property of Tesla. The infrastructure (as defined in Exhibit B) shall be left in a safe condition and shall become the property of Counterparty upon termination of this Agreement (except for Infrastructure that is upstream of the meter, which is and shall remain the property of the utility).
11. **UTILITIES:** Tesla agrees to arrange and pay the charges for all Tesla-related utility services provided or used in or at the Premises during the Term. Tesla shall pay directly to the utility company the cost of installation of any and all such Tesla-related utility services and shall arrange to have the utility service separately metered. Counterparty shall not be responsible for any damages suffered by Tesla in connection with the quality, quantity or interruption of utility service, unless the cause of the disruption or damage was Counterparty's gross negligence or intentional misconduct.
12. **USE:** Tesla shall use and occupy the Premises during the Term to install, operate and maintain a Supercharger Station and for incidental purposes, which may include generating photovoltaic electricity and operating an energy storage system, and for any other lawful use approved by the Counterparty ("Permitted Use"). Tesla is authorized to operate and collect payment for use of the Supercharger Station year-round, twenty-four (24) hours per day and seven (7) days per week.
13. **MAINTENANCE:** Tesla shall be responsible for maintaining the Supercharger Station (including repair and replacement of equipment, as necessary) at its' sole cost, and Counterparty shall have no liability for damage to the Supercharger Station unless caused by Counterparty's negligence or intentional misconduct. Notwithstanding the foregoing, Counterparty's normal responsibility to maintain the common areas of the Property shall also apply to the Premises, such as for trash removal, snow removal, repaving and restriping, and Counterparty agrees to coordinate such maintenance with Tesla pursuant to Section 14. If Tesla determines that additional trash cans are needed in the Premises, Tesla will notify Counterparty and Counterparty shall promptly install such trash cans at Counterparty's sole cost.
14. **TEMPORARY IMPAIRMENT:** Tesla agrees that Counterparty shall have the right to temporarily access and/or temporarily restrict access to a portion of the Premises to perform routine parking lot maintenance, provided that Counterparty shall use commercially reasonable efforts to minimize any impairment of the Premises, including, without limitation, by limiting such impairment to times of day and days of the week that are not busy charging periods, and (c) except in the case of snow removal, garbage collection or an emergency, Counterparty shall provide Tesla at least thirty (30) days advance written notice stating the date, time, duration and scope of the planned impairment.
15. **COUNTERPARTY COVENANTS:** Counterparty represents that: (a) it is the owner of the Property and has the power and authority to enter into this Agreement on the terms hereof; (b) it has obtained any required consents to enter into this Agreement; (c) the Property is subject to no conditions, restrictions or covenants incompatible with the Permitted Use; and (d) this Agreement does not violate any agreement, lease or other commitment by which Counterparty is bound. Counterparty shall not take any action that would impair or interrupt the use of the Premises or Supercharger Station, except as permitted in Section 14. Counterparty agrees to notify Tesla

within a commercially reasonable time if (x) it has knowledge of third parties impairing or misusing the Supercharger Station, or (y) it obtains knowledge of a needed repair to the Supercharger Station. If non-Tesla motorists repeatedly park in the Dedicated Stalls, thereby impairing use of the Dedicated Stalls, then the Parties shall reasonably cooperate to allow Tesla to implement an appropriate and effective strategy for preventing such impairment at Tesla's sole cost, which may include, without limitation, alternative signage and painted asphalt.

