6:00 P.M. **WORK SESSION - Discussion of Airport Leasing Policies**

AGENDA FOR COUNCIL MEETING
KLAMATH FALLS CITY COUNCIL
AUGUST 1, 2016
7:00 P.M.

Matters for Council consideration not scheduled on the Agenda can be addressed by the general public under the "Public Comment" section on the agenda. Testimony must be presented according to Council procedure. Items of a non-emergency nature may be scheduled for future Council determination in order to provide sufficient time to analyze the issue.

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

1. CONSENT AGENDA

a. Approval of August 1, 2016 agenda and July 18, 2016 regular meeting minutes

b. Authorization to use Chip Seal Services provided by Klamath County Road Department

LAND USE PUBLIC HEARING - QUASI JUDICIAL - NONE

LAND USE PUBLIC HEARING – LEGISLATIVE - NONE

GENERAL PUBLIC HEARING – NONE

LEGISLATIVE ACTION

2. AUTHORIZATION FOR AIRPORT TO EXECUTE LEASE AND OPERATING AGREEMENT WITH PENINSULA AIRWAYS

a. Report of Airport Director
b. Move to authorize execution of Lease and Operating Agreement with Peninsula Airways

3. RESOLUTION ADOPTING A TRANSFER OF APPROPRIATIONS FOR FISCAL YEAR 2015/2016 WITHIN THE WATER FUND

a. Report of Support Services Director
b. Move to introduce the Resolution by title
c. Move to approve the Resolution

4. RESOLUTION AMENDING THE INVESTMENT POLICIES FOR THE CITY OF KLAMATH FALLS

a. Report of Senior Accountant
b. Move to introduce the Resolution by title
c. Move to approve the Resolution

5. **ORDINANCE RATIFYING THE CREATION OF AN INTERGOVERNMENTAL ENTITY FOR THE OPERATION, MAINTENANCE, AND USE OF A COUNTY-WIDE INTEROPERABLE COMMUNICATIONS SYSTEM, AND AUTHORIZING PARTICIPATION THEREIN – SECOND AND FINAL READING**

   a. Move to pass the Ordinance by title for second and final reading
   b. Move to adopt the Ordinance

6. **A SPECIAL ORDINANCE GRANTING TO FALCON CABLE SYSTEMS COMPANY II, L.P., DBA CHARTER COMMUNICATIONS A FRANCHISE FOR A PERIOD OF TEN YEARS – SECOND AND FINAL READING**

   a. Move to pass the Ordinance by title for second and final reading
   b. Move to adopt the Ordinance

7. **ORDINANCE AMENDING CITY CODE SECTION 6.250 TO PROHIBIT SKATEBOARDING, BICYCLING OR ROLLER SKATING IN SUGARMAN'S CORNER AND DECLARING A LEGISLATIVE EMERGENCY – SECOND AND FINAL READING**

   a. Move to pass the Ordinance by title for second and final reading
   b. Move to adopt the Ordinance

OTHER MATTERS

ADJOURNMENT

The City Council may recess/adjourn to Executive Session under ORS 192.660 as follows: ORS 192.660(2):
(a) - Employment of Public Officers, Employees
(b) - Discipline of Public Officers and Employees and Agents
(d) - Labor Negotiations
(e) - Real Property Transactions
(f) - Exempt Public Records
(g) - Trade Negotiations
(h) - Consultation with Legal Counsel
(i) - Performance Evaluations of Public Officers and Employees
(j) - Public Investments

*****AMERICANS WITH DISABILITIES ACT NOTICE*****

Please contact the City Recorder's office, Klamath Falls City Hall, 500 Klamath Avenue, Klamath Falls, OR 97601, or call 541.883.5316 at least 48 hours prior to the scheduled meeting time if you need an accommodation to participate in the meeting. The City's TTY/TDD number is 541.883.5324

MINUTES
KLAMATH FALLS CITY COUNCIL
July 18, 2016

A regular meeting of the Klamath Falls City Council was held in the Council Chambers on the above date at 7:00 p.m. Mayor Todd Kellstrom called the meeting to order.

Council members present:

Councilman Dan Tofell
Councilman Matt Dodson
Councilman Bud Hart
Councilman Bill Adams
Councilwoman Trish Seiler

City staff members present:

Nathan Cherpeski, City Manager
Joanna Lyons-Antley, City Attorney
Dave Henslee, Police Chief
Mark Willrett, Public Works Director
Susan Kirby, Support Services Director
John Barsalou, Airport Director
Linda Tepper, Airport Business Manager
Joe Goetz, Airport Operations Manager
Randy Travis, Water/Geothermal Manager
Scott Souders, City Engineer
Joe Wall, Management Assistant to the City Manager
Kristina Buckley, Assistant to the City Recorder

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited

PRESENTATION OF SERVICE AWARDS. Mayor Kellstrom presented Larry Helms of the Public Works/Water Division (25 years), Captain Rob Dentinger of the Police Department (20 years), and Corporal Ed Foreman of the Police Department (10 years), with Service Awards in recognition of their many years of service to the City. He also recognized Jeff Fritz of the Public Works/Wastewater Division (30 years), Officer Peter York of the Police Department (10 years), and Ryan Badker of the Public Works/Wastewater Division (10 years) for their years of service.

PUBLIC COMMENT

Mayor Kellstrom opened the public comment.

Anita O'Neil. Ms. O'Neil expressed concern about the definition of "abandoned" in reference to the residential blighted property Ordinance because it seemed anyone could make an allegation that a home was abandoned. She asked what properties were on the "secret list" of 42 blighted properties made reference to in a recent article in the Herald and News and if that list could be published on the City's website. City Manager Nathan Cherpeski explained it was a list of homes the City was "looking at" that needed to be brought up to some standard because they were blighted for some reason. The issue within the proposed Ordinance was a receivership program and would only affect items that were health and safety related; so there was a process that would go before the court prior to any action. He further explained the City's goal was to get banks to take action on properties that were vacant, but there would be a legal process. City Attorney Joanna Lyons-Antley stated there was a 90 day period but the whole process was towards compliance.

Don Dumbek. Mr. Dumbek expressed his displeasure with the City's lack of promoting the area. He was displeased with the Retail Coach's lack of recruitment, the $150,000 spent on a downtown park that took away from other performance venues and was being utilized by alcoholics, skateboarders and bicyclists; and the demolition of the Balsiger building with no update or progress on development there either. He continued that retail sales downtown were not sustainable, there was no public restroom and there was no good use of resources downtown.

Hearing or seeing no one further, Mayor Kellstrom closed the public comment.

1. CONSENT AGENDA. Councilman Adams **moved to approve the Consent Agenda as follows: Approved the Consent Agenda for July 18, 2016; Approved the June 20, 2016 regular meeting minutes.** Councilman Tofell seconded. The motion carried unanimously with all Council members present voting aye.

LAND USE PUBLIC HEARING - QUASI JUDICIAL

There were no land use public hearing quasi-judicial matters.

LAND USE PUBLIC HEARING – LEGISLATIVE

There were no land use public hearing legislative matters.

GENERAL PUBLIC HEARING

There were no general public hearing matters.

LEGISLATIVE ACTION

2. MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN CITY OF KLAMATH FALLS AND PENINSULA AIRWAYS, INC. Airport Director John Barsalou reviewed his written report. Councilman Dodson asked about subsidizing air service. City Manager Nathan Cherpeski explained that after six months, staff anticipated the City would pay them the entire $200,000. The bigger fear was the flight from Portland to Klamath Falls would not be as full so it was structured for the first six months. He noted other communities were paying much more than that. Councilman Dodson noted there was no "back end" time commitment so long as they advertised for 60 days. They could pull out. Mr. Barsalou stated they were not in the habit of going into a location for a few months and then pulling out. Mr. Cherpeski stated staff believed even on some of the worst years, the City would meet their enplanement needs. PenAir felt Klamath Falls was a community that would make them money so there would be some startup costs; however, staff believed they would be successful in Klamath Falls and encouraged people to fly out of Klamath Falls.

Councilman Dodson **moved to authorize staff to execute Memorandum of Understanding with Peninsula Airways, Inc.** Councilman Hart seconded. The motion carried unanimously with all Council members present voting aye.

3. CONTRACT WITH MEAD & HUNT, INC. FOR MODOC WETLANDS MITIGATION SITE IMPROVEMENTS CONSTRUCTION ADMINISTRATION SERVICES. Airport Director John Barsalou reviewed his written report. Councilman Hart expressed confusion on dates shown in the Agenda Report. City Manager Nathan Cherpeski explained there was a difference with the FAA grant then the bid for the project. Staff submitted the grant and often had to submit the grants early for the FAA; many times before there were hard numbers for bids. Staff then adjusted the grant.

Councilman Dodson **moved to authorize staff to execute a contract with Mead & Hunt, Inc. in the amount of $31,047.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye.

4. CONTRACT WITH MEAD & HUNT, INC. FOR TAXIWAY B CONSTRUCTION ADMINISTRATION SERVICES. Airport Director John Barsalou reviewed his written report. Councilman Hart cautioned staff to make sure the aggregate came from an appropriate source. Mr. Barsalou stated staff had several conversations about that and with the contractor as well.

Councilwoman Seiler **moved to authorize staff to execute contract with Mead & Hunt, Inc. in the amount of $675,300.** Councilman Dodson seconded. The motion carried unanimously with all Council members present voting aye.

5. AWARD OF BID TO TOM AYRES CONTRACTOR, INC. FOR AIRPORT WETLAND MITIGATION SITE IMPROVEMENTS. Airport Director John Barsalou reviewed his written report. Councilman Dodson asked if the requirements were perhaps too stringent. City Manager Nathan Cherpeski stated he did not know if he had an exact answer; however, when he looked at the totality of the list of required documents, his thought process was, if the staff applied some common sense could it

be determined what was omitted. While Tom Ayres did not submit a form that said they would do at least 35% of the work, the form before that stated they would use zero subcontractors so it was a reasonable determination and Bob's Excavating did not complete a form. He continued that staff discussed how many forms were required and the need to streamline them.

Councilwoman Seiler stated the City Manager recommended award of the bid to Tom Ayres and in the letter from Mead & Hunt, they recommended rejecting the bid from that provider and giving the bid to Bob's Excavating. They both sent in incomplete packages so she asked how the City Manager decided that Tom Ayres was the better contract than Bob's Excavating. Mr. Cherpeski explained he was tasked in hearing the complaint and when he looked at it, it was clear that both entities left forms off their bids but Tom Ayres was the lowest bidder. Councilwoman Seiler referenced page 5 of 5 of the Agenda Report and the chart where drainage excavation was reflected. She stated the figures seemed low with $15 to remove pipe and asked how much pipe would be removed for that rate. Mr. Cherpeski responded the price was per linear foot and noted both of the bids were higher than the estimate.

Councilman Adams asked if staff had any contact from Bob's Excavating who was awarded initially. Mr. Cherpeski stated there was an Intent to Award letter but the challenge was filed within the challenge period by Tom Ayres so no award was made. There was a Bob's Excavating representative at the hearing who spoke about it at that time. Mr. Barsalou noted Bob's Excavating had received the Agenda information that was before Council. Councilman Adams stated as a bidder he would be uncomfortable bidding for the City when the City accepted incomplete bids but there was so much boiler plate that had to be completed it made it difficult to participate in the bid process. Mr. Cherpeski agreed there were too many forms and staff would be addressing that.

Councilman Dodson asked how critical the timeline was for the bid. Mr. Barsalou responded it was very critical and the work needed to be completed very soon as there was a short window.

Councilman Hart **moved to award bid, and authorize staff to execute contract with, Tom Ayres General Contractor, Inc. in the amount of $189,700.00 with Notice to Proceed dependent on receiving FAA funding.**

Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye.

6. ORDINANCE RATIFYING THE CREATION OF AN INTERGOVERNMENTAL ENTITY FOR THE OPERATION, MAINTENANCE, AND USE OF A COUNTY-WIDE INTEROPERABLE COMMUNICATIONS SYSTEM, AND AUTHORIZING PARTICIPATION THEREIN - FIRST READING. Police Chief Dave Henslee reviewed his written report. Councilman Adams stated he appreciated the Chief looking into it and the savings to the City.

Mayor Kellstrom opened the public comment. Hearing or seeing no one, closed the public comment.

Councilman Adams **moved to introduce the Ordinance by title for first reading.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Ordinance by title.

7. A SPECIAL ORDINANCE GRANTING TO FALCON CABLE SYSTEMS COMPANY II, L.P., DBA CHARTER COMMUNICATIONS A FRANCHISE FOR A PERIOD OF TEN YEARS - FIRST READING. City Attorney Joanna Lyons-Antley reviewed her written report. Councilman Tofell asked if all the other cities agreed to the exact same franchise. Ms. Lyons-Antley responded not the exact same as there were some terms that changed but those in the consortium did not have the issue of the PEG channel; however, the vast majority agreed. Councilman Tofell asked how long the City's term was with Pacific Power. Ms. Lyons-Antley responded it was 10 years. Councilman Tofell asked if the City was "stuck" at that length of time. Ms. Lyons-Antley explained it was traditional and a lesser amount of time would impact the $25,000 the City would receive for capital improvements; however, staff could review that option if it was the direction of Council.

Mayor Kellstrom opened the public comment. Hearing or seeing no one, closed the public comment.

Councilwoman Seiler **moved to introduce the Ordinance by title for first reading.** Councilman Hart seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan

Cherpeski read the Ordinance by title.

8. ORDINANCE ADDING SECTION 5.700 TO AUTHORIZE CITY TO PETITION COURT FOR RECEIVERS TO ADDRESS RESIDENTIAL BLIGHT - SECOND AND FINAL READING. Councilman Dodson commented staff could do a better job educating people about the program as there had been citizens who expressed concerns.

Councilwoman Seiler **moved to pass the Ordinance by title for second and final reading.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Ordinance by title.

Councilwoman Seiler **moved to adopt the Ordinance.** Councilman Adams seconded. On **Roll Call, Ordinance No. 16-05** was approved with Councilman Tofell, Councilman Dodson, Councilman Hart, Councilman Adams, and Councilwoman Seiler voting aye.

OTHER MATTERS

AN ORDINANCE AMENDING CITY CODE SECTION 6.250 TO PROHIBIT SKATEBOARDING, BICYCLING OR ROLLER SKATING IN SUGARMAN'S CORNER AND DECLARING A LEGISLATIVE EMERGENCY - FIRST READING. City Engineer Scott Souders reviewed his written report. Councilman Adams stated it was necessary to add the language but he asked how it would be enforced because he continued to see skateboarders, bicycles, etc. on sidewalks downtown. It seemed it could not be controlled and it seemed there was a real problem with people in general not understanding how to behave. Councilman Tofell stated that was his concern as well and requested feedback from Police Chief Henslee. Chief Henslee stated the language added by the Ordinance would allow the park to be signed for no skateboarding, etc. There were foot patrols downtown and if complaints were received they would be addressed so it would be complaint driven as well as enforced upon recognition during patrol.

Mayor Kellstrom opened the public comment.

Don Dumbek. Mr. Dumbek stated he saw someone in the park on a skateboard as he walked to the City Council meeting but the concern was all over the downtown. He encouraged the Police Department to enforce the regulations during more hours as he had not observed the foot patrols.

Hearing or seeing no one further, Mayor Kellstrom closed the public comment.

Councilwoman Seiler **moved to introduce the Ordinance by title for first reading.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Ordinance by title.

ADJOURNMENT

Councilman Tofell **moved to adjourn the meeting.** Councilman Dodson seconded. The motion carried unanimously with all Council members present voting aye. The meeting was adjourned at 8:00 p.m.

_____

Kristina Buckley
Assistant to the City Recorder

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 1b

Date: August 1, 2016

Department: Public Works	Contact/Title: Chuck Cox Streets & Equipment Manager
Staff Presenter: Chuck Cox	Telephone No.: 541-883-5363
City Manager Review:	Email: citypublicworks@klamathfalls.city

TOPIC: Authorize Use of Chip Seal Services Provided by Klamath County Road Department

SUMMARY AND BACKGROUND:

The Streets Division requested chip seal services from the Klamath County Public Works Department to chip seal the Stewart Lenox subdivision (attached map). The estimated cost for this project is $99,400.

FINANCIAL IMPACT:

Funding for this service in the amount of $100,000 is available in the Streets Division's 2016/2017 Approved Budget, and is identified in the Capital Outlay Program.

COUNCIL OPTIONS:

1) Authorize the 2016/17 Chip Seal Project;
2) Decline the use of Klamath County's chip seal services and direct staff to utilize a different resurfacing product; or
3) Decline to complete the 2016/17 Chip Seal Project; however, this would affect the current decline of the roadways in Stewart Lenox.

