

AGENDA
KEIZER CITY COUNCIL
REGULAR SESSION

Monday January 6, 2020

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 TESTIMONY**

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. **Liquor License Application – Change of Ownership and Trade Name – Tequila Nights (New Trade Name – Area 51 Bar and Grill)**

8. **ADMINISTRATIVE ACTION**

a. **ORDINANCE – Prohibiting Camping on Sidewalks, Public Property and Public Rights-of-Way; Declaring an Emergency**

9. **CONSENT CALENDAR**

a. **RESOLUTION – Authorizing City Manager to Sign ODOT Delivered Project Federal Project on Behalf of the City of Keizer – Wheatland Road Multimodal Corridor Plan Agreement with the State of Oregon**

b. Approval of December 9, 2019 City Council Work Session Minutes

c. Approval of December 16, 2019 City Council Regular Session Minutes

10. COUNCIL LIAISON REPORTS

11. 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.

12. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications.

13. AGENDA INPUT

January 13, 2020

6:00 p.m. – City Council Work Session

- City Council Goal Review/Progress Report

January 21, 2020 (Tuesday)

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

February 3, 2020

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

February 10, 2020

6:00 p.m. – City Council Work Session

14. ADJOURNMENT

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

CITY COUNCIL MEETING: _____ January 6, 2020

AGENDA ITEM NUMBER: _____

TO: MAYOR CLARK AND CITY COUNCIL MEMBERS

**THROUGH: CHRIS C. EPPLEY
CITY MANAGER**

**FROM: TRACY L. DAVIS, MMC
CITY RECORDER**

**SUBJECT: TEQUILA NIGHTS – LIQUOR LICENSE APPLICATION - CHANGE OF
OWNERSHIP/TRADE NAME (AREA 51 BAR AND GRILL)**

BACKGROUND:

On December 6, 2019 the City received an application for a change of ownership and trade name for the liquor license at Tequila Nights, located 3393 River Road N, Keizer, Oregon. The application is for full on-premises license. The trade name will change from Tequila Nights to Area 51 Bar and Grill. As required by Keizer Ordinance a public hearing was scheduled; notice was published and mailed to all property owners within 200 feet of the establishment. The Keizer Police Department reports a clear background check on the applicant and has no reason to recommend denial of the application. In addition, the Keizer Community Development Department finds the location of the establishment to be properly zoned and has no additional comment on the application.

RECOMMENDATION:

It is recommended the public hearing be opened to allow testimony from the applicant or other interested individuals and upon completion, the hearing be closed. It is further recommended the Council recommend approval of the application for Area 51 Bar and Grill under the guidelines as established by ORS 471.178 and the Ordinances of the City of Keizer. This recommendation shall then be forwarded to the Oregon Liquor Control Commission for final approval.



OREGON LIQUOR CONTROL COMMISSION

LIQUOR LICENSE APPLICATION

1. Application. **Do not include** any OLCC fees with your application packet (the license fee will be collected at a later time). Application is being made for:

| License Applied For: | CITY AND COUNTY USE ONLY |
|--|--|
| <input type="checkbox"/> Brewery 1 st Location | Date application received and/or date stamp: |
| <input type="checkbox"/> Brewery 2 nd Location | |
| <input type="checkbox"/> Brewery 3 rd Location | Name of City or County: |
| <input type="checkbox"/> Brewery-Public House 1 st location | |
| <input type="checkbox"/> Brewery-Public House 2 nd location | Recommends this license be: |
| <input type="checkbox"/> Brewery-Public House 3 rd location | |
| <input type="checkbox"/> Distillery | <input type="checkbox"/> Granted <input type="checkbox"/> Denied |
| <input checked="" type="checkbox"/> Full On-Premises, Commercial | By: _____ |
| <input type="checkbox"/> Full On-Premises, Caterer | Date: _____ |
| <input type="checkbox"/> Full On-Premises, Passenger Carrier | OLCC USE ONLY |
| <input type="checkbox"/> Full On-Premises, Other Public Location | |
| <input type="checkbox"/> Full On-Premises, For Profit Private Club | Date application received: |
| <input type="checkbox"/> Full On-Premises, Nonprofit Private Club | 12-6-19 |
| <input type="checkbox"/> Grower Sales Privilege 1 st location | By: <u>Orwick</u> |
| <input type="checkbox"/> Grower Sales Privilege 2 nd location | License Action(s): |
| <input type="checkbox"/> Grower Sales Privilege 3 rd location | C/O + C/ITN |
| <input type="checkbox"/> Limited On-Premises | |
| <input type="checkbox"/> Off-Premises | |
| <input type="checkbox"/> Off-Premises with Fuel Pumps | |
| <input type="checkbox"/> Warehouse | |
| <input type="checkbox"/> Wholesale Malt Beverage & Wine | |
| <input type="checkbox"/> Winery 1 st Location | |
| <input type="checkbox"/> Winery 2 nd Location | |
| <input type="checkbox"/> Winery 3 rd Location | |

2. Identify the applicant(s) applying for the license(s). ENTITY (example: corporation or LLC) or INDIVIDUAL(S) applying for the license(s):

Area 51 Bar & Grill, LLC

(Applicant #1)

(Applicant #2)

(Applicant #3)

(Applicant #4)

RECEIVED
OREGON LIQUOR CONTROL COMMISSION

DEC 06 2019

SALEM REGIONAL OFFICE

| | | |
|---|--------|----------|
| 3. Trade Name of the Business (Name Customers Will See) | | |
| Area 51 Bar & Grill | | |
| 4. Business Address (Number and Street Address of the Location that will have the liquor license) | | |
| 3393 River Road N. | | |
| City | County | Zip Code |
| Keizer | Marion | 97303 |



OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: Area 51 Bar & Grill, LLC Phone: 503-991-4549

Trade Name (dba): Area 51 Bar & Grill

Business Location Address: 3393 River Road N.