16. **PAYMENTS TO COUNTERPARTY:** Except as otherwise provided for herein, other than parking fees charged to all users of the Property, or as otherwise specifically provided for in this Agreement, Counterparty shall have no right to request or accept payment from Tesla, users of the Supercharger Station or any other third-parties in connection with the Supercharger Station.
17. **SIGNAGE:** Subject to applicable Laws (as defined in Section 35), Tesla shall install signage for the Dedicated Stalls substantially similar to the signage represented in Exhibit B ("Signage"). Any material revisions or additions to the Signage shall be subject to Counterparty approval, which shall not be unreasonably withheld, conditioned or delayed.
18. **DEFAULT:** Each of the following shall constitute an "Event of Default" under this Agreement:
  - A. **Breach:** The failure by either Party to perform or observe any material term or condition of this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party, provided, however, that if the nature of such default is such that it cannot reasonably be cured within such thirty (30) day period and the defaulting Party commences to cure within the thirty (30) day period and proceeds with diligence and continuity, then such Party shall have additional time to cure as is reasonably required.
  - B. **Bankruptcy; Insolvency:** The appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tesla located at the Premises if possession is not restored to Tesla within sixty (60) days; or a general assignment by Tesla for the benefit of creditors; or any action or proceeding is commenced by or against Tesla under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors and, in the case of actions filed against Tesla, is not discharged within sixty (60) days.
19. **REMEDIES:** Counterparty and Tesla acknowledge and agree that each Party shall have all remedies available at law or in equity if an Event of Default by the other Party has occurred and is continuing. In addition, if an Event of Default by Tesla has occurred and is continuing, then Counterparty, may: (a) continue this Agreement in effect by not terminating Tesla's right to possession of said Premises and thereby be entitled to enforce all Counterparty's rights and remedies under this Agreement; or (b) bring an action to recover and regain possession of said Premises in the manner provided by the laws of eviction of the state where the Premises are located then in effect.
20. **EXCLUSIONS:** Notwithstanding anything herein to the contrary, each Party expressly releases the other from any claims for, speculative, indirect, consequential or punitive damages, including any lost sales or profits of the other Party.

21. **ASSIGNMENT**: Tesla shall not assign this Agreement voluntarily or by operation of law, or any right hereunder, nor sublet the Premises or any part thereof, without the prior written consent of Counterparty, which shall not be unreasonably withheld, conditioned or delayed; provided that the foregoing prohibition shall not limit Tesla's ability to transfer this Agreement to a Tesla Affiliate for the same Permitted Use identified in Section 12. "**Affiliate**" of a Party is an entity that controls, is controlled by or is under common control with that Party, where "**control**" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, through ownership of voting securities, by contract or otherwise.
22. **INDEMNIFICATION**:
- A. **Counterparty**: Except to the extent a claim arises from any negligence or willful misconduct of a Counterparty Indemnified Party, Tesla hereby agrees to indemnify, hold harmless and defend Counterparty, its Affiliates and their respective directors, officers, managers, members, employees, agents and representatives (each a "**Counterparty Indemnified Party**") from all losses and liabilities, including court costs and reasonable attorneys' fees, on account of or arising out of or alleged to have arisen out of any third party claim directly related to: (i) Tesla's use of the Premises; (ii) Tesla's breach of this Agreement; or (iii) bodily injury or damage to real or tangible personal property caused by the use of the Trade Fixtures.
- B. **Tesla**: Except to the extent a claim arises from any negligence or willful misconduct of a Tesla Indemnified Party, Counterparty hereby agrees to indemnify, hold harmless and defend Tesla, its Affiliates and their respective directors, officers, managers, members, employees, agents and representatives (each a "**Tesla Indemnified Party**") from all losses and liabilities, including court costs and reasonable attorneys' fees, on account of or arising out of or alleged to have arisen out of any third party claim directly related to: (i) Counterparty's entry onto the Premises; or (ii) Counterparty's breach of this Agreement.
23. **LIENS**: Tesla shall not permit any liens or encumbrances to be placed on the Property as a result of any claims for labor or materials furnished to Tesla at the Premises.
24. **DESTRUCTION**: Any total destruction of the Premises shall, at Counterparty's or Tesla's written election within thirty (30) days of such destruction, terminate this Agreement.
25. **INSURANCE**: Through the duration of the Agreement, Tesla shall maintain commercial general liability insurance with limits of not less than Two Million Five Hundred Thousand dollars (\$2,500,000) per occurrence and Four Million dollars (\$4,000,000) aggregate for combined single limit for bodily injury or third-party property damage. The total limits above may be met by any combination of primary and excess liability insurance. A certificate evidencing such insurance shall be delivered to Counterparty upon the execution of this Agreement and upon reasonable request by Counterparty. Tesla shall include Counterparty as additional insured on its commercial general liability and, if applicable to meet limit requirements, umbrella and/or excess insurance policies, as respects to liability for services provided under this Agreement. Tesla will maintain worker's compensation insurance in accordance with state and federal law. This requirement may be waived if Tesla is a qualified self-insured in the state where the Premises are located, or work is performed. Insurance shall be maintained with responsible insurance carriers with a Best