DOCUMENTS ATTACHED:

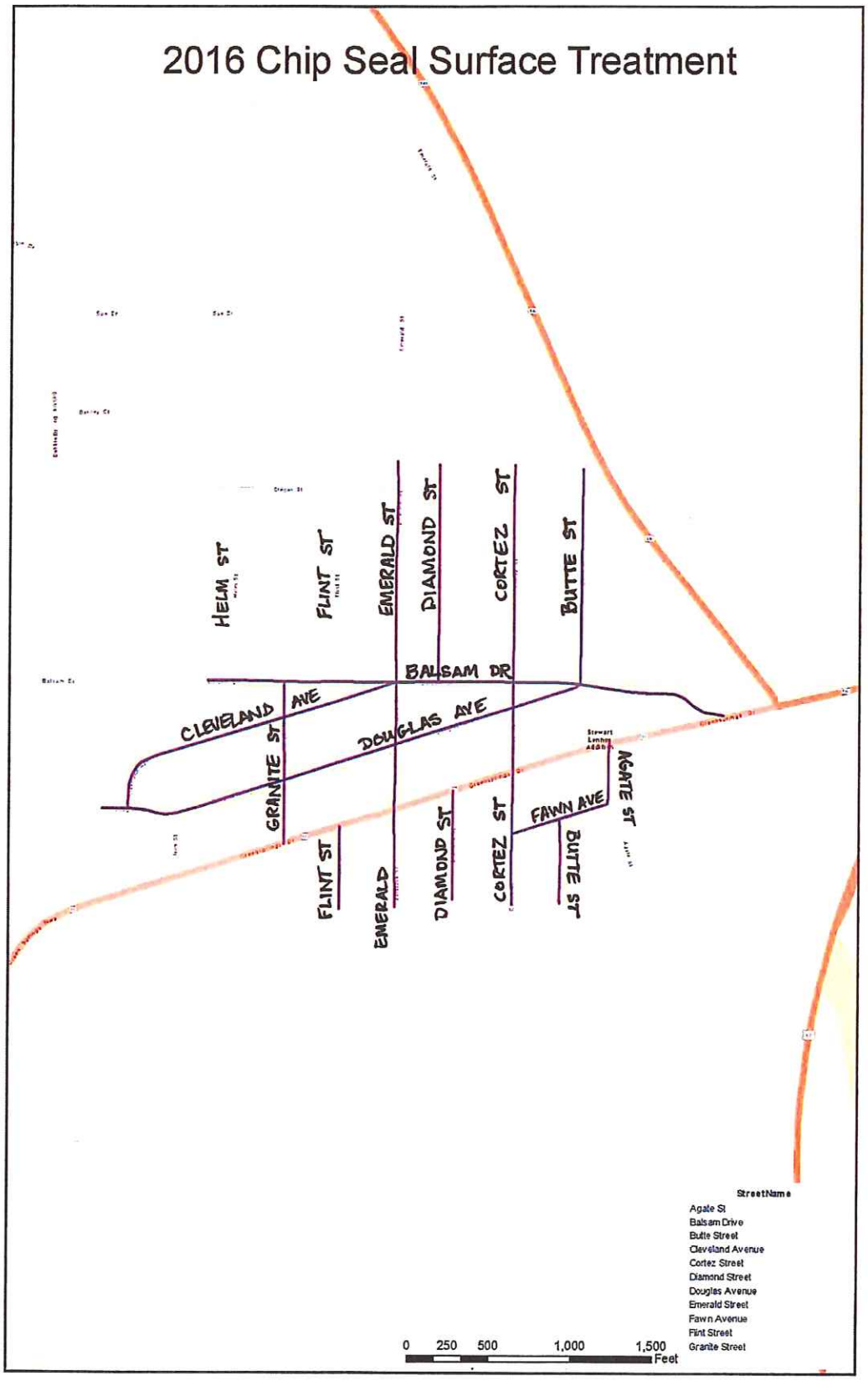
- Map of streets receiving chip seal

RECOMMENDED MOTION/ACTION:

Move to authorize chip seal services provided by Klamath County in an amount not to exceed $99,400.

NOTICE SENT TO:

Klamath County Public Works


2016 Chip Seal Surface Treatment
HELM ST
FLINT ST
EMERALD ST
DIAMOND ST
CORTEZ ST
BUTTE ST
BALSAM DR
CLEVELAND AVE
DOUGLAS AVE
GRANITE ST
FLINT ST
EMERALD
DIAMOND ST
CORTEZ ST
FAWN AVE
BUTTE ST
AGATE ST
StreetName
Agate St
Balsam Drive
Butte Street
Cleveland Avenue
Cortez Street
Diamond Street
Douglas Avenue
Emerald Street
Fawn Avenue
Flint Street
Granite Street
0 250 500 1,000 1,500
Feet

1b

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 2

Date: August 1, 2016

Department: Airport	Contact/Title: John Barsalou/Airport Director
Staff Presenter: John Barsalou	Telephone No.: (541)883-5373
City Manager Review:	Email: jbarsalou@flykfalls.com

TOPIC: Authorization for Airport to Execute Lease and Operating Agreement with Peninsula Airways

SUMMARY AND BACKGROUND:

On July 18, 2016, City Council authorized the execution of a Memorandum of Understanding with Peninsula Airways, dba PenAir, for daily roundtrip service to Portland that will commence on October 5, 2016.

In preparation for that service, PenAir desires to enter into an agreement for space located in the terminal building and for their operations at the Airport. The Lease and Operating Agreement will be for a term of 3 years beginning August 1, 2016 and ending July 31, 2019.

Highlights of the agreement:

- PenAir will have exclusive use of the southwest suite of offices (1,073 sf) in the terminal building at a rate of $13.50 per square foot, per annum.
- PenAir will have shared use of the secured area (1,701 sf) and the baggage claim area (900 sf) in the Terminal Building based upon the rate of $13.50 per square foot, per annum.
- PenAir will pay $1.25 per 1,000 lbs of certificated gross landing weight of revenue producing aircraft flights landing at the Airport.
- PenAir will be responsible for all electricity metered for its exclusive leased space in the terminal building and for their designated ramp meter.

FINANCIAL IMPACT:

The Airport will see an increase of approximately $1,700 per month in landing fees once PenAir begins service and $4,133.25 per month in rental revenue after PenAir's initial six months of operations is completed (April 2017). The Airport also expects to see an increase in fuel flowage fees from Century Aviation and concession fees from the car rental agencies as a direct result of PenAir's service. With the resumption of air service, the Airport will once again begin collecting Passenger Facility Charges (PFCs) that will go toward funding capital projects at the Airport and will also see an FAA entitlement funding increase from $150,000 to $1,000,000 once the Airport achieves 10,000 enplaned passengers in a calendar year.

COUNCIL OPTIONS:

1) Approve Lease and Operating Agreement;
2) Direct staff to renegotiate the Lease and Operating Agreement; or
3) Decline to approve Lease and Operating Agreement

DOCUMENTS ATTACHED:

- Proposed Lease and Operating Agreement

RECOMMENDED MOTION/ACTION:

Move to Authorize Execution of the Lease and Operating Agreement with Peninsula Airways.

NOTICE SENT TO:

Peninsula Airways

SIGNATORY AIRLINE LEASE AND OPERATING AGREEMENT

THIS Agreement made this _____day of _____, 2016, between the CITY OF KLAMATH FALLS, OREGON whose address is 500 Klamath Avenue, Klamath Falls, Oregon 97601, (the "CITY"); and PENINSULA AIRWAYS, INC. a corporation organized and incorporated in the State of Alaska whose address is 6100 Boeing Avenue, Anchorage, Alaska 99502, (the "LESSEE"), the parties agree as follows:

WITNESSETH THAT:

WHEREAS, the CITY is the operator of the Crater Lake-Klamath Falls Regional Airport located in Klamath Falls, Oregon, referred to as the "Airport";

WHEREAS, the parties hereto desire to enter into a Signatory Airline Lease and Operating Agreement, hereinafter referred to as "Agreement", granting the LESSEE the use of the Airport and its appurtenances;

NOW, THEREFORE, in consideration of the premises provided herein, the rights and privileges and the mutual covenants and conditions hereinafter contained and other valuable consideration, the parties hereto agree, for themselves, their successors and assigns, as follows:

1. TERM

The term of this Agreement shall be for three years, commencing August 1, 2016, and ending July 31, 2019, unless sooner terminated or canceled as herein provided.

Upon expiration of this Agreement, LESSEE's right to possession shall cease without further notice, and CITY shall have the right to take possession of the Premises. If after the expiration of this Agreement, LESSEE holds over with the written consent of CITY, but without a written renewal, the holding over will not operate as a renewal of this Agreement but will create only a month-to month extension, regardless of any rent or fee accepted by CITY. In that case, the obligations of CITY and LESSEE to perform under this Agreement shall continue month-to-month until the holdover terminates. Either party may terminate the holdover at any time by giving the other party at least sixty (60) days advance written notice.

2. PREMISES AND FACILITIES

CITY hereby Leases to LESSEE those facilities and premises in and adjacent to the Airport Terminal Building as shown on EXHIBIT A, attached hereto and hereinafter referred to as the "Premises".

3. RENTS, FEES, AND CHARGES

LESSEE agrees to pay rents, fees, and charges as shown on EXHIBIT B.

4. USE OF PREMISES

A. LESSEE's use of the Premises shall be limited to its use in operating its air transportation business. LESSEE shall not permit the use of its Premises for the offering for sale to the public of any other services without the prior written consent of CITY.

B. LESSEE shall have the exclusive use of those areas listed on EXHIBIT A for use and operating its air transportation business.

C. All repair, maintenance, and overhaul work shall be performed only upon those areas designated by the CITY for such use. LESSEE may perform customary fueling and servicing of aircraft preparatory to loading and takeoff or immediately following landing and unloading.

D. LESSEE, its agents, employees, suppliers, passengers, guests, and others doing business with LESSEE shall have the right of ingress and egress to and from the Premises and the public use areas used in connection therewith, over the Airport property and roadways, subject to rules and regulations governing the use of the Airport and as same may be promulgated by the CITY.

5. LESSEE's RIGHTS AND OBLIGATIONS

The parties hereto covenant and agree as follows:

A. LESSEE may use the Airport and its appurtenances together with all public use areas/facilities for the purpose of conducting its business as a scheduled air carrier. The privileges shall include, but not be limited to, the use of the Airport and its appurtenances for the purpose of landing, taking off, loading, unloading, taxiing and parking its aircraft and/or support equipment.

B. LESSEE's equipment used by LESSEE at the Airport shall be maintained at LESSEE's sole expense.

C. LESSEE shall comply, at its own cost and expense, with any and all applicable Airport, federal, state, and local laws, statutes, ordinances, and regulations and shall abide by and be subject to all reasonable rules and regulations which are now promulgated by the CITY.

D. LESSEE may provide support services for another air carrier, subject to all applicable conditions of the Agreement.

6. OPERATING AFFILIATES

An airline that enters into an arrangement with a Signatory Airline to provide passenger service on its behalf shall be considered an "Operating Affiliate". An Operating Affiliate is defined as any air transportation company that (i) is a wholly owned subsidiary of LESSEE and/or LESSEE's parent company or, (ii) uses the same livery as LESSEE, offers seats controlled and sold by LESSEE, and otherwise operates under substantially the same trade name(s) as LESSEE at the Airport.

2

7. CITY's RIGHTS AND OBLIGATIONS

A. Except as herein provided, CITY agrees that it will develop, operate, maintain, and keep in good repair and order the Airport and all common use and public appurtenances, facilities, and equipment provided by CITY.

B. CITY shall, with notice to LESSEE, have the right to adopt and enforce reasonable rules and regulations not in conflict with federal rules and regulations with respect to the use of the Airport.

C. The CITY through its duly authorized agents, retains the unrestricted right, with reasonable notice, to enter the Premises for the purpose of inspection or maintenance and for the purpose of doing any and all things which it is obligated, and has a right to do under this Agreement, provided that it does not interfere with the operations of the LESSEE.

8. UTILITIES AND MAINTENANCE

The parties shall be responsible for the utilities and maintenance of the Premises as set forth on EXHIBIT A. The responsible party shall keep and maintain same in good condition; normal wear and tear excluded.

9. CONSTRUCTION, MAINTENANCE & REPAIRS OF LESSEE's PREMISES

A. LESSEE may construct or install, at its own expense, any equipment, improvements, and facilities in any part of LESSEE's Premises.

1. No improvements, structures, alterations, or additions shall be made in LESSEE's Premises without the prior written consent of CITY. Such consent shall not be unreasonably withheld by CITY.

2. All improvements constructed by LESSEE pursuant to this section shall conform in all respects to the applicable statutes, ordinances, building codes, rules, and regulations of applicable governmental agencies as may have jurisdiction.

3. During the term of this Agreement, title to all improvements, structures, alterations or additions erected or installed in/on the Premises by LESSEE shall remain with LESSEE.

4. All signs, improvements, facilities, decorations, trade fixtures, furniture, furnishings and equipment installed by LESSEE during the term of this Agreement shall remain the property of the LESSEE. Upon the termination of this Agreement, LESSEE shall removal all such property to be retained by it from the Premises within thirty (30) days from the date of termination of this Agreement. The LESSEE shall clean, repair and refurbish the LESSEE'S area so that it is in as good a condition as it was at the time this Agreement was entered into, except for usual wear and tear or damage not caused by the negligence of the LESSEE.

B. No trade fixtures shall be installed without the prior written consent of CITY and all such installations shall be in accordance with any reasonable conditions related thereto then stated in writing by CITY.

10. ENVIRONMENTAL STANDARDS

Except for conditions prior to the execution of this Agreement, LESSEE agrees to accept responsibility for full compliance with any and all applicable present and future federal and state regulations, statutes, and laws regarding the use, storage, handling, distribution, processing and/or disposal of hazardous wastes, hazardous chemicals, toxic chemicals, toxic substances, pollutants, contaminants, or other similarly regulated substances (hereinafter referred to as "hazardous substances") in and on the space subject to this Agreement. Said hazardous substances shall include, but not be limited to: jet fuel; lubricating oils; hydraulic fluid; and deicing fluids.

Except for conditions existing prior to the execution of this Agreement, in the case of any hazardous substance spill, leak, or discharge, in or about the LESSEE's assigned area, the LESSEE agrees to make or cause to be made any necessary repairs or corrective actions as well as to clean up and remove any spill, leakage, discharge, release, or contamination. In the case of any hazardous substance spill, leak, discharge, release, or contamination by the LESSEE in or around the assigned area, the LESSEE agrees to make or cause to be made any necessary corrective actions. in accordance with requirements of all applicable environmental laws and to clean up and remove any spill, leakage, discharge, release, or contamination to the reasonable satisfaction of CITY. If the LESSEE fails to repair, clean up, properly dispose of, or take any other corrective actions as required herein, the CITY may (but shall not be required to) take all steps it deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak, discharge, release, or contamination. Any such repair, clean up, or corrective action taken by the CITY shall be at the LESSEE's cost and expense, and the LESSEE shall indemnify and pay for and/or reimburse the CITY for any and all reasonable costs the CITY incurs as a result of any repair, clean up, or corrective action it takes.

11. DAMAGE OR DESTRUCTION

A. If the LESSEE's Premises are partially damaged by fire or other casualty, but not rendered untenantable, the same shall be repaired with due diligence by CITY. The Premises shall be repaired or restored at CITY's expense to essentially the same condition at that which existed prior to such damage. If such damage is caused by the gross negligence of LESSEE, it shall be the responsibility of LESSEE to pay all loss, damage, and costs not covered by insurance proceeds.

B. If the LESSEE's Premises are completely destroyed by fire or other casualty or so damaged as to remain untenantable for more than thirty (30) days, the rent shall be abated for the period from the date of such occurrence until such space is temporarily replaced with other space sufficient to allow LESSEE to operate. CITY shall notify LESSEE within thirty (30) days of the occurrence of such casualty whether it intends to repair or reconstruct the damaged Premises. If the CITY elects not to repair or reconstruct, this Agreement shall terminate on the date of notification by CITY. In such event, CITY agrees to use its best efforts to obtain adequate substitute space for LESSEE.

12. SECURITY

A. The parties recognize their respective obligations for security on the Premises as prescribed by the Transportation Security Administration and Federal Aviation Administration

2

Regulations, and agree to employ such measures as are necessary to prevent or deter unauthorized access. Further, LESSEE shall coordinate any Airport security matter with CITY and shall follow all applicable requirements of the Airport's Security Program, Certification Manual, Operational Orders, and Emergency Program, including all provisions that are regulated under 49 CFR part 1540 (civil aviation security), 49 CFR Part 1542 (airport security) and 14 CFR Part 139 (airport certification and operation) and any other applicable federal regulation.