City: Keizer ZIP Code: 97303

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday 11:00 A to 12:00 A
~~Monday~~ ~~_____~~ to ~~_____~~
 Tuesday 11:00 A to 2:30 A
 Wednesday 11:00 A to 2:30 A
 Thursday 11:00 A to 2:30 A
 Friday 11:00 A to 2:30 A
 Saturday 12:00 A to 2:30 A

Outdoor Area Hours:

Sunday _____ to _____
 Monday _____ to _____
 Tuesday _____ to _____
 Wednesday _____ to _____
 Thursday _____ to _____
 Friday _____ to _____
 Saturday _____ to _____

The outdoor area is used for:

- Food service Hours: _____ to _____
- Alcohol service Hours: _____ to _____
- Enclosed, how _____

The exterior area is adequately viewed and/or supervised by Service Permittees.

(Investigator's Initials)

Seasonal Variations: Yes No If yes, explain: _____

ENTERTAINMENT

Check all that apply:

- Live Music
- Recorded Music
- DJ Music
- Dancing
- Nude Entertainers
- Karaoke
- Coin-operated Games
- Video Lottery Machines
- Social Gaming
- Pool Tables
- Other: _____

DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday _____ to _____
 Monday _____ to _____
 Tuesday _____ to _____
 Wednesday _____ to _____
 Thursday _____ to _____
 Friday 10:00 P to 2:30 A
 Saturday 10:00 P to 2:30 A

SEATING COUNT

Restaurant: _____ Outdoor: _____
 Lounge: 150 ✓ Other (explain): _____
 Banquet: _____ Total Seating: 150 ✓

OLCC USE ONLY

Investigator Verified Seating: ____ (Y) ____ (N)

Investigator Initials: _____

Date: _____

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: [Signature] Date: 11-03-19

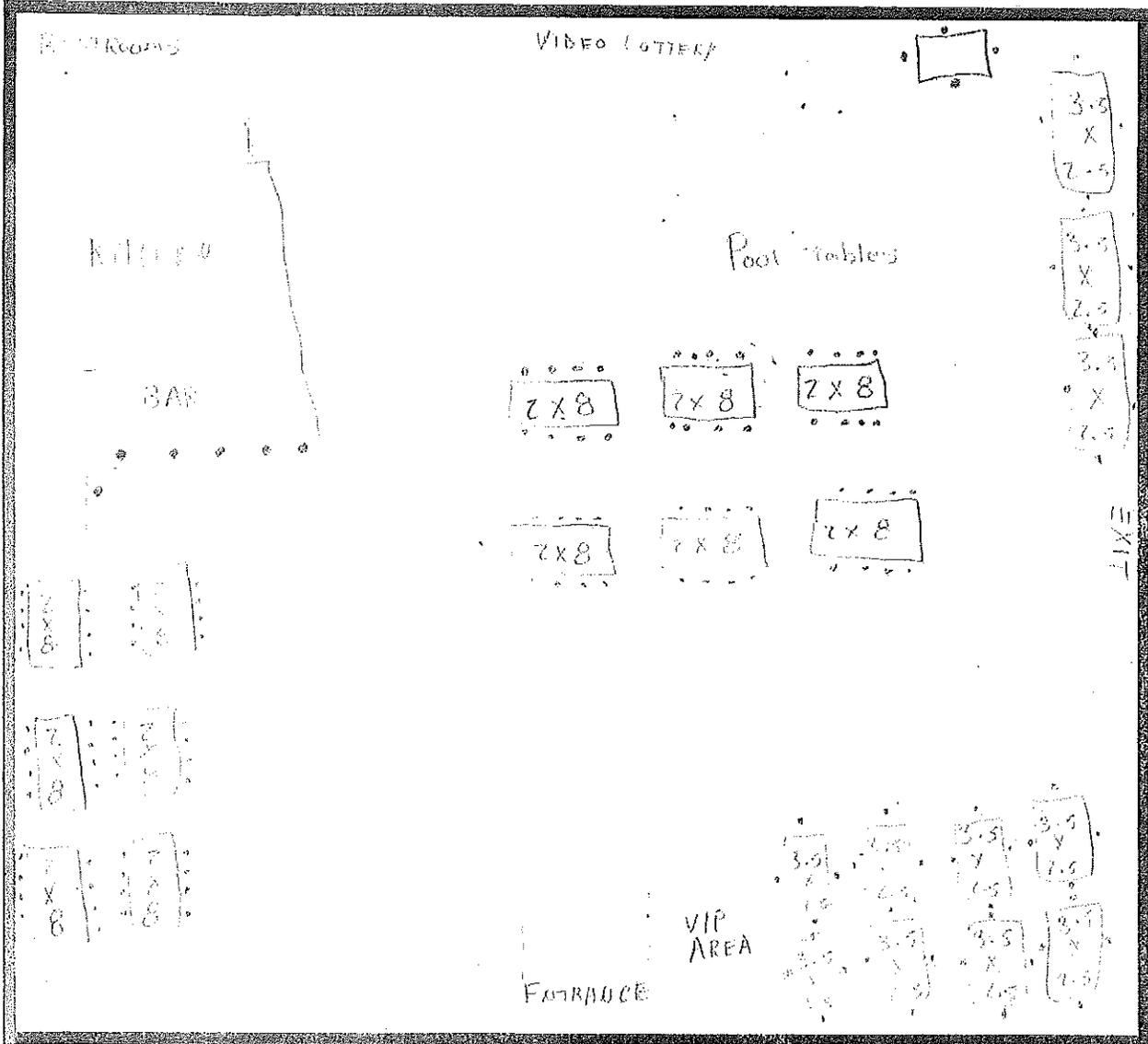
1-800-452-OLCC (6522)
www.oregon.gov/olcc



