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

AGENDA

KEIZER CITY COUNCIL
REGULAR SESSION

Monday, August 16, 2010
7:00 p.m.
Robert L. Simon Council Chambers
Keizer, Oregon

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE OF ALLEGIANCE**

4. **PUBLIC TESTIMONY**

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

5. **PUBLIC HEARINGS**

   a. **ORDINANCE – Establishing an Agreement with Clear Wireless, LLC for Placement of Wireless Facilities in the Public Rights-of-Way**

   b. **Keizer Development Code Text Amendment for Section 2.315 (Development Standards), Section 2.205 (Junk and Junkyards), and the Abatement of Nuisances Created by the Accumulation of Solid Waste**

6. **ADMINISTRATIVE ACTION**

   a. **RESOLUTION – Supporting Request for Transportation Enhancement Funds – Wheatland Road**

   b. **RESOLUTION – Authorizing the City Manager to Sign the First Amendment to Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series**

7. **CONSENT CALENDAR**

   a. **RESOLUTION – Authorizing the City Manager to Enter Into Adoption Agreement and Cafeteria Plan to Amend and Reinstate the City of Keizer Cafeteria Plan Under Section 125 of the Internal Revenue Code; Repealing R99-1157**

   b. **Approval of July 19, 2010 Regular Session Minutes**

8. **COMMITTEE REPORTS**

9. **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.

   a. **New Business or Old Business Issues**

10. **WRITTEN COMMUNICATIONS**

    To inform the Council of significant written communications.

11. **AGENDA INPUT**

    September 7, 2010 (Tuesday)
    7:00 p.m. – City Council Regular Session

    September 13, 2010
    5:45 p.m. – City Council Work Session
    - **City of Keizer Parks Tour**

    September 20, 2010
    7:00 p.m. – City Council Regular Session

12. **ADJOURNMENT**

CITY COUNCIL MEETING: **August 16, 2010**

AGENDA ITEM NUMBER:______________

TO:	**MAYOR CHRISTOPHER AND COUNCIL MEMBERS**
THROUGH:	**CHRISTOPHER C. EPPLEY, CITY MANAGER**
FROM:	**E. SHANNON JOHNSON, CITY ATTORNEY**
SUBJECT:	**ORDINANCE ESTABLISHING AGREEMENT WITH CLEAR WIRELESS, LLC FOR PLACEMENT OF WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

Clear Wireless, LLC ("Clear") offers Internet wireless services. Recently, Clear entered into a right of way use agreement with the City of Salem to place wireless facilities in the public right-of-way. These facilities are equipment cabinets and antenna that are placed on power/light poles. We used Salem's agreement as a template and with minor changes were able to reach agreement with Clear on a five year right-of-way use agreement. A copy of such agreement is attached to the Ordinance following this staff report.

The agreement provides for terms and conditions of the technical issues of placement of the facilities in the right-of-way. In addition, it provides an annual minimum fee of $10,000 to be paid by Clear to the City. The City will be paid $5,000 per year per wireless structure which would apply against the minimum annual fee. There is also a charge of $3.44 per year per lineal foot of facilities installed in the right-of-way, but I do not anticipate that that particular fee will be a substantial amount.

At this point, Clear has anticipated one wireless facility to be constructed soon, and possibly up to two more facilities in the next year. Therefore, I cannot estimate the annual revenue in this regard, other than to say it will be a minimum of $10,000.

Earlier this year we reached a temporary impasse with Clear regarding Voice over Internet Protocol (VoIP) telephony services. This was a concern because we strive to treat all telephone services the same with regard to regulation and franchise fees. Originally I had been told by Clear representatives that their service did not include VoIP services. However, they later informed me that was not necessarily the case. We basically resolved the impasse by agreeing to disagree on the issue. In Section 15(A)(2), Clear agrees to abide by any lawful ordinances or regulations that may be adopted by the City, but does not concede that the City has the right to impose such charges and reserves any and all right to object or appeal if Clear feels that, for example, state or federal law would supersede or preempt the City's right to charge franchise fees for VoIP services.

Though Clear representatives have informally agreed on all the terms of the attached Right of Way Use Agreement, as of the date of packet deadline we have not yet received the signed originals of the Agreement. If we do not receive it by the Council meeting date, we may need to continue the matter.

RECOMMENDATION:

Open the public hearing and take testimony. If there are no remaining questions, close the public hearing and adopt the attached Ordinance.

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

ESJ/tmh

BILL NO. ____ | A BILL | ORDINANCE NO. 2010-__________

FOR

AN ORDINANCE

ESTABLISHING AN AGREEMENT WITH CLEAR WIRELESS, LLC FOR PLACEMENT OF WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; DECLARING AN EMERGENCY

The City of Keizer ordains as follows:

Section 1. GRANT OF USE. The City of Keizer hereby grants to Clear Wireless, LLC, a Nevada limited liability company ("Grantee"), a Right of Way Use Agreement ("Agreement") for the privilege and authority to access Structures located in City rights-of-way to construct, repair, replace, maintain and operate facilities for offering wireless broadband internet access services in, under and over the surface of City rights-of-way for a term not to exceed five (5) years. The terms, conditions, and effective date of the franchise are set forth in the Agreement, attached hereto and by this reference incorporated herein.

Section 2. SAVINGS CLAUSE. Should any section or portion of this Ordinance be held unlawful or unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific section or portion thereof directly specified in the decision. All other sections or portions of this Ordinance shall remain in full force and effect.

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

Section 3. AUTHORIZATION TO ENTER INTO AGREEMENT. The City Manager is hereby authorized to enter into that certain Right of Way Use Agreement, a copy of which is attached hereto and by this reference incorporated herein.

Section 4. EFFECTIVE DATE. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist and this Ordinance shall take effect immediately upon its passage.

PASSED this ________ day of ___________________, 2010.

SIGNED this ________ day of ___________________, 2010.

____
Mayor

____
City Recorder

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

RIGHT OF WAY USE AGREEMENT

Section 1. NATURE AND TERM OF GRANT

A. Grant of Authority. The City does hereby grant a Right of Way Use Agreement ("Agreement") to Clear Wireless, LLC, a Nevada limited liability company ("Grantee") qualified to do business in the State of Oregon, and Grantee's successors and assigns, as approved by the City of Keizer under Section 12 of this Agreement, for the privilege and authority to access Structures located in City Rights-of-Way to construct, repair, replace, maintain and operate Facilities for offering wireless broadband Internet access services in, under and over the surface of City Rights-of-Way. Access to Structures is subject to receipt of authorization from the owner of the Structures. Grantee will use its Facilities to provide wireless broadband Internet access services. Grantee represents that it has applied for and received any regulatory authority that may be required to provide wireless broadband Internet access services.

1. This Agreement does not authorize Grantee to use the City Rights-of-Way for operating a cable system as defined by 47 U.S.C. §522(7) or providing video programming, as defined by 47 U.S.C. §522 (20) or providing telecommunications services as defined in ORS 759.005(2)(g).

2. Nothing in this Agreement shall preclude Grantee from entering into a contract for the use of any portion of its System with any Person or other entity for any services, whether specified herein or not, provided that said Person or entity is another franchisee, licensee, or said Person has assumed responsibility for obtaining any required authority from the City.

B. Duration. The term of this Agreement, and all rights and obligations pertaining thereto, shall be effective for a period of five (5) years, as measured from the effective date of the authorizing ordinance, unless terminated sooner as provided herein. If this Agreement is terminated or expires on its own terms and is not replaced by a new Agreement or similar authorization, Grantee shall remove its System and other facilities from the City Rights-of-Way, or waive its rights to such System and other facilities. Any such removal shall be directed by, and to the satisfaction of, the Public Works Department. The City shall provide written notice of any intention to require removal and shall consider Grantee's comments in its evaluation of whether or not to require removal. Following consideration of any such comments, the City Manager may issue a written order requiring removal of Grantee's Facilities within a reasonable period of time, not to exceed nine (9) months.

C. Effective Date. The effective date of this Agreement shall be the date of the last signature.

D. Agreement Not Exclusive. This Agreement is not exclusive. The City expressly reserves the right to grant rights to other Persons, as well as the right in its own name as a municipality, to use the Rights-of-Way for similar or different purposes allowed Grantee hereunder, by lease, franchise, permit or otherwise.

E. Charter and General Ordinances To Apply. To the extent authorized by law, this Agreement is subject to the Charter of the City of Keizer and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Nothing in this Agreement shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

Section 2. DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Attached Facilities" means any Facilities owned by Grantee affixed to a Structure except optical fiber, wires, coaxial cable and the mounting hardware used to attach optical fiber, wires, coaxial cable. Examples of "Attached Facilities" include but are not limited to antennas, telephone boxes, power boxes, and other equipment boxes and cabinets on Structures;

2. "City" means the City of Keizer, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

3. "City Council" means the Council of the City of Keizer.

4. "Facility" means capital, equipment and property, including but not limited to optical fiber, wires, pipes, mains, conduits, ducts, pedestals, antennas, cabinets and electronic equipment owned by Grantee and located in the Rights-of-Way used for transmitting, receiving, distributing, providing or offering wireless broadband Internet access services.

5. “Grantee” means Clear Wireless, LLC, a Nevada limited liability company qualified to do business in the State of Oregon.

6. “Guy Pole” or "Support pole" means a pole that is used primarily to structurally support an electrical or telephone distribution or transmission pole, but has no energized conductors or telephone wires or Facilities attached.

7. “Hazardous Substances” has the meaning given by ORS 465.200(16).

8. “Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

9. "Internet service" means a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of internet electronic mail, access to the Internet for information retrieval, and hosting of information for retrieval over the Internet or the graphical subnetwork called the world wide web.

10. “Original Structure” means a Structure located in the Rights-of-Way as of the effective date of this Agreement or Structures that are replaced after the effective date of this Agreement, provided that such Structure is in the same location as the Original Structure and the City had determined that the Structure has not been replaced for the purpose of allowing Grantee to attach Facilities.

11. "Agreement” means this Right of Way Use Agreement.

12. "Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.

13. "Replacement Structure" shall mean a Structure that a) replaces an existing Structure or Original Structure to accommodate Facilities; and b) does not result in an increase in the total number of utility, guy or support poles in the Rights-of-Way.

14. "Rights-of-Way" means the surface of, and the space above and below, any existing or future public street, road, alley or highway used or intended to be used by the general public for travel or public utility easement, within the City, to the extent the City has the right to allow Grantee to use them.

15. "Structure" means any utility pole, Guy or Support pole, utility pole extension, light standard or other similar pole in the Rights-of-Way that is suitable for the installation of Facilities.

16. “System” means all Facilities owned or used by Grantee necessary for the purpose of providing wireless broadband Internet access services and located in, under and above City Rights-of-Way, excluding ducts, conduits and vaults leased from another City franchisee, licensee, lessee or grantee.

17. “Wireless broadband Internet access service” means a service that uses spectrum, wireless facilities and wireless technologies to provide subscribers with high-speed (broadband) Internet access capabilities. For purposes of this Agreement, “broadband”

means infrastructure capable of delivering a speed in excess of 200 kbps in at least one direction.

18. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Agreement.

Section 3. COMPENSATION AND AUDITING

A. Amount. As compensation for the benefits and privileges under this Agreement, and in consideration of permission to use the Rights-of-Way of the City, Grantee shall pay the following fees to the City through the duration of the Agreement for the right to install Facilities on Structures in the Rights-of-Way:

   1. The Minimum Annual Fee. The Minimum Annual Fee for this Agreement shall be $10,000. The Minimum Annual Fee may be applied to the Right-of-Way Use Fee, below, but the combined Minimum Annual and Right-of-Way Use fees shall never be less than $10,000.

   2. Right-of-Way Use Fee.

      a. Grantee shall pay as a Right-of-Way Use Fee $5,000 per year per Structure that has any Attached Facilities as of the Payment Date (as defined herein). If Grantee installed any Attached Facilities after the Payment Date, the amount of this Fee for that year shall be prorated at $417.00 per month. If Grantee installs Facilities or Attached Facilities in the first half of a month, through and including the fifteenth of that month, Grantee owes the Right-of-Way Use Fee for the full month. If Grantee installs Facilities or Attached Facilities in the second half of the month, the Right-of-Way Use Fee is calculated from the first day of the month following the date Facilities or Attached Facilities are installed.

      b. Grantee shall also pay as a Right-of-Way Use Fee $3.44 per year per linear foot of Facilities installed in the Right-of-Way that are not Attached Facilities, provided that this fee shall not apply to Facilities that are attached to Attached Facilities and do not extend more than fifty (50) linear feet from the Attached Facilities. If Facilities are installed for less than one year, Grantee will pay the entire Right-of-Way Use Fee for the year without prorating or otherwise discounting such payment.

      c. For purposes of Subsection 3.A.2.a and 3.A.2.b, "year" shall mean the twelve (12) month period beginning on the Payment Date.

      d. The Right-of-Way Use Fee shall increase by four percent (4%) each year. This increase is applicable beginning one year after the Effective Date of this Agreement and every year thereafter for the term of this Agreement.

3. Installation and Application Fee.

    a. There shall be a one-time Installation and Application Fee of $2,000 payable to the City for each new Structure that Grantee uses for Attached Facilities.

    b. If the Attached Facilities will be placed on a Structure on a Local or Collector Street, then there shall be a separate one-time fee of $2,000 payable to the City.

4. Pre-Agreement Negotiation and Administration Fee. Grantee shall pay the City one thousand three hundred dollars ($1,300) for its pre-Agreement costs, including the negotiation and initial administration of this Agreement.

B. <u>Remittance Dates.</u> Grantee shall pay the above fees as follows:

1. The Annual Fee shall be due and owing on the Effective Date of this Agreement and on that same date every calendar year thereafter (the "Payment Date").

2. The Right-of-Way Use Fee shall be due and owing on the Payment Date, provided that the Right-of-Way Use Fee for Facilities that are installed after the Payment Date shall be paid upon completion of installation, which payment shall not be deducted or otherwise offset the Right-of-Way Use Fee due on the next Payment Date.

3. The Installation and Application Fee shall be due and owing when plans are submitted to the City for approval.

4. The Pre-Agreement Negotiation and Administration Fee shall be due and owing on the Effective Date of this Agreement.

C. <u>Late Payments</u>: Any payment not paid within twenty (20) days of when due ("overdue amounts") shall be subject to a delinquency penalty charge of five percent (5%) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this Agreement. In addition, all overdue amounts, including penalty charges, shall bear interest, until paid, at the rate of one percent (1%) per month.

D. <u>Acceptance of Payment and Recomputation.</u>

1. No acceptance of any payment made by Grantee shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid under Section 3 shall be subject to confirmation and recomputation by the City, provided that such audit and computation is completed within three (3) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the three (3) year period, then any claim that the

City might have had for additional compensation shall be forever waived and relinquished. Grantee agrees to reimburse the City for:

a. The reasonable costs of such confirmation if the City's recomputation discloses that Grantee had paid 95% or less of the fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit.

b. One-half of the reasonable costs of such confirmation if the City's recomputation discloses that Grantee had paid more than 95% but less than 98% of the fees owing for the period at issue.

c. If the City determines that Grantee made any underpayment, Grantee shall pay interest on the underpaid amounts as set forth in Section 3.C. If the City determines that Grantee made an underpayment exceeding 5% of the amount due, Grantee shall pay interest and the delinquency penalty pursuant to Section 3.C, above.

d. If Grantee disputes the City's determination of underpayment, Grantee shall immediately place the disputed amount in an escrow account until final resolution.

2. No acceptance of payment of fees under this agreement shall exempt Grantee from the payment of any other license, tax, or surcharge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City or any other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, tax or charge.

3. The City and its agents and representatives shall have authority to arrange for and conduct reviews of Grantee's relevant financial obligations payable hereunder. The City may determine the scope of review in each instance. All amounts paid by Grantee shall be subject to review by the City, provided that such review be completed within three (3) years from the date payment was due. City requests for reviews shall be in writing. Grantee shall provide or cause to be provided to the City, within the Keizer/Salem metropolitan region and during normal business hours, copies of all information reasonably within the scope of the review within 30 days from the date of the written request. If the City requests in writing that Grantee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Grantee fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the three (3) year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee fails to provide, or fails to cause to be provided, such requested information.

Section 4. GENERAL INSURANCE AND BONDING PROVISIONS

A. <u>Insurance.</u>

1. Grantee shall maintain commercial general liability insurance that protects Grantee and the City, as well as the City's officers, agents, and employees. Grantee shall at all times provide general liability and property liability insurance coverage with liability limits of not less than $1,000,000 for injury to or death of one or more persons on any one occurrence, and $1,000,000 for damage or destruction to property on any one occurrence; or a single limit policy of not less than $3,000,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Section 4(A)(1) shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Manager. If the insurance is canceled or materially altered within the term of this Agreement, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Agreement.

2. Grantee shall maintain on file with the City Manager a certificate of insurance certifying the coverage required above. The certificate of insurance shall be subject to the approval as to form by the City Attorney.

3. In the alternative to providing a certificate of insurance to the City certifying liability insurance coverage as required in this Section, Grantee may provide the City with a statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for Grantee and the City, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the approval as to form by the City Attorney. Upon Grantee's election to provide self-insurance coverage under this Section 4(A)(3), any failure by Grantee to maintain adequate self-insurance shall be a material violation of this Agreement.

B. Faithful Performance Bond.

1. Upon the effective date of this Agreement, Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of one hundred thousand dollars ($100,000), conditioned that Grantee shall well and truly observe, fulfill, and perform each term and condition of this Agreement. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Agreement, including, if necessary, the time required for removal of all of Grantee's Facilities installed in the City's Rights-of-Way. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City Manager. The bond shall be subject to the approval as to form by the City Attorney.

2. During the term of this Agreement, Grantee shall file with the City Manager a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section 4(B) if a bona fide, good faith dispute exists between the City and Grantee.

C. Construction Bond. During all times when Grantee is performing any construction work in or under the Rights-of-Way requiring a right-of-way/street opening permit, Grantee shall post a faithful performance bond or irrevocable letter of credit, as is required for such permits, running to the City, with good and sufficient surety approved by the City, in the sum of ten thousand dollars ($10,000). The bond or letter of credit shall be conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition under Section 6 and such permits. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Rights-of-Way by the Public Works Department which shall not be unreasonably withheld or delayed. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the City Manager a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to approval as to form by the City Attorney.