B. Any penalty imposed on CITY that results from a violation of the Airport's Security Program, Certification Manual, Operational Orders, Emergency Program, or any applicable federal regulation caused by LESSEE or by any of LESSEE's agents or personnel, including any officer or employee, or anyone else acting by, on behalf of, or under the authority of LESSEE, will, as between CITY and LESSEE, be the sole responsibility of LESSEE, and will be reimbursed to CITY within thirty (30) days of written demand if CITY pays the penalty.

13. INDEMNITY and WAIVER OF DAMAGES

LESSEE shall indemnify, hold harmless and defend the CITY, its employees and designated representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, and liabilities, including reasonable attorney's fees, resulting from, arising out of, related to, or caused by, LESSEE's negligence except to the extent such is due to the negligence or willful misconduct of CITY.

14. INSURANCE

LESSEE shall, at its own expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the limits outlined in EXHIBIT C, attached hereto.

15. WAIVER of SUBROGATION

The LESSEE and the CITY agree to waive their respective rights of recovery or claim against the other for any loss or damage to the Premises resulting from any insurable property hazards caused by the other party.

16. CITY's RIGHT OF CANCELLATION/ABATEMENT

In addition to any conditions as specified herein and all other remedies available to the CITY, this Agreement shall be subject to cancellation by the CITY should any one or more of the following occur:

A. If LESSEE shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or any other similar law or statute of the United States or any state, or government, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of the property of the LESSEE;

B. If LESSEE shall voluntarily abandon or discontinue the conduct and operation of its air transportation business at the Airport for a continuous period of ninety (90) days, except when such abandonment is caused by fire, earthquake, war, strike, or other calamity beyond the LESSEE's control; or

C. If LEESSE fails to keep any of the material covenants, terms or conditions of this Agreement and the failure to remedy such breach for a period of sixty (60) days after written notice from LESSEE of the existence of such a breach.

Upon such termination by the CITY, all rights, powers, licenses and privileges of the LESSEE hereunder shall cease, and the LESSEE shall have no claim whatsoever against the City or its agents, employees or representatives.

17. LESSEE's RIGHT OF CANCELLATION/ABATEMENT

A. LESSEE, upon ceasing operations at the Airport, shall have the right to terminate this Agreement upon three (3) months written notice and shall remain obligated to pay rents, fees, and charges which accrue during said three (3) months. If another air carrier agrees to assume all or part of LESSEE's Premises, with prior written consent of the CITY, such obligations shall be reduced by the amount assumed by such replacement air carrier(s).

B. In addition to all other remedies available to LESSEE, this Agreement shall be subject to cancellation by LESSEE should any one of the following occur:

1. The permanent abandonment of the Airport as an air carrier airport;

2. The breach of any material covenants, terms or conditions of this Agreement to be kept, performed, and observed by CITY and the failure to remedy such breach for a period of sixty (60) days after written notice from LESSEE of the existence of such a breach;

3. The inability of LESSEE to conduct its business at the Airport in substantially the same manner and to the same extent as theretofore conducted, for a period of at least ninety (90) days, because of (1) any law, or (2) any rule, order, judgment, decree, regulation or other action or nonaction of any governmental authority, board, agency or officer having jurisdiction thereof, without fault of LESSEE;

4. The taking of the whole or any part of the Premises by the exercise of any right of condemnation or eminent domain.

18. ASSIGNMENT AND SUBLETTING

A. Neither LESSEE nor any assignee of LESSEE shall in any manner assign, sublet, transfer, or encumber any of LESSEE's rights in and to the Agreement without the prior written consent of CITY. Such consent shall not be unreasonably withheld. An Operating Affiliate may occupy LESSEE'S Premises, if such Operating Affiliate has met the requirements contained herein.

B. LESSEE shall have the right to assign all of its rights and interests under this Agreement to any successor to its business through merger, consolidation, or voluntary sale or transfer, in which event the consent of CITY shall not be required.

2

19. NONDISCRIMINATION

The LESSEE and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision obligates the LESSEE or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

A. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

B. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

20. PRIOR AND COLLATERAL AGREEMENTS

This Agreement shall constitute the entire Agreement between the parties and no other stipulation, agreement, or understanding, written or oral, expressed or implied of the parties hereto or of their agents, relating to the lease and use of the Premises demised and identified herein, shall limit or modify its terms. This Agreement shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, express or implied, between the parties for the rights granted herein. This Agreement shall not be subject to modification or change except by written instrument duly signed by both parties.

21. SEVERABILITY

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

22. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oregon.

23. INDUCEMENTS

CITY reserves the right to take reasonable measures to induce new or expanded service at, or use of, the Airport, including the offering and provision of reasonable service and financial advantages of limited duration. The inducements provided to LESSEE under this Agreement are described in EXHIBIT D to this Agreement.

2

24. NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if hand delivered, or if sent by certified or registered mail, postage prepaid, to the following addresses:

CITY: CITY OF KLAMATH FALLS, OREGON
500 Klamath Avenue
Klamath Falls, Oregon 97601

AIRPORT: Crater Lake – Klamath Regional Airport
6775 Arnold Avenue
Klamath Falls, OR 97603

LESSEE: PENINSULA AIRWAYS, INC.
6100 Boeing Avenue
Anchorage, Alaska 99502

25. TAXES

The LESSEE agrees to pay all taxes or assessments lawfully imposed on the LESSEE for leasehold interest and personal property of the LESSEE at the Airport.

26. EXCLUSIVE RIGHTS

Nothing contained in this Agreement shall be construed as granting or authorizing the granting of an exclusive right that violates any Federal Aviation Administration rules or regulations.

2

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF KLAMATH FALLS

By: _____
Mayor

Attest: _____
City Recorder

LESSEE

By: _____
Chief Operating Officer

Attest: _____
Title: _____

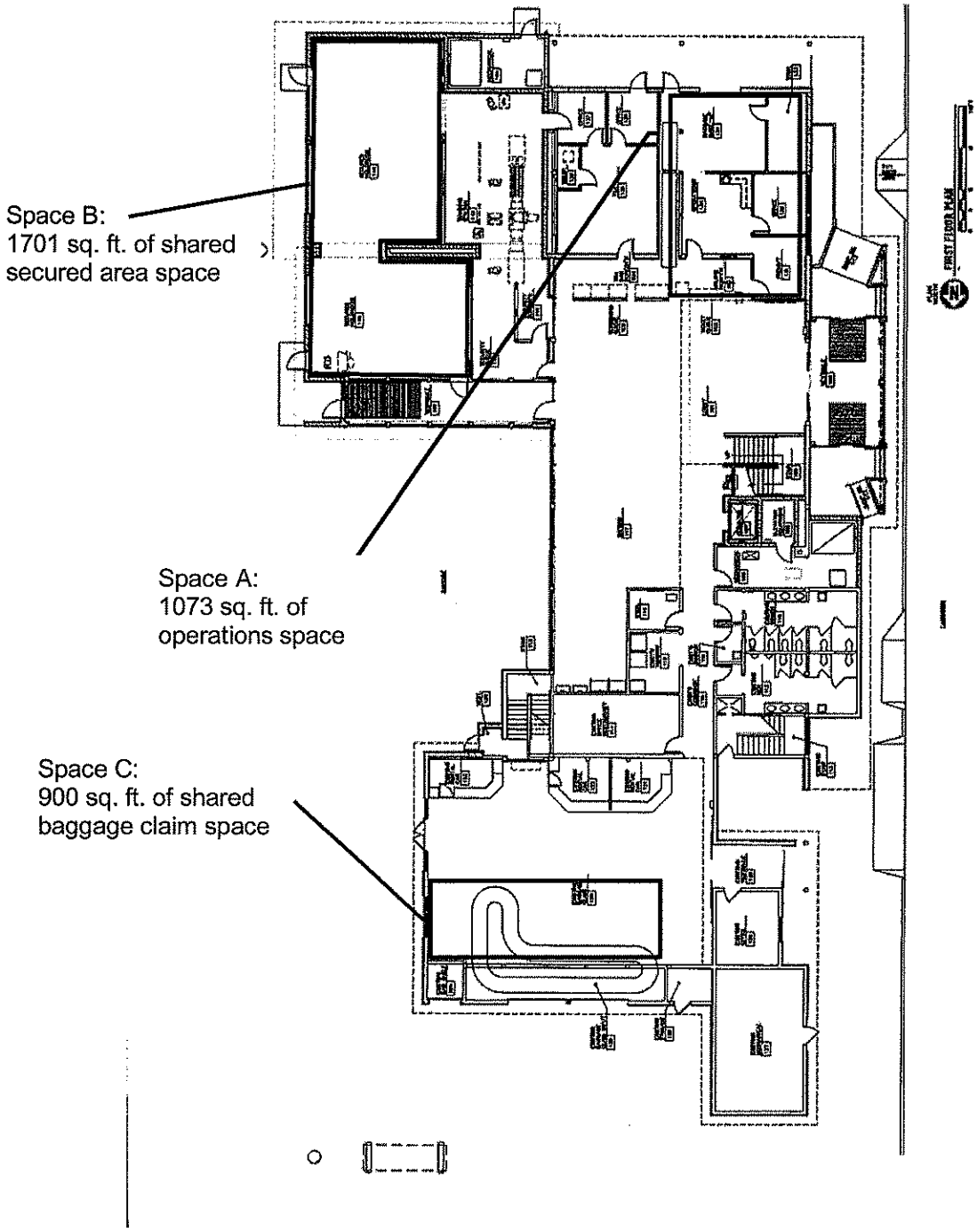
APPROVED AS TO FORM:

_____
City Attorney

2

EXHIBIT A

[LEASED PREMISES]



2

EXHIBIT B
[Rates & charges]

1. RENT

A. Effective October 1, 2016, the LESSEE shall pay a monthly rental for the LESSEE's exclusive operations leased space in the Terminal Building (Space A – 1073 s.f.) based upon the rate of thirteen dollars and fifty ($13.50) per square foot per annum.

B. The LESSEE shall pay a monthly rental for the use of the shared secured area (Space B - 1701 s.f.) and baggage claim area space (Space C - 900 s.f.) in the Terminal Building based upon the rate of thirteen dollars and fifty ($13.50) per square foot per annum. Should multiple airlines utilize the spaces, each airline shall pay 20% of the monthly rent with the remaining 60% divided proportionately between all airlines based on their share of monthly enplanements.

2. LANDING FEES

LESSEE shall pay one dollar twenty-five ($1.25) per thousand pounds (1,000 lbs.) of certificated gross landing weight of revenue producing aircraft flights landing at the Crater Lake - Klamath Regional Airport.

3. UTILITIES

LESSEE shall reimburse the CITY for all electricity metered for its exclusive leased space in the Terminal Building and for LESSEE's designated ramp meter.

4. ANNUAL ADJUSTMENTS

Annual adjustments to rentals, fees and charges pursuant to this agreement which amount to 2% increase or less per year shall apply without the necessity of formal amendment of the Agreement. However, the CITY will notify LESSEE, in writing, of all adjustments to rentals, fee and charges. On or about July 1st, of each year, the CITY will provide LESSEE the basis for annual increase. Any changes will take effect on the following October 1st. Changes to rentals, fees and charges that exceed 2% annually shall require a formal amendment to this Agreement.

5. RAMP FEE

At the signing of this Agreement, the CITY does not have a Ramp Fee for terminal apron parking, but reserves the right to establish a Ramp Fee for commercial service aircraft parking on the terminal apron. The CITY agrees to waive the Ramp Fee during the Term of this Agreement.

6. REPORTS, PAYMENTS, AND RECORDS

A. At the close of each calendar month, LESSEE shall calculate the Landing Fees due for that month as follows:

No later than the 10th (tenth) day of the following month, LESSEE shall prepare and submit to the CITY a monthly Certified Activity Report (CAR) showing the

2

number of flight arrivals operated by LESSEE during the previous month including the type, model and make of the aircraft. LESSEE shall also prepare and submit to the CITY a list showing the certified maximum gross landing weight of each aircraft in the LESSEE's fleet. The list shall be submitted prior to commencement of service under this Agreement and annually thereafter, and whenever changes in the aircraft or the fleet occur.

B. All fees required in this Agreement shall be due and payable for each month on the last business day of the following month. The acceptance by City of any such payment shall not preclude CITY from questioning the accuracy of the LESSEE's report upon which the fees are based. The CITY shall have the right, upon reasonable notice, to examine that portion of the books and records of LESSEE relevant for the purpose of ascertaining that the CAR and the amounts paid or to be paid to the CITY are accurate and correct.

C. In the event that the LESSEE fails to transmit the City the payment and the supporting data for Landing Fees incurred by the LESSEE during any month, the CITY shall compute such fees based upon data available as though the number of landings were the same as during the previous month. After receipt of the required, but delinquent payment and report from LESSEE, the CITY shall recalculate the fees for the month in question based upon the report. If the actual fees are higher than those fees invoiced to the LESSEE, the deficiencies shall be included by the LESSEE along with the next monthly payment. If the actual fees are less than those invoiced to the LESSEE, the excess shall be taken as credit by the LESSEE as part of the next monthly payment for such fees.

D. If the LESSEE fails to make any payments due hereunder on the due date, the LESSEE shall pay the same with interest effective as of the first day after the due date at the prorated rate of one-half percent (1/0%) per month during the first thirty (30) days after the due date and at the prorated rate of one and one-half (1-1/2%) per month thereafter until fully paid. If any payment remains unpaid for a period of ten (10) days after such payment becomes due, the CITY may give the LESSEE notice of default, with copy of said notice to the LESSEE's surety company. If LESSEE fails to cure said default within ten (10) days after issuance of written notice thereof, the CITY shall be free to exercise all other remedies set forth in this Agreement and available at law or equity.

E. The LESSEE shall submit all reports and fees due hereunder to the Business Manager, Crater Lake – Klamath Regional Airport, 6775 Arnold Avenue, Klamath Falls, OR 97603.

7. RECORDS

A. The LESSEE shall keep full and complete books of account and other records relating to the provisions and requirements of this Agreement and in doing so shall comply with the minimum procedural requirements prescribed by the CITY. The CITY , through it duly authorized representative, shall have the right to inspect and audit the LESSEE's books of account and other such records for a period of three (3) years, and upon the CITY's request, LESSEE shall make such

2

records available to the CITY for audit at the Airport or at some other mutually agreed upon location. Should adequate records not be made available by the LESSEE at the appointed location, then the additional cost of said audit, including, without limitation, all reasonable travel, food, and lodging expenses incurred by the CITY, shall, at the CITY's discretion, be paid by the LESSEE.

In the event it is determined based on the audit that the LESSEE has remitted less than ninety percent (90%) of amounts due, the LESSEE shall pay a ten percent (10%) surcharge of the amount found owing and shall reimburse the CITY for the costs of such audit. The CITY agrees to furnish the LESSEE a complete copy of the audit upon request.

The LESSEE shall, at such intervals as CITY may prescribe, submit to the CITY a written statement certified by an independent certified accountant stating that, in the accountant's opinion, payment for all rentals, fees, and charges due hereunder were made in accordance with the terms of this Agreement.

8. SURVIVAL OF PROVISIONS

The reporting, payment, records, and auditing provisions of this Section shall survive any termination of this Agreement.

2

EXHIBIT C
[Insurance Requirements]

1. Each policy of insurance must be from a company satisfactory to CITY, under policy forms no more restrictive than the standard form and satisfactory to CITY. Each policy must provide that it may not be canceled or materially changed during its term without at least thirty (30) days advance written notice to CITY.

2. A certificate certifying coverage of required insurance, and a declarations page or other evidence of the types, limits, deductibles, exclusions and endorsements must be delivered to CITY within thirty (30) days of the effective date of this Agreement.

3. Where any such policy has a normal expiration during the term of this Agreement, LESSEE will provide a certificate or satisfactory written evidence of continued coverage prior to such expiration. Within fifteen (15) days prior to the effective date of any cancellation or reduction in the amount or extent of insurance coverage, LESSEE will deliver to CITY a certificate or satisfactory written evidence certifying coverage that reinstates or otherwise provides at least the required insurance coverage.

4. The failure by either party at any time to enforce the insurance requirements provisions will not be construed as a waiver of these provisions and will not reduce either party's obligations under this Agreement.

5. LESSEE will maintain: a) Workers Compensation coverage with limits that meet or exceed State of Oregon requirements; and b) a policy or policies of liability insurance to insure itself against liability for injury and death of persons and damage to property. The liability policies will be in the minimum amounts set forth below:

Aircraft Liability: $25,000,000.00 Single Limit, each occurrence (Including Bodily Injury & Property Damage)

Airport Liability: $25,000,000.00 Single Limit, each occurrence (Including Bodily Injury & Property Damage)

Automotive Liability: $2,000,000.00 Single Limit, each occurrence (Including Bodily Injury & Property Damage)

6. All said "Liability" policies shall name CITY as an additional insured and shall also incorporate the following cross-liability endorsement or provision:

"CROSS-LIABILITY: It is understood and agreed that the insurance afforded by this policy or policies for more than one named insured shall not operate to increase the limits of the company's liability, but otherwise shall not operate to limit or void the coverage of any one named insured as respects to claims against the same named insured by any other named insured or the employees of such other named insured."

