The City of Keizer is committed to providing equal access to all public meetings and information per the requirements of the ADA and Oregon Revised Statutes (ORS). The Keizer Civic Center is wheelchair accessible. If you require any service such as SPANISH translation or other interpretive services that furthers your inclusivity to participate, please contact the Office of the City Recorder at least 48 business hours prior to the meeting by email at davist@keizer.org or phone at (503)390-3700 or (503)856-3412. Most regular City Council meetings are streamed live through www.KeizerTV.com and cable-cast on Comcast Channel 23 within the Keizer City limits. Thank you for your interest in the City of Keizer.

AGENDA

KEIZER CITY COUNCIL
REGULAR SESSION

Monday, November 1, 2021
7:00 p.m.
Robert L. Simon Council Chambers
Keizer, Oregon

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **FLAG SALUTE**

4. **SPECIAL ORDERS OF BUSINESS**

   a. **PROCLAMATION – American Indian Heritage Month**

   b. **PROCLAMATION – Veterans Day**

5. **COMMITTEE REPORTS**

6. **PUBLIC COMMENTS**
   This time is provided for citizens to address the Council on any matters other than those on the agenda scheduled for public hearing.

7. **PUBLIC HEARINGS**

8. **ADMINISTRATIVE ACTION**

   a. **RESOLUTION – Authorizing the City Manager to Sign Park Management Agreement with For The Love Of The Game, Inc.**

   b. **RESOLUTION – Authorizing a Temporary Suspension of the Ordinance Prohibiting Street Vendors**
   RESOLUTION – Authorizing Temporary Uses Subject To Conditions for Jingle Dash 5K Run/Walk and Keizer Holiday Lights Parade (2021)

   c. **RESOLUTION – Establishing Community Engagement Committee**
   RESOLUTION – Dissolving the Community Diversity Engagement Work Group

   d. **RESOLUTION – Authorizing Mayor to Sign Cable Television Franchise Agreement with Comcast of Oregon I, Inc.**

e. **ORDER – Designating "No Parking" Zone on Juedes Avenue North, Keizer, Oregon**

f. **Location Approval for Public Art Sculpture**

9. CONSENT CALENDAR

a. **RESOLUTION – Authorization for Disposition of Police Service Dog "Buster"**

b. **RESOLUTION – Amending the Resolution Authorizing the Interim City Manager to Purchase Two 2021 Black Dodge Durango SXT AWD Vehicles for Police Department; Amending Resolution No. R2021-3203**

c. **Approval of October 4, 2021 Regular Session Minutes**

d. **Approval of October 11, 2021 Work Session Minutes**

e. **Approval of October 18, 2021 Regular Session Minutes**

10. OTHER BUSINESS

This time is provided to allow the Mayor, City Council members, or staff an opportunity to bring new or old matters before the Council that are not on tonight's agenda.

11. STAFF UPDATES

12. COUNCIL MEMBER REPORTS

13. AGENDA INPUT

November 8, 2021

6:00 p.m. – City Council Work Session

- **PEG Funds/Keizer TV**

November 15, 2021

7:00 p.m. - City Council Regular Session

November 29, 2021

6:00 p.m. – City Council Work Session

- **Parks Master Plan**

December 6, 2021

7:00 p.m. - City Council Regular Session

14. ADJOURNMENT

City of Keizer Mission Statement

Keep City Government Costs And Services To A Minimum By Providing City Services To The Community In A Coordinated, Efficient, And Least Cost Fashion

City of Keizer, Oregon

KEIZER SINCE 1982

Proclamation

***WHEREAS** the lands in the Willamette Valley on which the people of the City of Keizer reside are the historic home of the Kalapuya, ancestors to the members of both the Confederated Tribes of the Grand Ronde and Confederated Tribes of Siletz Indians; and*

***WHEREAS** many injustices, broken treaties, and exclusions of Native Americans have occurred since non-native peoples came into these lands and we need to remember that tragic history and commit ourselves to a just and equitable future for all of our residents; and*

***WHEREAS** the many cultural and ethnic communities now living in the City of Keizer and the Willamette Valley benefit from knowing and celebrating the heritage, traditions and accomplishments of Native Americans; and*

***WHEREAS** the City of Keizer wishes to acknowledge and honor all Tribal Nations and their ancestors.*

***NOW, THEREFORE, I, CATHY CLARK,** Mayor of the City of Keizer, together with the Keizer City Council assembled in Regular Session, do hereby proclaim November 2021 as*

Native American Heritage Month

***IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Seal of the City of Keizer to be herein affixed this 1st day of November, 2021.*

MAYOR CATHY CLARK
City of Keizer, Oregon

City of Keizer, Oregon

KEIZER
SINCE 1982

Proclamation

WHEREAS the United State Congress passed a concurrent resolution on June 4, 1928 (44 Stat. 1962), calling for the observance of November eleventh with appropriate ceremonies, and later provided in an Act approved May 13, 1938 (52 Stat. 351), that November eleventh should henceforth be a legal holiday and should be known as Armistice Day to commemorate the end of what we now call World War I; and

WHEREAS in order to expand the significance of that commemoration and in order that a grateful nation might pay appropriate homage to the veterans of all its wars and who have contributed so much to the preservation of this Nation, the Congress, by an Act approved June 1, 1954 (68 Stat. 168), changed the name of the holiday to Veterans Day; and

WHEREAS, the people of the City of Keizer thank, honor and salute all of our community members who have answered the call to service to protect and defend our Nation.

NOW, THEREFORE, I, CATHY CLARK, Mayor of the City of Keizer, together with the Keizer City Council assembled in Regular Session, do hereby proclaim November 11, 2021 as

Veterans Day

And call on all the people of Keizer to pay our respects to all who have served in the United States Military Services, which is their due, and to rededicate ourselves to the task of promoting an enduring peace so that their efforts shall not have been in vain.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Keizer to be herein affixed this 1st day of November, 2021.

____

MAYOR CATHY CLARK
City of Keizer, Oregon

CITY COUNCIL MEETING: November 1, 2021

AGENDA ITEM NUMBER:________________

TO: MAYOR CLARK AND COUNCIL MEMBERS

THROUGH: R. WES HARE, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

SUBJECT: MANAGEMENT AGREEMENT FOR KEIZER LITTLE LEAGUE CITY PARK WITH FOR THE LOVE OF THE GAME

By way of background, Keizer Little League, Inc. entered into a Park Management Agreement in 2014 that terminated on October 31, 2021.

A Request for Proposal (RFP) was produced and distributed. The RFP was posted on the website on February 8, 2021, sent by mail to Keizer Little League, Keizer Youth Sports Association Inc., Clint Holland, West Coast Premier, North Salem Cal Ripken, Matt Lawyer, Keizer Chamber of Commerce, and Mickey Walker on February 9, 2021, and published in the Daily Journal of Commerce on February 12, 2021. For the Love of the Game (Mickey Walker) and West Coast Premier provided separate proposals. Upon initial review, it was determined that clarifications were needed. Therefore, a request for clarification was sent to the two proposers on March 19, 2021. Only For the Love of the Game submitted clarifications.

The two proposals were independently evaluated by the evaluators identified in the Request for Proposals (City Manager Pro Tem Tim Woods, Public Works Director Bill Lawyer, Parks/Facilities Division Manager Robert Johnson, Parks Board member Dylan Juran, and Councilors Dan Kohler and Kyle Juran). Following the independent scoring of the proposals, the committee met to discuss the outcome. The evaluators used criteria and evaluation guidelines set forth in the Request for Proposals to determine the appropriate proposer to recommend to Council. Based on the evaluators' recommendation, a notice was sent to the proposers indicating that For the Love of the Game was the successful proposer.

For the Love of the Game and the City of Keizer have negotiated the terms of an agreement based on the Request for Proposals and Council's direction. The agreement is for ten years, with the option to renew for two additional five-year terms.

I have attached a redlined version showing only the revisions made following the Council meeting held on September 20, 2021. Many of the revisions are further clarifications and self-explanatory. Of particular concern with the Council was the naming fees/rights in

Section 10 and I revised Section 10 to address Council's concerns. Because For the Love of the Game is a non-profit, I deleted the sentence about retaining "net revenue." I also moved Section 6D to a new Section 16 because it really applies to the whole contract, not just the concessions. A clean version of the agreement has been signed by For the Love of the Game and is included with the attached Resolution for consideration.

Mayor Clark sent four questions and requested they be addressed in the staff report. The questions and staff's answers are below:

1. QUESTION. A brief description of the level of park maintenance that this provides above and beyond what a normal park would need/get. In other words, why does this park need a different level of maintenance to function as a baseball/softball facility?

   ANSWER. Proper maintenance of a sports facility requires a much higher effort than a typical park because of the intense use of the fields and facilities during any given year. They are typically used heavily for approximately 6 months (April – September) of the year which is unlike any usage a normal park would see. For natural grass fields the surfaces need to be level, smooth and kept that way at all times. Baseball and softball fields also have the additional need for the infields to be dragged and raked after each game to help ensure the transition from the dirt infield to the grass outfield is kept smooth to reduce the opportunity for batted balls to take a "bad" hop. Turf areas in parks that do not function as a sports facility can be enjoyed by the public without being extremely level and smooth and can be maintained with weekly mowing.

   Sports facilities require mowing 2-3 times more frequently than typical open space turf areas along with increased fertilization, weed control and irrigation. Baseball and softball fields have areas on them that are heavily used, like the areas around home plate, the pitcher's mound/circle and near each base that need additional attention on a daily basis during the season. A baseball/softball facility also has backstops, fences, bleachers, restrooms and other buildings to maintain that a normal park either does not have or only has one of, such as a backstop.

   A baseball/softball facility also needs to be managed to ensure scheduling is coordinated among all of the organizations that wish to use the facility not to mention keeping dates open for tournaments to be hosted at the facility throughout the year. There is also a need to have people present on weekends and evenings to do the routine maintenance such as cleaning restrooms, infield work, garbage and litter cleanup, locking and unlocking facility at the beginning and end of each day, inspecting the facility for safety issues, lighting senior field, and handling parking issues. These needs do not exist in the normal operations of the rest of the parks system.

(Bill Lawyer/Robert Johnson)

2. QUESTION. Reporting requirements for accountability. Volunteer-run baseball groups have been inconsistent in meeting requirements for financial reporting. Please include a brief description of how the reporting will be done to ensure funds generated by this facility will benefit the facility. People want to know that the money generated by the KLL Park complex will stay with the complex. References to the contract section would be helpful.

   ANSWER. In accordance with Section 7.20 of the Contract, the City will receive no later than April 1st each year an income statement and balance sheet for the prior calendar year's financial activity. The financial statements will be reviewed to ensure that net revenues received by the manager are used for operations, field maintenance and repair expenses, capital improvements and other reasonable expenses of the park. Based upon the review of the financial information the City has the option to request additional financial statements up to two times per calendar year and to conduct an audit of the financial records.

   (Tim Wood)

3. QUESTION. Is there an actual conflict of interest between the Love of the Game and the Volcanoes organizations since the principals from both are the same people? People are tossing about this term and may not be using it properly.

   ANSWER. "Conflict of Interest" as the term is used in the Oregon government ethics statutes do not apply here because it is only applicable if the individual is a government official or employee. I am not aware of any conflict of interest law that would be applicable in this situation.

   There could be an ethical issue raised by some because essentially the same people are operating the Volcanoes stadium and the Little league complex which could result in an internal conflict of interest in certain situations. For example, it would be possible that both venues would compete for the same tournament in limited circumstances. It is also possible that the facilities could be complementary, for example when a large tournament uses both facilities.

   In any event, the situation does not present a legal conflict of interest.

   (Shannon Johnson)

4. QUESTION. If there is a need to make a change to the contract in the future, what is the public process to amend it?

ANSWER. Since it is a contract, there is no requirement for a public process. Council could direct the matter be scheduled for public hearing if Council wishes to do so. Of course, any amendment would have to be agreed to by both parties.

(Shannon Johnson)

Council has three choices with regard to this Request for Proposal: (1) adopt the attached Resolution authorizing the City Manager to sign the agreement; (2) restart the RFP process, or (3) fund and operate the facility with additional City employees.

RECOMMENDATION:

Review the matter and take action as Council determines appropriate.

Please contact me if you have any questions in this regard. Thank you.

ESJ/tmh

PARK MANAGEMENT AGREEMENT

PARTIES:

CITY OF KEIZER, an Oregon
municipal corporation (hereinafter "City")

FOR THE LOVE OF THE GAME, Inc., an Oregon
not for profit corporation (hereinafter "Manager")

RECITALS:

A. City owns real property and improvements located at 5245 Ridge Drive, Keizer, Marion County, Oregon consisting of approximately 15.4 acres and known as Keizer Little League City Park (hereinafter "Park").

B. City has need of services to administer all aspects involved with managing, operating, and maintaining the Park. These aspects include, but shall not be limited to, the following:

1. Operation of the park primarily as a youth recreation facility open to youth sports organizations and others on a basis that is fair and appropriate to ensure enjoyment of the park assets by all who wish to utilize them.
2. Proper functioning of all park operations necessary to serve the public safely and efficiently.
3. All concession sales or rentals of goods or services in the park and maintenance of the equipment or facilities in the park used for those concession sales or rentals.
4. Marketing the park's uses to all potential users
5. Maintenance activities, including replacement, servicing, cleaning, adjustment, and rehabilitation of parts and equipment consistent with prudent industrial practice, product specifications, design and manufacturer recommendations; custodian activities to keep the facility clean, free of litter, and ball fields in top notch playable condition.
6. Maintain proper accounting records.
7. Manage, operate and maintain the Park.

C. Manager desires to manage, operate and maintain the Park as a public resource, subject to Manager's use of the facilities as set forth herein.

D. This Agreement is intended to grant no property interest or lease rights to Manager, or any third party that may result in the loss of property tax exempt status of the Park.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties do mutually agree as follows:

AGREEMENT:

1. Term. The term of this Agreement shall be from November 1, 2021 to October 31, 2031, or until this Agreement is terminated or renewed as herein provided. This Agreement may be renewed for two (2) five-year terms after review and acceptance of the proposed field fees, performance and provision of services. Any renewal shall be in writing and signed by the parties. The Manager's performance will be formally evaluated every two (2) years by the City Manager.

2. Improvements. Manager agrees that all improvements on the premises are the property of City and are considered to be part of the premises that is the subject of this Agreement. Manager further agrees that all permanent improvements made upon the premises by Manager or any other person or entity after the date of this Agreement become part of the premises and the property of City. City shall not be liable for any costs, or materials and/or labor associated with the initial construction work or improvements made to the premises or personal property included in the premises or for any future improvements made to the premises except as expressly agreed to in writing by City. Manager shall not cause or permit any change in Park layout, any addition or deletion of any permanent improvements, or any action on the part of Manager or permitted by Manager that affects the Park without the prior separate written approval of City. City reserves the right to make changes, additions and deletions with regard to any present or future improvements on the premises. If City chooses to make changes, additions or deletions with regard to the improvements, it shall give Manager ninety (90) days notice prior to the proposed change. The parties may, by mutual consent, waive that ninety (90) day period. City is not obligated to any specific project or funding unless City Council approval is granted.

In addition to any other improvements necessary for safety, Manager agrees to perform the following improvements prior to April 1, 2022:

1. Repair/replace bleachers that are broken.
2. Repair/replace safety netting as needed.
3. Repair/replace protective L screens as needed.
4. Repair open electrical outlets.
5. Fill open ditches and holes that are trip hazards.
6. Remove tree limbs that are hazardous.

Manager agrees to perform the following improvements prior to April 1, 2023:

1. Installation of security system as approved by the City Manager.
2. Repair/replace gutters and downspouts as needed.
3. Repair/replace rotting dugouts as needed.
4. Add side rail to bleachers as needed.
5. Rebuild pitching mounds in bullpens and fields as needed.
6. Install scoreboard on Field 7.
7. Paint the dugouts, concession stand, and restrooms.

8. Fix or replace the "batter's eyes" on all fields.
9. Install turf in the bullpens.
10. Upgrade the dirt and playing surfaces.
11. Rebuild and maintain the pitching mounds and bullpens.
12. Replace/upgrade press boxes.
13. Add an auxiliary concession stand.
14. Make Fields 9 to 12 available for multiuse such as soccer and lacrosse.

Manager agrees to perform the following improvements no later than April 1, 2026, assuming neither party has served notice as provided for in Paragraph 13 in this Agreement:

1. Resurface the fields as needed.
2. Upgrade scoreboards as needed.
3. Build new dugouts as needed.
4. Improve the field house.
5. Make a recommendation to City about lights for softball.
6. Replace back stops as needed
7. Remodel the current restroom as needed.
8. Clean lenses and replace bulbs on the junior field as needed.
9. Pave the gravel parking lot with City's assistance if approved by Council.

Manager shall provide a report to the City Manager and Council at the City describing the improvements completed during the previous year no later than March 31 each year.

3. Use and Conditions. Subject to the terms and conditions set forth herein, Manager agrees to manage the Park in its entirety for the term of the Agreement as follows:

A. Manager shall ensure that the fields at Keizer Little League City Park are available for play by local youth by March 1st of each year. Authorized representatives of Manager and City will meet at the end of each season, but no later than November 30 each year, to review the overall management of the Park to ensure that the focus of the organization is on youth programming, facility enhancement, and field restoration and maintenance. Manager shall also provide a list of management contacts to City which shall be updated with the City within seven (7) days of any changes.

B. Manager will maintain all Park scheduling oversight year-round. Manager shall be responsible to schedule all youth leagues (Ages 18 & under), tournaments and sports activities, as well as all other groups, including adult leagues and tournaments. Manager understands that at a minimum, regular youth league play must be available Monday through Thursday and scheduled in advance. ~~Regular youth league is limited to Keizer-based leagues with the majority of players in each league being Keizer residents.~~

Manager shall supply the City with a season by season schedule for the park. Manager must allow reasonable access to the fields by any and all users subject to the above paragraph. Manager will provide the City a proposed field fee schedule for years after 2026 no later than October 1, 2025. Field fees shall be comparable to other public fields in the Salem-Keizer metro area. As used herein, “Keizer area teams” mean teams from leagues based in Keizer. Fees for the 2022-2023 seasons are as follows: For the 60’ fields - $40 per game for Keizer area teams and $60 per game for other users; For the 90’ field - $60 per game for Keizer area teams and $100 per game for other users. Fees for the 2024 - 2026 seasons are as follows: For the 60’ fields - $50 per game for Keizer area teams and $75 per game for other users; For the 90’ field - $75 per game for Keizer area teams and $125 per game for other users. The field fee shall be the Keizer area team fee, unless both teams are not Keizer-based league teams. Future field fees shall be approved by the City Council. Manager must allow reasonable access to the fields by any and all users subject to the provisions set forth herein.

C. Any individuals not affiliated with groups or organized teams may use the Park or individual fields at any time the Park is open if such use does not interfere with the priority or reserved use, cause safety concerns, or cause undue wear and tear in Manager’s reasonable discretion. Manager agrees that when the park is not scheduled for use, the park will operate as a public facility, open to any and all users.

D. Keizer Little League Park may be open after sunset where fields are appropriately lighted from March 1 to October 31 Monday through Saturday. The Park will close and the lights will be off at 11:00 p.m. Other than the lighted fields, the Park shall close as specified in Keizer Park Regulations. No power equipment shall be operated at the Park between 10:00 p.m. and 7:00 a.m. Compliance with this condition does not exempt such activity from application of the Keizer Noise Ordinance.

E. In order to provide better lines of communication for day-to-day concerns during the season, prior to April 1 each year, Manager shall provide City a supervision plan for each activity to be held in the park. Any updates or amendments to such list shall be promptly given in writing by Manager to City.

F. Manager may develop volunteer opportunities for individuals and groups. All volunteers must be qualified for the particular volunteer project and may be required to undergo a criminal background check. Though not a requirement, one of the goals of volunteer labor is to reduce the cash outlay for field maintenance expenses, thereby reducing future field fees.

G. Manager shall provide sporting equipment (except for individual player equipment) as needed and keep these items stored neatly when not in use.

H. Manager will appropriately handle any and all matters related to parking for scheduled events.

I. Manager will market and promote the park in a manner that is respectful of the community.

~~I.~~ J. Manager shall not form or sponsor any league or team that uses the Park.

Complaints from either members of the public, users of the Park or others shall be first submitted in writing to Manager. Complaints shall not be submitted to the City. Manager shall have a reasonable period of time to remedy or otherwise respond depending on the nature of the complaint. If the remedy or response is not satisfactory to the complainant, the complainant may request the City Manager or designee to review the matter.

Manager will promptly notify the City of any problem that Manager is not able to resolve so that the City can rapidly respond. However, notice to City does not waive any obligation or duty of Manager.

In the event of a dispute, the decision of the City concerning the use, operation or management of the Park shall be final and binding. The City reserves the right to make final determination on all policies and procedures relative to the operation and management of the Park. Manager shall have no right, without prior written approval of the City Manager, to use or authorize the use of the Park for any other purposes other than baseball, softball, soccer, football or other sporting events.

The City, acting through the City Manager, reserves the right, in its sole discretion, to cancel, terminate or interrupt any event, and cause one or more patrons to be dismissed during any event, if necessary to protect the public or property. However, no action shall occur without consultation with Manager. City shall not be liable to Manager or any third parties for any loss or damages by any such determination or action by the City Manager, or his/her designee taken in good faith for the benefit or protection of the City and the public generally, or the protection of the Park.

For matters that are on-going or are likely to recur, Manager may request ratification by the City Council of any actions by the City Manager, and may require any continuing actions by the City Manager to be approved formally by the City Council.

4. Maintenance. Except as noted below, Manager shall, throughout the term of this Agreement, at its own cost and without any expense to City, keep and maintain the entire premises, including all improvements thereto, in good, sanitary and neat order,

condition and repair throughout the entire year. Manager shall immediately repair all safety issues as identified by the City or that are known or discoverable by Manager. Manager covenants and warrants that Manager will leave the premises in good, sanitary and neat order, to the reasonable satisfaction of City upon termination of this Agreement. City shall not be obligated to make any repairs or in any way maintain the premises at any time throughout the term of this Agreement unless City agrees to do so in writing.

Except as noted below, Manager shall be responsible for all field maintenance, including, but not limited to, mowing, lining the fields, raking the infields and warning tracks, fertilization, overseeding, and weed control. Notwithstanding the above, in the event a repair, maintenance or improvement is required by law only because the subject property is a City park and said repair, maintenance or improvement would not have been required if the property were owned by Manager, then the cost of such repair, maintenance or improvement shall be the sole responsibility of City. City shall transfer ownership of the initial mower to the Manager upon execution of this Agreement. Manager is responsible for all mower maintenance and replacement.

Manager shall strive to generate sufficient revenue to offset all costs incurred for the maintenance and repair of the park. All net revenue earned by Manager and generated directly from the use of the facilities shall only be used ~~first~~ for operations, field maintenance and repair expenses, ~~and~~ capital improvements, and other reasonable expenses of the Park. ~~Manager may retain net revenue in excess of what is required for these obligations.~~ Maintenance includes, but is not limited to, the lighting system, scoreboards, bleachers, fences, backstops, and all other capital improvements.

5. Maintenance Standard. Manager agrees to perform all maintenance of the premises including all improvements and buildings, throughout the term of this Agreement during the term of this Agreement in a cost efficient manner. Such maintenance shall include the following:

A. Supervision - Manager shall direct and guide the efforts and use of all maintenance workers, equipment and materials to manage the ball field complex and to maintain it in proper order and form. Any and all subcontracting, other than for the usual operational expenses such as routine maintenance, minor repairs and field work, by Manager must have prior written authorization by the City.

B. Vandalism - Manager shall monitor and repair any and all vandalism to turf, water systems, “dugout” structures, other buildings, fencing, and other structures or facilities.

C. Field Maintenance - Manager shall be responsible for all field maintenance, including, but not limited to, mowing, lining the fields, raking the infields and warning tracks, turf maintenance and overseeding. City will apply one (1) fertilization and one (1) weed control each year.

Manager shall allow no cars or heavy equipment on the playing fields without prior written authorization of City staff.

