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AGENDA
KEIZER CITY COUNCIL
REGULAR SESSION

Monday, March 20, 2023

7:00 p.m.

Robert L. Simon Council Chambers
Keizer, Oregon

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **FLAG SALUTE**
4. **SPECIAL ORDERS OF BUSINESS**
5. **COMMITTEE REPORTS**
6. **PUBLIC COMMENTS**

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

7. **PUBLIC HEARINGS**
 - a. **ORDINANCE** – Adopting Right of Way Utility Regulations
RESOLUTION – Adopting Fees for Ordinance No. 2023-_____ (Adopting Right of Way Utility Regulations)
8. **ADMINISTRATIVE ACTION**
 - a. Service Line Warranty Program
9. **CONSENT CALENDAR**
 - a. Approval of February 21, 2023 Regular Session Minutes

b. Approval of February 27, 2023 Work Session Minutes

c. Approval of March 6, 2023 Regular Session Minutes

10. OTHER BUSINESS

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

11. STAFF UPDATES

12. COUNCIL MEMBER REPORTS

13. AGENDA INPUT

March 27, 2023 – 6:00 p.m.

City Council Work Session

- Safety Training

April 3, 2023 – 7:00 p.m.

City Council Regular Session

April 10, 2023 – 6:00 p.m.

City Council Work Session

- City Council 2023-2024 Goal Setting

April 17, 2023 – 7:00 p.m.

City Council Regular Session

May1, 2023 – 7:00 p.m.

City Council Regular Session

14. ADJOURNMENT

City of Keizer Mission Statement

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



CITY COUNCIL MEETING: MARCH 20, 2023

To: Mayor Clark and City Council Members

THRU: Adam J. Brown, City Manager

FROM: E. Shannon Johnson, City Attorney

SUBJECT: **CONTINUED PUBLIC HEARING – UTILITY SERVICE UTILIZING THE
PUBLIC RIGHTS-OF-WAY AND COMMUNICATIONS LICENSE LAW**

PROPOSED MOTIONS:

I move that the Keizer City Council adopt Ordinance No. 2023-____ Adopting Right-of-Way Utility Regulations.

AND

I move that the Keizer City Council adopt Resolution R2023-____ Establishing Fees for Ordinance No. 2023-____ (Adopting Right-of-Way Utility Regulations).

I. SUMMARY:

This matter is before the City Council for public hearing to consider an Ordinance Adopting Right-of-Way Utility Regulations and the associated Resolution Establishing Fees for Ordinance No. 2023-____ (Adopting Right-of-Way Utility Regulations).

II. BACKGROUND:

- A. Council held a work session on the issue of right-of-way regulation (ROW) in December 2021. At that time, special counsel Spencer Parsons reviewed the pros and cons of the “franchise” model which Keizer currently uses and the “code” model. Under the franchise model, each provider enters into a separate franchise agreement. The code model provides one set of regulations with some variations depending on the utility. Essentially, the code model allows the City to place providers on a level playing field. Mr. Parsons indicated that their firm recommended the code model to their municipal clients.

- B. The City Council considered the matter and directed staff to move forward with the code model.
- C. In April 2022 Council approved a contract with ROW Consultants, LLC (Reba Crocker) to prepare draft Ordinance and Resolutions.
- D. Over the past several months, Reba Crocker and I have reviewed and revised the drafts. At that time we had an Ordinance and Resolution for communication providers, as well as a separate Ordinance and Resolution for all other utilities. In January, we sent drafts to the utility providers for comments. Ms. Crocker held meetings with providers to go over their concerns.
- E. Because Mr. Parsons had changed positions and was not available, I engaged Nancy Werner as special counsel to assist.

III. CURRENT SITUATION:

- A. After review of the utilities' concerns, I met with Ms. Crocker and Ms. Warner. We felt that some of the utilities' concerns were valid and we agreed that changes were appropriate. Some of the changes are noted below.
 - 1. The right-of-way (ROW) Ordinance and the communications Ordinance were combined so that all utility/communications are covered in one Ordinance. This is intended to address comments regarding potential duplication between the Ordinances and allow all providers an easier way to see all the requirements.
 - 2. We added a registration requirement so that it applies to service providers that do not own facilities in the ROW, but not to licensees (providers that own facilities). The purpose of this is to remove non-facility owners from the license requirement to address comments that mistakenly assumed non-facility owners were subject to "franchise-like" requirements of the license.
 - 3. The prior fee Resolutions were combined into one Resolution with clarification on what fees apply to specific services/providers. This change is to ensure clarity in the fees established by the ordinance, and to clarify the offset provision to make clear that entities will not be required to pay the full amount of both fees. Existing franchisees paying a franchise fee based on their gross revenue from all services should not see any increase in their fee payments under the Ordinance.
 - 4. Numerous other changes were made to address providers' concerns, including clarifying the original language that requires undergrounding of overhead facilities only in new areas where all facilities are to be underground or when the City orders undergrounding of non-wireless facilities (i.e., there is no

requirement that all utilities be placed underground upon passage of the Ordinance); removing a prohibition on new utility poles; removing the pre-construction approval requirement and other clarifications and simplifications to the permitting provisions; and reduced the bond amount required of licensees.

B. A question was raised regarding if any of the providers would be paying more under the new Ordinance. After checking with Ms. Werner and Ms. Crocker, below is the response.

1. Except as noted below, no provider currently paying the City would see an increase in the amount paid.
2. Providers that are not paying the City now will be required to pay their share. That will include telecom companies operating in the ROW and any companies that lease space (capacity) using existing infrastructure. For example, cell companies use the ROW to send their signals through existing phone lines now, but pay nothing now because they do not have their own equipment in the ROW. At the same time, the landline phone companies have to pay; this makes it an unlevel playing field. Also, in the list of not paying are Electric Service Suppliers (other than PGE and Salem Electric) that provide electrical service would be required to compensate the City.
3. Lumen (previously known as CenturyLink) will have an increase in the compensation. That is because they currently only compensate based on Gross Revenues on “exchange access services”. They will be required to compensate based on non-exchange access services also which is the same for all other voice providers, like cell companies.
4. To the extent permitted by applicable law, any entity that provides broadband services will need to begin compensating the City for use of the ROW. That would include Lumen for their Internet services. There may be other internet providers. (Pursuant to FCC rules, Comcast compensates the City under a franchise agreement.)

C. Please note that reference to design or public works standards mean standards adopted by the Public Works Director under authority granted in this Ordinance.

IV. **ANALYSIS:**

A. **Strategic Impact** – No impact.

B. **Financial** – There should be a positive impact financially as noted above. The amount of that increase is difficult to calculate.

- C. **Timing** – Adopting the Ordinance and Resolution at this time will allow for a transition period and the beginning of the new process by July 1.
- D. **Policy/legal** – Federal law requires municipalities to provide a “level playing field” for providers. The Ordinance provides that and is recommended by legal counsel.

ALTERNATIVES:

- A. Adopt the attached Ordinance and Resolution.
- B. Decline to adopt the Ordinance and Resolution and retain the current franchise model of ROW regulation.
- C. Direct staff to make changes to the Ordinance and/or Resolution.

RECOMMENDATION:

Staff recommends the Council open the continued public hearing and take testimony relating to the Ordinance and proposed fees. Following public testimony, close the public hearing and deliberate the matter. If you have no further questions, adopt the attached Ordinance and Resolution by separate motions. Please let me know if you have any questions. Thank you.

ATTACHMENTS:

- Ordinance Adopting Right-of-Way Utility Regulations.
- Resolution Establishing Fees for Ordinance No. 2023-____ (Adopting Right-of-Way Utility Regulations).

(NOTE: Several comments were delivered to our consultant or City staff. We are sending those to Council separately so that the regular agenda packet is not too large. They are available to the public upon request. Please note that some of the concerns expressed have been resolved by the final version of the Ordinance/Resolution.)

A BILL

ORDINANCE NO.
2023-_____

FOR

AN ORDINANCE

ADOPTING RIGHT-OF-WAY UTILITY REGULATIONS

The City of Keizer ordains as follows:

Section 1. TITLE. This Ordinance shall be known and may be referenced as the "Right-of-Way Utility Regulations Ordinance."

Section 2. PURPOSE AND INTENT. The purpose of this Ordinance is to:

A. Permit and manage reasonable access to and utilization of the public rights-of-way of the City for utility services purposes and conserve the limited physical capacity, integrity, and longevity of those public rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Secure fair and reasonable compensation to the City and its residents, who have invested substantial public funds to acquire, build, and maintain the public rights-of-way and City-owned structures and improvements therein, from utilities that benefit from use of this public asset;

C. Ensure that all persons owning or operating utility facilities or providing utility services within the City register and comply with the ordinances, rules, policies, and other regulations of the City, as well as with applicable provisions of state and federal law;

1 D. Ensure that the City can continue to fairly and responsibly protect the
2 public health, safety, and welfare of its residents;

3 E. Encourage the provision of advanced and competitive utility services on
4 the widest possible basis to the residents, businesses and visitors within the City's
5 territorial and jurisdictional boundaries;

6 F. Allow the City to enter into other or additional agreements with person(s),
7 if the public interest is served, and to amend the requirements of this Ordinance and the
8 City regulations, as new technology is developed and deployed;

9 G. Allow the City to be resilient and adaptive to changes in technology; and

10 H. Comply with applicable provisions of state and federal law.

11 Section 3. JURISDICTION AND MANAGEMENT OF THE PUBLIC
12 RIGHTS-OF-WAY.

13 A. The City has jurisdiction and exercises regulatory management over all
14 public rights-of-way within the City under authority of the Oregon Constitution, the City
15 Charter, and state law.

16 B. The City has jurisdiction and exercises regulatory management over each
17 public right-of-way, whether the City has a fee, easement, or any other legal interest in
18 such public right-of-way, and whether the legal interest in the public right-of-way was
19 obtained by grant, dedication, prescription, reservation, condemnation, annexation,
20 foreclosure, or any other means.

1 C. The exercise of jurisdiction and regulatory management over a public
 2 right-of-way by the City is not official acceptance of such public right-of-way, and does
 3 not obligate the City to maintain or repair any part of such right-of-way.

4 D. The provisions of this Ordinance are subject to and shall be applied
 5 consistently with applicable state and federal laws, rules, and regulations, and, to the
 6 extent possible, shall be interpreted to be consistent with such laws, rules, and
 7 regulations. Nothing in this Ordinance shall be interpreted, deemed, or applied in a
 8 manner that authorizes or requires the City, its Council, Commissions, Boards, officials,
 9 directors, managers, employees, agents, contractors, or volunteers to violate applicable
 10 state or federal laws, rules, or regulations.

11 Section 4. REGULATORY FEES AND COMPENSATION NOT A TAX.

12 A. The fees and costs provided for in this Ordinance, and any compensation
 13 charged and paid as prescribed in this Ordinance, are separate from, and in addition to,
 14 any and all other federal, state, county, or city charges, including without limitation, any
 15 permit fee or any other generally applicable fee, tax, or charge on the business,
 16 occupation, property, or income, as may be levied, imposed, or due from any person, its
 17 customers, or subscribers, on account of the lease, sale, delivery, or transmission of
 18 utility services.

19 B. The City has determined that any fee, cost, or other charge provided for by
 20 this Ordinance is not subject to the property tax limitations of Article XI, Sections 11

1 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or
2 property owners.

3 C. The fees, costs, and other charges provided for in this Ordinance are
4 subject to applicable federal and state laws.

5 Section 5. DEFINITIONS. For the purpose of this Ordinance, the following
6 words, terms, phrases, and their derivations shall have the meanings given below unless
7 the context indicates otherwise. When not inconsistent with the context, words used in
8 the present tense include the future tense, words in the plural number include the
9 singular number, and words in the singular include the plural number. The word "shall"
10 is always mandatory and not merely directory.