Section 5. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS

A. General Indemnification. Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this Agreement, whether or not such act is permitted by this Agreement, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Facilities in a safe condition, but not to the extent such claim arises out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim, which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.

B. Relocation Indemnification. Grantee agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities in the Rights-of-Way in a timely manner in accordance with a relocation schedule furnished to Grantee by the Public Works Department under this Agreement, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

C. Indemnification – Hazardous Substances. Notwithstanding any other provision of this Agreement, Grantee agrees to forever indemnify the City, its officers, agents and employees, from and against any claims, costs and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law statute, regulation or order, for the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances, associated with, arising from or due to Grantee's structures or other Facilities in the Rights-of-Way.

Section 6. CONSTRUCTION, REPLACEMENT, REPAIRS AND MAINTENANCE

A. Permits. Grantee shall apply for and obtain all permits necessary for the construction, installation and operation of its Facilities in the Rights-of-Way. Grantee shall pay all applicable fees due for City construction permits. All construction and maintenance of any and all Grantee's Facilities within the Rights-of-Way incident to Grantee's provision of wireless broadband Internet access services shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee.

B. Installation of Equipment. Grantee's Facilities shall be installed and maintained in accordance with the laws of the State of Oregon and the ordinances and standards of the City regulating such construction.

C. Common Users. Grantee shall allow and encourage co-location by other users of the Rights-of-Way, provided such co-location does not interfere with Grantee's Facilities or jeopardize the physical integrity of the Structure and provided the owner of the Structure consents to such co-locations.

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D. Facility and Structure standards. This section establishes standards for attaching Facilities to Structures and placing Facilities in the Rights-of-Way. Grantee shall not attach or place Facilities in the Rights-of-Way except as provided herein.

Unless otherwise specified, all references in this subsection 6.D to the existing or allowed height of a Structure or utility pole are measured from ground level.

1. Structure selection

   a. Grantee shall site wireless facilities on existing structures that are not located in the Rights-of-Way before placing them on Structures in the Rights-of-Way. Existing Structures include but are not limited to buildings, light standards, and cell towers, as well as utility poles located on City-owned property.

   b. Grantee shall site Attached Facilities only on Original Structures or on Replacement Structures. Grantee shall not be permitted to, and shall not cause another Person to, increase the number of Structures in the Rights-of Way. This provision shall not apply to the proposed location and structure near 6945 Wheatland Road North which has received conditional use approval (Case No. 2009-07) prior to the execution of this Agreement.

   c. All of Keizer's streets are prioritized for siting wireless facilities on Structures in the Rights-of -Way. The categories for streets within the City may be identified by referring to the City's Transportation System Plan. Grantee must use poles in the Rights-of-Way on Streets in the following order of priority:

      i. Parkway or Freeway (generally 5 lane, high traffic volume streets), before using poles on
      ii. Major Arterial Streets (generally 4 or more lane, high traffic volume streets), before using poles on
      iii. Minor Arterial Streets (generally 3 lane, high traffic volume streets), before using poles on
      iv. Collector and Local Streets (generally 2 lane, low to medium traffic volume streets).Local

   d. If Grantee selects a Structure to support its facilities on a Local Street, Grantee shall provide RF contour maps (in color) illustrating the calculated coverage using the proposed antennas at the target signal level, plus and minus 5 dB, and the calculated coverage areas for all existing adjacent cell sites, to support the rejection of other structures. If other structures were ruled out for non-RF coverage reasons, Grantee shall identify and explain those reasons.

2. Original Structures. Facilities may be attached to Original Structures in the Rights-of-Way, provided:

a. The requirements in 6.D.1 are met;

b. Facilities do not jeopardize the physical integrity of the Structure;

c. Antennas and antenna mounting devices below the top of the Structure shall be mounted flush with the Structure or on extension arms that are no greater than one (1) foot in length.

d. Antennas and antenna mounting devices above the top of the Structure:

   i. Mounting devices and antennas other than omni-directional, or "whip" antennas shall be concealed within a canister or unicell-style cylinder, the diameter of which shall be no greater than twelve inches (12") more than the diameter of the Structure as measured six (6) feet from the butt of the Structure.

   ii. The combined height of the antennas and mounting device on a Structure shall not project more than:

      A. Twenty (20) feet above a Structure on a Parkway, Freeway or Major Arterial;
      B. Fifteen (15) feet above a Structure on a Minor Arterial ; or
      C. Ten (10) feet above a Structure on a Collector or Local Street.

e. All Facilities mounted on an Original Structure shall be painted, coated, or given a surface application to conform to the color and surface of the Structure.

f. The Original Structure is not replaced with a taller Structure, except as authorized in Section 6.D.3.

3. Replacement Structures. Facilities may be attached to Replacement Structures in the Rights-of-Way, provided:

   a. The requirements in 6.D.1, 6.D.2.d.i, and 6.D.2.e are met;

   b. Facilities do not jeopardize the physical integrity of the Structure;

   c. Color. Prior to installation, if the Replacement Structure is not made entirely of wood, it shall be painted, coated, or given a surface application to conform to the color of the Original Structure.

   d. Replacement Height Limits. A Structure or Original Structure may be replaced with a Replacement Structure that is taller than the Original Structure, provided that the total combined height of a Replacement Structure and any mounting devices shall be no greater than that allowed in Table 1, below.

Table 1

Maximum Combined Height Allowed for Replacement Structures and Antenna Mounting Devices (All figures are in feet measured from ground level)	
Street Type	Maximum Height
Parkway or Freeway (generally 5 lane, high traffic volume streets);	80’
Major Arterial Streets (generally 4 or more lane, high traffic volume streets);	80’
Minor Arterial Streets (generally 3 lane, high traffic volume streets);	70’
Collector and Local Streets (generally 2 lane, low to medium traffic volume streets)	50’

e. Antennas above the top of the Replacement Structure and Mounting Device. Antennas shall not project more than three (3) feet above the maximum allowable height of the Replacement Structure and mounting device. Example: A 35 foot pole on a Local Street may be replaced with a pole and mounting device, the top of which is no more than 50 feet tall, and the measurement to the top of the antennas may be no more than 53 feet.

f. Replacement Structure Engineering. In the event that a Structure needs to be replaced to provide structural capacity to support the Facility, Grantee must provide to the City a written statement from the pole owner that the Replacement Structure is no greater in width than the engineering minimum required by the Oregon Public Utility Commission.

g. Street Trees. If a Structure on a Local or Collector Street is proposed for replacement, Grantee, shall submit the sum of One Thousand Dollars ($1,000) to the City to fund street tree planting. The Public Works Department shall determine if a tree could be planted in the parking strip such that a mature tree canopy could develop around the Replacement Structure to reduce the visual impact of the Replacement Structure to the abutting property. If a tree cannot be planted with this result, then the Public Works Department shall deposit the funds into the Tree Fund for its use.

4. Unless otherwise agreed to in writing by the City, Grantee shall locate Facilities underground within the Rights-of-Way and in accordance with applicable City codes and ordinances. Where space prohibits locating Facilities underground within the Rights-of-Way or locating facilities underground within the Rights-of-Way would violate City codes or ordinances, the City shall determine an alternative location at which Grantee may place such Facilities. Where an alternative location for Facility placement is

identified on a Local or Collector Street by the Public Works Department, the height plus width plus depth of equipment cabinets in the Rights-of-Way shall be no more than 130 lineal inches combined.

5. Grantee may make excavations in the Rights-of-Way for any Facility needed for the maintenance or extension of its wireless broadband Internet system, subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any franchisees, licensees, or grantees of the City, or departments of the City, or other units of government owning or maintaining facilities that may be affected by the proposed excavation.

6. In the event that emergency repairs are necessary for Grantee's underground Facilities in the Rights-of-Way, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

7. Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law, codified at ORS 757.542 to 757.562 and 757.993 (2007), and the rules and regulations promulgated thereunder.

E. Relocation.

1. The City shall have the right to require Grantee to change the location of its Facilities in the Rights-of-Way when the public convenience requires such change, and the expense thereof shall be paid solely by Grantee. The City shall provide Grantee with the standard notice given under the circumstances to other franchisees, licensees, or grantees. Should Grantee fail to remove or relocate any such Facilities by the date established by the City, the City may cause and/or effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the City's Rights-of-Way, the City will make a reasonable effort to provide Grantee with an alternate location for its facilities within the City's Rights-of-Way.

2. The provisions of this Section 6.E. shall in no manner require or preclude Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity, other than the City, where the Facilities to be constructed by said person or entity are not or will not become City owned, operated or maintained Facilities.

F. Record of Installations.

1. On the date Grantee signs this Agreementand annually thereafter, in the event any new Facilities are constructed or any existing Facilities are relocated, Grantee shall provide to the City Manager's Office a list that identifies the location of Grantee's Facilities in the Rights-of-Way. In addition, Grantee shall file a Radio Frequency Transmission Facility Registration Form, made available by the City, for each existing and new Facility that is installed on Structures in the Rights-of-Way. For existing Facilities, the form shall be filed on the date Grantee signs this Agreement. For new Facilities, the form shall be filed within ten (10) days of the date the Facility is attached to the Structure in the City Rights-of-Way.

2. Within thirty (30) days following Grantee's acquisition of any Facilities in the Rights-of-Way, or upon any addition or annexation to the City of any area in which Grantee retains any such Facilities in the Rights-of-Way, Grantee shall submit to the City a written statement describing all Facilities involved, whether authorized by agreement, license, permit or any other form of prior right, and specifying the location of all such Facilities. Facilities acquired by Grantee shall immediately be subject to the terms of this Agreement, provided that Grantee shall have a reasonable period of time to bring such acquired Facilities into compliance with this Agreement. For purposes of calculating any compensation owed pursuant to Section 3 of this Agreement, any such acquired Facilities shall be treated as new installations and are subject to the Right-of-Way Use Fee and Installation and Application Fee from the date the acquisition or annexation becomes effective.

3. Radio frequency emission levels. Grantee's Facilities shall be operated and maintained so that the Facilities are in compliance with all radio frequency emission standards specified by the Federal Communications Commission.

G. Restoration After Construction. Grantee shall, after construction, maintenance or repair of Facilities, leave the Rights-of-Way in as good or better condition in all respects as it was before the commencement of such construction, maintenance or repairs, excepting normal wear and tear. Grantee agrees to promptly complete restoration work and to promptly repair any damage caused by such work at its sole cost and expense. When any opening is made by Grantee in a hard surface pavement in any Right-of-Way, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the Public Works Department, in accordance with standards developed and adopted by the Public Works Department. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 6 shall be done in strict compliance with all applicable rules, regulations and ordinances of the City.

H. Tree Pruning.

1. After obtaining a written permit from the City, Grantee may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree in or overhanging the Rights-of-Way which interferes with Grantee's Facilities. Except in emergencies, Grantee may not prune trees at a point below 30 feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. For the purposes of this Section 6.H, an emergency exists when it is necessary to prune to protect the public from imminent danger. The owner or occupant of the premises abutting the Right-of-Way shall have seven days from receipt of Grantee' notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense.

2. The City may waive the notification and permit process in the case of single trees, if Grantee adequately demonstrates to the City's satisfaction the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by Grantee shall be subject to the approval of the City. The City shall have the discretion to cancel the permit if, at any time, Grantee or its agents, fails to use proper arboricultural practices.

I. Compliance with City Codes.

Notwithstanding any other provision of this Agreement, the provisions of this Section 6 shall be subject to and superseded by amendments to applicable City codes, ordinances, rules and regulations. Notwithstanding the foregoing, Grantee shall not be required to modify any Facilities attached or installed prior to the effective date of such amendments, but Grantee shall bring any such Facilities into compliance with the amended Code, ordinance, rule or regulation at the time of any modification or replacement.

Section 7. RESERVATION OF CITY STREET RIGHTS

Nothing in this Agreement shall be construed to prevent the City from constructing sewers, widening streets, constructing sidewalks, grading, paving, repairing and/or altering any Right-of-Way or laying down, 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 to not obstruct, injure or prevent the unrestricted use and operation of Grantee's Facilities in the Rights-of-Way. However, if any of Grantee's Facilities interfere with the construction or repair of any Right-of-Way or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Facilities shall be removed or replaced in the manner the City shall direct in accordance with Section 6.E. In the event of such relocation, the City will cooperate with Grantee to identify alternate locations within the Rights-of-Way. 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 the Public Works Department's written notice to Grantee, the City may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

Section 8. STREET VACATION

If any Right-of-Way or portion thereof used by Grantee is vacated by the City during the term of this Agreement, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Right-of-Way, Grantee shall, without expense to the City, forthwith remove its Facilities from such Right-of-Way, and restore, repair or reconstruct the Right-of-Way where such removal has occurred, and place the Right-of-Way in such condition as may be required by the City Council which shall be no better than the condition of such Right-of-Way immediately prior to removal. In the event of any failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City, to repair, improve or maintain such Right-of-Way, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by the City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City shall cooperate with Grantee to identify alternative locations within the Rights-of-Way.

Section 9. MAINTENANCE OF FACILITIES

Grantee shall provide and put in use all Facilities necessary to control and carry Grantee's wireless broadband Internet access services so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, solely at its own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its System in a manner that requires any customer, except the City, or any entity permitted by the City to install cables, ducts, conduits, or other facilities, in, under or over the City's Rights-of-Way.

Section 10. DISCONTINUED USE OF FACILITIES

A. Whenever Grantee intends to discontinue use of its Facilities within all or part of a particular portion of the Rights-of-Way and does not intend to use said Facilities again for six months, Grantee shall submit to the Public Works Department for the Public Works Department's approval a completed application describing the Facility and the date on which Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place. If Grantee is permitted to abandon its Facilities in place, upon consent of the City, the ownership of Facilities in the Rights-of-Way shall transfer to the City and Grantee shall have no further obligation or liability therefor. Notwithstanding Grantee's request that any such Facility remain in place, the Public Works Department may require Grantee to remove the Facility from the Rights-of-Way or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The

Public Works Department may require Grantee to perform a combination of modification and removal of the Facility; provided, however, that Grantee may elect to remove its Facility entirely in the event the City requests any modification. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the Public Works Department and at Grantee's sole expense. Any such removal or modification shall be directed by, and to the satisfaction of, the Public Works Department. Until such time as Grantee removes or modifies the Facility as directed by the Public Works Department, 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 and restoration of the 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.

B. If Grantee discontinues use of Facilities on a Replacement Structure, and that Replacement Structure is taller than the Original Structure, Grantee will return the Replacement Structure to its original height at Grantee's sole expense. In the alternative, after proper notice pursuant to this Agreement, Grantee may request, and the City may grant at its discretion, a waiver from this requirement. If the City requests that the Structure be replaced with a Structure of the original height, the City shall give Grantee at least ninety (90) days to replace the Structure.

Section 11. HAZARDOUS SUBSTANCES.

A. Compliance with Applicable Law. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to its System or Facilities in the Rights-of-Way.

B. Maintenance, Inspection and Remediation. Grantee shall maintain and inspect its System and Facilities located in the Rights-of-Way. If Grantee discovers any Hazardous Substances in the course of Grantee's work on its System or Facilities in the Rights-of-Way, Grantee shall provide a written report of the discovery to the City within two (2) business days. Grantee shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by, all applicable local, state and federal laws, any Hazardous Substances in the Rights-of-Way directly attributable to or caused by Grantee's System or Facilities or the acts or omissions of Grantee. Nothing in this Agreement transfers or is intended to transfer any liability to the City for removal or remediation of any such Hazardous Substances in the Rights-of-Way.

C. Construction, Modification or Removal of Facilities. In the course of construction, modification or removal of any of its System or Facilities in the Rights-of-Way, to the extent necessary to safely proceed with such work, Grantee shall remove and remediate Hazardous Substances encountered in the course of its activities in accordance with, and only to the extent required by, all applicable state and federal laws, statutes, regulations and orders.

Grantee may use reasonable business efforts to recover its costs for such removal and disposal from all legally responsible third parties.

Section 12. CITY'S WRITTEN CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE

A. <u>Consent.</u> Except as otherwise permitted by Section 12.B. and except to entities that control, are controlled by, or are under common control with Grantee, neither this Agreement nor any of Grantee's Facilities located in the Rights-of-Way by authority of this Agreement shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City, which consent shall not be unreasonably withheld. Grantee shall give written notice to the City of any transfers to entities under common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Section 12.A. shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this Agreement.

1. In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Agreement, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.

2. No sale, lease, mortgage, assignment, transfer or merger for which the City's consent is required may occur until the successor, assignee or lessee has complied with the requirements of Section 4, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the Manager an executed counterpart or certified copy thereof.

B. <u>Transfers Without Consent in Ordinary Course of Business</u>. Grantee shall not lease any of its Facilities without the City's prior consent. However, and notwithstanding Section 12.A., hereof, Grantee may lease any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. A lessee of Grantee's Facilities shall not obtain any rights under this Agreement. For the purposes of this Section, a capital lease shall be treated as a lease under this Section until the conclusion of the lease, when transfer of ownership occurs. At that point in time, the capital lease shall be treated as a sale under Section 12.B.1.

1. Notwithstanding Section 12(A)(1), Grantee may sell portions of its Facilities in the ordinary course of its business, without otherwise obtaining the City's consent, so long as Grantee complies with the following conditions:

    a. The sale is to the holder of a current existing, valid agreement, franchise, permit or lease with the City authorizing the purchaser to operate Facilities for offering wireless broadband Internet access services in the City and Rights-of-Way.

    b. Within fourteen days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the Facilities sold by Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Section 6.F.1.), and providing an executed counterpart or certified copy of the sales documents.

    c. Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Facilities.

    d. Within fourteen days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid agreement, franchise, permit or lease with the City and has agreed to timely pay the amounts due pursuant to Section 3 of this Agreement. The purchaser shall not obtain any of Grantee's rights under this Agreement.