D. Water Systems - Manager shall maintain and repair the water system past the meters and irrigate as necessary.

E. Structural – Except as noted below, Manager shall maintain, repair and paint as necessary all backstops, bleachers, dugouts, score keeping stands, fences, barriers, signs, parking lots, ~~concession stand, field house,~~ and buildings, structures, ~~other property~~ and permanent improvements. City shall only be responsible to repair or replace buildings, structures, and permanent improvements that are damaged or destroyed by fire or other hazard.

F. Restroom/Portable Toilets – Manager shall maintain, repair and clean the permanent restroom facilities. Manager shall provide sufficient chemical toilets necessary to meet the needs of the park and shall be responsible for servicing the chemical toilets as needed. City to provide one year-round chemical toilet.

G. General Housekeeping - Manager shall remove and dispose of all litter and garbage and keep the area in a clean and safe condition. Manager must have a plan in place to handle garbage for both tournaments and regular league play. In addition to the above, Manager shall at all times, during the term of the Agreement, maintain the premises, and all property and equipment brought onto the premises by Manager or used by Manager on the premises, in a safe condition. If at any time during the term of this Agreement it appears to City that any maintenance or repairs as outlined above are needed on the premises, City shall notify Manager in writing. City shall give Manager thirty (30) days to perform the requested maintenance or repair. If Manager fails to perform as required by City, City may do the necessary repairs or maintenance and any reasonable costs incurred by City shall be paid by Manager within thirty (30) days after written demand for payment has been delivered to Manager. Election by City hereunder to do the necessary repairs or maintenance and charge the cost to Manager shall not prohibit City from electing to declare Manager in default pursuant to the provisions of this Agreement. Nothing contained on this paragraph shall be construed to relieve Manager of its responsibility for diligent maintenance as required under this Agreement.

H. Damage. Manager shall immediately give notice to City of any and all damage or potentially dangerous situation, however caused. Such notice shall be given both by phone calls and emails to both parties below:

Bill Lawyer 503-856-3555 – LawyerB@Keizer.org
Tracy Davis 503-856-3412 – DavisT@Keizer.org

For after hour notifications, notice shall be given as outlined above, as well as phone call to 503-393-1608.

Manager will promptly advise the City of any other problem that is not addressable by the Manager so that City can rapidly respond to these needs.

I. Rain-Outs. Manager shall supply a rain-out telephone line and/or website to alert participants regarding canceled games and practices. Practices will not be allowed on fields in which games have been postponed due to wet or unplayable field conditions. Manager or designee will decide the playability of the fields utilizing players' safety considerations as well as turf viability considerations. All teams, without exception, are expected to comply with this decision.

6. Concessions. Manager must operate the food concession and/or other retail sales in the park subject to the following policies:

A. Manager shall, at its sole cost and expense, develop, operate, and maintain a food and drink concession stand on the premises available to the general public. Manager shall not sell any alcoholic beverages ~~during youth sports events~~, drugs or medicines of any kind, tobacco products, or vaping products on the premises.

B. Manager will provide whatever refrigeration, cooking, dispensing and other equipment it deems appropriate for concession operation.

C. Manager shall not assign or subcontract its concession rights or any interest therein without the prior written consent of the City, and any such assignment or subcontract without written consent shall be void and shall at the option of the City, terminate this Agreement.

~~D. Manager shall at all times conduct its operations and assure that the operations of all subcontractors and employees are conducted in full compliance with all applicable laws, ordinances and administrative regulations of federal government, the State of Oregon, Marion County, the City of Keizer, and the agencies of any and all of them. Any license or certificate required by such authorities as the Marion County Health Department and others must be obtained and posted at all times.~~

~~E.~~D. All foods, drinks, beverages, confections, refreshments, etc., sold or kept for sale by Manager shall conform to all applicable food laws, ordinances, and regulations in all respects. No adulterated, misbranded, deceptively labeled, or impure articles shall be sold or kept for sale by Manager. All merchandise kept on hand shall be stored and handled with due regard for freshness and sanitation.

~~F.~~E. The City shall have the right, at any time during period of concession operation, to enter any part of any structure or mobile facility, and conduct whatever inspection City deems necessary to ensure compliance with this Agreement.

7. Licenses and Taxes. Manager shall obtain and pay for all licenses and permits required for operation on the Park; shall pay all ad valorem real and personal property and excise taxes, if any or any tax that might be levied upon the Park as a result of this Agreement or for any other reason resulting from Manager's operation of the Park; and shall pay all royalties arising from the sale of patented, copyrighted material or trademarks in its operation.

8. Utilities. City shall provide water services to the Park without charge to Manager. Manager shall pay all charges for garbage collection (including provision for garbage cans and dumpsters), and other utilities on the premises (electricity, sewer, phone, cable TV, and natural gas). Manager shall pay all charges for temporary and permanent utility hookups, connections, or installations.

9. Security. It will be the responsibility of Manager to maintain adequate security on the premises and its patrons. The City will furnish no more than the normal and routine police protection as provided in any park, subject to demands for police throughout the City from time to time. Manager will furnish the City with the appropriate combinations to enter all areas of property which may be secured. Manager will limit the number of keys for access to park facilities. All keys will be registered and can only be checked out and duplicated by the City Manager or his/her designee. A complete list of all individuals having keys to the premises shall be provided to City. City agrees to rekey entire facility no later than ________________, 2021, and provide keys to Manager.

10. Naming. Manager may propose the permanent naming of the Park or any existing or future monuments, statues, permanent buildings, structures and fields. Final approval of such proposed names shall be in the sole discretion of the Keizer City Council, following recommendation by the Parks and Recreation Advisory Board. ~~and should not be unreasonably withheld. The following scoreboard signs cannot be changed without written consent from the City:~~

"Net Naming Fees" or "Net Sponsorship Fees" are the fees paid for naming rights or sponsorship/advertising rights and are net of reasonable sales commissions, cost of improvements associated with the project, if any and other actual and reasonable costs connected with naming and sponsorship.

Net Naming Fees for the Park or any existing or future monuments, statues, permanent buildings, structures and fields shall be paid directly to the City and shall only be expended on improvements to the Park.

Net Sponsorship Fees or other fees, including, but not limited to donor-paid or donor-constructed fixtures such as score boards shall be paid to Manager. Such fees shall be used for maintenance, operation and improvements at the Park.

11. Discipline and Control. Subject to prior approval as required elsewhere herein, selection, compensation, direction, discipline, and control of Manager's employees, agents, volunteers and subcontractors shall be the sole responsibility of Manager. Manager shall be responsible for removing from the premises any employee, agent, volunteer or subcontractor who is disorderly, dishonest, dangerously careless, or any person violating any law, ordinance, or regulation. Manager shall enforce the "no alcoholic beverages/drugs" and tobacco/vaping-free rules, and handle crowd control at the park.

Manager has authority to eject such persons as necessary, but shall be responsible for any claims whatsoever in connection with such ejections pursuant to Section 14.

12. Insurance. City will insure all buildings and improvements on the property against loss or damage by fire or other hazard. The City will not insure or replace any building contents or personal property.

Manager shall maintain in effect throughout the term of this Agreement for all Manager's activities, a public liability insurance policy naming the City as an additional insured in an amount of one million dollars ($1,000,000), combined single limit including bodily injury and property damage. Such insurance provided by the Manager, and naming the City, its officers, agents, contactors, and employees as an additional insured, is for coverage during Manager activities, occasioned wholly or in part by the acts or omission of the Manager, its agents, officers, participants, and employees while using City facilities or otherwise performing its activities in agreement with the City.

13. Termination. This Agreement may be terminated upon a two (2) year written notice given by one party to the other party. Notice cannot be given prior to November 1, 2023 and notice must be given between November 1 and November 30, in any calendar year beginning in 2023.

This Agreement may also be terminated by mutual agreement of the parties at any time.

14. Indemnification and Hold Harmless. Manager shall be responsible for and shall pay and discharge any and all claims of any nature whatsoever under this Agreement or under Manager's use or management of the Park. Manager shall indemnify, defend, and save harmless the City and its officers, agents, and employees for and against any and all loss damage, injuries, action, causes of action, or liability of any kind whatsoever resulting from or arising out of the condition of the premises, products sold, and all operations, activities, or undertakings of Manager or any of Manager's employees, agents, volunteers or independent contractors. Notwithstanding the above, if City directly authorizes an activity by any party other than Manager during the period of this Agreement, this paragraph shall not apply to claims arising out of that activity.

15. Liens. Manager covenants to keep the premises and improvements free from all construction liens and all other liens of any type whatsoever arising out of Manager's repair, alteration, maintenance, and use of the premises and improvements. If a lien is filed, Manager will, within 30 days after knowledge of the filing, secure the discharge of the lien or deposit a sufficient corporate surety bond in an amount required by Oregon law to remove the lien. If Manager fails to discharge or bond off the lien, City will have the right to pay the amount of the lien and Manager will promptly reimburse City for any such payment by City, together with all costs and fees (including attorney fees) that City incurred in connection with the lien. Any amount payable by Manager under this provision will bear interest at the statutory rate from the date incurred or paid by City, until reimbursed in full by Manager. City reserves the right to post notices of nonresponsibility under the lien laws of the state of Oregon.

16. Manager shall at all times conduct its operations and assure that the operations of all subcontractors and employees are conducted in full compliance with all applicable laws, ordinances and administrative regulations of federal government, the State of Oregon, Marion County, the City of Keizer, and the agencies of any and all of them. Any license or certificate required by such authorities as the Marion County Health Department and others must be obtained and posted at all times. This shall include, but is not limited to compliance with state and federal disability laws.

17~~6~~. Assignment and Subcontracting. Manager shall not assign or transfer this Agreement, or any interest thereon. Any such assignment shall be void, and shall, at the option of the City, terminate this Agreement. Manager shall not subcontract any of its responsibilities hereunder without the express written consent of the City.

18~~7~~. Default. Upon failure by Manager to perform any term, condition, or covenant of this Agreement within thirty (30) days after written notice from City has been sent by regular mail, addressed to:

For the Love of the Game, Inc.

____

____

specifying the nature of the failure with reasonable particularity, City shall have the option to declare Manager to be in material breach and default hereunder and shall enable City to pursue its legal remedies including but not limited to those referred to in this Agreement. If the failure is of such a nature that it cannot be completely remedied within the said thirty (30) day period, the failure will not be a default if Manager begins correction of the failure within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as possible.

19~~8~~. Remedies. Upon default, and after the notice period described above, City may elect to terminate this Agreement and bring an action to recover any damages suffered by City as a result of Manager's actions or as a result of any breach by Manager of any term, covenant or condition of this Agreement.

20~~19~~. Financial Records/Audit. Beginning April ______2023, Manager shall prepare an income statement and balance sheet and shall provide full and complete copies of such records to City no later than April 1 of each year for the previous calendar year. The City may request and Manager shall provide such records for other periods, but no more than two (2) additional times per calendar year. The City, at its' sole expense, may audit any and all of Manager's records. Manager shall cooperate in all respects. Should such audit disclose material discrepancies greater than 3%, the City may terminate this Agreement at its' option with no less than thirty (30) days written notice. In such case, Manager shall reimburse City for any and all audit costs. If such discrepancies are not found, City will reimburse Manager's actual and reasonable out-of-pocket costs in responding to the audit.

21~~0~~. Attorney Fees. If suit or action is instituted to enforce or interpret this Agreement or in conjunction with any claim or controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the Court may adjudge reasonable as attorney fees at trial and on appeal of the suit or action.

22~~1~~. Amendments. Amendments to this Agreement shall be recognized only if reduced to writing and executed by formal action of the City Council of the City of Keizer.

23~~2~~. Relationship of the Parties. The City and Manager have entered into this Agreement for the purpose of establishing an independent contractor relationship between the City and Manager. This Agreement is not, nor should it be construed as, a lease or an agreement in the nature of a lease. No covenant of quiet enjoyment shall be implied in this Agreement. It is further understood and agreed by and between the parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the City, its successors or assigns on the one part, and Manager, its successors or assigns on the other part.

Manager has no property interest or possessory interest in the Park. Manager shall have the right to use the Park pursuant to the terms in this Agreement.

24~~3~~. Non-Discrimination. Manager agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.

25~~4~~. Notice. Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courtier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile at the address or facsimile number set forth below:

To the City:

City Manager
City of Keizer
930 Chemawa Road NE
PO Box 21000
Keizer, OR 97307
Fax: (503) – 393-9437

To the Manager:

For the Love of the Game, Inc.
____
____
Fax:_________________

26~~5~~. Agreement. This Agreement is the entire, final and complete agreement of the parties and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the date first above written.

CITY:	MANAGER:
CITY OF KEIZER	FOR THE LOVE OF THE GAME, INC.
By:___________________________ City Manager	By:____________________________ Managing Member
Dated:_________________________	Dated:_________________________

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2021-_____

AUTHORIZING CITY MANAGER TO SIGN PARK MANAGEMENT AGREEMENT WITH FOR THE LOVE OF THE GAME, INC.

WHEREAS, the City and Keizer Little League entered into a Park Management Agreement in 2014;

WHEREAS, the Park Management Agreement with Keizer Little League terminated October 31, 2021;

WHEREAS, a Request for Proposal was issued on February 8, 2021 and published in the Daily Journal of Commerce on February 12, 2021;

WHEREAS, the proposals were independently evaluated by the evaluators identified in the Request for Proposals and the evaluators recommended that For the Love of the Game, Inc. be awarded the Agreement;

WHEREAS, the proposers were notified that the evaluation resulted in the award of the Agreement to For the Love of the Game, Inc.;

WHEREAS, the parties have negotiated the terms of an agreement and desire to enter into such Agreement;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is authorized to sign the Park Management Agreement with For the Love of the

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

Game, Inc., a copy of which is attached as Exhibit "A" and by this reference incorporated herein.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon the date of its passage.

PASSED this __________ day of _________________, 2021.

SIGNED this __________ day of _________________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

PARK MANAGEMENT AGREEMENT

PARTIES:

CITY OF KEIZER, an Oregon
municipal corporation (hereinafter "City")

FOR THE LOVE OF THE GAME, Inc., an Oregon
not for profit corporation (hereinafter "Manager")

RECITALS:

A. City owns real property and improvements located at 5245 Ridge Drive, Keizer, Marion County, Oregon consisting of approximately 15.4 acres and known as Keizer Little League City Park (hereinafter "Park").

B. City has need of services to administer all aspects involved with managing, operating, and maintaining the Park. These aspects include, but shall not be limited to, the following:

1. Operation of the park primarily as a youth recreation facility open to youth sports organizations and others on a basis that is fair and appropriate to ensure enjoyment of the park assets by all who wish to utilize them.
2. Proper functioning of all park operations necessary to serve the public safely and efficiently.
3. All concession sales or rentals of goods or services in the park and maintenance of the equipment or facilities in the park used for those concession sales or rentals.
4. Marketing the park's uses to all potential users
5. Maintenance activities, including replacement, servicing, cleaning, adjustment, and rehabilitation of parts and equipment consistent with prudent industrial practice, product specifications, design and manufacturer recommendations; custodian activities to keep the facility clean, free of litter, and ball fields in top notch playable condition.
6. Maintain proper accounting records.
7. Manage, operate and maintain the Park.

C. Manager desires to manage, operate and maintain the Park as a public resource, subject to Manager's use of the facilities as set forth herein.

D. This Agreement is intended to grant no property interest or lease rights to Manager, or any third party that may result in the loss of property tax exempt status of the Park.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties do mutually agree as follows:

AGREEMENT:

1. Term. The term of this Agreement shall be from November 1, 2021 to October 31, 2031, or until this Agreement is terminated or renewed as herein provided. This Agreement may be renewed for two (2) five-year terms after review and acceptance of the proposed field fees, performance and provision of services. Any renewal shall be in writing and signed by the parties. The Manager's performance will be formally evaluated every two (2) years by the City Manager.

2. Improvements. Manager agrees that all improvements on the premises are the property of City and are considered to be part of the premises that is the subject of this Agreement. Manager further agrees that all permanent improvements made upon the premises by Manager or any other person or entity after the date of this Agreement become part of the premises and the property of City. City shall not be liable for any costs, or materials and/or labor associated with the initial construction work or improvements made to the premises or personal property included in the premises or for any future improvements made to the premises except as expressly agreed to in writing by City. Manager shall not cause or permit any change in Park layout, any addition or deletion of any permanent improvements, or any action on the part of Manager or permitted by Manager that affects the Park without the prior separate written approval of City. City reserves the right to make changes, additions and deletions with regard to any present or future improvements on the premises. If City chooses to make changes, additions or deletions with regard to the improvements, it shall give Manager ninety (90) days notice prior to the proposed change. The parties may, by mutual consent, waive that ninety (90) day period. City is not obligated to any specific project or funding unless City Council approval is granted.

In addition to any other improvements necessary for safety, Manager agrees to perform the following improvements prior to April 1, 2022:

1. Repair/replace bleachers that are broken.
2. Repair/replace safety netting as needed.
3. Repair/replace protective L screens as needed.
4. Repair open electrical outlets.
5. Fill open ditches and holes that are trip hazards.
6. Remove tree limbs that are hazardous.

Manager agrees to perform the following improvements prior to April 1, 2023:

1. Installation of security system as approved by the City Manager.
2. Repair/replace gutters and downspouts as needed.
3. Repair/replace rotting dugouts as needed.
4. Add side rail to bleachers as needed.

5. Rebuild pitching mounds in bullpens and fields as needed.
6. Install scoreboard on Field 7.
7. Paint the dugouts, concession stand, and restrooms.
8. Fix or replace the "batter's eyes" on all fields.
9. Install turf in the bullpens.
10. Upgrade the dirt and playing surfaces.
11. Rebuild and maintain the pitching mounds and bullpens.
12. Replace/upgrade press boxes.
13. Add an auxiliary concession stand.
14. Make Fields 9 to 12 available for multiuse such as soccer and lacrosse.

Manager agrees to perform the following improvements no later than April 1, 2026, assuming neither party has served notice as provided for in Paragraph 13 in this Agreement:

1. Resurface the fields as needed.
2. Upgrade scoreboards as needed.
3. Build new dugouts as needed.
4. Improve the field house.
5. Make a recommendation to City about lights for softball.
6. Replace back stops as needed
7. Remodel the current restroom as needed.
8. Clean lenses and replace bulbs on the junior field as needed.
9. Pave the gravel parking lot with City's assistance if approved by Council.

Manager shall provide a report to the City Manager and Council at the City describing the improvements completed during the previous year no later than March 31 each year.

3. Use and Conditions. Subject to the terms and conditions set forth herein, Manager agrees to manage the Park in its entirety for the term of the Agreement as follows:

A. Manager shall ensure that the fields at Keizer Little League City Park are available for play by local youth by March 1st of each year. Authorized representatives of Manager and City will meet at the end of each season, but no later than November 30 each year, to review the overall management of the Park to ensure that the focus of the organization is on youth programming, facility enhancement, and field restoration and maintenance. Manager shall also provide a list of management contacts to City which shall be updated with the City within seven (7) days of any changes.

B. Manager will maintain all Park scheduling oversight year-round. Manager shall be responsible to schedule all youth leagues (Ages 18 & under), tournaments and sports activities, as well as all other groups, including adult leagues and tournaments. Manager understands that at a minimum, regular youth league play must be available Monday through Thursday and scheduled in advance.

Manager shall supply the City with a season by season schedule for the park. Manager must allow reasonable access to the fields by any and all users subject to the above paragraph. Manager will provide the City a proposed field fee schedule for years after 2026 no later than October 1, 2025. Field fees shall be comparable to other public fields in the Salem-Keizer metro area. As used herein, "Keizer area teams" mean teams from leagues based in Keizer. Fees for the 2022-2023 seasons are as follows: For the 60' fields - $40 per game for Keizer area teams and $60 per game for other users; For the 90' field - $60 per game for Keizer area teams and $100 per game for other users. Fees for the 2024 - 2026 seasons are as follows: For the 60' fields - $50 per game for Keizer area teams and $75 per game for other users; For the 90' field - $75 per game for Keizer area teams and $125 per game for other users. The field fee shall be the Keizer area team fee, unless both teams are not Keizer-based league teams. Future field fees shall be approved by the City Council. Manager must allow reasonable access to the fields by any and all users subject to the provisions set forth herein.

C. Any individuals not affiliated with groups or organized teams may use the Park or individual fields at any time the Park is open if such use does not interfere with the priority or reserved use, cause safety concerns, or cause undue wear and tear in Manager's reasonable discretion. Manager agrees that when the park is not scheduled for use, the park will operate as a public facility, open to any and all users.

D. Keizer Little League Park may be open after sunset where fields are appropriately lighted from March 1 to October 31 Monday through Saturday. The Park will close and the lights will be off at 11:00 p.m. Other than the lighted fields, the Park shall close as specified in Keizer Park Regulations. No power equipment shall be operated at the Park between 10:00 p.m. and 7:00 a.m. Compliance with this condition does not exempt such activity from application of the Keizer Noise Ordinance.

E. In order to provide better lines of communication for day-to-day concerns during the season, prior to April 1 each year, Manager shall provide City a supervision plan for each activity to be held in the park. Any updates or amendments to such list shall be promptly given in writing by Manager to City.

F. Manager may develop volunteer opportunities for individuals and groups. All volunteers must be qualified for the particular volunteer project and may be required to undergo a criminal background check. Though not a requirement, one of the goals of volunteer labor is to reduce the cash outlay for field maintenance expenses, thereby reducing future field fees.

G. Manager shall provide sporting equipment (except for individual player equipment) as needed and keep these items stored neatly when not in use.

H. Manager will appropriately handle any and all matters related to parking for scheduled events.

I. Manager will market and promote the park in a manner that is respectful of the community.

J. Manager shall not form or sponsor any league or team that uses the Park.

Complaints from either members of the public, users of the Park or others shall be first submitted in writing to Manager. Complaints shall not be submitted to the City. Manager shall have a reasonable period of time to remedy or otherwise respond depending on the nature of the complaint. If the remedy or response is not satisfactory to the complainant, the complainant may request the City Manager or designee to review the matter.

Manager will promptly notify the City of any problem that Manager is not able to resolve so that the City can rapidly respond. However, notice to City does not waive any obligation or duty of Manager.

In the event of a dispute, the decision of the City concerning the use, operation or management of the Park shall be final and binding. The City reserves the right to make final determination on all policies and procedures relative to the operation and management of the Park. Manager shall have no right, without prior written approval of the City Manager, to use or authorize the use of the Park for any other purposes other than baseball, softball, soccer, football or other sporting events.

The City, acting through the City Manager, reserves the right, in its sole discretion, to cancel, terminate or interrupt any event, and cause one or more patrons to be dismissed during any event, if necessary to protect the public or property. However, no action shall occur without consultation with Manager. City shall not be liable to Manager or any third parties for any loss or damages by any such determination or action by the City Manager, or his/her designee taken in good faith for the benefit or protection of the City and the public generally, or the protection of the Park.

For matters that are on-going or are likely to recur, Manager may request ratification by the City Council of any actions by the City Manager, and may require any continuing actions by the City Manager to be approved formally by the City Council.

4. Maintenance. Except as noted below, Manager shall, throughout the term of this Agreement, at its own cost and without any expense to City, keep and maintain the entire premises, including all improvements thereto, in good, sanitary and neat order, condition and repair throughout the entire year. Manager shall immediately repair all safety issues as identified by the City or that are known or discoverable by Manager. Manager covenants and warrants that Manager will leave the premises in good, sanitary and neat order, to the reasonable satisfaction of City upon termination of this Agreement. City shall not be obligated to make any repairs or in any way maintain the premises at any time throughout the term of this Agreement unless City agrees to do so in writing.

Except as noted below, Manager shall be responsible for all field maintenance, including, but not limited to, mowing, lining the fields, raking the infields and warning tracks, fertilization, overseeding, and weed control. Notwithstanding the above, in the event a repair, maintenance or improvement is required by law only because the subject property is a City park and said repair, maintenance or improvement would not have been required if the property were owned by Manager, then the cost of such repair, maintenance or improvement shall be the sole responsibility of City. City shall transfer ownership of the initial mower to the Manager upon execution of this Agreement. Manager is responsible for all mower maintenance and replacement.

Manager shall strive to generate sufficient revenue to offset all costs incurred for the maintenance and repair of the park. All net revenue earned by Manager and generated directly from the use of the facilities shall only be used for operations, field maintenance and repair expenses, capital improvements, and other reasonable expenses of the Park. Maintenance includes, but is not limited to, the lighting system, scoreboards, bleachers, fences, backstops, and all other capital improvements.

