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**AGENDA**  
**KEIZER CITY COUNCIL**  
**REGULAR SESSION**  
Monday, October 5, 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. **El Vaquero Santa Maria BBQ Liquor License Change Of Ownership**

8. **ADMINISTRATIVE ACTION**

a. **ORDINANCE** – Creating A Planning Commission; Providing For Its Composition And Organization; Providing Its Powers And Duties; Repeal Of Ordinances 83-006, 2013-674, And 2017-783

9. **CONSENT CALENDAR**

a. **RESOLUTION** – Authorizing the City Manager to Enter Into Contract for Manzanita Street Storm Drain Repair with Michels Corporation

- b. **RESOLUTION** – Authorizing City Manager To Enter Into Contract For Lauderback Street Storm Drain Repair With Michels Corporation
- c. **RESOLUTION** – Authorizing The Finance Director To Enter Into Purchase Agreement For Albert Monitoring Services With Center For Internet Security, Inc (CIS)
- d. **RESOLUTION** – Authorizing The Finance Director To Enter Into Enzoic Proposal for Enzoic For Active Directory Software Services
- e. **Approval Of September 21, 2020 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**

**October 12, 2020**

**6:00 p.m. – City Council Work Session**

**October 19, 2020**

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

**October 26, 2020**

**6:00 p.m. - City Council Work Session**

- **City Council Goal – Community Makeup – Demographics and Diversity**

**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: October 5, 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: EL VAQUERO SANTA MARIA BBQ – LIQUOR LICENSE  
APPLICATION - CHANGE OF OWNERSHIP**

**BACKGROUND:**

On September 14, 2020 the City received an application to change the ownership for the liquor license previously held by Red Ginger, located 4907 River Road N, Keizer, Oregon. The establishment's new name will be El Vaquero Santa Maria BBQ. The application is for limited on-premises license. 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 El Vaquero Santa Maria BBQ 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 BUSINESS INFORMATION

Please Print or Type

Applicant Name: EL VAGUERO Santa Maria BBDP, INC. Phone: \_\_\_\_\_  
 Trade Name (dba): EL VAGUERO Santa Maria BBDP  
 Business Location Address: 4907 River Rd N  
 City: Keizer ZIP Code: 97303

### DAYS AND HOURS OF OPERATION

#### Business Hours:

Sunday 11 AM to 6 PM  
 Monday \_\_\_\_\_ to \_\_\_\_\_  
 Tuesday 11 AM to 9 PM  
 Wednesday 11 AM to 9 PM  
 Thursday 11 AM to 9 PM  
 Friday 11 AM to 9 PM  
 Saturday 11 AM to 9 PM

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

### DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday \_\_\_\_\_ to \_\_\_\_\_  
 Monday \_\_\_\_\_ to \_\_\_\_\_  
 Tuesday \_\_\_\_\_ to \_\_\_\_\_  
 Wednesday \_\_\_\_\_ to \_\_\_\_\_  
 Thursday \_\_\_\_\_ to \_\_\_\_\_  
 Friday \_\_\_\_\_ to \_\_\_\_\_  
 Saturday \_\_\_\_\_ to \_\_\_\_\_

### SEATING COUNT

Restaurant: 50 Outdoor: \_\_\_\_\_  
 Lounge: \_\_\_\_\_ Other (explain): \_\_\_\_\_  
 Banquet: \_\_\_\_\_ Total Seating: 50

**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: Kelly Cepeda Date: 9/5/2020

1-800-452-OLCC (6522)

www.oregon.gov/olcc

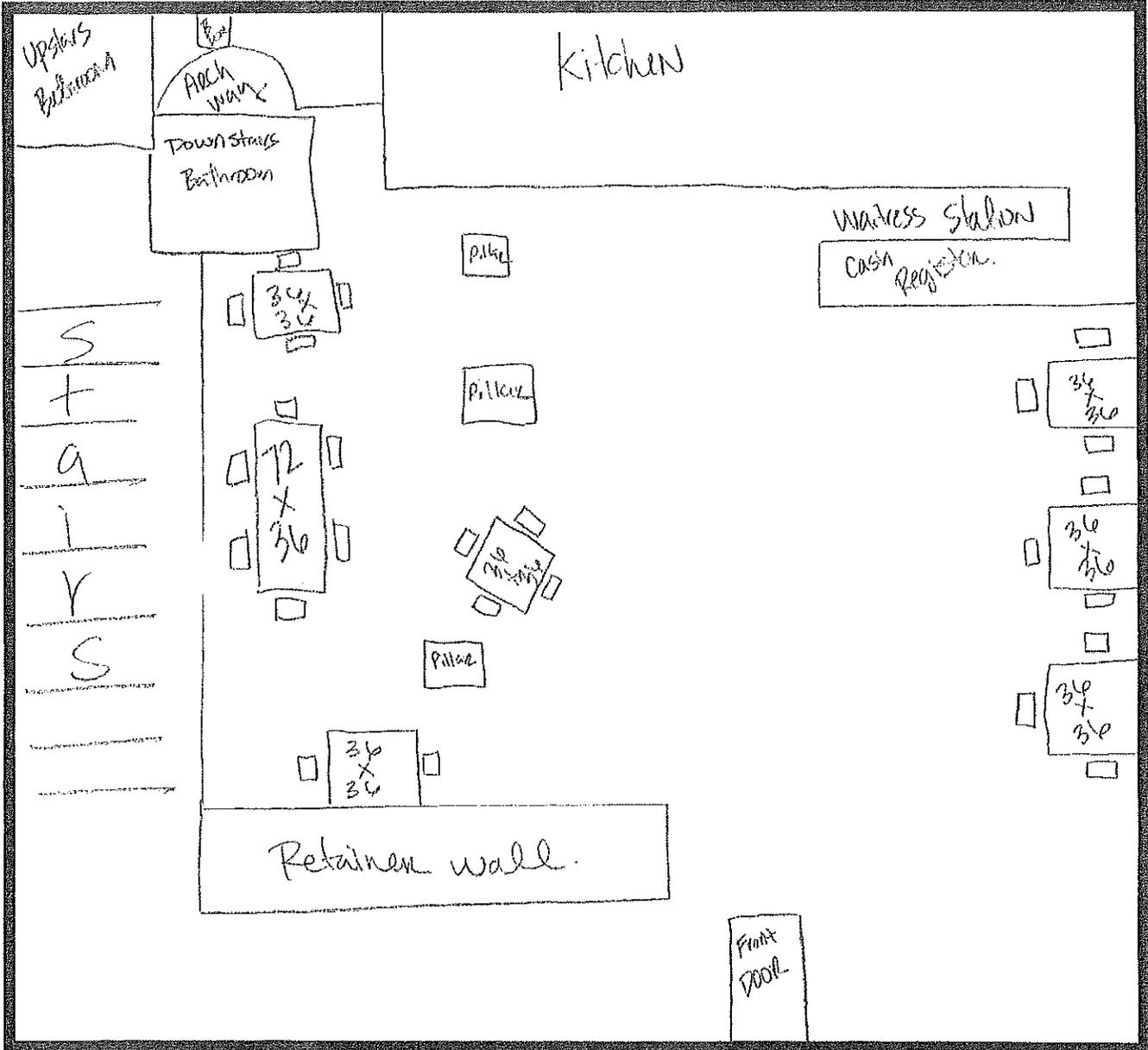
(rev. 12/07)



# OREGON LIQUOR CONTROL COMMISSION FLOOR PLAN

main floor

- **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.



EL Vaquero Santa Maria B&B, INC.  
 Applicant Name  
 EL Vaquero Santa Maria B&B  
 Trade Name (dba):  
 Keiner, OR 97303  
 City and ZIP Code

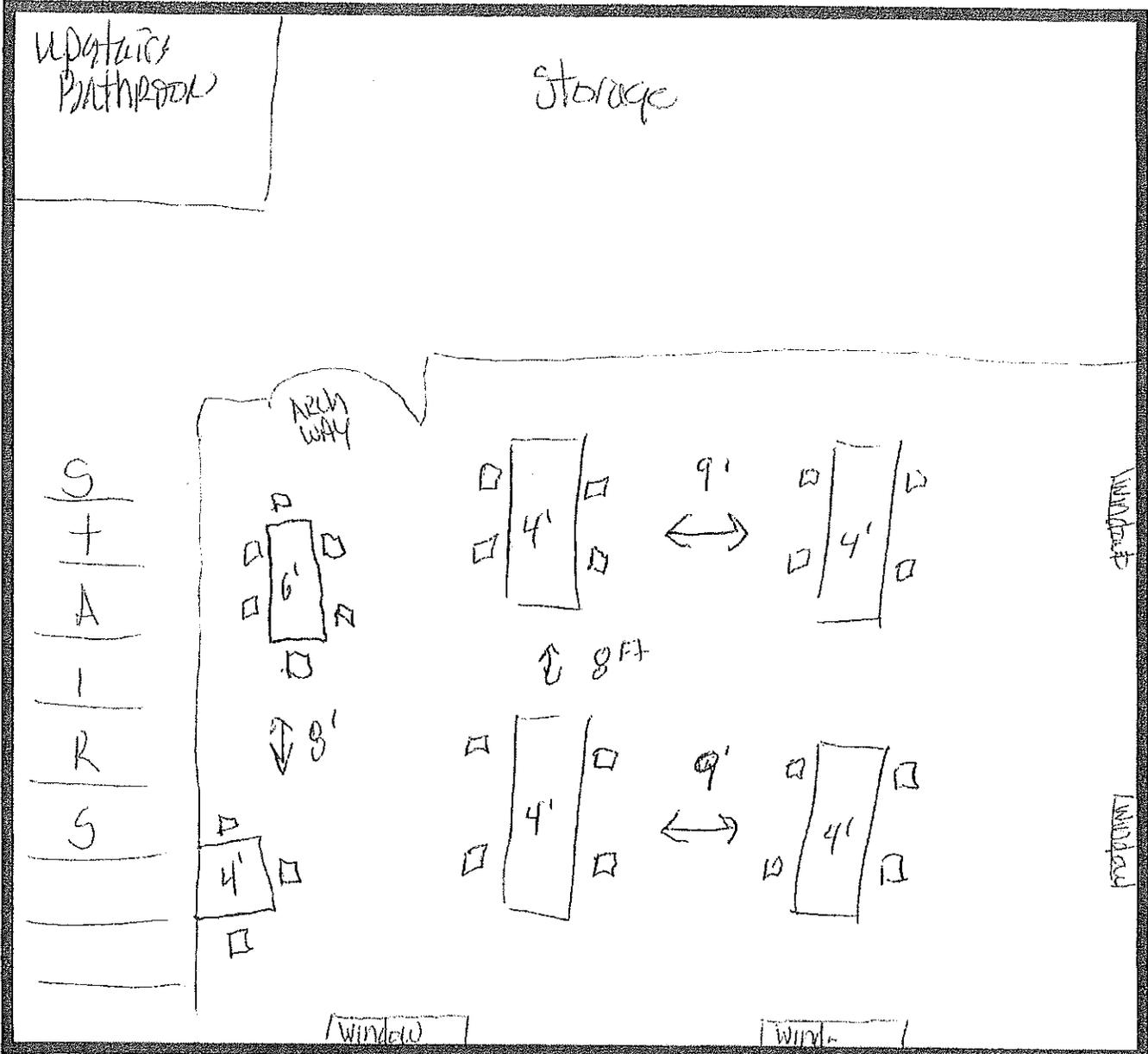
.....OLCC USE ONLY.....  
 MINOR POSTING ASSIGNMENT(S)  
 Date: \_\_\_\_\_ Initials: \_\_\_\_\_



# OREGON LIQUOR CONTROL COMMISSION FLOOR PLAN

up stairs floor

- **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.



EL VALLEJO SANTA MARIA BLDG, INC.  
 Applicant Name  
EL VALLEJO SANTA MARIA BLDG  
 Trade Name (dba):  
Keiner, OR 97303  
 City and ZIP Code

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

Date: \_\_\_\_\_ Initials: \_\_\_\_\_

**CITY COUNCIL MEETING: October 5, 2020**

**AGENDA ITEM NUMBER: \_\_\_\_\_**

**TO: MAYOR CLARK AND COUNCIL MEMBERS**

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

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

**SUBJECT: ORDINANCE CREATING A PLANNING COMMISSION**

The Council adopted Ordinance No. 83-006 creating the Planning Commission. Such Ordinance was amended by Ordinance No. 2013-674 and Ordinance No. 2017-783. A question of whether Planning Commission meetings are required to be held once a month was brought up. In researching the response to the question, it was discovered that Ordinance No. 83-006 as amended did not allow any flexibility with regard to occasionally canceling a meeting. It was determined that an amendment was necessary in this regard.

Because Ordinance No. 83-006 was already amended three times, a new Ordinance has been drafted for your consideration. The only substantive changes are the meeting requirements (Section 2.C.) to allow cancellation of a meeting and the Powers and Duties Section (Section 4) to bring them in line with state law.

**RECOMMENDATION:**

Adopt the attached Ordinance Creating a Planning Commission and repealing Ordinance No. 83-006, Ordinance No. 2013-674, and Ordinance No. 2017-783.

Please contact me if you have any questions. Thank you.

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A BILL  
FOR

ORDINANCE NO.  
2020-\_\_\_\_\_

AN ORDINANCE

CREATING A PLANNING COMMISSION; PROVIDING  
FOR ITS COMPOSITION AND ORGANIZATION;  
PROVIDING ITS POWERS AND DUTIES; **REPEAL OF  
ORDINANCES 83-006, 2013-674, AND 2017-783**

The City of Keizer ordains as follows:

Section 1. KEIZER PLANNING COMMISSION; COMPOSITION; TERMS  
AND VACANCIES.

A. The Keizer Planning Commission (“Commission”) is hereby created. The Commission will have the powers and duties hereinafter set forth and such additional powers and duties as may be conferred on such Commission by the constitution and laws of the State of Oregon, by the Charter of the City of Keizer, or by Ordinances, Resolutions, or Orders of the City Council.

B. The Commission will consist of seven (7) voting members to be appointed as outlined by the City Council Rules of Procedure. No more than two voting members shall be engaged principally in they buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than one voting member shall be engaged in the same kind of occupation, business, trade, or profession. No more than one member shall be a non-

1 resident of the City of Keizer. The Mayor will appoint a non-voting Council liaison to  
2 the Commission and shall make such announcement at a regularly scheduled Council  
3 meeting. The Council may appoint a non-voting Youth liaison to the Commission  
4 pursuant to the City Council Rules of Procedure. The Commission will be staffed by a  
5 non-voting staff liaison to be appointed by the City Manager.

6 C. The term of office of the appointed members shall be three years, or until  
7 their successors are appointed and qualified. The terms of office for appointed members  
8 shall be staggered so that the term of office of not more than three will expire in the same  
9 year. No appointive member shall serve more than two consecutive terms.  
10 Notwithstanding the other provisions of this Section, the term for Commission members  
11 appointed previously under Ordinance 83-006 shall continue in order to achieve the  
12 proper staggering of terms.

