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

A G E N D A

KEIZER CITY COUNCIL
Monday, July 18, 1994
7:00 p.m.
Robert L. Simon Council Chambers
Keizer City Hall
Keizer, Oregon 97303

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC TESTIMONY

   This time is provided for citizens to address the Council on matters not scheduled for public hearing.

4. COMMITTEE REPORTS

5. PUBLIC HEARINGS

   a. ORDINANCE - Honeysuckle Street Lighting LID (cont. from 7-5-94)

   b. ORDINANCE - Viacom Cable Franchise Agreement (cont from 3-21-94)

   c. ORDINANCE - Hidden Creek Phase I Street Lighting LID

   d. Zone Change/Variance Case 94-4 (Whittenburg)

6. ADMINISTRATIVE ACTION

   a. ORDINANCE - Northrup/Northshire Street Ligthing LID

7. CONSENT CALENDAR

   a. RESOLUTION - Amendments to the Compensation and Classification Plan

   b. RESOLUTION - Initiating Hidden Creek Phase II Street Light LID

c. RESOLUTION - Initiating Springridge Estates Street Light LID

d. RESOLUTION - Country Glen Street Light LID (Engineer's Report)

e. Approval of July 5, 1994 Regular Session Minutes

8. OTHER BUSINESS

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

9. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications and petitions.

a. Letter on relocation of Civic Center Homes outside of Keizer

10. AGENDA INPUT

AUGUST 1, 1994
5:30 p.m. Council Worksession
Fee Review
7:00 p.m. City Council Meeting
Vehicle For Hire Ordinance Amendments
Amendments to Manufactured Home Standards (cont. frm 6-20)
Brewster Public Hearing

AUGUST 15, 1994
7:00 P.M. City Council Meeting

11. ADJOURN

Upon request, auxiliary aids and/or special services will be provided. To request services, please contact us at 390-3700 or through Oregon Relay 1-800-735-2900 at least two working days (48 hours) in advance.

CITY COUNCIL MEETING: July 18, 1994

AGENDA ITEM NUMBER: 5a

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS

THROUGH: DOTTY TRYK Dotty
CITY MANAGER

FROM: WALLY G. MULL
PUBLIC WORKS DIRECTOR

RE: HONEYSUCKLE STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

ISSUE:

On July 5, 1994, the Public Hearing was opened to receive remonstrances to the formation of the Honeysuckle Street Lighting Local Improvement District. Testimony received from the residents of the area raised concerns with the number of proposed lights and undergrounding of the wires. The hearing was closed. The Council unanimously voted to reopen the hearing and allow the residents to meet in order to reach consensus on the number of street lights and the method for the installation of the wiring. The residents held a meeting on July 11, 1994 with only two residents appearing. Another meeting is scheduled for Thursday, July 14, 1994 at 7:00 p.m. A member of the staff will be in attendance at this meeting in order to answer questions. A verbal staff report will be given at the meeting on Monday evening.

RECOMMENDATION:

The public hearing should be reopened to allow any further testimony on this issue. The Council should then provide direction to staff on the formation of the lighting district.

3840 Rivercrest Dr. N
Keizer, OR 97303
July 11, 1994

Tracy L. Davis, Keizer City Recorder
PO Box 21000
Keizer, Oregon 97307

Dear Ms. Davis and Keizer City Council:

Subject: HONEYSUCKLE STREET STREET LIGHTING DISTRICT

We had previously indicated our agreement in favor of the proposed street lighting improvements in the Honeysuckle Street Lighting District, however we believed that such service would be undergrounded. If the service intends to use overhead wiring, we are adamantly opposed to the proposed Street Lighting District. We would rather have no street lighting at all than to have a flawed plan using overhead wiring.

A few of the drawbacks to overhead wiring are:

1. Years ago we bought into this development because there was no street side overhead wiring.
2. Overhead wiring is aesthetically unappealing.
3. Houses with overhead street wiring are harder to sell.
4. Property values are not enhanced with overhead wiring.
5. Overhead wiring creates more electromagnetic fields.
6. Studies have linked electromagnetic fields and cancer.
7. Overhead wiring is more hazardous in storms.
8. Our living room view would look out over the overhead wiring and detract from our enjoyment of our home.
9. The overhead wiring would be inconsistent with the beautification effort on River Road of placing the wiring underground.
10. Overhead wiring would be a mistake and would be much more costly to correct later with underground wiring.

If the majority of residents on Honeysuckle choose overhead wiring, the residents on Rivercrest I believe would prefer underground service. In that event, Salem Electric has advised me that the additional cost to underground the three Rivercrest lights would be less than $1,000. This cost per lot for the Rivercrest lots benefiting would only be less than $100 each.

Accordingly, we approve underground wiring at least for the three lights on Rivercrest Dr.

Sincerely, Joseph W. Rakocy

Joseph W. Rakocy

Carol R. Rakocy

Carol R. Rakocy

rcd 7.12.94

TO: MAYOR KOHO AND COUNCIL MEMBERS

FROM: DOTTY TRYK, CITY MANAGER Dotty

SUBJECT: VIACOM CABLE FRANCHISE AGREEMENT

BACKGROUND:

Our franchise agreement with Viacom Cable expires July 20, 1994. We have been partners in negotiations with the City of Salem and Marion and Polk Counties working with Viacom to develop a final ordinance and agreement. Both these documents contain assurances and regulations that are highly favorable to the City and cable customers.

The Ordinance regulates in much detail how the City will do business with any operator who wants to provide cable service in the city. It is similar to the ordinance adopted in 1987, but has some important additions. These changes include:

- Requirements regulating the sale or transfer or acquisition of control of the local franchise,
- Regulations governing the abandonment of franchise property in the public rights of way and, most importantly,
- Language that details customer rights, customer service and consumer protection .

The franchise agreement is specific to our relationship with Viacom. It contains commitments from Viacom on several items which will be very beneficial to Keizer cable customers. Most important of these are:

- The system will be rebuilt within the next 3 years to 550 Mhz with fiber optic nodes to every 1000 customers. This will provide up to 78 channels.
- Within the next 2 years, the city's three major public buildings--City Hall, Public Works Shop and Fire District Station--will be connected to a fiber optic network which will include most of the public buildings in the Salem area. In addition, Viacom will connect our pump stations to cable telemetry where feasible, saving us telephone charges.
- New services available in a sample of comparable areas must be made available in the Salem-Ke area.
- Customer service at levels exceeding FCC standards.
- Two additional PEG channels and more available based on usage.

- A viacom payment of up to $30,000 per year for the first five years and 1.5% of gross revenues thereafter to pay for public, education and government cable services. For the City of Keizer, this will allow us to purchase the hardware, software and support services needed to access the fiber optic interactive network.. At times other allowable projects might be considered by the Council. These dollars would be based on an operating plan adopted by Council.

- A 5 year agreement with an informal renewal process for two additional years at our discretion.

FISCAL IMPACT:

The franchise fee of 5% remains the same. Additionally, the city will receive up to $30,000 per year in the first 5 years with a total cap of $150,000 and with some flexibility to access more if needed to purchase equipment.

RECOMMENDATION:

It is recommended that the Ordinance regulating cable franchises be adopted and the resolution authorizing the Manager to sign the Franchise Agreement with Viacom be adopted.

CABLE TELEVISION FRANCHISE AGREEMENT

between

The CITY OF KEIZER,
an Oregon municipal corporation
("*Grantor*")

and

FAR-WEST COMMUNICATIONS INC. dba Viacom Cable, an Oregon corporation and subsidiary of Viacom International, Inc.
("*Grantee*")

RECITALS

1. The Grantor, pursuant to applicable Federal and State law and the Keizer Cable Communication Franchise Ordinance, is authorized to grant and renew one or more non-exclusive revocable franchises to operate, construct, maintain and reconstruct a cable television system within the City of Keizer.

2. The City, after due evaluation of Viacom Cable, a subsidiary of Viacom International Inc., and after public hearings, has determined that it is in the best interests of the City and its residents to renew its franchise with Viacom Cable.

3. Therefore, the Grantor hereby grants to Grantee a renewal of its cable television franchise in accordance with the Ordinance and this Agreement.

ARTICLE 1 RENEWAL OF FRANCHISE

1.1 Grant

The cable television franchise granted effective July 1, 1987, to Viacom Cable a corporation whose current ownership is indicated in Exhibit "A", is hereby renewed, subject to the terms and conditions of this Agreement. Both parties acknowledge that the prior Agreement, except those provisions requiring the payment of money by the Grantee to the Grantor which have not yet been performed, shall be superseded by this Agreement as of the effective date of this Agreement. This renewal Agreement extends to the Grantee the franchise, authority, right and privilege, to construct, reconstruct, operate and maintain a cable television system within the streets and public ways in the City of Keizer as the City is now or may in the future during the term of this franchise be constituted.

1.2 Right of Grantor to Grant and Renew Franchise

The Grantee acknowledges and accepts the present right of the Grantor to grant and renew a franchise and the Grantee agrees it shall not now or at any time hereafter challenge any lawful exercise of this right in any local, State or Federal court. This is not, however, a waiver of any constitutional or legal right or privilege on the part of the Grantee.

1.3 Effective Date of Renewal

The renewal shall be effective on the date that both parties have executed this Agreement, provided that said date is no later than thirty (30) days after the date the Council of the City of Keizer approves this Agreement. The renewal is further contingent upon the filing by the Grantee with the City Recorder, of the executed Franchise Agreement and the required security fund and insurance certificates, except that if the filing of the security fund or any such insurance certificate does not occur within sixty (60) days after the date that this Agreement has been signed by the City Manager and delivered to the Grantee, the Grantor may declare this renewal null and void, and this Agreement shall be considered terminated as of the sixtieth (60th) day.

1.4 Duration

The franchise renewal term shall be five (5) years from the effective date of this Agreement.. During the six (6) month period which begins with the thirty-sixth (36th) month before the expiration of the franchise, either the Grantor shall commence or the Grantee shall request the commencement of a renewal proceeding in accordance with Section 626 of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 USC §546 (collectively, the "Cable Act"). Any such proceeding shall be informal in the first instance. In addition to the renewal criteria provided in the Cable Act, Grantor shall evaluate in particular whether Grantee has complied in a timely way with all requirements of this Agreement. The Grantor will give emphasis to the whether the Grantee has worked in good faith to connect priority 2 facilities to cable telemetering. A renewal shall not be unreasonably denied by Grantor. However, if (a) Grantor and Grantee agree that no renewal proceeding is necessary, (b) Grantee requests a proceeding and Grantor does not think that a proceeding is necessary, or, fails to timely commence a proceeding, or (c) Grantor and Grantee proceed informally and resolve all outstanding issues, then Grantee's franchise shall be renewed at the appropriate time for (5) additional years. The same procedure shall be utilized for any second additional five (5) year term granted. Upon the expiration of fifteen (15) years, if two (2) additional terms have been granted, renewal of the franchise shall be in accordance with then applicable law. Nothing contained in this section shall be construed as a waiver of any rights Grantee or Grantor may have under the Cable Act or under any other laws, rules or regulations.

1.5 Conflict with Cable Ordinance

The provisions of the Cable Communications Franchise Ordinance are hereby incorporated herein by reference as if set out in full, and form part of the terms and conditions of this Agreement. In event of any conflict between the terms and conditions of this Agreement and the provisions of the Cable Communications Franchise Ordinance, the latter shall prevail. Except as provided in Section 2.11 herein, should Cable Communications Franchise Ordinance be amended, revised, superseded or otherwise changed after the effective date hereof in such way as would materially affect the terms and conditions of this Agreement, said amendment, revision or change shall not apply to this Agreement without the Grantee's approval.

1.6 Definitions

The definitions contained in the Cable Communications Franchise Ordinance are incorporated herein as if fully set forth.

ARTICLE 2 GENERAL REQUIREMENTS

2.1 Governing Requirements

The Grantee shall comply with all lawful requirements of this Agreement, the Cable Communications Franchise Ordinance and applicable State and Federal law.

2.2 Franchise Fee

The Grantee shall pay to the Grantor an annual franchise fee of five percent (5%) of Gross Annual Revenues received by the Grantee from all operations of the cable system in the City of Keizer, provided, that if future Federal or State law permits the Grantee to provide non-video services to subscribers (such as data or telephone communications) through the facilities of the cable system, and the Grantor has the regulatory authority to collect a franchise fee on such services, then the franchise fee for revenues derived by the Grantee from such services shall be at the same rate as paid to the Grantor by other providers of the same services that utilize the public rights-of-way, not to exceed five percent (5%). The fee shall be payable monthly, by no later than the end of the month following the month for which payment is due. The Grantee may estimate the monthly fee, with any required adjustment made annually with interest at the national prime lending rate plus one percent (1%) as published in the Wall Street Journal for the last business day during the time period for which payment was due.

2.3 Recovery of Processing Costs

As provided in The Cable Communications Franchise Ordinance, the Grantee, within sixty (60) days after receipt from the Grantor of a written itemization, shall reimburse the Grantor for its reasonable out-of-pocket costs incurred during the franchise renewal process, not to exceed Forty Thousand Dollars ($40,000).

2.4 Resolution of Disputes

To aid in the analysis and resolution of any future disputed matters relative to the franchise, the Grantor and the Grantee may, by mutual agreement (both as to whether to hire and whom to hire), employ the services of technical, financial or legal consultants, as mediators. The mediator(s) so employed may, in their sole discretion, apportion their fees between the parties, or award recovery of all such fees to either party based on the relative success of the parties in establishing their respective positions in the dispute.

2.5 Payment to the Grantor

No acceptance of any payment shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provision of this Agreement. All amounts shall be subject to audit, as authorized by the Cable Communications Franchise Ordinance. Such audit shall not occur prior to the last two (2) years of the franchise term. For any underpayment by Grantee, the total amount of such underpayment for any period covered by the applicable statute of limitations shall be due upon Grantor demand.

2.6 Insurance

(a) Upon the effective date of this Agreement the Grantee shall, at its sole expense, obtain, and maintain during the life of this Agreement, a policy or policies of insurance as required by The Cable Communications Franchise Ordinance and this section.

(b) The Grantee's liability insurance shall provide combined single limit coverage applying to Bodily Injury, Personal Injury and Property Damage in the amount of Two Million Dollars ($2,000,000).

(c) The following terms and conditions shall be included in or endorsed on each liability policy:

(1) The policy shall cover on an "occurrence" basis.

(2) The policy shall cover Personal Injury as well as Bodily Injury.

(3) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

(4) Broad Form property damage liability shall be afforded.

(5) The Grantor shall be named additional insured on the policy.

(6) As respects any insurance or self-insurance maintained by the Grantor, the coverage of Grantee's policy is primary insurance with no right of contribution or coordination.

(7) Standard form of cross-liability shall be afforded.

(8) The policy shall not be canceled without thirty (30) days notice of such cancellation given to the Grantor.

(d) The Grantor reserves the right to require an increase in coverage limits no more often than every three (3) years. Any such requirement by the Grantor will be no greater than the increase in the Portland, Oregon, Metropolitan Area Consumer Price Index (all consumers) for such three (3) year period.

(e) The Grantee shall submit to the Grantor documentation of the required insurance including copies of required endorsements and a certificate of insurance acceptable in form to Grantor's City Attorney.

(f) Any deductible or self-insured retention must be declared to and approved by the Grantor. At the option of the Grantor, insurer shall reduce or eliminate such deductible or self-insured retention as respects the Grantor, its officers and employees or the Grantee shall procure a bond guaranteeing payment of losses and related investigation, claims, administration and defense expenses.

(g) The Grantee hereby indemnifies the Grantor for any damage resulting to it from failure of either the Grantee or any subcontractor to take out and maintain such insurance.

2.7 Indemnification

(a) The Grantee shall indemnify, hold harmless, release and defend the Grantor, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including the Grantee from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the aforesaid operations, the exercise or enjoyment of the franchise renewed pursuant to this Agreement, and the activities of the Grantee, its subcontractors, employees and agents hereunder. The Grantee shall be solely responsible and save the Grantor harmless from all matters relative to payment of the Grantee's employees including compliance with Social Security, withholding, etc.

(b) This indemnification obligation is not limited in any way by a limitation on the amount or type of damages or compensation payable by or for the Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by the Grantee.

(c) The Grantor does not, and shall not, waive any rights against the Grantee which it may have by reason of this indemnification, because of the acceptance by the Grantor, or the deposit with the Grantor by the Grantee, of any of the insurance policies described in this Section.

(d) This indemnification by the Grantee shall apply to all damages and claims for damages of any kind suffered by reason of any of the aforesaid operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(e) The Grantee shall not be required to indemnify the Grantor for negligence or misconduct on the part of the Grantor or its officials, boards, commissions, agents, or employees (hereinafter "such acts").

(f) The Grantor agrees to indemnify the Grantee, its directors, officers, shareholders and employees from each and every claim arising out of the Grantor's use of the Grantee's cable system which the Grantor would be legally liable to pay if: (1) a claim asserting the same loss or injury were made directly against the Grantor, whether or not such a direct claim is actually made; and (2) the loss or injury sustained by the claimant resulted from the acts, errors or omissions of the Grantor or those whose actions for which the Grantor is legally responsible. "Indemnify", as used herein, means to indemnify, defend, and save harmless; and "use" shall refer only to physical use of the Grantee's cable system, such as cablecasting of Public, Educational and Government (PEG) access programming, the use of the Grantee's poles and aerial and underground structures, the use of any Institutional Network (I-Net) facilities, and the activation of the emergency alert override.

2.8 Security Fund

(a) In accordance with The Cable Communications Franchise Ordinance, within thirty (30) days of the Resolution adopting this Agreement, the Grantee shall establish and provide to the Grantor a security fund, as security for the faithful performance by the Grantee of all material provision of this Agreement. The security fund shall consist of two (2) parts. The first part shall be a bond, which may be a corporate guarantee and which shall be in the amount of One Hundred Twenty Five Thousand Dollars ($125,000), and in a form acceptable to the Grantor's City Attorney, and essentially similar to the example provided in Exhibit "B". The second part shall be in the amount of at least Twenty Five Thousand Dollars ($25,000) and shall either be in the form of an irrevocable letter of credit, or a cash deposit established in a local bank in an interest-bearing account payable to the order of the Grantor as trustee for the Grantee, with all interest distributed to the Grantee.

(b) The bond shall be maintained at the One Hundred Twenty Five Thousand Dollars ($125,000) level until the system rebuild provided for in Section 4.1 and Exhibit "C" herein is completed, at which time the bond shall be released, provided there are then no outstanding material violations of this Agreement. The cash or letter of credit portion of the security fund shall be maintained at the Twenty Five Thousand Dollar ($25,000) level throughout the term of this Agreement, provided that at intervals no more often than each three (3) years, the Grantor shall have the right to require that this amount be increased to reflect changes in the Portland, Oregon, Metropolitan Area Consumer Price Index during the prior three (3) year period.

(c) The security fund may be assessed by the Grantor for those purposes specified in Cable Communications Franchise Ordinance and the franchise agreement, in accordance with the procedures of The Cable Communications Franchise Ordinance, provided that the Grantee has received written notice and a period of at least thirty (30) days after receipt of notice to cure any material violation prior to any assessment, and has not cured the violation. As long as the Grantor follows the procedures specified herein and in Cable Communications Franchise Ordinance for assessing and withdrawing funds from said security fund, the Grantee shall not initiate litigation or non-City administrative action to prevent or impair the Grantor from accessing those funds. The Grantee's recourse, in the event the Grantee believes any taking of security funds is improper, shall be through legal action after the security has been drawn upon. If the Grantor's action or taking is found to be improper by any court or agency of competent jurisdiction, the Grantee shall be entitled to a refund of the funds plus interest and any other award which such court or agency shall make.

(d) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's rights-of-way.

2.9 Procedure for Remedying Franchise Violations

(a) The procedure for remedying franchise violations shall be that set forth in The Cable Communications Franchise Ordinance.

(b) If the violation is reasonably curable within thirty (30) days of receipt of the Grantor's written notice, and if the Grantee has not commenced appropriate corrective action within that thirty (30) day period, or provided a plan to correct the violation in accordance with subsection (c) below, then the Grantor may proceed to assess from the security fund damages for the Grantee's individual or repeated willful violations of a material franchise requirement of up to One Thousand Dollars ($1,000) per day, or per incident, for unexcused violations of the system rebuild completion schedule provided in Section 4.1 herein, and up to Two Hundred Dollars ($200) per day, or per incident, for all other violations, provided that all such violations of similar nature occurring at the same time shall be deemed one incident.

(c) In the event any stated violation is not reasonably curable within thirty (30) days, the franchise shall not be terminated or revoked or damages assessed if the Grantee has provided, within said thirty (30) days, a plan, satisfactory to the Grantor, to remedy the violation and continues to demonstrate good faith in seeking to correct said violation.

(d) In determining whether violations are material, the Grantor shall take into consideration the reliability of the evidence of the violation, the nature of the violation, whether the violation was chronic, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further such violations and such other matters as the Grantor may deem appropriate.

2.10 Reservation of Rights

The Grantor and the Grantee reserve all rights that they may possess under the law unless expressly waived herein.

2.11 State or Federal Preemption

In the event that the State or Federal Government discontinues preemption in any area of cable system operations or regulation over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the Grantor may, if it so elects, adopt rules and regulations in these areas, to the extent permitted in the then applicable law. Grantee shall comply with such adopted rules, regulations and ordinances. If such preemption has a material impact upon the term of this Agreement, Grantor and Grantee agree to negotiate in good faith to attempt to restore the mutual considerations provided in this Agreement.

ARTICLE 3 SERVICE AREA AND LINE EXTENSION POLICY

3.1 Franchise and Service Area

The Grantee's franchise and service areas shall be the entire City of Keizer, including any and all territory as it is annexed thereto, during the term of this Agreement. The Grantee shall offer the full range of residential cable services to all residents of the City, in accordance with the provisions of Section 3.2 below.

3.2 Line Extension Policy

(a) The Grantee shall provide residential cable services at standard installation charges, provided that any of the following conditions exists:

(1) A dwelling unit is within one hundred fifty (150) feet, for aerial installation, and seventy five (75) feet, for underground installation, from the nearest distribution cable of the Grantee's system;

(2) The area to be served comprises at least 25 dwelling units on a single lot or at least 25 dwelling units in the aggregate on two or more adjacent lots; or

(b) In the event a request is made for service by a resident in an area not meeting such criteria, the Grantee shall make such installation available to the requesting subscriber on a time and material basis.

3.3 Commercial Areas

For areas of the City that are primarily commercial, the Grantee shall install appropriate conduit at any time that open utility trenches are available and the Grantee has received at least ten (10) working days advance notice of the availability of the trenches.

ARTICLE 4 SYSTEM REBUILD

4.1 Rebuild

(a) The Grantee shall rebuild, as appropriate, the existing cable system to provide a capacity of at least seventy-eight (78) analog video channels [corresponding to an upper operating frequency of Five Hundred Fifty Megahertz (550 MHz)], within thirty-six (36) months of the effective date of this Agreement. Grantee may activate portions of the rebuilt plant and offer upgraded services in phases, as Grantee may determine. Completion of construction shall be defined as the ability to provide up to seventy-eight (78) channels of video programming, without digital compression, to all residential subscribers within the City, as well as satisfactory completion of any permit-specified requirements and the public building connections provided in Section 4.2 below.

(b) The rebuild shall utilize a "fiber optics to the service area" design in which optical fiber delivers signals from a central hub to nodes serving approximately one thousand (1,000) residences. The nodes shall interface the optical fiber with coaxial cables which distribute signals to cable subscribers, and also serve as input-output points for interconnection to public buildings and businesses.

4.2 Interactive Connection to Public Buildings

(a) As part of the Grantee's rebuild obligations, the Grantee shall provide interactive links between its fiber optic nodes and public buildings, in accordance with the requirements of Exhibit C, attached hereto. An interactive connection is defined as the capability to transmit and receive broadband video, data and voice communications between two (2) or more public buildings, contingent only upon the installation of appropriate terminal and interface equipment in the future, at the transmission and reception public building locations. The public agency users shall be responsible for the installation, operation and maintenance of terminal and interface equipment within the public buildings. The Grantee shall install, operate and maintain all cable system and network components outside the public buildings necessary to provide the activated path between the transmitting and receiving locations.

(b) Grantor and Grantee agree that any use of the interactive links and the cable network by public agencies to generate revenue or to serve nonpublic entities shall occur only with the prior written consent of Grantee.

4.3 Future System Modifications

(a) To assure that the Grantee's cable system continues to reflect the general cable industry state-of-the-art throughout the term of the franchise, the Grantor and the Grantee agree to utilize cable systems in the following communities as a basis for comparison. The comparison communities (also referred to as the "comparison group") shall be:

(1) Beaverton, OR
(2) Vancouver, WA
(3) Stockton, CA
(4) Downey, CA
(5) Spokane, WA
(6) Portland, OR
(7) Olympia, WA
(8) Marin County, CA

(b) The Grantor and the Grantee agree that if a second five (5) year term is granted, subsequent to the expiration of this Agreement, at any time during that subsequent term the Grantor may elect to survey the comparison communities. If the survey indicates that four (4) or more of the cable systems in the comparison group (also referred to as the "comparison sub-group") offer video programming services which exceed the services provided on the Grantee's system by ten (10) services or more, the Grantor may require the Grantee to provide additional video programming services to meet or exceed the average provided by the comparison sub-group. The Grantee shall complete the modification within six (6) months of receipt of the Grantor request, subject to the availability of system channel capacity.

(c) The Grantor and the Grantee further agree if a second five (5) year term is granted, subsequent to the expiration of this Agreement, at any time during that subsequent term, the Grantor may elect to survey the comparison communities. If the survey indicates that four (4) or more of the cable systems in the comparison group have activated upstream communications capacity and are offering interactive residential services, which may include but are not limited to telephone and data communications, the Grantor may require the Grantee to activate the upstream capacity of the Grantee's system. The Grantee shall complete this activation within twelve (12) months of receipt of the Grantor request.

4.4 Emergency Alert Capability

Within six (6) months of the effective date of this Agreement, the Grantee shall provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an audio override capability to permit the Grantor to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency. This capability shall continue to be operational during and subsequent to the system rebuild required by Section 4.1 above. The Grantor and Grantee shall cooperate in tests of the emergency alert capability at least once annually.

4.5 Standby Power

Concurrent with the system rebuild provided in Section 4.1 above, the Grantee shall provide standby power generating capacity at the cable communications system control center and at all hubs capable of providing at least twelve (12) hours of emergency supply. The Grantee shall maintain standby power system supplies at the fiber optic nodes and throughout the coaxial cable portion of the system, capable of providing emergency power within the standard limits of commercial power supply units available at completion of the rebuild.

4.6 Parental Control Lock

The Grantee shall provide, for sale or lease, to subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of premium channels.

4.7 Status Monitoring

The Grantee shall provide an automatic status monitoring system or a functional equivalent when the cable system has been activated for interactive service provided that such status monitoring is technically and economically proven to the Grantee's satisfaction.

4.8 Technical Standards

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as amended from time to time, shall apply, to the extent permitted by applicable law.

4.9 Right of Inspection

Upon reasonable notice, the Grantor shall have the right to inspect all construction, reconstruction or installation work performed subject to the provisions of the franchise and other pertinent provisions of law, and as part of the Grantor's obligation to protect the public health, safety and welfare of its citizens.

ARTICLE 5 SERVICES AND PROGRAMMING

5.1 Services and Programming

The Grantee shall provide the Grantor with a list of video and other services offered, which list shall be updated each time a change is made. The Grantee shall not change or reduce the number of services without thirty (30) days prior written notification to the Grantor and system subscribers.

5.2 Leased Channel Service

The Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with applicable law.

ARTICLE 6 SUPPORT FOR LOCAL CABLE ACCESS

6.1 PEG Access Operating Costs

(a) Based on the provisions of the Cable Communications Policy Act of 1984 and future applicable law, the Grantor shall determine from time to time the funding level that the Grantor desires to make available for public, educational and governmental (PEG) access operating costs, and the most appropriate entity or entities to manage PEG access operations.

(b) Any Grantor request to the Grantee for grant funds for equipment, facilities and channels for PEG access use shall be accompanied by an operating plan which delineates the source of the required funds to the extent required by Exhibit "C".

6.2 Grantee Support for PEG Usage

The Grantee shall provide the following or equivalent support for PEG cable usage within the franchise area:

(a) Provision and use of the grant funds and channels designated in Exhibit "C" of this Agreement for local PEG access equipment and facilities in accordance with the requirements of Exhibit "C".

(b) Maintenance of the Grantee's PEG access facilities and channels, and support of PEG programming to the extent specified in Exhibit "C" of this Agreement.

(c) Provision of free public building installation and basic service, and provision of interactive communications capability, to and from the locations specified in Exhibit "C".

6.3 Compliance with Federal Law

In accepting this franchise, the Grantee agrees that the commitments indicated in Section 6.2 above will not be charged against any franchise fees due to the Grantor during the term of the franchise. The Grantee also agrees to meet all of the commitments of Section 6.2 above, through the term of the franchise, even if future legislation or court decisions limit or abrogate the ability of the Grantor to require support for PEG access.

ARTICLE 7 REGULATION

7.1 Franchise Regulation

The franchise renewed under this Agreement shall be subject to regulation by the Grantor in accordance with all of the lawful provisions of Cable Communications Franchise Ordinance and applicable Federal and State law.

7.2 Force Majeure

The force majeure provisions of The Cable Communications Franchise Ordinance shall apply.

7.3 Rate Regulation

If Grantor elects to regulate the rates charged by Grantee, Grantor shall establish and follow reasonable procedures consistent with applicable Federal and State law, rules and regulations.

7.4 Service Standards

A verified and continuing pattern of noncompliance with the service standards contained in Cable Communications Franchise Ordinance, this Agreement or standards established by any regulatory body having the authority to formulate service standards for cable systems, shall constitute a material breach of this Agreement, provided that the Grantee shall receive written notification of such noncompliance and an opportunity to cure, prior to any sanction being imposed.

7.5 Notices

Notices transmitted by either party to this Agreement to the other party shall be addressed as follows:

Grantor:

City Manager
City Hall
P.O.Box 21000
Keizer, OR 97307

Grantee:

General Manager
Viacom Cable
1710 Industrial Dr., N.E.
Salem, OR 97303

Either party may designate by written notice a different address to which notices shall be sent.

7.6 Successors and Assigns

All provisions of this Agreement shall apply to any lawful successors and assigns.

7.7 Severability

If any provision of this Agreement or the application of such provision to any circumstance is declared unconstitutional or otherwise invalid or unenforceable by the lawful judgment of any court of competent jurisdiction, the remainder of this Agreement or the application of the provision to other circumstances, shall not be affected thereby.

