



City of Warrenton City Commission Agenda

City Hall, 225 S. Main Warrenton, OR 97146

Tuesday, November 12, 2024

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

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 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, no later than 3:00 p.m. the day of the meeting.

City Commission Regular Meeting 6:00 PM

1. Call to order

2. Pledge of Allegiance

3. Consent Calendar

- A. City Commission Meeting Minutes 10.22.2024
- B. Monthly Finance Report – July 2024
- C. Monthly Finance Report – August 2024
- D. Warrenton Library Strategic Plan 2024-2028
- E. Community Center Advisory Board Minutes 2024.02.15
- F. Community Center Advisory Board Minutes 2024.04.17
- G. Marina Advisory Committee Minutes 2024.01.22
- H. Marina Advisory Committee Minutes 2024.02.26
- I. Marina Advisory Committee Minutes 2024.05.20
- J. Parks Advisory Board Minutes 2024.08.12

4. Commissioner Reports

5. Public Comment

6. Public Hearings

- A. Appeal of SDC Fees; 65 Hwy 101
- B. Public Contracting Exemption; Kennedy Jenks for Design of Wastewater Treatment Plant

- C. Amendment of Chapter 16.88 and Adding Chapter 16.242 of the Warrenton Municipal Code to Clarify Regulations on Floodplain; Ordinance No. 1276

7. Business Items

- A. Oregon Clean Marina Certification
- B. Consideration of Community Center Fees for Community Thanksgiving Dinner
- C. Consideration of Shoreline Sanitary District MOU Amendment
- D. Consideration of E Dock Piling Replacement Contract
- E. Consideration of Warrenton Zoning Map Amendment; Ordinance No. 1282 – Second Reading and Adoption
- F. Consideration of Iredale Tide Gate and Culvert – Grant Award Agreement
- G. Consideration of Warrenton & CCDD 1 Levee Certification Phase 1 (Interior Drainage Study) – Financing Contract Amendment #1
- H. Consideration of Franchise Agreement – 3PO Networks, LLC

8. Discussion Items

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



City of Warrenton City Commission Minutes

City Hall, 225 S. Main Warrenton, OR 97146
Tuesday, October 22, 2024

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

Commission Members	Present	Excused
Gerald Poe, Mayor Pro Tem	X	
Jessica Sollaccio	X	
Tom Dyer	X	
Paul Mitchell	X	
Henry Balensifer, Mayor (via Zoom)	X	

Staff Members Present	
City Manager Esther Moberg	Police Sergeant Dylan McCoy
City Recorder Dawne Shaw	Public Works Director Greg Shafer
Planning Director Matthew Ellis	

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 9.24.2024
- B. Warrenton Employee Handbook – 2024 Updates
- C. Public Works Quarterly Report
- D. Monthly Finance Report – June 2024
- E. Police Department Monthly Report – September 2024

Motion:	Move to adopt the consent calendar.				
Moved:	Mitchell				
Seconded:	Dyer	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer	X			
Passed:	5/0				

4. Commissioner Reports

Commissioner Sollaccio noted she attended the CEDR (Clatsop Economic Development Resources), housing task force, and Clatsop Community Health Resource and Advocacy Team meetings. She provided a brief summary of what was discussed in the meetings. She briefly highlighted the Fall Festival.

Commissioner Mitchell noted he attended the groundbreaking for the new hospital.

City Manager Esther Moberg noted she attended the League of Oregon Cities (LOC) conference.

5. Public Comment

Elizabeth Bigda discussed Spruce Up Warrenton and provided an update on the board.

Rick Newton spoke in regard to the city commission candidates in the upcoming election; also spoke about building in the city.

Kelly Shipley spoke in regard to unpaid water bills for vacant homes.

6. Public Hearing

- A. Consideration of Amendment to Development Code – Mini Storage; Ordinance No. 1267; Second Reading & Adoption:

Mayor Pro Tem Poe 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 a public hearing was held by the Planning Commission and it is also necessary to conduct a hearing with the City Commission. The first reading of Ordinance No. 1267 was previously conducted at the August 27th City Commission meeting. Mayor Pro Tem Poe asked for public comments. No one spoke in favor, opposition or neutral. There being no further comments, Mayor Pro Tem Poe closed the public testimony and the public hearing.

Motion:	Move to conduct the second reading, by title only, of Ordinance No. 1267.				
Moved:	Dyer				
Seconded:	Sollaccio	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer	X			
Passed:	5/0				

Mayor Pro Tem Poe conducted the second reading, by title only, of Ordinance No. 1267; an Ordinance Establishing a Cap on the Number of Mini-warehouse Sites Within the City of Warrenton and Amending the Warrenton Development Code.

Motion:	Move to adopt Ordinance No. 1267.				
Moved:	Dyer				
Seconded:	Mitchell	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer	X			
Passed:	5/0				

- B. Consideration of Amendment to Wetland Conservation Plan Inventory & Locally Significant Wetland Map; Ordinance No. 1280:

Mayor Balensifer stated he will recuse himself due to a conflict of interest as his father is the applicant.

Mayor Pro Tem Poe opened the Public Hearing on the matter of amending the comprehensive plan to modify the wetland significance determination made on Tax Lot 81021DC06400. Formalities followed. No conflicts of interest or ex parte contacts were reported. Planning Director Matthew Ellis presented his staff report and recommended tabling the first reading of Ordinance No. 1280. He noted his recommendation to table the ordinance is due to a conflict between the applicable off land criteria and what is in the report. Commissioner Mitchell asked for clarification on how the Oregon Department of State Lands (DSL) made their decision; Mr. Ellis responded. Discussion followed on the best way to move forward. Mayor Pro Tem Poe asked for public comments. Applicant Mike Balensifer provided his comments and noted the hazardous trees that he is unable to cut down without going through a permit process. No one spoke in favor, opposition or neutral. There being no further comments, Mayor Pro Tem Poe closed the public testimony. Mayor Pro Tem Poe closed the public hearing. Brief discussion followed regarding the hazardous trees. There was consensus to ask DSL to respond to the hazardous tree issue.

Motion:	Move to table Ordinance No. 1280.				
Moved:	Dyer				
Seconded:	Mitchell	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer				X
Passed:	4/0				

C. Consideration of Warrenton Zoning Map Amendment; Ordinance No. 1282:

Mayor Pro Tem Poe opened the Public Hearing on the matter of amending the City of Warrenton Zoning Map to reclassify the zoning of multiple properties from General Industrial to Commercial Industrial. Formalities followed. Mayor Balensifer disclosed that he was in contact with Columbia Memorial Hospital (CMH), Big Beans, Wes Giesbrick, and Clatsop County although he does not feel it is a conflict; Mitchell noted he was also in communication with CMH. No additional conflicts of interest or ex parte contacts were reported. Planning Director Matthew Ellis presented his staff report and provided background on the ordinance. There was brief discussion on how the zoning will be labeled. Mayor Pro Tem Poe asked for public comments. No one spoke in favor, opposition or neutral. There being no further comments, Mayor Pro Tem Poe closed the public testimony and the public hearing.

Motion:	Move to conduct the first reading, by title only, of Ordinance No. 1282.				
Moved:	Mitchell				
Seconded:	Dyer	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer	X			
Passed:	5/0				

Mayor Pro Tem Poe conducted the first reading, by title only, of Ordinance No. 1282; an Ordinance Amending the City of Warrenton Zoning Map to Reclassify the Zoning of Multiple Properties from General Industrial to Commercial Industrial.

7. Business Items

A. Consideration of Wastewater Treatment Plant UV Disinfection System Control Panel Upgrade:

Public Works Director Greg Shafer discussed a contract with Veolia Water Technologies Treatment Solution for a UV Disinfection System PDCC control panel. He noted the current control panel has failed and is no longer working. He noted the control panel is within the current budget. Discussion followed on the need for the new system.

Motion:	Move to approve the contract with Veolia Water Technologies Treatment Solution for the UV Disinfection System PDCC control panel upgrade in the amount of \$81,500, including 10% contingency.				
Moved:	Mitchell				
Seconded:	Dyer	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer	X			
Passed:	5/0				

B. Consideration of Nuisance Cost Abatement; Resolution No. 2691:

Mr. Shafer reviewed the abatement costs that have been incurred by the City of Warrenton at the property located at 115 SW 1st Street. He noted the steps that have been taken to notify property owner of the assessed costs in the amount of \$525.00. Brief discussion followed.

Motion:	Move to approve Resolution No. 2691, as stated or amended, a Resolution of the City Commission of the City of Warrenton, Oregon, assessing the costs of abatement of the nuisance located at 115 SW 1 st Street and entering the same in the docket of city liens pursuant to Warrenton Municipal Code Section 8.16.200.				
Moved:	Dyer				
Seconded:	Sollaccio	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer	X			
Passed:	5/0				

C. Consideration of Ordinance No. 1281; Updating and Replacing WMC Chapter 3.28; Public Contracting; Second Reading & Adoption:

City Manager Esther Moberg presented Ordinance No. 1281 for its second reading and adoption.

Motion:	Move to conduct the second reading, by title only, of Ordinance No. 1281.				
Moved:	Sollaccio				
Seconded:	Dyer	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer	X			
Passed:	5/0				

Mayor Pro Tem Poe conducted the second 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.

Motion:	Move to adopt Ordinance No. 1281.				
Moved:	Dyer				
Seconded:	Sollaccio	Aye	Nay	Abstain	Recused
Vote:	Poe	X			
	Sollaccio	X			
	Dyer	X			
	Mitchell	X			
	Balensifer	X			
Passed:	5/0				

8. Discussion Items

A. 11th Street Sewer Line – Orenco/3PO Temporary Ownership:

Ms. Moberg discussed a request from Orenco/3PO systems to keep the 11th street sewer line as private for 3-4 years after completion of the Fort Pointe development. Mayor Balensifer noted that he does not see a downside as long as everything is done to city code and inspected. Commissioner Mitchell noted his concerns and that he does not want this to become a habit. Commissioner Sollaccio asked who would be affected by the moratorium; Ms. Moberg responded. Mayor Balensifer noted he would like strong inspection criteria where issues can be corrected when it is constructed. Commissioner Mitchell stated he would be more comfortable with 36 months instead of 48 months. Brief discussion followed; there consensus to allow 36 months. Ms. Moberg stated she will bring back an agreement for their review.

9. Good of the Order

Commissioner Mitchell stated get out there and vote.

Mayor Balensifer noted the members on the mayor association and LOC board. He spoke regarding the FEMA Bi-Op; thanked Spruce Up Warrenton for the fall festival; gave an update on the letter to the railroad regarding erosion in Hammond; and noted the Town Hall meeting on 10/28.

Ms. Moberg noted she also attended the fall festival; still recruiting for PW Director and Building Official.

10. Executive Session – None

11. Adjournment

There being no further business, Mayor Pro Tem Poe adjourned the meeting at 7:20 pm.

Respectfully prepared and submitted by Hanna Bentley, Deputy City Recorder.

Approved:

Attest:

Henry A. Balensifer III, Mayor

Dawne Shaw, CMC, City Recorder

Volume 18, Issue 1

**Monthly Finance Report
July 2024**

November 12, 2024

Economic Indicators

	Current	1 year ago
◆ Interest Rates:		
LGIP :	5.27%	4.11%
Prime Rate:	8.50%	8.50%
◆ CPI-U change:	2.9%	3.2%
◆ Unemployment Rates:		
Clatsop County:	4.0%	3.6%
Oregon:	4.1%	3.6%
U.S.:	4.3%	3.5%

Department Statistics

◆ Utility Bills mailed	3,202
◆ New Service Connections	0
◆ Reminder Letters	352
◆ Door Hangers	79
◆ Water Service Discontinued	9
◆ Counter payments	531
◆ Mail payments	1,414
◆ Auto Pay Customers/pmts	636
◆ Online (Web) payments	1,551
◆ Checks issued	315

Current and Pending Projects

- ◆ Business License Renewals-final delinquency notices sent
- ◆ Fiscal Year End Closing
- ◆ Audit Preparation and Reporting — Field work scheduled for week of October 14

Financial Narrative as of July 31, 2024

Note: Revenues and expenses should track at 1/12 or 8.3% of the budget. Expenditures on pages 2-4 include personnel services, materials and services, and debt service costs as well as transfers to the capital funds. See budget for details.

General Fund: Total revenues this month are \$562,735, which is 9.89% of the budget. Revenues exclusive of overhead and transfers are 92,798 compared to the prior year amount of \$78,862 and are up by \$13,936. Increases are shown in franchise fees, municipal court, planning fees, police charges, park charges, interest, lease receipts and food pod receipts and are offset by decreases in transient room tax, fire charges, miscellaneous and proceeds from sale of assets.

Expenses this month are \$875,573 compared to the prior year amount of \$553,254, an increase of \$322,319. All departments are tracking at or under budget except Admin/Comm/Finance due to one time payments at the beginning of the fiscal year. The increase in expense is primarily a result of an annual payment that was made quarterly during the Covid-19 pandemic through FYE 2024.

WBL: Business license revenue amounts to \$85,354, compared to \$86,983 at this time last year, a decrease of \$1,629. Year to date licenses issued are 523 compared to 476 at this time last year.

Building Department: Permit revenues this month amount to \$41,652, which is

23.45% of the budgeted amount. Permit revenue at this time last year was \$14,059, which was 5.3% of the budgeted amount.

State Tax Street: City fuels tax receipts since inception to June 2024 total \$5,267,795. Projects paid in 2024 with City fuels tax funds total \$706,652 and were:

Repair & Maintenance Overlay Projects \$466,370

SW 9th Intersection Widening \$240,282

Warrenton Marina: Total revenues this month are \$389,926, compared to \$382,070 at this time last year. Annual moorage billed this month amount to \$344,315 compared to \$325,313 last year. There is \$148,061 in moorage receivables outstanding.

Hammond Marina: Total revenues this month are \$211,551, compared to \$205,498 at this time last year. Annual moorage billed this month was \$169,584 compared to \$166,827 last year. There is \$16,235 in moorage receivables outstanding.

Water Fund: Utility fees this month are \$315,667 and \$279,239, for in-city and out-city respectively and total \$594,905, which is 13.6% of the budget. Last year at this time utility fees were \$477,229, which was 11.5% of the budget and are up by \$117,676.

Sewer Fund: Utility fees this month are \$272,096 and are 8.8% of the budget. Last year at this time utility fees were \$257,697 which was 9.4% of the budget and are up by \$14,399. Shoreline Sanitary fees this month are \$12,824. Total revenues year to date are \$328,705 compared to \$299,871 at this time last year.

Storm Sewer: Utility fees (20% of sewer fees) this month are \$54,390 and are 8.8% of the budget.

Sanitation Fund: Service fees charged this month for garbage and recycling were \$95,822 and \$21,809, year to date, and are 8.6% and 9.1% of the budget respectively.

Community Center Fund: Rental revenues this month are \$8,307 which is 41.5% of the budget. Last year at this time rental revenue was \$12,551, which was 62.8% of the budget.

Other: Total revenues and expenses as of July 31, 2024 city-wide are \$3,147,068 and \$3,082,181 respectively. The largest increases in revenues are in utility fees and overhead. The largest increases in expenses come from an annual insurance payment that has been made quarterly in prior fiscal years as well as a building purchase and URA grant.

Total revenues and expenses as of July 31, 2023 city-wide were \$2,065,765 and \$1,402,597, respectively.

Financial data as of July 31, 2024**City of Warrenton
Financial Report as of July 2024**

	General Fund				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	2,602,003	2,602,003	1,850,000	140.65	
Plus: Revenues	562,735	562,735	5,690,803	9.89	(see details of revenue, page 4)
Less: Expenditures					
Municipal Court	18,561	18,561	212,822	8.72	
Admin/Comm/Fin(ACF)	469,998	469,998	1,596,972	29.43	
Planning	24,735	24,735	444,512	5.56	
Police	205,258	205,258	2,678,362	7.66	
Fire	137,158	137,158	1,233,234	11.12	
Parks	19,863	19,863	286,839	6.92	
Transfers	-	-	270,778	-	
Total Expenditures	875,573	875,573	6,723,519	13.02	
Ending Fund Balance	2,289,165	2,289,165	817,284	280.09	

	WBL				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	150,786	150,786	130,000	115.99	
Plus: Revenues	86,032	86,032	65,800	130.75	
Less: Expenditures	24,771	24,771	77,038	32.15	
Ending Fund Balance	212,048	212,048	118,762	178.55	

	Building Department				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	483,082	483,082	460,000	105.02	
Plus: Revenues	47,751	47,751	206,480	23.13	
Less: Expenditures	27,728	27,728	481,132	5.76	
Ending Fund Balance	503,105	503,105	185,348	271.44	

	State Tax Street				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	2,861,717	2,861,717	3,300,000	86.72	
Plus: Revenues	13,490	13,490	4,350,625	0.31	
Less: Expenditures	43,562	43,562	5,215,225	0.84	
Ending Fund Balance	2,831,645	2,831,645	2,435,400	116.27	

	Warrenton Marina				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	451,107	451,107	410,000	110.03	
Plus: Revenues	389,926	389,926	729,364	53.46	
Less: Expenditures	78,270	78,270	892,096	8.77	
Ending Fund Balance	762,763	762,763	247,268	308.48	

Financial data as of July 31 2024, continued

	Hammond Marina				Water Fund			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	322,296	322,296	275,000	117.20	2,101,761	2,101,761	2,000,000	105.09
Plus: Revenues	211,551	211,551	459,022	46.09	644,708	644,708	7,381,792	8.73
Less: Expenditures	55,934	55,934	563,469	9.93	280,777	280,777	7,703,880	3.64
Ending Fund Balance	<u>477,913</u>	<u>477,913</u>	<u>170,553</u>	<u>280.21</u>	<u>2,465,692</u>	<u>2,465,692</u>	<u>1,677,912</u>	<u>146.95</u>
	Sewer Fund				Storm Sewer			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	3,355,550	3,355,550	3,100,000	108.24	1,837,304	1,837,304	1,515,000	121.27
Plus: Revenues	328,705	328,705	3,430,625	9.58	64,240	64,240	1,737,264	3.70
Less: Expenditures	233,098	233,098	4,990,921	4.67	29,607	29,607	2,283,391	1.30
Ending Fund Balance	<u>3,451,158</u>	<u>3,451,158</u>	<u>1,539,704</u>	<u>224.14</u>	<u>1,871,936</u>	<u>1,871,936</u>	<u>968,873</u>	<u>193.21</u>
	Sanitation Fund				Community Center			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	593,041	593,041	560,000	105.90	62,718	62,718	60,000	104.53
Plus: Revenues	121,671	121,671	1,388,710	8.76	8,662	8,662	26,800	32.32
Less: Expenditures	138,251	138,251	1,432,337	9.65	3,542	3,542	66,716	5.31
Ending Fund Balance	<u>576,461</u>	<u>576,461</u>	<u>516,373</u>	<u>111.64</u>	<u>67,839</u>	<u>67,839</u>	<u>20,084</u>	<u>337.77</u>
	Library				Warrenton Urban Renewal Agency Capital Projects Fund			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	229,299	229,299	220,000	104.23	6,487	6,487	6,400	101.36
Plus: Revenues	3,786	3,786	283,879	1.33	617,096	617,096	1,800,000	34.28
Less: Expenditures	36,443	36,443	333,445	10.93	617,073	617,073	1,806,400	34.16
Ending Fund Balance	<u>196,642</u>	<u>196,642</u>	<u>170,434</u>	<u>115.38</u>	<u>6,510</u>	<u>6,510</u>	<u>-</u>	<u>-</u>

Financial data as of July 31, 2024, continued**(\$ Cash Balances as of July 31, 2024)**

General Fund	2,905,662	Warrenton Marina	633,180	Storm Sewer	1,864,613
WBL	190,429	Hammond Marina	477,613	Sanitation Fund	529,352
Building Department	515,568	Water Fund	2,226,555	Community Center	70,100
State Tax Street	3,133,979	Sewer Fund	3,195,818	Library	202,263

Warrenton Urban Renewal Agency

Capital Projects	6,510
Debt Service	1,377,492

General Fund Revenues	Collection Frequency	2025-2025 Budget	Actual as a % of Current Budget	Collections/Accruals Year to date		(over) under budget
				July 2024	July 2023	
Property taxes-current	AP	1,428,999	0.00	-	-	1,428,999
Property taxes-prior	AP	30,000	0.00	-	-	30,000
County land sales	A	-	0.00	-	-	-
Franchise fees	MAQ	695,225	0.01	96	461	695,129
COW - franchise fees	M	354,629	9.63	34,165	30,933	320,464
Transient room tax	Q	650,000	0.00	-	421	650,000
Liquor licenses	A	625	0.00	-	-	625
State revenue sharing	MQ	223,378	0.00	-	-	223,378
Municipal court	M	94,200	11.58	10,907	7,304	83,293
Planning Fees	I	103,000	6.99	7,200	875	95,800
Police charges	I	24,000	16.18	3,884	2,446	20,116
Fire charges	SM, I	119,018	0.04	50	100	118,968
Park charges	I	-	0.00	365	255	-
Housing rehab loan payments	I	-	0.00	-	-	-
Miscellaneous	I	5,000	27.87	1,394	3,075	3,607
Interest	M	90,000	11.90	10,711	9,061	79,289
Lease receipts	M	272,758	7.71	21,027	18,301	251,731
Food pod receipts	M	-	0.00	3,000	2,045	(3,000)
Proceeds from sale of assets	I	-	0.00	-	3,585	-
Donations	I	-	0.00	-	-	-
Grants	I	-	0.00	-	-	-
Sub-total		4,090,832	2.27	92,798	78,862	3,998,034
Transfers from other funds	I	3,000	0.00	-	344	3,000
Overhead	M	1,596,971	29.43	469,936	197,052	1,127,035
Total revenues		5,690,803	9.89	562,735	276,258	5,128,068

M - monthly

S - semi-annual

Q - quarterly

I - intermittently

SM - Semi-annual in January then monthly

MQ - Monthly, cigarette and liquor and Quarterly, revenue sharing

AP - As paid by taxpayer beginning in November

A - annual

MAQ - Century Link, NW Nat & Charter-quarterly,
all others monthly

Note: Budget columns do not include contingencies as a separate line item but are included in the ending fund balance. Unless the Commission authorizes the use of contingency, these amounts should roll over to the following year beginning fund balance. For budget details, please refer to the City of Warrenton Adopted Budget for fiscal year ending June 30, 2025. Budget amounts reflect budget adjustments approved by the Commission during the fiscal year. Information and data presented in this report is unaudited.

Volume 18 Issue 2

Monthly Finance Report
August 2024

November 12, 2024

Economic Indicators

	Current	1 year ago
◆ Interest Rates:		
LGIP :	5.30%	4.42%
Prime Rate:	8.50%	8.50%
◆ CPI-U change:	2.5%	3.7%
◆ Unemployment Rates:		
Clatsop County:	4.0%	3.6%
Oregon:	4.0%	3.4%
U.S.:	4.2%	3.8%

Department Statistics

◆ Utility Bills mailed	3,189
◆ New Service Connections	0
◆ Reminder Letters	317
◆ Door Hangers	70
◆ Water Service Discontinued	9
◆ Counter payments	545
◆ Mail payments	910
◆ Auto Pay Customers/pmts	635
◆ Online (Web) payments	1,537
◆ Checks issued	408

Current and Pending Projects

- ◆ Audit/Financial Statements FYE 6/30/24
- ◆ Business License Renewals Wrap Up
- ◆ SDC Annual Report
- ◆ Landfill Financial Assurance Report
- ◆ Open Enrollment for Health Insurance

Financial Narrative as of August 31, 2024

Note: Revenues and expenses should track at 2/12 or 16.7% of the budget. Expenditures on pages 2-4 include personnel services, materials and services, and debt service costs as well as transfers to the capital funds. See budget for details.

General Fund: Total revenues year to date are \$783,664, which is 13.77% of the budget, compared to the prior year amount of \$522,433, which was 8.3% of the budget. Revenues exclusive of overhead and transfers are \$242,977 compared to \$212,572 at this time last year and are up by \$30,405. Increases are shown in franchise fees, state revenue sharing, municipal court, planning fees, police charges, park charges, interest, lease receipts and food pod receipts and are off set by decreases in property taxes, transient room tax, fire charges, miscellaneous, proceeds from sale of assets and donations.

Expenses year to date amount to \$1,253,358 compared to the prior year amount of \$1,002,434. An increase of \$250,924. All departments are tracking under budget except Admin/Comm/Finance which has one-time expenses at the beginning of the fiscal year and the Fire Department which is tracking at 18.9% of the budget.

WBA: Business license revenue amounts to \$84,015 compared to \$86,843 last year at this time, a difference of \$2,828. The number of business licenses issued year to date is 660 compared to 649 at this time

last year.

Building Department: Permit revenues year to date amount to \$57,766, which is 32.5% of the budgeted amount. Last year to date permit revenue was \$22,003, which was 8.2% of the budgeted amount.