OREGON LIQUOR CONTROL COMMISSION FLOOR PLAN

150 SEATS

- Your floor plan must be submitted on this form.
- Use a separate Floor Plan Form for each level or floor of the building.
- The floor plan(s) must show the specific areas of your premises (e.g. dining area, bar, lounge, dance floor, video lottery room, kitchen, restrooms, outside patio and sidewalk cafe areas.)
- Include all tables and chairs (see example on back of this form). Include dimensions for each table if you are applying for a Full On-Premises Sales license.



Area 51 Bar & Grill, LLC
 Applicant Name

Area 51 Bar & Grill
 Trade Name (dba):

Keizer 97303
 City and ZIP Code

.....OLCC USE ONLY.....
 MINOR POSTING ASSIGNMENT(S)

Date: _____ Initials: _____

CITY COUNCIL MEETING: January 6, 2020**AGENDA ITEM NUMBER: _____**

TO: MAYOR CLARK AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

SUBJECT: ORDINANCE PROHIBITING CAMPING

With the growing influx of homeless persons camping in public areas, we reviewed our current regulations to see if additional ordinances were appropriate. We have a Resolution that authorizes the City Manager to designate certain public properties, such as public parks and civic center property, as closed to the public during certain times, and provides that persons occupying such properties when closed can be subject to arrest. However, such Resolution does not apply to public right-of-way.

Providing a balance of compassion to homeless persons and the negative effects of public camping is difficult, and a full comprehensive solution is hard to reach. I reviewed recent Salem ordinances and believe it is appropriate to adopt a camping prohibition similar to Salem's. Such Ordinance is attached for your consideration. The Ordinance prohibits tents or any similar structures on the sidewalks, public rights-of-way, and public property generally. It also provides that, subject to state law, such campsites can be summarily abated as a nuisance.

We will be reviewing the general issue of camping/trespassing on public property further to determine if a more comprehensive regulatory approach is appropriate.

RECOMMENDATION:

Adopt the attached Ordinance.

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

ESJ/tmh

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A BILL

ORDINANCE NO.
2020-_____

FOR

AN ORDINANCE

PROHIBITING CAMPING ON SIDEWALKS, PUBLIC
PROPERTY AND PUBLIC RIGHTS-OF-WAY;
DECLARING AN EMERGENCY

The City of Keizer ordains as follows:

Section 1. FINDINGS. The City Council of the City of Keizer makes the following findings:

(A) The City of Keizer is a geographically diverse City, largely comprised of residential, commercial, and industrial areas.

(B) Maintaining pedestrian and authorized commercial activity on public sidewalks, public property and public rights-of-way are essential to public safety and welfare, thriving neighborhoods, and economic vitality within the City.

(C) Camping on public sidewalks, public property and public rights-of-way, is not the ordinary, customary, or intended use of public sidewalks, public property or public rights-of-way.

(D) Persons who camp on public sidewalks, public property and public rights-of-way threaten the safety and welfare of all pedestrians, with the greatest impact on those pedestrians who are elderly or young children or who have physical and mental disabilities.

1 (E) Persons who camp on public sidewalks, public property and public rights-
2 of-way, deter City residents and visitors from patronizing local shops, restaurants, and
3 businesses, and enterprises, and from utilizing public and private services, and activities
4 within the City, and deter people from using the sidewalks and public rights-of-way.

5 (F) Persons camping and the associated accumulation of trash and personal
6 property on public sidewalks, public property and public rights-of-way, is detrimental to
7 pedestrian safety, public welfare and the economic vitality of the community. This
8 behavior causes a cycle of decline as residents and tourists go elsewhere to walk, meet,
9 shop, dine, and access other services and activities, and residents become intimidated
10 from using the public sidewalks and rights-of-way.

11 (G) Camping is an incompatible and detrimental use of the public sidewalks,
12 public property, and public rights-of-way in all areas of the City.