5. Maintenance Standard. Manager agrees to perform all maintenance of the premises including all improvements and buildings, throughout the term of this Agreement during the term of this Agreement in a cost efficient manner. Such maintenance shall include the following:

A. Supervision - Manager shall direct and guide the efforts and use of all maintenance workers, equipment and materials to manage the ball field complex and to maintain it in proper order and form. Any and all subcontracting, other than for the usual operational expenses such as routine maintenance, minor repairs and field work, by Manager must have prior written authorization by the City.

B. Vandalism - Manager shall monitor and repair any and all vandalism to turf, water systems, "dugout" structures, other buildings, fencing, and other structures or facilities.

C. Field Maintenance - Manager shall be responsible for all field maintenance, including, but not limited to, mowing, lining the fields, raking the infields and warning tracks, turf maintenance and overseeding. City will apply one (1) fertilization and one (1) weed control each year. Manager shall allow no cars or heavy equipment on the playing fields without prior written authorization of City staff.

D. Water Systems - Manager shall maintain and repair the water system past the meters and irrigate as necessary.

E. Structural – Except as noted below, Manager shall maintain, repair and paint as necessary all backstops, bleachers, dugouts, score keeping stands, fences, barriers, signs, parking lots, and buildings, structures, and permanent improvements. City shall only be responsible to repair or replace buildings, structures, and permanent improvements that are damaged or destroyed by fire or other hazard.

F. Restroom/Portable Toilets – Manager shall maintain, repair and clean the permanent restroom facilities. Manager shall provide sufficient chemical toilets necessary to meet the needs of the park and shall be responsible for servicing the chemical toilets as needed. City to provide one year-round chemical toilet.

G. General Housekeeping - Manager shall remove and dispose of all litter and garbage and keep the area in a clean and safe condition. Manager must have a plan in place to handle garbage for both tournaments and regular league play. In addition to the above, Manager shall at all times, during the term of the Agreement, maintain the premises, and all property and equipment brought onto the premises by Manager or used by Manager on the premises, in a safe condition. If at any time during the term of this Agreement it appears to City that any maintenance or repairs as outlined above are needed on the premises, City shall notify Manager in writing. City shall give Manager thirty (30) days to perform the requested maintenance or repair. If Manager fails to perform as required by City, City may do the necessary repairs or maintenance and any reasonable costs incurred by City shall be paid by Manager within thirty (30) days after written demand for payment has been delivered to Manager. Election by City hereunder to do the necessary repairs or maintenance and charge the cost to Manager shall not prohibit City from electing to declare Manager in default pursuant to the provisions of this Agreement. Nothing contained on this paragraph shall be construed to relieve Manager of its responsibility for diligent maintenance as required under this Agreement.

H. Damage. Manager shall immediately give notice to City of any and all damage or potentially dangerous situation, however caused. Such notice shall be given both by phone calls and emails to both parties below:

Bill Lawyer 503-856-3555 – LawyerB@Keizer.org
Tracy Davis 503-856-3412 – DavisT@Keizer.org

For after hour notifications, notice shall be given as outlined above, as well as phone call to 503-393-1608.

Manager will promptly advise the City of any other problem that is not addressable by the Manager so that City can rapidly respond to these needs.

I. Rain-Outs. Manager shall supply a rain-out telephone line and/or website to alert participants regarding canceled games and practices. Practices will not be allowed on fields in which games have been postponed due to wet or unplayable field conditions. Manager or designee will decide the playability of the fields utilizing players' safety considerations as well as turf viability considerations. All teams, without exception, are expected to comply with this decision.

6. Concessions. Manager must operate the food concession and/or other retail sales in the park subject to the following policies:

A. Manager shall, at its sole cost and expense, develop, operate, and maintain a food and drink concession stand on the premises available to the general public. Manager shall not sell any alcoholic beverages, drugs or medicines of any kind, tobacco products, or vaping products on the premises.

B. Manager will provide whatever refrigeration, cooking, dispensing and other equipment it deems appropriate for concession operation.

C. Manager shall not assign or subcontract its concession rights or any interest therein without the prior written consent of the City, and any such assignment or subcontract without written consent shall be void and shall at the option of the City, terminate this Agreement.

D. All foods, drinks, beverages, confections, refreshments, etc., sold or kept for sale by Manager shall conform to all applicable food laws, ordinances, and regulations in all respects. No adulterated, misbranded, deceptively labeled, or impure articles shall be sold or kept for sale by Manager. All merchandise kept on hand shall be stored and handled with due regard for freshness and sanitation.

E. The City shall have the right, at any time during period of concession operation, to enter any part of any structure or mobile facility, and conduct whatever inspection City deems necessary to ensure compliance with this Agreement.

7. Licenses and Taxes. Manager shall obtain and pay for all licenses and permits required for operation on the Park; shall pay all ad valorem real and personal property and excise taxes, if any or any tax that might be levied upon the Park as a result of this Agreement or for any other reason resulting from Manager's operation of the Park; and shall pay all royalties arising from the sale of patented, copyrighted material or trademarks in its operation.

8. Utilities. City shall provide water services to the Park without charge to Manager. Manager shall pay all charges for garbage collection (including provision for garbage cans and dumpsters), and other utilities on the premises (electricity, sewer, phone, cable TV, and natural gas). Manager shall pay all charges for temporary and permanent utility hookups, connections, or installations.

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13. Termination. This Agreement may be terminated upon a two (2) year written notice given by one party to the other party. Notice cannot be given prior to November 1, 2023 and notice must be given between November 1 and November 30, in any calendar year beginning in 2023.

This Agreement may also be terminated by mutual agreement of the parties at any time.

14. Indemnification and Hold Harmless. Manager shall be responsible for and shall pay and discharge any and all claims of any nature whatsoever under this Agreement or under Manager's use or management of the Park. Manager shall indemnify, defend, and save harmless the City and its officers, agents, and employees for and against any and all loss damage, injuries, action, causes of action, or liability of any kind whatsoever resulting from or arising out of the condition of the premises, products

sold, and all operations, activities, or undertakings of Manager or any of Manager's employees, agents, volunteers or independent contractors. Notwithstanding the above, if City directly authorizes an activity by any party other than Manager during the period of this Agreement, this paragraph shall not apply to claims arising out of that activity.

15. Liens. Manager covenants to keep the premises and improvements free from all construction liens and all other liens of any type whatsoever arising out of Manager's repair, alteration, maintenance, and use of the premises and improvements. If a lien is filed, Manager will, within 30 days after knowledge of the filing, secure the discharge of the lien or deposit a sufficient corporate surety bond in an amount required by Oregon law to remove the lien. If Manager fails to discharge or bond off the lien, City will have the right to pay the amount of the lien and Manager will promptly reimburse City for any such payment by City, together with all costs and fees (including attorney fees) that City incurred in connection with the lien. Any amount payable by Manager under this provision will bear interest at the statutory rate from the date incurred or paid by City, until reimbursed in full by Manager. City reserves the right to post notices of nonresponsibility under the lien laws of the state of Oregon.

16. Manager shall at all times conduct its operations and assure that the operations of all subcontractors and employees are conducted in full compliance with all applicable laws, ordinances and administrative regulations of federal government, the State of Oregon, Marion County, the City of Keizer, and the agencies of any and all of them. Any license or certificate required by such authorities as the Marion County Health Department and others must be obtained and posted at all times. This shall include, but is not limited to compliance with state and federal disability laws.

17. Assignment and Subcontracting. Manager shall not assign or transfer this Agreement, or any interest thereon. Any such assignment shall be void, and shall, at the option of the City, terminate this Agreement. Manager shall not subcontract any of its responsibilities hereunder without the express written consent of the City.

18. Default. Upon failure by Manager to perform any term, condition, or covenant of this Agreement within thirty (30) days after written notice from City has been sent by regular mail, addressed to:

For the Love of the Game, Inc.
6700 Field of Dreams Way NE
P.O. Box 20936
Keizer, OR 97307

specifying the nature of the failure with reasonable particularity, City shall have the option to declare Manager to be in material breach and default hereunder and shall enable City to pursue its legal remedies including but not limited to those referred to in this Agreement. If the failure is of such a nature that it cannot be completely remedied within the said thirty (30) day period, the failure will not be a default if Manager begins correction of the failure within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as possible.

19. Remedies. Upon default, and after the notice period described above, City may elect to terminate this Agreement and bring an action to recover any damages suffered by City as a result of Manager's actions or as a result of any breach by Manager of any term, covenant or condition of this Agreement.

20. Financial Records/Audit. Beginning April 1, 2023, Manager shall prepare an income statement and balance sheet and shall provide full and complete copies of such records to City no later than April 1 of each year for the previous calendar year. The City may request and Manager shall provide such records for other periods, but no more than two (2) additional times per calendar year. The City, at its' sole expense, may audit any and all of Manager's records. Manager shall cooperate in all respects. Should such audit disclose material discrepancies greater than 3%, the City may terminate this Agreement at its' option with no less than thirty (30) days written notice. In such case, Manager shall reimburse City for any and all audit costs. If such discrepancies are not found, City will reimburse Manager's actual and reasonable out-of-pocket costs in responding to the audit.

21. Attorney Fees. If suit or action is instituted to enforce or interpret this Agreement or in conjunction with any claim or controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the Court may adjudge reasonable as attorney fees at trial and on appeal of the suit or action.

22. Amendments. Amendments to this Agreement shall be recognized only if reduced to writing and executed by formal action of the City Council of the City of Keizer.

23. Relationship of the Parties. The City and Manager have entered into this Agreement for the purpose of establishing an independent contractor relationship between the City and Manager. This Agreement is not, nor should it be construed as, a lease or an agreement in the nature of a lease. No covenant of quiet enjoyment shall be implied in this Agreement. It is further understood and agreed by and between the parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the City, its successors or assigns on the one part, and Manager, its successors or assigns on the other part.

Manager has no property interest or possessory interest in the Park. Manager shall have the right to use the Park pursuant to the terms in this Agreement.

24. Non-Discrimination. Manager agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further

agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.

25. Notice. Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courtier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile at the address or facsimile number set forth below:

To the City:

City Manager
City of Keizer
930 Chemawa Road NE
PO Box 21000
Keizer, OR 97307
Fax: (503) – 393-9437

To the Manager:

For the Love of the Game, Inc.
6700 Field of Dreams Way NE
P.O. Box 20936
Keizer, OR 97307
Fax: 503-390-2227

26. Agreement. This Agreement is the entire, final and complete agreement of the parties and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the date first above written.

CITY:

CITY OF KEIZER

By:______________________
R. Wes Hare,
City Manager

Dated:______________________

MANAGER:

FOR THE LOVE OF THE GAME, INC.

By: Jerry Q Walker
Jerry Q Walker,
President

Dated: 10-21-2021

APPROVED AS TO FORM:

____
Keizer City Attorney

COUNCIL MEETING: November 1, 2021

AGENDA ITEM NUMBER:____________

TO: **MAYOR CLARK AND CITY COUNCIL MEMBERS**

THROUGH: **R. WES HARE, CITY MANAGER**

FROM: **E. SHANNON JOHNSON, CITY ATTORNEY**

SUBJECT: **KEIZER HOLIDAY LIGHT PARADE TEMPORARY USE**

The Jingle Dash 5k Run/Walk and the Keizer Holiday Lights Parade event will be held on December 11, 2021. The Keizer Chamber of Commerce submitted an application relating to the events, a copy of which is attached.

In 1990 the City Council passed Ordinance No. 90-193 (An Ordinance Prohibiting Street Vendors) that prohibits the selling of any commodity or service upon any street, sidewalk or public right-of-way. There is a provision that allows for suspension of such regulations during a festival. The suspension is done by a City Council Resolution. A Resolution is attached for your consideration. This Resolution prohibits any interference with pedestrian, vehicular or parade traffic.

In 2004 the City Council passed Ordinance 2004-498, amending Section 2.203 of the Keizer Development Code (Ordinance No. 98-389), which regulates "Permitted Temporary Uses". This amendment affords Council discretion in authorizing "additional temporary uses" during a specific event or festival, and specifically allows for the council to authorize temporary signage in conjunction with a temporary use. The Development Code reads as follows:

> *Additional Permitted Temporary Uses. The City Council may, by resolution, authorize additional permitted temporary uses during a specific event or festival. This may include setting forth reasonable types of uses, appropriate zones for such uses, temporary signs and any time restrictions the Council finds necessary to protect the health, safety and welfare of the Public*. (Section 2.203.04.E)

The Jingle Dash 5k Run/Walk and the Keizer Holiday Lights Parade are significant community events which are beneficial to the citizens of Keizer and the surrounding communities. These activities are being organized under the leadership of the Keizer Chamber of Commerce.

In addition to the permits, the Chamber specifically requests authority to place up to nine food trucks/carts at each of the following locations:

- Saint Edward Catholic Church
- Willamette Valley Bank

- O'Reilly Auto
- Columbia Bank
- Remodeling by Classic Homes
- 911 Supply
- Sam Orcutt Way
- Famers Insurance
- Copy Cats

Staff recommends Council approve the placement of food trucks/carts at the above locations subject to the following conditions:

- The placement of all structures and facilities associated with the vendors shall conform to the requirements contained in the Keizer Development Code regarding Permitted Temporary Uses (KDC 2.203.04). The placement shall not obstruct or interfere with vehicle or pedestrian movement and shall not obstruct vision clearance areas.
- The authority to place the food trucks/carts at these locations shall only be for the day of December 11, 2021 and must be removed by noon on December 12, 2021.

The attached Resolution approves the special events, the placement of food trucks/carts, and the signage for the events. Specific conditions are attached to the Resolution.

In the past, the Chamber of Commerce has requested that the City waive all fees for these events. The Chamber of Commerce's application is silent on this subject and the Council may wish to consider how to proceed in this manner. The estimated total fees associated with these applications are as follows:

Application Fees	$ 25.00
Police Staffing	$ 4,600.00
Public Works Staffing	$ 1,000.00
Public Works barricades	$ 1,100.00
Temporary Use Permit	$ 495.00 (9 @ $55.00)
K23 Coverage	$ 180.00 (4 hrs @ $45.00 per hour)
	$ 7,400.00

$4,750.00 is included in the budget. In 2019, the Council waived all fees.

It is appropriate for Council to consider the matter of the fees and make a minute motion to deny the waiver request, waive some of the fees, or waive all of the fees for the December 11, 2021 Jingle Dash 5k Run/Walk and the Keizer Holiday Lights Parade.

RECOMMENDATION:

Adopt the attached Resolutions:

1. Authorizing a Temporary Suspension of the Ordinance Prohibiting Street Vendors.

2. Authorizing Temporary Uses Subject to Conditions for Jingle Dash 5k Run/Walk and Keizer Holiday Lights Parade.

The City Council should then consider the matter of the fees and make a minute motion to formalize its intent.

Please contact me if you have questions. Thank you.

ESJ/tmh

Keizer City Hall
930 Chemawa Road NE
Keizer, OR 97303
PO Box 21000, Keizer, OR 97307
Phone: (503) 390-3700
Fax: (503) 390-3787

City of Keizer
PARADE OR SPECIAL EVENT PERMIT FOR PUBLIC PROPERTY

Applications for permits must be submitted at least 60 days prior to date of parade or special event. This permit is pursuant to City of Keizer Ordinance No 2000-419. A fee of $25.00 must accompany this application.

Type of Event: ☒ Parade ☐ Walk ☐ Run ☐ Bike Race ☐ Special Event: ____________

Date of Event: 12/11/2021 Event Start Time: 6pm Event End Time: 10pm

Title of Event: Keizer Holiday Lights Parade & Jingle Dash 5k Run

Description of Event: Parade of lit floats celebrating the holiday season

Proposed Route or Event Location: Parade: Lockhaven Dr- River Rd- Plymouth Dr NE
Jingle Dash: Keizer Chamber office/ Chemawa rd/ Appleblossom/Keizer Chamber Office

Estimated Participants: 30,000 Number of Vehicles: 150 Number of Animals: 50

Clean-up Arrangements: Volunteer- Contracted Services

Assembly Location: Parade: Lockhaven Dr

Disassembly Location: Parade: Glynbrook to Plymouth Dr. NE

☒ Map Included: Please include a map showing the desired route or location, including assembly and disassembly points of the event, the proposed signing/traffic control plan, and the specific locations of streets to be closed.

Request for suspension of street vendor ordinance: ☒ Yes ☐ No
(Note: If granted, suspension of the ordinance allows sales by all persons.)

Group or Organization *(if applicable)*: Keizer Merchants Association DBA Keizer Chamber of Commerce

Applicant Name: Keizer Chamber of Commerce

Primary Phone: 503-393-9111 Secondary Phone: ____________

Mailing Address: 4118 River Rd N Keizer OR 97303

Email Address: corri@keizerchamber.com

This permit is subject to the following conditions:

1. No alcoholic beverages are permitted on public street or property unless allowed by City Ordinance. Please contact City staff for additional requirements regarding alcoholic beverages.
2. Permittee certifies that all residents living adjacent to proposed closure or businesses located adjacent to proposed closure have been notified of the event.
3. Barricades may be placed in the street right-of-way but must be positioned to allow access for emergency vehicles. Barricades are available from the City by calling 503-856-3551. Barricades must be returned to Public Works no later than the day after closure date.
4. Participants shall yield right-of-way to vehicular traffic, unless directed otherwise by a police officer.
5. The event will be conducted in such a manner to ensure the safety of the participants and spectators.
6. Permittee shall be responsible for clean-up of areas and removal of all paraphernalia and debris as a result of this event.

****NOTICE****

Permittee shall defend and indemnify the City of Keizer, its officers, agents and employees, against any claim, demand, suit or action for property damage, personal injury or death arising in connection with this event. The City of Keizer requires that the sponsor of such events carry commercial single limit liability insurance in the minimum amount of $500,000 and name the City of Keizer as an additional insured for this event. "City of Keizer" includes its officers, agents, contractors and employees. Claims made in excess of the policy will be the responsibility of the sponsor of the event. Sponsor shall provide City with evidence of the insurance no later than 20 days prior to the event.

INSURANCE COMPANY: The Summit Group of Oregon

POLICY NUMBER: OZ2H066657

COVERAGE LIMITS: $2,000,000

****PERMIT REVOCATION****

The City Manager may revoke this permit if circumstances reasonably show that the parade or special event can no longer be conducted consistent with public safety.

****APPLICATION SIGNATURE****

Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm facsimile or electronic transmitted signatures by signing an original document.

I hereby certify that I am the authorized representative of the above group, that the above statements are true to the best of my knowledge, that I will abide by all restrictions, administrative rules and applicable City Ordinances, and that I will provide proof of insurance at my own expense as required herein.

Applicant's Signature: ______________________ Date: 10/7/2021

************FOR OFFICE USE ONLY************

APPROVED ROUTE AND/OR POLICE COMMENTS:

FIRE DEPARTMENT COMMENTS:

ADDITIONAL APPROVAL COMMENTS OR CONDITIONS:

Approved by: ______________________
Keizer Police Department

Approved by: ______________________
Keizer Fire Department

Approved by: ______________________
Keizer Public Works

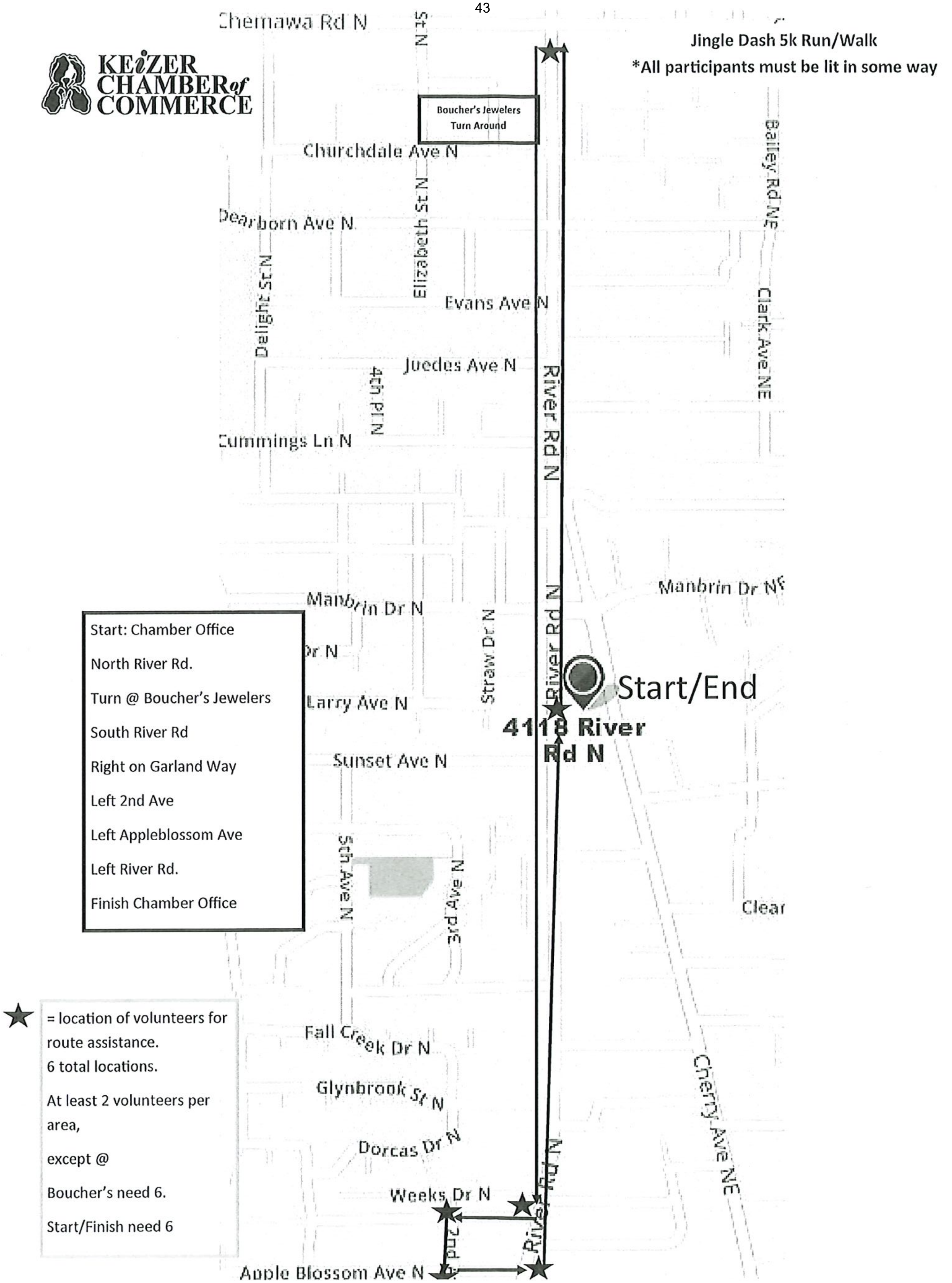
Approved by: ______________________
Keizer City Manager

City of Keizer Parade or Special Event Application

Jingle Dash 2021

Keizer Chamber of Commerce

Proposed Route or Event Location: Start at Keizer Chamber Office (4118 River Rd) - River Rd north to Chemawa Rd turn around then south to Garland, west to 2nd, south to Appleblossom and then east back to River Rd and finish at Keizer Chamber office. **Request PW permission to host one certified flagger with light, @ Cherry Ave (Between Allen Plaza & Lyons Club 5:30pm-7:30pm)



KEiZER CHAMBER of COMMERCE
Jingle Dash 5k Run/Walk
*All participants must be lit in some way
Chemawa Rd N
Boucher's Jewelers Turn Around
Churchdale Ave N
Dearborn Ave N
Elizabeth St N
Delight St N
Evans Ave N
Juedes Ave N
4th Pl N
Cummings Ln N
River Rd N
Bailey Rd NE
Clark Ave NE
Manbrin Dr N
Manbrin Dr NE
Straw Dr N
Larry Ave N
Sunset Ave N
Start/End
4118 River Rd N
5th Ave N
3rd Ave N
Clear
Fall Creek Dr N
Glynbrook St N
Dorcas Dr N
Weeks Dr N
Cherry Ave NE
Apple Blossom Ave N
Start: Chamber Office
North River Rd.
Turn @ Boucher's Jewelers
South River Rd
Right on Garland Way
Left 2nd Ave
Left Appleblossom Ave
Left River Rd.
Finish Chamber Office
= location of volunteers for route assistance.
6 total locations.
At least 2 volunteers per area,
except @
Boucher's need 6.
Start/Finish need 6

Register by November 1st for 10% Discount

'21

Songs of Christmas

KEIZER HOLIDAY LIGHTS PARADE

'21

Canciones de Navidad

DESFILE DE LUCES NAVIDEÑAS DE KEIZER

Saturday, December 11, 2021

SCHEDULE

3:30 pm Parade Staging Opens -All entrants must be lighted! ! !