State Tax Street: State gas taxes received this month amount to \$40,471 for fuel sold in July compared to \$28,245 at this time last year. Receipt of City fuels tax revenue for this fiscal year will begin next month.

Warrenton Marina: Total revenues year to date are \$564,708, compared to \$552,396, at this time last year, an increase of \$12,312. There is \$87,841 in moorage receivables outstanding.

Hammond Marina: Total revenues year to date are \$351,890 compared to \$345,758 at this time last year, an increase of \$6,132. There is \$6,910 in moorage receivables outstanding.

Of the total outstanding receivables:

\$10,426 (11%) is current,

\$3,947 (4.17%) is 30-60 days past due,

\$41,285 (43.57%) is 60-90 days past due and

\$39,093 (41.26%) is over 90 days past due

Water Fund: Utility fees this month are \$382,918 and \$314,647, for in-city and

out-city respectively and total \$697,565. Total year to date utility fees are \$1,292,470 and are 29.6% of the budget. Last year at this time total utility fees were \$1,090,751, which was 26.2% of the budget and are up by \$137,923.

Sewer Fund: Utility fees this month are \$272,099 and \$544,195 year to date, which is 17.6% of the budget. Last year at this time utility fees were \$524,266 which was 19.1% of the budget and are up by \$19,929. Shoreline Sanitary fees year to date are \$25,646.

Storm Sewer: Utility fees (20% of sewer) this month are \$54,390 and \$108,780 year to date and are 17.6% of the budget.

Sanitation Fund: Year to date service fees for garbage and recycling were \$194,405 and \$43,546 and are 17.4% and 18.3% of the budget, respectively.

SDC Summary for FYE 2024

	Fund Balance	SDC	Interest	Debt Pmts	Fund Balance
Parks	232,543	19,767	12,410		264,720
Water	322,480	51,257	17,385		391,122
Sewer	486,318	31,732	25,546		543,596
Storm	109,860	3,846	5,677		119,383
Streets	1,302,187	19,760	66,439		1,388,386
total	2,453,388	126,362	127,457	-	2,707,207

Financial data as of August, 2024

	General Fund			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	2,289,165	2,602,003	1,850,000	140.65
Plus: Revenues	220,929	783,664	5,690,803	13.77
Less: Expenditures				
Municipal Court	13,353	31,914	212,822	15.00
Admin/Comm/Fin(ACF)	70,690	540,687	1,596,972	33.86
Planning	20,758	45,493	444,512	10.23
Police	166,325	371,584	2,678,362	13.87
Fire	96,170	233,328	1,233,234	18.92
Parks	10,489	30,353	286,839	10.58
Transfers	-	-	270,778	-
Total Expenditures	377,786	1,253,358	6,723,519	18.64
Ending Fund Balance	2,132,309	2,132,309	817,284	260.90

Building Department			
Current Month	Year to Date	Budget	% of Budget
503,105	483,082	460,000	105.02
18,921	66,673	206,480	32.29
21,351	49,079	481,132	10.20
500,676	500,676	185,348	270.13

	WBL			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	212,048	150,786	130,000	115.99
Plus: Revenues	(504)	85,529	65,800	129.98
Less: Expenditures	8,215	32,986	77,038	42.82
Ending Fund Balance	203,329	203,329	118,762	171.21

	State Tax Street			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	2,831,645	2,861,717	3,300,000	86.72
Plus: Revenues	54,130	67,621	4,350,625	1.55
Less: Expenditures	29,438	73,001	5,215,225	1.40
Ending Fund Balance	2,856,337	2,856,337	2,435,400	117.28

Warrenton Marina			
Current Month	Year to Date	Budget	% of Budget
762,763	451,107	410,000	110.03
174,782	564,708	729,364	77.42
49,788	128,058	892,096	14.35
887,757	887,757	247,268	359.03

Financial data as of August 2024, continued

	Hammond Marina				Water Fund			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	477,913	322,296	275,000	117.20	2,465,692	2,101,761	2,000,000	105.09
Plus: Revenues	140,339	351,891	459,022	76.66	763,844	1,408,552	7,381,792	19.08
Less: Expenditures	41,819	97,753	563,469	17.35	165,978	446,755	7,703,880	5.80
Ending Fund Balance	<u>576,434</u>	<u>576,434</u>	<u>170,553</u>	<u>337.98</u>	<u>3,063,558</u>	<u>3,063,558</u>	<u>1,677,912</u>	<u>182.58</u>
	Sewer Fund				Storm Sewer			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	3,451,158	3,355,550	3,100,000	108.24	1,871,936	1,837,304	1,515,000	121.27
Plus: Revenues	339,032	667,738	3,430,625	19.46	62,638	126,877	1,737,264	7.30
Less: Expenditures	174,000	407,097	4,990,921	8.16	19,028	48,636	2,283,391	2.13
Ending Fund Balance	<u>3,616,190</u>	<u>3,616,190</u>	<u>1,539,704</u>	<u>234.86</u>	<u>1,915,545</u>	<u>1,915,545</u>	<u>968,873</u>	<u>197.71</u>
	Sanitation Fund				Community Center			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	576,461	593,041	560,000	105.90	67,839	62,718	60,000	104.53
Plus: Revenues	124,705	246,376	1,388,710	17.74	12,782	21,444	26,800	80.02
Less: Expenditures	92,554	230,804	1,432,337	16.11	1,310	4,852	66,716	7.27
Ending Fund Balance	<u>608,612</u>	<u>608,612</u>	<u>516,373</u>	<u>117.86</u>	<u>79,311</u>	<u>79,311</u>	<u>20,084</u>	<u>394.89</u>
	Library				Warrenton Urban Renewal Agency Capital Projects Fund			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	196,642	229,299	220,000	104.23	6,510	6,487	6,400	101.36
Plus: Revenues	2,356	6,143	283,879	2.16	21,126	638,222	1,800,000	35.46
Less: Expenditures	21,093	57,536	333,445	17.26	21,103	638,176	1,806,400	35.33
Ending Fund Balance	<u>177,905</u>	<u>177,905</u>	<u>170,434</u>	<u>104.38</u>	<u>6,533</u>	<u>6,533</u>	<u>-</u>	<u>-</u>

Financial data as of August 2024, continued

(\$ Cash Balances as of August 30, 2024)

General Fund	2,508,981	Warrenton Marina	807,222	Storm Sewer	1,903,487
WBL	203,553	Hammond Marina	578,872	Sanitation Fund	544,030
Building Department	505,618	Water Fund	2,674,486	Community Center	81,001
State Tax Street	3,177,514	Sewer Fund	3,344,133	Library	177,014

Warrenton Urban Renewal Agency

Capital Projects	6,533
Debt Service	1,368,079

General Fund Revenues	Collection Frequency	Actual as a % of Collections/Accruals (over)				
		2025-2025 Budget	Current Budget	Year to date		under budget
				August 2024	August 2023	
Property taxes-current	AP	1,428,999	0.00		-	1,428,999
Property taxes-prior	AP	30,000	25.85	7,756	9,131	22,244
County land sales	A	-	0.00		-	-
Franchise fees	MAQ	695,225	6.89	47,920	44,727	647,305
COW - franchise fees	M	354,629	20.25	71,810	64,828	282,819
Transient room tax	Q	650,000	1.02	6,661	6,838	643,339
Liquor licenses	A	625	0.00		-	625
State revenue sharing	MQ	223,378	0.14	324	-	223,054
Municipal court	M	94,200	17.29	16,286	12,147	77,914
Planning Fees	I	103,000	10.70	11,018	2,475	91,983
Police charges	I	24,000	25.69	6,166	4,049	17,834
Fire charges	SM, I	119,018	0.17	200	225	118,818
Park charges	I	-	0.00	395	370	-
Housing rehab loan payments	I	-	0.00		-	-
Miscellaneous	I	5,000	68.22	3,411	3,453	1,589
Interest	M	90,000	22.73	20,455	18,526	69,545
Lease receipts	M	272,758	16.34	44,577	36,602	228,181
Food pod receipts	M	-	0.00	6,000	4,745	(6,000)
Proceeds from sale of assets	I	-	0.00		3,585	-
Donations	I	-	0.00		871	-
Grants	I	-	0.00		-	-
Sub-total		4,090,832	5.94	242,977	212,572	3,847,855
Transfers from other funds	I	3,000	0.00	-	9,123	3,000
Overhead	M	1,596,971	33.86	540,687	300,738	1,056,284
Total revenues		5,690,803	13.77	783,664	522,433	4,907,139

M - monthly

Q - quarterly

SM - Semi-annual in January then monthly

AP - As paid by taxpayer beginning in November

MAQ - Century Link, NW Nat & Charter-quarterly,
all others monthly

S - semi-annual

I - intermittently

MQ - Monthly, cigarette and liquor and Quarterly, revenue sharing

A - annual

Note: Budget columns do not include contingencies as a separate line item but are included in the ending fund balance. Unless the Commission authorizes the use of contingency, these amounts should roll over to the following year beginning fund balance. For budget details, please refer to the City of Warrenton Adopted Budget for fiscal year ending June 30, 2025. Budget amounts reflect budget adjustments approved by the Commission during the fiscal year. Information and data presented in this report is unaudited.

WARRENTON COMMUNITY LIBRARY STRATEGIC PLAN 2024 - 2028



WARRENTON COMMUNITY LIBRARY 160 S Main Avenue, Warrenton, Oregon

Introduction

Providing advisory support in how the Warrenton Community Library provides services to the community is the most important function of the Warrenton Community Library Advisory Board. This Strategic Plan provides a blueprint, or roadmap, for how the Warrenton Community Library will grow, adapt to challenges, and further meet the needs of the community. This plan outlines goals, initiatives, and focus areas for staff to aspire to achieve.

Contributors to the Development of the Strategic Plan:

- Library Director
- Members of the Friends of the Warrenton Community Library
- Library Staff
- Community Members (by way of Community Forum)

The planning process for this document began in November of 2023 with the Strategic Planning Community Forum that was held at Warrenton City Hall. From that meeting, staff and Strategic Planning Committee members were able to identify key areas to focus on in the plan. The Committee met twice in May 2024, and were led through brainstorming and drafting sessions to tie all of this plan and its elements together.

Community and Warrenton Community Library Background

Warrenton, Oregon, is home to a population of roughly 6,500 people from a variety of different social, economic, and cultural backgrounds. Warrenton is included in a cooperative with the two other Clatsop County public libraries, but operates independently.

Warrenton's population is predominantly White (~80%) but is home to a large population of Hispanic and Latinx, Asian, and Native American people.

Warrenton Community Library began as a volunteer-run, small library in Hammond, Oregon. In 2017, the library moved to its current location in the heart of downtown Warrenton. While the other libraries in Clatsop County are funded through tax dollars, Warrenton Community Library's situation is a little bit different. Every five (5) years the library needs to put out to the voters a special tax levy for funding. Without the voters' support, the Warrenton Community Library would not be able to continue operations.

Warrenton Community Library Values

- Community-minded
 - Warrenton Community Library takes a "community-centered approach" when it comes to programming, collection development, and resources available. We believe that the library is a vital resource for our small community, and we want to ensure that the community is put first.
- Welcoming

- We at the library believe that being open and welcoming to our community and patrons is key to ensuring we are able to meet the needs of the people that rely on our services.
- Inquisitive
 - Libraries are about learning and exploration. We believe that being inquisitive is foundational to our ability to serve this community. Staff strive to learn more about their community, this field, and anything else that may come our way.
- Adaptable
 - Libraries are constantly transforming to meet the needs of patrons. In order to adequately serve the community, we believe that we must be willing and able to adapt to overcome our challenges, and to support our patrons.

Library Vision

Empowering our community to learn, grow, and feel more connected to the world and each other.

Library Mission Statement

Warrenton Community Library aims to enhance the quality of life for our community through literacy and life-long learning while connecting people to their community and world.

Strategic Plan Focus Areas, Objectives, and Key Projects

- Engaged Community
 - Increased attendance at community programs
 - Implement program attendance tracking and feedback system
 - Explore patron attendance incentive program
 - Expanded community and youth outreach
 - Engage local schools through class visits
 - Expand electronic/web marketing program including social media
 - Educated community on library resources and services
 - Redesign Warrenton Community Library logo and branding
 - Create patron policies and library services information handouts and processes
 - Send library services and brochure/information to Warrenton community
- Knowledgeable Staff
 - Staff are provided opportunities for professional development
 - Provide staff with continuing education opportunities annually
 - Volunteer program will be evaluated and enhanced
 - Create volunteer training program checklist
 - Revise volunteer handbook and training processes
 - Implement volunteer newsletter
 - Staff and volunteer experience and expertise will be highlighted
 - Create “staff catalogue” for public display

- Diverse opportunities
 - Enhanced collection variety and accessibility
 - Apply for Spanish language materials from Libros for Oregon
 - Survey patrons on cultural gaps in library collection
 - Grow “Library of Things” collection to include more diverse assortment of items
 - Inclusion of diverse voices from the community
 - Develop community speaker series that highlights the voices of marginalized communities
- Equitable Access
 - Identify barriers to access including physical, economic, and cultural barriers
 - Create feedback system for community members to voice their experiences and barriers to access
 - Implement solutions to accessibility challenges
 - Implement fine-free library program to enable community members of all socio-economic statuses to use the library
 - Provide scholarship opportunities to those who live outside Warrenton city limits, or who cannot afford an out-of-town card
 - Ensure ADA access to library

WARRENTON COMMUNITY CENTER
Advisory Board Meeting
February 15, 2024
5:00 PM

Meeting Date: February 15, 2024

Call to Order: Chairman, Debbie Little, called the regular meeting to order at approximately 5:04 PM. We met in the Commissioners Chambers at City Hall.

Roll Call: Chairman, Debbie Little; Vice Chair, Penny Morris, Secretary, Carol Snell, and Jessica, Financial Director for the City of Warrenton. Absent and excused: Cindy O'Reilly. The City Manager was present.

Introduction of Guests: None

Public Comment: None

Approval of Minutes: Debbie moved to approve the minutes of the annual and regular meetings dated January 18, 2024. Penny second the motion the motion carried.

Financial Report: Jessica was away at a training for the City.

Old Business: The plans for the Easter breakfast was reviewed. Donations letters were signed. Lorna is not going to help with the breakfast. Carol Farmer volunteered. The deep cleaning of the Community Center was discussed.

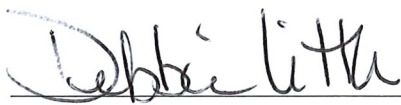
The City Manager stated they did not know Dennis had resigned and that he would need to write a letter.

New Business: Day Light Savings Time goes into affect the morning of the Easter Breakfast.

Correspondence: None

Next Regular Meeting: April 17, 2024 @ 4:00 PM.

It was moved and seconded to close the meeting at 5:49 PM



Debbie Little, Chairman



Carol Snell, Secretary

WARRENTON COMMUNITY CENTER
Advisory Board Meeting
April 17, 2024
4:35 PM

Meeting Date: April 17, 2024

Call to Order: Chairman, Debbie Little, called the regular meeting to order at approximately 4:35 PM. We met in the Commissioners Chambers at City Hall.

Roll Call: Chairman, Debbie Little; Vice Chair, Penny Morris, Secretary, Carol Snell. Absent were Jessica, Financial Director for the City of Warrenton, and Dennis O'Reilly. Absent and excused was Cindy O'Reilly. A city official was present to operate the Zoom equipment, etc,

Introduction of Guests: Zoom guesses were Mary Pressburg and Juliaeastham of the Astorian.

Public Comment: None

Approval of Minutes: Debbie moved to approve the February 15, 2024 minutes with the following corrections: Dennis O'Reilly was absent and not excused and the meeting was called to order at 4:30 PM. Carol seconded the motion, the minutes were approved.

Penny moved to correct the minutes of the January 18, 2024. It the meeting time was 4:30 PM, Carol seconded the motion the motion was approved.

Financial Report: Jessica left a report regarding the Breakfast with the Easter Bunny. There were 116 in attendance for a total of \$ 580.00, the raffle netted \$ 393.00; donations \$ 1,851.52 while

total expenses were \$ 821.52, for a net profit of \$ 2,003.00. Seven (7) local businesses donated \$ 1,000.00. The Pig n' Pancake donate the pancake mix and the cook while Starbucks donated the coffee.

Old Business: The breakfast went very well as did the raffle thanks to the girls from WAUNA. Our thanks also goes to Carla Iverson and her family for providing the Easter Bunny, kitchen help and taking money at the door.

It was brought to our attention that the minutes and agenda need to good to Jessica early enough so they can be posted on the city website.

Penny moved "to have Debbie write the city a letter regarding a quarterly deep cleaning of the Community Center". Carol seconded the motion, the motion passed.

It was reported that Lorna was interviewed to replace the cook who resigned due to illness at the Community Center.

New Business: Sunday, December 8, 2024 was chosen for the Breakfast with Santa. We will decorate the Community Center on November 30, 2024 at 9:00 AM. We will set up for the breakfast on December 7, 2024. The breakfast will be from 8:00 until 11:00 AM.

\The board would like to have the donation letters at the October 16, 2024 meeting for signatures.

Correspondence: None

Next Regular Meeting: May 15, 2024 at 4:30 pm.

It was moved and seconded to close the meeting at 5:00 PM



Debbie Little, Chairman



Carol Snell, Secretary

MINUTES
Marina Advisory Board
January 22, 2024
Warrenton City Hall – Commission Chambers
225 S Main
Warrenton, OR 97146

Chairperson Lylla Gaebel called the meeting to order at 2:01 p.m.

Marina Advisory Board Members Present: Chairperson Lylla Gaebel, Vice Chair Bill Kerr, Mike Balensifer, Dick Hellberg, Jen Fowler

Staff Present: Interim Harbormaster Don Beck, Marina Office Assistant Jessica McDonald

CONSENT CALENDAR

Meeting minutes from 12.18.2023 were presented by staff.

Mike Balensifer made motion to approve minutes. Motion was seconded by Bill Kerr and passed unanimously.

DISCUSSION

Chairperson Lylla Gaebel lead the committee in introductions of the new and previous members.

The committee held officer elections.

Bill Kerr made a motion to nominated Lylla Gaebel as chairperson. Mike Balensifer seconded, and motion passed unanimously.

Mike Balensifer made a motion to nominate Bill Kerr as Vice Chair. Jen Fowler seconded, and motion passed unanimously.

Interim Harbormaster Don Beck shared his Harbormaster Report and Marina's 2023 accomplishments.

The committee discussed E dock piles and Don Beck shared staff plans for an inspection of the piles. Discussed need for E Dock replacement in future planning.

The committee discussed rates for the upcoming budget year and the importance of Suzanne's removal.

Don Beck shared an update on the damage to Seafarer's Park for the committee.

The next Marina Advisory meeting is set for February 26, 2024, at 2pm at the Warrenton Commission Chambers.


There being no further business for this meeting, Chairperson Lylla Gaebel adjourned the meeting at 3:20 p.m.

Respectfully prepared and submitted by Jessica McDonald, Marina Office Assistant.

APPROVED:

ATTEST:


Don Beck, Interim Harbormaster


Lylla Gaebel, Marina Advisory Board Chairperson

MINUTES
Marina Advisory Board
February 26, 2024
Warrenton City Hall – Commission Chambers
250 S Main
Warrenton, OR 97146

Chairperson Lylla Gaebel called the meeting to order at 2:02 p.m.

Marina Advisory Board Members Present: Chair Lylla Gaebel, Vice Chair Bill Kerr, Mike Balensifer, Jen Fowler, Dick Hellberg.

Staff Present: City Manager Esther Moberg, Interim Harbormaster Don Beck, Marina Office Assistant Jessica McDonald

PUBLIC COMMENTS

Nathan Lail expressed concern over Warrenton and Hammond RV Park proposal.

Kelly Short brought photos of garbage in the Hammond Marina and recommended that crab cooking no longer be allowed in basin and change garbage collection site design for a cleaner marina.

CONSENT CALENDAR

Meeting minutes from 1.22.24 were presented by staff.

Mike Balensifer made a motion to approve minutes. Motion was seconded by Jen Fowler and motion passed unanimously.

DISCUSSION

Mission DG PNW partners Seth Hague and Mark Tolley gave a presentation to the board about their proposal for an RV Park in the Hammond and Warrenton Marina. The committee discussed presentation and listened to public input. Chairperson Lylla Gaebel noted concerns from the public over access to Seafarer's park, increases traffic in Hammond and limited parking. Dick Hellberg noted concerns over parking for A & B dock in Hammond and suggested the area in the Warrenton Marina would be better suited for commercial vessel activities. Committee made no changes to previous recommendation for the Warrenton City Commission to continue to explore proposal.

City Manager Esther Moberg gave a presentation on the dock assessment report and action plan in response to the assessment. Esther Moberg went over cost estimates for replacement and recommended an action plan to repair and replace docks within the Marina budget, she shared upcoming Capital Improvements that are being planned to assist with action plan goals.

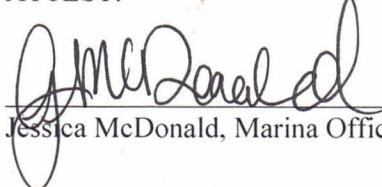
Interim Harbormaster Don Beck shared the Capital Improvement Report for 2024-2025, the report included projects staff would like to complete over the next six years as budget allows.

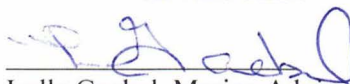
The committee discussed fishing derby as a fundraiser for the marinas, Jen Fowler volunteered as a weigh in location, and she is exploring options. Chairperson Lylla Gaebel suggested adding this to the next agenda for further discussion.

The next Marina Advisory meeting is set for March 18, 2024 at 2pm at the Warrenton Commission Chambers. There being no further business for this meeting, Vice Chair Lylla Gaebel adjourned the meeting at 4:30 p.m. Respectfully prepared and submitted by Jessica McDonald, Marina Office Assistant.

APPROVED:

ATTEST:


Jessica McDonald, Marina Office Assistant


Lylla Gaebel, Marina Advisory Board Chairperson

MINUTES
Marina Advisory Board
May 20, 2024
Warrenton City Hall – Commission Chambers
250 S Main
Warrenton, OR 97146

Chairperson Lylla Gaebel called the meeting to order at 2:05 p.m.

Marina Advisory Board Members Present: Chair Lylla Gaebel, Vice Chair Bill Kerr, Mike Balensifer, Jen Fowler.

Staff Present: City Manager Esther Moberg, Marina Office Assistant Jessica McDonald

CONSENT CALENDAR

Meeting minutes from 3.18.24 were presented by staff.

Mike Balensifer made a motion to approve minutes. Motion was seconded by Bill Kerr and motion passed unanimously.

DISCUSSION

Mike Balensifer initiated a discussion about how cooking and cleaning crab in the Hammond Marina might be contributing to erosion along the marina's bank. With the rise in crabbing popularity, staff will take committee concerns into account and may seek feedback on future policy recommendations.

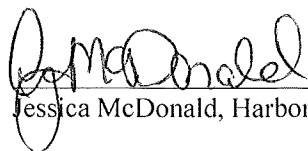
The board emphasized the importance of removing the vessel *Suzanne*. Staff acknowledged the challenges faced with this project but remain committed to making progress.

Jen Fowler presented the building plans for the new Big Game Bait Shop. The committee discussed the design and façade, expressing support for Fowler's design. The exterior façade colors may be reviewed by the committee in the future.

Jen Fowler proposed hosting a "Welcome to Buoy 10" event as a fundraiser for the marina and to draw more visitors during slower times. The committee discussed various possibilities, including a fisherman's market and other fundraising ideas. The board also decided to explore the revival of the sponsorship program initiated by Pam Ackley. Committee discussed reaching out to businesses in the future to move the sponsorship program forward.

The next Marina Advisory meeting is set for September 16h, 2024 at 2pm at the Warrenton Commission Chambers. There being no further business for this meeting, Chair Lylla Gaebel adjourned the meeting at 3:49 p.m. Respectfully prepared and submitted by Jessica McDonald, Harbormaster.

ATTEST:


Jessica McDonald, Harbormaster

APPROVED:



Lylla Gaebel, Marina Advisory Board Chairperson

MINUTES
 Warrenton Parks Advisory Board
 August 12, 2024
 Warrenton City Hall – Commission Chambers
 225 South Main Avenue, Warrenton, OR 97146

1. **CALL TO ORDER**

Parks Board Members Present: Chairperson Sara May Long, Bert Little, Brooke Terry, Ron Dyer, Sammi Beechan

Parks Board Members Absent: Anya Schauermann

City Staff Present: Esther Moberg; City Manager, Greg Shafer; Public Works Director, Savannah Cummings; Public Works Executive Secretary

2. **Pledge of Allegiance**

3. **Consent Calendar**

- a. **Review Minutes of April 8, 2024, Regular Meeting** – In the presence of a quorum of four members of the Parks Advisory Board, Sara Long made the motion to approve the minutes of the April 8, 2024, meeting. All board members were in favor, motion passed.