7.8 Choice of Law

This Agreement shall be governed by and interpreted under the laws of the State of Oregon. Venue for any action or suit to determine or enforce the rights and obligations of the parties hereto shall lie in the District or Circuit Court of the State of Oregon for Marion County, or the United States District Court for the District of Oregon, as any such court may have subject matter jurisdiction.

7.9 No Waiver

Grantee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the Grantor upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Agreement the date and year first above written.

VIACOM CABLEVISION, Grantee

{Corporate Seal}

By: ___________ ___________
Title: ___________ ___________

Date: ______

CITY OF KEIZER, Grantor

By: ____________ ____________
City Manager

Date: ______

ATTEST:

____________ ____________
City Recorder

APPROVED AS TO FORM:

____________ ____________
City Attorney

EXHIBIT A
OWNERSHIP

VIACOM INTERNATIONAL, INC.
1515 Broadway
New York, New York 10036

↓

TELE-VUE SYSTEMS, INC.
5924 Stoneridge Drive
Pleasanton, California 94566

↓

FAR WEST COMMUNICATIONS, INC.
1710 Industrial Drive, NE
Salem, Oregon 97303

EXHIBIT B
SURETY GUARANTEE

WHEREAS, the City of Keizer (hereinafter called "Grantor") under this Franchise Agreement dated the _____ day of __________, 1994, has granted a franchise to Viacom Cable, a subsidiary of Viacom International Inc. (hereinafter called "Grantee") to own, operate, and maintain a cable television system (hereinafter called "Franchise"); and

WHEREAS, Viacom International Inc. (hereinafter called "Guarantor"), a __________ corporation, being the parent company of the Grantee, has a substantial interest in said Franchise, the conduct of the Grantee, and the Franchise Agreement between Grantor and Grantee establishing Franchise requirements, which Agreement is hereby specifically referred to, incorporated herein and made a part hereof; and

WHEREAS, Section 2.8 of said Franchise Agreement requires the Grantee, as Principal, to furnish security issued to cover the faithful performance of certain of the Grantee's obligation under said Franchise, and which security shall be in favor of the Grantor;

NOW THEREFORE, subject to the provisions of Section 2.9, Guarantor hereby unconditionally guarantees the due and punctual performance of any and all obligations of Grantee contained in the Franchise Agreement, up to the financial limits provided in Section 2.8. This Guarantee shall, unless terminated, substituted or canceled as hereinafter provided, remain in full force and effect for the period provided by said Franchise. Provided that, upon substitution of another Guarantor reasonably satisfactory to the Grantor, this Guarantee may be terminated, substituted or canceled upon thirty (30) days prior written notice from Guarantor to the Grantor and Grantee.

Any such notice to be given hereunder shall be addressed to Grantor, with a copy to Grantee. Such terminations shall not affect liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation.

IN WITNESS WHEREOF, the Grantee and Guarantor have hereunto set this hands and seals this _____ day of ___________, 1994.

VIACOM CABLE	VIACOM INTERNATIONAL INC.
By: ____________________	By: ____________________
Title: __________________	Title: __________________

EXHIBIT C
GRANTEE COMMITMENT TO
PEG ACCESS CHANNELS, FACILITIES AND EQUIPMENT

1. INTERCONNECTION OF PUBLIC BUILDINGS

Grantor shall connect, at no installation charge, the buildings listed in Figure 1, to the closest node of the rebuilt cable system, under the following conditions:

(a) An activated one-way (downstream) connection and the highest tier of basic cable service at no monthly charge shall be provided to Priority 1, 2 and 3 public buildings listed in Figure 1, no later than completion of the cable system rebuild.

(b) Interactive (bidirectional) communications capability shall be provided between all Priority 1 and 2 buildings listed in Figure 1. The schedule for such connections shall be:

(1) The three (3) Priority 1 buildings listed in Figure 1 shall be connected within two (2) years of the effective date of this Agreement. The connection shall consist of no less than four (4) "dark" fibers between each building and the closest node.

(2) The Priority 2 buildings telemetry systems listed in Figure 1 shall be connected wherever possible during the rebuild..

(c) An interactive connection is defined as the provision of activated video, data and voice communications transmission and reception capability, upon the installation of appropriate terminal and interface equipment within each connected public building. Terminal and interface equipment procurement and installation within public buildings shall be the responsibility of the respective users.

(d) Grantor shall be responsible for operating and maintaining all network facilities and equipment outside the public buildings necessary to provide the communications path among the Priority 1 and 2 public buildings in Figure 1. Grantee shall not be responsible for switching or processing of any signals. Grantee shall route all data signals originating at a public building to Grantor's Data Center, and shall accept data signals from the Data Center for distribution to any public building. Grantee shall route all video signals originating at a public building to Grantor's Video Management/Community Access facility (address to be designated by Grantor), and shall accept video signals from the Video Management/Community Access facility for distribution to any public building, or to the cable system headend for transmission over a PEG access channel.

2. NETWORK USAGE CHARGES

(a) Grantee shall not charge any public agency, whose buildings are interconnected in accordance with paragraph 1 above, a network usage charge for communications originating and terminating at the public facilities listed in Figure 1 (defined as "Institutional Network" services).

(b) Grantee may establish network usage charges for new services offered, including but not limited to local telephone services, access to multimedia or specialized educational programming, and interconnection to external networks. Such charges shall not exceed forty percent (40%) of the charges that Grantee establishes for private-sector users of the same services.

3. PEG ACCESS CHANNELS

(a) Prior to the completion of the system rebuild provided in Section 4.1 of this Agreement, the Grantor shall continue to make available to the Grantor for PEG access use the channel capacity available as of the effective date of this Agreement.

(b) No later than the date of completion of the cable system rebuild provided in Section 4.1 of this Agreement, the Grantee shall make available to the Grantor the bandwidth of four (4) video channels available exclusively for PEG use, at which time this paragraph shall supersede the provisions of paragraph (a) above. These channels shall be dedicated for the term of this Agreement, provided that the Grantee may utilize any portions of these channels during any time when they are not scheduled for PEG use. The Grantor and the Grantee shall establish rules and procedures for such scheduling in accordance with the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and future applicable law.

(c) At any time after completion of the cable system rebuild provided in Section 4.1 of this Agreement, the Grantor may request, and the Grantee shall provide additional channel capacity up to a total bandwidth of eight (8) video channels or the equivalent for PEG use. Grantor may not submit such a request unless the PEG channels already being utilized each are cablecasting at least an average of twelve (12) hours of video programming per day for the preceding three (3) months, and at least seventy-five (75) hours of new unduplicated video programming per month for the preceding month on each channel already designated for PEG use. Public access programming shall count as part of the total only to the extent that it is produced locally. The Grantor shall provide a notarized statement verifying the PEG channel usage.

(d) If the cable system has channel capacity in excess of eighty (80) video channels, the Grantor may request and the Grantee shall provide additional channel capacity up to five percent (5%) of the channel capacity in excess of eighty (80) video channels PEG use. The Grantor may not submit such a request unless the PEG channels already being utilized each are cablecasting at least an average of twelve (12) hours of video programming per day for the preceding three (3) months and at least seventy-five (75) hours of new unduplicated video programming per month for the preceding month on each channel already designated for PEG use. The Grantor shall provide a notarized statement verifying the PEG channel usage.

(e) If the Grantor requests additional capacity pursuant to paragraph (d) above, said request shall not require the Grantee to violate existing program contracts.

(f) As used in this section, "new unduplicated video programming" shall mean video programming which has not been cablecast on any of the PEG channels during the previous six (6) months.

4. PEG EQUIPMENT AND FACILITIES ASSESSMENTS

(a) At any time after the effective date of this Agreement, the Grantor may submit to the Grantee a written notice and request that the Grantee pay to the Grantor a PEG assessment to be utilized solely for PEG access equipment, facilities and operations, which are defined to include, but not be limited to, data communications terminal and interface equipment as well as video equipment.

(b) The total dollar amount of all PEG assessments shall not exceed one and one-half percent (1.5%) of the cable system gross annual revenues from the area subject of this franchise, calculated from the effective date of this Agreement to the date of any PEG assessment request, with a maximum of Thirty Thousand Dollars ($30,000) per year for the first five (5) year term. To provide for terminal equipment necessary to interconnect the public buildings (see Exhibit C, Page 7 of 8) and participate in intergovernmental funding for a telecommunications position the City of Keizer may access up to Seventy Five Thousand Dollars ($75,000) in the first two years of this Agreement. The maximum PEG request cannot exceed One Hundred Fifty Thousand Dollars ($150,000) over the first five year term. If this Agreement is renewed for a subsequent five (5) year term, then the PEG assessments shall not exceed one and one-half percent (1.5%) of gross annual revenues for such subsequent term.

(c) If permitted by federal and state law, the Grantor shall not oppose any "pass-through" of the PEG access capital assessment provided in (b) above.

(d) All PEG assessments submitted by the Grantor shall include an operating plan, which shall contain, as a minimum, the following information:

(1) A list of the intended PEG users, with respect to the equipment and facilities to be acquired with the PEG assessment.

(2) The planned type and level of programming or communications service for each user.

(3) The capital equipment, facilities and estimated operating costs required to support the intended uses. This shall include a survey of existing publicly-owned equipment that might be available for the intended purposes.

(4) User commitments by the Grantor or third party PEG access users to cover operating expenses or support facilities for at least a three (3) year period, or if the operating plan contemplates pilot or development projects of less than three (3) years duration, for the entire period of the pilot project.

(5) An evaluation by the Grantor that the existing public facilities and equipment are inadequate to meet the needs of the operating plan.

(6) The operating plan shall be approved by the Common Council.

(7) The Grantee is expected to comment upon the plan and provide recommendations to improve its effectiveness, but may not withhold any requested assessment accompanied by a Grantor certification of need.

5. PEG OPERATIONS

The Grantor may negotiate agreements with neighboring jurisdictions served by the same cable system, educational institutions, or others to share operating expenses as appropriate. The Grantor and the Grantee may negotiate an agreement for management of PEG facilities or channel capacity, if so desired by the parties.

6. TITLE TO PEG EQUIPMENT

The Grantor shall retain title to all PEG equipment provided with funding made available in accordance with paragraph 4 above.

7. RELOCATION OF PEG CHANNELS

If the Grantee voluntarily relocates any PEG access channel to a different channel number, the Grantee shall reimburse the Grantor for any out-of-pocket the Grantor costs incurred as a result of the relocation. If the relocation is required by law or applicable regulation, then the Grantee shall reimburse the Grantor for the out-of-pocket relocation costs up to a ceiling of Four Thousand Dollars ($4,000). The Grantee shall provide the Grantor and all subscribers with at least thirty (30) days written notice of such relocation.

8. PROMOTION OF PEG ACCESS

The Grantee shall allow the Grantor to place not more than two (2) bill stuffers per year in the Grantee's subscriber statements for the promotion of PEG access at a cost to the Grantor not to exceed the Grantee's cost, upon the written request of the Grantor and at such times that the placement of such materials would not effect the Grantee's cost for the production and mailing of such statements. The Grantor agrees to pay the Grantee in advance for the actual cost of such bill stuffers. The Grantee shall also make available access information provided by the Grantor in subscriber packets at the time of installation and at the counter in the system's business office. The Grantee shall also distribute, at no charge to the Grantor, through advertising insertion equipment, one thirty-second (0.5 minute) promotional and awareness commercial spot each day between the hours of 6:00 a.m. and midnight. The advertising spots shall be produced at the Grantor's cost and submitted by the Grantor in a format compatible with such equipment once the Grantee has acquired and activated such capability. The Grantee shall also include a listing of the known programming to be cablecast on PEG access channels in any program guide of services for the cable system.

EXHIBIT C, FIGURE 1
PRIORITIZED LIST OF PUBLIC FACILITIES
FOR PEG ACCESS

Priority 1

Keizer City Hall	930 Chemawa Road NE
Keizer Public Works Shop	641 Chemawa Road NE
Keizer Fire District Station	661 Chemawa Road NE

Priority 2

Chemawa Pump Station	641 Chemawa Rd. NE
Willamette Manor Pump Station	3868 5th Ave N
Burnside Pump statoin	4335 Shoreline Dr. N
Toni Pump Station	4220 Toni Ave N
Cherry Ave Pump station	4110 Cherry Ave NE
McNary Pump Statoin	610 Lockhaven Dr NE
Carlhaven West Pump Station	950 Brandon Ave NE
Carlhaven East Pump Station	1150 Brandon Ave NE
Weissner Ave Pump Station	2005 Weissner Dr NE
Delta Pump Station	939 Delta Dr NE
13th Ave Pump Station	6250 13th Ave NE
17th Ave Pump Station	6288 17th Ave NE
Lauderback Pump Station	6180 Lauderback Ave NE
Meadows Pump Station	7177 River Rd. NE

BILL NO. A BILL FOR ORDINANCE NO 94-

AN ORDINANCE TO PROVIDE FOR THE ESTABLISHMENT AND GRANTING OF FRANCHISES OR PRIVILEGES FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF CABLE COMMUNICATION SYSTEMS AND FURTHER PROVIDING FOR THE CONTINUING REGULATION AND ADMINISTRATION OF THESE FRANCHISES AND RELATED ACTIVITIES

SECTION 1. INTENT.

(a) City of Keizer, pursuant to applicable Federal and State law, is authorized to grant one or more non-exclusive franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

(b) The City Council finds that the development of cable television and communications system has the potential of having real benefit and impact upon the residents of City of Keizer. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City shall designate. It is the intent of this ordinance and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this ordinance shall be deemed to include this finding as an integral part thereof.

SECTION 2. SHORT TITLE.

This ordinance shall be known and may be cited as the "City of Keizer Cable Communications Franchise Ordinance."

SECTION 3. DEFINITIONS.

For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

(1) "Agency Subscriber" means a government or public agency, school, or designated non-profit organization which receives a service from a cable communications system.

(2) "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.

(3) "Basic Radio Service" means the provision of audio programs to subscribers at a monthly rate.

(4) "Broadcast Signal" means a television or radio signal that is transmitted over the air to a wide geographic audience and

is received by a cable communications system and retransmitted to subscribers. The term broadcast signal does not refer to any signal received by a cable system by means of a microwave or satellite delivery system.

(5) "Cable Communications System" or "System" also referred to as "Cable Television System", "Cable System", "CATV System" or "Community Antenna TV System" means a facility crossing or using the public rights-of-way, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public right-of-way;

(c) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(d) Any facilities of any electric utility used solely for operating its electric utility system.

(6) "Cablecast Signal" means a nonbroadcast signal that originates within the facilities of the cable communications system.

(7) "Cable-mile" means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

(8) "Cable Service" means the total of the following:

(a) The one-way transmission to subscribers of video programming, or other programming services; and

(b) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(9) "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

(10) "City Manager" means the City Manager of the City of Keizer or any designee thereof.

(11) "Commence Construction" means that time and date when construction of the cable communications system is considered to have commenced, which shall be when the first connection is physically made to a utility pole, or undergrounding of cables is

initiated, after preliminary engineering (strand mapping) and after all necessary permits and authorizations have been obtained.

(12) "Commence Operation" means that time and date when operation of the cable communications system is considered to have commenced which shall be when sufficient distribution facilities have been installed so as to permit the offering of full service to a dwelling unit located within the franchise area and such services are actually subscribed to by a resident of the franchise area.

(13) "Commercial Use" means the channel capacity designated for commercial use as defined and required by federal law.

(14) "Completion of Construction" means that point in time when all distribution facilities have been installed by the Grantee so as to permit the offering of cable service to all of the potential subscribers to whom the system has access in the franchise area, as well as the provision, in an operational state, of any facilities required by the franchise agreement and which meet reasonable density requirements as specified in the franchise agreement.

(15) "Converter" means an electronic device which converts signal carriers from one form to another.

(16) "City Council" means the governing body of City of Keizer.

(17) "Educational Access Channel" means a channel on which the primary programmers are noncommercial educational institutions.

(18) "FCC" means the Federal Communications Commission and any legally appointed or elected successor.

(19) "Franchise" means an initial authorization, or renewal thereof, issued by the City Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

(20) "Franchise Agreement" means a contractual agreement, provided for under this ordinance, containing the specific provisions of the franchise granted, including referenced specifications, franchise applications, franchise requirements, and other related materials.

(21) "Franchise Fee" means any fee or assessment of any kind imposed by a franchising authority on a Grantee as compensation for the Grantee's use of the public rights-of-way. The term "franchise fee" does not include:

(a) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);

(b) Capital costs which are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities;

(c) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(d) Any fee imposed under Title 17, United States Code.

(22) "Government Access Channel" means a channel on which the Grantor is the primary programmer.

(23) "Grantee" means any "person" receiving a franchise pursuant to this ordinance and under the granting franchise ordinance, and its lawful successor, transferee or assignee.

(24) "Grantor" or "City" means City of Keizer as represented by the City Council or any delegate acting within the scope of its authority delegated by the City Council.

(25) "Gross Annual Receipts" means the annual gross revenues received by the Grantee or any affiliate of the Grantee in whatever form accrued from the provision of all services to subscribers over Cable Television System within the City utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such service, excluding refundable deposits, rebates or credits, except that any sales, excise or other taxes or charges collected for direct pass-through to local, State or Federal government, other than the franchise fee, shall not be included in the calculations of gross receipts.

(26) "Initial Service Area" means the area of the City which will receive service initially, as set forth in any franchise agreement.

(27) "Installation" means the connection of the system to subscribers' terminals, and the provision of service.

(28) "Local Origination Channel" means any channel where the Grantee or its designated agent is the primary designated programmer, and provides video programs to subscribers.

(29) "Nonbroadcast Signal" means a signal that is provided by a cable communications system and that is not involved in an over-the-air broadcast transmission path or is received by a cable system by means of a microwave or satellite delivery system.

(30) "Pay-Cable" or "Pay-Television" means the delivery to subscribers, over the cable communications system, of television signals for a fee or charge to subscribers over and above the charge for basic cable service, on a per program, per channel, or other subscription basis.

(31) "Person" means an individual, partnership, association, joint stock company, trust, corporation or limited liability company or governmental entity.

(32) "Private Channel", or "Closed-Circuit Channel" means any channel which is available only to subscribers who are provided with special converter or terminal equipment to receive signals on that channel.

(33) "Programmer" means a person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital, or other signals, either live or from recorded tapes or other storage media, to subscribers, by means of the cable communications system.

(34) "Public Access Channel" means a channel on which the primary programmers are noncommercial community organizations or individuals of the public operating under rules established by the Grantor.

(35) "Public, Educational or Government Access Facilities" or "PEG Access Facilities" means the total of the following:

(a) Channel capacity designated for public, educational, or governmental use; and

(b) Facilities and equipment for the use of such channel capacity.

(36) "Resident" means any person residing in the City as otherwise defined by applicable law.

(37) "Residential Subscriber" means a subscriber who receives with Grantee's authorization, a service in an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.

(38) "School" means any accredited, nonprofit, academic educational institution including primary and secondary schools, colleges and universities, both public and private.

(39) "Section" means any section, subsection, or provision of this ordinance.

(40) "Service Area" or "Franchise Area" means the area specified in the franchise agreement.

(41) "Service Tier" means a category of cable service or other services provided by Grantee and for which a separate rate is charged by the Grantee.

(42) "State" means the State of Oregon.

(43) "Street" or "Public Ways" or Public "Right-of-Way" means each of the following which have been dedicated to the public or hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Grantor shall permit to be included within the definition of street from time to time.

(44) "Subscriber" means any person, who or which elects to subscribe to, for any purpose, a service provided and authorized by the Grantee by means of or in connection with the cable system, and who pays the charges therefor.

SECTION 4. GRANT OF FRANCHISE.

4.1 Grant In the event that the Grantor shall grant to a Grantee a nonexclusive, revocable franchise to construct, operate, maintain, and reconstruct, a cable communications system within the franchise area, or a renewal of an existing franchise, said franchise or renewal shall constitute both a right and an obligation to provide the services of a cable communications system as required by the provisions of this ordinance and the franchise agreement. The franchise agreement shall include those provisions of the Grantee's application for franchise or application for renewal that are finally negotiated and accepted by the Grantor and Grantee.

Any franchise granted under the terms and conditions contained herein shall be consistent with Federal and State laws and regulations. In the event of conflict between the terms and conditions of the franchise and the general law and/or statutory requirements, the latter shall, without exception, control.

Any franchise granted is hereby made subject to the general provisions of this ordinance now in effect or hereafter made effective, except to the extent that those ordinance provisions thereafter made effective increase the material burdens or diminish the rights of the Grantee under the franchise. Nothing in the franchise shall be deemed to waive the requirements of the other codes and ordinanced of the Grantor regarding permits, fees to be paid or manner of construction.

4.2 Franchise Required. No cable communications system shall be allowed to occupy or use the streets in the franchise area or be allowed to operate without a franchise in accordance with the provisions of this ordinance.

4.3 Establishment of Franchise Requirements. The Grantor may establish appropriate requirements for franchises granted pursuant to this ordinance and may modify these requirements from time to time. Such requirements shall not be retroactive to franchises then in effect, but shall become applicable when the franchise is renewed.

4.4 Franchise Area. The Grantor may grant a franchise for all portions of the City. The service area shall be the entire territory defined in the franchise agreement. The initial service area shall be that portion of the franchise area scheduled to receive initial service, as stated in the franchise agreement.

4.5 Use of Public Streets and Ways. For the purpose of operating and maintaining a cable communications system in the franchise area, the Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the cable communications system. Prior to construction, repair or alteration requiring permits or street cuts in the street surface, the Grantee shall notify the City for purposes of determining ownership of cuts at a later date if failure occurs. However, the Grantee shall, in each case, file plans with the appropriate Grantor agencies and local utility companies, and receive written approval before proceeding. Grantee shall in any event comply with all applicable Grantor construction codes and procedures.

4.6 Duration. The term of any franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be as specified in the franchise agreement unless terminated sooner as hereinafter provided. The effective date of the franchise shall be the date of execution of the franchise agreement by the Grantor, subject to prior execution by the Grantee.

4.7 Franchise Nonexclusive; Limiting Number of Franchises.

(a) Any franchise granted shall be nonexclusive. Grantor may grant any number of franchises subject to applicable State and Federal law. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations such as:

(1) The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.

(2) The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service.

(3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

(b) Each Grantee awarded a franchise to serve the entire City shall offer universal service to all residents in the City, in accordance with construction and service schedules provided in the franchise agreement between Grantor and Grantee, and consistent with applicable law.

(c) Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

4.8 Franchise Applications.

a) Any person desiring an initial franchise for a cable television system shall file an application with the City. A reasonable nonrefundable application fee established by the City shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation costs of administrative review, financial, legal and technical evaluation of the applicant, consultants, (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

(b) An application for an initial franchise for a cable television system shall contain, where applicable:

(1) A statement as to the proposed franchise and service area;

(2) A resume of the prior history of the applicant, including the expertise of the applicant in the cable television field;

(3) A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a corporation;

(4) A list of officers, directors and managing employees of the applicant, together with a description of the background of each such person;

(5) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;

(6) A current financial statement of the applicant verified by a Certified Public Accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City,

(7) A proposed construction and service schedule;

(8) Any reasonable additional information that the City deems applicable.

4.9 Grant Procedure.

(a) Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make recommendations respecting such application to the City Council.

(b) A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted, subject to what conditions. The City Council may grant one (1) or more franchises, or may decline to grant any franchise.

(c) Any grant of a franchise shall become effective through the execution by the Grantor and Grantee of a franchise agreement subject to the terms and conditions of this ordinance.

4.10 Transfer of Ownership or Control.

(a) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by force or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the City Council and then only upon such terms and conditions as may be prescribed by the City Council, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the City Council shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section. A transfer of the franchise from one or more wholly-owned subsidiaries of Grantee's parent shall not require prior Grantor consent.

(b) The requirements of subsection (a) shall apply to any change in control of Grantee. The word "control" as used herein is not limited to major stockholders or partnership interest, but includes actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior authorization of the City Council shall be required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the Grantee as of the effective date of the franchise, singularly or collectively.

(c) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the Grantee within Grantor's jurisdiction or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by Grantor as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of Grantor to such change in control of ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to Grantor, which application shall include the information required under this ordinance. An application shall be submitted to Grantor not less than sixty (60) days prior to the date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capabilities to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. The Grantor shall consent to or deny the transfer of the franchise within one hundred twenty (120) days after receipt of the transfer request. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.

(e) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the cable television system, in the event of a Grantee default of its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the Grantor in its discretion and during said period of time it shall have the right to petition the Grantor to transfer the franchise to another Grantee.

(f) Upon transfer, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the franchise or of control of the franchise, including without limitations costs of administrative review, financial, legal and technical evaluation of the proposed transferee, consultants, (including technical and legal experts and all costs incurred by such experts), notice and publication costs and document preparation expenses. Any such reimbursement shall not be charged against any franchise fee due to Grantor during the term of the franchise.

4.11 Franchise Renewal. Franchise renewal shall be as prescribed by applicable law. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Upon mutual execution of a franchise renewal agreement, Grantee shall reimburse Grantor for special nonrecurring out-of-pocket costs incidental to the franchise renewal award including but not limited to attorney and consultant costs and publishing costs, not to exceed any maximum specified in the agreement. Any such reimbursement shall not be charged against any franchise fee due to the Grantor during the term of the franchise.

4.12 Police Powers. In accepting a franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the Grantor to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the Grantor pursuant to such power.

Any conflict between the provisions of this ordinance and any other present or future lawful exercise of the Grantor's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to any cable communications system franchise which contains provisions inconsistent with this ordinance shall prevail only if upon such exercise the Grantor finds any emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

4.13 Franchise Fee.

(a) Annual Franchise Payment. A Grantee of a franchise hereunder shall pay to the Grantor an annual fee in an amount as designated in the franchise agreement. Such payment shall be in addition to any other prescribed fees, including, but not limited to, business license and permit fees, and commence as of the effective date of the franchise. The Grantor, upon request, shall be furnished a statement, either audited and certified by an independent Certified

Public Accountant or certified by a financial officer of the Grantee, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Grantor shall have the right to conduct an independent audit of Grantee's records, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit.

(b) Acceptance by Grantor. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this ordinance or for performance of any other obligation of the Grantee. All amounts paid shall be subject to audit and recomputation by the Grantor for a maximum period of three (3) years.

(c) Failure to Make Required Payment. In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement. Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the statutory interest rate in effect upon the due date.

(2) A sum of money, as liquidated damage, equal to five percent (5%) of the amount due in order to defray those additional

expenses and costs incurred by the Grantor by reason of delinquent payment.

(d) Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

(e) Any Grantee franchise fee costs may be passed through to subscribers and designated as a separate line item on subscribers' bills, in accordance with Federal law.

4.14 Forfeiture or Revocation.

(a) Grounds for Revocation. The Grantor reserves the right to terminate or revoke any franchise granted hereunder and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by Grantee and a material breach under the franchise grant:

(1) If the Grantee should default in the performance of any of its material obligations under this ordinance or under the franchise agreement and such default continues for thirty (30) days after receipt of due notice and reasonable opportunity to cure the default;

(2) If the Grantee should fail to provide or maintain in full force and effect, the insurance coverage and security fund as required in the franchise agreement.

(3) The Grantee shall willfully violate any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's franchise, unless such order or ruling is being contested by grantee by appropriate proceedings conducted in good faith;

(4) If the Grantee practices any fraud or deceit upon the Grantor.

(5) If the Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.

(b) Procedure Prior to Revocation.

(1) The Grantor may make written demand that the Grantee do so comply with any such material requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the Grantee continues for a period of thirty (30) days following such written demand, the Grantor may place the issue of termination of the franchise upon a regular City Council meeting agenda. The Grantor shall cause notice to be served upon such Grantee specifying the grounds therefore, at least ten (10) days prior to the date of such meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published at least once, ten (10) days before such meeting in a newspaper of general circulation within the franchise area.

(2) The Grantor shall hear any person interested therein on the grounds set forth in the notice described in subsection (a) and the Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses. Then, the Grantor shall determine, based upon the preponderance of the evidence, whether the Grantee has committed a material breach of this ordinance or the franchise agreement, and, if so, whether such breach was willful.

(3) If the Grantor determines that the Grantee has willfully committed a material breach or otherwise fails to remedy a material breach, then the Grantor may, by resolution, declare that the franchise of such Grantee shall be terminated and security fund and bonds forfeited, or the Grantor may, at its option and if the material breach is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within such time and manner and upon such terms and conditions as the Grantor shall determine are reasonable under the circumstances.

(4) Any decision to revoke shall be made by a vote of a majority of the full City Council, shall be in writing and shall be based upon findings of fact. Grantee shall have the right to have such determination of revocation reviewed in a court of appropriate jurisdiction.

4.15 Procedures in the Event of Termination or Expiration.

(a) Disposition of Facilities. In the event a franchise expires, is revoked, or otherwise terminated, the Grantor may require the Grantee to remove, at its own expense, all above ground system facilities and other portions of the cable system as determined to be in the best interest of public safety within a reasonable time.

(b) Restoration of Property. In removing its plant, structures and equipment, the Grantee shall restore, at its own expense, any excavation or facility that has been affected during the removal process and shall leave all public ways facilities in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The liability, indemnity and insurance, and the security fund and bonds provided shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this section.

(c) Restoration by Grantor, Reimbursement of Costs. In the event of a failure by the Grantee to complete any work required by subsection (a) above and/or subsection (b) above, or any other work required by Grantor by law or ordinance within the time as may be established and to the satisfaction of the Grantor, the Grantor may cause such work to be done and the Grantee shall reimburse the Grantor the cost thereof within thirty (30) days after receipt of an itemized list of such costs or the Grantor may recover such costs through the security fund or bonds provided by Grantee. The Grantor shall be permitted to seek legal and equitable relief to enforce the provisions of this section. Any property remaining in place one (1) year after the termination of the franchise shall be considered abandoned in place. In such cases, the property in the public right-of-way shall become that of the City and Grantee shall submit to the City Manager, an instrument in writing, transferring ownership of such property to the City.

(d) Grantor's Rights Not Affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the Grantor to pursue any remedy under the franchise or any provision of law.

4.16 Receivership and Foreclosure.

(a) Any franchise granted shall, at the option of the Grantor, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Grantee whether in a receivership or trusteeship or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(1) Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment,

fully complied with all the terms and provisions of this ordinance and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise; and,

(2) Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the Court having jurisdiction on the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise agreement.

