



CITY COMMISSION OF THE CITY OF WARRENTON  
REGULAR MEETING  
November 22, 2016 – 6:00 P.M.  
Warrenton City Commission Chambers – 225 South Main Avenue  
Warrenton, OR 97146

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1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **COMMISSIONER COMMENTS/COMMUNICATIONS/AGENDA ADDITIONS**
5. **CONSENT CALENDAR**

- A. City Commission Regular Meeting Minutes – 10.25.16
- B. City Commission Regular Meeting Minutes – 11.08.16
- C. Fire Dept. Monthly Activity Report – October 2016
- D. Police Dept. Monthly Statistics Report – October 2016
- E. Monthly Finance Report – October 2016
- F. Update on Committee Applications

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.

6. **BUSINESS ITEMS**

- A. Consideration of Ordinance No. 1210-A; Vacating a Portion of SE Galena
- B. Consideration of NW Natural Gas Franchise Request
- C. Consideration of Contract for Legal Services with Beery, Elsner & Hammond, LLP

D. Consideration of IGA for Administrative Fees & Costs in Connection with Hammond Marina Conveyance

E. Library Board Recommendation

7. **PUBLIC COMMENT**

At this time, anyone wishing to address the City Commission concerning items of interest not already on the Agenda may do so. The person addressing the Commission will, when recognized, give his or her name and address for the record. 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.

8. **EXECUTIVE SESSION**

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

9. **ADJOURNMENT**

**CITY HALL IS ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630, BY CONTACTING LINDA ENGBRETSON AT LEAST 48 HOURS IN ADVANCE OF THE MEETING**

5-A

MINUTES  
Warrenton City Commission  
Regular Meeting – October 25, 2016  
6:00 p.m.  
Warrenton City Hall - Commission Chambers  
225 S. Main  
Warrenton, Or 97146

Mayor Kujala called the meeting to order at 6:00 p.m. and then led the public in the Pledge of Allegiance.

Commissioners Present: Mayor Mark Kujala, Tom Dyer, Pam Ackley and Rick Newton  
Excused: Henry Balensifer

Staff Present: City Manager Pro tem Linda Engbretson, Police Chief Mathew Workman, Public Works Director Jim Dunn, Public Works Foreman Craig Walter, Finance Director April Clark, Police Officer Robert Wirt, City Engineer Collin Stelzig and Administrative Assistant Dawne Shaw

COMMISSIONER COMMENT

Commissioner Newton welcomed everyone and noted he is retiring in one week.

Commissioner Dyer thanked everyone for the kind words about his career as a State Patrol Officer. Mayor Kujala noted the nice article in the newspaper about Commissioner Dyer's career and retirement.

Commissioner Ackley noted the recent Way to Wellville meeting and stated they are applying for a grant for a feasibility study for a universal preschool. The grant is for \$355,000 and the decision will be in early December. They will be coming back to round table/town hall meetings in January. They have talked about extending the program for another 5 years. Mayor Kujala thanked Commissioner Ackley for all her work on the Way to Wellville committee and the Backpack program.

City Manager Pro tem Linda Engbretson congratulated Commissioner Dyer on his retirement and to Commissioner Newton as well.

Mayor Kujala noted there is a walk-a-thon tomorrow at the Grade School to raise money for new equipment and the Backpack program. He will try to make appearance. He also noted this evening's Work Session on water rights, noting the information received should help put fears at ease that we are moving in the right direction. Mayor Kujala stated that per conversation at the last meeting he has put together a letter on behalf of the City Commission regarding Measure 4-181, which he read aloud for the public. The Commission agreed no changes to the letter were

needed and it will be sent out tomorrow to the press.

#### CONSENT CALENDAR

- A. Commission Regular Meeting Minutes – 9.27.16
- B. Commission Regular Meeting Minutes – 10.11.16
- C. Police Dept. Monthly Statistics – September 2016
- D. Fire Dept. Monthly Activity Report – September 2016

**Commissioner Ackley made the motion to accept the consent calendar as presented. Motion was seconded and passed unanimously.**

**Kujala – aye; Dyer – aye; Newton – aye; Ackley - aye**

#### BUSINESS

City Manager Pro tem Linda Engbretson requested to move agenda item 6.E to the first item of business.

**Commissioner Ackley made the motion to move Agenda item 6.E to the top of the agenda. Motion was seconded and passed unanimously.**

**Newton – aye; Dyer – aye; Kujala – aye; Ackley - aye**

Chief Workman discussed opportunities to get a K-9 Drug Dog for the Warrenton Police Department. He gave a brief explanation of the program, noting this would specifically be a drug dog, not a patrol dog. Officer Robert Wirt and Deputy Chance Moore provided additional information on the program and the training aspect. Officer Robert Wirt, who will be the dog's handler, stated that with the increasing drug problem it is a good time for a Drug K-9, and he is seeking permission to further explore the costs and requirements. Brief discussion followed and the Commission stated they are in support of going forward.

Legal Counsel Akin Blitz, with Bullard Law presented further review (see 9/7/16 minutes), findings and recommendations for the 8<sup>th</sup> Street Dam. He noted he would like meet in executive session, under Litigation (ORS 192.610(2)(h)). Mr. Blitz stated that he and Ms. Engbretson attended the Skipanon Water Control District (SWCD) Board meeting. Mr. Blitz noted SWCD is hiring legal counsel and that they made it clear at the meeting they would like to pursue negotiation/mediation of the issues. Mr. Blitz noted SWCD knows they do not own the 8<sup>th</sup> Street dam, but they are not willing to let go of their control until the Commission commits to a timeline for removal of the structure. Mayor Kujala stated he does not see what there is to negotiate other than they open the barricade and give back the tidegate doors. Mr. Blitz stated the letter from Natural Resources Conservation Service (NCRS), dated February 14, 2014, has caused all of this confusion. "NCRS did not have the authority to it give away".

#### MINUTES

Warrenton City Commission  
Regular Meeting – 10-25-16  
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Mayor Kujala stated City Engineer Collin Stelzig was Warrenton Engineer of Record during 2014-2015, while working with HLB Otak, noting they had looked at the proposal from SWCD and Crest for removing the dam and installing a bridge. Mayor Kujala mentioned concerns/conclusions from a report by Gary Wolf (Otak) and asked Mr. Stelzig if he would review the matter with the Commission. Mr. Stelzig proceeded with the presentation which explained the function and necessity of tide gates, and confirmed the 8<sup>th</sup> Street dam was designed to function as a tidegate. Mr. Stelzig cited data from a 1977 flood insurance study and noted the Skipanon River has the same hydraulic configuration above the tide gates and experiences the same type of flooding problems as Alder Creek. If the Alder Creek tide gates were removed, there would be consistent flooding. The presentation continued with 2002 data showing the tide elevation differences and effects without the tide gates and 2012 reports that show the tide gates should not be removed without further study/measures. Mr. Stelzig suggested more data collection, with the tide gates in place is needed. The discussion continued on the lifespan of the structure and Mayor Kujala stated for the record again, that he lives and owns a business in the affected area, but feels it is an issue he can speak to without any conflict. Mr. Blitz stated when he met with DSL two weeks ago, their position was they issued no permit to alter use of the 8<sup>th</sup> Street dam at the time the tide gates were removed and for that reason the removal was in violation of State law. The Army's position would be they issued no 408 permit; it was unlawful. The discussion continued on the estimated cost to replace the tide gates, whether the original gates are obtainable and the possibility of fish friendly tide gates being necessary. Mayor Kujala noted a 2002 USDA report recommended that before any changes were made to the 8<sup>th</sup> Street structure there should be flood plain modeling upstream; purchase of property or easements upstream; have all flood structures upstream fortified; and have community buy-in. It appears none of these items had been satisfied before SWCD removed the tide gates. Commissioner Ackley questioned whether the City had made a public records request for all reports and emails related to the 8<sup>th</sup> Street dam from SWCD. Mr. Blitz stated he had requested documents regarding ownership from SWCD and they stated the only thing they have is the letter from NCRS. He would like to request SWCD for all documentation regarding the 8<sup>th</sup> Street dam from its creation in 1962 to present. City Engineer Colin Stelzig continued his presentation on the information from the September 28<sup>th</sup> meeting with FEMA for the Clatsop Estuary Technical analysis and discussed the next steps, which includes continuing to move forward with the geo-technical work. The discussion continued on certification of the levee system.

City Manager Pro tem Linda Engbretson requested the Commission table agenda item 6.C., the franchise request from NW Natural.

Mayor Kujala discussed the contract for City Manager appointment as presented by City Manager Pro tem Linda Engbretson. Terms were briefly discussed. Mayor Kujala stated it is a one-year contract, and includes a six month review. The Commission agreed there were no issues with the contract.

**Commissioner Ackley made the motion to authorize the Mayor's signature on a one-year contract with Linda Engbretson to serve as the City of Warrenton's City Manager,**

**effective October 25, 2016, pending contract approval by legal counsel. Motion was seconded and passed unanimously.**

**Kujala – aye; Dyer – aye; Newton – aye; Ackley - aye**

Ms. Engbretson expressed thanks for the support of the community.

PUBLIC COMMENT – Pat O’Grady spoke in favor of the report from Akin Blitz, noting his concerns regarding CREST. John Nygaard echoed Mr. O’Grady’s sentiments and asked the reports be sent to the proper authorities. He also noted the pending street vacation could be subject to Measure 4-181 and suggested the Commission table the street vacation until after the election.

There being no further business Mayor Kujala adjourned the regular meeting at 7:38 p.m., and announced an executive session, under the authority of ORS 192.660(2)(h); *to consult with counsel considering the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed*. He stated the Commission is not expected to return to regular session to take action on any item considered in the executive session.

APPROVED:

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Mark Kujala, Mayor

ATTEST:

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Dawne Shaw, Administrative Assistant

5-B

MINUTES  
Warrenton City Commission  
Regular Meeting – November 8, 2016  
6:00 p.m.  
Warrenton City Hall - Commission Chambers  
225 S. Main  
Warrenton, Or 97146

Mayor Kujala called the meeting to order at 6:00 p.m. and then led the public in the Pledge of Allegiance.

Commissioners Present: Mayor Pro tem Henry Balensifer, Pam Ackley and Rick Newton  
Absent: Mayor Mark Kujala and Tom Dyer

Staff Present: City Manager Linda Engbretson, Fire Chief Tim Demers, Police Chief Mathew Workman, Public Works Director Jim Dunn, Public Works Foreman Craig Walter, Finance Director April Clark, Library Site Manager Nettie Calog, Wastewater Treatment Plant Superintendent Kyle Sharpsteen and Administrative Assistant Dawne Shaw

COMMISSIONER COMMENTS

Commissioner Newton stated this weekend he attended the WBA First Responders Dinner with a concert by Steve Azar, noting that it was a very nice event.

Commissioner Ackley noted it is a big day for our nation and thanked everyone for coming.

Mayor Pro tem Balensifer also thanked everyone for coming.

City Manager Engbretson stated she also attended the WBA event, noting that it was a nice evening and felt the first responders appreciated it. She also noted the WBA event raised \$5000 which will be split between the Warrenton Police and Fire departments. She reminded everyone City Hall is closed this Friday for Veterans Day.

Mayor Pro tem Balensifer requested to remove/postpone agenda item 6B and add agenda item 6F, a letter from the Mayor, on behalf of the City to ODFW.