4. **Reports**

- a. **Warrenton Kids, Inc.** – Debbie Little was able to join via phone call. She reported that the end of the baseball and softball seasons were a success. She also brought to attention the recently painted concessions shed located at Quincy Robinson Park, some parents of the recreation league players questioned the color. She was advised to bring this concern into the next board meeting as business item.
- b. **Public Works Operations** – Greg Shafer, Public Works Director, began by expressing his appreciation for volunteer support with the painting of the concessions shed at Quincy Robinson Park. He then provided the following report:
 - i. The playground improvements at Quincy Robinson Park were successful, two loads of bark chips have been distributed around to the playground, primarily under the swing set and around the merry-go-round.
 - ii. Hammond Community Garden – some ground clearing efforts have been made at the location, including the removal of some tree debris (i.e. stumps and or logs).
 - iii. Gave an update of the tennis court condition, the crack(s) in the court are on the list of park repairs.
 - iv. Board members inquired over the process of soliciting and utilizing volunteers. Esther Moberg informed the board that the city does not have the resources necessary to devote to a volunteer coordinator position and as a result are very selective with volunteer applicants and suggests that volunteers focus on looking

for opportunities to serve the community with other volunteer organizations.

- c. **Warrenton Parks Alliance** – Brooke Terry reported the metrics of a survey gathering volunteer and general parks improvement feedback and opinions from the public. This survey provided much needed information and the results will be distributed to the board members preceding the meeting. Brooke circled back to the volunteering opportunities discussion and specifically highlighted the need for ADA-friendly volunteering opportunities. She ended her report by asking for help from the Public Works department in creating a schedule to know the trails to focus on in trail clean-up work. She also asked for help from the City to get the word out for volunteering opportunities.

5. **Business Items**

- a. **City Website Trails Map List** – Esther Moberg lead this update by informing the board that the trails list will be updated as the new signs are posted. Unfortunately, while the City is working on updating the website, it has run into the issue of being understaffed and therefore doesn't have the manpower to physically check each of the trail locations and correspond them to what is listed on the website. Esther suggested that this be an opportunity for the Warrenton Parks Alliance to provide service, by doing the footwork to check the trail locations and conditions and then reporting to the City which updates need to be made. Brooke Terry agreed that the Warrenton Parks Alliance would be able to take on this task.
- b. **Gold Star Memorial Placement** – Bert Little reported that the memorial was installed, and the unveiling ceremony was a success. He thanked everyone for their participation and reported that he is pleased with the result.
- c. **Community Garden Relocation** – Ron Dyer reported that this project is going well. He plans to reach out to Home Depot about a potential fencing donation. The height of the fence should be adequate for keeping the elk out. Esther Moberg explained that the City will provide 2 spickets of water to the garden and have discussed providing some sort of shed or small building for tool storage. In response to the brush pile, the City will have Public Works workers address the large pile of tree debris near the site with a wood chipper and will leave the resulting wood chips.
- d. **WIKI Field Update** – Ron Dyer mentioned the possibility of installing a sprinkler system on field #2, as it is covered in turf. The purpose of having a sprinkler system is to help with maintenance and longevity of the field. He also reported that more sand is needed on the first base side on one of the fields. Additionally, he requested that prior to the season starting next year, the fields be rolled.

6. **Discussion Items**

- a. **Field 4 to Grade School Trail** – Ron Dryer reported that he has still yet to visit the trail. This item will be revisited when there is an update.
- b. **Covered Space** – Brooke Terry reported that she to attended the 4/9/24 Urban Renewal Agency meeting and discovered that their plans for a covered space were not as similar

as the ideas the Board had, and therefore not as interested in following their lead. This opened the opportunity to looking at the uses for a covered space differently, and the Board has agreed to research similar structures and the specifications that come with building a structure that is up to code in this area. Esther Moberg raised the concern that the cost of building a structure as large and structurally sound as required in this area will be extremely expensive and it is not likely that even obtaining a grant will cover the cost completely. The Board agreed to consider this and research into other options for a covered space, and are also willing to open discussion over moving the location of the covered space to more stable ground to attempt to eliminate some of the engineering costs necessary to build on sandy ground.

- c. **Adopt-A-Park Policy & Subcommittee** – It was reiterated that there will be no subcommittee for this project at this time. Brook Terry reported that she had conducted research into what other municipalities have done and research will continue to be gathered. Board Members will look into past meeting minutes and see what the City of Warrenton Parks Advisory Board has done in years past. Potential decision items include installation of exercise equipment at a park location. The Board agreed to research this specific possibility and provide materials for review. Esther Moberg requested that they involve the City with the kinds of equipment they are looking into before committing, to make sure everything is acceptable and maintainable.
- d. **Updated Trail Signs** – Esther Moberg presented drafted trail signs upgrades for review and approval. The signs themselves will include Spanish as a second language for directional assistance and are simplistic in their description of the trails to help mitigate confusion over accessibility questions. The Board agreed with the overall look, and asked that slight changes in color be made in reference to the blue colored trails as it was confusing being so close to the blue water on the map. Chairman Sara Long appreciated the high visibility of the map. Esther Moberg will bring these adjustments to the sign creators.

Additional Business Brought Before the Board

There was no further business brought before the Board.

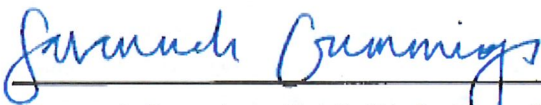
7. **ADJOURNMENT**

There being no further business, Chairperson Sara Long adjourned the meeting at 6:00 p.m.
The next regular meeting is scheduled for October 14, 2024, at 4:00 p.m.

Approved


Sara Long, Parks Advisory Board Chair

Attest


Savannah Cummings, Public Works Executive Secretary



WARRENTON CITY COMMISSION PUBLIC COMMENT FORM

NAME: Jim Parker

ADDRESS: 90652 Lewis Rd Warrenton OR 97146

EMAIL: Stretchyman@a9mail.com

DOES YOUR COMMENT HAVE TO DO WITH AN AGENDA ITEM: (Y or N)

BRIEFLY DESCRIBE YOUR TOPIC: Activity of the water dept

I was on Auto PAY, got new Debit card, and door hanger

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 Date: November 12, 2024
 From: Esther Moberg, City Manager
 Subject: Request for waiving of SDC fees

Summary:

The City received a request for waiving of SDC fees from the Coffee Kiosk that is going to be placed in the PreMarq Center Parking lot. In particular, the SDC fees for transportation are the ones they are concerned about. There has been a Coffee Kiosk in this same area that was removed in 2011. I am unclear if that Coffee Kiosk was required to pay any SDC fees. The fees that are currently being assessed are from our 2012 Code update regarding SDC fees.

Recommendation/Suggested Motion:

The City Manager recommends considering a slight but not full waiver of SDC fees. In comparing with Human Bean which was built approximately 10 years ago, they paid approximately \$13,000 in SDC fees at the time. I would recommend waiving no more than \$6,000 of the assessed SDC fees based on street and transportation impacts within the City reducing the total SDC transportation SDC fee to \$13,521.26 (other SDC fees for this project are a total of \$3,560). The total amount of SDCs would then be \$16,081.26 for this project.

Alternative:

Other action as deemed appropriate by the City Commission

OR

None recommended

Fiscal Impact:

SDC fee reduction will reduce the amount of money put in the streets fund for maintenance of streets.

Attachments:

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

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Approved by City Manager: _____

Dear City Manager,

I am writing to formally appeal the System Development Charges (SDC) fee calculated for my drive-thru coffee shop project at 65 US 101 HWY. I appreciate the City's efforts in reviewing our plans and approving the necessary permits for our business. However, I have concerns regarding the calculation of the SDC fees and would like to request a reconsideration of these charges.

The fee assessed for our project is \$22,081.26, which was unexpected and represents nearly 30% of our budget. This substantial fee was not disclosed at any stage of our initial planning or permitting discussions, which has placed a significant strain on our financial resources. We are a small business with limited capital, and this charge threatens our ability to proceed as planned.

Based on the City's Municipal Code, Chapter 3.36.130, I understand that there is an appeal process available for decisions made regarding SDC fees. As part of this appeal, I would like to present the following points for consideration:

Previous Business Use at the Location: The location of our drive-thru coffee shop previously operated as a similar business approximately 14 years ago. Given that a coffee drive-thru existed on this site before, I believe this prior use should be taken into account when calculating the SDC fee. It is our understanding that credit or consideration is sometimes given to properties that had a similar use in the past, which could potentially reduce the current fees assessed to our project.

Financial Impact: The SDC fee was a surprise to us and was not communicated before we embarked on this project. This fee's sudden imposition has a severe impact on our budget and jeopardizes the viability of our business. We would greatly appreciate any assistance or flexibility in reducing this fee or arranging an alternative payment plan that aligns with our financial constraints.

We respectfully ask the City Commission to review this matter, taking into account the previous use of the property and the significant financial implications for our small business. Our goal is to bring a valuable service to the community, and we hope to work collaboratively with the City to find a resolution that allows us to move forward with this project.

Thank you for your time and consideration. I look forward to discussing this matter further and exploring any options that might be available to reduce or restructure these charges. Please let us know if there are additional details or documentation we can provide to support our appeal.

Sincerely,

Ken Hopkins



City Commission Agenda Memo

Meeting Date: November 12, 2024
 From: Esther Moberg, City Manager
 Subject: Public Hearing; Public Contracting Exemption - Kennedy Jenks for Design of Wastewater Treatment plant

Summary:

Kennedy Jenks has been engaged with the City of Warrenton for more than six years in working toward the completion of the wastewater system facility plan. They have worked on projects at the Wastewater Treatment Plant including:

- 2017 Collection System I & I study
- 2017 Biosolids Management Plan
- 2018 Capacity Evaluation
- 2020 Lagoon Treatment Evaluation
- 2021 UV Disinfection Upgrade Conceptual Design
- 2021 Industrial User Survey
- 2022 Wastewater System Facility Plan

The goal since 2018 and with the completion of the 2022 Wastewater System Facility Plan has been to review and select (which was done in 2023) the best option for upgrading our Wastewater Treatment Plant. In 2023, the Commission selected the Membrane Treatment Plant as the best option for treating higher capacity at a better level of treatment for the long-term life of the new wastewater treatment plant. While the City has an initial outline of the membrane treatment plant upgrade, we now need to move into the design phase of the project. Given Kennedy Jenks's extensive history and knowledge of the City's treatment plant, current capacity, and future needs, as well as the likely cost savings from the City from not completing an additional procurement process and hiring a new engineering firm, staff recommends contracting with Kennedy Jenks for the design phase of this project. State law also supports this direct appointment to Kennedy Jenks, as further discussed below.

Having just successfully completed an extensive condition assessment, alternatives analysis, and preliminary design for necessary upgrades to the WWTP as part of the current Facility Plan contract, Kennedy Jenks is uniquely knowledgeable of the WWTP and the drivers for the imminent upgrades. Amending Kennedy Jenks's current contract, proceeding with the design of those upgrades offers the City the following benefits:

- Cost savings and schedule acceleration by eliminating the reduced efficiency involved with engaging another consultant that is not familiar with the WWTP and project background.
- Schedule acceleration and reduced effort for City staff by eliminating the procurement process for professional services.
- Kennedy Jenks will staff the project primarily out of their Portland, Oregon office and they will continue to maintain a local presence.
- The same team is currently designing a similar flat plate membrane treatment plant in Oregon and will apply those lessons learned to your facility's design.
- Certainty in Kennedy Jenks's ability to deliver the design on time and on budget based on past performance.
- Certainty that the project scope, schedule, and cost will remain as described in the Facility Plan and as promised to constituents.

- Certainty that Kennedy Jenks will provide ongoing support for services during construction and beyond based on past performance.

State law also supports this approach. Per state law (specifically, ORS 279C.115), the City may enter a contract for engineering services without going through a new procurement process if the engineering work was previously described, planned, studied, or rendered in an earlier contract with the engineer, and that earlier contract was awarded in accordance with state and local law. In this case, the City hired Kennedy Jenks to complete numerous previous projects, including the Wastewater System Facility Plan. This completed Wastewater System Facility Plan contemplated the design work needed to complete the membrane treatment plant upgrades. Therefore, this engineering design work was already contemplated in the work product under Kennedy Jenks's initial contract with the City. In addition, the Wastewater System Facility Plan was a public bid process of which Kennedy Jenks (KJ) and one other firm participated and Kennedy Jenks was selected at that time based on the criteria. Therefore, the City also followed applicable state and federal law during its initial procurement process when selecting Kennedy Jenks, and the City may enter an engineering contract with Kennedy Jenks without undertaking a new procurement.

In agreement with the Public Works Director, I am respectfully requesting moving forward with a contract with Kennedy Jenks for the Design phase of our new Wastewater Treatment Plant, as permitted by state law. Moving forward with Kennedy Jenks will also save the City time and money. All of the projects Kennedy Jenks has delivered have been highest quality, professional, and delivered in the most timely of manners.

Recommendation/Suggested Motion:

"I move to authorize the City Manager to enter into contract negotiations with Kenney Jenks for the design phase of the new Wastewater Treatment Plant upgrades."

Alternative:

Other action as deemed appropriate by the City Commission

OR

None recommended

Fiscal Impact:

N/A or...budgeted....or how funded

Attachments:

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

- XXXX

Approved by City Manager: _____



City Commission Agenda Memo

Meeting Date: November 12, 2024
 From: Matthew Ellis, AICP, CFM, Planning Director
 Subject: Public Hearing for Ordinance No. 1276

Summary:

At the direction of the Warrenton City Commission, City staff have been working on changes to the floodplain development permit to ensure the minimum regulatory requirements of the NFIP are adopted. During the analysis, staff realized that the floodplain development permit would make more sense to be its own chapter of the Development Code.

Additionally, FEMA Region 10 has advised Oregon cities in the floodplain to adopt a Pre-Implementation Compliance Measure (PICM) for the NFIP-ESA Integration Plan which will begin implementation over the next few years. This is adopted under Section 16.242.080 of the proposed ordinance.

The goal of this ordinance is to create a new chapter of the development code for floodplain regulation standards and adopt the PICM as required by FEMA Region 10.

Recommendation/Suggested Motion:

"I move to conduct the first reading, by title only, of Ordinance No 1276, AN ORDINANCE AMENDING CHAPTER 16.88 AND ADDING CHAPTER 16.242 OF THE WARRENTON MUNICIPAL CODE TO CLARIFY REGULATIONS ON FLOODPLAIN DEVELOPMENT PERMITS."

Alternative:

None recommended

Fiscal Impact:

N/A

Attachments:

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

- Ordinance No. 1276
- Staff Report

Approved by City Manager: _____

ORDINANCE NO. 1276
INTRODUCED BY ALL COMMISSIONERS

**AN ORDINANCE AMENDING CHAPTER 16.88 AND ADDING CHAPTER 16.242
OF THE WARRENTON MUNICIPAL CODE TO CLARIFY REGULATIONS ON
FLOODPLAIN DEVELOPMENT PERMITS**

WHEREAS, the City Commission recognizes that public health, safety, and general welfare necessitates the reasonable regulation of floodplain development within the City of Warrenton; and

WHEREAS, the current City code does not currently provide clear and objective standards for floodplain development permitting, leading to confusion across the community;

NOW THEREFORE, the City of Warrenton ordains as follows:

Section 1. Section 16.88.020(B) of the Warrenton Municipal Code is hereby amended as follows:

- B. Basis for Establishing the Areas of Special Flood Hazards. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Clatsop County, Oregon and Incorporated Areas," dated September 17, 2010, with accompanying flood insurance maps are hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at the Warrenton City Hall. The best available information for flood hazard area identification shall be the basis for regulation until a new FIRM is issued.

Section 2. Section 16.88.030 and Section 16.88.040 of the Warrenton Municipal Code are hereby repealed.

Section 3. A new Chapter 16.242 is hereby added to the Warrenton Municipal Code as follows:

Chapter 16.242 FLOODPLAIN DEVELOPMENT PERMITS

16.242.010 Purpose.

The purpose of this chapter is to regulate the use of areas of special flood hazard as established in Chapter 16.88 to promote public health, safety, and general welfare, and

to minimize public and private losses due to flood conditions. FEMA's Flood Insurance Rate Map (FIRM) designates flood areas in Warrenton subject to requirements of the National Flood Insurance Program (NFIP).

16.242.020 Establishment of Floodplain Development Permit.

- A. A floodplain development permit, in addition to any regular building permit and/or grading permit that may be required, shall be obtained before construction or development begins in any area of special flood hazard established in Chapter 16.88. The permit shall be required for all structures and buildings and for all development as set forth in Chapter 16.12.
- B. Applications for a floodplain development permit shall be made on forms furnished by the Planning Department and shall be processed as a Type I procedure. Applications shall include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
 - 1. Description of proposed development.
 - 2. Size and location of proposed development (site plan required).
 - 3. Base flood elevation at the site.
 - 4. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.
 - 5. Elevation to which floodproofing has occurred (if any).
 - 6. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 16.88.040.
 - 7. Elevation in relation to mean sea level of floodproofing in any structure.
 - 8. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
 - 9. FEMA/NFIP elevation certificate completed by a land surveyor, engineer, or architect who is authorized by law to certify elevation information (for all new structures and substantial improvements unless otherwise exempt from this requirement by state or federal law).

16.242.030 Duties and Responsibilities.

- A. The duties of the Planning Director or their designee shall include but not be limited to:
 - 1. Review all building permits to determine that the permit requirements and conditions of this chapter have been satisfied.

2. Review all development permits to require that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
 3. Review all development permits in the area of special flood hazard to determine if the proposed development adversely affects the flood carrying capacity of the area.
- B. Use of Other Base Flood Data. When base flood elevation data is not available either through a Flood Insurance Study, FIRM, or from another authoritative source, applications for floodplain development permits shall be reviewed to assure that the proposed construction will be reasonably safe from flooding. The Planning Director or their designee shall obtain, review, and reasonably utilize available data to administer this chapter. The test of reasonableness is a local judgment and includes but is not limited to the use of historical data, high water marks, and photographs of past flooding. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.
- C. Information to be Obtained and Maintained.
1. Where base flood elevation data is provided through a Flood Insurance Study, FIRM, or required as in this chapter, the Planning Director or their designee shall verify, obtain, and record the actual elevation (in relation to mean sea level) of the lowest flood (including basements and below-grade crawlspaces) of all new or substantially improved structures, and whether the structure contains a basement or not.
 2. For all new or substantially improved floodproofed structures where base flood elevation data is provided through a Flood Insurance Study, FIRM, or as required in this chapter, the Planning Director or their designee shall:
 - a. Verify and record the actual elevation (in relation to mean sea level); and
 - b. Maintain the floodproofing certifications required in this chapter.
 3. The Planning Director or their designee shall maintain for public inspection all records pertaining to the provisions of this chapter.
 4. In coastal high hazard areas, certification shall be obtained from a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns to withstand velocity waters.
- D. Interpretation of FIRM Boundaries. Where needed, the Planning Director or their designee shall be authorized to interpret the exact location of the boundaries of the areas of special flood hazards where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity

to appeal the interpretation to the Planning Commission consistent with this chapter.

- E. Alteration of Watercourses. The Planning Director or their designee shall:
1. Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administration.
 2. Require that a maintenance plan is provided within the altered or relocated portion of said watercourse which assures the flood carrying capacity is not diminished.

16.242.040 Standards for Flood Hazard Reduction.

In all areas of special flood hazard established in Chapter 16.88, the standards outlined in this section shall apply.

- A. Anchoring.
1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
 2. All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top and frame ties to ground anchors. (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques.)
 3. A certificate signed by a registered architect or engineer which certifies that the anchoring system is in conformance with FEMA regulations shall be submitted prior to final inspection approval.
- B. Construction Materials and Methods.
1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
 3. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- C. Utilities.
1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwater into the system.

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwater into the systems and discharge from the systems into floodwaters.
 3. On-site waste disposal systems shall be located to avoid impairment of them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality (DEQ).
- D. Manufactured Dwelling Park and Subdivision Proposals.
1. All manufactured dwelling park and subdivision proposals shall be consistent with the need to minimize flood damage.
 2. All manufactured dwelling park and subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
 3. All manufactured dwelling park and subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
 4. Where base flood elevation data has not been provided or is not available from an authoritative source, it shall be generated for manufactured dwelling park and subdivision proposals and other proposed developments which contain at least 50 lots or five acres.
- E. Residential Construction.
1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood elevation.
 2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.
- F. Nonresidential Construction.
1. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to a minimum of one foot above the

base flood elevation or, together with attendant utility and sanitary facilities, shall meet the following criteria:

- a. Below the base flood level, the structure is floodproofed and watertight with walls substantially impermeable to the passage of water.
 - b. The structure has structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
 - c. A registered professional engineer or architect certifies that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this chapter based on their development and/or review of the structural design, specification, and plans. Such certifications shall be provided to the building official as set forth in Chapter 16.244.
 - d. Nonresidential structures that are elevated and not floodproofed must meet the same standards for space below the lowest floor as described in Section 16.242.040(E)(2).
2. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level. For example, a building floodproofed to the base flood level will be rated as one foot below.
 3. Critical Facilities. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the area of special flood hazard. Construction of new critical facilities shall be permissible within the area of special flood hazard if no feasible alternative site is available. Critical facilities constructed within the area of special flood hazard shall have the lowest floor elevated three feet above base flood elevation or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the base flood elevation shall be provided to all critical facilities to the extent possible.
- G. Manufactured Homes/Dwellings.
1. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum 18 inches above the base flood elevation and securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement. Electrical crossover connections shall be a minimum of 12 inches above base flood elevation.

2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones AI-30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions shall be elevated so that either:
 - a. The lowest floor of the manufactured home is elevated to a minimum of 18 inches (46 cm) above the base flood elevation; or
 - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.
- H. Recreational vehicles placed on sites for longer than 180 consecutive days are required to either:
 1. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
 2. Meet the elevation and anchoring requirements for manufactured homes.
- I. Flood Hazard, Park and Open Space Deductions. Where fill and/or development is allowed within or adjacent to the area of special flood hazard outside the zero-foot rise floodplain, and the Comprehensive Plan designates the subject floodplain for park, open space, or trail use, the City may require the dedication of sufficient open land area for a greenway adjoining or within the floodplain. When practicable, this area shall include portions at a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the City's adopted Transportation System Plan for trails, pedestrian, and bikeway, as applicable. The City shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development's impact and shall be consistent with Chapter 16.136.
- J. Temporary Encroachments in the Floodway for Bridge Construction and Repair.
 1. Temporary encroachments in the floodway for bridge construction and repair shall receive a temporary use permit prior to the issuance of a floodplain development permit or other applicable permits.
 2. The temporary use permit shall state the number of days the structure or other development will be on the site. If a longer period is required, a new permit shall be issued.

3. A flood warning system for the project should be in place to allow equipment to be evacuated from the site and placed outside the floodplain.
 4. Placement of equipment in the floodway should be restricted to only equipment which is necessary for the purposes of the project. All other accessory equipment and temporary structures (i.e., construction trailers) should be restricted from the floodway. Structures should be placed on site so that flood damage is minimized. Anchoring the construction trailers in case of evacuation is not practical.
- K. Coastal High Hazard Areas. Located within areas of special flood hazard established in Section 16.88.020 are coastal high hazard areas, designated as Zones V1-V30, VE and/or V. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions in this chapter, the following provisions shall also apply:
1. All new construction and substantial improvements in Zones V1-V30 and VE (V if base flood elevation data is available) shall be elevated on pilings and columns so that:
 - a. Below the base flood elevation, the structure is floodproofed and watertight with walls substantially impermeable to the passage of water.
 - b. The structure has structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
 2. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this section.
 3. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1-30, VE, and V, and whether such structures contain a basement or not. The Planning Director or their designee shall maintain a record of all such information.
 4. All new construction shall be located landward of the reach of mean high tide.
 5. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the

elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

- a. Breakaway wall collapse shall result from water load less than that which would occur during the base flood.
 - b. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage because of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).
6. If breakaway walls are utilized, such enclosed space shall be useable solely for parking vehicles, building access, or storage. Such space shall not be used for human habitation.
 7. Prohibit the use of fill for structural support of buildings.
 8. Prohibit man-made alteration of sand dunes which would increase potential flood damage.

16.242.050 Variances.

- A. Variances to the requirements of this chapter shall be processed as a Type III procedure and be issued or denied in accordance with this section and Section 16.242.070.
- B. Conditions for Variances.
 1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
 2. Variances may be issued for the rehabilitation or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties without regard to the procedures set

forth in this section provided that the alteration will not preclude the structure's continued designation as a "historic structure."