11 A. "Cable service" is to be defined consistent with of 47 U.S.C. Section
12 522(6), as may be amended or superseded, and means the one-way transmission to
13 subscribers of (a) video programming, or (b) other programming service; and subscriber
14 interaction, if any, which is required for the selection or use of such video programming
15 or other programming service.

16 B. "Calendar year" means January 1 to December 31, unless otherwise noted.

17 C. "City" means the City of Keizer, Oregon, a municipal corporation, and its
18 governing authority, and/or its duly appointed and authorized agents. In addition, the
19 City may refer to all the territory within its corporate boundaries and as such may
20 change from time to time.

1 D. "City Council" means the City Council of the City of Keizer.

2 E. "City facilities" means City owned or publicly owned structures or
3 equipment located within the public rights-of-way used for governmental purposes
4 including, but not limited to, fiber-optic cable, streetlights, traffic signals, sanitary sewer,
5 storm sewer, or water infrastructure such as related pipes, manholes, catch basins, wires,
6 conduit, valves, vaults, and appurtenances.

7 F. "City Standards" means all the ordinances, codes, regulations, and rules of
8 the City of Keizer, heretofore or as may be subsequently amended.

9 G. "Communication services" means any service provided for the purpose of
10 transmission of information including, but not limited to, voice, video, or data, without
11 regard to the transmission protocol employed, and whether or not the transmission
12 medium is owned by the provider itself. Communications services includes all forms of
13 telephone services and voice, video, data, or information transport, but does not include:
14 (a) cable service; (b) open video system service, as defined in 47 CFR Section 76; (c)
15 over-the-air radio or television broadcasting to the public-at-large from facilities licensed
16 by the Federal Communications Commission or any successor thereto; (d)
17 communications provided over a private communications system or a public
18 communications system; and (e) direct-to-home satellite service within the meaning of
19 Section 602 of the Telecommunications Act.

20

1 H. “Construction” means any activity in the public right-of-way resulting in
2 physical change thereto, including excavation or placement of structures.

3 I. “Days” mean calendar days, unless otherwise noted.

4 J. “Emergency” means a circumstance, as determined by the City, in its sole
5 discretion, in which immediate work to facilities is necessary to restore lost service or
6 prevent immediate harm to persons or property.

7 K. “Federal Communications Commission” or “FCC” means the federal
8 administrative agency, or its lawful successor, authorized to regulate and oversee
9 telecommunication carriers, services, and provider, on a national level.

10 L. “Gross Revenue” means any and all amounts, of any kind, nature, or form,
11 without deduction for expense, less net write-off of uncollectable accounts within the
12 City, earned or derived from the operation of utility facilities (including revenue derived
13 from any use, rental and/or lease of the facilities to other person(s)), and/or the provision
14 of utility service(s) in the City, subject to all applicable limitations in federal and state
15 law.

16 M. “License” or “ROW License” means the authorization granted by the City
17 to a person(s) pursuant to this Ordinance.

18 N. “Licensee” means any person that is subject to the ROW License
19 requirement of this Ordinance or has a valid ROW License issued by the City.

20

1 O. “Person” means and includes any individual, firm, sole proprietorship,
2 corporation, company, partnership, co-partnership, joint-stock company, trust, limited
3 liability company, association, local service district, governmental entity, or other
4 organization, including any natural person or any other legal entity.

5 P. “Private communications system” means a communications system owned
6 by a utility operator for the operator’s exclusive use for internal communications and not
7 for sale or resale, including trade, barter, or other exchange of value, directly or
8 indirectly, to any person.

9 Q. “Public communications system” means any system owned or operated by
10 a government entity or entities that are primarily for use for internal communications or
11 communications with other government entities, and includes services provided by the
12 state of Oregon pursuant to ORS Sections 190.240 and 283.140. A public
13 communications system does not include any system used for sale or resale, including
14 trade, barter, or other exchange of value, of communications services or capacity on the
15 system, directly or indirectly, to any person.

16 R. “Registrant” means those persons that have a valid, active registration
17 pursuant to Section 8 of this Ordinance.

18 S. “Public rights-of-way”, or “Right-of-Way”, or “ROW” means and
19 includes, but is not limited to, the space in, upon, above, along, across, over, or under the
20 public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails,

1 paths, sidewalks, bicycle lanes, public utility easements, and all other public ways or
 2 areas, including the subsurface under and air space over these areas, but does not include
 3 parks, parkland, open space tracts, water quality tracts, or other City-owned property.
 4 This definition applies only to the extent of the City’s right, title, interest, and authority
 5 to grant a license or other authorization to occupy and use such areas for utility facilities
 6 or provision of utility services.

7 T. “Public utility easement” means the space in, upon, above, along, across,
 8 over, or under an easement for the construction, reconstruction, operation, maintenance,
 9 inspection, and repair of utility facilities. A public utility easement does not include an
 10 easement solely for the construction, reconstruction, operation, maintenance, inspection,
 11 and/or repair of City facilities, or where the proposed use by the licensee is inconsistent
 12 with the terms of any easement, right-of-way, or other legal right for use or occupancy
 13 granted to the City.

14 U. “Small wireless facility” means antenna facilities that are used for the
 15 provision of personal wireless service that meets each of the following conditions:

16 a. The facilities (i) are mounted on structures fifty (50) feet or less in
 17 height including the antennas, or (ii) are mounted on structures no more than ten
 18 percent (10%) taller than other adjacent structures, or (iii) do not extend existing
 19 structures on which they are located to a height of more than fifty (50) feet or by
 20 more than ten percent, (10%) whichever is greater;

b. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;

c. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume; and,

d. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

“Small wireless facility” does not include fiber, coaxial cable or similar equipment located within the right-of-way, other than wireless equipment associated with the structure that meets the criteria set forth in subsection U(c),

V. “State” means the state of Oregon.

W. “Structure” means any facility that is placed in the ROW, including but not limited to poles, vaults or manholes, hand holds, junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires, and transformers.

X. “Telecommunications Act” means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

Y. “Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mainlines, conduits, ducts, cables, wires,

transmitters, plants, equipment, and other facilities, including strand-mounted equipment, located within, on, along, under, or above the public rights-of-way, any portion or component of which is used or designed to be used to deliver, transmit, or otherwise provide utility service.

Z. “Utility service” means the provision, by means of utility facilities located in the public rights-of-way, whether or not such facilities are owned by the utility service provider, of cable services, communication services, electric energy, natural gas, or wireless communications, to or from customers within the corporate boundaries of the City, or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions.

AA. “Utility service operator” or “Operator” means any person who owns, places, operates, or maintains a utility facility within the City, whether or not the person provides utility service to customers within the City.

BB. “Utility service provider” or “Provider” means any person who provides utility service to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

CC. “Wireless communication services” means any wireless service using Federal Communications Commission-licensed or unlicensed spectrum including without limitation any personal wireless services, as defined in 47 U.S.C. § 332(c)(7)(C).

1 DD. “Work” means the construction, demolition, installation, replacement,
 2 repair, maintenance, or relocation of any utility facility, including but not limited to any
 3 excavation and restoration required in association with such construction, demolition,
 4 installation, replacement, repair, maintenance, or relocation.

5 Section 6. OTHER CITY LAWS. Every utility services operator and every
 6 person that provides utility services within the City, whether such person owns facilities
 7 or not, shall comply with all applicable City codes, rules, or requirements of the City of
 8 Keizer.

9 Section 7. ADMINISTRATION.

10 A. This Ordinance shall be administered by the City, its staff or duly
 11 appointed representative.

12 B. If a conflict exists between two City ordinance provisions, one of them a
 13 general requirement and the other a specific requirement, the more specific requirement
 14 shall operate as an exception to the general requirement regardless of the priority of
 15 enactment.

16 Section 8. REGISTRATION.

17 A. Registration Required. Every person who desires to provide utility services
 18 to customers within the City shall register with the City prior to providing any utility
 19 services to any customer in the City. Every person providing utility services to
 20 customers within the City as of the effective date of this Ordinance shall register within

1 forty-five (45) calendar days of the effective date of this Ordinance. Persons with a
2 valid ROW license or franchise in good standing are not required to register.

3 B. Registration Term. The registration granted pursuant to this Ordinance
4 shall be effective the earlier of the date it is issued by the City or the date services were
5 first provided within the City, and shall have a term of five (5) calendar years beginning:
6 (1) January 1st of the year in which the registration took effect for registrations that took
7 effect between January 1st and June 30th; or (2) January 1st of the year after the
8 registration took effect for registrations that become effective between July 1st and
9 December 31st.

10 C. Registration Application. The registration shall be on a form provided by
11 the City and shall be accompanied by any additional documents required by the City, in
12 the City's sole discretion and at no cost to the City, to identify the registrant and its legal
13 status, describe the type of utility services provided or to be provided by the registrant
14 and list the facilities over which the utility services shall be provided. Failure to receive
15 or secure a form shall not relieve any person from the obligation to register and pay the
16 associated fees or comply with this Ordinance.

17 D. Registration Application and Renewal Fee. Each application for new and
18 renewal registration shall be accompanied by a nonrefundable fee in an amount to be
19 determined by Resolution of the City Council.

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1 E. Changes to Information Contained on the Registration Application.

2 Within thirty (30) days of a change to the information contained in the application, the
3 applicant shall notify the City in writing of such change(s).

4 F. Renewal. At least thirty (30), but no more than one hundred twenty (120),

5 calendar days before the expiration of a registration granted under this Section, a
6 provider seeking renewal of its registration shall submit a renewal registration
7 application to the City, including all information and fees required in this Ordinance. If
8 the City determines that the applicant is in violation of the terms of this Ordinance or
9 any other City codes, rules, or regulations at the time it submits its application, the City
10 may require, by a written notice, that the applicant cure the violation before the City will
11 consider the application or grant the registration.

12 Section 9. ROW LICENSES.

13 A. Who Must Apply. Every utility services operator must at all times have a
14 valid ROW License from the City unless the utility services operator has a valid
15 franchise agreement from the City that is in effect and in good standing.

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1 B. When Must Apply. Every person shall obtain a ROW license prior to
 2 placing any utility facilities in the public rights-of-way. Every utility services operator
 3 as of the effective date of this Ordinance shall apply for a ROW license from the City
 4 within forty-five (45) days of the later of (a) the effective date of this Ordinance, or (b)
 5 the expiration of a valid franchise from the City, unless a new agreement is granted by
 6 the City.

7 C. ROW License Application. The ROW license application shall be on a
 8 form provided by the City, and shall be accompanied by any additional documents
 9 required by the City, in the City's sole discretion and at no cost to the City, that allows
 10 the City to easily identify the applicant, its legal status, including its authorization to do
 11 business in the state of Oregon, a description of the applicant's utility facilities, the
 12 specific service(s) to be provided, if any, and other information that the City determines,
 13 in its sole discretion at no cost to the City, is necessary to determine the applicant's
 14 ability to comply with the terms of this Ordinance.

15 D. ROW License Application Fee and Renewal Fee. The application and
 16 renewal application shall be accompanied by a nonrefundable application fee set by
 17 Resolution of the City Council.

18 E. Determination by City. The City shall issue, within a reasonable time after
 19 having received a duly filed application, a written determination granting or denying the
 20 license in whole or in part. If the license is denied, the written determination shall

1 include the reasons for denial. The application shall be evaluated based upon the
 2 provisions of this Ordinance, the continuing capacity of the public rights-of-way to
 3 accommodate the applicant's proposed utility facilities, and the applicable federal, state
 4 and local laws, rules, regulations, and policies.

5 F. Changes to Information Contained on the ROW License Application.

6 Within thirty (30) days of a change to the information contained in the license
 7 application, the licensee shall notify the City in writing of such change(s).