Such policies shall contain a provision whereby LESSEE's insurer waives any right of subrogation against City and its officer's, agents and employees.

2

7. LESSEE will submit certificates of insurance demonstrating that all insurance coverage required by this Agreement is in force with a company or companies rated by A.M. Best at a minimum rating of A-VII. If a company is not rated by A.M. Best, the company must have a comparable rating by a recognized insurance rating agency. If a company is not rated at all, it must be of sound recognized financial strength. If LESSEE neglects or refuses to comply with any of the insurance provisions of this Agreement within ten (10) business days after CITY provides written notice upon LESSEE informing it of the default, then CITY may terminate this Agreement. CITY shall be furnished with at least thirty (30) days advance written notice of any change in, or cancellation of LESSEE's required liability insurance coverage. In addition to the foregoing specified minimum amounts of liability insurance, LESSEE shall carry additional amounts of liability insurance from time to time in such amounts as are generally regarded as necessary or advisable in connection with the operation of the business of LESSEE. The failure of CITY at any time or from time to time, to enforce the foregoing provisions of this section concerning insurance coverage shall not constitute a waiver of these provisions, nor in any respect reduce the obligation of LESSEE to indemnify, defend and hold CITY harmless with respect to any items or injury or damages covered by this Article V.

2

EXHIBIT D
[Inducements]

1. LESSEE will pay no terminal rent for the first 6 (six) months for use of the Premises. LESSEE agrees that utility costs for terminal building use are LESSEE's responsibility and cost.

2. LESSEE will provide twice daily roundtrip flights to Portland International Airport (PDX) Monday through Friday and once daily roundtrip flights to PDX on Saturday and Sunday, starting October 5, 2016.

3. The CITY agrees to provide a deicing truck for use by LESSEE under a separate agreement. LESSEE will assist the CITY in locating a deicing truck. LESSEE agrees to operate the deicing truck at their cost.

4. As long as LESSEE provides the flights as discussed in Section 2 above and LESSEE agrees to sell tickets at least 60 (sixty) days in advance of the first roundtrip flight from the Airport, the CITY agrees to provide the following revenue guarantee for the first 180 (one hundred and eighty) days of service. CITY will reimburse LESSEE the difference in revenue between $88,128 and the actual revenue per week.

A. Available seats 30 x 60% load factor x $204 average fare = $3,672 X 24 flights/week = $88,128

"Available Seats" shall not include seats on cancelled flights.

B. LESSEE will calculate the revenue on a weekly basis. No later than 14 (fourteen) days following each week ending on Saturday, LESSEE will provide the CITY written notice of the flight revenue for the weekly period.

C. Within 30 (thirty) days of receipt of the notice, the CITY will pay LESSEE the difference between the amount determined in Section 4.A above and the actual revenue per flight. CITY's obligations under Section 4 shall not exceed a total of $200,000.

5. LESSEE agrees that its contract with Century Air (the Airport's Fixed Base Operator (FBO) is separate from this Agreement.

2

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 3

Date: August 1, 2016

Division: Finance
Staff Presenter: Sue Kirby
City Manager Review: _____

Contact/Title: Sue Kirby, Support Services Director
Telephone No.: 541-883-5326
Email: sgkirby@klamathfalls.city

TOPIC: A Resolution Approving a Transfer of Appropriations for Fiscal Year 2015/2016 within the Water Fund

SUMMARY AND BACKGROUND:

On June 15, 2015, the City Council adopted the fiscal year 2015/2016 budgets for the City of Klamath Falls. The following items have occurred that require a change in appropriations:

Geothermal – A transfer of appropriations of $10,000 from Water Fund Operations Capital Outlay to Geothermal Materials & Services to pay the Streets Division for repairing street cuts for geothermal main repairs and to cover 15/16 payables that are still outstanding.

Transfers of appropriations are authorized under the State of Oregon Local Budget Laws, ORS 294.463.

FINANCIAL IMPACT:

The only impact is a transfer of appropriations from Water Operations Division to the Geothermal Division.

DOCUMENTS ATTACHED:

- Proposed Resolution

REQUESTED MOTION/ACTION:

- Move to introduce the Resolution by title
- Move to approve the Resolution

NOTICE SENT TO:

Budget Committee

RESOLUTION NO. 16 - _____

A RESOLUTION ADOPTING A TRANSFER OF APPROPRIATIONS FOR FISCAL YEAR 2015/2016 WITHIN THE WATER FUND

WHEREAS, the City of Klamath Falls adopted the Fiscal Year 2015-2016 budgets on June 15, 2015;

WHEREAS, it is necessary to transfer $10,000 from Water Fund Operations Capital Outlay to Geothermal Materials & Services for repairs and maintenance and for outstanding 2015/2016 geothermal payables; and

WHEREAS, transfers of appropriations are permitted under the provisions of the State of Oregon Local Budget Laws, ORS 294.463; NOW, THEREFORE,

THE CITY OF KLAMATH FALLS RESOLVES AS FOLLOWS:

Section 1

The City Council of the City of Klamath Falls, Oregon hereby approves a transfer of appropriations for fiscal year 2015-2016.

Section 2

The amounts being transferred are hereby appropriated as follows:

	Current Budget Fiscal Year 15/16	Proposed Change	Revised Budget Fiscal Year 15/16
Water Fund			
Geothermal Division:			
Materials & Services	$ 141,500	$ 10,000	$ 151,500
Water Operations Division:			
Capital Outlay	2,386,000	(10,000)	2,376,000
Total Fund Appropriations	$ 2,527,500	$ -	$ 2,527,500

Section 3

This Resolution shall become effective immediately upon enactment.

3

Passed by the Council of the City of Klamath Falls, Oregon on the ____ day of August 2016.

Presented to the Mayor, approved and signed this _____ day of August, 2016.

_____
Mayor

ATTEST:

_____
City Recorder

STATE OF OREGON)
COUNTY OF KLAMATH) ss.
CITY OF KLAMATH FALLS)

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the 1st day of August, 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

_____
City Recorder

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 4

Date: August 1, 2016

Division: Finance
Staff Presenter: Geoff LeGault
City Manager Review: _____

Contact/Title: Geoff LeGault / Senior Accountant
Telephone No.: 541-883-5327
Email: glegault@klamathfalls.city

TOPIC: Resolution Amending the Investment Policies for the City of Klamath Falls (Oregon Local Government Intermediate Fund)

SUMMARY AND BACKGROUND:

The Oregon State Treasury began a new investment program on July 1, 2016 for local governments called the Oregon Local Government Intermediate Fund. OLGIF provides qualified local government participants with a vehicle to invest assets over an intermediate time horizon (3 to 5 years).

The City of Klamath Falls' reserves for capital projects that are currently invested in the Oregon Short Term Fund (OSTF) are projected to be in excess of $6,000,000 over the next 10 years. Staff recommends investing $4,000,000 in the new OLGIF at this time.

OLGIF is required to be listed as an eligible investment in the participant's investment policy. The only change to the City's investment policy would be to Section 9.1 with the addition of OLGIF as an eligible investment option.

A Statement of Understanding is required to be recorded in the Council minutes. The City's amended investment policy is also required to be reviewed by the OSTF Board before participating in OLGIF.

FINANCIAL IMPACT:

The financial impact will likely be a higher rate of return on funds invested with the Oregon State Treasury.

COUNCIL OPTIONS:

1) Amend City's Investment Policy, and invest with the OLGIF, approving proposed Resolution; or
2) Choose not to participate in OLGIF

DOCUMENTS ATTACHED:

- Statement of Understanding to be recorded in Council minutes
- OLGIF Information Pamphlet
- Proposed Resolution

RECOMMENDED MOTION/ACTION:

- Move to introduce the Resolution by title;
- Move to approve the Resolution

NOTICE SENT TO:

- N/A

Statement of Understanding recorded in the participant governing body's minutes, as follows, with no deviations:

The governing body of the City of Klamath Falls acknowledges the following:

- *Members of this body and investment staff have read and understand the "Oregon Local Government Intermediate Fund Information Pamphlet" provided by Oregon State Treasury;*
- *Investments in OLGIF are subject to loss; and*
- *Investments into OLGIF and divestments from OLGIF may be subject to restriction by Oregon State Treasury.*

PARTICIPANT INFORMATION
OREGON LOCAL GOVERNMENT INTERMEDIATE FUND

Purpose
The Oregon Local Government Intermediate Fund ("OLGIF" or "Fund") provides qualified local government participants with a vehicle to invest assets over an intermediate time horizon (three to five years). OLGIF is not appropriate for assets needed to cover short-term needs (less than one year). OLIGF is not structured to provide 100% net asset value ("NAV") at all times on participant investments. Participants may experience losses on OLGIF investments due to changes in market conditions. Assets invested in OLGIF should be able to withstand greater price volatility to achieve the level of returns typically associated with longer-term investments.

Description
OLGIF is actively managed to maintain a diversified portfolio of investment grade bond investments. Based on historical market performance, it is anticipated that the returns generated over extended periods will be greater in OLGIF than in shorter maturity vehicles such as the Oregon Short Term Fund ("OSTF"). The investment objective of OLGIF is to achieve a total return (i.e., principal and income) greater than the Barclays 1-5 Year U.S. Government/Credit Index ("Benchmark").

Participants invest in OLGIF by purchasing units of the Fund. Units in OLGIF represent a divisible interest in the underlying assets of the Fund. The value of each participant's investment(s) will be determined on a proportional basis to the net market value of the entire portfolio. The value of OLGIF's underlying bond market investments are marked-to-market on a daily basis. The value of OLGIF's underlying holdings and the NAV of participant investments will fluctuate due to market movements and changes in the underlying holdings.

Participants' investments in OLGIF are not federally insured or guaranteed by the U.S. Government, Federal Deposit Insurance Corporation, any federal agency, or the State of Oregon. OLGIF is not approved by the Securities and Exchange Commission.

Principal Investment Strategies:
Eligible investments are detailed in OLGIF's guidelines. OLGIF may have exposures, subject to diversification requirements, to several types of investment grade public debt market instruments denominated in U.S. dollars. These may include, but are not limited to:

- Obligations of U.S. and non-U.S. corporations;
- Obligations of the U.S. government and its agencies and instrumentalities;
- Obligations issued or guaranteed by non-U.S. governments and instrumentalities;
- Obligations of U.S. states or local governments and their agencies, authorities and other U.S. state government-sponsored enterprises;
- Repurchase agreements and reverse repurchase agreements; and
- Interests in pools of securitized assets such as asset-backed securities ("ABS"), commercial mortgage-backed securities ("CMBS"), and agency mortgage-backed securities ("MBS").

OLGIF may invest in public debt market securities not allowed for direct investment by Oregon Local Governments under ORS 294.035.

Credit Quality:
OLGIF invests in securities that, at the time of purchase, are investment grade rated by nationally recognized rating agencies (Moody's Investors Service, Inc., Standard & Poor's Financial Services LLC, and Fitch Ratings, Inc.).

Interest Rate Sensitivity:
OLGIF is expected to maintain a weighted average interest rate duration of ± 20% (percent) versus the Benchmark's duration. The duration of the Benchmark ranged between 2.5 to 3.0 years over the five-year period ending 2015.

> *Duration is the time weighted value of future cash flows on a portfolio of investments, and reflects the expected percentage change in price of the portfolio for a one percentage point instantaneous change in the overall level of interest rates. For example, the market value of a portfolio with an average duration of 2.0 years would be expected to decrease in value by 2.0% for a 1.0% instantaneous rise in all interest rates and vice versa.*

Diversification:
With the exception of U.S. Treasury and U.S. Agency securities, no more than 5.0% may be invested in the securities of any one issuer and no more than 3.0% may be invested in any one investment. Additional exposure limits by sector and industry are detailed in the OLGIF guidelines.

Management Authority
OLGIF may be managed internally by OST investment staff or by a third-party asset manager(s) approved by OST. Subject to the terms and conditions of OST Policy, OST Investment Staff have discretionary authority to direct the investment, exchange, liquidation, and reinvestment of assets in OLGIF.

Participant Qualification
OLGIF is a voluntary investment vehicle and participation is open to all Oregon local governments, subject to approval by OST. A local government may qualify to invest in OLGIF by completing the requirements listed below:

a. OLGIF listed as an eligible investment in the participant's investment policy.
b. Investment policy reviewed by the Oregon Short Term Fund Board.
c. Investment policy approved by the participant's governing body.
d. Statement of understanding recorded in the participant governing body's minutes, as follows, with no deviations:

to access the value of their investment by redeeming units at the NAV per unit calculated at the time of redemption.

Management/Administrative Fees

Management and administrative fees are charged on a monthly basis. Fees are calculated on the daily NAV and netted against the ending pool balance at month-end and are reflected in the NAV of the pool. Fees are assessed regardless of performance. During periods when OLGIF experiences a loss or investment income is low, fees may reduce the fund's NAV. The estimated annualized fee schedule is approximately 0.1152%.*

*Fees are variable and based upon the market value of investments comprising OLGIF; number of accounts; and account activity.

How will I be kept informed about my investment?

Account statements which include information on account balances, investment performance, and transaction history are available on the OLGIF participant website, and may be accessed through a secure login. Historical performance and an overview of OLGIF's underlying investments will be published periodically on the Oregon State Treasury's OLGIF website.

Risks Affecting the Value of OLGIF Investments

- Interest Rate Risk – The value of OLGIF investments will be impacted by changes in market interest rates. As interest rates rise, the value of fixed income investments tends to fall. In contrast, if interest rates fall the value of these investments tend to rise.

- Credit Risk – Credit risk is the risk that an organization issuing a fixed income security cannot repay the principal and/or interest payments when due, which would result in a loss to OLGIF. This risk tends to increase as an issuer's credit rating declines. OLGIF invests in securities that are rated 'investment grade' at the time of purchase to help mitigate this risk. It is important to note that the rating on securities held by OLGIF may fall below 'investment grade' after the initial purchase date. At the discretion of the asset manager, OLGIF may continue to hold securities that are downgraded below 'investment grade.'

- Reinvestment and Prepayment Risk – An obligor on a bond or other fixed income investment may prepay principal prior to the stated maturity date. This generally occurs as interest rates fall and creates the risk that the proceeds are reinvested at lower market rates, which may reduce the expected return generated by OLGIF investments.

- Portfolio Selection – Asset manager decisions regarding the credit quality, value, market trends, or interest rate environment impacting a particular investment may prove to be incorrect and could cause the value of OLGIF to decline.

- Optionality - Some bond market investments, such as structured securities, contain embedded derivative components. For example, securities with embedded call options may be subject to early redemption or prepayment (i.e., "be called") by issuers or obligors. Changes in interest rates or the underlying credit quality of obligors influences

the likelihood of prepayment which, in turn, affects the value of the structured security. Embedded optionality in structured securities may cause these securities to perform differently than expected and increase the price volatility of the security.

OLGIF Contact Information:

Participant application and records administration: OLGIF@ost.state.or.us
Participant transactions: https://www.your-fundaccount.com/Oregon/
Participant accounting and performance records: https://www.your-fundaccount.com/Oregon/
Participant services: (844) 794-8330

Disclaimer

Any information provided herein has been prepared from sources believed to be reliable but is not guaranteed, and is for informational purposes only. This document should not be regarded as an offer to sell or as a solicitation of an offer to buy the products mentioned in it. No representation is made that any returns will be achieved. Past performance is not indicative of future results. Opinions expressed herein are subject to change without notice. The securities and funds mentioned in this document may not be eligible or suitable for all types of investors.

RESOLUTION NO. 16- _____

A RESOLUTION AMENDING THE INVESTMENT POLICIES FOR THE CITY OF KLAMATH FALLS

WHEREAS, on February 3, 2014 the Klamath Falls City Council amended the City's Investment Policies approved July 16, 2012 and rescinded Resolution 12-23, Resolution 05-36 and Resolution 99-21;

WHEREAS, the Resolution requires staff to submit the Investment Policies annually to Council for review; and

WHEREAS, there are minor edits to the policy for personnel changes within staff and clarification of definitions or descriptions; NOW, THEREFORE,

THE CITY OF KLAMATH FALLS RESOLVES AS FOLLOWS:

Section 1.

The Klamath Falls City Council hereby adopts the Investment Policy attached to this Resolution as Exhibit A.

Section 2.

Resolution No. 14-06 and all other investment policies previously adopted by the City Council are hereby rescinded.

Section 3.

This Resolution shall become effective immediately upon enactment.

Passed by the Council of the City of Klamath Falls, Oregon, the _____ day of August, 2016.

Presented to the Mayor, approved and signed this _____ day of August, 2016.