3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
 4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 5. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that the failure to grant the variance would result in exceptional hardship to the applicant;
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances;
 - d. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 6. Variances as interpreted in the NFIP are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic, or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
 7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria and otherwise complies with general standards.
- C. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

16.242.060 Appeals.

Appeals will be conducted in accordance with Section 16.208.030 of this Code. The Planning Department shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

16.242.070 Variance and Appeal Criteria.

- A. While considering variances or appeals to the provisions of this chapter, the hearings body shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the:
1. Danger that materials may be swept onto other lands to the injury of others;
 2. Danger to life and property due to flooding or erosion damage;
 3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 4. Importance of the services provided by the proposed facility to the community;
 5. Necessity to the facility of a waterfront location, where applicable;
 6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 7. Compatibility of the proposed use with existing and anticipated development;
 8. Relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
 9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
 10. Expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

16.242.080 No Net Loss Standards.

- A. Prior to the issuance of a floodplain development permit, the applicant shall provide documentation on how the no net loss standards have been met.
- B. No net loss of floodplain storage, water quality, and vegetation is required for development in the special flood hazard area that would reduce undeveloped space, increase impervious surface, or result in a loss of trees that are 6-inches dbh or greater. No net loss can be achieved by first avoiding negative effects on floodplain functions to the degree possible, then minimizing remaining effects, then replacing and/or otherwise compensating for, offsetting, or rectifying the residual adverse effects to the three floodplain functions. Prior to the issuance of any floodplain development permit, the applicant shall:
1. Demonstrate a legal right by the applicant to implement the proposed activities to achieve no net loss;

2. Demonstrate that financial assurances are in place for the long-term maintenance and monitoring of all projects to achieve no net loss;
 3. Include a management plan that identifies the responsible site manager, stipulates what activities are allowed on site, and requires the posting of signage identifying the site as a mitigation area.
- C. Compliance with no net loss for undeveloped space or impervious surface is preferred to occur before the loss of habitat function but, at a minimum, shall occur concurrently with the loss. To offset the impacts of delay in implementing no net loss, a 25 percent increase in the required minimum area is added for each year no net loss implementation is delayed.
- D. No net loss must be provided within, in order of preference:
1. the lot or parcel that floodplain functions were removed from; then
 2. the same reach of the waterbody where the development is proposed; then
 3. the special flood hazard area within the same hydrologically connected area as the proposed development.
- E. Undeveloped Space. Development proposals shall not reduce the fish-accessible and egress-able undeveloped space within the special flood hazard area. A development proposal with an activity that would impact undeveloped space shall achieve no net loss of fish-accessible and egress-able space. Lost undeveloped space must be replaced with fish-accessible and egress-able compensatory volume based on the ratios below and at the same flood level at which the development causes an impact.
- F. Impervious Surfaces. Development proposals shall not result in a net increase in impervious surface area within the special flood hazard area or use low-impact development or green infrastructure to infiltrate and treat stormwater produced by the new impervious surface, as documented by a qualified professional. If prior methods are not feasible and documented by a qualified professional, stormwater retention is required to ensure no increase in peak volume or flow and to maximize infiltration, and treatment is required to minimize pollutant loading.
- G. Trees. Development proposals shall result in no net loss of trees 6-inches dbh or greater within the special flood hazard area. This requirement does not apply to silviculture where there is no development. Trees of or exceeding 6-inches dbh that are removed from the riparian buffer zone (RBZ), floodway, or RBZ-fringe must be replaced at the ratios below. Replacement trees must be native species that would occur naturally in the Level III ecoregion of the impact area.
- H. Stormwater Management. Any development proposal that cannot mitigate as specified in Section 16.242.080(F) must include water quality (pollution reduction) treatment for post-construction stormwater runoff from any net

increase in impervious area and water quantity treatment (retention facilities) unless the outfall discharges into the ocean.

- I. Retention Facilities. Retention facilities must limit discharge to match the pre-development peak discharge rate for the 10-year peak flow using a continuous simulation for flows between 50 percent of the 2-year event and the 10-year flow event (annual series), treat stormwater to remove sediment and pollutants from impervious surfaces such that at least 80 percent of the suspended solids are removed from the stormwater prior to discharging to the receiving water body, be designed to not entrap fish and drain to the source of flooding, and be certified by a qualified professional.
- J. Regional Stormwater Management. Stormwater treatment practices for multi-parcel facilities, including subdivisions, shall have an enforceable operation and maintenance agreement to ensure the system functions as designed. This agreement will include access to stormwater treatment facilities at the site by the City for inspection, a legally binding recorded document specifying the parties responsible for the proper maintenance of the stormwater treatment facilities, provisions for the maintenance of vegetation and/or soil permeability to maintain the functionality of the feature, and the responsible party for the operation and maintenance of the stormwater facility shall have the operation and maintenance manual on-site and available at all times.
- K. Riparian Buffer Zone (RBZ). The riparian buffer zone is measured from the ordinary high-water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream) or mean higher-high water of a marine shoreline or tidally influenced river reach to 170 feet horizontally on each side of the stream or inland of the MHHW. The riparian buffer zone includes the area between these outer boundaries on each side of the stream, including the stream channel. Habitat restoration activities in the RBZ are considered self-mitigating and are not subject to the no net loss standards described in this section. Functionally dependent uses are only subject to the no net loss standards for development in the RBZ. Ancillary features that are associated with but do not directly impact the functionally dependent use in the RBZ (including manufacturing support facilities and restrooms) are subject to the beneficial gain standard in addition to no net loss standards. Any other use of the RBZ requires a greater offset to achieve no net loss of floodplain functions, on top of the no net loss standards described above, through the beneficial gain standard. Under FEMA's beneficial gain standard, an area within the same reach of the project and equivalent to 5% of the total project area within the RBZ shall be planted with native herbaceous and shrub vegetation and designated as open space.

L. Mitigation Ratios. Mitigation occurring offsite within the same watershed shall be provided at double the below rate. The following mitigation ratios apply to development within the floodplain in accordance with the standards of this section:

1. For development in the riparian buffer zone (RBZ) and floodway:
 - a. For every cubic foot of lost undeveloped space, two cubic feet of undeveloped space are needed for mitigation in accordance with 16.242.080(E).
 - b. For every square foot of lost pervious surface, one square foot of pervious surface is needed for mitigation in accordance with 16.242.080(F).
 - c. For every removed tree between 6 inches dbh and 20 inches dbh, three trees between 6 inches dbh and 20 inches dbh are needed for mitigation in accordance with 16.242.080(G).
 - d. For every removed tree between 20 inches dbh and 39 inches dbh, five trees between 20 inches dbh and 39 inches dbh are needed for mitigation in accordance with 16.242.080(G).
 - e. For every removed tree greater than 39 inches dbh, six trees greater than 39 inches dbh are needed for mitigation in accordance with 16.242.080(G).
2. For development in the riparian buffer zone (RBZ) and floodway fringe:
 - a. For every cubic foot of lost undeveloped space, one and one half cubic feet of undeveloped space are needed for mitigation in accordance with 16.242.080(E).
 - b. For every square foot of lost pervious surface, one square foot of pervious surface is needed for mitigation in accordance with 16.242.080(F).
 - c. For every removed tree between 6 inches dbh and 20 inches dbh, two trees between 6 inches dbh and 20 inches dbh are needed for mitigation in accordance with 16.242.080(G).
 - d. For every removed tree between 20 inches dbh and 39 inches dbh, four trees between 20 inches dbh and 39 inches dbh are needed for mitigation in accordance with 16.242.080(G).
 - e. For every removed tree greater than 39 inches dbh, five trees greater than 39 inches dbh are needed for mitigation in accordance with 16.242.080(G).

M. Exemptions. The following activities are exempt from the standards in this Section, but not necessarily exempt from all of the standards in this Chapter:

1. Normal maintenance and modifications of existing structures, such as re-roofing and replacing siding, provided there is no change in the footprint or expansion of the roof of the structure.
2. Normal street, sidewalk, and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, that do not alter contours, use, or alter culverts. This does not include expansions of paved areas.
3. Routine maintenance of landscaping that does not involve grading, excavation, or filling.
4. Routine agricultural practices such as tilling, plowing, harvesting, soil amendments, and ditch cleaning that do not alter the ditch configuration provided the spoils are removed from special flood hazard area or tilled into fields as a soil amendment.
5. Routine silviculture practices that do not meet the definition of development, including harvesting of trees if root balls are left in place and forest road construction or maintenance that does not alter contours, use, or alter culverts.
6. Removal of noxious weeds and hazard trees, and replacement of non-native vegetation with native vegetation.
7. Normal maintenance of above-ground utilities and facilities, such as replacing downed power lines and utility poles provided there is no net change in footprint.
8. Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility. Normal maintenance does not include repair from flood damage, expansion of the prism, expansion of the face or toe, or addition of protection on the face or toe with rock armor.
9. Habitat restoration activities.

Section 4. Severability. If any provision, section, phrase, or word of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does in affect other provisions that can be given effect without the invalid provision or application.

Section 5. This ordinance shall take full force and effect 30 days after its adoption by the Commission of the City of Warrenton.

First Reading: November 12, 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



City of Warrenton

Planning Department

225 S Main Avenue ■ P.O. Box 250 ■ Warrenton, OR 97146

Phone: 503.861.0920 Fax: 503.861.2351

STAFF REPORT

TO: The Warrenton Planning Commission
FROM: Matthew Ellis, AICP, CFM, Planning Director
DATE: October 10, 2024
SUBJ: Development Code Revision (DCR-24-3) Floodplain Development Permits

BACKGROUND

At the direction of the Warrenton City Commission, City staff have been working on changes to the floodplain development permit to ensure the minimum regulatory requirements of the NFIP are adopted. During the analysis, staff realized that the floodplain development permit would make more sense to be its own chapter of the Development Code.

Additionally, FEMA Region 10 has advised Oregon cities in the floodplain to adopt a Pre-Implementation Compliance Measure (PICM) for the NFIP-ESA Integration Plan which will begin implementation over the next few years. This is adopted under Section 16.242.080 of the proposed ordinance.

The goal of this ordinance is to create a new chapter of the development code for floodplain regulation standards and adopt the PICM as required by FEMA Region 10.

PUBLIC PROCESS, PROCEDURES & PUBLIC NOTICE

Notice was provided to DLCD on June 13, 2024. Public hearing notice was published in The Astorian on September 26, 2024. No public comments were received as of the date of this report.

CODE PROVISIONS, APPLICANT RESPONSES, AND FINDINGS

Applicable Warrenton Municipal Code (WMC) chapters for this application include:

WMC 16.208 TYPES OF APPLICATIONS AND REVIEW PROCEDURES
WMC 16.232 AMENDMENTS TO COMPREHENSIVE PLAN TEXT AND MAP,
REZONE, AND DEVELOPMENT CODE

CONCLUSIONS AND RECOMMENDATION

Based on the findings of this staff report, staff recommend the Planning Commission

recommend approval of Ordinance No. 1276 to the City Commission for final adoption.

RECOMMENDED MOTION

"Based on the findings and conclusions of the October 10, 2024 staff report, I move to recommend and forward to the City Commission the changes to the Development Code as described in Ordinance No. 1276."

ALTERNATIVE MOTION

"I move to continue the hearing to a date certain to allow additional public testimony and reconsider Ordinance No. 1276."

ATTACHMENTS

1. Ordinance No. 1276



PROTECTING PRIVATE PROPERTY RIGHTS SINCE 1989

OPOA Legal Center

(503) 620-0258

www.oregonpropertyowners.org

November 12, 2024

City of Warrenton
225 S Main Ave
Warrenton, OR 97146

Re: Ordinance No. 1276

Mayor Balensifer III, members of the City Commission,

We write today to urge the Commission not to adopt Ordinance No. 1276, amending Chapter 16.88 and adding Chapter 16.242 of the Warrenton Municipal Code to clarify regulations on floodplain development permits. Specifically, we write today to express concerns with adoption of Section 16.242.080, as the proposed language is neither clear nor objective and will likely discourage needed housing through unreasonable cost or delay.

While we understand that the Federal Emergency Management Agency (FEMA) and nearly all Oregon NFIP jurisdictions are in a difficult situation due to reckless litigation brought by non-profit environmental organizations, the solutions contemplated by both FEMA and the City are ill-advised. As discussed in greater detail below, FEMA's Pre-Implementation Compliance Measures (PICMs), especially the 2024 Model Code, likely violates provisions of state land use law and federal environmental law. Consequently, we ask the City to slow down, reevaluate, and make choices consistent with all applicable laws.

By way of background, the OPOA Legal Center is a non-profit public interest law firm that defends Oregonians' private property rights from government overreach and regulatory injustice. Since 1989, the Legal Center has provided free legal services to property owners on matters related to farming, ranching, timber production, housing production, industrial development, and more. As practicing land use attorneys, we assist private property owners in submitting and obtaining permits from local governments and represent landowners before state and local agencies.

As the FEMA deadline approaches and local governments have published which PICM they will be adopting, we have received multiple concerned phone calls from builders, business owners, and homeowners throughout the state. Generally, these property owners are feeling uninformed and concerned about how adoption of the PICMs and ultimately the Oregon Implementation Plan for

NFIP-ESA Integration (Implementation Plan) will affect their property rights and property values. Based on our preliminary analysis, these fears are well founded. Adoption of any of the PICMs will infringe upon property rights, kill valuable and critical housing and economic development projects, force the City to ignore statewide planning goals and laws, and make it infinitely more difficult for the City to meet its housing and economic development targets under Statewide Planning Goals 9 and 10. On the other hand, the threat of suspension from the NFIP comes with serious consequences that will also harm jurisdictions and Oregonians alike. In short, the lawsuits and FEMA's artificial deadline result in a lose-lose for communities enrolled in the NFIP.

Accordingly, we urge the City and other local governments to take immediate legal action against FEMA to prevent the inevitable injury to both the City and your residents that will come from having to adopt any of the PICM options by December 1, 2024. At the same time, local governments, the State of Oregon, and the Department of Land Conservation and Development must exercise their influence with FEMA and other federal agencies to ensure: (1) a complete and final NEPA review of the proposed Implementation Plan with an accompanying Record of Decision; and/or (2) necessary changes or revisions to the 2016 Biological Opinion (BiOp), associated Reasonable and Prudent Measures, and the Implementation Plan to reduce harm to Oregonians and their property rights.

Both local government and the State of Oregon have the ability to seek emergency injunctive relief and change the course of implementing the BiOp. Given the clear harm the PICMs and ultimately the Implementation Plan will cause Oregonians, the State and local governments must take up the mantle of defending Oregonians' property rights and the economic wellbeing of our communities. To shift that burden onto property owners (once again) is unfair, unreasonable, and places the burden of enforcing federal and state law on your constituents, who did nothing to create this problem, and only stand to lose from the BiOp at the end of the day.

For these reasons and those outlined in the attached memorandum, we strongly urge the Council not to adopt Ordinance No. 1276. Thank you for the opportunity to comment.

Respectfully,

David Hunnicutt
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Samantha Bayer
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PROTECTING PRIVATE PROPERTY RIGHTS SINCE 1989

OPOA Legal Center

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MEMORANDUM

To: Warrenton City Council
From: OPOA Legal Center
Date: November 12, 2024
Re: FEMA BiOp Implementation

The purpose of this memorandum is to explain why the City of Warrenton should not adopt Ordinance No. 1276 and to encourage the City to seek injunctive or declaratory relief regarding the legal validity of the Pre-Implementation Compliance Measures prior to adopting any of the options. The memorandum concludes that adopting Ordinance No. 1276 violates state law and FEMA likely does not have authority to enforce the PICMS under federal law. Additionally, this memorandum suggests alternative actions the City could take to protect the City, its constituents, and their property rights.

I. FACTUAL BACKGROUND:

In 2009, several non-profit environmental groups filed a lawsuit against the Federal Emergency Management Agency (FEMA) arguing that the implementation of the National Flood Insurance Program (NFIP) jeopardized multiple threatened and endangered species in Oregon. In response, FEMA negotiated a settlement that required initiation of a consultation with the National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA). In 2016, NMFS issued a Biological Opinion (BiOp) evaluating the implementation of the NFIP and its effect on threatened or endangered species and their habitat in Oregon. The BiOp concluded that the implementation of the NFIP likely jeopardized the continued existence of 16 ESA-listed anadromous fish species (fish that migrate up rivers from the sea to spawn such as salmon) and Southern Resident killer whales.

Accordingly, NMFS issued a reasonable and prudent alternative (RPA) that if implemented, would avoid jeopardy to the listed species and destruction or adverse modification of designated or proposed critical habitat for the anadromous fish. In 2021, FEMA in cooperation with the Oregon Department of Land Conservation and Development (DLCD) issued a draft implementation plan to integrate the ESA into the NFIP (Implementation Plan). In 2023, the Implementation Plan began

the National Environmental Policy Act (NEPA) review process focusing on long-term measures to ensure compliance with the BiOp.

Unhappy with the delays in implementation, several environmental advocacy groups sued FEMA again. In response, in July 2024 FEMA notified Oregon NFIP communities of the need to adopt mandatory Pre-Implementation Compliance Measures (PICMs). FEMA established a December 1, 2024 deadline for communities to notify FEMA of which of the following PICM options they will adopt:

1. Prohibit all development in the Special Flood Hazard Area.
2. Adopt the 2024 Model Ordinance that requires mitigation of any floodplain development to a no net loss standard.
3. Require a special habitat assessment and mitigation plan for development on a permit-by-permit basis in the Special Flood Hazard Area to achieve a no net loss standard.

While participation in the NFIP is voluntary, nonparticipating flood-prone communities and communities who have withdrawn or are suspended from the program face the following sanctions:

1. No resident will be able to purchase a flood insurance policy.
2. Existing flood insurance policies will not be renewed.
3. No Federal grants or loans for development may be made in identified flood hazard areas under programs administered by Federal agencies such as HUD, EPA, and SBA;
4. No Federal disaster assistance may be provided to repair insurable buildings located in identified flood hazard areas for damage caused by a flood.
5. No Federal mortgage insurance or loan guarantees may be provided in identified flood hazard areas. This includes policies written by FHA, VA, and others.
6. Federally insured or regulated lending institutions, such as banks and credit unions, must notify applicants seeking loans for insurable buildings in flood hazard areas that there is a flood hazard and that the property is not eligible for Federal disaster relief.

If a local government does not meet the December 1 deadline, they are subject to possible enforcement actions and suspension pursuant to a process set forth in the NFIA and its associated regulations.

II. ANALYSIS:

While we understand the difficult situation FEMA has placed local governments in, it must be acknowledged that adopting any of the PICMs at this point likely subjects the City to significant legal liability. Oregon's statewide land use planning system governs development in and out of the floodplain, irrespective of FEMA's criteria for participation in the NFIP. While local governments have the authority to tailor their floodplain ordinances to qualify for federal programs, they cannot ignore state land use law. If they do so, they are subject to legal action by property owners or other entities affected by the local government's decision. In short, the City of Warrenton is not absolved of its responsibility to follow state law because of its desire to remain enrolled in the NFIP.

For the following reasons, we urge the City not to adopt Ordinance No. 1276. Alternatively, the City should seek immediately injunctive or declaratory relief challenging FEMA's authority to enforce the PICMs:

A. The City of Warrenton should not adopt Ordinance No. 1276 as proposed because it includes standards that are neither clear nor objective:

Under ORS 197A.400, cities and counties:

[...] may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary."

See ORS 197A.400(1) (emphasis added). By July 1, 2025, this standard must apply to unincorporated communities designated in a county's acknowledged comprehensive plan, nonresource lands, and areas zoned for rural residential use as defined in ORS 215.501.

The "clear and objective" standard includes two fundamental parts. In *Roberts v. City of Cannon Beach*, 316 Ore. App. 305, 311 the Oregon Court of Appeals summarized the recent case law on this two-part standard:

We agree with petitioners that, fundamentally, the standard has two parts: First, a standard, condition, or procedure must be objective. As LUBA has explained, "objective" means "existing independent of mind." [...] Standards are not objective "if they impose 'subjective, value-laden analyses that are designed to balance or mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or community.'" [...]

Second, as LUBA observed in this case, standards must also be clear. "[T]he term 'clear' means 'easily understood' and 'without obscurity or ambiguity.'" [...] This second prong of the analysis is better developed in LUBA's case law than in our own. [...] Ultimately, in the context of ORS 197.307(4), the degree of clarity required for standards, conditions, and procedures for housing development represents a balance between the need of applicants for an understandable route to approval of the applied-for development and the need of local governments for code-drafting requirements that are realistically achievable. See, e.g., Video Recording, House Committee on Human Services and Housing, HB 2007, Apr 13, 2017, at 29:55 (statement of Rep. Tina Kotek), available at <https://olis.oregonlegislature.gov> (accessed Dec 7, 2021) (indicating that it would be achievable for cities to apply only clear and objective standards to all housing).

See *Roberts v. City of Cannon Beach*, 334 Ore. App. 762, 770; See also *Legacy Dev. Grp., Inc. v. City of The Dalles*, ___ Or LUBA ___, ___, 2021 Ore. Land Use Bd. App. LEXIS 17, *5 (LUBA No. 2020-099, Feb. 24, 2020); *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998); *Rudell v. City of Bandon*, 249 Ore. App. 309, 319, 275 P.3d 1010 (2012); *Roberts*, Or LUBA at ___, 2021 Ore. Land Use Bd. App. LEXIS 75, *20; *Group B, LLC v. City of Corvallis*, ___ Or LUBA ___, 2015 Ore. Land Use Bd. App. LEXIS 58 (LUBA No. 2015-019, Aug 25, 2015).

In short, a local government may not adopt or apply a standard that regulates housing that is unclear, subjective, value laden, vague, or would otherwise make it unreasonably difficult or expensive for applicants to develop housing. Unfortunately, several aspects of the proposed Model Ordinance are neither clear nor objective. This is acknowledged by DLCDD in its FAQ to local governments.¹

While we take issue with numerous parts of the Model Code and the City's proposed Ordinance, for the purposes of this memorandum we are concerned most about the description of "No Net Loss" in subsection 16.242.080(B). According to this section, all development (including housing) in the floodplain must achieve the "no net loss" standard. According to the ordinance:

No net loss can be achieved by first avoiding negative effects on floodplain functions to the degree possible/ then minimizing remaining effects/ then replacing and/or otherwise compensating for/ offsetting/ or rectifying the residual adverse effects to the three floodplain functions.

This language is inherently unclear, subjective, and a prime example of a value laden analysis designed to balance or mitigate impacts of housing development on other properties and the floodplain itself. It is unclear what several of these terms mean, and is unclear how an applicant would truly meet this standard. We share similar concerns with subsection 16.242.080(M), the

¹ [DLCD PICM FAQ.pdf](#)

exceptions to the “no net loss” standard. It is unclear what is “normal” maintenance or modifications in the context of a structure like a house. This term is neither clear nor objective.

These are just two examples of where the proposed code present neither clear nor objective standards. We strongly urge City staff and City counsel to review the code in greater detail. DLCD has already acknowledged that several aspects of the Model Code are neither clear nor objective. The City should not move forward with its adoption, and should not move forward with adopting the “no net loss” standard as outlined in the Model Code, as it in itself would not pass the clear and objective test. We question whether *any* local government will be able to comply with any PICMs that requires a “no net loss” standard because the definition provided in the Implementation Plan and the Model Code cannot meet the clear and objective requirements of ORS 197A.400.

B. The City of Warrenton should not adopt Ordinance No. 1276 as proposed because it likely violates Measure 56:

Adoption of the Model Code likely violates Measure 56. Under ORS 215.503(4):

[A]t least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, the governing body of a county shall cause a written individual notice of land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

A property is considered “rezoned” if the City either “(a) Changes the base zoning classification of the property” or “(b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.” See ORS 215.503(9). By adopting Ordinance No. 1276, the City is adopting an ordinance that limits or prohibits land uses previously allowed, thus requiring Measure 56 notices to be sent out. This is confirmed by DLCD’s guidance to counties on implementing the PICMs. From our understanding, these notices have not been sent to property owners and the first public hearing on the matter has already taken place. If this is the case, then adoption of Ordinance No. 1276 at this juncture violates ORS 215.503(4).

C. City of Warrenton should take immediate legal action against FEMA as enforcing the PICMs without NEPA review potentially violates federal law:

Before acquiescing to any of the PICMs, the City of Warrenton and local governments should seek legal clarification as to whether the PICM’s are legally sound and within FEMA’s authority to impose. Specifically, local governments should seek either injunctive relief or declaratory relief to determine whether FEMA must first complete an Environmental Impact Statement (EIS) of the PICMs as required by the National Environmental Policy Act (NEPA). Additionally, they should determine whether the PICMs meet the criteria for interim measures under 40 CFR § 1506.1 (Limitations on actions during NEPA process).

Generally, NEPA establishes a national environmental policy and provides a framework for environmental planning and decision making by Federal agencies. NEPA directs Federal agencies, when planning projects or issuing permits, to conduct environmental reviews to consider the potential impacts on the environment by their proposed actions. As such, through NEPA review federal agencies are required to take a “hard look” as to whether any major federal action might significantly affect the quality of the human environment. As a United States District Court held in a similar case in Northern California (quoting the United States Ninth Circuit Court of Appeals):

NEPA emphasizes the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.