(b) In the case of a foreclosure or other involuntary sale of the plant, property and equipment of the Grantee, or any part thereof, the Grantor may serve notice of termination upon the Grantee and to the purchaser at such sale, in which event the franchise and all rights privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

(1) The Grantor shall have approved the transfer of the franchise, as and in the manner in this ordinance provided; and,

(2) Such successful purchaser shall have covenanted and agreed with the Grantor to assume and be bound by all the terms and conditions of the franchise agreement.

4.17 <u>Abandonment or Removal of Franchise Property</u>.

(a) In the event that the use of any property of Grantee within the public rights-of-way is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is parallel or redundant to other parts of the system and is intended for use only when needed as a backup for the system r a part thereof, shall not be deemed to have been abandoned because of its lack of use.

(b) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this ordinance, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, reasonable wear and tear excepted, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this ordinance and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this section.

(c) Upon abandonment of any franchise property in place, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the franchise property abandoned.

(d) At the expiration of the term for which the franchise is granted, or upon its termination or earlier expiration, as provided herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(e) Notwithstanding anything to the contrary set forth in this ordinance, the Grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee.

4.18 Franchise Processing Costs. For either a new franchise award or a franchise renewal, costs to be borne by Grantee shall include, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to a franchise, development and publication of relevant ordinances and franchise agreement, fees, and any reasonable cost not covered by the application fees, incurred by the Grantor in its study, preparation of proposal solicitation documents and evaluation of applications, including, but not limited to consultant and attorney fees and Grantor staff time.

These franchise processing costs shall be independent of the construction inspection and permit fees specified in this ordinance and the franchise fee specified herein.

SECTION 5. REGULATION OF FRANCHISE

5.1 Regulatory Authority. The Grantor shall exercise appropriate regulatory authority under the provisions of this ordinance and applicable law. If the franchise area served by the cable communications system also serves other contiguous or neighboring communities, Grantor may, at its sole option, participate in a joint regulatory agency, with delegated responsibility in the area of cable and related communications.

5.2 Regulatory Responsibility.

(a) The Grantor, acting alone or acting jointly with other Grantors, may exercise or delegate regulatory responsibility, including, but not limited to, the following areas:

(1) Administering and enforcing the provisions of the cable communications system franchise(s).

(2) Coordination of the operation of public, educational and government access channels and facilities.

(3) Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions.

(4) Establishing procedures and standards for use of channels dedicated to PEG access use, if provided for in any franchise agreement.

(5) Planning expansion and growth of public benefit cable services.

(6) Analyzing the possibility of integrating cable communications with other local, State or national telecommunications networks.

(7) Formulating and recommending long-range telecommunications policy.

5.3 Public Usage of the System.

(a) If so specified in the franchise agreement, the Grantor may utilize a portion of the cable communications system capacity, set aside by the Grantee and associated facilities and resources, to develop and provide cable services that will be in the public interest. In furtherance of this purpose, the Grantor may establish a commission, public corporation, or other entity to receive and allocate facilities, support funds and other considerations provided by the Grantee, and/or others. Such an entity, if established, may be delegated the following responsibilities:

(1) Receive utilize or reallocate for utilization, channel capacity, facilities, funding and other support provided specifically for public usage of the cable communications system.

(2) Review the status and progress of each service developed for public benefit.

(3) Reallocate resources on a periodic basis to conform with changing priorities and public needs.

(4) Report to the Grantor annually on the utilization of resources, the new public services developed and the benefits achieved for the Grantor and its residents.

5.4 PEG Access Facility Management.

(a) Intent. It is the intent of the Grantor to insure that PEG access facilities provided for in any franchise agreement, shall be managed in the best public interest so that programming using such facilities will be open to all residents, and available for all forms of public expression, community information and debate of public issues. Pursuant to these objectives, the Grantor may delegate the responsibility for PEG access facility management to a nonprofit entity which may include, but not be limited to, any of the following:

(1) A nonprofit public corporation.

(2) A PEG access facility management commission or committee, appointed by Grantor, and representing a broad spectrum of the community.

(3) An established nonprofit entity with special cablecasting capability, such as local or regional community college.

(4) An intergovernmental entity created pursuant to ORS Chapter 190.

(b) Functions. The entity designated to manage the PEG access facilities shall have the following functions:

(1) To assume responsibility for and management of the public access facilities as may in the franchise agreement be designated for community-based programming. Community channels may include public, educational and government access channels, as designated in the franchise agreement.

(2) To assure that the PEG access facilities are made available to all residents of the franchise area on a nondiscriminatory, first-come, first-served basis.

(3) To assure that no censorship or control over program content of the PEG access facilities exists except as necessary to comply with Federal prohibition of material that is obscene.

(4) To devise, establish, and administer all rules, regulations, and procedures pertaining to the use and scheduling of the PEG access facilities.

(5) To prepare, in conjunction with the Grantee, such regular or special reports as may be required or desirable.

(6) To hire and supervise staff.

(7) To make all purchases of materials and equipment that may be required.

(8) To develop sources of funding, such as foundation or Federal or State grants, to further community programming.

(9) To perform such other functions relevant to the PEG access facilities as may be appropriate.

(10) To establish budgets on an annual basis, and utilize funds and resources received from the Grantor or the public usage entity designated in this ordinance, for the purpose of PEG access programming.

(c) Access Rules. The PEG access facility management entity shall complete a set of rules for the use of the PEG access facilities which shall be promptly forwarded to the Grantor. The rules shall be prepared in cooperation with the Grantee, and confirmed by agreement between the PEG access facility management entity and the Grantee. The rules shall, at a minimum, provide for:

(1) Access on a first-come, first-served, nondiscriminatory basis for all residents of the franchise area.

(2) Prohibition of commercial or political use.

(3) Prohibition of any presentation of obscene or indecent material.

(4) Public inspection of the log of producers, which shall be retained by the PEG Access Facility Management for a period of four (4) years.

(5) Procedures by which individuals or groups who violate any rule may be prevented from further access to the facilities.

(6) Use of such reasonable amounts of channel time, cablecasting facilities, and technical support as are provided for in the agreement between the PEG access facility management entity and the Grantee.

(d) PEG Access Facility Management Entity Reports to Grantor. The PEG access facility management entity shall provide a report to the Grantor, at least annually, indicating achievements in community-based programming and services.

5.5 Reservation by Grantor. The Grantor reserves the right, at its discretion, from time to time, to determine if the entities described in 5.3 and 5.4 above are performing their purposes in a manner satisfactory to the Grantor, and if they are not, the Grantor may receive and reallocate all or a portion of the channel capacity operations appropriation, and capital appropriation, including any facilities and equipment purchased previously with such appropriation, to another entity. A new entity shall be required to comply in all respects with the legal responsibilities described in 5.3 and 5.4.

5.6 Rates.

(a) The Grantee shall establish rates for its service categories that shall be applied fairly and uniformly to all subscribers in the franchise areas.

(b) Schedule of Rates. The Grantee shall maintain and file with the Grantor, a complete schedule of subscriber rates including all fees and charges for services. The Grantee shall notify the Grantor at least thirty (30) days prior to any change in rates.

(c) No Consideration Beyond Schedule. The Grantee shall receive no consideration whatsoever for, or in connection with, its provision of service to its subscribers other than as filed with the Grantor.

5.7 Rate Change Procedure. The following procedure shall be utilized to the extent that Grantor regulation of rates is not preempted, and Grantor desires to exercise rate regulation:

(a) Within thirty (30) days of the filing of a petition for rate change for any rates subject to Grantor regulation, the Grantor shall hold an appropriate public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including Grantee, shall be heard on any related, matter, including but not limited to, the performance of its franchise, the Grantee's services, and the proposed new rates.

(b) Upon notice of any public hearing as provided above, the Grantor shall notify subscribers of the time, place and subject matter of the public hearing by announcement for at least two (2) consecutive days prior to the hearing.

(c) Within thirty (30) days after said hearing, the Grantor shall render a written decision on the Grantee's petition, either accepting, rejecting, modifying or deferring the same and reciting the basis for its decision. The Grantor shall consider, the following factors in approving or disapproving the petition:

(1) Grantee's substantial fulfillment of all material requirements for the franchise.

(2) Quality of service, as indicated by the number and type of service complaints, Grantee's response to complaints, and the result of periodic system performance tests and the annual reviews specified in 5.8.

(3) Prevailing rates for comparable services in other cable systems of similar size and complexity.

(4) Rate of return on Grantee's equity, as compared to businesses of equivalent risk.

5.8 Annual Review of Quality of Service. At Grantor's sole option, within ninety (90) days of the first anniversary of the effective date of each franchise, and each year thereafter from time to time throughout the term of the franchise, the Grantor and Grantee shall meet publicly to review the performance and quality of service of the cable communications system. The reports required in Section 9 and 10 regarding subscriber complaints, the records of performance tests and the opinion survey report shall be utilized as the basis for review. In addition, any subscriber may submit comments during the review meetings, either orally or in writing, and these shall be considered.

(a) Within thirty (30) days after the conclusion of the quality of service review meetings, Grantor shall issue a report with respect to the adequacy of system performance and quality of service. If inadequacies are found, Grantor may direct Grantee to correct the inadequacies within a reasonable period of time.

(b) Failure of Grantee, after due notice, to correct the inadequacies may be considered a material breach of the franchise, and Grantor may, at its sole discretion, exercise any remedy within the scope of this ordinance considered appropriate.

5.9 System and Services Review. To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced modern system, the following system and services review procedures are hereby established:

(a) At Grantor's sole option, the Grantor and Grantee may hold a system and services review session on or about the third anniversary date of the franchise agreement. Subsequent system review sessions may be scheduled by the Grantor approximately each three (3) years thereafter.

(b) Topics for discussion and review at the system and services review sessions shall include, but shall not be limited to, services provided, application of new technologies, system performance, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints, and technical and economic feasibility of system expansion or upgrading.

(c) Either the Grantor or the Grantee may select additional topics for discussion at any review session.

(d) When there have been repeated, reasonable documented complaints made or where there exists other evidence which, in the judgment of the Grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the Grantee is not in compliance with the requirements of this ordinance or its franchise, the Grantor shall have the right to require the Grantee to test, analyze and report on the performance of the system in order to protect the public against substandard cable services. Grantor may not compel Grantee to provide such test or reports unless and until Grantor has provided Grantee with at least thirty (30) days notice of its intention to exercise its rights under this section and has provided Grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the Grantor no later than thirty (30) days after the Grantor notifies the Grantee that it is exercising such right, and shall be made at Grantee's sole cost. Such report shall include the following information: The nature of the complaints which precipitated the special test, what system component was tested, the equipment used and procedures employed in said testing, the results of such test, and the method by which some complaints were resolved. Any other information pertinent to the special test shall be recorded.

SECTION 6 GENERAL FINANCIAL AND INSURANCE PROVISIONS.

6.1 Construction Bond.

(a) Within thirty (30) days after the granting of a franchise and prior to the commencement of any construction work by the Grantee, the Grantee may file with the Grantor a construction bond in the amount specified in the franchise agreement in favor of the Grantor and any other person who may suffer damages as a result of the breach of any duty by the Grantee assured by such bond.

(b) Such bond as contemplated herein shall be in the form approved by the Grantor and shall, among other matters, cover the cost of removal of any properties installed by the Grantee in the event said Grantee shall default in the performance of its franchise obligation.

(c) In no event shall the amount of said bond be construed to limits the liability of the Grantee for damages.

(d) Grantor, at its sole option, may waive this requirement, or permit consolidation of the construction bond with the performance bond and security fund specified, respectively in Section 6.2 and 6.3.

6.2 Performance Bond.

(a) In addition to the construction bond set forth above, the Grantee may be required to, at least thirty (30) days prior to the commencement of operation, file with the Grantor a performance bond in the amount specified in the franchise agreement in favor of the Grantor and any other person who may suffer damages as a result of any occurrence in the operation or termination of the cable communications system operated under the franchise agreement, and including the payments required to be made to the Grantor hereunder.

(b) Such bond as contemplated herein shall be in the form approved by the Grantor.

(c) In no event shall the amount of said bond be construed to limit the liability of the Grantee for damages.

6.3 Security Fund.

(a) Within thirty (30) days after the effective date of the franchise, the Grantee may be required to deposit into a bank account, established by the Grantor and maintain on deposit through the term of this franchise, the sum specified in the franchise agreement, as security for the faithful performance by it of all the provisions of the franchise, and compliance with all orders, permits and directions of any agency of the Grantor having jurisdiction over its acts or defaults under this ordinance, and the payment by the Grantee of any claims, liens and taxes due the Grantor which arise by reason of the construction, operation or maintenance of the system. After completion of any system construction, rebuild or upgrade, the required amount of the security fund shall be reduced to a sum specified in the Franchise Agreement, all of which may be in the form of an irrevocable letter of credit.

The security fund may be assessed by the Grantor for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay Grantor undisputed sums due under the terms of the franchise.

(2) Reimbursement of undisputed costs borne by the Grantor to correct franchise violations not corrected by Grantee, after due notice.

(3) Monetary remedies or damages assessed against Grantee due to undisputed defaults or violations of franchise requirements.

(b) At Grantor's sole option, some portion of the security fund may be provided in the acceptable form of an irrevocable letter of credit, in lieu of a cash deposit.

(c) Within thirty (30) days after notice to it that any amount has been withdrawn by the Grantor from the security fund pursuant to subsection (a) of this section, the Grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

(d) If the Grantee fails, after thirty (30) days written notice to pay to the Grantor any franchise fee or taxes due and unpaid; or, fails to pay to the Grantor within such thirty (30) days, any damages, costs or expenses which the Grantor shall be compelled to pay by reason of any act or default of the Grantee in connection with the franchise; or fails, after thirty (30) days written notice of such failure by the Grantor to comply with any material provision of the franchise which the Grantor reasonably determines can be remedied by an expenditure of the security fund, the Grantor may thereafter withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the Grantor shall notify the Grantee of the amount and date thereof.

(e) The security fund deposited pursuant to this section shall become the property of the Grantor in the event that the franchise is revoked for cause by reason of the default of the Grantee in accordance with the procedures of 4.14 above. The Grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit no later than ninety (90) days after the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the Grantee. The Grantee shall be entitled to any interest accrued on the cash portion of the security fund.

(f) The rights reserved to the Grantor with respect to the security fund are in addition to all other rights of the Grantor whether reserved by this ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall constitute an election of remedies or a waiver of any other right the Grantor may have.

6.4 Indemnification.

(a) The Grantee shall by acceptance of any franchise granted indemnify, defend and hold harmless the Grantor, its officers, boards, commissions, agents, and employees from any and all claims, suits, judgments for damages or other relief, costs and attorneys' fees in any way arising out of or through or alleged to arise out of or through:

(1) The act of the Grantor in granting the franchise; and

(2) The acts or omissions of Grantee, its servants, employees, or agents including, but not limited to, any failure or refusal by Grantee, its servants, employees or agents to comply with any obligation or duty imposed on Grantee by this ordinance or the franchise agreement.

(3) The exercise of any right or privilege granted or permitted by this ordinance or the franchise agreement.

Such indemnification shall include, but not be limited to, all claims arising in tort, contracts, infringement of copyright, violations of statutes, ordinances or regulations or otherwise.

(b) In the event any such claims shall arise, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee. Provided, however, that the Grantor in its sole discretion may participate in the defense of such claims at its expense, and in such event, Grantee shall not agree to any settlement of claims without Grantor approval.

6.5 Insurance.

(a) The Grantee shall maintain throughout the term of the franchise, insurance in amounts at least as follows:

(1) Worker's Compensation Insurance. In such coverage as may be required by the workers compensation insurance and safety laws of the State of Oregon and amendments thereto.

(2) General Liability. "Comprehensive" or Commercial general liability insurance, including, but not limited to, coverage for bodily injury, personal injury and property damage shall be maintained at the sum(s) specified in the franchise agreement.

(3) Comprehensive Automobile Liability. Comprehensive automobile liability including, but not limited to, non-ownership and hired car coverage as well as owned vehicles with coverage for bodily injury and property damage shall be maintained at the sum(s) specified in the franchise agreement.

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

(i) The Grantee shall furnish the Grantor with copies of such insurance policies and certificates of insurance.

(ii) Such general liability and automobile liability insurance policies provided for herein shall name the Grantor, its officers, agents, and employees as additional insured, and shall be primary to any insurance carried by Grantor. The insurance policies naming Grantor as additional insured shall be endorsed to require thirty (30) days written notice to the Grantor intent by the company to cancel or not renew the insurance policy.

(iii) The minimum amounts set forth in the franchise agreement for such insurance shall not be construed to limit the liability of the Grantee to the Grantor under the franchise issued hereunder to the amounts of such insurance.

(iv) All insurance carriers providing coverage under this section shall be duly licensed to transact insurance in the State of Oregon.

(v) All insurance required by this section shall be subject to review and approval by Grantor's legal counsel for sufficiency as to form and coverage, and shall be evidenced by a certificate of insurance issued by the insurance carrier or an authorized agent of the carrier in form acceptable to Grantor's legal counsel.

(vi) Should the Grantee, for any reason, fail to maintain all required coverage continuously in effect during the term of the franchise, the franchise and all privileges associated therewith shall automatically be suspended without further notice and without recourse upon the first instance of such lapse of coverage, and shall remain suspended until all required coverage is in effect. Grantor may, in addition to relying on the automatic suspension provided herein, proceed with termination or revocation of the franchise as otherwise provided in this ordinance.

(vii) In order to account for increases in consumer prices, no more than once during any five (5) year period, Grantor shall have the right to order Grantee to increase the amounts of the insurance provided in the franchise. Such order may be made by Grantor after conducting a duly noticed public hearing. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks.

SECTION 7. DESIGN AND CONSTRUCTION PROVISIONS

7.1 System Design. The cable communications system shall be constructed in accordance with the design, construction, or reconstruction requirements contained in the franchise agreement.

7.2 Geographical Coverage. The Grantee shall design a new cable system in such a manner as to have the capability to pass by every single-family dwelling unit, multiple-family dwelling unit, school and public agency within the franchise area. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the franchise agreement. Cable system construction and provision of service shall be non-discriminatory, and Grantee shall not delay or defer service to any section of the franchise area on the grounds of economic preference.

7.3 Cablecasting Facilities. The Grantee shall provide cablecasting facilities in accordance with the requirements of the franchise agreement.

7.4 System Construction Schedule.

(a) The Grantee shall comply with the requirements of the system construction schedule contained in the franchise agreement.

(b) The Grantee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan, and projected dates for offering service. In addition upon request, the Grantee shall update this information showing specifically whether schedules are being met and the reasons for any delay of more than thirty (30) days.

7.5 Delay in Construction. Grantee shall obtain all necessary permits and clearances. Within two (2) months after the effective date of a franchise, Grantee shall report to Grantor its estimate of the initial construction or reconstruction date. The initial date estimated after two (2) months may be used by Grantor as the presumptive construction or reconstruction starting date, with all construction requirements based on that date, provided, however, that Grantee may adjust its estimated initial date upon a showing of delays which are beyond its reasonable control or which are not reasonably foreseeable.

7.6 Remedies for Delay in Construction. The Grantor may at its sole option, apply any or all of the remedies in connection with delays in system construction as specified in Section 12 and Section 13 herein.

7.7 Provision of Service. After service has been established by activating trunk cables for any area meeting the density requirements in the Franchise Agreement, the Grantee shall provide service to any requesting subscriber within the area within thirty (30) days from the date of request, provided such subscriber provides appropriate identification and pays any outstanding balance due on previous accounts and any advance charges required for new service.

7.8 Undergrounding of Cable. The undergrounding of cable is encouraged. In any event, cables shall be installed underground at Grantee's cost where both telephone and electric utilities are already underground. Previously installed aerial cable shall be undergrounded and relocated in concert, and on a cost-sharing basis, with other utilities, when such other utilities may convert from aerial to underground construction.

7.9 Extensions; Undergrounding. In cases of new development or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching shall be borne by Grantee.

(a) New Development Undergrounding. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall given Grantee seven (7) days advanced notice of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by Grantee.

(b) The builder or developer shall provide the Grantee with sufficient conduit space, vaults and pedestals to enable the Grantee to furnish cable service in conformity with the requirements of this ordinance and with such additional requirements relative to the operation of the Grantee's cable communications system as are reasonably foreseeable.

(c) Grantee shall not construct any cable system facilities until Grantee has secured the necessary permits from Grantor, or other cognizant public agencies.

(d) In those areas of the City where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(e) In those areas of the City where the Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such pubic utilities subsequently are placed underground, then the Grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosure,, unless otherwise provided in the franchise agreement.

7.10 Underground at Multiple-Dwelling Units. In cases of multiple dwelling units serviced by aerial utilities, Grantee shall make every effort to minimize the number of individual aerial drop cables giving preference to undergrounding of multiple drop cables between the pole and the dwelling unit. At the Grantor's request, the burden of proof shall be upon the Grantee to demonstrate why undergrounding of drop cable is technically or economically unfeasible.

7.11 Street Occupancy.

(a) Grantee shall utilize existing telephone and power poles, conduits and other facilities with written permission by these franchisees, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property until written approval of the Grantor is obtained. Publicly owned poles such as traffic signals or street light poles may not be used. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structure shall be removed or modified by the Grantee at its own expense whenever the Grantor determines that the public convenience would be enhanced thereby.

(b) Grantee shall notify the Grantor at least ten (10) days prior to the intention of the Grantee to commence any construction in any streets. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such streets and that proposed construction shall be done in accordance with the pertinent provisions of the ordinances of the Grantor.

(c) All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times, shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

(d) Grantee shall, at its own expense, and in a manner approved by the Grantor, restore to pre-existing conditions any damage or disturbance caused to the public way as a result of its operations or construction on its behalf.

(e) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair.

(f) Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities including its microwave path, subject to approval of the Grantor. Trimming of trees on private property shall require written consent of the property owner in non-emergencies.

(g) The Grantee at its expenses shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when, in the opinion of the Grantor the same is required by reason of traffic conditions, public safety, street vacation, freeway or street grade, separation or realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks or any other types of structure or improvements by governmental agencies whether acting in a governmental capacity, or any other structure or public improvement, including but not limited to movement of buildings, redevelopment, or any general program under which the Grantor shall undertake to cause any such properties to be located beneath the surface of the ground. Nothing hereunder shall be deemed a taking of the property of Grantee and Grantee shall be entitled to no surcharge by reason of anything hereunder.

(h) Upon failure of Grantee to commence, pursue or complete any work required by law or by the provisions of this ordinance to be done in any street, within the time prescribed and to the satisfaction of the Grantor, the Grantor may, at its option, cause such work to be done and the Grantee shall pay to the Grantor the cost thereof in the itemized amounts reported by the Grantor to Grantee within thirty (30) days after receipt of such itemized report.

(i) The Grantee shall make no paving cuts or curb cuts unless absolutely necessary, and only after written permission has been given by the Grantor and all necessary permits have been obtained.

(j) The Grantor reserves the right to require conduit under special conditions as required by the Director of Public Works.

7.12 <u>Construction and Technical Standards</u>.

(a) Construction Standards.

(1) Grantor Codes and Permits. Grantee shall comply with all applicable Grantor construction codes and permit procedures. Grantor shall be entitled to charge reasonable permit and inspection fees to recover the special nonrecurring inspection costs imposed by the construction or reconstruction of the cable system.

(2) Compliance with Safety Codes. All construction practices shall be in accordance with all applicable sections of Federal and State Occupational Safety and Health Acts and any amendments thereto as well as all State and local codes where applicable.

(3) Compliance with Pole Attachment Standards. All aerial construction shall comply with the practices included in the Bell System Code of Pole Line Construction.

(4) Compliance with Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code (National Bureau of Fire Underwriters) and the National Electrical Safety Code (National Bureau of Standards), as amended, and all applicable State and local codes.

(5) Antennas and Towers. Antenna supporting structure (towers) shall be designed for the proper loading as specified in Electronics Industry Association's R.S.222-A specifications.

(6) Compliance with Aviation Requirements. Antennas support structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable State or local codes and regulations.

(7) Construction Standards and Requirements. All of the Grantee's plant and equipment, including but not limited to the antenna site, headend and distribution system towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the Grantor may deem proper to make, or to interfere in any manner with the rights of any property owner, or to hinder or obstruct pedestrian or vehicular traffic.

(8) Safety, Nuisance Requirements. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(b) Technical Standards. The Grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its franchise agreement. In addition, the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines.

(c) Compliance Procedure. Upon Grantor request, the Grantee shall submit, within sixty (60) days after the effective date of the franchise agreement, a detailed test plan describing the methods and schedules for testing the cable communications system on an ongoing basis to determine compliance with the provisions of the franchise agreement. The tests shall be in general conformance with the provisions of the Standards of Good Engineering Practices for Measurements on Cable Television Systems, issued by the National Cable Television Association, and performed at intervals no greater than twelve (12) months. The tests may be witnessed by representatives of the Grantor, and written test reports shall be submitted to the Grantor if requested. If more than ten percent (10% of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated. A second failure of more than ten percent (10%) may result, at the Grantor's option, in appropriate remedies. Repeated and verified failure to maintain specified technical standards or a failure to provide a written report of system results shall constitute a material breach of the franchise.

(d) Special Tests. At any time after commencement of service to subscribers the Grantor may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The Grantor shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.

SECTION 8. SERVICE PROVISIONS

8.1 Services to be Provided. The Grantee shall provide the initial services listed in the franchise agreement.

8.2 Basic Cable Service. The "Basic Cable Service" shall include any service tier which includes the retransmission of local television signals. This service shall be provided to all subscribers at the established monthly subscription rates.

8.3 Basic Radio Service. The "Basic Radio Service" shall include the availability of all audio services designated in the franchise agreement, including retransmission of local broadcast FM radio signals, and cablecast FM signals. This service shall be available to all subscribers at established monthly subscription rates.

8.4 Institutional Service. If specified in the franchise agreement, the "Institutional Service" shall include the provision of transmission and/or reception services to institutional users, on a commercial use basis. Services may include the distribution of video or non-video signals.

8.5 Additional Subscriber Services. "Additional Subscriber Services", not included in the services specified above, may be provided, either within the basic cable service rates, or on a premium basis, subject to applicable law.

8.6 Public, Educational and Government (PEG) Access Facilities. The Grantee may be required to provide the PEG access facilities including channel capacity, necessary interface equipment and cabling to permit operation as specified in the franchise agreement.

8.7 Cable Channels for Commercial Use. The Grantee shall designate channel capacity for commercial use as required by applicable law.

SECTION 9. OPERATION AND MAINTENANCE

9.1 Open Books and Records. The Grantor shall have the right to inspect at any time during normal business hours and with reasonable notice, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the franchise and are maintained at the office with the franchise area, provided that the

Grantor shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Grantee and provided further that records shall be exempt from inspection pursuant to this section, to the extent required by applicable laws regarding subscriber privacy and to the extent such records are protected by law against discovery in civil litigation.

If any such books or records are not kept in the local office, or upon reasonable request made available to the Grantor, and if the Grantor shall determine that an examination of such records is necessary or appropriate to the performance of any of Grantor's duties, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by Grantee.

9.2 Records Required.

(a) In any event the Grantee shall at all times maintain:

(1) The complaint file required by Section 13.5.

(2) A full and complete set of plans, records and "as-built" maps showing the exact location of all cable communications system equipment installed or in use in the franchise territory, exclusive of subscriber service drops.

(3) A record of all service calls and interruptions or degradation of service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.

(4) A summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis, in a form reasonable acceptable to the Grantor.

(b) The Grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonable relate to the scope of the City's rights under this ordinance or the Grantee's franchise.

9.3 Rights of Individuals.

(a) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of income level, race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations, and all executive and administrative orders relating to non-discrimination. Grantee may, from time to time, for research purposes, provide unique experimental program packaging or interactive services to customers served by specific system nodes. The nodes will be selected on a non-discriminatory basis representing broad community demographics.

(b) Grantee shall strictly adhere to the equal employment opportunity requirements of Federal, State and local law and regulations in effect on the dates of the franchise grant, and as amended from time to time.

(c) The Grantee's policy with regard to personally identifiable information shall be consistent with Federal law. Neither Grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(d) Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all local citizens, businesses, public agencies and other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use. Allocation of use of said facilities shall be made according to the rules or decisions of the Grantee, the Grantor in its lawful exercise of regulatory authority, and any State or Federal regulatory agencies affecting the same.

(e) No cable line, wire amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.

(f) The grantee, or any of its agents or employees, shall not sell, or otherwise make available to any part without consent of the subscriber or pursuant to State and Federal privacy laws:

(1) Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and

(2) Any list which identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the Grantee from providing composite ratings of subscriber viewing to any party.

9.4 Privacy Compliance Reports. Upon Grantor's request, but no more than annually, Grantee shall submit to Grantor a report indicating the degree of compliance with the applicable privacy provisions contained in federal and state law and this ordinance, and all steps taken to assure that the privacy rights of individuals have been protected.

9.5 Continuity of Service Mandatory. (a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to over build, rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers in good financial standings, receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of franchisee, or in the event a new operator acquires the system, the Grantee shall cooperate with the Grantor, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(b) In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Grantor or without just cause including war, riot, strike, acts of God and civil emergencies, the Grantor may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor is required to fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from operation of the system during said period, and the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by the Grantor that are the result of the Grantee's failure to perform.

9.6 Grantee Rules and Regulations. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable State and Federal laws, rules and regulations. Such rules, regulations, terms and conditions may be filed with the Grantor.

9.7 Uniform and Vehicle Identification. Every field employee of the Grantee shall be clearly identified with the name of Grantee visible to the public as a representative of the Grantee. Every field vehicle, except for field sales representatives' vehicles of the Grantee, shall be clearly marked. Grantee field employees and agents shall also wear an identification badge with the agent's name and photograph.

SECTION 10. CONSUMER PROTECTION

10.1 Minimum Consumer Protection and Service Standards.

(a) Except as otherwise provided in the franchise agreement, Grantee shall maintain a local office or offices and provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operations:

(1) Sufficient toll-free telephone line capacity during normal business hours to assure that a minimum of ninety-five percent (95%) of all calls will be answered before the fourth (4th) ring and ninety percent (90%) of all callers for service will not be required to wait more than thirty (30) seconds before being connected to a service representative.

(2) Emergency telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.

(3) A local business and service office open during normal business hours at least eight (8) hours daily, and at least four (4) hours weekly on evenings or weekends, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

(4) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis.

(5) An installation staff, capable of installing service to any subscriber within seven (7) days after receipt of a request, in all areas where trench and feeder cable have been activated.

(6) At the subscriber's request, Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation of service.

(b) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible and safe, shall be preceded by notice and shall occur during a period of minimum use of the cable system, preferably between midnight and six AM, (600 A.M.).

