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# City of Warrenton City Commission

## Agenda

City Hall, 225 S. Main Warrenton, OR 97146

Tuesday, September 24, 2024

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\*\*\*The meeting will be broadcast via Zoom at the following link\*\*\*

<https://us02web.zoom.us/j/5332386326?pwd=VHNVVXU5blkxbDZ2YmxlSWpha0dhUT09#success>

Meeting ID: 533 238 6326 | Passcode: 12345 | Dial-in Number: 253-215-8782

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**Public Comment:** To provide public comment, participants should register prior to the meeting. All remarks will be addressed to the whole City Commission and limited to 3 minutes per person. The Commission reserves the right to delay any action, if required, until such time as they are fully informed on a matter. Once your public comment is submitted it becomes part of permanent public record.

You may provide public comment using the following methods:

1. In-person: Complete a public comment card and submit to the City Recorder prior to the start of the meeting.
  2. Via Zoom: Register with the City Recorder, at [cityrecorder@warrentonoregon.us](mailto:cityrecorder@warrentonoregon.us) no later than 3pm the day of the meeting. Please ensure that your zoom name matches the name registered to comment.
  3. Written comments: Submit via e-mail to the City Recorder, at [cityrecorder@warrentonoregon.us](mailto:cityrecorder@warrentonoregon.us), no later than 3:00 p.m. the day of the meeting.
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## City Commission Regular Meeting: 6:00 PM

1. **Call to order**
2. **Pledge of Allegiance**
3. **Consent Calendar**
  - A. City Commission Meeting Minutes – 9.10.24
  - B. City Manager Contract Amendment
  - C. Police Department Monthly Report – August 2024
4. **Commissioner Reports**
5. **Public Comment**
6. **Public Hearings - None**
7. **Business items**
  - A. Consideration of Ordinance No. 1279; Amending Chapter 16.68 of Warrenton Comprehensive Plan Correcting the Urban Growth Boundary Map, Adding Related Text, and Recommending Zoning Districts – Second Reading and Adoption
  - B. Consideration of Mini Storage Lease Agreement – NW Smart Storage
  - C. Consideration of Ordinance No. 1281; Updating and Replacing WMC Chapter 3.28; Public Contracting

D. Consideration of October 8<sup>th</sup> City Commission Meeting Cancellation

**8. Discussion Items – None**

**9. Good of the Order**

**10. Executive Session**

*Under the authority of ORS 192.660(2)(h); to consult with counsel concerning the legal rights and duties of public body with regard to current litigation or litigation likely to be filed.*

**11. Adjournment**

**Warrenton City Hall is accessible to the disabled. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting Dawne Shaw, City Recorder, at 503-861-0823 at least 48 hours in advance of the meeting so appropriate assistance can be provided.**



**City of Warrenton City Commission**  
**Meeting Minutes**  
**City Hall, 225 S. Main Warrenton, OR 97146**  
**Tuesday, September 10, 2024**

1. **City Commission meeting called to order at 6:00 pm.**
2. **Pledge of Allegiance**

| <b>Commission Members</b> | <b>Present</b> | <b>Excused</b> |
|---------------------------|----------------|----------------|
| Gerald Poe                | X              |                |
| Jessica Sollaccio         | X              |                |
| Tom Dyer                  | X              |                |
| Paul Mitchell             | X              |                |
| Henry Balensifer, Mayor   | X              |                |

| <b>Staff Members Present</b>     |   |
|----------------------------------|---|
| City Manager Esther Moberg       | Police Chief Mathew Workman                 |
| Planning Director Matthew Ellis  | Public Works Director Greg Shafer           |
| City Recorder Dawne Shaw         | Fire Chief Brian Alsbury                    |
| Finance Director Jessica Barrett | Public Works Operation Manager Jim McCarthy |

**3. Consent Calendar**

\*Items on the Consent Calendar have previously been discussed and/or are considered routine. Approval of the Consent Calendar requires a motion, a second, and no discussion, unless requested by a member of the City Commission.

- A. City Commission Meeting Minutes – 8.27.2024
- B. Letter to FEMA on Bi-Op
- C. Port of Astoria – CBP Letter

|                  |  |            |            |                |                |
|------------------|--|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to approve the consent calendar as presented. |            |            |                |                |
| <b>Moved:</b>    | Mitchell   |            |            |                |                |
| <b>Seconded:</b> | Poe  | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe  | X          |            |                |                |
|                  | Sollaccio  | X          |            |                |                |
|                  | Dyer   | X          |            |                |                |
|                  | Mitchell   | X          |            |                |                |
|                  | Balensifer   | X          |            |                |                |
| <b>Passed:</b>   | 5/0  |            |            |                |                |

**4. Commissioner Reports**

Commissioner Sollaccio gave an update on Spruce Up Warrenton events, and also noted an update on the Parks Alliance board meeting.

Mayor Balensifer noted the Parks Advisory Board completed long range strategic plan for the parks, regarding the investments the Parks Alliance is making for the parks.

**5. Public Comment**

Emily Reyneke spoke about safety concerns and asked the commission to hold businesses accountable.

Mayor Balensifer noted item 7A is being withdrawn, as it will be re-noticed for the second reading as a Public Hearing at the next meeting.

**6. Public Hearing**

- A. Ordinance No. 1279; Amending Chapter 16.68 of Warrenton Comprehensive Plan Correcting the Urban Growth Boundary Map, Adding Related Text, and Recommending Zoning Districts:

Mayor Balensifer opened the Public Hearing on the matter of amending the comprehensive plan. Formalities followed. No conflicts of interest or ex parte contacts were reported. Planning Director Matthew Ellis presented his staff report. He noted the Commission previously adopted Ordinance No. 1262, amending the Urban Growth Boundary. He stated that during the post acknowledgement plan amendment, it was noted that the ordinance was not adopted following procedures laid out in the Warrenton Municipal Code. Per DLCD, it is necessary to have a Public Hearing for both the Planning Commission and City Commission. DLCD has advised that we bring a new ordinance forward in a Public Hearing to the City Commission. Mayor Balensifer asked for public comments. No one spoke in favor, opposition or neutral. Mayor Balensifer asked if the new ordinance also needed to go back to the Planning Commission; Mr. Ellis confirmed for the record, that it was not necessary, per DLCD, since the new ordinance language has not been altered from Ordinance No. 1262, and a public hearing has already been held at the Planning Commission level. There being no further comments, Mayor Balensifer closed the public testimony and the public hearing.

|                  |  |            |            |                |                |
|------------------|--|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to conduct the first reading, by title only, of Ordinance No. 1279, |            |            |                |                |
| <b>Moved:</b>    | Mitchell   |            |            |                |                |
| <b>Seconded:</b> | Dyer   | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe  | X          |            |                |                |
|                  | Sollaccio  | X          |            |                |                |
|                  | Dyer   | X          |            |                |                |
|                  | Mitchell   | X          |            |                |                |
|                  | Balensifer   | X          |            |                |                |
| <b>Passed:</b>   | 5/0  |            |            |                |                |

Mayor Balensifer conducted the first reading, by title only, of Ordinance No. 1279; an Ordinance Amending the City of Warrenton Comprehensive Plan Correcting the Urban Growth Boundary Map, Adding Related Text, and Recommending Zoning Districts.

**7. Business Items**

- A. *Withdrawn from the Agenda*
- B. Consideration of Ordinance No. 1277; Amending Chapter 16.68 of Warrenton Municipal Code; Establishing Regulations for Commercial Industrial Zone:

Mr. Ellis presented Ordinance No. 1277 for its second reading and adoption. He noted language regarding smell in Subsection D, has been amended per direction from the commission. Brief discussion followed.

|                  |   |            |            |                |                |
|------------------|---|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to conduct the second reading, by title only, of Ordinance No. 1277. |            |            |                |                |
| <b>Moved:</b>    | Dyer  |            |            |                |                |
| <b>Seconded:</b> | Poe   | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe   | X          |            |                |                |
|                  | Sollaccio   | X          |            |                |                |
|                  | Dyer  | X          |            |                |                |
|                  | Mitchell  | X          |            |                |                |
|                  | Balensifer  | X          |            |                |                |
| <b>Passed:</b>   | 5/0   |            |            |                |                |

Mayor Balensifer conducted the second reading, by title only, of Ordinance No. 1277; an ordinance amending Chapter 16.68 of the Warrenton Municipal Code to establish regulations for the Commercial Industrial (CI) District.

|                  |                                   |            |            |                |                |
|------------------|-----------------------------------|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to adopt Ordinance No. 1277. |            |            |                |                |
| <b>Moved:</b>    | Poe                               |            |            |                |                |
| <b>Seconded:</b> | Dyer                              | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe                               | X          |            |                |                |
|                  | Sollaccio                         | X          |            |                |                |
|                  | Dyer                              | X          |            |                |                |
|                  | Mitchell                          | X          |            |                |                |
|                  | Balensifer                        | X          |            |                |                |
| <b>Passed:</b>   | 5/0                               |            |            |                |                |

C. Consideration of Resolution No. 2690; Revising Planning Application Fees:

Mr. Ellis presented Resolution No. 2690 for its second reviewed a resolution modifying the Planning Application Fee Schedule. Mr. Ellis noted for the record, that only those applications that trigger the substantial improvement, substantial damage improvement or new construction, would be assessed the Floodplain Development permit fee. Brief discussion followed.

|                  |  |            |            |                |                |
|------------------|--|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to conduct the second reading, by title only, of Resolution No. 2690. |            |            |                |                |
| <b>Moved:</b>    | Dyer   |            |            |                |                |
| <b>Seconded:</b> | Sollaccio  | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe  | X          |            |                |                |
|                  | Sollaccio  | X          |            |                |                |
|                  | Dyer   | X          |            |                |                |
|                  | Mitchell   | X          |            |                |                |
|                  | Balensifer   | X          |            |                |                |
| <b>Passed:</b>   | 5/0  |            |            |                |                |

Mayor Balensifer conducted the second reading, by title only, of Resolution No. 2690; Revising Resolution No. 2672 Planning Application Fees.

|                  |                                    |            |            |                |                |
|------------------|------------------------------------|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to adopt Resolution No. 2690. |            |            |                |                |
| <b>Moved:</b>    | Poe                                |            |            |                |                |
| <b>Seconded:</b> | Dyer                               | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe                                | X          |            |                |                |
|                  | Sollaccio                          | X          |            |                |                |
|                  | Dyer                               | X          |            |                |                |
|                  | Mitchell                           | X          |            |                |                |

|                |            |   |  |  |  |
|----------------|------------|---|--|--|--|
|                | Balensifer | X |  |  |  |
| <b>Passed:</b> | 5/0        |   |  |  |  |

D. Consideration of Resolution No. 2679; New Land Uses to Transportation SDC Schedule:

Mr. Shafer presented his staff report and discussed an update to the Schedule of Land Uses for Transportation System Development Charges (SDC). Discussion followed on SDCs for Food Cart Pods.

|                  |  |            |            |                |                |
|------------------|--|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to conduct the second reading, by title only, of Resolution No. 2679. |            |            |                |                |
| <b>Moved:</b>    | Mitchell   |            |            |                |                |
| <b>Seconded:</b> | Dyer   | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe  | X          |            |                |                |
|                  | Sollaccio  | X          |            |                |                |
|                  | Dyer   | X          |            |                |                |
|                  | Mitchell   | X          |            |                |                |
|                  | Balensifer   | X          |            |                |                |
| <b>Passed:</b>   | 5/0  |            |            |                |                |

Mayor Balensifer conducted the second reading by title only, of Resolution No. 2679; a Resolution updating the schedule for Land Uses for Transportation System Development Charges.

|                  |                                    |            |            |                |                |
|------------------|------------------------------------|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to adopt Resolution No. 2679. |            |            |                |                |
| <b>Moved:</b>    | Poe                                |            |            |                |                |
| <b>Seconded:</b> | Dyer                               | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe                                | X          |            |                |                |
|                  | Sollaccio                          | X          |            |                |                |
|                  | Dyer                               | X          |            |                |                |
|                  | Mitchell                           | X          |            |                |                |
|                  | Balensifer                         | X          |            |                |                |
| <b>Passed:</b>   | 5/0                                |            |            |                |                |

E. Consideration of Safety Fair Road Closure:

Fire Chief Brian Alsbury requested a road closure for the Safety Fair on September 21<sup>st</sup> from 10 am to 2 pm. Brief discussion followed.

|                  |   |            |            |                |                |
|------------------|---|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to approve the request to close SW Main Court from SW 2 <sup>nd</sup> to SW 3 <sup>rd</sup> on Saturday, September 21, 2024, from 10 am to 2 pm. |            |            |                |                |
| <b>Moved:</b>    | Dyer  |            |            |                |                |
| <b>Seconded:</b> | Poe   | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe   | X          |            |                |                |
|                  | Sollaccio   | X          |            |                |                |
|                  | Dyer  | X          |            |                |                |
|                  | Mitchell  | X          |            |                |                |
|                  | Balensifer  | X          |            |                |                |
| <b>Passed:</b>   | 5/0   |            |            |                |                |

Mayor Balensifer noted Business Item 7F will be considered after Executive Session, so they will go straight to Discussion Items and Good of the Order.

**8. Discussion Items – None**

**9. Good of the Order**

City Manager Esther Moberg gave an update on hiring process for the Code Compliance Officer. Discussion followed on the hiring timeline for Police Officers.

**10. Executive Session**

At 6:28 pm., Mayor Balensifer recessed the regular meeting and announced the Commission will now meet in executive session under authority of ORS 192.660(2)(d); *to conduct deliberations with persons designated by the governing body to carry on labor negotiations.*

At 6:49 pm., Mayor Balensifer reconvened the regular meeting.

**(7.F) Consideration of Collective Bargaining Agreement – General Unit/AFSCME**

|                  |  |            |            |                |                |
|------------------|--|------------|------------|----------------|----------------|
| <b>Motion:</b>   | Move to approve the Collective Bargaining Agreement between the City of Warrenton and Local 2746-5 and Council 75 of AFSCME, AFL-CIO |            |            |                |                |
| <b>Moved:</b>    | Poe  |            |            |                |                |
| <b>Seconded:</b> | Sollaccio  | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Recused</b> |
| <b>Vote:</b>     | Poe  | X          |            |                |                |
|                  | Sollaccio  | X          |            |                |                |
|                  | Dyer   | X          |            |                |                |
|                  | Mitchell   | X          |            |                |                |
|                  | Balensifer   | X          |            |                |                |
| <b>Passed:</b>   | 5/0  |            |            |                |                |

**11. Adjournment**

There being no further business, Mayor Balensifer adjourned the meeting at 6:50 pm.

Approved:

Attest:

\_\_\_\_\_  
Henry A. Balensifer III, Mayor

\_\_\_\_\_  
Dawne Shaw, CMC, City Recorder

**CITY MANAGER  
FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT**

THIS FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT (“Fourth Amendment”) made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Warrenton, a municipal corporation of the State of Oregon, hereinafter called "City" and Esther Moberg, hereinafter called "Manager."

RECITALS:

WHEREAS, City employs Manager as its City Manager pursuant to the Employment Agreement entered into by and between City and Manager on August 5, 2022, and attached to this Fourth Amendment as Exhibit 1 and incorporated herein by this reference; and

WHEREAS, City and Manager amended the Employment Agreement on April 25, 2023 (“First Amendment”), and on November 14, 2023, (“Second Amendment”), and on June 24, 2024, (“Third Amendment”) which are attached to this Fourth Amendment as Exhibits 2, 3, and 4, respectively, and are incorporated herein by this reference; and

WHEREAS, City and Manager desire to amend the Third Amendment as follows.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above and the mutual covenants contained herein, City and Manager agree as follows:

**SECTION 1. AMENDED TERMS**

1.1 The parties agree to amend Section 4.1 of the Employment Agreement, as amended by the First, Second, and Third Amendments, as follows:

“Effective on and retroactive to July 1, 2024, the City agrees to pay the Manager an annual salary of one hundred and twenty-eight thousand dollars (\$128,000) payable on the same schedule as other employees of the City are paid. Manager shall be entitled to receive a Cost of Living Adjustment (COLA) to her salary in the same manner as and in the amount equal to the highest COLA granted to bargaining unit-represented City employees.

The City may increase, but not decrease, the Manager’s compensation without the need to amend this Agreement. The Manager compensation may be adjusted based on merit in conjunction with an evaluation conduction pursuant to Section 5.

Upon receipt of Manager's Masters in Public Administration, Manager's annual salary shall be increased by five thousand dollars (\$5,000)."

**SECTION 2. UNAMENDED TERMS**

All terms of the Employment Agreement, as amended by the First, Second, and Third Amendments, that are not specifically amended by this Fourth Amendment shall continue in full force and effect.

For the City:

|   |  |
|---|--|
| _____   | _____  |
| Henry A. Balensifer III<br>Mayor, City of Warrenton | Esther Moberg<br>City Manager, City of Warrenton |
| Date: _____   | Date: _____                                      |

# Exhibit 1

## CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this August 5, 2022, by and between the City of Warrenton, a municipal corporation of the State of Oregon, hereinafter called "City" and Esther Moberg, hereinafter called "Manager."

WITNESSETH:

City desires to employ the services of Manager as City Manager of the City of Warrenton as provided by the Charter of the City of Warrenton and Esther Moberg desires to accept said employment as the City Manager for the City of Warrenton, Oregon.

AGREEMENT

NOW, THEREFORE, in consideration of the above and the mutual covenants contained herein, City and Manager agree as follows:

### **SECTION 1. EMPLOYMENT, DUTIES AND AUTHORITY**

Manager shall perform all duties required of the position of City Manager, including but not limited to, those duties and responsibilities outlined in the City Charter, in the job description attached hereto and incorporated in here as Exhibit A, and any other duties and responsibilities authorized or directed by City Commission. At the discretion of the Manager, any duties described above may be delegated to subordinate employees as appropriate. In performance of all duties and responsibilities, Manager shall abide by the policies, rules and directives of City Commission, shall inform City Commission before making any major decisions, and shall perform such duties and responsibilities in accordance with the Charter, ordinances of the City of Warrenton and laws of the State of Oregon and the United States. Manager shall abide by all the terms and conditions contained in the current Personnel Resolution of the City of Warrenton, as amended from time to time, or other personnel regulations. In the event of a conflict between the Personnel Resolution or the regulations of this Agreement, this Agreement shall control.