**Commissioner Ackley made the motion to amend the agenda to remove item 6B and add item 6F. Motion was seconded and passed unanimously.**

**Balensifer – aye; Ackley – aye; Newton - aye**

## CONSENT CALENDAR

- A. Commission Work Session Minutes – 10.25.16
- B. Monthly Finance Report – Sept. 2016

**Commissioner Ackley made the motion to accept the consent calendar as presented. Motion was seconded and passed unanimously.**

**Balensifer – aye; Ackley – aye; Newton – aye**

## BUSINESS

Mayor Pro tem Balensifer opened the public hearing on the street vacation for a portion of SE Galena Ave. Formalities followed and no conflicts of interest or ex parte contacts were reported. City Manager Engbretson stated the Commission initiated the street vacation on October 11, 2016 and set it for Public Hearing. The proposed area for vacation is SE Galena that runs from SE 14<sup>th</sup> Place, south for a distance of 361.2 feet, in Block 2, Tract 3 of Chelsea. Petitioner, Ken Yuill gave a power point presentation on the street vacation request, noting the location and the surrounding areas/streets. He also noted the area is within the Urban Renewal District and he suggested a joint work session between the City Commission and the Planning Commission, inviting neighboring property owners, to discuss the possibility of building affordable housing. Mr. Yuill proposed using URA dollars to keep costs down. Commissioner Balensifer asked for public comments. No one spoke in favor or against the proposed street vacation. Commissioner Balensifer closed the public hearing.

**Commissioner Ackley made the motion to have staff prepare an ordinance to vacate a portion of SE Galena Avenue, per Street Vacation Petition No. 147. Motion was seconded and passed unanimously.**

**Balensifer – aye; Ackley – aye; Newton – aye**

Public Works Director Jim Dunn presented an IFA Grant Agreement for Warrenton Industrial User Agreement and Consideration of Resolution No. 2470, Approving and Adopting Increase to the 2016-2017 Budget by Increasing Appropriations for Unanticipated Revenues in the Sewer Fund. He noted the City applied for financial assistance through the Business Oregon Infrastructure Finance Authority and has received a grant of \$46,580 for the development of an Industrial User Agreement with Pacific Seafood Group. Due to the critical timing of the work, the City Commission approved entering into a contract with Kennedy/Jenks Consultants at the September 13, 2016 Commission meeting. On October 24<sup>th</sup> the funding agreement with IFA was executed. Now Public Works is requesting the Commission's approval to authorize the grant agreement with Oregon Infrastructure Finance Authority and amend the budget to account for

## MINUTES

Warrenton City Commission  
Regular Meeting – 11.08.16  
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these funds.

**Commissioner Newton made the motion to authorize the grant agreement between the Oregon Infrastructure Finance Authority and the City of Warrenton Industrial User Agreement Project. Motion was seconded and passed unanimously.**

**Balensifer – aye; Ackley – aye; Newton – aye**

**Commissioner Newton made the motion to adopt Resolution No. 2470; *Approving and Adopting Increase to the 2016-2017 Budget by Increasing Appropriations for Unanticipated Revenues in the Sewer Fund.* Motion was seconded and passed unanimously.**

**Balensifer – aye; Ackley – aye; Newton – aye**

Public Works Director Jim Dunn introduced Change Order Number 1 for the DeLaura Beach Lane – Bike Path storm water culvert. He stated the work is being done by North Pacific Excavation, and they have made attempts to connect to the existing storm water pipe as outlined in Item 15, Storm Drainage Pipe and Fittings section of the contract documents. However, the section of culvert was extensively damaged which made repairs impractical. North Pacific Excavation submitted a proposal of \$8,970.00 for the replacement of the 18” aluminum culvert with an 18” HDPE culvert. This work would be completed before paving. The discussion continued on the pricing and the beaver problems with the culverts around the city. Mr. Dunn explained they have been and trapping beavers and removing beaver dams to keep drainage open. Commissioner Ackley stated the Public Works department has done a great job on the project.

**Commissioner Ackley made the motion to approve Change Order Number 1 for the replacement of the 18” culvert for the DeLaura Beach Lane – Bike Path Project. Motion was seconded and passed unanimously.**

**Balensifer – aye; Ackley – aye; Newton – aye**

City Manager Engbretson opened the discussion on the library lease, reminding the Commission previous discussion and recommendation that was made at a prior meeting, for the temporary location of 346 S. Main. She stated Library Site Manager Nettie Calog has since become aware of another opportunity at the Serendipity building, which could provide a permanent location for the library and could also include a coffee/espresso bar and a café. The discussion continued on the price difference of the lease and the logistics of a public/private partnership to sub-lease to Serendipity owner, Cheryl Koon for the coffee/food portion of the building. Ms. Koon spoke to how the location would provide a gathering place for the community and went into further detail of the concept of a library/café type setting. Discussion continued on time constraints due to approaching winter weather as well as Coast Guard availability to move the library and the

concern of possibly losing the option of 346 S. Main as a temporary location. There was consensus of the Commission to support the Library Board moving forward to work out the details of the cost breakdown and logistics, and to bring back a formal recommendation and a lease to the Commission.

Mayor Pro tem Balensifer introduced a letter written by Mayor Kujala to ODFW, regarding the recreational fishing industry on the Columbia River and the benefits it brings the City. Mayor Pro tem Balensifer proceeded to read the letter aloud for the record. The Commission stated they are in favor of sending the letter.

**Commissioner Ackley made the motion to approve the Mayors signature on a letter to ODFW; Motion was seconded and passed unanimously.**

**Balensifer – aye; Ackley – aye; Newton - aye**

There being no further business Mayor Pro tem Balensifer adjourned the meeting at 6:50 p.m.

APPROVED:

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Henry Balensifer, Mayor Pro tem

ATTEST:

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Dawne Shaw, Administrative Assistant





# Warrenton Fire Department

P.O. Box 250 Warrenton, OR 97146-0250 503/861-2494 Fax 503/861-2351

5-C

## **STAFF REPORT**

**Date:** November 22, 2016  
**To:** The Members of the Warrenton City Commission  
Linda Engbretson, City Manager  
**From:** Tim Demers, Fire Chief  
**Re:** Fire Department Activity Report for **October, 2016**

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### **October, 2016 Emergency Response Activity -**

The Warrenton Fire Department responded to 98 emergency calls during the month of October, 2016. The department responded to 76 EMS (emergency medical service) calls, 5 motor vehicle crashes, and 11 service calls. There were Six (6) reportable fires during the month. Service calls include alarm activations with no fire, false alarms, hazardous conditions, good intent calls, public assists, etc. An average of 8 volunteers responded per call throughout the month. During the month of October, 54.1%, or 53 of the calls were during daytime hours between 6:00 a.m. and 6:00 p.m. The other 45 calls, or 45.9%, were during the night, between the hours of 6:00 p.m. and 6:00 a.m.

### **October, 2016 Training –**

The department held 4 regularly scheduled Wednesday evening training sessions during the month of October, with an average attendance of 20 volunteers per drill. The department offered three (3) additional training sessions during the month of October.

### **5<sup>th</sup> EMS – Geriatric care**

**Instructor: Chief Demers**

### ***Association business meeting***

### **12<sup>th</sup> Annual SCBA skills evaluation**

**Instructor: Capt. Shepherd**

## **19<sup>th</sup> Annual SCBA skills evaluation**

**Instructors: Capt. Shepherd**

## **26<sup>th</sup> Annual SCBA skills evaluation**

**Instructors: Company Officers**

## **NFPA Firefighter I – task performance practice**

**Instructors: Capt. Shepherd**

5-D



# WARRENTON POLICE DEPARTMENT

## OCTOBER 2016 STATISTICS

NOVEMBER 14, 2016



### News & Events:

- Halloween was calm with no major incidents and no injuries or issues with trick or treaters, etc.
- The RADAR Shop came to the station on November 2<sup>nd</sup> to check calibration on all department radar units and to recertify all of them.
- Chief Workman attended the Warrenton High School Resource Night where several groups and community partners gathered to share what they can provide to special needs students and families.
- On September 3<sup>rd</sup> twelve (12) police officer candidates participated in the ORPAT physical fitness test and the POST written testing. Successful candidates will be invited to the Oral Board process.
- Officer Wirt and Officer Berndt attended the 2016 Oregon Police Officer Association annual training conference in Grand Ronde where they received 24-hours of training. Chief Workman joined Officer Wirt on Friday the 4<sup>th</sup> for the Annual Awards banquet.
- Several department members attended the Public Safety Appreciation Event sponsored by the Warrenton Business Association at Camp Rilea featuring country singer Steve Azar. Chief Workman presented Mr. Azar with several souvenir items from the department.
- On November 9<sup>th</sup> Officer Berndt and Officer Dalrymple did a presentation to a local Cub Scout group on what it is like to be a police officer.
- On November 10<sup>th</sup> ten (10) candidates participated in the Oral Board Process at City Hall. Twelve were invited but two had to drop out. The candidates were scored and the two six (6) will be moving on in the process to the next step (PHQ/CPI questionnaires)
- The top candidates all scheduled times to take the PHQ/CPI and the forms will be sent to the psychologist for review before the next step.

October Statistics (% changes are compared to 2016)							
Category	2016	2015	% Chg	2014	% Chg	2013	% Chg
Calls for Service	<b>557</b>	665	<b>-16%</b>	661	<b>-16%</b>	825	<b>-32%</b>
Incident Reports	<b>133</b>	160	<b>-17%</b>	92	<b>45%</b>	114	<b>17%</b>
Arrests/Citations	<b>50</b>	69	<b>-28%</b>	55	<b>-9%</b>	57	<b>-12%</b>
Traffic Events	<b>122</b>	211	<b>-42%</b>	148	<b>-18%</b>	143	<b>-15%</b>
DUI Calls	<b>1</b>	1	<b>0%</b>	0	<b>100%</b>	5	<b>-80%</b>
Traffic Accidents	<b>13</b>	18	<b>-28%</b>	17	<b>-24%</b>	43	<b>-70%</b>
Property Crimes	<b>64</b>	78	<b>-18%</b>	52	<b>23%</b>	113	<b>-43%</b>
Disturbances	<b>81</b>	52	<b>56%</b>	59	<b>37%</b>	73	<b>11%</b>
Drug/Narcotics Calls	<b>10</b>	2	<b>400%</b>	4	<b>150%</b>	9	<b>11%</b>
Animal Complaints	<b>20</b>	22	<b>-9%</b>	23	<b>-13%</b>	24	<b>-17%</b>
Officer O.T.	<b>160.5</b>	167.8	<b>-4%</b>	48.5	<b>231%</b>	103.5	<b>55%</b>
Reserve Hours	<b>8</b>	73	<b>-89%</b>	59.5	<b>-87%</b>	47.5	<b>-83%</b>



Category	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Calls for Service	637	647	716	685	737	696	763	690	691
Incident Reports	124	125	143	132	160	166	173	146	161
Arrests/Citations	64	69	111	88	113	83	90	63	84
Traffic Events	254	231	260	279	249	179	175	158	199
DUI Calls	2	3	5	2	7	3	2	1	4
Traffic Accidents	16	15	13	24	21	14	18	23	17
Property Crimes	46	68	92	39	58	92	130	78	56
Disturbances	66	58	73	62	76	62	93	76	72
Drug/Narcotics Calls	8	4	6	3	8	4	4	5	9
Animal Complaints	19	18	27	30	29	29	27	40	27
Officer O.T.	148.25	236.75	107.5	45	55.75	57	124.75	137	135
Reserve Hours	30	82	57	125	65	55.5	34	35	32

Oct	Nov	Dec	2016 YTD	2016 Estimate	2015	2016 v 2015	2014	2016 v. 2014	2013	2016 v. 2013
557			6819	8183	8239	-1%	8317	-2%	7132	15%
133			1463	1756	1749	0%	1515	16%	1364	29%
50			815	978	925	6%	994	-2%	841	16%
122			2106	2527	2353	7%	2220	14%	2075	22%
1			30	36	15	140%	14	157%	33	9%
13			174	209	291	-28%	408	-49%	498	-58%
64			723	868	805	8%	1374	-37%	1312	-34%
81			719	863	781	10%	1359	-37%	1372	-37%
10			61	73	42	74%	80	-9%	69	6%
20			266	319	311	3%	318	0%	329	-3%
160.5			1208	1449	1249	16%	997.5	45%	999	45%
8			524	628	901.75	-30%	804.75	-22%	1016	-38%

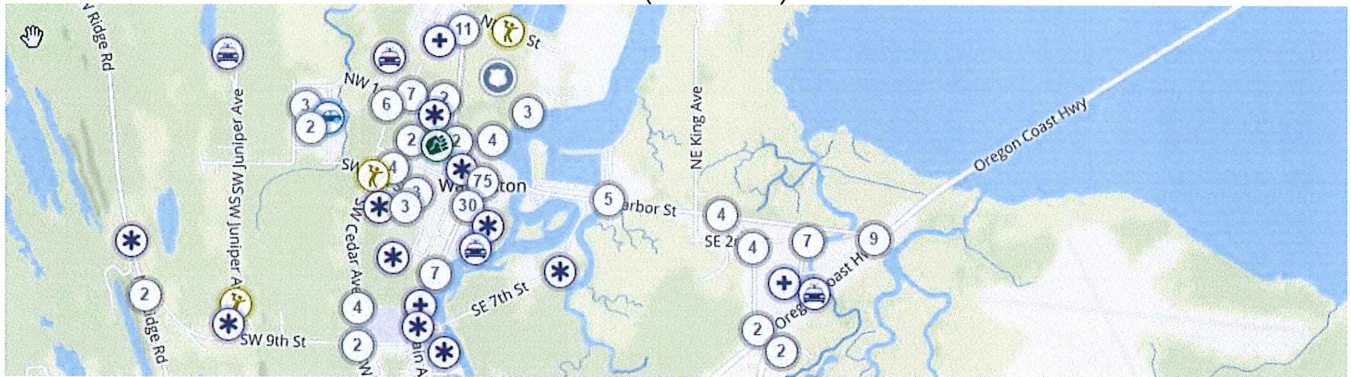
The following is a graphic representation of statistics for October 2016 using our [CrimeReports.com](http://CrimeReports.com) membership. If you go to the website you can zoom in on each incident for more details.