Section 13. FORFEITURE AND REMEDIES

A. Forfeiture. In addition to any other rights set out elsewhere in this Agreement, the City reserves the right to declare a forfeiture of the Agreement, and all of Grantee's rights arising thereunder, in the event that:

    1. Grantee violates any material provision of the Agreement.

        a. For purposes of this Section, the following are material provisions of this Agreement, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Agreement:

            (1) The invalidation, failure to pay or any suspension of Grantee's payments of fees to the City for use of the Rights-of-Way under this Agreement;

(2) Any failure by Grantee to submit timely reports regarding the calculation of its fees to the City under Section 3 of this Agreement;

(3) Any failure by Grantee to maintain the liability insurance required under this Agreement;

(4) Any failure by Grantee to maintain the performance bond required under this Agreement;

(5) Any failure by Grantee to otherwise fully comply with the requirements of this Agreement.

2. Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.

3. There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Grantee's operation of its System within the City.

B. Additional Remedies. In addition to any rights set out elsewhere in this Permit, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

1. Impose a financial penalty of up to $1,000.00 per violation;

2. Suspend Grantee's rights under this Agreement, until Grantee corrects or otherwise remedies the violation;

3. Revocation. The City Council or Grantee may revoke this Agreement in the event that any provision becomes invalid or unenforceable and the City Council or Grantee expressly finds that such provision constituted a consideration material to the Agreement. The City or Grantee shall exercise its revocation rights under this Section 13(B)(3) by providing 30 days written notice prior to the effective date of the revocation, and an opportunity to renegotiate acceptable provisions in accordance with Section 14.

C. Determination of Remedy. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.

D. Notice and Opportunity to Cure. The City shall give Grantee thirty (30) day's prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Grantee cures the stated reason within the thirty (30) day notice period, or if Grantee initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated reason within the thirty (30) day notice period, or if Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section. However, in no event shall the City exercise its rights of revocation under this Section if a bona fide, good faith dispute exists between the City and Grantee.

Section 14. RENEGOTIATION

In the event that any provision of this Agreement becomes invalid or unenforceable and the City Council or Grantee expressly finds that such provision constituted a consideration material to entering into this Agreement, the City and Grantee may mutually agree to renegotiate the terms of this Agreement. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have 90 days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 15. MISCELLANEOUS

A. Compliance with Laws.

1. Both Grantee and the City shall comply with all applicable federal and state laws.

2. Subject to Section 6.I, Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority, including, but not limited to the lawful imposition of taxes, fees, charges or surcharges for or due to any type of voice services, provided or offered by Grantee, including Voice Over Internet Protocol (VoIP) services. Grantee does not concede the right of City to impose such charges and fully reserves any and all rights to object and/or appeal in any way whatsoever, without loss of any other rights granted under this Agreement.

B. Severability. If any Section, provision or clause of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Agreement shall not be affected.

C. Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Agreement in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Agreement by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Agreement by reason of such failure or neglect.

D. Force Majeure.

1. For purposes of this Section 15.D., the term Force Majeure shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, or other similar events which are not reasonably within the control of the parties hereto.

2. If Grantee is wholly or partially unable to carry out its obligations under this Agreement as a result of Force Majeure, Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Agreement, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Agreement.

E. 1. Choice of Forum. Any litigation between the City and Grantee arising under or regarding this Agreement shall occur, if in the state courts, in the Marion County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

2. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

F. Notice. Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the following addressee, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express), or (4) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

1. If to the City:

City Manager's Office
City of Keizer
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
FAX (503) 393-9437

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///

With a copy to: City Attorney's Office
City of Keizer
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
FAX (503) 856-3434

2. If to Grantee: Attn: Site Leasing – Salem, Oregon
Clear Wireless, LLC
4400 Carillon Point
Kirkland, WA 98033

With a copy to: Attention: Legal Department
Clear Wireless, LLC
4400 Carillon Point
Kirkland, WA 98033

3. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

G. Confidential Records. Grantee may identify information submitted to the City as confidential. Prior to submitting such information to the City, Grantee shall prominently mark in conspicuous letters any information with the word "Confidential" on every page. The City shall treat any information so marked as confidential and not subject to public disclosure until the City receives any public records request for disclosure of such information. Within ten (10) working days of receiving any such request, the City shall provide Grantee with written notice of the request, including a copy of the request. Grantee shall have ten (10) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. Whether Grantee submits any written response to the City, the City shall retain the final discretion to determine whether to release the requested confidential information, provided the City shall give Grantee at least ten (10) working days written notice after receipt of any response from Grantee prior to releasing such information. Grantee does not waive any of its rights to seek a protective order from a court of competent jurisdiction restraining the City from disclosing such information.

H. Public Records. Documents and records submitted by Grantee to the City may be subject to public inspection under the Oregon Public Records Law, ORS 192.410 through 192.505. Grantee acknowledges it is responsible for becoming familiar with the provisions of the Oregon Public Records Law.

I. Amendment. The City has negotiated this Agreement in good faith, in reliance upon the information provided by Grantee regarding the scope of its authority to offer wireless broadband Internet access services as defined in Section 2. In the event that Grantee actually receives authority to offer services outside the scope of this Agreement, or otherwise begins offering services outside the scope of those otherwise identified in this Agreement, Grantee shall immediately notify the City. Within 90 days of receiving such notice, the City may either enter into negotiations with Grantee to revise or amend this Agreement to reflect such changed circumstances, or may proceed with early termination of this Agreement. The parties will negotiate in good faith to revise the Agreement to authorize the expanded scope of services.

J. Interference. Grantee shall, at its expense, comply with all Federal Communications Commission Radio Frequency requirements in connection with the use, operation, maintenance, construction and/or installation of its Facilities. If at any time during Grantee's occupancy of the Rights-of-Way, it is determined by the City that Grantee's transmission facilities are negatively impacting the City's communication facilities, Grantee agrees to cooperate with the City in addressing the negative impact. Grantee agrees to temporarily shut off power and transmission to and from the transmission facility that is causing a problem until the problem is resolved, provided that the City agrees to cooperate with and assist Grantee in installing a temporary replacement facility so as to avoid disruption of Grantee's service.

K. In the event of termination of this Agreement under Section 1.B or forfeiture or revocation under Section 13, all indemnity rights, audit rights and confidentiality obligations shall survive for a period of three (3) additional years following the date of termination or forfeiture.

L. Grantee shall be responsible for obtaining all other necessary approvals, authorizations and agreements to attach Facilities to Structures owned or controlled by any third-party. Grantee acknowledges and agrees that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or may be obtained by Grantee from any other Person.

M. Grantee acknowledges that it, and not the City, shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration (the FAA) or the Federal Communications Commission (the FCC). Grantee shall indemnify and hold the City harmless from any fines or other liabilities caused by Grantee's failure to comply with such requirements. Should Grantee or the City be cited by either the FAA or the FCC because Grantee's Facilities or System are not in compliance and should Grantee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Agreement immediately on notice to Grantee or proceed to cure the conditions of noncompliance at Grantee's sole expense.

N. Captions. Throughout this Agreement, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Agreement. The captions shall not affect the meaning and interpretation of this Agreement.

GRANTEE:	CITY:
CLEAR WIRELESS, LLC, a Nevada Limited Liability Company	CITY OF KEIZER, an Oregon Municipal Corporation
By:______________________________ ________________________, Managing Member	By:_______________________________ Christopher C. Eppley, City Manager
Dated:_____________________________	Dated:__________________________________

COUNCIL MEETING: **<u>August 16, 2010</u>**
AGENDA ITEM NUMBER: _______

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS
THROUGH: CHRIS EPPLEY, CITY MANAGER
NATE BROWN, COMMUNITY DEVELOPMENT DIRECTOR
FROM: SAM LITKE, SENIOR PLANNER

SUBJECT: TEXT AMMENDMENT FOR SECTION 2.315 (DEVELOPMENT STANDARDS), SECTION 2.205 (JUNK AND JUNKYARDS), AND THE ABATEMENT OF NUISANCES CREATED BY THE ACCUMULATION OF SOLID WASTE ORDINANCE

Attachments:

- Section 2.205 –draft
- Section 2.315 -draft
- Solid Waste Abatement Ordinance

ISSUE:
Revisions will allow for the consolidation of code regulations governing solid waste code enforcement. The Planning Commission voted unanimously to support the proposed text amendments.

DISCUSSION:
The proposed amendments to the Keizer Development Code will amend Section 2.315 (Development Standards) to include standards relating to trash and recycling enclosures that will require new developments to provide trash enclosures that are adequate to accommodate the projected level of trash and recycling containers.

Section 2.205 (Junk and Junkyards) is proposed to be deleted from the zone code and be incorporated into an expanded Solid Waste Abatement Ordinance. Section 2.205 does not really govern junkyards as much as it evolved into another option for code enforcement. This has created two sections of regulations with one set applying in certain situations and the other applying in other situations and yet each somewhat overlapping. Adding to the confusion, each code section also has its own enforcement process. Deleting Section 2.205 and expanding the Solid Waste Abatement Ordinance will result in there being a single code governing solid waste thereby making the regulations less cumbersome for code enforcement and the general public. A final benefit is that it will eliminate the term "junk" which becomes a confrontational term when used to explain to someone that their cherished old rusting car is referred to as junk. It will now be referred to as an inoperable vehicle.

RECOMMENDATION:
That the City Council hold a public hearing to consider the matter and direct staff to prepare ordinances to adopt the proposed revisions.

[redacted]

~~2.205.01 Purpose~~

~~The City Council of Keizer, Oregon finds and declares that the accumulation and storage of junk tends to create a condition reducing private property values, promotes blight and deterioration, creates fire hazards, creates a hazard to the health, safety and general welfare of the public, creates harborage for rodents and insects, and reduces the aesthetic value of the City as a whole. Therefore, the presence of junk on private or public property, except as expressly permitted by the provisions herein, is hereby declared a public nuisance and may be abated under the Keizer Nuisance Abatement Procedures Ordinance (City of Keizer Ordinance No. 94-282), or restrained or enjoined by a court of competent jurisdiction. In addition, violations of this code are considered infractions and subject to the civil infraction provisions of the City of Keizer. (5/98)~~

~~2.205.02 Definitions~~

~~A. **Junk.** The term "junk" regardless of value, includes but is not limited to, any derelict, neglected, or wrecked motor vehicle or parts thereof, glass, paper, waste tire, waste or discarded material, or any of the following old items: machinery or parts thereof, used fixtures, metal, lumber, or wood. For the purposes of this definition the following meanings apply: (5/98)~~

~~1. "Derelict vehicle" means any used motor vehicle without a valid vehicle license or with an expired license. (5/98)~~

~~2. "Neglected Vehicle" means a motor vehicle that is missing its engine or transmission, but has all of its body parts intact, including fenders, hood, trunk, glass, and tires. (5/98)~~

~~3. "Fixture" means any item that is designed to be used indoors or otherwise protected from the elements. This includes, but is not limited to upholstered furniture, and heating, plumbing, and electrical fixtures. (5/98)~~

~~4 "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect. (5/98)~~

~~5 "Wrecked vehicle" means a motor vehicle that is dismantled, or partially dismantled, or having a broken or missing window or windshield, or lacking a wheel or tire. (5/98)~~

~~B. **Junkyard.** The term "junkyard" is defined as the use of more than 200 square feet of the area of any lot for the outside storage of derelict, neglected, or wrecked motor vehicle or parts thereof, glass, paper, waste tire, waste or discarded material, or any of the following old items: machinery or parts thereof, used fixtures, metal, lumber, or wood. (5/98)~~

~~2.205.03 Keeping of Junk or Junkyards; Nuisance~~

~~A. It is hereby determined and declared that the keeping of any junk, or the operation of a junkyard, except as expressly permitted in this ordinance, out of doors on any street, lot, or premises within the City of Keizer, or in a building that is not wholly or entirely enclosed except for doors for ingress and egress, is a nuisance and is unlawful. (5/98)~~

~~B. The abatement of junk nuisances and junkyards from public or private property, except for those items specified within the City of Keizer Solid Waste Ordinance (City of Keizer Ordinance No. 94-281) shall be in accordance with the provisions contained in the Keizer Uniform Nuisance Abatement Ordinance (City of Keizer Ordinance No. 94-282). (5/98)~~

~~2.205.04 Keeping of Junk, or operation of Junkyard~~

~~It shall be unlawful for any person, or the agent or employee of any person to keep junk, or knowingly create a junkyard out of doors on any street, private, or public property, or for more than 10 days on any lot or premises within the City, or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress. (5/98)~~

~~2.205.05 Exceptions~~

~~These provisions shall not apply to:~~

~~1. Any wrecked, neglected, or derelict vehicle or parts thereof kept in a motor vehicle wrecking or storage yard on a property zoned for that use, and licensed by the State and City. (5/98)~~

~~2. Any wrecked motor vehicle stored outside an enclosure at a business offering motor vehicle repair on a parcel zoned for that use, and as defined in the Standard Industrial Classification as Industry Group No. 753, provided that no more than eight vehicles are outside of an approved enclosure in the industrial zones, and no more than four vehicles are outside an approved enclosure in the commercial zones. The enclosed area shall comply with the sight obscuring requirements contained in this ordinance. (5/98)~~

~~3. Open storage of material directly associated with the primary activity of a business provided the business is permitted, special, or conditional use within any of the zones, and the materials are enclosed by a sight obscuring fence, and the materials are safely stacked, bundled, or otherwise source separated, and remain within the stream of commerce with an established future use. (5/98)~~

~~4. Recyclable solid waste that has been source separated and collected and kept at a scrap and waste metal or recycling establishment as defined by the Standard Industrial Classification Manual and Industrial Group 5093, and is~~

~~operating in compliance with all applicable provisions of this ordinance and state laws, and where the materials or solid waste is enclosed by a sight obscuring fence in compliance with the provisions of this ordinance or in approved containers approved by the City. (5/98)~~

~~5. Any waste tire(s) kept for storage, collection, transportation, or disposal by a person licensed for that purpose by the State of Oregon. (5/98)~~

~~2.205.06 Violations~~

~~Violations of the provisions of this chapter are an infraction and a public nuisance and are subject to the civil infraction provisions and the Keizer Uniform Nuisance Abatement Procedures Ordinance (City of Keizer Ordinance No. 94-282). (5/98~~

2.315 DEVELOPMENT STANDARDS

2.315.01 Purpose

The Development Standards herein called Standards are intended to implement the Keizer Comprehensive Plan and the purpose of each zoning district. They do this by promoting functional, safe, and attractive developments that maximize compatibility with surrounding uses and commercial corridors, and that are compatible with and enhance the transportation system. The Standards mitigate potential conflicts and problems, and maximize harmonious relationships. Alternatives to the Standards on a case-by-case basis may be reviewed and approved as a land use action. In such cases, the purpose of this ordinance shall be met through factual findings and conclusions about the proposed design, and attachment of specific conditions if necessary, by the review body. Application of the Standards does not evaluate the proposed use, nor the specific architectural style or design. Rather, the Standards focus on the structural elements of texture, color, and materials, and on the site elements of building placement. (01/04)

2.315.02 Applicability

A. Exterior changes to all buildings in matters relating to color or facade materials only shall comply with the applicable or relevant development standards found in Section 2.315.08.B(4) and (5) of this code. (01/04)

B. Serial additions, alterations or expansions as defined in Section 1.2 of this code shall be limited so that the standards specified in Section 2.315.03.A and B are not exceeded in a 3-year period. (01/04)

C. The provisions of this section shall apply to all development as defined in Section 1.2 of this code. (01/04)

2.315.03 Exemptions

The following are exempt from the Standards: (01/04)

A. Structural additions, alterations, or expansions which are 25 percent or less of existing building(s) gross floor area and/or impervious surface area are affected; **OR,** when 500 square feet or less of an existing building(s) gross floor area and/or impervious surface area, whichever is less, is affected. (01/04)

B. Exterior changes involving the addition, alteration or moving of a door, window, porch, canopy, or awning where the combined area of change is less than 500 square feet in area in a 3-year period, (01/04)

C. Repainting of exterior walls due to minor repairs or vandalism, which is 25% or less, or no more than 100 sq. ft. (01/04)

D. Agricultural uses (01/04)

E. Any residential building housing three or fewer dwelling units. (01/04)

F. Accessory structures of less than 500 square feet. (5/98)

G. Any interior remodeling (01/04)

H. A temporary business (01/04)

2.315.04 Administration of the Development Standards

These Standards are intended to be objective and to serve as a guide to designers of developments. The Standards are applied in one of four ways: (01/04)

A. The Standards embodied in this ordinance are administratively reviewed at the time of a building permit application. Compliance to the Standards is a condition of building permit approval. (01/04)

B. In instances where conformance to the standards is outside of the scope of a building permit, such as repainting a building, the owner shall be responsible for conformance with these Standards as contained in Section 2.315.02. (01/04)

C. The Standards embodied in this ordinance are to be perpetually maintained on all properties. This particularly applies to color and facade materials, which may change without requiring a building permit. (01/04)

D. In the event a development proposal or a change to an existing building does not conform to the standards contained in this ordinance due to an applicant wishing to propose alternatives, the applicant may choose to apply for approval of a Development Standards Alternative application. A Development Standards Alternative application shall comply with the same procedures as a Conditional Use Permit in Section 3.103, with the initial decision rendered by the Planning Commission (Section 3.103.06.C.). No building permit will be issued for a use requiring Development Standards Alternative approval until the application is approved. (01/04)

2.315.05 Non-Conforming Buildings

Any building that did not conform to the Standards on May 18, 1998 is considered a legally non-conforming building as-regulated within this Code. (01/04)

2.315.08 Development Standards

All applicable development must meet the following standards: (5/98)

A. Pedestrian Circulation. As used herein “walkway” means a hard surfaced area intended and suitable for use by pedestrians, including both public and private sidewalks. (01/04)

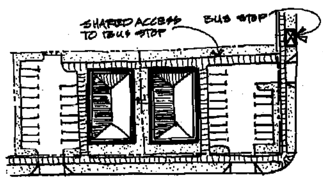
1. Connection Required. The-pedestrian circulation system for the proposed development must connect uses, building entrances, adjacent streets and existing and planned (as adopted in the City Transportation System Plan) transit facilities within 600 feet of the site. (07/09)

2. Walkway Location and Design. Walkway(s) shall be located so that a pedestrian can conveniently walk between a transit street and the entrance(s) to a building(s). Except where it crosses a driveway, a walkway shall be separated by a raised curb or other physical barrier from the auto travel lane and parking. If a raised path is used the ends of the raised portions must be equipped with curb ramps which comply with Oregon State Building Code Requirements. (01/04)

3. Additional Street Access. A walkway from a building entrance to a public street shall be provided for every 300 feet of street frontage. (01/04)