6:00 pm River Road Closed (except East/West Intersection of Chemawa & River Road)

6:15pm Jingle Dash 5k/Fun Run - Keizer Chamber - 4118 River Rd N

5:00 pm Judging

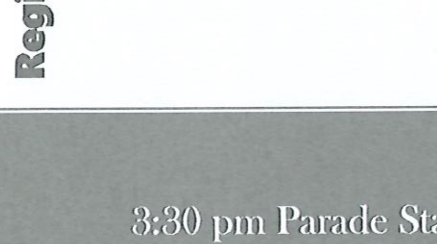
7:00 pm Parade Starts

ROUTE

River Road:

Lockhaven to Glynbrook

*****THERE WILL ONLY BE ONE LIVE SANTA CLAUS IN THE PARADE!*****



Parade Application Deadline - November 26th, 2021

Applications available at www.keizerchamber.com

2021 Keizer Holiday Lights Parade sponsored by

ENTRY INFORMATION

Entries ***must*** be lit, they may be historical, humorous or modern in design, so long as they are in good taste and reflect the theme which is "Songs of Christmas." Those planning entries should remember that our audience focus and participation will mainly be children.

Entrants must observe the following established parade rules, regulations and entry criteria:

1. The entry application must be filled out completely and must contain a full description of the proposed entry.

2. Your staging and disbandment assignment will be *e-mailed* to you prior to parade day.

3. Non-parade vehicles *will not* be allowed to park in the staging areas. *Horse Trailers, Flat Bed Trailers, etc will not be allowed to stay in the staging area.*

4. Parade Check-in and staging areas will be open at 3:30 p.m.

5. All parade participants must be in position no later than at 4:45 pm to be judged or by 5:30 pm for non-competitive entries. The parade will begin at approximately 7:00 p.m.

6. The parade will disband at River Rd & Glynbrook, BUT not before. Please refer to map and instructions for picking up participants at the end of the parade.

7. All entries, INCLUDING those walking, MUST be decorated with lights, or they will not be allowed to enter the parade route. Remember it will be dark!

8. **Candy may not be *thrown* from any entry under any circumstances. It CAN be handed out- just not *thrown*.**

9. **Proof of liability insurance *MUST* be provided with parade application. Commercial vehicles must be properly licensed and be driven by a licensed driver.**

10. All entries must obey police and parade personnel.

11. Consumption of alcoholic beverages and use of any illicit drugs are prohibited on or in any entry. No use of alcohol by parade participants will be allowed prior to or during the parade.

12. All entries must incorporate the theme, **SONGS OF CHRISTMAS**, be in good taste, and promote the goal of community spirit and civic pride. No entry shall display material offensive or discriminatory to any race, religion, sex, national origin, age, or marital status.

13. All entries must be moving in a forward motion at all times unless directed by police or parade personnel. Entries must stay within 50 feet of the entry directly in front of them, but no closer than 30 feet.

14. It is the responsibility of the applicant to furnish all necessary materials for the entry, ***including waste removal for all animal entries.***

15. Political candidates are limited to one entry throughout the entire parade.

16. All entries will be subject to approval of the Parade

JUDGING & AWARDS

Judging will take place in the parade formation and staging areas beginning at 5:00 pm for all entries except bands. All entrants must be in formation at that time to be considered for judging.

Divisions

Most Festive Best Use of Lights Best Choreography Best Theme Mayor's Choice Honorable Mentions(3)
Best Use of Music/Sound (Cash Prize awarded POST-parade excludes marching bands)

Thank you for participating!

Keizer Chamber of Commerce
4118 River Rd N-Keizer, OR 97303
(503) 393-9111
info@keizerchamber.com

KEIZERCHAMBER.COM

2021 Keizer Holiday Lights Parade Application - Songs of Christmas

Name of Entry: ______________________________

Contact: Name: ______________________ Phone: ______________

Parade Day Contact Name/Phone (if different): ______________________

E-Mail: ______________________________

Mailing Address: ______________________________

INCOMPLETE APPLICATIONS MAY BE RETURNED

Type of Entry - Must Select One:

- ☐ Decorated Float
- ☐ Decorated Commercial Vehicle
- ☐ Marching Group or Walkers- How Many? ____________
- ☐ Single Vehicle (Check One):
- ☐ Horses - How Many? ______
  - [ ] Mounted Group
  - [ ] Rodeo Court
  - [ ] Novelty Group

(Entries with animals must provide for water & waste removal)

- ☐ Automotive Club/Show - How many? __________
  Limited to 24 autos (**staged side by side**) and only one entry.
- ☐ Other - Describe: ______________________

REQUIRED:

Staging Length: __________ feet
Total length of vehicle or float including towing vehicle.

Music: Yes? ____ No? ____
Will your entry be playing music over a sound system or creating music, sound, or noises? If yes describe? ______________________

Handouts: Yes? ____ No? ____
City ordinance does not allow throwing of any objects (i.e candy) to the spectators.

There will only be ONE live Santa Claus in the parade. Please do not prepare your float to have one on board.

Entry Fees

Non Profit (Civic/Service/Military Group) *Cannot advertise a commercial business.*	$35.00
Commercial (Keizer Chamber Member)	$125.00
Commercial (Non-Keizer Chamber Member)	$175.00
Auto Clubs/Shows	$35.00

Total Paid: ______

Make checks payable to Keizer Chamber of Commerce or Visa/Master Credit Card #

Billing Address: ______________________

Expiration Date_____/_____ Zip Code__________ CVC ______

Entry Deadline: *November 26th, 2021*

Entries MUST include:

- Entry fee
- Proof of Insurance for motorized vehicles (copy of insurance card)
- Signed Application
- Script (emailed to: info@keizerchamber.com)-A brief description (50-70 words) of your entry for parade radio/TV announcers. Details may include history, participants, and interesting facts, or other parade experience.

No exceptions please. **Incomplete forms may be returned.** Entries will be limited and those not accepted will receive a full refund.

Appearance/Decor Policy:
All entries must be decorated *WITH LIGHTS*. **No undecorated commercial vehicles, trucks, motorcycles, golf carts, or bicycles allowed.**

The undersigned applicant, sponsor or authorized agent represents that they have fully read and understand the attached rules and regulations and that they agree to comply with said rules and regulations and all other rules, regulations and entry criteria of the Keizer Holiday Lights Parade. In consideration of the acceptance of this application, the applicant agrees to indemnify, hold harmless and defend against any action against the Keizer Holiday Lights Parade, sponsors, and continued members and/or the Keizer Chamber of Commerce and Board of Directors from and against all liabilities whatsoever arising out of applicant's participation in the Keizer Holiday Lights Parade.

______________________________ Signature

______________ Date

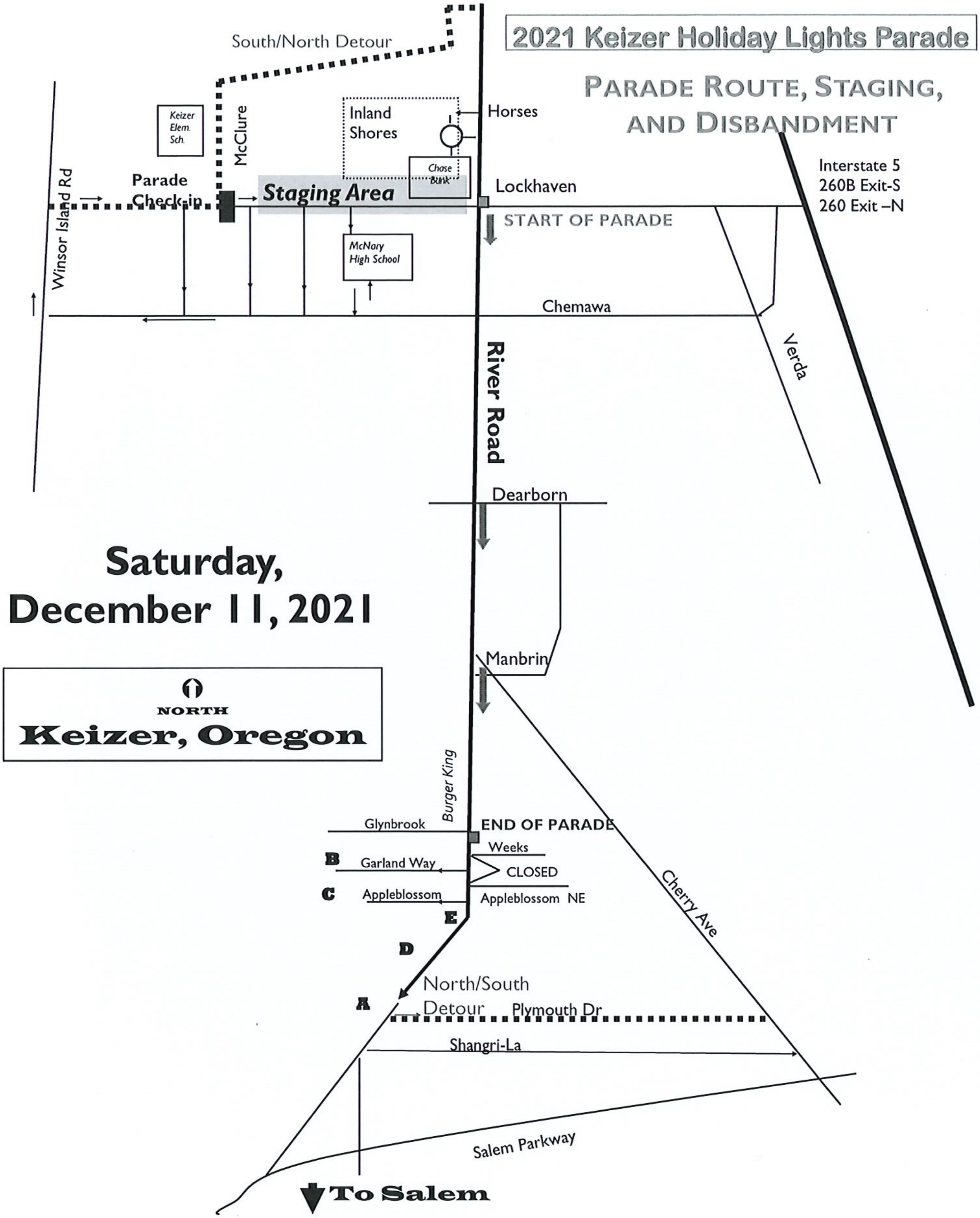
Mail Application and Fee to:
Keizer Chamber of Commerce,
4118 River Rd N, Keizer, OR 97303 Phone (503) 393-9111
E-mail TV/Radio script: info@keizerchamber.com

Register by November 1st to save 10%!

2021 Keizer Holiday Lights Parade

Parade Route, Staging, and Disbandment

Saturday, December 11, 2021



River Road will close at 6:00 pm from Lockhaven to Glynbrook and will remain closed until all parade entries are cleared from River Road. Please be sure to have established a disbandment plan PRIOR to the time of the parade start.

YOU WILL NOT BE ALLOWED to disband on River Road.

(Chemawa Road will remain open for East to West traffic until approximately 7:00pm).

October 18, 2021

To: Mayor Clark and Keizer City Councilors
Wes Hare, Interim Keizer City Manager

From: Keizer Chamber of Commerce, Corri Falardeau

Subjects: Keizer Holiday Events (Turkey Dash, Christmas Tree Lighting, Jingle Dash, Light Parade)
Special Event Permit (see attached)
Sign Code Variance request
Street Closure request

Keizer Chamber is proud to partner with the City of Keizer and many local area businesses to bring the spirit of the holidays beginning with Thanksgiving to the streets within our community. Below please find details for the Turkey Dash 5k, Christmas Tree Lighting, Jingle Dash 5k and the Keizer Holiday Lights Parade.

Chamber Events Date and Times:

Turkey Dash- Start time 8am

November 25 The Turkey Dash starts at Lowes Keizer Station weaving around businesses and then back into Gubser Neighborhood then, back to Lowes to finish the race, 500-800 runners and walkers are expected to participate in the 5k run/walk event. The fastest participants will finish in 15 to 20 minutes and the slowest participants will finish by 10:30am. Set up begins at 6:00am, on-site registration opens at 7:00am.

Christmas Tree Lighting

December 7 The Christmas Tree Lighting takes place at Walery Plaza, Christmas Caroling, Santa arrives for to help light the tree, Candy canes given for all kids!

Keizer Holiday Lights Parade

Keizer Holiday Lights Parade is a community wide celebration of the unique spirit of Keizer. Held the Second Saturday of December each year, this year falling on December 11th, 2021. Keizer Holiday Lights Parade is a one-day event in which we hold a Holiday Family Fun Run, Jingle Dash and Holiday Light Parade. The Holiday Lights Parade Committee, a function of the Keizer Chamber of Commerce, oversees the scheduling of events and the promotion of the Parade and Jingle Dash. The Chamber wishes to, in cooperation with the City of Keizer, facilitate the Keizer Holiday Lights Parade and Jingle Dash.

Parade – *start time 7:00pm*

December 11 Staging at Lockhaven (3:30pm – 9:00pm)
Parade on River Rd from Lockhaven to Glynbrook.
Disbandment begins at Glynbrook to Plymouth (side streets of River Rd.)

Jingle Dash Family Fun Run- "Run Run Rudolf" ***Start time 6:15pm***

December 11 100-150 runners and walkers are expected to participate in the 5k run/walk event During the 5k on Saturday, the fastest participants will finish in 15 to 20 minutes and the slowest participants will finish by 7:00pm.

The race will start at the Keizer Chamber office, down to Boucher Jewelers, down to Abby's Pizza around the block on Appleblossom (Run attendants and Race Signs will be present) back to the Keizer Chamber to Finish.

Location of Events:

Turkey Dash
Lowes Keizer Station, Gubser Neighborhood

Parade & Jingle Dash
River Road, Lockhaven Dr., Glynbrook, Plymouth Dr

Description of Events:

Parade – Parade 90+ entries of floats, bands, cars, and marching groups. Noise will be generated during the parade along River Rd from bands and other entries providing live and recorded music. All floats will be illuminated to participate.

6:00pm-9:00pm Food Trucks an vendors available for public (Indicated on the Food Truck Map provided) Free Hot Chocolate, Coffee and Goodies available for the public too.

Run/Walk Events – 150-250 runners and walkers are expected to participate in the 5k run/walk event. During 5k on Saturday, the fastest participants will finish in 15 to 20 minutes and the slowest participants will finish by 7:00pm.

Street Closures	Days	Time	Location
River Road	December 11	6:00pm-9:00pm	Lockhaven to Plymouth
Lockhaven	December 11	3:30pm-9:00pm	McClure to River Rd
Cherry Ave	December 7th	5:30-7:30pm	Greenwood to Mambrin

Parade Detours

West and east bound traffic will be able to cross River Rd at Chemawa Rd until the main parade lead float/entry approaches the intersection.

North/South Detour (west of River Road)- north and south bound traffic via: McNary Estates Drive (back gate), McClure St., Lockhaven (west of McClure St), Windsor Island Rd/Shoreline, Wayne, Rivercrest, Sunset, 5th, Fall Creek Dr., Sandra Ave., Dorcas, Jack St, and Stark

North/South Detour (east of River Road) – north bound traffic via: Plymouth, Cherry Ave. and Salem Parkway

North/South Detour (east of River Road) –south bound traffic via: Manzanita, Trail, Lockhaven, Verda, and Salem Parkway

North end of River Road gradually will open as end of parade continues south.

Event Parking
Parking will be available in various area lots of unoccupied businesses, and alongside streets.

Promotional Event Signs, Banners
The Keizer Holiday Lights Parade Committee will embark on decorating the City with Holiday Lights Parade & Jingle Dash Street Banners at the vacant lot on River Rd & Bever, the vacant lot next to Willamette Valley Bank, Chemawa Rd., Lockhaven Dr. and on participating business storefronts, promoting the Parade and Jingle Dash.

Other Permits and Agencies
The Keizer Chamber of Commerce will require all food concessionaires to obtain Temporary Restaurant Licensing from Marion County Health Department. We will also require they haven the proper insurance for this event.

The Keizer Holiday Light Parade Committee asks the City of Keizer limit mobile street vending during the parade be exclusive to those who have registered with the Parade, through the Chamber's required processes. (Local Schools, Youth, and Non-Profit organizations given first priority).

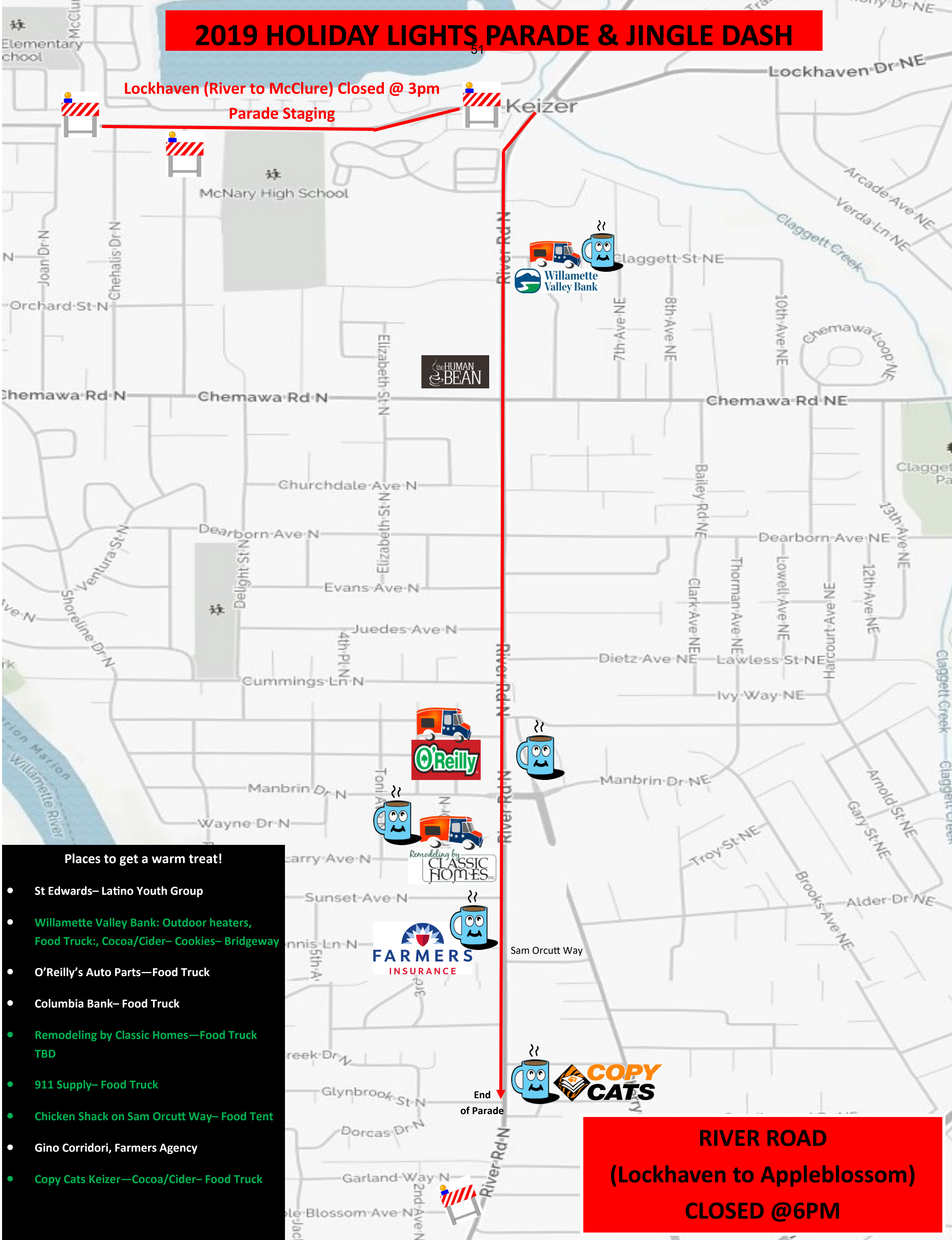
Security & Safety
Keizer Police Department has established an Incident Action Plan in partnership with input provided by the Keizer Chamber and event planning committee for the Keizer Holiday Lights Parade.

All activities will be monitored with volunteers for each event as well as staff of the Keizer Chamber of Commerce.

Clean Up
The Keizer Chamber will provide cleanup for the parade route with Chamber Volunteers and by partnering with Chamber members. Garbage cans, street cleaning and porta potties will be offered during Turkey Dash, Jingle Dash, and the Parade.

Respectfully Submitted for
Keizer Chamber of Commerce

2019 HOLIDAY LIGHTS PARADE & JINGLE DASH



Places to get a warm treat!

- St Edwards– Latino Youth Group
- Willamette Valley Bank: Outdoor heaters, Food Truck:, Cocoa/Cider– Cookies– Bridgeway
- O'Reilly's Auto Parts—Food Truck
- Columbia Bank– Food Truck
- Remodeling by Classic Homes—Food Truck TBD
- 911 Supply– Food Truck
- Chicken Shack on Sam Orcutt Way– Food Tent
- Gino Corridori, Farmers Agency
- Copy Cats Keizer—Cocoa/Cider– Food Truck

RIVER ROAD
(Lockhaven to Appleblossom)
CLOSED @6PM

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2021-_____

AUTHORIZING A TEMPORARY SUSPENSION OF THE ORDINANCE PROHIBITING STREET VENDORS

WHEREAS, the City of Keizer adopted Ordinance 90-193 in December, 1990 which prohibits street vendors in the City of Keizer;

WHEREAS, the Ordinance allows for suspension of these regulations during a festival;

NOW, THEREFORE,

BE IT RESOLVED that a temporary suspension of the Ordinance prohibiting street vendors is hereby granted and street vendors will be permitted on Saturday, December 11, 2021 from 5:00 p.m. to 11:00 p.m.

BE IT FURTHER RESOLVED all vendors must have any necessary governmental permits and approvals.

BE IT FURTHER RESOLVED that at no time shall any person interfere with, impede or block pedestrian, vehicular or parade traffic in any manner whatsoever or unreasonably interfere with viewing the parade. Street vendors shall not operate on private property.

Keizer City Attorney
930 Chemawa Rd NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately on the date of its passage.

PASSED this _______ day of ______________, 2021.

SIGNED this _______ day of ______________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Rd NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2021-_____

AUTHORIZING TEMPORARY USES SUBJECT TO CONDITIONS FOR JINGLE DASH 5K RUN/WALK AND KEIZER HOLIDAY LIGHTS PARADE (2021)

WHEREAS, the Keizer Development Code provides pursuant to Section 2.203.04(E) that the City Council may by resolution authorize temporary uses during a specific event or festival;

WHEREAS, the Keizer Development Code also provides that the Council may set forth the reasonable types of uses, zones and time restrictions;

WHEREAS, the Keizer Chamber of Commerce has requested the City to authorize a temporary use for the Jingle Dash 5k Run/Walk and the Keizer Holiday Lights Parade, including, but not limited to placement of food booths, stands, trucks or carts in specific locations during the events;

WHEREAS, the City Council has considered this matter and finds that it is appropriate to grant the request with certain restrictions necessary to protect the health, safety and welfare of the public;

NOW, THEREFORE,

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

BE IT RESOLVED by the City Council of the City of Keizer that the 2021 Jingle Dash 5k Run/Walk and the 2021 Keizer Holiday Lights Parade are authorized as specific temporary uses and the hours of operation, allowance for booths/stands for the events, and signage for the events are hereby allowed pursuant to the design, restrictions and conditions as set forth in the attached Exhibit "A" which is incorporated herein by this reference.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately on the date of its passage.

PASSED this __________ day of _________________, 2021.