See *Delta Smelt Consol. Cases v. Salazar*, 686 F Supp 2d (E.D. Calif. 2009).

As noted in *Delta Smelt*, because the risk of taking incorrect action is so high, the CEQ has imposed limitations on federal action taken during the NEPA process. Specifically, 40 CFR § 1506.1(c) states:

(c) While work on a required environmental review for a program is in progress and an action is not covered by an existing environmental document, agencies shall not undertake in the interim any major Federal action covered by the program that may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental review; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

Here, FEMA is currently in the process of completing its Environmental Impact Statement (EIS) under NEPA for the 2021 Implementation Plan. This process was set to be completed by 2025, when a final Record of Decision (ROD) would be issued. Implementation of the PICMs is FEMA’s attempt to implement the BiOp RPA’s prior to completion of the Implementation Plan. As such, the PICM’s constitute major federal action, subject to the criteria outlined in 40 CFR § 1506.1(c).

As it stands, it is unclear if the PICMs could pass § 1506.1(c) muster as it is: (1) unclear whether FEMA has the authority to impose a “no net loss” standard under the NFIP irrespective of how the Implementation Plan moves forward; (2) unclear whether the PICMs have undergone any environmental review themselves; and (3) enforcing a “no net loss” standard as contemplated by the PICMs likely prejudices programmatic development of the NFIP and future decisions by jurisdictions and FEMA in implementing the program.

To be clear, FEMA is not required to take interim action, they are not required to select any of the PICM's they've chosen, they are not compelled to choose December 1, 2024 as a deadline, and any (or all) of their chosen PICM's may be inconsistent with federal law. This is a self-imposed decision by FEMA as a strategy to influence new litigation they are facing. This is not solid legal ground for the City to be making decisions upon— especially when the City's proposed solution violates Oregon land use law.

Before acquiescing to any of interim measures imposed by FEMA, we ask you to consider the following legal issues, which may have bearing on the validity of the PICMs:

- i. **FEMA needs to complete its EIS before enforcing the “no net loss” standard:** As discussed in greater detail above, FEMA is currently in the process of completing its EIS of the Implementation Plan. Until FEMA completes its EIS, it is premature to attempt to enforce Plan requirements like the “no net loss” standard that may or may not satisfy federal law. The whole point of NEPA is to ensure that an agency evaluate its proposed actions for compliance with federal environmental law. *Cf. Wetlands Water Dist. v. United States DOI*, 376 F3d 853 (9th Cir. 2004). Until such time as the EIS is complete, FEMA lacks authority to mandate the PICM's, and local governments should not adopt them.
- ii. **FEMA does not have statutory authority to enforce the PICM's:** FEMA's jurisdictional and regulatory authority stems from the National Flood Insurance Act, 42 USC § 4000-4131. There is nothing in the Act that authorizes FEMA to adopt federal regulations to carry out the intent and purposes of the ESA. In fact, the NFIA and ESA have nothing in common with each other and are designed to address completely separate policies.

Assuming for the sake of argument only that the consultation requirements of the ESA (16 USC §1536(a)(2)) apply to FEMA's actions under the NFIP, and that NMFS has the authority to require FEMA to consider the RPA's suggested in the Bi-Op, there is simply nothing in the NFIA authorizing FEMA to require local governments to amend their local planning ordinances to implement RPA's that have nothing to do with the purposes of the NFIA. In other words, FEMA cannot rely on its consultation obligations under the ESA to bootstrap extreme conservation standards into its coverage requirements under the NFIP. This is a step too far, and the PICM requirements requiring local governments to enact a model ordinance that looks like something out of the ESA rather than the NFIP are outside the scope of FEMA's congressionally delegated authority.

I. CONCLUSION:

For the aforementioned reasons, the City should not adopt Ordinance No. 1276 and should challenge FEMA's enforcement of the PICMs.

We understand that the City and local governments have been placed in a difficult spot because of these lawsuits and FEMA's failure to complete their EIS in a timely manner. However, the choice of adopting the Model Code would simply pass the cost and burden suffered by the City directly onto your constituents. This isn't fair, especially when the PICMs are legally questionable.

We fully understand the City's concern that ignoring FEMA's self-imposed deadline could possibly jeopardize the City's ability to obtain coverage under the NFIP. No one wants that, least of all the property owners in your City. However, there is a long and substantial process that FEMA must follow, including a probation period, with multiple opportunities for the local government to course correct and come into compliance (see 44 CFR §59.24). Therefore, taking a slow, measured, and legally responsible response to FEMA's PICMs will not result in any immediate threat to a jurisdiction's enrollment in the NFIP.

Respectfully,

David Hunnicutt
OPOA Legal Center
OSB #923426
Dhunnicut@oregonpropertyowners.org

Samantha Bayer
OPOA Legal Center
OSB #125220
sbayer@oregonpropertyowners.org



City Commission Agenda Memo

Meeting Date: November 12, 2024
From: Jessica McDonald, Harbormaster
Subject: Clean Marina Certification

Summary:

We are honored to have Glenn Dolphin from the Oregon State Marine Board join us for the commission meeting to present the City of Warrenton with its Oregon Clean Marina Certification.

The Clean Marina program educates marina operators on protecting and enhancing local water quality through environmentally responsible practices. A key aspect of the certification process involved the removal of the sunken vessel *Suzanne*, this removed the last derelict vessels from the marina. Additionally, staff have implemented and enforced strict insurance, registration and seaworthiness requirements for all vessels within the marinas.

Recommendation/Suggested Motion:

NA

Alternative:

Other action as deemed appropriate by the City Commission

OR

None recommended

Fiscal Impact:

N/A

Attachments:

- Clean Marina Logo

Approved by City Manager: _____

A blue ink signature, likely of the City Manager, written over a horizontal line.





City Commission Agenda Memo

Meeting Date: November 12, 2024
From: Esther Moberg, City Manager
Subject: Community Thanksgiving Meal Request

Summary:

The City has received a request for the commission to pay the fees for use of the Community Center for the annual free community Thanksgiving Dinner. Fort Stevens VFW Post and Auxiliary 10580 will be managing the dinner again this year. They are requesting use of the center for Wednesday and Thursday, November 27 and 28, 2024. The cost of last year's rental fee was covered by using funds from the Warrenton Business license fund.

The Community Center is operated on user fees only and does not receive other funding except through donations and fund-raising efforts. The operating budget for the center is very small and utilities and cleaning costs still need to be covered. It is my recommendation that the City not waive the fee but pay for the event from the Business license account. That has been the practice for other "waiver" requests. The total fee for use of the Community Center for this event is \$898.00

Recommendation/Suggested Motion:

"I move the City cover the cost of use of the Community Center for the annual free Community Thanksgiving Dinner by using funds in the Warrenton Business License Budget."

Alternative:

None recommended

Fiscal Impact:

There is room in the budget for this expense.

Attachments:

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



**Fort Stevens 10580 VFW Auxiliary
PO Box 233
Warrenton, Oregon 97146**

October 17, 2024

City of Warrenton
170 SW 3rd Street
Warrenton, OR 97146

RE: Community Thanksgiving

Greetings,

We would like to use the Community Center to prepare the Annual Community Thanksgiving Dinner. We would like to use the Community Center on Wednesday November 27, 2024, for food preparation and Thursday, November 28, 2024 for Thanksgiving Day.

It is our intention to have in house seating as well as delivery. We are asking that the City of Warrenton waive the Community Center rental fees as you have done in previous years. Please advise your decision as soon as possible so we may begin our action plan.

Thank you for your consideration of our request.

Debbie Little, President
Fort Stevens 10580 VFW Auxiliary

Warrenton Community Center

(503) 861-2233

LOCATION: 170 SW 3RD ST
WARRENTON, OR 97146

MAILING ADDRESS: PO BOX 250
WARRENTON, OR 97146

Rental Application

DATE(S) RESERVED: 11-27-24
11-28-24

TIME(S) RESERVED: _____

TYPE OF EVENT:

Community Thanksgiving

ESTIMATED ATTENDANCE:

(MAXIMUM CAPACITY = 135)

NAME OF ORGANIZATION, GROUP, OR INDIVIDUAL:

Fort Stevens VFW 10580 Post 3 Auxiliary

CONTACT PERSON:

NAME:

Debbie Little

HOME PHONE:

503 739-0661

MAILING ADDRESS:

P.O. Box 233 Warrenton, OR 97146

BUSINESS PHONE:

CELL:

503 739-0661

ALTERNATE CONTACT PERSON:

NAME:

Bert Little

HOME PHONE:

503 739-1071

MAILING ADDRESS:

P.O. Box 233 Warrenton, OR 97146

BUSINESS PHONE:

CELL:

503 739-1071

PERSON RESPONSIBLE FOR CLEANING:

VFW Post 3 Auxiliary

PHONE:

(SEE CLEANING INSTRUCTIONS ATTACHED)

Check here if you would like us to clean and deduct the fee from your deposit

☐

SEE ATTACHED RATE STRUCTURE		
CLEANING AND KEY DEPOSIT FEE:	FEE	TOTAL

KEYS: _____ X _____ \$10.00
(quantity)
CLEANING: _____ or _____
(regular) \$75.00 (alcohol) \$200.00
TOTAL DEPOSIT: _____

RENTAL FEES:				
Check One	HOURS RENTED	X	RATE	RENTAL FEE
<input type="checkbox"/> Meeting Room, food in Center	ALL DAY		\$449 per day	
<input type="checkbox"/> Meeting Room Only, no food	ALL DAY		\$321 per day	
<input type="checkbox"/> Meeting Room, food in Center			\$50 per hr	
<input type="checkbox"/> Meeting Room Only, no food			\$40 per hr	

LIST SUPPLIES WANTED TO RENT

I/we hereby apply for the use of the above facility and agree to assume full responsibility for the conduct of guests and any damage done to the premises during the period of use. I understand the deposit will be refunded only if the building is clean and in the same condition as I/we found it. Upon notification, refunds of the deposit, for cancellation, will be due as per the schedule in the Community Center Rate Schedule. I have read the attached "General Rules and Guidelines and "Cleaning Instructions" and agree to these conditions of use.

Signature:

Debbie Little

Date:

10-17-24

MAKE CHECKS PAYABLE TO: CITY OF WARRENTON

226 S. MAIN

P. O. BOX 250

WARRENTON, OR 97146

Please return all completed applications to City Hall at the above address.

TOTAL RENT:

GRAND TOTAL FEES:

Rental Fees are due 5 days prior to rental date.

Internal use only			
Amount	Receipt #	Date	
Deposit fee paid:			
Rental fee paid:			
fee paid:			
fee paid:			
Staff:			
Calendar:			



City Commission Agenda Memo

Meeting Date: November 12, 2024
 From: Esther Moberg, City Manager
 Subject: Agenda title description

Summary:

Shoreline Sanitary District has requested to pay off the connection fee debt. They will continue to pay their regular charges but this was an initial assessment fee based on the City of Warrenton taking over sanitary services for the Shoreline Sanitary District area. The request is to allow for this pay off amount of \$196,680 and that there would be an addendum added to the IGA stating this original fee had been paid in full.

Recommendation/Suggested Motion:

I make a motion to approve the payment of the remaining debt for connections fees per the IGA agreement dated January 12, 2016 and to add an addendum to the IGA once the payment is received stating the amount has been paid in full.

Alternative:

Other action as deemed appropriate by the City Commission

OR

None recommended

Fiscal Impact:

The City of Warrenton would receive \$196,680 this fiscal year. The City of Warrenton will continue to receive the regular utility fees from this Shoreline Sanitary District per the Amended Intergovernmental Agreement.

Attachments:

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

- Letter from Shoreline Sanitary District
- Amended IGA dated January 12, 2016

Approved by City Manager: _____

**Shoreline Sanitary District
PO Box 732
Warrenton, Or 97146**

September 19, 2023

Warrenton City Manager
P.O. Box 250
Warrenton, OR 97146

RE: Amended Intergovernmental Agreement, Shoreline Sanitary District – City of
Warrenton dated January 12, 2016

Dear Ms. Moberg

As per our Amended Intergovernmental Agreement, Shoreline Sanitary District – City of Warrenton dated January 12, 2016, Article 3, par 3.2, “a connection fee of \$10.00 per month will be assessed to each user for a period of 20 years (240 months) starting with the first month that the City starts sending out District bills.”

As of January 1, 2025, Shoreline Sanitary District (SSD) would like to pay off the remaining debt owed by all users. Attached is an accounting of amounts paid and amounts owed, with the bottom line being that SSD would pay the City \$196,680 to close out the users remaining debt. In addition there would need to be an amendment to our IGA stating that the debt had been paid in full.

I will be happy to meet with you to discuss this payoff. If the proposal needs to go before the City Council, I will be happy to meet with them also.

Thank you for your time and attention to this matter.

Best Regards,



John L. Glen
Chairman, Shoreline Sanitary District BOD

“This institution is an equal opportunity provider”

Shoreline Sanitary District
PO Box 732
Warrenton, Or 97146

Proposed early repayment of Shoreline Sanitary District customer buy in.

The original obligation was \$10 a month for 20 years, or \$2,400 for each connection.

20 years x 12 months = 240 months

Payment started on January 1, 2016

January 1, 2016 through December 31, 2024 is 9 years or 108 months that will have been paid on each connection.

240 months – 108 months = 132 months remaining

108 months x \$10 = \$1,080 paid on each connection

\$2,400 - \$1,080 = \$1,320 owed by each connection

\$1,320 x 149 connections = **\$196,680** still owed as of January 1, 2025

**AMENDED INTERGOVERNMENTAL AGREEMENT
SHORELINE SANITARY DISTRICT - CITY OF WARRENTON**

This Amended Intergovernmental Agreement (the "Amended IGA") is made and entered into this 8th day of NOV, 2016, by and between the City of Warrenton, Oregon, a municipal corporation (the "City"), and the Shoreline Sanitary District, a municipal corporation formed under ORS 450 (the "District"). The City and the District are each referred to in this Amended IGA as a "Party" and collectively as the "Parties."

WHEREAS, by the authority granted in ORS 190.010, units of local government may enter into agreements with other units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform; and

WHEREAS, the City is a full-service municipal corporation which owns and operates a sanitary sewage system including collection sewers, pumping stations, wastewater treatment facilities, and an outfall to the Columbia River, all in accord with state statutes and a National Pollutant Discharge Elimination System (NPDES) permit issued and administrated by the state of Oregon Department of Environmental Quality ("DEQ"); and

WHEREAS, the District is a single-purpose sanitary district organized under ORS 450 which owns and operates a sanitary sewage system including collection sewers, pumping stations, wastewater treatment facilities, and an outfall to the Skipanon River, all in accord state statutes and a NPDES permit issued and administered by DEQ; and

WHEREAS, the City and the District desire to meet all current and future Federal and State statutes, codes, and regulations; and

WHEREAS, the District has been experiencing difficulty complying with certain terms contained in its NPDES permit and was issued a Mutual Agreement and Order ("MAO") by DEQ to fully control or prevent the discharge of treated wastewater to the Skipanon River by April 30, 2009, which deadline has been extended by DEQ to December 31, 2011; and

WHEREAS, in order to comply with the MAO, the District desires to connect its sewage collection system with the City's and to have the City receive and treat the District's sanitary sewage in perpetuity; and

WHEREAS, the City is willing to accept and treat the District's sanitary sewage upon the terms and conditions contained in this Amended IGA.

WHEREAS, THE City and the District entered into an Intergovernmental Agreement on September 8, 2009, (the "Original IGA") setting forth the terms for connection of the District's sewage collection system with the City's.

WHEREAS, the District has applied for a loan from USDA Rural Development to fund

the sewage systems connection and USDA Rural Development has requested some modifications to the Original IGA as a condition for the approval of such funding.

WHEREAS, the Parties agree and understand that this Amended IGA will replace the Original IGA in its entirety.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, it is mutually agreed as follows:

ARTICLE 1 **DEFINITIONS**

1.1 **“City Collection System”** means all collection sewers, lateral sewers, pumping stations, force mains, and metering devices presently operating and planned to operate to convey sewage to the City WWTP, and including all easements, properties, or rights-of-way occupied by the City Collection System.

1.2 **“City Emergency Contact”** means the person to be identified by the City in writing on the Effective Date of this Amended IGA (and confirmed or updated as necessary throughout the term of this Amended IGA), to receive notice of emergency operation or maintenance issues or problems with the District System.

1.3 **“City Reports”** means the City Monthly Report and the City Annual Report containing the information set forth in Section 4.3 of this Amended IGA.

1.4 **“City Service”** means the acceptance and treatment of District sewage by the City and includes collection, conveyance, and pumping within the City.

1.5 **“City System”** means the City Collection System and the City WWTP.

1.6 **“City WWTP”** means the integrated system of tanks, ponds, piping, equipment, pumps, blowers, controls, buildings, disinfection facilities, and outfall pipes owned by the City for the purpose of treating sewage in compliance with all federal and state statutes.

1.7 **“Connection Date”** means the date the City begins accepting and treating sewage from the District through the new Connection Line.

1.8 **“Connection Line”** means the pipeline and pumping stations that will be constructed by the District to connect the District Collection System to the City System including all easements, properties, or rights-of-way occupied by the Connection Line.

1.9 **“District Collection System”** means all collection sewers, lateral sewers, pumping stations, force mains, and metering devices presently owned and operated by the District and that will continue operating after the Connection Date, including all easements, properties, or rights-of-way occupied by the District Collection System.

1.10 **“District Reports”** means the District Quarterly Report and the District Annual Report containing the information set forth in Section 5.4 of this Amended IGA.

1.11 **“District Reserve Fund”** means the account to be maintained by the District pursuant to Section 5.3 of this Amended IGA.

1.12 **“District System”** means the District Collection System and the Connection Line.

1.13 **“District Users”** shall mean the users within the District who maintain a connection to the District Collection System and whose sewage will be accepted and treated by the City after the Connection Date.

1.14 **“District User Monthly Rate”** means the monthly base rate to be charged by the City to District System users for City Services.

1.15 **“EDU”** means equivalent dwelling unit, a measure of sewage generation.

1.16 **“Flow-Based Cost”** means the proportionate cost of sewer service or repairs or improvements allocable to District Users based on the gallons of sewage delivered by the District into the City System as a proportion of the total measured quantity of sewage treated at the City WWTP.

1.17 **“Point of Delivery”** means the manhole within the City Collection System located at latitude 46°8'59.38"N and longitude 123°55'40.75"W to which the Connection Line will be connected and into which the District will discharge sewage from the District Collection System.

1.18 **“USDA Rural Development”** is a United States Department of Agriculture agency that will provide a loan to the District to fund construction of the Connection Line if other funding is not available.

ARTICLE 2

CONNECTION OF THE DISTRICT COLLECTION SYSTEM TO THE CITY SYSTEM

2.1 The District will design, fund and oversee the construction of a Connection Line between the District Collection System and the City System. Attached as Exhibit 1 is a Wastewater Facilities Pre-Design Report dated July, 2008 prepared for the District by Curran-McLeod, Inc., the District's consulting engineers, which discusses the Connection Line and includes a map of its proposed alignment.

2.2 The District shall be responsible to obtain and pay the cost of obtaining all land use approvals, easements or rights-of-way necessary for the construction, installation, operation and maintenance of the Connection Line.

2.3 The District agrees to comply with all applicable federal, state, and local laws, regulations and codes for construction and installation of the Connection Line and its sewage

facilities as well as the terms and deadlines contained in the MAO.

2.4 The District agrees to provide copies of all pre-design, design and construction plans and specifications related to the Connection Line to the City for the City's approval at least thirty (30) calendar days before construction of the Connection Line commences. The City agrees that it will not unreasonably withhold approval of such plans and specifications but reserves the right to require reasonable modifications.

2.5 Prior to the Connection Date, the District will conduct tests, including but not limited to pressure tests, of the new Connection Line, including the pump stations. The District agrees to notify the City about when such tests will be conducted and permit the City to observe the tests. The City reserves the right to request reasonable additional testing to ensure that the line will function properly once connected to the City System.

2.6 The District will notify the City in writing that the connection will become active at the Point of Delivery at least thirty (30) calendar days before the Connection Date.

2.7 At least ten (10) days prior to the Connection Date, the District shall provide to the City copies of all operations and maintenance manuals, and plans, for the District System, as well as any additional information reasonably requested by the City. As-built drawings will be provided to the City within six months of the connection date.

2.8 The District shall own the District System after the Connection Date.

2.9 At the sole option of the City, in the years 2029, 2034 or 2039, subject to the express written consent of USDA Rural Development if it is a lender to District, ownership of the District System and Connection Line may be transferred to the City, at no cost to the City. Consideration for such a transfer will be the continued provision of City Services to District Users. If the City chooses to exercise this ownership transfer option, it shall provide written notice of that decision to the District by no later than January 1 of the appropriate year. The District will take all steps necessary to effectuate the ownership transfer within ninety (90) days of receiving such notice. In the event that ownership of the District System is transferred to the City, this Amended IGA shall automatically terminate and cease to be in effect on the date of such transfer.

2.10 The District shall not expand sewer service inside or outside its existing boundaries without the consent of the City, which consent shall not be unreasonably withheld.

2.11 The City shall not expand or reconstruct the District Collection System without the prior written consent of the District, which consent shall not be unreasonably withheld.

2.12 The City shall not be responsible in any way for the construction of the Connection Line or the District's compliance with federal and state law, including the MAO and the District's existing NPDES permit.

2.13 To the fullest extent permitted by law, the District shall defend (with counsel selected at the sole discretion of the City), indemnify, reimburse and hold harmless the City from and

against any and all claims, demands, fines, damages for bodily injury and damage to property, to the extent caused by the District that arise out of the construction or installation of the Connection Line. The duty to defend shall arise immediately and shall include, but not be limited to, all fees and costs of any arbitration, mediation or other settlement efforts, the costs of any experts retained to assist with the defense, the cost of trial preparation

ARTICLE 3

CITY SERVICE CHARGES

3.1 The City shall administer the billing and collection of all charges for City Services or other charges related to acceptance and treatment of the District's sewage to District Users in the same manner the City bills and collects charges within City boundaries.

3.2 District Users shall pay a District User Monthly Rate directly to the City for City Services. The District User Monthly Rate shall be; the current in-city rate times 1.25. In addition, a connection fee of \$10.00 per month will be assessed to each user for a period of 20 years (240 months) starting with the first month that the City starts sending out District bills. The City shall retain both of these fees to pay for services to the District.

3.3 The City may modify or increase the District User Monthly Rate at its sole discretion at any time; however the percentage increase for District Users shall not be more than the percentage increase for City users. The City agrees to notify the District and District Users of such increase or modification thirty (30) calendar days before the increase or modification takes effect.

3.4 The District may levy surcharges on District Users at any time in its sole discretion. If the District decides to do so, it shall notify the City of the amount of those surcharges thirty (30) calendar days before the surcharges take effect. District surcharges will be added to the monthly billing statement sent by the City to District Users. Funds collected from District Users for any District surcharge shall be forwarded to the District by the 3rd Monday of every month, following receipt by the City.

3.5 The City may, in its sole discretion, issue general obligation bonds for the construction, reconstruction or improvement of the City System and may impose a reasonable system development surcharge in addition to the District User Monthly Rate on District Users to cover District Users' proportional share of the additional general obligation bond payments based on the Flow-Based Cost.

3.6 Should extraordinary or unexpected repairs or improvements or actions necessitated by Acts of God be needed for the City WWTP, District Users shall be required to pay their proportionate share of such improvements based on the Flow-Based Cost.

3.7 Any additional users permitted to connect to the District System after the Connection Date may be required to pay a connection charge to the City and to the District in an amount determined by each party in its sole discretion. This connection charge shall be billed and collected by the City prior to such connection. Funds from District Users for any District connection charges shall be forwarded to the District within thirty (30) calendar days of receipt by the City.

ARTICLE 4
CITY RESPONSIBILITIES

4.1 The City agrees to accept, treat, and discharge all sewage from the District in a manner fully consistent with state and federal statutes and its NPDES permit.

4.2 The City shall operate, maintain, and make all necessary repairs to the District System and pay the costs thereof.

4.3 For the first two years after the Effective Date of this Amended IGA, the City shall provide monthly reports to the District by the 3rd Monday of each month containing the following information:

- (a) costs of operating, maintaining and repairing the District System;
- (b) total monthly payments received from District Users;
- (c) any other information reasonably requested by the District pertaining to the District System.

For the remainder of the term of this Amended IGA, the City shall provide a City Annual Report to the District on February 1 of each calendar year containing the same information. All City financial reports, books and records will be available for inspection by District or USDA Rural Development upon reasonable advance notice to City.

4.4 The City shall assure that all fidelity bonds and insurance coverage are adequate for the protection of the District from liabilities and claims attendant to the satisfaction of this Amended IGA.