4. Driveway Crossings. Driveway crossings shall be a maximum of 36 feet in width. Where the pedestrian system crosses driveways, parking areas and loading areas, the system must be clearly identifiable through the use of elevation changes, a different paving material, texture, or other similar method. (01/04)

5. Lighting. Lighting shall be provided for all walkways. Pedestrian walkways must be lighted to a level where the system can be used at night by employees and customers. (01/04)



Pedestrian Access Standards

6. Walkway Coverage.

a. Any portion of a walkway located within three feet of a building frontage-shall be covered with awnings or building overhangs. The minimum vertical clearance shall be 9 feet for awnings and building overhangs. The maximum vertical clearance shall be 15 feet. (01/04)

b. In the EG zone, Any portion of a walkway located within three feet of a building frontage shall be covered with awnings or building overhangs as provided in Subsection a, except for buildings, which have greater than 300 feet of lineal frontage, where this requirement shall apply to at least 33 percent of the building frontage. The maximum vertical clearance shall be 15 feet. (01/04)

7. Dimensions. Walkways shall be at least five feet in paved unobstructed width. Walkways that serve multiple uses or tenants shall have a minimum unobstructed width of eight feet. (01/04)

8. Stairs or ramps shall be in place where necessary to provide a direct route between the transit street and the building entrance. Walkways without stairs shall comply with the accessibility requirements of the Oregon State Building Code. (01/04)

9. Access to Adjacent Property. If the proposed development has the potential of being a significant attractor or generator of pedestrian traffic, potential pedestrian connections between the proposed development and existing or future development on adjacent properties other than connections via the street system shall be identified. (01/04)

10. The building permit application or Development Standards Alternative-application shall designate walkways and pedestrian connections on the proposed site plan. If the applicant considers walkways are infeasible proposed findings shall be submitted demonstrating that the walkway or connection is infeasible. The findings will be evaluated in conjunction with the building permit or Development Standards Alternative process. (01/04)

B. Building Design

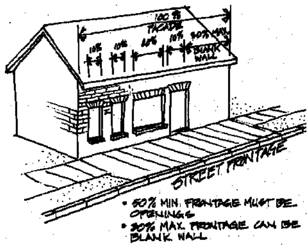
1. Ground floor windows

a. In the CM, CR, and MU zones, all street-facing elevations containing permitted uses as listed under Sections 2.110.02 F, G, H, I, J and K shall have no less than 50 percent of the ground floor wall area with windows, display areas or doorway openings. (5/98)

b. In the EG zone, one elevation of any building with more than 100,000 square feet of floor area, which contains permitted uses listed under Sections 2.119.05 F, G, H, I, J, and K, shall have no less than 33 percent of the ground floor wall area, defined from the ground to the height of the awning, with windows or window facsimiles or other architectural features that simulate windows, display areas or doorway openings. The location of this elevation shall be determined as part of the required Site Master Plan review described in Chapter 2.125 of this Zoning Ordinance. (01/04)

2. Building facades

a. In the CM, CR, and MU zones, facades that face a public street shall extend no more than 30 feet without providing a variation in building materials, a building off-set of at least 2 feet, or a wall area this is entirely separated from other wall areas by a projection, such as a porch or a roof over a porch. No building facade shall extend for more than 300 feet without a pedestrian connection between or through the building, provided that there is a pedestrian purpose being served. (01/04)



Facade Standards

b. In the EG zone, facades facing a public street shall extend no more than 60 feet without providing a variation of building materials for buildings over 20,000 square feet. In the EG zone, no building facade shall extend for more than 400 feet without a pedestrian connection between or through the building, provided that there is a pedestrian purpose being served. (01/04)

3. Awnings – Awnings or canopies, shall be provided along building storefronts abutting a public sidewalk. Awnings and canopies shall be constructed of canvass, acrylic fabric, laminated vinyl, metal or similar standard material. Awnings and canopies of corrugated fiberglass or polycarbonate roofing shall be prohibited. Awnings and canopies shall not be back lit. (01/04)

4. Materials and Texture

   a. Building Materials. (01/04)

      1) All buildings shall have wood, brick, stone, or stucco siding, or vinyl siding made to look like wood siding. Metal siding as described in this section shall be allowed. (5/98) In the EG zone, all buildings shall have wood, brick, stone, architectural block, slump stone, architectural concrete or stucco siding, or vinyl siding made to look like wood siding. (01/04)

      2) Metal siding other than corrugated or reflective material are allowed except for residential buildings housing 3 or more dwellings and buildings within the EG zone metal siding is allowed with the exception of corrugated or reflective metal. (01/04)

      3) Plain concrete block, plain concrete, plywood and sheet press board may not be used as exterior finish materials. (01/04)

   b. Trim Material. (01/04)

      Building trim shall be wood, brick, stone, stucco, vinyl siding material made to look like wood, or metal. (01/04)

   c. Roofing Material. (01/04)

      Any roofing material is allowed including metal roofs. (5/98)

   d. Foundation Material. (01/04)

      Foundation material may be plain concrete or plain concrete block where the foundation material is not revealed for more than 3 feet. (5/98)

5. Color

a. Any portion of a building that is painted or stained may use as the main color, and roof color for all portions of the roof visible from the ground, any color which meets all of the following criteria: (01/04)

1. The Red-Green-Blue factors (also known as XYZ factors) shall not exceed a saturation level of 20%.(01/04)

2. Each component factor, as a percentage of the whole component value, shall equal or exceed 38%, with no greater than a 20% difference between any of the three values. (01/04)

3. Light Reflectance Value (LRV) of any color shall be between the values of 30 and 85. (01/04)

4. The finish shall be either matt or satin. (01/04)

b. For the purpose of this ordinance, "main color" is the principal color of the building which must be at least 75% of the surface of the building excluding windows; the trim colors of all buildings may be any color. (01/04)

c. In no case shall the main color or the trim color of any structure be "florescent", "day-glo", or any similar bright color. (01/04)

6. Roof Lines - Roof lines shall establish a distinctive “top” to a building. When flat roofs are proposed, a cornice a minimum 12 inches high projecting a minimum 6 inches from the wall at the top of the wall or parapet shall be provided. (5/98)

7. Roof-mounted equipment – In a CM, CR, CO, EG or MU zone, all roof-mounted equipment, including satellite dishes and other communication equipment, must be screened from view from adjacent public streets. Solar heating panels are exempt from this standard. (01/04)

C. Accessory Structures

1. Accessory Structures including buildings, sheds, trash receptacles, mechanical devices, and other structures outside the main building, shall either be screened from view by the public by either a hedge or fence: **OR,** with the exception of trash receptacles, accessory

structures including buildings, sheds, mechanical devices, and other structures outside the main building must be screened by painting them the same color as the main color of the building. (01/04)

2. Trash enclosures shall be designed to be large enough to accommodate the projected amount of trash being generated at the development. The area must be able to fully contain all necessary trash and recycling containers.

D. Alternative Design Solutions. (01/04)

Depending upon the applicable review process identified in this code, the Planning Commission or City Council may approve design alternatives to the Standards in this chapter, or approve them with conditions, if it finds the alternative design can meet the purpose and intent of this ordinance and be successfully applied to a particular property. (01/04)

E. Transit Facility Requirement

New retail, office and institutional buildings at, or within 600 feet of an existing or planned transit facility, as identified in the city TSP, shall provide either the transit facility on site or connection to a transit facility along a transit route when the transit operator requires such an improvement. (07/09)

F. Transit Access

New retail, office and institutional buildings within 600 feet of a transit facility, as identified in the city TSP, shall provide for convenient pedestrian access to transit through the measures listed in Subsections 1 and 2 below. (07/09)

1. Walkways shall be provided connecting building entrances and streets adjoining the site; (07/09)

2. Pedestrian connections to adjoining properties shall be provided except where such a connection is impracticable. Pedestrian connections shall connect the onsite circulation system to existing or proposed streets, walkways, and driveways that abut the property. Where adjacent properties are undeveloped or have potential for redevelopment, streets, access ways and walkways on site shall be laid out or stubbed to allow for extension to the adjoining property; (07/09)

3. In addition to Subsections 1 and 2 above, sites at transit facilities must provide the following: (07/09)

a. Either locate buildings within 20 feet of the transit facility, a transit street, or an intersecting street or provide a pedestrian plaza at the transit facility or a street intersection; (07/09)

b. A reasonably direct pedestrian connection between the transit facility and building entrances on the site; (07/09)

c. A transit passenger landing pad accessible to disabled persons; (07/09)

d. An easement or dedication for a passenger shelter if requested by the transit provider; and (07/09)

e. Lighting at the transit facility. (07/09)

2.315.09 Determination of Conformance to Development Standards as Part of Building Permit Review

The Zoning Administrator, or designee, during the normal course of reviewing a building permit application, shall include as part of that review, a determination of the proposal's conformance with the provisions of this chapter. Corrections may be noted on the plans, or required to be submitted as amended plans, to assure conformance to the standards or a design alternative, which was approved by the planning Commission or City Council. Building plans shall not be approved unless there is conformance with the provisions of this chapter. (01/04)

2.315.10 Criteria for Development Review

The Planning Commission, or Council upon appeal, may approve the proposed design alternatives, or approve them with conditions, if it finds the alternative design can meet the purpose and intent of this ordinance and be successfully applied to a particular property. (5/98)

BILL NO. ~~263~~ ___ A BILL ORDINANCE NO.

FOR ~~94-281~~ 2010-____

AN ORDINANCE RELATING TO THE ABATEMENT OF NUISANCES CREATED BY THE ACCUMULATION OF SOLID WASTE AND/OR INOPERABLE VEHICLES: REPEALING ORDINANCE NO. ~~91-210~~ 94-281

DRAFT 5

The City of Keizer ordains as follows:

Section 1. SHORT TITLE. This ordinance shall be known as the "Keizer Solid Waste ~~Abatement~~ and Inoperable Vehicle Ordinance" and shall be so cited and pled.

Section 2. PURPOSE, POLICY, AND SCOPE. It is the declared policy of the City of Keizer, in furtherance of the protection of the public health, safety and welfare of the people of the City of Keizer, to enact [illegible] the accumulation of solid waste and inoperable vehicles on public and private property as a public nuisance and providing means for abatement of such accumulation of solid waste or inoperable vehicles. The City Council of Keizer, Oregon finds and declares that the accumulation and storage of solid waste or inoperable vehicles tends to create a condition reducing private property values, promotes blight and deterioration, creates fire hazards, creates a hazard to the health, safety and general welfare of the public, creates harborage for rodents and insects, and reduces the aesthetic value of the City as a whole. Such accumulations are hereby declared to be a public nuisance.

Section 3. ~~EXEMPTIONS~~ DEFINITIONS

~~(1) "Antique vehicle" means a motor vehicle that is older than one-half the number of years between the current year and 1900 and that is maintained as a collector's item.~~

(~~2~~ 1) "City Council" means the City Council of the City of Keizer.

(2) "Composting and Compost Piles" means the process of biochemical degradation of organic waste under controlled conditions. Compost piles are permitted on residential

property, provided each compost pile is enclosed on all sides by a wood container, concrete block container, container made of another opaque material, or wire mesh container, designed for composting.

(3) “Construction Material” means an article or item which is being used for the construction of a building or structure on the lot. It excludes materials considered construction wastes, solid waste, or discarded material.

(4) “Construction waste” means items or materials including but not limited to lumber, plumbing fixtures, roofing material and other material commonly used during a construction project which is not occurring on the subject property or any material in which exposure to the elements renders it unusable for its intended purpose.

~~([illegible]) “Con[illegible] unsightliness” means u[illegible] inoperativ[illegible] or s[illegible]d waste upon priv[illegible] property [illegible]hich can be seen [illegible]om public propert[illegible] or pro[illegible]rty [illegible]onging t[illegible] other [illegible]rsons.~~

(4 5) “Dispose” or “disposal” means the accumulation, storage, collection, or transportation of solid waste to a transfer facility, disposal site, sanitary landfill, or resource recovery facility.

(~~5~~ 6) “Disposal site” means land used for the disposal or handling of solid waste, including but not limited to, dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, composting plants, salvage sites, incinerators for solid waste delivered by the public or by a franchise collector or franchised transporter of solid waste; but the term does not include a hazardous waste facility subject to the permit requirements of ORS Chapter 466 or a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable materials, unless the site is used by the public, either directly or indirectly.

DRAFT 5

(7) "Fixture" means any item that is designed to be used indoors or otherwise protected from the elements. This includes but is not limited to upholstered furniture, heating, plumbing, and electrical fixtures.

(~~6~~ 8) "Inoperable Vehicle" means a vehicle on public or private property which meets one or more of the following conditions: ~~that is not an antique vehicle and which: (a) Has been left on private property for more than twenty (20) days; and~~ (~~b~~)

(a) "Wrecked ~~Inoperative~~ vehicle" means a motor vehicle that is dismantled, or partially dismantled; has broken or missing window(s); or broken or missing windshield; or missing wheel(s); or missing tire(s);~~ or lacks an engine or the engine will not run; or lacks a transmission or the transmission is inoperable.~~

[illegible]lict vehicle" means an[illegible] a valid veh[illegible]se or w[illegible] an expi[illegible]cense b[illegible] excludes any veh[illegible]e defined in the O[illegible] V[illegible]icle Code[illegible]hich [illegible]of a t[illegible]e that is not requ[illegible]d to have a license.

"Neg[illegible]ted [illegible]hicle" m[illegible]ns a[illegible]otor vehicle that[illegible]cks an engine or t[illegible]e eng[illegible] will not run; or lacks a transmission or the transmission is inoperable, but has all of its body parts intact, including fenders, hood, trunk, glass, and tires.

(9) "Open Storage" means any bagged or loosely stored solid waste or putrescible material which is not in an approved receptacle or container. For the purpose of this definition a tarp shall not be considered an approved container.

(~~7~~ 10) "Person" means ~~includes~~ individuals, corporations, associations, firms, partnerships and joint stock companies.

(~~8~~ 11) "Putrescible material" means organic material that can decompose and may give rise to foul or offensive byproducts.

(~~9~~ 12) "Solid Waste" means all putrescible and nonputrescible material, including but not limited to: garbage, rubbish, refuse, ashes, wastepaper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge; residential, commercial, industrial, demolition and construction wastes, discarded or abandoned ~~vehicles or~~ vehicle parts, machinery and machinery parts, home and industrial appliances and appliance parts, metal, glass, paper, tires, lumber, wood, used "fixtures" or discarded material; ~~discarded home and industrial appliances~~; manure, vegetable or animal solid and semisolid wastes; dead animals, useless or discarded material or infectious waste as defined in ORS 459.386 or other wastes; but the term "solid waste" does not include hazardous wastes as defined by ORS Chapter 466 or regulations adopted by the Department of Environmental Quality or Environmental Quality Commission.

Section 4. ADMINISTRATION. The City Manager or his designee shall be responsible for the administration of this Ordinance.

DRAFT 5

Section 5. SOLID WASTE ACCUMULATION PROHIBITED. No person shall accumulate, store, collect, maintain, or display on private property inoperable vehicles or solid waste that (a) is offensive or hazardous to the health and safety of the public; or (b) creates odors that are offensive to the extent that a reasonable person is denied their right to quiet enjoyment of their property; or (c) is not stored within an approved solid waste receptacle. ~~creates a condition of unsightliness.~~

Section 6. STORAGE OF INOPERABLE VEHICLES OR CONSTRUCTION MATERIALS ALLOWED. One "inoperable vehicle" and/or "construction materials" covering no more than 200 square feet in area may be stored on private property, out of doors if fully screened by a 100% sight obscuring fence, wall, or hedge.

~~Section 3~~ **Section 7. EXEMPTIONS.** Unless specifically provided otherwise, this ordinance does not apply to:

(1) Disposal sites approved by the City of Keizer and operated in compliance with regulations promulgated by the Environmental Quality Commission, Department of

Environmental Quality and other ordinances or regulations of the City of Keizer.

(2) Agricultural operations (including the growing and harvesting of crops and timber, the raising of fowl or animals, and the storage or use of agricultural waste, sprays and fertilizer) provided that all operations comply with all applicable laws and regulations. This exception doe not apply in those City of Keizer land use zones that do not permit such activities.

(3) The operation of a wrecking yard ~~with a valid and current license or permit to operate a wrecking yard under ORS 377.605 to 377.655~~ as defined in the Keizer Development Code and in an area zoned and/or permitted for use as a wrecking yard.

(4) Compost piles used only for the decomposition of garden and yard trimmings and located on the tax lot where the garden and yard trimmings are generated.

DRAFT 5

Section ~~7~~ 8. UNAUTHORIZED DUMPING. Except as provided in Section ~~3~~ 7 of this Ordinance, no person shall dispose of solid waste at any place within the city limits of the City of Keizer. No person shall use or permit to be used any land within the City of Keizer as a public or private disposal site without securing all necessary permits and approvals.

Section ~~8~~ 9. VEHICLE REPAIR OR RESTORATION EXCEPTIONS. This Ordinance shall not apply to vehicles being repaired in a land use zone that allows such use outright.

Section ~~9~~ 10. OWNER OR TITLE HOLDER. The equitable or legal owner of land upon which the nuisance exists is equally responsible for the abatement of the nuisance as is the lessee, tenant, possessor or user of the land.

Section ~~10~~ 11. DISPOSAL OF WASTE. It will be the responsibility of all persons producing solid waste within the City of Keizer to dispose of their waste in an approved method.

Section ~~11~~ 12. PENALTIES. A violation of this Ordinance is an infraction under the Civil Infraction Ordinance No. 86-063

Section ~~12~~ 13. ABATEMENT OF NUISANCE/CITATION FOR INFRACTION. The City Manager or his/her designee may make an investigation to determine whether a violation of this ordinance has occurred. If the City Manager or his/her designee determines that there is a violation of this Ordinance, he or she may proceed to abate the nuisance pursuant to the Keizer Uniform Abatement Procedure (Ordinance No. 94-282) or may seek any other legal or equitable remedy provided by law for the abatement of the nuisance or for the enforcement of the provisions of this Ordinance.

Section ~~13~~ 14. SAVINGS CLAUSE. Should any section or portion of this Ordinance be held invalid and unenforceable by a court of competent jurisdiction, such decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this Ordinance shall remain in full force and effect.