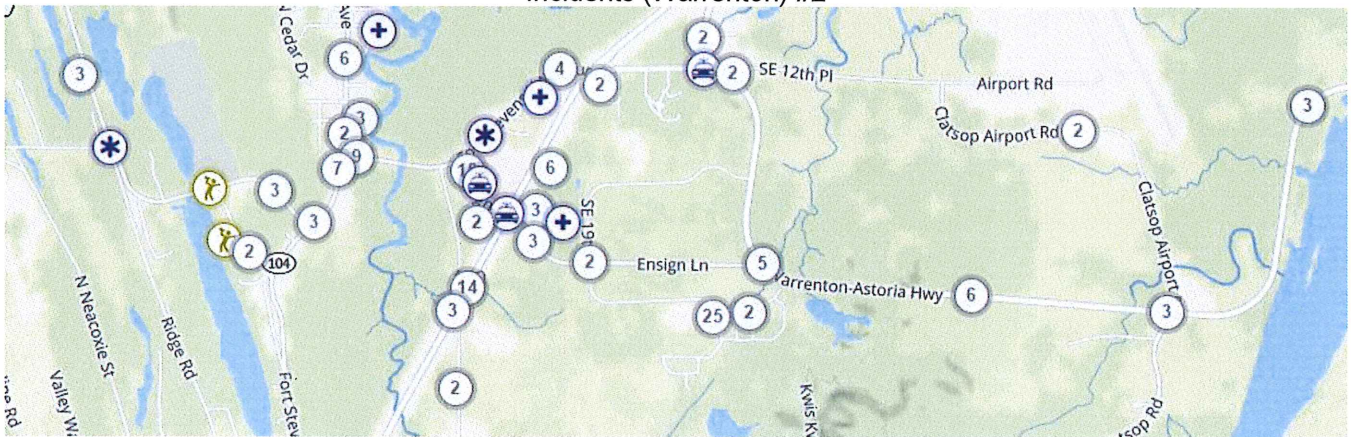




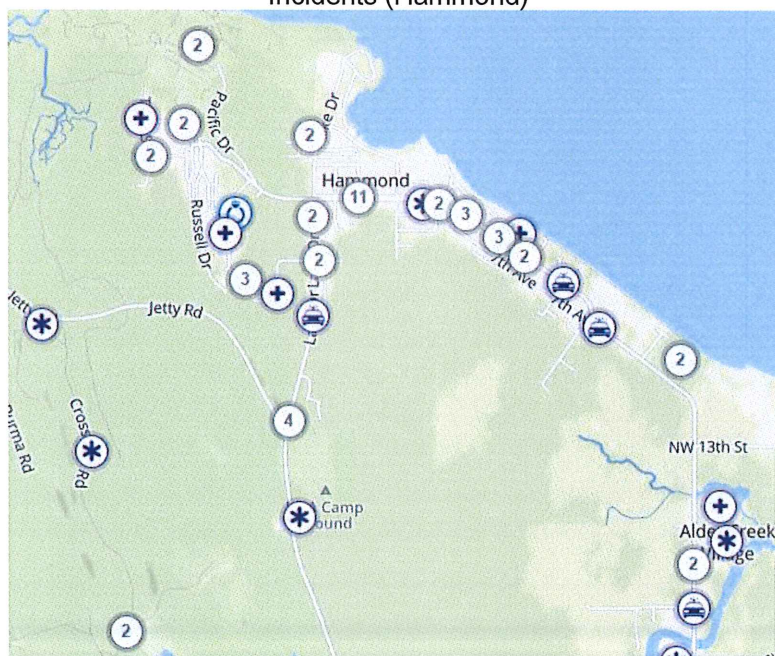
### Incidents (Warrenton) #1



## Incidents (Warrenton) #2



## Incidents (Hammond)





# CITY OF WARRENTON

## FINANCE DEPARTMENT

5-E

Volume 10, Issue 4

### Monthly Finance Report October 2016

November 22, 2016

#### Economic Indicators

	Current	1 year ago
♦ Interest Rates:		
LGIP :	1.03%	.54%
Columbia Bank:	.05%	.05%
♦ Prime Rate:	3.50%	3.25%
♦ CPI-U change:	not avail	0.2%
♦ Unemployment Rates:		
Clatsop County:	not avail	5.5%
Oregon:	5.3%	5.6%
U.S.:	4.9%	5.0%

#### Department Statistics

♦ Utility Bills mailed	3,276
♦ New Service Connections	10
♦ Reminder Letters	445
♦ Door Hangers	102
♦ Water Service Discontinued	13
♦ Walk-in counter payments	884
♦ Mail payments	1,274
♦ Auto Pay Customers/pymts	549
♦ Online (Web) payments	483
♦ Checks Issued	374

#### Current and Pending Projects

♦ M D & A / Audit
♦ SDC Annual Report
♦ Landfill Financial Assurance Report
♦ Warrenton Urban Renewal Agency Annual Report

### Financial Narrative as of October 31, 2016

**Note:** Revenues and expenses should track at 4/12 or 33.3% of the budget.

**General Fund:** Year to date revenues amount to \$1,054,697, which is 28.8% of the budget, compared to the prior year amount of \$1,048,793, which was 29.8% of the budget and are up by \$5,904. Increases are shown in franchise fees, police charges, leases, interest and miscellaneous.

Expenses year to date amount to \$1,314,749, which is 31.5% of the budget, compared to the prior year amount of \$1,277,957, which was 32.4% of the budget. All departments are tracking at or under budget except the Admin/Comm/Fin department which has large expenditures at the beginning of the year and has had unexpected increased spending in Professional Services. A budget adjustment is anticipated from Contingency for this additional spending.

**WBA:** Business license revenue amounts to \$46,395 compared to \$45,285 last year at this time, a difference of \$1,110.

**Building Department:** Permit revenues this month amount to \$13,085 and \$53,580 year to date, which is 25.1% of the budgeted amount. Last year to date permit revenue was \$49,374.

**State Tax Street:** State gas taxes received this month amount to \$30,591 for

fuel sold in September and \$80,038 year to date. City gas taxes received this month amount to \$36,057 for fuel sold in August and are \$68,266 year to date.

**Warrenton Marina:** Total revenues to date are \$389,090, 79.6% of the budgeted amount, compared to the prior year amount of \$404,861 and was 73.8% of the budgeted amount. There is \$45,936 in moorage receivables outstanding.

**Hammond Marina:** Total revenues to date are \$254,925, 93.8% of the budgeted amount, compared to the prior year amount of \$259,901 and was 64.5% of the budgeted amount. There is \$4,531 in moorage receivables outstanding.

Of the total outstanding receivables \$30,545 is over 90 days old.

**Water Fund:** Utility fees charged this month are \$131,772 and \$82,693 and \$611,466 and \$542,311 year to date, for in-city and out-city respectively and totals \$1,153,777 and is 46.48% of the budget. Last year at this time year to date fees were \$534,098 and \$538,607, for in-city and out-city, respectively, and totaled 1,072,705.

**Sewer Fund:** Utility fees charged this month are \$161,682 and \$677,006 year to date, which is 35.9% of the budget. Last year at this time year to date fees were \$616,430. Shoreline Sanitary Fees

year to date are \$37,723. Septage revenue year to date is \$125,333 and is 44.8% of the budget. Total revenues year to date are \$861,793 compared to \$744,545 at this time last year.

**Storm Sewer:** Utility Fees (20% of sewer fees) this month are \$32,326 and \$135,361 year to date and is 35.87% of the budget. Last year to date revenues were \$131,472 which was 37.6% of the budget.

**Sanitation Fund:** Service fees charged this month for garbage and recycling were \$76,677 and \$14,528, and \$308,586 and \$57,974, year to date, and are 36.5% and 34.4% of the budget, respectively.

**Community Center:** Rental revenue to date is \$4,298 and represents 43% of the budget. Total expenses are \$6,338 and total revenues are \$4,750 for a decrease to fund balance of \$1,588.

**Library:** Current year property taxes received this month amount to \$2,132 and is 4.5% of the budget. Property taxes will begin coming in next month.



## Financial data as of October 2016

	General Fund			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	849,116	1,269,879	950,000	133.67
Plus: Revenues	433,465	1,054,697	3,668,832	28.75
Less: Expenditures				
Municipal Court	7,322	36,608	126,320	28.98
Admin/Comm/Fin (ACF)	88,542	463,258	1,006,408	46.03
Planning	11,028	49,812	197,533	25.22
Police	101,566	507,945	1,702,215	29.84
Fire	54,146	211,784	833,463	25.41
Parks	10,150	45,342	171,673	26.41
Transfers	-	-	129,578	-
Total Expenditures	272,754	1,314,749	4,167,190	31.55
Ending Fund Balance	1,009,827	1,009,827	451,642	223.59

(see details of revenue, page 4)

	WBA			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	148,824	137,741	150,850	91.31
Plus: Revenues	2,122	48,338	46,200	104.63
Less: Expenditures	3,188	38,321	155,047	24.72
Ending Fund Balance	147,758	147,758	42,003	351.78

	Building Department			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	248,751	261,655	230,000	113.76
Plus: Revenues	13,421	54,201	213,890	25.34
Less: Expenditures	16,891	70,575	231,551	30.48
Ending Fund Balance	245,281	245,281	212,339	115.51

	State Tax Street			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	1,359,318	1,421,947	1,180,000	120.50
Plus: Revenues	68,113	152,435	799,407	19.07
Less: Expenditures	157,408	304,359	1,842,462	16.52
Ending Fund Balance	1,270,023	1,270,023	136,945	927.40

	Warrenton Marina			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	440,543	195,027	170,000	114.72
Plus: Revenues	2,176	389,090	489,001	79.57
Less: Expenditures	34,533	175,931	614,841	28.61
Ending Fund Balance	408,186	408,186	44,160	924.33



**Financial data as of October 2016, continued**

	Hammond Marina				Water Fund			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	308,666	168,011	170,000	98.83	1,638,903	1,140,492	910,000	125.33
Plus: Revenues	6,575	254,925	271,701	93.83	225,418	1,196,795	4,236,400	28.25
Less: Expenditures	23,654	131,349	389,770	33.70	114,782	587,748	4,761,435	12.34
Ending Fund Balance	<u>291,587</u>	<u>291,587</u>	<u>51,931</u>	<u>561.49</u>	<u>1,749,539</u>	<u>1,749,539</u>	<u>384,965</u>	<u>454.47</u>