4.5 The City shall name District as an additional insured in its general liability insurance policy. The City will maintain insurance sufficient to comply with at least minimum limits for federal and state regulations including Workers Compensation, Liability and Property Damage insurance, including vehicular coverage, with minimum coverage of \$300,000/\$500,000/\$50,000 or a combined single limit coverage of \$500,000.

4.6 To the extent the City interacts with District users, it will be in compliance with Section 504 of the Rehabilitation Act of 1973 (Public Law ("P.L.") 93-112).

The City will certify that all related facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside will be developed in compliance with Architectural Barriers Act of 1968 (P.L. 90-480) as implemented by the General Services Administration regulations 41 Code of Federal Regulations ("CFR") 101-19.6 and Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) as implemented by 7 CFR, Parts 15 and 15b, and Title 2 and 3 of the Americans With Disabilities Act of 1990.

In accordance with the Section 504 of the Rehabilitation Act of 1973 (USDA Regulation 7 CFR 15b) the city will, for all related facilities, conduct a self-evaluation for public access, and, if applicable, a transition plan where major structural modifications are necessary to make common areas handicapped accessible. The city will have up to three (3) years for complying with its transition plan, but must show annual progress on compliance.

4.7 The City of Warrenton agrees to be in compliance with Title VI of the Civil Rights Act of 1964, as amended.

4.8 The City agrees to uphold applicable commitments of the District in the Assurance Agreement (RD 400-4) attached hereto as Exhibit1.

ARTICLE 5 DISTRICT RESPONSIBILITIES

5.1 The District agrees to abide by the City's rules and policies governing the operation of the City System presently, and hereafter, except as they may conflict with state or federal statutes.

5.2 The District agrees to reimburse the City for all necessary reconstruction or expansion of the District System.

5.3 The District shall maintain a capital replacement reserve fund (the "District Reserve Fund") to cover the costs of necessary reconstruction, expansion or emergency repairs to the District System. A \$5.00 per EDU District Reserve Fund surcharge shall be added to District User monthly billing statements. Funds collected by the City from District Users for the District Reserve Fund surcharge shall be forwarded to the District by the 3rd Monday of every month following receipt by the City and deposited into the District Reserve Fund to be set up and maintained by the District. One year from the Connection Date, the City and District shall set an exact minimum dollar amount for the District Reserve Fund and modify the District Reserve Fund surcharge to meet that minimum amount as necessary.

5.4 For the first two years after the Effective Date of this Amended IGA, the District shall provide District Quarterly Reports to the City on April 30, July 31, October 31 and January 31 containing the following information:

- (a) updates regarding the repayment of financing for the Connection Line;
- (b) updates regarding regulatory compliance;
- (c) any other information reasonably requested by the City pertaining to the District System.

For the remainder of the term of this Amended IGA, the District shall provide a District Annual Report to the City on February 1 of each year containing the same information. All District financial reports, books and records will be available for inspection by the City upon

reasonable advance notice to District.

5.5 The District shall prepare and submit to the state an annual budget in accordance with ORS 450.

5.6 The District shall complete smoke testing and internal TV inspections of the District System every eight (8) years during the term of this Amended IGA beginning with the year 2018, the results of which shall be provided to the City.

5.7 At all times during the terms of this Amended IGA the District shall maintain minimum of \$1,000,000 of general liability insurance coverage as well as all other statutorily required insurance coverage.

5.8 The District shall name the City as an additional insured on its general liability insurance policy.

5.9 The District shall advise the City Emergency Contact immediately if it becomes aware of any problems relating to the operation or functioning of the District System.

ARTICLE 7 **MISCELLANEOUS**

7.1 This Amended IGA shall remain in full force and effect for thirty (30) years after the Effective Date or the term of the loan from USDA Rural Development unless terminated earlier in accordance with Section 2.9 or otherwise modified or terminated by mutual written agreement following public hearings on this matter in each jurisdiction.

7.2 Time and manner of performance are of the essence to this Amended IGA.

7.3 In entering into this Amended IGA, the Parties represent that they have relied upon the advice of their individual attorneys, who are the attorneys of their own choice, concerning the terms of this Amended IGA.

7.4 All notices and communications in connection with this Amended IGA shall be given in writing and shall be transmitted by personal delivery or certified or registered mail, return receipt requested, to the following:

For notices to the City, to:

City Manager
City of Warrenton
225 South Main Street
P.O. Box 250
Warrenton, OR 97146

For notices to the District, to:

Chair of the Board of Directors
Shoreline Sanitary District
P.O. Box 732
Warrenton, OR 97146

7.5 This Amended IGA shall be construed, interpreted and enforced in accordance with the laws of the State of Oregon and without regard to conflict of law principles.

7.6 In the event that a dispute arises under or related to the terms of this Amended IGA including, but not limited to, its enforcement or interpretation, the Parties agree to meet and confer to resolve the dispute through the City Manager or Mayor and the Chair of the District Board prior to the initiation of litigation. Any action or proceeding to enforce the provisions of this Amended IGA, or based on any right arising out of this Amended IGA, shall be brought in Clatsop County Circuit Court in the State of Oregon, or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue. The prevailing Party in such an action or proceeding, or appeal of the same shall be entitled to an award of such Party's reasonable attorney fees and costs incurred in preparation, prosecution or defense of such action or proceeding.

7.7 The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Amended IGA.

7.8 This Amended IGA contains all the terms and conditions agreed upon by the Parties. No oral or written agreement either before or contemporaneous with the execution of this Amended IGA shall affect or modify any of the terms or obligations contained herein.

7.9 If any provision of this Amended IGA is deemed invalid or unenforceable, the balance of this Amended IGA shall remain in full force and effect.

7.10 Any modification or amendment of this Amended IGA shall be binding only if evidenced in writing and signed by each Party or an authorized representative of each Party.


7.11 This Amended IGA may be signed in counterparts with the same effect as if each party had signed the same original document. This Amended IGA may be executed with signatures affixed to a facsimile or email transmission copy of this Amended IGA. However, immediately following such facsimile or email execution, the Parties shall execute duplicate originals of this Amended IGA and deliver such originals to each other.

[Signature Pages Follow]


IN WITNESS HEREOF, the Parties have caused this Amended IGA to be executed on the date(s) shown below and mutually agree that this instrument will be in full force and effect upon the date that it has been executed by both the City and the District as provided for herein (the "Effective Date").

CITY OF WARRENTON

 10/26/10
Mayor Date

 11/8/10
City Manager Date

SHORELINE SANITARY DISTRICT

 11/19/11
Chairman Date

 1/19/11
Secretary Date



City Commission Agenda Memo

Meeting Date: November 12, 2024
 From: Jessica McDonald, Harbormaster
 Subject: E Dock Piling Replacement Contract

Summary:

In January 2024, the City of Warrenton Marina conducted an evaluation of the Commercial E Dock piles after the failure of two pier dock piles. The assessment revealed that 13 piles on the main dock were in critical condition and at risk of failing. In response, three of these piles were replaced, along with the two failed pier dock piles.

During the FY 24-25 budget planning process, the city allocated funds to replace the remaining ten failing piles on E Dock. The estimated cost for this replacement is \$105,599, which falls well within the approved capital improvements budget of \$200,000 for this project.

This project is not merely a matter of routine maintenance—it is about safeguarding the safety and structural integrity of this critical dock, which is economically vital to the operations of Warrenton Marina. Taking action now will prevent more expensive emergency repairs in the future, while ensuring we continue to offer a safe, reliable space for our commercial vessels.

The City of Warrenton Marinas is respectfully requesting approval for the E Dock Pile Replacement project, to be completed by Bergerson Construction.

Recommendation/Suggested Motion:

"I move to approve the contract with Bergerson Construction to complete the Warrenton E Dock Piling Replacement Project."

Alternative:

Other action as deemed appropriate by the City Commission

OR

None recommended

Fiscal Impact:

The project has been budgeted in FY 24-25 capital improvements at \$200,000. Current piling replacement costs are \$105,599, which is significantly under budget.

Attachments:

- Contract for Goods and Services with Bergerson Construction

Approved by City Manager: _____

CITY OF WARRENTON

CONTRACT FOR GOODS AND SERVICES

CONTRACT:

This Contract, made and entered into this 12 day of November 2024, by and between the City of Warrenton, a municipal corporation of the State of Oregon, hereinafter called "CITY," and Bergerson Construction, hereinafter called "CONTRACTOR", duly authorized to do business in Oregon.

WITNESSETH

WHEREAS, the CITY requires goods and services which CONTRACTOR is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, CONTRACTOR is able and prepared to provide such goods and services as CITY does hereinafter require, under those terms and conditions set forth; now, therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. CONTRACTOR GOODS AND SERVICES: (Title: E Dock Piling Replacement)

A. CONTRACTOR shall provide goods and services for the CITY, as outlined in its attached quote, dated September 19, 2024, and is attached hereto as Exhibit A.

B. CONTRACTOR'S obligations are defined solely by this Contract, the RFP, or solicitation document, (if any) and its attachment and not by any other contract or agreement that may be associated with this project.

2. COMPENSATION

A. The CITY agrees to pay CONTRACTOR a total not-to-exceed price of \$105,599.00 for providing goods and performance of those services provided herein;

B. The CONTRACTOR will submit a final invoice referencing Hammond Marina Bank Stabilization for all goods provided or services rendered to: City of Warrenton, Attention: Accounts Payable, PO Box 250, Warrenton, Oregon 97146, **OR**, CONSULTANT may submit invoice via email to ap@ci.warrenton.or.us. City pays net 21 upon receipt of invoice.

C. CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract.

3. CONTRACTOR IDENTIFICATION

CONTRACTOR shall furnish to the CITY the CONTRACTOR'S employer identification number, as designated by the Internal Revenue Service, or CONTRACTOR'S Social Security number, as CITY deems applicable.

4. CITY'S REPRESENTATIVE

For purposes hereof, the CITY'S authorized representative will be Jessica McDonald, Harbormaster.

5. CONTRACTOR'S REPRESENTATIVE

For purposes hereof, the CONTRACTOR'S authorized representative will be Chad Curs, Project Manager.

6. CONTRACTOR IS INDEPENDENT CONTRACTOR

- A. CONTRACTOR'S services shall be provided under the general supervision of City's project director or his designee, but CONTRACTOR shall be an independent CONTRACTOR for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 2 of this Contract,
- B. CONTRACTOR acknowledges that for all purposes related to this contract, CONTRACTOR is and shall be deemed to be an independent CONTRACTOR and not an employee of the CITY, shall not be entitled to benefits of any kind to which an employee of the CITY is entitled and shall be solely responsible for all payments and taxes required by law; and furthermore in the event that CONTRACTOR is found by a court of law or an administrative agency to be an employee of the CITY for any purpose, CITY shall be entitled to offset compensation due, or, to demand repayment of any amounts paid to CONTRACTOR under the terms of the contract, to the full extent of any benefits or other remuneration CONTRACTOR receives (from CITY or third party) as result of said finding and to the full extent of any payments that CITY is required to make (to CONTRACTOR or a third party) as a result of said finding.
- C. The undersigned CONTRACTOR hereby represents that no employee of the City of Warrenton, or any partnership or corporation in which a City of Warrenton employee has an interest, has or will receive any remuneration of any description from the CONTRACTOR, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

7. CANCELLATION FOR CAUSE

CITY may cancel all or any part of this Contract if CONTRACTOR breaches any of the terms herein or in the event of any of the following: Insolvency of CONTRACTOR; voluntary or involuntary petition in bankruptcy by or against CONTRACTOR; appointment of a receiver or trustee for CONTRACTOR, or any assignment for benefit of creditors of CONTRACTOR. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney's fees, and other costs of litigation at trial and upon appeal. CONTRACTOR may likewise cancel all or any part of this contract if CITY breaches any of the terms herein and be therefore entitled to equivalent damages as expressed above for CITY.

8. ACCESS TO RECORDS

CITY shall have access to such books, documents, papers and records of contract as are directly pertinent to this contract for the purposes of making audit, examination, excerpts and transcripts.

9. FORCE MAJEURE

Neither CITY nor CONTRACTOR shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disabled provided the party so disabled shall within ten (10) days from the beginning

such delay notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation.

10. NONWAIVER

The failure of the CITY to insist upon or enforce strict performance by CONTRACTOR of any of the terms of this Contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

11. ATTORNEY'S FEES

In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

12. APPLICABLE LAW

The law of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

13. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the proposal of the CONTRACTOR, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

14. INDEMNIFICATION

CONTRACTOR agrees to indemnify and hold harmless the CITY, its Officers, and Employees against and from any and all loss, claims, actions, suits, reasonable defense costs, attorney fees and expenses for or on account of injury, bodily or otherwise to, or death of persons, damage to or destruction of property belonging to CITY, contractor, or others resulting from or arising out of CONTRACTOR'S negligent acts, errors or omissions in the supply of goods or performance of services pursuant to this Agreement. This agreement to indemnify applies whether such claims are meritorious or not; provided, however, that if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of CONTRACTOR and The CITY this indemnification and agreement to assume defense costs applies only to the extent of the negligence or alleged negligence of the CONTRACTOR.

15. INSURANCE

Prior to starting work hereunder, CONTRACTOR, at CONTRACTOR'S cost, shall secure and continue to carry during the term of this contract, with an insurance company acceptable to CITY, the following insurance:

A. **Commercial General Liability.** Contractor shall obtain, at Contractor's expense and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and the annual aggregate of not less than \$2,000,000. Coverage shall include contractors, subcontractors and anyone directly or indirectly employed by either. This insurance will include personal and Advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined

single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$2,000,000.

B. Automobile Liability. Contract shall obtain, at Contractor's expense and keep in effect during the term of the resulting Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000, and annual aggregate not less than \$2,000,000.

C. Additional Insured. The liability insurance coverage shall include City and its officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance. Prior to starting work under this Contract, Contractor shall furnish a certificate to City from each insurance company providing insurance showing that the City is an additional insured, the required coverage is in force, stating policy numbers, dates of expiration and limits of liability, and further stating that such coverage is primary and not contributory.

D. Notice of Cancellation or Change. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor or its insurer(s) to City. Any failure to comply with the reporting provisions of this clause will constitute a material breach of this Contract and will be grounds for immediate termination of this Agreement.

16. WORKMEN'S COMPENSATION

The CONTRACTOR, its subcontractors, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, or are employers that are exempt under ORS 656.126.

17. LABORERS AND MATERIALMEN, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LIENS AND WITHHOLDING TAXES

Contractor shall make payment promptly, as due, to all persons supplying CONTRACTOR labor or material for the prosecution of the work provided for this contract.

Contractor shall pay all contributions or amounts due the Industrial Accident Fund from CONTRACTOR or any subcontractor incurred in the performance of the contract.

Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

18. PAYMENT OF MEDICAL CARE

Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury to the employees of such CONTRACTOR, of all sums which the CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR collected or

deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

19. STANDARD OF CARE

The standard of care applicable to contractor's services will be the degree of skill and diligence normally employed by contractors performing the same or similar services at the time CONTRACTOR'S services are performed. CONTRACTOR will re-perform any services not meeting this standard without additional compensation.

20. NO THIRD PARTY BENEFICIARIES

This contract gives no rights or benefits to anyone other than the CITY and CONTRACTOR and has no third party beneficiaries.

21. SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability shall survive termination of this Agreement for any cause.

22. BUSINESS LICENSE

A City of Warrenton Business License is required for all businesses working within the City of Warrenton. Information for this process is available on the City of Warrenton website at <http://ci.warrenton.or.us/> or by calling 503-861-2233.

23. COMPLETE CONTRACT

This Contract and its referenced attachments constitute the complete contract between CITY and CONTRACTOR and supersedes all prior written or oral discussions or agreements. CONTRACTOR services are defined solely by this Contract and its attachments and not by any other contract or agreement that may be associated with this Contract.

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

City of Warrenton, a Municipal Corporation

BY: _____
Henry Balensifer III, Mayor Date

ATTEST:

Dawne Shaw, CMC, City Recorder Date

CONTRACTOR:

BY: _____
Date

P.O. Box 387
Astoria, OR 97103
Office 503-325-7130
Fax 503-325-0174
24 Hour Service



TIN # 93-0600594
OR CCB# 63328
WA CC01 BERGECI 1210H
info@bergerson-const.com
www.bergerson-const.com

September 19, 2024

City of Warrenton
Attn: Jessica Megowan
501 NE Harbor Place
Warrenton, OR 97146
jmcdonald@warrentonoregon.us
PH: (503) 861-3822

Project: **City of Warrenton – 24-25 E Dock Guide Pile Replacement**

Bergerson Construction is pleased to provide this Quote for materials, equipment, labor and required insurance for the following scope of work:

Mobilization/Demobilization	1 LS @	\$24,000
<ul style="list-style-type: none">Mobilize and demobilize crane barge and pile driving equipment from Bergerson Construction's Yard in Astoria, OR to Jobsite.		
Furnish 12" x 0.375" x 60' Steel Piles	10 EA @ \$3,200/EA	\$32,000
<ul style="list-style-type: none">Includes supply & delivery of 12.75" diameter, 0.375" wall thickness, steel pipe piles supplied in 60' lengths.Material pricing is based on steel supplier's current inventory, subject to prior sale.		
Remove Existing Steel Piles	10 EA @ \$1,300/EA	\$13,000
<ul style="list-style-type: none">Includes removal and disposal of existing steel piles.If piles are broken below waterline, additional charges may apply.		
Install Steel Guide Piles	10 EA @ \$3,600/EA	\$36,000
<ul style="list-style-type: none">Includes installation of steel guide piles, with vibratory driving methods.Includes supply & installation of white bird caps on each new pile.		
Surcharge for Oregon CAT Tax (0.57%)	1 LS	\$599
<ul style="list-style-type: none">Includes installation of steel guide piles, with vibratory driving methods.Includes supply & installation of white bird caps on each new pile.		

Total Quote: \$105,599.00

Notes:

- Schedule for this work is subject to Bergerson Construction's other contractual commitments.
- Due to the poor condition of the existing piles, piles may break while extracting. If a pile breaks, and cannot be fully extracted, a new guide pile will be driven next to the existing pile hoop/broken pile. Relocation of the pile hoop over the new guide pile will be the responsibility of the owner and is not included in this quote.

EXCLUSIONS:

- | | |
|-------------------------------------|--------------------------------|
| 1. Engineering | 8. Weekend Work |
| 2. Bond (Add 1.3% if required) | 9. Overhead Obstructions |
| 3. Utilities/Locates | 10. Subsurface Obstructions |
| 4. Diving | 11. Special Inspection/Testing |
| 5. Permits (unless otherwise noted) | 12. Access/Vessel Coordination |
| 6. Mammal and Acoustic Monitoring | 13. Survey/Layout |
| 7. Eelgrass and Shellfish Survey | |

Thank you for the opportunity to provide this quote. Please feel free to contact me personally with any questions.

Chad Curs
Estimator/Project Manager



City Commission Agenda Memo

Meeting Date: November 12, 2024
 From: Matthew Ellis, AICP, CFM, Planning Director
 Subject: Second Reading and Adoption of Ordinance No. 1282

Summary:

City staff has applied for rezoning the North Coast Business Park from I-1 General Industrial to CI Commercial Industrial to enable commercial and industrial development along Ensign Drive. The subject properties are owned by Clatsop County, Big Beams LLC, and Columbia Memorial Hospital and are identified as Tax Lots 810270000205, 810270000209, 810270000210, 810270000212, and 810270000213.

A public hearing was held by the Planning Commission on October 10, 2024, to discuss this proposed rezoning and allow for public testimony. The Planning Commission unanimously recommended Ordinance No. 1282 in a 4-0 vote. The City Commission held a public hearing on October 22. Following the public hearing, the City Commission voted unanimously to conduct the first reading of Ordinance No. 1282.

Recommendation/Suggested Motion:

"I move to conduct the second reading, by title only, of Ordinance No 1282, AN ORDINANCE AMENDING THE CITY OF WARRENTON ZONING MAP TO RECLASSIFY THE ZONING OF MULTIPLE PROPERTIES FROM GENERAL INDUSTRIAL TO COMMERCIAL INDUSTRIAL."

"I move to adopt Ordinance No 1282, AN ORDINANCE AMENDING THE CITY OF WARRENTON ZONING MAP TO RECLASSIFY THE ZONING OF MULTIPLE PROPERTIES FROM GENERAL INDUSTRIAL TO COMMERCIAL INDUSTRIAL."

Alternative:

None recommended

Fiscal Impact:

N/A

Attachments:

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

- Ordinance No. 1282
- Staff Report

Approved by City Manager: _____

ORDINANCE NO. 1282
INTRODUCED BY ALL COMMISSIONERS

**AN ORDINANCE AMENDING THE CITY OF WARRENTON ZONING MAP TO
RECLASSIFY THE ZONING OF MULTIPLE PROPERTIES FROM GENERAL
INDUSTRIAL TO COMMERCIAL INDUSTRIAL**

WHEREAS, the City of Warrenton applied to rezone five properties along Ensign Drive to allow for both commercial and industrial uses and enable development opportunities that are not currently available; and

WHEREAS, the Warrenton Planning Commission conducted a public hearing on the proposal on October 10, 2024, and forwarded a recommendation of approval to the City Commission based on the findings and conclusions of the October 10, 2024, staff report and public testimony; and

WHEREAS, the Warrenton City Commission conducted a public hearing on the proposal on October 22, 2024, and has determined that the proposal is consistent with the Comprehensive Plan and meets the applicable criteria in the Warrenton Municipal Code based on the findings and conclusions of the October 10, 2024, staff report, public testimony, and the Planning Commission findings;

NOW THEREFORE, the City of Warrenton ordains as follows:

Section 1. The City of Warrenton Zoning Map is amended to reflect the rezone herein described as Exhibit 1 based on the findings and conclusions referenced above.

Section 2. This ordinance shall take full force and effect 30 days after its adoption by the Commission of the City of Warrenton.

First Reading: October 22, 2024

Second Reading:

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

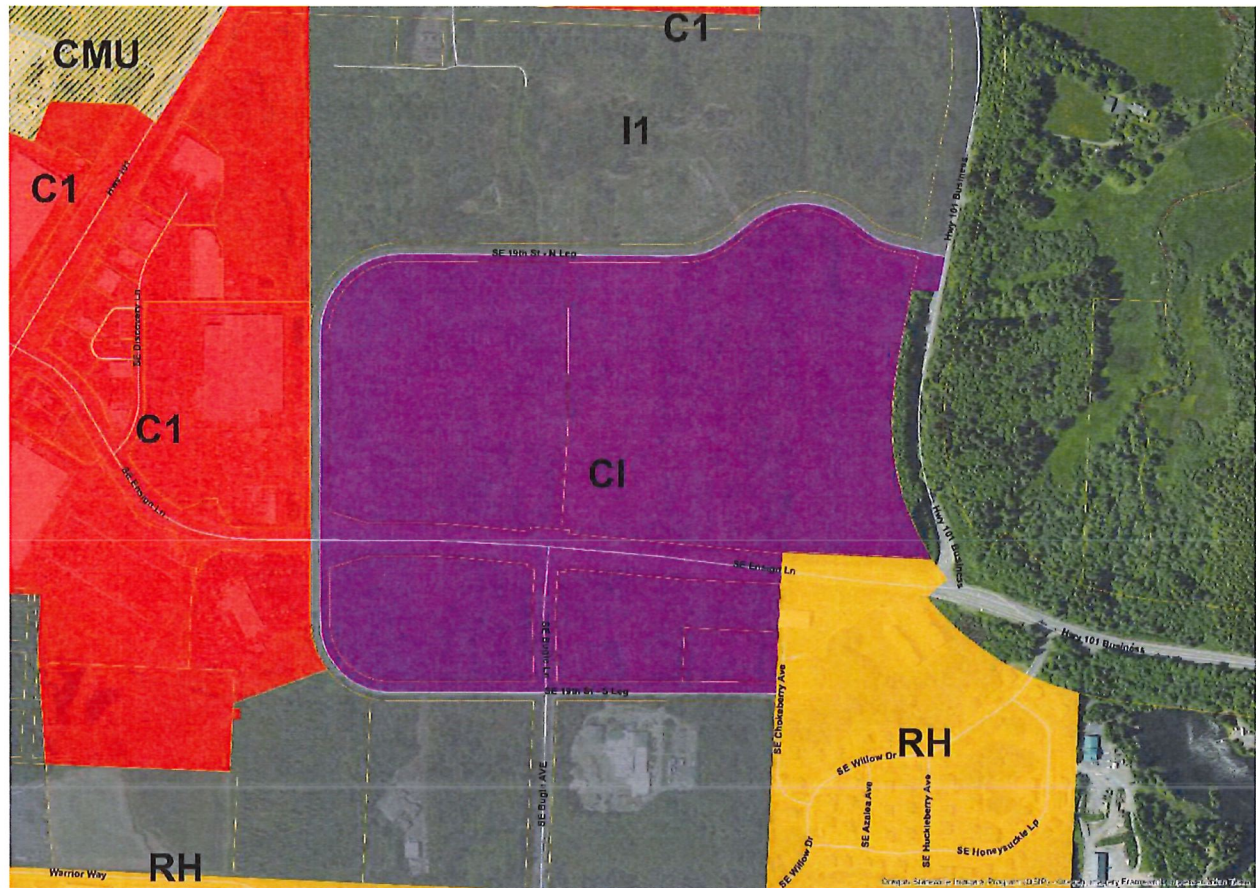
APPROVED:

Henry A. Balensifer III, Mayor

ATTEST:

Dawne Shaw, CMC, City Recorder

Ordinance 1282
Exhibit 1





City of Warrenton

Planning Department

225 S Main Avenue ■ P.O. Box 250 ■ Warrenton, OR 97146

Phone: 503.861.0920 Fax: 503.861.2351

STAFF REPORT

TO: The Warrenton Planning Commission
FROM: Matthew Ellis, AICP, CFM, Planning Director
DATE: October 10, 2024
SUBJ: RZ-24-1 North Coast Business Park

BACKGROUND

City staff has applied for a rezoning of the North Coast Business Park from I-1 General Industrial to CI Commercial Industrial to enable commercial and industrial development along Ensign Drive. The subject properties are owned by Clatsop County, Big Beams LLC, and Columbia Memorial Hospital and are identified as Tax Lots 810270000205, 810270000209, 810270000210, 810270000212, and 810270000213.