8 G. Authorization Granted.

9 a. A ROW license granted under this Ordinance authorizes the
 10 licensee to construct, place, maintain, and operate utility facilities in the public
 11 rights-of-way, subject to the provisions of City code, rules, regulations, policies,
 12 and other applicable provisions of state and federal law.

13 b. Each ROW license granted under this Ordinance authorizes only
 14 those utility facilities applied for by the applicant and approved by the City. The
 15 City may approve in one license utility facilities designed to provide more than
 16 one type of utility service.

17 c. A ROW license granted under this Ordinance shall be personal to
 18 the licensee and may not be assigned, sublicensed, or transferred, in whole or in
 19 part, except as permitted by this Ordinance.

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d. A ROW license granted under this Ordinance does not grant, convey, create, or vest in a licensee any real property interest in land, including any fee, leasehold interest, or easement, and does not convey equitable or legal title in the public rights-of-way. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the public rights-of-way. A ROW license granted under this Ordinance is not a warranty of title. Licensee expressly acknowledges and agrees to enter on to and use public rights-of-way in its "as-is and with all faults" condition. The City makes no representations or warranties whatsoever, whether express or implied, as to the public rights-of-way's condition or suitability for the intended or proposed utilization. By its acceptance of the ROW license, the licensee expressly acknowledges and agrees that neither the City nor its agents have made, and the City expressly disclaims, any representations or warranties whatsoever, whether express or implied, with respect to the physical, structural, or environmental condition of the public rights-of-way, and the present or future suitability of the public rights-of-way.

e. The issuance of a ROW license does not constitute a waiver or bar to the City's exercise of any governmental right or power, including without limitation the City's police powers and regulatory powers, regardless of whether such powers existed before or after the license is issued.

1 H. Term of ROW License. Subject to the termination provisions in Subsection
 2 N of this Section 9, the ROW license granted pursuant to this Ordinance shall be
 3 effective the earlier of the date it is issued by the City or the date services were first
 4 provided within the City, and shall have a term of five (5) calendar years beginning: (1)
 5 January 1st of the year in which the license took effect for licenses that took effect
 6 between January 1st and June 30th; or (2) January 1st of the year after the license took
 7 effect for licenses that become effective between July 1st and December 31st.

8 I. ROW License Nonexclusive. No ROW license granted pursuant to this
 9 Section shall confer any exclusive right, privilege, license, or franchise to occupy or use
 10 the public rights-of-way for delivery of utility services or any other purpose. The City
 11 expressly reserves the right to grant licenses, franchises, or other authorizations to other
 12 persons, as well as the City's right to use the public rights-of-way, for similar or
 13 different purposes.

14 J. Reservation of City Rights. The City reserves all rights, title, and interest
 15 in its public rights-of-way. A license granted under this Ordinance does not prevent the
 16 City from exercising any of its rights, including without limitation grading, paving,
 17 repairing, or altering any public rights-of-way, constructing, laying down, repairing,
 18 relocating, or removing City facilities, or establishing any other public work, utility, or
 19 improvement of any kind, including repairs, replacement, or removal of any City
 20 facilities.

1 K. Multiple Services.

2 a. A licensee that provides or transmits, or allows the provision or
3 transmission, of utility services and other services over its facilities is subject to
4 the ROW license and fee requirements of this Ordinance for the portion of the
5 facilities and extent of utility services delivered over those facilities.

6 b. A licensee that provides or transmits more than one utility service
7 over its facilities is not required to obtain a separate ROW license or franchise
8 agreement for each utility service; provided, that it gives notice to the City of
9 each utility service provided or transmitted and pays the applicable fee for each
10 utility service.

11 L. Transfer or Assignment. A licensee shall obtain the written consent of the
12 City prior to the transfer, sublicense, or assignment of a license unless the licensee
13 demonstrates to the City that state or federal law specifically prohibits the City from
14 requiring its prior written consent. A transfer, sublicense, or assignment shall only be
15 authorized by the City if the proposed transferee or assignee is authorized under all
16 applicable federal, state, and local laws to own or operate the utility system and the
17 transfer or assignment is approved by all agencies or organizations required or
18 authorized under federal, state, and local to approve such transfer, sublicense, or
19 assignment.

20

1 a. Without limiting any other rights the City may have to condition its
2 consent, the City may condition its consent to any such transfer, sublicense, or
3 assignment on the transferee, sublicensee, or assignee's written agreement to
4 assume all obligations under the license, this Ordinance and other City codes and
5 regulations.

6 b. If a ROW license is transferred, sublicensed, or assigned, whether
7 pursuant to the City's approval or in the event approval is not required by this
8 Section, the transferee, sublicensee, or assignee shall become responsible for
9 fulfilling all the obligations under the license with respect to obligations of the
10 licensee at the time of transfer, sublicensee, or assignment. A transfer, sublicense,
11 or assignment of a license does not extend the term of the license. No transfer,
12 sublicense, or assignment may occur until the successor transferee or assignee
13 has provided proof of insurance, additional insured endorsement, and a bond
14 pursuant to Section 18. In the event approval is not required by this Section, the
15 licensee shall provide the City at least thirty (30) days prior written notice of the
16 transfer, sublicense, or assignment.

17 M. Renewal. At least thirty (30), but no more than one hundred twenty (120),
18 calendar days before the expiration of a license granted under this Section, a licensee
19 seeking renewal of its license shall submit a renewal application to the City, including
20 all information and fees required in this Ordinance. The City shall review the application

1 and grant or deny the license within a reasonable time period after the application is duly
 2 filed. If the City determines that the licensee is in violation of the terms of this
 3 Ordinance or any other City codes, rules, or regulations at the time it submits its
 4 application, the City may require, by a written notice, that the licensee cure the violation
 5 or submit a detailed plan to cure the violation within a reasonable period of time, as
 6 determined by the City, before the City will consider the application or grant the license.

7 N. Termination.

8 a. Revocation or Termination of a License. The City may terminate or
 9 revoke the license granted pursuant to this Ordinance for any of the following
 10 reasons:

- 11 1. Violation of any of the provisions of this Ordinance;
- 12 2. Violation of any provision of the license;
- 13 3. Misrepresentation in a license application;
- 14 4. Failure to pay taxes, compensation, fees, or costs due the City
 15 after final determination by the City of the taxes, compensation,
 16 fees, or costs;
- 17 5. Failure to restore the public rights-of-way after construction as
 18 required by this Ordinance or other applicable state and local laws,
 19 ordinances, rules, and regulations;
- 20

6. Failure to comply with technical, safety, and engineering standards related to work in the public rights-of-way;

7. Failure to obtain or maintain any and all licenses, permits, certifications, and other authorizations required by state or federal law for the placement, maintenance, or operation of the utility facilities; or

8. Is in violation of any City code, rule, regulation, or other City requirements.

b. Standards for Revocation or Termination. In determining whether termination, revocation, or some other sanction is appropriate, the following factors shall be considered:

1. Whether the violation was intentional;
2. The egregiousness of the violation;
3. The harm that resulted;
4. The licensee's history of compliance; and
5. The licensee's cooperation in discovering, admitting, and curing the violation.

c. If a license is terminated by the City, within thirty (30) days the licensee shall file a final remittance form with the City stating, "final remittance" and shall remit any funds due.

O. Notice and Cure. The City shall give the licensee written notice of any apparent violations before revoking or terminating a license. The notice shall include a statement of the nature and general facts of the violation or noncompliance and provide a reasonable time period not to exceed thirty (30) days for the licensee to demonstrate that the licensee has remained in compliance, that the licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the licensee is in the process of curing a violation or noncompliance, the licensee must demonstrate that it acted promptly and continues to actively work toward compliance. If the licensee does not respond within the reasonable time stated in the notice, or if the City determines in its sole discretion that the licensee is not, or is no longer, actively working toward compliance, the City shall determine whether the license shall be terminated or revoked.

P. Termination by Licensee. If a licensee ceases to be required to have a license, as defined under this Ordinance, the licensee may terminate or surrender its license with a thirty (30) day notice to the City. Licensee may reapply for a license at any time. No refunds or credits shall be given for licenses terminated by the licensee or the City.

a. Within thirty (30) days of surrendering a license, the licensee shall file a final remittance form with the City stating, "final remittance" and shall remit any funds due.

b. Upon surrendering a license, unless otherwise agreed to by the City, the licensee shall file a written statement that it has removed, or shall remove within sixty (60) days, any and all facilities from the City, according to Section 10, and no longer is subject to the provisions of this Ordinance.

Q. Franchise Agreements.

a. If the public interest warrants, as determined by the City in its sole and absolute discretion, the City and a person may enter into a written franchise agreement that may include terms that clarify, enhance, expand, waive, or vary the provisions of this Ordinance, consistent with applicable state and federal law. The franchise agreement may conflict with the terms of this Ordinance, with the review and approval of the City Council. The franchise agreement shall be subject to the provisions of this Ordinance to the extent such provisions are not in conflict with any such franchise agreement. In the event of a conflict between the express provisions of a franchise agreement and this Ordinance, the franchise agreement shall control.

b. If approved by the City, the licensee requesting a franchise agreement shall deposit a non-refundable fee, as set by Resolution of City Council, before negotiations occur.

1 Section 10. CONSTRUCTION AND RESTORATION.

2 A. Public Works Director Policies, Standards, Specifications, and Other
 3 Guidelines. The City Council authorizes the Public Works Director to develop, amend,
 4 and publish or otherwise make publicly available any policies, standards, specifications,
 5 and other guidelines for the location, design, management and operation of facilities in
 6 public rights-of-way subject to this Ordinance. All such policies, standards,
 7 specifications, and other guidelines (a) must be consistent, and not in conflict with, the
 8 applicable provisions of state, federal, and local law, which includes this Ordinance; and
 9 (b) shall be effective upon their publication; provided, however, that any permit
 10 applications submitted prior to publication shall be subject to the policies, standards,
 11 specifications, and other guidelines in effect when the submittal occurred.

12 B. Construction Permits. No person shall perform any work in the public
 13 right-of-way, or on utility facilities within the public rights-of-way, without first
 14 obtaining a permit from the City. The City shall not issue a permit for the construction,
 15 installation, maintenance, or repair of utility facilities unless the licensee has the proper
 16 authorizations required by and is in compliance with this Ordinance and all other City
 17 codes and regulations, and all applicable fees have been paid.

18 C. Applications for Permits. Applications for permits to construct utility
 19 facilities shall be submitted upon forms to be provided by the City and shall comply with
 20 all City codes and regulations, including all public works regulations and standards at

1 the time the work commences. All permit applications shall be accompanied by
2 drawings, plans, and specifications in sufficient detail to demonstrate:

3 a. That the facilities shall be constructed in accordance with all
4 applicable laws, codes, rules, and regulations;

5 b. The location and route of all utility facilities to be installed above
6 ground or on existing utility poles;

7 c. The location and route of all utility facilities on or in the public
8 rights-of-way to be located under the surface of the ground, including the line and
9 grade proposed for the burial at all points along the route that are within the
10 public rights-of-way. Applicant's existing utility facilities shall be differentiated
11 on the plans from new construction. A cross section shall be provided showing
12 new or existing utility facilities in relation to the street, curb, sidewalk, or other
13 public rights-of-way; and

14 d. The construction methods to be employed for protection of existing
15 structures, fixtures, and facilities within or adjacent to the public rights-of-way,
16 and description of any structures, fixtures, or facilities that applicant proposes to
17 temporarily or permanently remove or relocate.

18 D. All permit applications shall be accompanied by the verification of a
19 qualified and duly authorized representative of the applicant that the drawings, plans,
20 and specifications submitted with the application comply with applicable technical

1 codes, rules, and regulations. Permit applications shall be accompanied by a written
2 construction schedule, which shall include an estimated start date and a deadline for
3 completion of construction. The construction schedule is subject to approval by the City.
4 Subject to any restrictions in state or federal law, the City may from time to time publish
5 or otherwise make publicly available any additional or different application requirements
6 as the City finds necessary or appropriate for processing applications, which shall be
7 effective immediately upon publication.