_____
Mayor

ATTEST:

_____
City Recorder

4

STATE OF OREGON)
COUNTY OF KLAMATH)ss.
CITY OF KLAMATH FALLS)

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the 1st -day of August, 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

_____
City Recorder

Exhibit "A"

Investment Policies

Adopted by Council: 7/16/2012
Amended: February 3, 2014 and August 1, 2016

INVESTMENTS

Resolution No. 16-__ (Rescinds Resolution Nos. 14-06, 12-23, 05-36, 99-21, 94-34 and 2485)

Dated: August 1, 2016

1. Purpose

This Investment Policy defines the parameters within which funds are to be invested by the City of Klamath Falls, a municipal corporation ("City"). This policy also formalizes the framework, pursuant to ORS 294.135, for the City's investment activities to ensure effective and judicious management of funds within the scope of this policy.

These guidelines are intended to be broad enough to allow designated investment staff to function properly within the parameters of responsibility and authority, yet specific enough to adequately safeguard the investment assets.

2. Governing Authority

The City's investment program shall be operated in conformance with Oregon Revised Statutes and applicable Federal Law. Specifically, this investment policy is written in conformance with ORS 294.035; 294.040; 294.052; 294.135; 294.145; and 294.810. All funds within the scope of this policy are subject to regulations established by the state of Oregon. Any revisions or extensions of these sections of the ORS shall be assumed to be part of this Investment Policy immediately upon being enacted.

3. Scope

This policy applies to activities of the City with regard to investing the financial assets of operating funds, capital funds, bond proceeds and bond reserve funds. Investments of employees' retirement funds, deferred compensation plans, and other funds are not covered by this policy. The amount of funds falling within the scope of this policy over the next three years is expected to range between $10 million and $35 million.

4. General Objectives.

The primary objectives, in priority order, of investment activities shall be:

4.1. Preservation of Invested Capital

Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The goal is to mitigate credit risk and interest rate risk.

4

4.2. **Liquidity**

The investment portfolio shall remain sufficiently liquid to meet all reasonably anticipated operating requirements. Furthermore, the portfolio should consist largely of securities with active secondary or resale markets. A portion of the portfolio also may be placed in the Oregon Short Term Fund which offers next-day liquidity. Where possible and prudent, the portfolio should be structured so that investments mature concurrent with anticipated demands.

4.3. **Return**

The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into consideration the safety and liquidity needs of the portfolio. Although return consists of both principal return (gains and losses due to market value fluctuations) and income return (yield), this policy discourages active trading and turnover of investments. Investments should generally be held to maturity

5. **Standards of Care**

5.1. **Prudence.**

The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported and appropriate action is taken to control adverse developments within a timely fashion as defined in this policy.

The "prudent person" standard states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

5.2. **Ethics and Conflicts of Interest.**

Officers and employees involved in the investment process shall refrain from personal activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. Disclosure shall be made to the governing body. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the City. Officers and employees shall, at all times, comply with the State of Oregon Government Standards and Practices code of ethics set forth in ORS Chapter 244.

6. **Delegation of Authority and Responsibilities**

6.1. **Governing Body**

The Klamath Falls City Council ("City Council") will retain ultimate fiduciary responsibility

for invested funds. The governing body will receive reports, pursuant to, and with sufficient detail to comply with ORS 294.085 and 294.155.

6.2. Delegation of Authority

Authority to manage investments within the scope of this policy and operate the investment program in accordance with established written procedures and internal controls is granted to the City Manager or his/her designee, hereinafter referred to as Investment Officer, and derived from the following: ORS 294.035 to 294.053, 294.125 to 294.145, and 294.810.

No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

All participants in the investment process shall seek to act responsibly as custodians of the public trust. No officer or designee may engage in an investment transaction except as provided under the terms of this policy and supporting procedures.

6.3. Investment Committee

The Investment Officer may seek to establish an investment committee to provide guidance to the Investment Officer and monitor investment policy compliance.

6.4. Investment Adviser

The Investment Officer may engage the services of one or more external investment managers to assist in the management of the entity's investment portfolio in a manner consistent with this investment policy. Investment advisers may be hired on a non-discretionary basis. All investment transactions by approved investment advisers must be pre-approved in writing by the Investment Officer and compliant with this Investment Policy. If the City hires an investment adviser to provide investment management services, the adviser is authorized to transact with its direct dealer relationships on behalf of the City.

7. Transaction Counterparties, Investment Advisers and Depositories

7.1. Broker/Dealers

The Investment Officer shall determine which broker/dealer firms and registered representatives are authorized for the purposes of investing funds within the scope of this investment policy. A list will be maintained of approved broker/dealer firms and affiliated registered representatives.

The following minimum criteria must be met prior to authorizing investment transactions. The Investment Officer may impose more stringent criteria.

7.1.1. Broker/Dealer firms must meet the following minimum criteria:

- Be registered with the Securities and Exchange Commission (SEC);
- Be registered with the Financial Industry Regulatory Authority (FINRA);
- Provide most recent audited financials; and
- Provide FINRA Focus Report filings.

7.1.2. Approved broker/dealer employees who execute transactions with the City must meet the following minimum criteria:

- Be a registered representative with the Financial Industry Regulatory Authority (FINRA);
- Be licensed by the state of Oregon;
- Provide certification (in writing) of having read; understood; and agreed to comply with the most current version of this investment policy.

7.1.3. The Investment Officer may want to establish policy for engaging broker/dealer firms and registered representatives that are more restrictive than stated in this policy. Additional requisites or due diligence items may include:

- Positive references from at least three other local government clients.
- As part of the periodic due diligence review, inquiries with other local government clients with regard to their recent experiences with broker/dealer firms or registered representatives and any change in relationship status.
- Requirement that approved registered representatives provide notification within 30 days of any formal investigations or disciplinary actions initiated by federal or state regulators.
- Requirement that prospective registered representatives have an established history of advising local governments with similar amounts of assets under management.

7.1.4. Periodic (at least annual) review of all authorized broker/dealers and their respective authorized registered representatives will be conducted by the Investment Officer. Factors to consider would be:

- Pending investigations by securities regulators.
- Significant changes in net capital.
- Pending customer arbitration cases.
- Regulatory enforcement actions.

7.2. **Direct Issuers**

Obligations that are permitted for purchase by this policy may be purchased directly from the issuer.

7.3. **Investment Advisers**

A list will be maintained of approved advisers selected by conducting a process of due diligence.

7.3.1. The following items are required for all approved Investment Advisers:

- The investment adviser firm must be registered with the Securities and Exchange Commission (SEC) or licensed by the state of Oregon; (Note: Investment adviser firms with assets under management > $100 million must be registered with the SEC; otherwise the firm must be licensed by the state of Oregon)

- All investment adviser firm representatives conducting investment transactions on behalf of the City of Klamath Falls must be registered representatives with FINRA;
- All investment adviser firm representatives conducting investment transactions on behalf of the City must be licensed by the state of Oregon;
- Certification, by all of the adviser representatives conducting investment transactions on behalf of this entity, of having read, understood and agreed to comply with this investment policy.

7.3.2. A periodic (at least annual) review of all authorized investment advisers will be conducted by the Investment Officer to determine their continued eligibility within the portfolio guidelines. Factors to consider would be:

- Pending investigations by securities regulators.
- Significant changes in net capital.
- Pending customer arbitration cases.
- Regulatory enforcement actions.

7.3.3. The Investment Officer may want to establish guidelines or policy for engaging investment advisers' services that are more restrictive than stated in this policy. Additional requisites or due diligence items may include:

- Positive references from at least three other local government clients of a prospective investment adviser firm.
- As part of the periodic due diligence review, inquiries with other local government clients of approved investment advisers with regard to their recent experiences with the adviser and any change in the relationship status.
- Requirement that approved investment advisers provide notification within 30 days of a relationship termination by an Oregon based local government.
- Requirement that approved investment adviser provide notification within 30 days of any formal investigations or disciplinary actions initiated by federal or state regulators.
- Requirement that prospective investment advisers have an established history of advising local governments with similar amounts of assets under management.

7.4. **Depositories**

All financial institutions who desire to become depositories must be qualified Oregon Depositories pursuant to ORS Chapter 295. The City Council encourages investing funds locally, whenever reasonable, prudent and in accordance with this policy.

7.5. **Competitive Transactions**

7.5.1. The Investment Officer shall obtain and document competitive bid information on all investments purchased or sold in the secondary market. Competitive bids or offers should be obtained, when possible, from at least three separate brokers/financial institutions or through the use of a nationally recognized trading platform.

4

7.5.2. In the instance of a security for which there is no readily available competitive bid or offering on the same specific issue, then the Investment Officer shall document quotations for comparable or alternative securities.

7.5.3. When purchasing original issue instrumentality securities, no competitive offerings will be required as all dealers in the selling group offer those securities as the same original issue price. However, the Investment Officer is encouraged to document quotations on comparable securities.

7.5.4. If an investment adviser provides investment management services, the adviser must retain documentation of competitive pricing execution on each transaction and provide upon request.

8. Administration and Operations

8.1. Delivery vs. Payment

All trades of marketable securities will be executed (cleared and settled) by delivery vs. payment (DVP) to ensure that securities are deposited in the City's safekeeping institution prior to the release of funds.

8.2. Third-Party Safekeeping

Securities will be held by an independent third-party safekeeping institution selected by the City. All securities will be evidenced by safekeeping receipts in the City name. Upon request, the safekeeping institution shall make available a copy of its Statement on Standards for Attestation Engagements (SSAE) No. 16.

8.3. Internal Controls.

The Investment Officer and City Council are responsible for establishing and maintaining an adequate internal control structure designed to reasonably assure that invested funds are invested within the parameters of this investment policy and, protected from loss, theft or misuse. Specifics for the internal controls shall be documented in writing. The established control structure shall be reviewed and updated periodically by the Investment Officer. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits likely to be derived and the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points at a minimum:

- Compliance with Investment Policy
- Control of collusion.
- Separation of transaction authority from accounting and record keeping.
- Custodial safekeeping.
- Avoidance of physical delivery of securities whenever possible and address control requirements for physical delivery where necessary.
- Clear delegation of authority to subordinate staff members.
- Confirmation of transactions for investments and wire transfers in written or digitally verifiable electronic form.

- Dual authorizations of wire and automated clearing house (ACH) transfers
- Staff training
- Review, maintenance and monitoring of security procedures both manual and automated.

An external auditor shall provide an annual independent review to assure compliance with Oregon state law and the City policies and procedures.

9. Suitable and Authorized Investments

9.1. Permitted Investments

The following investments are permitted pursuant to ORS 294.035, 294.040, and ORS 294.810.

- US Treasury Obligations: U.S. Treasury and other government obligations that carry the full faith and credit guarantee of the United States for the timely payment of principal and interest.
- US Agency Obligations: Senior debenture obligations of US federal agencies and instrumentalities or U.S. government sponsored enterprises (GSE).
- Oregon Short Term Fund.
- *Oregon Local Government Intermediate Fund (OLGIF)(8/1/16 addition)*
- Corporate Indebtedness
- Commercial Paper issued under the authority of section 3(a)2 or 3(a)3 of the Securities Act of 1933.
- Corporate Bonds
- Repurchase Agreements
- Municipal Debt
- Bankers Acceptances
- Certificates of Deposit. Qualified Institution Time Deposits/Savings Accounts/Certificates of Deposit.

9.2. Approval of Permitted Investments

If additional types of securities are considered for investment, per Oregon state statute they will not be eligible for investment until this Policy has been amended and the amended version adopted by the City.

9.3. Prohibited Investments

9.3.1. Private Placement or "144A" Securities

Private placement or "144A" securities are not allowed. "144A" securities include commercial paper issued under section 4(2)144A (also known as "4(2)A") of the Securities Act of 1933.

9.3.2. US Agency Mortgage-backed Securities

US agency mortgage-backed securities such as those securities by FNMA and FHLMC are not allowed.

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9.3.3. **Securities Lending and Reverse Repurchase Agreements**
The City shall not lend securities nor directly participate in a securities lending or reverse repurchase program.

9.4. **Bank Demand Deposits and Time Deposits**

9.4.1. All bank demand deposits and time deposits (Examples of time deposits are: certificates of deposit and savings accounts) shall be held in qualified Oregon depositories in accordance with ORS Chapter 295.

9.4.2. Bank demand deposits in qualified depository institutions are considered cash vehicles and not investments and are therefore outside the scope and restrictions of this policy. Pursuant to ORS 294.035(3)(d), time deposits, certificates of deposit and savings accounts are considered investments and within the scope of this policy.

9.5. **Repurchase Agreements**

9.5.1. ORS 294.035 (3)(j) requires repurchase agreement collateral to be limited in maturity to three years and priced according to percentages prescribed by written policy of the Oregon Investment Council or the Oregon Short Term Fund Board.

9.5.2. ORS 294.135 (2) limits the maximum term of any repurchase agreement to 90 days.

9.5.3. On March 12, 1996, the OSTF Board adopted the following margins:

- US Treasury Securities: 102%
- US Agency Discount and Coupon Securities: 102%
- Mortgage Backed and Other*: 103%
  *Limited to those securities described in ORS 294.035(1)

10. **Investment Parameters**

10.1. **Credit Risk**
Credit risk is the risk that a security or a portfolio will lose some or all of its value due to a real or perceived change in the ability of the issuer to repay its debt. Credit risk will be mitigated by the following guidelines:

10.1.1. **Diversification**
It is the policy of the City to diversify its investments by instrument/investment and by depository. Where appropriate, exposures will be limited by security type; maturity; issuance, issuer, and security type, Allowed security types and investment exposure limitations are detailed in the table below.

10.1.2. **Investment Recognized Credit Ratings**
Investments must have a rating from at least one of the following nationally recognized statistical ratings organizations (NRSRO): Moody's Investors Service; Standard & Poor's;

and Fitch Ratings Service as detailed in the table below. Ratings used to apply the guidelines below should be investment level ratings and not issuer level ratings.

10.1.3. **Portfolio Average Credit Rating**
The minimum weighted average credit rating of the portfolio's rated investments shall be Aa/AA/AA by Moody's Investors Service; Standard & Poor's; and Fitch Ratings Service respectively.

10.1.4. **Exposure Constraints and Minimum Credit Ratings, Diversification and Credit Exposure Constraints.**
The following table limits exposures among investments permitted by this policy.

Issue Type	Maximum % Holdings	Minimum Ratings Moody's / S&P / Fitch
US Treasury Obligations	100%	None
US Agency Securities Per Agency (Senior Obligations Only)	100% 33%	- -
Oregon Short Term Fund	Maximum allowed per ORS 294.810	-
Bankers' Acceptances	25%(1)	A1+/P1/F1+
Bank Time Deposits/Savings Accounts/Certificates of Deposit(2) Per Institution	50% 25%	-
Repurchase Agreements	5%	-
Corporate Debt (Total) Corporate Commercial Paper Per Issuer Corporate Bonds Per Issuer	15%(3) 15%(3) 2.5%(4) 10%(3) 2.5%(4)	- A1/P1/F1 Aa/AA/AA

(1)25% Maximum per ORS 294.035(D)
(2)As authorized by ORS 294.035(3)(d)
(3)35% Maximum per ORS 294.035(D)
(4)5% Maximum per ORS 294.035(D)

10.1.5. **Restriction on Issuers With Prior Default History**
Per ORS 294.040, the bonds of issuers listed in ORS 294.035 (3)(a) to (c) may be purchased only if there has been no default in payment of either the principal of or the interest on the obligations of the issuing county, port, school district or city, for a period of five years next preceding the date of the investment.

10.2. **Liquidity Risk**
Liquidity risk is the risk that an investment may not be easily marketable or redeemable. The following strategies will be employed to mitigate liquidity risks:

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10.2.1. The value of at least 25% of funds available for investing or three months of budgeted operating expenditures will be invested in the Oregon Short Term Fund, with a qualified depository institution, or investments maturing in less than 90 days to provide sufficient liquidity for expected disbursements.

10.2.2. Funds in excess of liquidity requirements are allowed for investments maturing in greater than one year. However, longer-term investments tend to be less liquid than shorter term investments. Portfolio investment maturities will be limited as follows:

Total Portfolio Maturity Constraints:

Maturity Constraints	Minimum % of Total Portfolio
Under 90 days	25% or three months Estimated Operating Expenditures
Under 1 year	50%
Under 3 year	100%

10.2.3. Reserve or Capital Improvement Project monies may be invested in securities exceeding the maximum term if the maturities of such investments are made to coincide as nearly as practicable with the expected use of the funds.

10.2.4. Larger issuance sizes enhance liquidity as there are likely to be a greater number of investors. Issuance sizes above a minimum amount qualify a corporate or municipal debt bond issuance for index eligibility. Index eligible bonds have a significantly larger investor base which improves liquidity.

10.2.5. Limiting investment in a specific debt issuance improves secondary market liquidity by assuring there are other owners of the issuance.