(c) The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for service within the following time frames:

(1) For a system outage: within two (2) hours, including weekends, of receiving subscriber calls or requests for service which by number identify a system outage of sound or picture of one (1) or more channels, affecting at least ten percent (10%) of the subscribers of the system.

(2) For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels that affects three (3) or more subscribers. On weekends, an outage

affecting fewer than three (3) subscribers shall result in a service call no later than the following Monday morning.

(3) For inferior signal quality: Within forty-eight (4) hours, including weekends of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three (3) successive subscriber failures to be present at an appointed time shall excuse Grantee of duty to respond.

Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to subscribers. In the event Grantee determines that the customer has damages the equipment, Grantee shall be entitled to charge the hourly service rate permitted by the FCC.

(d) Unless excused, Grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five (5) business days unless technically infeasible.

(e) Upon request from affected subscribers, Grantee shall provide appropriate rebates to subscribers whose service has been interrupted for four (4) or more hours.

(f) Upon five (5) days notice, Grantee shall establish its compliance with any or all of the standards required above. Grantee shall provide sufficient documentation to permit Grantor to verify the compliance.

(g) A repeated and verifiable pattern of non-compliance with the consumer protection standards of (a) through (e) above, after Grantee's receipt of due notice and an opportunity to cure, is a material breach of the franchise.

(h) Grantee shall establish written procedures, reviewed by the Grantor, for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with Grantor.

(i) Grantor shall have the right to review Grantee's response to subscriber complaints in order to determine grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.

(j) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the grantee elects to rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate or not t renew the franchise, the Grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

In the event of a change of control of Grantee, or in the event a new operator acquired the system, the original Grantee shall cooperate with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period Grantee shall be entitled to the revenues for any period during which it operates the system.

(k) Additional service standards and standards governing consumer protection and response by Grantee to subscriber complaints not otherwise provided for in this ordinance may be established in the franchise agreement, and Grantee shall comply with such standards in the operations of the cable television system. A verified and continuing pattern of noncompliance is a material breach of the franchise, provided that Grantee shall receive due process, including written notification and an opportunity to cure, prior to any sanction being imposed.

10.2 Requests for Cable Service and Repairs.

(a) The Grantee shall maintain an office in the local area which shall be open during all usual business hours, have a publicly listed toll-free telephone, and be so operated to receive requests for repairs on a twenty-four (24) hour a day basis.

(b) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum use of the system. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions and requests for cable repair service as required by this ordinance.

(c) The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for repair service within twenty-four (24) hours or subject to subscriber availability for access to premises as follows:

(1) System outage: Within two (2) hours of receiving subscriber calls which by number identify a system outage of sound or picture of one (1) or more channels, affecting all the subscribers of the system or a considerable number thereof.

(2) Isolated outage: Within twenty-four (24) hours of receiving a request for service identifying an isolated outage of sound or picture for one (1) or more channels.

(3) Inferior reception quality: Within forty-eight (48) hours of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location, and in the case of Subsection (1),

(2) and (3) of this section, leaves written notification of such arrival.

No charge shall be made to the subscriber for this service unless the service request can be demonstrated to be of non-cable system origin.

10.3 <u>Complaint Procedure</u>

(a) Complaints to Grantee. Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The Grantee shall also notify the subscriber of the subscriber's right to file a complaint with the Grantor in the event the subscriber is dissatisfied with the Grantee's decision. Grantee's procedures shall be filed with the Grantor.

(b) Complaints to Grantor. A subscriber who is dissatisfied with the Grantee's proposed decision or who was not sent a written decision within the thirty (30) day period shall be entitled to have the complaint reviewed by Grantor. The subscriber shall initiate the review by filing a written complaint together with the Grantee's written decision, if any, with the Grantor and by notifying the Grantee of the filing. The subscriber shall make such filing and notification within ten (10) days of receipt of Grantee's decision or within ten (10) days of the expiration of the thirty (30) day period, whichever is earlier.

10.4 Review by Grantor. The Grantor shall determine, solely upon a review of a subscriber complaint and the Grantee's decision, if any, whether further action is warranted. In the event the Grantor does not initiate further proceedings within fifteen (15) days of the filing of the complaint, the Grantee's proposed action or resolution shall be final. If the Grantor decides to initiate further investigation, Grantor shall require the Grantee and the subscriber to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions. The Grantee or the subscriber may request in such statement that a hearing be conducted by the Grantor. A hearing if requested shall be conducted by the Grantor following notice in writing specifying the time and place for such hearing. The hearing shall be conducted informally, and the parties may offer any evidence pertinent to the dispute. The parties shall produce any additional evidence, including testing reports from the Grantee, which the Grantor may deem necessary to an understanding and determination of the dispute. The Grantor shall issue a written decision within fifteen (15) days of receipt of the written statements or, if a hearing is requested, within fifteen (15) days of the conclusion of the hearing, setting forth the basis of his decision. The Grantor's decision shall be final unless appealed by the Grantee to arbitration.

10.5 Complaint Notification. Grantee shall provide written notice to each subscriber describing the procedure established by Grantee for resolving subscriber complaints and of the subscriber's right to have Grantee's response to a subscriber complaint reviewed by the Grantor in accordance with the provisions of this ordinance. The notice shall include the name, business address, and business telephone numbers of Grantee's office and of the Grantor office designated to receive complaints. The form of the notice shall be subject to the approval of the Grantor.

10.6 Complaint Log. Grantee shall maintain a file of all subscriber complaints requiring a service call as required by SECTION 83(a) herein.

10.7 Remedies for Violations. The Grantor may, as apart of a subscriber complaint decision issued under the provisions of this ordinance, impose damages on the Grantee as specified in the franchise agreement. Damages may be imposed only if the Grantor finds that the Grantee has arbitrarily refused or failed without justification to comply with the provisions of this ordinance.

SECTION 11 RIGHTS RESERVED TO THE GRANTOR

11.1 General reservation of rights. In addition to any rights specifically reserved to the Grantor by this ordinance, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.

11.2 Right to Purchase the System. The Grantor may in any lawful manner and upon the payment of a fair valuation lawfully ascertain, purchase, condemn, acquire, take over and hold the property and plant of the Grantee in whole or in part. If such purchase or taking over be upon revocation of the franchise or at the expiration of the term of the franchise and determination of the City not to renew, such valuation shall be at the fair market value of the system as defined by applicable law.

11.3 Right of Inspection of Construction. The Grantor shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law.

11.4 Right of Intervention. The Grantor shall have the right of intervention in any suit or proceeding to which the Grantee is party, and the Grantee shall not oppose such intervention by the Grantor.

11.5 Right to Regulate Where Previously Prohibited. In the event Federal laws or regulations cease to prohibit local regulation of matters not the subject of franchise agreements, Grantor reserves the right to regulate such matters to the extent and at the time so permitted.

SECTION 12. FRANCHISE VIOLATIONS

12.1 Remedies for Franchise Violations. If the Grantee fails to perform any obligation under either this ordinance or franchise, or fails to do so in a timely manner, the Grantor may at its option, and in its sole discretion;

(a) Cure the violation and recover the actual cost thereof from the security fund established herein of such violation is not cured within thirty (30) days after written notice to the Grantee of Grantor's intention to cure and draw upon the security fund; and assess against the Grantee monetary damages up to the limits established in the franchise agreement for material franchise violations, said assessment to be levied against the security fund, herein above provided, and collected by Grantor immediately upon said assessment. The amount of such assessment shall be deemed, without proof, to represent liquidation of damages actually sustained by Grantor by reason of Grantee's failure to perform. Such assessment shall not constitute a waiver by the Grantor of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from Grantor's right to enforce the provisions of the construction and performance bonds provided for in this ordinance and is intended to provide compensation to Grantor for actual damages.

(b) Terminate the franchise, for any of the causes stated in this ordinance.

(c) No remedy shall be imposed by Grantor against Grantee for any violation of the franchise without Grantee being afforded due process of law, as provided for in this ordinance.

Grantor may, in its sole judgment and discretion, impose any or all of the above enumerated measures against Grantee, which shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.

12.2 Remedies for Delay in Construction. The Grantor may impose the following remedies with regard to delays within Grantee's control in initial construction of a new system; provided Grantee has not informed Grantor of its intent to seek arbitration according to the provisions of this ordinance.

(a) Reduction in the duration of the franchise on a month-for-month basis for each month of delay exceeding six (6) months.

(b) Forfeiture of construction bonds and/or assessment of monetary damages up to the maximum per day and per incident limits specified in the franchise agreement, levied against the security fund, for delays exceeding one (1) year.

(c) Termination of the franchise within one (1) year after award of the franchise if the Grantee has failed to initiate scheduled system construction or reconstruction.

(d) Termination of the franchise for delays exceeding eighteen (18) months.

Any remedies applied shall be in accordance with the procedures contained herein.

12.3 Procedure for Remedying Franchise Violations. Prior to imposing any remedy or other sanction against Grantee specified in this ordinance, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

(a) Grantor shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five (5) days in the case of the failure of the grantee to pay any sum or other amount due the Grantor under this ordinance or the Grantee's franchise and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed or if Grantee fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the Grantor shall then give written notice of not less than twenty (20) days of an administrative hearing t be held before the City's hearing officer. Said notice shall specify the violations alleged to have occurred.

(b) At the hearing, the hearing officer shall hear and consider all relevant evidence, and thereafter render findings and a decision.

(c) In the event the hearing officer finds that the Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) In the event the hearing officer finds that material violations exist and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor and is not diligently proceeding to fully remedy such violation, the City Manager may impose one (1) or more of the remedies provided in this ordinance and the franchise agreement as is deemed appropriate under the circumstances.

12.4 Force Majeure; Grantee's Inability to Perform. In the event Grantee's performance of any of the terms, conditions, obligations, or requirements this ordinance or the franchise is prevented or impaired by a cause or event beyond Grantee's reasonable control, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that such inability to perform shall not relieve a Grantee from the obligations imposed by this ordinance pertaining to refunds and credits for interruptions in service. For the purpose of this section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation maintenance or repair of the cable communications system where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

SECTION 13. REPORTS

13.1 Annual Reports. At Grantor's sole option and request, within ninety (90) days after the close of Grantee's fiscal year, the Grantee shall submit a written annual report to the City

Manager in a form approved by the Grantor. Such report shall include, without limitation, the following information:

(a) A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service.

(b) A list of Grantee's officers, members of its board of directors, and other principals of Grantee;

(c) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Grantee and its parent and subsidiaries, if any;

(d) An indication of any residences in Grantee's service area where service is not available, and a schedule for providing service;

(e) Information as to the number of homes passed, number of subscribers to each category of service, additional television outlets, and the number of converters and remote controls provided.

(f) Any other information relevant to franchise regulation which the Grantor shall reasonable request, and which is relevant to its regulatory responsibilities.

13.2 Plant Survey Report. At Grantor's sole option, and upon reasonable notice, Grantee shall submit to the Grantor or provide Grantor access to "as-built" maps of the portions of the franchise area that have been cabled and have all services available or an appropriate engineering evaluation including suitable electronic measurements conducted in conformity with FCC guidelines and franchise technical standards. Grantee shall provide sufficient detail to enable the Grantor to ascertain that the service requirements and technical standards of the FCC and/or the franchise were achieved and maintained. If Grantor has reason to believe that portions or all of the system do not meet either the FCC technical guidelines, or those incorporated into the franchise agreement, at Grantor's request, but no more often than once per three (3) years, the Grantee and the Grantor shall agree upon the appointment of a qualified independent engineer to evaluate and verify the technical performance of the cable system. The cost of such evaluation shall be borne equally by the Grantee and the Grantor.

13.3 Copies of Federal and State Reports.

(a)upon request, Grantee shall submit to the Grantor copies of all pleadings, applications, reports, communications and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence and actions by, any Federal, State and local courts, regulatory agencies and other government bodies which are non-routine in nature and which will materially affect its cable television operations within the franchise area. Information otherwise privileged or confidential by law and so designated by Grantee, which is submitted to Grantor, shall be retained in confidence by Grantor and its authorized agents and shall not be made available for public inspection to the extent it may be held exempt from public disclosure under the Oregon Public Records Law.

(b) Notwithstanding the foregoing, Grantee shall have no obligation to provide copies of documents to Grantor which contain trade secrets of Grantee or which are otherwise of a confidential or proprietary nature to Grantee unless it receives satisfactory assurance from Grantor that such information can and will be held in strictest confidence by the Grantor. To the extent possible, Grantee will provide Grantor with summaries of any required documents or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on Grantee to establish the confidential nature of any information submitted to the reasonable satisfaction of the Grantor.

13.4 Public Reports. A copy of each of Grantee's annual and other period public reports and those of its parent and local subsidiaries as the Grantor requests, shall be submitted to the Grantor within ten (10) days of their issuance.

13.5 Complaint File and Reports. An accurate and comprehensive file shall be kept by the Grantee of any and all complaints requiring a service call. Complete records of Grantee's actions in response to all complaints shall be kept. These files and records shall include:

(a) Upon request, a summary of complaints requiring a service call, identifying the number and nature of complaints and their disposition in a form approved by the Grantor. A copy of the summary shall be upon request and submitted to the Grantor by the tenth day of the succeeding month.

(b) A written or computer-stored log and summary of all service interruptions.

(c) A written or computer-stored log and summary of all requests for cable service and their disposition.

(d) The Grantee shall assist the Grantor in an annual opinion survey report which identifies satisfaction or dissatisfaction among subscribers with cable communication services offered by the Grantee. The survey required to make said report shall be the responsibility of the Grantor and shall be in a form that can be transmitted to subscriber with the monthly bill for service. The utilization of the monthly bill for service for distribution of the survey will be provided once per calendar year at no cost to the Grantor. The Grantor shall pay for all direct costs associated with the development and return of the survey.

13.6 Inspection of Facilities. Upon reasonable notice, and during normal business hours, Grantee shall permit examination by any duly authorized representative of the Grantor, of all franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the City, and all records relating to the franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under this ordinance or the franchise agreement. Grantee shall have the right to be present at any such examination.

13.7 Public Inspection. All reports subject to public disclosure, shall be available for public inspection at a designated Grantor office during normal business hours.

13.8 Failure to Report. The refusal, failure, or neglect of the Grantee to file any of the reports required as and when due under this ordinance, or such other reports as the Grantor reasonably may request, if such reports are not provided to Grantor within thirty (30) days after written request therefore, may be deemed a breach of the franchise, and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise.

13.9 False Statements. Any materially false or misleading statement or representation made knowingly by the Grantee in any report required under this ordinance or the franchise shall be deemed a breach of the franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise.

13.10 Cost of Reports. All reports and records required under this or any other section shall be furnished at the sole expense of the Grantee except as otherwise provided in this ordinance or the franchise agreement.

SECTION 14. MISCELLANEOUS PROVISIONS

14.1 Compliance with State and Federal Laws. Notwithstanding any other provisions of the franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the State and Federal government or any administrative agencies thereof. Provided, however, if any such State or Federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the franchise or any law or regulation of the Grantor, then as soon as possible following knowledge thereof, the Grantee shall notify the Grantor of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Grantor or the franchise.

14.2 Separability Non-material Provisions. If any provision of this ordinance or any related agreements is held by any court or by any Federal, State, or local agency of competent jurisdiction to be invalid as conflicting with Federal, State, or local law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation and if said provision is considered non-material by the Grantor, said provision shall be considered a separate, distinct and independent part of this ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof or thereof which has been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, provided that the Grantor shall give the Grantee thirty (30) days written notice of such change before requiring compliance with said provision.

14.3 Separability-Material Provisions. If any material Section of this ordinance, as determined by the Grantor, is held to be invalid or preempted by Federal, State or City regulations or laws, the Grantor shall negotiate with Grantee appropriate modifications to the franchise to provide reasonable relief to the Grantor from such invalidity of preemption, including the payment of damages. If the parties are unable to reach agreement on such modifications, then the dispute shall be submitted to a mutually agreeable arbitrator, in accordance with State law, who shall determine what modifications and/or liquidated damages are appropriate. The arbitrator's decision shall be binding on the parties, provided, that no decision of the arbitrator shall require the Grantor or Grantee to be in violation of any Federal or State law or regulation. Notwithstanding the provisions of Section 14.2 and 14.3, if the Grantee should cause the invalidation of any provision of this ordinance or franchise agreement by action in any court of competent jurisdiction, the Grantor may, at its own discretion, consider the entire franchise invalid and unenforceable.

14.4 Notices. Grantee shall maintain within the franchise area throughout the term of the franchise, an address for service of notices by mail.

14.5 No Recourse Against the Grantor. The Grantee shall have no recourse whatsoever against the Grantor or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise, except as otherwise guaranteed by Federal and State law.

14.6 Nonenforcement by the Grantor. The Grantee shall not be relieved of its obligation to comply with any of the provisions of this ordinance by reason of any failure of the Grantor to enforce prompt compliance.

14.7 Waivers. Any provision of this ordinance may be waived by the Grantor, at Grantor's sole discretion, by City Council resolution. Grantee may submit a written request for waiver at any time, and the request placed on the agenda for a public hearing and decision.

Grantor shall reach its decision no later than thirty (30) days following the receipt of any waiver request.

14.8 Effective Date. This ordinance shall become effective on July 20, 1994.

PASSED this day of , 1994.

SIGNED this day of , 1994.

Mayor

City Recorder

COUNCIL MEETING: July 18, 1994

AGENDA ITEM NO: 5c

TO: MAYOR KOHO AND CITY COUNCIL

FROM: DOTTY TRYK Dotty
CITY MANAGER

THROUGH: TRACY L. DAVIS Tracy
CITY RECORDER

SUBJECT: PUBLIC HEARING - To consider remonstrances to an Ordinance spreading assessments to Hidden Creek Phase I Street Lighting Local Improvement District

ISSUE

Scheduled is a public hearing to receive remonstrances to Hidden Creek Phase I Street Lighting Local Improvement District and subsequent consideration of an Ordinance spreading assessments to the district.

BACKGROUND

In June, 1994 the Keizer City Council adopted Ordinance 94-278 relating to formation of street lighting local improvement districts within the City of Keizer.

On June 8, 1994, the developer of Hidden Creek Phase I filed a petition to form a street lighting local improvement district. In response to this petition, the City Council adopted Resolution R94-748 on June20, 1994 to initiate a street lighting local improvement district and directing the City Engineer to make a survey and file a written report with the City Recorder. On July 5, 1994 the City Council approved the City Engineer's report and set a public hearing to consider remonstrances to the project. On July 7, 1994 notice of the public hearing and intention to assess for the lighting improvements, as required under Ordinance 94-278, were provided by mail to the property owners.

ANALYSIS

Included within the agenda packet is the Ordinance to spread assessments to the properties benefitted by the lighting district. The Ordinance provides for first annual estimated assessments and the method for determining second and future annual assessments. Following the City Council's adoption of the Ordinance spreading assessments, the City authorizes the appropriate utility company to install the poles and lights. Depending on the type of poles requested by the

City, it takes the utility company from two to six months to have the lights on site and operational.

FISCAL IMPACT

The operating cost of the lights will be billed to the property owners on an annual basis, recovering the City's costs in paying the bills throughout the year. In addition, the bills include the cost of the Engineer's report in the first year, and a 8.5% administrative charge in the first and subsequent years to recover the City's cost for administering the lighting districts. All funds are budgeted through the Utility Fund.

RECOMMENDATION

1. Open the public hearing to consider oral and written remonstrances to formation of Hidden Creek Phase I Street Lighting Local Improvement District.

2. If valid remonstrances of the owners of two-thirds of the land to be specially assessed for the lighting district are presented to the Council at the public hearing, close the hearing and suspend formation of the district for six months.

3. If valid remonstrances of the owners of two-thirds of the land to be specially assessed for the lighting district are not presented to the Council at the public hearing, close the hearing and consider adoption of the ordinance spreading assessments to the district.

BILL NO.______ **ORDINANCE NO. 94-_____**

A BILL FOR

AN ORDINANCE SPREADING ASSESSMENTS TO HIDDEN CREEK PHASE I STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

SECTION 1.

WHEREAS, the City Council did heretofore declare its intention to install street lights to serve an area known as Hidden Creek Phase I Street Lighting Local Improvement District which is described as follows:

> Hidden Creek Properties Section 26D; Township 6, Range 3 West; Tax Lot 200 (Lots 1-41) in the City of Keizer, Marion County, Oregon.

which includes the installation of sixteen (16) 100-watt high pressure sodium luminaries on eight-foot long mast arms, and attached to 25-foot fiberglass poles located within the subject local improvement district, all in accordance with the City Engineer's report for Hidden Creek Phase I Street Lighting Local Improvement District and estimates heretofore duly and regularly adopted by the City Council, which are hereby referred to and made a part hereof, and did fix the time and place for hearing protests against the installation of said improvements, and the assessment and the cost thereof, as aforesaid and

WHEREAS, notice was duly mailed on July 7, 1994 as required by Ordinance; and

WHEREAS, a meeting of the City Council was held at the time and place fixed by public notice for the purpose of considering any such protest and at that time heard and considered all protests submitted relating to the proposed improvements and assessment thereof, and said Council has considered the matter and deeming that construction of said improvements was and is of material benefit to the City, and all the property to be assessed therefore will be benefitted by the improvements to the extent of a per parcel first annual assessment estimated at $55.41 at the time of the City Engineer's report, did order the construction of said improvements; and

WHEREAS, the estimated annual cost of said improvements has been preliminarily determined to be the sum of $41.41 per parcel.

NOW, THEREFORE, the City Council of the City of Keizer ordains as follows:

SECTION 2.

(a) First Annual Assessment. It is hereby determined that the first annual estimated proportionate share of the cost of said improvements, on each parcel and property benefitted thereby, is the amount set opposite the description of each piece or parcel of land as described in Hidden Creek Phase I Street Lighting District Assessment Roll as set forth in Exhibit "A" attached, and that each piece or parcel of land benefitted by the improvements, to the full extent of the amount so set opposite such piece or parcel and that the respective amounts represent the proportionate benefits of said improvements to said respective parcels of property, and the Council does hereby declare that each of the parcels of property described in Hidden Creek Phase I Street Lighting District Roll as set forth in Exhibit "A" attached is hereby assessed the first annual estimated amount set opposite each respective description.

(1) Summary of first annual estimated costs assessed for formation of the lighting district to serve the area known as "Hidden Creek Phase I Street Lighting Local Improvement District":

16 - 100-Watt Luminaries & Poles	$ 1564.80
Engineer Report	574.00
Annual Administrative Costs @8.5%	133.00
Total First Annual Costs	$ 2271.80

(2) The Recorder of the City of Keizer is hereby directed to send a notice of first annual assessment to each owner of assessed property by mail within ten (10) days after the Ordinance levying the first annual installments has been passed, and to publish notice of the first annual assessment in a newspaper of general circulation in the city.

(b) Second and Subsequent Annual Assessments. After a municipal lighting district has been formed in accordance with City of Keizer Ordinance 94-278, the second and subsequent annual assessments shall be spread by Resolution which may include changes in the mode of collecting the assessment. The method of assessment and notification for subsequent annual assessments shall be determined in accordance with City of Keizer Ordinance 94-278.

(c) Mode of Collecting Assessments. Assessments for said lighting district shall be collected pursuant to ORS 223.866.

PASSED this ______ day of ________________________, 1994.

SIGNED this ______ day of ________________________, 1994.

____
Mayor

____
City Recorder

EXHIBIT A
NOTICE OF ASSESSMENT

NOTICE IS HEREBY GIVEN that the City Council of the City of Keizer, Oregon, on January 3, 1994 adopted Ordinance No. 94-____, entitled, AN ORDINANCE SPREADING ASSESSMENTS TO HIDDEN CREEK PHASE 1 STREET LIGHTING LOCAL IMPROVEMENT DISTRICT.

In accordance with that ordinance, you are hereby given NOTICE of an ASSESSMENT on your property.

The record owners, description of the assessed properties and assessments are:

<u>ASSESSMENT NO. 1</u>

Henderson Homes P.O. Box 20998 Keizer, Oregon 97307	Lot 1 Hidden Creek Phase 1 First Annual Assessment: $55.41

<u>ASSESSMENT NO. 2</u>

Hannegan & Sons P.O. Box 5343 Salem, Oregon 97304	Lot 2 Hidden Creek Phase 1 First Annual Assessment: $55.41

<u>ASSESSMENT NO. 3</u>

Henderson Homes P.O. Box 20998 Keizer, Oregon 97307	Lot 3 Hidden Creek Phase 1 First Annual Assessment: $55.41

<u>ASSESSMENT NO. 4</u>

Hannegan & Sons P.O. Box 5343 Salem, Oregon 97304	Lot 4 Hidden Creek Phase 1 First Annual Assessment: $55.41

<u>ASSESSMENT NO. 5</u>

Hannegan & Sons P.O. Box 5343 Salem, Oregon 97304	Lot 5 Hidden Creek Phase 1 First Annual Assessment: $55.41

<u>ASSESSMENT NO. 6</u>

Hannegan & Sons P.O. Box 5343 Salem, Oregon 97304	Lot 6 Hidden Creek Phase 1 First Annual Assessment: $55.41

ASSESSMENT NO. 7

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 7
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 8

Henderson Homes
P.O. Box 20998
Keizer, Oregon 97307

Lot 8
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 9

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 9
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 10

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 10
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 11

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 11
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 12

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 12
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 13

Henderson Homes
P.O. Box 20998
Keizer, Oregon 97307

Lot 13
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 14

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 14
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 15

Hannegan & Sons P.O. Box 5343 Salem, Oregon 97304	Lot 15 Hidden Creek Phase 1 First Annual Assessment: $55.41

ASSESSMENT NO. 16

Henderson Homes P.O. Box 20998 Keizer, Oregon 97307	Lot 16 Hidden Creek Phase 1 First Annual Assessment: $55.41

ASSESSMENT NO. 17

Hannegan & Sons P.O. Box 5343 Salem, Oregon 97304	Lot 17 Hidden Creek Phase 1 First Annual Assessment: $55.41

ASSESSMENT NO. 18

Hannegan & Sons P.O. Box 5343 Salem, Oregon 97304	Lot 18 Hidden Creek Phase 1 First Annual Assessment: $55.41

ASSESSMENT NO. 19

Hidden Creek Properties 5309 River Road N Keizer, Oregon 97303	Lot 19 Hidden Creek Phase I First Annual Assessment: $55.41

ASSESSMENT NO. 20

Hannegan & Sons P.O. Box 5343 Salem, Oregon 97304	Lot 20 Hidden Creek Phase 1 First Annual Assessment: $55.41

ASSESSMENT NO. 21

Hidden Creek Properties 5309 River Road N Keizer, Oregon 97303	Lot 21 Hidden Creek Phase I First Annual Assessment: $55.41

ASSESSMENT NO. 22

Hidden Creek Properties 5309 River Road N Keizer, Oregon 97303	Lot 22 Hidden Creek Phase I First Annual Assessment: $55.41

ASSESSMENT NO. 23

Hidden Creek Properties
5309 River Road N
Keizer, Oregon 97303

Lot 23
Hidden Creek Phase I
First Annual Assessment: $55.41

ASSESSMENT NO. 24

Hidden Creek Properties
5309 River Road N
Keizer, Oregon 97303

Lot 24
Hidden Creek Phase I
First Annual Assessment: $55.41

ASSESSMENT NO. 25

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 25
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 26

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 26
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 27

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 27
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 28

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 28
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 29

Henderson Homes
P.O. Box 20998
Keizer, Oregon 97307

Lot 29
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 30

Henderson Homes
P.O. Box 20998
Keizer, Oregon 97307

Lot 30
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 31

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 31
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 32

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 32
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 33

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 33
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 34

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 34
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 35

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 35
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 36

Henderson Homes
P.O. Box 20998
Keizer, Oregon 97307

Lot 36
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 37

Henderson Homes
P.O. Box 20998
Keizer, Oregon 97307

Lot 37
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 38

Michael Greer
6228 Lardon Road NE
Salem, Oregon 97305

Lot 38
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 39

Henderson Homes
P.O. Box 20998
Keizer, Oregon 97307

Lot 39
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 40

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 40
Hidden Creek Phase 1
First Annual Assessment: $55.41

ASSESSMENT NO. 41

Hannegan & Sons
P.O. Box 5343
Salem, Oregon 97304

Lot 41
Hidden Creek Phase 1
First Annual Assessment: $55.41

In accordance with City of Keizer Ordinance 87-094, said assessment will be placed on the Assessment Rolls of the Marion County Assessor and collected pursuant to ORS 223.866 by the Marion County Tax Collector at the same time and in the same manner as your annual property taxes. Failure to pay said assessment when due may subject your property to foreclosure proceedings.

Second and subsequent annual assessment amounts against the above described property will be determined annually, based upon electrical consumption and operating costs within Hidden Creek Phase 1 Street Lighting Local Improvement District.

If you have any questions regarding this Notice of Assessment, please contact the City of Keizer, 390-3700.

Senior citizens age 62 or older, under certain conditions, may file for a property tax deferral on payment of the assessment. If you have questions on the property tax deferral program, please call the Oregon Department of Revenue, 371-2244.

CITY COUNCIL MEETING: July 18, 1994

AGENDA ITEM NUMBER: 5d

TO: MAYOR AND CITY COUNCIL

THROUGH: DOTTY TRYK, Dotty
CITY MANAGER

FROM: JOHN N. MORGAN, AICP
COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: PUBLIC HEARING -
ZONE CHANGE/VARIANCE CASE 94-4

DISCUSSION:

This case was filed by Paul Whittenberg who is purchasing the property on the east side of River Road between Claggett Street and Chemawa Road. Mr. Whittenberg is intending to develop the entire property with a complex of retail, office, and residential uses. This case was called up by the Council on June 20th in order to accommodate Mr. Whittenberg's short time frame for closing on the property.

Much of what Mr. Whittenberg wishes to do does not require any land use action. However, zone changes, with minor associated variances, are necessary for two parts of the project:

- A zone change from CR (Commercial Retail) to MU (Mixed Use) for land at the northeast corner of the property to accommodate residential uses.
- A zone change from CR (Commercial Retail) to CG (Commercial General) for land located at the central east side of the property to allow construction of mini-warehouses.

Please find attached to this report a formal land-use staff report that provides a detailed description, analysis, findings, and recommendations on this case. You will note that the proposals conform to the Comprehensive Plan and that Staff recommends their approval with certain conditions.

Community Development and Public Works staffs have been working closely with Mr. Whittenberg as he has envisioned and designed a development for the entire property. While the Council's formal involvement is limited to consideration of the two zone changes for the two small portions of the site, staff has been coordinating, advising, and facilitating discussions and designs on access, siting, signing, uses, and other factors.