13 D. The City Council shall fill any vacancy in the Commission by appointment  
14 for the unexpired term of the predecessor in office. Such appointment shall not be  
15 included for calculation of term limits referenced in Section 1(C).

16 E. Prospective members of the Commission may be required to qualify by  
17 submitting a written application and/or appearing before the City Council or Volunteer  
18 Coordinating Committee for a personal interview. Before entering upon the duties of a  
19 Planning Commissioner, each Commission shall take an oath or shall affirm support for  
20 the constitution and the laws of the United States and of the State of Oregon and that  
21 each Commissioner will faithfully and impartially perform duties of that office.

1 F. The members of the Commission shall receive no compensation, but shall  
2 be reimbursed for duly authorized expenses.

3 G. A member of the Commission may be removed by a two-thirds majority  
4 vote of the City Council after hearing, for misconduct or nonperformance of duty.

5 Section 2. ORGANIZATION.

6 A. The Commission shall elect a chairman and vice chairman, who shall be  
7 members appointed by the City Council and who shall hold office during the pleasure of  
8 the Commission.

9 B. Four members appointed by the City Council shall at all times constitute a  
10 quorum.

11 C. The Commission shall meet at least once each month and the regular  
12 meeting place of the Commission shall be the City Hall. Upon a majority vote of the  
13 members of the Commission present, a meeting may be canceled when deemed  
14 appropriate. Notice of cancellation shall be posted at City Hall, on the City's web site  
15 and social media sites, distributed to members of the media, and to citizens requesting  
16 notice.

17 D. The Commission may make, establish and alter rules and regulations for its  
18 government and procedures consistent with the laws of the State of Oregon and with the  
19 Charter and Ordinances of the City of Keizer. Before any rules, amendments or  
20 deletions become effective, the Commission must submit them to the City Council for  
21 approval.

1           Section 3.    MONTHLY REPORT TO COUNCIL. At the regular meeting in  
2   October each year, the Commission shall make a rotation schedule of members to appear  
3   before the City Council each month. The Commission representative will appear at a  
4   City Council meeting during the appointed month to give a verbal report on the  
5   transactions of the Commission for the preceding month.

6           Section 4.    POWERS AND DUTIES. Except as otherwise provided by the  
7   City Council, the Planning Commission may:

8           A.    Recommend and make suggestions to the Council and to other public  
9   authorities concerning:

10           a.    The laying out, widening, extending and locating of public  
11   thoroughfares, parking of vehicles, relief of traffic congestion;

12           b.    Betterment of housing and sanitation conditions;

13           c.    Establishment of districts for limited the use, height, area, bulk and  
14   other characteristics of buildings and structures related to land development;

15           d.    Protection and assurance of access to incident solar radiation; and

16           e.    Protection and assurance of access to wind for potential future  
17   electrical generation or mechanical application.

18           B.    Recommend to the Council and other public authorities plans for  
19   regulating the future growth, development and beautification of the City in respect to its  
20   public and private buildings and works, streets, parks, grounds and vacant lots, and plans  
21   consistent with future growth and development of the City in order to secure to the City

1 and its inhabitants sanitation, proper service of public utilities and telecommunications  
2 utilities, including appropriate public incentives for overall energy conservation and  
3 harbor, shipping and transportation facilities.

4 C. Recommend to the Council and other public authorities plans for  
5 promotion, development and regulation of industrial and economic needs of the  
6 community in respect to industrial pursuits.

7 D. Advertise the industrial advantages and opportunities of the City and  
8 availability of real estate within the City for industrial settlement.

9 E. Encourage industrial settlement within the City.

10 F. Make economic surveys of present and potential industrial needs of the  
11 City.

12 G. Study needs of local industries with a view to strengthening and  
13 developing them and stabilizing employment conditions.

14 H. Do and perform all other acts and things necessary or proper to carry out  
15 the provisions of ORS 227.010 to 227.170, 227.175 and 227.180.

16 I. Study and propose such measures as are advisable for motion of the public  
17 interest, health, morals, safety, comfort, convenience and welfare of the City and of the  
18 area within six miles thereof.

19 J. For the purposes of this Section:

20 a. "Incident solar radiation" means solar energy falling upon a given  
21 surface area.



**CITY COUNCIL MEETING: October 5, 2020**

**AGENDA ITEM NUMBER: \_\_\_\_\_**

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

**THROUGH: CHRIS EPPLEY  
CITY MANAGER**

**FROM: BILL LAWYER  
PUBLIC WORKS DIRECTOR**

**SUBJECT: MANZANITA STREET STORM DRAIN REPAIR**

**DATE: September 18, 2020**

**BACKGROUND:**

During routine video inspection of the storm drain system a damaged section of 24" diameter concrete pipe was identified in a portion of the line on Manzanita Street NE. Staff considered the options for repairing or replacing the damaged section of pipe and solicited quotes to perform this work. The preferred option is to have a cured in place liner installed in the existing pipe as opposed to replacing the pipe.

This project involves installation of approximately 405 lineal feet of 24" cured in place pipe liner mobilization, and restoration of the project site.

Quotes were solicited through the informal bidding process to complete the work. This type of work is specialized and staff attempted to obtain multiple quotes for the work. Only one quote was received from Michels Corporation.

**FISCAL IMPACT:**

Funds for this project are available in the City Council adopted FY-20-21 Stormwater Fund budget.

**RECOMMENDATION:**

Staff recommends the City Council adopt the attached Resolution authorizing the City Manager to enter into a contract with **Michels Corporation** in the amount of **\$52,457.00** for the Manzanita Street Storm Drain Repair.

Please contact me with any questions or concerns.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2020-\_\_\_\_\_

AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACT FOR MANZANITA STREET STORM DRAIN REPAIR WITH MICHELS CORPORATION

WHEREAS, an existing 24” storm drain line on Manzanita Street Northeast is in

need of repair;

WHEREAS, staff solicited bids to repair the storm drain line, and only one bid

was received from Michels Corporation in the amount of \$52,457.00;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City

Manager is hereby authorized to enter into the Contract with Michels Corporation for a

total cost of \$52,457.00 to repair the storm drain pipe on Manzanita Street Northeast.

Funding for this project is from the Stormwater Fund.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately

upon its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Recorder

CONTRACT  
FOR  
MANZANITA STORM DRAIN REHABILITATION

THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Keizer, an Oregon municipal corporation, hereinafter called "Owner", and Michels Corporation, hereinafter called "Contractor".

WITNESSETH THAT: In consideration of the mutual covenants and conditions hereinafter set forth, the Owner and Contractor hereby agree as follows:

1. **WORK BY CONTRACTOR.** The Contractor shall provide all labor and materials to provide the services described in Exhibit "A" (Scope of Services) attached hereto and by this reference incorporated herein.
2. **TIME OF COMPLETION.** Unless directed in writing otherwise, the Contractor shall commence the work covered by this Contract within ten (10) days of full execution of this Contract (weather permitting), and shall complete all aspects of the project no later than January 8, 2021.
3. **BONDS.** Payment Bonds and Performance Bonds are required of Contractor at Contractor's own expense. Such bonds shall be issued by a surety licensed in the State of Oregon and must be acceptable to Owner. The bonds must equal the sum of the contract price.

The Contractor and all subcontractors must obtain or possess a valid Public Works Bond, filed with the Construction Contractors Board (CCB) before beginning any work on this project.

4. **PRECONSTRUCTION CONFERENCE.** Before any Work is started, a Preconstruction Conference attended by the Contractor, Public Works Director, and others as appropriate, will be held to establish a working understanding among the parties as to the Work and to discuss the procedures for handling submittals, processing applications for payment, and maintaining records. Contractor is required to request such Preconstruction Conference as soon as possible to prevent delays in the project.
5. **CONTRACT SUM.** The Contract Sum is Fifty-two Thousand, Four Hundred Fifty-seven and no/100 Dollars (\$52,457.00) plus the actual costs of the bonds.
6. **PAYMENTS.** When final completion of the work has been achieved, Contractor shall prepare for Owner's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on Owner's inspections, the work has reached final completion in accordance with the Contract Documents. Payment of the Contract Sum shall be made to Contractor within twenty (20) days after acceptance of the work by Owner and Contractor's submittal of the final application for payment and the following submissions:

- A. Any and all additional forms and documentation required by statute or this Agreement;
- B. An affidavit declaring any indebtedness connected with the work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the project property;
- C. A statement, under oath, that it has complied with all provisions of State law governing contractors on a public contract and it has complied with the provisions governing fair employment practices;
- D. A statement by each of Contractor's subcontractors, under oath, that each of the subcontractors has complied with all provisions of State law governing contractors on a public contract and has complied with the provisions governing fair employment practices;
- E. Release of any liens, conditioned on final payment being received;
- F. A report of any accidents or injuries experienced by Contractor or its Subcontractors at the worksite.
- G. All certified payroll reports.

If the work has been substantially completed and full completion thereof is materially delayed through no fault of the Contractor and the Public Works Director so certifies, the Owner shall, upon the certificate of the Public Works Director, and without terminating the Contract, make payment for the balance due for that portion of the work fully complete and accepted, less a retained amount equal to five percent (5%) of the amount requested.

7. **PAYMENTS WITHHELD.** Owner may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any estimate to such extent as may be necessary to protect the Owner from losses on account of:
- a. Defective work not remedied within a reasonable time after written notice.
  - b. Claims filed or reasonable evidence indicating probable filing of claims.
  - c. Failure of the Contractor to make payments properly to subcontractors or for material or labor.
  - d. A reasonable doubt that the Contract can be completed for the balance then unpaid.
  - e. Damage to the site, adjacent public or private property, or to another contractor.
  - f. Failure of the Contractor to keep Contractor's work progressing in accordance with Contractor's time schedule.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

8. **CHANGES.** Contractor may request and/or Owner may order changes in the work or the timing or sequencing of performance of the work that impacts the Contract Price or the Contract Time. All such changes in the work that affect Contract Time or Contract Price shall be formalized in a written Change Order.

Acceptance of the Change Order and any adjustment in the Contract Price and/or Contract Time must be signed by all parties.

9. NOTICES. Any written notices permitted or required by this Contract shall be deemed given when personally delivered, or three days after deposit in the United States mail, postage fully prepaid, addressed to the parties as set forth below or such other address as either party may provide to the other by notice given in accordance with this provision.

OWNER:

Bill Lawyer  
Public Works Director  
City of Keizer  
930 Chemawa Road NE  
PO Box 21000  
Keizer, OR 97307

CONTRACTOR:

Michels Corporation  
1715 16<sup>th</sup> Street SE  
Salem, OR 97302

10. LICENSES AND PERMITS. Owner shall secure and pay for all fees and permits required for the project, if any. Contractor shall comply with all laws, ordinances and regulations, (Federal, State, or local) which may be applicable to the project to be conducted hereunder.
11. RESPONSIBILITY OF PUBLIC WORKS DIRECTOR. The term "Public Works Director" herein shall be Bill Lawyer, or his duly authorized representative. The Public Works Director shall have full authority to interpret the plans and specifications and shall determine the amount, quality, and acceptance of the work and supplies to be paid for under this Contract. It shall be the duty of the Public Works Director to enforce the specifications in a fair and unbiased manner, although he has the right to waive any term of the specifications if that term is found to be unreasonable and inconsistent with the general spirit of the specifications.
12. WAIVER. It is expressly understood and agreed that any waiver granted by the Public Works Director or the Owner of any term, provision or covenant of this Contract shall not constitute a precedent nor breach of the same of any other terms, provisions, or covenants of this Contract. Neither the acceptance of the work by Owner nor the payment of all or any part of the sum due the Contractor hereunder shall constitute a waiver, by the Owner, of any claim which the Owner may have against the Contractor.
13. LIABILITY INSURANCE. The Contractor shall procure and maintain ongoing and completed liability insurance as hereinafter specified at Contractor's own expense. All such insurance shall be subject to the approval of the Owner for adequacy of protection and shall include a provision preventing cancellation without ten (10) day's prior notice to the Owner in writing. Contractor must provide the Owner with a certificate of insurance and endorsement evidencing the insurance within five (5) days from Contractor's execution of this Contract.

Contractor shall not commence work until the required evidence has been delivered to Owner. The endorsement must insure the City of Keizer as an additional insured. "The City of Keizer" includes its officers, agents, contractors, and employees. The liability insurance required is as follows:

- a. Contractor's General Public Liability and Property Damage Insurance issued to the Contractor and protecting him from all claims for personal injury including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under this Contract, whether such operations be by himself or by any subcontractor under him, or anyone directly or indirectly employed by the Contractor or by a subcontractor under him.

All such insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; a limit of liability of not less than \$2,000,000 for any such damages sustained by two or more persons in any one accident; a limit of liability of not less than \$1,000,000 for all damages arising out of injury or destruction of property, damages arising out of injury or destruction of property, (including property of the City) in any one accident; and a limit of liability of not less than \$2,000,000 for all damage arising out of injury to or destruction of property, including property of City, during the policy period.

- b. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 issued to Contractor and protecting him from all claims arising out of or in connection with any operations under this Contract, whether such operations be by himself or by any subcontractor under him, or anyone directly or indirectly employed by Contractor or by a subcontractor under him.

14. WORKERS COMPENSATION INSURANCE. The Contractor shall procure and maintain, at Contractor's own expense, during the life of this Contract, in accordance with the provision of the laws of the state of Oregon, Workman's Compensation Insurance for all of Contractor's employees at the site of the project and in case any work is sublet, the Contractor shall require such subcontractor similarly to provide Workman's Compensation Insurance for all of its employees unless such employees are covered by the protection afforded by the Contractor. Certificates evidencing the issuance of such insurance shall be filed with the Owner within five (5) days after execution of this Contract.

15. INDEMNITY. The Contractor shall indemnify the Owner, the Owner's agents and employees from and against all losses and all claims, demands, payments, suit actions, recoveries, and judgment of every nature and description brought or recovered against them by reason of any act or omission of the said Contractor, Contractor's agents, or employees, in the execution of the work or in guarding the same.

16. **SUBCONTRACTS.** The Contractor shall have full responsibility under these conditions, general provisions, plans and specifications for any subcontracts which Contractor may let. Work not performed by Contractor with its own forces shall be performed by subcontractors. Contractor agrees to bind each subcontractor and material supplier (and require every subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Contract and the Contract Documents as they apply to the subcontractor's and material supplier's portions of the work. Contractor shall submit a certification to Owner that all subcontractors performing work will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

17. **CONTRACTOR PAYMENTS.** Contractor shall: (1) make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract; (2) pay all contributions or amounts due the State Industrial Accident Fund and the State Unemployment Compensation Trust Fund from such Contractor or Subcontractor incurred in the performance of the Contract; (3) not permit any lien or claim to be filed or prosecuted against the Owner because of any labor or material furnished; and (4) pay to the Department of Revenue all sums withheld from employees.

If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the Project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract.