Issue Type	Maximum % of Issuance* (Par)
US Agency Securities	50%
Corporate Debt (Total)	-
Corporate Commercial Paper	100%
Corporate Bonds	25%
Municipal Bonds	25%

*The par amount issued under a single CUSIP.

10.3. **Interest Rate Risk**

Longer-term investments have the potential to achieve higher returns but are also likely to exhibit higher market value volatility due to the changes in the general level of interest rates over the life of the investment(s). Interest rate risk will be mitigated by providing adequate liquidity for short term cash needs, and by making longer-term investments only with funds that are not needed for current cash flow purposes. Certain types of securities, including

variable rate securities, securities with principal pay-downs prior to maturity, and securities with embedded options, will affect the interest rate risk profile of the portfolio differently in different interest rate environments. The following strategies will be employed to control and mitigate adverse changes in the market value of the portfolio due to changes in interest rates:

10.3.1. Where feasible and prudent, investment maturities should be matched with expected cash outflows to mitigate market risk.

10.3.2. To the extent feasible, investment maturities not matched with cash outflows, including liquidity investments under one year, should be staggered to mitigate re-investment risk.

10.3.3. No commitments to buy or sell securities may be made more than 14 days prior to the anticipated settlement date, or receive a fee other than interest for future deliveries.

10.3.4. The maximum percent of callable securities in the portfolio shall be 10%;

10.3.5. The maximum stated final maturity of individual securities in the portfolio shall be three years, except as otherwise stated in this policy.

10.3.6. The maximum portfolio average maturity (measured with stated final maturity) shall be 1.5 years.

11. **Investment of Proceeds from Debt Issuance**

11.1. Investments of bond proceeds are restricted under bond covenants that may be more restrictive than the investment parameters included in this policy. Bond proceeds shall be invested in accordance with the parameters of this policy and the applicable bond covenants and tax laws.

11.2. Funds from bond proceeds and amounts held in a bond payment reserve or proceeds fund may be invested pursuant to ORS 294.052. Investments of bond proceeds are typically not invested for resale and are maturity matched with outflows. Consequently, surplus funds within the scope of ORS 294.052 are not subject to this policy's liquidity risk constraints within section IX (2).

12. **Investment of Reserve or Capital Improvement Funds**

Pursuant to ORS 294.135(1)(b), reserve or capital Improvement project monies may be invested in securities exceeding three years when the funds in question are being accumulated for an anticipated use that will occur more than 18 months after the funds are invested, then, upon the approval of the City Council, the maturity of the investment or investments made with the funds may occur when the funds are expected to be used.

13. Guideline Measurement and Adherence

13.1. Guideline Measurement

Guideline measurements will use market value of investments.

13.2. Guideline Compliance:

13.2.1. If the portfolio falls outside of compliance with adopted investment policy guidelines or is being managed inconsistently with this policy, the Investment Officer shall bring the portfolio back into compliance in a prudent manner and as soon as prudently feasible.

13.2.2. Violations of portfolio guidelines as a result of transactions; actions to bring the portfolio back into compliance and; reasoning for actions taken to bring the portfolio back into compliance shall be documented and reported to the City Council.

13.2.3. Due to fluctuations in the aggregate surplus funds balance, maximum percentages for a particular issuer or investment type may be exceeded at a point in time. Securities need not be liquidated to realign the portfolio; however, consideration should be given to this matter when future purchases are made to ensure that appropriate diversification is maintained.

14. Reporting and Disclosure

14.1. Compliance

The Investment Officer shall prepare a report at least quarterly that allows the City Council to ascertain whether investment activities during the reporting period have conformed to the investment policy. The report should be provided to the City Council. The report will include, at a minimum, the following:

- A listing of all investments held during the reporting period showing: par/face value; accounting book value; market value; type of investment; issuer; credit ratings; and yield to maturity (yield to worst if callable).
- Average maturity of the portfolio at period-end.
- Maturity distribution of the portfolio at period-end.
- Average portfolio credit quality of the portfolio at period-end.
- Average weighted yield to maturity (yield to worst if callable investments are allowed) of the portfolio.
- Distribution by type of investment.
- Transactions since last report.
- Distribution of transactions among financial counterparties such as broker/dealers.
- Violations of portfolio guidelines or non-compliance issues that occurred during the prior period or that are outstanding. This report should also note actions (taken or planned) to bring the portfolio back into compliance.

14.2. **Performance Standards/ Evaluation**

At least annually, the Investment Officer shall report comparisons of investment returns to relevant alternative investments and comparative Bond Indexes. The performance of the portfolio should be compared to the performance of alternative investments such as available certificates of deposit; the Oregon Short Term Fund; US Treasury rates; or against one or bond indices with a similar risk profile (e.g., Bond indexes comprised high grade investments and maximum maturities of three years). The City will use the 3-Month Treasury Bill as a performance measure for investments. The 3-month Treasure Bill reflects the yield of a basically risk-free and liquid investment; therefore, the return on any investment made by the City should exceed the 3-month Treasury Bill.

When comparing performance, all fees and expenses involved with managing the portfolio shall be included in the computation of the portfolio's rate of return.

14.3. **Marking to Market.**

The market value of the portfolio shall be calculated at least quarterly and a statement of the market value of the portfolio shall be issued at least quarterly.

14.4. **Audits**

Management shall establish an annual process of independent review by the external auditor to assure compliance with internal controls. Such audit will include tests deemed appropriate by the auditor.

15. **Policy Maintenance and Considerations**

15.1. **Review**

The investment policy shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity and return, and its relevance to current law and financial and economic trends. The annual report should also serve as a venue to suggest policies and improvements to the investment program, and shall include an investment plan for the coming year.

15.2. **Exemptions**

Any investment held prior to the adoption of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested as provided by this policy.

15.3. **Policy Adoption and Amendments**

This investment policy and any substantial modifications to this policy must be formally approved in writing by the City Council. This policy must be submitted to the Oregon Short Term Fund (OSTF) Board for review if:

15.3.1. This policy allows maturities beyond 18 months unless the funds are being accumulated for a specific purpose, including future construction projects, and upon approval of the City Council, the maximum maturity date matches the anticipated use of the funds (ORS 294.135(1)(b) and 294.135(3)); and

15.3.2. This policy has never been submitted to the OSTF Board for comment or material changes have been made since the last review by the OSTF Board.

ORDINANCE NO. 16- _____

ORDINANCE RATIFYING THE CREATION OF AN INTERGOVERNMENTAL ENTITY FOR THE OPERATION, MAINTENANCE, AND USE OF A COUNTY-WIDE INTEROPERABLE COMMUNICATIONS SYSTEM, AND AUTHORIZING PARTICIPATION THEREIN

WHEREAS, City of Klamath Falls ("Participant") is a unit of local government or governmental agency formed and authorized under Oregon law to promote public safety and provide emergency services, including engaging in emergency radio communications in the course of its operations; and

WHEREAS, Participant and certain other emergency services providers in Klamath County have engaged in collaborative and cooperative discussions for the purpose of creating an intergovernmental entity under ORS 190.010(5) to own and operate an interoperable radio communications system within the County; and

WHEREAS, by and through an *"Agreement for the Formation of an Intergovernmental Entity for the Operation, Maintenance, and Use of a County-Wide Interoperable Communications System"* ("Agreement"), Participant and other participating providers (listed in Exhibit A, which is attached to this Ordinance and incorporated herein by this reference) formed the Klamath Interoperability Radio Group ("KIRG"), an intergovernmental entity; and

WHEREAS, pursuant to ORS 190.085, prior to the effective date of the Agreement, each party to such Agreement must enact an Ordinance ratifying the creation of KIRG; and NOW THEREFORE,

THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

Section 1.

1. Pursuant to ORS 190.085, Participant hereby ratifies the creation of the KIRG and authorizes Participant's participation therein.
2. The Agreement shall become effective July 1, 2016.
3. The public purpose of the Agreement is to provide for regional decision-making and ownership of regional system assets to increase overall system reliability, reduce duplication, increase the ability to obtain state and federal grants, and support the highest level of interoperability of regional and state emergency communications.
4. To carry out its public purposes, the KIRG shall have the following powers, duties and functions in addition to those specified in ORS 190.003 through 190.265:
   - A. To provide operation, maintenance, construction, repair, replacement and management of the radio system as described in the Agreement.
   - B. To otherwise manage the business and affairs of the radio system as set forth in the Agreement.

C. To retain such officers and employees as it deems necessary to carry out its objectives, and to contract for the purchase of property and services in accordance with the Agreement.

D. To administer, and account for, all payments and receipts related to operation of the radio system on behalf of a party, parties, or the intergovernmental entity as a whole.

E. To adopt such bylaws, rules, regulations and policies as the parties deem necessary to further the purposes of the Agreement.

F. To exercise all powers provided in the applicable acts, charters, or laws of the individual parties which are necessary or desirable to develop and operate the KIRG.

THIS ORDINANCE SHALL TAKE EFFECT no sooner than 30 days from the date of adoption.

Passed by the Council of the City of Klamath Falls this ___day of _____, 2016.

Presented to the Mayor, approved and signed this ____day of _____, 2016.

_____
Mayor

ATTEST:

_____
City Recorder

STATE OF OREGON)
COUNTY OF KLAMATH) ss.
CITY OF KLAMATH FALLS)

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the ____day of ____, 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

_____
City Recorder

EXHIBIT A

KLAMATH INTEROPERABILITY RADIO GROUP
FOUNDING PARTICIPANTS

- Bly Rural Fire Protection District
- Bonanza Rural Fire Protection District
- Central Cascade Fire and Emergency Medical Services
- Chemult Rural Fire Protection District
- Chiloquin/Agency Lake Rural Fire Protection District
- Crescent Rural Fire Protection District
- Keno Rural Fire Protection District
- Klamath County
- Klamath 911 Emergency Communications District
- Klamath County Fire District #1
- Klamath County Fire District #3
- Klamath County Fire District #4
- Klamath County Fire District #5
- Klamath County Sheriff
- Klamath Falls Police Department
- Malin Police Department
- Malin Rural Fire Protection District
- Merrill Police Department
- Merrill Rural Fire Protection District
- Oregon Institute of Technology Campus Safety
- Oregon Outback Rural Fire Protection District
- Rocky Point Fire and Emergency Medical Services

ORDINANCE NO. 16-____

A SPECIAL ORDINANCE GRANTING TO FALCON CABLE SYSTEMS COMPANY II, L.P., DBA CHARTER COMMUNICATIONS A FRANCHISE FOR A PERIOD OF TEN YEARS

WHEREAS, the current franchise with Charter Communications expired June 2013;

WHEREAS, a consortium of cities negotiated a proposed franchise form, and the City negotiated the terms relating to the Public Education Government channel; and NOW, THEREFORE,

THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

Section 1.

The franchise agreement with Falcon Cable Systems Company II, L.P., DBA Charter Communications is attached as Exhibit A to this Ordinance.

Passed by the Council of the City of Klamath Falls this ___day of _____, 2016.

Presented to the Mayor, approved and signed this ____day of _____, 2016.

_____
Mayor

ATTEST:

_____
City Recorder

STATE OF OREGON)
COUNTY OF KLAMATH) ss.
CITY OF KLAMATH FALLS)

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the ____day of ____, 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

_____
City Recorder

6

EXHIBIT A

6

FRANCHISE AGREEMENT
CITY OF KLAMATH FALLS, OREGON
TABLE OF CONTENTS

Article I. Title and Purpose 2
Article II. Definitions 2
Article III. Grant of Franchise 3
Section 3.1 Grant of Franchise 3
Section 3.2 Equal Protection 4
Section 3.3 Police Powers 4
Section 3.4 Transfer/Assignments 4
Section 3.5 Violations of Franchise; Procedures, Notice & Cure 5
Section 3.6 Revocation of Franchise 6
Section 3.7 Minor Violations 6
Section 3.8 Retention & Inspection of Records 7
Article IV. Street Occupancy 7
Section 4.1 Occupancy 7
Section 4.2 Work by Grantor; Cable System Relocation 8
Section 4.3 Construction & Technical Standards 9
Article V. Franchise Fees 9
Section 5.1 Franchise Fees 9
Section 5.2 Audit of Franchise Fees 10
Article VI. Service 10
Section 6.1 Nondiscrimination; Privacy 10
Section 6.2 Extension of Cable Service 10
Section 6.3 Customer Service 11
Section 6.4 Subscriber Bills and Notices 11
Section 6.5 Rate Regulation 11
Section 6.6 Annexation by Grantor 11
Section 6.7 Emergency Alert System 11
Article VII. Service to Public Buildings; Community Programming 11
Section 7.1 Service to Public Buildings 11
Section 7.2 Public Education & Government (PEG) Channel 12
Section 7.3 Access and Community Support Not Franchise Fees 14
Article VIII. Insurance & Indemnification 14
Section 8.1 Insurance Requirement 14
Section 8.2 Indemnification 15
Article IX. Notices 15
Section 9.1 Notice to Grantor 15
Section 9.2 Notice to Grantee 15
Article X. Miscellaneous Provisions 16
Section 10.1Compliance with Local, State & Federal Law 16
Section 10.2 Severability 16
Section 10.3 Force Majeure 16
Section 10.4 Descriptive Headings 16
Section 10.5 Legal Action 16
Section 10.6 Entire Agreement 16
Section 10.7 Public Notice 16
Article XI. Term & Renewal 17
Section 11.1 Effective Date & Term 17

FRANCHISE AGREEMENT
City of Klamath Falls, Oregon

This Franchise Agreement (**"Franchise"**) is between the CITY OF KLAMATH FALLS, OREGON, a municipal corporation, hereinafter referred to as **"Grantor"** and FALCON CABLE SYSTEMS COMPANY II, L.P., d/b/a Charter Communications, hereinafter referred to as **"Grantee."**

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a Cable System on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all Federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

Article I. Title & Purpose

Section 1.1 The purpose of this Franchise is to create and renew a binding, enforceable Franchise contract between Grantor and Grantee that establishes the terms and conditions under which Grantee may construct, operate and maintain a Cable System within Klamath Falls, Oregon (hereinafter referred to as "CITY" and/or "GRANTOR").

Article II. Definitions

Section 2.1 For the purposes of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning defined herein, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future; words in the plural number include the singular number; and words in the singular number include the plural number. Words used in this Franchise which are not defined hereunder but defined in the Cable Act shall have the meaning specified in the Cable Act definition.

a. **Affiliate.** As set forth in the Cable Act.
b. **Cable Act.** The Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521, *et seq.*, as it may be amended, or superseded.
c. **Cable System, Cable Service and Basic Cable Service.** As set forth in the Cable Act.
d. **FCC.** The Federal Communications Commission and any successor governmental entity thereto.
e. **Franchise.** The non-exclusive authorization granted hereunder of a franchise, privilege, permit, license or to otherwise construct, operate and maintain a Cable System within the Service Area.
f. **Grantee.** Falcon Cable Systems Company II, L.P., d/b/a Charter Communications.

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g. **Grantor.** The City of Klamath Falls, Oregon.

h. **Gross Revenues.** All amounts derived by the Grantee or any Affiliate, in whatever form and from all sources, from the operation of Grantee's Cable System to provide Cable Services within the Service Area including but not limited to amounts for all Cable Services, premium services, advertising, Franchise Fees, home shopping channels and other such revenue-sharing arrangements, installations, and all leased access payments,. Grantor acknowledges and agrees that Grantee shall maintain its books and records in accordance with Generally Accepted Accounting Principles ("GAAP").

   Gross Revenues shall not include, to the extent consistent with GAAP: (1) any taxes, fees or assessments imposed on Subscribers but collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC user fee; (2) bad debt, provided, however, that bad debt recoveries shall be included in Gross Revenues during the period collected or as soon as practicable; (3) credits, refunds and deposits paid to Subscribers; and (4) any Public, Education and Government (PEG) Capital Fee (as described in Section 7.2). Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues.

   If Cable Services and non-Cable Services are bundled together and offered to Subscribers for one price, then in accordance with GAAP, Grantee shall account for the revenue from such packages using the retail rate methodology, which allocates the bundled discount by the proportion of the total retail rate each billing component represents. Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose of evading or reducing its Franchise Fee obligations.

i. **Person.** An individual, partnership, association, organization, corporation, trust or governmental entity.

j. **Public School.** Any accredited public school operated within the Service Area and limited to elementary, junior high and high school.

k. **Service Area.** The geographic boundaries of the Grantor as they now exist and any changes thereto, by annexation or other legal means.

l. **Standard Installation.** Installations of Cable Service to a location within one hundred fifty feet (150') from the existing Cable System.

m. **State.** The State of Oregon.

n. **Streets.** The area across, in, over, along, upon and below the surface of public streets, roadways, highways, bridges, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, utility strips or rights-of-way dedicated for compatible uses, now or hereafter held by Grantor within the Service Area, which are under the jurisdiction or control of Grantor, and only to the extent Grantor has the right, title, interest and/or authority to grant a franchise to occupy and use such areas for a Cable System and Cable Service.

o. **Subscriber.** Any Person lawfully receiving any Cable Service from Grantee.