8 E. Prior to issuance of a permit, the applicant shall pay a permit fee in the
9 amount determined by Resolution of the City Council.

10 F. If satisfied that the application, plans, and documents submitted comply
11 with all requirements of the City, the City shall issue a permit authorizing construction
12 of the utility facilities, subject to such further conditions, restrictions, or regulations
13 affecting the time, place, and manner of performing the work as the City may deem
14 necessary or appropriate, to the extent not prohibited by applicable state and federal law.

15 G. Except in the case of an emergency that poses an imminent threat to public
16 health or safety and/or injury to persons or property, the permittee shall notify the City
17 not less than seventy-two (72) hours in advance (excluding weekends) of any work in
18 the public rights-of-way.

19 H. All construction practices and activities shall be in accordance with the
20 permit, approved final plans, and specifications for the facilities. The City and its

representatives shall be provided access to the work site and such further information as it may require, in the City's sole discretions and at no cost to the City, to ensure compliance with such plans, specifications, and other City codes and regulations.

I. All work that does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance (including any policies, standards, specifications, or other guidelines adopted by the City), shall be removed within thirty (30) days, or corrected at the sole expense of the permittee. The City is authorized to issue stop work orders in order to ensure compliance.

J. The permittee shall promptly complete all construction activities in compliance with the permit and all applicable laws and, in a manner designed to avoid unnecessary disruption, and shall minimize unavoidable disruption of the City public rights-of-way and other public and private property. All construction work within the public rights-of-way, including without limitation any restoration work, must be completed within one hundred twenty (120) days of the date the construction permit is issued unless the City has given written approval of an extension or an alternate schedule.

K. Injury to Persons or Property. All licensees shall preserve and protect from injury or damage other facilities in the public rights-of-way, the public using the public rights-of-way, and any adjoining property, and take other necessary measures to protect persons and property, including but not limited to buildings, walls, fences, trees, and

1 other facilities that may be subject to damage from the permitted work. A licensee shall
 2 (a) use suitable barricades, flags, flagging attendants, lights, flares, and other measures
 3 as required for the safety of all members of the general public; (b) comply with all
 4 applicable Americans with Disabilities Act requirements; and (c) comply with all the
 5 requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

6 L. Restoration. A licensee shall be responsible for all injury to persons or
 7 damage to public or private property resulting from its failure to properly protect people
 8 or property and to carry out the work regardless of whether the work is performed by a
 9 licensee or by other person(s) performing the work on behalf of the licensee.

10 a. When a licensee, or any person acting on its behalf, does any work
 11 in or affecting any public rights-of-way, it shall, at its own expense, promptly
 12 restore such rights-of-way or property to the current City standards, in
 13 accordance with applicable federal, state, and local laws, codes, ordinances, rules,
 14 and regulations, unless otherwise directed by the City.

15 b. If weather or other conditions beyond the licensee's control do not
 16 permit the complete restoration required by the City, the licensee shall
 17 temporarily restore the affected public rights-of-way or property. Such temporary
 18 restoration shall be at the licensee's sole expense and the licensee shall promptly
 19 undertake and complete the required permanent restoration when the weather or
 20

1 other conditions no longer prevent such permanent restoration. Any
 2 corresponding modification to the construction schedule shall be subject to
 3 approval by the City.

4 c. If the licensee fails to restore public rights-of-way or property as
 5 required in this Ordinance, the City shall give the licensee written notice and
 6 provide a period of not less than ten (10) days and not exceeding thirty (30) days
 7 to restore the public rights-of-way or property. If, after said notice, the licensee
 8 fails to restore the public rights-of-way or property as required in this Ordinance,
 9 the City may cause such restoration to be made at the sole expense of the
 10 licensee. In cases where the City believes that an emergency or threat to public
 11 safety exists, it may act without notice to, and at the sole expense of, the licensee.
 12 Upon receipt of an invoice from the City, the licensee shall reimburse the City
 13 within thirty (30) days for all costs incurred by the City.

14 M. Inspection. Every facility shall be subject to the right of periodic
 15 inspection by the City or its agents to determine compliance with the provisions of this
 16 Ordinance and all other applicable state and City laws, codes, ordinances, rules, and
 17 regulations. Every licensee shall cooperate with the City in permitting the inspection of
 18 utility facilities in a timely manner after request by the City. The licensee shall perform
 19 all testing or permit the City or its agents to perform any testing at the licensee expense,
 20 required by the City to determine that the installation of the licensee's facilities and the

1 restoration of the public rights-of-way comply with the terms of the permit, this
 2 Ordinance, and applicable state and City laws, codes, ordinances, rules, and regulations,
 3 in effect at the time of the work.

4 N. Coordination of Construction. All licensees shall make a good faith effort
 5 to both cooperate with and coordinate their construction schedules with those of the City
 6 and other users of the public rights-of-way.

7 a. Prior to January 1 of each year, licensees shall provide the City
 8 with a schedule of known proposed construction activities for that year that are
 9 in, around, or that may affect the public rights-of-way and any City facilities.

10 b. At the City's request, licensees shall meet with the City annually, or
 11 as determined by the City, to schedule and coordinate construction in the public
 12 rights-of-way.

13 c. All construction locations, activities, and schedules within the
 14 public rights-of-way shall be coordinated as ordered by the City to minimize
 15 public inconvenience, disruption, and damage to persons and property.

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1 Section 11. LOCATION OF FACILITIES.

2 A. Location of Facilities. Unless otherwise agreed to in writing by the City,
3 whenever any existing electric utilities, cable facilities, or wireline communication
4 facilities are located underground within a public right-of-way of the City, a licensee
5 with permission to occupy the same public right-of-way shall locate all new facilities
6 underground at its own expense.

7 a. Whenever all new or existing electric utilities, cable facilities or
8 wireline communication facilities are located or relocated underground within a
9 public right-of-way of the City, a licensee that currently occupies the same public
10 right-of-way must relocate its facilities underground concurrently with the other
11 affected facilities to minimize disruption of the public rights-of-way, absent
12 extraordinary circumstances or undue hardship as determined by the City in its
13 sole discretion and consistent with applicable state and federal law.

14 b. The requirements in this Section do not apply to antennas,
15 pedestals, cabinets, small wireless facilities, or similar above-ground equipment
16 of any utility provider, or facilities used for transmission of electric energy at
17 nominal voltages in excess of thirty-five thousand (35,000) volts. The City
18 reserves the right to require written approval of the location of any such above-
19 ground equipment of any licensee.

20

1 B. Interference with the Public Rights-of-Way. No licensee or other person
2 may locate or maintain facilities so as to interfere with the use of the public rights-of-
3 way by the City, by the general public, or by other persons duly authorized to use or be
4 present in or on the public rights-of-way. Facilities shall not be located in areas of
5 restricted sight distance or interfere with the proper function of traffic control signs,
6 signals, lighting, or other devices that affect traffic operation. All use of the public
7 rights-of-way shall be consistent with City codes, ordinances, rules, and regulations, in
8 effect and as may be subsequently amended.

9 C. Relocation of Utility Facilities.

10 a. When requested to do so in writing by the City, a licensee shall, at
11 no cost to the City, temporarily or permanently remove, relocate, change, or alter
12 the position of any utility facility within a public right-of-way, including
13 relocation of aerial facilities underground, except as such facilities are not
14 required to be located underground pursuant to subsection 11(A)(b) of this
15 Section.

16 b. Nothing herein shall be deemed to preclude the licensee from
17 requesting reimbursement or compensation from a third party, pursuant to
18 applicable laws, regulations, tariffs, or agreements. However, the licensee shall
19 timely comply with the requirements of this Section regardless of whether it has
20 requested or received such reimbursement or compensation.

c. The City shall coordinate the schedule for relocation of utility facilities and based on such effort, shall provide written notice of the time by which the licensee must remove, relocate, change, alter, or underground its facilities. If a licensee fails to remove, relocate, change, alter or underground any utility facility as requested by the City by the date established by the City, the licensee shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable law and regulations, the facilities to be remove, relocated, altered, or undergrounded, at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee shall reimburse the City for all costs incurred within thirty (30) days.

d. The City shall cooperate with the licensee in securing alternate locations. However, the City shall bear no responsibility to obtain, compensate, or otherwise assist the licensee in relocation of the facilities to a location not in control of the City.

D. Removal of Unauthorized Facilities.

a. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing, a licensee and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a public right-of-way shall, at its

own expense, remove the facility and restore the public right-of-way to City standards in effect at the time the work is performed.

b. A utility system or facility is unauthorized under any of the following circumstances:

1. The utility facility is outside the scope of authority granted by the City. This includes facilities that were never authorized and facilities that were once authorized but for which the authorization has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

2. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility shall be presumed abandoned if it is not used for a period of one (1) year. A licensee may attempt to overcome this presumption by presenting plans for future use of the facility to the City, which will determine application of the presumption in its sole discretion.

1 3. The utility facility is improperly constructed or installed or is
2 in a location not permitted, licensed, franchised, or otherwise
3 authorized by the City.

4 4. The licensee is in violation of a material provision of this
5 Ordinance and fails to cure such violation within thirty (30) days of
6 the City sending written notice of such violation, unless the City, in
7 its sole discretion, extends such time period in writing.

8 E. Removal by City.

9 a. The City retains the right and privilege to cut or move any facility
10 located within the public rights-of-way of the City, without notice, as the City
11 may determine, in its sole discretion, to be necessary, appropriate, or useful in
12 response to a public health or safety emergency. The City shall use qualified
13 personnel or contractors consistent with applicable state and federal safety laws
14 and regulations to the extent reasonably practicable without impeding the City's
15 response to the emergency.

16 b. If the licensee fails to remove any facility when required to do so
17 under this Ordinance, the City may remove the facility using qualified personnel
18 or contractors consistent with applicable state and federal safety laws and
19 regulations, and the licensee shall be responsible for paying any and all costs
20 incurred by the City, including any administrative or collection costs. Upon

receipt of an invoice from the City, the licensee shall reimburse the City for all the costs within thirty (30) days. The obligation to remove shall survive the termination of any authorizations granted by the City.

c. The City is not liable to any person(s) for any damage to utility facilities, or for any consequential losses resulting directly or indirectly from any damage caused by the City's actions, or its contractor, in removing, relocating, altering, or undergrounding the facilities, unless such damage arises directly from the City's sole active negligence or willful misconduct.

F. Engineering Designs and Plans. The licensee shall provide the City with as-built plans or system maps of their facilities, upon request, for the purpose of design of other City infrastructure or to confirm existing conditions.

G. Maps. Licensee shall provide, at no cost to the City, a comprehensive map showing the location of all facilities in the rights-of-way. Such map shall be provided at no cost to the City and in a format acceptable to the City, with accompanying data sufficient to enable for the City to determine the exact location of facilities. The licensee shall provide such map yearly by February 1, if any changes occurred during the prior year, and at any time upon request by the City. The City may only request such map once per calendar year.

Section 12. LEASED CAPACITY. A licensee may lease or otherwise provide capacity on or in its facilities to others ("lessees"); provided, that (1) the licensee

1 provides the City with the name and business address of any lessee, within 60 (sixty)
 2 days of the effective date of the lease or other agreement to provide capacity; (2) the use
 3 of the licensee facilities does not require or involve any additional equipment owned or
 4 operated by the lessee to be installed on the facility unless the lessee has obtained a
 5 ROW license or franchise from the City; and (3) the licensee maintains control over and
 6 responsibility for the facility at all times.