13 (H) The City of Keizer promotes policies that preserve the right to enjoy public
14 spaces and to traverse freely, while protecting free-speech rights, as well as other safe
15 activity consistent with City Ordinances and permitting requirements.

16 (I) The prohibitions against camping on public sidewalks, public property, and
17 public rights-of-way as defined in this Ordinance leaves fully intact the right to speak,
18 protest, or engage in other lawful activity on any public sidewalk consistent with City
19 Ordinances and permitting requirements.

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1 (J) Campsites on public sidewalks, public property, and public rights-of-way
2 are unsafe and unhealthy for the people living there, and have a detrimental effect on the
3 economic vitality of the City, and the safety and welfare of the residents and visitors of
4 the City of Keizer.

5 (K) The City of Keizer is a compassionate City, and desires to help persons
6 experiencing residential instability or homelessness, to transition to safe and permanent
7 housing. However, allowing camping on our public sidewalks, public property, and
8 public rights-of-way in our neighborhoods, and in other areas of our City does not help
9 people transition to housing and has a detrimental effect on the economic vitality of the
10 City, and the public safety and welfare.

11 (L) Maintaining accessible and attractive sidewalks, public property, and
12 public rights-of-way for pedestrian and commercial traffic is an important public safety
13 objective, and important to maintain the economic vitality of the City. Blocked and
14 obstructed public sidewalks, public property, and public rights-of-way present hazards to
15 pedestrians, and discourages visitors and patrons to community businesses.

16 (M) The placement of tents, shelters or other items on public sidewalks, public
17 property, and public rights-of-way, for habitation, is not the ordinary, customary, or
18 intended use of these areas, and is an incompatible and detrimental use of these spaces in
19 all parts of the City.

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1 (N) Campsites can also obstruct and delay emergency personnel responding to
 2 emergencies. Campsites can obstruct ingress to and egress from businesses, residential
 3 buildings, and other establishments and property. Campsites often exhibit the presence
 4 of human waste and uncontained food, which poses public health risks.

5 Section 2. CAMPING PROHIBITED ON PUBLIC SIDEWALKS, PUBLIC
 6 PROPERTY AND PUBLIC RIGHTS-OF-WAY.

7 (A) Definitions. Unless the context specifically requires otherwise, as used in
 8 this Section, the following words and phrases mean:

9 (1) “Campsite” means any place where there is a tent, or any structure
 10 or an assembly of materials that provides shelter to one or more persons; or where
 11 there is a collection of personal property indicative of a person’s intent to dwell
 12 temporarily.

13 (2) “to camp” means to set up, or to remain in or at a campsite, for the
 14 purpose of establishing or maintaining a temporary place to live.

15 (B) It is unlawful for any person to camp in or upon any public sidewalk,
 16 public property, or public rights-of-way, unless otherwise specifically authorized by law
 17 or by declaration of the City Council, City Manager or Emergency Manager in
 18 emergency circumstances.

19 (C) Upon finding it to be in the public interest, the City Council may exempt a
 20 special event from compliance with this Section by Resolution. The Resolution shall

1 specify the period of time and location covered by the exemption, as well as other
2 reasonable conditions.

3 (D) A violation of this Ordinance is declared a public nuisance under
4 Ordinance No. 94-282 (Adopting the Keizer Uniform Nuisance Abatement Procedure).
5 Due to the disruption to the public and the unsafe and unhealthy nature of such
6 campsites, as well as other effects as outlined in Section 1(Findings), City Council
7 directs the summary abatement of such campsites, subject to applicable state statutes.

8 (E) This Ordinance is cumulative to other Ordinances or regulations including,
9 but not limited to Ordinance No. 2019-807 (Relating to Street Obstructions and Debris
10 on Public Right-of-Way) and Resolution R2019-2948 (Authorizing City Manager to
11 Order Removal of Persons from City Property).

12 Section 3. SEVERABILITY. If any section, subsection, sentence, clause,
13 phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional, or
14 is denied acknowledgment by any court or board of competent jurisdiction, then such
15 portion shall be deemed a separate, distinct, and independent provision and such holding
16 shall not affect the validity of the remaining portions hereof.

17 ///

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

4 PASSED this _____ day of _____, 2020.

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6 SIGNED this _____ day of _____, 2020.

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Mayor

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City Recorder

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CITY COUNCIL MEETING: January 6, 2020

AGENDA ITEM NUMBER: _____

TO: MAYOR CLARK AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

SUBJECT: ODOT DELIVERED PROJECT FEDERAL PROJECT ON BEHALF OF THE CITY OF KEIZER – WHEATLAND ROAD MULTIMODAL CORRIDOR PLAN

The City applied for a grant to prepare and deliver a Wheatland Road Multimodal Corridor Plan. The project was selected as a part of the Surface Transportation Program – Urban grant program and awarded to the City.

The total project cost for the work is estimated at \$212,861 with federal funding allocated for the project to be \$191,000 and the City's match to be 10.27 percent.

The grant match (the difference between the federal funds and the total project cost) may be comprised of soft costs, such as publication costs, mailings, etc. and any amount remaining after the soft cost contribution offset is to be paid from the Street Fund.

The State of Oregon, acting by and through its Development of Transportation has prepared an agreement and it is attached for your consideration.