	Sewer Fund				Storm Sewer			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	1,665,305	1,369,458	1,300,000	105.34	290,648	284,330	210,000	135.40
Plus: Revenues	204,615	861,793	4,226,699	20.39	32,714	135,491	377,960	35.85
Less: Expenditures	105,591	466,922	4,309,630	10.83	33,848	130,307	532,049	24.49
Ending Fund Balance	<u>1,764,329</u>	<u>1,764,329</u>	<u>1,217,069</u>	<u>144.97</u>	<u>289,514</u>	<u>289,514</u>	<u>55,911</u>	<u>517.81</u>

	Sanitation Fund				Community Center			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	393,967	354,473	375,000	94.53	9,882	11,801	11,000	107.28
Plus: Revenues	91,581	368,651	1,016,132	36.28	1,781	4,750	12,515	37.95
Less: Expenditures	101,417	338,993	1,170,371	28.96	1,450	6,338	21,308	29.74
Ending Fund Balance	<u>384,131</u>	<u>384,131</u>	<u>220,761</u>	<u>174.00</u>	<u>10,213</u>	<u>10,213</u>	<u>2,207</u>	<u>-</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	17,812	31,129	21,000	148.23	2,194,518	42,123	19,154	219.92
Plus: Revenues	2,842	5,105	55,727	9.16	62	2,200,126	4,222,122	52.11
Less: Expenditures	4,134	19,714	60,172	32.76	7,688	55,357	4,241,276	1.31
Ending Fund Balance	<u>16,520</u>	<u>16,520</u>	<u>16,555</u>	<u>99.79</u>	<u>2,186,892</u>	<u>2,186,892</u>	<u>-</u>	<u>-</u>



**Financial data as of October 2016, continued****(\$) Cash Balances as of October, 2016**

General Fund	1,226,241	Warrenton Marina	367,476	Storm Sewer	253,586
WBA	147,786	Hammond Marina	293,053	Sanitation Fund	285,714
Building Department	247,397	Water Fund	1,356,672	Community Center	11,744
State Tax Street	1,278,766	Sewer Fund	1,402,832	Library	17,043

**Warrenton Urban Renewal Agency**

Capital Projects	2,193,833
Debt Service	775,515

General Fund Revenues	Collection Frequency	2016-2017 Budget	Actual as a % of Current Budget	Collections/Accruals Year to date		(over) under budget
				October 2016	October 2015	
Property taxes-current	AP	884,586	4.46	39,488	57,992	845,098
Property taxes-prior	AP	35,000	30.89	10,810	13,103	24,190
County land sales	A	-	0.00	-	-	-
Franchise fees	MA	534,000	19.40	103,583	102,374	430,417
COW - franchise fees	M	124,338	38.24	47,552	43,194	76,786
Transient room tax	Q	462,109	53.87	248,950	255,067	213,159
Liquor licenses	A	625	4.00	25	25	600
State revenue sharing	MQ	125,559	10.98	13,788	20,468	111,771
Municipal court	M	127,175	25.87	32,898	42,468	94,277
Planning charges	I	55,000	18.30	10,063	36,946	44,937
Police charges	I	6,000	40.60	2,436	2,052	3,564
Fire charges	SM	92,481	0.00	-	-	92,481
Park charges	I	-	0.00	250	100	-
Housing rehab loans	I	-	0.00	-	689	-
Miscellaneous	I	1,300	712.15	9,258	7,364	(7,958)
Interest	M	5,000	50.72	2,536	1,600	2,464
Lease receipts	M	209,251	33.36	69,802	46,882	139,449
Donations	I		0.00	-	-	-
<b>Sub-total</b>		<b>2,662,424</b>	<b>22.21</b>	<b>591,439</b>	<b>630,324</b>	<b>2,070,985</b>
Overhead	M	1,006,408	46.03	463,258	418,469	543,150
<b>Total revenues</b>		<b>3,668,832</b>	<b>28.75</b>	<b>1,054,697</b>	<b>1,048,793</b>	<b>2,614,135</b>

M - monthly

S - semi-annual

Q - quarterly

I - intermittently

SM - Semi-annual in November then monthly

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

AP - As paid by taxpayer beginning in November

R - renewals due in July and new licenses intermittently

MA - pacificorp-monthly, Century Link-quarterly, others annually in March 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, 2017. Budget amounts reflect budget adjustments approved by the Commission during the fiscal year. Information and data presented in this report is unaudited.

## 2016 Upcoming Committee/Board Vacancies

<u>Seat</u>	<u>Name</u>	<u>Term</u>	<u>New Term End Date</u>
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### Budget Committee

1.	Debbie Morrow	12/31/16	12/31/19
√ 5.	Ed Wegner	12/31/16	12/31/19

### Planning Commission Board

√ 1.	Vince Williams	12/31/16	12/31/20
√ 2.	Christine Bridgens	12/31/16	12/31/20

### Community Center Board

1.	Frank Becker, <b>Chair</b>	12/31/16	12/31/20
4.	Lorna Anderson	12/31/16	12/31/20

### Warrenton Parks Advisory Board

3.	<b>VACANT</b>	12/31/16	12/31/19
√ 4.	Bert Little	12/31/16	12/31/19
7.	<b>VACANT</b>	<u>12/31/17</u>	

### Warrenton Community Library Board

4.	Jill Benish	12/31/16	12/31/20
5.	Baret Murphy-Becker	12/31/16	12/31/20
6.	Douglas Rich	12/31/16	12/31/20
7.	Judy Sivley	12/31/16	12/31/20

### Warrenton Business Association

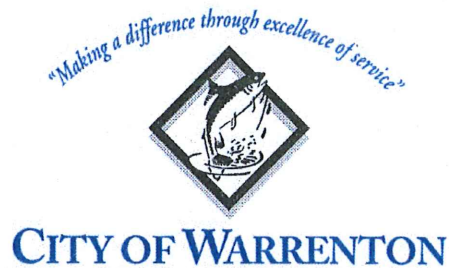
4.	Kristin Talamantez	12/31/16	12/31/19
5.	Pat O'Grady	12/31/16	12/31/19
6.	Steve Fulton	12/31/16	12/31/19

### Urban Renewal Advisory Committee

√ 1.	Bob Bridgens	12/31/2016	12/31/18
2.	Gerald Poe	12/31/2016	12/31/18
√ 3.	Frida Fraunfelder	12/31/2016	12/31/18

√ = Application received

6-A



## AGENDA MEMORANDUM

TO: The Warrenton City Commission  
FROM: Dawne Shaw, Administrative Assistant  
DATE: November 16, 2016  
SUBJ: Ordinance No. 1210A

### SUMMARY

The Commission initiated a street vacation on October 11, 2016 and held a Public Hearing on November 8, 2016. The proposed area for vacation is SE Galena that runs from SE 14<sup>th</sup> Place, south for a distance of 361.2 feet, in Block 2, Tract 3 of Chelsea. Staff has prepared an Ordinance for first reading.

### RECOMMENDATION/SUGGESTED MOTION

*"I move to conduct the first reading, by title only, of Ordinance No. 1210-A;  
Vacating a Portion of SE Galena Avenue in Warrenton, Oregon."*

### ALTERNATIVE

Not to proceed or other action as deemed appropriate by the City Commission

**FISCAL IMPACT**

**Property will go on County Tax Rolls**

Approved by City Manager:

*Lme*

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



ORDINANCE NO. 1210A

INTRODUCED BY ALL COMMISSIONERS

VACATING A PORTION OF SE GALENA AVENUE  
IN WARRENTON, OREGON

WHEREAS, The Warrenton City Commission deems it to be in the best interest of the City to vacate a portion of SE Galena Avenue in the City of Warrenton, County of Clatsop, State of Oregon; and

WHEREAS, a public hearing on the petition was held at the hour of 6:00 p.m. on Tuesday, November 8, 2016, in the Commission's Chambers at Warrenton City Hall; and

WHEREAS, due notice of time and place for said hearing was given, as by law required;

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

**Section 1.** The public right-of-way in the City of Warrenton, Clatsop County, State of Oregon, described as:

That portion of SE Galena Avenue that runs from SE 14<sup>th</sup> Place south for a distance of 361.2 feet in Block 2, Sub Tract 3 of Chelsea between tax lots 81027BC 01700 81027 BC 01600; 81027BC 02100, 81027BC 02200 and 81027BC 01500

is hereby vacated. Nothing contained herein shall cause or require the removal or obstruction of any drainage ditch, abandonment of any sewer, water main conduit, utility line, pole or any other thing used or intended to be used for any public service.

**Section 2.** The City Recorder of the City of Warrenton is hereby ordered to make this vacation a matter of public record; and it is expressly provided that the petitioner shall forthwith pay the costs of the necessary changes of public records, as required by law, and it is hereby provided that the City Recorder shall file with the clerk, the assessor, and the surveyor of Clatsop County, a certified copy of this ordinance.

**Section 3.** This ordinance will take effect 30 days after its adoption by the Warrenton City Commission.

Adopted by the City Commission of the City of Warrenton, Oregon this \_\_\_\_\_ day of December, 2016.

First Reading: November 22, 2016  
Second Reading: December , 2016

APPROVED:

\_\_\_\_\_  
Mark Kujala, Mayor

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

\_\_\_\_\_  
Dawne Shaw, Administrative Assistant

6-B

*"Making a difference through excellence of service"*



**CITY OF WARRENTON**

## **AGENDA MEMORANDUM**

TO: The Mayor and Warrenton City Commission  
FROM: Linda Engbretson, City Manager  
DATE: November 22, 2016  
SUBJ: NW Natural Gas Request for Franchise

### **SUMMARY**

The City has received a request from NW Natural Gas to renegotiate its Franchise Agreement (expired September 2016). In 2011, the City began the process of instituting a right of way ordinance which basically eliminates the need to negotiate franchise agreements with utilities (except cable required by federal law) and provides a uniform code for all utilities to follow. The City worked with legal counsel Nancy Werner, with Beery Elsner & Hammond, who worked with the League of Oregon Cities in developing a model ordinance. The City held work sessions and meetings beginning in July 2011 and finally a public hearing in April of 2012 prior to adoption of the ordinance. Utility companies were involved throughout the process and presented their concerns which were considered. The ordinance established standards for use of the city's rights of way making it part of the municipal code. There are several advantages to the City, including avoiding the time and expense to negotiate franchise agreements with each company.

I have attached NW Natural's letter outlining their reasons for the request to enter into a new franchise agreement, Ms. Werner's response to each bullet point, a copy

of the City's right of way license application, the privilege tax resolution and Chapter 12.32, *Public Rights of Way*, of the City's Municipal Code.

#### RECOMMENDATION/SUGGESTED MOTION

The City went through a thorough process when considering the adoption of this ordinance. I recommend that NW Natural Gas be required to apply for a Utility Right of Way License and follow Warrenton's Municipal Code, Chapter 12.32.

#### ALTERNATIVE

Other action as deemed appropriate by the City Commission

#### FISCAL IMPACT

No change. The current franchise agreement requires 5% of their gross revenues be paid to the City. The Privilege tax is the same.