18. **PROTECTION OF WORK AND PROPERTY.** The Contractor shall continuously maintain adequate protection of all Contractor's work and materials from damage or theft and shall protect the Owner's property and all adjacent property from injury or loss arising in connection with the activities under this Contract. The Contractor shall make good any such damage, injury, or loss, except such as may be due to errors in the Contract documents or such as may be caused by agents or employees of the Owner.

The Contractor shall take, use, provide, and maintain all necessary precautions, safeguards, and protection to prevent accidents, or injury to persons or property on, about, or adjacent to the work site, warning against any hazards created by the work being done under this Contract. Contractor shall designate a responsible member of Contractor's organization on the work, whose duty shall be the prevention of accidents, and the name of the person so designated shall be reported to the Owner in writing. In any emergency affecting the safety of life, or of the work or adjoin property, the Contractor, without special instruction or authorization from the Owner, is hereby permitted to act, at Contractor's discretion, to prevent such threatened loss or injury, and Contractor must take such action if so instructed or authorized by the Owner. The Contractor shall also protect adjacent property as required by law.

Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor and sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

19. WORK HOURS. Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. Furthermore, Contractor shall not employ any person performing work under this contract for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it. Contractor shall pay all individuals performing work under this contract at least time-and-a-half pay for:

- a. All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
- b. All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- c. All work performed on Saturday or Sunday and on any legal holiday specified in ORS 279C.540.

20. PREVAILING WAGE. Contractor must ensure that each worker in each trade or occupation employed in the performance of this Contract either by the Contractor, Sub-contractor or other person doing or contracting to do the whole or any part of the work on this Contract, shall be paid not less than the applicable prevailing rate of wage set forth in the attached schedule pursuant to ORS 279C.840(4) & OAR 839-016-0033(1).

Contractor shall maintain all records and file all wage certification forms as required by Oregon Administrative Rules.

A. Prevailing Wage Requirements

a. Applicable Prevailing Wage Rates

- i. If this project is subject to the applicable Oregon Prevailing Wage Rate publication and any amendments, and/or the federal Davis Bacon Wage Rate Act (40 U.S.C. 3141 et seq.), in effect at the time of solicitation, the Contractor shall pay the wage rate and fringe benefits listed in the Bureau of Labor and Industries publication titled "July 1, 2020 Prevailing Wage Rates for Public Works

Contracts in Oregon", which is incorporated herein by reference or can be accessed and downloaded at BOLI's website.

- ii. If the project is subject to the federal Davis Bacon Act, the current wage rate publication for Oregon can be accessed and downloaded at <http://www.dol.gov/whd/govcontracts/dbra.htm>. ORS.279C.838.
  - iii. If the project is subject to the Davis-Bacon Act and if the state prevailing rate of wage is higher than the federal prevailing rate of wage that is in effect at the time a public agency enters into a contract with a contractor for the project, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage. ORS 279C.838.
  - iv. All prevailing wage rates that apply to the project must be posted at the job site. Every contractor on the site is responsible for this posting. ORS 279C.840(4) & OAR 839-025-0033(1).
  - v. All contracts and subcontracts for this project must include a provision that each worker in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, must be paid not less than the applicable state prevailing rate of wage, or the applicable federal prevailing rate of wage, whichever is higher. ORS 279C.838.
- b. Certified Payroll Filing Requirements
- i. Every employer on a covered project must file certified payroll records with the Owner. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.845 to 279C.860.
- c. Certified Payroll Form
- i. To help employers satisfy the filing requirement, Form WH-38 is included in each PWR rate book. BOLI does not require contractors to use this form, but contractors must supply all information the form requests and this information must be certified.

Employers using their own forms or reports can comply with the certification requirement by attaching and completing a copy of the certification from the WH-38 form to their filing.

Employers must submit the hours worked each day by each employee, his or her name, address, the pay rate, work

classification, gross pay to the employee and the amount contributed to any third party fringe benefits (and the type of benefit provided).

To meet filing requirements, the employer must sign the certified payroll to confirm that the information is true and complete. Unsigned reports do not satisfy the filing requirement. Submitting false or incomplete information can be the basis for civil penalties or debarment.

The Contractor and subcontractors shall preserve the certified statements for a period of three (3) years from the completion of the contract.

d. Certified Payroll Retainage

- i. As required in ORS 279C.845, the Owner will retain 25% of any amount earned by the Contractor on the project until the Contractor has filed the certified statements required in ORS 279C.845. The Owner will pay to the Contractor the amount retained within 14 days after the Contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.
- ii. As required in ORS 279C.845, the Contractor shall retain 25% of any amount earned by a first tier subcontractor on the project until the first tier subcontractor has filed with the Owner the certified statements required in ORS 279C.845. Before paying any amount retained, the Contractor shall verify that the first tier subcontractor has filed the certified statement. Within 14 days after the first tier subcontractor files the required certified statement the Contractor shall pay the first tier subcontractor any amount retained.

21. QUALIFYING EMPLOYEE DRUG TESTING PROGRAM. Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum a written employee drug testing policy, required drug testing for all new subject employees or, alternatively, required testing of all subject employees every 12 months on a random selection basis, and required testing of a subject employee when the Contractor has reasonable cause to believe the subject employee is under the influence of drugs.

22. SAFETY MEASURES. Contractor agrees that Contractor, Contractor's employees, and subcontractors will comply with all OSHA regulations applicable to the work being performed. Contractor further understands and agrees that work sites under this project vary from low traffic to very high traffic flow and that Contractor shall use appropriate traffic control measures. All traffic control measures must comply with the current edition of the Manual on Uniform Traffic

Control Devices (MUTCD). Contractor agrees that all personnel must wear safety vests at all times and use safety cones as required.

- 23.INSPECTION. Owner and his representative shall at all times have access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the stock and materials used and employed, and the workmanship are in accordance with the requirements and intentions of the specifications. All work done and all materials furnished shall be subject to inspection and approval.

The inspection of the work shall not relieve the Contractor of any of Contractor's obligations to fulfill the Contract in full and as prescribed. Defective work shall be made good and unsuitable material shall be rejected, notwithstanding that such defective work and material may have been previously overlooked and accepted on estimates for payment. No work shall be done at night without the prior written approval of Owner.

- 24.DEFECTIVE WORK OR MATERIAL. The Contractor shall promptly remove from the premises all work and materials condemned by Owner as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute Contractor's own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

- 25.LIENS. Contractor shall not permit any lien or claim to be filed or prosecuted against the City of Keizer, Oregon or the private property owner, in connection with this contract and agrees to assume responsibility should such lien or claim be filed. If at any time there shall be evidence of any lien or claim for which the Owner might become liable and which is chargeable to the Contractor, the Owner shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient to provide complete indemnification against such lien or claim. In the event the Owner has already paid to the Contractor all sums due under this Contract or the balance remaining unpaid is insufficient to protect the Owner, the Contractor shall be liable to the Owner for any loss so sustained.

- 26.OWNER'S RIGHT TO TAKE OVER THE WORK. If the Contractor should be adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed to take over its affairs, or if it should fail to prosecute its work with due diligence and carry the work forward in accordance with its work schedule and the time limits set forth in the Contract documents, or if it should fail to substantially perform one or more of the provisions of the Contract documents to be performed by it, the Owner may serve written notice on the Contractor and the surety of its payment and/or performance bond, stating its intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Owner bases its right to exercise such remedy.

In any event, unless the matter complained of is satisfactorily corrected within ten (10) days after service of such notice, the Owner may, without prejudice to any other right or remedy, exercise one of the following such remedies, at once, having first obtained a certificate from the Public Works Director that sufficient cause exists to justify such action.

- a. The Owner may terminate the services of the Contractor, which termination shall take effect immediately upon service of notice thereof on the Contractor, whereupon Owner may itself take over the work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the work to completion by such means as it shall deem best. In the event of such termination of its service, the Contractor shall not be entitled to any further payment under this Contract until the work is completed and accepted. If the Owner takes over the work and if the unpaid balance of the Contract price when the Owner takes over the work exceeds the cost of completing the work, including compensation for any damages or expenses incurred by Owner through the default of the Contractor, such excess shall be paid to the Contractor. In such event, if such costs, expenses and damages shall exceed such unpaid balance of the Contract price, the Contractor shall pay the difference to the Owner. Such costs, expenses, and damages shall be certified by the Public Works Director.
- b. The Owner may take control of the work and either make good the deficiencies of the Contractor itself or direct the activities of the Contractor in doing so, employing such additional help as the Owner deems advisable. In such event, the Owner shall be entitled to collect from the Contractor, or to deduct from any payment then or thereafter due the Contractor, the cost incurred by it through the default of the Contractor, provided the Public Works Director approves the amount thus charged to the Contractor.
- c. The Owner may require the surety on the Contractor's bond to take control of the work at once and see to it that all of the deficiencies of the Contractor are made good with due diligence. As between the Owner and the surety, the cost of making good such deficiencies shall all be borne by the surety. If the surety takes over the work, either upon instructions from the Owner to do so or based upon the surety's choice, all provisions of the Contract documents shall govern in respect to the work done by the surety, the surety being substituted for the Contractor as to such provisions as to payment for the work and provisions of this section as to the right of the Owner to do the work itself or to take control of the work.

The above remedies are in addition to any other remedies allowed by law or equity.

**27. OWNER'S RIGHT TO TERMINATE CONTRACT.** Owner may terminate this Contract upon seven (7) days written notice to Contractor if Owner fails to

receive funding, appropriations, limitations or other expenditure authority sufficient to allow Owner to pay for services under this Contract.

28. **CONTRACTOR'S RIGHT TO STOP OR TERMINATE CONTRACT.** If the work shall be stopped under an order of any court or other public authority for a period of no less than three (3) months through no act or fault of the Contractor or of any one employed by it, then the Contractor may on seven (7) days written notice to the Owner stop work or terminate this Contractor and recover from the Owner payment for all work executed to the date of stoppage, any losses sustained from any plant or material, and a reasonable profit. If the Public Works Director shall fail to issue any certificate for payment within ten (10) days after it is due, or if the Owner shall fail to pay the Contractor within fifteen (15) days after its maturity and presentation to the Owner any sum certified by the Public Works Director, then the Contractor may, on seven (7) days written notice to Owner, terminate the Contract and recover from the Owner payment for all work executed to date, any losses sustained upon any plant for material, and a reasonable profit.

29. **DELAYS AND EXTENSION OF TIME.** If the Contractor is delayed at any time in the progress of the work by an act or neglect of the Owner, or any employee of Owner, or by any separate contractor employed by the Owner, or by changes ordered in the work, or by strike, lockouts, fire, unusual delay in transportation, unavoidable casualties, or any cause beyond the Contractor's control, or by delay authorized by the Public Works Director, or by any cause which the Public Works Director shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Public Works Director may decide.

No such extensions shall be made for a delay occurring more than seven (7) days before claim therefore is made in writing to the Public Works Director. In the case of a continued cause of delay, only one claim is necessary. This section does not exclude the recovery of damages for delays by either party under other provisions in the Contract documents.

30. **ACCEPTANCE.** Final inspection and acceptance of the work shall be made by the Owner and local appointed authority. Such inspection shall be made as soon as practical after the Contractor has notified the Owner in writing that the work is ready for such inspection.

31. **GUARANTEE.** Except for normal wear and tear, Contractor agrees to guarantee all work under this Contract for a period of one (1) year from the date of acceptance of the work. If any unsatisfactory condition or damage develops within the time of this guarantee due to materials or workmanship which were defective, inferior, or not in accordance with the Contract, Contractors agrees, whenever notified by Owner, to immediately place such guaranteed work in a condition satisfactory to Owner and make repairs of all damage made necessary in the fulfillment of the guarantee. This provision shall survive termination of this Contract.

### 32. DISPUTE RESOLUTION.

- (a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the Owner within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Marion. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Salem, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Marion County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the Owner. Insofar as the Contractor and the Owner legally may do so, they agree to be bound by the decision of the arbitrator.
- (b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the Owner shall make payments as required by the Agreement for undisputed portions of work.

33. ASSIGNMENT. Neither Owner nor Contractor shall assign its interest in this Contract without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Contract shall be binding upon both parties, their partners, successors, assigns and legal representatives. Neither party to this Contract shall assign the Contract as a whole without written consent of the other.

34. INDEPENDENT CONTRACTOR STATUS. The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner. Contractor is not entitled to, and expressly waives all claim to City benefits including, but not limited to health, life, and disability insurance, overtime pay, paid leave, and retirement.

35. GOVERNING LAW. This Contract shall be governed by the laws of the State of Oregon.

36. SEVERABILITY. Any provision or part of this Contract held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor. Owner and Contractor agree that this Contract shall be amended to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

37.COMPLIANCE. The Contractor shall comply with and require its subcontractors to comply with all applicable provisions of Federal, State and local statutes, ordinance, orders, rules, regulations, and all other specifications and provisions as contained within these Contract documents.

38.INCORPORATION; PRECEDENCE. The Exhibits, if any, attached to this Contract are incorporated herein as if fully set forth in this Contract. If any provision of any Exhibit conflicts with the provisions of this Contract, the terms of this Contract shall govern.

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF KEIZER

MICHELS CORPORATION

By: \_\_\_\_\_  
Christopher C. Eppley,  
City Manager

By: \_\_\_\_\_  
\_\_\_\_\_,  
\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Keizer City Attorney



## Michels Corporation

Attn: City of Keizer  
 Lyle Bell  
 (503) 856-3571  
[bell@keizer.org](mailto:bell@keizer.org)

September 10, 2020

**Re: CIPP Proposal – “Manzanita Storm Drain Rehabilitation” - Keizer, OR**

Our quantities are calculated only from take-offs and limited by the information provided at the date indicated above, and the Owner should verify bidding quantities.

Michels Pipe Services, a division of Michels Corporation, is pleased to provide the following quote to your firm for the above-mentioned project, per your request. ~~The following prices should be considered confidential.~~ Your investment for this project is as follows:

| <u>Item</u> | <u>Description</u> | <u>Quantity</u> | <u>U/M</u> | <u>Unit</u>  | <u>Extension</u>    |
|-------------|--------------------|-----------------|------------|--------------|---------------------|
| 1           | 24" CIPP           | 405             | LF         | 120.00       | 48,600.00           |
| 2           | Mobilization       | 1               | LS         | 3,857.00     | 3,857.00            |
|             |                    |                 |            | <b>Total</b> | <b>\$ 52,457.00</b> |

**Proposal based on award of all items.**

**Items Included in Michels Pipe Services' Proposal:**

- Michels intends to execute all proposal work in one mobilization to and from project site. Any additional mobilization will be negotiated.
- Traffic control for Michels' operations only. *Typical signs (8), and cones (60) only. See Exclusions.*
- Pre-Clean/CCTV inspect pipe *immediately prior* to CIPP installation. *Michels' CIPP scope only. See Clarifications and Exclusions.*
- “Premier Pipe USA” Cured-in-Place pipe installed at locations associated with quoted items. *All material used in the CIPP application will be submitted and approved after award of project and prior to installation.*
- Post-lining Clean/CCTV inspect pipe after CIPP installation. *Michels' CIPP scope only.*

~~Any task or item not specifically included under this Proposal Letter is excluded from the scope of this project. Any additional items or information provided to Michels Pipe Services after the date of this Proposal Letter may result in modifications and/or adjustments to the schedule and pricing.~~

Michels has based the design on standard industry practices and according to ASTM F1216.