Article III. Grant of Franchise

Section 3.1 Grant of Franchise.

a. Subject to the terms and conditions of this Franchise, Grantor hereby grants to Grantee a non-exclusive authorization to erect, construct, operate and maintain a Cable System within the Streets for a ten (10) year term for the purpose of providing Cable Service within the Service Area.

b. Nothing in this Franchise shall be construed to authorize, prohibit or condition Grantee from offering any service over its Cable System that is not prohibited by Federal or State Law.
c. Nothing in this Franchise shall be construed to prohibit Grantor from granting to other Persons rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets by franchise, permit or otherwise, subject to Section 3.2.

Section 3.2 **Equal Protection.**
The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide Cable Service within the Service Area. If any other provider of Cable Services or video services (without regard to the technology used to deliver such services) is lawfully and expressly authorized by the Grantor to use the Streets to provide such services, and if the material obligations applicable to Grantee are more burdensome or less favorable than those imposed on any such competing provider, then upon thirty (30) days prior written notice to the Grantor, the Grantee shall have the right and may choose, to the extent consistent with applicable State and Federal laws and orders and rules adopted pursuant thereto:

A) to modify this Franchise to the mutual satisfaction of Grantor and Grantee; or
B) to deem this Franchise expired thirty-six (36) months from the date of the above written notice; or
C) to terminate this Franchise and take in its place the same franchise agreement of a competing provider of Cable Services or video services authorized by the Grantor

The Grantor and the Grantee agree that any undertakings that relate to the renewal of the Grantee's Franchise with the Grantor shall be subject to the provisions of Section 626 of the Cable Act (47 U.S.C. § 546) or any such successor statute. Nothing in this Franchise shall impair the right of the Grantor or Grantee to seek other remedies available under law.

Section 3.3 **Police Powers.**
Notwithstanding any other provision of this Franchise, Grantee's rights are subject to the police powers of Grantor to adopt and enforce ordinances necessary for the safety, health and welfare of the public ("Police Powers"). Grantee agrees to comply with all applicable laws, ordinances and regulations adopted under the Police Powers of Grantor. This Franchise is a contract and except as to those changes that are the result of the Grantor's lawful exercise of its Police Powers, the Grantor may not take unilateral action that materially changes the explicit mutual promises in this contract. All changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between an explicit mutual promise of this Franchise and an explicit provision of any Grantor ordinance or regulation, this Franchise shall control. Grantee specifically reserves the right to challenge any terms, conditions or provisions of local law if Grantee believes such are in conflict with its contractual rights under this Franchise, or are not a lawful exercise of the Grantor's Police Power. For purposes of this paragraph, a "conflict" shall exist only to the extent the Grantor ordinance or regulation has the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise.

Section 3.4 **Transfer/Assignment.**
Subject to Section 617 of the Cable Act (47 U.S.C. § 537), the Franchise granted hereunder shall not be assigned, other than to an Affiliate of the Grantee, without the prior written consent of the Grantor, and such consent shall not be unreasonably withheld

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or delayed. Grantor may condition its consent upon terms and conditions relating to the legal, financial and technical qualifications of the proposed transferee. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer as required in the Cable Act and related FCC rules and regulations, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request and all information required by the Grantor pursuant to this Section 3.4, and the Cable Act, consent by the Grantor shall be deemed granted.

Section 3.5 **Violations of Franchise; Procedures, Notice & Cure.**

a. If Grantor believes that Grantee has failed to perform any obligation under this Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, Grantor shall follow the procedures set forth herein:
   1. Grantor shall notify Grantee in writing of any alleged violation ("Violation Notice") which notice shall include the exact nature of any alleged violation (the "Violation Notice") and a request for cure of such violation.
   2. Grantee shall have thirty (30) days from the date of receipt of the Violation Notice to respond in writing, indicating that Grantee:
      a. Has cured the alleged violation, providing reasonable documentation or detailed explanation demonstrating that the alleged violation has been cured;
      b. Has commenced, or will commence actions to cure the alleged violation, but that the alleged violation cannot reasonably be cured immediately, describing the steps taken or to be taken to cure the alleged violation; or
      c. Contests the Violation Notice, stating the reasons therefore, and requesting a public hearing in accordance with this Franchise.
   3. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, determine whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor. Grantor may, in its sole discretion, extend Grantee's cure period upon request by Grantee.
   4. In the event that the Grantor contends that the Grantee has failed to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to this Franchise, the Grantor shall set a public hearing to determine whether the Grantee has committed a violation. The public hearing shall be within sixty (60) days of the end of the cure period.
      a. In the case of any public hearing pursuant to this Section, Grantor shall provide the Grantee at least twenty (20) days prior written notice of such public hearing, which specifies the time, place and purpose of such public hearing. Grantor shall provide general notice of the public hearing in the same manner as it publishes other notices of the Grantor.
      b. At the public hearing, Grantee shall be provided an opportunity for full participation, including the right to be represented by legal counsel and to state its position on the matter. The public hearing shall be on the record. If Grantee provides the Grantor written notice at least fifteen (15) business days prior to the public hearing, Grantor shall make a written transcript available to the Grantee within ten (10) business days after the public hearing and the cost of the transcript shall be the sole responsibility of the Grantee.

5. Within fifteen (15) days following a public hearing on an alleged violation, Grantor shall issue a written report to Grantee on Grantor's decision and any showing that the Grantee has committed a violation and Grantor shall make written findings of fact relative to its determination, which Notice shall be sent to the Grantee according to this Franchise. If a violation is found, the Grantee may petition for reconsideration before any competent court having jurisdiction over such matters.
6. If, after the public hearing and any subsequent reconsideration, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
   a. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor determines; and/or
   b. Commence an action at law or other equitable remedy available under this Franchise or any applicable law; and/or
   c. To the extent provided in Section 3.6, Grantor may begin the process of revocation of Franchise in accordance with the provisions contained within this Franchise.

Section 3.6 Revocation of Franchise

a. Prior to revocation or termination of the Franchise, Grantor shall give written notice to Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

b. At the hearing, Grantor shall give Grantee an opportunity to state its position on the matter, present evidence and question witnesses; after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and, if Grantee provides the Grantor written notice at least fifteen (15) business days prior to the hearing, Grantor will make a written transcript available to the Grantee within ten (10) business days after the hearing, and the cost of the transcript shall be the sole responsibility of the Grantee. The decision of the Grantor shall be made in writing and shall be delivered to Grantee. Grantee may appeal such determination to an appropriate court. Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

c. Notwithstanding the above provisions, Grantee does not waive any of its rights under Federal law or regulation.

d. In the event of a revocation of this Franchise, Grantee shall remove its Cable System from the Streets of Grantor, or abandon the Cable System in place if permitted in writing by the Grantor.

Section 3.7 Minor Violations.

The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be

derived by the Grantor and/or Subscribers. It is in the Grantor's sole discretion to determine when a violation is a good faith error and/or to determine the hardship versus benefit.

Section 3.8 **Retention & Inspection of Records.**

a. Subject to the requirements of Section 631 of the Cable Act (47 U.S.C. § 551), all records that are legally permissible for release and that are reasonably necessary to ensure Grantee's compliance with the Franchise shall be made available by Grantee to Grantor or Grantor's representative, who has signed Grantee's Non-Disclosure Agreement, upon advance written notice to examine during normal business hours and on a nondisruptive basis. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. To the extent permitted by law, the Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality by marking each page as "confidential". If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason including compliance with the Oregon Public Records laws, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, including the district attorney, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. Grantor shall have no obligation to pursue or defend an appeal of a decision by a court or agency of competent jurisdiction, including the district attorney, ordering the disclosure of any books and records.

b. Financial Records. Grantee shall maintain financial records of its Gross Revenues and Grantee fee payments for audit purposes for a period no less than four (4) years.
c. Service Calls/Complaints. Grantee shall maintain a record of all service calls and/or complaints for a minimum period of one (1) year.
d. Other Records. Grantee shall maintain a full set of its plans, records and maps detailing the location of its Cable System within the Franchise Service Area.

Article IV. Street Occupancy

Section 4.1 **Occupancy.**

a. Nothing in this Franchise shall be construed to prevent any public work of the Grantor or other utility occupying the Streets of the Grantor.
b. Safety. Grantee shall at all times employ the standard of care attendant to the risks involved and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.
c. Damage or Disturbance. Grantee shall, at its own expense and promptly after discovery or notice from Grantor or other Person, restore any damage or disturbance caused to the Streets as a result of its operation, construction or maintenance of its Cable System to a condition at least as good as the condition of the Street immediately prior to such damage or disturbance.
d. Existing Poles & Conduits. Grantee shall utilize existing poles, manholes, conduits and other like facilities whenever possible. Grantee may not construct or install new, different, or additional conduits or other underground or underground-related facilities within the Street without obtaining all legally required permits of the Grantor. Grantee may install in the Streets new or additional poles necessary for its Cable System in areas where there are no existing underground cable, telephone or electric facilities upon separate written permission from the Grantor.

e. Underground Construction. The facilities of the Grantee shall be installed underground in those areas of the Service Area where existing telephone and electric services (other than high voltage electric lines) are both underground at the time of system construction, or where there is insufficient space on existing poles for Grantee's facilities. Grantee shall, in cases of new Street construction where all other utilities (except high voltage electric lines) are required by Grantor to be placed underground, place its facilities underground. Grantee shall install its facilities prior to the completion of any new or to be reconstructed or resurfaced Streets to avoid damage to the newly constructed/reconstructed Streets when Grantor has afforded reasonable advance notice.

f. Minimum Interference. All transmission lines, equipment and structures of Grantee's Cable System shall be installed and located so as to cause reasonably minimum interference with the rights and appearance and reasonable convenience of property owners who adjoin any Street and at all times shall be kept and maintained in a safe condition and in good order and repair.

g. Vegetation Removal. Grantee may trim or remove any vegetation within the Streets, at its expense, as may be necessary to protect its wires and facilities, subject to any permit required by Grantor and local codes and ordinances.

Section 4.2 Work by Grantor; Cable System Relocation

a. Relocation for Grantor. Grantee shall, at its own expense, temporarily or permanently disconnect, relocate or remove any portion of its Cable System, including relocation from aerial to underground locations, when required by Grantor by reason of Street construction, widening or repair, including sidewalks; traffic conditions; public safety; Street vacations; installation or repair of public facilities or utilities, or any other public purpose as determined by the Grantor pursuant to its police power. In the event of a request for a permanent relocation, disconnection or removal, Grantor shall advise Grantee in writing as soon as reasonably possible, but not less than forty-five (45) days prior to the date for relocation, disconnection or removal. In the event of a request for a temporary relocation, disconnection or removal, Grantor shall give Grantee no less than ten (10) business days advance written notice.

b. Failure to Remove or Relocate. Should Grantee fail to remove or relocate any facilities as required in this Section 4.2, the Grantor may cause such work to be done by a qualified contractor and the costs thereof, including reasonable costs and expenses incurred due to Grantee's delay, shall be paid by Grantee, subject to any reimbursement required in Section 4.2d.

c. Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by the permit holder and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

d. Reimbursement of Costs. If Grantor reimburses any Person that owns facilities in the Streets used to provide services in competition with Grantee's services provided pursuant to this Franchise for the cost of any of the foregoing, to the extent Grantee is required by the Grantor to relocate for the same project, the Grantor shall reimburse the Grantee in the same manner. If any Federal, State, and/or other funds become available for relocating purposes concerning a qualifying public project, and if such funds are available to Cable Operators, the Grantor will assist the Grantee with the application for such funds to the extent Grantor assists other utilities that own facilities in the Streets used to provide services in competition with Grantee's services provided pursuant to this Franchise with the application for such funds.

Notwithstanding the immediately preceding sentence, the Grantor has no obligation to seek or locate Federal, State, and/or other funds for relocating purposes.

Section 4.3 **Construction & Technical Standards**

a. Grantee shall obtain all legally required permits and pay all required permit fees before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area.
b. Grantee shall adhere to the terms of the permits and all Grantor codes, ordinances, rules and regulations currently or hereafter applicable to Grantor Streets and/or construction, operation or maintenance of the Cable System within the Service Area, provided that such codes are of general applicability pursuant to Grantor's Police Powers.
c. Grantee shall be responsible for ensuring that its Cable System is designed, installed and operated in accordance with good engineering practices and to meet the technical standards adopted by the FCC relating to Cable Systems contained in Part 76 of the FCC's rules and regulations as same may be amended. Grantee shall be at all times prepared to show, on advanced request by an authorized representative of the Grantor, that its Cable System complies with those applicable rules.
d. Grantee shall conduct complete performance tests of the Cable System required by the FCC, and shall maintain the resulting test data on file for the duration of time required by the FCC. The test data shall be made available for inspection by the Grantor, upon advance notice.

Article V. Franchise Fees

Section 5.1 **Franchise Fees**

a. Grantee shall pay to Grantor an annual Franchise Fee in an amount equal to five percent (5%) of Grantee's annual Gross Revenues. Payment of the Franchise Fee shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. If agreed to in writing by the Grantor, which agreement may be revoked upon thirty (30) days notice by the Grantor, payment shall be transmitted by electronic funds transfer to a bank account designated by Grantor. Each franchise fee payment shall be followed, within forty five (45) days, by a report from Grantee showing the basis for the computation of the Franchise Fees paid during that period.
b. The payment of the Franchise Fee shall be in addition to taxes or fees of general applicability owed to Grantor by Grantee that is not included as a Franchise Fee under Federal law.
c. No acceptance of any payment by Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as Franchise Fees under this Franchise, or of any tax or other fee owed to Grantor by Grantee.
d. The payment period and the collection of Franchise Fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the effective date of the Franchise. Grantee shall continue to pay Franchise Fees under the former agreement (Grantor Ordinance No. 03-12) in the interim period.
e. In the event the Cable Act is amended to modify the current cap on Franchise Fees to an amount other than five percent (5%) of Gross Revenues required here, Grantee agrees to and shall pay the new maximum amount consistent with federal law. Such increased fee shall take effect on the next available billing cycle in which the higher fee may be placed on Subscribers' bills.
f. In the event that a Franchise Fee payment or recomputation amount is not made by the Grantee to the Grantor on or before the due date, or is underpaid, Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the lesser of (i) the commercial prime interest rate of the Grantor's primary depository

bank during the period such unpaid amount is owed or (ii) nine percent (9%) per annum, but in no event less than five percent (5%).

Section 5.2 Audit of Franchise Fees

a. Grantor may review and/or audit Grantee's records to ensure the correct calculation of Gross Revenues and application of Franchise Fees payable under this Franchise. Grantee shall provide such records to Grantor or its designee in the Service Area, subject to Grantor and/or designee signing an agreed upon Non-Disclosure Agreement, upon thirty (30) days prior written request at no charge to the Grantor.

b. In the event that any Franchise Fee is underpaid, Grantee shall pay interest as required in this Franchise. The period of limitation for recovery of any Franchise Fee payable hereunder shall be four (4) years from the date on which payment was due. Subject to applicable law, if the audit discloses an underpayment by an amount in excess of five thousand dollars ($5,000), Grantee will reimburse Grantor for reasonable audit costs.

Article VI. Service

Section 6.1 Nondiscrimination; Privacy

a. Grantee shall not deny service, deny access or otherwise discriminate against Subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex or any other basis precluded by law.

b. Grantee shall fully comply with the privacy rights of Subscribers as contained in Section 631 of the Cable Act.

Section 6.2 Extension of Cable Service

a. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable as measured from Grantee's closest trunk line or distribution cable that is capable of delivering Cable Service as of the date of such request for service. If such residence is located within one hundred fifty (150) feet of Grantee's trunk line or distribution cable, the Cable Service will be provided at Grantee's published rate for Standard Installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service and into any annexed area which is not contiguous to the present Service Area of the Grantee as long as said circumstance does not constitute a violation under the Cable Act to assure that access to Cable Services is not denied to any group of potential residential cable Subscribers because of the income of those residents.

b. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.2 above, the Grantee shall only be required to extend the Cable System to Subscriber/Customer(s) in that area if the Subscribers are willing to pay the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any installation charges to extend the Cable System from the tap to the residence. However, the connection charge shall not exceed Grantee's actual costs for the distance exceeding one hundred fifty (150) feet for each potential Subscriber, and each potential Subscriber shall only be required to pay their proportionate share of construction costs related to the provision of Cable Services to their property.

Section 6.3 **Customer Service**

a. Customer Service Standards. Grantee shall comply with customer service standards required by the FCC as set forth in Part 76 of Title 47 of the Code of Federal Regulations.

b. Continuous Service.