Approved by City Manager



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

Hi Linda:

- I wanted to follow up with you on why NW Natural would prefer to renew its franchise with the City, in lieu of the ROW ordinance. The ROW ordinance leaves open the option for the City to consider franchise agreements with its utility partners, and NWN believes that both its longstanding relationship with the City and its long-term investment by the nature of its services and operation, along with the particular obligations of a gas utility compared to other utilities, are all reasons a franchise would work better for both parties here. With the ROW ordinance, the additional process / administrative requirements imposed on NWN (in particular, the licensure processes and financial assurance requirements) are costly and would not improve either on safety or efficient delivery of NWN's services to City residents.
- NW Natural has found that franchises generally promote more open communication with and regarding cities' financial, logistical and infrastructure needs, while providing for NW Natural's strict regulatory requirements and unique attributes, especially compared to one-size-fits-all ROW ordinances given the differences in gas versus other utilities.
- The promotion of equity among all utilities is often raised as a reason for ROW ordinances over franchises. NW Natural respectfully notes the marked differences between the various utilities subject to this ordinance, not only in the nature of the services they deliver, but also their divergent and industry-specific regulatory schemes. A one-size-fits-all approach does not adequately account for these differences.
  - For example, the Telecommunications Act of 1996 mandates that City franchising/right-of-way regulations applicable to telecommunications providers maintain competitive neutrality to encourage competition and decrease barriers to market entry as new telecommunication companies enter the market. In contrast, NW Natural's service territory is allocated to it alone and its rates are regulated by the Oregon Public Utility Commission (OPUC). There are no issues of competitive neutrality because there is no direct competition, and the City has flexibility to customize a franchise that recognizes NW Natural's unique service and the regulatory structure under which it operates.
- We understand that ROW ordinances also strive to streamline processes for cities, particularly those that commonly arise from multiple uses/users of a city's rights-of-way. It seems in many if not most instances, such issues are caused by companies new to the areas, without firm ties to the particular communities or undergoing corporate changes in control. Given NWN's long history in Oregon, and its 50 years in Warrenton, NWN has not only well-established ties in the community but also long-standing interests and investments in the City. We will work with you to resolve concerns promptly and are committed to serving the City's and its residents' natural gas needs.
- The ROW ordinance's licensure requirements, specifically the business license and Utility ROW license (renewable annually and every 5 years respectively), add process and administrative burdens to NWN without gains in safety or efficient delivery of services to Warrenton customers. The basic method of delivering natural gas hasn't changed significantly in over 150 years since NW Natural first began providing services, and the investments made by NW Natural in the City's rights-of-way are significant, long term investments designed to serve Warrenton for decades. An annual registration requirement or every 5 year ROW license requirement are at odds with this long-term investment. A franchise (typically 10 years in length) provides certainty to NW Natural's customers,

the public, investors and comfort to its lenders. This certainty enables NW Natural to provide better and more cost-effective service to its customers.

- The additional fees outlined in the Ordinance, such as the registration fee, permit / license fees will ultimately be fees/costs passed on to its residents. Likewise, requiring a PUC-approved utility with a 150+ year history of performance to post a 100% bond for each project is an expensive and unnecessary requirement, and could significantly hinder our operations, and such a requirement unnecessarily increases costs that will be passed through to customers in utility rates. We respectfully submit that NW Natural should be exempt from such a requirement, or there should be a credit-worthiness or past performance exception, and this would be easily addressed in a franchise agreement.
- Of some concern as well is the definition of gross revenues in the ordinance, which does not contain the some of the longstanding exclusions in NWN franchise with Warrenton and the other cities we serve (See Section 13 of the Warrenton Franchise versus Resolution No. 2365 setting privilege tax rate). These exclusions are to ensure that the franchise fees paid for the use of the ROW are tied to the use of the ROW; the ordinance has instead placed an overly broad definition of Gross Revenue for the privilege tax.
- While the current NWN/Warrenton franchise does not have any specifics on insurance requirements, we would have not object to incorporating these requirements into a franchise agreement. In fact, the insurance level/coverage requirements are similar to those we have in multiple other franchise agreements.
- Another concern of NW Natural, which operates in over 96 cities, is that with an ordinance in lieu of a franchise, a city may also make unilateral changes without the knowledge of its licensees, effectively forcing the licensee out of compliance without the licensee's knowledge or a reasonable opportunity to conform. It is not a question of NWN intentionally trying to not comply or any intent by the city to cause such an effect; it is just that a franchise provides more surety to both parties.
- Requiring a PUC-Approved Utility with a 150+ year history of performance to post a 100% bond for

In summary, NW Natural remains committed to working with Warrenton to provide consistent, cost-effective and safe natural gas. It is our hope that we can continue to work with the City to negotiate mutually-beneficial franchise agreements as we have done for the past 50 years.

Thank you for your consideration and we look forward to continuing our long collaborative relationship with the City.



- I wanted to follow up with you on why NW Natural would prefer to renew its franchise with the City, in lieu of the ROW ordinance. The ROW ordinance leaves open the option for the City to consider franchise agreements with its utility partners, and NWN believes that both its longstanding relationship with the City and its long-term investment by the nature of its services and operation, along with the particular obligations of a gas utility compared to other utilities, are all reasons a franchise would work better for both parties here. With the ROW ordinance, the additional process / administrative requirements imposed on NWN (in particular, the licensure processes and financial assurance requirements) are costly and would not improve either on safety or efficient delivery of NWN's services to City residents.

RESPONSE: The ROW Ordinance allows the City to grant a franchise to “clarify, enhance, expand, waive or vary the provisions of [the ROW Ordinance]” when “the public interest warrants.” In my opinion, nothing in NW Natural’s request shows the public interest in varying the terms of the ROW Ordinance. As stated in a Memorandum provided to the Council prior to adopting the ROW Ordinance, “[t]he fundamental policy question here is whether to shift to Code provisions that are uniform for all utilities or to continue to negotiate individual franchise agreements with each utility.” The adoption of the ROW Ordinance reflects the policy decision to strive for uniform requirements for all utilities using the rights of way in the City. Unless there is a compelling reason, I do not recommend overlooking that policy for any utility.

- NW Natural has found that franchises generally promote more open communication with and regarding cities' financial, logistical and infrastructure needs, while providing for NW Natural's strict regulatory requirements and unique attributes, especially compared to one-size-fits-all ROW ordinances given the differences in gas versus other utilities.

RESPONSE: It is not clear why a franchise would promote more open communication than a license. Perhaps NW Natural is referring to communication during the franchise negotiation process. If that is the case, such communication can be achieved through meetings between City staff and NW Natural to discuss the new license and any other pertinent issues. As discussed more fully below, the ROW Ordinance accounts for differences between utilities. The current NW Natural franchise does not include “gas-specific” provisions, so it is unclear why the differences between gas and other utilities raises a concern.

- The promotion of equity among all utilities is often raised as a reason for ROW ordinances over franchises. NW Natural respectfully notes the marked differences between the various utilities subject to this ordinance, not only in the nature of the services they deliver, but also their divergent and industry-specific regulatory schemes. A one-size-fits-all approach does not adequately account for these differences.
  - For example, the Telecommunications Act of 1996 mandates that City franchising/right-of way regulations applicable to telecommunications providers maintain competitive neutrality to encourage competition and decrease barriers to market entry as new telecommunication companies enter the market. In contrast, NW Natural's service territory is allocated to it alone and its rates are regulated by the Oregon Public Utility Commission (OPUC). There are no issues of competitive neutrality because there is no direct competition, and the City has flexibility to customize a franchise that recognizes NW Natural's unique service and the regulatory structure under which it operates.



RESPONSE: NW Natural has not provided a concrete example of a requirement of the ROW Ordinance that would be problematic for it to comply with as a natural gas company. The ROW Ordinance was drafted to apply to all utilities (as defined therein) and I am not aware of any example from the multiple jurisdictions that have implemented a similar ordinance demonstrating that it cannot effectively apply to all of them. While different utilities may have different legal and regulatory requirements, the ROW Ordinance requires compliance with “applicable Federal, State and local laws, codes, ordinances, rules and regulations” so that it works for all utilities. (This is consistent with the current NW Natural franchise, which does not appear to contain references to any gas-specific laws or regulations.)

Further, the Telecommunications Act of 1996 does not mandate competitive neutrality, and in any event “competitive neutrality” is not among the purposes of the ROW Ordinance as stated in WMC 13.32.010. Rather, the City’s policy objectives in establishing the ROW Ordinance appear to be uniformity and efficiency that result in better management of the limited capacity of the public rights of way. A franchise agreement with NW Natural would not likely meet those objectives.

- We understand that ROW ordinances also strive to streamline processes for cities, particularly those that commonly arise from multiple uses/users of a city's rights-of-way. It seems in many if not most instances, such issues are caused by companies new to the areas, without firm ties to the particular communities or undergoing corporate changes in control. Given NWN's long history in Oregon, and its 50 years in Warrenton, NWN has not only well-established ties in the community but also longstanding interests and investments in the City. We will work with you to resolve concerns promptly and are committed to serving the City's and its residents' natural gas needs.

RESPONSE: One of the primary issues the ROW Ordinance addresses is ensuring the City has up-to-date and consistent standards and regulations for utility work in the City’s rights of way. This issue is not unique to new companies; virtually all utilities work in the rights of way whether it is installation of new facilities or maintenance and repair of older facilities. A utility’s longstanding presence in the City should have no bearing on its ability and willingness to comply with the City’s adopted regulations and standards, including the ROW Ordinance.

- The ROW ordinance's licensure requirements, specifically the business license and Utility ROW license (renewable annually and every 5 years respectively), add process and administrative burdens to NWN without gains in safety or efficient delivery of services to Warrenton customers. The basic method of delivering natural gas hasn't changed significantly in over 150 years since NW Natural first began providing services, and the investments made by NW Natural in the City's rights-of-way are significant, long term investments designed to serve Warrenton for decades. An annual registration requirement or every 5 year ROW license requirement are at odds with this long-term investment. A franchise (typically 10 years in length) provides certainty to NW Natural's customers, the public, investors and comfort to its lenders. This certainty enables NW Natural to provide better and more cost-effective service to its customers.

RESPONSE: It appears that the annual business license requirement referenced above is based on WMC 12.32.050(C), which requires contractors to have a business license prior to the City granting a permit to work in the rights of way. This requirement existed in the prior version of the Code at WMC 12.32.080, and thus is not a new requirement. NW Natural and its



contractors should have been complying with this requirement both before and after the adoption of the ROW Ordinance.

With respect to the license requirement, this actually removes the “process and administrative burdens” required of a franchise negotiation. Franchise negotiations can take months and will include staff and possibly legal counsel time and thus costs for both parties. The license application is short and simple. While the term of the license is 5 years rather than 10 years, given the simplicity of the process, the shorter term should not be an issue.

It is difficult to see how a license that is renewed through a simple application process every five years poses more of a threat to the long term investment NW Natural made in the City over 50 years ago than franchise negotiations. There is no reason to believe the City would deny NW Natural’s license request, and the terms of the license always will be clearly laid out in the Municipal Code. By contrast, a franchise requires negotiations that do not provide any certainty as to what the final terms will be and leave as much, if not more, room for the City to deny a franchise request than denying a license. Finally, there is no indication of any kind, either in Warrenton or the other Oregon cities with similar ROW ordinances, that the license requirement impacts service to customers.

- The additional fees outlined in the Ordinance, such as the registration fee, permit / license fees will ultimately be fees/costs passed on to its residents. Likewise, requiring a PUC-approved utility with a 150+ year history of performance to post a 100% bond for each project is an expensive and unnecessary requirement, and could significantly hinder our operations, and such a requirement unnecessarily increases costs that will be passed through to customers in utility rates. We respectfully submit that NW Natural should be exempt from such a requirement, or there should be a credit-worthiness or past performance exception, and this would be easily addressed in a franchise agreement.

RESPONSE: There is no registration fee in the ROW Ordinance. (Several other cities have registration fees in their ROW ordinances, which may be the source of this concern.) The existing NW Natural franchise authorizes the City to require permits and many Oregon cities require payment of permit fees. There is no indication that, if Warrenton imposes a permit fee, it will have any impact on gas rates. Assuming the “license fee” refers to the license application fee, this amount (which I believe is \$50.00) is far lower than staff/attorney time and costs NW Natural would incur in a franchise negotiation.

With respect to the bond requirement, the prior version of WMC 12.32, before the ROW Ordinance amendments, required a bond or other surety prior to performing work in the right of way. This requirement is not new relative to other utilities (though it is not expressly required in NW Natural’s current franchise). It is designed to protect the right of way by providing funds the City can access if a utility fails to properly complete its work and restore the right of way, and I recommend the City retain the ability to require it.