IF in some areas, CIPP installation within the specified work hour restrictions is not feasible, Michels shall not be held liable for any fees, penalties, or damages resulting from exceeding specified work hours during CIPP installation.

Proposal is based on a standard five day (Monday – Friday) work week. All weekend work is excluded.

Diameter transitions in can result in some minor wrinkling of the CIPP liner. This is an unavoidable byproduct of CIPP installation through diameter transitions. Any wrinkling present is cosmetic only. Michels cannot be held liable for the remediation of any wrinkling of the CIPP liner due to diameter transitions.





If at any time Michels Corporation discovers any condition that existed but was not discovered due to no fault of Michels Corporation or arises that prevents Michels Corporation from the installation of CIPP by normal methods, Michels' reserves the right to ~~modify this Proposal Letter and any terms or conditions herein.~~ ***If our crews are delayed through no fault of their own, Michels will charge the responsible party \$1,950.00 per crew standby hour for straight time work, 1 1/2 time on all overtime work and double time on all weekend work; this rate will also be applied for any extra mobilizations, indoctrinations, meetings, training, etc.***

Material acquisition lead-time is generally 3-4 weeks to Salem, OR. ~~This quote is valid for 30 days. Retainage is to be paid 60 days after owner's acceptance of Michels' work. If the Owner elects to accept Michels' proposal then both parties expressly agree that this proposal letter will be fully incorporated into the CONTRACT or SUBCONTRACT AGREEMENT to the extent it does not conflict with any other provision in the Contract or Subcontract Agreement. The scope and intent of this Proposal Letter shall govern.~~

Michels appreciates your consideration of this quote and looks forward to working with you on this project. Please feel free to contact me at (503) 364-1199 or [szandofs@michels.us](mailto:szandofs@michels.us) so that I may address any questions or concerns you have.

Sincerely,  
Michels Corporation

Sam Zandofsky  
Sr. Estimator

\*request modification of the contract and any terms or conditions therein.

**CITY COUNCIL MEETING: October 5, 2020**

**AGENDA ITEM NUMBER: \_\_\_\_\_**

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

**THROUGH: CHRIS EPPLEY  
CITY MANAGER**

**FROM: BILL LAWYER  
PUBLIC WORKS DIRECTOR**

**SUBJECT: LAUDERBACK STREET STORM DRAIN REPAIR**

**DATE: September 18, 2020**

**BACKGROUND:**

During routine video inspection of the storm drain system staff identified a damaged section of 18" diameter concrete pipe in a portion of the line on Lauderback Street NE. Staff considered the options for repairing or replacing the damaged section of pipe and solicited quotes to perform this work. The preferred option is to have a cured in place liner installed in the existing pipe as opposed to replacing this pipe.

This project involves installation of approximately 300 lineal feet of 18" cured in place pipe liner on Lauderback Street NE, mobilization, and restoration of the project site.

Quotes were solicited through the informal bidding process to complete the work. This type of work is specialized and staff attempted to obtain multiple quotes for the work. Only one quote was received from Michels Corporation.

**FISCAL IMPACT:**

Funds for this project are available in the City Council adopted FY-20-21 Stormwater Fund budget.

**RECOMMENDATION:**

Staff recommends the City Council adopt the attached Resolution authorizing the City Manager to enter into a contract with **Michels Corporation** in the amount of **\$28,200.00** for the Lauderback Street Storm Drain Repair.

Please contact me with any questions or concerns.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2020-\_\_\_\_\_

AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACT FOR LAUDERBACK STREET STORM DRAIN REPAIR WITH MICHELS CORPORATION

WHEREAS, an existing 18” storm drain line on Lauderback Street Northeast is in need of repair;

WHEREAS, staff solicited bids to repair the storm drain line, and only one bid was received from Michels Corporation in the amount of \$28,200.00;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is hereby authorized to enter into the Contract with Michels Corporation for a total cost of \$28,200.00 to repair the storm drain pipe on Lauderback Street Northeast. Funding for this project is from the Stormwater Fund.

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

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Recorder

CONTRACT  
FOR  
LAUDERBACK 18-INCH STORM DRAIN REHABILITATION

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Keizer, an Oregon municipal corporation, hereinafter called "Owner", and Michels Corporation, hereinafter called "Contractor".

WITNESSETH THAT: In consideration of the mutual covenants and conditions hereinafter set forth, the Owner and Contractor hereby agree as follows:

1. **WORK BY CONTRACTOR.** The Contractor shall provide all labor and materials to provide the services described in Exhibit "A" (Scope of Services) attached hereto and by this reference incorporated herein.
2. **TIME OF COMPLETION.** Unless directed in writing otherwise, the Contractor shall commence the work covered by this Contract within ten (10) days of full execution of this Contract (weather permitting), and shall complete all aspects of the project no later than January 8, 2021.
3. **CONTRACT SUM.** The Contract Sum is Twenty-eight Thousand, Two Hundred and No/100 Dollars (\$28,200.00).
4. **PAYMENTS.** When final completion of the work has been achieved, Contractor shall prepare for Owner's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on Owner's inspections, the work has reached final completion in accordance with the Contract Documents. Payment of the Contract Sum shall be made to Contractor within twenty (20) days after acceptance of the work by Owner and Contractor's submittal of the final application for payment. Such payment shall be conditioned, however, upon submission by the Contractor of evidence, satisfactory to the Owner, that all claims for labor, material, and any other outstanding indebtedness in connection with this Contract have been paid in full.

If the work has been substantially completed and full completion thereof is materially delayed through no fault of the Contractor and the Public Works Director so certifies, the Owner shall, upon the certificate of the Public Works Director, and without terminating the Contract, make payment for the balance due for that portion of the work fully complete and accepted, less a retained amount equal to five percent (5%) of the amount requested.

5. **PAYMENTS WITHHELD.** Owner may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any estimate to such extent as may be necessary to protect the Owner from losses on account of:
  - a. Defective work not remedied within a reasonable time after written notice.
  - b. Claims filed or reasonable evidence indicating probable filing of claims.

- c. Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- d. A reasonable doubt that the Contract can be completed for the balance then unpaid.
- e. Damage to the site, adjacent public or private property, or to another contractor.
- f. Failure of the Contractor to keep Contractor's work progressing in accordance with Contractor's time schedule.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

- 6. **CHANGES.** Contractor may request and/or Owner may order changes in the work or the timing or sequencing of performance of the work that impacts the Contract Price or the Contract Time. All such changes in the work that affect Contract Time or Contract Price shall be formalized in a Change Order. Acceptance of the Change Order and any adjustment in the Contract Price and/or Contract Time must be signed by all parties.
- 7. **NOTICES.** Any written notices permitted or required by this Contract shall be deemed given when personally delivered, or three days after deposit in the United States mail, postage fully prepaid, addressed to the parties as set forth below or such other address as either party may provide to the other by notice given in accordance with this provision.

**OWNER:**

Bill Lawyer  
Public Works Director  
City of Keizer  
930 Chemawa Road NE  
PO Box 21000  
Keizer, OR 97307

**CONTRACTOR:**

Michels Corporation  
1715 16<sup>th</sup> Street SE  
Salem, OR 97302

- 8. **LICENSES AND PERMITS.** Owner shall secure and pay for all fees and permits required for the project, if any. Contractor shall comply with all laws, ordinances and regulations, (Federal, State, or local) which may be applicable to the project to be conducted hereunder.
- 9. **RESPONSIBILITY OF PUBLIC WORKS DIRECTOR.** The term "Public Works Director" herein shall be Bill Lawyer, or his duly authorized representative. The Public Works Director shall have full authority to interpret the plans and specifications and shall determine the amount, quality, and acceptance of the work and supplies to be paid for under this Contract. It shall be the duty of the Public Works Director to enforce the specifications in a fair and unbiased manner, although he has the right to waive any term of the specifications if that term is found to be unreasonable and inconsistent with the general spirit of the specifications.

10. WAIVER. It is expressly understood and agreed that any waiver granted by the Public Works Director or the Owner of any term, provision or covenant of this Contract shall not constitute a precedent nor breach of the same of any other terms, provisions, or covenants of this Contract. Neither the acceptance of the work by Owner nor the payment of all or any part of the sum due the Contractor hereunder shall constitute a waiver, by the Owner, of any claim which the Owner may have against the Contractor.

11. LIABILITY INSURANCE. The Contractor shall procure and maintain ongoing and completed liability insurance as hereinafter specified at Contractor's own expense. All such insurance shall be subject to the approval of the Owner for adequacy of protection and shall include a provision preventing cancellation without ten (10) day's prior notice to the Owner in writing. Contractor must provide the Owner with a certificate of insurance and endorsement evidencing the insurance within five (5) days from Contractor's execution of this Contract. Contractor shall not commence work until the required evidence has been delivered to Owner. The endorsement must insure the City of Keizer as an additional insured. "The City of Keizer" includes its officers, agents, contractors, and employees. The liability insurance required is as follows:

- a. Contractor's General Public Liability and Property Damage Insurance issued to the Contractor and protecting him from all claims for personal injury including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under this Contract, whether such operations be by himself or by any subcontractor under him, or anyone directly or indirectly employed by the Contractor or by a subcontractor under him.

All such insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; a limit of liability of not less than \$2,000,000 for any such damages sustained by two or more persons in any one accident; a limit of liability of not less than \$1,000,000 for all damages arising out of injury or destruction of property, damages arising out of injury or destruction of property, (including property of the City) in any one accident; and a limit of liability of not less than \$2,000,000 for all damage arising out of injury to or destruction of property, including property of City, during the policy period.

- b. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 issued to Contractor and protecting him from all claims arising out of or in connection with any operations under this Contract, whether such operations be by himself or by any subcontractor under him, or anyone directly or indirectly employed by Contractor or by a subcontractor under him.

12. **WORKERS COMPENSATION INSURANCE.** The Contractor shall procure and maintain, at Contractor's own expense, during the life of this Contract, in accordance with the provision of the laws of the state of Oregon, Workman's Compensation Insurance for all of Contractor's employees at the site of the project and in case any work is sublet, the Contractor shall require such subcontractor similarly to provide Workman's Compensation Insurance for all of its employees unless such employees are covered by the protection afforded by the Contractor. Certificates evidencing the issuance of such insurance shall be filed with the Owner within five (5) days after execution of this Contract.
13. **INDEMNITY.** The Contractor shall indemnify the Owner, the Owner's agents and employees from and against all losses and all claims, demands, payments, suit actions, recoveries, and judgment of every nature and description brought or recovered against them by reason of any act or omission of the said Contractor, Contractor's agents, or employees, in the execution of the work or in guarding the same.
14. **PROTECTION OF WORK AND PROPERTY.** The Contractor shall continuously maintain adequate protection of all Contractor's work and materials from damage or theft and shall protect the Owner's property and all adjacent property from injury or loss arising in connection with the activities under this Contract. The Contractor shall make good any such damage, injury, or loss, except such as may be due to errors in the Contract documents or such as may be caused by agents or employees of the Owner.

The Contractor shall take, use, provide, and maintain all necessary precautions, safeguards, and protection to prevent accidents, or injury to persons or property on, about, or adjacent to the work site, warning against any hazards created by the work being done under this Contract. Contractor shall designate a responsible member of Contractor's organization on the work, whose duty shall be the prevention of accidents, and the name of the person so designated shall be reported to the Owner in writing. In any emergency affecting the safety of life, or of the work or adjoin property, the Contractor, without special instruction or authorization from the Owner, is hereby permitted to act, at Contractor's discretion, to prevent such threatened loss or injury, and Contractor must take such action if so instructed or authorized by the Owner. The Contractor shall also protect adjacent property as required by law.

Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor and sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

15. **SAFETY MEASURES.** Contractor agrees that Contractor, Contractor's employees, and subcontractors will comply with all OSHA regulations applicable

to the work being performed. Contractor further understands and agrees that work sites under this project vary from low traffic to very high traffic flow and that Contractor shall use appropriate traffic control measures. All traffic control measures must comply with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD). Contractor agrees that all personnel must wear safety vests at all times and use safety cones as required.

- 16.INSPECTION. Owner and his representative shall at all times have access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the stock and materials used and employed, and the workmanship are in accordance with the requirements and intentions of the specifications. All work done and all materials furnished shall be subject to inspection and approval.

The inspection of the work shall not relieve the Contractor of any of Contractor's obligations to fulfill the Contract in full and as prescribed. Defective work shall be made good and unsuitable material shall be rejected, notwithstanding that such defective work and material may have been previously overlooked and accepted on estimates for payment. No work shall be done at night without the prior written approval of Owner.

- 17.DEFECTIVE WORK OR MATERIAL. The Contractor shall promptly remove from the premises all work and materials condemned by Owner as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute Contractor's own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

- 18.LIENS. Contractor shall not permit any lien or claim to be filed or prosecuted against the City of Keizer, Oregon or the private property owner, in connection with this contract and agrees to assume responsibility should such lien or claim be filed. If at any time there shall be evidence of any lien or claim for which the Owner might become liable and which is chargeable to the Contractor, the Owner shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient to provide complete indemnification against such lien or claim. In the event the Owner has already paid to the Contractor all sums due under this Contract or the balance remaining unpaid is insufficient to protect the Owner, the Contractor shall be liable to the Owner for any loss so sustained.

- 19.OWNER'S RIGHT TO TAKE OVER THE WORK. If the Contractor should be adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed to take over its affairs, or if it should fail to prosecute its work with due diligence and carry the work forward in accordance with its work schedule and the time limits set forth in the Contract documents, or if it should fail to substantially perform one or more of the provisions of the Contract documents to be performed by it, the Owner may

serve written notice on the Contractor stating its intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Owner bases its right to exercise such remedy.

In any event, unless the matter complained of is satisfactorily corrected within ten (10) days after service of such notice, the Owner may, without prejudice to any other right or remedy, exercise one of the following such remedies, at once, having first obtained a certificate from the Public Works Director that sufficient cause exists to justify such action.

- a. The Owner may terminate the services of the Contractor, which termination shall take effect immediately upon service of notice thereof on the Contractor, whereupon Owner may itself take over the work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the work to completion by such means as it shall deem best. In the event of such termination of its service, the Contractor shall not be entitled to any further payment under this Contract until the work is completed and accepted. If the Owner takes over the work and if the unpaid balance of the Contract price when the Owner takes over the work exceeds the cost of completing the work, including compensation for any damages or expenses incurred by Owner through the default of the Contractor, such excess shall be paid to the Contractor. In such event, if such costs, expenses and damages shall exceed such unpaid balance of the Contract price, the Contractor shall pay the difference to the Owner. Such costs, expenses, and damages shall be certified by the Public Works Director.
- b. The Owner may take control of the work and either make good the deficiencies of the Contractor itself or direct the activities of the Contractor in doing so, employing such additional help as the Owner deems advisable. In such event, the Owner shall be entitled to collect from the Contractor, or to deduct from any payment then or thereafter due the Contractor, the cost incurred by it through the default of the Contractor, provided the Public Works Director approves the amount thus charged to the Contractor.