Insurance Reports rating of "A-" or better or through a formal self-insurance mechanism that has either (a) a Best Insurance Reports rating of "A-" or better; or (b) a financial size category of "VI" or higher, provided, that if such self-insurance program does not meet either (a) or (b), then Tesla's use of self-insurance for the coverages herein shall be subject to Counterparty's approval, not to be unreasonably withheld, conditioned, or delayed.

26. **CONFIDENTIALITY AND PUBLICITY:**

- A. **Confidentiality:** Tesla and Counterparty agree that the terms of this Agreement and any non-public, confidential or proprietary information or documentation provided to one Party by the other Party in connection with this Agreement are confidential information, and the Parties agree not to disclose such confidential information to any person or entity during the Term and for a period of three (3) years thereafter subject to Public Records and Open Public Meetings laws, regulations, and policies as required due to Counterparty's nature as a public entity.
- B. **Permitted Disclosures:** Notwithstanding the foregoing, the Parties may disclose information (i) to their respective Affiliates, subcontractors, lenders, employees, financial, legal and space planning consultants, in each case that have a "need to know" such confidential information and have committed to treat the information as confidential under terms no less protective than the terms of this Section 26, provided that the Party disclosing such confidential information shall be liable for any disclosure by such authorized recipients and (ii) as required by law subject to Public Records and Open Public Meetings laws, regulations, and policies as required due to Counterparty's nature as a public entity.
- C. **Publicity:** Neither Party will use the other Party's name, trademark or logo without obtaining the other Party's prior written consent.

27. **ENVIRONMENTAL MATTERS:** Counterparty represents and warrants that the Premises shall be delivered free of environmental contamination that violates any applicable environmental law. Notwithstanding any provision in this Agreement to the contrary, Counterparty agrees that it will indemnify and hold Tesla harmless from all costs from, and Tesla shall have no liability for, any environmental contamination of the Property, unless caused by Tesla, its agents, employees or contractors. During the Term, Counterparty is responsible for remediating any pre-existing contamination and any contamination not caused by Tesla, its agents, contractors or employees, but only to the extent required by applicable environmental law.

28. **NOTICES:** All notices, demands and approvals shall be in writing and shall be delivered by prepaid first-class certified mail, or by a reputable overnight delivery service, to the addresses of the respective Party as specified in Section 1. Notice given by certified mail shall be deemed given on the second business day after deposit in the United States Mail, and any notice given by overnight delivery service shall be deemed given on the next business day after deposit with such overnight delivery service. Copies of notices, demands and approvals shall also be delivered if a "copy to" e-mail or other address is specified in Section 1. Notwithstanding the foregoing, as provided in Section 4, Counterparty may approve the plans and specifications by e-mail. Either Party may change their respective address for notices by giving written notice of such new address in accordance with the provisions of this Section 28.