7 Section 13. MAINTENANCE.

8 A. Every licensee shall install and maintain all facilities in a manner that
 9 complies with applicable federal, state, and local laws, rules, regulations, and policies.
 10 The licensee shall, at its own expense, repair and maintain facilities from time to time as
 11 may be necessary to accomplish this purpose.

12 B. If, after written notice from the City of the need for repair or maintenance,
 13 the licensee fails to repair or maintain facilities as requested by the City and by the date
 14 established by the City, the City may perform such repair or maintenance using qualified
 15 personnel or contractors at the licensee's sole expense. Upon receipt of an invoice from
 16 the City, the licensee shall reimburse the City for any and all costs within thirty (30)
 17 days.

18 Section 14. VACATION OF PUBLIC RIGHTS-OF-WAY.

19 A. If the City vacates any public rights-of-way, or portion thereof, that a
 20 licensee uses, the licensee shall, within thirty (30) days following written notice from the

City or such other time directed or agreed to in writing by the City, and at licensee's own expense, remove its facilities from the public rights-of-way unless: (a) the City reserves a public utility easement, which the City shall make a reasonable effort to do; provided, that it is practicable to do so and there is no expense to the City; or (b) the licensee obtains an easement for its facilities.

B. If the licensee fails to remove its facilities within thirty (30) days after a public right-of-way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified workers in accordance with state and federal laws and regulations at the licensee's sole expense. Upon receipt of an invoice from the City, the licensee shall reimburse the City for any and all costs within thirty (30) days.

Section 15. RIGHTS-OF-WAY USE AND ACCESS FEES.

A. Every person that owns utility facilities in the City shall pay the rights-of-way use fee in the amount determined by Resolution of the City Council.

B. Every person that provides utility service in the City shall pay the rights-of-way access fee in the amount determined by Resolution of the City Council for every utility service provided in the City.

C. A person subject to the both the rights-of-way use fee in subsection A and the rights-of-way access fee in subsection B of this Section shall deduct from the total amount due the lower of the fees due under subsection A and subsection B or, in the

1 event the fees due under subsection A and subsection B are the same, deduct from the
 2 total amount due the full amount of one of the fees.

3 D. Fees required by this Section shall be reduced by any franchise fees, but in
 4 no case shall be less than zero dollars (\$0).

5 E. No acceptance of any payment shall be construed as accord that the
 6 amount paid is in fact the correct amount, nor shall such acceptance of payment be
 7 construed as a release of any claim the City may have for further or additional sums
 8 payable.

9 F. Unless otherwise agreed to in writing by the City, the fees set forth under
 10 this Section shall be paid quarterly, in arrears, within forty-five (45) days after the end of
 11 each calendar quarter. Each payment shall be accompanied by an accounting of gross
 12 revenues, if applicable, and a calculation of the amount payable (a remittance form shall
 13 be provided by the City). The City may request and shall be provided, at no cost to the
 14 City, any additional reports or information it deems necessary, in its sole discretion, to
 15 ensure compliance with this Section. Such information may include, but is not limited
 16 to: chart of accounts, total revenues by categories and dates, list of products and
 17 services, narrative documenting calculation, details on number of customers within the
 18 City limits, or any other information needed for the City to easily verify compliance.

1 G. The calculation of the fees required by this Section shall be subject to all
2 applicable limitations imposed by federal or state law in effect and as may be
3 subsequently amended.

4 H. The City reserves the right to enact other fees and taxes applicable to
5 person(s) subject to this Ordinance. Unless expressly permitted by the City in enacting
6 such fee or tax, or required by applicable state or federal law, no person may deduct,
7 offset, or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or
8 taxes based on the payment of the fees required under this Ordinance.

9 Section 16. PENALTIES AND INTEREST ON FEES. Penalties and interest
10 imposed by this Section are in addition to any penalties that may be assessed under other
11 ordinances or regulations of the City.

12 A. Any person who has not submitted the required remittance forms or
13 remitted the correct fees when due as provided under this Ordinance shall pay a penalty
14 listed below in addition to the amount due:

15 a. First occurrence during any one calendar year; ten percent (10%) of
16 the amount owed, or twenty-five dollars (\$25.00), whichever is greater.

17 b. Second occurrence during any one calendar year; fifteen percent
18 (15%) of the amount owed, or fifty dollars (\$50.00), whichever is greater.

19 c. Third occurrence during any one calendar year; twenty percent
20 (20%) of the amount owed, or seventy-five dollars (\$75.00), whichever is greater.

1 d. Fourth occurrence during any one calendar year; twenty-five
2 percent (25%) of the amount owed, or one hundred dollars (\$100.00), whichever
3 is greater.

4 B. If the City determines that the nonpayment of any fees due as required by
5 this Ordinance is due to fraud or intent to evade the provisions hereof, an additional
6 penalty of twenty-five percent (25%) of the amount owed, or five hundred dollars
7 (\$500.00), whichever is greater, shall be added thereto in addition to other penalties
8 stated in the Ordinance or as allowed by law.

9 C. In addition to the penalties imposed, any person who fails to remit any fees
10 when due shall pay interest at the rate of one and one-half percent (1.5%) per month or
11 fractions thereof, without proration for portions of a month, on the total amount due
12 (including penalties), from the date on which the remittance first became delinquent,
13 until received by the City. The City reserves the right to impose interest at the
14 maximum amount allowed by law.

15 D. Every penalty imposed, and such interest as accrues under the provision of
16 this Section, shall be merged with, and become part of, the fees required to be paid.

17 E. The City or its designee, in their sole discretion, shall have the authority to
18 reduce or waive the penalties and interest due under this Section.

1 Section 17. AUDITS (FORMAL OR INFORMAL) AND RECORDS
2 REQUESTS.

3 A. The City may audit and/or request information from any person at any
4 time to verify compliance with this Ordinance. The City shall make a written request for
5 information and the person shall comply with the request within thirty (30) days of
6 receipt of the City's written request, or such other time as agreed to in writing. All
7 information shall be provided to the City, at no cost to the City.

8 B. Every person shall furnish the City with information sufficient to
9 demonstrate that the person is in compliance with all the requirements of this Ordinance,
10 all other City regulations, and its franchise agreement, if any, including but not limited
11 to payment of any applicable fees.

12 C. Every licensee shall make available for inspection by the City at reasonable
13 times and intervals, upon request by the City, any maps, records, books, diagrams, plans,
14 and other documents maintained by the licensee with respect to its facilities within the
15 public rights-of-way. Access shall be provided within the City unless prior arrangement
16 for access elsewhere has been made with the City.

17 D. If the City's audit, or review of the books, records, and other documents or
18 information of the person demonstrates that the person has underpaid any fees required
19 by this Ordinance by two percent (2%) or more in any one year, the person shall
20 reimburse the City for all costs incurred by the City in conducting the audit or review, in

1 addition to any interest owed or other fees imposed by this Ordinance or as specified in a
 2 franchise agreement.

3 E. Any underpayment, including any and all costs incurred by the City in
 4 conducting the audit or review, shall be paid within thirty (30) days of the City's notice
 5 to the person of such underpayment.

6 Section 18. INSURANCE AND INDEMNIFICATION.

7 A. Insurance.

8 a. All Utility Service Operators shall maintain in full force and effect
 9 the following liability insurance policies that protect the licensee and the City, as
 10 well as the City's officers, agents, and employees, with limits not less than the
 11 amounts set by the City Manager:

12 1. Comprehensive general liability insurance.

13 2. Motor vehicle liability insurance for owned, non-owned and
 14 hired vehicles.

15 3. Worker's compensation insurance.

16 b. The limits of the insurance shall be set by the City Manager but
 17 shall not be less than the maximum limits of liability imposed on municipalities
 18 of the state of Oregon. The insurance shall be without prejudice to coverage
 19 otherwise existing and shall name as additional insureds the City and its officers,
 20 agents, and employees. The coverage must apply as to claims between insureds

1 on the policy. The licensee shall provide the City thirty (30) days prior written
2 notice of any cancellation or material alteration of said insurance. If the insurance
3 is canceled or materially altered, the licensee shall maintain continuous
4 uninterrupted coverage in the terms and amounts required.

5 c. The licensee shall at all times maintain on file with the City a
6 current certificate of insurance and additional insured endorsement, or proof of
7 self-insurance acceptable to the City, certifying the coverage required above.

8 d. Self-Insurance. At the request of a licensee, the City shall
9 determine, in its sole discretion, whether a licensee may self-insure. A licensee
10 whose request has been granted shall provide the City proof of insurance through
11 a letter of self-insurance or insurance certificate, listing the City as an additional
12 insured.

13 e. Performance Bond

14 1. In addition to any other generally applicable bond or
15 security fund obligations required by local ordinance, upon the
16 Effective Date of this Ordinance, or the issuance of a new license
17 or renewal of a license, the licensee shall furnish proof of the
18 posting of a faithful performance bond running to the City
19 collectively with good and sufficient surety approved by the City,
20 in the penal sum of One Hundred Fifty Thousand Dollars

(\$150,000.00), conditioned that Grantee shall well and truly observe, fulfill, and perform all provisions of this Ordinance. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the license for the time period it owns facilities within the City's rights-of-way.

2. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City. The bond shall be subject to the approval of the City as to its adequacy under the requirements of this Section. During the term of the bond, licensee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the City.

B. Indemnification.

a. To the fullest extent permitted by law, each licensee shall defend, indemnify, and hold harmless the City and its officers, employees, agents and representatives from and against any and all liability, causes of action, claims, damages, losses, judgments, and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a

1 trial or appeal ever takes place), that may be asserted by any person or entity in
2 any way arising out of, resulting from, during, or in connection with, or alleged to
3 arise out of or result from the negligence, careless or wrongful acts, omissions,
4 failure to act, or other misconduct of the licensee or its affiliates, officers,
5 employees, agents, contractors, subcontractors, or lessees in the construction,
6 operation, maintenance, repair, or removal of its facilities, and in providing or
7 offering utility services over the facilities, whether such acts or omissions are
8 authorized, allowed, or prohibited by this Ordinance or by a franchise agreement.
9 The acceptance of a license under this Ordinance shall constitute such an
10 agreement by the applicant whether the same is expressed or not.

11 b. Every licensee shall also indemnify the City for any damages,
12 claims, additional costs, or expenses assessed against or payable by the City
13 arising out of or resulting, directly or indirectly, from the licensee's failure to
14 remove or relocate any of its facilities in the public rights-of-way or in a timely
15 manner as required by this Ordinance, except to the extent the licensee's failure
16 arises directly from the City's negligence or willful misconduct.

17 ///

18 ///

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20 ///

1 Section 19. COMPLIANCE. Every person subject to this Ordinance shall
 2 comply with all applicable federal and state laws and regulations, including regulations
 3 of any administrative agency thereof, as well as all applicable ordinances, resolutions,
 4 rules, and regulations of the City, heretofore or hereafter adopted or established during
 5 the term of any license or registration granted under this Ordinance.

6 Section 20. CONFIDENTIAL/PROPRIETARY INFORMATION. If any
 7 person is required by this Ordinance to provide books, records, maps, or information to
 8 the City that the person reasonably believes to be confidential or proprietary, and such
 9 books, records, maps or information are clearly marked as confidential at the time of
 10 disclosure to the City (“confidential information”), the City shall take reasonable steps to
 11 protect the confidential information to the extent permitted by Oregon Public Records
 12 Laws. In the event the City receives a public records request to inspect any confidential
 13 information and the City determines that it shall be necessary to reveal the confidential
 14 information, to the extent reasonably possible the City shall notify the person that
 15 submitted the confidential information of the records request prior to releasing the
 16 confidential information. The City shall not be required to incur any costs to protect any
 17 confidential information, other than the City’s routine internal procedures for complying
 18 with the Oregon Public Records Law.

19 Section 21. CITY PERMISSION REQUIRED. No person may occupy or
 20 encroach on a public right-of-way without the express written permission of the City.