RECOMMENDATION:

It is recommended Council:

1. Hold the public hearing;

2. Hold the hearing over until August 1;

3. Direct Staff to prepare an order approving the zone changes subject to the conditions outlined in the Staff Report and return it on August 1 for completion of the hearing and action on the order.

KEIZER COMMUNITY DEVELOPMENT DEPARTMENT
STAFF RECOMMENDATION
ZONE CHANGE/VARIANCE CASE No. 94-4

TO: City Council

FROM: John N. Morgan, AICP, Community Development Director
W.J. Wendolowski, AICP; City Planner

DATE: July 12, 1994

The Planning staff reviewed the above referenced case and offers the following comments.

I. GENERAL INFORMATION

A. APPLICANTS: Paul and Judy Wittenburg for property owned by C.F. Foulger and Ruth A. Rhoten.

B. PROPERTY LOCATION: The subject property is located in the 5000 Block of River Road, on the west side of River Road between Chemawa Road And Claggett Street. The County Assessor's map identifies the two parcels as being located within Township6 South; Range 3 West; Section 35CC; Tax Lot #800; and, Township7 South; Range 3 West; Section 02BA; Tax Lot #s 4900, 5000, 5100, and, 5300. (See Exhibit "A".)

C. PARCEL SIZE: The combined tax lots contain 14.47 acres.

D. EXISTING DEVELOPMENT AND PUBLIC FACILITIES: The subject property contains two commercial buildings. One building contains several small businesses (Breys Restaurant, True-Value Hardware, Uptown Music, Northside Alliance Church, etc.) the second building is abandoned (Hydro-Tubes).

E. PLAN DESIGNATION AND ZONING: The subject property is designated Commercial in the Keizer Comprehensive Plan and zoned CR (COMMERCIAL RETAIL). The property also lies within the identified 100 year flood plain based on a draft flood map submitted by the Federal Emergency Management Administration (FEMA).

F. ADJACENT ZONING AND LAND USES: To the west and south are shopping centers (School House Square, Safeway) are located on CR zoned land. The Keizer Fire District and the City Department of Public Works are located to the southeast of P (PUBLIC) zoned land. Property to the east is zoned RS (SINGLE FAMILY RESIDENTIAL) and contains an older single family subdivision. To the north is RM (MEDIUM DENSITY RESIDENTIAL) zoned property containing a retirement home and nursing home. Land to the northwest is zoned RM and UT (URBAN TRANSITION) and contains rehabilitation clinic, apartments and a church. (See Exhibit "A".)

G. PROPOSAL: The applicants are requesting approval of the following: (1) azone from to the MU (MIXED USE) zone on 3.1 acres and to the CG (COMMERCIAL GENERAL) zone on 3.58 acres; and, (2) variances: to increase the height limit imposed by KZO Section 17.32, and, to reduce the required setback in KZO Section 17.40. (See Exhibit "B" for site plan.)

II. AGENCY COMMENTS

A. The City Department of Public Works, the City Engineer and the City Traffic Engineer provided a set of recommendations. These are attached as Exhibit"C" and Exhibit "D."

B. The Salem Community Development Department noted the subject property was a case study site in a recent "In-Fill" study project and recommended the applicant and city review the study. The Department also recommended maintaining the Kestrel Street stub as a pedestrian access. The Keizer Fire District noted development of property will require compliance with applicable Uniform Fire Codes. The City Police Department reviewed the proposal and offered no comment.

C. Northwest Natural Gas, Portland General Electric and US West reviewed the proposal and did not oppose the changes. No other contacted agency responded.

IV. FINDINGS - MU (MIXED USE) ZONE CHANGE

A. The applicants are proposing a zone change to the MU zone on 3.1 acres located in the northeast corner of the property. The rezoned property will have direct access to Claggett Street and through the use of cross connections be able to access River Road and Chemawa Road. The applicants do not have a specific development plan available at this point but preliminary proposals call for the development of either a retirement village or motel. Both uses are permitted within the MU zone (Keizer Zoning Ordinance Chapter 30).

B. The zone change review criteria are found in Section 4.16 of the Zoning Ordinance. The criteria, and staff commentary, are noted below:

<u>(1)</u> <u>The zone must be appropriate for the Plan designation.</u>

Section 4.02 identifies Comprehensive Plan designations and their corresponding zones. Pursuant to this Section, the MU zone is appropriate for the existing Commercial Plan designation.

<u>(2)</u> <u>Potential uses can be accommodated on the property.</u>

The applicant submitted a site plan showing how the property can be developed for retirement apartments. Based on the submitted site plan, parcel size and the parcel's relatively flat topography, there does not appear to be any physical limitation which would prohibit this type of development or other permitted development on the property.

(3) Allowed uses can comply with the development standards found in Chapters 17 to 20 of the Zoning Ordinance.

Chapters 17 to 20 establish requirements regarding access, vision clearance areas, landscaping, buffering, special setbacks, parking and other applicable standards. These are technical requirements regarding development of the site if additional improvements should occur and by themselves, do not specifically prohibit or restrict the zone change. The issuance of any new building permit, or a change in the use of the property, will require evidence the development on the site can comply with all Zoning Ordinance requirements; otherwise no development will occur.

(4) Adequate public facilities are available.

The parcel is fully served by public and private utilities. Additional service extensions are not required. The property also has more than adequate access to adjacent streets; traffic flow will not be a concern .

(5) Satisfaction of any zone change review criteria in the Comprehensive Plan are satisfied.

The Comprehensive Plan does not contain zone change review criteria. Satisfaction of this item is therefore not required.

(6) The supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next 5 years; or, the location of existing appropriately zoned land is not locationally or physically suited for the particular uses proposed for the property, or lacks site specific amenities required by the proposed use.

Generally, this criteria requires an extensive market analysis to locate a specific business. However, staff recognizes the uniqueness of the MU zone, a zone which permits a mixture of residential and commercial uses. Existing MU zoned land is located within the Staats Lake development and Country Glen Estates. Current plans for both properties call for multi-family, commercial retail and office development. There is simply no vacant MU zoned parcelsavailable within the City.

In addition, the subject zone change represents a minor decrease in the amount of CR land within in the City, and more importantly, provides an opportunity to develop an essentially vacant area on the property.

(7) The supply of vacant land in the existing zone is inadequate to accommodate the 5 year projected rate of development.

The issue of the zone change is complicated by the strong similarities between the CR and MU zones. In many ways these two zones are interchangeable. The zone change is actually one of degree, and in general, will establish a zone that essentially allows most of the uses permitted within the CR zone. The only exceptions are restrictions on the size of more intensive retail uses (e.g. furniture stores are limited to 10,000 square feet of floor area), a prohibition against certain types of intensive commercial development (e.g. automobile sales), and, the zone permits residential development.

The Mixed Use effectively perpetuates the commercial retail aspects of the property while providing additional development opportunities. It is also interesting to note the property was available for several years and, with the exception of the existing commercial buildings, was never developed. It would appear to staff this lack of development of the vacant land is a strong indication there is sufficient CR zoned land available in the community.

(8) The proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.

In general the MU zone is more restrictive in the types and size of permitted commercial development and will allow a variety of residential uses. On the whole the MU zone allows less intensive uses than permitted in the current CR zone.

E. The change in zoning from CR to MU does not have any major deleterious effect on commercial development within the City. Staff stresses the similarities between the two zones. The zone only places certain limits on commercial development; it does not eliminate over 3 acres of land from any commercial activity. Based on the above findings, staff concludes the proposal complies with the zone change criteria.

V. FINDINGS - CG (COMMERCIAL GENERAL) ZONE CHANGE

A. The applicants are also proposing a zone change to the CG zone on 3.58 acres located on the eastern portion of the property. The rezoned property will have access to Claggett Street, River Road, and Chemawa Road through the use of driveway connections. The applicants are specifically requesting the CG zoning to permit the development of a mini-storage warehouse, a use permitted in the CG zone (Keizer Zoning Ordinance Chapter 29).

B. The zone change review criteria are found in Section 4.16 of the Zoning Ordinance. The criteria, and staff commentary, are noted below:

(1) The zone must be appropriate for the Plan designation.

Section 4.02 identifies Comprehensive Plan designations and their corresponding zones. Pursuant to this Section, the CG zone is appropriate for the existing Commercial Plan designation.

(2) Potential uses can be accommodated on the property.

The applicant submitted a site plan showing how the property can be developed for mini-storage warehouses. Based on the submitted site plan, parcel size and the parcel's relatively flat topography, there does not appear to be any physical limitation which would prohibit this type of development or other permitted development on the property.

(3) Allowed uses can comply with the development standards found in Chapters 17 to 20 of the Zoning Ordinance.

Chapters 17 to 20 establish requirements regarding access, vision clearance areas, landscaping, buffering, special setbacks, parking and other applicable standards. These are technical requirements regarding development of the site if additional improvements should occur and by themselves, do not specifically prohibit or restrict the zone change. The issuance of any new building permit, or a change in the use of the property, will require evidence the development on the site can comply with all Zoning Ordinance requirements; otherwise no development will occur.

(4) Adequate public facilities are available.

The parcel is fully served by public and private utilities. Additional service extensions are not required. The property also has more than adequate access to adjacent streets; traffic flow will not be a concern .

(5) Satisfaction of any zone change review criteria in the Comprehensive Plan are satisfied.

The Comprehensive Plan does not contain zone change review criteria. Satisfaction of this item is therefore not required.

(6) The supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next 5 years; or, the location of existing appropriately zoned land is not locationally or physically suited for the particular uses proposed for the property, or lacks site specific amenities required by the proposed use.

There is no CG zoned property containing at least 3.5 acres available within the City. Some UT zoned property which is designated Commercial, is available along Cherry Avenue and the Chemawa Interchange. However, development of these sites would also require a zone change. According to the applicant, the site is also locationally suited for the proposed business as it has access to a major arterial and is located near significant residential development. Further, as with the MU zone change, the proposal provides an opportunity to develop an essentially vacant area on the property and one that will probably not develop with conventional commercial uses due to its physical separation from River Road and the lack of clear visibility from the street.

(7) The supply of vacant land in the existing zone is adequate to accommodate the 5 year projected rate of development.

Previous findings indicated there is sufficient CR zoned land available within the City. The establishment of the MU zone also supplements CR zoning thereby providing additional commercial retail and office development opportunities. Plus, the CG is also a commercial zone. For these reasons, staff concludes that even with the loss of 3.58 acres, the supply of available vacant land for commercial development is adequate for at least five years.

(8) The proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.

The CG zone will permit uses which are more intensive (e.g. machine shops, auto repair, welding and fabrication) than allowed in the existing CR zone. To ensure these type of uses will not destabilize the adjacent residential areas, staff will recommend the placement of the limited use overlay zone (LU).

E. An approved zone change remains with the property. Once established, the property owner may develop the land for any use permitted within the zone and in many cases no additional land use review is required. The applicant will simply need a building permit to construct the mini-storage warehouses.

The storage warehouses will generate minimal traffic, will not create a nuisance with regard to noise, dust or odors, and on the whole, are likely to be compatible with the area's residential development. As noted, however, there are certain uses which may not compatible with the single family homes to the east, or with development on the balance of this property or on other properties to the south. To ensure the site is developed specifically as indicated, staff recommends a limited use overlay zone (LU) be placed on the property thereby limiting permitted development to the proposed warehouses. All other uses identified within the CG zone will require conditional use approval before they can be established.

F. The staff recommendation for approval of the zone change is due, in large part, to the design and layout of the proposed mini-storage warehouses. To ensure the final product is consistent with the proposal, staff will recommend the placement of a condition requiring the storage units to substantially conform in style, color, texture and layout to what was what was represented by the applicant.

G. The change in zoning from CR to CG does not have any major deleterious effect on commercial development within the City and actually provides an opportunity to develop existing vacant land. Provided the LU zone is placed on the property, limiting the permitted use of the parcel to that envisioned by the applicant, staff concludes the proposal complies with the zone change criteria.

VI. FINDINGS - VARIANCE TO SPECIAL BUFFERING REQUIREMENTS

A. The applicant intends to construct mini-storage warehouses on the CG portion of the property. Section 17.40, of the Keizer Zoning Ordinance, requires special setback provisions for commercial development located adjacent to property in the RS zone. The commercial property must either establish a two-way driveway or provide 20 feet of landscaping. The applicant is requesting a variance to this Section to allow only 10 feet of landscaping. A variance is required as this request modifies a quantifiable standard.

B. The decision criteria for a variance are contained in Section 6.30 of the Keizer Zoning Ordinance. The criteria, and staff's comments, are as follows:

(a) The degree of variance from the standard is the minimum necessary to permit development of the property for uses allowed in the applicable zone.

The applicant originally intended to build right up to the property line thereby eliminating any setback. The property does contain a significant number of trees of which the adjacent residents would like to preserve. To accommodate the neighbor's concerns, the developer moved the back wall in 10 feet. With this reduced setback, the developer is able to efficiently utilize the property while maintaining a degree of buffering between the two properties. For these reasons, the proposed variance is the minimum necessary to allow a reasonable, and permitted, use of the subdivision lots.

(b) There has not been a previous land use action approved on the basis that variances would not be allowed.

There is no previous land use decision that expressly prohibits the granting of the variance.

(c) The variance will not be unreasonably detrimental to property or improvements in the neighborhood of the subject property; and, (d) the variance will not significantly affect the health or safety of persons working or residing in the vicinity.

The variance does place the commercial development closer to RS zoned property. This reduction is mitigated by three factors: (i) the existing row of trees; (ii) the type of business proposed for the property; and, (iii) the rear of the storage buildings will face the back yards of the residences. All of these factors significantly reduce the impact of the setback reduction. For these reasons, staff finds the variance will not be unreasonably detrimental to improvements in the area nor will it affect the public's health and safety.

(e) The variance will be consistent with the intent and purpose of the provision being varied.

The purpose and intent of the setback is to provide sufficient buffering between commercial development and residential uses. As noted above, the setback reduction is mitigated by the existing row of trees, the type of proposed land use and the placement of the back wall toward the residents. Staff believes that a minimum 10 foot setback along with those mitigating factors meets the intent of the setback requirement.

C. Based on the above findings, staff determined the request complies with the decision criteria for a variance. Consistent with this determination, the minimum landscaped area shall be 10 feet. Further, the building shall not face any single family residence.

VII. FINDINGS - VARIANCE TO SPECIAL HEIGHT REQUIREMENTS

A. Section 17.32, of the Keizer Zoning Ordinance, requires special height limitations for commercial structures adjacent to residential areas. A building is limited to a height of 9 feet at the property line with a 1 foot increase for each additional foot of setback. No building can exceed 20 feet in height within 50 feet of a property line adjacent to residentially zoned property.

B. The applicant originally requested a variance to permit a 24 or 25 foot building within the 50 foot area. However, since the applicant revised the site plan to include a 10 foot landscaped strip along the east side, no building will exceed 20 feet of height within the first 50 feet from the east property line. For this reason, the applicant is not required to obtain a variance.

VIII. DEVELOPMENT CONSIDERATIONS

A. The City Engineer, in conjunction with the Department of Public Works and the City Traffic Engineer, provided a list of recommended development considerations. These recommendations involve provisions for sewer, water, storm drainage and traffic access. To ensure public health and safety, staff recommends the placement of these recommendations as conditions.

IX. RECOMMENDATION - MU ZONE CHANGE

A. The application is capable of complying with the zone change decision criteria. Staff recommends approval of the MU (MIXED USE) zone change request with the addition of the engineering recommendations described in VIII, above.

X. RECOMMENDATION - CG ZONE CHANGE

A. The application is capable of complying with the zone change decision criteria. Staff recommends approval of the CG (COMMERCIAL GENERAL) zone change request subject to the following conditions:

1. The CG zone change shall be modified to includethe placement of the Limited Use Overlay Zone (LU). Permitted uses in CG zone shall be limited to Mini-Storage Warehouses as identified in Section 29.01(5) [SIC 40], of the Keizer Zoning Ordinance.

2. The proposed mini-storage warehouses shall substantially conform with the color, style, texture, architectural features, landscaping, and layout of the plans and pictures submitted by the applicant.

3. The engineering recommendations described in VIII, above, shall be required.

XI. RECOMMENDATION - VARIANCE

A. The application is capable of complying with the variance decision criteria. Staff recommends approval of the landscape reduction request subject to the following conditions:

1. The minimum landscaped area along the east side of the storage units shall be 10 feet.

2. The entry ways to the storage units shall not be situated as to be seen by adjacent residences.

3. Existing trees within the 10 foot landscaped strip shall remain and be continually maintained by the applicant.

XII. RECOMMENDATION - GENERAL DEVELOPMENT

A. Prior to any development on the subject property, and regardless of zone, the applicant shall submit a master design plan. The design plan shall incorporate those elements identified in the City Engineer's report, Exhibit"C", and, the Traffic Engineer's report attached as Exhibit "D." This plan shall be reviewed and approved by the Department of Public Works and the Community Development Department to ensure compliance with City engineering requirements, conditions of approval and other applicable development standards. Approval of the plan shall be required prior to the issuance of any building permits.

DATE: JULY 11, 1994

TO: CITY OF KEIZER
PLANNING DEPARTMENT

SUBJECT: ZONE CHANGE/VARIANCE CASE NO. 94-4 (PAUL WHITTENBURG)

PUBLIC WORKS DEPARTMENT COMMENTS

It is the understanding of the Public Works Department that the property located at the Northeast corner of the intersection of North River Road and Chemawa Road is being considered for a proposed Zone Change from CR to CG (Commercial General) and from CR to MU (Mixed Use) with variances requested to reduce the required setback and to allow an increase in the maximum height allowed in said zones.

The following comments are being provided to assist in the overall evaluation of the proposal:

SANITARY SEWERS:

a.) City of Salem approval for local sewer permits will need to be issued prior to construction. The property is not subject to the current city acreage assessment for undeveloped property since it is located within the original Keizer Sanitary Sewer District. .

b.) Connecting to existing sewers that serve the general area will be the responsibility of the developer of the property.

c.) An existing sanitary sewer line is indicated on the city maps that provide sewer service to this area. A sewer line which lies in an extension of Kestral St. would be located under the proposed Mini-Warehouses. The applicant should provide to the City of Keizer Department of Public Works a copy of the recorded easements on this property. It is possible that an easement exists that would prohibit the construction directly over the existing sewer line.

d.) Appropriate easements will be required for any public sewer mains located within the subject property.

WATER SYSTEM:

a.) A water main exists in the vicinity of the proposed entrance to the property from River Road North. The water main is one of the old steel mains scheduled to be replaced by the City of Keizer. During the fire flow calculations for the subject property the developer may want to have this main oversized. The City will assist in the reconstruction of the main if it is enlarged by helping to pay for a share of the new main. Final amounts to be paid shall be determined by the Director of Public Works prior to any work being undertaken on the existing water main.

b.) The city water department shall determine the method and location of the proposed water meters to serve the property. The water department will assist the developer in determining a meter size for service when enough data is available. Landscaping irrigation may require a separate meters.

c.) The Keizer Fire District cannot comment at this time on fire flow requirements for the proposed buildings since the type of construction and occupancy limits are not yet known. Final development plans shall be reviewed by the Keizer Fire Department prior to any issuance of building permits by the City of Keizer.

d.) Any wells on the subject property shall be identified and abandoned in accordance with the water department requirements.

STREET AND DRAINAGE IMPROVEMENTS:

a.) Improvements to Claggett Street will involve a traffic signal at River Road North to handle the projected increase in traffic, particularly when the commercial development occurs. This development shall be responsible for 50% of the cost of a new traffic signal at the intersection of Claggett Street and River Road North. Timing of the improvement shall be determined by the City of Keizer Department of Public Works.

b.) The proposed overall development plan for the site will need to provide for improved access control in the vicinity of the main access to River Road and to the accessways to Chemawa Road and Claggett Street. The driveway width for both access roads shall be of adequate width to provide for left turn lanes onto River Road and to Chemawa Road.

The access road northerly to Claggett Street shall be a separate roadway not traversing through the proposed residential development.

c.) The existing storm drain lines within the subject property shall be located and appropriate easements provided for all storm drains that serve separate properties or public facilities. An overall storm drain master plan shall be developed for the site for approval by the Department of Public Works.

d.) Storm water detention will be required for this site. Engineering calculations for the proposed detention facility will be required to be reviewed by the City Engineer prior to Construction.

e.) Construction permits are required by the Department of Public Works prior to any public facility construction. Contact Scott Peterson at the City Engineer's office at 390-7402 for the necessary permit information that is required.

f.) A Pre-design meeting will be required prior to the Developer's Engineer submitting plans to the city for review.

A Pre-construction conference shall be required prior to commencement of any construction under permits issued by the city.

ASSOCIATED TRANSPORTATION ENGINEERING & PLANNING (ATEP)

(503) 636-9232 (503) 743 4191

MEMO

TO: CITY OF KEIZER

ATTN: JOHN MORGAN

FROM: DICK WOELK, Traffic Engineer

DATE: July 13, 1994

RE: Whittenberg Development

I have reviewed the proposed development and have the following comments:

1) The development will generate a large number of trips as shown in table 1.

TABLE 1 - TRIP GENERATION							
USE	Weekday	AM PEAK HOUR			PM PEAK HOUR		
		TOTAL	IN	OUT	TOTAL		
Shopping center	3574	85	54	32	328	164	164
Elderly Housing	80	2	1	1	3	2	1
Mini-Storage	139	10	5	5	14	7	7
Restaurant	1027	79	39	39	81	44	37
TOTAL	4,819	175	98	76	425	216	208

The trips generated by the development will be concentrated at the River Road entrances.

The main assess points to the development shall be as follows:

a) River Road - Three (3) main driveways will be allowed, one (1) joint use driveway shall be centered on the existing U.S. Bank entrance and shall connect to the proposed mini-warehouse driveway. To separate the existing parking lot from the existing driveway, an asphaltic curb shall be install on the south side of the driveway between the existing driveway and the Brey's Parking lot with two (2) breaks for access, one at the aisleway in front of Brey's and one at the aisleway on the east side of Bray's.

The second driveway to River Road shall be located at a point a minimum of 150' south of Claggett Street and shall be a right turn in and right turn out driveway. At such time as this corner is developed a raised concrete island shall be constructed to preclude left turns into or out of this driveway.

The third driveway shall be a joint use driveway between the proposed site and Bob's restaurant. This driveway will serve both the development and the Bob's Restaurant parking lot and drive through.

b) Claggett Street - Two (2) main driveways will be allowed onto Claggett Street. One (1) shall be located a minimum of 100' east of River Road and shall be aligned as close as possible to the existing driveway from the Keizer Retirement home.

The second (2) driveway onto Claggett Street shall be located such that the centerline of the driveway shall be within 20 feet +/- from the centerline of the most easterly driveway to the Keizer Retirement home.

c) Chemawa Road - One (1) driveway will be allowed from Chemawa Road and shall be located just to the east of Keizer farm store. This access shall be developed as a 38 foot wide roadway at Chemawa Road to provide for a 12 foot right turn lane, a 12 foot left turn lane and a 14 foot wide entrance lane from Chemawa Road.

2) The intersection of River Road and Claggett Street will meet the warrants for the installation of a traffic signal. This signal should also be connected with the existing interconnect system that currently ends at Chemawa Road.

4) The access to the restaurant parking from River Road should be redesigned to accommodate entrance to the parking lot without congestion.

5) The parking lot entrance at the existing Hydro -Tube parking lot needs to be realigned and redesigned to eliminate the "Y" type connection.

6) The access aisle in front of the Mini-Storage units will need to be a minimum of 24 feet in width and shall be as straight as possible. The preliminary site plan shows that this access aisle juts around the parking lot to the south of the Hydro-Tube location.

7) The access points onto Claggett Street and Chemawa Road shall be controlled by stop signs.

8) The traffic signal will require that "No Parking" be allowed on the south side of Claggett Street between North River Road and the proposed driveway into the elderly care facility.

9) All driveway access points should be located so that align with any existing driveway entrance points across the street.

After reviewing this proposal in the field, it would be very beneficial if the existing businesses, namely Bob's and U.S. Bank be contacted and their access points be redesigned and consolidated to accommodate not only the proposed development but their use as well.

If you have questions regarding these, please call me at 503-743-4491.

CITY OF KEIZER
ZONE/COMPREHENSIVE PLAN CHANGE APPLICATION

APPLICATIONS RETURNED BY MAIL WILL NOT BE ACCEPTED

Applicant: please check what you are applying for:

ZONE CHANGE (√)
Fee:

COMPREHENSIVE PLAN CHANGE ( )
fee:

ZONE CHANGE/COMP. PLAN CHANGE (√)
fee:

If there are any questions about this application, who should be contacted?

Kenneth Sherman, Jr.
Name (please print or type)

Post Office Box 2247, Salem, OR 97308
Address

364-2281
Daytime Telephone (8:30 a.m.- 5:00 p.m.)

1. Applicant — Address and zip code

Paul & Judy Wittenberg — 5210 River Road, N., Keizer, OR 97303

2. Property Owners (if other than applicant) — Address and Zip Code

C.F. Foulger, as trustee for certain trusts, as to an undivided 86 2/3% interest; and Ruth A. Rhoten, as to an undivided 13 1/3% interest — 302 Woodbridge Ct, SE Salem, Oregon 97306

3. Contract and/or mortgage holder (if any) — Address and Zip Code

None

4. The applicants propose to change the zone from Parcel A: CR to Co on approximately 3.1 acre and from CR to CG ~~to~~ Parcel B: current zone on approximately 3.58 acres and/or change the Comprehensive Plan designation from N/A to ______.

5. Address of the subject property 5000 River Road, N., Keizer, OR

FOR OFFICE USE ONLY

Section____Township____Range____
Tax Lot Number(s)______________

Existing zone and Comp Plan Designation

Zone Map # ______________

Application accepted by

Application elements submitted:
___(A) Title transfer instrument
___(B) Assessor's Map
___(C) Two Plot Plans
___(D) Applicant's Statement
___(E) Adjacent property owners list
___(F) Filing Fee

__________ Date application determined to be complete

6. Applicant: To have a complete application, you will need to attach the following at the time you submit the application:

(A) A copy of the latest officially recorded title transfer instrument (deed, warranty deed, or contract) giving the legal description for the subject property. If only a portion of property is being changed then a legal description prepared by a Title Company or surveyor for that portion to be rezoned is required.

(B) A copy of the most recent Assessor map for the subject property.

(C) Two plot plans drawn in ink on sheets of paper 81/2" x 11". One plot plan shows existing zoning and what structures, etc. presently exist on the property. The other plot plan shows proposed zoning and what structures, etc. are proposed for the subject property. See attached example for what details need to be shown.

(D) Attach a written statement explaining your reasons for this request and addressing the Zone Change criteria and/or Zone Change/Comprehensive Plan Change criteria as outlined on the cover sheet of this application.

(E) Certified List - a list of all property owners within 250 feet of the subject property. The list must be certified by a Title Company or County Assessor's Office (see attached "Procedures for Preparing Notification List"). The list must have been prepared to be current to within 30 days of the date of application.

(F) Filing fee made payable to the City of Keizer.

7. SIGNATURES of each owner (husband and wife) and any contract holder of the subject property.

Pioneer Trust Bank, N.A. Attorney in Fact for Ruth Rhoten

By: [signature] Trust Officer ______________________

[signature] ______________________

DATED this ___4___ day of ______________________, 19_____.

8. THE APPLICANT(S) SHALL CERTIFY THAT:

(A) The above request does not violate any deed restrictions that may be attached to or imposed upon the subject property.

(B) If the application is granted, the applicant will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.

(C) All the above statements and the statements in the attachments, and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.

(D) The applicant has read the entire contents of the application, including the policies and criteria, and understands the requirements for approving or denying the application.

SIGNATURE of Applicant(s):

[signature: Paul Wittenberg] ______________________

DATED this ___1st___ day of ___~~May~~ June___, 19_94_.

CITY OF KEIZER
ADJUSTMENT/CONDITIONAL USE/VARIANCE APPLICATION

APPLICATIONS RETURNED BY MAIL WILL NOT BE ACCEPTED

pplicant: Please check what you are pplying for:

NDITIONAL USE ( )
e: $

RIANCE (✓)
e: $

JUSTMENT ( )
e: $

If there are any questions about this application, who should be contacted?

Kenneth Sherman, Jr.
Name

Post Office Box 2247, Salem OR 97308
Address

364-2281
Daytime telephone (8:30 a.m. to 5:00 p.m.)

Applicant	Address and zip code
Paul and Judy Wittenberg	5210 River Road N Keizer OR 97303
Property owners (if other than applicant)	**Address and zip code**
C.F. Foulger, as trustee for certain trusts, as to an undivided 86 2/3% interest; and Ruth A. Rhoten, as to an undivided 13 1/3% interest	302 Woodbridge Court SE Salem Oregon 97306
Contract and/or mortgage holders (if any)	**Address and zip code**
None	

The owners of record of the subject property do hereby request permission to change the zone from (Parcel A) CR to CO on approximately 3.1 acres and from CR to CG on (Parcel B) on approximately 3.58 acres

Address of subject property 5000 River Road N Keizer OR 97303

Size of subject property (include all contiguous tax lots in same owner ship) ____________

FOR OFFICE USE ONLY

ction ____ Township____ Range____

x lot number(s) ____________

ne ____________

ne map number____________

____

____

app. determined to be complete

Application elements submitted:

____(a) Title transfer instrument
____(b) Assessor's map
____(c) Plot plan
____(d) Applicant's statement
____(e) Adjacent property owner's list
____(f) Filing fee

____
Application accepted by

Applicants: To have a complete application, you will need to attach the following at the time you submit this application.

(a) A copy of the latest officially recorded title transfer instrument (deed, warranty deed, or contract) giving the legal description for the subject property.

(b) A copy of the most recent Assessor's maps for the subject property: Available at the Marion County Assessor's Office in the Courthouse.

(c) Plot plan drawn in black ink on a separate sheet of paper, 81/2 x 11, showing the location of the proposed conditional use, variance or adjustment and its distance from other structures, property lines, roads, and other features. See attached example.

(d) A written statement explaining your reasons for the proposed adjustment, conditional use or variance, and how your proposal conforms to City of Keizer development policies and the requirements of the particular zone (applicable for conditional uses). Insert extraordinary circumstances which may apply.

(e) A list of all property owners within 100 feet of the subject property. The list must be certified by a Title Company or County Assessor's Office (see attached "Procedures for Preparing Notification List"). The list must have been prepared to be current to within 30 days of the date of application.

(f) Filing fee made payable to the City of Keizer.

SIGNATURES of each owner (husband and wife) and any contract holder of the subject property.