RECOMMENDATION:

Adopt the attached Resolution authorizing the City Manager to sign the ODOT Delivered Project Federal Project on Behalf of the City of Keizer Agreement for the Wheatland Road Multimodal Corridor Plan.

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

ESJ/tmh

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2020-_____

AUTHORIZING CITY MANAGER TO SIGN ODOT DELIVERED PROJECT FEDERAL PROJECT ON BEHALF OF THE CITY OF KEIZER – WHEATLAND ROAD MULTIMODAL CORRIDOR PLAN AGREEMENT WITH STATE OF OREGON

WHEREAS, the City of Keizer has applied for a grant for assistance with the Wheatland Road Multimodal Corridor Plan transportation planning project;

WHEREAS, the City has been awarded the grant;

WHEREAS, the State of Oregon, acting by and through its Department of Transportation and the City are authorized to enter into agreements under Oregon Revised Statutes Chapter 190;

WHEREAS, the State and the City wish to enter into the attached Agreement;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is authorized to sign the attached Agreement for the Wheatland Road Multimodal Corridor Plan.

BE IT FURTHER RESOLVED that the City Manager is directed and authorized to take all action necessary and appropriate in connection with such Agreement within the normal budgetary constraints of the City of Keizer.

BE IT FURTHER RESOLVED that the matching funds shall be paid out of the Street Fund.

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

3 PASSED this _____ day of _____, 2020.

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5 SIGNED this _____ day of _____, 2020.

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Mayor

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City Recorder

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**ODOT Delivered Project Federal Project
On Behalf of the City of Keizer**
Wheatland Road Multimodal Corridor Plan
Key Number: 21303

THIS AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and the **CITY OF KEIZER**, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" or collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform
2. Wheatland Road is a part of the city street system under the jurisdiction and control of Agency.
3. Agency has agreed that State will deliver this project on behalf of the Agency.
4. The Project was selected as a part of the Surface Transportation Program - Urban and may include a combination of federal and state funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

NOW THEREFORE the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering the Wheatland Road Multimodal Corridor Plan on behalf of Agency, hereinafter referred to as "Project." Project includes the development of a multimodal corridor plan and conceptual street design for Wheatland Road between River Road and Clearlake Road. The Project statement of work is attached hereto, marked "Exhibit A," and by this reference made a part hereof.

City of Keizer/ODOT
Agreement No.33627

2. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.
3. The total Project cost is estimated at \$212,861, which is subject to change. Federal funds for this Project shall be limited to \$191,000. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.
4. Federal funds under this Agreement are provided under Title 23, United States Code.
5. ODOT considers Agency to be a third party under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
6. With the exception of Americans with Disabilities Act of 1990 (ADA) related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency's concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget.
7. State will submit the requests for federal funding to Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.
8. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
9. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
10. This Agreement may be terminated by mutual written consent of both Parties.
11. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

City of Keizer/ODOT
Agreement No.33627

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
12. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
13. Information required by 2 Code of Federal Regulation (CFR) 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to Agency with the Notice to Proceed.
- 14. Americans with Disabilities Act Compliance:**
- a. Agency shall utilize ODOT standards to assess and ensure that the Project and all component activities comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all plans and proposed alternatives for future design or construction of pedestrian, bicycle, and transit routes and facilities will result in ADA-compliant facilities and improvements.
 - b. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the establishment of any work zone.
15. RESERVED
16. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.

City of Keizer/ODOT
Agreement No.33627

17. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
18. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
19. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
20. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
21. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
22. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.
23. State's Contract Administrator for this Agreement is Dan Fricke, Senior Transportation Planner, ODOT Region 2, 455 Airport Road SE, Building B, Salem, Oregon 97301-

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5395; telephone: (503) 986-2663; email: Daniel.L.Fricke@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

24. Agency's Contract Administrator for this Agreement is Bill Lawyer, Public Works Director, City of Keizer, PO Box 21000, Keizer, Oregon, 97303; telephone: (503) 390-3700; email: lawyerb@keizer.org, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2018-2021 Statewide Transportation Improvement Program (STIP), (Key #21303) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

Signature Page Follows

CITY OF KEIZER, by and through its
elected officials

By _____
Title:

Date _____

By _____
Title:

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____
Agency Counsel

Date _____

Agency Contact:

Bill Lawyer
Public Works Director
City of Keizer
PO Box 21000
Keizer, Oregon
(503) 390-3700
LawyerB@keizer.org

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Manager

Date _____

By _____
State Traffic Roadway Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Herbert Lovejoy via email
Assistant Attorney General

Date 12/24/19

State Contact:

Dan Fricke
Senior Transportation Planner
ODOT Region 2, Area 3
455 Airport Road SE, Building B
Salem, Oregon 97301-5395
(503) 986-2663
Daniel.L.Fricke@odot.state.or.us

EXHIBIT A – Statement of Work

Background -

Wheatland Road serves as the major north/south arterial providing connectivity to the northwest quadrant of the City of Keizer and beyond. The existing roadway is substandard and accessibility is limited. There are significant gaps and deficiencies in the sidewalk and bicycle network (including ADA accessibility) and there is a lack of safe crossing locations. The street design would identify safety improvements for all modes of travel including freight, buses, bicycles, pedestrians, and passenger vehicles.