29. **BROKERS**: Each Party represents to the other Party that it has not dealt with any broker and each Party hereby agrees to indemnify and hold the other Party harmless from all losses and liabilities, including court costs and reasonable attorneys' fees, arising out of any claims for commissions or fees related to any broker, finder or similar person with whom the indemnifying Party has dealt, or purportedly has dealt, in connection with this Agreement.
30. **SALE OR TRANSFER**: In the event of a sale or transfer of all or a portion of Counterparty's interest in the Property or Premises while this Agreement is in effect, Tesla's rights shall be conveyed with the Property or Premises and Counterparty warrants that any transferee shall be bound by all terms and conditions of this Agreement and shall obtain any necessary documents to confirm such assignment.
31. **SUCCESSORS AND ASSIGNS**: This Agreement shall be binding upon and shall inure to the benefit of Counterparty and Tesla and their respective successors and assigns.
32. **SUBORDINATION**: Subject to Section 15 above, this Agreement is subject to and subordinate to all ground or superior leases and to all mortgages which may now or hereafter affect such leases or the real property of which the Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such ground or superior leases and mortgages; provided that Tesla's rights under this Agreement shall not be disturbed by such subordination so long as no Event of Default by Tesla exists. This Section 32 shall be self-operative and no further instrument of subordination or non-disturbance shall be required by any ground or superior lessor or by any mortgagee, affecting any lease or the Property.
33. **FORCE MAJEURE**: If either Party's performance of its obligations under this Agreement is delayed by Force Majeure, then such Party's time of performance will be extended by a corresponding number of days. As used in this Agreement, "**Force Majeure**" means an act, event, condition or requirement beyond such party's reasonable control, including, without limitation, labor disputes, governmental restrictions, natural disasters, fire, flood, inclement weather, pandemic, disease or other outbreak of infectious disease or any other public health crisis, inclusive of quarantine, shelter order or similar restrictions on employees or travel, declaration of national, regional or local state of emergency, explosion, embargoes, war, terrorism, civil disturbance or other similar events.
34. **INCENTIVES**: Counterparty agrees that Tesla shall own and receive the benefit of all Incentives derived from the construction, ownership, use or operation of the Supercharger Station, including, without limitation, from electricity delivered through, stored at or generated by the Supercharger Station. Counterparty will cooperate with Tesla in obtaining all Incentives, provided that Counterparty is not obligated to incur any out-of-pocket costs in doing so unless reimbursed by Tesla. If any Incentives are paid directly to Counterparty, Counterparty agrees to immediately pay such amounts over to Tesla. "**Incentives**" means (a) electric vehicle charging or renewable energy credits or certificates, carbon credits and any similar environmental or pollution allowances, credits or reporting rights, (b) rebates or other payments based in whole or in part on the cost or size of equipment, (c) performance-based incentives paid as periodic payments, (d) tax credits, grants or benefits, and (e) any other attributes, commodities, revenue streams or payments, in each of (a) through (e) under any present or future law, standard or program and whether paid by a utility, private entity or any governmental, regulatory or administrative authority.

35. **COMPLIANCE WITH LAW:** Each Party shall comply with all applicable codes, laws and ordinances ("Laws") in fulfilling its respective obligations under this Agreement. Each Party represents that it is in good standing under the Laws of the state of its organization.
36. **GOVERNING LAW:** This Agreement shall be governed by the Laws of the state where the Premises are located.
37. **INTENTIONALLY DELETED.**
38. **NON-DISCRIMINATION:** The Parties are against discrimination, harassment and unfair treatment of individuals, and therefore each Party agrees that it shall not discriminate against or segregate any person, or group of persons on account of sex, marital status, sexual orientation, gender identity, disability, race, age, color, religion, creed, veteran status, national origin or ancestry in the performance of their respective obligations in this Agreement, or knowingly permit any such practice by its directors, officers, managers, members, employees, agents, representatives or contractors in connection with this Agreement that is in violation of applicable Laws.
39. **INTERPRETATION:** The headings and defined terms in this Agreement are for reference purposes only and may not be construed to modify the terms of this Agreement. Neither Party shall have the right to unilaterally revoke or terminate this Agreement, unless such revocation or termination is pursuant to the explicit terms of this Agreement.
40. **SEVERABILITY:** If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected, and each provision shall be valid and enforceable to the fullest extent permitted by law.
41. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together will constitute one agreement. Electronic signatures and other signed copies transmitted electronically in PDF or similar format shall be treated as originals.