Pioneer Trust Bank, N.A., Attorney in Fact for Ruth Rhoten
BY: [signature] Trust Officer ______________________

[signature] ______________________

DATED this 1 day of ______________________, 19___.

THE APPLICANT(S) SHALL CERTIFY THAT:

(a) The above request does not violate any deed restrictions that may be attached to or imposed upon the subject property.
(b) If the application is granted, the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
(c) All the above statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
(d) The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

SIGNATURE of Applicant(s): Paul C. Wittenberg ______________________

DATED this 1st day of June, 1994.

ordinance are to be measured from grade as provided in the definition of "height of building" in Section 2.184 unless a different method of measure is specified.

17.31 HEIGHT EXCEPTIONS.

(a) Towers (including electrical transmission towers), steeples, chimneys, antennas, (including radio, television and microwave antennas, and structures exclusively for essential equipment), wind driven electrical generating equipment and monuments are exempt from the height limitation in the applicable zone provided: 1) they do not contain any habitable space.

(b) Mechanical penthouses, equipment, and appurtenances necessary to the operation or maintenance of the building or structure itself, including ventilators, plumbing and vent stacks, cooling towers, water tanks, panels or collectors for solar energy, and window washing equipment, together with enclosures for any such features are exempt from all height restrictions, except airport overlay zone height limitations, provided: 1) They do not contain any offices, restrooms, storage rooms, or habitable space; 2) That the sum of the horizontal section of all such projections at the height limit applicable to the building or structure on which they are located does not exceed 60 percent of the horizontal area of the roof of the building on which they are situated; and 3) No such device or enclosure shall project more than 15 feet above the roof, measured vertically from any point on the device or enclosure.

17.32 SPECIAL HEIGHT LIMITS ADJACENT TO RESIDENTIAL ZONES. In commercial, industrial and UT zones any structure within 50 feet of a side or rear lot line that abuts on a lot in a residential, or UT zone shall not project above a plane 9 feet high at the abutting lot line and increasing 1 foot for each foot of distance from the lot line to a height of 20 feet.

17.40 BUFFERING RS ZONED LOTS FROM DEVELOPMENT IN COMMERCIAL AND INDUSTRIAL ZONES. In commercial and industrial zones, for commercial or industrial developments proposed within 100 feet of lots in the RS zone, the Zoning Administrator shall require that buffer measures (a) or (b) and measures (c), (d), (e) and (f) are satisfied.

(a) A two-way landscaped roadway separating the development from the residential lot.

(b) A landscaped open area a minimum of 20 feet wide separating new structures from the residential lot. Natural vegetation, landscaping or fencing will be provided to at least the six foot level to screen living area from direct view across the open area.

(c) Outdoor storage facilities to be screened from view of the public road and from adjacent residential uses.

(d) Exterior lighting to be designed to provide illumination to the site and not cause glare into the public right-of-way and adjacent properties.

(e) Roof equipment to be screened from view of nearby residential uses.

17.41 WATER RESOURCES. Proposed land uses shall not significantly increase the potential adverse impacts on water resources. Development relying on groundwater as a water supply shall not adversely affect the groundwater resource. If there is evidence of groundwater limitation in the immediate area evidence shall be required that adequate water can be provided without adversely affecting the groundwater resource.

17.42 NOISE IMPACTS. Dwellings and places of public assembly shall not be located in a noise impact area, if, according to the Department of Environmental Quality, the noise impacts will be significant and adequate mitigation cannot be provided.

17.43 HISTORICAL SITES AND STRUCTURES. The following procedures and standards apply to historic sites and structures:

(a) Historic sites and structures shall be designated by the City Council and placed on the Historic Sites and Structures Inventory in the following manner:

(1) The owner or owners of a site or structure may request designation of their property as a Historic Site or Structure. Request for designation shall be submitted to the City Council. The Planning Commission or City Council may also initiate such proceedings on their own motion.

(2) The City Council, as described in Subsection 5.25, shall conduct a public hearing to evaluate the request. No building, alteration, demolition, or removal permits for any improvement, building, or structure shall be issued while the public hearing or any appeal is pending. Notice for the public hearing shall be as stated in Chapter 5.

(3) If the City Council determines that a site or structure proposed under section (a) (1) above to be designated on the Historic Sites and Structures Inventory has architectural significance or is of historic importance based upon past or present use, the Council may designate such site or structure on the Historic Sites and Structures Inventory.

(b) The City must grant its approval prior to alteration of any structure, or any change of use of land or structure designated as a historic site or structure. Approval shall be pursuant to procedures, including filing fees, set forth in

STATEMENT OF REASONS

The applicant has executed a "Commercial-Industrial Sale Agreement and Receipt for Earnest Money No. 020894" dated February 9, 1994, providing for the purchase by the applicants from the owners of the two parcels of real property described in Exhibit A attached hereto. As is illustrated by the plot plan attached to this application, this acreage currently contains certain commercial structures. The entire parcel is designated "Commercial" on the Keizer Comprehensive Plan map, and the entire parcel is currently zoned Commercial Retail (CR).

The applicant proposes to sell off a portion of the subject property, identified as "Parcel A" on the second plot plan, consisting of approximately 3.58 acres, to Jerry Carlson for redevelopment as a complex of mini-storage units. This use is not permitted in the CR zone, but it is permitted in the CG zone, under the general heading of "transportation, communication, electric, gas and sanitary services (40, 41, 42, 43, 44, 45 and 47)." (Section 29.01(5), KZO)

With regard to Parcel B depicted on the Plot Plan, the applicant envisions the development of some form of multi-family housing on this property, perhaps in conjunction with the operation of the applicant's Keizer Retirement & Health Care Center Village, located immediately north of Parcel B across Claggett Street. Alternative possible developments on this property might be a hotel or motel, or some other residential or limited commercial use. Some of these potential development alternatives would not be permitted under a CR zone, but would be permitted under the MU zone.

The proposed zone changes are consistent with the applicable zone change criteria, to wit:

A. The proposed zones are appropriate for the comprehensive land use designation on the property and consistent with the description and policies for the applicable comprehensive land use classification.

1. Both the MU zone and the CG zone are permitted zones for properties designated "Commercial" on the Keizer Comprehensive Plan (Section 4.02, KZO). Rezoning Parcel B to MU will be consistent with General Goal 2 of the Goals and Policies: Economic, Commercial and Industrial Development, Keizer Comprehensive Plan, in that it will provide land for the expansion of the Keizer Retirement & Health Care Center Village, or for the development of other compatible residential or commercial facilities. The retirement center, which is located immediately across Claggett Street to the north, has no room for expansion on its existing campus. To meet the continuing need for additional retirement and health care facilities for the Keizer community, Keizer Retirement & Health Care Center Village anticipates the possibility of expanding onto Parcel B with a series of duplex-type villas to accommodate senior citizens on an independent living basis. Thus, the rezoning of Parcel B to MU would help to supply "an adequate amount of land to accommodate an existing business".

2. The proposed rezoning of Parcel B will also be consistent with General Goal 4 of the Goals and Policies: Economic, Commercial and Industrial Development, Keizer Comprehensive Plan, in that it will ensure compatibility between commercial and industrial lands and lands adjacent to them. The properties immediately to the east of Parcel B are currently developed for Low Density Residential use. Development of Parcel B to duplex-type villas as a part of the Keizer Retirement & Health Care Center Village operation or to a hotel or motel or other compatible residential or commercial use within the limits of the MU ordinance will provide an appropriate transition between the Low Density Residential development to the east and the anticipated Commercial Retail development of the abutting property to the west, adjacent to north River Road.

3. The rezoning of Parcel B will also be consistent with General Goal 7 of the Goals and Policies: Economic, Commercial and Industrial Developments, Keizer Comprehensive Plan, in that it will encourage private efforts to increase economic development in Keizer. The provision of residential and health care services for seniors is an economic activity of increasing importance in Keizer and the mid-Willamette Valley. This zone change would facilitate the expansion of the applicant's facility to help meet this growing demand. Alternatively the development of a hotel or motel on this property would bring a much needed lodging facility to the community.

4. Rezoning Parcel B to MU will likewise be consistent with Policy Statement 1(b) of the Policies for Commercial and Industrial Developments, which policy states that Keizer should provide sufficient land adjacent to existing facilities where future expansion is anticipated. As is stated above, expanded residential opportunities for senior citizens are needed, and this property constitutes an ideal site for expansion of the Keizer Retirement & Health Care Center Village.

5. The proposal to rezone Parcel A to CG will accommodate the development on that property of a new mini-warehouse storage facility, consistent with General Goal 2 of the Goals and Policies: Economic, Commercial and Industrial Development, Keizer Comprehensive Plan.

6. Additionally, rezoning of Parcel A to accommodate the planned mini-warehouses will be consistent with General Goal 3 of the Goals and Policies: Economic, Commercial and Industrial Development, Keizer Comprehensive Plan, which calls for reserving enough remaining large parcels for special developments requiring larger lots. By their nature, mini-storage operations require larger parcels because it is necessary to cluster a significant number of storage units in order to make the operation economic feasible.

7. Rezoning Parcel A to accommodate mini-warehouses will also be compatible with General Goal 4 of the Goals and Policies: Economic, Commercial and Industrial Development, Keizer Comprehensive Plan, in that

it will ensure compatibility between this property and the residential and commercial properties which are adjacent. The mini-warehouse units which are planned for Parcel A are designed to present an attractive facade to the residential properties to the east (see drawings attached to plot plans). And to enhance the transition from the mini-warehouse property to these residential properties, the developer would install a split-face block wall along the east line of the parcel. Mini-storage units constitute a quiet low-key commercial use which will be more compatible with the adjacent residences then would be many of the high-traffic, noisy Commercial Retail uses which would be permitted on Parcel A under its current CR zoning.

8. The proposed mini-warehouse facility would be consistent with the commercial development policies of the Keizer Comprehensive Plan, in that there would be appropriate landscaping on the site, and exterior lighting on the site would be designed to provide illumination to the site without causing glare on adjacent properties. (Policy Statement 2(b) and (c) of the Policies for Commercial and Industrial Developments, KCP)

9. In addition, although the developer of the mini-warehouse facility proposes to install a block wall on the east boundary of Parcel A, this wall would be only approximately 6 feet in height and would be of split-face block construction to enhance its decorative nature. Thus, this feature would not be inconsistent with Policy Statement 2(f) of the Policies for Commercial and Industrial Developments.

10. Access to the mini-warehouses would be through the commercial developments on the adjacent property to the west. Thus, this development would be consistent with Policy Statement 4(a) of the Policies for Commercial and Industrial Developments, because major customer traffic would not be filtered through nearby residential streets. Instead, that traffic would come directly off north River Road through the commercial development to reach the mini-warehouses.

B. The uses permitted in the proposed zones can be accommodated on the proposed sites without exceeding their physical capacities. Both properties are more than adequate in size to accommodate their proposed uses, and the proposed residential or commercial uses and mini-warehouse units will be designed to fit comfortably within the parcels upon which they are proposed to be built.

C. Allowed uses in the proposed zones can be established in compliance with the development requirements of Chapter 17 to 20 of the Keizer Zoning Ordinance without need for adjustments or variances.

1. Generally speaking, any of the uses permitted in the CG or MU zones could be accommodated on Parcels A and B, respectively, without the need for variances or adjustments, given the size, dimensions and locations of these parcels.

2. Specifically with respect to the mini-warehouse units planned for Parcel A, these units could be laid out on the property in a manner so as to obviate the need for any variances. However, the developer has determined that the most efficient and attractive development of these facilities will necessitate the granting of a variance for setbacks with respect to this development. This variance is being applied for concurrently with this application.

D. Adequate public facilities, services and transportation networks are in place or are planned to be provided concurrently with the development of the property. Both parcels are located well within the current developed area of the Keizer community, and all public facilities and services necessary to accommodate the proposed developments, including sanitary sewer, storm sewer, water, utilities services, streets and transportation services are currently in place and available. It is anticipated that the developments proposed for these two parcels will place less demand on these public systems then would Commercial Retail development which is currently permitted outright on these subject properties.

E. Satisfaction of any zone change review criteria in the Keizer Comprehensive Plan is demonstrated. The Keizer Comprehensive Plan contains no zone change review criteria.

F. For residential zone changes, the criteria listed in the purpose statement for the proposed zone shall be met. This criteria is inapplicable to these zone changes, because the request is to change the zones to commercial zones.

The proposed zone changes also are consistent with the following additional criteria for non-residential zone changes:

A. The supply of vacant land in the proposed zones is inadequate to accommodate the projected rate of development of uses allowed in those zones; or the location of the appropriately zoned land is not locationally or physically suited to the particular uses proposed for the subject property, or lack site-specific amenities required by the proposed use.

1. With respect to Parcel B, this is the only parcel of vacant land which is located adjacent to the existing Keizer Retirement & Health Care Center Village. As is stated above, a possible use for this property would be to expand the health care village onto this property by building thereon duplex-type residential units for seniors who are able to live in an independent setting. It is essential that this development be located adjacent to the existing retirement center and health care facility.

2. Parcel A, proposed for mini-warehouses, is uniquely well-situated to accommodate this use. The supply of vacant CG-zoned land in Keizer is quite limited, and the applicant has not been able to identify any available vacant parcels which approach the size of Parcel A.

B. The supply of vacant land in the existing zone is adequate, assuming the zone change is granted, to accommodate the projected rate of development of uses allowed in the zone during the next five years. Parcels A and B are situated within a larger tract of land, approximately 19 acres in size, the whole of which is currently zoned CR. The undeveloped portions of this property have stood vacant for many years despite repeated efforts to market the same for Commercial Retail uses. In addition, there are substantial other tracts of Commercial Retail land which are available for development within the Keizer community. It also appears that the 19 acre parcel is too deep to make the easterly portions of it attractive for Commercial Retail development, and these portions of the property are better suited for the MU and CG uses proposed through this application. Based on these factors, it appears that there is more than adequate CR land available in Keizer to meet the needs over the next five years.

C. The proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.

> **1.** The proposed MU zone for Parcel B is a less intensive commercial zone than the CR zone now applicable to that parcel, thus this criteria is inapplicable to the proposed rezoning of Parcel B. The proposed rezoning of Parcel A to CG is subject to this criteria in that CG would allow a more intensive use of Parcel A than would other commercial zones. However, the mini-warehouse facility proposed to be developed on Parcel A would an extremely low intensity use of this property. Indeed, the usage would be significantly less intense than many of the Commercial Retail uses which would be permitted under the existing zoning. The proposed mini-warehouses are being designed to present a pleasant, unimposing facade to the residential area to the east, and to be adequately buffered from this area.

MULTI/TECH
ENGINEERING SERVICES, INC.

CONSULTANTS
1155 13th Street, S.E.
Salem, Oregon 97302
(503) 363-9227

Variance Request
for

Whittenburg Project

July 5, 1994

We are requesting a variance to the following sections of Section 17 - General Development Standards and Regulations:

Section 17.32: A request to allow for the elimination of the special height limits adjacent to Residential zones, within the area of the Commercial General zoned property. We are asking that structure heights be allowed to reach 12 feet within the first 5 feet of the area abutting the residential lots.

Section 17.40: A request to eliminate the requirement of subsections (a) and (b) of this section. To allow for the placement of buildings on the property lines, adjacent to RS zoned lots. It is our desire to be able to construct a block building wall on the property line adjacent to the rear lot lines of existing single family lots. The Block Walls will meet the requirements of subsection (b) with respect to fencing, subsections (c) and (d).

The intention of the requirements is to buffer the residential areas from the commercial activities and to screen them from view. The proposed block wall is the building wall as well, and as such will meet the requirements of the screening and buffer requirements. The residential lots, rear yards will not be effected by the proposed activity.

We believe that the requested variance is the minimum necessary to develop the site as intended with the mini storage facilities.

Our review of the activities on the site and the adjoining sites, did not reveal any previous land use action that would prevent the granting of the variance at this time.

The granting of the variances as requested will not be detrimental to the property or the improvement in the neighborhood. At the present time, the area adjoining the RS zone property is overgrown with black berries to the extent that the area is impassable. The variance will allow the construction of a wall on the properly line that will eliminate the nuisance of the black berries but will maintain the isolation of the residences areas.

We cannot find any evidence that the granting of the variance will significantly affect the health or safety of the persons working or residing in the vicinity. Given the fact that the building walls will in fact add to the security and safety of the rear yard areas to the gain of the residents.

As we noted above the granting of the variance will allow the development of the walls on the property line and will meet the intent of the sections in buffering and screening the residential areas from the commercial activities.

CITY COUNCIL MEETING: July 18, 1994

AGENDA ITEM NUMBER: 6a

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS

THROUGH: DOTTY TRYK Dotty
CITY MANAGER

FROM: TRACY L. DAVIS
CITY RECORDER Tracy

SUBJECT: NORTHRUP/NORTHSHIRE STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

BACKGROUND:

On July 5, 1994 a public hearing was held to receive remonstrances for the formation of the Northrup/Northshire Street Lighting Local Improvement District. A petition was received from the residents of Northshire requesting the number of street lights be reduced from three to two and also that the lights be located on the existing poles. The Council unanimously approved the reduction in the number of lights and directed staff to revise the Ordinance to reflect the appropriate assessments.

ISSUE:

The City Engineer has prepared a revised report estimating the assessment for each of the lots to be $58.21 in the first year and $44.21 in subsequent years. These assessments are reflected in the attached Ordinance.

RECOMMENDATION:

It is recommended the Council adopt the Ordinance spreading assessments to the Northrup/Northshire Street Lighting Local Improvement District.

City of Keizer

REVISED ENGINEER'S REPORT

FOR

THE NORTHRUP AND NORTHSHIRE COURTS

STREET LIGHTING DISTRICT

For City Council Action July 18, 1994

REGISTERED PROFESSIONAL ENGINEER
6744
OREGON
JULY 17, 1970
RUSSELL W. FAUST

PREPARED BY:

William I. Peterson
Engineering Consultants, Inc.
3851 River Rd. N
Keizer, OR 97303
(503) 390-7402

Date: July 12, 1994

Project File 94-0311

July 12, 1994

TO: The Hon. Mayor and City Council

FROM: William I. Peterson, PE
City Engineer

SUBJECT: Revised Street Lighting District for Northrup Ct. and Northshire Ct.

Authority and Purpose: This report is submitted in accordance with the requirements of City of Keizer **Ordinance No. 94-278** and Council **Resolution 94-719** for the purpose of creating the subject Street Lighting District.

District Boundaries and Map: A Map of the proposed District is attached showing the areas benefited by the street lights proposed to be installed.

Revised Lighting Plan As directed by Council, the lighting improvements will consist of 5, 70 Watt, high pressure Sodium luminaires mounted on 8 foot long mast arms and attached to 25 foot wood poles. Three of these poles would be new and two are existing. This design is selected to be consistent with adjacent lighted areas.

It is recommended that installation be accomplished by the following method:

Portland General Electric (PGE) would supply, install and maintain the luminaires, poles and underground or overhead wiring. PGE would also supply the electrical power to the District.

Estimated Costs:

Initial Cost and Annual costs -

5 Poles & luminaires @ $8.15 per month each x 12 mos.	$ 489.00
Administrative Fee @ 8.5%	41.56
Engineering @ $14.00 /lot	168.00
Total Assessment	$ 698.56

(1) Includes tax roll preparation, audit, delinquencies and miscellaneous administrative costs to the City as authorized by Res. 94-716.

Method of Assessment: It is recommended that the costs be assessed equally to each lot or parcel in the district. The first year assessment would include the one time costs for District formation and engineering. Subsequent years assessments would reduce to $ 44.21 per lot.

Assessment Roll: The attached preliminary assessment roll identifies the benefited properties and the first year assessments to be levied against each.

Respectfully submitted,

Russell W. Faust, PE

BILL NO.______ **ORDINANCE NO. 94-_____**

A BILL FOR

AN ORDINANCE SPREADING ASSESSMENTS TO NORTHRUP/NORTHSHIRE STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

SECTION 1.

WHEREAS, the City Council did heretofore declare its intention to install street lights to serve an area known as Northrup/Northshire Street Lighting Local Improvement District which is described as follows:

Northrup Court, Tax Lots 400, 500, 600, 700, 800, 900, 1000 and 1100 and Northshire Court, Tax Lots 1200, 1300, 1400 and 1500 in Section 26, Township 6 South, Range 3 West, Willamette Meridian, in the City of Keizer, Marion County, State of Oregon

which includes the installation of five 70-watt high pressure sodium luminaries on eight-foot long mast arms, and attached to 25-foot wood poles located within the subject local improvement district, all in accordance with the City Engineer's report for Northrup/Northshire Street Lighting Local Improvement District and estimates heretofore duly and regularly adopted by the City Council, which are hereby referred to and made a part hereof, and did fix the time and place for hearing protests against the installation of said improvements, and the assessment and the cost thereof, as aforesaid and

WHEREAS, notice was duly mailed on June 21, 1994 as required by Ordinance; and

WHEREAS, a meeting of the City Council was held at the time and place fixed by public notice for the purpose of considering any such protest and at that time heard and considered all protests submitted relating to the proposed improvements and assessment thereof, and said Council has considered the matter and deeming that construction of said improvements was and is of material benefit to the City, and all the property to be assessed therefore will be benefitted by the improvements to the extent of a per parcel first annual assessment estimated at $58.21 at the time of the City Engineer's report, did order the construction of said improvements; and

WHEREAS, the estimated annual cost of said improvements has been preliminarily determined to be the sum of $44.21 per parcel.

NOW, THEREFORE, the City Council of the City of Keizer ordains as follows:

SECTION 2.

(a) First Annual Assessment. It is hereby determined that the first annual estimated proportionate share of the cost of said improvements, on each parcel and property benefitted thereby, is the amount set opposite the description of each piece or parcel of land as described in Northrup/Northshire Street Lighting District Assessment Roll as set forth in Exhibit "A" attached, and that each piece or parcel of land benefitted by the improvements, to the full extent of the amount so set opposite such piece or parcel and that the respective amounts represent the proportionate benefits of said improvements to said respective parcels of property, and the Council does hereby declare that each of the parcels of property described in Northrup/Northshire treet Lighting District Roll as set forth in Exhibit "A" attached is hereby assessed the first annual estimated amount set opposite each respective description.

(1) Summary of first annual estimated costs assessed for formation of the lighting district to serve the area known as "Northrup/Northshire Street Lighting Local Improvement District":

Five 70-Watt Luminaries & Poles (12 lots)	$ 489.00
Engineer Report	168.00
Annual Administrative Costs @8.5%	41.56
Total First Annual Costs	$ 698.56

(2) The Recorder of the City of Keizer is hereby directed to send a notice of first annual assessment to each owner of assessed property by mail within ten (10) days after the Ordinance levying the first annual installments has been passed, and to publish notice of the first annual assessment in a newspaper of general circulation in the city.

(b) Second and Subsequent Annual Assessments. After a municipal lighting district has been formed in accordance with City of Keizer Ordinance 94-278, the second and subsequent annual assessments shall be spread by Resolution which may include changes in the mode of collecting the assessment. The method of assessment and notification for subsequent annual assessments shall be determined in accordance with City of Keizer Ordinance 94-278.

(c) Mode of Collecting Assessments. Assessments for said lighting district shall be collected pursuant to ORS 223.866.

PASSED this ______ day of ________________________, 1994.

SIGNED this ______ day of ________________________, 1994.

____
Mayor

____
City Recorder

EXHIBIT "A"

REVISED PRELIMINARY ASSESSMENT ROLL

R940311.WQ1

NORTHRUP AND NORTHSHIRE COURT
STREET LIGHTING DISTRICT
Assessor's Map 6 3W 26 DB

TAX LOT	Owner's Name and Address [Contract Buyer]	Cost per Lot	Total Assessment
400	Robert G. & Susan P. Mc Clellan 1089 Northrup Ct. NE Keizer, OR 97303	$58.21	$58.21
500	Richard B. & Brenda Bearden 1079 Northrup Ct. NE Keizer, OR 97303	$58.21	$58.21
600	Gale & Trudy L. DeHutt 1059 Northrup Ct. NE Keizer, OR 97303	$58.21	$58.21
700	David D. & Marcia King 1058 Northrup Ct. NE Keizer, OR 97303	$58.21	$58.21
800	Richard T. & Catherine Sjolander 1078 Northrup Ct. NE Keizer, OR 97303	$58.21	$58.21
900	Phillip K. Weaver 1098 Northrup Ct. NE Keizer, OR 97303	$58.21	$58.21
1000	Roger C. & Corrine M. Obershaw 1097 Northshire Ct. NE Keizer, OR 97303	$58.21	$58.21
1100	Richard I. & Jacqueline K. Goad 1077 Northshire Ct. NE Keizer, OR 97303	$58.21	$58.21

PRELIMINARY ASSESSMENT ROLL

94-0311.WQ1

NORTHRUP AND NORTHSHIRE COURT
STREET LIGHTING DISTRICT
Assessor's Map 6 3W 26 DB

TAX LOT	Owner's Name and Address	Cost per Lot	Total Assessment
1200	Margie Ruth Gilliam Bennett 1057 Northshire Ct. NE Keizer, OR 97303	$58.21	$58.21
1300	David P. & Sharon R. Moomaw 1056 Northshire Ct. NE Keizer, OR 97303	$58.21	$58.21
1400	Dallas & Mary E. Hardison 1076 Northshire Ct. NE Keizer, OR 97303	$58.21	$58.21
1500	Christopher J. & Sally Hallstrom 1096 Northshire Ct. NE Keizer, OR 97303	$58.21	$58.21

TOTAL ASSESSABLE COSTS $698.56

TO: MAYOR KOHO AND COUNCIL MEMBERS

FROM: DOTTY TRYK, CITY MANAGER

SUBJECT: Resolution Amending the Classification and Compensation Plan

BACKGROUND:

At your last meeting you considered a resolution amending the City's classification and compensation plan. There were three issues to be considered.

Salary Changes for Employees:

The recommended salary adjustment was a 2% increase effective July 1, 1994. This is equal to the adjustment agreed to with the Police Association.

Benefits Change:

It was recommended that all employees be able to take advantage of a deferred compensation matching program which was given to the Police Association. This program would match up to 2% of employees' contributions into the plan.

Classification Amendments:

These would create a Municipal Utility Clerk classification and change the status of Community Services Officers to permanent from limited duration.

FISCAL IMPACT:

At your last meeting you requested a fiscal impact report of the results of granting these changes. I have attached a spreadsheet summarizing the fiscal impact. The maximum effect would be $39,375 across the organization assuming all employees participate fully in the deferred compensation plan. The impact by fund and activity is less than 1% of each.

RECOMMENDATION:

Because the fiscal impact is minimal, I would not recommend a contingency transfer this early in the year. It may be possible to absorb this change within current budget appropriations. If I discover that this is not the case, I will return to you mid year with a request for a budget adjustment.

It is recommended that the resolution be adopted.

CITY OF KEIZER

94-95

2% WAGE ADJUSTMENT

Department	TOTAL	General Fund	Water Fund	Utility Fund	Street Fund	Urban Renewal
ADMINISTRATION	$1,894.08	$1,071.60	$745.80	$0.00	$0.00	$76.68
RECORDER/COURT	$1,015.68	$896.04	$0.00	$59.88	$59.88	$0.00
COMMUNITY DEVEL	$1,681.20	$915.00	$273.72	$109.44	$273.72	$109.44
PUBLIC WORKS	$8,308.08	$556.32	$6,049.56	$467.88	$1,195.80	$38.52
POLICE	$6,595.68	$6,592.08	$0.00	$0.00	$0.00	$0.00
Annual Total	$19,494.72	$10,031.04	$7,069.08	$637.20	$1,529.40	$224.64

2% MATCH

ADMINISTRATION	$1,932.00	$1,092.96	$760.80	$0.00	$0.00	$78.24
RECORDER/COURT	$1,035.96	$913.92	$0.00	$61.08	$61.08	$0.00
COMMUNITY DEVEL	$1,714.80	$933.24	$279.12	$111.60	$279.12	$111.60
PUBLIC WORKS	$8,474.28	$567.48	$6,170.52	$477.24	$1,219.68	$39.36
POLICE	$6,723.96	$6,723.96	$0.00	$0.00	$0.00	$0.00
Annual Total	$19,881.00	$10,231.56	$7,210.44	$649.92	$1,559.88	$229.20
TOTAL IMPACT	$39,375.72	$20,262.60	$14,279.52	$1,287.12	$3,089.28	$453.84

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R94- ____

SETTING FORTH A CHANGE IN THE CLASSIFICATION AND COMPENSATION PLAN BY AMENDING CERTAIN UNREPRESENTED CLASSIFICATIONS; A CHANGE IN COMPENSATION FOR ALL EMPLOYEES EFFECTIVE JULY 1, 1994; AND REPEALING R94-722

The City Council of the City of Keizer does hereby resolve as follows:

SECTION 1. That Resolution R94-722 is hereby repealed in its entirety.