Wheatland Road is one of the primary access routes to the agricultural lands to the north, as well as the direct access to the residential areas of North Keizer, including the Clear Lake and Forest Ridge elementary schools. As a result, there is significant traffic and pedestrian volumes on the roadway, higher travel speeds with a posted speed of 40 mph, Cherriots Transit routes and stops. The street is inadequately developed with a variety of improvements and at a variety of widths, creating safety issues and an uninviting transportation experience.

Wheatland Road is a challenging roadway that has high traffic volumes and speeds, divides residential areas on both sides of the road, serves two elementary schools on the east side and Willamette Lutheran Retirement Facility on the west side. There is a lack of turn lanes to residential subdivisions creating significant safety conflicts between motor vehicles, limited bike facilities, and significant gaps and deficiencies in the sidewalk network. The corridor also lacks adequate street lighting that is a safety concern with the number of children that cross Wheatland Road in the early morning.

Fortunately there have not been severe or fatal pedestrian crashes along the corridor in recent years, however the risk of future crashes is high with travel speeds exceeding 40 mph, lack of street lighting and the frequent pedestrian crossings of young school children. Additionally, the current Wheatland Road striping allows vehicle passing zones that encourages speeding and creates unnecessary conflicts with pedestrians and bikes that are currently sharing the road due to gaps in the bicycle and sidewalk network.

Project Goals -

The purpose of the study is to develop a multimodal corridor plan and conceptual street design that removes barriers for all modes of travel, considers the latest urban safety improvements for pedestrians (refuge medians, street lighting, crosswalk push button activated flashers) bicycles (separated multi-use path, buffered bikes lanes, etc.), and transit facilities while creating an enjoyable experience for all users. This Project would also include community involvement to assure the design plan is consistent with the needs of key stakeholders (neighborhoods, schools, and businesses).

City of Keizer/ODOT
Agreement No.33627

Furthermore, this Project is not only intended to improve the multimodal experience and facilities within the area, it is intended to develop a streetscape design that will strengthen the identity and character of adjacent neighborhoods, parks and schools.

The corridor plan encompasses approximately 9,000 feet (1.7 miles) from River Road N to Clearlake Road NE along Wheatland Road.

Deliverables –

Conceptual street design and multimodal corridor plan that includes;

- The removal of barriers for all modes of travel.
- Consider implementing the latest urban safety improvements for pedestrians such as refuge medians, street lighting and crosswalk push button activated flashers.
- Consider implementing improvements for bicycles such as separated multi-use path, buffered bikes lanes, etc.
- Incorporates transit stop locations.
- Creates an enjoyable experience for all users.
- Identification of right of way acquisition needed along the corridor to provide for constructing the recommended improvements.
- Identify the estimated cost of implementation that includes property acquisition, design and construction.

Hold stakeholder meetings to gather input from neighborhood groups, School District representatives and the general public for consideration in the design.

Attend a meeting with City's Traffic Safety Bicycle/Pedestrian Committee to present a conceptual design and gather input from the Committee.

Present to Agency's City Council the conceptual plan for their approval and incorporation into the Agency's Transportation System Plan.

**ATTACHMENT NO. 1 to AGREEMENT NO. 33627
SPECIAL PROVISIONS**

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.
 - a. State or its consultant shall conduct planning work to produce a conceptual plan for a multimodal corridor that will be incorporated into Agency's Transportation System Plan. Said plan will identify future projects that can be advanced to design and construction.
 - b. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.
2. State and Agency agree that the useful life of this Project is defined as 20 years.
3. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. State will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.
4. Agency may perform only those elements of the Project identified in the special provisions.

PROJECT FUNDING REQUEST

5. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, its consultant or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or contractor, using the criteria in 2 CFR 200.330.

7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
11. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:

- a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
 - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
 13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

DESIGN STANDARDS

14. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State's Oregon Bicycle & Pedestrian Design Guide (current version). State or its consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. State or its consultant may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.
16. State and Agency agree that for all projects on the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. State and Agency further agree that for all projects on the NHS, regardless of funding source; any design element that does not

meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retain authority for said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.

17. ODOT agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or its consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

PRELIMINARY & CONSTRUCTION ENGINEERING

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.
19. Architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects must follow the State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the state approved consultant prior to receiving authorization from State to proceed.
20. The State or its consultant responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.
22. Upon State's award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

Disadvantaged Business Enterprises (DBE) Obligations

24. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."

25. State and Agency agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
26. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

RIGHT OF WAY

27. Right of Way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.
28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.
29. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be entirely responsible for project acquisition and coordination of the right of way certification.
30. State or its consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.

Agency/State
Agreement No.

31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

RAILROADS

32. State shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

UTILITIES

33. State or its consultant shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. State or its consultant shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility & Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

GRADE CHANGE LIABILITY

34. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
35. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
36. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

MAINTENANCE RESPONSIBILITIES

37. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

CONTRIBUTION

38. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
39. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
40. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

ALTERNATIVE DISPUTE RESOLUTION

41. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

WORKERS' COMPENSATION COVERAGE

42. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be

included. State and Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

43. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

By signing this Agreement, Agency agrees to fulfill the responsibility imposed by 49 CFR 29.510 regarding debarment, suspension, and other responsibility matters. For the purpose of this provision only, Agency is considered a participant in a covered transaction. Furthermore, by signing this Agreement, Agency is providing the certification for its principals required in appendix A to 49 CFR part 29.