### **SECTION 2. TERM**

2.1 At-Will Employment. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Commission to terminate the services of the Manager at any time, from her position with the City, subject only to the provisions set forth in this Agreement.

2.2 Length of Agreement. This Agreement shall be in effect September 19, 2022 and extend through August 30, 2024. By mutual written agreement this Agreement may be extended for an additional two (2) year term.

## SECTION 3. TERMINATION AND SEVERANCE

3.1 Termination without Cause. This Agreement may be terminated by either the City or Manager for any reason whatsoever.

3.2 Termination for Cause. Manager's employment with the City may be terminated immediately in the sole discretion of the City (acting by and through its City Commission) upon the occurrence of any of the following events:

- a. Manager fails or refuses to comply with the written policies, standards, and regulations of the City that are now in existence or that may, from time to time be established;
- b. The City has reasonable cause to believe Manager has committed fraud, misappropriated City funds, goods or services to either her own or some other private third party's benefit and/or other act(s) of misconduct which the City Commission believes is/are detrimental to the City and/or its interests;
- c. The Manager fails to comply with the residency terms outlined below;
- d. The Manager is unable to perform her job functions.

3.3 Not For Cause Termination. In the event Manager is involuntarily terminated by the City before the expiration of this Agreement (albeit Manager is willing and able to perform her duties) for reasons other than those set out above in subsection 3.2, then in that event, Manager shall be entitled to (and City agrees to pay) a severance payment equal to the value of four (4) months' salary. After three (3) years of continuous service, the Manager shall be entitled to (and the City agrees to pay) a severance payment equal to the value of six (6) months of salary. Payment of the severance shall be made monthly, each payment being the value of one month's salary. The right to said payment shall cease if, during the period of the scheduled payments, Manager accepts employment with another employer. Manager has an affirmative obligation to notify the City upon acceptance of other employment. If the City does not renew the Agreement pursuant to subsection 2.2, the Agreement will be deemed expired, and no severance payment will be due.

3.4 Reduction in Salary. If the City reduces the salary or other financial benefits of Manager in greater percentage than an applicable across the board reduction for all City Department Heads, or if Manager resigns at the request of the City Commission (for reasons other than those set out in subsection 3.2), then Manager may deem this Agreement to be involuntarily terminated without cause and shall then be entitled to severance pay consistent with subsection 3.3 above.

3.5 Voluntary Resignation. If Manager voluntarily resigns her position with the City for any reason before expiration of this Agreement, then Manager shall give the City at least thirty (30) calendar days' written notice in advance, excluding accrued vacation, and Manager shall be available to serve during this period. The City Commission, however, shall have the discretion to decide whether Manager shall continue in his position during the notice period.

3.6 Accrued Leaves on Separation. Termination pursuant to subsection 3.3 or resignation pursuant to subsection 3.5 shall entitle Manager to a lump sum payment equivalent to all accrued and unused vacation within thirty (30) days of termination. If the City terminates Manager pursuant to subsection 3.2, Manager shall receive accrued and unused vacation.

## SECTION 4. COMPENSATION

4.1 Compensation. The City agrees to pay the Manager an annual salary of one hundred twenty thousand dollars (\$120,000) payable on the same schedule as other employees of the City are paid. Manager shall be entitled to receive a Cost of Living Adjustment (COLA) to her salary in the same percentage amount and at the same time as may be given to City's Department Heads.

The City may increase, but not decrease, the Manager's compensation without the need to amend this Agreement. The Manager compensation may be adjusted based on merit in conjunction with an evaluation conduction pursuant to Section 5.

4.2 Expenses and Vehicle Allowance. City shall reimburse Manager for all actual and necessary expenses other than vehicle expenses, as provided in the budget and as necessary to perform assigned duties and responsibilities. Supporting vouchers and receipts shall be provided by Manager for such expenditures according to City procedures.

The City agrees to pay the Manager, during the term of this Agreement and in addition to other salary and benefits herein provided, four hundred dollar (\$400) a month as a vehicle allowance to be used to purchase, lease, or own a vehicle and for related mileage expenses. If the Manager is required by her City employment to travel outside of Clatsop County on City business, the City shall reimburse her mileage at the IRS rate.

4.3 Cell Phone Allowance. The City agrees to either provide the Manager a cell phone or provide a cell phone allowance equal to that of other City employees and pursuant to City policy.

4.3 Professional Development and Organizations. The City encourages the Manager to attend the annual League of Oregon Cities (LOC) Conference, the spring and summer conferences for Oregon City/County Management Association (OCCMA), activities of the LOC, and conferences and meetings of state committees or commissions upon which the Manager serves as a member. City agrees to pay for attendance costs that may not be provided by OCCMA.

Attendance at out-of-state conferences and meetings, membership on state or national committees or commissions, and other official meetings or travel are reasonable for the professional advancement of the Manager. Such activities, however, requires prior approval by the City Commission. The City Commission, at its sole discretion, shall have the right to approve or disapprove such out-of-state membership or travel.

The City expressly authorizes membership of the Manager in ICMA, OCCMA, and shall pay Manager's membership fees to these organizations and any reasonable attendance costs at annual conferences and conventions associated with Manager's participation in ICMA, LOC, and OCCMA as approved in the City budget.

4.4 Warrenton Community Library fee. The City agrees to reimburse Employee for the annual out-of-city library card fee for the Warrenton Community Library each year.

## **SECTION 5. EVALUATION**

The City Commission shall evaluate the Manager annually prior to or near the Commission's regularly scheduled meeting in February 2022, and each year thereafter. All evaluations shall be communicated to the Manager consistent with Oregon Public Meetings Law. Such an evaluation may include merit salary adjustments, if appropriate.

## **SECTION 6. BENEFITS**

6.1 Health, Life, and Disability Insurance. The City agrees to provide health and life insurance for the Manager, spouse, and dependents under the same programs and policies as are provided for all other Department Heads.

6.2 Vacation. For the first three (3) years of employment Manager shall accrue vacation leave at a rate of eight (8) hours per month. Thereafter Manager, shall accrue vacation leave at the same rate as any other employee of her tenure.

6.3 Other Benefits. Except as expressly provided herein, Manager shall be entitled to all standard employee benefits as provided in the personnel policies of the City, or as may be otherwise agreed upon by both parties

## **SECTION 7. HOURS OF WORK AND OUTSIDE ACTIVITIES**

The parties acknowledge that the performance of the duties of City Manager constitutes a full-time job. The City Manager does not have set hours of work as the City Manager is expected to be available at all times. However, it is also recognized that the Manager must devote a great deal of her time outside of normal office hours to the business of the City, and to that end the parties recognize that the Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. Manager is an exempt professional from the overtime provisions of the federal Fair Labor Standards Act, and its counterpart in Oregon law.

## **SECTION 8. RESIDENCY REQUIREMENT**

The Commission recognize the Manager currently lives locally and will not require the Manager to relocate within the City limits. However, the City does require the Manager to provide notice of her intent to relocate further away from the City prior to doing so. After receiving such notice, or if no notice is given, the City Commission may exercise its option to terminate the Agreement with cause and no severance compensation as set forth under subsection 3.3.

## **SECTION 9. OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

All provisions of the City Charter, regulations and rules as they now exist, and hereafter may be amended, shall apply to the Manager as they would to other employees of the City, unless they conflict with the terms of this Agreement.

## SECTION 10. GENERAL PROVISIONS

10.1 Professional Liability. The City agrees to defend, hold harmless and indemnify Manager from any and all demands, claims, suits, actions and legal proceedings brought against Manager in her individual capacity, or in her official capacity as agent and employee of the City, consistent with the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300).

10.2 Modification. Nothing shall restrict the ability of the City and Manager to amend or adjust the terms of this Agreement. However, no amendment or adjustment shall be valid unless in writing and signed by both the City and Manager. Manager reserves the right to discuss the terms of this Agreement with the City Commission as a whole in either closed Executive Session or open Regular Session in accordance with Oregon Public Meetings Law.

10.3 Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected, and shall remain in full force and effect.

10.4 Rights and Duties. The rights and duties of the City and Manager shall survive the termination of this Agreement.

10.6 Integration. This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject

10.7 Bonding. City shall bear the full cost of any fidelity or other bonds required of Manager under any law or ordinance.

## SECTION 11. NOTICES

Notices pursuant to this agreement shall be given by deposit into the custody of the United States Postal Service, by certified mail, postage paid and addressed as follows:

CITY:

ATTN: City Recorder  
PO Box 250  
Warrenton, OR 97146

AND

CITY ATTORNEY:  
Beery Elsner & Hammond, LLP  
Attn: Ashley Driscoll  
1804 NE 45<sup>th</sup> Ave  
Portland, OR 97213 AND

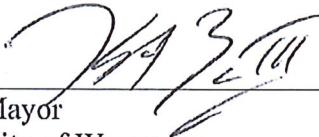
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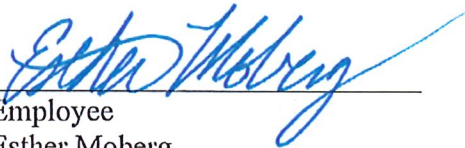
MANAGER:

Esther Moberg  
91012 Hwy 202  
Astoria, OR 97103

Alternately, notices required pursuant to this agreement may be served personally in the same manner as is applicable to civil judicial practice. Notice shall be deemed to be given as of the date mailed or personally served.

IN WITNESS WHEREOF, the City of Warrenton has caused this agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Attorney and the Manager.

  
\_\_\_\_\_  
Mayor  
City of Warrenton

  
\_\_\_\_\_  
Employee  
Esther Moberg

ATTEST:  
  
\_\_\_\_\_

APPROVED AS TO FORM:

# Exhibit A

## CITY OF WARRENTON CLASS SPECIFICATION

### CITY MANAGER

#### **DEFINITION**

Under the general direction of the City Commission, directs and coordinates the activities of all City departments and implements policy as established by the City Commission.

#### **DISTINGUISHING CHARACTERISTICS**

The position of City Manager is established by City Charter and is the administrative head of the City.

#### **EXAMPLES OF DUTIES**

The duties listed below are examples of the work typically performed by employees in this class. An employee may not be assigned all duties listed and may be assigned duties which are not listed below. Marginal duties (shown in *italics*) are those duties which are least likely to be essential functions for any single position in this class.

1. Meets with the City Commission in regular and special meetings, gives information and transmits special or regular reports covering the affairs and needs of the City and its varied issues of municipal operations; and advises Commission members in their deliberations on policy or legislative matters.
2. Meets with the public to provide information and assistance regarding City ordinances and policies; receives private citizen questions and complaints on a wide variety of issues and attempts to resolve problems to the satisfaction of all parties.
3. Directs staff in the administration of all ordinances and the provisions of all franchises, leases, contracts, permits, and privileges granted by the City.
4. Appoints and removes all City officers and employees except as otherwise provided by the City Charter; directly and through subordinate supervisors, directs and controls the work of City staff and City departments; assigns and transfers employees as necessary to obtain efficiency in City operations.
5. Administers the City personnel system including recruitment and selection, performance appraisals, collective bargaining, labor contract administration, grievance resolution and employee terminations.

City Manager  
Job Description  
Updated: 4/07

6. Supervises and participates in the preparation of the annual City budget as the Budget Officer; reviews and approves departmental budget requests for submission to the Commission as appropriate, submits the estimates of revenues and expenditures to the Budget Committee; prepares or directs the preparation of such special reports as the Budget Committee or City Commission may require.
7. Seeks out financial resources available to the City such as revenue sharing, economic development grants; supervises the preparation of special grant requests.
8. Meets with representatives of other cities, the county and other governmental agencies on varied problems involved in the coordination of City services and agreements with those of other governmental units; attends meetings of various bodies directly involved in the City's operation such as the Planning Commission and provides staff assistance where requested; corresponds with other governmental agencies, private groups, and individuals on varied aspects of City business.
9. Supervises the operation of all public utilities owned and operated by the City.
10. Serves as purchasing agent, approving purchase orders and payments.
11. Exercises general supervision over all City property.
12. Confers with City staff and others on varied operating and administrative problems, proposed and reviews departments plans, programs and procedures and suggests new innovations or methods to improve the standard of services rendered by the City.

## **QUALIFICATIONS FOR EMPLOYMENT**

### **Knowledge and Ability**

#### Knowledge of:

1. Municipal government organization, powers, functions and relationships with other governmental jurisdictions.
2. Principles and practices of public administration as applied to the management of diversified municipal government services.
3. Principles and practices of public budgeting, financial management, personnel management, and records management.

City Manager  
Job Description  
Updated: 4/07

4. Principles and methods used in employee-management negotiations, procurements, public works contract bidding and administration, and other aspects of municipal government operations.

Ability to:

1. Establish and maintain cooperative and harmonious working relationship with City legislative and administrative officials and employees, representatives of business and government organizations and the general public.
2. Develop and prepare effective and complete correspondence and administrative reports.
3. Make effective presentations to various groups.
4. Analyze complex problems and complete research in solving them.
5. Plan, assign, direct and review the work of others.
6. Analyze and implement municipal public service projects and programs.
7. Analyze public policy and present and apply finding.

**Experience and Training**

The knowledge, ability and skill listed above may be gained through various types of education, training and experience. A typical way to acquire the required knowledge, ability and skill is listed below.

Seven years of experience in municipal government management preferably as a city manager or assistant city manager. Graduation from a four-year college or university with major course work in public administration or related field.

**PHYSICAL DEMANDS AND WORKING CONDITIONS**

Deadlines and shifting priorities are frequently part of the daily routine. Interruptions are frequent from various City staff, telephone calls, and office visitors. Some travel by car is required to attend meetings and training sessions. Availability and transportation is required to attend meetings outside of normal business hours.

Physical demands include sitting for prolonged periods; occasional lifting of files, stacks of paper, reference and other materials; moving from place to place between and within the office, as well as in outdoor locations to inspect

City Manager  
Job Description  
Updated: 4/07

development sites; some reaching for items above and below desk level. Environment is generally clean with limited exposure to conditions such as dust, fumes, odors, or noise.

City Manager  
Job Description  
Updated: 4/07

Exhibit 2

CITY MANAGER  
EMPLOYMENT AGREEMENT  
ADDENDUM  
April 25, 2023

6.2 Vacation


Per the updated Exempt Staff Addendum to Employee Handbook (effective date July 1, 2023):

City Manager's Holiday and Vacation Benefits shall match those of Exempt Staff, effective July 1, 2023. City Manager shall receive a total of 4 "personal holidays" per fiscal year. These personal holidays must be used within the fiscal year. They cannot be cashed out or carried over to the next fiscal year.

Paid Vacation Benefits will match those of Exempt Staff starting July 1, 2023 based on continuous completed months of employment, with accrual matching the same schedule as the addendum adopted April 25, 2023 and going into effect July 1, 2023.

Starting July 1, 2023, City Manager will earn 10 hours per month for every month worked and so forth, following Exempt Staff paid vacation benefits schedule.

Approved:

  
Henry A. Balensifer III, Mayor

Accepted:

  
Esther Moberg, Employee

SECOND AMENDMENT  
CITY MANAGER  
EMPLOYMENT AGREEMENT

11.14.23

THIS AMENDMENT made and entered into this DATE by and between the City of Warrenton, a municipal corporation of the State of Oregon, hereinafter called "City" and Esther Moberg, hereinafter called "Manager."

WITNESSETH:

City and Manager agree to amend the Manager's Employment Agreement, executed on August 5, 2022, and amended via an addendum agreement on April 25, 2023. All terms not specifically addressed below remain in full force and effect.

AMENDMENT AGREEMENT

NOW, THEREFORE, in consideration of the above and the mutual covenants contained herein, City and Manager agree as follows:

SECTION 6. BENEFITS


6.3 Education Incentive. City agrees to reimburse Manager for all qualifying expenses associated with her achieving an online Master's Degree in Public Administration through the University of West Georgia, not to exceed \$12,000. The following criteria applies:

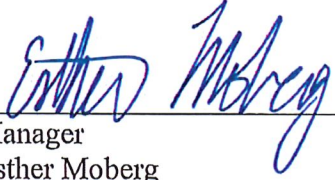
- o 6.3.1 Manager must achieve a B or higher in graded class, a passing grade in a pass-fail class, or the minimum passing grade as stipulated by the educator or testing agency. If a sufficient grade is not achieved no educational assistance reimbursement will be issued.
- o 6.3.2. Upon submission of grades achieved of a B or higher for the designated term, the Manager will be reimbursed for both tuition and books at the end of the term.
- o 6.3.3 Manager will not qualify for mileage reimbursement or use a City vehicle for attending class.
- o 6.3.4 If Manager leaves employment from the City of Warrenton within one year of the last educational assistance payment, or within one year of completion of the last class, the amount of the payment will be considered only a loan. Accordingly, the employee will be required to repay up to 100 percent of the original educational assistance payment.

6.4 Other Benefits. Except as expressly provided herein, Manager shall be entitled to all standard employee benefits as provided in the personnel policies of the City, or as may be otherwise agreed upon by both parties

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IN WITNESS WHEREOF, the City of Warrenton has caused this agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Attorney and the Manager.

  
\_\_\_\_\_  
Mayor  
City of Warrenton

  
\_\_\_\_\_  
Manager  
Esther Moberg

ATTEST:

  
\_\_\_\_\_

APPROVED AS TO FORM:

**CITY MANAGER  
THIRD AMENDMENT TO EMPLOYMENT AGREEMENT**

THIS THIRD AMENDMENT TO EMPLOYMENT AGREEMENT ("Third Amendment") made and entered into this 24 day of June, 2024, by and between the City of Warrenton, a municipal corporation of the State of Oregon, hereinafter called "City" and Esther Moberg, hereinafter called "Manager."