*[Signature page follows.]*



IN WITNESS WHEREOF, the Parties have each caused an authorized representative to execute this Agreement as of the date signed below.

**COUNTERPARTY:**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TESLA:**

Tesla, Inc.  
a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A

Premises and Property Depiction and Address

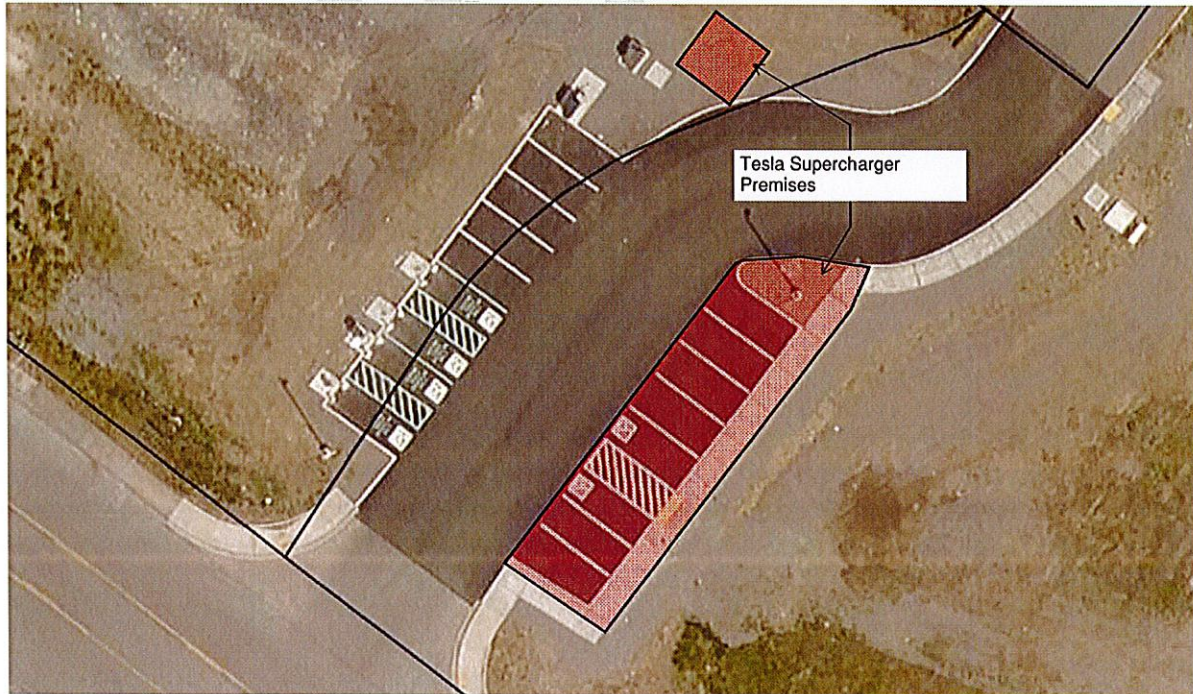
Property Address: 700 NW Arkansas Way, 1701 NW Louisiana Ave, Chehalis, WA 98532

Premises and Property Depiction:

Property Depiction:



Tesla Supercharger Premises:



## EXHIBIT B

### Supercharger Station

Tesla shall install the Supercharger Station on the Premises pursuant to the terms of this Agreement and the Approved Plans.

The “**Supercharger Station**” shall consist of: (a) necessary utility infrastructure, which may include a utility transformer, metering equipment, conduit, wiring and concrete pads (collectively, the “**Infrastructure**”); and (b) certain trade fixtures as determined by Tesla, which shall include eight (8) charge posts (“**Superchargers**”), power electronics equipment, switchgear and Signage, and may also include, without limitation, fence or other visual barriers, a canopy, solar panels and an energy storage system (collectively, the “**Trade Fixtures**”).

### Signage

#### Dedicated Stall Sign Example