1 Section 22. VIOLATIONS AND PENALTIES.

2 A. In addition to any other remedy provided in this Ordinance, a violation of
3 any provision of this Ordinance or any other City regulations, codes, ordinances, or
4 standards, is a civil violation and shall be enforced under the provisions of this
5 Ordinance. Each day that the violation exists or continues shall constitute a separate
6 violation. Each civil violation shall be punishable by a fine of not less than one hundred
7 dollars (\$100.00) and not more than one thousand dollars (\$1,000).

8 B. Before issuing the first citation for a violation, the City shall mail written
9 notice of the violation(s) via United States Postal Service (USPS) to the address as listed
10 on the person's application, providing a reasonable time (no less than twenty (20) and no
11 more than forty (40) days from the date of the notice) for the person to remedy the
12 violation to the City's satisfaction. The notice may also be delivered by other means in
13 addition to USPS.

14 C. The rights, remedies, and penalties provided in this Ordinance are
15 cumulative, are not mutually exclusive, and are in addition to any other rights, remedies,
16 and penalties available to the City under any other provision of law, including without
17 limitation any judicial or other remedy at law or in equity for enforcement of this
18 Ordinance.

1 Section 23. SEVERABILITY AND PREEMPTION.

2 A. The provisions of this Ordinance shall be interpreted to be consistent with
3 applicable federal and state law, and shall be interpreted, to the extent possible, to cover
4 only matters not preempted by federal or state law.

5 B. If any article, section, subsection, sentence, clause, phrase, term, provision,
6 condition, covenant, or portion of this Ordinance is for any reason declared or held to be
7 invalid or unenforceable by any court of competent jurisdiction or superseded by state or
8 federal legislation, rules, regulations, or decision, the remainder of this Ordinance shall
9 not be affected thereby but shall be deemed as a separate, distinct, and independent
10 provision, and such holding shall not affect the validity of the remaining portions hereof,
11 and each remaining section, subsection, sentence, clause, phrase, term, provision,
12 condition, covenant, or portion of this Ordinance shall be valid and enforceable to the
13 fullest extent permitted by law. In the event any provision is preempted by federal or
14 state laws, rules, or regulations, the provision shall be preempted only to the extent
15 required by law and any portion not preempted shall survive. If any federal or state law
16 resulting in preemption is later repealed, rescinded, amended, or otherwise changed to
17 end the preemption, such provision shall thereupon return to full force and effect and
18 shall thereafter be binding without further action by the City.

19 Section 24. APPLICATION TO EXISTING AGREEMENTS. To the extent
20 that this Ordinance is not in conflict with and can be implemented consistent with

1 existing franchise agreements, this Ordinance shall apply to all existing franchise
 2 agreements granted by the City.

3 Section 25. EFFECTIVE DATE. This Ordinance shall take effect on July 1,
 4 2023.

5 PASSED this _____ day of _____, 2023.

6
 7 SIGNED this _____ day of _____, 2023.

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 Mayor

 City Recorder

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023-_____

ESTABLISHING FEES FOR ORDINANCE NO. 2023-_____
(ADOPTING RIGHT-OF-WAY UTILITY REGULATIONS)

WHEREAS, the City has constitutional and charter authority to manage its rights-of-way and establish fees;

WHEREAS, on _____, 2023, the Keizer City Council adopted Ordinance No. 2023-_____ which regulates utility services utilizing the public right-of-way;

WHEREAS, Ordinance No. 2023-_____ provides that the City Council shall by Resolution establish applicable fees;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Keizer that:

Section 1. The right-of-way license application fee shall be Three Hundred Dollars (\$300.00) and shall include an initial five-year license (if approved).

Section 2. The right-of-way license renewal fee shall be Two Hundred and Fifty Dollars (\$250.00) for a five-year license (if approved).

Section 3. The registration fee shall be Three Hundred Dollars (\$300.00) and shall include an initial five-year term.

1 Section 4. The registration renewal fee shall be Two Hundred and Fifty
2 Dollars (\$250.00) for a five-year term.

3 Section 5. The fee for franchise negotiations shall be Five Thousand Dollars
4 (\$5,000.00).

5 Section 6. The fees established by Ordinance No. 2023-____ shall be as
6 follows, and effective as of July 1, 2023, to the extent permitted by applicable law and
7 subject to any applicable limitations imposed by applicable law:

Utility Service *	Annual Rights-of-Way Use Fee	Annual Rights-of-Way Access Fee
Electric Utility Service/Facility	5% of gross revenue, or a minimum of \$5,000.00*, whichever is greater	5% of gross revenue
Natural Gas Utility Service/Facility	5% of gross revenue, or a minimum of \$5,000.00*, whichever is greater	5% of gross revenue
Communication Utility Service/ Facility	Non-Wireless: 7% of gross revenue, or a minimum of \$5,000.00*, whichever is greater. Wireless (non-Small Wireless): Five Thousand Dollars (\$5,000.00) per attachment Small Wireless Facility: Two Hundred and Seventy Dollars (\$270.00) per attachment	7% of gross revenue
Utility Service Operator that owns facilities but does not provide services within the City or earn gross revenue within the City.	Based on total linear footage of facilities in the Right-of-Way; \$3.50* per linear foot, or a minimum of \$5,000.00*, whichever is greater.	

8 *Minimum fees and linear feet fees, shall increase three percent (3%) annually on January 1st of
9 each year, beginning on January 1, 2025.

10

11

1 Section 7. Gross Revenue.

2 A. Gross revenues shall include, by way of illustration and not
3 limitation: Fees for installation, disconnection, reconnection, maintenance and
4 services calls, repair, charges for equipment sales, rental, or lease, late fees, non-
5 sufficient funds (NSF) charges, and administrative fees.

6 B. Gross revenues shall not include: Charges imposed by a utility
7 service provider selling electrical energy or gas for public purpose charges
8 (energy efficiency programs, market transformation programs, low-income
9 energy efficiency programs and carbon offset programs); residential exchange
10 program (Bonneville Power Administration credits); revenues associated with
11 Universal Service funding requirements under 47 U.S.C. § 254 and ORS
12 759.425; revenues associated with taxes for emergency communications under
13 ORS Chapter 403; telecommunication revenues, tariffed or non-tariffed charges
14 or service applicable to any connection, circuit or equipment which brings an E9-
15 1-1 call to the appropriate responding Public Safety Answering Point, regardless
16 of where the E9-1-1 call is originated; and sales of bonds, mortgages, or other
17 evidence of indebtedness, securities, or stocks.

18 Section 8. Terms used in this Resolution shall have the meaning defined in
19 Ordinance No. 2023-_____.

20 Section 9. The annual attachment shall be paid quarterly in arrears.

1 Section 10. The attachment fee shall be assessed as follows:

2 Installation before the 15th of the month will be assessed the full month.

3 Installations after the 15th of the month will be assessed beginning the next
4 month.

5 Section 11. The removal of an attachment will be assessed as follows:

6 If removed and the area is restored per Ordinance No. 2023-____, before
7 the 15th of the month, there will be no charge for that month. If removed and the
8 area is restored per Ordinance No. 2023-____ after the 15th of the month, the full
9 month will be assessed.

10 Section 12. This Resolution shall take effect on July 1, 2023.

11 PASSED this _____ day of _____, 2023.

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13 SIGNED this _____ day of _____, 2023.

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Mayor

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City Recorder



CITY COUNCIL MEETING: MARCH 20, 2023

To: Mayor Clark and City Council Members

FROM: Adam Brown, City Manager

SUBJECT: **SERVICE LINE WARRANTY PROGRAM**

PROPOSED MOTION:

Authorize the City Manager to enter into a non-royalty marketing agreement with Utility Service Partners, Inc. (USP) for an initial term of three (3) years, subject to City Attorney review with an additional (1) year renewal.

I. SUMMARY:

USP presented to the City Council on January 17, 2023 about the National League of Cities Service Line Warranty Program. Council asked staff to bring back a proposal for consideration.

II. BACKGROUND:

- A. The National League of Cities (NLC) Service Line Warranty Program, offered by Utility Service Partners, a HomeServe Company, was conceived in partnership with the National League of Cities to educate property owners about their service line responsibilities and to help residents avoid the out-of-pocket expense for unanticipated and potentially costly service line repairs and replacements. This program, is the only one of its kind endorsed by the NLC, and will help in:
1. Providing homeowners affordable protection against significant and unexpected costs to remedy leaking/broken/ clogged water lines, sewer lines, and in-home plumbing lines
 2. Ensuring the delivery of timely, high-quality repair services in adherence to all applicable codes
 3. Providing exemplary service that reflects positively on the City
 4. The program generates an ongoing, sustainable source of revenue for partner municipalities and stimulates the local economy by using fully

vettled local contractors to complete the repairs.

5. The City will receive a royalty of 10% per product per month for the duration of the program. (or a reduction in price for homeowners should the City opt out of the royalty)

III. CURRENT SITUATION:

- A. NLC Service Line Warranty Program offers three complete and separate voluntary programs. There is never a service fee/deductible, or annual or lifetime limit. Residents can enroll in or cancel the service at any time.
 1. Exterior Water Service Line - Includes service to locate, excavate and repair/replace a leaking exterior water service line. Covered repairs include, but are not limited to leaks, breaks, corrosion, blockages, root intrusion, and other types of damage (such as from freezing) that impair or limit the intended function of the system. Includes thawing of frozen water lines. Includes restoration of ground surface features after excavation for service line repair, including filling, raking, reseeding, reinstallation of existing soft landscaping and shrubbery, and patching of paved surfaces. If concrete cutting is necessary to repair Your Exterior Water Line, the resulting trench will be filled with gravel and covered with asphalt, cement, or concrete, as appropriate. Debris will be removed from the restoration area.
 2. Exterior Sewer Service Line - Includes services to locate, excavate and repair/replace a leaking exterior sewer service line. Covered repairs include, but are not limited to leaks, breaks, corrosion, blockages (due to fats, oils and grease), root intrusion, and other types of damage (such as from freezing) that impair or limit the intended function of the system. Includes restoration of ground surface features after excavation for service line repair, including filling, raking, reseeding, reinstallation of existing soft landscaping and shrubbery, and patching of paved surfaces. If concrete cutting is necessary to repair Your Exterior Sewer Line, the resulting trench will be filled with gravel and covered with asphalt, cement, or concrete, as appropriate. Debris will be removed from the restoration area.
 3. Internal Plumbing and Drainage - Coverage includes the emergency breakdown costs of repairing or replacing interior water, sewer, and drainage pipe materials, valves and other plumbing-related material, including unblocking, repair and replacement. Repair of clogged toilets.
- B. The monthly fees are as follows:

Service Line Warranty Program

March 20, 2023

Product	Monthly	Annual Coverage Limit	Annual Service Calls/Per Call Coverage
External Water Line	\$5.25	Unlimited	Unlimited Calls \$8,500 Per Call
External Sewer Line	\$7.25	Unlimited	Unlimited Calls \$8,500 Per Call
In-Home Plumbing	\$9.49	Unlimited	Unlimited Calls \$3,000 Per Call

- C. **IMPLEMENTATION** – The NLC Service Line Program will utilize the City logo to brand the materials used to educate City residents/customers about their repair service plans. Program marketing literature clearly discloses that the Program and the City are separate entities and that the program is voluntary for residents. The NLC Service Line Warranty Program will create all marketing materials with input from the City and will submit all marketing/communications materials to the City for final approval before distribution.
- D. **Enrollment and billing** – The NLC Service Line Program offers residents simple options if they choose to enroll either via mail, phone, or web. They handle all customer billing and residents can choose annual, quarterly, or monthly billing and may pay by check, direct debit/ACH, or credit card. Once they receive the enrollment application, customers receive a welcome letter which includes their service agreement terms and conditions, their payment details, a reiteration of their policy coverage, and their toll-free customer service number. Customers also receive a welcome call from customer service as an additional, personalized confirmation of the program. They handle all customer billing, and a homeowner can enroll or cancel at any time.