DRAFT 5

Section ~~14~~ 15. REPEAL. Ordinance No. ~~91-210~~ 94-281 (Keizer Nuisance Abatement Ordinance) is Repealed, but such Ordinance shall remain in force for the purpose of authorizing the citation, prosecution, conviction and judgment of a person who violated that Ordinance, or for the purposes of abating a nuisance that occurred when such Ordinance was in effect.

Section ~~15~~ 16. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days after its passage.

COUNCIL MEETING: August 16, 2010

AGENDA ITEM NUMBER:______________

TO: KEIZER CITY COUNCIL

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: ROB KISSLER
DIRECTOR OF PUBLIC WORKS

SUBJECT: AUTHORIZATION TO APPLY FOR TRANSPORTATION ENHANCEMENT PROGRAM – WHEATLAND ROAD

BACKGROUND:

The Oregon Department of Transportation funds a biannual process whereby local jurisdictions may apply to have specific projects funded by these federal funds. The intent of the program is to "provide federal highway funds for projects that strengthen the cultural, aesthetic, or environmental value of our transportation system". A notice of intent to file for projects has already been filed, but the program requires specific authorization of the council to actually apply for the program.

The project that staff has developed would be to complete street improvements along Wheatland Road from River Road to the north City limits. The Salem Keizer Area Transportation Study group will also need to support this application. The intent of this project concept would be in improving the transportation experience and safety when traveling through a main corridor to mid-valley destinations north of Keizer i.e. Wheatland Ferry and Willamette Mission State Park.

The Notice of Intent was filed for a total of $1,700,000 of federal funds, with the requisite match from local jurisdiction of 10.27%, which would require $174,590 in local match, however the staff is proposing an over match of 35.3% showing the region good intent to fund and complete needed safety improvements for pedestrians, cyclists and the driving public. This project cost is a result of an engineering estimate from the City Engineer.

ISSUE:

Application for this grant will require the expenditure of staff time and will commit the City to provide the required match when the project is constructed.

RECOMMENDATION:

It is hereby recommended that the City Council adopt the attached Resolution Supporting the Request for Transportation Enhancement Funds for improvements along Wheatland Road from River Rd to the north City limits.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2010- ____________

SUPPORTING THE REQUEST FOR TRANSPORTATION ENHANCEMENT FUNDS FOR IMPROVEMENTS TO WHEATLAND ROAD NORTH

WHEREAS, the City of Keizer filed an intent to apply for federal funds under the Traffic Enhancement Program to fund complete street, stormwater drainage, separated sidewalks, bike lanes and street tree improvements along Wheatland Road N from River Road to the north City Limits.

WHEREAS, the notice of intent was filed for a total of $1,700,000.00 of federal funds with the requisite match from local jurisdiction of 10.27% which would require $174,590.00 in local match, however the City is over matching the project at a rate of 35.3% or $600,100.00 for a total project cost of $1,700,100.00. NOW, THEREFORE

BE IT RESOLVED by the City Council of the City of Keizer that the request for transportation enhancement funds is hereby supported for improvements to Wheatland Road North from River Road N to the north City limits for a total project cost of $1,700,100.00.

PASSED this _____ day of __________________, 2010.

SIGNED this _____ day of __________________, 2010.

____
Mayor

____
City Recorder

CITY COUNCIL MEETING: **August 16, 2010**

AGENDA ITEM NUMBER:_______________

TO:	**MAYOR CHRISTOPHER AND COUNCIL MEMBERS**
THROUGH:	**CHRISTOPHER C. EPPLEY, CITY MANAGER**
FROM:	**E. SHANNON JOHNSON, CITY ATTORNEY**
SUBJECT:	**RESOLUTION – AUTHORIZING CITY MANAGER TO SIGN AMENDMENT TO KEIZER ROTARY AMPHITHEATER MANAGEMENT AGREEMENT (ADDITION OF TWO CITY-SPONSORED CONCERTS)**

At a recent Council meeting, the Council directed staff to authorize additional City-sponsored concerts. You may remember that KRA, LLC is producing five City-sponsored concerts under an agreement previously authorized by Council. The attached resolution and agreement allows the addition of two more City-sponsored concerts.

RECOMMENDATION:

Adopt the attached Resolution authorizing the City Manager to sign the amendment to the Keizer Rotary Amphitheater Management Agreement.

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

ESJ/tmh

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2010-_____

AUTHORIZING THE CITY MANAGER TO SIGN THE FIRST AMENDMENT TO KEIZER ROTARY AMPHITHEATER MANAGEMENT AGREEMENT FOR 2010 CITY SPONSORED CONCERT SERIES

WHEREAS, the City and KRA entered into a Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series dated June 7, 2010;

WHEREAS, the Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series allowed for management of five (5) City sponsored concerts;

WHEREAS, the City wishes to add additional concerts to the City sponsored concert series;

WHEREAS, an amendment to the Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series and a First Amendment has been prepared for the City Manager's signature;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is authorized to execute the attached First Amendment to Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series on behalf of the City.

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-390-3700

BE IT FURTHER RESOLVED by the City Council of the City of Keizer that the City's contribution for the additional concerts shall be limited to in-kind efforts.

PASSED this __________ day of _________________, 2010.

SIGNED this __________ day of _________________, 2010.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-390-3700

FIRST AMENDMENT TO KEIZER ROTARY AMPHITHEATER MANAGEMENT AGREEMENT FOR 2010 CITY SPONSORED CONCERT SERIES

DATE: ________________________, 2010

PARTIES:

CITY OF KEIZER, an Oregon municipal corporation (hereinafter "City")
930 Chemawa Road NE
PO Box 21000
Keizer, OR 97307

KRA LLC (hereinafter "KRA")
PO Box 750
Salem, OR 97308

RECITALS:

City and KRA entered into that certain Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series dated June 7, 2010.

City and KRA wish to enter into this First Amendment to Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series to add additional concerts to the City sponsored concert series.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT:

Section 1. Amendment of Number of City Sponsored Concerts. All references to “five (5) City sponsored ...” in the Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series shall be amended to “seven (7) City sponsored…”.

Section 2. Amendment of Section 3(A). Section 3(A) is hereby amended as follows:

A. The concerts shall be held on the following dates: June 5, June 19, July 10, August 7, <u>August 18</u>, August 21, and <u>September 11, 2010</u>.

Section 3. Amendment of Section 3(B). Section 3(B) is hereby amended as follows:

B. KRA agrees to solicit approximately 10-15 bands from a variety of genres and present the prospective bands to the City Summer Concert Band Selection Task Force. The City Summer Concert Band Selection Task Force (Task Force) shall make the final approval of the selection of the bands for the concert series. ~~KRA agrees that they will present the prospective bands to the Task Force no later than May 1, 2010 and the Task Force agrees to make a final selection of the five bands with two alternates no later than May 15, 2010.~~

Section 4. Amendment of Section 3(C). Section 3(C) is hereby amended as follows:

C. KRA agrees to negotiate contracts with the selected bands and provide such contracts to the City ~~no later than June 1, 2010~~upon request. The City will not enter into contracts with bands and is not responsible for any compensation to the bands whatsoever.

Section 5. Remain in Effect. Except as amended herein, all other terms of the Keizer Rotary Amphitheater Management Agreement for 2010 City Sponsored Concert Series shall remain in full force and effect.

CITY:	KRA:
CITY OF KEIZER	KRA LLC
By:_____________________________	By:_____________________________
Christopher C. Eppley,	Clint Holland
City Manager	Chairman

CITY COUNCIL MEETING: August 16, 2010

AGENDA ITEM NUMBER:_______________

TO: **MAYOR CHRISTOPHER AND COUNCIL MEMBERS**

THROUGH: **CHRISTOPHER C. EPPLEY, CITY MANAGER**

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

SUBJECT: **RESTATEMENT OF CAFETERIA PLAN FOR CITY EMPLOYEES**

The previous benefit administrator, PCA (Personal Choice Account) Regence, is no longer offering benefit administration services. The City has chosen to use the services of eflexgroup, Inc. as the benefit administrator.

Eflexgroup, Inc. requires the Council to amend and restate the cafeteria plan pursuant to Internal Revenue Code rules. A Resolution authorizing the City Manager to enter into the benefit plan agreements is attached for your review.

RECOMMENDATION:

Adopt the attached Resolution.

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

ESJ/tmh

Proposal

eflexFSA

Administration

Presented by:

eflexgroup

2740 Ski Lane • Madison, WI 53713
Toll Free Phone: 1.877.933.3539, ext. 300 • Toll Free Fax: 608.237.3800
efgsales@eflexgroup.com • www.eflexgroup.com

Fast Answers • Fast Claims • Web Self Service

Flex Plans | Transportation Plans | HRAs | HSAs | COBRA | eflex Card & Stacked Card | Private-labeled eflex Department

Table of Contents

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eflexFSA

Investment for Plan Year 2010

Number of Eligible Employees	*Annual Fee*	*Per Participant Per Month*
[redacted]		
251-500	$675	$5.50
[redacted]		
1,001-5,000	$875	$4.95
[redacted]		

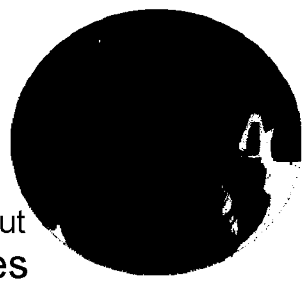
Go Green, Save Green

If you submit all enrollments electronically, include email addresses and secure direct deposit* of reimbursements for 100% of enrolled employees, elect electronic funds transfer (EFT) for all fees and plan funding, **Per participant per month including debit card drops to $4.50.**

**Certain state laws prevent mandatory direct deposit. In these states, if an employee opts out of direct deposit, we'll deduct a manual reimbursement fee of $3 per month from his/her FSA.*

eflex Services Include:

- eflex Debit Card
- Health FSA and/or Dependent Care FSA
- Full Compliance including Non-discrimination Testing, Plan Documents, Summary Plan Description, and Form 5500 (if required)
- World-class Service
- Online Account Access and Web Self Service 24/7/365
- Online Forms
- Flexpert and Live Chat at www.eflexgroup.com
- Electronic or Spreadsheet Enrollments
- Direct Deposit
- Personal Service via a Customer Care Center available 24/7/365
- Employee Educational Materials (If requested, onsite enrollment meetings will be billed at $100 per hour plus travel expenses)
- 2.5-month Extension
- Legal Updates
- Minimum monthly billing is $75



It's about choices

Important eflex Card Information: Your account will need to be pre-funded 1/12 of the total annual elections for the eflex Card option. Your eflex Account Administrator will notify you of the actual pre-funded amount upon completion of your group set-up. This amount will roll forward each plan year.

Questions? Contact eflex Sales at 1.877.933.3539, ext. 300 or efgsales@eflexgroup.com

About eflexgroup.com

Thank you for considering **eflexgroup.com** (eflex) to administer your Flexible Spending Account (FSA). You've made a wise choice.

eflex is a nationwide administrator of consumer-driven health plans. We specialize in FSAs, HRAs, HSAs, Premium Only Plans (POP), COBRA Administration, and Transportation Plans.

Founded in 2000 on the idea that administration of benefits should be easier, eflex is a different kind of administrator. With a customer focus and Lean Six Sigma quality tools operating throughout the organization, we are miles ahead of our competitors in technology and offer unparalleled service.

Operating under the standards of fast answers, fast claims, and Web self service, eflex is creating the highest standards for customer service and innovation in the consumer-driven health market.

Expertise

eflex leadership staff has more than 130 years of combined experience in pre-tax employee benefits administration, human resources and COBRA. Founded and owned by Ric Joyner and Tom Jacobs, eflex is one of the nation's leaders in self-service administration.

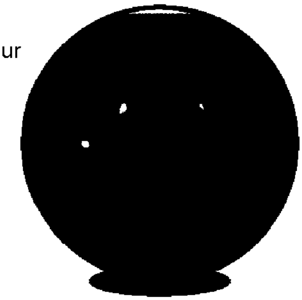
Ric Joyner, eflex co-founder, left a Madison, Wisconsin TPA (third-party administrator) firm he founded in 1988 to start eflex. He is the founding President of the National Association of Professional Benefit Administrators (NAPBA) that serves the niche TPA business. Joyner is a Certified Employee Benefits Specialist (CEBS), Group Benefit Associate, Certified Flexible Compensation Instructor by the Employer's Council on Flexible Compensation (ECFC), and board approved by ASPA to teach Cafeteria plan regulations. He holds a BS in Information Technology and recently completed his MBA.

Tom Jacobs, eflex co-founder and General Counsel, had a Madison, Wisconsin-based private law practice in employment law and insurance defense litigation before starting eflex. He is a national lecturer on consumerism in health care and pre-tax employee benefits. He is a former Board member of the National Association of Professional Employer Organizations (NAPEO), and a member of the NAPEO Legal Advisory Council. A co-founder of the National Association of Professional Benefits Administrators (NAPBA), Jacobs is Chair of the Wisconsin State Bar Association Insurance for Members Board. Jacobs' degrees from the University of Wisconsin-Madison include Juris Doctor, MBA, and BA.

The company vision when it opened its doors nearly 10 years ago was to be the number one Web-based flex and COBRA provider in the country.

eflex company founders have been pioneers in the TPA industry. They continue to provide great insight and vision and identify smart solutions across the nation.

Technology



eflex employs and invests in cutting-edge technology which enables us to provide superior service at reasonable prices. Our current platform allows access to information 24 hours a day, 7 days a week, 365 days a year (24/7/365). Through our Web-based service technology, we have created efficiencies that allow us to provide superior service with competitive prices. We are available to you by phone, email, fax, and Live Support.

We have aligned our operational strategy with business goals and objectives, designed systems to meet customer needs and expectations, and continually manage system capacity and improvement of system performance over time using Lean Six Sigma methods.

We created our Website to allow employees and employers to self-service their accounts and perform essential functions when it's convenient for them. We currently provide employees and employers secure online access to:

- Automated Web-based enrollment
- Account balances
- Claim status and history
- Educational materials
- Downloadable forms (e.g., claim forms)
- Claim submission
- Comprehensive reports
- Live chat

eflex is a Microsoft “shop.” We use MS products such as MS Dynamic CRM customer service and case management), Accounting, MS Office 2007, MS Server, and Microsoft SQL Server Cluster of Dell R900 servers. The Web server farm is running HP Proliant series. We use an LP gas generator which keeps critical functions maintained in a power outage. We have two large power back-up battery stations similar to the technology of telephone companies, which take raw electricity and pass it through batteries to clean and smooth out any imperfections.

> “In this busy day and age, few of us take the time to send a vendor/partner correspondence unless we’re complaining.
>
> I just wanted to let you know how impressive and user friendly your Website is. I want to extend congratulations and let you know you are a valued partner.”
>
> *—Steve Farmer*
> *Wallace, Welch & Willingham*
> *St. Petersburg, FL*

Our highly trained and knowledgeable internal IT (Information Technology) staff is available for custom projects, including the development of private-labeled Websites. Our 128-bit SSL encryption certificate provided by GeoTrust ensures security between our clients’ browsers and our servers.

Our core competencies are: fast answers, fast claims, and Web self service. Because we are a Web-based TPA, we are constantly investing in upgrades to our Website and our electronic service capabilities. Upgrades in the next two years will make it easier than ever for our customers to navigate our Website, and to securely service and access their accounts.

Service

We employ Lean Six Sigma quality methodology throughout the entire organization. Our goal is to exceed your expectations. Our service philosophy results in greater employee participation, satisfaction, retention, and tax savings.

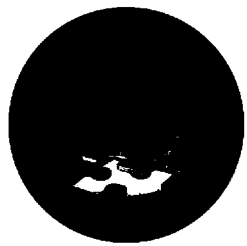
Superior service and innovative thinking is the kind of forethought that's made eflex one of the nation's leaders in self-service administration. With Lean Six Sigma quality tools throughout our organization, we've been raising the bar in service for benefits administration for the past 10 years.

> "I was shocked at how quickly your staff answers questions, and completes claim details. This is incredible customer service. Your entire department, at least every single person who has assisted me, should be commended. Service bar none--EXCELLENT! I don't think it's possible to get any better!"
>
> *K. Rosiak, Mequon, WI*

Our core competencies are fast answers, fast laims and Web self service. We stand behind these core competencies and can prove our service metrics at any time. In fact, we post them daily on our Website at eflexgroup.com. **At eflex, we don't talk about service, we prove it.**

- We touch all claims within 30 minutes of arrival
- Claims processing time is generally one-to-two business days after we receive claim documentation
- We process an average of 65,000 to 70,000 claims per month and our claims error rates are less than 2%
- The hold time in our call center averages under one minute; in most cases it's less than 30 seconds
- Online account lookup, education and forms puts critical information at the click of a mouse 24/7/365

Differentiation Statement



We differentiate ourselves from the competition, with our commitment to three key business disciplines: **fast answers, fast claims, and Web self service**.

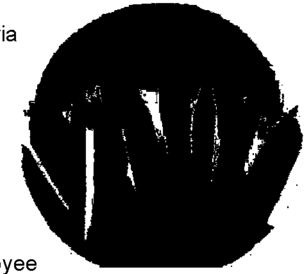
We offer benefit plans that are easier—easier to explain, understand, access, use, and to get your money back. Our service philosophy results in greater employee satisfaction and employee retention. Our well designed, easy to use flex plans will promote and facilitate utilization, resulting in greater tax savings to employers and employees.

In January 2008, we were honored at the International Lean Six Sigma Process Excellence Awards. eflex beat out a variety of companies including Wal-Mart, Capital One, and Allstate, for our implementation of the Lean Six Sigma program. Through Lean Six (which can be applied to virtually any business) we were able to successfully curb expenses, further increase profits, employee efficiency, morale, and offer our customers world-class service.

In 2009, we were named Partner of the Year by Minneapolis-based Lighthouse1. We use the Lighthouse1 claims system which is an SaaS (Web based) application. Lighthouse1 is a leader in the third-party processing market. Some of the largest administrators in the country are using LH1. Lighthouse1 honored eflex for the "best all-around" performance in several major factors including employer and participant retention, HSA growth, debit card adoption, service excellence and volume of participants on the Lighthouse1 system.