**RECITALS:**

WHEREAS, City employs Manager as its City Manager pursuant to the Employment Agreement entered into by and between City and Manager on August 5, 2022 and attached to this Third Amendment as Exhibit 1 and incorporated herein by this reference; and

WHEREAS, City and Manager amended the Employment Agreement on April 25, 2023 ("First Amendment"), and on November 14, 2023 ("Second Amendment"), which are attached to this Third Amendment as Exhibits 2 and 3 and incorporated herein by this reference; and

WHEREAS, Pursuant to Section 2.2 of the Employment Agreement, the Employment Agreement may be extended for an additional two (2) year term by mutual written agreement of the parties; and

WHEREAS, City and Manager desire to extend the Employment Agreement as provided for in Section 2.2, as amended by the First and Second Amendments to the Employment Agreement, and as modified by the following terms.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above and the mutual covenants contained herein, City and Manager agree as follows:

**SECTION 1. AMENDED TERMS**

1.1 The parties agree to extend the term of the Employment Agreement, as amended by the First and Second Amendments, for an additional two years, pursuant to Section 2.2 of the Employment Agreement. The Employment Agreement shall be in effect, as amended, from September 1, 2024, to August 30, 2026.

1.2 The parties agree to amend Section 4.1 of the Employment Agreement, as amended by the First and Second Amendments, as follows:

"Effective July 1, 2024, the City agrees to pay the Manager an annual salary of

one hundred and twenty-five thousand dollars (\$125,000) payable on the same schedule as other employees of the City are paid. Manager shall be entitled to receive a Cost of Living Adjustment (COLA) to her salary in the same manner as and in the amount equal to the highest COLA granted to bargaining unit-represented City employees.

The City may increase, but not decrease, the Manager's compensation without the need to amend this Agreement. The Manager compensation may be adjusted based on merit in conjunction with an evaluation conduction pursuant to Section 5.

Upon receipt of Manager's Masters in Public Administration, Manager's annual salary shall be increased by five thousand dollars (\$5,000)."

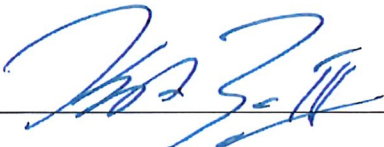
1.3 The parties agree to amend Section 6.2 of the Employment Agreement, as amended by the First and Second Amendments, as follows:

"Manager shall also receive eight (8) 'personal holidays' per fiscal year. These personal holidays must be used within the fiscal year. They cannot be cashed out or carried over to the next fiscal year."

**SECTION 2. UNAMENDED TERMS**


All terms of the Employment Agreement, as amended by the First and Second Amendments, that are not specifically amended by this Third Amendment shall continue in full force and effect.

For the City:



Henry A. Balensifer III  
Mayor, City of Warrenton

Date: 6/24/2024



Esther Moberg  
City Manager, City of Warrenton

Date: 6/24/2024



# WARRENTON POLICE DEPARTMENT MONTHLY REPORT



TO: The Warrenton City Commission  
 FROM: Chief Mathew Workman  
 DATE: September 24, 2024  
 RE: August 2024 Stats Report

**Upcoming Dates:**

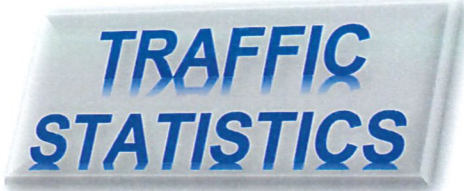
- 09/25 – 911 Subscriber Meeting
- 09/25 to 09/26 – OACP/OSSA Fall Meetings
- 10/07 – Police Officer Interviews
- 10/10 – WPD Training Day
- 10/17 – LEA Meeting
- 10/18 – Annual DA Training
- 10/18 to 10/23 – IACP Conf. Boston, MA

**Highlights Since the Last Report:**

- 08/28 – 911 Subscriber Meeting
- 09/10 to 09/12 – New CAD RMS Training
- 09/12 – WPD Training Day
- 09/17 – Pre-Trial Release Workgroup
- 09/19 – LEA Meeting
- 09/24 – County Youth SIM meeting
- 09/25 to 09/26 – OACP/OSSA Fall Meetings

**Traffic Statistic Highlights:**

- Three (3) DUII Arrests (3-Alcohol, 0-Drugs)
- Two (2) Driving While Suspended Citations/Arrests
- Two (2) Reckless/Careless Driving Citations/Arrest
- Four (4) Speeding Citations
- One (1) Failure to Yield Citation
- Three (3) Following Too Close Citations
- Four (4) Insurance Citations
- Three (3) Driver's License Citations
- Two (2) License/Registration Citations
- One Hundred Thirty-Nine (139) other Citations and Warnings
- Twenty (20) Traffic Crash Investigations
- **Citation vs Warning: 163** Traffic Stops: **25** Citations, **138** Warnings; *Warning 85% of the time.*



**Overall Statistics:**

| Category              | August Statistics (% changes are compared to 2024) |        |       |      |       |       |       |
|-----------------------|--|--------|-------|------|-------|-------|-------|
|                       | 2024   | 2023   | % Chg | 2022 | % Chg | 2021  | % Chg |
| Calls for Service     | 795  | 959    | -17%  | 824  | -4%   | 834   | -5%   |
| Incident Reports      | 212  | 233    | -9%   | 224  | -5%   | 207   | 2%    |
| Arrests/Citations     | 78   | 156    | -50%  | 154  | -49%  | 160   | -51%  |
| Traffic Stops/ Events | 163  | 285    | -43%  | 203  | -20%  | 159   | 3%    |
| DUII's                | 3  | 5      | -40%  | 3    | 0%    | 4     | -25%  |
| Traffic Crashes       | 20   | 17     | 18%   | 23   | -13%  | 22    | -9%   |
| Property Crimes       | 92   | 102    | -10%  | 133  | -31%  | 115   | -20%  |
| Person Crimes         | 79   | 82     | -4%   | 87   | -9%   | 91    | -13%  |
| Drug/Narcotics Calls  | 0  | 5      | -100% | 6    | -100% | 1     | -100% |
| Animal Calls          | 45   | 36     | 25%   | 25   | 80%   | 31    | 45%   |
| Officer O.T.          | 192.5  | 156.75 | 23%   | 238  | -19%  | 169.5 | 14%   |
| Reserve Hours         | 0  | 0      | 0%    | 0    | 0%    | 0     | 0%    |

| Category                     | Jan   | Feb    | Mar  | Apr   | May   | Jun    | Jul   | Aug   | Sep |
|------------------------------|-------|--------|------|-------|-------|--------|-------|-------|-----|
| <b>Calls for Service</b>     | 666   | 742    | 721  | 696   | 749   | 801    | 780   | 795   |     |
| <b>Incident Reports</b>      | 206   | 222    | 234  | 200   | 232   | 228    | 221   | 212   |     |
| <b>Arrests/Citations</b>     | 123   | 154    | 123  | 97    | 196   | 110    | 81    | 78    |     |
| <b>Traffic Stops/ Events</b> | 188   | 248    | 188  | 216   | 152   | 239    | 211   | 163   |     |
| <b>DUII's</b>                | 3     | 3      | 1    | 2     | 3     | 4      | 2     | 3     |     |
| <b>Traffic Crashes</b>       | 13    | 10     | 19   | 12    | 15    | 15     | 21    | 20    |     |
| <b>Property Crimes</b>       | 79    | 109    | 104  | 99    | 111   | 120    | 104   | 92    |     |
| <b>Person Crimes</b>         | 60    | 57     | 63   | 53    | 73    | 76     | 78    | 79    |     |
| <b>Drug/Narcotics Calls</b>  | 8     | 5      | 3    | 4     | 11    | 7      | 5     | 0     |     |
| <b>Animal Calls</b>          | 19    | 18     | 23   | 15    | 24    | 36     | 37    | 45    |     |
| <b>Officer O.T.</b>          | 82.25 | 103.75 | 61.5 | 167.5 | 88.75 | 181.25 | 205.5 | 192.5 |     |
| <b>Reserve Hours</b>         | 0     | 0      | 0    | 0     | 0     | 0      | 0     | 0     |     |

| Oct | Nov | Dec | 2024 YTD    | 2024 Estimate | 2023        | 2024 v 2023 | 2022           | 2024 v. 2022 | 2021           | 2024 v. 2021 |
|-----|-----|-----|-------------|---------------|-------------|-------------|----------------|--------------|----------------|--------------|
|     |     |     | <b>5950</b> | <b>8925</b>   | <b>9084</b> | <b>-2%</b>  | <b>8050</b>    | <b>11%</b>   | <b>8669</b>    | <b>3%</b>    |
|     |     |     | <b>1755</b> | <b>2633</b>   | <b>2529</b> | <b>4%</b>   | <b>2484</b>    | <b>6%</b>    | <b>3160</b>    | <b>-17%</b>  |
|     |     |     | <b>962</b>  | <b>1443</b>   | <b>1335</b> | <b>8%</b>   | <b>1602</b>    | <b>-10%</b>  | <b>2020</b>    | <b>-29%</b>  |
|     |     |     | <b>1605</b> | <b>2408</b>   | <b>2369</b> | <b>2%</b>   | <b>1848</b>    | <b>30%</b>   | <b>2088</b>    | <b>15%</b>   |
|     |     |     | <b>21</b>   | <b>32</b>     | <b>30</b>   | <b>5%</b>   | <b>34</b>      | <b>-7%</b>   | <b>30</b>      | <b>5%</b>    |
|     |     |     | <b>125</b>  | <b>188</b>    | <b>217</b>  | <b>-14%</b> | <b>168</b>     | <b>12%</b>   | <b>182</b>     | <b>3%</b>    |
|     |     |     | <b>818</b>  | <b>1227</b>   | <b>1127</b> | <b>9%</b>   | <b>1204</b>    | <b>2%</b>    | <b>1267</b>    | <b>-3%</b>   |
|     |     |     | <b>539</b>  | <b>809</b>    | <b>825</b>  | <b>-2%</b>  | <b>811</b>     | <b>0%</b>    | <b>1013</b>    | <b>-20%</b>  |
|     |     |     | <b>43</b>   | <b>65</b>     | <b>60</b>   | <b>8%</b>   | <b>40</b>      | <b>61%</b>   | <b>36</b>      | <b>79%</b>   |
|     |     |     | <b>217</b>  | <b>326</b>    | <b>335</b>  | <b>-3%</b>  | <b>273</b>     | <b>19%</b>   | <b>253</b>     | <b>29%</b>   |
|     |     |     | <b>1083</b> | <b>1625</b>   | <b>1572</b> | <b>3%</b>   | <b>2212.83</b> | <b>-27%</b>  | <b>1503.14</b> | <b>8%</b>    |
|     |     |     | <b>0</b>    | <b>0</b>      | <b>0</b>    | <b>0%</b>   | <b>0</b>       | <b>0%</b>    | <b>0</b>       | <b>0%</b>    |

| <b>Homeless Incidents</b> | <b>2024</b> | 2023     | 2022     | 2021     |
|---------------------------|-------------|----------|----------|----------|
| Code 40 (Normal)          | <b>30</b>   | 57       | 40       | 42       |
| Code 41 (Aggressive)      | <b>1</b>    | 4        | 8        | 3        |
|                           |             |          |          |          |
| <b>Elk Incidents</b>      | <b>2024</b> | 2023     | 2022     | 2021     |
| Interaction:              | 1           | 4        | 3        | 2        |
| Traffic Accidents:        | 1           | 0        | 1        | 0        |
| Traffic Complaints:       | 1           | 3        | 0        | 1        |
| <b>Total:</b>             | <b>3</b>    | <b>7</b> | <b>4</b> | <b>3</b> |

The following is a graphic representation of statistics for **August 2024** using our **CityProtect** membership (formerly [CrimeReports.com](http://CrimeReports.com)). The "Dots" represent a location of a call and if you zoom in on the map you would see an icon for the type of call and some basic time/date details. Some dots represent multiple calls at one location. If you go to the website ([www.cityprotect.com](http://www.cityprotect.com)), you can zoom in on each incident for more details.

- |  |  |  |  |
|--|--|--|--|
| <input checked="" type="checkbox"/> Assault                    | <input checked="" type="checkbox"/> Property & Theft           | <input checked="" type="checkbox"/> Disorder/Disturbance | <input checked="" type="checkbox"/> 911 or Other       |
| <input checked="" type="checkbox"/> Assault                    | <input checked="" type="checkbox"/> Property Crime             | <input checked="" type="checkbox"/> Disorder             | <input checked="" type="checkbox"/> Community Events   |
| <input checked="" type="checkbox"/> Assault with Deadly Weapon | <input checked="" type="checkbox"/> Breaking & Entering        | <input checked="" type="checkbox"/> Disorder             | <input checked="" type="checkbox"/> Community Policing |
| <input checked="" type="checkbox"/> Sexual Offense             | <input checked="" type="checkbox"/> Property Crime Commercial  | <input checked="" type="checkbox"/> Drugs                | <input checked="" type="checkbox"/> Proactive Policing |
| <input checked="" type="checkbox"/> Sexual Assault             | <input checked="" type="checkbox"/> Property Crime Residential | <input checked="" type="checkbox"/> Drugs                | <input checked="" type="checkbox"/> Emergency          |
| <input checked="" type="checkbox"/> Sexual Offense             | <input checked="" type="checkbox"/> Other Property Crime       | <input checked="" type="checkbox"/> Liquor               | <input checked="" type="checkbox"/> Emergency          |
| <input checked="" type="checkbox"/> Other Sexual Offense       | <input checked="" type="checkbox"/> Theft                      | <input checked="" type="checkbox"/> Liquor               | <input checked="" type="checkbox"/> Fire               |
| <input checked="" type="checkbox"/> Other Violent Offense      | <input checked="" type="checkbox"/> Theft from Vehicle         | <input checked="" type="checkbox"/> Quality of Life      | <input checked="" type="checkbox"/> Fire               |
| <input checked="" type="checkbox"/> Homicide                   | <input checked="" type="checkbox"/> Theft of Vehicle           | <input checked="" type="checkbox"/> Quality of Life      | <input checked="" type="checkbox"/> Police Calls       |
| <input checked="" type="checkbox"/> Kidnapping                 | <input checked="" type="checkbox"/> Other Theft                |  |  |
| <input checked="" type="checkbox"/> Robbery                    |  |  |  |



**WARRENTON CITY COMMISSION PUBLIC COMMENT FORM**NAME: Tony FalettiADDRESS: P.O. Box 188 Warrenton Or 97146 325A1 + Hwy 101

EMAIL: \_\_\_\_\_

DOES YOUR COMMENT HAVE TO DO WITH AN AGENDA ITEM: (Y or N) (N)BRIEFLY DESCRIBE YOUR TOPIC: When repairs are going to start on  
seafarer's Park, public safety fair**PLEASE GIVE THIS CARD TO THE CITY RECORDER PRIOR TO THE MEETING***Once this card is submitted to the City Recorder, it becomes a part of the permanent public record.*



## City Commission Agenda Memo

Meeting: September 24, 2024  
 Date: From: Matthew Ellis, AICP, Planning Director  
 Subject: Second Reading by Title Only for  
 Ordinance No. 1279

### Summary:

This is the Second Reading and Adoption (by title only) of Ordinance No. 1279 regarding UGB adjacent to the Hammond Marina. At the last meeting a public hearing was held regarding this ordinance. The City Commission directed staff to process an amendment to the Warrenton Comprehensive Plan to reflect a change in the Urban Growth Boundary (UGB) for the property owned by the City of Warrenton adjacent to the Hammond Marina, which was adopted by Ordinance No. 1262. Unfortunately, the adoption of Ordinance No. 1262 was not adopted following the procedures laid out in the Warrenton Municipal Code. Ordinance No. 1279 repeals and replaces Ordinance No. 1262 following the appropriate procedures.

### Recommendation/Suggested Motion:

*"I move to conduct the second reading, by title only, of Ordinance No. 1279, AN ORDINANCE AMENDING THE CITY OF WARRENTON COMPREHENSIVE PLAN CORRECTING THE URBAN GROWTH BOUNDARY MAP, ADDING RELATED TEXT, AND RECOMMENDING ZONING DISTRICTS."*

*"I Move to adopt Ordinance No. 1279."*

### Alternative:

Other action as deemed appropriate by the City Commission

### Fiscal Impact:

N/A

### Attachments:

- Ordinance No. 1279

Approved by City Manager:



ORDINANCE NO. 1279  
INTRODUCED BY ALL COMMISSIONERS

AN ORDINANCE AMENDING THE CITY OF WARRENTON COMPREHENSIVE  
PLAN CORRECTING THE URBAN GROWTH BOUNDARY MAP, ADDING  
RELATED TEXT, AND RECOMMENDING ZONING DISTRICTS

WHEREAS, the City of Warrenton and the Town of Hammond merged operations in 1991 resulting in the new municipal boundary for the City of Warrenton; and

WHEREAS, both the City of Warrenton and the Town of Hammond had approved comprehensive plans that were reviewed by the Oregon Department of Land Conservation and Development (DLCD) and both plans included maps showing the location of areas within an Urban Growth Boundary (UGB); and

WHEREAS, residents and elected officials from the newly combined City of Warrenton and the Town of Hammond established joint planning efforts that resulted in a new City of Warrenton Comprehensive Plan fully adopted in 2005 and subsequently amended; and

WHEREAS, the 2005 UGB map for the City of Warrenton inadvertently omitted two tracts of land that were part of the Town of Hammond's UGB, resulting in the loss of approximately fifty-eight (58) acres of land being excluded from the new Warrenton UGB area. These tracts are depicted on Exhibit A; and

WHEREAS, the City Commission passed a motion on February 14, 2023, authorizing the Warrenton Planning Commission to consider the amendment to the Warrenton Comprehensive Plan and UGB Map correcting the error; and

WHEREAS, the Warrenton Planning Commission caused the DLCD to be notified in compliance with Oregon requirements and conducted a public hearing on April 13, 2023, where the following public comments were entered into the record

1. No written or verbal comments were received in opposition or support of the request.

WHEREAS, The Planning Commission made the following findings of fact related to the request:

1. The UGB area consists of two tracts – a northerly tract of approximately 13.9 acres and a westerly tract of approximately 43.1 acres of land.
2. The northern tract is owned by the City of Warrenton and is pending annexation. The current Clatsop County zoning is RM (Recreation Management) The proposed zoning for the tract is RC (Recreation Commercial) and OSI (Open Space Institutional).
3. The northerly tract site is currently used for Hammond Marina operations and as a public open space known as Seafarers Park.
4. The westerly tract is owned by the government of the United States and is currently part of the Fort Stevens Park and recreation area. This site is currently zoned UGB (Urban Growth Boundary) This site would remain outside of the City of Warrenton and remain zoned UGB.
5. There are no public sanitary sewer or water improvements on the subject property.
6. The site will remain in the Warrenton Fire District and Warrenton-Hammond School District.
7. No extension of public infrastructure is planned for the property.
8. The legal description and location map are shown in Exhibit B.