It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to Grantee are honored, subject to the terms and conditions of this Franchise.

Section 6.4 **Subscriber Bills and Notices**

Grantee shall comply with the notice requirements in Subpart T of Part 76 of the FCC's rules and regulations, as such may be amended from time to time.

Section 6.5 **Rate Regulation**

Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, in Grantor's sole discretion. If and when exercising rate regulation, Grantor shall abide by the terms and conditions set forth by the FCC.

Section 6.6 **Annexation by Grantor**

The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee, which notice shall include each site address to be annexed as recorded on county assessment and tax rolls. Such annexed area will be subject to the provisions of this Franchise upon written notice from the Grantor. Any identified Subscriber addresses shall be included in Grantee franchise fee calculations within thirty (30) days after Grantee's receipt of the annexation notice. All notices due under this Section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 9. Upon request and if reasonably available, Grantor will also provide addresses and maps of annexed areas in a digital format. In any audit of Franchise Fees due under this Agreement, Grantee shall not be liable for Franchise Fees on annexed areas unless and until Grantor has provided the notice by certified mail that meets the standards set forth in this Section.

Section 6.7 **Emergency Alert System**

Grantee agrees at all times to comply with Federal and State EAS rules as required in 47 C.F.R. Part 11 or as amended.

Article VII. Service to Public Buildings; Community Programming

Section 7.1 **Service to Public Buildings**

Grantee shall provide, without charge, one (1) outlet and equipment for Basic and Expanded Cable Service to all elementary and secondary Public School instructional buildings and public library buildings within the Service Area and located within one hundred twenty-five (125) feet of Grantee's distribution plant. Additionally, upon written request from Grantor, Grantee shall provide, without charge, one (1) activated outlet and equipment of Basic Cable Service to up to five (5) publicly owned or publicly operated buildings, provided that the buildings are located within one hundred twenty-five aerial feet (125') of the existing distribution Cable System that is actively delivering Cable Service, or if the Grantor agrees to pay the additional cost for non-Standard Installation. Nothing in the preceding sentence shall require Grantor to make any request to Grantee to continue to receive, without charge, any Basic Cable Service provided to publicly owned or operated buildings as of the effective date of this Franchise. The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Grantor shall take

reasonable precautions to prevent any inappropriate use of or loss or damage to the Grantee's Cable System.

Section 7.2 Public Education & Government (PEG) Channel

a. Grantee shall continue to provide one (1) channel[s] on the Cable System for use by Grantor for non-commercial, video programming for Public, Education and Government access ("PEG").

b. The PEG channel(s) shall, to the extent required by law, be placed on Franchisee's lowest cost level of Cable Service available to Subscribers. Throughout the term of the Franchise, all Subscribers shall be able to view the PEG channel(s) without additional equipment, fees or charges, other than equipment, including converters, required of all Subscribers at additional cost to view the non-PEG programming on the Subscriber's selected level of service.

c. Programming shall be produced in the Service Area, by those who reside in the Service Area or be of interest to Subscribers in the Service Area as reasonably determined by the Grantor.

d. For a period of two (2) years from the effective date (as provided in Section 11.1), the Grantor shall not be required to maintain any minimum programming on the PEG Channel. Thereafter, the Grantor shall provide at least one (1) hour of local programming on the PEG Channel in any six (6) month period. For the purposes of the above calculation: a) a program may not be repeated more than three (3) times in any consecutive six (6) month period; and b) time allocated to character-generated or similar programming shall not be included. In the event the programming levels set forth herein are not maintained, the Grantee may have the underutilized PEG Channel returned to the Grantee for the Grantee's use. The Grantee may utilize the PEG Channel only after giving the Grantor not less than ninety (90) days notice and the Grantor fails to maintain the minimum programming levels set forth herein during those ninety (90) days. The Grantor may request return of the PEG Channel used by the Grantee at any time, which request for return shall be accompanied by a showing that the Grantor's intended use for the PEG Channel will, or is reasonably likely to, meet the programming requirements set forth in this Section. The Grantee shall, within ninety (90) days of the date of the written request, cease use of and return the PEG Channel to the Grantor.

e. When the PEG channel(s) required pursuant to this Section is utilized seventy percent (70%) of the time, five (5) days per week, Monday through Friday, for a consecutive twelve (12) hour block during the hours from 11:00 AM to 11:00 PM, during ten (10) consecutive weeks, Grantee shall make available an additional PEG channel upon the same conditions as the original PEG channel within ninety (90) days of a written notice from Grantor. For the purposes of the above percentage calculation: a) a program may not be repeated more than three (3) times in any consecutive ten (10) week period; and b) time allocated to character-generated or similar programming shall be excluded.

f. Grantee shall not be responsible for operating and managing the PEG channel(s) including approving any or all PEG programming and/or for obtaining any necessary releases from programmers or another Person to show such content on the PEG channel(s). Grantee shall not exercise any editorial control over the PEG channel(s), except as permitted in Section 611(e) of the Cable Act (47 U.S.C. § 531(e)).

g. Grantor reserves the right to permit a third party to operate and/or manage the PEG channel(s) on Grantor's behalf. The PEG channel(s) shall not be used for commercial purposes, including but not limited to leasing capacity or advertising.

h. Grantee shall continue to provide all existing connection(s) of the PEG access channel(s) from Grantee's headend to the location designated by Grantor, in

place as of the effective date of this Franchise at no cost to Grantor. After the effective date, any connections to the Grantee's headend to enable transmission of PEG access programming shall be requested in writing by the Grantor and shall be provided by Grantee as soon as reasonably possible. The cost for such connections shall be paid by the Grantor and may be paid for with the PEG fee set forth below. Grantee shall, at no cost to the Grantor, provide and maintain the equipment necessary for transmission of PEG programming to Subscribers on the PEG channel(s). Grantee may recover from Subscribers such equipment costs in accordance with Section 7.2.(i). For the purposes of this subsection, "connections" means the physical connection between the PEG access origination point and the Grantee's headend, including cable, fiber (if used) and conduits. For purposes of this subsection, "equipment" means any equipment necessary to transport the PEG signal from outside the Grantor's building demarcation point to the Grantee's headend, as well as any equipment in the Grantee's headend necessary to transmit the programming to Subscribers, and the maintenance of all the foregoing.

i. Grantee shall provide a one-time PEG Access grant in the amount of twenty five thousand dollars ($25,000), payable to the Grantor within sixty (60) days of the Effective Date. The Grantee shall be permitted to recover such capital costs from Subscribers as allowed by federal law. Grantor and Grantee acknowledge that pursuant to current federal law (47 U.S.C. § 542(g)(2)(C)) PEG funds are only to be used for capital equipment costs and not for operational costs.

j. Grantor shall account for all PEG capital fees and equipment separately from other funds and consistent with Oregon Local Budget Law and other applicable State and Federal laws. PEG capital support shall be for the exclusive use of the Grantor or any designated access provider and shall not be used for purposes other than as described in this Franchise. Except as otherwise set forth in this Section 7, the Grantor shall be responsible for installing, operating, maintaining and replacing the equipment purchased as necessary.

k. Upon thirty (30) days notice from Grantee, but not more than once annually, Grantor shall provide Grantee with a report detailing how the capital PEG support funds were used.

l. Grantor shall permit any duly authorized representative of the Grantee, upon receipt of thirty (30) days advance written notice, to examine during normal business hours and on a non-disruptive basis, any and all records and equipment to ensure the Grantor's compliance with this Section.

Section 7.3 Access and Community Support Not Franchise Fees

Subject to applicable law, the Grantee agrees that any PEG capital support provided pursuant to this Section shall in no way modify or otherwise affect the Grantee's obligations to pay Franchise Fees to the Grantor. The Grantee agrees that although the sum of Franchise Fees and PEG capital support as set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, PEG capital support shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise, subject to applicable law. In the event Grantee deducts from any Franchise Fee payment any amounts or costs required in this Section, Grantee shall make best efforts to provide the Grantor written notice at least 30 days prior to implementing the deduction.

Article VIII. Insurance & Indemnification

Section 8.1 Insurance Requirement

a. Grantee shall maintain, throughout the Term of this Franchise, insurance in amounts no less than the following:

Workers Compensation – Statutory Limits

Commercial General Liability: $2,000,000 per occurrence, Combined Single Liability (CSL); $2,000,000 General Aggregate

Auto Liability including coverage on all owned, non-owned hired autos: $1,000,000 per occurrence, CSL

Umbrella Liability: $2,000,000 per occurrence, CSL

b. Grantor shall be added as an additional insured arising out of work performed by Charter to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
c. Grantee's insurance carrier will endeavor to provide advance written notice of cancellation to the Grantor for any reason other than non-payment of premium. Notice of cancellation to the Grantor may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email address provided by the Grantor. Upon policy expiration or change of insurance carrier, Certificates of Insurance will be provided within thirty (30) days after policy renewal or replacement.
d. The limits of the insurance as provided herein shall be subject to any changes as to the maximum limits of tort liability imposed on municipalities of the State of Oregon during the term of this Franchise. Upon notice from Grantor of such changes, which must be made in writing and signed by the Grantor and Grantee, the Grantee shall increase the limits required in this Section 8.1 to at least the maximum limits within thirty (30) days.
e. Grantee shall furnish Grantor with current certificates of insurance within ninety (90) days of the effective date of this Franchise.

Section 8.2 **Indemnification**

Grantee shall, by acceptance of the Franchise granted herein, defend, indemnify and hold harmless Grantor, its officers, agents and employees, from and against all claims, liabilities, damages and penalties, including but not limited to attorney fees, arising as a result of construction, operation and maintenance of the Cable System within the Service Area, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, Notwithstanding the foregoing, Grantee shall not be obligated to indemnify the Grantor for claims, damages and penalties caused by the negligence, gross negligence or willful misconduct of Grantor, its officers, agents and employees, including any use of any Public, Education and Government (PEG) channels, funding and facilities. Grantor shall give Grantee written notice within ten (10) days of receipt of any claim or lawsuit subject to this Franchise, and Grantor may retain its own separate counsel at its sole cost and expense.

Article IX. Notices

Section 9.1 **Notice to Grantor**

Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express. Changes in names and addresses may be made at any time with proper notice.

City of Klamath Falls
222 S. 6th Street
Klamath Falls, OR 97601

Section 9.2 **Notice to Grantee**
Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to Persons at the addresses set forth below, or by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express. Changes in names and addresses may be made at any time with proper notice. Grantee shall provide thirty (30) days written notice to Grantor of any changes in rates, programming services or channel positions using any reasonable written means.

Attn: Director, Government Relations
Charter Communications
222 NE Park Plaza Drive, Suite #231
Vancouver, WA 98684

With a copy to:

Attn: Vice President, Government Relations
Charter Communications
12405 Powerscourt Drive
St. Louis, MO 63131

Article X. Miscellaneous Provisions

Section 10.1 **Compliance with Local, State & Federal Law.**
Grantee shall at all times comply with all applicable State and Federal laws, and local laws pursuant to Section 3.3, Section 4.3.b, or as otherwise expressly provided herein, and the applicable rules and regulations of administrative agencies. Grantor and Grantee reserve all rights they each may possess under law, unless expressly waived herein.

Section 10.2 **Severability.**
If any Section, term, word, phrase or part of this Franchise, or any other portion thereof, is held invalid by a court of competent jurisdiction, all remaining Sections, terms, words, phrases or other parts shall remain in full force and effect.

Section 10.3 **Force Majeure.**
In the event either party is prevented or delayed in its performance of any of its obligations under this Franchise by reason of fires, hurricanes, tornadoes, earthquakes or other acts of God, unavoidable casualty, insurrections, war, riot, sabotage, unavailability of materials or supplies, vandalism, strikes, boycotts, lockouts, labor disputes, act or omission or delays by utility companies upon whom that party is dependent for pole attachments or easement use, that party shall not be held in default or noncompliance with the provisions of this Franchise nor shall it suffer any penalty relating thereto. This provision includes, but is not limited to, work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Grantee to foresee or control.

Section 10.4 Descriptive Headings.
The captions to Articles and Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

Section 10.5 Legal Action.
The venue of any legal action brought against one party by the other arising out of this Franchise shall be within Klamath County, Oregon or the United States District Court for the District of Oregon. This Franchise shall be governed by the laws of the State of Oregon and by federal law.

Section 10.6. Entire Agreement.
This Franchise sets forth the entire Agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

Section 10.7 Public Notice.
The Grantor shall provide public notice of any public meeting relating to this Franchise or any such grant of additional franchises by the Grantor to any other Person(s) to provide Cable Services consistent with Oregon law relating to public meetings.

Article XI. Term & Renewal

Section 11.1 Effective Date & Term

a. This Franchise shall take effect and be in full force on _____, 2016, provided that Grantee returns an executed original version of this Franchise to the Grantor not more than sixty (60) days from the date the Grantor executes this Franchise. If Grantee does not accept this Franchise as required in this Section, the Franchise shall be null and void.
b. This Franchise shall expire ten (10) years from the effective date, unless extended by the mutual written consent of both parties.
c. Grantee may seek renewal of this Franchise in accordance with the provisions of Section 626 of the Cable Act, or any such successor statute. In the event of a denial of renewal of this Franchise, Grantee shall remove its Cable System from the Streets of Grantor, or abandon the Cable System in place if permitted in writing by the Grantor.

GRANTOR:

Considered and approved on this _____ day of _____, 2016 (Ordinance No. _____),

On Behalf of the City of _____, Oregon

By: _____
Signature

Printed Name_____

Title: _____

Date: _____

GRANTEE:

Accepted this _____ day of _____, 2016, subject to applicable Federal, State and local law:

FALCON CABLE SYSTEMS COMPANY II, L.P.
By: Charter Communications VII, LLC its General Manager
By: Charter Communications Inc., its Manager

By: _____

Printed Name: Mark E. Brown
Title: Vice-President, Government Affairs
Charter Communications

ORDINANCE NO. 16-____

AN ORDINANCE AMENDING CITY CODE SECTION 6.250 TO PROHIBIT SKATEBOARDING, BICYCLING OR ROLLER SKATING IN SUGARMAN'S CORNER AND DECLARING A LEGISLATIVE EMERGENCY

WHEREAS, City Code Section 6.250 prohibits skateboarding and roller skating in designated locations; and

WHEREAS, the City recently opened Sugarman's Corner and within a few weeks, there are indications of grinding by skateboarding and bicycling on the newly installed planters; and

WHEREAS, the City wishes to amend Section 6.250 to include Sugarman's Corner; and NOW, THEREFORE,

THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

Section 1.

Section 6.250 is amended as follows:

6.250 PROHIBITED AREAS

(1) No person shall skate or travel by means of a skateboard or roller skates within the Veteran's Memorial area, at Veterans Memorial Park or Sugarman's Corner, or upon, over or along the streets or sidewalks of the following thoroughfares in the City:

Main Street from Riverside Drive to the Government Canal; East Main Street from Main Street to Sixth Street; Klamath Avenue from Second Street to Eleventh Street; Ninth Street from Klamath Avenue to Prospect Street; Prospect Street from Ninth Street to Upham Street; Upham Street from Worden Street to Oregon Avenue; Oregon Avenue from Upham Street to Biehn Street; Biehn Street from Oregon Avenue to Kit Carson Way; Tenth Street from Main Street to the Government Canal; Esplanade from Main Street to the Government Canal; Riverside Street from City limits to Main Street; Eighth Street from Klamath Avenue to Jefferson Street; Sixth Street from Pine Street south to City limits; Pine Street from Second Street to Eleventh Street; Eleventh Street from Klamath Avenue to Upham Street; Seventh Street from Klamath Avenue to Pine Street; Fifth Street from Pine Street to Sixth Street; Fourth Street from Klamath Avenue to Pine Street; Third Street from Klamath Avenue to Pine Street; Second Street from Klamath Avenue to Pine Street.

(2) No person shall ride a bicycle upon a sidewalk along the streets described in Subsection (1).

(3) As used in this Section, "skateboard" means a board of any material, natural or synthetic, with wheels affixed to the underside, designed to be ridden by a person.

(4) No person shall ride a bicycle within Sugarman's Corner.

Section 2.

It being necessary for the preservation of public peace, health, safety and welfare and for this Ordinance be enacted immediately, a legislative emergency due to the continuing damage at the site listed above, an emergency is hereby declared to exist and this Ordinance shall take effect and be in full force on the date of its passage by the City Council and approval by the Mayor.

Passed by the Council of the City of Klamath Falls this ___day of _____, 2016.

Presented to the Mayor, approved and signed this ____day of _____, 2016.

_____
Mayor

ATTEST:

_____
City Recorder

STATE OF OREGON)
COUNTY OF KLAMATH) ss.
CITY OF KLAMATH FALLS)

I, _____, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the ____day of ____, 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

_____
City Recorder

7