SIGNED this __________ day of _________________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

EXHIBIT “A”

Design, Restrictions and Conditions

The City Council approves the proposed temporary uses, hours of operation, placement of food trucks/carts, and signage for the 2021 Jingle Dash 5k Run/Walk and 2021 Keizer Holiday Lights Parade as follows:

1. Except as set forth in this decision, the 2021 Jingle Dash 5k Run/Walk shall be routed, staged, disbanded, operated and conducted pursuant to the Special Event Permit application submitted by the applicant as approved by the Keizer Police Department and Public Works Department.

2. Except as set forth in this decision, the 2021 Keizer Holiday Lights Parade shall be routed, staged, disbanded, operated and conducted pursuant to the Special Event Permit application submitted by the applicant as approved by the Keizer Police Department and Public Works Department.

3. Except as noted below, the 2021 Jingle Dash 5k Run/Walk and the 2021 Keizer Holiday Lights Parade may have one (1) food truck/cart located at each of the following locations :

   - Saint Edward Catholic Church
   - Willamette Valley Bank
   - O’Reilly Auto
   - Columbia Bank
   - Remodeling by Classic Homes
   - 911 Supply
   - Sam Orcutt Way
   - Farmers Insurance
   - Copy Cats

   All food trucks/carts shall be placed on a parking lot or other hard surface area.

   No food truck/cart may be placed without the property owner’s permission. All food trucks/carts shall be subject to the conditions further described herein as well as the sign code. Such food trucks/carts may be placed no earlier than noon December 11, 2021 and must be removed no later than noon December 12, 2021 and may not be located on any public road or sidewalk. The exact site location is subject to approval by the Planning Director.

4. No electronic signs of any type are allowed, unless required by the Keizer Police Department or Public Works Department for safety reasons.

5. The 2021 Jingle Dash 5k Run/Walk and the 2021 Keizer Holiday Lights Parade may have four (4) banners not to exceed 32 square feet advertising the events.

The locations of such banners must have prior approval of the Planning Director. Such banners may be placed no earlier than November 12, 2021 and must be removed no later than December 13, 2021.

6. The 2021 Jingle Dash 5k Run/Walk and the 2021 Keizer Holiday Lights Parade may have a hand sign or flag located at the Focal Point. Such sign or flag may be placed no earlier than December 3, 2021 and must be removed no later than December 13, 2021. The hand sign or flag shall not exceed the allowable size as stated in the sign code.

7. Signs, banners, flags and balloons shall be placed to ensure there shall be no traffic interference or distraction, and if deemed to be a hazard by the Planning Director, shall be removed immediately upon notice. Balloons shall be placed in such a manner so as to not present a potential to damage light fixtures or landscaping.

8. No other signs are allowed.

9. No signs, flags, balloons or other items may be placed in the right-of-way, except for banners referenced in Section 5. No signs shall be placed on private property without the specific permission of the private property owner. Placement of any yard sign in any public right-of-way or sidewalk easement shall cause the City to remove such signs immediately without notice. In such instance, the Keizer Holiday Lights Parade shall be billed for City staff time, including benefits.

10. If required under applicable regulations, any food vendor shall obtain a license from Marion County Environmental Health or similar county agency prior to operating.

11. Any food truck/cart or other vendor shall not obstruct pedestrian pathways, driveways or drive aisles and shall not create a traffic or safety hazard.

12. Any paper, cardboard, wood, or plastic containers, wrappers, or any litter or material is to be picked up by the vendor.

13. All food trucks/carts must remain capable of being moved at any time.

14. All activities shall comply with Keizer Police Department’s direction and requirements of Keizer Fire District.

15. Any food truck/cart not removed by December 12, 2021 may be immediately removed by City staff without notice and the Keizer Holiday Lights Parade shall be billed for staff time at the hourly rate of staff person including benefits for removing the food truck/cart.

CITY COUNCIL MEETING: November 1, 2021

AGENDA ITEM NUMBER:________________

TO: **MAYOR CLARK AND COUNCIL MEMBERS**

THROUGH: **R. WES HARE, CITY MANAGER**

FROM: **E. SHANNON JOHNSON, CITY ATTORNEY**

SUBJECT: **CREATION OF COMMUNITY ENGAGEMENT COMMITTEE; DISSOLUTION OF COMMUNITY DIVERSITY ENGAGEMENT WORK GROUP**

The Community Diversity Engagement Work Group was formed by the City Council in April 2021 as part of the Goals and Work Plan and has been meeting to make recommendations to the Council. The Work Group made a motion at their September 9, 2021 meeting that a standing committee be formed. The Work Group has agreed on a general purpose for such committee. Following the Work Group's recommendation, the City Council held a work session on October 11, 2021 to further refine the purpose of the committee.

If Council finds that the attached purpose is acceptable, the first step is the creation of a permanent standing committee. I have prepared the enclosed Resolution Establishing the Community Engagement Committee. The Purpose and Tasks section in the exhibit was taken from the Mayor's notes at the work session. I did make a change to clarify the youth member shall be under 19 years of age at the date of appointment.

After adoption of the Resolution, the next step is the Mayor announcing the two Keizer City Councilors to be appointed as members to the Committee.

The third step is for the Volunteer Coordinating Committee to begin the recruitment process for the Committee and make a recommendation to the Council.

The Work Group also made a motion at their September 9, 2021 meeting that the Work Group be dissolved as it has fulfilled its purpose. I have enclosed a Resolution dissolving the Work Group for Council's consideration.

RECOMMENDATION:

Take the following actions:

1. Adopt the attached Resolution creating the Community Engagement Committee.
2. Mayor should announce the two City Councilors to serve as members of the committee.
3. Adopt the attached Resolution dissolving the Community Diversity Engagement Work Group.

Please contact me if you have any questions in this regard. Thank you.

ESJ/tmh

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2021-_____

ESTABLISHING COMMUNITY ENGAGEMENT COMMITTEE

WHEREAS, the City Council adopted Resolution R2020-3135 (Adopting Keizer Statement of Values-Justice, Equity, Diversity and Inclusion) on December 7, 2020;

WHEREAS, the Community Diversity Engagement Work Group was formed by the City Council in April 2021 as part of the Goals and Work Plan;

WHEREAS, the Community Diversity Engagement Work Group made a recommendation to the City Council to form a Community Diversity Engagement Committee;

WHEREAS, the Keizer City Council considered the matter in a work session on October 11, 2021 and directed staff to revise the Resolution forming the Committee;

WHEREAS, the Keizer City Council has considered the recommendation from the Community Diversity Engagement Work Group and finds it necessary and appropriate to appoint a committee to advise the Council on action for community engagement as outlined in Appendix "A" attached hereto;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the Community Engagement Committee is hereby established as outlined in Appendix "A", which is attached hereto and by this reference made a part hereof.

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon the date of its passage.

PASSED this __________ day of _________________, 2021.

SIGNED this __________ day of _________________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

Appendix "A"
City Council Committee

Name: Community Engagement Committee

Purpose: To act in an advisory capacity to the Keizer City Council and to advise on action for community engagement by:

1. Listening to understand. Keizer wants to let everyone know we are all included when we talk about the Keizer community and are important for our community to thrive holistically,
2. Using what is heard to create recommendations for action plan(s) for increasing community engagement and communication on progress in civic processes,
3. Acting on the values included in the Resolution for Justice, Equity, Diversity and Inclusion.

Tasks: To assist in developing action recommendations for community engagement in civic processes in the following areas:

1. Collaboration with Council, other city committees, commissions and neighborhood associations to increase active participation and recommend culturally responsive actions,
2. Collaboration with other organizations (historical/cultural/arts, business organizations, faith community, community based organizations, education, and additional sectors not usually included),
3. Collaborating in community opportunities to have conversation, celebration, relationship building,
4. Recommending additions or subtractions of national observances/ commemorative/heritage months,
5. Help develop metrics and yearly report on tasks identified and the data needed to better understand culturally responsive provision of services and public participation,
6. Assist in identifying leaders and build leadership capacity of underrepresented and underserved communities.

Membership: The Committee shall consist of nine voting members. Two (2) members shall be Keizer City Councilors to be appointed by the Mayor and announced at a regularly scheduled Council meeting, six (6) citizen-at-large members and one (1) youth member who is under 19 years of age at the date of appointment. Appointed members will be expected to think broadly in terms of how issues of racism, sexism, ableism, and other discriminatory and prejudicial biases that impact all residents in Keizer. The citizen-at-large and youth members shall be appointed as outlined by the City Council Rules of Procedure. The Committee will be staffed by a non-voting staff liaison to be appointed by the City Manager.

Term of Office: Each Councilor member shall be appointed for a two-year term by the Mayor pursuant to the Council Rules of Procedure. Each non-Councilor member shall be appointed for a three-year term, except for the initial terms. The initial terms of the non-Councilor members shall be staggered so that not more than three will expire in the same year. Members may be reappointed.

Chair and Vice-Chair: The Committee will elect the Chair and Vice-Chair at the first meeting of each calendar year.

Meetings: Members of the Committee shall establish a regular meeting date and shall meet as deemed necessary by the Chair. All meetings of the Committee shall follow Robert Rules of Order Newly Revised and the Oregon Public Meeting Laws.

Attendance: It is the duty of each member to attend at least 75% of the meetings each calendar year. When a member is unable to attend a meeting, the member shall notify the Chair. Members of the Committee may be removed by a two-thirds majority vote of the City Council.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2021-_____

DISSOLVING THE COMMUNITY DIVERSITY ENGAGEMENT WORK GROUP

WHEREAS, the City Council formed the Community Diversity Engagement Work Group in April 2021 as part of the Goals and Work Plan;

WHEREAS, the Community Diversity Engagement Work Group has indicated that it has fulfilled its purpose and recommends dissolution;

WHEREAS, the Council has considered the matter and wishes to dissolve the Community Diversity Engagement Work Group;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the Community Diversity Engagement Work Group is hereby dissolved.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon the date of its passage.

PASSED this __________ day of _________________, 2021.

SIGNED this __________ day of _________________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

CITY COUNCIL MEETING: November 1, 2021

AGENDA ITEM NUMBER:________________

TO: MAYOR CLARK AND COUNCIL MEMBERS

THROUGH: R. WES HARE, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

SUBJECT: CABLE TELEVISION FRANCHISE AGREEMENT WITH COMCAST OF OREGON I, INC.

This matter is before Council for authorization for signing the cable television franchise agreement with Comcast of Oregon I, Inc. As I have reported to the Council in the past, Comcast came to us some time ago as the previous franchise agreement had expired. Due to changes in federal law and Federal Communications Commission rulings, franchise agreements across the country were being rewritten.

I have attached a copy of the memorandum from outside counsel, Spencer Parsons, which lays out some of the high points of changes from previous agreements. In addition, as we have noted to Council, federal law has required for some time that the Public, Educational and Government (PEG) fee cannot be used for PEG operations, but only for capital equipment. Since the PEG fees cannot exceed the capital expenses generally, the PEG fee has been adjusted to an amount that more than covers the average capital expenditures for cameras, computer equipment, etc. If the amount turns out not to be sufficient, the agreement is for five years and the PEG fee can be increased at that point. If it has a surplus, the fee must be reduced.

RECOMMENDATION:

Adopt the attached Resolution authorizing the Mayor to sign the new cable television franchise agreement.

Please let me know if you have any questions in this regard. Thank you.

Beery Elsner & Hammond LLP
ATTORNEYS AT LAW

MEMORANDUM

TO: Shannon Johnson, Keizer City Attorney

FROM: Spencer Parsons, Special Counsel

SUBJECT: Comcast Franchise Renewal

DATE: October 8, 2021

Introduction:

Below are highlighted sections of the new proposed franchise between the City of Keizer and Comcast. These do not represent all changes made between franchise documents, but rather substantive departures that were negotiated, and/or provisions that merit particular attention in light of recent changes to federal law.

Of particular note is the adjustment of the PEG fee to $0.75; the upgrade of an existing PEG channel to high-definition; the methodology provided for addressing “in-kind” contributions to the extent the cost of the contributions, together with franchise fee payments, exceeds 5%; and the definition of “gross revenue” to explicitly exclude non-cable services, thereby excluding such revenues when calculating franchise fee payments owed to the City.

Notable Franchise Provisions:

Section 1.23, “Gross Revenue” Definition: Subsection (a) excludes “[r]evenue from non-cable services.” Subsection (B) was added to clarify that payments bundled services that include both cable and non-cable services shall be allocated on a pro-rata basis for inclusion of what constitutes gross revenues in calculating franchise fees.

Section 2.3, Franchise Term: The franchise term is five years, unless otherwise extended or terminated sooner as provided under the terms of the franchise.

Section 3.1, Franchise Fees: The franchise fee, as before, is set at 5% of gross revenues. However, it is important to note that the 5% applies only to “cable services” under Section 1.23(A), which excludes revenue from non-cable services from the definition of “Gross Revenue”. For instance, revenue from broadband service would not be included in the calculation of gross revenues, and therefore not reflected in the 5% paid to the City.

Section 3.7, “In-Kind” Contributions: This section preserves the City’s ability to choose whether to pay for, discontinue or allow for offsets for “in-kind” benefits provided by the franchisee

t 503.226.7191
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e info@gov-law.com
1804 NE 45th Ave
Portland, OR 97213-1416
www.gov-law.com

where the cost of such benefits, in addition to the payment of the franchise fee, exceeds 5%. Because the City is entitled to 5% franchise fees, any in-kind benefits provided are arguably subject to this section. However, what this section does is prohibit the franchisee from acting unilaterally without first conferring with the City.

Section 9.4, High-Definition Channels: Under this section, within 120 days of franchise execution Comcast is required to activate on of the two existing PEG channels as HD while continuing to provide it in SD as well.

Section 10.11 Undergrounding: This section requires Comcast to place facilities underground where other utilities are already undergrounded, and also requires undergrounding at Comcast's expense where other utilities are undergrounded (Comcast is able to pass on such costs to consumers, as allowed under federal law).

Section 14.1, PEG Fees: This section establishes a PEG fee of $0.75 per month. This fee will be collected by Comcast and passed on to the City.

Conclusion:

Please review the proposed franchise, as negotiated between the parties, and do not hesitate to contact me with questions regarding the identified provisions and/or any other language contained in the document.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2021-_____

AUTHORIZING MAYOR TO SIGN CABLE TELEVISION FRANCHISE AGREEMENT WITH COMCAST OF OREGON I, INC.

WHEREAS, the City of Keizer and Far-West Communications, Inc. entered into that certain cable television franchise agreement on or about August 29, 1994;

WHEREAS, the agreement has been extended several times;

WHEREAS, the current extension expires on February 28, 2022;

WHEREAS, the parties have concluded the informal renewal negotiations in accordance with Section 626 of Title VI of the Communications Act of 1934, as amended;

WHEREAS, it is in the public interest to enter into the cable television franchise agreement so that cable service to the public will not be interrupted;

WHEREAS, the Council has reviewed the matter and desires to enter into the cable television franchise agreement attached hereto;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the Mayor is authorized to sign the Cable Television Franchise Agreement with Comcast of Oregon I, Inc. attached as Exhibit “A” and by this reference incorporated herein.

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

BE IT FURTHER RESOLVED by the City Council of the City of Keizer that the City Manager is authorized to take any and all necessary acts to effectuate the agreement.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon the date of its passage.

PASSED this __________ day of _________________, 2021.

SIGNED this __________ day of _________________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

CABLE TELEVISION

FRANCHISE

AGREEMENT

Between the

CITY OF KEIZER

AND

COMCAST OF OREGON I,
INC.

This Franchise Agreement ("Franchise") is between the City of Keizer, Oregon, hereinafter referred to as "the City" "Grantor" or "Franchise Authority" and Comcast of Oregon, I Inc., hereinafter referred to as "the Grantee." The City and the Grantee are referred to together as "the Parties."

The City hereby acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to meet the cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a Cable System (as defined herein) on the terms set forth herein.

SECTION 1. DEFINITIONS

For the purposes of this Agreement and all attachments included hereto, the following terms, phrases, words and their derivations shall have the meaning given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 **Access** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video and Signals as permitted under applicable law, including, but not limited to:

(A) **Public Access** means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary Programmers or users having editorial control over the content;

(B) **Educational Access** means Access where Schools and educational institutions are the primary Programmers or users having editorial control over the content;

(C) **Governmental Access** means Access where governmental institutions are the primary Programmers or users having editorial control over the content; and

(D) **PEG Access** means Public Access, Educational Access, and Governmental Access, collectively.

1.2 **Access Center** means a facility or facilities where Public, Educational, or Governmental use Signals are managed and delivered Upstream to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

1.3 **Access Channel** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.

1.4 **Affiliate** when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 **Basic Service** means any service tier which includes the retransmission of local television broadcast Signals, or as such service tier may be further defined by federal law.

1.6 **Cable Act** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.

1.7 **Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

1.8 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.9 **Cable System** means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

1.10 **Capacity** means the maximum ability to carry Signals or other information within a specified format.

1.11 **Capital or Capital Cost** means the expenditure of funds for resources whose useful life can be expected to exceed a period of one (1) year or longer as consistent with Generally Accepted Accounting Principles ("GAAP").

1.12 **Channel** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio and may include other non-video subcarriers and digital information.

1.13 **Demarcation** means up to and including the device (as of the Effective Date known as the "modulator") where the DAP Signal is converted into a format to be transmitted over a fiber connection to Grantee.

1.14 **Designated Access Provider ("DAP")** means the entity or entities designated by the Grantor to manage or co-manage PEG Access Channels and Access Centers. The Grantor may be a Designated Access Provider; however, any entity designated by the Grantor shall not be a third party beneficiary under this Agreement.

1.15 **Downstream** means the transport of Signals from the Headend to Subscribers or to Interconnection points served by the Cable System.

1.16 **Effective Date** means the date defined in Section 2.4 herein.

1.17 **FCC** means the Federal Communications Commission.

1.18 **Fiber** means a transmission medium of optical strands of cable capable of carrying Signals by means of lightwave impulses.

1.19 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.

1.20 **Franchise Area** means the area within the legal jurisdictional boundaries of the City of Salem as the City is now or may change during the term of this Agreement.

1.21 **Grantee** means Comcast of Oregon, I, Inc. or its permitted successors, transferees or assignees.

1.22 **Grantor** means the City of Keizer, Oregon.

1.23 **Gross Revenue** means, and shall be construed broadly to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:

- Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
- Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
- Fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
- Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Payments for pre-paid Cable Services and/or equipment;
- Advertising Revenues as defined herein;
- Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total

Cable Service Subscribers within the Franchise Area.

- Gross Revenues shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. Gross Revenues, however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Agreement. Gross Revenues shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. Gross Revenues shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect, to the extent such sales taxes are in fact transferred by Grantee to the authority imposing the sales tax. With the exception of recovered bad debt, Gross Revenues shall not include bad debt.

(A) "Gross Revenues" shall **<u>not</u>** include:

- Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;

- Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee, the FCC user fee and PEG fee shall not be regarded as such a tax or fee;

- Launch fees and marketing co-op fees; and,

- Unaffiliated third- party advertising sales agency fees or commissions which are reflected as a deduction from revenues.

- Revenue from non-cable services.

(B) To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services, as defined herein, and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components at the published standalone retail rate card pricing before discounts are applied. . This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

Example: Prior to any bundle-related price reduction, if Cable Service is valued at 50% of the total of the services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than fifty percent (50%) of the price of the bundled service total.

(C) Grantee reserves the right to change the allocation methodologies set forth in paragraph (B) above to meet standards mandated by the Financial Accounting Standards Board ("FASS"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"), after providing not less than 30 days written notice of any such change to Grantor and providing Grantor the right to review and to challenge any new allocation methodologies. Grantor acknowledges and agrees that Grantee shall calculate Gross Revenues in a manner consistent with GAAP where applicable; however, the Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item.

(D) Grantor agrees and acknowledges that Grantee shall maintain its books and Records in accordance with GAAP.

1.24 **Headend** means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the Interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.

1.25 **Interconnect or Interconnection** means the provision by Grantee of technical, engineering, physical, financial and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Cable System or any separate communications network, so that services of technically adequate quality may be sent to, and received from, such other systems to the extent required by this Agreement.

1.26 **Leased Access Channel** means any Channel commercially available for programming for a fee or charge by Grantee to members ofthe general public.

1.27 **Origination Point** means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.

1.28 **Parent Corporation** means Comcast Communications, Inc. or successors and assigns and includes any other existing or future corporations with greater than fifty percent

(50%) ownership or control over Grantee.

1.29 **Person** means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization, and includes any natural person.

1.30 **Programmer** means any Person responsible for PEG Access Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides PEG Access Programming for transmission on the Cable System.

1.31 **Programming** means television programs, audio, video or other patterns of Signals to be transmitted on the Cable System, and includes all programs or patterns of Signals transmitted, or capable of being transmitted, on the Cable System.

1.32 **Public Rights of Way** include, but are not limited to, Streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such Streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a)(2).

1.33 **Record** means written or graphic materials, however produced or reproduced, or any other tangible permanent record, to the extent related to the enforcement or administration of this Agreement.

1.34 **Quarterly or Quarter** means the standard calendar periods of January 1 - March 31, April 1 - June 30, July 1 - September 30, and October 1 - December 31, unless otherwise specified in this Agreement.

1.35 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools.

1.36 **Section** means a provision of this Agreement, unless specified as part of another document.

1.37 **Signal** means any electrical or light impulses carried on the Cable System, whether one-way or bi-directional.

1.38 **Streets** means the surface of any public Street, road, alley or highway, within the Grantor, used or intended to be used by the general public for general transportation purposes to the extent the Grantor has the right to allow the Grantee to use them, and the space above and below.

1.39 **Subscriber** means any Person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of, or in connection with, the Cable System.

1.40 **Upstream** means the transport of Signals to the Headend from remote points on the

Cable System or from Interconnection points on the Cable System.

SECTION 2. – GRANT OF FRANCHISE

2.1 Grant

(A) Grantor hereby grants to Grantee in the public interest a nonexclusive authorization to make lawful use of the Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System subject to the terms and conditions set forth in this Agreement.

(B) This Agreement is intended to convey limited rights and interests only as to those Public Rights of Way in which the Grantor has an actual interest. It is not a warranty of title or interest in any Public Rights of Way, it does not provide the Grantee any interest in any particular location within the Public Rights of Way, and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Public Rights of Way covered by this Agreement, including without limitation, the right to perform work on its Streets, or appurtenant public works facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

(C) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. Nothing herein shall be interpreted to prevent Grantee or Grantor from challenging the lawfulness or enforceability of any provisions of applicable law. The use of Rights of Way by Grantee for the provision of services other than Cable Service is not regulated, authorized, or prohibited by this agreement, and any such use may be governed by a separate authorization as consistent with applicable law. While Grantee currently utilizes the Public Rights of Way for the provision of services other than Cable Service, Grantee agrees that such utilization does not constitute a waiver, or otherwise limit, Grantor's exercise of its rights, or its ability to seek any legal or equitable remedies against Grantee.

(D) Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any agent, Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

2.2 Use of Public Rights of Way

Subject to Grantor's supervision and control and the terms of this Agreement, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights of Way within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Services.

Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate agencies of Grantor prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's Public Rights of Way within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation for costs associated with maintenance of the public right of way, to be paid for these valuable rights throughout the term of this Agreement subject to federal law. Grantor agrees that it will cooperate with Grantee on permitting requests and will review permit applications in a reasonable and timely manner.

2.3 Duration

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be five (5) years from the Effective Date of this Agreement, unless extended or terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, Public Rights of Way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Public Rights of Way for any purpose not incompatible with Grantee's authority under this Agreement, and for such additional Franchises for Cable Systems as Grantor deems appropriate subject to Section 2.5 below.

2.5 Grant of Other Franchises

(A) The Grantor reserves the right to grant additional Franchises or similar authorizations for the provisions of Cable Services via Cable Systems or similar systems located in the Public Rights of Way. Grantor intends to treat competitors in a nondiscriminatory manner in keeping with federal law. If the Grantor grants such an additional Franchise or authorization to use the Public Rights of Way to provide such services and Grantee believes the Grantor has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this Section 2.5 will apply. If the Grantor or other government agencies or affiliates provides comparable video services, it may be considered a competitor under this Section.

(B) As part of this Agreement, the Grantor and Grantee have mutually agreed that the following material Franchise terms may be used to compare Grantee's Franchise to a competitor: a 5% (five percent) Franchise fee, PEG funding, PEG Access Channels, access to the public right of way, customer service obligations, and complimentary services (hereinafter "Material Obligations"). Grantor and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a competitor and as such can reasonably be expected to be applied fairly across all competitors.