Note that WMC 12.32.050.N.1 imposes the bond requirement unless “otherwise provided in a franchise agreement *or agreed to in writing by the City.*” The italicized portion of this provision would allow the City to waive the bond requirement for some or all of NW Natural’s projects if the City believes a bond is not needed to ensure proper work and restoration, and it could do so by a simple letter to NW Natural rather than through a franchise.

- Of some concern as well is the definition of gross revenues in the ordinance, which does not contain the some of the longstanding exclusions in NWN franchise with Warrenton and the other cities we serve (See Section 13 of the Warrenton Franchise versus Resolution No. 2365 setting privilege tax rate). These exclusions are to ensure that the franchise fees paid for the use of the ROW are tied to the use of the ROW; the ordinance has instead placed an overly broad definition of Gross Revenue for the privilege tax.

RESPONSE: I disagree that the exclusions in the current franchise are intended to ensure fees are tied to use of the rights of way. The exclusions include revenue from space and water heating equipment, wholesale sales, and revenue from the United State government. To the extent NW Natural receives revenue from these services, it is solely because of NW Natural's system in the City's rights of way. To the extent NW Natural leases water heaters, it does so to its customers, which it serves via its facilities in the rights of way. If any wholesale transactions occur in the City, it is because of the facilities in the rights of way that NW Natural can provide gas to its wholesale customer. Obviously the United State government, if it is a customer in Warrenton, would be served via the facilities in the rights of way as well. In short, all of these exclusions would exclude revenue that is directly linked to the fact that NW Natural has facilities in the City's rights of way that enable it to provide service.

Many current franchise agreements define "gross revenues" to include all revenue from the operation of the utility system in the city without the types of deductions in the current franchise. Thus, even if the City were to negotiate a franchise with NW Natural, I would recommend the City adopt a broad definition of gross revenues in the franchise that does not include these exclusions.

- While the current NWN/Warrenton franchise does not have any specifics on insurance requirements, we would have [sic] not object to incorporating these requirements into a franchise agreement. In fact, the insurance level/coverage requirements are similar to those we have in multiple other franchise agreements.

RESPONSE: Given that the insurance requirements in the ROW Ordinance are acceptable, this is not an issue that warrants granting NW Natural a franchise.

- Another concern of NW Natural, which operates in over 96 cities, is that with an ordinance in lieu of a franchise, a city may also make unilateral changes without the knowledge of its licensees, effectively forcing the licensee out of compliance without the licensee's knowledge or a reasonable opportunity to conform. It is not a question of NWN intentionally trying to not comply or any intent by the city to cause such an effect; it is just that a franchise provides more surety to both parties.

RESPONSE: NW Natural is correct that the City can change the terms of the ROW Ordinance and require compliance with the revised terms. This ability to change the terms is one of the advantages of the ROW Ordinance because it allows the City to implement best practices as those change over time, rather than relying on franchise terms that may be out of date before the franchise expires. It also ensures that all utilities follow the same regulations. With franchise agreements, each utility has its own set of negotiated regulations that likely are



different from the other utilities, making enforcement more difficult and undermining the City's ability to ensure consistent, up-to-date standards for work and restoration of the rights of way.

The City should promptly inform all utilities of the intended changes and the effective date of any changes to ensure compliance. This should address NW Natural's concern.

City of Warrenton  
225 S. Main Ave.  
Warrenton, OR 97146  
(503) 861-2233

## UTILITY RIGHT OF WAY LICENSE APPLICATION

Pursuant to Chapter 12.32 of the Warrenton Municipal Code, unless a person has a valid franchise from the City, every person who owns or controls any utility facilities (as defined in the Code) in, upon, beneath, over or across any public right of way (ROW), and prior to constructing, placing or locating any utility facilities in the ROW, shall obtain a license from the City.

**Instructions:** Please provide all information requested below, including applicable application fees, to Finance Department. The application must be signed by an authorized representative of the entity requesting a license.

The City will review the information and return an executed copy of the application, if approved. The copy of the license application executed by the City will serve as the license required by Chapter 12.32.

For additional information, please contact \_\_\_\_\_.

### Applicant Information:

1. Applicant Name (Include Corporate Name Registered with Oregon Secretary of State as well as any DBAs and Affiliates that will construct, own or control any facilities in the ROW):  
\_\_\_\_\_  
\_\_\_\_\_
2. Applicant's Authorized Contact Name(s), Title, Postal and E-Mail Address, and Phone and Facsimile Numbers: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Please describe the facilities to be constructed or operated. Include the following information: (a) the general location of the existing and/or proposed facilities; (b) a description of the approximate number of feet of plant existing and/or to be installed in the ROW; (c) whether the facilities are or will be aerial or underground; and (d) the size of facilities and equipment that are or will be located in, on, under, over, or above the ROW.  
\_\_\_\_\_

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4. Check all of the following that apply regarding the services to be provided over the facilities in the ROW:

- ☐ Cable Service
- ☐ Telecommunications Services
- ☐ Natural gas
- ☐ Electricity
- ☐ Water
- ☐ Other: \_\_\_\_\_

5. Please attach documentation or a statement that demonstrates that the applicant has received or is legally qualified to receive authorizations from state and/or federal authorities necessary to conduct the activities that will require use of the ROW.

☐ Check box if no authorizations required

By executing this License, the undersigned affirms that he/she is an authorized representative of \_\_\_\_\_ ("Licensee") with the authority to execute this License Application. I hereby certify, on behalf of Licensee, that the information provided in the license application is true and correct as of the date hereof, and that Licensee agrees to abide by the obligations set forth in Chapter 12.32 of the Warrenton Municipal Code.

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

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

The City hereby grants to Licensee the License required pursuant to Chapter 12.32 of the Warrenton Municipal Code.

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

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

RESOLUTION NO. 2365

Introduced by All Commissioners

TO ESTABLISH PRIVILEGE TAXES FOR UTILITIES OPERATORS WITHIN THE CITY  
OF WARRENTON RIGHT-OF-WAY

WHEREAS, Warrenton Municipal Code (WMC) Chapter 12.32 Rights-of-Way establishes a privilege tax and license application fee with the rates of each to be set by Commission resolution; and

WHEREAS, the City of Warrenton desires to set the privilege tax rate and license application fees established in Chapter 12.32.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

**Section 1:** The privilege tax established in WMC 12.32.120 is hereby set at the following rates for each type of utility service listed below:

1) Electric

Privilege Tax: 5% of gross revenues defined as any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles.

2) Cable

Privilege Tax: 5% of gross revenue as defined in the franchise granted to Cox Cablevision by Ordinance 791-A.

3) Natural Gas

Privilege Tax: 5% of gross revenues defined as any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles.

4) Telecommunications Utilities (as defined in ORS 759.005)

Privilege Tax: 7% of gross revenue as defined in ORS. 221.515

5) Utility Operators (as defined in SMC 12.16.050) Not Listed Above

Privilege Tax: 5% of gross revenues defined as any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles.

**Section 2:** The license application fee established in WMC 12.32.060 is \$50.00.


**Section 3:** This resolution is and shall be effective from and after its passage by the Council.

ADOPTED by the City Commission of the City of Warrenton this 22nd day of May 2012.

APPROVED:

  
Karl R. Hellberg, Mayor

ATTEST:

  
Linda Engbertson, City Recorder



## **EXHIBIT A**

### **Chapter 12.32 PUBLIC RIGHTS OF WAY**

#### **12.32.010 Purpose and Intent.**

The purpose and intent of this chapter is to:

- A. Permit and manage reasonable access to the rights of way of the City for utility purposes and conserve the limited physical capacity of those rights of way held in trust by the City consistent with applicable state and federal law;
- B. Assure that the City's current and ongoing costs of granting and regulating access to and the use of the rights of way are fully compensated by the persons seeking such access and causing such costs;
- C. Secure fair and reasonable compensation to the City and its residents for permitting use of the rights of way;
- D. Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the City comply with the ordinances, rules and regulations of the City;
- E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
- F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City; and
- G. Comply with applicable provisions of state and federal law.

#### **12.32.020 Jurisdiction and Management of the Public Rights of Way.**

- A. The City has jurisdiction and exercises regulatory management over all rights of way within the City under authority of the City charter and state law.
- B. The City has jurisdiction and exercises regulatory management over each right of way whether the City has a fee, easement, or other legal interest in the right of way, and whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. The exercise of jurisdiction and regulatory management of a right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.
- D. The provisions of this chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

#### **12.32.030 Regulatory Fees and Compensation Not a Tax.**

- A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the rights of way provided for in this chapter, are separate from, and in addition to, any and all other federal, state, local, and City charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.
- B. The City has determined that any fee or tax provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this chapter are subject to applicable federal and state laws.

#### **12.32.040 Definitions.**

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

"Cable service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"City facilities" means City owned or operated structures or equipment located within the right of way or public easement used for governmental purposes.

"Communications services" means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. "Communications service" includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights of way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

"License" means the authorization granted by the City to a utility operator pursuant to this chapter.

"Permittee" means any person to whom the City has issued a valid permit pursuant to WMC 12.32.050 and includes any person who is subject to the permit requirement of WMC 12.32.050 regardless of whether or not such person applied for or obtained the required permit. For work performed on behalf of a utility operator, "permittee" shall include the utility operator in addition to the person to whom the City issued the permit.

"Private communications system" means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private communications system" includes services provided by the state of Oregon pursuant to ORS 190.240 and 283.140.

"Public utility easement" means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

"Public Works Director" shall mean the person acting as the head of the City's public works department or his or her designee.

"Right of way" means and includes, 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 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 City's right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

"State" means the state of Oregon.

"Utility facility" or "facility" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights of way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service. "Utility facility" does not include City facilities.

"Utility operator" or "operator" means any person who owns, places, operates or maintains a utility facility within the City. The City shall not be considered a "utility operator" for purposes of this chapter.

"Utility service" means the provision, by means of utility facilities permanently located within, under or above the rights of way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the City, and/or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions. "Utility service" does not include City owned or operated utility services.

"Work" means construction, reconstruction, grading, oiling, repairing, opening or excavating in or on the right of way. "Work" also includes the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

#### **12.32.050 City Permit Required.**

A. No person shall do work affecting the right of way without first obtaining a permit from the Public Works Department. The permit requirement does not apply to City utilities or to the construction of improvements performed under City contract unless such contract expressly requires City permits.

B. No person shall perform any work on utility facilities within the rights of way without first obtaining all required permits, including but not limited to a permit from the Public Works Director. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received the license required by this chapter, or has a current franchise with the City, and all applicable fees have been paid.

C. The permit shall be issued only to a duly licensed bonded contractor holding a current City of Warrenton business license with proof of current liability and workers compensation insurance, except that a property owner who is not a licensed contractor may receive a permit under the following conditions:

1. The total value of the work is not to exceed One Thousand Dollars (\$1,000).
2. No excavation shall exceed one foot in depth.

3. Excavations shall be in the area between the back of the curb and right of way/property line boundary.
4. No existing improvements other than sidewalks and/or driveway approaches are to be disturbed.
5. A security deposit of One Thousand Two Hundred Dollars (\$1,200) in the form of cash or certified check shall be required under the restoration of the work area at the discretion of the Public Works Director. In the event that restoration is not satisfactory, the deposit shall be retained by the City to defray the cost of restoration by the Public Works Department.

D. In the event of an emergency, a utility operator with a license pursuant to this chapter or its contractor may perform work on its utility facilities without first obtaining a permit from the City, provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable, but not more than forty eight (48) hours after commencing the emergency work. As used in this subsection D, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

E. Applications for permits to work in the right of way shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate that the facilities will be constructed in accordance with all applicable codes, rules and regulations, including but not limited to the most current revision of the City of Warrenton Public Works specifications. The drawings, plans and specifications accompanying applications for permits to construct or work on utility facilities shall also demonstrate:

1. The location and route of all utility facilities to be installed aboveground or on existing utility poles.
2. The location and route of all utility facilities on or in the rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the rights of way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. A cross section shall be provided showing new or existing utility facilities in relation to the street, curb, sidewalk or right of way.
3. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the rights of way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

F. A permit applicant shall provide the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

G. All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the Public Works Director.

H. Prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the Commission.

I. If satisfied that the applications, plans and documents submitted comply with all requirements of this chapter, the Public Works Director shall issue a permit authorizing the work, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

J. Except in the case of an emergency, the permittee shall notify the Public Works Director not less than two (2) working days in advance of any excavation or construction in the rights of way.

K. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications. The Public Works Director shall be provided access to the work site and such further information as the Public Works Director may require to ensure compliance with such requirements.

L. All work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter, shall be removed at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provision of this chapter.

M. The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All work within the rights of way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance of the permit unless an extension or an alternate schedule has been approved by the Public Works Director.

N. Performance Surety.

1. Unless otherwise provided in a franchise agreement or agreed to in writing by the City, a performance bond or other form of surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of the work within the rights of way of the City shall be provided before construction is commenced.
2. The performance bond or other form of surety acceptable to the City shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the Public Works Director, including restoration of rights of way and other property affected by the construction.
3. The performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:
  - a. Timely completion of the work;
  - b. That the work is performed in compliance with applicable plans, permits, technical codes and standards;
  - c. Proper location of the work and/or utility facilities as specified by the City;
  - d. Restoration of the rights of way and other property affected by the work; and
  - e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

O. Injury to Persons or Property. The permittee shall preserve and protect from injury or damage all facilities in the rights of way, the public using the rights of way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. The permittee shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

P. Restoration.

1. The permittee shall, at its own expense, promptly restore such ways or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the City and as determined by the Public Works Director.
2. If weather or other conditions beyond the permittee's control do not permit the complete restoration required by the City, the permittee shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.
3. If the permittee fails to restore rights of way or property as required in this chapter, the City shall give the permittee written notice and provide the permittee a reasonable period of time not less than ten (10) days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the permittee fails to restore the rights of way or property as required in this chapter, the City shall cause such restoration to be made at the expense of the permittee.

#### **12.32.060 Licenses.**

##### **A. License Required.**

1. Except those utility operators with a valid franchise agreement from the City, every person shall obtain a license from the City prior to conducting any work in the rights of way.
2. Every person that owns or controls utility facilities in the rights of way as of the effective date of this chapter shall apply for a license from the City within forty-five (45) days of the later of: (1) the effective date of this chapter, or (2) the expiration of a valid franchise from the City, unless a new franchise is granted by the City pursuant to subsection E of this section.

**B. License Application.** The license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.

**C. License Application Fee.** The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the Commission in an amount sufficient to fully recover all of the City's costs related to processing the application for the license.

**D. Determination by City.** The City shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this chapter, the continuing capacity of the rights of way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

**E. Franchise Agreements.** If the public interest warrants, the City and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or

vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of Commission. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with any such franchise.

F. Rights Granted.

1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the City code and other applicable provisions of state or federal law, to construct, place, maintain and operate utility facilities in the rights of way for the term of the license.
2. Any license granted pursuant to this chapter shall not convey equitable or legal title in the rights of way, and may not be assigned or transferred except as permitted in subsection K of this section.
3. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the City as may exist at the time the license is issued or thereafter obtained.

G. Term. Subject to the termination provisions in subsection M of this section, the license granted pursuant to this chapter will remain in effect for a term of five (5) years.

H. License Nonexclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights of way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights of way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights of way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

I. Reservation of City Rights. Nothing in the license shall be construed to prevent the City from grading, paving, repairing and/or altering any rights of way, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights of way, public work, City utility, City improvement or City facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in subsections C, D and E of section 12.32.080 this chapter, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

J. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and privilege tax requirements of this chapter for the portion of the facilities and extent of utility services delivered over those facilities.
2. A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license or franchise for each utility service, provided that it gives notice to the City of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.



K. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

L. Renewal. At least ninety (90), but no more than one hundred eighty (180), days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the City, including all information required in subsection B of this section and the application fee required in subsection C of this section. The City shall review the application as required by subsection D of this section and grant or deny the license within ninety (90) days of submission of the application. If the City determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The Commission may terminate or revoke the license granted pursuant to this chapter for any of the following reasons:
  - a. Violation of any of the provisions of this chapter;
  - b. Violation of any provision of the license;
  - c. Misrepresentation in a license application;
  - d. Failure to pay taxes, compensation, fees or costs due the City after final determination of the taxes, compensation, fees or costs;
  - e. Failure to restore the rights of way after construction as required by this chapter or other applicable state and local laws, ordinances, rules and regulations;
  - f. Failure to comply with technical, safety and engineering standards related to work in the rights of way; or
  - g. 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 utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:
  - a. The egregiousness of the misconduct;
  - b. The harm that resulted;
  - c. Whether the violation was intentional;
  - d. The utility operator's history of compliance; and/or
  - e. The utility operator's cooperation in discovering, admitting and/or curing the violation.

3. Notice and Cure. The City shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City manager or designee determines that the utility operator's response is inadequate, the City manager or designee shall refer the matter to the Commission, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked.

#### **12.32.070 Construction and Restoration.**

A. Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the National Electrical Code and the National Electrical Safety Code. When a utility operator, or any person acting on its behalf, does any work in or affecting the rights of way, the utility operator shall, at its own expense, promptly restore the rights of way as directed by the City consistent with applicable City codes, rules and regulations. A utility operator or other person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting the rights of way or property.

B. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this chapter and all other applicable state and City codes, ordinances, rules and regulations. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City. The utility operator shall perform all testing, or permit the City to perform any testing at the utility operator's expense, required by the City to determine that the installation of the utility operator's facilities and the restoration of the right of way comply with the terms of this chapter and applicable state and City codes, ordinances, rules and regulations.

C. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the rights of way.

1. Prior to January 1st of each year, utility operators shall provide the City with a schedule of known proposed construction activities for that year in, around or that may affect the rights of way.
2. Utility operators shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in the rights of way.
3. All construction locations, activities and schedules within the rights of way shall be coordinated as ordered by the Public Works Director, to minimize public inconvenience, disruption, or damages.

#### **12.32.080 Location of Facilities.**

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right of way of the City, the utility operator with permission to occupy the same right of way shall locate its facilities underground at its own expense. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to pedestals, cabinets or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the right of way.

B. Interference with the rights of way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the rights of way. All use of the rights of way shall be consistent with City codes, ordinances, rules and regulations.

#### **C. Relocation of Utility Facilities.**

1. A utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right of way, including relocation of aerial facilities underground, when requested to do so in writing by the City.
2. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.
3. The City shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City and by the date reasonably established by the City, the utility operator shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

#### **D. Removal of Unauthorized Facilities.**

1. Unless otherwise agreed to in writing by the Public Works Director, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a right of way shall, at its own expense, remove the facility and restore the right of way.
2. A utility system or facility is unauthorized under any of the following circumstances:
  - a. The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.



- b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one (1) year. A utility operator may overcome this presumption by presenting plans for future use of the facility.
- c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this chapter.
- d. The utility operator is in violation of a material provision of this chapter and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.

**E. Removal by City.**

- 1. The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the rights of way of the City, without notice, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency.
- 2. If the utility operator fails to remove any facility when required to do so under this chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove shall survive the termination of the license or franchise.
- 3. The City shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to subsections B, C or D of this section or undergrounding its facilities as required by subsection A of this section, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those subsections, unless such damage arises directly from the City's negligence or willful misconduct.

**F. Engineering Designs and Plans.** The utility operator shall provide the City with two complete sets of engineered plans in a form acceptable to the City showing the location of all its utility facilities in the rights of way after initial construction if such plans materially changed during construction. The utility operator shall provide two updated complete sets of as built plans upon request of the City, but not more than once per year.

**12.32.090 Leased Capacity.**

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the City with the name and business address of any lessee. A utility operator is not required to provide such information if disclosure is prohibited by applicable law or a valid agreement between the utility operator and the lessee.

**12.32.100 Maintenance.**

A. Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

#### **12.32.110 Vacation.**

If the City vacates any right of way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right of way unless the City reserves a public utility easement, which the City shall make a reasonable effort to do provided that there is no expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a right of way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

#### **12.32.120 Privilege Tax.**

A. Every utility operator shall pay the privilege tax for every utility service provided using the rights of way in the amount determined by resolution of the Commission.

B. Privilege tax payments required by this section shall be reduced by any franchise fee payments received by the City, but in no case will be less than zero dollars (\$0).

C. Unless otherwise agreed to in writing by the City, the tax set forth in subsection A of this section shall be paid quarterly, in arrears, for each quarter during the term of the license within thirty (30) days after the end of each calendar quarter, and shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The utility shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.

D. The calculation of the privilege tax required by this section shall be subject to all applicable limitations imposed by federal or state law.

E. The City reserves the right to enact other fees and taxes applicable to the utility operators subject to this chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the privilege tax or any other fees required by this chapter.

#### **12.32.130 Audits.**

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every provider of utility service shall furnish the City with information sufficient to demonstrate that the provider is in compliance with all the requirements of this chapter

and its franchise agreement, if any, including but not limited to payment of any applicable registration fee, privilege tax or franchise fee.

2. Every utility operator shall make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the rights of way or public utility easements. Access shall be provided within the City unless prior arrangement for access elsewhere has been made with the City.

B. If the City's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrate that the utility operator or provider has underpaid the privilege tax or franchise fee by three percent (3%) or more in any one (1) year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to subsection C of Section 13.32.120 this chapter or as specified in a franchise.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the City's notice to the utility service provider of such underpayment.

#### **12.32.140 Insurance and Indemnification.**

##### **A. Insurance.**

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:
  - a. Comprehensive general liability insurance with limits not less than:
    - i. Three Million Dollars (\$3,000,000.00) for bodily injury or death to each person;
    - ii. Three Million Dollars (\$3,000,000.00) for property damage resulting from any one accident; and
    - iii. Three Million Dollars (\$3,000,000.00) for all other types of liability.
  - b. Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of One Million Dollars (\$1,000,000.00) for each person and Three Million Dollars (\$3,000,000.00) for each accident.
  - c. Worker's compensation within statutory limits and employer's liability with limits of not less than One Million Dollars (\$1,000,000.00).
  - d. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000.00).
2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The policy shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.



3. The utility operator shall maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.
- B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise granted or license issued pursuant to this chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by subsection N of Section 12.32.050 of this chapter.
- C. Indemnification.
1. Each utility operator shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this chapter or by a franchise agreement. The acceptance of a license under Section 12.32.060 of this chapter shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.
  2. Every utility operator shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights of way or easements in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

#### **12.32.150 Compliance.**

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license granted under this chapter.

#### **12.32.160 Confidential/Proprietary Information.**

If any person is required by this chapter to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, the City shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon Public Records Laws, provided that all documents are clearly marked as confidential by the person at the time of disclosure to the City.

The City shall not be required to incur any costs to protect such document, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

**12.32.170 Penalties.**

A. Any person found guilty of violating any of the provisions of this chapter or the license shall be subject to a penalty of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

B. Nothing in this chapter shall be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this chapter.

**12.32.180 Severability and Preemption.**

A. The provisions of this chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

**12.32.190 Application to Existing Agreements.**

To the extent that this chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this chapter shall apply to all existing franchise agreements granted to utility operators by the City.

ORDINANCE NO. 1099-A

Introduced by Commissioner: Terry Ferguson

An Ordinance Granting a Non-Exclusive Gas Utility Franchise to Northwest Natural Gas Company, and Fixing Terms, Conditions, and Compensation of Such Franchise

The City of Warrenton ordains as follows:

Section 1: Definitions and Explanations.