SECTION 2. Salary grades for certain management employees have been adjusted based upon a cost of living increase as recommended by the City Manager and approved by the City Council, and are hereby assigned to the following management classifications, effective July 1, 1994:

CLASS TITLE		BASE MONTHLY PAY RANGES				
	FLAT	1	2	3	4	5
City Manager	$4,950					
Chief of Police		$3,971	$4,170	$4,378	$4,597	$4,827
City Recorder		$2,306	$2,421	$2,542	$2,669	$2,803
Community Development Director		$3,923	$4,119	$4,325	$4,541	$4,769
Police Lieutenant		$3,434	$3,606	$3,786	$3,975	$4,175
Police Sergeant		$2,920	$3,066	$3,219	$3,380	$3,549
Public Works Director		$3,940	$4,137	$4,344	$4,561	$4,789

SECTION 3. The following salary grades have been adjusted based upon a cost of living increase as recommended by the City Manager and approved by the City Council, and are currently assigned to the following Public Works Department classifications, effective July 1, 1994:

CLASS TITLE		BASE MONTHLY PAY RANGES				
	FLAT	1	2	3	4	5
Municipal Utility Worker		$1,658	$1,741	$1,828	$1,919	$2,015
Waterworks Operator		$2,050	$2,152	$2,260	$2,373	$2,492
Waterworks Supervisor		$2,733	$2,869	$3,012	$3,163	$3,321
Water Production/Quality Technician		$2,733	$2,869	$3,012	$3,163	$3,321
Parks Superintendent/Cross Connection Supervisor		$2,733	$2,869	$3,012	$3,163	$3,321

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SECTION 4. The following salary grades have been adjusted based upon a contracted cost of living increase as recommended by the City Manager and approved by the City Council, and are hereby assigned to the following Police Department classifications, effective July 1, 1994:

CLASS TITLE	BASE MONTHLY PAY RANGES					
	FLAT	1	2	3	4	5
Police Officer		$2,375	$2,492	$2,619	$2,750	$2,888
Support Specialist		$1,758	$1,846	$1,938	$2,035	$2,137

SECTION 5. The following salary grades have been adjusted based upon a cost of living increase as recommended by the City Manager and approved by the City Council, and are currently assigned to the classifications of the following full-time, permanent classifications, effective July 1, 1994:

CLASS TITLE	BASE MONTHLY OR HOURLY PAY RANGES					
	FLAT	1	2	3	4	5
Administrative Assistant		$1,916	$2,012	$2,113	$2,219	$2,330
Associate Planner		$2,493	$2,618	$2,749	$2,886	$3,030
Clerical Specialist		$1,486	$1,560	$1,638	$1,720	$1,806
Community Services Officer		$1,758	$1,848	$1,938	$2,037	$2,139
Finance Officer		$3,105	$3,260	$3,423	$3,594	$3,774
Municipal Court Clerk		8.84	9.28	9.74	10.23	10.74
Utility Billing Clerk I		$1,486	$1,560	$1,638	$1,720	$1,806
Utility Billing Clerk II		$1,617	$1,698	$1,783	$1,872	$1,966
Water Office Supervisor		$2,232	$2,344	$2,460	$2,584	$2,713

SECTION 6. The following salary grades have been adjusted based upon a cost of living increase as recommended by the City Manager and approved by the City Council, and are hereby assigned to the following permanent, part-time classifications, effective July 1, 1994:

CLASS TITLE	BASE HOURLY PAY RANGES					
	FLAT	1	2	3	4	5
Accounting Clerk		8.57	9.00	9.45	9.92	10.42
Accounting Technician		11.14	11.70	12.29	12.90	13.55
Maintenance Worker		7.81	8.20	8.61	9.04	9.49
Recording Clerk		8.40	8.82	9.26	9.72	10.21

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SECTION 7. The following salary grades have been adjusted based upon a cost of living increase as recommended by the City Manager and approved by the City Council, and are currently assigned to the following seasonal classifications, effective July 1, 1994:

CLASS TITLE	FLAT	BASE HOURLY PAY RANGES 1	2	3	4	5
Street Sweeper	$7.81					

SECTION 8. A City employee who is determined to be fluent in a second language which is deemed to be of benefit to the City, shall receive a maximum incentive of $50.00 per month. Determination of whether the second language is of benefit to the City, will be at the discretion of the City Manager. Fluency will be determined by the City Manager, based upon a standard and testing program which the City will implement by policy with the assistance of high school and/or college faculty members and/or court-approved translators.

SECTION 9. Holiday schedules for all non-represented employees, except Sergeants, are as follows:

New Years Day	Labor Day	1- Personal Leave Day
Martin Luther King's Birthday	Veterans Day	1- Floating Holiday
Presidents Day	Thanksgiving Day	Independence Day
Memorial Day	Christmas Day	

SECTION 10. Sergeants shall be entitled to take twelve (12) paid floating holidays per fiscal year. A holiday shall accrue on the first of each month and be taken or paid as earned. Holiday time off shall be scheduled at the request of the employee who may accrue no more than four (4) holidays at any time and who shall make every effort to schedule all of the holidays off during that fiscal year. Should the employee be unable to obtain this schedule because of a request denial by the City, then the employee shall be allowed to accumulate additional holiday time and carry over to the next fiscal year, or be paid for the accrued holiday time at the City's option.

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SECTION 11. Vacation schedules for all full time non-represented employees are as follows:

REGULAR EMPLOYEES	DEPARTMENT HEADS
1-2 yrs. @ 6.7 hours	1-4 yrs. @ 10 hours
3-4 yrs. @ 8 hours	5-9 yrs. @ 12 hours
5-9 yrs. @ 10 hours	10-14 yrs. @ 13.33 hours
10-14 yrs. @ 12 hours	15 + yrs. @ 16.67 hours
15 + yrs. @ 16.67 hours	

Note: 6.7 hours = 10 days; 8 hours = 12 days; 10 hours = 15 days; 12 hours = 18 days; 13.33 hours = 20 days; 16.67 hours = 25 days. Half-time employees accrue vacation at one-half the above rate; three-quarter time employees accrue at three-quarter the above rate.

SECTION 12. Sick-leave shall accrue at the rate of 8 hours per month for full-time employees, and shall be prorated accordingly for part-time employees. Sick-leave may be accumulated to a maximum of 960 hours and carried over to the next year. Provided, however, that the employee in the classification of Public Works Director hired prior to June 30, 1985 who has excess of 960 hours of accumulated sick leave shall be entitled to carry up to 1460 hours. The 1460 hours shall be reduced based upon sick leave usage.

SECTION 13. Compassionate Leave: 5-days for each death in the immediate family.

SECTION 14. The City shall pay an incentive of $50.00 per month to a Sergeant holding an Associate of Arts Degree. The City shall pay $100.00 per month to a Sergeant holding a Bachelor of Arts or Bachelor of Science degree from an accredited college or university.

SECTION 15. Standby pay for Water Department is $100.00 per week for 24-hour standby.

SECTION 16. The City shall pay an incentive of:

$0.10 per hour for Waterworks Certification I;

$0.25 per hour for Waterworks Certification II;

$0.75 per hour for Waterworks Certification III;

$50.00 per month for an Intermediate BPST Certificate;

$100.00 per month for an Advanced BPST Certificate.

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SECTION 17. Mileage reimbursement for all employees is $.27 per mile.

SECTION 18. Medicare withholding for all employees will be paid by the City.

SECTION 19. RETIREMENT PLAN:

Management employees: If eligible for PERS, employer contribution will based upon the actuarial report received from PERS but not more than 19% of gross salary. If eligible for deferred compensation (ICMA) employer contribution equaling 11% of base salary.

Non-management employees: If eligible for PERS, employer contribution will be based upon the actuarial report received from PERS. If eligible for deferred compensation (ICMA), employer contribution in an amount equaling 11% of base salary.

In addition, the City will match employee deferred compensation contributions up to 2% of salary for unrepresented employees.

SECTION 20. HEALTH AND WELFARE

Management benefit package: An amount equal to 32% over and above base monthly pay. For those eligible for deferred compensation, an amount equal to an additional 1% of base monthly pay toward deferred compensation.

PASSED this _____ day of ______________________________, 1994.

SIGNED this _____ day of ______________________________, 1994.

____

Mayor

____

City Recorder

COUNCIL MEETING: July 18, 1994

AGENDA ITEM NUMBER: 7b

TO: MAYOR KOHO AND CITY COUNCIL

THROUGH: DOTTY TRYK
CITY MANAGER

FROM: TRACY L. DAVIS
CITY RECORDER

SUBJECT: INITIATING HIDDEN CREEK PHASE II STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

ISSUE:

Shall the City Council initiate Hidden Creek Phase II Street Lighting Local Improvement District?

DISCUSSION:

A petition was filed on July 11, 1994 by Hidden Creek Properties to form a local improvement district for street lights in Hidden Creeek Phase II in Keizer. The petition contained the required signatures of the property owner as outlined by City of Keizer Ordinance 94-278.

RECOMMENDATION:

It is recommended that the City Council approve the Resolution initiating Hidden Creek Phase II Street Lighting Local Improvement District and direct the City Engineer to prepare a survey of the area.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R94-______

DECLARING THE CITY'S INTENT TO INITIATE A STREET LIGHTING LOCAL IMPROVEMENT DISTRICT (HIDDEN CREEK PHASE II) AND DIRECTING THE CITY ENGINEER TO MAKE A SURVEY AND FILE A WRITTEN REPORT WITH THE CITY RECORDER

WHEREAS, the City Council of the City of Keizer has received a petition from the developer to initiate a street lighting district in the Hidden Creek Phase II area in the City of Keizer, Oregon; and

WHEREAS, pursuant to City of Keizer Ordinance 94-278, the necessary signatures of land owner comprising two-thirds of the property to be included within Hidden Creek Phase II Street Lighting District have requested the formation of the district; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

1. The City Council declares its intent to initiate the Hidden Creek Phase II Street Lighting District;
2. The City Engineer is hereby directed to make a survey of the District;
3. The City Engineer shall file a written report with the City Recorder to be considered by the City Council on August 15, 1994.

PASSED this ____ day of ______________________, 1994.

SIGNED this ____ day of ______________________, 1994.

____
Mayor

____
City Recorder

COUNCIL MEETING: July 18, 1994

AGENDA ITEM NUMBER: 7c

TO: MAYOR KOHO AND CITY COUNCIL

THROUGH: DOTTY TRYK Dotty
CITY MANAGER

FROM: TRACY L. DAVIS Tracy
CITY RECORDER

SUBJECT: INITIATING SPRINGRIDGE ESTATES STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

ISSUE:

Shall the City Council initiate Springridge Estates Street Lighting Local Improvement District?

DISCUSSION:

A petition was filed on July 12, 1994 by Lydon Construction Inc. to form a local improvement district for street lights in SpringridgeEstates in Keizer. The petition contained the required signatures of the property owner as outlined by City of Keizer Ordinance 94-278.

RECOMMENDATION:

It is recommended that the City Council approve the Resolution initiating Springridge Estates Street Lighting Local Improvement District and direct the City Engineer to prepare a survey of the area.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R94-______

DECLARING THE CITY'S INTENT TO INITIATE A STREET LIGHTING LOCAL IMPROVEMENT DISTRICT (SPRINGRIDGE ESTATES) AND DIRECTING THE CITY ENGINEER TO MAKE A SURVEY AND FILE A WRITTEN REPORT WITH THE CITY RECORDER

WHEREAS, the City Council of the City of Keizer has received a petition from the developer to initiate a street lighting district in the Springridge Estates area in the City of Keizer, Oregon; and

WHEREAS, pursuant to City of Keizer Ordinance 94-278, the necessary signatures of land owner comprising two-thirds of the property to be included within Springridge Estates Street Lighting District have requested the formation of the district; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

1. The City Council declares its intent to initiate the Springridge Estates Street Lighting District;
2. The City Engineer is hereby directed to make a survey of the District;
3. The City Engineer shall file a written report with the City Recorder to be considered by the City Council on August 15, 1994.

PASSED this ____ day of ____________________, 1994.

SIGNED this ____ day of ____________________, 1994.

____
Mayor

____
City Recorder

COUNCIL MEETING: July18, 1994

AGENDA ITEM NUMBER: 7d

TO: MAYOR KOHO AND CITY COUNCIL

THROUGH: DOTTY TRYK
CITY MANAGER

FROM: TRACY L. DAVIS
CITY RECORDER

SUBJECT: COUNTRY GLEN ESTATES STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

ISSUE:

The Council should review the City Engineer's report filed for Country Glen Estates Street Lighting Local Improvement District and consider a Resolution to adopt this report and to set a public hearing date to receive remonstrances to the project.

BACKGROUND:

On June 20, 1994, the City Council adopted Resolution R94-749 initiating the Country Glen Estates Street Lighting Local Improvement District and directed the City Engineer to make a survey and file a written report with the City Recorder. This Council action was taken in response to a petition from the property owner requesting the formation of a lighting district in this area.

FISCAL IMPACT:

The costs for establishing the district in the first year include a fee for the engineers report and an 8.5% administrative fee to cover the costs for advertising and staff time in establishing the district. The City receives reimbursement from the property owners for these costs and the actual electricity used through assessments placed on the tax rolls. All activity is budgeted through the Utility Fund.

RECOMMENDATION:

It is recommended City Council adopt the Resolution setting the public hearing for August 1, 1994 and directing the City Recorder to provide notice of the public hearing and notice of proposed assessments to the property owners.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R94-_____

COUNTRY GLEN ESTATES STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

BE IT RESOLVED by the City Council of the City of Keizer, Oregon:

Section 1. That the City Council hereby finds the preliminary plans, an estimate of probable costs contained in the City Engineer's report for Country Glen Estates Street Lighting Local Improvement District which was filed with the City Recorder on July 12, 1994, to be satisfactory, and the same are hereby approved and adopted.

Section 2. That the City Council hereby declares its intention to make the lighting district improvements to serve Country Glen Estates Street Lighting Local Improvement District and hereby declares that the improvements to be made shall consist of forty-four (44) 100 watt high pressure sodium luminaries and mounted on 8 foot long mast arms and attached to 25 foot gray fiberglass poles within the district, all in accordance with the aforesaid preliminary plans with the initial cost of installation to be borne by Portland General Electric and the operational and electrical power costs estimated at $5143.97 the first year and $4668.97 in subsequent years to be assessed against the properties benefitting from the improvements.

Section 3. That the City Council hereby directs the City Recorder to give notice of intention to make the improvements by sending notice to the property owners within the district stating a public hearing will be held on August 1, 1994, said notice to also provide that information required under City of Keizer Ordinance 94-278, an ordinance providing for procedures for municipal lighting districts and special assessments.

Section 4. That the City Council hereby directs the City Recorder to mail notice of the proposed assessments to each owner in the local improvement district with notice that any objections to the Engineer's Report and the proposed assessment will be considered by the City Council at the aforesaid August 1, 1994 public hearing.

Section 5. That the City Council may abandon the proceedings for the lighting district improvements if sufficient property owner support for the local improvement district does not materialize.

Section 6. If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED this ____ day of ______________, 1994.

SIGNED this ____ day of ______________, 1994.

____
Mayor

____
City Recorder

City of Keizer

ENGINEER'S REPORT

FOR

COUNTRY GLEN ESTATES

STREET LIGHTING DISTRICT

For City Council Action July 18, 1994

REGISTERED PROFESSIONAL ENGINEER 6744 OREGON JULY 17, 1970 RUSSELL W. FAUST

Date: July 11, 1994

PREPARED BY:

William I. Peterson
Engineering Consultants, Inc.
3851 River Rd. N
Keizer, OR 97303
(503) 390-7402

Project File 94-0327

July 11, 1994

TO: The Hon. Mayor and City Council

FROM: William I. Peterson, PE
City Engineer

SUBJECT: Street Lighting District for the Country Glen Estates Subdivision

Authority and Purpose: This report is submitted in accordance with the requirements of City of Keizer **Ordinance No. 94-278** and Council **Resolution 94-730** for the purpose of creating the subject Street Lighting District.

District Boundaries and Map: A Map of the proposed District is attached showing the areas benefited by the street lights proposed to be installed.

Lighting Plan The lighting improvements will consist of forty four (44), 100 Watt, high pressure Sodium luminaires mounted on 8 foot long mast arms and attached to 25 foot gray fiberglass poles. This design is selected to be consistent with adjacent lighted areas.

It is recommended that installation be accomplished by the following method:

Portland General Electric (PGE) would supply, install and maintain the luminaires, poles and underground or overhead wiring. PGE would also supply the electrical power to the District.

Estimated Costs:

Initial Cost and Annual costs -

44 Poles & luminaires @ $8.15 per month each x 12 mos.	= $ 4,303.20
Administrative Fee @ 8.5%	365.77
Engineering : 190 lots @$2.50 /Lot	475.00
Total Assessment	$5,143.97
Per Lot Assessment (First Year)	$ 27.217

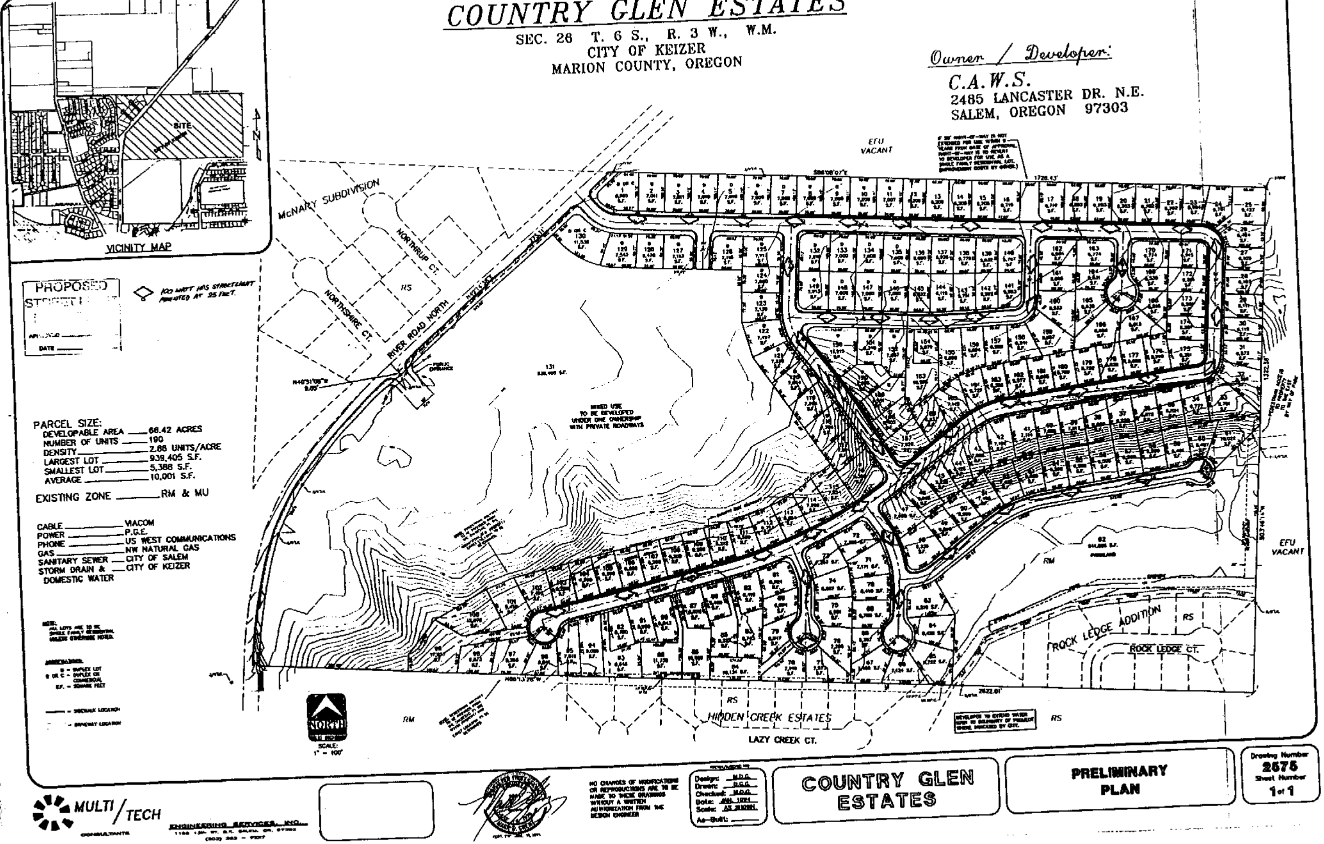
(1) Includes tax roll preparation, audit, delinquencies and miscellaneous administrative costs to the City as authorized by Res. 94-716.

Method of Assessment: It is recommended that the costs be assessed equally to each lot or parcel in the district. Please note that the City, as owner of the park land, Lot 62, would not share in the assessment. The first year assessment would include the one time costs for District formation and engineering. Subsequent years assessments would reduce to $ 24.70 per lot.

Assessment Roll: The attached preliminary assessment roll identifies the benefited properties and the first year assessments to be levied against each.

Respectfully submitted,

Russell W. Faust, PE


COUNTRY GLEN ESTATES
SEC. 26 T. 6 S., R. 3 W., W.M.
CITY OF KEIZER
MARION COUNTY, OREGON
Owner / Developer:
C.A.W.S.
2485 LANCASTER DR. N.E.
SALEM, OREGON 97303
VICINITY MAP
SITE
PROPOSED
100 WATT HPS STREETLIGHT MOUNTED AT 35 FEET.
PARCEL SIZE:
DEVELOPABLE AREA ____ 66.42 ACRES
NUMBER OF UNITS ____ 190
DENSITY ____ 2.86 UNITS/ACRE
LARGEST LOT ____ 939,405 S.F.
SMALLEST LOT ____ 5,388 S.F.
AVERAGE ____ 10,001 S.F.
EXISTING ZONE ____ RM & MU
CABLE ____ VIACOM
POWER ____ P.G.E.
PHONE ____ US WEST COMMUNICATIONS
GAS ____ NW NATURAL GAS
SANITARY SEWER ____ CITY OF SALEM
STORM DRAIN & DOMESTIC WATER ____ CITY OF KEIZER
McNARY SUBDIVISION
NORTHRUP CT.
NORTHSHIRE CT.
RIVER ROAD NORTH
RS
RM
MIXED USE TO BE DEVELOPED UNDER ONE OWNERSHIP WITH PRIVATE ROADWAYS
EFU VACANT
HIDDEN CREEK ESTATES
LAZY CREEK CT.
ROCK LEDGE ADDITION
ROCK LEDGE CT.
NORTH
SCALE: 1" = 100'
MULTI/TECH
ENGINEERING SERVICES, INC.
NO CHANGES OF MODIFICATIONS OR REPRODUCTIONS ARE TO BE MADE TO THESE DRAWINGS WITHOUT A WRITTEN AUTHORIZATION FROM THE DESIGN ENGINEER
COUNTRY GLEN ESTATES
PRELIMINARY PLAN
Drawing Number
2575
Sheet Number
1 of 1

Oregon Housing and Associated Services, Inc.
525 Glen Creek Road, NW, Suite 210
Salem, Oregon 97304
PH: (503) 585-6193
FAX: (503) 585-6898
TDD 1-800-735-2900

Richard West, Chief Operating Officer

RECEIVED
'94 JUL 8 AM 9 06
CITY OF KEIZER
OREGON 97303

July 7, 1994

Mr. John Morgan, Director
Community Development Department
City of Keizer
P.O. Box 21000
Keizer, OR 97307

RE: Relocation of civic center homes outside of Keizer

Dear Mr. Morgan:

Thank you for the City of Keizer's continued interest in Oregon Housing and Associated Service's (OHAS) HOPE 3 Program. HOPE 3 is designed to help low-income households purchase their first home.

As a part of the HOPE 3 Program the City of Keizer agreed to consider donating up to nine houses as long as they were relocated in Keizer per your May 28, 1993 letter. Unfortunately, no eligible government-owned sites exist in Keizer. However, OHAS has identified two eligible lots in Silverton. If approved by the City, OHAS is interested in moving two of the houses to the lots in Silverton.

Transfer and removal of the houses could be governed by the following or similar conditions:

1) OHAS would comply with the stipulations listed in your May 28, 1993 letter.

2) OHAS and the City of Keizer would adopt mutually agreeable conditions of transfer similar to the attached documents used by the Oregon Department of Transportation (ODOT).

3) The City would agree to donate the houses to OHAS free of charge.

4) OHAS would be responsible for paying all costs and accepting all responsibility related to moving the houses as described by the ODOT documents.

5) OHAS would agree to exclusively use the houses in its HOPE 3 Program.

I would appreciate any feedback or comments you or others may have regarding the enclosed proposal and the above drafted conditions. Please call if you have any questions. I look forward to hearing from you.

Sincerely,

Jon Gail

Jon C. Gail
Housing Rehab Specialist

SAMPLE FORM

DISPOSAL OF BUILDINGS FORM

STATE OF OREGON
BY AND THROUGH ITS DEPARTMENT
OF TRANSPORTATION, HIGHWAY DIVISION,
hereinafter referred to as "State"—

File No. ______________
Section ______________
Highway ______________

I hereby offer you the sum of $______________ for the following designated and described buildings and structures, to wit:

The offer is made to you upon the following terms and conditions:

(1) The amount offered is remitted in full herewith.

(2) If the said offer is accepted, I hereby agree to remove the said improvements from the real property upon which it is located within a period of __________ days from the date of notice of acceptance thereof, which removal shall include the clearing up of the premises on which the improvements are located and the disposal by burning or removing all boards, timbers, rubbish, litter, and debris. Furthermore, removal, within the terms of this offer is not complete as long as the improvements or any part thereof remain on any public highway, road, street or right of way or in any other public property whatsoever except as herein otherwise specifically provided. In case of failure to complete the removal and clearing up work, as herein agreed, the State may, at its discretion, declare me to be in default and I hereby agree to thereupon forfeit all rights and equities in the said structure, or structures, and all the materials and fixtures salvaged, or to be salvaged therefrom, and title to the structure, or structures, and/or the materials and fixtures shall revest in the State and the State may resell or otherwise dispose of same, as the State may deem expedient, without liability or obligation to me.

(3) To guarantee the complete removal and clearing up work as herein agreed, I shall deposit with the State an additional sum of $1,500.00. If the premises are satisfactorily cleared and cleaned and removal is complete as herein agreed, the said deposit shall be returned. Otherwise, the whole of said sum, or if removal is otherwise complete, such part of said sum as is necessary to pay the cost of clearing the premises, shall be forfeited to the State. Where removal is otherwise complete, any balance of said sum left after payment of the cost of clearing the premises shall be returned to me. Failure to obtain all necessary governmental permits prior to starting work shall be justification for the State to retain all or a portion of the deposit.

(4) The acceptance of this offer shall not be construed to imply or carry with it any right or permission to move the structure, or structures, across or along any highway, road, or street. If any such move is contemplated, proper application for a permit to cover said work will be made to the State or other authority having jurisdiction to issue moving permits. I further agree to indemnify and hold harmless the State of Oregon, by and through its Department of Transportation, Highway Division, the members thereof, and its officers, employees, and agents, from and against all damages, claims, demands, or injury or death of any person arising out of the occupancy and use of the aforementioned premises by me, and State shall not be liable for any damage or injury to persons or property occurring or arising on premises from any cause whatsoever.

(5) It is to be understood that the acceptance of this offer and the mailing or delivery of notice to me of such acceptance shall operate as a Bill of Sale to cover the said improvements.

(6) It is further understood that this offer and the acceptance thereof is based upon the structure, or structures, in their existing location and condition, and the State assumes no responsibility and makes no guarantee or representation as to the condition thereof, prior to, or subsequent to, the date and acceptance of this offer. The State accepts no liability for protection of the improvements after the sale has been completed.

(7) Buildings being moved or demolished shall not be used for living quarters until they are removed from the right of way. State reserves the right to enter and inspect the buildings during normal working hours. In order to protect the purchaser and State from creating a potentially dangerous condition or an "attractive nuisance", State reserves the right, and without notice to purchaser, to enter upon the property within 24 hours after any building has been removed from the foundation by purchaser and fill any basement, land depression or hole that may exist under the building without liability or damages to purchaser.

ADDRESS: ______________________ NAME: ______________________

____

ACCEPTANCE OF BID

The above offer hereby is accepted this ______________ day of ______________, 19____.

4/16/84
81-734-3648
Distribution:
Purchaser - original
Property Manager - 1
Region - 1

STATE OF OREGON, BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION,
HIGHWAY DIVISION

By ______________________
Property Agent

Attached to the SALES AGREEMENT FORM and made a part thereof.

INSTRUCTIONS AND REGULATIONS OF PURCHASE OF IMPROVEMENTS AT PUBLIC AUCTION FROM THE STATE OF OREGON, DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION

1. MOVING BUILDINGS ACROSS OR ALONG HIGHWAY OR STREET:
   The acceptance of the bid of any bidder does not imply or carry with it any right or permission to move the buildings across or along any highway, road, or street. If any such moving is contemplated, the bidder should ascertain, before bidding, whether or not such moving will be permitted, and if so, the conditions under which it will be permitted.

2. The improvements, together with trees, shrubs, plants, etc., will be sold to the highest bidder.

3. The improvements will be sold with no guarantee by the State as to condition and the State will accept no liability for protection of the improvements after the sale has been completed, including fire and comprehensive insurance.

4. The successful bidder must be prepared to make payment in full at time of sale; otherwise, the State may accept the second high bid or negotiate with any interested parties for making the sale.

5. TERMS OF SALE:

   Cash/ PERSONAL CHECK or cashier's check at the time of sale. The buildings will be sold separately or in combination, whichever is determined to be in the best interest of the State, to the highest bidder. The State reserves the right to accept or reject any or all bids. All of the bid price must accompany the successful bid, and a performance deposit to guarantee removal of buildings will be furnished by the successful bidders, in the form of a cashier's check, in the amount of -0- or more for each building.

6. The purchaser will remove the purchased items from the State property and clean up all resultant debris, as directed, within the specified period of time; otherwise, the sale will become null and void and all monies paid to the State by the purchaser shall become the property of the State and all interest of the purchaser shall cease and terminate. Driveways and concrete floor slabs at ground level are not required to be removed. Steps, porches, perimeter foundations and basement walls must be removed, plus other site work as directed by Property Agent. Concrete floors must be fractured; backfill with pit-run material allowed. Top 12 inches must be compacted two-inch minus material. Site to be bladed smooth and level with surrounding land.

7. The purchaser, his contractors, agents and employees, shall indemnify and save the State of Oregon harmless from any and all claims, liabilities and causes of action occasioned by the removal of the purchased items and subsequent clean-up operations.

(Cont.)

INSTRUCTIONS (Continued)

8. The State reserves the right to withdraw any improvements from the sale at any time prior to the actual sale time without advertising or otherwise notifying the public of such withdrawal. The State further reserves the right to accept or reject any or all bids.

9. The purchaser will obey all city, county, and State rules and regulations pertaining to the demolishing, burning and moving of any buildings or improvements purchased from the State pursuant to the instructions and regulations of purchase of improvements from the State of Oregon, Department of Transportation, Highway Division.

10. The purchaser to furnish the Region Property Agent with copies of appropriate permits and a work schedule prior to any work at the site.

MINUTES

KEIZER CITY COUNCIL
Tuesday, July 5, 1994
Robert L. Simon Council Chambers
Keizer City Hall

CALL TO ORDER

Mayor Dennis Koho called the regular meeting to order at 7:00 p.m. Roll call was taken as follows:

Present
Dennis Koho, Mayor
Jim Keller, Councilor
Jerry McGee, Councilor
Al Miller, Councilor (arrived at 7:14 p.m.)
Jerry Watson, Councilor

Absent
Chet Patterson, Councilor
Marlene, Wellin, Councilor

Staff
Dotty Tryk, City Manager
John Morgan, Community Development Director
Charles R. Stull, Chief of Police
Wally Mull, Public Works Director
Kim Krause, Finance Officer
Shannon Johnson, City Attorney
Tracy L. Davis, City Recorder

PUBLIC TESTIMONY

Presenting testimony to the Council was:

Dale Crawford, 5355 Verda Lane N, Keizer who expressed his concern for the lack of sidewalks on Verda Lane between Chemawa and Kalmia. The safety of the children in this area is very important and asked the Council to consider options to improve this area.

Mayor Koho also expressed his concerns and suggested staff look into this matter for possible future improvements.

Councilor Watson stated sidewalks are a matter of public safety and should be required in all areas of the City.