PUBLIC PROCESS, PROCEDURES & PUBLIC NOTICE

The application was submitted on August 9 and was deemed complete on August 9, 2024. We sent notice of the public hearing to adjacent property owners on September 19 and published notice in The Astorian on September 26, 2024.

CODE PROVISIONS, APPLICANT RESPONSES, AND FINDINGS

Applicable Warrenton Municipal Code (WMC) chapters for this application include:

16.208 TYPES OF APPLICATIONS AND REVIEW PROCEDURES
16.232 AMENDMENTS TO COMPREHENSIVE PLAN TEXT AND MAP, REZONE,
AND DEVELOPMENT CODE

Chapter 16.208 Administration of Land Use and Development Permits
16.208.060 Type IV Procedure (Legislative and Map Amendments).

APPLICANT RESPONSE: None provided.

STAFF FINDING: The applicant did not hold a pre-application conference, which is required for all Type IV applications, but as City staff was the applicant, a pre-application conference would not have changed the application substantially. All other criteria of the section have been met.

Chapter 16.232 Amendments To Comprehensive Plan Text And Map, Rezone, And Development Code
16.232.030 Quasi-Judicial Amendments.

- B. Criteria for Quasi-Judicial Amendments. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:
1. Demonstration of compliance with all applicable Comprehensive Plan policies and map designations. Where this criterion cannot be met, a Comprehensive Plan amendment shall be a pre-requisite to approval.

APPLICANT RESPONSE: None provided.

STAFF FINDING: Section 3.320 Commercial Lands of the 2011 Comprehensive Plan says, "A new regional shopping center or large regional stores are a permitted use in the General Commercial district near U.S. Highway 101 ...if the development will enhance market choices available to consumers and improve the local economy through retail diversity and attraction of new businesses." This development has since been built and provides significant benefits to the local and regional economy. The rezoning and development of the subject properties will expand those benefits and provide additional commercial and industrial opportunities locally and regionally.

The 2021 Economic Opportunities Analysis shows the difference in needs between commercial and industrial development. In Exhibit 32, the C-1 General Commercial zone needed 21 new sites based on 2019 employment figures to support 554 new jobs, while the I-1 General Industrial zone needed 2 sites to support 2 new jobs. The CI Commercial Industrial zone is a mix between the two and rezoning to CI enables the market to place successful development on the property. Additionally, Exhibit 30 compares the available land area for commercial and industrial zoning classifications, estimating 517.2 surplus acres of industrially zoned land compared to only 125.9 surplus acres of commercially zoned land. While both are surpluses, approving this rezoning enables the market to decide on the best use of the land while not preventing either commercial or industrial development. The proposed rezoning aligns both with the adopted Comprehensive Plan and the 2021 Economic Opportunities Analysis. **This criterion is met.**

2. Demonstration of compliance with all applicable standards and criteria of this Code, and other applicable implementing ordinances.

APPLICANT RESPONSE: None provided.

STAFF FINDING: Section 16.68.010 of the Warrenton Municipal Code provides the purpose behind the CI Commercial Industrial zoning district:

The purpose of the Commercial Industrial Zone is to provide sites for employment-related uses to provide and manufacture products and services in the City of Warrenton. These areas are suitable for larger retail/ light manufacturing, fabrication/processing/ and bulk storage.

This rezoning permits commercial and industrial development to provide and manufacture products in the City of Warrenton for our residents and those who visit our community. Given the context of the above criteria where the City has an excess of vacant industrial land, this corridor makes sense to allow both commercial and industrial development. This development is compliant with the Warrenton Municipal Code and aligns the Zoning Map better with the outcomes described in the Comprehensive Plan. **This criterion is met.**

3. Evidence of change in the neighborhood, or community, or a mistake or inconsistency in the Comprehensive Plan or land use district map regarding the property which is the subject of the application; and the provisions of Section 16.232.060, as applicable.

APPLICANT RESPONSE: Requests made by Clatsop County Board of Commissioners and Columbia Memorial Hospital indicating the right mix of land uses may not be present in the existing zoning of the area.

STAFF FINDING: The CI Commercial Industrial zoning district was adopted by the City Commission on September 10, 2024. The Comprehensive Plan was most recently amended in 2018, and the Land Use Plan as a whole was most recently amended in 2011. The Comprehensive Plan could not have considered the existence of the CI Commercial Industrial zoning district. Additionally, the existing zoning of the property is I-1 General Industrial. The new CI Commercial Industrial zoning district allows for the same intensity of development – contextual with its surroundings – and allows additional commercial uses appropriate for larger-scale development. Given the additional zoning option and the extensive commercial development that has thrived west and southwest of this site, there is sufficient evidence of change to warrant this rezoning application. **This criterion is met.**

CONCLUSIONS AND RECOMMENDATION

The application meets the criteria of the Warrenton Comprehensive Plan and the Warrenton Municipal Code. Accordingly, City staff recommends approval of the request.

RECOMMENDED MOTION

“Based on the findings and conclusions of the October 10, 2024 staff report, I move to recommend the rezoning of the North Coast Business Park as described in RZ-24-1 and forward to the City Commission for a proposed public hearing with a recommendation to adopt.”

ATTACHMENTS

1. Ordinance No. 1282
2. Application
3. Map
4. City of Warrenton Economic Opportunities Analysis



City Commission Agenda Memo

Meeting Date: November 12th, 2024
 From: Greg Shafer, Public Works Director
 Subject: Iredale Tide gate and Culvert – Grant Award Agreement

Summary:

The City of Warrenton has been awarded funding for the Iredale Tide Gate and Culvert Project (LPDM-PJ-10-OR-2024-001) through the Legislative Pre-Disaster Mitigation (LPDM) Grant Program, with an award date of August 29, 2024. This project aims to enhance the stormwater conveyance system along Iredale Street to 5th Avenue and from Pacific Drive to 7th Street by replacing the existing 24" pipe with larger 30"-36" pipes. The total estimated cost is \$1,017,451.05, with OEM providing up to 75% of the project costs, or \$763,088.29, while the City will contribute a minimum match of \$254,362.76. We seek the commission's approval to sign the grant award agreement to proceed with this important infrastructure improvement.

Recommendation/Suggested Motion:

"I move to approve and sign the grant award agreement for the Iredale Tide Gate and Culvert Project (LPDM-PJ-10-OR-2024-001) between the State of Oregon, acting by and through the Oregon Department of Emergency Management, and the City of Warrenton."

Alternative:

Other action as deemed appropriate by the City Commission

OR

None recommended

Fiscal Impact:

The City will provide a non-Federal match of at least \$254,362.76, covering any costs exceeding the total project cost. This match will be funded by the Storm Sewer Fund (028-430) in the adopted 2024-2025 budget.

Attachments:

- OEM Legislative Pre-Disaster Mitigation Grant Program Agreement; Grant No: LPDM-PJ-10-OR-2024-001

Approved by City Manager: _____

Ether Moberg

OREGON DEPARTMENT OF EMERGENCY MANAGEMENT
Legislative Pre-Disaster Mitigation (LPDM) Grant Program
CFDA # 97.047
City of Warrenton
Iredale Tidegate and Culvert Project
Not to Exceed \$763,088.29
Grant No: LPDM-PJ-10-OR-2024-001

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Department of Emergency Management, hereinafter referred to as “OEM,” and **City of Warrenton** hereinafter referred to as “Subrecipient,” and collectively referred to as the “Parties.”

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs (as defined in Section 6.a.) incurred beginning on **August 29, 2024** and shall terminate upon completion and approval of the Project (as defined in Section 4) by federal and state officials, including the completion of close-out and audit (the “Project Completion Date”). This period shall be known as the Grant Award Period. The Project shall be completed no later than **August 28, 2027**, (the “Expiration Date”), unless otherwise extended as provided in this Agreement. OEM’s obligation to disburse Grant Funds under this Agreement is subject to Sections 6 and 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **FEMA Project Description and Budget**
Exhibit B: **Federal Department of Homeland Security Standard Terms & Conditions**
Exhibit C: **Subagreement Insurance Requirements**
Exhibit D: **Information required by 2 CFR 200.332(b)(1)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C; Exhibit D.

3. **Project Cost, Grant Funds.** The total estimated cost of the Project is **\$1,017,451.05**. In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient (i) an amount not to exceed 75 percent of the Project Costs or **\$763,088.29**, whichever is less, (the “Federal Share”) in grant funds for eligible costs described in Section 6 hereof and (ii) Subrecipient management costs in the amount of **\$0.00** (the “Management Costs Reimbursement” and, together with the Federal Share, the “Grant Funds”). Grant Funds for this Program are provided by the Federal Emergency Management Agency (FEMA) and are administered by OEM. Subrecipient will commit a percentage of the Project Costs to the project, known as the non-Federal match. The non-Federal match can be cash, in-kind, or a combination of both. For this Agreement, Subrecipient’s non-Federal match shall be no less than **\$254,362.76**. Subrecipient shall apply any

savings, rebates and reductions in cost to reduce the overall cost of the Project. Subrecipient is responsible for any costs in excess of the total Project Cost.

4. **Project.** The Grant Funds shall be used solely for the project described in Exhibit A (the “Project”) and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. Performance and Close-Out Reports.

- a. Subrecipient agrees to submit performance reports, using a form provided by OEM.
- b. Performance reports are due to OEM on or before 15 days following the end of each calendar quarter (March 31, June 30, September 30, and December 31).
- c. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.
- d. Subrecipient shall submit a final close-out report to OEM for review which must include a financial performance report, construction reports (if applicable), invention disclosure (if applicable), Federally-owned property report (if applicable), and final request for reimbursement (if applicable).
- e. Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues, may result in the suspension of grant payments, termination of this Agreement, or both.

6. Reimbursement Process.

- a. OEM shall reimburse Subrecipient’s actual, reasonable and necessary costs of developing the Project (the “Project Costs”) in an amount not to exceed the Grant Funds amount provided in Section 3. Project Costs do not include those costs that are excluded from reimbursement by either OEM or FEMA under this Agreement or as a result of a financial review or audit. Reimbursements shall be made by OEM within ninety (90) days of OEM’s receipt and approval of a Request for Reimbursement of Funds form (the “RfR”) and all supporting documentation (i.e., a complete packet) from Subrecipient. Subrecipient must pay its contractors, consultants and vendors before submitting RfRs to OEM for reimbursement.
- b. No later than the end of each calendar quarter (March 31, June 30, September 30, and December 31), Subrecipient shall submit an RfR to OEM for review and approval. Each RfR shall include the appropriate Hazard Mitigation Assistance Project Number, FEMA Project Number, FEMA FIPS Number and UEI Number, as well as supporting invoices and other appropriate documentation evidencing the Project Costs for which reimbursement is sought, e.g., timesheets/work logs for labor hours and receipts and other proof of Subrecipient’s payment to vendors. RfRs must be based on actual expenses incurred and specify the percentage of Project completion. Subrecipient’s deadline to submit its final RfR is 30 days after the earlier of the Project Completion Date or the Expiration Date, whichever occurs first.

- c. OEM will withhold reimbursements for Project Costs if Subrecipient fails to submit performance reports by the specified deadlines or if the performance reports submitted are incomplete.
- d. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon, however, travel expenses must be a part of the approved budget for the project. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- e. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no Grant Funds or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.
- f. **Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
 - iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Subrecipient has provided to OEM an RfR in accordance with Section 6.b of this Agreement.
- g. **Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Mis-expended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Mis-expended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subrecipient shall return all Unexpended Funds to OEM within 15 days after the earlier of expiration or termination of this Agreement.

The Subrecipient shall be responsible for pursuing recovery of monies paid under this Agreement in providing disaster assistance against any party that might be liable, and further, the Subrecipient shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this Agreement.

In the event the Subrecipient obtains recovery from a responsible party, the Subrecipient shall first be reimbursed its reasonable costs of litigation from such recovered funds. The Subrecipient shall pay to OEM the proportionate Federal share, as defined in Exhibit E, of all project funds recovered in excess of costs of litigation.

7. Representations and Warranties of Subrecipient. Subrecipient represents and warrants to OEM as follows:

- a. Organization and Authority.** Subrecipient is a city and political subdivision of the State of Oregon duly organized under the laws of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.
- b. Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, subrecipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), FEMA, or any of their authorized representatives, access to records, accounts, documents,

information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

- b. **SEFA.** Subrecipient must prepare a Schedule of Expenditures of Federal Awards (SEFA) that includes: Federal grantor name, pass-through entity name, program name, Federal catalog number, identifying number assigned by the pass-through entity and current year expenditures.
- c. **Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.334. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200 and to apprise itself of all rules and regulations set forth.
- d. **Audits.**
 - i. If Subrecipient expends \$1,000,000 or more in Federal funds (from all sources) in Subrecipient's fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$1,000,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
 - ii. Audit costs for audits not required in accordance with 2 CFR Part 200, Subpart F are unallowable under this Agreement. If Subrecipient did not expend \$1,000,000 or more in Federal funds in its fiscal year but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
 - iii. Subrecipient shall save, protect and hold harmless OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. **Subagreements.** Subrecipient may enter into contracts (hereafter "subagreements") for performance of the Project. Subrecipient must have and use its own documented procurement procedures that conform with applicable State and Federal law, including, without limitation, 2 CFR 200.318 through 200.327. For each subagreement over \$150,000, the subagreement shall

address administrative, contractual or legal remedies for violation or breach of subagreement terms and provide for sanctions and penalties as appropriate. Additionally, for each subagreement over \$10,000, the subagreement shall address termination for cause or for convenience including the manner in which termination will be affected and the basis for settlement.

- i. Subrecipient shall provide to OEM copies of all Requests for Proposals (RFPs) or other solicitations for procurements anticipated to be for \$100,000 or more and shall provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RfR a list of all procurements issued during the period covered by the report.
 - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
 - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
 - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
 - v. In the event that Subrecipient subcontracts for engineering services, Subrecipient shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm's contract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with Subrecipient for the benefit of Subrecipient of not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that the subcontract shall terminate immediately upon cancellation or lapse of the bond or insurance and shall require the subcontractor to notify Subrecipient immediately upon any change in insurance coverage or cancellation or lapse of the bond.
- b. Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B to this Agreement and all procedures for managing and maintaining records of all purchases of property and equipment, including, without limitation, the following requirements:
- i. All property and equipment purchased under this Agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in

accordance with all applicable procurement requirements under State and Federal law, including, without limitation, 2 CFR 200.318 through 200.327, and all purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.

- ii. Subrecipient's property and equipment records shall include the following information at the minimum: a description of the property or equipment; the manufacturer's serial number, model number or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
- iii. For acquisition projects, Subrecipient shall retain real estate transaction and property tracking records indefinitely to enable FEMA to track the use of real property acquired with grant funds and ensure that the property is maintained for open space in perpetuity (see 44 CFR Part 80).
- iv. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
- iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
- vi. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
- vii. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
- viii. Subrecipient agrees to comply with 2 CFR 200.313 when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
- ix. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
- x. Subrecipient shall retain, and shall require its contractors to retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with this Agreement.

c. Subagreement indemnity; insurance.

- i. Subrecipient's subagreement(s) shall require the other party to such subagreement(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.
- ii. Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense. Sections 9(c)(i) and (ii) shall survive the expiration or termination of this Agreement.
- iii. Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and amounts provided in Exhibit C to this Agreement.

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
 - i. Subrecipient fails to complete the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;

- iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. Termination by Either Party.** Either Party may terminate this Agreement upon at least thirty days' notice to the other Party.
- d. Effect of Termination.** In the event of termination of this Agreement, each party shall be liable only for Project Costs and allowable expenses incurred by the other party, prior to the effective date of termination, and Subrecipient will return all Federal funds paid to Subrecipient for the Project which have not been expended or irrevocably committed to eligible activities.

11. General Provisions

- a. Indemnity.** To the degree permitted by the Oregon Tort Claims Act, ORS 30.260 et seq., Subrecipient shall indemnify, defend, save, and hold harmless the United States and its agencies, officers, employees, agents, and members, and the State of Oregon and its agencies, officers, employees, agents, and members, from and against all claims, damages, losses, expenses, suits, or actions of any nature arising out of or resulting from the activities of Subrecipient, its agencies, officers, employees, agents, members, contractors, or subcontractors under this Agreement. If legal limitations apply to the indemnification ability of Subrecipient, this indemnification shall be for the maximum amount of funds available for expenditure, including any available contingency funds, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds. If requested by OEM, Subrecipient shall purchase commercial insurance covering this indemnification.
- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.

- c. **Responsibility for Grant Funds.** Subrecipient shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon Subrecipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Subrecipient, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to the persons identified in the signature blocks or to such other persons, addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim")

between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

The Subrecipient will comply with the insurance requirements of the Stafford Act, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.
- k. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. **Headings.** The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement, and are not relevant to the interpretation of any provision of this Agreement.
- m. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed

and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

- n. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- o. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

City of Warrenton

By _____
Henry Balensifer
Mayor
City of Warrenton

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

By _____
Emily Guimont
Lead Attorney
Beery & Elsner

Date _____

Subrecipient Program Contact:

Twyla Vittetoe
Engineering Technician
City of Warrenton
225 S. Main Ave., Warrenton, OR 97146
971-286-2037
tvittetoe@warrentonoregon.us

Subrecipient Finance Contact:

Jessica Barrett
Finance Director
City of Warrenton
225 S. Main Ave., Warrenton, OR 97146
503-810-2233
JBarrett@warrentonoregon.us

Oregon Department of Emergency Management

By _____
Patence Winningham
Deputy Director
Oregon Department of Emergency Management

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By  _____
Sam Zeigler, Senior Asst. Attorney General

Date 10/17/24

OEM Program Contact:

Stephen J. Richardson
State Hazard Mitigation Officer
Oregon Department of Emergency Management
3930 Fairview Industrial Drive SE
Salem, OR 97302
503-378-3316
stephen.j.richardson@oem.oregon.gov

OEM Finance Contact:

Abigail Lemoss
Accountant
Oregon Department of Emergency Management
3930 Fairview Industrial Drive SE
Salem, OR 97302
971-719-0857
Abigail.LEMOSS@oem.oregon.gov

EXHIBIT A **Attached Budget and Project Description**

Approved Budget for (LPDM-PJ-10-OR-2024-001/City of Warrenton/Iredale Tidegate and Culvert Project)					SF-424C Cost Estimate Original	
Pre-Award Costs					Item (p represents pre-award cost)	Total Cost
Item #	Item Description	Count	Unit Cost	Total Cost		
				\$0.00	1p. Administrative and legal expenses	\$0.00
				\$0.00	2p. Land, structures, rights-of-way, appraisals, etc.	\$0.00
				\$0.00	4p. Architectural and engineering fees	\$0.00
				\$0.00	5p. Other architectural and engineering fees	\$0.00
				\$0.00	6p. Project inspection fees	\$0.00
				\$0.00	11p. Miscellaneous	\$0.00
				\$0.00	1. Administrative and legal expenses	\$0.00
				\$0.00	2. Land, structures, rights-of-way, appraisals, etc.	\$0.00
				\$0.00	3. Relocation expenses and payments	\$0.00
				\$0.00	4. Architectural and engineering fees	\$0.00
				\$0.00	5. Other architectural and engineering fees	\$0.00
				\$0.00	6. Project inspection fees	\$0.00
				\$0.00	7. Site work	\$0.00
				\$0.00	8. Demolition and removal	\$0.00
				\$0.00	9. Construction	\$1,017,451.05
				\$0.00	10. Equipment	\$0.00
				\$0.00	11. Miscellaneous	\$0.00
Post-Award Costs					Description of Project:	
9	Construction	1	\$1,017,451.05	\$1,017,451.05	<p>The proposed Iredale Tidegate and Culvert Project will be located in the City of Warrenton's Hammond area. The construction will commence at the Iredale Tidegate situated on the Hammond Boat Basin and the Columbia River. From there, it will proceed across and along Iredale Street, extending south to the intersection with 5th Avenue</p>	
				\$0.00		
				\$0.00		
				\$0.00		
				\$0.00		
				\$0.00		
				\$0.00		
				\$0.00		
				\$0.00		
				\$0.00		
Total Project Cost				\$1,017,451.05	Total Project Cost	\$1,017,451.05
Federal Share			75%	\$763,088.28		
Management Costs (are in addition to the above total project cost; they should NOT be included in the total project cost)						
Post-Award Management Costs						
				\$0.00		
				\$0.00		
				\$0.00		
Management Cost Total				\$0.00	Management Cost Total	\$0.00
Management Costs cannot exceed 5% of the total project cost which is				\$50,872.55		

EXHIBIT B

Federal Department of Homeland Security Standard Terms and Certifications

Subrecipient and any of its successors, transferees and assignees agree to comply with all applicable provisions governing Department of Homeland Security (DHS) access to record, accounts, documents, information, facilities, and staff members. In addition, recipients shall comply with the following provisions:

FY 2024 DHS STANDARD TERMS AND CONDITIONS

The Fiscal Year (FY) 2024 Department of Homeland Security (DHS) Standard Terms and Conditions apply to all new federal awards of federal financial assistance (federal awards) for which the federal award date occurs in FY 2024 and flow down to subrecipients unless a term or condition specifically indicates otherwise. For federal awards that may involve continuation awards made in subsequent FYs, these FY 2024 DHS Standard Terms and Conditions will apply to the continuation award unless otherwise specified in the terms and conditions of the continuation award. The United States has the right to seek judicial enforcement of these terms and conditions. All legislation and digital resources are referenced with no digital links. These FY 2024 DHS Standard Terms and Conditions are maintained on the DHS website at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

A. Assurances, Administrative Requirements, Cost Principles, Representations, and Certifications

I. Recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non- Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the federal awarding agency.

B. General Acknowledgements and Assurances Recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in effect as of the federal award date and located at 2 C.F.R. Part 200 and adopted by DHS at 2 C.F.R. § 3002.10. All recipients and subrecipients must acknowledge and agree to provide DHS access to records, accounts, documents, information, facilities, and staff pursuant to 2 C.F.R. § 200.337.

I. Recipients must cooperate with any DHS compliance reviews or compliance investigations.

II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities and personnel.

III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.

IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements required by law, federal regulation, Notice of Funding Opportunity, federal award specific terms and conditions, and/or federal awarding agency program guidance.

V. Recipients must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receiving the Notice of Award for the first award under which this term applies. Recipients of multiple federal awards from DHS should only submit one completed tool for their organization, not per federal award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active federal award, not every time a federal award is made. Recipients must submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in these DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhscivil-rights-evaluation-tool>. DHS Civil Rights Evaluation Tool | Homeland Security The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension to the 30-day deadline if the recipient identifies steps and a timeline for completing the tool. Recipients must request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Standard Terms & Conditions

I. Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal award funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal award funds.

II. Activities Conducted Abroad

Recipients must coordinate with appropriate government authorities when performing project activities outside the United States obtain all appropriate licenses, permits, or approvals.

III. Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (codified as amended at 42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

IV. Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

V. Best Practices for Collection and Use of Personally Identifiable Information

Recipients who collect personally identifiable information (PII) as part of carrying out the scope of work under a federal award are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information

that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

VI. Civil Rights Act of 1964 – Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA's implementing regulations at 44 C.F.R. Part 7.

VII. Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284 (codified as amended at 42 U.S.C. § 3601 et seq.) which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units— i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

VIII. Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 to any work first produced under federal awards and also include an acknowledgement that the work was produced under a federal award (including the federal award number and federal awarding agency). As detailed in 2 C.F.R. § 200.315, a federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and to authorize others to do so.