**NOW THEREFORE**, the City of Warrenton ordains as follows:

**Section 1.** Ordinance No. 1262 is hereby repealed.

**Section 2.** Section 2.30 of the 2011 Warrenton Comprehensive Plan is amended as follows:

**Section 2.320 Urban Development**

(1) Growth Management. While the City of Warrenton’s physical size is large, the actual developable land is restricted by factors such as protected wetlands, public land ownership, and physical land characteristics that make development at urban densities challenging. As such, the City will adopt a growth management strategy to ensure the orderly conversion of land to urban uses. The City will apply growth management standards to outlying areas of the City which are largely vacant and currently have few public facilities to:

- (a) Make urbanizable land available for conversion to urban uses in stages as public facilities adequate to serve urban development become available.
- (b) Ensure the orderly and economic provision of services.

(c) Discourage undeveloped areas from prematurely developing at non-urban densities.

(d) Maintain undeveloped areas at parcel sizes which can eventually be converted to urban uses.

(e) Encourage the development within urban areas before the conversion of urbanizable areas.

(2) Urban Growth Boundary: Unincorporated areas adjoining the City limits that are needed to accommodate urban development shall be included in the Urban Growth Boundary, along with property presently in Warrenton, and will be appropriately managed. The city recently initiated a planning process with the assistance of Portland State University to establish a developability matrix that indicates the areas within the current city boundary that should be further encouraged or enticed to develop at urban densities. The initial results show that natural resource concerns stress the importance of making wise land use decisions and efficient infrastructure investments. The City and Clatsop County shall establish an Urban Growth Boundary management agreement with Warrenton having the primary authority for making land use decisions within the Urban Growth Boundary.

(3) No area will be added to the Urban Growth Boundary unless the following factors are considered:

(a) Demonstrated need to accommodate long-range urban population growth requirements consistent with Statewide Planning Goals.

(b) Need for housing, employment opportunities and livability.

(c) Orderly and economic provision for public facilities and services.

(d) Maximum efficiency of land uses within and on the fringe of the existing urban area.

(e) Environmental, energy, economic and social consequences.

(f) Retention of agricultural land as defined, with Class I being the highest priority and Class VI the lowest priority.

(g) Compatibility of the proposed urban uses with nearby agricultural or forestry activities.

(h) Changes to the urban growth boundary shall also conform to the procedures and requirements of Statewide Planning Goal 2, Part H, Exceptions.

(i) The City of Warrenton desires to ensure that lands previously included in the Town of Hammond Urban Growth Boundary are maintained for the City of Warrenton Urban Growth Boundary.

(4) The City may adjust the Urban Growth Boundary to make minor additions or subtractions of lands from the Urban Growth Boundary consistent with OAR 660-024-0070. Such adjustment may include an exchange of lands inside the Urban Growth Boundary for lands outside the Urban Growth Boundary pursuant to a voluntary Transfer of Development Rights agreement.

**Section 3.** Upon annexation, the zoning classification for the land associated with Hammond Marina operations shall be Recreational Commercial and that part of the property associated with Seafarers Park shall be zoned Open Space Institutional. (See Exhibit C). The westerly tract will remain zoned UGB (Urban Growth) under Clatsop County Zoning.

**Section 4.** Pursuant to ORS 222.520, the City Commission declares that upon the effective date of the annexation, all annexed territory will be withdrawn for Clatsop County Sheriff law enforcement and under the jurisdiction of the City of Warrenton Police Department.

**Section 5.** Effective Date. This ordinance takes effect upon the county's receipt of this ordinance.

**First Reading:** September 10, 2024

**Second Reading:**

ADOPTED by the City Commission of the City of Warrenton, Oregon this \_\_\_\_ day of \_\_\_\_\_, 2024.

APPROVED:

\_\_\_\_\_  
Henry A. Balensifer III, Mayor

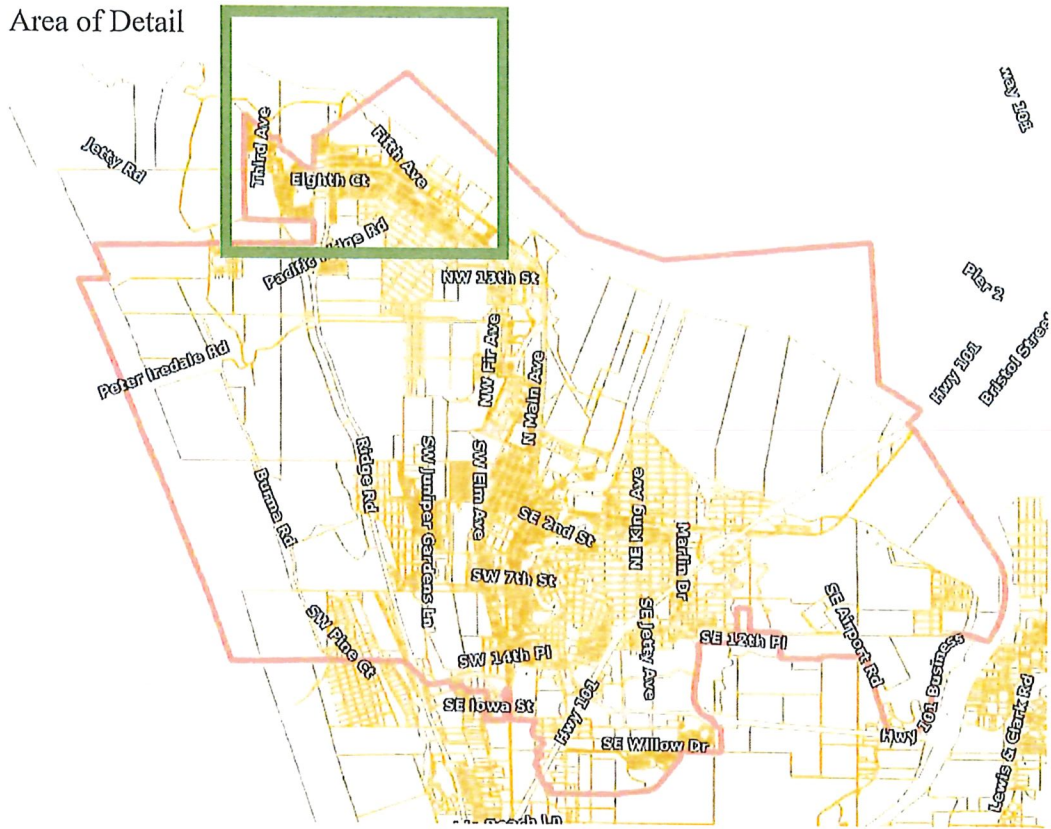
ATTEST:

\_\_\_\_\_  
Dawne Shaw, CMC, City Recorder

Ordinance No. 1262

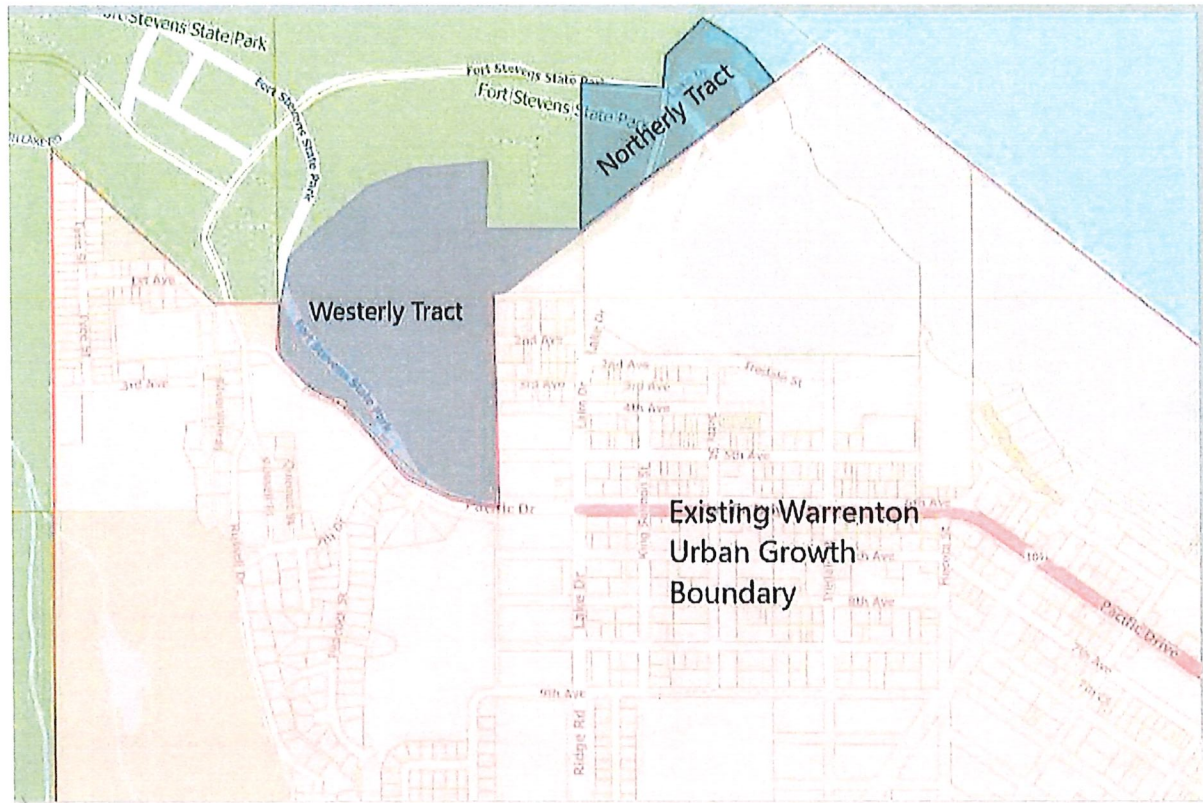
Exhibit A – City of Warrenton Current UGB

Area of Detail



Ordinance No. 1262

Exhibit B – Proposed UGB Additions (Formerly Town of Hammond UGB)







# City Commission Agenda Memo

Meeting Date: September 24, 2024  
From: Esther Moberg, City Manager  
Subject: Lease Agreement NW Smart Storage

## Summary:

City Mini Storage Lease agreement for approval with tenant/manager NW Smart Storage.

## Recommendation/Suggested Motion:

*I move to approve the lease as presented for NW Smart Storage to run the City of Warrenton Mini Storage Property at 69 NE Iredale.*

## Alternative:

Other action as deemed appropriate by the City Commission OR None recommended

## Fiscal Impact:

Approving this lease will start lease payments to the City of Warrenton in January 2025.

## Attachments:

- Lease Agreement

Approved by City Manager: \_\_\_\_\_

## LEASE AGREEMENT

This LEASE (this “Lease”) is made and entered into on September \_\_\_, 2024 (the “Commencement Date”), by and between the City of Warrenton, an Oregon municipal corporation (“Landlord”), and NW Smart Storage LLC, an Oregon limited liability company (“Tenant”).

### RECITALS

A. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the real property located at 60 NE Iredale Ave, Warrenton, Oregon described on attached **Exhibit A**, including the 5 existing buildings together with any and all rights, privileges, easements, and appurtenances (collectively, the “Premises”).

C. The Premises is in need of repairs, which the Tenant agrees to undertake as part of this Lease, as described below.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

#### Article 1

##### PREMISES

Landlord does hereby demise, lease, and let unto Tenant, and Tenant does hereby take and lease from Landlord, the Premises for the term and on the rents, conditions, and provisions herein. Tenant accepts the Premises in its “AS IS” condition except but subject to the completion of all improvements to be performed by Landlord in accordance with **Exhibit B** hereto.

#### Article 2

##### LEASE TERM

**2.1 Initial Term.** Starting on the Commencement Date, the Premises will be leased for a term of ten (10) years (the “Initial Term”), unless earlier terminated pursuant to the terms of this Lease.

**2.2 Extended Term.** If Tenant is not in default under the Lease, and if Tenant provides Landlord with written notice of its desire to extend the Lease no less than one-hundred twenty (120) days before the expiration of the Initial Term, Landlord has the option to extend the Initial Term for an additional period of up to fifteen (15) years (the “Extended Term”) by providing written notice thereof to Tenant no less than ninety (90) days before the expiration of the Initial Term (the Initial Term, if and as extended by the Extended Term, is referred to in this Lease as the “Term”). Upon exercise of this option to extend, the term of this Lease will be extended through the expiration date of the Extended Term, on the same terms and conditions as contained in this Lease, except for Rent (which will be determined in accordance with section 3.2 below).

#### Article 3

##### RENT

**3.1 Rent for Initial Term.** Tenant agrees to pay to Landlord monthly rent in the amount of \$3500 (“Rent”) beginning January 1, 2025 (waiving the first six months based on the investment of agreed upon updates and repairs) and on the first day of each and every month thereafter during the Term. On the 5th annual anniversary of the Commencement Date and every

year thereafter (each, an “Adjustment Date”), Rent will increase by 3% over the previous monthly rent.

**3.2 Rent Adjustment Provision for Fixed Increases**

On each annual anniversary of the Commencement Date of this Lease, Rent will increase by 3%, beginning in year 5 of the lease.

**3.2 Payment of Rent.** Rent is payable in advance, commencing on the Commencement Date and thereafter on the first day of each month throughout the Term, without notice or demand and without abatement, deduction or setoff except as otherwise provided in this Lease. If the Commencement Date is a day other than the first day of a month, Rent payable on the Commencement Date will be prorated based on the number of days that will elapse during that month after the Commencement Date. Rent and all other amounts payable to Landlord under the terms of this Lease must be delivered to Landlord at its office, located at 225 S. Main Ave/P.O. Box 250, Warrenton, Oregon 97146, or at another place that Landlord may designate by notice to Tenant, in lawful money of the United States.

**3.3 Late Charge and Interest.** If Rent or any other amount payable by Tenant to Landlord is not paid within 10 calendar days of its due date, Tenant will pay to Landlord a late charge of five percent of the amount due. The parties agree that the late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment. Collection of the late charge will not be considered a waiver of default nor of any other right or remedy. In addition, all delinquent amounts will bear interest at the rate of nine percent per annum or the highest rate permitted by law, whichever is lower (the “Default Rate”), from the date first due until the date paid in full.

**3.4 Net Lease.** This Lease is a totally net lease, and it is intended that the rent provided for in this Lease will be an absolutely net return to Landlord throughout the Term. Tenant will be responsible for paying all costs and expenses relating to the Premises, including real and personal property taxes, utilities, maintenance, repairs, interior and exterior structural repairs, interior and exterior nonstructural repairs, insurance, and all other costs and expenses relating to the Premises. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Tenant is required to pay, as additional rent, all sums, impositions, costs, and other payments that Tenant assumes or agrees to pay in any provision of this Lease. If Tenant fails to make a payment, Landlord will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of the Rent.

**3.5 Credit.** Tenant will have Rent waived for first four (4) months if Tenant completes the improvements set forth in Exhibit C. There should be progress reports and updates showing the improvements are moving forward in a reasonable manner during this time of waiver. If the improvements are not done or there is a delay, further agreement shall be made regarding any waiver of rent or payments.

**Article 5**

**USE AND COMPLIANCE WITH LEGAL REQUIREMENTS**

**5.1 Permitted Use.** Tenant will use and occupy the Premises during the Term for the purpose of operating a storage facility with rented on a space-by-space retail basis to corporations, partnerships, individuals and/or other entities for use as self-storage facilities. Landlord acknowledges that Tenant is in the business of managing self-storage facilities and hereby consent to Tenant entering into rental agreements with subtenants for renting of individual storage spaces in compliance with the terms and conditions of this Lease. This Lease

is also subject to compliance with Lessor's Rules and Regulations for the Property contained in **Exhibit D** ("Rules and Regulations"), as they may be reasonably amended from time to time. The Premises must be in compliance with all applicable Legal Requirements (as defined in section 5.2 below).

**5.1.1 Rental Agreements.** Tenant shall have the sole discretion, which discretion shall be exercised in good faith, to establish the terms and conditions of occupancy by the subtenants of the Premises and to enter into rental agreements with subtenants. The rental agreements must contain terms that comply with and that require subtenants to comply with Landlord's Rules and Regulations contained in **Exhibit D**. Tenant shall provide City a copy of its standard rental agreement with subtenants and provide City an updated version when Tenant makes changes to the rental agreement terms. All tenants shall receive similar terms and conditions and shall have an agreement in writing with the landlord (digital or paper).

**5.1.2 Reporting.** Tenant shall provide Landlord on an annual basis by the first calendar day of each year a current report of all subtenants, including the name, address and contact information for each subtenant.

**5.1.3 Access to Records.** The records, books and accounts of Tenant may be examined by Landlord or its representatives at all reasonable times for purposes of determining Tenant's compliance with this Lease.

**5.2 Compliance with Legal Requirements.** Tenant will observe and comply with all Legal Requirements that may apply to the Premises, or to the use or manner of uses of the Premises whether or not the Legal Requirements affect the interior or exterior of the Premises, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises, and whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Term commences. Tenant will pay all costs of compliance with Legal Requirements.