IV. **ANALYSIS:**

- A. **Strategic Impact** – No Strategic Impact.
- B. **Financial** – There is an option to add a 10% royalty, which would add \$.50 to the cost of each service warranty. Staff does not recommend adding the royalty. So, there would be no financial impact to the city.
- C. **Timing** – If the council approves participation in the National League of Cities Service Line Warranty Program they will work with Utility Service Partners towards an implementation date. Since USP already operates in this area, it will likely be quickly after execution of the agreement and marketing materials are put together for community members.
- D. **Policy/legal** –The City Council approval is required for homeowners to get the discounted rates through the National League of Cities program.

ALTERNATIVES:

- A. Authorize the City Manager to enter into a non-royalty marketing agreement with Utility Service Partners, Inc. (USP) for an initial term of three (3) years, subject to City Attorney review with an additional (1) year renewal.
- B. Take No Action – There are comparable private warranty programs including by USP. The agreement with the National League of Cities, however, allows homeowners to get a better discounted rate.

RECOMMENDATION:

Staff recommends that the City Council Authorize the City Manager to enter into a non-royalty marketing agreement with Utility Service Partners, Inc. (USP) for an initial term of three (3) years, subject to City Attorney review with an additional (1) year renewal.



MINUTES
KEIZER CITY COUNCIL
Tuesday, February 21, 2023
Keizer Civic Center, Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Clark called the meeting to order at 7:00 pm. Roll call was taken as follows:

Present:

Cathy Clark, Mayor
Laura Reid, Councilor
Shaney Starr, Councilor
Kyle Juran, Councilor
Soraida Cross, Councilor
Daniel Kohler, Councilor
Youth Councilor Angelica
Sarmiento Avendano

Staff:

Adam Brown, City Manager
Tim Wood, Assistant City Manager
Shannon Johnson, City Attorney
Shane Witham, Planning Director
Bill Lawyer, Public Works Director
John Teague, Police Chief
Machell DePina, Human Resources
Tracy Davis, City Recorder

Absent:

Robert Husseman, Councilor

FLAG SALUTE

Mayor Clark led the pledge of allegiance.

SPECIAL ORDERS OF BUSINESS - None

**COMMITTEE
REPORTS**

Matt Lawyer, Keizer, reported that he and Jeremy Grenz had been elected as Chair and Vice Chair respectively at the last Planning Commission meeting. He then reviewed past accomplishments of the Commission and anticipated projects. Planning Director Shane Witham provided additional information regarding Accessory Dwelling Units.

Mr. Lawyer then encouraged volunteers to assist at the City Hall annual cleanup on March 11 sponsored by Keizer Rotary and Claggett Creek Watershed Council.

Lisa Cejka, Keizer, reported that the Parks Board had discussed the ongoing graffiti and vandalism problems, noted that \$9400 is available for park grants and encouraged anyone wishing to participate to submit an application for Board approval. Bill Lawyer, Public Works Director, added that Robert Johnson is reaching out to people for projects and volunteers. Bike racks made by CTECH for Keizer Rapids Park are being considered. He is waiting to hear back from them.

PUBLIC COMMENTS - None

PUBLIC**HEARINGS****a. Utility Service Utilizing the Public Rights of Way and Communications License Law**

Mayor Clark opened the Public Hearing.

City Attorney Shannon Johnson summarized his staff report and recommended continuing this matter to the March 20 Council meeting.

With no further testimony, Mayor Clark closed the Public Hearing.

Councilor Starr moved that the hearing on Utilizing the Public Rights-of-Way and Communications License Law be continued to March 20, 2023. Councilor Reid seconded. Motion passed as follows:

AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: Husseman (1)

ADMINISTRATIVE ACTION**a. West Keizer Neighborhood Association Annual Report**

Taken out of order.

Rhonda Rich, President of the West Keizer Neighborhood Association, summarized the report submitted and published in the packet. She directed attention to the City website and that of the West Keizer Neighborhood Association for additional information and thanked all presenters who had attended the meetings.

Councilor Starr moved that the Keizer City Council accept the Annual Report from West Keizer Neighborhood Association and extend recognition through 2023. Councilor Reid seconded. Motion passed as follows:

AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: Husseman (1)

City Recorder Tracy Davis summarized her staff report. Mayor Clark noted that the registration is to pay for the lunch; attendance is free.

b. Community Center Fee Waiver – Keizer Chamber of Commerce Luncheon/State of the City Address

Councilor Starr moved that the Keizer City Council approve the requested waiver of the Community Center rental fees including the security deposit and charge \$120 for staffing fees for the March 14, 2023 Chamber of Commerce Luncheon/State of the City Address. Councilor Reid seconded. Motion passed as follows:

AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: Husseman (1)

c. RESOLUTION – Authorizing the City Manager to Enter Into A

Finance Director Tim Wood summarized his staff report.

Mayor Clark indicated that she was not comfortable approving the proposal and contract without seeing them.

Personal Services Agreement with Buffalo Cloud Consulting LLC for Consulting Services

Councilor Reid noted that the consultants had attended the last Community Diversity Engagement Committee meeting and that she was impressed by what they had to offer.

Councilor Cross voiced support for the CDE Committee but indicated that she was not comfortable with spending \$24,050 for a business outside the Salem-Keizer area and having someone from another city giving direction on how to deal with issues in Keizer.

Councilor Starr moved that the Keizer City Council table the Resolution Authorizing the City Manager to Enter Into A Personal Services Agreement with Buffalo Cloud Consulting LLC for Consulting Services until the next City Council meeting on March 6. Councilor Reid seconded.

Mr. Johnson explained that the appropriate language would be to 'continue to a date certain' rather than tabling to a specific meeting. Councilors Starr and Reid accepted this change in the motion.

Motion passed as follows:

AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: Husseman (1)

CONSENT CALENDAR

- a. RESOLUTION – Authorizing the City Manager to Sign Engineering Services Contract with AKS Engineering & Forestry, LLC
- b. RESOLUTION – Authorizing the City Manager to Enter Into Agenda and Meeting Management Software Agreement with CivicPlus
- c. Approval of February 6, 2023 Regular Session Minutes

Councilor Starr moved for approval of the Consent Calendar. Councilor Reid seconded. Motion passed as follows:

AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: Husseman (1)

OTHER BUSINESS

Human Resources Director Machell DePina explained that the due to a recent court decision, rounding of time on time sheets is no longer allowed. Because there are references to rounding in the Police collective bargaining agreement a Memorandum of Understanding is needed for clarification. She noted that the issue is complicated but an agreement has been reached with the union. This will be a stopgap to limit the City liability while bargaining.

Councilor Starr moved to suspend the rules to consider this Resolution. Councilor Reid seconded. Motion passed as follows:

AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: Husseman (1)

Councilor Starr moved that the Keizer City Council adopt a Resolution Authorizing the City Manager and Chief of Police to Sign Memorandum of Understanding No. 7 Relating to 2021-23 Collective Bargaining Agreement. Councilor Reid seconded. Motion passed as follows:

AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: Husseman (1)

STAFF UPDATES

City Manager Adam Brown provided information regarding the camera system being considered for placement in area parks noting that research has been done and the next step will be to see if there are cooperative purchasing agreements available or if it is necessary to go out for bids. In order to prevent vandalism of the cameras, the wiring will be installed so that it cannot be cut.

COUNCIL MEMBER REPORTS

Councilor Cross reported on events she had attended including the Southeast Keizer Community Dinner and noted that she felt she had built relationships while there.

Councilor Juran reported that everything he had attended had been reported on already. He added that it was great to see people helping others.

Councilor Starr reported on meetings and events she had attended and provided details about the Latino Business Alliance.

Councilor Kohler noted that April 22 is Earth Day and will be celebrated in conjunction with Soggy Day in the Park, reported on meetings and events he had attended, shared information about what The Rec does and their plans for a music festival in August, and reminded everyone of the Community Dinner and City Hall Cleanup event.

Councilor Reid reported on neighborhood association meetings and other events and meetings she had attended, thanked Mayor Clark for her strong representation of Keizer, reviewed plans for the 40th birthday celebration, and announced that windows on the lower level of the Keizer Heritage building have been replaced and the master plan for the Heritage Foundation is being finalized.

Youth Councilor Angelica Avendano announced upcoming concerts, basketball game and blood drive at McNary.

Mayor Clark reported on meetings and events she had attended, announced upcoming ones and urged everyone to participate in the DLCD Walkable Communities virtual Open House on Tuesday, February 28.

Councilor Kohler noted that on this day in history 1885 the Washington Monument was dedicated. Chief Teague added that at that time aluminum was a precious metal and the man who place the monument was from Oregon.

AGENDA INPUT

February 27, 2023, 6:00 p.m. – City Council Work Session

- Strategic Planning Session

March 6, 2023, 7:00 p.m. – City Council Regular Session

March 13, 2023 – 6:00 p.m. - Long Range Planning Task Force Meeting

March 20, 2023 – 7:00 p.m. - City Council Regular Session

ADJOURNMENT

Mayor Clark adjourned the meeting at 8:29 p.m.

MAYOR:

APPROVED:

Cathy Clark

Debbie Lockhart, Deputy City Recorder
COUNCIL MEMBERS

Councilor #1 – Laura Reid

Councilor #4 – Soraida Cross

~ Absent ~

Councilor #2 – Shaney Starr

Councilor #5 – Robert Husseman

Councilor #3 – Kyle Juran

Councilor #6 – Daniel R. Kohler

Minutes approved: _____



MINUTES
KEIZER CITY COUNCIL
WORK SESSION
Monday, February 27, 2023
Keizer, Oregon

**CALL TO
ORDER**

Mayor Clark called the work session to order at 4:00 p.m. Attendance was taken as follows:

Present:

Cathy Clark, Mayor
Laura Reid, Councilor
Shaney Starr, Councilor
Kyle Juran, Councilor
Soraida Cross, Councilor
Robert Husseman, Councilor
Dan Kohler, Councilor (4:12)

Staff Present:

Adam Brown, City Manager
Tim Wood, Assistant City Manager
Shane Witham, Planning Director
Shannon Johnson, City Attorney
Bill Lawyer, Public Works Director
John Teague, Police Chief
Tracy Davis, City Recorder

Also Present: Representatives from Keizer and Marion County Fire Districts and Sarah Wilson, Ashley Sonoff and Sasha Connell with SSW Consulting

DISCUSSION
**a. Strategic
Planning
Session**

Ms. Wilson introduced herself and staff and provided an overview of what was planned for the Work Session including getting acquainted with the strategic planning process, reviewing the timeline, developing an understanding of Keizer's history as well as current context, and developing a communication and engagement strategy.

As part of the process, each Councilor and Department Head introduced themselves and revealed their 'super power'. The following was discussed:

Ground rules for success:

- Grace to find our thoughts and words to express ideas
- Listen and seek to understand
- Be forward thinking
- Be visionary and keep resources in mind in our planning
- Courage – it is okay to disagree
- No bad ideas – be open minded – think outside the box
- Consider all possible perspectives
- Consider the regional impacts of our vision
- We serve the entire community perspective for everyone
- Have fun
- Be engaged and participate

Project Goals:

- Develop a strategic plan with a clear mission and five year vision to guide the City of Keizer
- Identify the values that will guide the organization in achieving vision and supporting the motion
- Conduct inclusive community engagement to inform the development of the plan and build support for implementation
- Build a cohesive plan

Project Schedule:

- February/March – project scoping and planning
- March/June – engagement phase
- June/August – plan development
- August/September – review and adoption

Roles and Responsibilities

City Council

- Provide input on the communications and engagement plan, mission, vision and values
- Engage in the project updates and provide guidance
- Encourage participation from the community
- Other ideas for supporting the project

Strategic Planning Team – Staff

- Serve as champions
- Be engaged
- Provide oversight of the communication and engagement strategy

During the dinner break, attendees discussed the history of Keizer.