MINUTES
KEIZER CITY COUNCIL WORK SESSION
Monday, December 9, 2019
Keizer Civic Center, Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Clark called the meeting to order at 6:00 pm. Roll call was taken as follows:

Present:

Cathy Clark, Mayor
Kim Freeman, Councilor
Marlene Parsons, Councilor
Laura Reid, Councilor
Roland Herrera, Councilor
Elizabeth Smith, Councilor
Dan Kohler, Councilor

Staff:

Chris Eppley, City Manager
Shannon Johnson, City Attorney
Bill Lawyer, Public Works Director
John Teague, Police Chief
Tracy Davis, City Recorder

DISCUSSION

a. Emergency Preparedness

Mayor Clark explained that the Work Session is to update Councilors on procedures in the case of an emergency and that in the case of an emergency it is important for Councilors to be responsive to the media, to refrain from speculation and to stay within the parameters of what is known.

Councilor Herrera then led the discussion noting that the Work Session is a result of a scholarship he received to attend a National Association of Latino Elected Officials conference on emergency preparedness. He explained that many of the disasters focused on hurricanes or issues that are not a threat in this area, but the discussion inspired him to share disaster preparedness for threats that are prevalent in this area.

He defined emergency management as the process of dealing with extreme events that can disrupt communities and cause extensive damage and effect a large number of people. He noted that anyone who has been through the flood of 1996 is prepared because they have that experience.

He stressed the importance of taking care of family first and of elected officials being in contact with each other, and suggested that an emergency drill be planned in 2020.

Public Works Director Bill Lawyer explained that Keizer:

- Is a member of Marion County Emergency Management and Jennifer Warner attends monthly meetings where they network with hospitals and fire districts.
- Is a member of the Oregon Water/Wastewater Agency Response Network so that resources can be shared without formal action.

- o Has a MORE (Managing Oregon Resources Efficiently) agreement with the State which allows the City to share resources directly with the State or visa versa without formal action.
- o Stays compliant with the NIMS (National Incident Management System) and ICS (Incident Command System) training so the City is eligible for federal reimbursement in an emergency.
- o Does not do a lot of other planning in preparedness other than that due to the staffing required.

He explained that Council’s role in an emergency situation is to take official action as necessary. He noted that he wanted to schedule a full exercise of the EOC in September in conjunction with the County so that communications and other things can be thoroughly tested.

Discussion then took place regarding CERT and EVAK, partnering with schools, operating agreements with Cherriots, and the resources of Keizer United and Salem Leadership Foundation. City Manager Chris Eppley stressed the importance of emergency management training, volunteer coordination during an emergency, and most importantly remaining calm.

Mayor Clark urged everyone to promote emergency preparedness on the family level.

A video was then shown of the 1996 Keizer flood. Bill Lawyer then shared what staff learned from experiencing the flood, information about the dike, and Labish flooding. Brian Butler from the Keizer Fire District expressed agreement with everything that had been said and offered assistance and partnership from the District.

ADJOURNMENT Mayor Clark adjourned the meeting at 7:29 p.m.

MAYOR:

APPROVED:

Cathy Clark

Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – Laura Reid

Councilor #4 – Roland Herrera

Councilor #2 – Kim Freeman

Councilor #5 – Elizabeth Smith

Councilor #3 – Marlene Parsons

Councilor #6 – Daniel R. Kohler

Minutes approved: _____



MINUTES
KEIZER CITY COUNCIL
Monday, December 16, 2019
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 Kim Freeman, Councilor Daniel Kohler, Councilor Marlene Parsons, Councilor Laura Reid, Councilor Roland Herrera, Councilor Elizabeth Smith, Councilor Youth Councilor Christopher Wolfert | Staff: Chris Eppley, City Manager Shannon Johnson, City Attorney Bill Lawyer, Public Works Director John Teague, Police Chief Tim Wood, Finance Director Tracy Davis, City Recorder |
|--|--|
- FLAG SALUTE** Mayor Clark led the pledge of allegiance.
- SPECIAL ORDERS OF BUSINESS** Councilor Kohler introduced *Anya Holcomb*, Co-Director of Salem for Refugees, and *Matthew Westerbeck*, Program Manager for refugee services through Catholic Charities of Oregon. Mr. Westerbeck then explained that the presentation is to provide an update and encourage County participation. He and Ms. Holcomb then narrated a PowerPoint presentation regarding the Salem for Refugees organization and the resettlement of the refugees.
- a. Salem and Keizer for Refugees Presentation** Councilor Reid and Mayor Clark shared additional information about the benefit of welcoming refugees into the community.
- COMMITTEE REPORTS** *Matt Lawyer*, Keizer, reported that the Parks Advisory Board had reviewed the Park Bike Rack Inventory done by Wayne Frey and discussed the possibility of a soccer field in one of the parks. He concluded his report commending Parks staff and the Parks Board.
- PUBLIC TESTIMONY** None
- PUBLIC HEARING** *Mayor Clark opened the Public Hearing.*
- a. Fraternal Order of Eagles Liquor** City Manager Chris Eppley summarized his staff report. *Reese Miller*, Trustee for the Fraternal Order of the Eagles, explained

**License
Application**

that although this license is only for liquor, the lodge is hoping to be allowed to serve food with the hope that the Lodge will become an active part of the community and provide active entertainment. He then fielded questions from Council regarding the facility.