"Legal Requirements" means all applicable present and future laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, or any component thereof or any activity conducted thereon, including but not limited to those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).

"Environmental Laws" means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including but not limited to the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 *et seq.*), the Toxic Substances Control Act (15 USC § 2601 *et seq.*), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 *et seq.*), the Clean Air Act (42 USC § 7401 *et seq.*), amendments to the foregoing, and any rules and regulations promulgated thereunder.

"Hazardous Substances" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

**5.4 Prohibited Uses.** Tenant will not use or occupy the Premises or the Improvements, or permit or suffer all or any part of the Premises or the Improvements to be used

or occupied: (a) for any unlawful or illegal business, use, or purpose; (b) in any manner so as to constitute a nuisance of any kind; (c) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (d) for any business, use, or purpose deemed disreputable.

**5.5 No Waste.** Tenant will not cause or permit any waste, damage, disfigurement, or injury to the Premises,

## Article 6

### IMPROVEMENTS

**6.1 Construction, Modification, and Demolition of Improvements.** Tenant may not construct, reconstruct, demolish, remove, replace, remodel, or rebuild on any part or all of the Premises such buildings, structures, parking areas, driveways, walks, and other improvements of any nature including excavation, earthmoving, paving, installation of utilities, and all other development activities (“Improvements”) without obtaining the prior written consent of the Landlord which consent is in Landlord’s sole and absolute discretion. Construction of any approved Improvements will be undertaken in compliance with all Legal Requirements and will be performed in a good and workmanlike manner.

**6.3 Notice of Construction.** Tenant agrees to notify Landlord in writing of Tenant’s intention to commence construction of an approved Improvement at least 30 calendar days before commencement of any such work or delivery of any materials. The notice must specify the approximate location and nature of the intended Improvements, and the anticipated date that work will be commenced and completed. Landlord will have the right at any time and from time to time to post and maintain on the Premises notices of nonresponsibility and such other notices as Landlord deems necessary to protect Landlord’s interest in the Premises and the Improvements from the liens of mechanics, laborers, materialmen, suppliers, or vendors; and Landlord will have the right to inspect the Premises and the Improvements in relation to the construction at all reasonable times.

**6.4 Landlord Cooperation.** Landlord agrees to cooperate with Tenant in all respects in connection with Tenant’s construction of any approved Improvements, including but not limited to, executing the applications and other instruments reasonably necessary for construction of the Improvements, provided that Landlord will not be required to pay any application fees or incur any other costs or liabilities in connection with the Improvements beyond Landlord’s fees for any professional advice Landlord desires.

**6.5 Easements and Dedications.** Tenant and Landlord each recognize that in order to provide for the development of the Premises, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power line, and other easements and dedications and similar rights be granted or dedicated over or within portions of the Premises. Granting any such rights shall be in Landlord’s sole discretion.

## Article 7

### TAXES AND UTILITIES

**7.1 Taxes Defined.** As used in this Lease, the terms “Tax” and “Taxes” mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or the Improvements, or with respect to services or utilities in connection with the use, occupancy, or

operations of the Premises or the Improvements, or on Landlord with respect to the Premises or the Improvements, or on any act of leasing space in the Improvements, or in connection with the business of leasing space in the Improvements, including any tax on rents, whether direct or as a part of any "gross receipts" tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes. Taxes will include, but not be limited to, state and local real-property taxes, levies, and assessments, and any tax, fee, or other excise, however described, that may be levied or assessed in lieu of, or as a substitute, in whole or in part, for, or as an addition to any other taxes, and all other governmental impositions and governmental charges of every kind and nature relating to the Premises or the Improvements, including, but not limited to, any road-user or transportation-system-maintenance fee and any charges or fees measured by trip generation or length, parking spaces, impervious surfaces, buildings, vehicle usage, or similar bases for measurement.

**7.2 Payment of Taxes.** Throughout the Term, Tenant will pay all Taxes as they become due. The landlord is paying the outstanding taxes for 2024 only. If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Tenant may pay the same in installments as each installment becomes due and payable, but in any event must do so before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest. Taxes for the year in which this Lease commences and expires will be prorated between the parties as of the Commencement Date or expiration date as the case may be and, on the Commencement Date, Tenant will pay its pro rata share of the current year's taxes.

**7.3 Contesting Taxes.** If Tenant in good faith desires to contest the validity or the amount of any Tax, Tenant will be permitted to do so by giving to Landlord written notice thereof before commencement of such contest. Landlord will, at Tenant's expense (including reimbursement of attorney fees reasonably incurred by Landlord), cooperate with Tenant in any such contest to the extent that Tenant may reasonably request, but Landlord will not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant will indemnify and save Landlord harmless from any such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Tenant under the provisions of this Lease will belong to Tenant, except that to the extent any rebates or refunds are related to a period of time in which this Lease is not in effect (either before commencement or after expiration or termination), the portion of the rebate attributable to such time will be returned to Landlord to the extent previously paid by Landlord. Any contest as to the validity or amount of any Tax, or assessed valuation on which the Tax was computed or based, whether before or after payment, may be made by Tenant in the name of Landlord or of Tenant, or both, as Tenant will determine.

**7.4 Evidence of Payment.** Promptly after payment, Tenant will provide Landlord with evidence reasonably satisfactory to Landlord that all Taxes required to be paid by Tenant have been paid.

**7.5 Personal-Property Taxes.** Tenant must pay before delinquency all taxes assessed against and levied on improvements, fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Premises, and when possible Tenant must cause said improvements, fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real property of Landlord.

**7.6 Utilities and Services.** Tenant will pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, internet, cable, garbage pickup, and all other utilities and services used by Tenant on the Premises as they become due, together with

any taxes thereon, from and after the Commencement Date. Tenant is required to maintain the following utility services during the Term: water, sanitary sewer, storm sewer, gas, electric, and garbage pickup. All other utilities may be maintained or discontinued at Tenant's discretion.

## **Article 8 INSURANCE**

**8.1 Property Insurance.** Tenant, at its cost and expense, will keep all Improvements insured against loss or damage by property insurance written on the standard Insurance Services Office (ISO) "special-form" policy, or its nearest equivalent in use at the time. Tenant will obtain endorsements to its special-form policy to maintain the following types of coverage to the extent required by Landlord and available at commercially reasonable rates: (a) flood, (b) earthquake, (c) business interruption, and (d) indirect loss.. The property insurance must cover the full replacement value of the Improvements (excluding foundation and excavation cost), and require that all losses are payable to Landlord and Tenant as their interests may appear. Any loss adjustment must require written consent of both parties, which will not be unreasonably withheld, conditioned, or delayed. The amount of the insurance policy will be increased from time to time as the full replacement value of the Improvements increases.

**8.2 Liability Insurance.** Tenant, at its cost and expense, will maintain commercial general liability insurance covering the Premises, the Improvements, and the conduct or operation of its business with limits of loss of at least \$2 million combined single-limit coverage for personal injury and property damage. The insurance policy must be primary to any insurance available to Landlord, contain a severability-of-interest or cross-liability clause, include contractual-liability coverage for Tenant's indemnification obligations contained in this Lease, and name Landlord as an additional insured. Landlord has the right from time to time to increase the amount of liability insurance required under this Lease based on then-current market conditions for properties comparable to the Premises.

**8.3 Additional Requirements.** Tenant's insurance carriers must be reputable insurance companies reasonably acceptable to Landlord, licensed to do business in the State of Oregon, and have a minimum A-VIII rating as determined by the then-current edition of *Best's Insurance Reports* published by A.M. Best Co. Tenant will provide Landlord with certificates of insurance concurrently with the execution of this Lease and upon each renewal thereafter to establish that Tenant's insurance obligations have been met and that the policies are not subject to cancellation or material change without at least 30 calendar days advance written notice to Landlord; provided, however, that Landlord reserves the right to inspect and require full copies of all insurance policies to be provided to Landlord.

## **Article 9 RELEASE AND INDEMNIFICATION**

**9.1 Release.** Tenant is and will be in exclusive control of the Premises and the Improvements, and Landlord will not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements, or any injury or damage to the Premises or the Improvements or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition on any part of the Premises or the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of the use, misuse, or abuse of all or any of the Improvements, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the

Improvements, including defects in construction of the Improvements, latent or otherwise; and Tenant hereby releases Landlord from and against any and all liabilities resulting from any such injuries and damages. Landlord acknowledges that it remains responsible for liability to any third party to the extent that the liability arises from Landlord's gross negligence or willful misconduct.

**9.2 Indemnification.** Except to the extent caused by the gross negligence or willful misconduct of Landlord, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, charges, and expenses (including, without limitation, reasonable attorney fees and costs at trial and on appeal; environmental response and remedial costs; environmental consultant and laboratory fees; and natural resource damages) that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term:

(a) Any work or thing done in, on, or about all or any part of the Premises or the Improvements by Tenant or any party other than Landlord;

(b) Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;

(c) Any negligence on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees;

(d) Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements, even if caused in part by the negligence of Landlord, but only up to the limits of Tenant's liability insurance coverage with respect to any such negligence of Landlord; and

(e) Any failure of Tenant to comply with or to perform any covenant, agreement, term, provision, condition, or limitation that this Lease requires Tenant to comply with or to perform, including without limitation Tenant's compliance with the Legal Requirements and the release of Hazardous Substances in violation of Environmental Laws.

## **Article 10**

### **LIENS**

**10.1 No Liens.** Tenant will not suffer or permit any construction liens to attach to or be filed against any part the Premises or the Improvements by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or any person occupying or holding an interest in any part of the Premises or the Improvements. If any such lien is filed against any portion of the Premises or the Improvements, Tenant will cause the same to be discharged of record within 15 calendar days after the date of its filing by payment, deposit, or bond.

**10.2 Landlord Right to Post Notices.** Landlord will have the right to post and keep posted at all reasonable times on the Premises and the Improvements notices of nonresponsibility and any other notices that Landlord desires or is required to post for the protection of Landlord's interest in the Premises and the Improvements from any such lien.

**10.3 No Right to Lien Landlord's Interest.** Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that

might in any way give rise to the right to file any lien against Landlord's interest in the Premises or against Landlord's interest, if any, in the Improvements. Tenant is not an agent for Landlord.

#### **Article 11**

#### **REPAIRS AND MAINTENANCE**

**11.1 Tenant Obligation.** Tenant must maintain, repair, and replace the Premises and the Improvements and keep the Premises in the same condition it is in on the Commencement Date (minus normal wear and tear). The Tenant shall keep the Premises in a clean and attractive condition, and in good condition and repair, throughout the entire Term. Tenant's obligations extend to both structural and nonstructural items and to all maintenance, repair, and replacement work. Tenant must bring the current structures on the Premises up to a clean and attractive condition, and in good condition and repair, within six months of the Commencement Date. The Landlord shall have the right to inspect to ensure compliance with this section pursuant to Article 13.

**11.2 Landlord Obligation.** Landlord is not required to furnish to Tenant, the Premises, or the Improvements or any facilities, utilities, or services of any kind whatsoever during the Term, such as, but not limited to, water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, or any other utilities or services used by Tenant. Landlord is not required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements during the Term except as set forth in **Exhibit B**.

**11.3 Limited Assignment of Rights.** Landlord assigns to Tenant, without recourse, any rights that Landlord may have against any parties causing damage to the Improvements on the Premises to sue for and recover amounts expended by Tenant as a result of the damage.

#### **Article 12**

#### **SIGNAGE**

**12.1 Signage.** Tenant is permitted to install signage on the Premises and the Improvements as long as Tenant complies with all applicable Legal Requirements.

#### **Article 13**

#### **INSPECTION AND ACCESS**

Tenant will permit Landlord or its authorized representative to enter the Premises and the Improvements at all reasonable times during normal business hours for purposes of inspecting them for compliance with the terms of this Lease and making any repairs or performing any work that Tenant has neglected or refused to make in accordance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on Landlord's part to make such inspections or perform such work (including, but not limited to, repairs and other restoration work made necessary because of any fire or other casualty or partial condemnation, irrespective of the sufficiency or availability of any property or other insurance proceeds, or any award in condemnation, that may be payable). Landlord's performance of any work will not constitute a waiver of Tenant's default in failing to perform the same.

#### **Article 14**

#### **DAMAGE AND DESTRUCTION**

If the Premises or any Improvements on the Premises are damaged or destroyed by fire or other casualty, Rent will not abate and Tenant must (a) promptly restore the damaged Improvements to substantially the same condition existing before the casualty, or (b) promptly remove all damaged Improvements (including foundations) and leave the Premises in a clean, attractive, and safe condition. The proceeds available from Tenant's property insurance policy

(the "Proceeds") must be used for restoring or removing the damaged Improvements as provided above, and any Proceeds not used for such restoration or removal will be delivered to Tenant. If the Proceeds are not sufficient for Tenant to restore or remove the damaged Improvements, Tenant must pay the difference.

**Article 15**  
**CONDEMNATION**

**15.1 Total Taking.** If all the Premises and the Improvements are taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a "Taking"), or if in Tenant's reasonable judgment the Taking of any portion of the Premises or the Improvements renders the portion remaining insufficient and unsuitable to permit the restoration of the Improvements following the Taking, then Tenant may terminate this Lease by providing written notice thereof to Landlord within 30 calendar days after Tenant is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) as of the date on which the condemning authority takes possession (any Taking in this section being called a "Total Taking") and the Rent will be apportioned and paid to the date of the Total Taking.

**Article 16**  
**ASSIGNMENT AND SUBLETTING**

**16.1 Limitations on Transfers.** Tenant must not, voluntarily or by operation of law, sell, assign, or transfer this Lease or any interest therein, sublet the Premises or any part thereof except as permitted by section 5.1, or grant any right to use the Premises, the Improvements, or any respective part thereof (each a "Transfer") without the prior written consent of Landlord, which consent is in Landlord's sole and absolute discretion. Any attempted Transfer without such prior written consent will be void. Landlord's consent to a Transfer will in no event release Tenant, any assignee, or any guarantor from their respective liabilities or obligations under this Lease or any guaranty of this Lease (including any liabilities or obligations arising during the Extended Term), nor relieve Tenant from the requirement of obtaining Landlord's prior written consent to any further Transfer. Landlord's acceptance of Rent from any other person will not be deemed to be a waiver by Landlord of any provision of this Lease or consent to any Transfer.

If Tenant is a corporation, partnership, limited liability company, or other entity or unincorporated association, then any Transfer of this Lease by merger, consolidation, liquidation, or change in the ownership of or power to vote the majority of the ownership interest of Tenant, will constitute a Transfer for the purposes of this Article.

Tenant shall promptly notify Landlord in writing when the Tenant becomes aware that a transfer of ownership interest in Tenant of fifty percent (50%) or more is certain to occur.

**16.2. Assignments Prohibited.** An assignment prohibited within the meaning of section 16.1 includes, without limitation, one or more sales or transfers, direct or indirect, by operation of law or otherwise, or the creation of new stock or ownership interests, by which ownership or control of an aggregate of more than 50 percent of Tenant's stock or ownership interests must vest in a party or parties who are non-stockholders, partners, or members, as applicable, as of the Commencement Date.

**Article 17**  
**DEFAULT**

The occurrence of any one or more of the following constitutes an event of default under this Lease:

(a) Failure by Tenant to pay Rent or any other amount required to be paid by Tenant to Landlord under this Lease within 10 calendar days after written notice of such nonpayment is given to Tenant; provided, however, that Landlord is not required to give Tenant more than one such notice in any consecutive 12-month period. After giving the first such notice to Tenant during a consecutive 12-month period, Tenant will be deemed in default under this Lease for failure to pay Rent or any other amount within 10 calendar days after the same becomes due, without notice or opportunity to cure;

(b) Failure by Tenant to obtain and maintain any insurance or provide evidence of insurance as required by the terms of this Lease and such failure continues and is not remedied within 10 calendar days after written notice thereof is given to Tenant;

(c) Failure by Tenant, whether by action or inaction, to comply with any term or condition or fulfill any obligation under this Lease (other than as set forth in subsections (a) and (b) above) and such failure continues and is not remedied within 30 calendar days after written notice thereof is given to Tenant; provided, however, that if the failure is of such a nature that it cannot be cured within said 30-day period, then this provision is satisfied if Tenant begins the cure within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the cure within 90 calendar days after Landlord's notice is given to Tenant;

(d) Tenant becomes insolvent; Tenant makes an assignment for the benefit of creditors; Tenant files a voluntary petition in bankruptcy; Tenant is adjudged bankrupt or a receiver is appointed for Tenant's properties; the filing of any involuntary petition of bankruptcy and Tenant's failure to secure a dismissal of the petition within 75 calendar days after filing; or the attachment of or the levying of execution on the leasehold interest and Tenant's failure to secure discharge of the attachment or release of the levy of execution within 30 calendar days.

## **Article 18 REMEDIES**

**18.1 Remedies.** Upon the occurrence of an event of default, Landlord may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

(a) Landlord may terminate this Lease by written notice to Tenant.

(b) Landlord or Landlord's agent or employee may immediately or at any time thereafter, without terminating the Lease, reenter the Premises and the Improvements either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises and the Improvements, to the end that Landlord may have, hold, and enjoy the Premises and the Improvements. RE-ENTRY OR TAKING POSSESSION OF THE PREMISES OR THE IMPROVEMENTS BY LANDLORD WILL NOT BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE UNLESS A WRITTEN NOTICE OF SUCH INTENTION IS GIVEN TO TENANT.

(c) Landlord may, without terminating the Lease, relet the whole or any part of the Premises and the Improvements from time to time, either in the name of Landlord or otherwise, to any persons, for any terms ending before, on, or after the expiration date of the Term, at any rentals and on any other conditions (including concessions and free rent) that Landlord determines to be appropriate. To the extent allowed under Oregon law, Landlord will have no obligation to relet all or any part of the Premises or the Improvements and will not be liable for refusing to relet the Premises or the Improvements, or, in the event of reletting, for refusing or

failing to collect any rent due on such reletting; and any action of Landlord will not operate to relieve Tenant of any liability under this Lease or otherwise affect such liability. Landlord at its option may make any physical change to the Premises or the Improvements that Landlord, in its sole discretion, considers advisable and necessary in connection with any reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting Tenant's liability.