Cafeteria Plans

Section 125 of the Internal Revenue Code allows tax savings for employers and employees. These Section 125 plans, often called “cafeteria” or “flex” plans are one of the few **employee benefits that offer advantages to both employers and employees.** There are variations of Cafeteria Plans but for this proposal, we will focus on:



- Premium Only Plans (POP)
- Flexible Spending Account Plans (FSA)
- Dependent Care FSA
- Individual Health Premium Account

Employer Advantages

- FICA tax savings of 7.65% on every dollar the employee puts in the plan *(Please visit eflexgroup.com for an employer “Savings Calculator”)*
- Flexibility in budgeting for and controlling escalating benefit costs
- Flexibility in benefit choices
- Employee morale
- Competitive benefit plan that helps to attract and retain employees

Employee Advantages

- Tax savings from Federal, State, and FICA
- Budgeting for medical and child-care expenses
- Choice in selecting benefits
- Morale booster
- Use pre-tax dollars to purchase “out of pocket” expenses that they’re already buying (i.e., daycare, insurance premiums, deductibles, co-pays, over-the-counter medications, etc.)
- Increased take-home pay due to ability to spend pre-tax dollars

Employer’s Responsibility/Legal Requirements

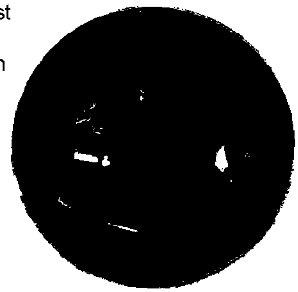
- Plan Document: Employer simply completes our Adoption Agreement that defines the plan parameters.
- Plan Year. IRS guidelines require that a plan year be no more than 12 months, but shorter plan years may be beneficial in some cases.
- IRS guidelines require that the plan is installed to benefit employees, not exclusively for highly-compensated officers or owners. To ensure compliance, eflex will perform IRS-required “non-discrimination tests” as part of our annual fee.
- An annual Form 5500 report must be filed after the plan year ends, when applicable.
- Some plans are required to follow guidelines of the Employee Income Security Act (ERISA).
- All plans must forbid election changes off of the plan renewal unless a change in status occurs. Please visit eflexgroup.com for a complete guide to these situations.
- All funds not claimed by the end of the plan year are forfeited back to the employer.

Compliance Expertise

We employ a Human Resources attorney on staff and retain one of the best employee benefits and tax attorneys in the Midwest. We also enjoy a well-established ongoing relationship with key staff at both the IRS and the Treasury Department so we receive early notifications of new and changing regulations and guidelines.

Our full-time Compliance Director oversees all regulations and ensures that we properly administer our clients' plans and keep them in full compliance. Our Compliance Director has been with eflex since its inception in 2000.

Premium Only Plan (POP)



The POP is the most common of all cafeteria plans. It is most often used in conjunction with the other cafeteria plan types (e.g., FSA). In a POP, the employees portion of group health and other premiums is payroll deducted on a pre-tax basis, resulting in lower employee and employer taxes.

Below are examples of the premiums that can be deducted pre-tax through the POP. Eligible plans are limited to the employer's group plans in which the employee pays the whole amount, or a portion thereof. POP plans may help reduce the impact of a premium increases.

- Accident Insurance
- Cancer Insurance
- Dental Insurance
- Disability Insurance*
- Group Term Life Insurance**
- Group Health Insurance
- HMO Insurance
- Intensive Care Insurance
- Vision Insurance

*Disability Insurance benefits are taxable when premiums are placed pre-tax.
**Term life limit: up to $50,000 pre-tax on employee only; spouse/dependent life not available.

Employer's Responsibility/Legal Requirements

A POP doesn't need to conform to ERISA requirements.

- Plan document
- Non-discrimination test

POP Only

eflex charges $199 annually for a POP only. (It is included in flexible spending plan.) The $199 POP fee includes:

- Annual Legal Requirements
- Plan document updates
- Non-discrimination testing
- 5500 filing when reinstated
- Employee Communication Materials
- Waivers
- Enrollment forms
- Communication pieces

Flexible Spending Accounts (FSA)

The next phase of Cafeteria Plans involves Flexible Spending Accounts (FSAs.) These accounts offer greater tax savings for the employer and employee. FSAs also help to fill coverage gaps between health plans and out-of-pocket expenses.

An FSA allows employees to budget for medical expenses that are not covered by insurance. It is reported that the average family spends between $800 and $2,500 each year on medical expenses. By using an FSA, such expenses may be payroll deducted on a pre-tax basis, resulting in significant tax savings for both the employee and employer. Below is a brief list of eligible and ineligible expenses.

Health-Related Expenses	Ineligible Expenses
Acupuncture	Birthing classes
Alcoholism treatment	Breast pumps
Ambulance	Dental bleaching or bonding
Care for handicapped	Diaper service
Contact lens & supplies	Electrolysis
Deductibles	Health club dues
Dental co-pays and deductibles	Illegal operations or treatments
Dental services (non-cosmetic) and X-rays	Marital or family counseling
Diabetic supplies/insulin	Massage therapy
Doctor office visit co-pays	Meals, excluding inpatient care
Drug addiction treatment	Non-prescription vitamins
Eligible hospital charges (not covered by insurance)	Retin-A
	Rogaine or hair transplant
Eye glasses	Supplements from chiropractor, acupuncturist, holistic healer, etc.
Guide dog care	
Hearing-aid batteries	Whirlpools
Holistic healing services (medically necessary), not including holistic remedies or supplements	
Lab fees	
Laser eye surgery	
Learning disabilities care	*Please visit eflexgroup.com for a more comprehensive list of eligible expenses.*
Medical miles (per IRS limits)	
Oral Surgery	
Orthodontia	
Over-the-counter drugs	
Prescription drug co-pays	
Prostheses	
Routine physicals	
Vision exams and X-rays	
Wheelchair(s)	
X-Rays	

Employer's Responsibility/Legal Requirements

For the Health FSA claims to be paid on a pre-tax basis, IRS rules govern the use of these funds. One of these rules is that the Health FSA must act like group health insurance. The following rules exemplify this.

Uniform Coverage Rule

This rule requires employers to make the full amount of coverage available to participating employees from the start of the plan year, regardless of how much they've paid into the account. For example, if the employee has elected $1,200 per year and has a claim for glasses in the amount of $200 in the first month of the plan, eflex is required to pay the full claim to the employee.

We help mitigate your risk using the following methods:

- We form a partnership for your staff to advise us when the employee is leaving your company.
- In the initial plan design phase, you may limit the amount employees elect per year.
- Limits are advisable when turnover approaches 7-15% per year.
- You (the employer) are required to provide funds to eflex when the account goes below zero.
- You may use forfeited funds to offset potential losses and/or plan expenses.

Use It or Lose It Rule

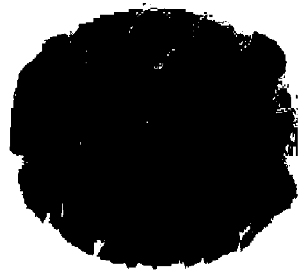
Any funds the employee elects in their FSA that are not claimed within 90 days from the plan year end are forfeited to the employer. The funds are typically used to offset administration fees or "uniform coverage rule" expenses.

Health FSA Claim Filing

- Services must be rendered within the plan year.
- All claims for medical expenses must be filed within the allotted time frame.
- Claims must have attached documentation, which must include proof of service (service date, description, and charge).
- If you elect the eflex Card, there are generally no claim forms. Employees simply swipe the eflex Card at the provider location. Funds are instantly withdrawn from the FSA and paid to the provider. (Employees should still keep their receipts from eflex Card purchases in case there is an IRS audit.)

"On Sunday evening, I needed a little help and called your Customer Care phone number to find a most helpful agent…thanks for being so customer focused. It is a pleasure to work with you."
--Joe Franklin, Jr., President, AGMA
Alexandria, VA

Dependent Care FSA



This account allows employees to pay dependent care expenses pre-tax. Married couples filing jointly and singles, may elect up to $5,000 annually pre-tax. This results in significant tax savings for both the employee and employer.

In nearly all cases, the flex deduction through the employer is *double* that of the tax credit. More information is available by visiting the Flexpert at www.eflexgroup.com

Who is a Qualifying Person?

Dependent care expenses must be for the care of one or more persons qualifying as a dependent. Qualifying persons are:

- A dependent under the age of 13 when the care was provided, and for whom the employee may claim an exemption.
- A spouse who is physically or mentally challenged.
- A dependent who is physically or mentally challenged, and for whom you may claim an exemption (e.g., an aging parent living with the employee).

Dependent Care Claim Filing

- Services must be rendered within the plan year.
- Services must be incurred prior to reimbursement.
- Recurring claims are offered by eflex, allowing the employee to submit one claim at the beginning of the plan year. We will reimburse them each time there is a payroll deduction. For more information, please see our website.
- Overnight camps, educational programs and certain transportation are ineligible expenses.
- Claims are paid based on the amount in your account.
- A bill or receipt from the provider is required. (See the Reimbursement Claim Form for additional information).
- Reimbursement Claim Forms must be completed, signed, and dated with documentation attached.

Individual Health Premium Account

Use the Individual Health Premium Account (IND) to pay for premiums billed to the employee's home or from a spouse's employer. Employees must request reimbursement similar to the daycare or health FSA.

Examples of Coverage

- Accident Insurance
- Dental Insurance
- Hospital Insurance
- Medicare Insurance
- COBRA Premiums
- Cancer Insurance
- Disability Insurance (taxable if taken pre-tax
- Major Medical Insurance
- Vision Insurance

Employee Claim Filing

- All premiums for Individual Health Premium policies must fall within the plan year.
- Employee must provide a copy of the policy and current premium notice for reimbursement.
- Reimbursement Claim Forms must be completed, signed, and dated with documentation attached.

Proprietary and confidential. ©2009 eflexgroup.com

eflex Card

The eflex Card works like a credit card, except it has a stored value instead of a credit limit. The stored value is the employee's available balance under the eflexFSA. The eflex Card is valid from year-to-year. There's an expiration date on the card. When the expiration nears, a new card will automatically be ordered to replace the current card.

There are no transaction fees or pin numbers with the eflex Card. Employees simply swipe the eflex Card at the provider location and choose the "credit" option. Funds are instantly withdrawn from the FSA and paid to the provider. No filing claims and no more waiting for reimbursement.

The card is merchant coded. Every merchant who accepts VISA is assigned one of roughly 1,000 merchant codes. The codes are listed according to industry (e.g., restaurant, pharmacy, dental office). Only valid merchant codes are "open" to the card, which means if someone tries to use the card at a restaurant or gas station, it would be declined. It will also decline payment for non-covered expenses, like vitamins.

Claim verification is required by the IRS

While the eflex Card eliminates claim forms, we're still required to ensure that all expenses purchased with the eflex Card are eligible according to IRS guidelines. Therefore, employees should save their receipts. To ensure compliance with IRS guidelines, there may be instances where we will require documentation for an eflex Card purchase. If so, we would send the employee a letter or e-mail requesting they send us a copy of the insurance explanation of benefits (EOB), itemized receipts, insurance payment coupons, or cash register receipts. If we don't receive the documentation after three notices (within 45 days), we will deactivate the employee's card until we receive the necessary documentation.

Easy to use

Even the most comprehensive health insurance plans don't cover everything. For example, colds and allergies don't usually require a trip to the doctor. But, they do require a trip or two to the pharmacy for over-the-counter medication. Since over-the-counter medications are excluded from coverage under nearly all health insurance plans, employees must pay for them out of their pockets. With an eflexFSA, employees pay for them with pre-tax dollars at the swipe of a card.

Once employees realize how much money they can save by using pre-tax dollars to pay for things they are already buying, like day care services, medications, co-pays, and deductibles, you have their interest. Then, when you show them how easy it is to buy those things with the eflex Card, they can't wait to enroll.

In fact, participation levels among companies using the eflex Card have more than doubled! For employers, increased participation means greater savings in FICA because the gross monthly income for those employees is lower so the monthly payroll tax is lower.

"I always recommend eflex to my clients because the service is outstanding!"
–Sherri Freeman, Holden Insurance, Superior, WI

Installing the Plan

Once the employer has selected eflex, there are just a few things that need to be completed to ensure an accurate/efficient installation of the plan. We've created a seamless process to guide you through the set-up of an eflexFSA.

Step 1: Adoption Agreement. The FSA Adoption Agreement is the employer contract. It details the participation dates, plan needs, and contract information between employer and eflex. Please complete the Adoption Agreement in full, and return it to eflex Sales via email or fax.

Step 2: Educate and enroll employees. We offer a variety of helpful educational materials that groups can use to promote the plan and encourage employee participation. Visit eflexgroup.com to download our simple FSA Enrollment Kit.

Distribute the Enrollment Kit to all eligible employees. If the employer chooses to use the Internet for enrollment, we must receive the formatted Excel spreadsheet containing the eligible employee information before the beginning of the enrollment period. (We recommend a period 10-14 days prior to plan start date). If the employer chooses to use the paper enrollment method, we require the formatted Excel spreadsheet containing the enrollment information at least one week prior to the plan start date. Most plans can be enrolled at the beginning of the month, with one month advance notice. If the employer chooses to use the eflex Card, we require enrollment information at least one month prior to the plan start date so employees can receive their cards at the beginning of the plan year. At the end of the calendar year, when most plans enroll and re-enroll, we may request a longer time frame to implement the plan.

We'll start processing plan information immediately upon receipt of the completed Adoption Agreement and the enrollment spreadsheet. It typically takes just 3 to 4 business weeks to fully complete processing and set up the plan.

Banking Arrangements

We will electronically sweep payroll deductions from an account of the employer's choosing. The sweep will be made for the amount listed on the payroll deduction or claims summary report. This arrangement is the most efficient and convenient approach and places the dollars into the hands of your employees the quickest.

For fast answers, fast claims, and Web self service, eflex is your only choice.

For more information, please visit eflexgroup.com or call eflex Sales at 1.877.933.3539, ext. 300.

Confidentiality Statement: *All rights reserved. The information contained in this document is proprietary and confidential to eflexgroup.com and may be used solely by the recipient to evaluate eflexgroup.com products and services. No part of this document may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy and recording, for any purpose without eflexgroup Inc.'s consent.*

All information in this document is valid for 90 days from the date the proposal is issued.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2010-_____

AUTHORIZING THE CITY MANAGER TO ENTER INTO ADOPTION AGREEMENT AND CAFETERIA PLAN TO AMEND AND RESTATE THE CITY OF KEIZER CAFETERIA PLAN UNDER SECTION 125 OF THE INTERNAL REVENUE CODE; **REPEALING RESOLUTION NO. R99-1157**

WHEREAS, the City Council of the City of Keizer adopted a Cafeteria Benefit Plan under Section 125 of the Internal Revenue Code by Resolution No. R99-1157;

WHEREAS, the City Council of the City of Keizer deems it to be in the best interest of its employees and officers to amend and restate its Cafeteria Plan under Section 125 of the Internal Revenue Code of 1986, as amended;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Council hereby adopts and approves this Cafeteria Plan as amended and restated to become effective as of August 1, 2010 pursuant to the Adoption Agreement and Cafeteria Plan attached hereto.

BE IT FURTHER RESOLVED that the City Manager of the City of Keizer shall have the authority to:

a. Execute the attached Adoption Agreement and Amended Cafeteria Plan, and other documents and agreements as may be necessary to implement the Plan;

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-390-3700

b. Appoint a plan administrator for such plan, and change such administrator from time to time with the advice and consent of the City Council;

c. Contract with eflexgroup, Inc. to provide assistance to the plan administrator in establishing and maintaining such plan.

BE IT FURTHER RESOLVED that the City Recorder is directed to enter a copy of the attached Adoption Agreement and Cafeteria Plan, as amended, into the records of the City of Keizer, and into the minutes of this meeting.

BE IT FURTHER RESOLVED that Resolution No. R99-1157 (Adopting a Premium Conversion, Medical Reimbursement and Dependent Care Reimbursement Cafeteria Benefit Plan for City Employees) is hereby repealed in its entirety.

PASSED this __________ day of _________________, 2010.

SIGNED this __________ day of _________________, 2010.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-390-3700

eflexFSA

Submit by Email

Print Form

Adoption Agreement

As set forth below, the following employer hereby adopts the eflexgroup.com (eflex) plan (the plan) and engages eflex to provide services related to the plan. The plan is a "cafeteria plan" as defined in Section 125 of the Internal Revenue Code.

Note: Incomplete agreements cannot be processed. Please call eflex Sales at 1.877.933.3539, ext. 300 with questions regarding this agreement. Fax completed form to the attention of your eflex Sales Associate at (608) 237-3800 or email to efgsales@eflexgroup.com.

Organization: City of Keizer
Enter the name exactly as it appears on your tax returns and as you would like it to appear in your plan documents.

Federal ID #: 93-0836902 Date Incorporated/Organized: 1982

Mailing Address: P.O. Box 21000

City: Keizer State: OR ZIP: 97307-1000

Street Address: 930 Chemawa Rd. NE, Keizer State: OR ZIP: 97307-1000
(If different from mailing address)

Organization Type *(Please check all that apply.)*

- ☐ Professional Association
- ☐ Subchapter "C" Corporation
- ☑ Government Agency
- ☐ Other:
- ☐ Subchapter "S" Corporation*
- ☐ Partnership/LLP**
- ☐ LLC (Limited Liability Company)**
- ☐ Non-profit
- ☐ Sole Proprietorship**

**Subchapter "S" Corporation shareholders above the 2% ownership level may not participate, but may sponsor a plan for its employees; immediate family members of Subchapter S owners may not participate.*
***LLC, LLP, Partnership, and Sole proprietors may not participate, but may sponsor a plan for the employees. However, if the spouse is a bona fide employee of the firm, he/she may participate and use the benefit for the entire family.*

The employer/organization entity is organized pursuant to the laws in the state of: Oregon

Nature of the Business: City Government Phone Number: 503-390-3700

SIC: Web Address: www.keizer.org

Contact Information

Human Resources Contact *(name and title)*: Cathy Meeks, Human Resources Administrative Assistant

Phone Number: 503-856-3419 Fax Number: 503-856-3445

Email Address: meeksc@keizer.org

Payroll Contact *(name and title)*: Karen Sergent, Accounting Technician

Phone Number: 503-856-3422 Fax Number: 503-390-3787

email: sergentk@keizer.org

Plan Elections

Plan Name ☑ Employer's Name: City of Keizer ☐ Other:

Plan Number ☑ 501 ☐ 502 ☐ Other: Number of Eligible Employees: 93

Plan Year Plan Begin Date: 8/01/2010 Plan End Date: 7/31/2011 ☐ Check if short plan year.