(C) Within one (1) year of the adoption of a competitor's Franchise or similar authorization, Grantee must notify the Grantor in writing of the Material Obligations in this Agreement that exceed the Material Obligations of the competitor's Franchise or similar authorization. The Grantor shall have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the competitor, or dispute that the Material Obligations are different. In the event the Grantor disputes the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what Franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the Grantor that it elects to immediately commence the renewal process under 47 USC§ 546 and to have the remaining term of this Franchise shortened to notmore than thirty (30) months.

(D) Nothing in this Section 2.5 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the Grantor be required to refund or to offset against future amounts due the value of benefits already received.

(E) Section 2.5(C) does not apply if the Grantor is ordered or required to issue a Franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the Grantee's competitor actually commencing provision of service in the market to its first customer. Should the competitor fail to continuously provide service for a period of six (6) months, the Grantor has the right to implement this Agreement with its original terms upon one hundred twenty (120) days' notice to Grantee.

2.6 <u>Police Powers</u>

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor. Nothing in this Section shall be deemed a waiver by Grantee or the Grantor of the rights of Grantee or the Grantor under applicable law.

2.7 Relations to Other Provisions of Law

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Agreement and any ordinance of general application that directly affects or changes the material terms or obligations of Grantee under the Franchise Agreement, the Franchise Agreement shall govern. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising in contract or at law. The Franchise issued, and the Franchise fee paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

2.8 Effect of Acceptance

By accepting the Franchise the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fees

(A) As compensation for the benefits and privileges granted under this Agreement, and in consideration of permission to use Public Rights of Way, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise fees shall commence as of the Effective Date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

(B) In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

3.2 Payments

Grantee's Franchise fee payments to Grantor shall be computed quarterly. Each quarterly payment shall be due and delivered to Grantor no later than forty-five (45) days after the last day of the preceding quarter.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to Grantor, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 Audit/Reviews

No more frequently than every twenty-four (24) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit or review of Grantee's Records reasonably related to the administration or enforcement of this Agreement. The Grantor may hire an independent third party to audit or review the Grantee's financial Records, in which case the Grantee shall provide all necessary Records to the third party. All such Records shall be made available in the local offices of the Grantee or provided in electronic format fully compatible with Grantor's software. If the audit or review shows that Franchise fees have been underpaid by five percent (5%) or more, Grantee shall reimburse Grantor the reasonable cost of the audit or review up to twenty thousand dollars ($20,000) within thirty (30) days of the Grantor's written demand for same. Records for audit/review purposes shall include without limitation:

(A) Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to and/or included in the determination of Franchise fees, revenues or expenses related thereto.

(B) Source documents that completely explain any and all calculations related to any allocation of any amounts involving Franchise fees, revenues, or expenses related thereto.

(C) Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, and/or support and/or correlate to any accounts involving Franchise fees, revenues or expenses related thereto.

3.6 Interest on Late Payments

Payments not received within forty-five (45) days from the quarter ending date or are underpaid shall be assessed interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

3.7 Additional Commitments Beyond Franchise Fees

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees to Grantor in accordance with applicable law. The total value of Franchise fee cash payments and additional commitments set forth elsewhere in this Franchise may not total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period. In such case, and subject to applicable law, Grantor may, in its sole discretion, elect to (1) discontinue requiring Grantee to provide the additional commitment, (2) pay directly to Grantee the current municipal pricing sheet rate value of the commitment consistent with Section 12.3 of this Agreement; or (3) continue the additional commitment subject to fee offset from franchise fees consistent with Section 12.3 of this Agreement.

3.8 Costs of Publication

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor or applicable law.

3.9 Tax Liability

Payment of the Franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

3.10 Payment on Termination

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues (as defined herein) received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a performance bond or other security provided by the Grantee.

SECTION 4. – ADMINISTRATION AND REGULATION

4.1 Authority

Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

4.2 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status, or physical or mental disability, or geographic location in the Franchise Area to the extent required by applicable law.

4.3 Filing of Rates and Charges

Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement.

4.4 Time Limits Strictly Construed

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, as defined in Section 4.6, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

4.5 Mid-Term Performance Evaluation Session

4.5.1 Grantor may hold up to three performance evaluation sessions during the term of this Agreement. Grantor shall conduct any such evaluation session.

4.5.2 Evaluation session shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

4.5.3 Evaluation session shall deal with the Grantee's performance of the terms and conditions of this Agreement and compliance with state and federal laws and regulations.

4.5.4 As part of the performance evaluation session, Grantee shall submit to the Grantor a facilities survey, report, or map, in a format mutually acceptable to Grantor and Grantee, which includes a description of the portions of the Franchise Area that are served by Grantee and indicating with particularity where Grantee is providing both Cable Services and non-Cable services. Such report shall also include with particularity the number of cable miles, and the location of all overhead and underground equipment and facilities. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.

4.5.5 During an evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation subject to Section 7.2.

4.6 Force Majeure

For the purposes of interpreting the requirements in this Agreement, Force Majeure shall mean: an event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, acts of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the control of Grantee to foresee or control.

4.7 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Insurance Requirements

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:

(1) Commercial General Liability: Two million dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two

million dollar ($2,000,000) aggregate limit; and one million dollar ($1,000,000) limit for broadcasters liability;

(2) Automobile Liability: One million dollar ($1,000,000) combined single limit per accident for bodily injury and property damage;

(3) Employer's Liability: Two million dollar ($2,000,000) limit; and

(4) Worker's compensation coverage as required by law.

(5) Property Loss: Fire insurance with coverage for extended perils on the franchise property used by Grantee in the conduct of franchise operations in an amount adequate to enable Grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

5.2 <u>Deductibles and Self-Insured Retentions</u>

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The Grantor, its officers, officials, employees, and duly authorized agents are to be named as additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;

(b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, and duly authorized agents shall be in excess of the Grantee's insurance and shall not contribute to it;

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made, or lawsuit is brought, except with respect to the limits of the insurer's liability; and

(d) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the Grantor.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A-".

(C) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting the insurance requirements of this agreement. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantor's ordinances and laws.

5.3 <u>Indemnification</u>

(A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee and its officers, employees, or duly authorized agents, and Grantee's contractors and their subcontractors, arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the act of the Grantor in granting the franchise; and provided further Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the negligence or willful negligence of Grantor. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

(1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;

(2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG

Access Channels or use of PEG funds by Grantor and/or DAP;

(3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and

(4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.

(B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

5.4 <u>Performance Bond</u>

(A) In addition to any other generally applicable bond or security fund obligations required by local ordinance, upon the Effective Date of this Agreement, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor, with good and sufficient surety approved by the Grantor, in the penal sum of One Hundred Thousand Dollars ($100,000.00), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Agreement. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the Grantee throughout the term of this Agreement.

(8) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the Grantor. The bond shall be subject to the approval of the Grantor or the Commission as to its adequacy under the requirements of this Section. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond

along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Grantor.

SECTION 6. CUSTOMER SERVICE

6.1 Grantee shall comply with the customer service standards set forth in 47 CFR Section 76.309 of the FCC's Rules and Regulations, as may be amended from time to time.

6.2 Emergency Broadcast. Grantee will comply with the Emergency Alert System (EAS) as provided under applicable FCC Regulations, the Oregon State EAS Plan and the local EAS plan, if any, that applies to Grantor.

6.3 ADA Accessible Equipment. Grantee shall comply with the Americans with Disabilities Act ("ADA"), any amendments thereto and any other applicable federal, state or local laws or regulations. Grantee shall notify Subscribers of the availability of ADA equipment and services and shall provide such equipment and services in accordance with federal and state laws.

6.4 Discriminatory Practices. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any other Persons on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee shall comply at all times with all other applicable federal, state or local laws, rules and regulations relating to non-discrimination.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

(A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and Records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and Records of Grantee, its Parent Corporations and Affiliates that are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's Records on the basis that Grantee's Records are under the control of any Parent Corporation, Affiliate or a third party. Grantor may, in writing, request copies of any such Records or books and for those books and Records not related to pending Subscriber complaints, Grantee shall provide such copies within ten (10) business days of the transmittal of such request. For those books and Records associated with an audit, Grantee shall provide said books and Records within thirty (30) calendar days of the transmittal of such request. One copy of all books and Records required under this Section shall be furnished to Grantor at sole expense of Grantee. If the requested books and Records not related to Subscriber complaints are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within seven (7) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or Records of Grantee are not kept in a local office and are not made available to Grantor upon written request as set forth above, and if Grantor determines that an examination of such books and records is necessary or appropriate to the performance of any of Grantor's duties under this agreement, then all reasonable travel expenses incurred by Grantor in making such examination shall be paid by Grantee. Grantor and Grantee may mutually agree in writing to waive or modify the schedule in individual cases where compliance with the schedule is infeasible due to circumstances beyond the control of Grantee.

(B) Grantee shall at all times maintain a full and complete set of plans, Records and "as built" maps showing the location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops, and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium consistent with Grantee's regular business practices. Grantee shall allow Grantor access and the right to view these plans, Records and maps within 5 business days of receiving notice from Grantor.

7.2 Confidentiality of Books and Records

Grantee acknowledges that information submitted to the Grantor is open to public inspection under the Oregon Public Records Law, ORS 192.311 through 192.478. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law. Grantee may identify certain information in its books and Records as confidential or proprietary. Grantee shall clearly and conspicuously stamp the word "Confidential" on each page of its books and Records that Grantee determines contains confidential or proprietary information prior to submitting such information to the Grantor. Grantee shall also provide a brief written explanation as to why such information is confidential under state or federal law. Grantor shall treat any information so identified as confidential until Grantor receives a request for disclosure of such information and Grantor makes a determination that such information is disclosable in accordance with applicable laws. Grantor will make reasonable efforts to provide Grantee with not less than five (5) days' advance notice of any request for information identified as confidential. If Grantor believes it must release any such confidential books and Records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, and where Grantor determines that any such record is not subject to public disclosure, it shall deny access to any of Grantee's books and Records marked confidential as set forth above to any Person. Grantor shall retain sole discretion to determine whether to release any information identified as confidential by Grantee, in accordance with applicable laws.

7.3 Copies of Federal and State Documents

Upon thirty (30) days of a request by Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its Parent Corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the

Franchise Area. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

7.4 Complaint File and Reports

Grantee shall keep an accurate and comprehensive Record of any and all complaints regarding the operation and performance of the Cable System within the Franchise Area, and that require a service call, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those Records shall be retained for three (3) years and remain available to Grantor during normal business hours.

7.5 Inspection of Facilities

Grantor may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement at any time upon at least twenty-four (24) hours' notice, or, in case of an emergency, upon demand without prior notice.

7.6 False Statements

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise. Grantor shall have the right to determine the severity of the violation based upon the report in question.

7.7 Report Expense

All reports and Records required under this or any other Section shall be furnished, without cost, to Grantor.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

(A) Grantee's Cable System shall provide the widest diversity of Programming possible. Grantee shall provide at least the following broad categories of Programming to the extent such categories are reasonably available:

(1) Educational Programming.

(2) Sports.

(3) General entertainment (including movies).

(4) Children/family oriented.

(5) Arts, culture and performing arts.

(6) Foreign language.

(7) Science/documentary.

(8) Weather information.

(9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and

(10) National, state, and local government affairs.

(B) Grantee shall not delete any broad category of Programming within its control.

8.2 Parental Control Devices

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.3 Leased Access Channels

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

8.4 Continuity of Service

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of Section 4.6 of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 Management and Control of Access Channels

(A) Grantor may authorize a DAP to control and manage the use of any and all Access Centers provided by Grantee under this Agreement, including, without limitation, the operation of Access Channels. To the extent of such designation by Grantor, as between the DAP and Grantee, the DAP(s) shall have sole and exclusive responsibility for operating and managing such Access Centers. The

Grantor or its designee may formulate rules for the operation of the Public Access Channels, consistent with this Agreement; such rules shall not be designed to control the content of Public Access Programming except as necessary to ensure compliance with state or federal laws and regulations. Nothing herein shall prohibit the Grantor from authorizing itself to be a DAP.

(B) Grantee shall cooperate with Grantor and DAPs in the use of the Cable System and Access Centers for the provision of PEG Access.

(C) All Subscribers shall receive the PEG channels without additional charges for the service orequipment regardless of the tier of service they subscribe to.

(D) Except as provided in this Agreement, the Grantor shall allocate Access resources to DAPs only.

(E) The Grantee shall, at Grantee's expense, continue to provide current connections, including all necessary terminal equipment for the transmission, of all PEG Access Channels required in this Agreement to and from the Grantee's Headend and the DAP headend as of the Effective Date of this Agreement. If the Grantor designates new Access providers, or if a current DAP moves its site or location at its own instigation after the Effective Date of this Agreement, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the PEG capital fee under Section 9 of this Agreement. Neither Grantor nor Grantee waives any rights under applicable federal law regarding the provision of PEG channels, as set forth in this Agreement.

9.2 Channel Capacity and Use

(A) Upon the Effective Date of this Agreement, all Access Channels provided for herein are administered by the Grantor or a DAP.

(1) Existing Access Channels: Grantee shall provide two (2) standard definition ("SD") Downstream Channels of Public, Educational, and Governmental Access Programming, for distribution on Grantee's Basic Service tier. Grantee does not relinquish its ownership of or ultimate right of control over Cable System capacity. The Channel positions designated for PEG Access use shall be maintained for the duration of this Agreement, subject to Section 9.6 in this Agreement.

(2) Throughout the term of this Agreement, Grantee shall, at Grantee's expense subject to Section 3.7, provide and maintain existing Fiber Upstream links to enable character generated, pre-recorded, and live cablecasts between the Origination Points provided pursuant to Section 9.8 and any DAP headend facility to enable the distribution of PEG Access Programming to Subscribers on PEG Channels.

"Locally Produced" means programming produced in Marion

County or produced specifically for Grantor; and "Original Programming" means Programming in its initial cablecast on the Cable System or in its first or second repeat; and

"Locally Scheduled" means that the scheduling, selection, and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the DAP or, with respect to programming received over the interconnection, the provider transmitting the programming over the interconnection. However, carriage on any Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as part of its Cable Services shall not be considered "Locally Scheduled."

(3) If at any time during the term of this agreement Grantee's Basic Service Tier is no longer available to Subscribers, Grantee shall make reasonable effort to make every Access Channel required under this Section 9 available to every Subscriber in the Franchise Area, without additional charge of any kind.

9.3 Standard Definition Channels

Grantee shall carry all components of the SD Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The DAP shall be responsible for providing the Access Channel Signal in an SD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for costs associated with the transport and distribution of the SD Access Channel on its side of the Demarcation point.

9.4 High Definition Channels

(A) Upon the Effective Date of this Agreement and within one hundred twenty (120) days following written notice by the Grantor, Grantee shall activate one (1) of the existing Access Channels, as designated by the Grantor, in high definition ("HD") format and simultaneously carry that SD Access Channel Signal provided under Section 9.2.

(B) Grantee shall carry all components of the HD format Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The DAP shall be responsible for the costs associated with providing the Access Channel Signal in an HD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for actual costs associated with the transport and distribution of the HD Access Channel on its side of the Demarcation point, except that Grantee may offset its actual costs against the PEG capital fee in Section 12 for the one-time purchase of network equipment associated with the provision of HD PEG Programming.

(C) Grantee shall have no more than one hundred twenty (120) days from the date of the written notices in this Section 9.4 to fully activate the Access Channel from the DAP to Subscribers in the HD format. Grantee shall verify HD Channel Signal delivery to Subscribers with the DAP. Upon request, Grantor shall provide documentation to confirm that the criteria set forth above has been met.

(D) The Grantor acknowledges that receipt of HD format Access Channel may require Subscribers to buy or lease special equipment or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 9.4.

9.5 Quality of SD and HD Access Channel Signals.

The Grantee shall not unreasonably discriminate against SD and HD Access Channels with respect to accessibility, functionality and to the application of any applicable FCC Rules and Regulations, including without limitation Subpart K Channel Signal standards. With respect to Signal quality, Grantee shall not be required to carry an Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall distribute the Access Channel Signal without degradation. There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD Signals so long as the requirements of this Agreement are otherwise met. Grantee may implement HD carriage of PEG Access Channels in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a Signal quality for the Subscriber that is reasonably comparable and functionally equivalent to similar commercial HD Channels carried on the Cable System. In the event the Grantor believes and provides evidence that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner. Disputes under this Section 9.5 shall be addressed through the Franchise enforcement procedures set forth in Section 13. Upon reasonable written request by a DAP, Grantee shall verify that Access Channel Signal delivery to Subscribers is consistent with the requirements of this Section 9.5.

9.6 Relocation of Access Channels

Grantee shall make all reasonable efforts to coordinate the cablecasting of all Programming on the Cable System on the same Channel designations as such Programming is currently cablecast in the Franchise Area as set forth in Section 9.2 herein. If at any time during the duration of this Agreement, the parties agree to a reassignment of the location of an Access Channel on its Cable System, Grantee shall provide at least sixty (60) days advance written notice to the Grantor and the DAP(s) prior to the actual date of such Channel relocation. Grantee shall make best efforts in the event of Channel relocation, to place the Access Channels within reasonable proximity from the Channel location for network affiliate. Grantee shall also assign the HD PEG Access Channel a number near the other HD local broadcast stations if such Channel positions are not already taken, or if that is not possible, near HD news/public affairs Programming Channels if such Channel positions are not already taken, or if not possible, as reasonably close as available Channel numbering will allow. Grantee shall ensure that Subscribers are notified of such reassignment in accordance with the notice requirements in

Section 6 that include its customer messaging function, for at least fifteen (15) days prior to the change and fifteen (15) days after the change.

9.7 Access Interconnections

The Grantee shall, subject to any rights under federal law, maintain for the duration of this Agreement any and all existing Interconnections of Access Channels with contiguous Cable Systems owned by the Grantee as of the Effective Date of this Agreement, in order to receive from and deliver to the DAP's headend, via the Grantee's Headend, all the Access Channels required by this Agreement and originating by the Grantor or its designee.

9.8 Origination Points

(A) The existing Origination Points listed in Attachment "A" will remain available, at the expense of Grantee, for use by the DAP to enable the distribution of PEG Access Programming on the Cable System during the term of this Agreement.

(8) Additional permanent Origination Points requested by the Grantor or DAP in writing shall be provided by Grantee as soon as reasonably possible at the expense of Grantor or DAP. Such costs may be paid for from the PEG capital fee in Section 14.

(C) There shall be no charge to the Grantor, to any other DAP, or to any other Person for the use of the Upstream Capacity from the program origination locations described in this Section, subject to Grantee’s rights under federal law and Section 3.7, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

9.9 Changes in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's Signal delivery technology, which directly or indirectly affects the Signal quality or transmission of Access services or Programming or requires Grantor to obtain new equipment in order to be compatible with such change for purposes of transport of and delivery of any Access Channels (SD or HD), Grantee shall, at its own expense and free of charge to Grantor and DAP, take necessary technical steps or provide necessary technical assistance, including the purchase or acquisition and maintenance of all necessary equipment, and training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

9.10 Technical Quality

The Grantee shall maintain all Upstream and Downstream Access services, Programming and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including transmitters/receivers, associated cable and equipment in use upon the Effective Date of this Agreement, necessary to carry a quality Signal to and from Demarcation at Grantor's or DAP's facilities.

9.11 PEG Access Program Listings on Cable System's Digital Channel Guide

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will not restrict Grantor or the DAP from making arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Grantor or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service. The cost for this service may be funded by the PEG capital fee as set forth in Section 14.

SECTION 10. GENERAL STREET USE AND CONSTRUCTION

10.1 Construction

(A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction and maintenance necessary for the operation of its Cable System to provide Cable Services. All construction and maintenance of any and all facilities within the Public Rights of Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Except as permitted in Section 10.1(D), prior to performing any construction or maintenance in the Public Rights of Way, Grantee shall apply for, and obtain, all necessary permits. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits and give appropriate notices to any other Cable Operators, licensees or permittees of the Grantor, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.

(B) All construction shall be performed in compliance with this Agreement, all applicable Grantor ordinances and codes, and any permit issued by the Grantor. When obtaining a permit, Grantee shall inquire in writing about other construction projects currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, Cable Operators, and permittees so as to reduce as far as possible the number of Street cuts.

(C) Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area as it shall find necessary to ensure compliance with the terms of this Agreement, other pertinent provisions of law, and any permit issued by the Grantor.

(D) In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs and shall apply for appropriate permits as soon as reasonably practicable but in no event later than forty-eight (48) hours after discovery of the emergency. Grantee shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permit or license fees.

(E) Whenever possible, to avoid additional wear and tear on the Public Rights of Way, Grantee shall utilize existing poles and conduit. Grantee may charge for use of the conduit consistent with all applicable laws. Notwithstanding the foregoing, this Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Grantor or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Grantor upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

10.2 Location of Facilities

Grantee shall comply with the requirements of Oregon Utility Notification Center ORS 757.542-757.562 and ORS 757.993 (penalty for violation of utility excavation notification provisions), and applicable rules and regulations promulgated thereunder in OAR Chapter 952 relating to Oregon Utility Notification Center.

10.3 Relocation

(A) Relocation for Grantor.

(1) Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Public Rights of Way by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority, or where the Franchising Authority determines it is in the public interest, and the expense thereof shall be paid by Grantee (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party). Grantee shall not be required to pay for the relocation of Cable System facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, provided that the original location of the particular Cable System facilities were approved by Grantor through the permitting process. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may affect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Public Rights of Way, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights of Way.

(2) If public funds, other than the funds of Grantor, including passed-through funds, are available to any Person using such Public Rights of Way for the purpose of defraying the cost of any of the relocation of facilities as provided under this Section, Grantee shall be afforded equal treatment

subject to applicable law and regulations.

(B) Relocation by Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the Public Right of Way or on any other property of the Grantor in the case of fire, disaster, or other emergency, provided that Grantor shall be responsible for any damage to Grantee's facilities as a result of Grantor's negligence or gross negligence in performing work under this Section. The Grantor shall attempt to provide notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action.

(C) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action regarding the necessary changes requested by the responsible entity. Grantee and such other Franchise holder shall determine how costs associated with the removal or relocation required herein shall be allocated. Grantee shall not be required to act under this Section 10.3(C) until Grantee and the Franchise holder have determined how costs associated with relocation under this section will be paid between Grantee and the third-party Franchise holder.

(D) Movement for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require the permit holder to pay the full amount in advance.

10.4 Restoration of Public Rights of Way

Whenever Grantee excavates, damages or disturbs the surface of any Public Right of Way for any purpose, including but not limited to relocation or undergrounding as required in this Section, Grantee shall promptly restore the Public Right of Way to the satisfaction of the Grantor in accordance with applicable Grantor ordinances and codes and any permit issued by the Grantor. In the event there is no applicable ordinance, code or permit, Grantee shall promptly restore the Public Right of Way to at least its prior condition. Unless otherwise provided in any permit issued by Grantor, when any opening is made by Grantee in a hard surface affected by the excavation in accordance with applicable regulations of the Grantor. Grantor may, after providing notice to Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, refill or repave any opening made by Grantee in the Public Rights of Way, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove and/or repair any work done by Grantee that, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. All excavations made by Grantee in the Public Rights of Way shall be properly safeguarded for the prevention of accidents. All of Grantee’s work under this Agreement, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor.

10.5 Maintenance and Workmanship

(A) Grantee's Cable System shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Public Rights of Way by, or under, Grantor's authority.

(B) Grantee shall maintain and use any equipment necessary to control and carry Grantee's cable television Signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and in a presentable condition.

10.6 Reservation of Grantor in Public Rights of Way

Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers, grading, paving, repairing or altering any Public Right of Way; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable Systems interferes with the construction or repair of any Public Right of Way or public improvement, including construction, repair or removal of a sewer or water main or any other public work, Grantee's Cable System shall be removed or replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by Grantor's written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay.

10.7 Use of Conduits by Grantor

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights of Way and other public places without charge to Grantor if such installation by Grantor results in no additional cost to Grantee, and to the extent space therein or thereon is reasonably available and feasible without compromising the integrity of the Cable System or facility, and pursuant to all applicable ordinances and codes. For the purposes of this Section 10.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes or provision of services in competition with Grantee. Grantor may, consistent with Section 3.7, elect to pay the mutually-agreed fair market value for the use of Grantee's facilities, and authorize Grantee to deduct the mutually-agreed upon fair market value from its Franchise fees payable to Grantor, or discontinue use the of Grantee's facilities. This provision applies only to the extent that such payment, deduction or discontinuation of use is required under federal law.

10.8 Public Rights of Way Vacation

If any Public Right of Way or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Public Right of Way, Grantee shall, without delay or expense to Grantor, remove its facilities from such Public Right of Way, and restore, repair or reconstruct the Public Right of Way where such removal has occurred, and place the Public Right of Way in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Public Right of Way, Grantor may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Grantor, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

10.9 Discontinuing Use of Facilities

Whenever Grantee intends to discontinue using any facility within the Public Rights of Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Public Rights of Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Rights of Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

10.10 Hazardous Substances

A. Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Public Rights of Way.

B. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Public Rights of Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

C. Grantee agrees to forever indemnify the Grantor, its officers, boards, commissions, duly authorized agents, and employees, from and against any claims, costs and expenses of any kind, pursuant to and in accordance with applicable State or federal laws, rules and regulations, for the removal or remediation of any leaks, spills, contamination or residues of hazardous substances attributable to Grantee’s Cable System in the Public Rights of Way.

10.11 Undergrounding of Cable

(A) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines at no additional expense to the Grantor or Subscribers, to the extent permitted by law and applicable safety codes. Cable must be installed underground where: (1) all existing utility lines are placed underground, or (2) all overhead utility lines in a given area are placed underground as part of a public project.

(B) Related Cable System equipment such as pedestals must be placed in accordance with applicable code requirements and underground utility rules; provided, however, nothing in this Agreement shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, pedestals, power supplies, or other related equipment. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.

(C) For purposes of this Section, “utility lines” and “utility wiring” does not include high voltage electric lines.

10.12 Tree Trimming

Subject to acquiring prior written permission of the Grantor, including any required permits, the Grantee shall have the authority to trim trees that overhang a Public Right of Way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

10.13 Construction, Building and Zoning Codes

Grantee shall strictly adhere to all applicable construction, building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

10.14 Standards

A. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with applicable provisions of the National Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

B. Grantee shall ensure that individual Cable System drops are properly bonded to the electrical power ground at the home at time of installation, and are consistent, in all respects, with applicable provisions of the National Electrical Code and the National Electrical Safety Code.

10.15 New Developments

Grantor agrees, to the extent consistent with applicable law, to require that any developer (A) give the Grantee at least ten (10) days advance written notice of the availability of any open trench, and (B) provide Grantee with reasonable access to the open trench. Notwithstanding the foregoing, Grantee shall not be required to utilize any open trench nor shall failure of any developer to contact Grantee under this section be considered a violation of this Agreement.

SECTION 11 - SYSTEM DESIGN AND STANDARDS

11.1 Subscriber Network

(A) As of the Effective Date of this Agreement, the Cable System utilizes a Fiber to the node architecture serving no more than fifteen hundred (1,500) Subscribers per node. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture as demand requires.

(B) Grantee's Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

11.2 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), technical standards, as they may be amended from time to time, regardless of the transmission technology utilized.

11.3 Test and Compliance Procedures

(D) Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.

(E) As required by 47 C.F.R. § 76, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee may, upon request from Grantor, provide Grantor summary written reports of the results of such tests.

SECTION 12 - SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

12.1 Equivalent Service

Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

12.2 Service Availability

A. Service to New Subdivisions. Grantee shall provide Cable Service in new subdivisions provided that at least ten (10) residences within that subdivision are within 1320 cable bearing strand feet from Grantee's nearest trunk or distribution cable as outlined under Section 12.2(c), upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.

B. Grantee shall provide such service:

1. With no line extension charge except as specifically authorized elsewhere in this Agreement.

2. At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor; and at nondiscriminatory monthly rates for residential Subscribers, subject to federal law.

C. Required Extensions of Service. Whenever the Grantee shall receive a request for service from at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such potential Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers within ninety (90) days, provided that such extension is technically and financially feasible, and if it will not adversely affect the operation of the Cable System.

D. Customer Charges for Extensions of Service. No potential Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a potential Subscriber's request to locate a cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to such Subscriber, or a density of less than ten (10) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and potential Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1320) cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscriber be paid in advance.

E. Enforcement. Failure to meet these standards shall subject Grantee to enforcement actions in Section 13.

12.3 Connection of Public Facilities

a. The parties agree that under the FCC Section 621 Order, complimentary accounts are not a condition of the renewed franchise. Grantee will itemize pricing for all former complimentary service locations (attached hereto as Attachment A), at rates consistent with applicable law – at the time of this writing, defined as "marginal cost", and shall be subject to applicable fees and taxes and Grantee's regular, nondiscriminatory rate adjustments.

b. Should Grantee no longer provide Complimentary Service to a location or locations, then Grantor or former Complimentary Service recipients have the right to choose to retain those previously complimentary Cable Services at the rates described in 12.3(a) above. Schools and Libraries will not be included as Complimentary Service recipients. Grantee will disclose in writing the amount due and shall arrange with Grantor for direct invoicing or other payment options as permitted under applicable law. Charges may include those for services and equipment, if any, at each location. Grantor also has the option to terminate Cable Service to a given Location identified in Attachment A, at any given time.

SECTION 13 - FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

13.1 Procedure for Remedying Franchise Violations

A. If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

B. The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) calendar days to do one of the following:

i. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (E) below, or;

ii. Cure the violation, or;

iii. Notify Grantor that Grantee cannot cure the violation within the thirty (30) calendar days and notify the Grantor in writing of what steps the Grantee shall take to cure the violation, including the Grantee's projected completion date for such cure. At Grantor's sole discretion, Grantor may allow Grantee up to an additional sixty (60) calendar days to cure the violation or Grantor may set a hearing before its hearing officer in accordance with subsection (C) below. If Grantor allows for an additional period of time for Grantee to cure the violation and Grantee does not cure the violation within the extended period of time, then Grantor shall set a hearing before its Hearing Officer in accordance with subsection (C) below;

iv. Notify Grantor, in writing that Grantee concurs with Grantor's assertion that a violation has occurred but contesting Grantor's preferred remedy and request a hearing before Grantor's hearing officer in accordance with subsection (E) below.

C. If, pursuant to the provisions of subsection B above, a hearing is to be set before the Grantor's hearing officer, the hearing shall be conducted in front of city council with the hearing officer present. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the hearings officer shall impose remedies as set forth in subsection (G) below.

D. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (C), the Grantor shall impose remedies as set forth in subsection (G) below.

E. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, or concurs that a violation has occurred but contests Grantor's preferred remedy and requests a hearing in accordance with subsection (B) above, then the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied. If the hearings officer determines that a violation has occurred or Grantee concurs that a violation has occurred and is only contesting Grantor's preferred remedy, then the hearings officer shall determine remedial options as set forth in subsection (G) below.

F. In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject and may provide additional hearing procedures as Grantor deems appropriate.

G. If, after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:

1. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;

2. Recommend revocation of this Agreement, and/or;

3. Pursue any other legal or equitable remedy available under this Agreement or any applicable law.

H. The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.

I. Grantor may institute any appropriate suit or legal action in a court of competent jurisdiction to enforce the decision or order of the hearings officer, and, notwithstanding any determination by the hearings officer, may pursue any legal or equitable remedy available under this Agreement or any applicable law.

J. Grantor's failure to pursue a remedy under this section for Grantee's violation of this Agreement shall not constitute consent to any subsequent breach of the Agreement or a waiver of Grantor's ability to seek a remedy for any violation of this Agreement.

K. Nothing in this section shall be interpreted as limiting the ability of the Grantor and Grantee to agree that a violation of this Agreement has occurred and to the appropriated remedy.

L. Nothing in this Section shall be construed as limiting Grantor's ability to seek, in a court of competent jurisdiction, injunctive relief or any remedy which would be impacted by allowing the cure period set out in subsection (B) above or any other procedure in this section.

13.2 **<u>Revocation</u>**

A. Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 13.1, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

B. At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

C. Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority consistent with applicable law. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.

D. Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

13.3 Relationship of Remedies

A. Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed except as otherwise provided in Section 13. By way of example and not limitation, the collection of fees in association with default or revocation proceedings by Grantor shall in no respect affect:

1. Refunds or credits owed to Subscribers; or

2. Grantee's obligation to comply with the provisions of this Agreement or applicable law.

B. No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's performance bond, or the recovery of amounts under the insurance, indemnity or penalty provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for equitable remedies or otherwise; or an excuse of faithful performance by Grantee.

13.4 Removal

A. In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Rights of Way use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights of Way, public places and private property in at least as good a condition as that prevailing prior to Grantee's removal of its equipment. However, Grantee shall not be required to remove the facility if the facility is used to provide non-Cable services not regulated under this Agreement, and Grantee has appropriate authority from Grantor.

B. If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs and Grantor may recover the costs through the Performance Bond provided by Grantee.

13.5 Receivership and Foreclosure

Grantor and Grantee acknowledge that the following paragraphs may not be applicable or are subject to the jurisdiction of the bankruptcy court.

A. At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

1. The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment, or;

2. The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

B. If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

1. Grantor has approved the transfer of this Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and

2. The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

13.6 No Recourse Against Grantor

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.

13.7 Nonenforcement By Grantor

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

SECTION 14 – PEG ACCESS GRANT FUND

Grantee shall support the continued viability of Public, Educational and Government (PEG) Programming, through the following funding:

14.1 Fund Payments

During the term of this Agreement, Grantee agrees to collect and pay Grantor an amount equal to Seventy Five cents ($0.75) per month, per Subscriber for all lawful purposes related to Public, Educational and Government Access Programming, which funds shall be used in accordance with applicable law. Nothing in this Section 14 shall be viewed as a waiver of Grantor's rights to use the funds provided to Grantor in this Section for any lawful purpose permitted under applicable federal law. The Grantor acknowledges that Grantee may pass through and include such payment on the bills of residential Subscribers. Grantee shall make such payments quarterly following the Effective Date of this Agreement. Each payment shall be due and payable no later than forty-five (45) days after the end of each quarter.

14.2 Annual PEG Fee Report

(A) Grantor shall provide a report annually to the Grantee on the use of the funds provided to the Grantor under this Section. Reports shall be submitted to the Grantee within one hundred twenty (120) days of the close of Grantor's fiscal year.

(B) Grantee may reasonably review records of the Grantor and the DAP related to the use of funds in such reports to confirm that funds are used in accordance with federal law and this Agreement. Grantee will notify the Grantor in writing at least thirty (30) days prior to the date of such a review and identify the relevant financial records of Grantor and the DAP that Grantee wants to review. The time period of the review shall be for the fund payments received no more than thirty-six (36) months prior to the date the Grantee notifies Grantor of its intent to perform a review. The Grantor shall make such records available for inspection and copying during normal business hours at the office of the Grantor or the DAP.

14.3 PEG Access Fees

Grantee agrees that financial support for PEG Access, and all other Grantee PEG obligations set forth in this Agreement, may or may not modify or otherwise affect Grantee's obligations to pay

Franchise fees to Grantor under federal law. Grantee agrees that although the sum of Franchise fee and the PEG Support payments set forth in this Section 14 may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset, discontinued or otherwise credited against any past, present or future Franchise fee payments under this Agreement unless federal law mandates such offset, discontinuance or other such credit. As a result, neither party waives any rights under applicable federal law regarding the provision of PEG channels and fees, as set forth in this Agreement. To the extent federal law mandates, such offset, discontinuance or other such credit, then Grantor may elect how to compensate Grantee through fee offset, payment at Grantee's Government Rate Card rate, or discontinuance of PEG to the extent permitted under federal law. Grantor shall provide the Grantee with ninety (90) days' prior written notice of its choice if it is required to make such a decision.

SECTION 15 - ABANDONMENT

15.1 Effect of Abandonment

If the Grantee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until this Agreement is revoked and a new grantee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses and damages incurred.

15.2 What Constitutes Abandonment

(A) The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:

(1) The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.7; or

(2) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

SECTION 16 - FRANCHISE RENEWAL AND TRANSFER

16.1 Renewal

A. The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

B. Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

16.2 <u>Transfer of Ownership or Control</u>

A. The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.

B. The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of fifty-one percent (51%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a fifty-one percent (51%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to cancellation unless and until the Grantor shall have consented thereto.

C. The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.

D. The Grantor shall render a final written decision on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.

F. In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.

G. The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.

H. Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 17 - MISCELLANEOUS PROVISIONS

(A) Severability

If any Section, subsection, paragraph, term, or provision of this Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term, or provision directly involved in the controversy in which such holding shall have been rendered, and shall not in any way affect the validity of any other Section, subsection, paragraph, term, or provision hereof. Under such a circumstance the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to this Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days, either party may (1) seek appropriate legal remedies to amend this Agreement, or (2) shorten this Agreement to thirty-six (36) months, at which point either party may invoke the renewal procedures under 47 U.S.C. § 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

(B) Preemption

In the event that federal or state laws, rules, regulations or judicial determinations affecting the application of any provision of this Agreement preempt a provision of this Agreement or limit its enforceability, then the provision shall be read to be preempted to the extent and for the time, and only to the extent and for the time, as required by law. In the event that federal or state laws, rules, regulations or judicial determinations affecting the application of any provision of this Agreement is subsequently repealed, rescinded, amended, reversed or otherwise changed so that the affected provision preempted is no longer preempted, such provision shall return to full force and effect, and shall thereafter be binding on the parties to this

Agreement without the requirement of further action on the part of either party.

(C) <u>Preservation of Benefits</u>

If the terms of this Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of Grantee and Grantor and preserves the benefits bargained for by each party.

(D) <u>Preferential or Discriminatory Practices Prohibited</u>

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

(E) <u>Dispute Resolution</u>

(1) The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the Grantor and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.

(2) If the parties are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

(F) <u>Notices</u>

(1) Throughout the term of this Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such addresses shall be:

Comcast of Oregon, II, Inc.
Attn: Government Affairs
9605 SW Nimbus Ave
Beaverton, OR 97008
with copy to:

Attn: West Division/Government Affairs
15815 25th Ave West
Lynnwood, WA 98087

(2) All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such address shall be:

City of Keizer
Attn: City Attorney
930 Chemawa Rd NE
Keizer, OR 97303

(G) Binding Effect

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

(H) Authority to Amend

This Agreement may be amended at any time by written agreement between the parties.

(I) Governing Law

This Agreement shall be governed in all respects by the laws of the State of Oregon.

(J) Captions

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

(K) Entire Agreement

This Agreement, together with all appendices and attachments, contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

(L) Effective Date

The Effective Date of this Agreement shall be November 1 2021.

Agreed to this ________day of November, 2021

COMCAST OF OREGON II, INC.	CITY OF KEIZER
By: ___________________________	By: _______________________________
___________________________	Cathy Clark
As Its:	As Its: Mayor

Attachment A

Listing of Current Origination Points

Keizer City Hall – 930 Chemawa Road NE
Keizer Public Works Building/Shop – 641 Chemawa Road NE
Keizer Fire District Station – 661 Chemawa Road NE
Chemawa Pump Station – 641 Chemawa Road NE
Willamette Manor Pump Station – 3868 5th Ave N
Burnside Pump Station – 4335 Shoreline Dr. N
Toni Pump Station – 4220 Toni Ave N
Cherry Ave Pump Station – 4110 Cherry Ave N
McNary Pump Station – 610 Lockhaven Dr NE
Carlhaven West Pump Station – 950 Brandon Ave NE
Carlhaven East Pump Station – 1150 Brandon Ave NE
Weissner Ave Pump Station – 2005 Weissner Dr NE
Delta Pump Station – 939 Delta Dr NE
13th Ave Pump Station – 6250 13th Ave NE
17th Ave Pump Station – 6288 17th Ave NE
Lauderback Pump Station – 6180 Lauderback Ave NE
Meadows Pump Station – 7177 River Rd NE

CITY COUNCIL MEETING: November 1, 2021

AGENDA ITEM NUMBER:________________

TO: **MAYOR CLARK AND CITY COUNCIL MEMBERS**

THROUGH: **WES HARE**
CITY MANAGER

FROM: **BILL LAWYER**
PUBLIC WORKS DIRECTOR

SUBJECT: **ESTABLISHING A NO PARKING ZONE ON JUEDES AVENUE N**

DATE: **October 15th, 2021**

BACKGROUND:

Staff responded to a report of a downed No Parking sign on Juedes Ave. N and discovered while determining the proper location for the sign that this No Parking zone may not have been approved by the City Council.

The No Parking area is located across from the Wells Fargo Bank on the south side of Juedes Avenue N and extends from the intersection of River Road to the west approximately 150 feet, as shown in the attached exhibit.

Staff believes it is appropriate for this area to be a No Parking zone because there is room for vehicles to park “head in” which would require them to back onto Juedes Avenue creating safety concerns for vehicles turning from River Road onto Juedes Avenue.

This No Parking Zone has been delineated with signs at each end of the zone and staff believes this is the best option as there are no curbs on the south side of Juedes Avenue.

FISCAL IMPACT:

There is minimal to no fiscal impact with officially establishing a No Parking Zone at this location.

RECOMMENDATION:

Staff recommends the City Council consider the matter and adopt the attached Order designating the No Parking Zone on Juedes Avenue N as indicated on the attached Exhibit.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

ORDER

DESIGNATING "NO PARKING" ZONES ON JUEDES AVENUE NORTH, KEIZER, OREGON

WHEREAS, the City Council of the City of Keizer has authority pursuant to state statute and Keizer Ordinance No. 2020-818 to establish "no parking" zones;

WHEREAS, staff was not able to locate a formal approval by the City Council of a no parking zone on the south side of Juedes Avenue North;

WHEREAS, staff believes parking on the south side of Juedes Avneue North creates a safety concern for vehicles turning rom River Road onto Juedes Avenue and recommends formalizing the no parking zone on the south side of Juedes Avenue North;

WHEREAS, the City Council has reviewed the matter and finds that it is appropriate to designate the south side of Juedes Avenue North as "no parking".

NOW, THEREFORE;

IT IS HEREBY ORDERED by the City Council of the City of Keizer that "no parking" zones are hereby established on the south side of Juedes Avenue North as indicated on the attached exhibit.

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

IT IS HEREBY FURTHER ORDERED that the costs associated with the "no parking" zone be paid from the Street Fund.

IT IS HEREBY FURTHER ORDERED that this Order shall take effect immediately upon its passage.

PASSED this ____________ day of ____________________, 2021.

SIGNED this ____________ day of ____________________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

Exhibit 1

Created: September 2021

CITY COUNCIL MEETING: November 1, 2021

AGENDA ITEM NUMBER:___________

TO: MAYOR CLARK AND COUNCIL MEMBERS

THROUGH: R. WES HARE, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

SUBJECT: LOCATION APPROVAL FOR PUBLIC ART SCULPTURE

In accordance with the Public Art Ordinance, the City Council determines the location of where sculptures would go and the Keizer Public Arts Commission (KPAC) chooses the sculptures for each location.

KPAC has been working with Ric Smith, the artist who created the art entitled "Iron Glory", the sculpture that was previously located at Copper Creek Mercantile. Mr. Smith replaced Iron Glory at the Copper Creek Mercantile with another creation in order to refurbish Iron Glory. When Mr. Smith completes his refurbishment, KPAC has determined that the location at the corner of Juedes and River Road would be appropriate for reinstallation. The property owner, Dr. Van Voorhies, has indicated that he would be willing to host Iron Glory.

KPAC requests that the City Council approve the location as shown on the attached drawing as a location for the placement of the public art. If Council authorizes this new location, KPAC intends to work toward entering into the appropriate agreements with the property owner as well as the artist to add another enjoyable addition to the growing body of Keizer's community art.

RECOMMENDATION:

Review the matter and if the Council deems it appropriate, make a minute motion approving the location at Juedes and River Road shown on the attached drawing for public art.

Please let me know if you have any questions. Thank you.

ESJ/tmh

Proposed Art Pad: Juedes Ave and River Rd

Created: October 2021

KEIZER SINCE 1982

CITY COUNCIL MEETING: November 1, 2021

AGENDA ITEM NUMBER: ________

TO: **MAYOR CLARK AND CITY COUNCIL MEMBERS**

THROUGH: **WES HARE**
INTERIM CITY MANAGER

FROM: **JOHN TEAGUE**
CHIEF OF POLICE

SUBJECT: **Authorization for Disposition of Police Service Dog**

ISSUE:

The City of Keizer Police Department has identified that K9 Buster is no longer suitable for police work due to age and the retirement of his handler, Eric Jefferson. K9 Buster was obtained in August 2012 as a two year old and has served the department and community well for the past nine years.

Keizer City Ordinance 90-167 allows for disposition of police service dogs.

RECOMMENDATION:

It is recommended that Council authorize Eric Jefferson to acquire K9 Buster for the sum of $1.00 and assume all responsibility for the dog including its maintenance, condition, and conduct.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2021-_____

AUTHORIZATION FOR DISPOSITION OF POLICE SERVICE DOG "BUSTER"

WHEREAS, the City of Keizer's Police K-9 dog, Buster, is no longer suitable for police work;

WHEREAS, the City of Keizer Police Department desires to retire Buster to his handler;

WHEREAS, Ordinance No. 90-167 provides to the disposition of police service dogs;

WHEREAS, the City Council desires to sell Buster to his handler for the sum of $1.00 and his handler, Officer Jefferson, desires to acquire Buster and agrees to assume all responsibility for Buster including maintenance, condition, and conduct;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the police service dog known as "Buster" shall be sold to Officer Jefferson for the sum of $1.00 upon the condition that Officer Jefferson obtain a license for Buster and agrees in writing to accept full future responsibility for Buster including Buster's maintenance, condition, and conduct.

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

BE IT FURTHER RESOLVED that Officer Jefferson shall further agree in writing that Buster will not be used in any way to generate income or profit for any person, including Officer Jefferson, other than profits from breeding.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon the date of its passage.

PASSED this __________ day of _________________, 2021.

SIGNED this __________ day of _________________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

COUNCIL MEETING: November 1, 2021

AGENDA ITEM NUMBER: ________

TO: MAYOR CLARK AND CITY COUNCIL MEMBERS

THRU: WES HARE
CITY MANAGER

THRU: JOHN TEAGUE
CHIEF OF POLICE

FROM: TREVOR WENNING
SUPPORT LIEUTENANT, POLICE DEPARTMENT

SUBJECT: 2021/22 KEIZER POLICE K9 VEHICLES

ISSUE:

The purchase of two Dodge Durango SXT AWD vehicles was initially authorized on purchase order number 2021-001 by Resolution No. R2021-3203. These vehicles are not pursuit rated and will not meet the needs of the police department.

The Keizer Police Department budgeted for the 2021/22 fiscal year, the replacement of two K9 police vehicles. Staff has determined that two 2021 Black Dodge Durango Pursuit AWD vehicles will meet the needs of the Police Department and they are available utilizing the State of Oregon purchasing contract number PA1651 with Withnell Motor Company. The cost of each vehicle is $34,062.52 for a total of $68,125.04.

RECOMMENDATION:

Adopt the attached Resolution amending Resolution No. R2021-3203.

Please contact me if you have questions.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2021-_____

AMENDING THE RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO PURCHASE TWO 2021 BLACK DODGE DURANGO SXT AWD VEHICLES FOR POLICE DEPARTMENT; **AMENDING RESOLUTION NO. R2021-3203**

WHEREAS, the City Council adopted Resolution No. R2021-3203 authorizing the Interim City Manager to purchase two 2021 Black Dodge Durango SXT AWD vehicles for the police department;

WHEREAS, it was discovered that the quoted price in Resolution No. R2021-3203 was not for pursuit rated vehicles and would not meet the needs of the police department;

WHEREAS, staff has obtained a new quote for pursuit rated vehicles;

WHEREAS, purchase of pursuit rated vehicles need additional authorization due to the difference in costs from the original estimate;

WHEREAS, the purchase price of the vehicles is included in the Keizer budgeted funds in the 2021-2022 Police Services Fee;

WHEREAS, the City has determined procurement through the Oregon Cooperative Procurement Program (ORCPP) provided the best price of $68,125.04 from Withnell Motor Company for pursuit rated vehicles;

WHEREAS, the City Council wishes to amend Resolution R2021-3203 to amend the purchase price from $55,306.10 to $68,125.04;

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that Resolution No. R2021-3203 is here by amended and authorizes the Interim City Manager is hereby authorized to purchase two 2021 Black Dodge Durango Pursuit AWD vehicles from Withnell Motor Company for a purchase price of $68,125.04 by issuing a new Purchase Order.

BE IT FURTHER RESOLVED that the Interim City Manager is authorized to take any and all necessary acts to effectuate the purchase of the vehicles.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon the date of its passage.

PASSED this __________ day of _________________, 2021.

SIGNED this __________ day of _________________, 2021.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

MINUTES
KEIZER CITY COUNCIL
Monday, October 4, 2021
Keizer Civic Center, Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Clark called the meeting to order at 7:00 pm. Roll call was taken as follows:

Present:	**Staff:**
Cathy Clark, Mayor	Shannon Johnson, City Attorney
Elizabeth Smith, Councilor	Tim Wood, Finance Director
Laura Reid, Councilor	Bill Lawyer, Public Works Director
Roland Herrera, Councilor	John Teague, Police Chief
Daniel Kohler, Councilor	Shane Witham, Planning Director
Kyle Juran, Councilor	Tracy Davis, City Recorder
Ross Day, Councilor	
Miranda Coleman, Youth Councilor	

FLAG SALUTE

Mayor Clark led the pledge of allegiance.

SPECIAL ORDERS OF BUSINESS

a. Oath of Office – Keizer Police Officer Nate Smith

Police Chief John Teague introduced Officer Nate Smith. City Attorney Shannon Johnson issued the Oath of Office. Officer Smith then introduced his family and friends.

b. PROCLAMATION

National Disability Employment Awareness Month

Mayor Clark read a Proclamation declaring the month of October as National Disability Employment Awareness Month.

COMMITTEE REPORTS

Lore Christopher, Keizer, reported on the new art on display in the Keizer Gallery, mural maintenance, the Iron Glory sculpture relocation, utility box art, approval of the Art Master Plan, roundabout art, mosaic art funding through grants, insta-art and sasquatch at Keizer Rapids Park and the dedication of the story poles.

Michael DeBlasi, Keizer, reported that Traffic Safety/Bikeways /Pedestrian Committee discussed using some of the ARPA funds for safety improvements, soliciting grants for project identification as a first step to getting funding for sidewalk improvements, flashing speed limit signs, the Monster Cookie ride, and remedies for traffic leaving the road at the Chemawa curve. Mr. DeBlasi also requested that the committee be allowed to be involved in the Verda Lane design discussion. Mayor Clark explained that the design has already been developed and is an ODOT driven project but the committee would likely be involved in the Wheatland Road corridor project. She also suggested that the committee consider working with property owners on Cummings to develop a design for safe pedestrian travel.

Bob Busch, Keizer, reported that the Keizer Points of Interest Committee had completed all their projects and had moved a motion to recommend Council dissolve the committee.

PUBLIC COMMENT

Councilor Day apologized for his actions at the recent work session noting that he meant no disrespect to staff or councilors.

Carma Rowel and Tim Dike, Keizer, questioned what the plan and timeline was for Area C of Keizer Station. Mayor Clark explained the general plan and indicated that staff would send them the Master Plan for the area. City Attorney Shannon Johnson explained that the City does not develop the property; that is up to the property owners.

No written comments.

PUBLIC HEARING

a. ORDINANCE - Amending the Process for the Formation of Public Improvement Reimbursement Districts; Declaring an Emergency; Amending Ordinance No. 2015-716; Repeal of Ordinance 2021-838

Mayor Clark opened the Public Hearing.

Mr. Johnson corrected a typographical error on page 3 of the ordinance, summarized his staff report and shared an objection letter received that day, but noted that the time to object was in 2015.

John Eld, Salem, with the developer, thanked everyone for their hard work and shared information about the reimbursement district timing, the amount of money owed by Mr. Batzer, details about distribution of costs and costs of improvements.

Jack Yarbrough, Keizer, voiced opposition to the interest portion of the reimbursement district and shared information about the difficulty of developing his parcel of land.

With no further testimony, Mayor Clark closed the public hearing.

<u>Councilor Smith moved that the Keizer City Council adopt a Bill for an Ordinance Amending the Process for the Formation of Public Improvement Reimbursement Districts; Declaring an Emergency; Amending Ordinance No. 2015-716; Repeal of Ordinance 2021-838 with the correction on page 3 of the Ordinance, line 4, changing ‘return *of* investment’ to ‘return *on* investment’. Councilor Reid seconded. Motion passed unanimously as follows</u>:

AYES: Clark, Reid, Herrera, Smith, Kohler, Day and Juran (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

RESOLUTION – Amending Resolution R2015-2630 (Forming the Keizer Station Area C Reimbursement District)

Councilor Smith moved that the Keizer City Council adopt a Resolution Amending Resolution R2015-2630 (Forming the Keizer Station Area C Reimbursement District). Councilor Reid seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Herrera, Smith, Kohler, Day and Juran (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

ADMINISTRATIVE ACTION

a. City Council Rules of Procedure

Mr. Johnson summarized his staff report. Mayor Clark directed attention to the memo in the packet which included a recommendation for a Council Work Session on this topic. A work session was scheduled for December 13.

CONSENT CALENDAR

a. RESOLUTION – Authorizing City Manager to Sign Contracts with Aramark
b. Approval of September 20, 2021 Regular Session Minutes

Item b was pulled.

Councilor Smith moved for approval of Item a of the Consent Calendar. Councilor Reid seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Herrera, Smith, Kohler, Day and Juran (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

Mayor Clark corrected spelling on page 4. Councilor Smith moved for approval of Item b of the Consent Calendar as corrected. Councilor Reid seconded. Motion passed as follows:

AYES: Clark, Reid, Herrera, Kohler, Day and Juran (6)
NAYS: None (0)
ABSTENTIONS: Smith (1)
ABSENT: None (0)

OTHER BUSINESS/ STAFF UPDATES

Chief Teague reported that Officer Jeremy Darst received a Life Saving award from Keizer Fire. He placed a tourniquet on the arm of a stabbing victim and did it so well that the doctors left it on until surgery. The victim kept his arm.

COUNCIL MEMBER REPORTS

Youth Councilor Coleman announced a community service event that would be taking place at Northview Park in conjunction with Homecoming weekend.

Councilor Kohler reported on meetings and events he had attended and announced upcoming ones.

Councilor Herrera recognized Marlena Martinez from Claggett Creek

Middle School to was selected to play in the 12U All-American games in Oklahoma, reported on meetings and events he had attended, commended the OSU soccer team and thanked Councilor Day for his apology.

Councilor Smith reviewed the top three responses from Department Heads related to what they felt was important in a City Manager and thanked them for participating.

Councilor Day will attend the Latino Business Alliance meeting for Councilor Reid. He reported on various football games and praised Keizer Florist for last-minute assistance and suggested that Arturo and Olga Gloria of Latinos in Action be added to the stakeholders list in the City Manager recruitment.

Mayor Clark reported on meetings and events she had attended and announced upcoming ones. She urged everyone to provide input at the on-line ODOT Public Participation Plan and shared the good news of additional grant funding received by the Homeless Alliance Youth Demonstration Program.

AGENDA INPUT

October 11, 2021, 6:00 p.m. – City Council Work Session
October 18, 2021, 7:00 p.m. – City Council Regular Session
October 25, 2021, 6:00 p.m. – Long Range Planning Task Force

- ARPA Funds

November 1, 2021, 7:00 p.m. - City Council Regular Session
November 8, 2021, 6:00 p.m. – Work Session – Parks Master Plan
December 13, 2021, 6:00 p.m. – Work Session – Council Rules & Procedures

ADJOURNMENT

Mayor Clark adjourned the meeting at 9:01 p.m.

MAYOR: APPROVED:

Cathy Clark	Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – Laura Reid	Councilor #4 – Roland Herrera
Councilor #2 – Ross Day	Councilor #5 – Elizabeth Smith
Councilor #3 – Kyle Juran	Councilor #6 – Daniel R. Kohler

Minutes approved:________________________

MINUTES
KEIZER CITY COUNCIL
WORK SESSION
Monday, October 11, 2021
Keizer, Oregon

CALL TO ORDER

Mayor Clark called the work session to order at 6:00 pm. Attendance was taken as follows:

Present:
Cathy Clark, Mayor
Laura Reid, Councilor
Elizabeth Smith, Councilor
Dan Kohler, Councilor (6:33)
Roland Herrera, Councilor
Ross Day, Councilor

Absent:
Kyle Juran, Councilor

Staff Present:
Wes Hare, Interim City Manager
Shannon Johnson, City Attorney
Tim Wood, Finance Director
Tracy Davis, City Recorder

DISCUSSION

a. Community Diversity Engagement Committee

Mayor Clark urged everyone to focus on the purpose and deliverables for this committee and reminded them that it would be an advisory committee to the Council like all the other City committees and part of its purpose would be to create opportunities for broader community conversations and celebrations that would help expand understanding.

Members of the Community Diversity Engagement Work Group shared their thoughts as follows:

Councilor Reid explained that the committee should include a variety of perspectives from a wide range of populations in order to make the best policy decisions. Councilor Herrera added that the committee should include diverse people from the community who have been underrepresented and asked Council to reconsider using the Volunteer Coordinating Committee process for this committee. Councilor Smith pointed out that this is the first step in a process that would likely evolve as community needs and desires are identified, the committee would likely work with other committees, organizations and schools, and it should periodically report to Council. She suggested that a dedicated email address be set up so that citizens could send ideas directly to committee members and voiced support for Councilor Herrera's suggestion that the City hire an outside consultant to assist with this overall effort.

Discussion followed regarding Council goals, working with other committees, sharing data with the community, inclusive actions, the importance of recommendations for specific actions, listening and understanding, identification of underrepresented communities in Keizer, development of a community engagement plan, ensuring that everyone in the community feels welcome, the need to be open and understanding with everyone and to work together, the community benefit of diverse participation, progress reports, and the name and membership of the committee.

Mayor Clark then reviewed deliverables

- o Collaboration with Council, City/outside committees and organizations and emergency preparedness organizations
- o Data to better understand services provided and community participation (to be used in reporting progress)
- o Opportunities for celebrations
- o Identification of leaders of underrepresented/underserved communities

Mayor Clark asked staff to put together a draft for Council review at the November 1 Council meeting, noted that the resolution should include that Council would meet with the committee six months after the first committee meeting and again after one year to consider any needed adjustments.

City Attorney Shannon Johnson verified that the committee would be called “Community Engagement Committee”. Councilor Herrera urged that the word ‘Diversity’ be included in the Committee title. Mayor Clark suggested that this could be considered at the six-month review.

Following discussion Council agreed that the youth member should be a voting member and be under 19 at the time of appointment. Councilor Herrera reiterated his request that appointment of members for this committee be done by Council members rather than by the Volunteer Coordinating Committee.

ADJOURN Mayor Clark adjourned the work session at 7:30 p.m.

MAYOR: APPROVED:

Cathy Clark	Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – Laura Reid	Councilor #4 – Roland Herrera
Councilor #2 – Ross Day	Councilor #5 – Elizabeth Smith
~ Absent ~ Councilor #3 – Kyle Juran	Councilor #6 – Daniel R. Kohler

Minutes approved:_______________________

MINUTES
KEIZER CITY COUNCIL
Monday, October 18, 2021
Keizer Civic Center, Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Clark called the meeting to order at 7:00 pm. Roll call was taken as follows:

Present:
Cathy Clark, Mayor
Elizabeth Smith, Councilor
Laura Reid, Councilor
Roland Herrera, Councilor
Daniel Kohler, Councilor
Kyle Juran, Councilor
Ross Day, Councilor
Miranda Coleman, Youth Councilor

Staff:
Shannon Johnson, City Attorney
Tim Wood, Finance Director
Bill Lawyer, Public Works Director
John Teague, Police Chief
Shane Witham, Planning Director
Tracy Davis, City Recorder

FLAG SALUTE

Nicolas Elder from Scout Troop 220 led the pledge of allegiance.

SPECIAL ORDERS OF BUSINESS

a. PROCLAMATION – Domestic Violence Awareness Month

Mayor Clark read the Proclamation and introduced Miss Oregon, Sofia Boru, and Michele Roland-Schwartz who voiced the importance of being aware of all aspects of domestic violence and its prevention and shared information about the work of the Sexual Assault Task Force.

COMMITTEE REPORTS

David Louden, Keizer, read the minutes from the most recent Parks Advisory Board meeting as a report to Council.

Matt Lawyer, Keizer, announced that Planning Commission had three new members: Mo Avishan, Ron Bersin and Sarah Hutches and reported on efforts related to the Code update mandated by House Bill 2001 and Senate Bill 458.

PUBLIC COMMENT

Corrie Falardeau, Keizer Chamber of Commerce, shared information about fundraising and upcoming holiday events.

Marlene Parsons, Keizer, voiced concern for the Summer Concert Series request for proposals process and suggested that it be redone using graders that were not familiar with the applicants.

Carolyn Holman, Keizer, suggested that Council declare a failed request for proposals for the Summer Concert Series and start the process over, voiced support for the Community Engagement Committee and suggested that a Diversity, Equity and Inclusivity Committee be formed as well.

Carol Doerfler, Keizer, President of West Keizer Neighborhood Association, asked that Council declare a failed request for proposals for the Summer Concert Series and start the process over.

PUBLIC HEARING

None

ADMINISTRATIVE ACTION

a. ORDINANCE – Amending Keizer Development Code Regarding Sections 2.102, 2.103, 2.104, 2.201, and 2.302 Amending Ordinance No. 98-389

City Attorney Shannon Johnson summarized his staff report.

Councilor Smith moved that the Keizer City Council adopt a Bill for an Ordinance Amending Keizer Development Code Regarding Section 2.102 (Single Family Residential (RS)), Section 2.103 (Limited Density Residential (RL)), Section 2.104 (Medium Density Residential (RM)), Section 2.201 (General Standards), and Section 2.302 (Street Standards) Amending Ordinance No. 98-389. Councilor Reid seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Herrera, Smith, Kohler, Day and Juran (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

b. RESOLUTION – Dissolving the Keizer Points of Interest Committee

Interim City Manager Wes Hare summarized his staff report.

Mayor Clark thanked all the people who had served on the Keizer Points of Interest Committee since its inception in 2007 and noted that historical recognition work would continue through partnership with the Keizer Museum.

Councilor Smith moved that the Keizer City Council adopt a Resolution Dissolving the Keizer Points of Interest Committee. Councilor Reid seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Herrera, Smith, Kohler, Day and Juran (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

c. Public Education Government (PEG) Fund Update

Finance Director Tim Wood summarized his staff report and asked Council to discuss options and direct staff.

Discussion followed regarding hybrid meetings, compilation of data on viewership of broadcasts, and inviting current technical staff to a work session. A work session to address this issue was scheduled for November 29.

CONSENT CALENDAR

a. Approval of September 27, 2021 Special Session Minutes
b. Approval of October 4, 2021 Regular Session Minutes

Item B was pulled to verify content and will be on next meeting agenda.

Councilor Smith moved for approval of Item A of the Consent Calendar. Councilor Reid seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Herrera, Smith, Kohler, Day and Juran (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

OTHER BUSINESS/ STAFF UPDATES

Mr. Wood announced that the City received the Government Finance Officers Association Distinguished Budget Presentation Award for the 2021-2022 Budget and thanked everyone involved in the Budget process. He also reminded everyone to conserve water during winter months to keep monthly sewer costs low.

Chief Teague reported that both K9s were retiring and provided details regarding their disposition and replacement.

Public Works Director Bill Lawyer provided information regarding the paving repairs being done on Windsor Island Road and repairs on the fountains at the focal point.

COUNCIL MEMBER REPORTS

Councilor Smith reported on the Parks Board meeting and Marion County Commissioners Breakfast and shared information about housing assistance.

Councilor Day reported on the Latino Business Alliance meeting and a program that will replace regular light bulbs with LED bulbs.

Councilor Juran reported on the Planning Commission meeting and the McNary football game.

Youth Councilor Coleman reported on the recent community service effort at Northview Park and homecoming week events and announced upcoming events.

Councilor Kohler reported on Claggett Creek Watershed Council, Southeast Keizer Neighborhood Association, Chamber Board, Marion County Commissioner Breakfast and Volunteer Coordinating Committee meetings.

Councilor Reid noted that she had attended McNary sporting events other than football, reported on the Homeless Alliance Board meeting, commended the Percy fundraising event, and announced upcoming McNary parent/teacher conferences.

Councilor Herrera reported on Keizer United, Marion County Public Safety Coordinating Council, and neighborhood association meetings and announced upcoming meetings and events.

Mayor Clark reported on the Mid-Willamette Area Commission of Transportation, Mid-Willamette Valley Homeless Alliance Executive

Committee, Heritage Board, and Strategic Economic Development Corporation meetings and announced upcoming meetings and events.

AGENDA INPUT

October 25, 2021, 6:00 p.m. – Long Range Planning Task Force
- ARPA Funds

November 1, 2021, 7:00 p.m. - City Council Regular Session
November 8, 2021, 6:00 p.m. – Work Session – Parks Master Plan
November 15, 2021, 6:00 p.m. – City Council Regular Session
November 29, 2021, 6:00 p.m. – Work Session – K-23

ADJOURNMENT

Mayor Clark adjourned the meeting at 8:34 p.m.

MAYOR: APPROVED:

______________________ ______________________
Cathy Clark Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

______________________ ______________________
Councilor #1 – Laura Reid Councilor #4 – Roland Herrera

______________________ ______________________
Councilor #2 – Ross Day Councilor #5 – Elizabeth Smith

______________________ ______________________
Councilor #3 – Kyle Juran Councilor #6 – Daniel R. Kohler

Minutes approved:______________________

Written Comments/Testimony and Submitted Documents

Written Public Comments

October 18 thru November 1, 2021

- Daryl Fuller – Keizer – received 10-25-21 – Delight Street
- Carol Doerfler – Keizer – received 10-27-21 – DEI Committee
- Kathy Lincoln – Keizer – received 11-1-21 – Community Engagement Committee
- Carolyn Homan – Keizer – received 11-1-21 – Community Engagement Committee Resolution

Davis, Tracy

From: Daryl Fuller <darylfuller66@gmail.com>
Sent: Monday, October 25, 2021 9:34 AM
To: Cathy Clark; Laura Reid; Ross Day; Kyle Juran; Roland Herrera; Elizabeth Smith; Daniel Kohler; Davis, Tracy
Subject: Speed bumps and new signage on Delight St next to Cummings Elementary school.

Hello my name is Daryl Fuller and reside at and own the property at 4550 Delight St N, Keizer, OR 97303. My wife and I bought our home in November 2020. We love our home and the community and feel blessed in home ownership.

Before buying our home we considered the challenges that we could present themselves in living directly across the street from a elementary school. Most have proved manageable and we are grateful that school is once again open to kids and teachers. However two issues we are asking your help to address...speeding on Delight street and unauthorized parking on our property primarily in the morning as parents are dropping off their kids.
I would propose two things - speed bumps on Delight street and Cummings Ln within the School zone and new signage and/or enforcement of present trespass laws during morning dropoffs and afternoon pickups. Thank you for your consideration and am looking forward to hearing from you and working with you on these matters
Sincerely - Daryl Fuller.

From: carol doerfler <kares97303@comcast.net>
Sent: Wednesday, October 27, 2021 9:49 PM
To: Cathy Clark; Elizabeth Smith; Laura Reid; rolandherrera; Daniel Kohler; Ross Day; Kyle Juran
Cc: Hare, Wes
Subject: DEI Committee-

I do not understand the resistance to using one or all of the DEI words in the title of the new Committee you are about to adopt- How else will the Community that you are trying to reach, understand that this is directed at and for them?

Many City Governments have actual DEI Departments and do not shy away from using DEI to describe themselves like Hillsboro, Bend, Eugene Like Oswego and even tiny little Forest Grove, Population about 25,000 AND they have had some form of formal training to help them understand how to do this!

A simple, "Diversity Committee" would cover it all-

Carol Doerfler
Keizer Resident
503-390-0079

Davis, Tracy

From:	Kathryn Lincoln <klincoln@q.com>
Sent:	Monday, November 1, 2021 12:20 PM
To:	Davis, Tracy; Cathy Clark; rolandherrera; Elizabeth Smith; Daniel Kohler; Laura Reid; Kyle Juran; Ross Day
Subject:	Community Engagement Committee

Dear Madame Mayor and City Council - I am writing to express my concern about the proposed Resolution Establishing a Community Engagement Committee. The resolution being voted on tonight is purported to be based upon the recommendation of the Community Diversity Engagement Work Group formed by the City Council in April 2021. That work group was formed to help Keizer act upon the values adopted in the Inclusivity Resolution, adopting a "Statement of Values- Justice, Equity, Diversity and Inclusion", in December, 2020. The Diversity Engagement Work Group recommended to the city council that it form a permanent "Community Diversity Engagement Committee". "Diversity" was at the heart of the Inclusivity Resolution, and the recommendation from the resulting work group. However, other than the vague reference to acting on the "values" of the December 2020 resolution, there is no mention of encouraging Diversity in the Purpose or the Tasks outlined for the future Community Engagement Committee.

First and foremost, the new committee should be designated as the "Community Diversity Engagement Committee" as recommended by the work group. The point of the whole process was to increase participation in Keizer civic life by culturally diverse groups.

Second, it would be consistent with the previous Resolution and the Work Group recommendation to amend the Purpose of the proposed resolution in Appendix A as follows:

"To act in an advisory capacity to the Keizer City Council and to advise on action to ***encourage diversity and equity*** *in community engagement by: 1. Listening to understand. Keizer wants to let everyone know ~~we are~~ all* ***are*** *included when we talk about the Keizer community and* ***all*** *are important for our community to thrive holistically, 2. Using what is heard to create recommendations for action plan(s) for increasing* ***diversity*** *in community engagement and communication on progress in civic processes, 3. Acting on the values included in the Resolution for Justice, Equity, Diversity and Inclusion."*

Third, the Membership provision should be amended as follows:

"The Committee shall consist of nine voting members. Two (2) members shall be Keizer City Councilors to be appointed by the Mayor and announced at a regularly scheduled Council meeting, six (6) citizen-at-large members and one (1) youth member who is under 19 years of age at the date of appointment. Appointed members will be expected to think broadly in terms of how issues of racism, sexism, ableism, and other discriminatory and prejudicial biases ~~that~~ impact all residents in Keizer. The citizen-at large and youth members shall be appointed as outlined by the City Council Rules of Procedure. ***Every effort should be made to encourage and appoint a culturally diverse group of citizen-at-large members."***

With these recommended amendments, the proposed Resolution would be more consistent with what the past actions of the city and work group, and the wishes of the citizens of Keizer.

Thank you for the opportunity for this input.

Kathy Lincoln
Keizer, OR

Davis, Tracy

From: Carolyn Homan <willie88car@gmail.com>
Sent: Monday, November 1, 2021 4:22 PM
To: Davis, Tracy; Cathy Clark; Elizabeth Smith; Roland Herrera; Laura Reid; Daniel Kohler; Kyle Juran; Ross Day
Subject: Letter for Council packet

To: Mayor Clark, Councilors Smith, Herrera, Reid, Kohler, Juran and Day
Re: Community Engagement Committee resolution
Madam Mayor and Councilors: I want to reinforce my earlier testimony before Council regarding the possible creation of a Community Engagement Committee, which has sprung from the work of the Diversity, Inclusivity and Equity work group the Council formed.

I feel that the name and scope of this committee as it is proposed skirt the essence of the issue that drove creation of the DEI work group. Community engagement is a noble goal and not to be discouraged. But to avoid the use of diversity, inclusivity or equity in laying out the scope of this committee, or to avoid using even one of the terms in the name, is to avoid the real work at hand, Without diversity, inclusivity and equity, true community engagement is impossible.

Engaging the whole community requires a strong signal from Council that that is truly the goal. That a diversity of thought and input from all sectors is valued, heard and considered in the process of decision-making. In short, community engagement must be a starting point for a real outreach to a community that is increasingly culturally diverse.

Thank you for your consideration.
Sincerely,
Carolyn Homan
Keizer resident
Sent from Mail for Windows