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

Councilor Freeman moved that the Keizer City Council recommend approval of the application for a liquor license for Fraternal Order of Eagles under the guidelines as established by ORS 471.178 and the Ordinances of the City of Keizer and to forward this recommendation to the Oregon Liquor Control Commission for final approval. Councilor Herrera seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Freeman, Parsons, Herrera, Smith and Kohler (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**ADMINISTRATIVE
ACTION**

**a. RESOLUTION –
Dissolving the
Festivals
Advisory Board
(FAB);
Repealing
R2011-2155 and
R2015-2551**

City Attorney Shannon Johnson summarized his staff report. Councilors Parsons and Reid and Mayor Clark provided additional information.

Councilor Freeman moved that the Keizer City Council adopt a Resolution Dissolving the Festivals Advisory Board (FAB); Repealing R2011-2155 and R2015-2551. Councilor Herrera seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Freeman, Parsons, Herrera, Smith and Kohler (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**b. ORDINANCE –
Amending
Keizer
Development
Code Regarding
Section 2.403**

Mr. Johnson summarized his staff report.

Councilor Freeman moved that the Keizer City Council adopt a Bill for an Ordinance Amending Keizer Development Code Regarding Section 2.403 (Shared Housing Facilities) Amending Ordinance 98-389. Councilor Herrera seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Freeman, Parsons, Herrera, Smith and Kohler (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**CONSENT
CALENDAR**

- a. RESOLUTION – Approval of Field Usage Rates for the 2020 Season at Keizer Little League City Park
- b. RESOLUTION – Appointing Municipal Court Judge Pro Tem
- c. Approval of December 2, 2019 City Council Regular Session Minutes

Councilor Freeman moved for approval of the Consent Calendar. Councilor

Herrera seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Freeman, Parsons, Herrera, Smith and Kohler (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

COUNCIL LIAISON REPORTS

Councilor Herrera complimented the Festival of Lights parade, announced upcoming meetings and wished everyone a merry Christmas and happy new year.

Councilor Parsons thanked the Police Department for their traffic control efforts related to the Holiday Lights Parade, reviewed meetings and events she had attended, announced upcoming ones and wished everyone happy holidays.

Councilor Smith shared information about meetings and events she had attended, urged citizens to attend the Charter Review Committee meetings and provide input, announced upcoming meetings and events, congratulated the team for the smooth opening of In-N-Out Burgers, and wished everyone happy holidays.

Councilor Freeman thanked volunteers for the tree lighting and parade, urged citizens to attend the Charter Review Committee meetings, thanked everyone involved in collecting food and for supporting local businesses and wished everyone a merry Christmas and happy new year.

Councilor Reid thanked everyone involved in collecting food for Marion Polk Food Share, urged citizens living in southeast Keizer to attend their neighborhood association meetings, reviewed past meetings and events and announced upcoming ones and wished everyone happy holidays.

Councilor Kohler reported that Scouting for Food collected almost 10,000 pounds of food, reviewed various events and meetings he had attended and announced upcoming ones.

Mayor Clark reported on the recent ground-breaking ceremony at the tribal property in Keizer Station, Homeless Alliance and the Safe Sleep facility, reviewed past meetings and events and announced future ones and extended condolences to the family of Greg Frank who passed away on November 15.

Youth Councilor Christopher Wolfert announced that the two-week Christmas break starts next week.

OTHER BUSINESS

City Manager Chris Eppley praised the talented McNary kids.

City Recorder Tracy Davis announced that 5 or 6 applications have been received for the Community Center Assistant.

Chief Teague urged shoppers to conceal valuables left in their cars to prevent theft.

Public Works Director Bill Lawyer announced that the Public Works staff won an award for their float

WRITTEN COMMUNICATIONS

Mayor Clark read a letter from Marty McGee, son of Jerry McGee, who donated \$1,000 for the Jerry McGee Scholarship through the Rotary and plans on doing so every year.

She also summarized a letter from Peter Nystrom, Mayor of Norwich, Connecticut, whose baseball team is being considered for possible elimination. She suggested that if Council was not opposed, she would send a note supporting him and all other minor league baseball teams. No one objected.

AGENDA INPUT

- January 6, 2020 – 7:00 p.m. – City Council Regular Session
- January 13, 2020 – 7:00 p.m. – City Council Work Session
 - City Council Goal Review/Progress Report
- January 21, 2020 (Tuesday) – 7:00 p.m. – City Council Regular Session

ADJOURNMENT

Mayor Clark adjourned the meeting at 8:19 p.m.

MAYOR:

APPROVED:

Cathy Clark

Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – Laura Reid

Councilor #4 – Roland Herrera

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Minutes approved: _____