☐ Check here if mid-year take-over; complete original plan dates below.

Original Plan Begin Date: 8/01/2010 Original Plan End Date: 7/31/2011

This Agreement shall automatically renew indefinitely for like terms, unless terminated earlier as set forth in the "Term and Termination" section detailed in this form.

2.5-Month Extension

IRS *Regulation Notice 2005-42* allows employers to offer a 2.5 month extension that will immediately follow the end of the plan year. Unused benefits or contributions of employees may be paid or reimbursed to plan participants for qualified benefit expenses incurred during the 2.5 month grace period. Claims run-out will begin at the plan end date and stop 90 days later. This extension is an optional choice for the employer.

☐ Elect 2.5-Month Extension ☑ Do *not* Elect 2.5-Month Extension

Eligibility Requirements

To enroll in the Plan, an employee must timely complete an enrollment form for the applicable plan year. An employee must also satisfy eligibility rules for the various available benefits as follows *(check one).*

☐ All employees are eligible (including part time). For Section A of the plan (Group Medical Premiums and/or Cash in Lieu of Medical Premiums), an employee must be eligible for coverage under the terms of the applicable underlying plans. For Sections B, C, and D of the plan (Health FSA, Dependent FSA, and/or Individual Health Premium Account), all employees are eligible, regardless of how few hours they work.

☑ Only employees who work sufficient hours are eligible. For Section A of the plan (Group Medical Premiums and/or Cash in Lieu of Medical Premiums), an employee must be eligible for coverage under the terms of the applicable underlying plans. For Sections B, C, and/or D of the Plan (Health FSA, Dependent FSA, and/or Individual Health Premium Account), an employee must be regularly scheduled to work at least:

☑ Hours per week: 20 ☐ Other: ____________

☐ Other Requirements (e.g., class, union). To participate in the Plan, an employee must:

____

____

Plan Participation

Participation in the plan begins (check one):

☐ Date of hire

☑ First of the month following:

☑ Date of Hire ☐ 30 Days ☐ 60 Days ☐ 90 Days ☐ Other: ____________

☐ Other: ____________

Benefits for the Cafeteria Plan

Group Medical Premiums (Section A of the plan). Pre-tax payment of employee premiums for coverage under the following plans offered by the employer. *(Please check all that apply.)*

☑ Major Medical ☑ Dental

☐ Health Savings Account (HSA) ☐ Short-term Disability

☐ Long-term Disability ☐ Stand-alone Group Policy of Life Insurance

☐ Vision Care ☐ Cancer Insurance (not a cash-back policy)

☐ Accidental Death or Dismemberment Insurance ☐ Other: ____________

☐ Group Term Life Insurance that is $____________ *(Not to exceed $50,000 in face amount)*

☐ Life Insurance Attached to Health Insurance that is $ ____________ *(Not to exceed $50,000 in face amount)*

☑ **Health FSA** (Section B of the Plan). Pre-tax payment by salary reduction and reimbursement of qualifying health care expenses incurred by employees, subject to the following. *(Please check one.)*

☑ Because an employee's annual Health FSA election amount is required by law to be available uniformly throughout the year, the plan shall limit the amount that an employee may annually elect up to $ 3,000.00.

☐ The plan shall not limit the annual Health FSA election amount.

☑ **Dependent Care FSA** (Section C of the plan). Pre-tax payment by salary reduction and reimbursement of qualifying dependent-care expenses incurred by employees.

☐ **Individual Health Premium Account** (Section D of the plan). Pre-tax payment by salary reduction and reimbursement of employee premiums for individual-billed health-related insurance.

☐ **Flex Dollars** (Section A of the plan). Instead of requiring employees to pay premiums for medical coverage, the employer pays cash as follows to employees who decline coverage:

___

☑ **Debit Card.** All participating employees will be offered the eflex Card. Your account will need to be pre-funded 1/12 of the total annual elections. Your Account Manager will notify you of this amount upon completion of group set-up. This deposit will roll forward each plan year. **Important: to reduce requests for substantiation and comply with IRS regulations, please provide the co-pay amounts from your group medical plan**. Also provide a copy of your benefit plan summary.

Office Visit Co-pay(s): see attachment Emergency Room Co-pay(s) see attachment

Prescription Drug Co-pay(s) see attachment Other Co-pays (please describe) see attachment

☐ Pharmacy Download: Our card vendor offers links to check prescription eligibility at the point of sale. If you would like to explore this option for your plan, please provide the name of your pharmacy vendor. *Please note there is an additional one-time cost of $400 to set up this download. By providing the pharmacy vendor information, you agree to accept this cost.* Vendor name: ___

Contributions

☑ The Employer shall make no additional contributions to the plan.

☐ The Employer shall make additional contributions to the plan as described: ___

☐ Employer contributions to be made in a lump sum at start of the plan year.

☐ Employer contributions to be made each pay period.

Enrollment

☑ Spreadsheet enrollment. Employer enters enrollment data into an eflex spreadsheet; no charge.

☐ Paper enrollment. $5 fee per form for manual enrollment; fee is waived if employer uses eflex spreadsheet enrollment.

☐ Internet. Employer provides a list of eligible employees and chooses timeframe for employees to enroll online. This option requires 14 business days for set up. Contact eflex Sales at efgsales@eflexgroup.com to arrange online enrollment.

☐ Download option. Electronic submission of enrollments from your HR system or enrollment company. Please request data specifications from your eflex Sales consultant.)

Supplies

☑ FSA Employee Brochure
  ☑ In English ☐ In Spanish

☑ Employee Meeting Video CD
  ☑ In English ☐ In Spanish

Deductions and Payment Limitations

Are all employees paid on the same schedule? ☒ Yes ☐ No

Employees are paid on the following schedule (check all that apply):

☐ Weekly (48 pay periods)	☐ Weekly (52 pay periods)	First pay date after effective date: ___
☐ Bi-weekly (24 pay periods)	☑ Bi-weekly (26 pay periods)	First pay date after effective date: 8/05/2010
	☐ Semi-monthly	First pay date after effective date: ___
		Second pay date after effective date: ___
	☐ Monthly	First pay date after effective date: ___
	☐ Other	First pay date after effective date: ___

Deductions are taken: ☑ Every time the employee is paid
☐ Other: ___
(e.g., Monthly payroll paid on the 15th and 30th of every month unless the dates fall on a weekend or holiday.)

Funding *(Please choose one of the following.)*

☑ **Payroll Deduction Funding.** Your Account Administrator will send you a payroll deduction report three business days prior to your payroll. Please verify deductions and make any corrections. Return any corrections to your Account Administrator prior to your payroll date. ACH funds are drawn on the payroll date and occur within 24 to 48 hours from the payroll date depending on bank clearing time.

☐ **Claims Based Funding.** Your Account Administrator will send you a claims summary report based on your processing schedule. Funds will be drawn via ACH one business day after you (the employer) receive the report. Please make your employees aware of the claims-based schedule you have chosen with your plan so they will know when to expect reimbursements. **Note: If opting for the debit card, funding must be daily.**

Choose reimbursement schedule for claims:
☐ Daily Processing ☐ Semi-weekly Processing (Tuesday and Thursday) ☐ Weekly (Friday)

Monthly Administration Fees

eflex will electronically invoice monthly; fees will be debited on or around the 10th of each month.

Billing Information

Billing Contact *(name and title)*: Karen Sergent, Accounting Technician

email address for monthly invoices: sergentk@keizer.org

If applicable, please check your eflex partner/affiliate:

☐ ARISE Health Plan ☐ Blue Shield of California ☐ Mercy Health Care
☐ Midwest Security Administrator ☐ Physicians Plus Health Care ☐ WPS Health Insurance
☐ UMR
☐ Check this box if you are affiliated with an eflex partner/affiliate and want auto claims download.

Banking Arrangements

Please attach voided check. Do not use a deposit slip as the number could be invalid. Your agreement will not be processed without a voided check.

Bank Account Information

Bank Name: ______________________________

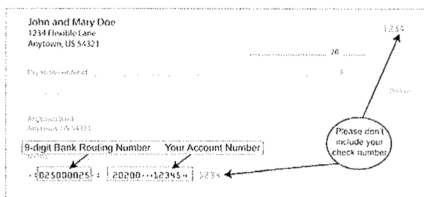
Bank Address: ______________________________

City: ____________________ State: ____________________ ZIP: ____________________

Name on the Account: ______________________________

Routing and Transit #: ______________________________

Account #: ______________________________



By checking the boxes under funding and monthly administration fees in this agreement, we hereby authorize eflex, hereinafter called COMPANY, to initiate debit entries to our checking account indicated above and the depository named above, hereinafter called DEPOSITORY, to debit the same to such account. This authority is to remain in full force and effect until COMPANY and DEPOSITORY has received written notification from either of us of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Fees

Annual Fee (Plan Document, Summary Plan Description, Discrimination Testing Fee, 5500 Filing, Setup, 2.5-month extension)	$ 300.00
☑ Go Green, Save Green Option. We agree to submit all enrollments electronically, include email addresses and secure direct deposit* of reimbursements for 100% of enrolled employees, elect electronic funds transfer (EFT) for all fees and plan funding. In return, we will be charged a discounted per participant per month (pppm) fee of $4.50 including debit card. By electing the Go Green pricing, we understand and agree that we will be charged an additional fee of $3 pppm for each participant who doesn't elect direct deposit and $3 pppm for each participant who doesn't provide eflex with an email address.	
Monthly Administration Fee (per participant per month)	$ 4.50
Minimum Monthly Fee	$ 75.00
Optional Fees	
Paper Enrollment (without electronic file)	$ 0.00
Employee Meeting presented by eflex	$ 0.00

Note: eflex may increase fees from year to year by an amount equivalent to the increase in the Consumer Price Index (all urban consumers, US city average, all items).

Do you have other benefit plan administration with eflex? *(Please check all that apply.)*

☐ POP ☐ HSA ☐ HRA ☐ COBRA ☐ Transit

Items Needed Before Implementation

Complete Adoption Agreement (this document) and email to efgsales@eflexgroup.com or fax to 608.237.3800. *Incomplete agreements cannot be processed. Please call eflex Sales at 1.877.933.3539, ext. 300 with any questions.*

Attach a copy of the pricing sheet from your proposal to the completed Adoption Agreement.

Complete the enrollment spreadsheet using our format and email to the attention of your eflex Sales consultant at efgsales@eflexgroup.com.

Responsibilities of the Employer

Effect of Agreement

This agreement, along with the plan document and any addenda attached to the agreement, contain all provisions of an Internal Revenue Code § 125 "Cafeteria Plan" adopted by the employer. This agreement is also a contract between the employer and eflex. **The employer should consult legal counsel before executing this agreement.**

Plan Sponsor and Administrator

The employer is both the sponsor and the administrator of the plan, with ultimate responsibility for: 1) ensuring that the plan complies with all applicable federal, state and local laws, including Internal Revenue Code § 125; 2) establishing, amending, terminating, and interpreting plan provisions; and 3) determining whether claims should be paid. Although the employer has engaged eflex to provide certain documents and administrative services (including review and payment of qualified claims under the plan), eflex shall whenever possible, consistent with this agreement, act as directed by the employer.

ERISA

All plans that are not government or church plans are ERISA plans.

Funding of Plan (please read carefully)

The employer shall provide eflex with all funds that eflex requires to pay benefit claims under the plan. If eflex pays a qualified benefit claim in advance in an amount greater than $100 of receipt of the corresponding funds from the employer, the employer shall provide funds to eflex within 5 days notice of such payment by eflex.

If the employer has funded any overages, eflex will review the account on an annual plan year basis, and any overages are refunded with forfeitures. If the necessity arises for eflex to hold the overages in an account, the overages are added at plan year close with other applicable funds. If the employer is under a PEO arrangement or other payroll service, by signing this agreement you authorize the PEO/payroll service to forward funds to eflex as necessary herein.

All debit card deposits will roll forward to the next plan year. Funds will be returned upon termination of the employer.

Discrimination Testing/Cooperation
To perform required services for the plan, the employer shall timely provide eflex with information that eflex reasonably requests, including completed employee enrollment forms, employee census data/nondiscrimination testing data, and otherwise cooperate with eflex. All data submitted by the employer shall be in electronic format as specified by eflex. In the event such data is not provided as specified, the employer hereby holds eflex harmless from any claims or liability associated with employer's potential failure to remain in compliance. In the event the employer requests eflex perform manual services, eflex may at its discretion charge the employer a fee comprising of time and materials, determined by eflex.

Mutual Indemnification
Each party shall indemnify the other party, its employees, directors, and agents (collectively, Indemnitees) and hold the Indemnitees harmless against all damages, losses, or other liabilities incurred by the Indemnitees arising from any act or failure to act by the Indemnitor, its employees, directors, or agents in connection with the plan. Such indemnification shall include (and not be limited to) liabilities arising from a failure to timely provide eflex with information. Such indemnification shall also include liabilities arising from administration or interpretation of the plan by either party in a manner contrary to law.

Term and Termination
The term of this agreement shall be two years, and shall automatically renew annually unless the employer gives to eflex notice of termination at least 90 days prior to the plan year end date. In any case of termination, the employer shall be responsible for 90 days of administrative fees to cover administration of claims run out.

Other Termination By Employer: If the employer terminates the agreement without giving the notice or terminates within the current plan year specified above, there shall be a termination fee of six months of administrative fees, measured by the administrative fees averaged over the prior three months, payable to eflex prior to the actual termination date. Additionally, the employer shall be responsible for reimbursing eflex $300 and any applicable material and labor costs, as well as any fees required to cover administration of run out claims.

Other Termination by eflex: eflex may terminate the agreement effective 1) as of an end of term date without the 90-day notice or 2) on a date other than an end of term date, but only if the employer previously breached this agreement, such as by failing to pay eflex for its services, failing to provide funds for payment of claims, or failing to cooperate with eflex.

The employer and *eflex* executed this Adoption Agreement on the dates set forth below.

Employer

Company Name: City of Keizer

Name: Machell DePina, Human Resources Director

Signature: ______________________ Date: ____________

eflexgroup.com Representative

Name: ______________________

Signature: ______________________ Date: ____________

Agent Information

Name: ______________________

Address: ______________________

City: ______________________ State: __________ ZIP: __________

email: ______________________ Phone Number: ______________

Important: The IRS requires that qualified plans enact a Corporate Resolution. This Corporate Resolution is critical documentation that shows the IRS that the corporation has instituted a plan according the appropriate regulations. The employer should complete this page and keep it on file with the plan document as critical documentation for the plan. This page of the Adoption Agreement does not need to be submitted to eflex.

WHEREAS, the Board of Directors of ____

deems it to be in the best interest of its employees and officers to amend and restate its Cafeteria Plan under Section 125 of the Internal Revenue Code of 1986, as amended, be it

RESOLVED, that the Board of Directors hereby adopts and approves this Cafeteria Plan as amended and restated to become effective as of ____

Pursuant to the Adoption Agreement and Cafeteria Plan which are attached hereto;

RESOLVED FURTHER, that the President of the ____

Shall have the authority to:

a. execute this Adoption Agreement and Amended Cafeteria Plan, and other documents and agreements as may be necessary to implement the Plan;

b. appoint a plan administrator for such plan, and change such administrator from time to time with the advice and consent of the Board of Directors;

c. contract with eflexgroup, Inc, to provide assistance to the plan administrator in establishing and maintaining such plan; and

RESOLVED FURTHER, that the Secretary of the Board is directed to enter a copy of this Adoption Agreement and this Cafeteria Plan, as amended, into the records of this Institution, and into the minutes of this meeting.

CERTIFICATION

The foregoing is a true copy of a resolution duly adopted by the Board of Directors at a meeting on

______________________________ and entered in the minutes of such meeting in the Institution minute's book.

Dated ____

Secretary's Name ____

Secretary's Signature ____

Please detach this page and keep it for your files.

This Business Associate Agreement (the "Agreement") is entered into by and between City of Keizer ______________________ (the "Plan") ***{or Plan Sponsor if Underlying Agreement is with Plan Sponsor, not Plan}*** and eflexgroup, Inc./eCOBRA (together referred to as the "Business Associate") effective February 17, 2010 or date document is signed.

WHEREAS, the Plan is a group health plan as defined in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "Privacy Regulations") and Title 45, Parts 160, 162 and 164 of the Code of Federal Regulations (the "Security Regulations") (together, the "Privacy and Security Regulations") adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

WHEREAS, Business Associate and the Plan ***{Sponsor}*** entered into an agreement ("Underlying Agreement") whereby Business Associate will perform services on behalf of the Plan; and

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information ("PHI") by Business Associate in performance of its obligations in compliance with (1) the Privacy and Security Regulations; and (2) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy) and regulations promulgated there under by the U.S. Department of Health and Human Services ("DHHS") (together referred to as "HITECH").

In consideration of the mutual promises set forth below, the parties hereby agree as follows:

1. Definitions. Capitalized terms shall have the meanings given to them in the Privacy and Security Regulations and HITECH, which are incorporated herein by reference.

2. Use and Disclosure of Protected Health Information. The Plan and Business Associate hereby agree to comply with the privacy and security requirements of HIPAA, as set forth in the Privacy and Security Regulations and HITECH. Business Associate shall use and/or disclose PHI only to the extent necessary in furtherance of Business Associate's obligations and duties under the Underlying Agreement with the Plan and as authorized or permitted by the Privacy and Security Regulations and HITECH. Business Associate shall disclose PHI to other business associates of the Plan to the extent necessary for purposes of the Plan's Payment and Health Care Operations, provided such other business associates have business associate agreements in place with the Plan as required by the Privacy Regulations (and a copy of the applicable provisions of such other business associate agreements will be provided to Business Associate upon request). Business Associate shall disclose PHI to the Plan Sponsor to the extent necessary for the Plan Sponsor's administration activities that constitute Payment or Health Care Operations, provided the Plan document has been amended as required by the Privacy Regulations (and a copy of the applicable provisions of the Plan document will be provided to Business Associate upon request). Business Associate may disclose Summary Health Information to the Plan Sponsor for the purpose of (a) obtaining bids for health or stop loss insurance for the Plan, or (b) modifying, amending or terminating the Plan.