The above remedies are in addition to any other remedies allowed by law or equity.

20. **CONTRACTOR'S RIGHT TO STOP OR TERMINATE CONTRACT.** If the work shall be stopped under an order of any court or other public authority for a period of no less than three (3) months through no act or fault of the Contractor or of any one employed by it, then the Contractor may on seven (7) days written notice to the Owner stop work or terminate this Contractor and recover from the Owner payment for all work executed to the date of stoppage, any losses sustained from any plant or material, and a reasonable profit. If the Public Works Director shall fail to issue any certificate for payment within ten (10) days after it is due, or if the Owner shall fail to pay the Contractor within fifteen (15) days after its maturity and presentation to the Owner any sum certified by the Public Works Director,

then the Contractor may, on seven (7) days written notice to Owner, terminate the Contract and recover from the Owner payment for all work executed to date, any losses sustained upon any plant for material, and a reasonable profit.

21. DELAYS AND EXTENSION OF TIME. If the Contractor is delayed at any time in the progress of the work by an act or neglect of the Owner, or any employee of Owner, or by any separate contractor employed by the Owner, or by changes ordered in the work, or by strike, lockouts, fire, unusual delay in transportation, unavoidable casualties, or any cause beyond the Contractor's control, or by delay authorized by the Public Works Director, or by any cause which the Public Works Director shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Public Works Director may decide.

No such extensions shall be made for a delay occurring more than seven (7) days before claim therefore is made in writing to the Public Works Director. In the case of a continued cause of delay, only one claim is necessary. This section does not exclude the recovery of damages for delays by either party under other provisions in the Contract documents.

22. ACCEPTANCE. Final inspection and acceptance of the work shall be made by the Owner and local appointed authority. Such inspection shall be made as soon as practical after the Contractor has notified the Owner in writing that the work is ready for such inspection.

23. GUARANTEE. Contractor agrees to guarantee all work under this Contract for a period of one (1) year from the date of final acceptance thereof. If any unsatisfactory condition or damage develops within the time of this guarantee due to materials or workmanship which were defective, inferior, or not in accordance with the Contract, Contractor agrees, whenever notified by Owner, to immediately place such guaranteed work in a condition satisfactory to Owner and make repairs of all damage made necessary in the fulfillment of the guarantee. This provision shall survive termination of this Contract.

24. DISPUTE RESOLUTION.

(a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the Owner within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Marion. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Salem, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Marion County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a

- decision within forty-five (45) days of the first meeting with the Contractor and the Owner. Insofar as the Contractor and the Owner legally may do so, they agree to be bound by the decision of the arbitrator.
- (b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the Owner shall make payments as required by the Agreement for undisputed portions of work.
25. **ASSIGNMENT.** Neither Owner nor Contractor shall assign its interest in this Contract without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Contract shall be binding upon both parties, their partners, successors, assigns and legal representatives. Neither party to this Contract shall assign the Contract as a whole without written consent of the other.
26. **INDEPENDENT CONTRACTOR STATUS.** The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner. Contractor is not entitled to, and expressly waives all claim to City benefits including, but not limited to health, life, and disability insurance, overtime pay, paid leave, and retirement.
27. **GOVERNING LAW.** This Contract shall be governed by the laws of the State of Oregon.
28. **SEVERABILITY.** Any provision or part of this Contract held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor. Owner and Contractor agree that this Contract shall be amended to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
29. **COMPLIANCE.** The Contractor shall comply with and require its subcontractors to comply with all applicable provisions of Federal, State and local statutes, ordinance, orders, rules, regulations, and all other specifications and provisions as contained within these Contract documents.
30. **INCORPORATION; PRECEDENCE.** The Exhibits, if any, attached to this Contract are incorporated herein as if fully set forth in this Contract. If any provision of any Exhibit conflicts with the provisions of this Contract, the terms of this Contract shall govern.
31. **SIGNATURE.** Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm facsimile or electronic transmitted signatures by signing an original document.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF KEIZER

MICHELS CORPORATION

By: \_\_\_\_\_  
Christopher C. Eppley,  
City Manager

By: \_\_\_\_\_  
\_\_\_\_\_,  
\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Keizer City Attorney



## Michels Corporation

Attn: City of Keizer  
Lyle Bell  
(503) 856-3571  
[bell@keizer.org](mailto:bell@keizer.org)

REVISED

September 14<sup>th</sup>, 2020

**Re: CIPP Proposal – “Lauderback 18-inch Storm Drain Rehabilitation” - Keizer, OR**

Our quantities are calculated only from take-offs and limited by the information provided at the date indicated above, and the Owner should verify bidding quantities.

Michels Pipe Services, a division of Michels Corporation, is pleased to provide the following quote to your firm for the above-mentioned project, per your request. ~~The following prices should be considered confidential.~~ Your investment for this project is as follows:

| <u>Item</u> | <u>Description</u> | <u>Quantity</u> | <u>U/M</u> | <u>Unit</u> | <u>Extension</u> |
|-------------|--------------------|-----------------|------------|-------------|------------------|
| 1           | 18" CIPP           | 300             | LF         | 94.00       | 28,200.00        |
|             |                    |                 |            | Total       | \$ 28,200.00     |

**Proposal based on award of all items.**

**Items Included in Michels Pipe Services’ Proposal:**

- Michels intends to execute all proposal work in one mobilization to and from project site. Any additional mobilization will be negotiated.
- Minor traffic control for Michels’ operations only. *Typical signs (4) and cones (20) or temporary street closure (local traffic only). See Exclusions.*
- Pre-Clean/CCTV inspect pipe *immediately prior* to CIPP installation. *Michels’ CIPP scope only. See Clarifications and Exclusions.*
- “Premier Pipe USA” Cured-in-Place pipe installed at locations associated with quoted items. *All material used in the CIPP application will be submitted and approved after award of project and prior to installation.*
- Reinstate laterals (1ea).
- Post-lining Clean/CCTV inspect pipe after CIPP installation. *Michels’ CIPP scope only.*

~~Any task or item not specifically included under this Proposal Letter is excluded from the scope of this project. Any additional items or information provided to Michels Pipe Services after the date of this Proposal Letter may result in modifications and/or adjustments to the schedule and pricing.~~

Michels has based the design on standard industry practices and according to ASTM F1216.

**IF in some areas, CIPP installation within the specified work hour restrictions is not feasible, Michels shall not be held liable for any fees, penalties, or damages resulting from exceeding specified work hours during CIPP installation.**

**Proposal is based on a standard five day (Monday – Friday) work week. All weekend work is excluded.**





If at any time Michels Corporation discovers any condition that existed but was not discovered due to no fault of Michels Corporation or arises that prevents Michels Corporation from the installation of CIPP by normal methods, Michels' reserves the right to modify this Proposal Letter and any terms or conditions herein. ***If our crews are delayed through no fault of their own, Michels will charge the responsible party \$1,850.00 per crew standby hour for straight time work, 1 1/2 time on all overtime work and double time on all weekend work; this rate will also be applied for any extra mobilizations, indoctrinations, meetings, training, etc.***

Material acquisition lead-time is generally 3-4 weeks to Salem, OR. ~~This quote is valid for 30 days. Payment is to be paid 60 days after work acceptance of Michels work. If the Owner elects to accept Michels proposal, then both parties expressly agree that this proposal here will be fully incorporated into the CONTRACT or SUBCONTRACT AGREEMENT. In the event of a conflict between any other provision in the Contract or Subcontract Agreement, the scope and intent of this Proposal Letter shall govern.~~

Michels appreciates your consideration of this quote and looks forward to working with you on this project. Please feel free to call me at (503) 364-1199 or email at [chesselgrave@michels.us](mailto:chesselgrave@michels.us) so that I may address any questions or concerns that arise.

Sincerely,  
Michels Corporation

*Chris Hesselgrave*

Chris Hesselgrave, Estimator

request modification of the contract and any terms or conditions therein.

**CITY COUNCIL MEETING: October 5, 2020**

**TO: MAYOR CLARK AND COUNCIL MEMBERS**

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

**FROM: TIM WOOD, FINANCE DIRECTOR**

**SUBJECT: RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE CENTER FOR INTERNET SECURITY (“CIS”) FOR ALBERT MONITORING SERVICES**

The City of Keizer would like to enter into an agreement with CIS for Albert Monitoring Services.

Albert Monitoring Services provides continuous network monitoring, intrusion detection, dissemination of cyber threat warnings and vulnerability identification and mitigation recommendations.

**ISSUES AND FISCAL IMPACT:**

The initial cost for Albert Monitoring Services is \$11,580 and includes \$900 in one-time startup costs. The initial cost is included in the Fiscal Year 2020-21 Adopted City of Keizer Budget. The agreement is for one year and because it provides for an automatic renewal it requires City Council approval.

**RECOMMENDATION:**

Staff recommends that the City Council adopt the attached resolution authorizing the Finance Director to enter into an agreement with CIS for Albert Monitoring Services.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2020-\_\_\_\_\_

AUTHORIZING FINANCE DIRECTOR TO ENTER INTO PURCHASE AGREEMENT FOR ALBERT MONITORING SERVICES WITH CENTER FOR INTERNET SECURITY, INC. (CIS)

WHEREAS, the City desires to enter into an agreement with Center for Internet Security, Inc. (CIS) for Albert monitoring services;

WHEREAS, Albert monitoring services provides continuous network monitoring, intrusion detection, dissemination of cyber threat warnings and vulnerability identification and mitigation recommendations;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the Finance Director is authorized to enter into the attached Purchase Agreement for Albert Monitoring Services with Center for Internet Security, Inc.

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

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Recorder

## **PURCHASE AGREEMENT FOR ALBERT MONITORING SERVICES**

This PURCHASE AGREEMENT (Agreement) by and between the Center for Internet Security, Inc. (“CIS”), located at 31 Tech Valley Drive, East Greenbush, NY 12061-4134, and City of Keizer (“Customer”) with its principal place of business at: 930 Chemawa Rd NE, Keizer, OR 97303 for Albert Monitoring Services, as defined herein below (CIS and Customer each a “Party” and collectively referred to as the “Parties”).

### **WITNESSETH:**

**WHEREAS**, CIS, through its Multi-State Information Sharing and Analysis Center (MS-ISAC) has been recognized by the United States Department of Homeland Security as the governmental ISAC and as a key Albert Monitoring resource for all fifty states, local governments, tribal nations and United States territories (“SLTTs”); and

**WHEREAS**, CIS operates twenty-four hours a day, seven days per week (24/7) Security Operations Center (SOC), as further described herein; and

**WHEREAS**, CIS offers fee-based Albert Monitoring Services (as defined herein) to SLTTs and Customer desires to procure such Albert Monitoring Services, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Parties do hereby agree as follows:

### **I. Definitions**

**A. Albert Monitoring Services.** Combined Netflow and intrusion detection system monitoring, with analysis of related data; event notification and delivery; and management of associated devices, including software necessary for service delivery. Also referred to as “**Services.**”

**B. Security Operation Center (SOC)** – 24 X 7 X 365 watch and warning center that provides network monitoring, dissemination of cyber threat warnings and vulnerability identification and mitigation recommendations.

### **II. Selection of Albert Monitoring Services**

Subject to the terms and conditions contained herein, CIS hereby agrees to supply Customer with the Albert Monitoring Services as requested during the term of this Agreement, including hardware if so requested by Customer and set forth in Appendix A. Initially, CIS shall provide Customer with the Albert Monitoring Services specified in Appendix A (“Initial Albert Monitoring Services”). Additional Albert Monitoring Services may be ordered by Customer during the Term of this Agreement by submitting a written request to CIS; such purchases are also subject to the terms and conditions contained in Appendix B described below, to extent applicable. The Service Start Date of subsequent orders for Albert Monitoring Services will be dependent upon CIS receiving sufficient information

to begin services, but shall terminate as of the end of the applicable Term, as specified in Section V below. Additional Cyber Security Services may also be ordered by Customer by separate agreement with CIS.

Request for additional services should be sent to:

Center for Internet Security, Inc.  
31 Tech Valley Drive  
East Greenbush, NY 12061-4134  
Attn: CIS Services

or email to: [CIS\\_Services@cisecurity.org](mailto:CIS_Services@cisecurity.org)

### **III. Consideration, Payment Terms**

- A. Consideration. As consideration for the Albert Monitoring Services requested by Customer, Customer hereby agrees to pay to CIS the costs for one year of the Albert Monitoring Services as specified in Appendix A.
- B. Pricing for Subsequent Terms. At least thirty (30) days prior to the end of any Term of this Agreement, CIS shall provide Customer with updated pricing for Albert Monitoring Services to apply for the subsequent Term. Unless Customer terminates the Agreement in accordance with the provision of Section V(A) of this Agreement, the parties agree that Appendix A will be amended to incorporate the updated pricing for the subsequent Term.
- C. Payment Terms. CIS shall invoice Customer for the Albert Monitoring Services. Unless otherwise agreed to by the Parties in writing, Customer shall pay CIS within 30 days of receipt of invoice.
- D. Review of Network Utilization. The Parties recognize that the pricing set forth in Appendix A is based on good faith estimates of network utilization provided to CIS by Customer. During the Term of this Agreement and any subsequent Renewal Terms, CIS shall have the right, but not the obligation, to review Customer's daily average network utilization to determine whether such actual utilization meets or exceeds the utilization parameters agreed to in Appendix A. CIS shall have the right to increase the pricing set forth in Appendix A if Customer's daily average network utilization exceeds the utilization limit of the pricing category on which Customer's then-current pricing is based. Such price increase shall be effective upon renewal, subject to the terms set forth in section III(B) above.

### **IV. Additional Terms and Conditions**

Appendix B, which is attached hereto and incorporated herein, contains additional terms and conditions applicable to the purchase and implementation of Albert Monitoring Services.

### **V. Term of this Agreement; Termination**

- A. Term; Renewal. This Agreement will commence on the date it is signed by

both Parties (the "Effective Date"), and Albert Monitoring Services will start as of the date that all pre-service requirements as set forth in Appendix B are met and monitoring services are available (the "Service Start Date"). This Agreement shall continue in full force and effect for a period of twelve (12) months from the Service Start Date (the "Term"), unless otherwise earlier terminated pursuant to the terms of this Section V. The Agreement will automatically renew for an additional term(s) of one year unless either Party provides the other Party with written notice of its intent not to renew at least sixty (60) days prior to the end of the Term.

B. Termination. Unless otherwise specified in the additional terms and conditions related to the particular Albert Monitoring Service, either Party may terminate this Agreement and any Albert Monitoring Service being provided under this Agreement by providing written notice to the other Party ninety (90) days prior to such termination.

## **VI. Title, Limitation of Warranties and Liability**

A. Title. CIS will at all times retain title to hardware and software provided to Customer during the Term of this Agreement. Customer shall retain title to all hardware and/or software purchased by Customer to provide Services under this Agreement.

The Customer shall own all right, title and interest in its data that is provided to CIS pursuant to this Agreement. Customer hereby grants CIS a non-exclusive, non-transferable license to access and use such data to the extent necessary to provide Albert Monitoring Services under this Agreement.

B. LIMITATION OF LIABILITY. EXCEPT FOR ACTS OR OMISSIONS CAUSED BY THE GROSS NEGLIGENCE OF CIS, CIS DOES NOT ASSUME ANY RESPONSIBILITY OR LIABILITY FOR ANY ACT OR OMISSION OR OTHER PERFORMANCE RELATED TO THE PROVISION OF ALBERT MONITORING SERVICES OR FOR THE ACCURACY OF THE INFORMATION PROVIDED AS PART OF THE SERVICES. THE SERVICES ARE PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED.

C. Right to Subcontract. In order to facilitate its performance of the Agreement, CIS may utilize a third-party subcontractor ("Subcontractor") to provide any or all of the services required of it under this Agreement. Prior to any such subcontracting, CIS shall enter into a written agreement with Subcontractor in which Subcontractor accepts responsibility for all obligations that would otherwise be performed by CIS in accordance with the terms of this Agreement. Any written agreement between CIS and Subcontractor shall ensure for the provision of confidential information to require that Subcontractor abides by the same Confidentiality Terms contained herein. Customer may be directed to interact and communicate with Subcontractor at CIS' direction.

**VII. Confidentiality Obligation**

CIS acknowledges that certain confidential or proprietary information may either be provided by Customer to CIS or generated in the performance of the Albert Monitoring Services, including without limitation: information regarding the infrastructure and security of Customer's information systems; assessments and plans that relate specifically and uniquely to the vulnerability of Customer's information systems; the results of tests of the security of Customer's information systems insofar as those results may reveal specific vulnerabilities; or information otherwise marked as confidential by Customer ("Confidential Information"). The Customer acknowledges that it may receive from CIS trade secrets and confidential and proprietary information ("Confidential Information"). Both Parties agree to hold each other's Confidential Information in confidence to the same extent and the same manner as each Party protects its own confidential information, but in no event will less than reasonable care be provided and a Party's information will not be released in any identifiable form without the express written permission of such Party or as required pursuant to lawfully authorized subpoena or similar compulsive directive or is required to be disclosed by law, provided that the Customer shall be required to make reasonable efforts, consistent with applicable law, to limit the scope and nature of such required disclosure. CIS shall, however, be permitted to disclose relevant aspects of such Confidential Information to its officers, employees and CIS's federal partners provided that they agree to protect the Confidential Information to the same extent as required under this Agreement. The Parties agree to use all reasonable steps to ensure that Confidential Information received under this Agreement is not disclosed in violation of this Section VII. The obligations of the Parties pursuant to this paragraph shall survive the termination of this Agreement. Nothing in this Agreement shall prohibit CIS from using aggregated data of its customers in any format for any purpose, provided that such data cannot be identified to or associated with Customer.

**VIII. Force Majeure**

Neither Party shall be liable for performance delays or for non-performance due to causes beyond its reasonable control.

**IX. No Third Party Rights**

Except as otherwise expressly stated herein, nothing in this Agreement shall create or give to third parties any claim or right of action of any nature against Customer or CIS.

**X. Assignment**

Neither Party may assign their rights and obligations under this Agreement without the prior written approval of the other Party, which approval shall not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon and inure to the benefits of each Party and their respective successors and

assigns.

## **XI. Notices**

A. All notices permitted or required hereunder shall be in writing and shall be transmitted either: via certified or registered United States mail, return receipt requested; by facsimile transmission; by personal delivery; by expedited delivery service; or by e-mail with acknowledgement of receipt of the notice.

Such notices shall be addressed as follows or to such different addresses as the Parties may from time-to-time designate:

### **CIS**

**Name:** CIS Services  
**Address:** Center for Internet Security, Inc.  
31 Tech Valley Drive  
East Greenbush, NY 12061-4134  
**Phone:** (518) 880-0766  
**E-Mail:** [CIS\\_Services@cisecurity.org](mailto:CIS_Services@cisecurity.org)

### **Customer**

**Name:** Tim Wood  
**Title:** Finance Director  
**Address:** City of Keizer  
930 Chemawa Rd NE  
Keizer, OR 97303  
**Phone:** 503-856-3413  
**E-Mail:** [WoodT@Keizer.org](mailto:WoodT@Keizer.org)

B. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

C. The Parties may, from time to time, specify any new or different contact information as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration, resolving issues and problems and/or for dispute resolution.

## **XII. Governing Law and Jurisdiction**

Unless otherwise specifically prohibited by the laws of Customer's jurisdiction,

any disputes arising in connection with this Agreement shall be governed and interpreted by the laws of the State of Oregon without regard to its conflict of law provisions. In the event that the laws of Customer's jurisdiction require that the laws of that jurisdiction apply to all contracts entered into by Customer, then the laws of that jurisdiction shall apply.

### **XIII. Non-Waiver**

None of the provisions of this Agreement shall be considered waived by either Party unless such waiver is given in writing by the other Party. No such waiver shall be a waiver or any past or future default, breach or modification of any of the terms, provision, conditions or covenants of the Agreement unless expressly set forth in such waiver.

### **XIV. Entire Agreement; Amendments**

This Agreement and the appendices attached hereto constitute the entire understanding and agreement between the Parties with respect to the subject matter hereof and replace and supersede all prior understandings, communications, agreements or arrangements between the parties with respect to this subject matter, whether oral or written. This Agreement may only be amended as agreed to in writing by both Parties.

### **XV. Partial Invalidity**

If any provision of this Agreement be adjudged by a court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

The foregoing has been agreed to and accepted by the authorized representatives of each Party whose signatures appear below:

**CENTER FOR INTERNET**

**CUSTOMER**

**SECURITY, INC.**

DocuSigned by:  
By: Steve Gold  
6C0198DC07F44E4...  
Name: Steve Gold  
Title: VP, Cybersecurity solutions  
Date: 9/25/2020

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LIST OF APPENDICES**

**APPENDIX A-Initial Albert Monitoring Services Order**

**APPENDIX B-Additional Terms and Conditions for Albert Monitoring Services**

**APPENDIX A**

**For Albert Monitoring Services**

| Albert Network Monitoring Services (Recurring)     |                       |  |            |                          |                  |
|--|-----------------------|--|------------|--------------------------|------------------|
| QTY  | SKU                   | Description  | Term (yrs) | Unit Cost                | Extended Cost    |
| 1  | CIS-ALB-SM-MON-PR-Y-A | CIS Albert SM Monitoring Primary Sensor                | 1          | 10,680                   | \$ 10,680        |
|  |                       |  |            | Subtotal                 | \$ 10,680        |
| Albert Network Monitoring Intialization (One-Time) |                       |  |            |                          |                  |
| QTY  | SKU                   | Description  | One-Time   | Unit Cost                | Extended Cost    |
| 1  | CIS-ALB-SM-MON-PR-O-A | CIS Albert SM Monitoring Primary Sensor Initialization | 1          | 900                      | \$ 900           |
|  |                       |  |            | Subtotal                 | \$ 900           |
| Albert Network Monitoring Services                 |                       |  |            |                          |                  |
|  |                       |  |            | Recurring Services Total | \$ 10,680        |
|  |                       |  |            | One-Time Services Total  | \$ 900           |
|  |                       |  |            | One-Time Services Total  | \$ -             |
|  |                       |  |            | <b>Grand Total</b>       | <b>\$ 11,580</b> |

## APPENDIX B

### ADDITIONAL TERMS AND CONDITIONS

The following terms and conditions set forth the respective responsibilities of CIS and Customer in establishing and maintaining Albert Monitoring Services.

#### I. CIS Responsibilities

CIS will provide the following as part of the Albert Monitoring Services, as specified below:

**A. Monitoring and Event Related Services.** CIS will provide the following monitoring and event related services:

1. Specifications for the sensor(s)/server(s) to be purchased by Customer for provision of the Albert Monitoring Services.
2. Analysis of events from monitored devices for attacks and malicious traffic.
3. Analysis of security events.
4. Correlation of security data/logs/events with information from other sources.
5. Notification of security events per the Escalation Procedures provided by Customer.
6. 24/7 telephone (1-866-787-4722) availability for assistance with resolution of security events detected by the Albert Monitoring Services.

**B. Device Management:** CIS will be responsible for the correct functioning of devices used as part of Albert Monitoring Services, including ensuring that all upgrades, patches, configuration changes and signature upgrades are applied to such devices.

**C. Batch Queries:** CIS will process batch queries of Netflow data upon Customer request, with a limit of 10 queries per month per device. CIS maintains flow records for a period of three (3) months.

#### II. Customer Responsibilities

A. Customer acknowledges and agrees that CIS's ability to perform the Albert Monitoring Services is subject to Customer fulfilling certain responsibilities listed below. Customer acknowledges and agrees that CIS shall not have any responsibility whatsoever to perform or to continue to perform Albert Monitoring Services in the event Customer fails to meet its responsibilities described below.

B. For purposes of this Agreement, Customer acknowledges and agrees that only those security devices supported by CIS fall within the scope of this Agreement.

C. Customer shall provide the sensor(s)/server(s) to be used for Albert Monitoring Services, using the specifications provided by CIS, and in type and numbers as agreed to in this Agreement. Customer shall also provide logistic support in the form of rack space, electricity, Internet connectivity, and any other infrastructure necessary to support communications at Customer's expense

D. Customer shall provide the following to CIS prior to the commencement of Albert Monitoring Services and at any time during the Term of the Agreement if the information changes:

1. Current network diagrams to facilitate analysis of security events on the portion(s) of Customer's network being monitored. Network diagrams will need to be revised whenever there is a substantial network change;
2. Reasonable assistance to CIS, including, but not limited to, providing all technical information related to the Albert Monitoring Service reasonably requested by CIS, to enable CIS to perform the Albert Monitoring Service for the benefit of Customer;
3. Public and Private IP address ranges including a list of servers being monitored including the type, operating system and configuration information, as well as a list of IP ranges and addresses that are not in use by Customer (DarkNet space);
4. Completed Pre-Installation Questionnaires (PIQ) in the form provided by CIS. The PIQ will need to be revised whenever there is a change that would affect CIS's ability to provide the Cyber Device Monitoring Services;
5. A completed Escalation Procedure Form including the name, e-mail address, and 24/7 contact information for all designated Points of Contact (POC)
6. The name, email address, and landline, mobile, and pager numbers for all shipping, installation and security points of contact.

E. During the Term of this Agreement, Customer shall provide the following with respect to any Device Monitoring Services:

1. Written notification to CIS SOC ([SOC@cisecurity.org](mailto:SOC@cisecurity.org)) at least thirty (30) days in advance of changes in hardware or network configuration affecting CIS's ability to provide Albert Monitoring Services;
2. Written notification to CIS SOC ([SOC@cisecurity.org](mailto:SOC@cisecurity.org)) at least twelve (12) hours in advance of any scheduled downtime or other network and system administration scheduled tasks that would affect CIS's ability to provide Albert

Monitoring Service;

3. A revised Escalation Procedure Form must be submitted when there is a change in status for any POC.
4. Sole responsibility for maintaining current maintenance and technical support contracts with Customer's hardware vendors for any device affected by Albert Monitoring Services.
5. Active involvement with CIS SOC to resolve any tickets requiring Customer input or action; and
6. Reasonable assistance in remotely installing and troubleshooting devices including hardware and communications.

**CITY COUNCIL MEETING: October 5, 2020**

**TO: MAYOR CLARK AND COUNCIL MEMBERS**

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

**FROM: TIM WOOD, FINANCE DIRECTOR**

**SUBJECT: RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH ENZOIC FOR SOFTWARE SERVICES**

The City of Keizer would like to enter into an agreement with Enzoic for Enzoic for Active Directory software services.

Enzoic for Active Directory enables network password policy enforcement and daily screening of compromised passwords to further support the security of the City's network.

**ISSUES AND FISCAL IMPACT:**

The annual cost for Enzoic is \$2,079 and is included in the Fiscal Year 2020-21 Adopted City of Keizer Budget. The agreement is for one year and because it provides for an automatic renewal it requires City Council approval.

**RECOMMENDATION:**

Staff recommends that the City Council adopt the attached resolution authorizing the Finance Director to enter into an agreement with Enzoic for software services.



(<https://www.enzoic.com/>)



# Subscription Agreement

This Subscription Agreement ("Agreement") is by and between PasswordPing Ltd. d/b/a Enzoic, a Colorado limited liability company ("Enzoic," "PasswordPing," "we," or "us"), and the person (individual or legal person) whose name appears on the signature line of the Agreement or on any document that incorporates the Agreement by reference ("Customer" or "you") and is effective on the Effective Date, as defined by date of last signature on the initial Order.

Enzoic offers compromised credential detection and various identity monitoring services. This Agreement enables you to place orders with Enzoic to obtain access to the Enzoic service offerings (each order accepted by Enzoic under this Agreement, an "Order"). This Agreement includes the terms and conditions under which Enzoic will provide You with access to the Enzoic services specified in each Order (the "Services").

The parties, by their authorized representatives, enter into and agree to be legally bound by this Agreement.

1. **TERM.** The term of this Agreement will begin on the Effective Date and, unless earlier terminated as specified herein, will continue until this Agreement is terminated as specified herein. Each Order under this Agreement will continue for the term stated in that Order, unless earlier terminated as specified herein or in that Order.

Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer's purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement.

2. **ORDERS.** You may enter into one or more Orders under this Agreement. Each Order may be placed in any form acceptable to Enzoic. Enzoic may accept Orders by providing notice to You, by providing You with access to the Enzoic Service specified in the Order, or as indicated in the applicable Order. If any conflict arises between the terms of any Order and the terms of this Agreement, the terms of the Order will control.

### 3. SERVICES.

3.1 Scope. The scope and functionality of each Service is as specified in each applicable Order for that Service, including any applicable sources, frequencies, volumes, or other attributes specified therein ("Attributes"). Enzoic not responsible for requests to access or use any Service outside of the applicable Attributes for that Service. You are responsible for entering into a new Order with Enzoic to reflect any changes in any applicable Attributes.

3.2 Access. Following acceptance by Enzoic of an Order under this Agreement, you will have the right to access and use the Services specified in that Order solely for your own lawful business purposes, as further specified on each Order. Your access to and use of all Services is subject to the terms and conditions stated herein and in each applicable Order. You have no right to access or use any services offered by Enzoic except for those Services specified in Orders accepted by Enzoic.

4. API. The Services are provided through the application programming interfaces identified and defined by Enzoic for each Service (the "Enzoic APIs"). Subject to the terms of this Agreement, and provided that you remain in compliance with this Agreement, Enzoic will grant you a limited, non-exclusive, non-transferrable, non-sublicensable right to (1) access each Enzoic API specified in an Order by Enzoic, and (2) access and use any software development libraries or other tools for the Enzoic APIs that Enzoic provides or makes available to Customer (the "Enzoic SDK"). All access to or use of the Enzoic APIs and Enzoic SDK will be solely in accordance with the instructions and documentation provided by Enzoic to enable your access to and use of each applicable Service. Enzoic may update or modify the Enzoic APIs or Enzoic SDK at any time. The Enzoic APIs and Enzoic SDK include any such update or modification. Enzoic will provide you with notice of and applicable documentation for any such update. Except as expressly stated in this Section, you receive no rights or licenses (whether by implication, estoppel, or otherwise) to access or use any Enzoic API or the Enzoic SDK.

5. RESTRICTIONS. The Enzoic SDK and the underlying software, hardware, and technology used to provide the Services and Password API, as well as all data and information used to provide the Services and the structure and organization thereof (collectively, the "Enzoic Technology"), constitutes the valuable IPR (as defined below) of Enzoic. This Agreement grants you no rights to directly access or use the Enzoic Technology or any portion thereof except as defined in the Order. As a condition of your rights under this Agreement to access and use the Services and Enzoic API and Enzoic SDK, you agree that you will not and will not permit anyone to: (1) directly access or use (or attempt to directly access or use) any Enzoic Technology for any purpose other than specified in the Order; (2) access or use (or attempt to directly access or use) the Enzoic SDK or any Service or Enzoic API for any purpose except as expressly provided in this Agreement; (3) modify, adapt, alter, translate, or create derivative works from any Service, Enzoic API, Enzoic SDK, or Enzoic Technology except as outlined in the Order; (4) sublicense, distribute, sell, transfer, or otherwise share your right to access or use the Enzoic SDK or any Service or Enzoic API with or to any third party; (5) use the Enzoic SDK

or any Service or Enzoic API for the benefit of any third party or make the Enzoic SDK or any Service or Enzoic API available to any third party; (6) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code, structure, design, or method of operation for the any Service or the Enzoic API, Enzoic SDK, or Enzoic Technology; (7) circumvent or overcome (or attempt to circumvent or overcome) any technological protection measures intended to restrict access to any Service or the Enzoic API, Enzoic SDK, or Enzoic Technology; (8) interfere in any manner with the operation of any Service or the Enzoic API, Enzoic SDK, or Enzoic Technology; (9) access or use any Service or the Enzoic API or Enzoic SDK in any manner that violates any applicable laws, the rights of any third party, or any agreement by which you are bound or would cause Enzoic to violate any applicable laws or the rights of any third party; or (10) alter, obscure, or remove any copyright notice, copyright management information, or proprietary legend from any Service or Enzoic Technology.

6. **SUPPORT.** If you enter into an Order for support under this Agreement, Enzoic will provide you with reasonable applicable support services for the Services, Enzoic API, or Enzoic SDK specified in that Order. All support services will be subject to the terms of this Agreement, in addition to the terms of such Order. Except as specified in any such Order, Enzoic is under no obligation to provide to you with any maintenance or support relating to the Services, Enzoic API, or Enzoic SDK.

7. **FEES AND PAYMENT.** You agree to pay Enzoic the fees and other amounts specified in each Order ("Fees"). Fees are due and payable as set forth in the Order specifying those Fees. If an Order does not specify applicable payment terms for any Fee, the Fee will be due and payable on a monthly basis in advance within 30 days of Enzoic's invoice containing the Fee. If you have specified credit or debit card or direct withdrawal from a bank account as an applicable payment mechanism under this Agreement, you grant Enzoic the right to charge the credit card or debit the bank account provided to Enzoic for all Fees. All Fees will be non-refundable. Fees do not include any taxes or other governmental charges. You are responsible for paying all such taxes and other charges imposed by way of the performance of either party under this Agreement, excluding taxes based on Enzoic's net income. All past due amounts will bear an additional charge of the lesser of 1½% per month or the maximum amount permitted under applicable law.

8. **OWNERSHIP.** Enzoic retains all right, title, and interest in and to the Services, Enzoic API, Enzoic SDK, and Enzoic Technology, any updates, upgrades, enhancements, modifications and improvements thereto ("Improvements"), and all intellectual property and proprietary rights therein or relating thereto throughout the world, including all copyrights, trademarks, trade secrets, patents (and patent applications), moral rights, rights in data and databases, and other intellectual property and proprietary rights throughout the world ("IPR"). You receive no ownership interest in or to any of the foregoing and you are granted no rights or licenses to use any of the foregoing except for the rights expressly granted under this Agreement. You agree to and hereby

acknowledge that the names and logos of Enzoic and those of its providers and licensors are trademarks of Enzoic or its third party providers, as applicable, and no right or license is granted to you to use them.

9. **TERMINATION.** Either party may terminate this Agreement if the other party materially breaches this Agreement and fails to remedy such breach within 30 days after receiving notice of the breach from the other party. Upon any termination of this Agreement: (a) all rights granted to you hereunder will immediately terminate; (b) Enzoic will have no further obligation to provide any Services to you and you will cease access to any use of the Services, Enzoic API, and Enzoic SDK; (c) all Fees and other amounts you then owe under this Agreement will become immediately due and payable to Enzoic; and (e) you will return to Enzoic or (if so notified by Enzoic) destroy, all copies of all Enzoic Confidential Information. Upon the request of Enzoic you will certify in writing to your compliance with the terms of this Section. The relevant portions of Sections 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 will survive termination of this Agreement for any reason. Without limiting any right of termination, Enzoic may suspend your access to the Services and Enzoic API if reasonably necessary to prevent any damage, injury, or harm to Enzoic, any Enzoic Technology, or any other Enzoic customer or third party.

#### 10. REPRESENTATIONS AND WARRANTIES.

10.1 **General.** Each party represents and warrants to the other party that: (a) such party has the full legal right and authority to enter into this Agreement; (b) this Agreement forms a binding legal obligation on behalf of such party; (c) this Agreement will not conflict with or result in a breach of any other agreement or obligation of such party; and (d) such party has all legal rights and authority necessary to perform its obligations under this Agreement and to grant all rights and licenses set forth in this Agreement.

10.2 **Performance.** Enzoic represents and warrants to you that Enzoic will use commercially reasonable efforts to maintain and verify that the Services operate in accordance with the requirements specified in each Order under this Agreement. Your sole and exclusive remedy in the event of any failure by Enzoic to comply with the foregoing sentence will be for Enzoic to, at its option, re-perform the affected Services or refund to you the portion of any Fees attributable to the affected Services.

11. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES, PASSWORD PING SDK, AND ENZOIC API ARE PROVIDED BY ENZOIC AND ITS PROVIDERS ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND. ENZOIC EXPRESSLY DISCLAIMS, AND YOU DISCLAIM ANY RELIANCE ON, ANY OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, WHETHER EXPRESSED OR IMPLIED, REGARDING THIS AGREEMENT OR THE SERVICES, ENZOIC SDK OR ENZOIC API, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A PARTY OR ITS AGENTS OR

REPRESENTATIVES WILL CREATE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS UNLESS CONFIRMED IN WRITING BY SUCH PARTY AS AN AMENDMENT TO THIS AGREEMENT.

## 12. INDEMNIFICATION.

12.1 By You. You will indemnify, defend, and hold harmless Enzoic (and its officers, directors, employees, contractors, and agents) from and against any damages, liabilities, losses, costs and expenses (including reasonable attorneys' fees) incurred in connection with or as a result of: (1) your use of or access to the Services or Enzoic API, including any results generated through the Services, in a manner inconsistent with this agreement; (2) any Customer Data or any use thereof; or (3) your breach of this Agreement; or (4) any damage to property or injury to or death of any person directly or indirectly caused by your actions. Enzoic agrees to give you prompt notice of any claim subject to this Section.

12.2 By Enzoic. Enzoic will indemnify, defend, and hold harmless you (and your officers, directors, employees, contractors, and agents) from and against any damages, liabilities, losses, costs and expenses (including reasonable attorneys' fees) incurred in connection with or as a result of any claim or allegation made against You alleging that your use of the Services or Enzoic API in accordance with this Agreement infringes any third party patent or copyright issued under the laws of the U.S. or misappropriates any third party trade secret valid under the laws of any state in the U.S.. Enzoic will also pay all settlements entered into and damages awarded against you to the extent based on such a claim or action subject to this Section. If the Service or Enzoic API becomes, or if Enzoic believes is likely to become, the subject of a claim of infringement or misappropriation subject to this Section, Enzoic may, in its sole discretion, replace or modify the Services or Enzoic API, procure for you the right to continue using the Services or Enzoic API under this Agreement, or terminate this Agreement and require you to cease use of the Services and Enzoic API. In the case of any such termination, Enzoic will refund to you any pre-paid portion of any Fees. Enzoic shall not be liable for any costs or expenses you incur in connection with any claim of infringement or misappropriation without Enzoic's prior written authorization. Enzoic will have no obligation under this Section in the case of any: (a) use of or access to the Services or Enzoic API in breach of this Agreement; (b) use of or access to the Services or Enzoic API other than as specified in any applicable documentation or Order; (c) software, hardware, equipment, systems, services, or other technology not provided by Enzoic; or (d) use of the Services or Enzoic API after Enzoic has notified you to cease use thereof. THIS SECTION STATES THE SOLE AND EXCLUSIVE LIABILITY OF ENZOIC, AND THE SOLE AND EXCLUSIVE REMEDY FOR YOU, FOR ANY INFRINGEMENT OR MISAPPROPRIATION CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, SERVICES, OR THE ENZOIC API.

13. LIMITATION OF LIABILITY. IN NO EVENT WILL ENZOIC BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND ARISING OUT OF THE SERVICES, ENZOIC API, ENZOIC SDK OR THIS AGREEMENT, INCLUDING ANY LOSS OF DATA, OPPORTUNITY, REVENUES, PROFITS, OR REPUTATION,

BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE SERVICES, EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE. THE MAXIMUM CUMULATIVE LIABILITY OF ENZOIC RELATING TO THE SERVICES, ENZOIC API, ENZOIC SDK, OR THIS AGREEMENT WILL UNDER NO CIRCUMSTANCES EXCEED THE AMOUNTS PAID TO ENZOIC UNDER THIS AGREEMENT IN THE 6 MONTHS PRIOR TO THE EVENTS GIVING RISE TO SUCH LIABILITY. IN STATES WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, EACH PARTY'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

14. CONFIDENTIALITY. For purposes of this Agreement, "Confidential Information" means the terms of this Agreement, the Enzoic API, Enzoic SDK, Enzoic Technology, and all documentation, information, data, and materials relating to the Services, regardless of the form thereof, including all copies and extracts thereof. All You will not disclose any Confidential Information to any third party without Enzoic's prior written consent. You may disclose Confidential Information only to those of its employees who have a need to know the Confidential Information for purposes of your valid use of the Services as permitted by this Agreement, provided those employees are bound by an obligation of confidentiality at least as protective of the Confidential Information as the terms of this Agreement. You will treat all Confidential Information with the same degree of care as you treat your own confidential information which, in no event, will be less than reasonable care. You will not utilize the Confidential Information other than as expressly permitted in this Agreement.

#### 15. DATA.

15.1 Customer Data. You are solely responsible for all data, information, and other content provided to Enzoic through any Service or Enzoic API ("Customer Data"). Enzoic will not use your Customer Data other than to provide the Services and perform its obligations under this Agreement. Enzoic is not responsible or liable for any deletion or loss of your Customer Data and will maintain your Customer Data only for so long as is required to provide the Services and perform its obligations under this Agreement. You grant Enzoic such rights in the Customer Data as are necessary for Enzoic to provide the Services and perform its obligations under this Agreement. Enzoic is under no obligation to review any Customer Data for accuracy or potential liability. You assume all risks associated with the use of any Customer Data in the Services, including any reliance on any Customer Data or the form, format, accuracy, completeness, or usefulness thereof.

15.2 Data Security. Enzoic will maintain a data security program providing commercially reasonable safeguards and measures to protect the security of Customer Data during processing by the Services. Enzoic will otherwise have no responsibility or liability for any Customer Data or for any deletion, destruction, or loss of any Customer Data.

15.3 Data Privacy. Customer will comply at all times with the applicable terms of any privacy policy or other policy, agreement, or terms under which any Customer Data was

obtained by Customer. Enzoic will have the right to capture, analyze, and use data regarding the use and operation of the Services<sup>68</sup>. Any such data may be used by Enzoic for any lawful business purpose.

16. DISPUTES. The parties will attempt to resolve any disputes, controversies, or claims arising under, out of, or relating to this Agreement ("Disputes") through good faith negotiations. Any Dispute that cannot be resolved through good faith negotiations will be settled exclusively through binding arbitration as follows. If within 10 business days, or 5 business days in the event of a Dispute related to Fees or IPR, the parties are unable to resolve any Dispute, either party may submit the Dispute for final settlement through binding arbitration by the International Chamber of Commerce ("ICC") under its arbitration rules then in effect (the "Rules"). Either party may commence the arbitration by delivering a request for arbitration as specified in the Rules. The arbitration will be conducted before a sole neutral arbitrator selected by agreement of the parties. If the parties cannot agree on the appointment of a single arbitrator within 30 days (the "Initial Period") after either party to this Agreement delivers a request for arbitration, a neutral arbitrator will be selected as provided in the Rules. The arbitration will be conducted in the English language in Denver, Colorado (USA) or such other location as may be designated by Enzoic. The award of the arbitrator(s) will be the exclusive remedy of the parties for all claims, counterclaims, issues or accountings presented or plead to the arbitrator(s). The award of the arbitrators will require payment of the costs, fees and expenses incurred by the prevailing party in any such arbitration by the non-prevailing party. Judgment upon the award may be entered in any court or governmental body having jurisdiction thereof. Any additional costs, fees or expenses incurred in enforcing the award may be charged against the party that resists its enforcement.

17. U.S. GOVERNMENT CUSTOMERS. The Enzoic Technology is a "commercial item" as that term is defined at FAR 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and is provided to the U.S. Government only as a commercial end item. Consistent with FAR. 12.212 and DFARS 227.7202 (Jun 1995), all U.S. Government Users acquire solely the rights expressly granted herein (if any) with respect thereto.

18. EXPORT. The Services, Enzoic SDK, and Enzoic API may be subject to U.S. export control Laws and export or import regulations in other countries. You agree to strictly comply with all such Laws and acknowledge that it has the responsibility to obtain such licenses to export, re-export or import as may be required.

19. NOTICES. All notices to be given by a party under this Agreement will be in writing and will either be via: (1) hand-delivery; (2) Federal Express or a comparable traceable overnight mail service; (3) email, provided a receipt or confirmation is received from the intended recipient demonstrating that the intended recipient received the email; or (4) certified mail, return receipt requested, to the other party at its respective addresses set forth above. All notices will be effective upon receipt (or when delivery is refused) or 3

business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address for notice by giving notice of the new address to the other party.

20. **GOVERNING LAW AND VENUE.** This Agreement will be governed by the Laws of the State of Colorado (USA), without regard to conflicts of law principles thereof. The federal and state courts located in Denver, Colorado (USA) will have sole and exclusive jurisdiction over any disputes arising hereunder. The parties irrevocably submit to the personal jurisdiction of such courts.