Councilor McGee suggested this would be an appropriate item to refer to the Traffic Safety Committee. Mayor Koho noted the Committee will be chosen in the next few months and items such as this will be forwarded to this group for review.

COMMITTEE REPORTS

Swearing In of Reserve Police Officers

Chief of Police, Charles Stull introduced the following reserve officers for the City of Keizer:

Carrie Anderson
Kara Berkeland
Matt McCowan
Jeff Wise

City Attorney, Shannon Johnson issued the oath of office to these individuals.

Community Policing Committee Report

Ed Davis, Chair of the Community Policing Committee reported the progress made during the first six months of the community policing program in Keizer. Mr. Davis noted the main Committee has been restructured by creating subcommittees for each district. This provided additional community input and addressed the special needs of each district. Some of the specified problems addressed within each subcommittee were:

District 1 - Addressed problems surrounding multi-family housing issues, the creation of bi-lingual flyers for hazardous material and traffic safety concerns.

District 2 - Revisions to the neighborhood watch introduction pamphlet and reviewing incidents in the parks to devise possible solutions.

District 3 - Development of a traffic safety flyer and working with McNary High School in regards to issues dealing with the school.

Mr. Davis noted the officers have created a closer partnership with the citizens in each of their districts to address problems and create solutions. He also stated the community policing program has generated 13 additional neighborhood watch programs since its' inception and is responsible for the creation of the proposed graffiti ordinance.

Councilor Keller commended Mr. Davis for his work and direction of the Community Policing Committee. He noted this committee's enthusiasm and determination to get things done has been outstanding. He recommended other members of the City Council attend one or more of their meetings.

Councilor McGee thanked Mr. Davis for providing statistical information as part of the evaluation plan.

Mayor Koho also thanked Mr. Davis for his leadership provided to this committee. Mr. Davis stated this is a very active committee and their deserve much of the credit for the progress made to this date.

Community Oriented Policing Audit Committee Report

Chief Stull provided brief background information since the inception of the Community Policing in Keizer. A six-month report was presented to the Council by Jodi Sherwood, Community Policing Coordinator and Sergeant Kent Barker.

Jodi Sherwood explained the Community Oriented Policing Audit Committee consists of eight members of the Keizer Police Department and was formed to review the progress of the Community Policing Program and make recommendations for improved effectiveness. The report covers statistical information, milestones, surveys, newspaper articles and recommendations. Ms. Sherwood stated the report will be used as a basis for future evaluations of the program and recommended this evaluation take place every six months.

Sergeant Kent Barker outlined the recommendations prepared by the Committee. These recommendations include:

-Community Service Officer responsible for Part III crimes, neighborhood watch and crime prevention

classes, business watch and educational training courses;
-Increased citizen involvement;
-Utilization of citizen volunteers;
-Development of a citizen academy;
-Improved maintenance of Neighborhood Watch and
-Business Watch Program;
-Encourage creation of Neighborhood Associations;
-Increase the educational classes for citizens; and
-Consider additional personnel to department.

In closing, Sergeant Barker said the Committee is pleased with the direction the Community Policing Program has taken and hopes future evaluation reports will include additional community surveys and input.

Mayor Koho thanked Ms. Sherwood, Sergeant Barker and the other members of the audit committee for their work. In response to a question from the Mayor, Sergeant Barker explained the concept of a citizen academy.

Councilor McGee also appreciated the work done by the committee on this report. He suggested the committee consider including a citizen review panel for future evaluations.

Councilor Watson said the report includes an impressive list of milestones accomplished in the first six months. He hopes the report will be a helpful tool in future evaluations.

Chief Stull advised the Council, the next evaluation report will be in six months.

PUBLIC HEARINGS

Mayor Koho reopened the hearing which was continued on June 6, 1994.

Northrup / Northshire Street Lighting Local Improvement District

Wally Mull, Public Works Director reported this hearing was opened on June 6, 1994 to receive remonstrances to the formation of a lighting district for the Northrup/Northshire area. An engineer's report had been adopted by the Council in May which recommended the installation of six street lights within the district.

Presenting testimony was:

Mary Hardison, 1076 Northshire Court NE, Keizer presented the Council with a petition signed by five of the six residents of Northshire Court. The petition requested the installation of two street lights on the existing poles in the area. Ms. Hardison stated the reduction of the number of lights was discussed with Portland General Electric.

Mayor Koho closed the public hearing.

Mayor Koho moved for a bill for an Ordinance Spreading Assessments to Northrup/Northshire Street Lighting Local Improvement District with the reduction of lights as proposed. Councilor Miller seconded the Motion.

City Attorney, Shannon Johnson stated the Ordinance should be revised with the estimated assessment for five lights in the area before passage.

Mayor Koho withdrew his motion and Councilor Miller the second.

Councilor Keller moved to have staff determine the new estimated assessment and bring the Ordinance back at the next Council meeting for consideration. Mayor Koho seconded the Motion.

The Motion passed as follows:

AYES: Keller, Koho, McGee, Miller and Watson (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

ORDINANCE - Street Vacation Portion of Dearborn Avenue (E. Drees)

Mayor Koho opened the hearing.

Public Works Director, Wally Mull reported this street vacation for a portion of Dearborn Avenue was initiated by the Council on June 6, 1994 and notice has been published and posted on the property for the public hearing this evening. At the request of the Council, staff considered any future needs of the area and determined additional right-of-way should be acquired along Dearborn Avenue and Verda Lane. Mr. Mull noted Ms. Drees has consented to this dedication as part of the partitioning process. (Maps detailing this area were introduced as exhibits 1 and 2).

Councilor Keller confirmed Ms. Drees will dedicate this right-of-way during the partitioning process.

There was no testimony to come before the Council.

Mayor Koho closed the public hearing.

Councilor McGee voiced his support for the vacation and the dedication of the property the City will receive.

Councilor Watson cited his concern the property dedication was not included in the vacation Ordinance. Mr. Johnson stated it is not appropriate to include this and will be done during the partitioning process.

Mayor Koho supported the vacation of this property commended Ms. Drees on her cooperation in this matter.

<u>Councilor Keller moved for a bill for an Ordinance to vacate a Portion of Dearborn Avenue in the City of Keizer, State of Oregon. Councilor Watson seconded the Motion.</u>

<u>The Motion passed as follows:</u>

AYES: Keller, Koho, McGee, Miller and Watson (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

ORDINANCE - Honeysuckle Street Lighting Local Improvement District

City Manager Dotty Tryk, advised the Council the residents of the area filed a petition to form a local improvement district to install street lights. Notice of the public hearing and estimated assessments have been sent to the affected residents.

Mayor Koho opened the public hearing.

Presenting testimony to the Council was:

Bill Baugher, 507 Honeysuckle, Keizer asked the Council to delay the adoption of the Ordinance in order to allow the residents to further discuss the proposed number of street lights and the option for undergrounding of the wires in the area.

Maria Eyerly, 656 Honeysuckle, Keizer thanked Mr. Mull for his assistance in the formation of this district. She noted this area is in desperate need of street lights, however, she questions the need for the proposed eight lights, especially a light in the small cul-de-sac. Ms. Eyerly also voiced her concern that the postponement to discuss these issues would delay the installation of the lights.

Dick Dunlap, 536 Honeysuckle N, Keizer supported the installation of street lights with underground wiring in the area.

Carol Rakocy, 3840 Rivercrest Drive, Keizer supported the installation of the proposed number of lights.

Mayor Koho closed the public hearing.

Councilor McGee said he is impressed the citizens of the area are coming forward with their concerns and ideas regarding street lights. He encouraged the Council to reopen the hearing and allow the citizens time to discuss their options further.

Councilor Watson voiced his concern in delaying this matter since a procedure was established and had been followed for this process.

Councilor Keller said one of the Council goal was to improve communications with the citizens and this is a step towards that goal by allowing the citizens to discuss this matter further.

Public Works Director, Wally Mull stated the residents were notified of the assessments and layout of lights prior to the hearing.

Councilor Miller moved to reopen the hearing and continue it to July 18, 1994 in order for the residents to discuss this matter further. Councilor McGee seconded the Motion.

The Motion passed as follows:

AYES: Keller, Koho, McGee, Miller and Watson (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

ORDINANCE - Fircone Street Lighting Local Improvement District

City Manager Dotty Tryk, advised the Council the residents of the area filed a petition to form a local improvement district to install street lights in this area. Notice of the public hearing and estimated assessments have been sent to the affected residents.

Mayor Koho opened the public hearing.

There was no testimony to come before the hearing.

Mayor Koho closed the public hearing.

Councilor Keller moved for a bill for an Ordinance spreading assessments to the Fircone Street Lighting Local Improvement District. Councilor Miller seconded the Motion.

The Motion passed as follows:

AYES: Keller, Koho, McGee, Miller and Watson (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

ORDINANCE - Clearview Drive Street Lighting Local Improvement District

City Manager, Dotty Tryk, advised the Council the developer of the area filed a petition to form a local improvement district to install street lights in this area. Notice of the public hearing and estimated assessments have been sent to the affected residents.

Mayor Koho opened the public hearing.

There was no testimony to come before the hearing.

Mayor Koho closed the public hearing.

Councilor Keller moved for a bill for an Ordinance spreading assessments to the Clearview Drive Street Lighting Local Improvement District. Councilor Miller seconded the Motion.

The Motion passed as follows:

AYES: Keller, Koho, McGee, Miller and Watson (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

ADMINISTRATIVE ACTION

ORDINANCE - Abatement of Graffiti

RESOLUTION - Intent to Work with Citizens to Abate Graffiti

Chief of Police, Charles Stull introduced the Anti-Graffiti subcommittee who developed the Ordinance and Resolution; Jodi Sherwood, Butch Dunn, Joe Coons, Molly Smith, John Copeland, Ed Davis, Susy Riches and Manny Martinez.

Jodi Sherwood, Community Policing Coordinator stated the committee has met several times since March and has developed the graffiti ordinance and accompanying resolution. The drafts have been presented to the Governmental Affairs Committee and the Chamber of Commerce Board for review. Both groups have unanimously approved these documents.

A video tape showing recent instances of graffiti paintings within the City was shown.

Butch Dunn stated the increased amount of graffiti within the City shows a need to have a tool in place to discourage these activities. Mr. Dunn highlighted sections of the ordinance and explained his personal confrontation with gang members. It was this confrontation which encouraged him to become involved with the committee.

Joe Coons, business owner in Keizer stated graffiti on the building of a business will encourage customers to shop elsewhere. This will create a financial hardship on the businesses in Keizer.

Molly Smith stated the graffiti affects the safety of the community. Now is the time to get a handle on the situation before it becomes uncontrollable.

John Copeland, a sales associate in the area, said it is a detriment to the community to have visible signs of vandalism on buildings. He encouraged the Council to put this Ordinance in place.

Ed Davis added the Resolution was created to ensure the citizens of Keizer the City is willing to help resolve and assist in the cleaning up of the City.

Councilor Watson voiced his concern that the ordinance is unenforceable and impractical. He understands the intent of the Ordinance but suggested changes regarding the responsibility of lawful custodians.

Ed Davis stated the intent of the ordinance is to be proactive and the person who sprays the graffiti will have the same penalty as the person who leaves it there. However, the Resolution provides assistance to property owners for clean up.

Councilor Keller stated this Ordinance has gained the support of the business community.

Councilor McGee said this Ordinance will allow us to take control of the City and help persuade the absentee owners to be responsible for the removal of graffiti.

Councilor Miller thanked the committee for their work and supports the Ordinance and Resolution.

Susy Riches, 1141 Chemawa Road N, Keizer, representing the Chamber of Commerce, read a letter of support from the Chamber board. The Board unanimously approved this Ordinance and urged the adoption.

Manny Martinez, 1747 Meadowlark Drive, Keizer, representing the Gubser Neighborhood Association relayed their unanimous support for this Ordinance. Mr. Martinez told of his experience in Miami, Florida where the graffiti was out of the control of the City. He urged the Council to adopt this Ordinance in order to avoid a similar situation.

Councilor McGee stated the person who recently sprayed graffiti on Kennedy School had complete control of the City for a great length of time. Chief Stull indicated the primary reason gang members spread the graffiti is to stake out their territory. In order for the City to take a strong stance against this type of activity he urged the adoption of this Ordinance.

Councilor Watson stated he is in agreement with the intent of the Ordinance however, he has concerns with the citizens rights and liberties. He is also concerned the custodial guardian is responsible for the act. Councilor Watson proposed changing the lawful custodian section to only hold them responsible for negligent supervision. He also suggested renaming section 6 to nuisance abatement in order to link it with sections 7 and 8. Councilor McGee agreed with Councilor Watson that section 6 should be retitled.

Mayor Koho voiced his concern with changing the custodial guardian section. He suggested the inclusion of a curfew in the Ordinance.

Councilor Miller stated by removing the responsibility of the custodial guardian, it removes the "teeth" of the Ordinance.

<u>Councilor McGee moved adoption for a bill for an Ordinance Relating to the Abatement of Graffiti and Declaring a Public Nuisance including the comments and corrections agreed upon by the Council. Councilor Keller seconded the Motion.</u>

Councilor Watson continued to voice his concern with the significant liberal issue of this Ordinance. He suggested changes to section 5 and add a definition of negligent supervision.

Councilor Miller disagreed with the proposed change by Councilor Watson.

The Motion passed with the following votes:

AYES: Keller, Koho, McGee, Miller and Watson (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

Councilor Watson moved to have the Mayor appoint a Committee of five people (2 Council Representatives and 3 Community Policing Committee Representatives) to examine in depth custodial responsibility and report back to the Council for any possible revisions to the Ordinance. Mayor Koho seconded the Motion.

The Motion passed as follows:

AYES: Keller, Koho, McGee, Miller and Watson (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

RESOLUTION - Amendments to the Compensation and Classification Plan

City Manager, Dotty Tryk reported this resolution amending the compensation and classification plan involves three issues; recommends a two-percent cost of living increase for non-represented and management employees, creates a deferred compensation match program and amends the classification plan to create a Municipal Utility Worker class. Ms. Tryk distributed a summary sheet of the present employee benefit package and the proposed additions. She stated the recommendations for the two-percent cost of living increase and the deferred compensation match are consistent with the Keizer Police bargaining agreement authorized by the Council. Ms. Tryk noted the two-percent cost of living increase was based upon the formula stated in the bargaining agreement using the CPI rate of 2.89 from March to March.

Councilor McGee cited concerns with using a CPI formula rather than the actual cost of living for these increases.

Mayor Koho stated the CPI is the only nationally recognized index that is used to reflect the cost of living in which he is aware of. Councilor McGee stated the Department of Labor has a cost of living index. He provided examples why the CPI is not a true reflection on the cost of living and its impact on people.

Councilor McGee expressed his surprise to find out the City does not contribute Social Security for employees. City Manager Tryk explained the history and the City's participation in a retirement program for the employees.

Councilor Keller stated he understands the intent of the proposal and does not want to create a division between non-represented and represented employees in this matter. He asked staff to prepare a financial impact report for this proposal. City Manager Tryk stated the resources need to cover this proposal would be transferred from the contingency fund. Councilor Keller voiced his concern in using the contingency fund for this.

Councilor Miller suggested proposals such as these should be discussed during the budgetary process.

Mayor Koho suggested this matter and the City Manager evaluation be discussed during a worksession in the near future. He also supported treating the non-represented and represented employees equally.

<u>Mayor Koho moved for a Resolution Setting Forth a Change in the Compensation Plan by Amending Certain Unrepresented Classifications; A Change in Compensation for all Employees effective July 1, 1994; and Repealing R94-722.</u>

<u>The Motion died for a lack of a second.</u>

Councilor Keller expressed his concern for the source and total amount of the funds that will be used to cover this increase. Councilor McGee concurred and asked this matter be delayed until this information is provided.

<u>Councilor McGee moved to delay this matter until fiscal information is received.</u>

<u>The Motion died for a lack of a second.</u>

The Council discussed the possible implications this delay will cause.

<u>Councilor McGee moved to have the Councilor Miller seconded the Motion.</u>

<u>The Motion passed with the following votes:</u>

AYES: Keller, McGee, Miller and Watson (4)
NAYS: Koho (1)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

CONSENT CALENDAR

The Consent Calendar consisted of the following:

a. <u>RESOLUTION</u> - Initiating Larsen park Street Light Local Improvement District

b. <u>RESOLUTION</u> - Hidden Creek Phase I Street Lighting Local Improvement District (Approve Engineer's Report)

c. Approval of June 20, 1994 Regular Session Minutes

Councilor Keller moved for approval of the items on the Consent Calendar. Councilor Patterson seconded the Motion.

The Motion passed with the following votes:

AYES: Keller, Koho, McGee, Miller and Watson (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Patterson and Wellin (2)

OTHER BUSINESS

Councilor Keller informed the Council he had received a request from the Gubser Neighborhood Association to reduce the speed on McLeod Street from 35 mph to 25 mph.

Councilor Watson inquired of the process for disposing of dead animals on the roadway. Wally Mull, Public Works Director informed the Council the local garbage agencies have agreed to dispose of these upon the request by the City.

Shannon Johnson, City Attorney stated the Land Use Board of Appeals decided in favor of Ron Brewster and has remanded the matter back to the City Council. Mr. Johnson briefly covered the final decision of the Board. Mr. Johnson noted the City has an option to appeal the decision of the Board. The Council agreed by consensus not to appeal the decision and asked Mr. Johnson to discuss this matter with Mr. Brewster or his attorney and set a time and date for a hearing before the Council.

Councilor McGee inquired of the status of the repairs to the Fortune Cookie Restaurant. City Manager Tryk will inquire of the status and report back to the Council.

Councilor McGee voiced his concern with the recent article in the Keizertimes regarding Iris Lane. City Manager Tryk stated the engineering firm was involved in the negotiations process and was dealing with the property manager rather than owner of the property.

Councilor Miller expressed his concern the Urban Renewal Agency budget included $170,000 for the purchase of the right-of-way from Bi-Mart and based upon this information, the Agency Board decided not to proceed with the project and eliminated the funds. According to the article Bi-Mart had not been contacted in two years and he feels staff mislead the Agency on this matter.

City Manager Tryk stated this amount was an estimate made by the City Engineer if the need arose to purchase the right-of-way from Bi-Mart.

Councilor Watson asked staff to review the tapes of the meetings and prepare a transcript of the discussion in order to provide the Council with accurate information.

Mayor Koho announced he will be appearing on CCTV with Salem's Mayor elect during the next week.

There was no other businesses to come before the Council.

WRITTEN COMUNICATION

There was no written communication to come before the Council.

AGENDA INPUT

Mayor Koho noted the agenda input items listed.

The meeting was adjourned at 10:42 p.m.

____

TRACY L. DAVIS
City Recorder

APPROVED:

MAYOR:

____

__________________________ (Councilor Wellin absent)

(Councilor Patterson absent) __________________________

__________________________ __________________________

____

City of Keizer, Oregon

City of Keizer

MEMORANDUM

DATE: July 18, 1994

TO: Mayor Koho and Councilmembers

FROM: Dotty Tryk, City Manager Dotty

SUBJECT: Lockhaven Improvement

Background:

After the Dairy Queen opened on Lockhaven, the City required his participation in a street improvement to two lanes, a left turn lane and two 6 foot bike paths to Trail. This was anticipated to cost $73,500. Because the bids were very high this improvement wasn't made. We expect to make it this summer.

When we rejected the bids, we decided to wait until this construction season and extend the improvement to 14th as that would have been phase 2 of a Lockhaven improvement. This was estimated to cost $336,000. A widening to 14th with three lanes with bike lanes will complete the widening of Lockhaven to McLeod at a basic level.

Because Lockhaven is one of our busier and, potentially most dangerous, streets, I asked our staff to look at the cost of sidewalks and curbs on two sides in addition to the widening and to look at improving the street to McLeod. The cost of a full improvement to McLeod would be approximately $590,000. Of this, $415,000 would complete the widening with additional storm drain work needed and the sidewalks and curbs would be about $175,000.

It is possible that the property owners on Lockhaven would like an opportunity to use the Local Improvement District process to enhance the project with the addition of curbs and gutters. This would be for safety and improving their property values.

If the Council agrees to the LID concept, staff will determine interest from the property owners and initiate an LID. If this works well, it can serve as a model for other parts of town that need sidewalks.

Fiscal Impact:

There are funds in the FY'95 Budget for the widening to 14th. However, most of the improvements planned for FY'94 did not occur. This will result in a larger fund balance than we expected. With a supplemental budget, we would be able to fund this project. And, there is some logic to using the unspent Lockhaven Reserve of $384,700 on Lockhaven.

Recommendation:

The offer to the property owners of the opportunity to improve their properties with an LID would be a program similar to the Unimproved Street program you created this year. The participants would have the change to leverage city funds to create a much more desirable project. This kind of cost sharing will allow the City to stretch our funds a little further. It would be worthwhile to test the interest in this kind of project.

Action Requested:

I would like Council to give me a consensus as to how to proceed.

1. We can do the widening to 14th without sidewalks still this year. This would complete widening to McLeod.

2. If you decide to proceed with forming an LID, the public process will take the project out of this construction year, but we will be able to do the street to Trail and some storm drain work now and complete the project next spring.

Either way the required improvements in front of Dairy Queen will be done this year.

PRELIMINARY COST ESTIMATE
LOCKHAVEN DRIVE WIDENING - OPTION 1
River Rd. to 14th Street

JO. 93-321
June 21, 1994(rev.)
PLVM

ITEM	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT
1	MOBILIZATION	ALL	L.S.		$10,000.00
2	SAWCUT EXIST. STREET	5000	L.F.	$1.25	$6,250.00
3	SAWCUT EXIST. DRIVEWAYS	850	L.F.	$1.00	$850.00
4	RESLOPE EXIST. DRIVES/PARKING	2600	SQ.FT.	$2.50	$6,500.00
	- PUBLIC PROPERTY				
5	REMOVE AND RESLOPE DRIVES	70	SQ.FT.	$3.00	$210.00
	- PRIVATE PROPERTY				
6	STD. 6' STREET WIDENING	5000	L.F.	$20.00	$100,000.00
7	8" CONC. STORM DRAIN	45	L.F.	$20.00	$900.00
	- CL. "D" BACKFILL				
8	12" CONC. STORM DRAIN	2650	L.F.	$25.00	$66,250.00
	- CL. "D" BACKFILL				
9	15" CONC. STORM DRAIN	460	L.F.	$30.00	$13,800.00
	- CL. "D" BACKFILL				
10	POTHOLE EXIST. STORM DRAIN PIPE	ALL	L.S.		$500.00
11	STD. TYPE 1 CATCH BASIN	28	EA.	$550.00	$15,400.00
12	STD. FLATTOP MANHOLE	2	EA.	$1,400.00	$2,800.00
13	STD. MANHOLE	8	EA.	$1,600.00	$12,800.00
14	CONNECT TO EXIST. STORM DRAIN	5	EA.	$200.00	$1,000.00
15	CONNECT EXIST. CATCH BASINS	2	EA.	$250.00	$500.00
16	CONNECT EXIST. RAINDRAINS TO S.D.	25	EA.	$100.00	$2,500.00
17	ENGINEERED FILL	110	C.YDS.	$5.50	$605.00
18	TYPE "A" CURB AND GUTTER	535	L.F.	$8.00	$4,280.00
19	5' PCC SIDEWALK	535	L.F.	$8.50	$4,547.50
20	GEOTEXTILE SUBGRADE STABILIZATION	100	S.YDS.	$2.00	$200.00
21	EROSION CONTROL AND REVEGETATIO	3000	L.F.	$2.00	$6,000.00
	IN DRAINAGE WAY				
22	TREE REMOVAL	1	EA.	$200.00	$200.00
23	REMOVE AND REPLACE EXIST.				
24	LANDSCAPING RR TIES TO P.L.	ALL	L.S.		$500.00
25	ADJUST STRUCTURES TO GRADE	ALL	L.S.		$2,000.00
26	TEMPORARY SIGNING AND STRIPPING	ALL	L.S.		$1,000.00
27	STREET RE-STRIPPING	ALL	L.S.		$7,500.00
28	TEMP. PROT. AND DIR. OF TRAFFIC	ALL	L.S.		$25,000.00
	TOTAL ESTIMATE				$292,092.50
	Engineering, Surveying, Legal, & Contingencies @15%				$43,813.88
	Total Estimated Project Cost				$335,906.38

PRELIMINARY COST ESTIMATE
LOCKHAVEN DRIVE WIDENING - OPTION 2
-Curbs and Sidewalks to McLeod

JO. 93-321
JUNE 21, 1994(rev.)
PLVM

ITEM	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT
1	MOBILIZATION	ALL	L.S.		$25,000.00
2	SAWCUT EXIST. STREET	5000	L.F.	$1.25	$6,250.00
3	SAWCUT EXIST. DRIVEWAYS	850	L.F.	$1.00	$850.00
4	RESLOPE EXIST. DRIVES/PARKING - PUBLIC PROPERTY	2600	SQ.FT.	$2.50	$6,500.00
5	REMOVE AND RESLOPE DRIVES - PRIVATE PROPERTY	70	SQ.FT.	$3.00	$210.00
6	STD. 6' STREET WIDENING	5000	L.F.	$20.00	$100,000.00
7	8" CONC. STORM DRAIN - CL. "D" BACKFILL	45	L.F.	$20.00	$900.00
8	12" CONC. STORM DRAIN - CL. "D" BACKFILL	3000	L.F.	$25.00	$75,000.00
9	15" CONC. STORM DRAIN - CL. "D" BACKFILL	460	L.F.	$30.00	$13,800.00
10	POTHOLE EXIST. STORM DRAIN PIPE	ALL	L.S.		$500.00
11	STD. TYPE 1 CATCH BASIN	20	EA.	$550.00	$11,000.00
12	STD. FLATTOP MANHOLE	2	EA.	$1,400.00	$2,800.00
13	STD. MANHOLE	14	EA.	$1,600.00	$22,400.00
14	CONNECT TO EXIST. STORM DRAIN	5	EA.	$200.00	$1,000.00
15	CONNECT EXIST. CATCH BASINS	2	EA.	$250.00	$500.00
16	CONNECT EXIST. RAINDRAINS TO S.D.	25	EA.	$100.00	$2,500.00
17	ENGINEERED FILL	1365	C.YDS.	$5.50	$7,507.50
18	TYPE "A" CURB AND GUTTER	7800	L.F.	$8.00	$62,400.00
19	5' PCC SIDEWALK	7800	L.F.	$8.50	$66,300.00
20	GEOTEXTILE SUBGRADE STABILIZATION	100	S.YDS.	$2.00	$200.00
21	EROSION CONTROL AND REVEGETATION	3000	L.F.	$2.00	$6,000.00
22	IN DRAINAGE WAY				
23	TREE REMOVAL	1	EA.	$200.00	$200.00
24	REMOVE AND REPLACE EXIST.				
25	LANDSCAPING RR TIES TO P.L.	ALL	L.S.		$500.00
26	ADJUST STRUCTURES TO GRADE	ALL	L.S.		$2,000.00
27	TEMPORARY SIGNING AND STRIPPING	ALL	L.S.		$1,000.00
	STREET RE-STRIPPING	ALL	L.S.		$7,500.00
28	TEMP. PROT. AND DIR. OF TRAFFIC	ALL	L.S.		$35,000.00
	TOTAL ESTIMATE				$457,817.50
	Engineering, Surveying, Legal, & Contingencies @~~15%~~ 18%				~~$68,672.63~~ $82,407.15
	Total Estimated Project Cost				[illegible]

$540,224.65

CRITERIA FOR ZONE CHANGE/VARIANCE
CASE NO. 94-4
(PAUL AND JUDY WITTENBERG)

ZONE CHANGE CRITERIA:

1. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.

2. The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.

3. Allowed uses in the proposed zone can be established in compliance with the development requirements in Chapter 17 to 20 without need for adjustments or variances.

4. Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.

5. Satisfaction of any zone change review criteria in the Keizer Comprehensive Plan is demonstrated.

6. The supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next 5 years, or the location of the appropriately zoned land is not locationally or physically suited to the particular uses proposed for the subject property, or lack site specific amenities required by the proposed use.

7. The supply of vacant land in the existing zone is adequate, assuming the zone change is granted, to accommodate the projected rate of development of uses allowed in the zone during the next 5 years.

8. The proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.

(see reverse)

VARIANCE CRITERIA:

1. The degree of variance from the standard is the minimum necessary to permit development of the property for uses allowed in the applicable zone; and

2. There has not been a previous land use action approved on the basis that variances would not be allowed; and

3. The variance will not be unreasonably detrimental to property or improvements in the neighborhood of the subject property; and

4. The variance will not significantly affect the health or safety of persons working or residing in the vicinity.

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: CHARLES CONAHEY

Address: 1050 LOCKHAVEN, NE

Subject or Agenda Item Number:
LOCKHAVEN CHANGE

Your Comments:

Proponent ____ Opponent ____ General ____

Date 7/18/94

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Robert L. Brown

Address: 1020 Lockhaven Dr. NE

Subject or Agenda Item Number: 3
Lockhaven changes

Your Comments:

Proponent ______ Opponent ______ General ______

Date 7/18/94

City of Keizer, Oregon

PUBLIC HEARING SIGN UP SHEET

PUBLIC HEARING REGARDING: Viacom Cable Franchise Agreement

DATE: July 18, 1994 **TIME:** 7:00 p.m. **AGENDA ITEM #** 5b

BEFORE THE: KEIZER CITY COUNCIL **PLACE:** ROBERT L. SIMON COUNCIL CHAMBERS

NAME	ADDRESS	GENERAL	PROPONENT	OPPONENT

no testimony
dr

City of Keizer, Oregon

PUBLIC HEARING SIGN UP SHEET

PUBLIC HEARING REGARDING: Hidden Creek Phase I Street Light LID

DATE: July 18, 1994 TIME: 7:00 p.m. AGENDA ITEM # 5c

BEFORE THE: KEIZER CITY COUNCIL PLACE: ROBERT L. SIMON COUNCIL CHAMBERS

NAME	ADDRESS	GENERAL	PROPONENT	OPPONENT

no testimony
[illegible]

City of Keizer, Oregon

PUBLIC HEARING SIGN UP SHEET

PUBLIC HEARING REGARDING: Honeysuckle Street Lighting LID

DATE: July 18, 1994 TIME: 7:00 p.m. AGENDA ITEM # 5a

BEFORE THE: KEIZER CITY COUNCIL PLACE: ROBERT L. SIMON COUNCIL CHAMBERS

NAME	ADDRESS	GENERAL	PROPONENT	OPPONENT
Maria Egerly	656 Honeysuckle St N	X		
J. Raboz	3840 Rivercrest Dr. N		UNDERGROUND	