3. Prohibition on Unauthorized Use or Disclosure of PHI. Business Associate shall not use or disclose any PHI received from or on behalf of the Plan, except as permitted or required by the Underlying Agreement, this Agreement, the Privacy and Security Regulations, HITECH and as required by law or as otherwise authorized in writing by the Plan. Business Associate shall comply with the applicable provisions of: (a) the Privacy Regulations; (b) HITECH (including 42 U.S.C.A. sections 17931 and 17934); (c) state laws, rules and regulations applicable to individually-identifiable health information not preempted by federal law; and (d) the Plan's health information privacy policies and procedures.

4. Business Associate's Operations. Business Associate may use PHI it creates for or receives from the Plan, in its capacity as a Business Associate, to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities but only if:

(a) The disclosure is required by law; or

(b) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:

(i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and

(ii) Notify Business Associate (who shall in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached as soon as possible.

5. Data Aggregation Services. Business Associate may use PHI to provide Data Aggregation Services related to the Plan's Health Care Operations.

6. PHI Safeguards. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any PHI relating to the Plan.

7. Electronic Health Information Security and Integrity. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations and HITECH to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the Plan. Business Associate shall document and keep these security measures current in accordance with the Security Regulations and HITECH (including 42 U.S.C.A. section 17931).

8. Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the Plan, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of the Privacy and Security Regulations.

9. Subcontractors and Agents. Business Associate shall require each of its subcontractors or agents to whom Business Associate may provide PHI on behalf of the Plan to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Agreement, the Privacy and Security Regulations and HITECH.

10. Access to PHI. Business Associate shall provide access, at the request of the Plan, to PHI in a Designated Record Set, to the Plan or, as directed by the Plan, to an Individual to meet the requirements under Title 45, Section 164.524 of the CFR or applicable state law and to meet the electronic transmission requirements for access to Electronic Health Records by Individuals in accordance with HITECH, including 42 U.S.C.A. section 17935(e). Business Associate shall provide access in the time and manner set forth in the Plan's health information privacy policies and procedures.

11. Amending PHI. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Plan directs or agrees to pursuant to Title 45, Section 164.526 of the CFR at the request of the Plan or an Individual in the time and manner set forth in the Plan's health information privacy policies and procedures.

12. Accounting for Disclosures of PHI.

(a) Business Associate shall document all disclosures of PHI and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the CFR, including PHI in Electronic Health Records in accordance with HITECH.

(b) Business Associate agrees to provide the Plan, in the time and manner set forth in the Plan's health information privacy policies and procedures, information collected in accordance with Section 12(a) above, to permit the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the CFR and HITECH, including 42 U.S.C.A. section 17935(c) with respect to Electronic Health Records. To the extent a request for an accounting relates to disclosures of PHI in Electronic Health Records by Business Associate, at the Plan's election, the Plan can provide an Individual who requests such accounting with Business Associate's contact information, and Business Associate shall provide the accounting directly to the Individual upon request by the Individual.

13. Access to Books and Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from or on behalf of the Plan available to the Plan and to DHHS or its designee for the purpose of determining the Plan's compliance with the Privacy Regulations and HITECH.

14. Reporting. As described below, Business Associate shall report to the Plan in writing (a) any use or disclosure of PHI not permitted under 45 CFR section 164, Subpart E, this Agreement, or by law, (b) any Security Incident of which it becomes aware and (c) any Breach of Unsecured PHI in accordance with HITECH, including 42 U.S.C.A. section 17932. For purposes of this Agreement, the term Security Incident means the attempted or successful unauthorized access, use, disclosure, modification or destruction of electronic PHI relating to the Plan.

(a) Reporting Security Incidents or Improper Uses or Disclosures. Business Associate shall make the report to the Plan's Privacy Official (or to the Plan's Security Official in the event of a Security Incident) within 3 business days after Business Associate learns of such unauthorized use or disclosure or Security Incident. Business Associate's report shall: (i) identify the nature of the unauthorized use or disclosure or Security Incident; (ii) identify the PHI affected; (iii) identify who made the unauthorized use and/or received the unauthorized disclosure and/or participated in the Security Incident, if known; (iv) identify what Business Associate has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure or Security Incident; (v) identify what corrective action Business Associate has taken or shall take to prevent future similar unauthorized use or disclosure or Security Incident; and (vi) provide such other information, including a written report, as reasonably requested by the Plan's Privacy Official or Security Official. Any Security Incident or unauthorized use or disclosure of PHI that is a Breach of Unsecured PHI shall be reported as required under subsection (b) below.

(b) Notification of a Breach. Pursuant to HITECH, including 42 U.S.C.A. section 17932, and regulations under 45 CFR Parts 160 and 164, as amended, Business Associate shall provide written notice to the Plan's Privacy Official of any Breach of Unsecured PHI within three business days after Business Associate discovers the Breach. Business Associate shall conduct the risk assessment to determine whether a Breach occurred. Business Associate's report to the Plan shall identify or describe: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed; (ii) the incident, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) who made the unauthorized use and/or received the unauthorized disclosure; (iv) the types of Unsecured PHI involved in the Breach; (v) any specific steps the Individual should take to protect him or herself from potential harm related to the Breach; (vi) what the Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; (vii) contact procedures for how the Individual can obtain further information from Business Associate; and (viii) such other information, including the risk assessment analysis prepared by Business Associate, as reasonably requested by the Plan's Privacy Official.

15. Sale of PHI. Business Associate shall not receive direct or indirect payment in exchange for any PHI relating to the Plan or its Individuals, including Electronic Health Records, unless Business Associate receives authorization by all affected Individuals, except as permitted under HITECH including 42 U.S.C.A. section 17935(d).

16. Marketing. Business Associate shall not receive direct or indirect payment for marketing communications which include PHI relating to the Plan or its Individuals without authorization from the affected Individuals unless such communication is permitted under the Privacy Regulations and HITECH, including 42 U.S.C.A. section 17936.

17. Restrictions on Uses, Disclosures and Requests.

(a) Business Associate will limit all uses, disclosures and requests of PHI, including electronic PHI, to the Limited Data Set to the extent possible or, if that is not sufficient, then to the minimum necessary to accomplish the intended purpose of such use, disclosure or request, as required by the Privacy Regulations and HITECH (including 42 U.S.C.A. 17935(b)).

(b) Upon the request of an Individual, Business Associate will not disclose such Individual's PHI for purposes of Payment or Health Care Operations if the Individual paid in full out of pocket for the health care item or service to which the PHI relates, in accordance with HITECH (including 42 U.S.C.A. section 17935(a)).

18. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

19. Termination for Cause. As required by the Privacy Regulations and section 42 U.S.C.A. 17934, if the Plan or Business Associate ("Non-Breaching Party") becomes aware that the other entity to this Agreement has engaged in a material breach ("Breaching Party"), then the Non-Breaching Party shall:

(a) Provide an opportunity for the Breaching Party to cure the breach or end the violation and terminate this Agreement and the Underlying Agreement if the Breaching Party does not cure the breach or end the violation within the time specified by the Non-Breaching Party.

(b) Immediately terminate this Agreement and the Underlying Agreement if cure is not possible.

(c) If neither termination of this Agreement and the Underlying Agreement nor cure is feasible, report the violation to DHHS.

20. Return or Destruction of Health Information.

(a) Except as provided in Section 20(b) below, and subject to any record retention provisions of the Underlying Agreement, upon termination, cancellation, expiration or other conclusion of this Agreement and the Underlying Agreement, Business Associate shall return to the Plan or destroy all PHI created or received by Business Associate on behalf of the Plan. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

(b) In the event that the Parties mutually determine that returning or destroying the PHI is infeasible, Business Associate shall retain the PHI, extend the protections of this Agreement to such PHI and maintain the confidentiality of all such PHI, for so long as Business Associate maintains such PHI. The obligations of Business Associate under this Section 20(b) shall survive termination of this Agreement and the Underlying Agreement.

21. Obligations of Plan.

(a) The Plan shall provide Business Associate a copy of the Plan's Notice of Privacy Practices if there are limitations in the Notice that would prevent disclosure or use of PHI.

(b) The Plan shall notify Business Associate of any restriction to the use or disclosure of PHI that the Plan has agreed to (and any revocation of such a restriction), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(c) The Plan shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Regulations or HITECH if done by the Plan, except as permitted in Sections 4 and 5 above.

22. Automatic Amendment. Upon the effective date of any amendment to the Privacy and Security Regulations or HITECH and any applicable regulations there under with respect to PHI, the Agreement shall automatically be deemed to be amended to incorporate such amendment to the Privacy and Security Regulations and HITECH and applicable regulations so that Business Associate and the Plan remain in compliance with the Privacy and Security Regulations and HITECH and applicable regulations.

21. Hold Harmless. Business Associate shall indemnify and hold the Plan and its employees, directors and trustees harmless from all liabilities, penalties, taxes, costs, expenses or damages of any sort resulting from or attributable to Business Associate's breach of this Agreement.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf, effective as of February 17, 2010.

{Plan or Plan Sponsor Name}	eflexgroup, Inc./eCOBRA
By: Machell DePina	By: ______________
Its: Human Resources Director, City of Keizer	Its: Director of Compliance

Signed This 17th Day of August, 20 10 .

MINUTES
KEIZER CITY COUNCIL
Monday, July 19, 2010
Keizer Civic Center, Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Christopher called the meeting to order at 7:10 pm. Roll Call was taken as follows:

Present:
Lore Christopher, Mayor
Richard Walsh, Councilor
Cathy Clark, Councilor
Mark Caillier, Councilor
David McKane, Councilor
Brandon Smith, Councilor

Absent:
Jim Taylor, Council President

Staff:
Chris Eppley, City Manager
Shannon Johnson, City Attorney
Rob Kissler, Public Works
Nate Brown, Community Development
Kevin Watson, Assistant to the City Manager
Marc Adams, Police Chief
Tracy Davis, City Recorder

FLAG SALUTE

Mayor Christopher led the pledge of allegiance.

ANNOUNCEMENT

Mayor Christopher announced the City Council would meet in Executive Session pursuant to ORS 192.660(2)(f) Exempt Records and ORS 192.660(2)(h) Litigation at the end of the meeting. The meeting will be recessed and then reconvened to take any necessary action before adjournment.

PUBLIC TESTIMONY

Jim Jacks, Keizer, Planning Commission, provided a Planning Commission and Economic Opportunities Analysis Task Force update noting that the Commission and Task Force had studied job related land uses and the related infrastructure. The Commission had reviewed text amendments relating to junk and junkyards and recommended Council approval.

Jim Parent, Parks Advisory Board, reported on recent Parks Board actions including citizen concern about the neglect of the dog park grounds at Keizer Rapids Park and a recommendation to Council to extend water to the dog park for irrigation and for the drinking fountain. He added that the person who contributed the funds for the drinking fountain has indicated that if it is not installed by the end of the summer she would request return of her contribution. Mr. Kissler explained that staff goal is to get a master line into the park as soon as possible and that a volunteer group has stepped up to assist with the irrigation.

Additional discussion then took place regarding Master Plan revisions, the need to irrigate the dog park and surrounding fields, splitting the dog park so that grass could grow on the unused side, and alternate surfaces. Mr. Parent reported that the Wild Wild Rec Program is growing in attendance at each park and that the Parks Department has indicated a willingness to use community service volunteers. He added that the Bair Park cleanup is a week-long event and *Jeanne Bond-Esser* provided additional information regarding the clean-up. Mr. Parent pointed out that changes have been made to the Keizer website so that park information is more readily available to the public. Discussion took place regarding the Splash Park schedule and maintenance issues that are being addressed. Mr. Parent concluded his report noting that the Soccer Association has presented a proposal to develop and maintain the multi-use play fields at Keizer Rapids Park for soccer.

Lyndon Zaitz, Keizer, Chair of Making Keizer Better Foundation, invited everyone to the RiverFair on August 14 at Keizer Rapids Park and provided details of the planned events with Councilor Clark providing additional information. Mr. Zaitz added that the Foundation has given grants to the food bank and for vocational scholarships.

Vickie Hilgemann, Keizer Parks Foundation, added that dogs could communicate with a dog psychic at the RiverFair and this would be a fundraiser for the Foundation. She reported that the Foundation continues fundraising for projects in the dog park including a temporary irrigation system for the dog park in partnership with the City and Keizer Rotary. She reported on the Marie Dorion sign dedication held at Keizer Station Park and the Wild Wild Rec Program and expressed the desire to have Police and Fire participation in that program

Leslie Layton, Keizer, voiced concern about traffic at Windsor and Chemawa and suggested a turn lane be included in the proposed improvements. Public Works Director Rob Kissler explained that the project is federally funded and Oregon Department of Transportation will be the lead agency. The City will serve as liaison and can share citizen concerns and suggestions with ODOT.

Sherrie Gottfried, Keizer Renaissance Inn, reported on the Good Vibrations Motorcycle event. She noted that it was very successful and provided details about the event including the beneficial impact it had to the business community. She thanked those involved including Sgt. LeDay and Chief Adams of the Keizer Police, Keizer Chamber of Commerce, Keizer Rotary, City staff, Salem Harley Davidson, the church that provided the Sunday morning service, Christian Motorcycle Association, Salem Hawg Chapter, Councilors Clark and McKane and Kevin Watson. She explained that if the City wishes to hold the event again next year, letters need to be sent to the promoter, Randy Burke.

Art Bobrowitz, Keizer, thanked Salem Harley Davidson and the Keizer

Police Department, the Keizer Times and the Statesman Journal for their efforts in the Good Vibrations event. Discussion then took place regarding bringing the event to the area next year and improving it.

Carol Infranca, Nevada and Oregon, showed and narrated a slide show of pictures taken during the Good Vibrations Motorcycle Rally.

Mark Kemper, Salem, State Coordinator for the Christian Motorcycle Association, commended the organization of the Good Vibrations Motorcycle Rally, thanked the City for their support, and urged that the event be held again next year.

Christine Dieker, Keizer Chamber, and Councilor McKane thanked all involved in the Good Vibrations event, voiced amazement at the collaboration and organization and urged that the event be held again next year. Ms. Dieker suggested that events rotate between Salem and Keizer every other year.

PUBLIC HEARINGS

a. RESOLUTION ~ Authorization for Supplemental Budget for Expenditure of Carryover Funds for Chemawa Road Improvements

Public Works Director Rob Kisser explained that an agreement had been entered into with the Oregon Department of Transportation for improvements on Chemawa Road, appropriations were made in the FY09-10 budget and because they were not expended the funds were carried over to the FY10-11 budget. Therefore, expenditure of the funds would not impact the Street Fund.

Mayor Christopher opened the Public Hearing.

Hearing no testimony, Mayor Christopher closed the Public Hearing.

<u>Councilor Walsh moved to adopt a Resolution Authorizing Supplemental Budget for Expenditure of Carryover Funds for Chemawa Road Improvements. Councilor Clark seconded. Motion passed unanimously as follows:</u>

AYES: Christopher, Walsh, Smith, McKane, Caillier and Clark (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Taylor (1)

ADMINISTRATIVE ACTION

None

CONSENT CALENDAR

A. RESOLUTION ~ Regarding Evaluation of City Manager and Declining to Grant Salary Increase
B. RESOLUTION ~ Approving Extension of the Cable Television Franchise Agreement with Comcast of Oregon I, Inc. (Formerly known as Far-West Communications, Inc., dba AT&T Cable Services)
C. Approval of June 14, 2010 Work Session Minutes
D. Approval of June 21, 2010 Regular Session Minutes

Items A and C were pulled from the Consent Calendar.

Councilor Walsh moved for approval of Items B and D of the Consent Calendar. Councilor Clark seconded. Motion passed as follows:

AYES: Christopher, McKane, Caillier, Walsh, Smith and Clark (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Taylor (1)

Councilor Walsh pointed out for the record that City Manager Chris Eppley had voluntarily declined his salary increase.

A correction was made in the June 14, 2010 Work Session Minutes.

Councilor Walsh moved for approval of Items A and C of the Consent Calendar. Councilor Smith seconded. Motion passed as follows:

AYES: Christopher, Caillier, Walsh, Smith and Clark (5)
NAYS: None (0)
ABSTENTIONS: McKane (1)
ABSENT: Taylor (1)

COMMITTEE REPORTS

Councilor Smith reported on the upcoming Keizer Urban Renewal Board meeting and thanked Councilor McKane for his participation and leadership in the recent Good Vibrations Motorcycle Rally.

Councilors Walsh and Caillier had nothing to report.

Councilor McKane indicated that in response to the request that the Keizer Good Vibrations Task Force hold a debriefing meeting, he would determine an appropriate date and send out invitations shortly.

Councilor Clark reported that she had attended the Commissioners Breakfast, the Transit Community Leaders Task Force, the Marie Dorion sign dedication event, and the Marion County Fair. She noted that the City had received the Grand Prize Purple Ribbon for their booth. In closing, Councilor Clark extended a welcome to 30 young ladies from Tokyo who would be visiting the area next week, and noted that she would be attending the upcoming Oregon Municipal Planning Organization Consortium and Keizer-23 Advisory Committee meetings.

OTHER BUSINESS

Chief Adams explained that the department owed thanks to many other jurisdictions for their help during the Sunday Good Vibrations parade.

WRITTEN COMMUNICATIONS

None

AGENDA INPUT

August 2,, 2010
5:45 p.m. – Executive Session
7:00 p.m. – City Council Regular Session

August 9, 2010
5:45 p.m. – City Council Work Session – Cancelled
- City of Keizer Water – Fluoride Issue – Postponed to October 11

August 16, 2010
7:00 p.m. – City Council Regular Session

September 13, 2010
5:45 p.m. – City Council Work Session
- Parks Tour

ADJOURNMENT

Meeting was recessed at 8:58 p.m. to go to Executive Session.

Meeting was reconvened at 9:15 p.m. – No action was required from the Executive Session.

Mayor Christopher adjourned the meeting at 9:16 p.m.

MAYOR: APPROVED:

Lore Christopher

Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – David McKane

Councilor #4 – Cathy Clark

Councilor #2 – Brandon Smith

Councilor #5 – Richard Walsh

Councilor #3 – Mark Caillier

~ Absent ~

Councilor #6 – James Taylor

Minutes approved: