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AGENDA
KEIZER CITY COUNCIL
REGULAR SESSION
Tuesday, June 20, 2023
7:00 p.m.
Robert L. Simon Council Chambers
Keizer, Oregon

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **FLAG SALUTE**

4. **SPECIAL ORDERS OF BUSINESS**

a. Presentation by Dr. Satya Chandragiri

5. **COMMITTEE REPORTS**

a. Volunteer Coordinating Committee Recommendations for Appointment – Keizer Public Arts Commission and Youth Liaisons for Keizer Public Arts Commission and Keizer Planning Commission

6. **PUBLIC COMMENTS**

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

7. **PUBLIC HEARINGS**

a. **RESOLUTION** – Certification of Lighting District Assessments

8. **ADMINISTRATIVE ACTION**

a. **ORDINANCE** – Regulating Dogs at Large

b. **ORDINANCE** – Amending Ordinance No. 2020-812 (Prohibiting Camping On Sidewalks, Public Property and Public Rights-of-Way); Declaring an Emergency

- c. **RESOLUTION** – Authorizing City Manager and Chief of Police to Sign 2023-2026 Collective Bargaining Agreement with Keizer Police Association
- d. **RESOLUTION** – Authorizing the City Manager to Award and Enter Into An Agreement with Remodeling by Classic Homes, Inc. for Civic Center Trellis Repair

9. CONSENT CALENDAR

- a. **RESOLUTION** – Authorizing the City Manager and Public Works Director to Enter Into Intergovernmental Agreement for Right of Way Services (Verda Lane: Dearborn Avenue to Salem Parkway (Keizer))
- b. Approval of May 25, 2023 Special Session Minutes
- c. Approval of June 5, 2023 Regular Session Minutes

10. OTHER BUSINESS

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

11. STAFF UPDATES

12. COUNCIL MEMBER REPORTS

13. AGENDA INPUT

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

July 10, 2023 – 6:00 p.m.
City Council Work Session

July 17, 2023 – 7:00 p.m.
City Council Regular Session

14. ADJOURNMENT



CITY COUNCIL MEETING: JUNE 20, 2023

TO: Mayor Clark and City Council Members
THRU: Adam J. Brown, City Manager
FROM: Tracy Davis, City Recorder
SUBJECT: Volunteer Coordinating Committee Recommendations for Appointments to the Public Arts Commission Positions 2 and 5 and Youth Committee Liaisons for Arts Commission and Planning Commission.

PROPOSED MOTION:

*I move the City Council accept the recommendation of the Volunteer Coordinating Committee and appoint **Derek Bish** and **Marylyn Wood** to positions 2 and 5 respectively on the **Keizer Public Arts Commission**, terms expiring June 30, 2026, and appoint **Katherine Klein** as **Youth Liaison** to the **Keizer Public Arts Commission** and **Angelica Sarmiento** as **Youth Liaison** to the **Keizer Planning Commission**, for the terms starting September 1, 2023 and ending May 31, 2024.*

I. SUMMARY:

The Volunteer Coordinating Committee met on June 8, 2023 to review and interview applicants for openings on the Keizer Public Arts Commission and Youth Liaison positions.

II. BACKGROUND:

The Volunteer Coordinating Committee serves in an advisory capacity to the City Council and is responsible for making recommendations for appointments to various Boards and Commissions. The Committee is also responsible for recognition of City volunteers.

III. CURRENT SITUATION:

The Keizer Public Arts Commission had two openings. With these appointments, the group will have a full slate of members. Youth Liaisons for the Arts Commission and the Planning Commission are now filled for the 2023-2024 school year, however, Youth Committee Liaison positions for Parks Advisory Board and Traffic Safety/Bikeways/Pedestrian Committee are still needed.

RECOMMENDATION:

Staff recommends the City Council accept the recommended appointments as outlined.



To: MAYOR CLARK AND CITY COUNCIL MEMBERS

THROUGH: Adam J. Brown, City Manager

FROM: Tim Wood, Assistant City Manager

SUBJECT: CERTIFICATION OF LIGHTING DISTRICT ASSESSMENTS

PROPOSED MOTION:

I move the City Council adopt Resolution R2023-_____ Certification of Lighting District Assessments for Fiscal Year 2023-24.

I. SUMMARY:

On an annual basis the City must certify the annual lighting district assessments for the property holders of record as of June 30, 2023 so that the assessed amounts can be included on the Marion County Tax Rolls for Fiscal Year 2023-24.

II. BACKGROUND:

- A. The City administers 210 separate lighting districts.
- B. New subdivisions are required to establish a lighting district as part of the City’s development code.
- C. Existing subdivisions, without lighting, can establish a lighting district based on the agreement of the majority of the property owners.
- D. Each district is assessed annually the cost to provide lighting (electricity) for their specific district for the previous year.

III. CURRENT SITUATION:

- A. Actual lighting costs for the previous year have been summarized for each lighting district.
- B. The specific assessments have been noticed in the Keizertimes on June 9, 2023.

IV. **ANALYSIS:**

- A. **Strategic Impact** – N/A
- B. **Financial** – The Fiscal Year 2023-24 assessment is for \$421,355.55 and includes an administrative fee of \$4.51 per assessed lot and an allowance for uncollectible accounts of 2%. These amounts are accounted for in the Street Lighting District Fund.
- C. **Timing** – The attached resolution must be adopted by June 30, 2023 in order to be included in the Marion County Assessors tax roll for Fiscal Year 2023-24.
- D. **Policy/legal** – The lighting districts are established under Oregon Revised Statute 223.866 Local Improvements and Works Generally – Levy of Assessment

ALTERNATIVES:

- A. Adopt attached resolution
- B. Take No Action – The City would need to identify an alternate funding source in order to continue to provide lighting throughout the City’s established lighting districts.

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution R2023-____ Certification of Lighting District Assessments.

ATTACHMENTS:

- Resolution R2023-____ Certification of Lighting District Assessments
- Exhibit A – Lighting District Assessments

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023-_____

CERTIFICATION OF LIGHTING DISTRICT ASSESSMENTS

BE IT RESOLVED by the City Council of the City of Keizer that Keizer has determined and computed the amount of money necessary to be raised by assessment to cover funds spent to operate and maintain certain street lighting facilities within Keizer, including administrative costs for a total of \$421,355.55; and

BE IT FURTHER RESOLVED that Keizer certifies Exhibit "A" attached hereto, is a true and correct list of the properties within the various lighting assessment district in Keizer giving the proper assessment and apportionment of costs and expenses to be assessed against the respective properties for operation and maintenance of street lighting facilities for the year; and

BE IT FURTHER RESOLVED that Exhibit "A" attached hereto, is certified to the County Assessor to be added to the appropriate tax accounts for the respective properties indicated. The totals include the administrative fee of \$4.51 per assessed lot.

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

PASSED this _____ day of _____, 2023.

SIGNED this _____ day of _____, 2023.

Mayor_____

City Recorder_____

CITY OF KEIZER
"EXHIBIT A"
CERTIFICATION OF
LIGHTING DISTRICT ACCOUNTS
ASSESSMENT YEAR 2023-24

DISTRICT		TOTAL PER DISTRICT	PER LOT OR FRONT FOOTAGE
#	NAME		
008	MARDELL	\$ 5,211.93	\$ 25.93
012	WILARK PARK ST LTG	9,680.50	50.95
014	MAI LIN	8,558.31	29.41
015	APPLEBLOSSOM	3,488.32	39.64
017	RIVERCREST	16,583.40	49.95
018	IVY WAY	5,565.63	46.77
019	ARNOLD WAY	1,170.96	28.56
022	NORTHVIEW	5,442.08	63.28
023	MCNARY HGHTS	5,287.92	60.09
024	CEDAR PARK ST LGHT	1,180.66	62.14
025	MENLO	1,700.73	62.99
026	SHADY LANE	2,891.65	0.5425 FRONT FOOT
028	NORTHWOOD PARK #1	3,095.33	63.17
034	GREENWOOD	2,148.68	0.5677 FRONT FOOT
041	WILARK PARK #6	687.60	38.20
042	WILARK PARK ANN #7	678.24	42.39
043	NORTHWOOD PARK #2	2,526.25	58.75
044	MAI-LIN DISTRICT #2	644.69	28.03
045	MCLEOD PARK	1,375.56	38.21
046	LANCER PARK	1,574.28	43.73
047	HILLIGOSS	764.82	54.63
048	CARLHAVEN ADDITION	577.64	20.63
049	WINDSOR ESTATES	1,309.39	56.93
050	WHITAKER PARK	4,325.10	55.45
079	ANDREW PARK	848.40	56.56
080	GLYNBROOK	3,443.18	83.98
081	LAWNDALE SUB	2,139.62	62.93
082	NORTHWOOD PARK #4	7,131.46	72.77
083	PALMA CIEA #5	1,284.80	58.40
084	WILARK PARK ANN #5	889.20	49.40
086	HICKS JONES	10,226.60	0.5551 FRONT FOOT
087	CARLHAVEN ADD #2	667.80	23.85
094	WILL MANOR 4	1,880.94	81.78
095	WHEATLAND LN	433.44	61.92
096	NORTHTREE ESTATES	7,117.00	71.17
097	CHEMAWA PARK	1,392.30	77.35
108	MCLEOD PARK #2	1,334.07	49.41
120	CHEMAWA EST #1	1,549.50	51.65
122	SIX SUBDIVISION	568.36	21.86
126	MCLEOD ESTATES	3,364.78	45.47
128	CHEHALIS SUB	448.80	28.05
129	DENNIS LANE N	2,079.45	46.21
130	CRESTWOOD VILLAGE	458.64	38.22
131	CHEMAWA EST #2	1,635.06	48.09

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DISTRICT		TOTAL PER DISTRICT	PER LOT OR FRONT FOOTAGE
#	NAME		
132	CHARLOTTE	2,278.35	50.63
141	PALMA CIEA	22,490.41	50.09
142	RIVERVIEW N	1,300.94	44.86
143	MEADOWBROOK	508.41	56.49
144	JUNIPER	1,025.80	51.29
146	TERRACE GLEN	876.32	54.77
147	WEDGEWOOD ESTATE	1,125.76	35.18
148	JULIE ESTATES	1,302.00	65.10
150	KEPHART	1,924.00	48.10
159	JOHNISEE ADDN	446.42	34.34
161	WALENWOOD SUB	237.24	26.36
162	WARNER PARK	237.24	26.36
163	SPRINGTIME PK SUB	673.65	44.91
164	STONEHEDGE ESTATE	5,184.00	51.84
165	RIVERVIEW N #2	1,358.56	48.52
181	TIMBERVIEW SUB	5,692.78	40.09
182	VISTAVIEW ESTATE #2	2,625.00	43.75
183	NORTHRIDGE PARK	933.76	29.18
184	JUNIPER #2 SUBDIV	1,497.51	71.31
185	KEIZER HEIGHTS	2,826.24	44.16
191	CLARK ST NE	582.32	20.08
192	FRIENDSHIP ADDITION	446.64	37.22
193	TEN AT MCNARY	1,137.60	71.10
194	BUCHOLZ ADDITION	660.66	31.46
195	PARKLAWN ADDITION	394.24	98.56
205	GLYNBROOK II N	3,232.74	75.18
206	FOUR WINDS ADDN N	5,935.98	48.26
207	FERNBROOK	1,580.28	40.52
208	EDEN ESTATES	2,995.02	71.31
209	COUNTRY CLUB EST	1,498.84	53.53
212	LAWNDALE I SUB PH-2	2,528.37	64.83
213	STONEHEDGE EST II	3,672.42	37.86
215	GARY ST	1,108.89	29.97
216	ARNOLD ST #2	1,083.72	49.26
217	FOUR WINDS III	627.80	31.39
218	GREENWAY	797.04	44.28
219	NOON AVE	1,218.56	38.08
220	STONEHEDGE EST III	1,357.12	42.41
221	STONEHEDGE EST 4&5	1,554.03	50.13
227	WILLOW LAKE EST	2,016.96	45.84
228	THE MEADOWS PH-1	3,414.88	60.98
231	FOURWINDS II	609.44	38.09
232	WHITAKER HGTS	1,683.68	49.52
234	THE MEADOWS PH-3	2,134.30	60.98

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DISTRICT		TOTAL PER DISTRICT	PER LOT OR FRONT FOOTAGE
#	NAME		
235	THE MEADOWS PH-2	2,256.26	60.98
236	THE MEADOWS PH-4	2,378.22	60.98
237	ORCHARD CREST	2,415.21	45.57
238	STONEHEDGE EST #6	1,604.82	38.21
239	SPRINGMEADOW EST	4,315.40	2,157.70
241	WILLOW LAKE 2&3	4,071.36	42.41
246	CHERRYLAWN CT NE	503.76	62.97
247	ORCHARD CREST PH-3	1,922.55	54.93
248	MAX CT	539.00	53.90
249	THE MEADOWS PH-5	2,561.16	60.98
250	ORCHARD CREST PH-2	2,397.19	45.23
251	RIVERCREST PH-1&2	1,987.92	45.18
253	THE MEADOWS PH-6	1,890.38	60.98
254	THE MEADOWS PH-7	2,439.20	60.98
255	TIMBERVIEW PH-3	1,741.88	62.21
256	APPLETREE PH-1,2,3	3,034.62	65.97
257	BRIARWOOD	3,030.39	3,030.39
258	HIDDEN CRK EST PH-1	3,391.92	94.22
259	CATERWOOD ESTATES	2,453.10	48.10
260	PARKMEADOW APTS	1,012.73	1,012.73
261	NORTHRUP/NORTHSHIRE	544.44	45.37
262	COUNTRY GLEN EST	9,708.80	52.48
263	FIRCONE	2,076.40	71.60
264	HIDDEN CRK EST PH-2	880.00	55.00
265	CLEARLAKE SUBDIV	2,846.90	58.10
266	SPRINGRIDGE EST	1,867.52	58.36
267	THE RIDGE	1,311.20	59.60
268	NORTHSIDE ESTATES	2,742.54	63.78
269	HOMESTEAD/CLEARVIEW	403.10	40.31
270	HONEYSUCKLE	1,499.00	59.96
272	LARSON PARK SUBDIV	458.64	38.22
273	BAILEY ESTATES	449.40	44.94
274	STICKLES ADDITION	243.00	27.00
275	CEDAR BLUFF SUBDIV	1,737.18	64.34
276	ABT KOUFAX LN	1,517.31	65.97
277	HIDDEN CREEK PH-3	756.36	22.92
278	HOLLY LN/ALDER DR NE	398.52	44.28
282	3RD AVE N	2,048.01	35.93
283	HIDDEN CREEK PH-4	1,077.15	71.81
284	JACOBE ESTATES SUB	837.90	83.79
285	PRAIRIE EST	7,477.76	81.28
286	TECUMSEH ESTATES	1,104.81	52.61
287	TEPPER E SUB	1,944.60	69.45
288	WESTMORE	1,360.32	56.68

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DISTRICT		TOTAL PER DISTRICT	PER LOT OR FRONT FOOTAGE
#	NAME		
292	PINEHURST ESTATES	3,286.62	57.66
293	LEEWOOD MEADOWS	2,550.42	47.23
294	BROWER PLACE	1,755.84	56.64
295	HIGHLANDS ESTATES	3,294.60	54.91
296	JACOBE ESTATES PH2	1,090.98	60.61
297	BAHNSEN WOODS EST	3,387.60	56.46
298	FOREST RIDGE EST	2,874.30	52.26
299	WHEATLAND TERRACE	847.28	60.52
300	WATERFORD	2,846.90	58.10
306	ROCKLEDGE ADDITION	408.00	25.50
307	WITTENBERG	1,461.80	730.90
308	JORDON RUN	764.94	69.54
309	PRAIRIE CLOVER	596.92	149.23
310	VINEYARDS	5,124.60	56.94
311	HIGHLANDS NORTH	459.36	28.71
312	CHEMAWA GLEN	2,296.72	60.44
315	SPARROW ADDITION	615.28	76.91
316	VINEYARDS NO. PHASE 2	3,170.67	62.17
317	HIDDEN CREEK PHASE 5	828.70	82.87
318	BARNICK ESTATES	1,227.12	102.26
319	MCLEOD ACRES	797.80	79.78
321	BEIER ESTATES	1,438.56	79.92
322	WESTMORE EAST SUBDIV N.	439.92	24.44
323	SHADY ADDITION N.-RING ST. N.E.	797.04	44.28
332	CLEARLAKE HEIGHTS	594.58	42.47
333	PINE MEADOWS ESTATE	651.42	46.53
334	AT MURPHY SUBDIVISION-PHASE 1 & 2	1,284.96	53.54
336	FULTZ ESTATES	839.10	55.94
338	RICKMAN CROSSING	633.00	63.30
339	CEDAR TREE	833.25	75.75
340	WINDSOR WOODS SUBDV	2,942.72	66.88
344	APPLE TREE ANNEX/PEIRCE DRIVE	1,731.24	48.09
345	FULTZ ESTATES PH 2	428.24	53.53
346	PLEASANT VIEW NE	1,921.26	46.86
350	HUNTER ADDITION II/BARNICK RD INFILL PROJ	325.70	32.57
351	HUNTER ADDITION I	414.45	82.89
352	LENT ESTATES STLT DIST. KUD	684.45	25.35
353	TREBBER ESTATES	1,243.50	82.90
354	WINDSOR WOODS SUBDV PH2	1,760.95	42.95
355	EVERWOOD MEADOWS	857.85	57.19
356	MEGAN LEE PROP.	225.10	45.02
358	CLEARLAKE MEADOWS STLT DIST	209.75	41.95
359	CLAGGET GROVE DIST.	307.32	51.22
360	SELENA ESTATES DIST.	731.51	43.03

CITY OF KEIZER
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DISTRICT		TOTAL PER DISTRICT	PER LOT OR FRONT FOOTAGE
#	NAME		
361	CANDLEWOOD IND PARK NE	210.77	30.11
363	BRIAN MDWS ST LT DIST.-KUD	567.60	25.80
365	JACOBE ESTATES PH3	223.52	27.94
366	MADALYN TERRACE	344.12	24.58
367	GRISWOLD AVE NE	370.89	123.63
368	HALEY ESTATES	635.94	35.33
369	KEIZER STATION LIGHTING-AREA A	12,661.29	174.18 PER ACRE
370	WHEATLAND MEADOWS ESTATE	1,002.82	26.39
372	SARAH JEAN COURT	218.96	31.28
373	BENSON ESTATES SUBDIVISION	414.45	82.89
374	PEYTON-HAYLEY SUBDIVISION	201.55	40.31
375	MCGEE COURT	227.16	37.86
377	CRAFTSMAN RIDGE STREET	535.50	35.70
378	TAYLOR RIDGE SUB	316.56	39.57
379	TEETS ESTATES STREET	246.48	18.96
384	AVALON MEADOWS STREET	2,711.88	33.48
385	MAGEE ESTATES STREET	140.98	20.14
386	MCNARY HGHTS ADDN STREET	442.20	29.48
387	NEW DAY STREET	220.62	36.77
391	TATE ESTATES ST LTG	232.70	23.27
392	ALDINE MEADOWS LTG	792.60	26.42
393	WINDSOR ISLAND LTG	2,180.52	40.38
394	NORTHFIELD ESTS LTG	1,600.80	133.40
395	WILLOWLAKE LAKE VIEW	915.43	29.53
397	MISTY MEADOWS	1,241.10	82.74
399	BOWDEN MEADOWS	2,496.00	78.00
400	KEIZER STATION LTG AREA C	2,349.96	169.63 PER ACRE
403	GALINA COURT ST LTG	223.44	37.24
404	PINECREST ADDN ST LTG	308.65	61.73
405	SUMMERVIEW ESTS LTG	616.32	77.04
406	SNOOK GROVE LTG	628.20	62.82
407	STERLING MEADOW LTG	619.65	41.31
408	AUBREY GLENN LTG	664.17	51.09
462	NAOMI'S START	393.48	98.37
TOTAL ASSESSMENT		\$ 421,355.55	



CITY COUNCIL MEETING: JUNE 20, 2023

To: Mayor Clark and City Council Members

FROM: Adam Brown, City Manager

SUBJECT: **LEASH ORDINANCE**

PROPOSED MOTION:

I move to that the Council adopt Ordinance 2023-_____, Regulating Dogs at Large.

I. SUMMARY:

The City Council discussed dogs off leash multiple times in the latter half of 2022 that culminated in a City Council work session in November 2022. The council had some discussion as to whether a leash ordinance should be enacted in the City of Keizer. The council continued discussion on the topic on May 1, 2023 and directed staff to prepare an ordinance for consideration. A draft ordinance was presented on June 5, 2023 and revisions to the civil penalties were requested.

II. BACKGROUND: -

- A. The City Council held a work session on November 28, 2022 to discuss responsible dog ownership after staff and council members had received many reports of dogs off leash.
- B. The only restriction Keizer has on dogs is that they must be on leash while in parks unless they are in a dog park. This means that you can walk a dog to a park or from a park off leash as long as the dog is on leash at the park.
- C. During the meeting the council said they would like to see what other communities do. Staff researched a sample of cities to see what others require. Attachment A shows the list of communities sampled. We also looked to see if there were Animal Control Officers or an Animal Shelter.
- D. The Council discussed dog leashes on May 1, 2023 and directed staff to prepare an ordinance to come back to council for consideration similar to what most communities do.

III. CURRENT SITUATION:

- A. As mentioned previously it is not the intent of staff to have targeted patrols for the leash law. We expect enforcement to be complaint driven or in response to life safety situations.
- B. The Council discussed a proposed ordinance on June 5, 2023. Two issues were discussed. The first was the fines for infractions of the ordinance. Second was the exemptions for Americans with Disabilities Act (ADA).
 - 1. Several alternative fine structures were discussed at the meeting. Staff committed to come back with revisions to the fee structure. The fine structure recommended is as follows:
 - a) For the first offense: \$50
 - b) For the second offense: \$100
 - c) For the third offense: \$200
 - d) Maximum fine is \$500
 - 2. To address dog training, a reference to state and federal ADA laws is made in the ordinance. "Dogs that are allowed to be off-leash under state or federal disability laws are exempt from this Ordinance, however, the owner or custodian must have such dog under voice command."
- C. Staff recommends adoption of the amended ordinance.

IV. ANALYSIS:

- A. **Strategic Impact** – No strategic impact.
- B. **Financial** – There is no financial impact.
- C. **Timing** – There is no time constraints by which the Council must decide.
- D. **Policy/legal** – Only the council can enact a leash law by ordinance.

V. ALTERNATIVES:

- A. Adopt an ordinance requiring all dogs to be on leash at all times in which they are not on their own property.
- B. Take No Action – Without action, dog owners will be allowed to have dogs off leash throughout the city, except when at parks.

Leash Ordinance

June 20, 2023

VI. RECOMMENDATION:

The City Manager recommends that the Council adopt ordinance 2023-_____ requiring all dogs to be on leash at all times in which they are not on their own property.

Attachment

Ordinance 2023-_____

1
2
3
4
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8
9

A BILL
FOR

ORDINANCE NO.
2023-_____

AN ORDINANCE

REGULATING DOGS AT LARGE

The City of Keizer ordains as follows:

10 Section 1. COUNTY REGULATIONS. Except as this Ordinance requires more
11 stringent limitations upon dogs or other animals or the ownership or control of dogs or
12 other animals, the Council hereby consents to the application and enforcement of all
13 Marion County animal control Ordinances currently in effect or adopted hereafter.

14 Section 2. DOGS AT LARGE. It is unlawful for an owner or custodian of a dog
15 to permit the dog to run loose or be at large. “Loose” or “at large” shall mean off the
16 premises of the owner or custodian, while the dog is not under complete control of the
17 owner or custodian by being restrained by a leash or chain not exceeding 10 feet in
18 length, but the use of such leash or chain shall not be required when said dog is in a
19 motor vehicle or on different premises where that private property owner has not
20 objected to the dog being loose or at large. However, dogs shall always be restrained as
21 set forth above in all right-of-way areas and sidewalks, as well as on any city-owned
22 property.

23 Section 3. EXEMPTION. Dogs that are allowed to be off-leash under state or
24 federal disability laws are exempt from this Ordinance, however, the owner or custodian

1 must have such dog under voice command. In addition, on-duty police dogs and dogs
2 within a city-authorized dog park area are exempt.

3 Section 4. VIOLATIONS. A violation of this Ordinance is an infraction under
4 the Keizer Civil Infraction Ordinance. The minimum fine is \$25. The presumptive fine
5 is as follows:

- 6 a. For the first offense: \$50
- 7 b. For the second offense: \$100
- 8 c. For the third offense: \$200

9 and the maximum fine is \$500.

10 Section 5. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days
11 after its passage.

12 PASSED this _____ day of _____, 2023.

13
14 SIGNED this _____ day of _____, 2023.

15
16
17 _____
18 Mayor

19
20 _____
21 City Recorder



CITY COUNCIL MEETING: JUNE 20, 2023

To: Mayor Clark and City Council Members

THRU: Adam J. Brown, City Manager

FROM: E. Shannon Johnson, City Attorney

SUBJECT: Amending Ordinance No. 2020-812 Prohibiting Camping On Sidewalks, Public Property and Public Rights-Of-Way

PROPOSED MOTION:

I move that the Keizer City Council adopt Ordinance No. 2023-_____ Amending Ordinance No. 2020-812 (Prohibiting Camping On Sidewalks, Public Property and Public Rights-Of-Way); Declaring an Emergency

I. SUMMARY:

Current city ordinance regarding camping on public property outdoors is not consistent with federal court decisions and state statutes. Therefore, it is appropriate to adopt amendments to the current ordinance.

II. BACKGROUND:

Federal courts have determined that it is a violation of the federal Constitution to totally restrict homeless individuals from sleeping and resting on public property if they have nowhere else to go. In addition, the Oregon Legislature has adopted statutes that requires local government that has any restrictions on such activity to provide regulations that are objectively reasonable.

III. CURRENT SITUATION:

- A. Currently, Ordinance No. 2020 – 812 (Prohibiting Camping on Sidewalks, Public Property and Public Rights-of-Way) does not allow camping in any public place.
- B. However, federal court decisions in the last few years have indicated that it is a violation of the Eighth Amendment of the United States Constitution to totally prohibit resting and sleeping outdoors on public property if an individual is homeless and has nowhere else to go.
- C. In addition, the Oregon Legislature adopted House Bill 3115 which adds other requirements on local government. The statute requires local governments that regulate sleeping and resting outdoors on public property to have regulations that are objectively reasonable. The main part of the legislation is set forth below:

Any city or county law that regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness.

Homeless individuals can bring a lawsuit and recover attorney fees if a court determines that the regulations are not objectively reasonable.

- D. Most Oregon local governments are responding by amending their ordinances or adopting new legislation.
- E. Our office has prepared an ordinance which amends the existing ordinance referenced above. The amendment provides for limited short-term sleeping and resting in certain right-of-way areas. Such ordinance is attached along with the current Ordinance 2020-812.

IV. ANALYSIS:

- A. **Strategic Impact** – None.
- B. **Financial** – None.
- C. **Timing** – The new state statute requires regulations to be objective reasonable on July 1, 2023.
- D. **Policy/legal** – State law and federal case law would indicate that it is appropriate to adopt this legislation.

ALTERNATIVES:

- A. Adopt the attached ordinance allowing limited resting and sleeping in certain rights-of-way areas.
- B. Adopt the attached ordinance with changes as Council sees fit.
- C. Decline to adopt any ordinance at this time.

RECOMMENDATION:

Staff recommends adopting the attached ordinance. Please contact me if you have any questions or concerns. Thank you.

ATTACHMENTS:

- Ordinance 2023-_____ A Bill for an Ordinance Amending Ordinance No. 2020-812 Prohibiting Camping on Sidewalks, Public Property And Public Rights-Of-Way; Declaring an Emergency
- Current Ordinance 2020-812

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A BILL

ORDINANCE NO.

2020- 812

FOR

AN ORDINANCE

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

The City of Keizer ordains as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (D) Violations of this Ordinance are infractions, and the violators may be cited
4 under the Keizer Civil Infraction Ordinance.

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

10 (F) This Ordinance is cumulative to other Ordinances or regulations including,
11 but not limited to Ordinance No. 2019-807 (Relating to Street Obstructions and Debris
12 on Public Right-of-Way) and Resolution R2019-2948 (Authorizing City Manager to
13 Order Removal of Persons from City Property). The procedures and/or remedies set
14 forth herein shall not prohibit in any way any alternative remedies set out in city
15 ordinances or state statutes intended to alleviate ordinance violations. The remedies set
16 forth herein are not exclusive, but are in addition to any and all common law and
17 statutory remedies for the abatement of nuisances.

18 Section 3. SEVERABILITY. If any section, subsection, sentence, clause,
19 phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional, or
20 is denied acknowledgment by any court or board of competent jurisdiction, then such

1 portion shall be deemed a separate, distinct, and independent provision and such holding
2 shall not affect the validity of the remaining portions hereof.

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

6 PASSED this 6th day of January, 2020.

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8 SIGNED this 6th day of January, 2020.

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Mayor



City Recorder

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A BILL
FOR

ORDINANCE NO.
2023-_____

AN ORDINANCE

AMENDING ORDINANCE NO. 2020-812 (PROHIBITING CAMPING ON
SIDEWALKS, PUBLIC PROPERTY AND PUBLIC RIGHTS-OF-WAY);
DECLARING AN EMERGENCY

The City of Keizer ordains as follows:

Section 1. Ordinance 2020-812 (Prohibiting Camping on Sidewalks, Public
Property and Public Rights-of-Way) is amended by deleting Section 2 and replacing it
with the following:

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

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

(1) To “Camp” or the act of “Camping” means to pitch, use, or occupy
camp materials or a camp for the purpose of occupancy, habitation, or sheltering
for survival, and in such a way as will facilitate sleeping or storage of personal
belongings, taking measures to keep protected from the elements including heat
and cold, or any of these activities in combination with one another or in
combination with either sleeping or making preparations to sleep. A “Camp” is a
location where people Camp or are Camping.

(2) “Camp Materials” may include, but are not limited to, tents, awnings,
lean-tos, chairs tarps or tarpaulins, cots, beds, sleeping bags, blankets, mattresses,
sleeping or bedding materials, food or food storage items, and/or similar items
that are or appear to be used as living and/or sleeping accommodations, or to

1 assist with living and/or sleeping activities.

2 (3) “Public Rights of Way” means all City-owned or controlled rights-of-
3 way, whether in fee title, by dedication, or as holder of a public easement for
4 right-of-way or public access purposes. Public rights-of-way includes, but are not
5 limited to, any public road, street, sidewalk, or private street or other property that
6 is subject to a public access easement dedicated or granted to the City for
7 vehicular, pedestrian, or other means, and any planter strip or landscaped area
8 located adjacent to or contained within streets that is part of the public right-of-
9 way.

10 (4) “City Property” includes all real property, land and public facilities
11 owned, leased by the City, controlled, or managed by the City of Keizer including
12 City parking lots or parking structures, but excluding public rights-of-way.

13 (5) “Relocate” means to move off of Public Rights-of-Way or City
14 Property. The definition does not include moving to another portion of the same
15 City Property.

16 (B) Except as set forth below, it is unlawful for any person to camp in or upon
17 any public sidewalk, city property, or public rights-of-way.

18 (C) In express recognition of the need for those experiencing homelessness to
19 sleep and rest and if they have nowhere else to go, camping is not prohibited in
20 public rights-of-way, except in the following right-of-way areas:

- 21 (1) For safety reasons, vehicular and bicycle travel lanes and five (5)
- 22 feet adjacent to such travel lanes.
- 23 (2) Stormwater facilities.
- 24 (3) Adjacent to any residential uses.
- 25 (4) Within 100 feet of any school, church or daycare facility.
- 26 (5) Within ten (10) feet of the intersection of a street and driveway or a
- 27 private pedestrian path, or within ten (10) feet of a building entry.

1 the lowest possible level, and to engage to seek compliance and solve problems
2 while maintaining the dignity of all involved. To that end, violations of this
3 Ordinance should only result in citations when other means of achieving
4 compliance have been unsuccessful, or are not practicable for the particular
5 situation.

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

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

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15 PASSED this _____ day of _____, 2023.

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17 SIGNED this _____ day of _____, 2023.

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Mayor

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City Recorder



CITY COUNCIL MEETING: JUNE 20, 2023

To: Mayor Clark and City Council Members

THRU: Adam J. Brown, City Manager

FROM: Machell DePina, Human Resources Director

SUBJECT: **COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF KEIZER AND THE KEIZER POLICE ASSOCIATION**

PROPOSED MOTIONS:

"I move the City Council adopt Resolution R2023-_____ authorizing the City Manager and Chief of Police to sign the attached 2023-2026 Collective Bargaining Agreement with the Keizer Police Association.

I. SUMMARY:

The City's Collective Bargaining Agreement (CBA) with the Keizer Police Association (KPA) is set to expire on June 30, 2023. A new three-year CBA has been agreed upon with the KPA. Such agreement is attached to the enclosed Resolution. The Resolution provides for City Manager and Chief of Police authorization to sign Memorandum of Understanding without additional Council authorization except for amendments relating to wages, benefits, budgetary matters, or job classifications that have not been budgeted for by the Council. An additional exception is provided for individual new-hire vacation/sick leave bank and/or accruals.

II. BACKGROUND:

- A. The City of Keizer and Keizer Police Association bargaining began with a first session on January 26, 2023 and met a total of 7 times with the last meeting on June 7, 2024.
- B. Members of the Executive Leadership Team met with the City Council in Executive Session prior to bargaining on January 17, 2023, again for a status update on April 17, 2023 and finally this afternoon in preparation for this evening's recommended resolution.

III. CURRENT SITUATION:

- A. On Monday, June 12, 2023, the City was informed of the KPA's agreement to accept the City's last offer as presented on Friday, June 9, 2023.
- B. On Tuesday, June 20, 2023, the City Council discussed the elements of the proposal during Executive Session.

IV. ANALYSIS:

- A. **Strategic Impact** – Does not apply.
- B. **Financial** –The financial impact is approximately \$375,000 of compensation costs in excess of the 2023-24 Adopted budget.
- C. **Timing** – It is important that approval be provided immediately to provide for the timely processing of Personnel Action Forms (PAFs) for the beginning of the 2023-24 fiscal year and to avoid the need for workload of retroactive wage and benefit adjustments.
- D. **Policy/legal** – Council approval is required for this request based on the City Charter.

V. ALTERNATIVES:

- A. Adopt the attached Resolution authorizing the City Manager and Chief of Police to sign the attached 2023-2026 Collective Bargaining Agreement with the Keizer Police Association.
- B. The Council may choose not to authorize signature of the attached agreement and direct the City to continue bargaining with the KPA. Lack of agreement after 150 days of good faith negotiations may result in a request for mediation and if an impasse is declared, a final determination being made by an arbitrator who would select one of the two last best offer packages.

VI. RECOMMENDATION:

Staff recommends that the City Council adopt Resolution 2023-_____ authorizing the City Manager and Chief of Police to sign the attached 2023-2026 Collective Bargaining Agreement with the Keizer Police Association.

ATTACHMENTS:

- Resolution R2023-____ Authorizing the City Manager and Chief of Police to Sign the Attached 2023-2026 Collective Bargaining Agreement with the Keizer Police Association.
- 2023-2026 Collective Bargaining Agreement with the Keizer Police Association not yet available but will be attached to the Resolution prior to Council action.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023-_____

AUTHORIZING CITY MANAGER AND CHIEF OF POLICE TO SIGN 2023-2026 COLLECTIVE BARGAINING AGREEMENT WITH KEIZER POLICE ASSOCIATION

WHEREAS, the City Council authorized the City Manager and Chief of Police to enter into a Collective Bargaining Agreement with the Keizer Police Association by Resolution R2021-3169;

WHEREAS, such Collective Bargaining Agreement was effective from July 1, 2021 through June 30, 2023;

WHEREAS, the City desires to enter into a new Collective Bargaining Agreement for the period of July 1, 2023 through June 30, 2026;

WHEREAS, from time-to-time amendments need to be made to the Collective Bargaining Agreement to modify provisions and change job classifications as authorized by the Council;

WHEREAS, such amendments are made with the use of Memoranda of Understanding;

WHEREAS, Memoranda of Understanding must be authorized by the City Council;

WHEREAS, the City Council desires to allow the City Manager and Chief of Police to sign Memoranda of Understanding relating to the 2023-2026 Collective Bargaining Agreement without further authorization by the City Council except for

1 amendments relating to provisions that relate to wages, benefits, budgetary matters, or
2 job classification additions, except as noted below;

3 WHEREAS, the City Council desires to allow the City Manager and Chief of
4 Police to sign Memoranda of Understanding relating to the 2023-2026 Collective
5 Bargaining Agreement without further authorization by the City Council relating to
6 classification additions if such job classification additions have been budgeted for by
7 Council;

8 WHEREAS, the City Council desires to allow the City Manager and Chief of
9 Police to sign Memoranda of Understanding relating to the 2023-2026 Collective
10 Bargaining Agreement without further authorization by the City Council relating to
11 individual new-hire vacation/sick leave beginning bank and/or accrual;

12 NOW, THEREFORE,

13 BE IT RESOLVED by the City Council of the City of Keizer that the City Manager
14 and Chief of Police are authorized to sign the attached 2023-2026 Collective Bargaining
15 Agreement with the Keizer Police Association.

16 BE IT FURTHER RESOLVED by the City Council of the City of Keizer that the
17 City Manager and Chief of Police are authorized to sign Memoranda of Understanding
18 relating to the 2023-2026 Collective Bargaining Agreement without further Council
19 authorization unless such Memoranda pertain to provisions that relate to wages, benefits,
20 budgetary matters, or job classification additions, except as noted below.

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1 BE IT FURTHER RESOLVED by the City Council of the City of Keizer that the
2 City Manager and Chief of Police are authorized to sign Memoranda of Understanding
3 relating to the 2023-2026 Collective Bargaining Agreement without further Council
4 authorization relating to job classification additions if Council has budgeted for the job
5 classification addition.

6 BE IT FURTHER RESOLVED by the City Council of the City of Keizer that the
7 City Manager and Chief of Police are authorized to sign Memorandum of Understanding
8 relating to the 2023-2026 Collective Bargaining Agreement without further Council
9 authorization relating to individual new-hire vacation/sick leave beginning bank and/or
10 accrual as long as any changes are budgeted.

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

13 PASSED this _____ day of _____, 2023.

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15 SIGNED this _____ day of _____, 2023.

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Mayor

City Recorder



CITY COUNCIL MEETING: June 20, 2023

TO: MAYOR CLARK AND CITY COUNCIL MEMBERS

THROUGH: Adam J. Brown, City Manager

FROM: Bill Lawyer, Public Works Director

SUBJECT: CIVIC CENTER TRELIS REPAIRS

PROPOSED MOTION:

I move the City Council approve Resolution #2023 ___ authorizing the City Manager to enter into a contract with Remodeling by Classic Homes Inc. for the Civic Center Trellis Repair project.

I. SUMMARY:

The proposed project includes repair to the trellis structures over the City Hall employee break area patio and the Police Department break area patio.

II. BACKGROUND:

Staff solicited bids through the formal bid process to repair the Civic Center Trellises. No bids were received through this process. Staff then contacted local contractors in an effort to find a company willing to perform the work. Remodeling by Classic Homes Inc. was the only contractor that showed interest in the project and submitted a bid in the amount of \$246,944.25.

III. CURRENT SITUATION:

- A. The existing wood trellis structures are rotting and need to be repaired or removed. The repair project will replace all exposed wood on the trellis's with steel which will not be susceptible to rot.
- B. Repairing the trellises will provide a covered area for the employee outdoor break areas.

IV. ANALYSIS:

- A. **Strategic Impact** – N/A

- B. **Financial** – Funds for this project are identified in the City Council adopted Fiscal Year 2023/2024 budget.
- C. **Timing** – Approval of this request will allow the filtration plant to be available for use at the earliest possible date.
- D. **Policy/legal** – City Council approval is required to award this contract.

ALTERNATIVES:

- A. Approve Resolution #2023 ____ authorizing the City Manager to enter into a contract with Remodeling by Classic Homes, Inc. for the Civic Center Trellis Repair project.
- B. Take no action – Not approving this project will result in the trellises to ultimately need to be removed.

RECOMMENDATION:

- A. Staff recommends that the City Council approve Resolution #2023 ____ authorizing the City Manager to enter into a contract with Remodeling by Classic Homes Inc. for the Civic Center Trellis Repair project.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023- _____

AUTHORIZING THE CITY MANAGER TO AWARD AND ENTER INTO AN AGREEMENT WITH REMODELING BY CLASSIC HOMES, INC. FOR CIVIC CENTER TRELLIS REPAIR

WHEREAS, the trellis structures over the City employee break area patio and Police Department break area patio are in need of repair;

WHEREAS, bids were solicited for such repair;

WHEREAS, no bids for this project were received;

WHEREAS, the Public Works Director then reached out to contractors to find a company willing and able to perform the work;

WHEREAS, Remodeling by Classic Homes, Inc. was the only contractor that showed interest in the project;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is hereby authorized to award the contract and enter into an agreement with Remodeling by Classic Holmes, Inc. for a total cost of \$246,944.25. Funding for this project is from the Administrative Services Fund – Public Works Civic Center Facilities.

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

PASSED this _____ day of _____, 2023.

SIGNED this _____ day of _____, 2023.

Mayor

City Recorder



TO: MAYOR CLARK AND CITY COUNCIL MEMBERS

THROUGH: Adam J. Brown, City Manager

FROM: Bill Lawyer, Public Works Director

SUBJECT: OREGON DEPARTMENT OF TRANSPORTATION (ODOT) INTER-GOVERNMENTAL AGREEMENT (IGA) FOR RIGHT OF WAY SERVICES

PROPOSED MOTION:

I move the City Council approve Resolution #2023 authorizing the City Manager to sign the Right of Way Services IGA with ODOT for the Verda Lane improvements.

I. SUMMARY:

ODOT has determined a Right of Way Services Agreement needs to be in place with the City to enable ODOT to perform needed property acquisition for the Verda Lane improvements.

II. BACKGROUND:

- A. The City applied for and received Federal grant funding to design and construct improvements to Verda Lane NE from Dearborn to near the MLK Jr. Parkway.
- B. The project must be managed and delivered by either ODOT or a Certified Local Agency. Keizer is not nor will be a Certified Local Agency so therefore the property acquisition process must be performed by ODOT.

III. CURRENT SITUATION:

- A. Design work for the project is nearing completion.
- B. The existing amended IGA does not include the specifics services needed for property acquisition for the project.
- C. The Right of Way Services Agreement allows ODOT to perform property acquisition services for the City to acquire property needed to construct the project.

IV. ANALYSIS:

- A. **Strategic Impact** – N/A
- B. **Financial** – There is no direct financial impact of this request as the City’s funding of the project is already planned for.
- C. **Timing** – Approval at this request will allow ODOT to acquire property needed to construct the project.
- D. **Policy/legal** – An IGA that covers the needed services for right of way acquisition is necessary to allow ODOT to perform these services for the City.

ALTERNATIVES:

- A. Approve the resolution.
- B. Take No Action – The project will be delayed until a new IGA can be entered into.

RECOMMENDATION:

Staff recommends that the City Council approve Resolution 2023-___ authorizing the City Manager to sign the Right of Way Services IGA with ODOT for the Verda Lane improvements.

ATTACHMENTS:

- Resolution 2023-___

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2023-_____

AUTHORIZING THE CITY MANAGER AND PUBLIC WORKS DIRECTOR TO ENTER INTO INTERGOVERNMENTAL AGREEMENT FOR RIGHT OF WAY SERVICES (VERDA LANE: DEARBORN AVENUE TO SALEM PARKWAY (KEIZER))

WHEREAS, the City of Keizer entered into the Agreement for the Verda Lane: Dearborn Avenue to Salem Parkway engineering project in June 2020;

WHEREAS, the City entered into Amendment Number 01 to the Agreement to allow the design and construction of the project in April 2023;

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

WHEREAS, the Oregon Department of Transportation is requesting that the City enter into an Intergovernmental Agreement for Right of Way Services outlining the responsibilities of each jurisdiction for the acquisition of properties under the Project;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager and Public Works Director are authorized to sign the Intergovernmental Agreement for Right of Way Services attached hereto.

BE IT FURTHER RESOLVED by the City Council of the City of Keizer that the City Manager and Public Works Director are hereby authorized to execute further

1 agreements relating to this project in the future without Council authorization unless the
2 cost of the project is increased.

3 BE IT FURTHER RESOLVED by the City Council of the City of Keizer that the
4 City Manager and Public Works Director are authorized to take any other actions
5 consistent with these agreements.

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

8 PASSED this _____ day of _____, 2023.

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10 SIGNED this _____ day of _____, 2023.

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Mayor

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City Recorder

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**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**

Verda Lane: Dearborn Avenue to Salem Parkway (Keizer)

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

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. Alder Drive, Claxter Road, and Verda Lane from Dearborn Avenue to, but not including, the Salem Parkway are a part of the city street system under the jurisdiction and control of Agency.
4. State is responsible for delivering the Verda Lane: Dearborn Avenue to Salem Parkway (Keizer) project ("Project") under ODOT Delivered Federal Project on Behalf of City of Keizer Agreement Number 34063 executed on June 15, 2020, and Amendment No. 1 executed on April 19, 2023 ("Project Agreement") attached hereto as Exhibit C and by this reference made a part hereof.
5. This Agreement covers a subset of the work set forth in the Project Agreement; therefore, the Project Agreement describes the general scope and funding for the right of way activities carried out under this Agreement. This Agreement further defines the roles and responsibilities of the Parties regarding real property to be used as part of the right of way for the Project, and further refines the details of the scope and funding for these right of way activities.
6. As of the Effective Date of this Agreement, there are no local public agencies ("LPAs") certified to independently administer federal-aid projects for right of way services. State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement.

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

TERMS OF AGREEMENT

1. Under such authority, to accomplish the objectives in the Project Agreement, State agrees to perform the right of way Services shown in Exhibit A - Special Provisions ("Services"), attached hereto and by this reference made a part hereof.
2. The Parties agree to comply with the terms of this Agreement and the applicable terms of the Project Agreement in performing the Services. In the event of a direct conflict, the terms of the Project Agreement will control over any conflicting provision in this Agreement.
3. Exhibits Attached and Incorporated.
 - a. This Agreement includes the following exhibits, each of which is attached and incorporated into this Agreement by reference as though fully set forth herein:
 - Exhibit A – Special Provisions
 - Exhibit B – Resolution Exercising The Power of Eminent Domain
 - Exhibit C - Project Agreement
4. This Agreement becomes effective on the date all required signatures are obtained ("Effective Date"). Services shall begin on or after the Effective Date and shall be completed no later than December 31, 2028, on which date this Agreement automatically expires unless extended by a fully executed amendment.
5. Both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and implemented through Title 49, Part 24, ORS Chapter 35 and the ODOT Right of Way Manual, located at <https://www.oregon.gov/ODOT/ROW/Documents/ROW-Manual.pdf> and incorporated herein by this reference. Each Party will require its contractors and subcontractors, if any, to comply with this provision.
6. The funding and payment for the Services are set forth in the Project Agreement. This Agreement commits no additional funding for the Services.
 - a. Under no condition shall Agency's obligations under this Agreement exceed \$1,698,000.00, including all expenses, unless agreed upon by both Parties in writing in a fully executed amendment to this Agreement. This maximum is the amount programmed in the STIP for the right of way phase of the Project. Expenditures must be charged according to the appropriate Project phase as identified in Exhibit A.
 - i. Agency agrees to reimburse State for all expenses, including salaries and other personnel expenses (OPE) of State employees performing Services, direct costs, costs of rental equipment used, travel expenses, and per-diem expenditures. Travel expenses shall be reimbursed in accordance with the current Oregon Department of Administrative Services rates as contained in the Oregon Accounting Manual (OAM), which can be found at:

<https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>.

STATE OBLIGATIONS

1. State shall perform the Services assigned to State in Exhibit A.
2. State's right of way contact person for this Agreement is Regina Thompson, Sr. Right of Way Agent, 455 Airport Road SE, Building B, Salem, Oregon 97301; phone: (503) 986-2609; email: Regina.Thompson@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the Services assigned to Agency in Exhibit A. All Services provided by Agency shall comply with ODOT's Right of Way Manual in effect at the time the Services are performed.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance its share of all costs and expenses incurred under this Agreement up to the maximum amount set forth in Terms of Agreement Paragraph 6.
3. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform Services under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
4. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 ("Claims"), to the extent such Claims are caused, or alleged to be caused, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise solely from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.
5. Any such indemnification shall also provide that neither the Agency's contractor or subcontractor nor any attorney engaged by Agency's contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or

that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

6. Agency shall perform all Services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the Services under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
7. When Agency is performing Services under this Agreement, Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
8. Agency certifies and represents that all individuals signing this Agreement have been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
9. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
10. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Services under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. Agency shall upon State's request provide copies of any required documentation related to the Services as described in Exhibit A.
12. Agency's right of way contact person for this Agreement is Bill Lawyer, Department Director, Public Works Department, City of Keizer, P.O. Box 21000, Keizer, Oregon 97303; phone: (503) 390-3700; email: LawyerB@keizer.org, or assigned designee upon individual's absence.

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Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS:

1. Termination.
 - a. This Agreement may be terminated by mutual written consent of both Parties.
 - b. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing, and delivered by certified mail or in person, under any of the following conditions:
 - i. If either Party fails to provide Services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the Services as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - i. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - ii. If Agency fails to provide payment of its share of the cost of the Project.
 - iii. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Agreement is prohibited or State is prohibited from paying for such Services from the planned funding source.
 - d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
2. All employers that employ subject workers who perform Services under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
3. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify

the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

4. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
5. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
6. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
7. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of

Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

8. Agency and State are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
9. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
12. Survival. All rights and obligations of the Parties under this Agreement will cease upon termination or expiration of this Agreement, other than the rights and obligations of the parties that by their nature or express terms survive termination or expiration of this Agreement.

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

Signature Page to Follow

CITY OF KEIZER, by and through its designated officials

By _____

Date _____

By _____

Date _____

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

By _____
Agency's Counsel

Date _____

Agency Contact:

Bill Lawyer, Department Director
Public Works Department
City of Keizer
P.O. Box 21000
Keizer, Oregon 97303
(503) 390.3700
LawyerB@keizer.org

State Contact:

Regina Thompson, Sr. Right of Way Agent
ODOT Region 2
455 Airport Road SE, Building B
Salem, Oregon 97301
(503) 986-2609
Regina.Thompson@odot.oregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Delivery & Operations Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
State Right of Way Manager

Date _____

By _____
Region 2 Manager

Date _____

By _____
Region 2 Right of Way Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By N/A _____
Assistant Attorney General

Date _____

Exhibit A
SPECIAL PROVISIONS
Right of Way Services

A. Preliminary Phase: State or Agency shall perform the Services outlined in this Section A during the preliminary right of way phase of the Project as identified below. When Services listed under this Section A are performed by Agency, Agency shall charge the Services as preliminary engineering expenditures.

1. State shall prepare preliminary cost estimates.
2. State shall make preliminary contacts with property owners.
3. State shall gather and prepare data for environmental documents.
4. State shall develop access and approach road list.
5. State shall help prepare field location and project data as defined in the Project Agreement.
6. Title. State shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
7. Legal Descriptions:
 - a. State shall prepare sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
 - b. State shall prepare construction plans and cross-section information for the Project.
 - c. State shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current ODOT [Right of Way Engineering Manual](https://www.oregon.gov/ODOT/ETA/Documents_Geometronics/ROW-Eng-Manual.pdf), located at https://www.oregon.gov/ODOT/ETA/Documents_Geometronics/ROW-Eng-Manual.pdf and incorporated herein by reference. The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
 - d. State shall specify the degree of title to be acquired (e.g., fee, easement), which must be determined in accordance with the current ODOT Right of Way Manual.
8. Hazmat:
 - a. State shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.

- b. State shall conduct a Level 2 Preliminary Site Investigation, according to ODOT's Hazmat Program Procedures Guidebook and other applicable requirements of the Oregon Department of Environmental Quality, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties. If contamination is found, State will promptly disclose the severity and extent of contamination to Agency and present a recommendation for remediation to Agency as set forth in ODOT's Right of Way Manual Section 6.330 paragraph 2.
- c. State shall attempt to have the property owner undertake any necessary remediation at the property owner's expense. Other options are set forth in ODOT's Right of Way Manual section 6.330 paragraph 2.b. If State undertakes any remediation on the site, Agency will be solely responsible for any liability that may arise from such remediation.

B. Right of Way Phase: State or Agency shall perform the Services outlined in this Section B during the acquisition right of way phase of the Project as identified below. When Services listed under this Section B are performed by Agency, Agency shall charge the Services as right of way expenditures.

1. Right of Way Acquisition:

- a. Right of Way Acquisition is the process of obtaining property necessary for the Project, from negotiation to possession of the property, using various sub-processes including, but not limited to, appraisal, negotiation, condemnation, relocation, title closing, and project related property management related to the potential exercise of eminent domain. The basic requirements for carrying out right of way acquisition for the Project are set forth in this Section B.
- b. When performing the right of way acquisition Services, State shall provide Agency with a monthly status report of the Services.
- c. Title to properties acquired shall be in the name of State of Oregon, by and through its Department of Transportation.
- d. The Agency delegates, and the State accepts, the Agency's authority pursuant to all relevant common law, statutes, ordinances, and other authorities, to acquire and condemn property on Agency's behalf for the Project, where such acquisition or condemnation is made necessary by the Project.
- e. The Agency shall adopt a resolution of intention and determination of necessity in accordance with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation ("Resolution"). Agency's Resolution shall be substantially in the form of Exhibit B, attached hereto and by this reference made a part hereof. If the Agency would like the Oregon Department of Justice (DOJ) to provide legal or litigation Services related to the condemnation work identified in this Agreement on Agency's behalf, DOJ must provide approval prior to performance of the Right of Way Services

under this Agreement. To secure DOJ assistance, ODOT's Region Right of Way Manager must submit a written request to DOJ's Chief Trial Counsel, the Agency must expressly and officially request and authorize DOJ representation for the condemnation on the Project, and the signature of DOJ's Chief Trial Counsel must be obtained on this Agreement.

2. Real Property and Title Insurance:

- a. State shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current ODOT Right of Way Manual, and after obtaining State's concurrence. Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- b. Agency shall accept conveyed property "as-is" and in accordance with ORS 93.808. State is not required to provide any additional Services to Agency, including but not limited to payment, documentation, platting, surveying, or remediation, beyond those specifically set forth in this Agreement.

3. Appraisal:

- a. State shall conduct the valuation process of properties to be acquired. If hazardous materials are located on the property, State shall use section 6.330, paragraph 2 in ODOT's Right of Way Manual.
- b. State shall perform the appraisal reviews to set just compensation.
- c. State shall recommend just compensation, based upon a review of the valuation by qualified personnel.

4. Negotiations:

- a. State shall tender all monetary offers to landowners in writing at the compensation level shown in the appraisal review. State shall have sole authority to negotiate and make all settlement offers. When settlements for property acquisitions are made for more or less than the approved just compensation amount, a justification is required. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way is complete prior to advertising for any construction contract, unless otherwise agreed to by Agency and State.

No. 34438

- c. State agrees to file all Recommendations for Condemnation (Form 734-3311 and accompanying documents) with ODOT right of way headquarters, at least seventeen (17) weeks prior to the right of way certification date if negotiations have not been successful on those properties.

5. Relocation:

- a. State shall perform any relocation assistance, make replacement housing computations, and do all things as required by applicable state and federal law necessary to relocate any persons displaced by the Project.
- b. State shall determine all relocation benefits each property owner is eligible for and shall make all relocation and moving payments.
- c. State shall facilitate the relocation appeal process.

C. Closing Phase

- 1. State shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments.
- 2. Upon acceptance by State the conveyance documents shall be recorded.

D. Property Management

- 1. State shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
- 2. State shall dispose of all improvements and excess land consistent with applicable state, federal, and local laws and policies.
- 3. State shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

E. Condemnation

- 1. State may offer mediation if the State and property owners have reached an impasse.
- 2. State shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.

3. State shall perform all legal and litigation Services related to the condemnation process, including all settlement offers. Prior approval of this Agreement by DOJ and passage of an Agency Resolution are required as provided in Section B.1.e above.
4. When State performs legal or litigation Services related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney(s), nor any member of the law firm of Agency's attorney(s), board or council member(s), or mayor, nor any other employee or representative of Agency licensed to practice law, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project or the Services.

F. Transfer of Right of Way to State

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. Agency shall identify the existence of any hazardous materials on or in the property prior to the transfer. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept, at no additional cost to the State, all right of way acquired on the Agency's facility, subject to concurrence from the Oregon Transportation Commission and FHWA at the time of the transfer. State shall identify the existence of any hazardous materials on or in the property prior to the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

EXHIBIT B
SAMPLE RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN
Right of Way Services

This Exhibit is an example only and the completed resolution will be a separate document from the ROWSA. (Instructions - please delete before completing form.) The LPA should block and copy to incorporate this language into their own standard resolution form OR fill in an "attested to" line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A" attached to this Resolution and, by this reference incorporated herein; now, therefore,

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A to this Resolution. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. ([Insert title of Agency]'s staff and [attorney/counsel] --OR-- (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any

court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).

- 4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this _____ day of _____, 20__

[insert signature blocks here]

Attachments: Exhibit A to Exhibit B to Agency Resolution Exercising the Power of Eminent Domain – Property Description

Exhibit A to Exhibit B - Agency Resolution Exercising the Power of Eminent Domain – Property Description

Continued from previous page. This Exhibit is an example only and the completed resolution will be a separate document from the ROWSA. Delete all highlighted instructions.

[insert property description]

**ODOT Delivered Federal Project
On Behalf of City of Keizer
Verda Lane: Dearborn Avenue to Salem Parkway (Keizer)
Key Number: 20741**

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

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform
2. Verda Lane from Dearborn Avenue to, but not including, the Salem Parkway is a part of the city street system under the jurisdiction and control of Agency.
3. Agency has agreed that State will deliver this project on behalf of the Agency.
4. The Project was selected as a part of the Transportation Alternatives Program - Urban and may include a combination of federal, state and local funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

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

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering the Verda Lane: Dearborn Avenue to Salem Parkway (Keizer) project on behalf of Agency, hereinafter referred to as "Project." Project includes the preliminary engineering design of a future construction project to complete bicycle facilities and sidewalks along Verda Lane between Dearborn Avenue and Salem Parkway. The location of the Project is

City of Keizer / ODOT
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approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Parties anticipate the right of way and construction phases of the Project will be added at a later date. Upon full funding and the addition of these phases to the Project in the Statewide Transportation Improvement Program (STIP), this Agreement will be amended to include right of way and construction phase work, and add their respective costs. If the Parties do not amend this Agreement to add right of way and construction phase work, the right of way, construction and maintenance provisions in this Agreement will not apply.
3. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.
4. The total Preliminary Engineering phase of Project cost is estimated at \$501,600.00, which is subject to change. Federal funds for this Project shall be limited to \$450,085.68. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.
5. Federal funds under this Agreement are provided under Title 23, United States Code.
6. ODOT does not consider Agency to be a subrecipient or vendor under this Agreement, for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
7. With the exception of Americans with Disabilities Act of 1990 (ADA) related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency's concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract at ten (10) percent (%) over engineer's estimate without prior approval of Agency.
8. State will submit the requests for federal funding to Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.
9. Agency guarantees the availability of Agency funding in an amount required to fully

fund Agency's share of the Project.

10. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
11. This Agreement may be terminated by mutual written consent of both Parties.
12. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
13. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
14. Information required by 2 Code of Federal Regulation (CFR) 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to Agency with the Notice to Proceed.
15. **Americans with Disabilities Act Compliance:**
 - a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb

ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;

- ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>.

- b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- c. Maintenance obligations in this section shall survive termination of this Agreement.

16. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are

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incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.

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

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State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.

24. State's Contract Administrator for this Agreement is Kumar Rethnasamy, Transportation Project Leader, ODOT, 455 Airport Road SE, Building B, Salem, OR 97301, (503) 986-2692, Kumar.Rethnasamy@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

25. Agency's Contract Administrator for this Agreement is Bill Lawyer, Department Director, City of Keizer Public Works, P.O. Box 21000, Keizer, OR 97307, (503) 390-3700, LawyerB@keizer.org, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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

This Project is in the 2018-2021 Statewide Transportation Improvement Program (STIP), (Key Number 20741) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

City of Keizer / ODOT
Agreement No. 34063

CITY OF KEIZER, by and through its
elected officials

By 
City Manager

Date 6-2-20

STATE OF OREGON, by and through
its Department of Transportation

By 
Highway Division Administrator

Date 6/15/2020

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

By 
Agency Legal Counsel

Date 6-2-20

APPROVAL RECOMMENDED

By Sonny P.A. Chickering Digitally signed by Sonny P.A. Chickering
Date: 2020.06.11 09:25:05 -07'00'
Region 2 Manager

Date _____

By Michael Kimlinger Jun 9 2020 8:06 AM
State Traffic Roadway Engineer

Date _____

By 
Region 2 Project Delivery Manager

Date 6-8-2020

By John Huestis (via email)
Region 2, Area 3 Manager

Date June 5, 2020

APPROVED AS TO LEGAL SUFFICIENCY

By Janet C. Borth (via email)
Assistant Attorney General

Date May 15, 2020

Agency Contact:

Bill Lawyer, Department Director
Public Works Department
City of Keizer
P.O. Box 21000
Keizer, OR 97307
(503) 390-3700
LawyerB@keizer.org

State Contact:

Kumar Rethnasamy
Transportation Project Leader
ODOT
455 Airport Road SE, Building B
Salem, Oregon 97301
(503) 986-2692
Kumar.Rethnasamy@odot.state.or.us

EXHIBIT A – Project Location Map



**ATTACHMENT NO. 1 to AGREEMENT NO. 34063
SPECIAL PROVISIONS**

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.
 - a. State or its consultant shall conduct preliminary engineering and design work required to produce final plans, specifications, and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments.
 - b. State will advertise, bid, and award the construction contract. Upon State's award of the construction contract, a consultant hired and overseen by the State shall be responsible for contract administration and construction engineering & inspection, including all required materials testing and quality documentation. State shall make all contractor payments.
 - c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.
2. Agency will lead public outreach at its own expense during the Project with support from ODOT technical staff if requested.
3. State and Agency agree that the useful life of this Project is defined as twenty (20) years.
4. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS

PROJECT ADMINISTRATION

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

PROJECT FUNDING REQUEST

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

FINANCE

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

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

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

DESIGN STANDARDS

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

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

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

PRELIMINARY & CONSTRUCTION ENGINEERING

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

Disadvantaged Business Enterprises (DBE) Obligations

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

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

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

RIGHT OF WAY

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

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

RAILROADS

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

UTILITIES

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

GRADE CHANGE LIABILITY

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

MAINTENANCE RESPONSIBILITIES

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

CONTRIBUTION

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

ALTERNATIVE DISPUTE RESOLUTION

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

WORKERS' COMPENSATION COVERAGE

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

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

LOBBYING RESTRICTIONS

43. Agency certifies by signing the Agreement that:

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

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

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

A136-G0092418

AMENDMENT NUMBER 01
ODOT Delivered Federal Project
On Behalf of City of Keizer
Verda Lane: Dearborn Avenue to Salem Parkway (Keizer)
Key Number: 20741

This is Amendment No. 01 to the Agreement between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and CITY OF KEIZER, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" or collectively as "Parties," entered into on June 15, 2020.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding, add phases, and update language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.** Additions are underlined. Deletions are *italicized* and struck through.
 - a. EXHIBIT A shall be deleted in its entirety and replaced with the attached REVISED EXHIBIT A. All references to "Exhibit A" shall hereinafter be referred to as "Revised Exhibit A."
 - b. RECITALS, Paragraph 2, Page 1, is revised as follows:
 2. Alder Drive, Claxter Road, and Verda Lane from Dearborn Avenue to, but not including, the Salem Parkway ~~are~~ a part of the city street system under the jurisdiction and control of Agency.
 - c. RECITALS, Paragraph 4, Page 1, is revised as follows:
 4. The Project was selected as part of the Transportation Alternatives Program - Urban and the Congestion Management Air Quality (CMAQ) Program and may include a combination of federal, state, and local funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.
 - d. TERMS OF AGREEMENT, Paragraphs 1 - 2, Page 2, are revised as follows:
 1. Under such authority, Agency and State agree to State delivering the Verda Lane: Dearborn Avenue to Salem Parkway (Keizer) project on behalf of Agency, hereinafter referred to as "Project." ~~Project includes the preliminary engineering design of a future construction project to complete~~The Project includes design and construction of bicycle lanes and sidewalks along Verda Lane between Dearborn Avenue and Salem Parkway, and a safety enhancement to realign Claxter Road to Alder Drive at the intersection of Verda

City of Keizer/ODOT
 Agreement No. 34063 Amendment No. 1

Lane and Alder Drive. The location of the Project is approximately as shown on the maps attached hereto, marked "Revised Exhibit A," and by this reference made a part hereof.

2. The Parties agree that the right of way and construction phases of the Project are funded in the State Transportation Improvement Program (STIP), and herein incorporated into this Agreement. The Parties anticipate the right of way and construction phases of the Project will be added at a later date. Upon full funding and the addition of these phases to the Project in the Statewide Transportation Improvement Program (STIP), this Agreement will be amended to include right of way and construction phase work, and add their respective costs. If the Parties do not amend this Agreement to add right of way and construction phase work, the right of way, construction and maintenance provisions in this Agreement will not apply.

e. **TERMS OF AGREEMENT, Paragraph 4, Page 2, is revised as follows:**

4. The total ~~Preliminary Engineering phase of~~ Project cost is estimated at ~~\$4,074,800.00~~~~\$501,600.00~~, which is subject to change. Federal funds for this Project shall be limited to ~~\$3,440,359.44~~~~\$450,085.68~~. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.

f. **TERMS OF AGREEMENT, Paragraph 6, Page 2, is revised as follows:**

6. ODOT does not consider Agency to be a subrecipient or ~~contractor/vendor~~ under this Agreement, for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.

g. **TERMS OF AGREEMENT, Paragraph 14, Page 3, is revised as follows:**

14. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party. Information required by 2 Code of Federal Regulation (CFR) 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid

City of Keizer/ODOT
 Agreement No. 34063 Amendment No. 1

Project Agreement for this Project, a copy of which shall be provided by ODOT to Agency with the Notice to Proceed.

h. TERMS OF AGREEMENT, Paragraph 19, Page 5, is revised as follows:

19. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; ~~or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.~~

i. INSERT NEW TERMS OF AGREEMENT, Paragraph 26, to read as follows:

26. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

j. INSERT NEW TERMS OF AGREEMENT, Paragraph 27, to read as follows:

27. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 8 (Funding), 13 (Termination), 15.b (ADA maintenance), 14, 18-20, 23 (Integration, Merger, Waiver), 26-27; and Attachment 2, paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 37-41 (Maintenance and Contribution).

4. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
5. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

City of Keizer/ODOT
Agreement No. 34063 Amendment No. 1

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

This Project is in the ~~2021-2024-2018-2021~~ Statewide Transportation Improvement Program (STIP) (Key No. 20741) that was adopted by the Oregon Transportation Commission on ~~July 20, 2017~~ July 15, 2020 (or subsequently by amendment to the STIP).

CITY OF KEIZER, by and through its elected officials

By 
City Manager

Date 4/4/2023

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

By 
Agency Legal Counsel

Date 4-9-2023

Agency Contact:

Bill Lawyer, Department Director
Public Works Department
City of Keizer
P.O. Box 21000
Keizer, OR 97307
(503) 390-3700
LawyerB@keizer.org

State Contact:

Kumar Rethnasamy
Transportation Project Leader
ODOT
455 Airport Road SE, Building B
Salem, Oregon 97301
(503) 986-2692
Kumar.Rethnasamy@odot.oregon.gov

STATE OF OREGON, by and through its Department of Transportation

By 
McGregor LYNDE (Apr 19, 2023 11:57 PDT)
Delivery and Operations Division
Administrator

Date 04/19/2023

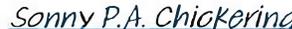
APPROVAL RECOMMENDED

By Not Applicable
Certification Program Manager

Date _____

By 
Heidi SHOBLUM (Apr 10, 2023 08:56 PDT)
State Traffic Roadway Engineer

Date 04/10/2023

By 
Sonny P.A. Chickering (Apr 7, 2023 16:59 PDT)
Region 2 Manager

Date 04/07/2023

APPROVED AS TO LEGAL SUFFICIENCY

By Janet Borth (via email)
Assistant Attorney General

Date 3/13/2023 (email retained in record)



MINUTES
KEIZER CITY COUNCIL SPECIAL SESSION
Monday, May 25, 2023
Keizer Civic Center, Keizer, Oregon

CALL TO ORDER

Council President Shaney Starr called the meeting to order at 5:30 pm. Roll call was taken as follows:

Present:

Shaney Starr, Councilor
Laura Reid, Councilor
Soraida Cross, Councilor
Dan Kohler, Councilor
Kyle Juran, Councilor

Absent:

Cathy Clark, Mayor
Robert Husseman, Councilor

Staff Present:

Adam Brown, City Manager
Tracy Davis, City Recorder

DISCUSSION

City Manager Adam Brown summarized his staff report.

a. Marion County Jurisdictional Letter

Councilor Reid moved that the Keizer City Council authorize the city to sign on to the multi-jurisdictional letter to Governor Tina Kotek and Interim Director Mr. David Baden to address adverse consequences to local communities arising from the federal court order limiting admissions and services at the Oregon State Hospital. Councilor Kohler seconded. Motion passed as follows:

AYES: Reid, Cross, Kohler, Starr and Juran (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Clark and Husseman (2)

ADJOURN

Council President Shaney Starr adjourned the meeting at 5:35 p.m.

MAYOR:

APPROVED:

~ Absent ~

Cathy Clark

Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – Laura Reid

Councilor #4 – Soraida Cross

~ Absent ~

Councilor #2 – Shaney Starr

Councilor #5 – Robert Husseman

Councilor #3 – Kyle Juran

Councilor #6 – Daniel R. Kohler

Minutes approved: _____



MINUTES
KEIZER CITY COUNCIL
Monday, June 5, 2023
Keizer Civic Center, Council Chambers
Keizer, Oregon

CALL TO ORDER

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

Present:

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

Staff:

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

FLAG SALUTE

Mayor Clark led the pledge of allegiance.

**SPECIAL ORDERS
OF BUSINESS**

Referring to the previous month's observance, Mayor Clark invited Rabbi Avrohom Perlstein to share information about Jewish Heritage. Rabbi Perlstein explained that he is the grandchild of a couple who survived the holocaust, noted that the Jewish people are not about anti-Semitism but are people who have moved on from that experience and believe in a better world with the hope to build community, live in peace and promote peace.

**PROCLAMATION –
Pride Month**

Nevaeh Music shared what it is has been like for her to be a homosexual in Keizer and urged that progress be promoted through education. Mayor Clark then read the proclamation observing June as Pride Month and presented it to Ms. Music.

**PROCLAMATION –
Juneteenth**

Councilor Starr noted that there would be a presentation about Juneteenth at the June 20 Council meeting. Mayor Clark then read the proclamation observing June 19th as Juneteenth, the oldest African American holiday observance in the United States.

**PROCLAMATION –
2022-23 Youth
Councilor Angelica
Sarmiento**

Mayor Clark read a proclamation honoring and thanking Youth Councilor Angelica Sarmiento Avendano for her dedicated service and presented her with gifts of appreciation.

Ms. Sarmeinto expressed her gratitude for everything she learned while

Avendano

serving on Council and noted that she hoped to continue to serve as Planning Commission Youth Committee Liaison.

COMMITTEE REPORTS**a. Committee Appointment**

Councilor Juran thanked Markey Toomes for his previous service and appointed Stephanie Cross to the Community Diversity Engagement Committee.

Beth Melendy reported that the Keizer Public Arts Commission had approved a new display in the gallery, renewed contracts with artists on sculptures throughout the city and purchased a few pieces of art from a local artist for permanent display. The Commission will next be focusing on getting art on the utility boxes and installing cow sculptures in the roundabout. Councilor Reid noted that there will be a dedication ceremony for the roundabout sculptures in the lobby as part of the 40th birthday party with a permanent sign to be placed in Claggett Creek Park.

David Dempster reported that Traffic Safety/Bikeways/Pedestrian Committee has seen an increase in people expressing concern about walking and biking and speeding traffic. He reviewed various areas of concern and noted that the committee will have a Bike Skills Fair on June 10; the committee gives helmets away at schools, apartment complexes and any event that they can attend. Discussion followed regarding the Neighborhood Traffic Management Plan. Committee member Tammy Saldivar noted that she has been spearheading the updating efforts of the plan and is working with Public Works to overcome some 'roadblocks' to the process.

Jacqueline Green, Keizer, announced that the Kennedy Neighborhood Council is holding a Community Resource Fair at St. Edward Catholic Church July 28 and August 4 and is hoping to learn about the needs of the community and get community support to fill those needs.

PUBLIC COMMENTS

Mayor Clark noted for the record written comments received from Tammy Kunz asking how the Community Diversity Engagement Committee can impact the community.

John Misener, Keizer, asked if the Miracle of Lights route was going to include Meadowlark and Mistwood and noted that the neighbors do not want it to be part of the route. Mayor Clark explained that this is not a City event. The question should be directed to the people who are establishing the route. She note that determining how people are involved in these conversations will be addressed later on the agenda but the route is not part of that discussion.

Robert Dichtel, Keizer, expressed disappointment that there would be no city sponsored concerts at the park this summer and urged Council to resurrect the series as soon as possible.

Lyndon Zaitz, Keizer, announced the Keizertimes photo scavenger hunt

in association with the city birthday party. He explained that a list of items will be posted on the Keizertimes Facebook and website pages. Participants will take photos and submit them to the paper. Deadline is Friday, June 16. The winner will receive a basket of goodies. There are 17 items throughout the city and everyone is welcome to participate.

Tammy Kunz, Keizer, suggested that a pedestrian activated crossing beacon be placed on Verda Lane between May and Dixon streets to help school children cross Verda.

Dennis Spencer, Keizer, complained that cars parked illegally in handicapped spaces are not being cited and asked that something be done.

Emerson Carella, Keizer, explained that he is a high school student that was nominated to serve on the Volunteer Coordinating Committee but was rejected because of his age. He noted that he has served as an aid in the legislature and on the United Way Board and has been accepted into the FBI Academy. He shared detailed information on teenage suicide and his involvement in its prevention and urged Council to stop basing qualification solely on age but to focus on qualifications.

Ken Gierloff, Keizer, questioned the status of installation of a pedestrian activated crossing beacon at Alder and Brooks. With consent of Council Mayor Clark asked that the Traffic Safety/Bikeways/Pedestrian Committee recommendation be directed to Public Works Director Bill Lawyer to look at the feasibility of the request.

Mr. Gierloff then requested that the speed limit on Verda Lane be reduced by 5 miles per hour. Chief Teague expressed support for this reduction. With the concurrence of Council Mayor Clark asked the City Manager to work with Public Works to reduce the speed on Verda.

PUBLIC HEARING
a. ORDINANCE –
Setting Water
Rates (2024);
Repealing
Ordinance No.
2022-844

Mayor Clark opened the Public Hearing.

Finance Director Tim Wood summarized his staff report. Discussion followed regarding changing the billing cycle to monthly rather than bi-monthly and electronic bill payments. Mr. Wood reminded everyone that the most expensive part of their utility bill is sewer, not water.

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

Councilor Starr moved that the Keizer City Council adopt a Bill for an Ordinance Setting Water Rates (2024); Repealing Ordinance No. 2022-844. Councilor Reid seconded. Motion passed unanimously as follows:

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

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

- b. RESOLUTION – Amending the City of Keizer Police Services Fee; Repealing Resolution R2022-3284** *Mayor Clark opened the Public Hearing.*
 Mr. Wood summarized his staff report.
With no further testimony, Mayor Clark closed the Public Hearing.
Councilor Starr moved that the Keizer City Council adopt a Resolution Amending the City of Keizer Police Services Fee; Repealing Resolution R2022-3284. Councilor Reid seconded. Motion passed as follows:
 AYES: Clark, Reid, Cross, Kohler, Starr and Juran (6)
 NAYS: Husseman (1)
 ABSTENTIONS: None (0)
 ABSENT: None (0)
- c. RESOLUTION – Declaring the City’s Election to Receive State Revenues** *Mayor Clark opened the Public Hearing.*
 Mr. Wood summarized his staff report and fielded questions regarding receipt of the payments.
With no further testimony, Mayor Clark closed the Public Hearing.
Councilor Starr moved that the Keizer City Council adopt a Resolution Declaring the City’s Election to Receive State Revenues. Councilor Reid seconded. Motion passed unanimously as follows:
 AYES: Clark, Reid, Husseman, Cross, Kohler, Starr and Juran (7)
 NAYS: None (0)
 ABSTENTIONS: None (0)
 ABSENT: None (0)
- RESOLUTION – Certifying That the City of Keizer Provides Four or More Municipal Services** Councilor Starr moved that the Keizer City Council adopt a Resolution Certifying That the City of Keizer Provides Four or More Municipal Services. Councilor Reid seconded. Motion passed unanimously as follows:
 AYES: Clark, Reid, Husseman, Cross, Kohler, Starr and Juran (7)
 NAYS: None (0)
 ABSTENTIONS: None (0)
 ABSENT: None (0)
- d. RESOLUTION – Adopting the FY 2023-24 Budget, Making Appropriations, and Imposing and Categorizing Taxes** *Mayor Clark opened the Public Hearing.*
 Mr. Wood summarized his staff report.
With no further testimony, Mayor Clark closed the Public Hearing.
 Mayor Clark noted that a request for funds will come from Keizer Kloset in July or later. They did not request funds during the budget process.
 Councilor Reid provided clarification regarding Keizer Heritage Foundation regarding tracking ongoing expenses and updating of the doors to make them ADA compliant.
Councilor Starr moved that the Keizer City Council approve a Resolution

Adopting the FY 2023-24 Budget, Making Appropriations, and Imposing and Categorizing Taxes. Councilor Reid seconded. Motion passed unanimously as follows:

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

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**e. ORDINANCE –
Regulating
Dogs at Large**

Mayor Clark opened the Public Hearing.

Mayor Clark admitted to the record written comment from Ross Day. City Manager Adam Brown summarized his staff report. Discussion followed regarding dog certifications, fines, ADA exemptions, the County ordinance, and recourse available to people through personal injury claims.

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

Councilor Starr moved that the Keizer City Council adopt a Bill for an Ordinance Regulating Dogs at Large. Councilor Cross seconded.

The following changes were pointed out as scriveners errors or offered as friendly amendments and accepted by Councilors Starr and Cross:

Section 3, line 20: delete the first line starting with ‘trainer certified’ and most of the second line up to ‘are exempt’ and replace with: “Dogs that are allowed to be off-leash under state or federal disability laws” are exempt.

Section 3, line 22 change: “In addition, on duty police dogs and dogs within a city-authorized dog park area are exempt.”

All three fine dollar amounts: Minimum \$200, Presumptive \$250 and Maximum \$500.

Line 17: ‘lease’ should be ‘leash’.

Line 17: replace ‘hand-held leash’ with ‘restrained by a leash’

Fine Structure: Minimum fine \$25, Presumptive fine \$25, \$50 and \$100 with a Maximum of \$500. Mr. Johnson noted that this section would need to be re-written.

Mayor Clark noted that she would like staff to bring back the \$25/\$50/\$100 structure and continue this discussion.

Following this discussion both Councilors Starr and Cross agreed to withdraw their motion and bring this issue back to the June 20 meeting with changes discussed.

**ADMINISTRATIVE
ACTION
a. Southeast**

Taken out of order. Addressed under Committee Reports.

Ken Gierloff reported that the association is back and is engaged and it plans to move forward with an event during National Night Out. He

**Keizer
Neighborhood
Association
Annual Report**

thanked Council for the extra funds allotted noting that he hoped the extra money would help with engaging people in the neighborhood. He also introduced Don Davis, the newest member of the Board. Chief Teague commended Mr. Gierloff for his continued dedication to the neighborhood noting that he has been working Mr. Gierloff since 1993 and many good things have happened in southeast Keizer because of his efforts.

Councilor Starr moved that the Keizer City Council accept the report of the Southeast Neighborhood Association and extend recognition to the Southeast Neighborhood Association for an additional year. Councilor Reid seconded. Motion passed unanimously as follows:

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

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**b. North West
Keizer
Neighborhood
Association
Report**

Taken out of order. Addressed under Committee Reports.

Hersch Sangster and Board members introduced themselves. Mr. Sangster shared information on the formation of the association, meetings held, and plans. He noted that the association hopes to increase membership and will focus on more outreach and is hoping to work with the City to develop a park in the neighborhood.

Councilor Starr moved that the Keizer City Council accept the report of the Northwest Neighborhood Association and extend recognition to the Northwest Neighborhood Association for an additional year. Councilor Reid seconded. Motion passed unanimously as follows:

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

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**c. ORDINANCE –
Amending Keizer
Development
Code Regarding
Sections 1.103,
2.102, 2.103, 2.104,
2.107, 2.110, 2.122,
2.127, 2.130,
2.302, 2.308, 2.401,
2.403, 2.432, 3.105,
and 3.202;
Amending
Ordinance 98-389**

Planning Director Shane Witham summarized his staff report.

Councilor Starr moved that the Keizer City Council adopt a Bill for an Ordinance Amending Keizer Development Code Regarding Section 1.103, Section 2.102, Section 2.103, Section 2.104, Section 2.107, Section 2.110, Section 2.122, Section 2.127, Section 2.130, Section 2.302, Section 2.308, Section 2.401, Section 2.403, Section 2.432, Section 3.105, and Section 3.202; Amending Ordinance 98-389. Councilor Reid seconded. Motion passed unanimously as follows:

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

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**d. ORDINANCE –
Amending
Ordinance
Relating to the
Regulation of
Fireworks
Within the City
of Keizer
(Amending
Ordinance No.
2022-851);
Declaring an
Emergency**

City Manager Adam Brown summarized his staff report.

Mayor Clark pointed out a discrepancy and suggested taking out the exemption line in section 3 or adding the requirement of compliance with Oregon Administrative Rules. Following discussion it was noted that Section 3d should be deleted and put into Section 4.

Mr. Johnson suggested Council adopt the ordinance as written and staff would bring it back at the next meeting with recommended changes.

Councilor Starr moved that the Keizer City Council adopt a Bill for an Ordinance Amending Ordinance Relating to the Regulation of Fireworks within the City of Keizer (Amending Ordinance No. 2022-851); Declaring an Emergency. Councilor Reid seconded. Motion passed unanimously as follows:

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

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**e. Special Events
in
Neighborhoods**

Mr. Brown summarized his staff report. Discussion followed regarding the recommendation and methodology for public outreach, recourse for those who may disagree and the final decision being made by City staff.

Patti Tischer, Keizer, President of the Greater Gubser Neighborhood Association, explained that although neighbor involvement is small, they have made it clear that they want direct communication on events that will affect them.

Councilor Starr moved that the Keizer City Council direct staff to amend the special event ordinance to require public participation for special events that occur in a neighborhood that go over 24 hours and impact more than 5 homes. Councilor Reid seconded.

Mayor Clark offered a friendly amendment that the methodology be submitted with the application. Amendment accepted by Starr and Reid.

Motion passed unanimously as follows:

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

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**f. Community
Center Fee
Waiver – Marion
County Reentry
Initiative
Breakfast**

City Recorder Tracy Davis summarized her staff report.

Councilor Starr moved that the Keizer City Council approve a waiver of the Community Center rental fee, staffing costs, and refundable security deposit for the Marion County Re-Entry Initiative Breakfast on October 12, 2023. Councilor Reid seconded. Motion passed unanimously as follows:

AYES: Clark, Reid, Husseman, Cross, Kohler, Starr and Juran (7)
 NAYS: None (0)
 ABSTENTIONS: None (0)
 ABSENT: None (0)

g. The Lava Dome

Mr. Brown summarized his staff report and explained that the City is working with Lava Dome on various usage details. He noted that the agreement is that local sports leagues would play on the outdoor fields and would only be allowed to use the indoor fields during inclement weather. He reminded Council that the letter of intent is non-binding but is simply a tool used to collect donors.

Mayor Clark noted for the record written testimony received from Greater Northeast Keizer Neighborhood Association President Tammy Kunz supporting the Lava Dome project.

Marlene Parsons, Keizer, a member of the Board for the Lava Dome, shared details regarding use, scholarships, inclusivity, staffing, fees and upkeep. She urged Council to approve the letter of intent so that Lava Dome can move forward with soliciting donations and building the dome. She confirmed that this is Phase 1, which is installation, management and use of the dome and fielded questions regarding scheduling.

Mr. Brown noted that the Letter of Intent was not included in the packet but was emailed to Councilors. He summarized what was in the letter: parties will work together with Lava Dome on terms of the development agreement and terms of the management agreement.

Discussion followed regarding the extreme cost, sponsors, use of fields, who is responsible for scheduling the fields, the letter of intent, and capacity. It was suggested that a definite scheduling plan be included in the letter of intent. Concern was voiced regarding Keizer youth being excluded from use of the fields because they would be rented to outside organizations.

Mayor Clark noted that this could not be adopted tonight because the letter of intent was not included in the packet. She suggested that additional questions be directed to Mr. Brown or Mr. Johnson between now and the next Council meeting.

Council agreed by consensus that the conversation should move forward with development of the letter of intent.

CONSENT CALENDAR

- a. RESOLUTION – Authorizing Mayor to Send Letter to City Attorney Regarding Evaluation Recommendations and Observations
- b. RESOLUTION – Authorizing the City Manager to Award and Enter Into an Agreement with Gelco Construction Company for McLeod Storm Realignment
- c. RESOLUTION – Authorizing the City Manager to Award and Enter Into an Agreement with Roy Houck Construction LLC for 2023 Pavement Resurfacing

- d. RESOLUTION – Authorizing the City Manager to Enter Into Agreement with Ralph Andersen & Associates
- e. RESOLUTION – Certification of Delinquent Sewer Accounts
- f. Approval of May 15, 2023 Regular Session Minutes

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

AYES: Clark, Reid, Husseman, Cross, Kohler, Starr and Juran (7)
 NAYS: None (0)
 ABSTENTIONS: None (0)
 ABSENT: None (0)

OTHER BUSINESS None

STAFF UPDATES None

COUNCIL MEMBER REPORTS Councilor Starr reported that she had met with US Navy Lieutenant Commander to plan for their visit during Navy Week in September. McNary Principal Eric Jespersen is excited about having the Navy Pop Music Band do a concert for the community after the Navy sailors play a rotating softball game with Keizer youth.

Councilor Cross announced that at the annual Withnell Family YMCA meeting she was named Board Member of the Year.

Mayor Clark reminded everyone of the upcoming 40th Birthday celebration on June 16 and 17 and read a thankyou note from Mike and Marlee Koenig from the Keizer Community Band.

AGENDA INPUT June 12, 2023 – 6:00 p.m. – City Council Work Session
 June 20, 2023 (Tuesday) – 7:00 p.m. – City Council Regular Session
 July 3, 2023 – 7:00 p.m. – City Council Regular Session

ADJOURNMENT Mayor Clark adjourned the meeting at 11:44 p.m.

MAYOR:

APPROVED:

 Cathy Clark

 Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

 Councilor #1 – Laura Reid

 Councilor #4 – Soraida Cross

 Councilor #2 – Shaney Starr

 Councilor #5 – Robert Husseman

 Councilor #3 – Kyle Juran

 Councilor #6 – Daniel R. Kohler

Minutes approved: _____