Discussion followed regarding the following:

Economic Climate

- Stagnant revenues – high inflation
- Library ballot measure – no vote
- Constrained tax base

Organization trends and challenges

- Continued funding to support workforce
- Workplace of choice – people come and stay – maximize our team
- High performance implementation training
- Strategic plan – build management systems
- Public Works functions financed by fees – ensure we can maintain if we cannot do for all
- Fiscal cliff
- Retirement tsunami – 80% of budget is personnel – tightening – less staff

Political Factors

- Unfunded mandates
- Urban growth boundaries

Community Needs

- Employment lands – commercial – industrial
- Creates sense of community division – counter to values
- Transition from volunteer base to sustained organization
- Public Library
- Diminished volunteer involvement
- Build on the work we have done on housing and homelessness
- Mental health services
- Police foundation

Technology Factors

- Work from home – changes in how people engage
- On the cusp of implementing new technology
 - HRIS
 - Agenda management
 - Body cameras
 - Park cameras
 - City behind in implementing modern day technology
- Behind on implementing current technology

Uncertainties

- Legislature – on offense and defense
- Economic uncertainties – post ARPA
- Youth – next generation – concerned about wellbeing post pandemic
- Increased tolerance for crime
- Drug addictions continue to contribute to overall decline of community livability
- Measure 110

Following this discussion, a group exercise and review of group discussions took place. Followed by discussion on the themes.

Vision Themes

- Resources
- Land
- Library
- Bring people in
- Public spaces
- Public safety and livability
- Sustainability
- Build community support
- Small town connection

The consultant explained that the next steps would be compilation of all this information to inform the community engagement strategy and development of a timeline.

ADJOURN

Mayor Clark adjourned the work session at 7:59 p.m.

APPROVED:

MAYOR:

Cathy Clark

Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – Laura Reid

Councilor #4 – Soraida Cross

Councilor #2 – Shaney Starr

Councilor #5 – Robert Husseman

Councilor #3 – Kyle Juran

Councilor #6 – Daniel R. Kohler

Minutes approved: _____



MINUTES
KEIZER CITY COUNCIL
Monday, March 6, 2023
Keizer Civic Center, Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Clark called the meeting to order at 7:04 pm. Roll call was taken as follows:

Present:

Cathy Clark, Mayor
Laura Reid, Councilor
Shaney Starr, Councilor
Kyle Juran, Councilor
Soraida Cross, Councilor
Robert Husseman, Councilor
Daniel Kohler, Councilor
Youth Councilor Angelica
Sarmiento Avendano

Staff:

Adam Brown, City Manager
Tim Wood, Assistant City Manager
Shannon Johnson, City Attorney
Shane Witham, Planning Director
Bill Lawyer, Public Works Director
John Teague, Police Chief
Tracy Davis, City Recorder

FLAG SALUTE

Mayor Clark led the pledge of allegiance.

**SPECIAL ORDERS
OF BUSINESS**

**a. PROCLAMATION
– Women's
History Month**

Mayor Clark welcomed women in leadership from the Keizer Fire District, Neighborhood Associations and the Chamber and read the Proclamation declaring March as Women's History Month.

**COMMITTEE
REPORTS**

Michael DeBlasi, Keizer, reported that the Traffic Safety-Bikeways-Pedestrian Committee discussed the update of the Neighborhood Traffic Management Plan, roundabout and Alder/Brooks crosswalk safety, and heard testimony from Mike Jaffe of COG and Janna Berman from ODOT.

Responding to inquiry regarding crosswalks near Kennedy Street, Public Works Director Bill Lawyer explained that there is a crossing guard at Dearborn and Verda so children are encouraged to cross there to go to school.

**PUBLIC
COMMENTS**

Barbara Miner, Keizer Community Library Board President, provided an update on the Community Library noting that they have new Library Cards just for children and there are over 300 active kids cards and 1100 active adult cards in Keizer.

Corri Falardeau, Keizer Chamber Executive Director, announced that business education classes are available through Work Source Oregon and held at the McNary Golf Restaurant. She encouraged all business owners to register for these free classes at the website. She also announced that Keizer had received the Oregon State Shape Shifter Award for the 2022 KeizerFest based on the last-minute move of the festival to Keizer Rapids Park and announced that the Percy fundraiser auction will be held May 25.

PUBLIC HEARING

a. 2023 Keizer

Liquor License

Renewal

Recommendation

Mayor Clark opened the Public Hearing.

City Recorder Tracy Davis summarized her staff report. Establishments renewing their liquor licenses are:

- ♦ 7-Eleven Store #2362-17727G
- ♦ 7-Eleven Store #2362-17762C
- ♦ 7-Eleven Store #41537AA
- ♦ Abby's Pizza
- ♦ AJ's Hideaway Bar and Grill
- ♦ All Stars Sports Grill
- ♦ B&S Market
- ♦ Bai Bua Thai Kitchen
- ♦ Best Western Premier Keizer
- ♦ Bi Mart #624
- ♦ Bubba's Pub and Lotto
- ♦ Café Yum
- ♦ Casa Los Dos Amigos Mexican Restaurant
- ♦ Chemawa Market
- ♦ Chen's Dynasty
- ♦ Cherry Ave Market and Deli
- ♦ Chipotle Mexican Grill
- ♦ Coopers Deli & Pub
- ♦ Cost Plus World Market
- ♦ Eagles Lodge #2081
- ♦ Elks Lodge #2472
- ♦ Good Times 1
- ♦ Growl Movement
- ♦ Gustav's Bargarten Keizer
- ♦ Holiday Inn Express
- ♦ Hops N Drops
- ♦ JC's Pizzeria
- ♦ John's Chinese Restaurant
- ♦ Keizer Food Market
- ♦ Keizer Liquor Store
- ♦ Keizer Mart
- ♦ Keizer Shell Food Mart
- ♦ Keizer Sub Shop
- ♦ Kolby's Restaurant Bar & Billiards
- ♦ La Hacienda Real
- ♦ Los Dos Hermanos
- ♦ Love of the Game
- ♦ Mario's Bar
- ♦ Mariscos La Sirenita
- ♦ McNary Golf Club
- ♦ Mommy and Maddi's
- ♦ Nancy's Burgers and Fries
- ♦ Neighborhood Mini Mart
- ♦ Odd Moe's Pizza
- ♦ Outback Steak House
- ♦ Pats 1 Cigs
- ♦ Pho Keizer
- ♦ Plaza Morelia
- ♦ Ringo's Tavern
- ♦ Rite Aid #5364
- ♦ Round Table Pizza #964
- ♦ Royal Pub
- ♦ Safeway Store #1516
- ♦ Sammies Keizer
- ♦ Shari's of Keizer
- ♦ Smoker Friendly #2
- ♦ Smoker Friendly #3
- ♦ Target Store #2110
- ♦ Teriyaki Town and Sushi
- ♦ Thai Lotus
- ♦ The Pour House Saloon
- ♦ Town and Country Lanes Inc
- ♦ US Market #125
- ♦ VIP Beverage & Event Services
- ♦ Walgreens #04230
- ♦ Waremart by Winco
- ♦ Willow Lake Golf Center

With no further testimony, Mayor Clark closed the Public Hearing.

Councilor Starr moved that the Keizer City Council recommend renewal of the listed liquor licenses and forward that recommendation to the Oregon Liquor Control Commission. Councilor Reid seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Husseman, Cross, Kohler, Starr and Juran (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

ADMINISTRATIVE ACTION

a. RESOLUTION

RESOLUTION – Authorizing The City Manager To Enter Into A Personal Services Agreement With Buffalo Cloud Consulting LLC For Consulting Services

Finance Director Tim Wood summarized his staff report noting that no action was required. Council took no action.

b. RESOLUTION – Adopting Eligible Project To Be Used By City For Funds Received From County Under Intergovernmental Agreement For Community Prosperity Initiative

Mr. Wood summarized his staff report. Mayor Clark added that one of the objectives was to create gathering places for people to use public spaces.

Councilor Starr moved that the Keizer City Council adopt a Resolution Adopting Eligible Project To Be Used By City For Funds Received From County Under Intergovernmental Agreement For Community Prosperity Initiative; Repeal Of Resolution R2022-3281. Councilor Reid seconded. Motion passed as follows:

AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)

NAYS: Husseman (1)

ABSTENTIONS: None (0)

ABSENT: None (0)

CONSENT CALENDAR

- a. RESOLUTION – Authorizing The City Manager To Enter Into Lease Agreement With Pitney Bowes For Keizer Police Department Postage Meter
- b. RESOLUTION – Authoring The City Manager To Award And Enter Into An Agreement With Pacific Excavation, Inc. For Upgrades To ADA Curb Ramps
- c. RESOLUTION - Authorizing City Manager To Enter Into Lubricate And Survey Agreement With Otis Elevator Company
- d. RESOLUTION – Authorizing The City Manager To Purchase 2022 Dodge Durango Vehicle For Police Department Detective

Councilor Starr moved for approval of the Consent Calendar. Councilor Reid seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Husseman, Cross, Kohler, Starr and Juran (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

OTHER BUSINESS Councilor Reid reported that Mr. Wood had informed the Community Diversity Engagement Committee that they would have \$10,000 to begin with for the 40th Birthday celebration. She noted that the committee has agreed that bands would not be paid but passing the hat would be permissible.

STAFF UPDATES Mr. Wood announced that the sewer reset period is officially over. Planning Director Shane Witham shared information regarding the Walkable Mixed-Use Areas presentation at the Community Diversity Engagement Committee meeting. Chief Teague urged everyone to report graffiti via the link on the City's website noting that pictures are welcome.

COUNCIL MEMBER REPORTS Councilor Cross announced that she is attending the Citizens' Police Academy, reported on events she had attended and announced upcoming ones. Councilor Starr noted that she too is attending the Citizens' Police Academy and reported on recent events she had attended. Councilor Kohler thanked Keizer Rotary for their work at the Community Dinner, reported on other events and meetings he had attended and urged volunteers to help with the upcoming Civic Center Cleanup event. Councilor Husseman reported that he had attended a memorial service for Phil Nelson who passed away in September 2022 at the age of 34. He was a star athlete and one of the best basketball players McNary has produced. He also congratulated Whiteaker and Claggett Creek Middle School boys and girls basketball teams noting that this is the first time in 30 years that Salem-Keizer Public Schools has had in-school middle school basketball. Councilor Reid reported that she had attended the Homeless Alliance Executive meeting and announced the opening of the Homegrown Theater presentation of The Odd Couple. Youth Councilor Angelica Sarmiento shared information regarding the McNary Choir Festival, Blood Drive, Album Release Party and Band Concert and announced that McNary had three state champions in wrestling. Mayor Clark thanked Councilor Reid for filling in at the Homeless Alliance meeting, reported on meetings and events she had attended and announced upcoming ones including the State of the County and City addresses.

AGENDA INPUT

March 13, 2023 – 6:00 p.m. - Long Range Planning Task Force Meeting

March 20, 2023 – 7:00 p.m. - City Council Regular Session

March 27, 2023 – 6:00 p.m. - City Council Work Session

- Safety Training

April 3, 2023 – 7:00 p.m. - City Council Regular Session

ADJOURNMENT

Mayor Clark adjourned the meeting at 8:03 p.m.

MAYOR:

APPROVED:

Cathy Clark_____
Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – Laura Reid_____
Councilor #4 – Soraida Cross_____
Councilor #2 – Shaney Starr_____
Councilor #5 – Robert Husseman_____
Councilor #3 – Kyle Juran_____
Councilor #6 – Daniel R. Kohler

Minutes approved: _____