21. **GENERAL.** This Agreement includes these terms and conditions and each Order accepted by Enzoic under this Agreement. This Agreement is the complete and exclusive agreement between you and Enzoic regarding the subject matter hereof and supersedes all oral or written agreements, proposals, or understandings between the parties as to the subject matter of the Agreement. This Agreement is in the English language, which language will be controlling in all respects. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. If any provision of this Agreement is held by an arbitrator or a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable Law and the remaining provisions of this Agreement will continue in full force and effect. Nothing in this Agreement will limit either party's right to seek immediate injunctive or other equitable relief in any court of competent jurisdiction. Enzoic will not be held responsible for failure or delay in the performance of any obligation under this Agreement if such failure or delay is beyond its reasonable control. The parties are independent contractors, and nothing in this Agreement will be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties. Neither party is an agent of the other and neither party is authorized to make any representation, contract, or commitment on behalf of the other party. No term of this Agreement will be construed to confer any third-party beneficiary rights on any non-party. Each right and remedy hereunder is cumulative with each and every other right and remedy herein or in any other agreement between the parties or under applicable law. Each party will promptly execute all assignments and other documents, and take all other actions, as may be reasonably required to enable the other party to perfect, defend, and enforce the benefit of the rights of each party established under this Agreement. You may not assign, transfer or delegate, in whole or in part, whether by assignment, sale, merger, reorganization, operation of law, or otherwise, this Agreement or any of its rights or obligations under this Agreement, to any third party without the prior written consent of Enzoic. For the purposes of this Agreement, any change of control you undergo will be deemed an assignment. Enzoic may assign this Agreement upon notice to you. Any assignment in violation of the foregoing will be null and void and will be considered a breach of this Agreement. The words "include," "includes" and "including" means

"include," "includes" or "including," in each case, "without limitation." The parties expressly waive any applications of the U.N. Convention<sup>70</sup> on Contracts for the International Sale of Goods with respect to the performance or interpretations of this Agreement.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2020-\_\_\_\_\_

AUTHORIZING FINANCE DIRECTOR TO ENTER INTO ENZOIC PROPOSAL FOR ENZOIC FOR ACTIVE DIRECTORY SOFTWARE SERVICES

WHEREAS, the City desires to enter into an agreement with Enzoic for Enzoic for Active Directory software services;

WHEREAS, Enzoic for Active Directory software enables network password policy enforcement and daily screening to support the security of the City’s network;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the Finance Director is authorized to enter into the attached agreement and addendum with PassworkPing, Ltd d/b/a Enzoic.

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

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Recorder

Enzoic Proposal for City of Keizer, Oregon

Overview

Enzoic is a leading provider of various compromised credentials and breach detection services. We continually update our compromised passwords database from known breached passwords and cracking dictionaries containing billions of passwords used by hackers.

City of Keizer, Oregon would like to protect their corporate network according to the NIST guidelines of SP 800-63B by preventing the use of these unsafe passwords.

To support this objective, Enzoic’s Password API services are available integrated with Microsoft Active Directory Domain Services®. This service is installed as a password filter on the Domain Controller. This validates both new/reset passwords in Active Directory and continuously detects if they become subsequently exposed.

Licensing

City of Keizer, Oregon is licensed for the “Enzoic for Active Directory” for up to 130 users at \$2,079 for a Term of one (1) year to commence upon acceptance of this Order according to Additional Terms below and as found at: <https://www.enzoic.com/subscription-agreement/> and which shall renew automatically unless cancelled with at least 30 day notice. Terms of the Subscription Agreement are amended pursuant to the Addendum attached hereto and by this reference incorporated herein.

Additional Terms

Proposed order terms expire if not executed by October 10, 2020

We ask that for this special pricing, if you are satisfied with our solution and would like to move forward, to please provide a review or quote of satisfaction for Enzoic.

Accepted by  
City of Keizer, Oregon

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name & Title

Accepted by  
PasswordPing, Ltd d/b/a Enzoic

 \_\_\_\_\_ 9/24/2020  
Signature Date

Josh Horwitz, COO

\_\_\_\_\_  
Printed Name & Title

**ADDENDUM TO ENZOIC SUBSCRIPTION AGREEMENT**

|                 |  |              |
|-----------------|--|--------------|
| <b>PARTIES:</b> | PASSWORDPING, LTD D/B/A<br>ENZOIC                  | ("Enzoic")   |
|                 | CITY OF KEIZER, an Oregon<br>Municipal Corporation | ("Customer") |

The Enzoic Subscription Agreement is hereby amended as follows:

1. Section 14 (Confidentiality) shall be replaced with the following:

14. CONFIDENTIALITY. For purposes of this Agreement, "Confidential Information" means the Enzoic API, Enzoic SDK, Enzoic Technology, and all documentation, information, data, and materials relating to the Services, regardless of the form thereof, including all copies and extracts thereof. Subject to requirements of applicable public records law, Customer will not disclose any Confidential Information to any third party without Enzoic's prior written consent. Customer may disclose Confidential Information only to those of its employees who have a need to know the Confidential Information for purposes of your valid use of the Services as permitted by this Agreement, provided those employees are bound by an obligation of confidentiality at least as protective of the Confidential Information as the terms of this Agreement. Customer will treat all Confidential Information with the same degree of care as Customer treats Customers own confidential information which, in no event, will be less than reasonable care. Customer will not utilize the Confidential Information other than as expressly permitted in this Agreement.

2. Section 20 (Governing Law and Venue) shall be replaced with the following:

20. GOVERNING LAW AND VENUE. This Agreement will be governed by the Laws of the State of Oregon (USA), without regard to conflicts of law principles thereof. The federal and state courts located in Oregon will have sole and exclusive jurisdiction over any disputes arising hereunder. The parties irrevocably submit to the personal jurisdiction of such courts.

3. Except as amended herein, all other terms of the Enzoic Subscription Agreement between the parties shall remain in full force and effect.

PASSWORDPING, LTD D/B/A  
ENZOIC

CITY OF KEIZER, an  
Oregon municipal corporation

By:  \_\_\_\_\_  
Josh Horwitz, COO Enzoic

By: \_\_\_\_\_

Date: 9/24/2020

Date: \_\_\_\_\_



**MINUTES**  
**KEIZER CITY COUNCIL**  
**Monday, September 21, 2020**  
**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:
- | <b>Present:</b>            | <b>Staff:</b>                       |
|----------------------------|-------------------------------------|
| Cathy Clark, Mayor         | Chris Eppley, City Manager          |
| Kim Freeman, Councilor     | Shannon Johnson, City Attorney      |
| Roland Herrera, Councilor  | Shane Witham, Community Development |
| Daniel Kohler, Councilor   | Bill Lawyer, Public Works Director  |
| Laura Reid, Councilor      | Tim Wood, Finance Director          |
| Elizabeth Smith, Councilor | John Teague, Police Chief           |
| Marlene Parsons, Councilor | Tracy Davis, City Recorder          |
- FLAG SALUTE** Mayor Clark led the pledge of allegiance.
- SPECIAL ORDERS OF BUSINESS** Police Chief John Teague reviewed efforts being made by the Police Department relating to the area wildfires. City Manager Chris Eppley added that his efforts had been to find and relay information regarding the fires and related conditions. Councilor Smith provided an update regarding boats on Detroit Lake. Mayor Clark shared the website for those impacted by the fires to get assistance, announced that those who suffered losses due to the fires should register with FEMA, and provided detailed information on volunteers and fire related resources.
- COMMITTEE REPORTS** *Jeffrey Watson*, Keizer, reported that the Planning Commission discussed efficiency measures related to Keizer's housing needs and possible unintended consequences of any changes, discussed the possibility of influencing new code language, and expressed a willingness to consider lowering lot sizes.
- PUBLIC TESTIMONY** *Jessica Davidson*, Keizer, praised the community, leadership and police for their recent efforts related to the area fire disasters.
- Carolyn Holman*, Keizer, questioned if public testimony would be allowed at the upcoming work session. Mayor Clark responded that public testimony will be allowed at the end of the meeting.

**PUBLIC HEARING**

*Mayor Clark opened the Public Hearing.*

**a. Keizer  
Development  
Code Text  
Amendment –  
Flood Plain**

Interim Community Development Director Shane Witham summarized his staff report, asked Council to allow for correction of scrivener errors if found in this section, fielded questions and provided clarification.

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

Councilor Freeman moved that Keizer City Council direct staff to prepare an ordinance with findings to adopt the Keizer Development Code text amendments for Section 2.122 Floodplain Overlay Zone and Section 1.200 Definitions, with latitude for scrivener's corrections and additions. 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 –  
Directing  
Finance  
Director to  
Review  
Advisability of  
Refunding or  
Refinancing  
Bonds Related  
to Keizer  
Station Area A**

Finance Director Tim Wood summarized his staff report, fielded questions and provided clarification.

Councilor Freeman moved that the Keizer City Council adopt a Resolution Directing Finance Director to Review Advisability of Refunding or Refinancing Bonds Related to Keizer Station Area A Local Improvement District. 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)

**RESOLUTION –  
Authorizing  
Finance Director  
to Enter Into  
Engagement  
Letter with  
Hawkins  
Delafield & Wood**

Councilor Freeman moved that the Keizer City Council adopt a Resolution Authorizing Finance Director to Enter into Engagement Letter with Hawkins Delafield & Wood. 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)

**RESOLUTION –  
Authorizing  
Finance Director  
to Enter Into**

Councilor Freeman moved that the Keizer City Council adopt a Resolution Authorizing Finance Director to Enter into Engagement Letter with Piper Sandler & Co. Councilor Herrera seconded. Motion passed unanimously as follows:

- Engagement Letter with Piper Sandler & Co** AYES: Clark, Reid, Freeman, Parsons, Herrera, Smith and Kohler (7)  
NAYS: None (0)  
ABSTENTIONS: None (0)  
ABSENT: None (0)
- b. RESOLUTION – Ratifying the City Manager’s Declaration of a Local State of Emergency in the City of Keizer as a Result of Wildfire Conditions** City Attorney Shannon Johnson summarized his staff report, fielded questions and provided clarification. Discussion followed regarding allowance for roosters.  
Councilor Freeman moved that the Keizer City Council adopt a Resolution Ratifying the City Manager’s Declaration of a Local State of Emergency in the City of Keizer as a Result of Wildfire Conditions – Allowance for Evacuees’ Chickens/Ducks and Recreational Vehicles. 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 – Authorizing the City Manager to Enter Agreement with BlueFin for Merchant Services  
B. Approval of September 8, 2020 City Council Regular Session Minutes  
Councilor Parsons pulled item B.  
Councilor Freeman moved that the Keizer City Council approve Item A of the Consent Calendar. Councilor Herrera seconded. Motion passed unanimously as follows:  
AYES: Clark, Reid, Freeman, Parsons, Smith, Herrera and Kohler (7)  
NAYS: None (0)  
ABSTENTIONS: None (0)  
ABSENT: None (0)  
Councilor Freeman moved that the Keizer City Council approve Item B of the Consent Calendar. Councilor Herrera seconded. Motion passed as follows:  
AYES: Clark, Reid, Freeman, Smith, Herrera and Kohler (6)  
NAYS: None (0)  
ABSTENTIONS: Parsons (1)  
ABSENT: None (0)
- COUNCIL LIAISON REPORTS** Councilor Parsons listed meetings that had been cancelled.  
Councilor Herrera reported on meetings and events he had attended, announced upcoming ones and announced that September 15 through October 15 is Spanish Heritage Month.

Councilor Smith announced that the design for the City Charter Review signs was complete, shared information regarding remedy of communication issues related to the recent fires, praised the police and other first responders who assisted with evacuation and search and rescue, thanked Chris Eppley and Mayor Clark for their communication efforts during the crisis and Councilors Freeman, Parsons and Kohler for their volunteer efforts as well.

Councilor Freeman shared information regarding the Commissioners' Breakfast, commended the Planning Commission for their efforts, thanked everyone who helped the evacuees and everyone who donates to the Keizer Food Bank.

Councilor Reid reported on the West Keizer Neighborhood Association meeting, shared information regarding a Keizer Homegrown Theater presentation, congratulated Christy Perry who was named Oregon Superintendent of the Year, shared detailed information regarding school distance learning programs and announced the upcoming Southeast Keizer Neighborhood Association meeting.

Councilor Kohler reported on events and meetings he had attended and announced upcoming ones. He commended the attitudes of people who had lost everything in the fires and the willingness of volunteers and urged everyone to be tolerant of election signs.

Mayor Clark reviewed meetings and events in which she had participated and announced upcoming ones, thanked Keizer Elks who streamed a 9-11 remembrance on Facebook Live, and urged volunteers to help with the Wallace House Park cleanup event.

**OTHER BUSINESS** Police Chief John Teague reported that contact has taken place with fireworks violators. Additional contact scheduled for June will serve as their verbal warning. Violation is a Class B misdemeanor. Conversations have taken place with Senator Post regarding changing the category so that the punishment is a fine rather than time in jail.

Interim Community Development Director Shane Witham shared information regarding the 'Covid-19 grants' noting that some requests have been processed. The timeline is tight and there are more 'strings attached' to this money than the earlier cycle.

Public Works Director Bill Lawyer reported that he has been in contact with the Delight Street multi-use path project manager. They are having difficulty reaching the sub-contractor and are going to look for someone to fix the trip hazard.

Councilor Reid noted that school zone flashers are on from 11 to 1 weekdays for meal distribution.

*Rich Rodriguez*, Keizer, asked that the Finance Director report what the net present value of the savings of the refunding is. Mr. Wood responded that this information will be shared when it is determined.

## WRITTEN COMMUNICATIONS

Announced that residents of homeless camps are participating in a 'Cash for Trash' program (to keep their area clean) sponsored by Church of the Park and Cascade Football Club. She read a note from Summer Reyes supporting inclusivity and announced the Marion County Public Hearing regarding I-5 Aurora/Donald interchange and the commissioning of the USS Oregon.

## AGENDA INPUT

September 28, 2020 – 6:00 p.m. – Council Work Session – Council Goal: Community Makeup – Demographics and Diversity  
 October 5, 2020 – 7:00 p.m. – Council Regular Session  
 October 12, 2020 – 6:00 p.m. – City Council Work Session  
 October 19, 2020 – 7:00 p.m. – Council Regular Session  
 October 26, 2020 – 6:00 p.m. – City Council Work Session – Inclusion and Disparity

Mr. Witham explained that Planning Commission will be reviewing the Cost of Growth report in October and may be ready to share the findings and the report either at a work session or a regular council meeting.

## ADJOURNMENT

Mayor Clark adjourned the meeting at 8:30 p.m.

MAYOR:

APPROVED:

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Cathy Clark

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Debbie Lockhart, Deputy City Recorder

## COUNCIL MEMBERS

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Councilor #1 – Laura Reid

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Councilor #4 – Roland Herrera

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Councilor #2 – Kim Freeman

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Councilor #5 – Elizabeth Smith

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Councilor #3 – Marlene Parsons

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Councilor #6 – Daniel R. Kohler

Minutes approved: \_\_\_\_\_