IX. Debarment and Suspension

Recipients must comply with the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689 set forth at 2 C.F.R. Part 180 as implemented by DHS at 2 C.F.R. Part 3000. These regulations prohibit recipients from entering into covered transactions (such as subawards and contracts) with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

X. Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Governmentwide implementation (2 C.F.R. Part 182) of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

XI. Duplicative Costs

Recipients are prohibited from charging any cost to this federal award that will be included as a cost or used to meet cost sharing or matching requirements of any other federal award in either the current or a prior budget period. (See 2 C.F.R. § 200.403(f)). However, recipients may shift costs that are allowable

under two or more federal awards where otherwise permitted by federal statutes, regulations, or the federal financial assistance award terms and conditions.

XII. Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA's implementing regulations at 44 C.F.R. Part 19.

XIII. E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety

Recipient State, Tribal, local, or territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. Recipient State, Tribal, local, or territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.

XIV. Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

XV. False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§ 3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)

XVI. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

XVII. Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving recipient-owned, recipient-rented, or privately owned vehicles when on official government business or when performing any work for or on behalf of the Federal Government. Recipients are also encouraged to conduct the initiatives of the type described in Section 3(a) of E.O. 13513.

XVIII. Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (a list of certified air carriers can be found at: [Certificated Air Carriers List | US Department of Transportation, https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list](https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list)) for international air transportation of people and property to the extent that such service is available, in accordance with the

International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

XIX. Hotel and Motel Fire Safety Act of 1990

Recipients must ensure that all conference, meeting, convention, or training space funded entirely or in part by federal award funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a.

XX. John S. McCain National Defense Authorization Act of Fiscal Year 2019

Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. The statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

XXI. Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-helpdepartment-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

XXII. Lobbying Prohibitions

Recipients must comply with 31 U.S.C. § 1352 and 6 C.F.R. Part 9, which provide that none of the funds provided under a federal award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification. Per 6 C.F.R. Part 9, recipients must file a lobbying certification form as described in Appendix A to 6 C.F.R. Part 9 or available on Grants.gov as the Grants.gov Lobbying Form and file a lobbying disclosure form as described in Appendix B to 6 C.F.R. Part 9 or available on Grants.gov as the Disclosure of Lobbying Activities (SF-LLL).

XXIII. National Environmental Policy

Act Recipients must comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

XXIV. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

XXV. Non-Supplanting Requirement

Recipients of federal awards under programs that prohibit supplanting by law must ensure that federal funds supplement but do not supplant non-federal funds that, in the absence of such federal funds, would otherwise have been made available for the same purpose.

XXVI. Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, scope of work, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this federal award are incorporated by reference. All recipients must comply with any such requirements set forth in the NOFO. If a condition of the NOFO is inconsistent with these terms and conditions and any such terms of the Award, the condition in the NOFO shall be invalid to the extent of the inconsistency. The remainder of that condition and all other conditions set forth in the NOFO shall remain in effect.

XXVII. Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq. and applicable regulations governing inventions and patents, including the regulations issued by the Department of Commerce at 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts, and Cooperative Agreements) and the standard patent rights clause set forth at 37 C.F.R. § 401.14.

XXVIII. Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962) and 2 C.F.R. § 200.323. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

XXIX. Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified as amended at 29 U.S.C. § 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

XXX. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of the federal award, then the recipient must comply with the requirements set forth in the

government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated by reference.

XXXI. Reporting Subawards and Executive Compensation

For federal awards that equal or exceed \$30,000, recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation set forth at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated by reference.

XXXII. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers:

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. (a) When the Federal agency has determined that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at "[Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov](#)."

Definitions:

The definitions applicable to this term are set forth at 2 C.F.R. § 184.3, the full text of which is incorporated by reference.

XXXIII. SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. The SAFECOM Guidance is updated annually and can be found at [Funding and Sustainment | CISA](#)

XXXIV. Terrorist Financing

Recipients must comply with E.O. 13224 and applicable statutory prohibitions on transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible for ensuring compliance with the E.O. and laws.

XXXV. Trafficking Victims Protection Act of 2000 (TVPA)

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Trafficking Victims Protection Act of 2000, Pub. L. No. 106- 386, § 106 (codified as amended at 22 U.S.C. § 7104). The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated by reference.

XXXVI. Universal Identifier and System of Award Management

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated reference.

XXXVII. USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

XXXVIII. Use of DHS Seal, Logo and Flags

Recipients must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.

XXXIX. Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections at 10 U.S.C § 470141 U.S.C. § 4712.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require its first tier contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the Contractors perform under contracts between Subrecipient and the Contractors (the "Subagreements"), and ii) maintain the insurance in full force throughout the duration of the Subagreements. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OEM. Subrecipient shall not authorize Contractors to begin work under the Subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the Subagreements permitting it to enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subagreements as permitted by the Subagreements, or pursuing legal action to enforce the insurance requirements. In no event shall Subrecipient permit a Contractor to work under a Subagreement when the Subrecipient is aware that the Contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the Subrecipient directly enters into a contract. It does not include a subcontractor with which the Contractor enters into a contract.

TYPES AND AMOUNTS.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

☒ **Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to OEM. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an

occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

AUTOMOBILE LIABILITY INSURANCE:

☒ **Required** ☐ **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subagreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against OEM or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not OEM has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Subagreement, for a minimum of 24 months following the later of (i) Contractor's completion and Subrecipient's acceptance of all Services required under this Subagreement, or, (ii) Subrecipient's or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Subagreement.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Subrecipient shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before delivering any goods and performing any services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the

excess/umbrella insurance. As proof of insurance OEM has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by OEM under this agreement and to provide updated requirements as mutually agreed upon by Contractor and OEM.

STATE ACCEPTANCE:

All insurance providers are subject to OEM acceptance. If requested by OEM, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under this Exhibit C.

EXHIBIT D
Information required by 2 CFR 200.332(b)(1)

1. Federal Award Identification: EMS-2024-PD-0004
 - (i) Subrecipient name: City of Warrenton
 - (ii) Subrecipient's UEI number: MXASVPL41FV3
 - (iii) Federal Award Identification Number (FAIN): LPDM-PJ-10-OR-2024-001
 - (iv) Federal Award Date: August 29, 2024
 - (v) Subaward Period of Performance: August 28, 2027
 - (vi) Subaward budget period start and end dates: August 29, 2024 through August 28, 2027
 - (vii) Total Amount of Federal Funds Obligated by this Agreement: \$763,088.29
 - (viii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement: \$763,088.29
 - (ix) Total Amount of Federal Award Committed to the Subrecipient by the pass-through entity: \$763,088.29
 - (x) Federal award project description: City of Warrenton/Iredale Tidegate and Culvert Project
 - (xi)
 - (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
 - (b) Name of Pass-through entity: Oregon Department of Emergency Management
 - (c) Contact information for awarding official of the pass-through entity: Patence Winningham, Deputy Director, Oregon Department of Emergency Management.
 - (xii) Assistance listings number, title and amount: 97.047 Pre-Disaster Mitigation Grant Program
Total Project Amount: \$1,017,451.05
 - (xiii) Is Award R&D? No
 - (xiv)
 - (a) Indirect cost rate for the Federal award: 5%
 - (b) Is the de minimis rate being used per §200.414? No



City Commission Agenda Memo

Meeting Date: November 12th, 2024
 From: Greg Shafer, Public Works Director
 Subject: Warrenton and CCDD 11 Levee Certification Phase 1 (Interior Drainage Study)- Financing Contract Amendment #1

Summary:

In December 2021, the City Commission approved a financing contract with Business Oregon to support the Warrenton and CCDD 11 Levee Certification Phase 1, specifically aimed at completing the Interior Drainage Study. Following this, in December 2022, the Commission authorized a professional services contract with Civil West Engineering to carry out the study.

The study has now been successfully completed. However, while collaborating with Business Oregon to finalize the contract, we identified minor discrepancies between the project description in the agreement and the actual work performed. To address this, we propose a minor amendment to the project description, ensuring it accurately reflects that the financing contract will solely pertain to the Interior Drainage Study under Phase 1.

Recommendation/Suggested Motion:

"I move that the City Commission accept Amendment #1 to the financing contract with Business Oregon for Project Number A22001, pertaining to the Warrenton and CCDD 11 Levee Certification Phase 1."

Alternative:

Other action as deemed appropriate by the City Commission

OR

None recommended

Fiscal Impact:

N/A

Attachments:

- A22001: A-01 Contract Amendment

Approved by City Manager: _____

Amendment Number 01

Project Name: Warrenton and CCDD 11 Levee Certification – Phase 1

This amendment is made and entered into by and between the State of Oregon, acting by and through its Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“OBDD”), and the City of Warrenton, Oregon (“Recipient”), and amends the Grant Contract between Recipient and OBDD, Project Number A22001, dated 10 February 2022, (“Contract”) for the above-named Project. Capitalized terms not defined in this amendment have the meanings assigned to them by the Contract.

Recital: The purpose of this amendment is to extend the time to complete the project and amend the project description.

The parties agree as follows:

1. Amend the project completion deadline in Section 1 – Key Terms as follows (deletion in ~~strikethrough~~; addition in double underline):
“Project Completion Deadline” means ~~10 October 2024~~ 31 December 2024.
2. Amend Exhibit C – Project Description- (4) Agency Coordination as follows (deletion in ~~strikethrough~~; addition in double underline)
 4. Agency Coordination
Coordinate with Clatsop County Drainage District
 - a. ~~FEMA~~
 - b. ~~Review other related regulatory programs (ESA, CWA)~~
 - c. ~~Coordinate with other local drainage districts~~
 - d. ~~Letter of map revision (local)~~

OBDD will have no obligation under this amendment, unless within 60 days after receipt, the Recipient delivers to OBDD the following items, each in form and substance satisfactory to OBDD and its Counsel:

- (i) this amendment duly executed by an authorized officer of the Recipient; and
- (ii) such other certificates, documents, opinions and information as OBDD may reasonably require.

SIGNATURES TO FOLLOW BELOW

Except as specifically provided above, this amendment does not modify the Contract, and the Contract shall remain in full force and effect during the term thereof. This amendment is effective on the date it is fully executed and approved as required by applicable law.



STATE OF OREGON
acting by and through its
Oregon Business Development Department



CITY OF WARRENTON,

By: _____
Edward Tabor, Infrastructure & Program
Services Director

By: _____
The Honorable Henry A. Balensifer III, Mayor

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not required by OAR 137-045-0050



City Commission Agenda Memo

Meeting Date: November 12, 2024
From: Esther Moberg, City Manager
Subject: Franchise Agreement 3PO Networks, LLC

Summary:

3PO Networks LLC is requesting a non-exclusive Franchise Agreement for the installation of Fiber Optic cable, serving the Fort Point housing development with also the option for dark fiber sales.

Recommendation/Suggested Motion:

I move to approve the Franchise Agreement for 3PO Networks LLC.

Alternative:

Other action as deemed appropriate by the City Commission

OR

None recommended

Fiscal Impact:

The City will receive 5% in gross profits from this agreement.

Attachments:

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

- Franchise Agreement

Approved by City Manager: _____

FRANCHISE AGREEMENT

WARRENTON, OREGON

This Franchise Agreement (“Franchise”) is between the City of Warrenton, Oregon, hereinafter referred to as the “Grantor” and 3PO Networks, LLC, an Oregon limited liability company, locally known as 3PO Networks, hereinafter referred to as the “Franchisee”.

Recitals

Pursuant to Federal law, State statutes, and City Charter and local ordinances, the Grantor is authorized to grant non-exclusive franchises to occupy “public rights-of-way” as defined by City of Warrenton Municipal Code Chapter 12.32, in order to construct, operate, and maintain a fiber optic system within the municipal boundaries of the City of Warrenton.

1. Granting of Franchise:

The Grantor hereby grants to Franchisee a non-exclusive Franchise for the use of the Streets within the service area for the construction, operation, and maintenance of the Fiber Optic Cable System to provide Fiber Optic (including Dark Fiber) in the Service Area, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit the Franchisee from offering any service over its Fiber Optic system that is not prohibited by federal or state law, nor does this Franchise authorize the Franchisee to offer such services, and the Grantor reserves the right to exercise its lawful authority with respect to the Franchisee’s offering of such services. This Franchise is subject to the laws of the United States and the State of Oregon, and to the lawful, generally applicable ordinances, adopted pursuant to the City’s police powers, of the City whether now existing or hereinafter enacted. Franchisee agrees that, unless otherwise expressly set forth herein, it will comply with generally applicable requirements of Warrenton Municipal Code section 12.32 regarding “Public Right of Way”, as amended from time to time, as if fully set forth herein. Nothing herein shall be interpreted to prevent Franchisee from challenging the lawfulness or enforceability of any provisions of applicable law.

2. Term: The Franchise shall be for a term of twenty (20) years, commencing on the Effective Date of this Franchise as set forth in Section ____
3. Use of the Streets: Franchisee is authorized to use the Streets of the City of Warrenton for the construction, operation, and maintenance of the Fiber Optic System to provide Fiber Optic Service in the Service Area, including the right to repair, replace, and enlarge and extend the Fiber Optic system, subject to section 2 above.
4. Maintenance of the System: Franchisee shall design, construct and operate the Fiber Optic System so as to meet the technical standards adopted by the FCC relating to Fiber and Dark Fiber as contained in the FCC’s rules and regulations as they may, from time to time, be amended, regardless of the transmission technology utilized.
5. Service:
 - a. The Franchisee will provide Fiber Optic Service to all residences within the designated service area. Franchisee shall have the right, but not the obligation, to

extend the Cable system into any other portion of the service area. Fiber Optic Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Franchisee having legal access to any such Subscriber's dwelling unit or other units wherein such Fiber Optic Service is provided.

- b. Franchisee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, or persons on the basis of race, color, income, religion, national origin, sex, sexual orientation, age, disability, or, except as otherwise provided herein, the area in which such person lives.
- c. The Grantor adopts and reserves the right to enforce the customer service standards set forth by the FCC in their rules and regulations as amended from time to time by the FCC, and the notice requirements therein as amended from time to time by the FCC. Franchisee shall comply with all customer service and notice requirements.

2. Insurance/Indemnity:

- a. Franchisee shall indemnify and hold harmless the Grantor and its agents and employees from and against claims, damages, losses, and expenses, including reasonable attorney's fees sustained by the Grantor on account of suits, judgments, claims or demands to the extent arising out of the negligence or willful misconduct of Franchisee, its agents, employees, and contractors pursuant to this franchise or the installation, operation, or maintenance of the Fiber Optic Communication System authorized herein.
- b. Grantor shall indemnify and hold harmless Franchisee and its agents and employees from and against claims, damages, losses, and expenses, including reasonable attorney's fees sustained by Franchisee on account of suits, judgment, claims, or demands to the extent arising out of the negligence or willful misconduct of Grantor, its agents, employees, and contractors pursuant to this Franchise.
- c. Throughout the term of this Franchise, and as specified herein Franchisee and those acting on its behalf, including but not limited to subcontractors, shall maintain in full force and effect the following insurance, issued on policies written by companies authorized to do business under the laws of the State of Oregon:
 - i. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
 - 1. \$3,000,000 per occurrence for bodily injury, or death to each person; or property damage resulting from any one accident;
 - 2. \$3,000,000 for all other types of liability.
 - 3. Comprehensive general liability insurance shall provide coverage for any and all costs, including defense costs, and losses and damages resulting from personal injury, bodily injury, or death, property damage, products liability, and completed operations. Such insurance shall include broad form and blanket contractual coverage.

4. Comprehensive automobile liability for owned, non-owned, and hired vehicles with a limit of \$1,000,000 combined single limit per accident.
5. Workers compensation with statutory limits and employer's liability insurance with limits of not less than \$1,000,000 per occurrence. In the case that Franchisee subcontracts with others, Franchisee shall require each subcontractor to similarly provide worker's compensation insurance for all of the subcontractor's employees.
6. The coverage amounts set forth may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
7. The liability insurance policies required by this Section shall be maintained by Franchisee and those acting on its behalf, including but not limited to its subcontractors, throughout the term of the Franchise. Franchisee shall provide an insurance certificate, together with an endorsement including the Grantor as an additional insured, to the Grantor prior to the commencement of any work or installation of any facilities pursuant to said Franchise and again at each policy renewal or replacements. Payments of deductibles and self-insured retentions shall be the sole responsibility of Franchisee. Any insurance maintained by the Grantor, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of Franchisee's insurance and shall not contribute to it.
8. Each policy shall be endorsed to provide the Grantor with notice of cancellations in accordance with policy provisions.
9. If Franchisee desires to satisfy the insurance requirements herein through self-insurance, Franchisee must provide documentation to the Grantor demonstrating the coverage provided meets or exceeds that described above.
10. No provisions of this Sections shall bar Franchisee from claiming contribution for such injuries, death, damages, and defense costs after, and to the extent, Grantor is found liable by a court of competent jurisdictions for such damages, injuries or death by reason of negligence or willful misconduct of Grantor, its employees, servants, or agents.

3. Revocation:

- a. Revocation or Termination of Franchise. The Grantor may terminate or revoke this franchise for any of the following reasons:
 - i. Violation of any of the provisions of Warrenton Municipal Code 12.32;
 - ii. Violation of any provision of this franchise;
 - iii. Misrepresentation in a franchise application;

- iv. Failure to pay taxes, compensation, fees, or costs due to the Grantor after final determination of the taxes, compensation, fees, or costs;
 - v. Failure to restore the right of way after construction as required by WMC 12.32, this franchise, or other applicable State and local laws, ordinances, rules, and regulations;
 - vi. Failure to comply with technical, safety, and engineering standards related to work in the rights-of-way; or
 - vii. Failure to obtain or maintain any and all licenses, permits, certifications, and other authorizations required by State or Federal law for the placement, maintenance and/or operation of the Fiber Optic System.
- b. Standards for Revocation or Termination. In determining whether termination, revocation, or some other sanction is appropriate, the following factors shall be considered:
- 1. The egregiousness of the misconduct;
 - 2. The harm that resulted;
 - 3. Whether the violation was intentional;
 - 4. The Franchisee's history of compliance; and/or
 - 5. The Franchisee's cooperation in discovering, admitting, and/or curing the violation.
- c. Notice and Cure. The Grantor shall give the Franchisee written notice of any apparent violations before terminating the franchise. The notice shall include a short and concise statement of the nature and general facts of violation or noncompliance and provide a reasonable time (no less than 30 days) for the Franchisee to respond. Franchisee's response shall be in writing and may demonstrate that Franchisee has remained in compliance, that it has cured or is in the process of curing any violation or noncompliance, that it is excused from compliance, or that it would not be in the public interest to revoke the franchise. If the Franchisee is in the process of curing a violation or noncompliance, the Franchisee must demonstrate that it acted promptly and continues to actively work on compliance. If the Franchisee does not respond or if the City Manager or designee determines that the Franchisee's response is inadequate, the City Manager or designee shall refer the matter to the City Commission, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked. Such hearing shall be on the record and shall provide Franchisee with an opportunity to present evidence and examine witnesses. The decision of the Grantor shall be made in writing and shall be delivered to the Franchisee.

4. Confidentiality:

To the extent permitted by law, the Grantor agrees to treat as confidential any records information that constitutes proprietary or confidential information to the extent Franchisee marks such as "confidential" or "proprietary" prior to providing them to the Grantor. If the Grantor believes it must release such confidential records in the course of Oregon Public

Records Law compliance, it shall advise Franchisee in advance to that Franchisee may take appropriate to protect its interests.

5. Additional Franchises:

If any other provider of Fiber Optic services is lawfully and expressly authorized by the Grantor to use the streets to provide such services, the Grantor shall, to the extent permitted by applicable law, within sixty (60) days of a written request from Franchisee, (i) modify this Franchise to insure that the material of obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider, or (ii) dispute that the requested modification is required by this Section. [Material obligations” are limited to: franchise fees; insurance; indemnification; security instruments; customer service standards; required reports and related record keeping; enforcement or revocation provisions; and notice and opportunity to cure breaches. In the event the Grantor disputes that the requested modification is required by this Section, Grantee may bring an action in federal or state court for a determination as to whether the requested modification is required by this Section. Notwithstanding the foregoing, the remedies provided in this Section may be invoked by Grantee only by providing written notice to the Grantor within ninety (90) day period commencing upon the effective date of the Grantor’s grant of authority to the other provider of Fiber Optic services as described in this Section, provided that Grantor provides written notice to Grantee within ten (10) days after Grantor’s grant of such authority. In the event Grantor fails to provide such notice, the ninety (90) day period shall commence upon Grantee’s actual notice of Grantee’s grant of authority.

6. Notices, Miscellaneous:

- a. Unless otherwise required by law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery by US certified mail, return receipt request, or email communication to the designated email address provided below. Franchisee shall provide thirty days’ written notice of any changes in rates, using any reasonable written means.

As set forth above, notices to the Grantor shall be sent to
City of Warrenton
Attn: City Manager
PO Box 250
Warrenton, OR 97146

And every notice to the Franchisee shall be delivered or sent to:

Alex Gamota, CEO
3PO Networks, LLC
950 SE Oak Ave
Roseburg, OR 97479

7. Franchise Fee:

- a. Franchisee shall pay to the Grantor an annual amount equal to five percent (5%) of Gross Revenues for such calendar year.
- b. The franchise fee shall be paid quarterly, in arrears, for each quarter during the term of the Franchise, within forty-five (45) days after the end of each calendar quarter and shall be accompanied or followed by an accounting of Gross Revenues and a calculation of the amount payable. TFranchisee shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date. Payment shall be subject to audit or review pursuant to Warrenton Municipal Code, as of the Effective Date of this Franchise.

- 8. Effective Date:** The Franchise granted herein will take effect and be in full force from such date of acceptance by Franchisee recorded on the signature page of this Franchise, provided that such acceptance is delivered to the Grantor within sixty (60) days of the date the Franchise is considered and approved by the Grantor. If acceptance is not delivered as required in this Section, this Franchise shall be null, void, and of no force or effect. This Franchise shall expire twenty (20) years from the Effective Date unless extended by the mutual agreement of the parties.

9. Acceptance and Entire Agreement:

The Grantor and the Franchisee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Franchisee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect (60) days after the Effective Date of this Franchise.

10. Definitions:

Dark Fiber: Dark fiber is considered to be “wire communications” which fall under FCC regulations.

Franchise: means the authorization granted hereunder of a privilege, to construct, operate and maintain a Fiber Optic System to provide Fiber Optic Service within the designated Service Area.

Gross Revenue: means any revenue, as determined in accordance with generally accepted accounting principles, derived by the Franchisee from the operation of the Fiber Optic System to provide Fiber Optic services in the service area, provided however, that such phrase shall not include: (1) any taxes, fees or assessment collected by the Franchisee from Subscribers for pass-through to a government agency, including the FCC user fee, but not including franchise fees, which shall be included in “Gross Revenue”; (2) bad debt; and (3) credits, refunds, and deposits paid to Subscribers.

Service Area: shall mean the designated areas in Exhibit A.

Streets: shall mean and include but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges,

trails, paths, sidewalks, bicycle lanes, public utility easements, and all other public ways or areas, including the subsurface under and the air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel. This definition applies only to the extent of the Grantor's right, title, interest and authority to grant a franchise to occupy and use such areas for a Fiber Optic Cable System.

Subscriber: means any person lawfully receiving any Fiber Optic Service from the Franchisee.

Grantor: The City of Warrenton, Oregon.

City Manager: The City Manager of the City of Warrenton or their designee.

Communications: All wires, cables, conduits, poles, equipment, appliances, and associated structures used by Franchisee in conducting its communications business.

Grantee: 3PO Networks, LLC an Oregon limited liability company with offices located at 950 SE Oak Ave. Roseburg, OR 97470

Considered and approved this _____ day of _____ 2024.

City of Warrenton

Signature: _____

Name/Title: _____

Henry A. Balensifer, Mayor

Accept this ____ day of _____ 2024, subject to all applicable laws.

3PO Networks, LLC

Signature: _____

Name/Title: _____

Alex Gamota, CEO

Exhibit A
Description

3PO Networks LLC - Fort Pointe Fiber Optic Cabling Route

Description of fiber optic network within the Public Right-of-Way (ROW) for franchise agreement

The 3PO Networks fiber optic cabling will be restricted to the Fort Pointe Community. Starting at the intersection of Ridge Road ROW and the South side of Road C. The cabling will run East from the Ridge Road ROW, connecting the West and East sides of Road A, continuing East, connecting the West and East side of Road B. Road A will have fiber optic cabling on the West and East side of the ROW starting at Road C and continuing South until connection with Road B. Road B will have fiber optic cabling on the West and East side of the ROW starting at Road C and continuing until it terminates at the Ridge Road ROW. Road I will have cabling on both the North and South side starting at the intersection of the Ridge Road ROW and continuing East until its connection at Road A. Road N. will have cabling on both the North and South side starting at the intersection of the Ridge Road ROW and continuing East until its connection at Road B.

This description is more fully depicted in the attached drawing.