(d) Whether or not Landlord retakes possession of or relets the Premises and the Improvements, Landlord has the right to recover its damages, including without limitation all lost rentals, all legal expenses, all costs incurred by Landlord in restoring the Premises or otherwise preparing the Premises and the Improvements for reletting, and all costs incurred by Landlord in reletting the Premises and the Improvements.

(e) To the extent permitted under Oregon law, Landlord may sue periodically for damages as they accrue without barring a later action for further damages. Landlord may in one action recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent reserved in this Lease for the balance of the Term after the time of award and the fair rental value of the Premises and the Improvements for the same period, discounted at the time of award at a reasonable rate not to exceed 10 percent per annum. If Landlord relets the Premises and the Improvements for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of rent reserved on the reletting will be deemed to be the fair and reasonable rental value for the part or the whole of the Premises and the Improvements so relet during the term of the reletting.

**18.2 Landlord's Self-Help Right.** If Tenant at any time (a) fails to pay any Tax in accordance with the provisions of this Lease, (b) fails to make any other payment required under this Lease, or (c) fails to perform any other obligation on its part to be made or performed under this Lease, then after 10 calendar days' written notice to Tenant (or without notice in the event of an emergency) and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease or from any default by Tenant and without waiving Landlord's right to take any action that is permissible under this Lease as a result of the default, Landlord may, but is under no obligation to, (i) pay any Tax or make any other payment required of Tenant under this Lease, and (ii) perform any other act on Tenant's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take any action that may be necessary. All payments so made by Landlord and all costs and expenses incurred by Landlord, including reasonable attorney fees, in connection with the performance of any such act will constitute additional rent payable by Tenant under this Lease and must be paid to Landlord on demand.

**18.3 No Waiver.** No failure by Landlord to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Tenant, and no breach by Tenant, may be waived, altered, or modified except by a written instrument executed by Landlord. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

**18.4 Remedies Cumulative and Nonexclusive.** Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or

hereafter existing at law or in equity or by statute or otherwise, and Landlord's or Tenant's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

**18.5 Remedies Procedures.** Notwithstanding anything to the contrary, the provisions of ORS 105.137 shall apply to this Lease.

## **Article 19**

### **RIGHT OF FIRST OFFER AND RIGHT OF FIRST REFUSAL**

As long as Tenant is not in default under this Lease, Tenant will, at all times during the Term, have the right of first offer to purchase the Premises from Landlord. This right of first offer will not apply to any transfer by Landlord to any Affiliate of Landlord (an "Exempt Transfer") but will survive an Exempt Transfer. If Landlord elects to sell the Premises, after following all required steps as set forth under the Warrenton City Charter, during the Term, Landlord will not list the Premises with a broker or otherwise market the Premises for sale without first making an offer ("Landlord's Offer") to Tenant for a price and on terms and conditions acceptable to Landlord and allowing Tenant 30 days from the date Tenant receives the offer to respond. If Tenant accepts Landlord's Offer, the parties will negotiate a purchase and sale agreement. If Tenant fails to respond, then Landlord may sell the Premises to any person for such price and terms as Landlord desires without further notice to Tenant. If Tenant makes a counteroffer within the 30 days, Landlord will have the option of accepting the counteroffer at any time during the 60 days after it is delivered to Landlord. Tenant may not withdraw any counteroffer until 60 days after it is given. During that time, Landlord may market and sell the Premises to a third party, as long as the sale is for a price that is at least five percent higher than the price contained in Tenant's counteroffer.

If Landlord receives an acceptable unsolicited offer to purchase the Premises during the Term and after following all required steps as set forth under the Warrenton City Charter, then before accepting the offer Landlord will give Tenant a copy of the executed offer. When Tenant receives the offer, Tenant will have the option to purchase the Premises (or portion covered by the offer, as the case may be) at the same price and on the same terms and conditions as are contained in the offer. The option may be exercised only by notice to Landlord within 10 business days after receiving the offer, together with reasonably satisfactory evidence that Tenant is ready and able to make payment and otherwise ready to enter into a purchase and sale agreement for the Premises. If Tenant fails to timely exercise its purchase option, then Landlord may sell the Premises according to the terms of the offer to the third-party offeror.

If Landlord is unable sell the Premises to a third party within six months of (1) Tenant's failure to exercise its option with respect to a third-party offer or (2) Tenant's counteroffer to a Landlord offer, then Tenant's option rights under this Article 19 will be reinstated. As used in this Article 19, the term "sell" means actually conveying Landlord's interest in the Premises to a third party, any agreement between Landlord and a third party for a future conveyance of Landlord's interest in the Premises, or any transaction that is the substantial equivalent of such a conveyance or agreement for such a conveyance.

**Article 20**  
**SURRENDER AND HOLDOVER**

**20.1 Condition of Premises and Improvements.** Upon expiration of the Term or earlier termination of this Lease, Tenant will deliver all keys to Landlord and surrender the Premises and the Improvements in good condition and repair and broom clean (reasonable wear and tear excepted), free and clear of all occupancies, free and clear of all subtenants and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Landlord. Tenant's obligations under this Article will be subject to the provisions of Article 14 relating to damage or destruction.

**20.2 Tenant's Property.** Before the expiration or earlier termination of this Lease, Tenant will remove all furnishings, furniture, and trade fixtures that remain Tenant's property, including the personal property of all subtenants (the "Tenant's Property"). If Tenant fails to do so, at Landlord's option, (a) the failure to remove Tenant's Property will be deemed an abandonment of Tenant's Property, and Landlord may retain Tenant's Property and all rights of Tenant with respect to it will cease; or (b) by written notice given to Tenant, Landlord may elect to hold Tenant to Tenant's obligation of removal, in which case Landlord may effect the removal, transportation, and storage of Tenant's Property and Tenant will reimburse Landlord for the costs incurred in connection therewith on demand.

**20.3 Holding Over.** Any holding over after the expiration of the Term with the written consent of Landlord will be construed to be a tenancy from month-to-month, same Rent payable for the period immediately before the expiration of the Term and will otherwise be on the terms and conditions of this Lease. If Landlord consents to Tenant holding over, either party may thereafter terminate the tenancy at any time on 30 calendar days' advance written notice to the other party.

Any holding over after the expiration of the Term without the written consent of Landlord will be construed as a tenancy at sufferance (which Landlord may terminate at any time without notice) and Tenant will be liable for any and all damages resulting from such unauthorized holdover (including, but not limited to, any and all damages that Landlord is required to pay a new tenant for failing to timely deliver any portion of the Premises or the Improvements).

**20.4 Rental Agreements with Subtenants.** Upon expiration of the Term or earlier termination of this Lease, all rental agreements between Tenant and each subtenant will automatically terminate. The tenant shall turn over the names of all subtenants who have not removed their items from the property at the time of termination, however, it is up to the tenant to work on foreclosure process with the subtenants and removal of all items.

**Article 21**  
**CONDITION OF PREMISES**

Tenant acknowledges that it has examined the physical condition of the Premises (including whether the Premises contains any Hazardous Substances or fails to comply with any Environmental Laws) and as a result agrees to accept the Premises in "as-is" condition, with all faults. Tenant further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Landlord or any agent or person acting for Landlord.

**Article 22**  
**QUIET ENJOYMENT**

On paying the Rent and adhering to all covenants, agreements, and conditions of this Lease, Tenant will have quiet enjoyment of the Premises during the Term without hindrance or disturbance by any person claiming by, through, or under Landlord, subject, however, to the Permitted Exceptions and as otherwise excepted in this Lease.

**Article 23**  
**NOTICES**

**22.1 Notice Parties and Means of Delivery.** Any notice required or permitted by the terms of this Lease will be deemed given if delivered personally (effective upon delivery), or sent by United States registered or certified mail, postage prepaid, return receipt requested (effective upon delivery or refusal to accept delivery), and addressed as follows:

If to Landlord:           Attn: City Manager  
  PO BOX 250  
  Warrenton, OR 97143

Attn:                            City Recorder  
With a copy to:           PO BOX 250  
  Warrenton, OR 97143

Attn:                            \_\_\_\_\_  
If to Tenant:                \_\_\_\_\_  
  \_\_\_\_\_

Attn:                            \_\_\_\_\_  
With a copy to:            \_\_\_\_\_  
  \_\_\_\_\_

Attn:                            \_\_\_\_\_

**22.3 Copies of Certain Notices to Tenant.** Tenant will immediately send to Landlord, in the manner prescribed in this Article, copies of all notices that Tenant receives with respect to the Premises or the Improvements from any government authority, fire regulatory agency, or similarly constituted body, and copies of its responses to those notices.

**22.4 Failure to Notify of Change of Address or Refusal to Accept a Notice.** Notwithstanding anything in this Article to the contrary, any notice mailed to the last-designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this Article will not be deemed ineffective if actual delivery cannot be made because of a change of address of the person or party to which the notice is directed or the failure or refusal of such a person or party to accept delivery of the notice.

**Article 24**  
**MISCELLANEOUS**

**24.1 Survival.** All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

**24.2 Invalidity.** If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than

those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

**24.3 Force Majeure.** If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

**24.4 Nonmerger.** There may be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease, may be held, directly or indirectly, by or for the account of any person who owns the fee estate in the Premises or any interest in such fee estate. No merger will occur unless and until all persons having an interest in the fee estate in the Premises and all persons having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting the merger and duly record the same.

**24.5 Entire Agreement; Counterparts.** This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Tenant and Landlord mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of counterparts, including by electronic signatures, each of which will constitute an original, but all of which will constitute one Lease.

**24.6 Applicable Law.** This Lease will be governed by, and construed in accordance with, the laws of the State of Oregon.

**24.7 Brokerage.** Landlord and Tenant represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other.

**24.8 Binding Effect.** The covenants and agreements contained in this Lease are binding on and inure to the benefit of Landlord, Tenant, and their respective successors and assigns.

**24.9 Recordation of Lease.** Tenant may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of Clatsop County, Oregon. Tenant will pay the recording costs.

**24.10 Time Is of the Essence.** Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

**24.11 Interpretation.** In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon must be given equal weight, and there must be no inference, by operation of law or otherwise, that any provision of this Lease may be construed against either party hereto. Landlord and Tenant acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved

against the drafting party will not be used in the interpretation of this Lease or any exhibit or amendment hereto.

**24.12 Headings, Captions, and References.** The headings and captions contained in this Lease are for convenience only and do not in any way define, describe, limit, or amplify the scope or intent of this lease or any term or provision in it. The use of the term “Herein” refers to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of a masculine or neuter gender in this Lease includes the masculine, feminine, and neuter genders and the singular form includes the plural when the context so requires.

**24.13 Relationship of Parties.** Nothing contained in this Lease is to be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Landlord and Tenant.

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

LANDLORD:

/s/ \_\_\_\_\_,  
a(n)

\_\_\_\_\_

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

TENANT:

/s/ \_\_\_\_\_,  
a(n)

\_\_\_\_\_

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

**EXHIBIT A  
PROPERTY**

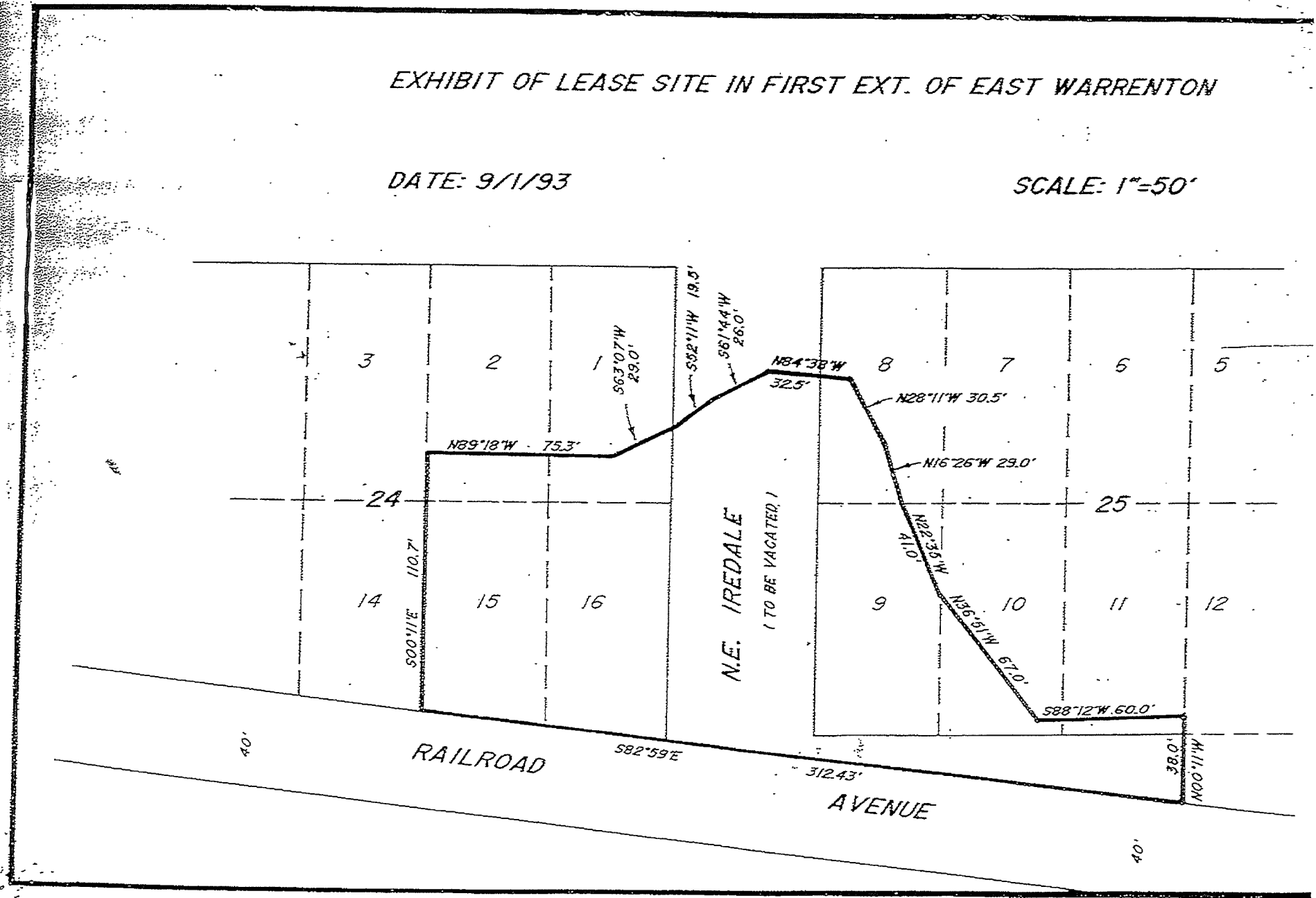
# Exhibit A

Beginning at the southwest corner of Lot 15, Block 24, in the plat of FIRST EXTENSION OF EAST WARRENTON, County of Clatsop, State of Oregon; thence, South 82' 59'E along a line parallel with and 40 feet right angle distance north of the south boundary of Railroad Avenue 312.43 feet to an intersection with the southerly projection of the east boundary of Lot 11, Block 25, FIRST EXTENSION OF EAST WARRENTON; thence N00 11' W 38.0 feet; thence S88 12'W 60.00 feet; thence N36 51' W 67.0 feet; thence N22 35'W 41.0 feet; thence N16 26'W 29.0 feet; thence N28 11'W 30.5 feet; N84 38'W 32.5 feet; thence S61 44'W 26.0 feet; thence S52 11'W 19.5 feet; thence S63 07'W 29.0 feet; thence N89 18'W 75.3 feet; to the west boundary of Lot 2, said Block 24; thence S00 11'E along the west boundary of said Lots 2 and 15 a distance of 110.7 feet to the point of beginning; containing 31,900 square feet} more or less.

EXHIBIT OF LEASE SITE IN FIRST EXT. OF EAST WARRENTON

DATE: 9/1/93

SCALE: 1"=50'



**EXHIBIT B**  
**LANDLORD IMPROVEMENTS**

Landlord agrees to complete the following improvements at Landlord's expense within three (3) months after Tenant takes delivery of the possession of the Premises:

1. Replace up to 7 of the damaged or failing rollup doors on the external storage units.
2. Repair or replace 15' of insulation inside far west building, fixing the remainder of the insulation in place. (Already completed September 2024).
3. In cooperation with Tenant, fix sheet metal on far east building.
4. Replace all gutters that are missing or damaged.
5. The City will replace the west side door on the building that has two entrance and exit doors.

**EXHIBIT C**  
**TENANT IMPROVEMENTS**

Tenant agrees to complete the following improvements at Tenant's expense within 5 months after Tenant takes delivery of the possession:

1. Install new gates.
2. Install new security system.
3. Install new doors on external units
4. Secure sides of Property (fencing catching back corners of buildings).
5. Fix leak in the far west building.
6. Add new locks on all doors.
7. Perform pest control.
8. Paint front of buildings where needed.
9. Clean out gutters.
10. Clean and spruce up courtyard including adding more gravel.
11. Add more lighting in courtyard.

**EXHIBIT D**  
**LANLORD RULES AND REGULATIONS FOR PREMISES**

1. Boat storage is permitted in courtyard of Premises only.
2. No use of City right of way other than temporary parking.
3. No living or residing allowed on Premises, including in storage units.
4. The following are prohibited on the Premises, including storage units: guns.
5. No storage of food allowed on premises or in any units to avoid pest issues.



## City Commission Agenda Memo

Meeting Date: September 24, 2024  
 From: Esther Moberg, City Manager  
 Subject: Ordinance Updating and Replacing Public Contracting Code

### Summary:

The City of Warrenton Public Contracting Code was not current with State Standards regarding Public Contracts. We have done a significant update with the assistance of legal to update our public contracting language to reflect current state standards including prevailing wage and public contract minimum thresholds. We also reflect a slight change to personal and surplus values. The City Manager's authority remains the same per City Charter.

### Recommendation/Suggested Motion:

*"I move to conduct the first reading, by title only, of Ordinance No. 1281; An Ordinance Amending in its Entirety, Chapter 3.28 of the Warrenton Municipal Code; Public Contracting, and Repealing All Ordinances in Conflict"*

### Alternative:

Other action as deemed appropriate by the City Commission OR None recommended

### Fiscal Impact:

This will lessen the burden on the city for prevailing wage contracts, and burden on staff for onerous requirements that are better suited for higher threshold contracts (less staff time and city money will be spent on contracts that are not required to have these thresholds by state law.

### Attachments:

- Ordinance No. 1281
- Public Contracting Code

Approved by City Manager: \_\_\_\_\_

**ORDINANCE NO. 1281  
INTRODUCED BY ALL COMMISSIONERS**

**AN ORDINANCE AMENDING IN ITS ENTIRETY, CHAPTER 3.28 OF THE WARRENTON MUNICIPAL  
CODE; PUBLIC CONTRACTING, AND REPEALING ALL ORDINANCES IN CONFLICT**

**WHEREAS**, State standards regarding public contracting law thresholds have increased; and

**WHEREAS**, current Warrenton Municipal Code language is outdated and not current with State standards, including prevailing wage and public contract minimum thresholds; and

**WHEREAS**, Warrenton Municipal Code Chapter 3.28 has been reviewed and significantly updated with the assistance of legal counsel.

**NOW, THEREFORE, THE CITY OF WARRENTON ORDAINS AS FOLLOWS:**

**Section 1.** Warrenton Municipal Code Chapter 3.28 Public Contracting is hereby amended in its entirety to read as follows:

**Title 3. Revenue and Finance**

**Chapter 3.28. PUBLIC CONTRACTING**

**3.28.010 Public contracts – City of Warrenton policy.**

A. **Short Title.** The provisions of this chapter and all rules adopted under this chapter may be cited as the “Public Contracting Regulations.”

B. **Purpose of the Public Contracting Regulations.** It is the policy of the City of Warrenton in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:

1. Promoting impartial and open competition;
2. Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
3. Taking full advantage of evolving procurement methods that suit the contracting needs of the City of Warrenton as they emerge within various industries.

C. **Interpretation of Public Contracting Regulations.** In furtherance of the purpose of the objectives set forth in subsection B of this section, and except as provided within these regulations, City public contracting is governed by the Oregon Public Contracting Code (ORS

Chapters 279, 279A, 279B and 279C) (the “State Statutes”) and the Oregon Attorney General’s Model Public Contract Rules (OAR Chapter 137, divisions 46, 47 and 49) (the “Model Rules”).

For purposes of these Public Contracting Regulations, “emergency” means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare, or safety; and require prompt execution of a contract to remedy the condition.

### **3.28.020 Application of public contracting regulations.**

In accordance with ORS 279A.025, the City of Warrenton’s public contracting regulations and the State Statutes do not apply to the following classes of contracts:

- A. **Between Governments.** Contracts between the City of Warrenton (A) Another contracting agency; (B) The Oregon Health and Science University; (C) A public university listed in ORS 352.002; (D) The Oregon State Bar; (E) A governmental body of another state; (F) The federal government; (G) An American Indian tribe or an agency of an American Indian tribe; (H) A nation, or a governmental body in a nation, other than the United States; or (I) An intergovernmental entity formed between or among: (i) Governmental bodies of this or another state; (ii) The federal government; (iii) An American Indian tribe or an agency of an American Indian tribe; (iv) A nation other than the United States; or (v) A governmental body in a nation other than the United States.
- B. **Insurance and service contracts** as provided for under ORS 414.115, 414.125, 414.135 and 414.145, for purposes of source selection.
- C. **Grants.** A grant contract is an agreement under which the City of Warrenton is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions. The making or receiving of a grant is not a public contract subject to the State Statutes; however, any grant made by City of Warrenton for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant to design or construct the public improvement or public works project are made in accordance with the State Statutes and these regulations.
- D. **Legal Witnesses and Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City of Warrenton is or may become interested.
- E. **Real Property.** Acquisitions or disposal of real property or interests in real property.

- F. **Textbooks.** Contracts for the procurement or distribution of textbooks.
- G. **Oregon Corrections Enterprises.** Procurements from an Oregon corrections enterprises program.
- H. **Finance Contracts,** agreements or other documents entered into, issued or established in connection with:
  1. The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of the City;
  2. Program loans and similar extensions or advances of funds, aid, or assistance that a public body makes to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
  3. The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085.
- I. **Employee Benefits.** Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565, or contracts for employee benefit plans as provided in ORS 243.860 to 243.886.
- J. **Exempt Under State Laws.** Any other public contracting specifically exempted from the State Statutes by another provision of law.
- K. **Federal Law.** Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the State Statutes or these regulations, or require additional conditions in public contracts not authorized by the State Statutes or these regulations.

### 3.28.030 Public Contracts – Regulation and Authority.

- A. **City Commission General Authority.** Except as expressly delegated under these regulations, the Warrenton City Commission reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law, including, but not limited to, the power and authority to:
- B. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
  1. Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;

2. Exempt the use of brand name specifications for public improvement contracts;
3. Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
4. Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation, subject to the requirements of the State Statutes and the Public Contracting Regulations;
5. Hear properly filed and timely appeals of the Purchasing Manager's determination of debarment, or concerning prequalification;
6. Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services, Construction-Related Personal Services, and public improvements; and
7. Award all contracts that exceed the authority of the Purchasing Manager.

C. **City Manager General Authority.** For the purposes of these Public Contracting Regulations, "City Manager" means the City Manager for the City of Warrenton, or the City Manager's designee. The City Manager shall be the purchasing manager for the City of Warrenton and is hereby authorized to issue all solicitations and to award all City of Warrenton contracts for which the contract price does not exceed \$50,000.00. Subject to the provisions of these Public Contracting Regulations, the purchasing manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the State Statutes or otherwise convenient for the City of Warrenton's contracting needs. Notwithstanding the foregoing, as required by City Charter section 39, the City Commission shall approve the plans and specifications of any public improvement in excess of \$10,000.00 to be made by a private contractor. The purchasing manager shall hear all properly filed and timely solicitations and award protests.

D. **Solicitation Preferences.** When practical, the Warrenton City Commission and Purchasing Manager shall use solicitation documents and evaluation criteria that:

1. Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability, and quality are otherwise equal;
2. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products; and

3. Give a preference to goods, services, and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.
- E. **Delegation of Purchasing Manager’s Authority.** Any of the responsibilities or authorities of the Purchasing Manager under these Public Contracting Regulations may be delegated and sub-delegated by written directive.
- F. **Mandatory Review of Rules.** Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Model Rules, the Purchasing Manager shall review the public contracting regulations, other than the Model Rules, and recommend to the City Commission any modifications required to ensure compliance with statutory changes.

### **3.28.040 Public Contracts – Direct Appointment Contracts; Pre-Authorized Contracts.**

A. **Direct Appointment Contracts.** Notwithstanding anything contained within these Public Contracting Regulations, the following classes of contracts may be awarded in any manner which the Solicitation Agent deems appropriate to the City of Warrenton’s needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.

1. **Advertising.** Contracts for the placing of notices or advertisements in any medium.
2. **Amendments.** Contract amendments shall not be considered to be separate contracts if made in accordance with the Public Contracting Regulations.
3. **Animals.** Contracts for the purchase of animals.
4. **Copyrighted Materials—Library Materials.** Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
5. **Equipment Repair.** Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
6. **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
7. **Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

8. **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City of Warrenton.
9. **Specialty Goods for Resale.** Contracts for the purchase of specialty goods by City of Warrenton for resale to consumers.
10. **Sponsor Agreements.** Sponsorship agreements, under which the City of Warrenton receives a gift or donation in exchange for recognition of the donor.
11. **Structures.** Contracts for the disposal of structures located on City of Warrenton owned property.
12. **Renewals.** Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.
13. **Temporary Extensions or Renewals.** Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and nonrenewable, or recently expired, contract, other than a contract for public improvements.
14. **Temporary Use of City of Warrenton Owned Property.** The City may negotiate and enter into a license, permit or other contract for the temporary use of City-owned property without using a competitive selection process if:
  - a. The contract results from an unsolicited proposal to the City based on the unique attributes of the property or the unique needs of the proposer;
  - b. The proposed use of the property is consistent with the City's use of the property and the public interest; and
  - c. The City of Warrenton reserves the right to terminate the contract without penalty, in the event that the City determines that the contract is no longer consistent with the City's present or planned use of the property or the public interest.
15. **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

**B. Contracts Required by Emergency Circumstances.**

1. **In General.** When the City Manager determines that immediate execution of a contract is necessary to address an emergency, the City Manager may execute a contract not to exceed \$50,000.00 without competitive selection and award or City of Warrenton approval, but, where time permits, the City Manager shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

2. **Reporting.** An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, (a) document the nature of the emergency; the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of the City of Warrenton and the public, and (b) notify the Warrenton City Commission of the facts and circumstances surrounding the emergency execution of the contract.
3. **Emergency Public Improvement Contracts.** A public improvement contract may only be awarded under emergency circumstances if the Warrenton City Commission has made a written declaration of emergency. Any public improvement contract award under emergency conditions must be awarded within 60 days following the declaration of an emergency unless the Warrenton City Commission grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the Warrenton City Commission may waive the requirement for all or a portion of required performance and payment bonds.

C. **Federal Purchasing Programs.** Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration (“GSA”) as provided in this subsection.

1. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Purchasing Manager. The Solicitation Agent shall provide the Purchasing Manager with a copy of the letter, memorandum, or other documentation from GSA establishing permission to the City of Warrenton to purchase under the federal program.
2. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
3. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City.
4. If a single purchase of goods or services exceeds \$250,000.00, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the City. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

D. **Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the State Statutes.

**E. Concession Agreements.**

1. **General.** No part of a concession agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of the City of Warrenton concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.
2. **Classes of Contracts Eligible for Award Without Competition.** The following concession agreements may be awarded by any method deemed appropriate by the Solicitation Agent, including without limitation by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
  - a. **Contracts Under \$5,000.00.** Contracts under which the Solicitation Agent estimates that receipts by the City of Warrenton will not exceed \$5,000.00 in any fiscal year and \$50,000.00 in the aggregate.
  - b. **Single Event Concessions.** Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the Purchasing Manager to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.
3. **Competitive Award.** Concession agreements solicited by the City of Warrenton for the use of designated public premises for a term greater than a single event shall be awarded as follows:
  - a. **Small Concessions.** For concession agreements for which the concessionaire’s projected annual gross revenues are estimated to be \$500,000.00 or less, the Purchasing Manager has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire’s annual gross revenues will exceed \$500,000.00, the Solicitation Agent may, but shall not be required to, reissue the solicitation as a request for proposals.
  - b. **Major Concessions.** Concession agreements for which the concessionaire’s projected annual gross revenues under the contract are estimated to exceed \$500,000.00 annually shall be awarded using a request for proposals.

**3.28.050 Public contracts – Process for approval of special solicitation methods and exemptions.**

- A. **Authority of City of Warrenton.** In its capacity as contract review board for the City, the City Commission, upon its own initiative, or upon request of the Purchasing Manager, may

create or approve special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

**B. Sole Source Procurements.** Pursuant to ORS 279B.075(1), the Purchasing Manager is authorized to declare in writing certain goods and services to be available from only one source. The determination of a sole source must be based on findings required by ORS 279B.075(2), and otherwise be processed in accordance with OAR 137-047-0275. To the extent reasonably practical, the City shall negotiate with the sole source to obtain contract terms that are advantageous to the City.

**C. Special Procurements.**

1. Pursuant to ORS 279B.085, to seek approval of a special procurement, the Purchasing Manager shall submit a written request to the City Commission that describes the contracting procedure, the goods or services or the class of goods or services that are the subject of the special procurement and the circumstances that justify the use of a special procurement.
2. The written findings must demonstrate that the use of the special procurement:
  - a. Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and;
  - b. Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or;
  - c. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.
3. City shall provide public notice of the special procurement approval in the same manner as provided in ORS 279B.055(4).

**D. Procurement Exemptions.** Pursuant to ORS 279C.335(2), the Purchasing Manager is authorized to seek the procurement of Construction-Related Personal Services or public improvements via procurement or contracting methods, or both, that deviate from those set forth in these Public Contracting Regulations, the State Statutes, and the Model Rules. In order to qualify for an exemption under this section, the Purchasing Manager must produce written findings that demonstrate all applicable elements of ORS 279C.335(2)(a) and (b), present such findings to the City Commission, and follow the notice and hearing requirements of ORS 279C.335(5). For clarity's sake, this exemption process shall be used if the City seeks to use any alternate contracting method, including a design-build contract, construction-manager/general-contractor contract, or energy-saving performance contract, each as defined by state law.

#### E. Hearing.

1. The City of Warrenton shall approve the sole source procurement, special solicitation, or exemption after a public hearing before the Warrenton City Commission following notice by publication in at least one newspaper of general circulation in the City of Warrenton area in accordance with the requirements set forth in this section.
2. At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.
3. The Warrenton City Commission will consider the findings and may approve the exemption as proposed or as modified by the Warrenton City Commission after providing an opportunity for public comment.

F. **Commencement of Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a special exemption under this section, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the Warrenton City Commission approves the exemption. If the Warrenton City Commission fails to approve a requested exemption or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled.

### 3.28.060 Public Contracts – Surplus Property; City Funded Private Construction Projects.

#### A. Surplus Property.

1. **Definition.** “Surplus property” means personal property owned by the City of Warrenton which is no longer needed for use by the department to which such property has been assigned.
2. **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the City Commission that the method of disposal is in the best interest of the City of Warrenton. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the City of Warrenton. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.
  - a. Governments. Without competition, by transfer or sale to another City of Warrenton department or public agency.
  - b. Auction. By publicly advertised auction to the highest bidder.
  - c. Bids. By public advertised invitation to bid.

- d. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with Public Contracting Regulations for the award of personal services contracts.
  - e. Fixed Price Sale. The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
  - f. Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
  - g. Donation. By donation to any organization operating which is recognized by the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
3. **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$1000.00, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost effective, including by disposal as waste, upon such determination by the Solicitation Agent. The official making the disposal shall make a record of the value of the item and the manner of disposal.
4. **Personal-Use Items.** An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$300.00 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Manager.
5. **Police Officers' Handguns.** Upon honorable retirement from service with the City of Warrenton, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the City at least 30 days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer, the City shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value.
6. **Restriction on Sale to City of Warrenton Employees.** City of Warrenton employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

7. **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, the City of Warrenton shall make, execute and deliver, a bill of sale signed on behalf of the City, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

**B. City of Warrenton Funded Privately Constructed Public Improvements.** The City of Warrenton may contribute funding to a privately constructed public improvement project without subjecting the project to competitive solicitation requirements if all of the following conditions are met with respect to the entire public improvement project:

1. The City's contribution to the project may not exceed 25% of the total cost of the project;
2. The City must comply with all applicable laws, if any, concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;
3. The general contractor for the project must agree in writing to comply with all applicable laws, if any, concerning reporting and payment of prevailing wages for the project;
4. The funds contributed to the project may not provide a pecuniary benefit to the owner of the development for which the project is being constructed, other than benefits that are shared by all members of the community;
5. The performance of the general contractor and the payment of labor for the project must be secured by performance and payment bonds or other cash-equivalent security that is acceptable to the Purchasing Manager to protect the City of Warrenton against defective performance and claims for payment; and
6. The contract for construction of the project must be amended, as necessary, to require the general contractor to maintain adequate workers compensation and liability insurance and to protect and provide indemnification to the City of Warrenton for all claims for payment, injury or property damage arising from or related to the construction of the project.

### **3.28.070 Public Contracts – Personal Service Contracts.**

A. **“Personal services contract”** means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors, health care professionals, land use consultants, urban renewal consultants, landscape architects and other licensed professionals, artists, designers, computer programmers, performers, consultants, appraisers, realtors,

geologists, hydrologists, and property managers. The Warrenton City Commission shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

B. **Large Procurements.** The following formal selection procedure will be used when the estimated payment to the contractor for a personal service contract exceeds \$250,000.

1. **Announcement.** The City will give notice of its intent to procure personal services through the League of Oregon Cities, and/or any other means the City deems appropriate, including contacting prospective contractors directly. Announcements will include:
  - a. A description of the proposed project;
  - b. The scope of the services required;
  - c. The project completion dates;
  - d. A description of special requirements;
  - e. When and where the application may be obtained and to whom it must be returned;
  - f. The closing date; and
  - g. Other necessary information, as determined by City in its sole discretion.
2. **Application.** Applications will include a statement that describes the prospective contractor's credentials, performance data, examples of previous work product or other information sufficient to establish contractor's qualification for the project, references, and other information identified by the City as necessary to make its selection. Applications shall include, at minimum:
  - a. Specialized experiences in the type of work to be performed;
  - b. Capacity and capability to perform the work, including any specialized services within the time limitations for the work;
  - c. Education and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable; and
  - d. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.

- e. Any other factors relevant to the particular contract.
3. **Initial screening.** The Purchasing Manager will evaluate the qualifications of all applications and select a prospective contractor or prospective contractors whose application demonstrates that the contractor is the best qualified to meet the City's needs.
4. **Final Selection.**
- a. The Purchasing Manager will interview the finalists selected from the initial screening. At the Purchasing Manager's discretion, the interviews may be conducted before the City Commission.
  - b. After the interview process concludes, the Purchasing Manager will make the final selection. If the interviews are conducted before the City Commission, the City Commission will make the final selection.
  - c. The final selection will be based upon applicant capability, experience, project approach, compensation requirements, references and any other criteria identified by the City as necessary for the City to select a contractor.

C. **Intermediate Procurements.** The following informal selection procedure may be used when the estimated payment to the contractor for a personal service contract is equal to or less than \$250,000 and above \$25,000, or when the Purchasing Manager determines that the informal procedure will not interfere with competition among prospective contractors, reduce the quality of services, or increase costs. The Purchasing Manager will contact a minimum of three (3) prospective contractors qualified to offer the services sought. The Purchasing Manager will request an estimated fee, and make the selection consistent with the City's best interests. If three (3) quotes are not received, the Purchasing Manager will make a written record of efforts to obtain the quotes.

D. **Small Procurements.** Contracts for which the Solicitation Agent estimates that payments will not exceed \$25,000.00, including optional renewals, may be awarded under any method deemed in the City of Warrenton's best interest by the Solicitation Agent, including by direct appointment. However, the Purchasing Manager must make reasonable efforts to choose the most qualified contractor to meet the City's needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.

E. **\$50,000.00 Award from Qualified Pool.** Contracts for personal services for which the estimated contract price does not exceed \$50,000.00 may be awarded by direct appointment without competition from a qualified pool.

F. **Personal Service Contracts for Continuation of Work.** Contracts of not more than \$250,000.00 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if

the prior contract was awarded under a competitive process and the City Commission determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

**G. Sole Source.** The Purchasing Manager may negotiate with a single source for personal services if the services are available from only one contractor, or the prospective contractor has special skills uniquely required for the performance of the services. The City must make written finds to demonstrate why the proposed contractor is the only contractor who can perform the services desired, in general compliance with ORS 279B.075.

**H. Emergency.** The Purchasing Manager may select a contractor without following any procedures when an emergency is determined to exist. In such instances, the Purchasing Manager must make written declarations of the circumstances that justify the emergency appointments.

### **3.28.080 Public contracts – Construction-Related Personal Service Contracts.**

**A. Purpose.** This section implements ORS 279C.100 to 279C.125. The City will rely on these Public Contracting Regulations, not the Model Rules, for a contract with an architect, engineer, photogrammetrist, land surveyor, as each is defined in ORS 279C.100, and (in very narrow instances) a transportation planner (collectively referred to herein as “Construction-Related Personal Services”).

**B. Applicability.** This section applies only to a Construction-Related Personal Service contract that meets the following criteria:

1. The estimated payment to the contractor exceeds \$100,000; and
2. The contract is for a personal service that is *legally required* to be provided or performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor. For example: hiring an architect to design a building or hiring an engineer to design a wastewater system. Because the law requires licensed professionals to design buildings and infrastructure, the City may rely on this subsection to hire someone to perform those services. However, if the City is hiring an architect or engineer to perform project management services (for example), it may solicit and award such services under Section 3.28.070 of these Public Contracting Regulations. *See* definition of “Related Services” below.
3. If either (1) or (2) above is not satisfied (i.e. the contract is for a personal service that is legally required to be provided by a licensed architect, etc. *but* is estimated to not exceed \$100,000; *or* the contract will require an engineer, etc. to perform a Related Service) then the City may rely on Section 3.28.070 of these Public Contracting Regulations to solicit and award the contract.

C. **Mixed contracts.** Some contracts will contain a mixture of services covered by this section (i.e., services that only the particular consultant may legally perform) and Related Services. Whether the City uses this section or Section 3.28.070 to solicit and award a mixed contract will depend upon the predominate purpose of the contract. The City will determine the predominate purpose based upon either the amount of money it estimates it will spend for covered services versus Related Services or the amount of time it estimates it the consultant will spend working on covered services versus Related Services. If covered services predominate, City will solicit the contract under this section. If Related Services predominate, City will solicit the contract under Section 3.28.070.

D. **Small Procurements.** For clarity's sake, the Purchasing Manager may enter Construction-Related Personal Service contracts when the estimated payment is less than \$100,000 in any manner the Purchasing Manager finds practical or convenient, including direct selection or award. However, the Purchasing Manager must make reasonable efforts to choose the most qualified contractor to meet the City's needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.

E. **Exception for Previous Work.** Pursuant to ORS 279C.115, the City may procure a Construction-Related Personal Service contract pursuant to Section 3.28.070 if the project described in the procurement document:

1. Involves work that was described, planned, or rendered in an earlier contract with the Construction-Related Personal Services consultant;
2. The earlier contract was awarded in accordance with the City's contracting rules in effect at the time of the earlier contract; and
3. The contemplated new contract is a continuation of the project described in the earlier contract.

F. **Exception for Emergencies.** Pursuant to ORS 279C.110(9), the City may directly appoint a Construction-Related Personal Service contract in an emergency.

G. **Definitions.** The following definitions apply to this section:

1. "Price Agreement" means an agreement related to the procurement of Construction-Related Personal Services or Related Services, under agreed-upon terms and conditions and possibly at a set price with:
  - a. No guarantee of a minimum or maximum purchase; or
  - b. An initial order or minimum purchase, combined with a continuing obligation to provide Construction-Related Personal Services or Related Services where the City does not guarantee a minimum or maximum additional purchase.

2. "Transportation Planning Services" only includes project-specific transportation planning required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq. and no other types of transportation planning services. By way of example only, Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project required to comply with the National Environmental Policy Act, 42 USC 4321 et. seq.
3. "Related Services" means personal services, other than architectural, engineering, photogrammetric, mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services. In other words, personal services that are *not required by law* to be performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor.

H. **Intermediate Procurements.** The following informal selection procedure may be used when the estimated payment to the consultant for Construction-Related Personal Services is equal to or less than \$250,000 and above \$100,000. The Purchasing Manager will contact a minimum of three (3) prospective consultants qualified to offer the services sought. The Purchasing Manager will request an estimated fee and make the selection consistent with the City's best interests, to the most qualified consultant. If three (3) quotes are not received, the Purchasing Manager will make a written record of efforts to obtain the quotes.

I. **Large Procurements.** The following formal selection procedure will be used when the estimated payment for Construction-Related Personal Services exceeds \$250,000.

1. When selecting a consultant to perform Construction-Related Personal Services under this section, the City must award a contract to the most qualified consultant.
2. Unless the City follows the process set forth in subsection (3) of this Section, when determining which consultant is most qualified, the City may only solicit or use pricing policies and pricing proposals, or other price information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a consultant's compensation *after* the City has selected the most qualified consultant.
3. Notwithstanding subsection (2) of this section, if the solicitation documents include the information described in ORS 279C.110(5)(a), City may request pricing policies or

pricing proposals from prospective consultants, including an estimate of the number of hours that will be needed to perform the work described in the solicitation, and a schedule of hourly rates. A pricing policy or pricing proposal also may include a description of the tasks included in the proposal, a list of persons or labor classifications who will perform the tasks, and a list of expenses. A proposer that does not wish to provide pricing information may withdraw its bid. City may use the pricing policies or pricing proposals to select a consultant, provided City does not assign more than 15 percent of weight in its evaluation to the pricing policies or information.

4. When soliciting a Construction-Related Personal Service under this section, City will use a Request for Proposals (“RFP”) or a Request for Qualifications (“RFQ”) followed by a RFP, as described below. City may advertise RFQs and RFPs in any manner it deems appropriate, including electronically.
5. **RFQ.** City may in its sole discretion issue an RFQ to evaluate potential Construction-Related Personal Service consultants and establish a short list of qualified Construction-Related Personal Service consultants to whom it may issue an RFP for some, or all of the Construction-Related Personal Services or Related Services described in the RFQ. RFQs shall follow the process set forth in section 3.28.120.
6. **RFP.** City will issue an RFP to select the most qualified Construction-Related Personal Service consultant, regardless of whether an RFQ precedes an RFP. RFPs will include:
  - a. A description of the project and the specific Construction-Related Personal Services or Related Services sought for the project, the estimated project cost (if deemed necessary and appropriate to provide, in the discretion of the Purchasing Manager), the estimated time period during which the project is to be completed, and the estimated time period in which the specific Construction-Related Personal Services or Related Services sought will be performed;
  - b. The RFP evaluation process and the criteria that the City will use to select the most qualified Construction-Related Personal Service consultant, including the weight, points, or other classifications applicable to each criterion. Without limitation, the criteria may include:
    - 1) Proposers' availability and capability to perform the services described in the RFP;
    - 2) Experience of proposers' key staff persons in providing similar services on similar projects within the last three years;
    - 3) The amount and type of resources, and number of experienced staff persons proposers will commit to the project;

- 4) Proposers' demonstrated ability to successfully complete similar projects on time and within budget, including the hourly rates for key personnel and related cost data for similar projects in the previous 12 months;
  - 5) References and recommendations from past clients;
  - 6) Conditions or limitations, if any, that may constrain or prohibit the selected Construction-Related Personal Service consultant's ability to provide additional services related to the project, including but not limited to construction services;
  - 7) Whether interviews will or may occur and, if so, how the interview will factor into City's selection;
  - 8) A proposal deadline and a description of how or where to submit a proposal;
  - 9) A statement whether City will accept proposals in electronic format;
  - 10) A statement that interested consultants respond solely at their own expense;
  - 11) A statement reserving City's right to reject any or all proposals and its right to cancel the RFP at any time if doing either would be in the public interest;
  - 12) A statement directing proposers to the protest procedures set forth in the RFP;
  - 13) A statement whether City will hold a pre-proposal meeting for all interested Construction-Related Personal Service consultants to discuss the project and if a pre-proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory; and
  - 14) Any other elements the Purchasing Manager deems appropriate.
- c. After selecting the most qualified Construction-Related Personal Service consultant in accordance with an RFP, Purchasing Manager will notify each proposer accordingly and state that it will begin negotiating a contract with the most qualified consultant. A resulting contract will at least include:
- 1) The consultant's performance obligations and performance schedule;
  - 2) Payment methodology and a maximum amount payable to the consultant for the services required under the contract;

- 3) Insurance and indemnification provisions;
  - 4) Legally required terms; and
  - 5) Any other provisions City believes are in its best interest to negotiate.
- d. City will formally terminate negotiations in writing with the most qualified consultant if it is unable for any reason to negotiate a contract within a reasonable amount of time, as City may determine in its sole discretion. City may thereafter negotiate with the second ranked consultant, and if necessary, with the third ranked consultant, and so on, until negotiations result in a contract. If negotiations with any consultant do not result in a contract within a reasonable amount of time, City may end the particular solicitation. Nothing in this section precludes City from re-entering negotiations, in its own discretion, with a consultant if negotiations were previously terminated for the same contract.

J. **Price agreements.** Solicitation materials and the terms and conditions for a Price Agreement for Construction-Related Personal Services or Related Services must:

1. Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity, and purpose of the procurement that will reasonably enable a consultant to decide whether to submit a proposal;
2. Specify whether the City intends to award a Price Agreement to one consultant or to multiple consultants. If City will award a Price Agreement to more than one consultant, the solicitation document and Price Agreement will describe the criteria and procedures City will use to select a consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Construction-Related Personal Services are at City's sole discretion; and
3. Specify the maximum term for assigning services under the Price Agreement.

### **3.28.090 Public Contracts – Small Procurements of Goods and Services.**

A. Any procurement of goods or services estimated by the City Manager to not exceed \$25,000 may be awarded in any manner the City Manager finds practical or convenient, including direct selection or award.

B. A procurement may not be artificially divided or fragmented to qualify for this section.

### **3.28.100 Public Contracts – Intermediate Procurements of Goods and Services.**

A. The following informal selection procedure may be used when the estimated payment to the contractor for goods or services is equal to or less than \$250,000 and above \$25,000. The City Manager will contact a minimum of three (3) prospective contractors qualified to offer the goods or services or public improvement sought. The City Manager will request an estimated fee and make the selection consistent with the City’s best interests. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.

B. An intermediate procurement contract may be amended in accordance with OAR 137-047-0800.

C. A procurement may not be artificially divided or fragmented to qualify for this section.

### **3.28.110 Large Procurements of Goods and Services, and Public Improvements.**

A. When the estimated payment to the contractor for goods or services is above \$250,000, the City shall either seek competitive sealed bidding in accordance with OAR 137-047-0255 or competitive sealed proposals in accordance with OAR 137-047-0260.

B. When estimated payment to the contractor for a public improvement is above \$5,000, the City shall follow the solicitation procedures set forth in OAR 137-049-0200.

C. A procurement may not be artificially divided or fragmented to avoid this section.

### **3.28.120 Public contracts – Qualified Pools.**

A. **General.** To create a qualified pool, the Purchasing Manager may invite prospective contractors to submit their qualifications to the City of Warrenton for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects, including personal services, Construction-Related Personal Services, and public improvements. The City Commission shall approve the use of a qualified pool appointment and will approve the qualified pool membership on an annual basis.

B. **Advertisement.** The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be republished at least once per year and shall be posted at the City of Warrenton’s main office and on its website.

C. **Contents of Solicitation.** Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to

qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the City of Warrenton.

D. **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the City of Warrenton and all pool participants are parties. The contract shall contain all terms required by the City, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that the City may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any City of Warrenton contract.

E. **Use of Qualified Pools.** Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the Warrenton City Commission shall award all contracts of the type for which a qualified pool is created from among the pool's participants, unless the Solicitation Agent determines that best interests of the City of Warrenton require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.

F. **Amendment and Termination.** The Purchasing Manager may discontinue a qualified pool at any time or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.

G. **Protest of Failure to Qualify.** The Purchasing Manager shall notify any applicant who fails to qualify for participation in a pool that he or she may appeal a qualified pool decision to the Warrenton City Commission in accordance with these rules.

### **3.28.120 Public contracts – Electronic advertisement of public improvement contracts.**

A. In lieu of publication in a newspaper of general circulation in the City of Warrenton metropolitan area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement with an estimated cost not exceeding \$125,000 may be published electronically by posting on the City of Warrenton's website, provided that the following conditions are met:

B. The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and

C. The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation the City of Warrenton metropolitan area and will provide costs savings for the City, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in the City of Warrenton metropolitan area in encouraging meaningful competition.

Any advertisement for a public improvement contract with an estimated cost over \$125,000 must be published at least once in a trade newspaper of general statewide circulation, such as the Daily Journal of Commerce.

### **3.28.130 Authority to electronically advertise solicitation for goods and services.**

A. The Purchasing Manager is authorized to develop an “electronic procurement system” in accordance with OAR 137-047-0300(2)(b). As described in OAR 137-046-0110(15), this is an information system accessible through the internet that allows the City to post electronic advertisements and receive electronic offers for goods and services. When an electronic procurement system is in place, the Model Rules allow procurement solicitations to be advertised exclusively on the internet. This saves the City time and money over newspaper advertisements.

B. Prior to any development of an electronic procurement system, the City may advertise solicitations for goods and services on the internet in addition to newspaper advertisements.

### **3.28.140 Appeal of debarment or prequalification decision.**

A. Right to Hearing. Any person who has been debarred from competing for City of Warrenton contracts or for whom prequalification has been denied, revoked, or revised may appeal the City’s decision to the Warrenton City Commission as provided in this section.

B. Filing of Appeal. The person must file a written notice of appeal with the City’s Purchasing Manager within three business days after the prospective contractor’s receipt of notice of the determination of debarment, or denial of prequalification.

C. Notification of Warrenton City Commission. Immediately upon receipt of such notice of appeal, the Purchasing Manager shall notify the Warrenton City Commission of the appeal.

D. Hearing. The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:

1. Promptly upon receipt of notice of appeal, the City of Warrenton shall notify the appellant of the time and place of the hearing;
2. The Warrenton City Commission shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the Purchasing Manager; and

3. At the hearing, the Warrenton City Commission shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

E. Decision. The Warrenton City Commission shall set forth in writing the reasons for the decision.

F. Costs. The Warrenton City Commission may allocate the Commission's costs for the hearing between the appellant and the City of Warrenton. The allocation shall be based upon facts found by the City Commission and stated in the Warrenton City Commission's decision that, in the Commission's opinion, such allocation of costs. If the City of Warrenton does not allocate costs, the costs shall be paid as by the appellant, if the decision is upheld, or by the City, if the decision is overturned.

G. Judicial Review. The decision of the Warrenton City Commission may be reviewed only upon a petition in the circuit court of Clatsop County filed within 15 days after the date of the Warrenton City Commission's decision. (Ord. 1076-A § 13, 2005)

### **3.28.150 Notice of Intent to award certain contracts.**

A. At least seven days before the award of a public contract solicited under any invitation to bid or request for proposals, the City will post or provide to each bidder or proposer notice of the City's intent to award a contract.

B. If stated in the solicitation document, the City may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of the City's intent.

C. As an alternative, the City may provide written notice to each bidder or proposer of the City's intent to award a contract. This written notice may be provided electronically or through non-electronic means.

D. The City may give less than seven days' notice of its intent to award a contract if the City determines in writing that seven days is impracticable.

E. This section does not apply to any goods or service contract, public improvement contract or class of public improvement or goods or services contracts exempted from competitive bidding requirements.

F. A protest of the City's intent to award a contract may only be filed in accordance with OAR 137-047-0740, OAR 137-048-0240, or OAR 137-049-0450, as applicable. Protests to the City's intent to award a personal service contract under Section 3.28.070 may only be filed in accordance with OAR 137-047-0740.

**Section 2.** Effective Date. This Ordinance shall be effective on the 30th day following its passage.

First Reading:

Second Reading:

ADOPTED by the City Commission of the City of Warrenton, Oregon this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Henry A. Balensifer III, Mayor

Attest: \_\_\_\_\_  
Dawne Shaw, CMC, City Recorder



# City Commission Agenda Memo

Meeting Date: September 24, 2024  
From: Esther Moberg, City Manager  
Subject: Cancellation of October 8 Commission Meeting

**Summary:**

Requesting consideration of cancellation of the first City Commission meeting in October.

**Recommendation/Suggested Motion:**

*I move to cancel the October 8 Commission meeting due to a lack of agenda items.*

**Alternative:**

Other action as deemed appropriate by the City Commission OR None recommended

**Fiscal Impact:**

N/A

**Attachments:**

(All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.)

**Approved by City Manager:** \_\_\_\_\_