- (1) As used in this ordinance.
  - (a) "City" means the City of Warrenton and the areas within its boundaries, including its boundaries as extended in the future.
  - (b) "Commission" means the legislative body of the City.
  - (c) "Grantee" means the corporation referred to in Section 2 of this ordinance.
  - (d) "Gas" means natural methane-based gas.
  - (e) "Gas Mains" includes all gas transmission and distribution facilities located on or under any right of way or public place within the City.
  - (f) "Person" includes an individual, corporation, association, firm, partnerships and join stock company.
  - (g) "Public place" includes any city-owned park, place or grounds within the City that is open to the public but does not include a right of way.
  - (h) "Right of way" includes a street, alley, avenue, road, boulevard, thoroughfare bridge or public highway within the City, but does not include a public place.
- (2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.

Section 2: Rights Granted.

Subject to the conditions and reservations contained in this ordinance, the City hereby

grants to Northwest Natural Gas Company, a corporation, the right, privilege, and franchise to:

- (1) Construct, maintain, and operate only a gas utility system with the City.
- (2) Install, maintain and operate on and under the rights of way of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas.

#### Section 3: Use of Right of Way by Grantee.

- (1) Before the Grantee may use or occupy any right of way, the Grantee shall first obtain permission from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
- (2) The compensation paid by the Grantee for this franchise includes all compensation for the use of rights of way located within the City as authorized. However, this subsection shall not be construed to prevent the City from requiring the grantee to pay charges as provided in Section 14 of this ordinance.

#### Section 4: Duration.

This franchise is granted for a period of 10 years from and after the effective date of this ordinance, unless sooner terminated as provided in this ordinance. At the City's request, this franchise, including franchise fee, may be re-opened after five years from the effective date of this ordinance. If the parties are unable to agree to renegotiated terms or a continuation on the same terms, this franchise shall terminate 180 days after City's notice of re-opening.

#### Section 5: Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining, or operating any City-owned public utility.



## Section 6: Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (1) Construct, install, maintain, and operate any public improvement, work or facility;
- (2) Do any work that the City may find desirable on, over or under any right of way or public place.
- (3) Vacate, alter or close any right of way or public place, provided that the City shall make available to Grantee an alternative right of way for the location of its facilities, if an alternative right of way is necessary.
- (4) Control or prevent the use of any public place by Grantee and require payment of additional compensation for use of the public place at a reasonable amount.
- (5) Whenever the City shall excavate or perform any work in any of the present and future rights of way and public places of the City, or shall contract, for such excavation or work where such excavation or work may disturb Grantee's gas mains, pipes and appurtenances, the City shall, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (6) Whenever the City shall vacate any right of way or public place for the convenience or benefit of any person or governmental agency or instrumentality Grantee's right under this franchise shall be preserved as to any of its facilities then existing in such right of way or public place.

## Section 7: Continuous Service.

The Grantee shall maintain and operate an adequate system for the distribution of gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by an act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

### Section 8: Safety Standards and Work Specifications.

- (1) The facilities of the Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

### Section 9: Control of Construction.

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its gas mains in the rights of way and public places of the City and shall obtain from the City approval of the location and plans prior to commencement of the work. The City may require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its gas mains.

### Section 10: Right of Way Excavations and Restorations.

- (1) Subject to the provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinary maintenance, prior to making an excavation in the traveled portion of any right of way and, when required by the City, in any untraveled portion of any right of way, the Grantee shall obtain from the City approval of the proposed excavation and of its location. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.
- (2) When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the right of way or public place to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portion of a right of way or public place to the same condition in which it was prior to the excavation, upon 15 days written notice to the Grantee, the City may make the restoration, and the cost thereof, including the City's cost of inspection, supervision and administration, shall be paid by the Grantee.

### Section 11: Location and Relocation of Facilities.

- (1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the rights of way and public places and in accordance with any specifications adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the rights of way and public places of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice so to do from the City. The City shall provide the Grantee with timely notice of any anticipated requirement to remove or relocate its facilities. The cost of such removal or relocation of its facilities shall be paid by the Grantee. When a removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, Grantee may refuse to accomplish such removal or relocation unless such part agrees to pay the reasonable cost thereof.

### Section 12: Emergency Repair Service.

Grantee shall maintain emergency repair service available on a 24-hour a day basis.

### Section 13: Compensation.

- (1) As compensation for the franchise granted by this ordinance, the Grantee shall pay to the City an amount equal to five percent (5%) of the gross revenue collected by the Grantee from its customers for gas consumed within the City. Except as otherwise provided herein, "gross revenues" means revenues received from gas operations within the City less related net uncollectibles. Gross revenues shall include revenues from the use, rental, or lease of the Grantee's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer and revenues paid directly by the United States of America or any of its agencies.
- (2) The compensation required by this section shall be due for each calendar year, or fraction thereof, within sixty (60) days after the close of such calendar year, or fraction thereof. Within sixty (60) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last calendar year for which compensation has been paid.
- (3) The Grantee shall furnish to the City with each payment of compensation required by this section a statement showing the amount of gross revenue for the Grantee within the City

for the period covered by the payment computed on the basis set out in subsection (1) of this section. The compensation for the period covered by the statement shall be computed on the basis of the gross revenue so reported. If the Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due to City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from the Grantee.

- (4) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

#### Section 14: Permit and Inspection Fees.

Nothing in this ordinance shall be construed to limit the right of the City to require the Grantee to pay reasonable charges imposed by the City in connection with issuing a permit, making an inspection or performing any other service, including projects in public places, for or in connection with the Grantee and its facilities, whether pursuant to this ordinance or any other ordinance or resolution now in effect or adopted by the City in the future, as long as these fees apply to all persons alike.

#### Section 15: Compensation to be Credit Against Certain Taxes.

The compensation required by Section 13 of this ordinance to be paid by the Grantee to the City shall be a credit against all license, occupation, business or excise taxes which the City may now or hereafter impose upon the Grantee. However, nothing contained in this franchise shall give the Grantee any credit against any ad valorem property tax now or hereafter levied against real or personal property within the City, or against any local improvement assessment or against any charges imposed upon the Grantee as provided in Section 14 of this ordinance or reimbursement or indemnity paid to the City.

#### Section 16: Expiration.

At the end of the Franchise term, if the City and Grantee are negotiating another franchise and have not concluded their negotiations, Grantee's rights and responsibilities shall be controlled by this franchise until the City grants a new franchise and Grantee accepts it.



#### Section 17; Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 13 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The Commission may require periodic reports from the Grantee relating to its operations and revenues within the City.

#### Section 18; Supplying Maps Upon Request.

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. Upon reasonable notice, an authorized representative of the City may inspect the maps and data any time during business hours at an office of the Grantee. Grantee and the City may determine that the locations of certain gas facilities should be confidential as the public interest may require. In such a case, Grantee is under no obligation to provide records of the location of these facilities to the City and the City shall treat any public record disclosing the location of these facilities as confidential, subject to the provisions of state law and the Oregon Public Records Law. The City shall limit access to any such confidential record to trustworthy employees of the City with a need to know the information set out in the record. The City shall store any such confidential record in a secure and private place and avoid making and distributing copies of the record.

#### Section 19; Indemnification.

The Grantee shall indemnify and save harmless the City and its officers, agents, and employees from any and all loss, cost and expense, including court costs and attorney fees, whether at trial or on appeal, arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

#### Section 20; Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee; but no transfer of this franchise by merger, consolidation, sale, assignment or otherwise shall be made unless the Commission first consents by resolution.

#### Section 21; Reservation of Statutory Authority; Incorporation of Charter Provisions.

The City reserves the right to exercise, with regard to this franchise and the Grantee, all authority now or hereafter granted to the City by State statutes. All rights of the City under the City charter

are reserved to the City and provisions of the City charter applicable hereto are incorporated by reference and made part of the franchise.

Section 22: Termination of Franchise for Cause.

The City may terminate this franchise as provided in this Section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this ordinance. The City shall provide the Grantee written notice of any such failure and the Grantee shall have sixty (60) days from receipt of notice to cure such failure, or if such failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing such failure.

Section 23: Remedies not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy of penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 24: Acceptance.

The Grantee shall, within thirty (30) days from the date this ordinance takes effect, files with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

Section 25: Effective Date.

This ordinance will be effective 30 days following the date of its passage by the City Commission.

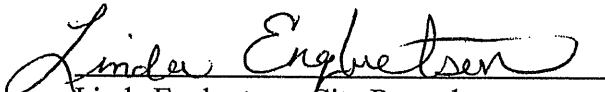
ADOPTED by the City Commission of the City of Warrenton this 26<sup>th</sup> day of September, 2006.

APPROVED:

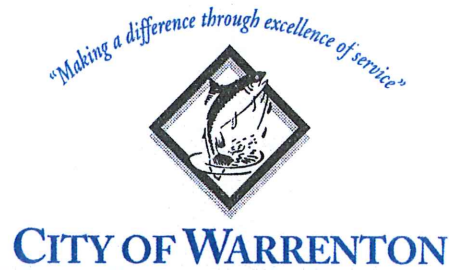


Gilbert Gramson, Mayor

ATTEST:

  
Linda Engbretson, City Recorder

6-C



## AGENDA MEMORANDUM

TO: The Honorable Mayor and Warrenton City Commission  
FROM: Linda Engbretson, City Manager  
DATE: November 22, 2016  
SUBJ: Contract for Professional Services

### SUMMARY

The City has engaged Beery Elsner & Hammond LLP for various legal services for several years for various issues. They are currently providing legal services relating to the City's defense in *Steadfast, LLC v. ODOT and City of Warrenton (CCC Court Case # 14CV19870)*. The City has reached the ceiling for that contract amount. They have also most recently provided opinions on election laws, franchise agreements, and street right-of-way issues.

The attached contract for professional services will cover ongoing costs associated with the lawsuit; the trial date has been pushed out to May 2017. The contract also covers other services as may be requested. Beery Elsner and Hammond specializes in municipal government legal services.



#### RECOMMENDATION/SUGGESTED MOTION

*" I move to authorize the City Manager's signature on the Contract for Professional Services between the City of Warrenton and Beery Elsner & Hammond LLC."*

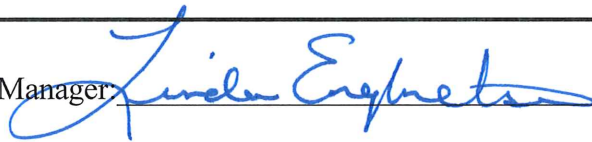
#### ALTERNATIVE

Other action as deemed appropriate.

#### FISCAL IMPACT

Unanticipated legal costs have impacted the Professional Services line item in the General Fund. We will likely need a budget adjustment to transfer funds from contingency.

Approved by City Manager

A handwritten signature in blue ink, appearing to read "Linda Engstrom", is written over a horizontal line.

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

**CITY OF WARRENTON  
CONTRACT FOR PROFESSIONAL SERVICES**

This Contract is made and entered into this \_\_\_ day of November, 2016 by and between the City of Warrenton, an Oregon municipal corporation (CITY) and Beery Elsner & Hammond, LLP, an Oregon limited liability partnership (CONSULTANT) duly authorized to perform legal services in Oregon.

**WITNESSETH:**

**WHEREAS**, CONSULTANT has been engaged by CITY periodically over a period of approximately five (5) years to perform legal services on a variety of matters for CITY; and

**WHEREAS**, CITY wishes to continue to engage CONSULTANT for such services which CONSULTANT is capable of providing, under terms and conditions hereinafter described

**NOW THEREFORE**, in consideration of the foregoing and the terms and conditions set forth hereafter, CITY and CONSULTANT agree as follows:

**1. CONSULTANT SERVICES**

- A. In addition to the work described in 1(B) below, CONSULTANT shall perform legal services for the CITY at the request of the City Manager (or her designee) and/or City Commission as either deem necessary or appropriate.
- B. CONSULTANT is currently providing legal services relating to CITY's defense in *Steadfast, LLC v. ODOT and City of Warrenton* (CCC Court Case # 14CV19870) for which there is a letter agreement (dated October 13, 2015) between CITY and CONSULTANT having agreed to an additional not-to-exceed amount for legal services of \$25,000.00.

**2. COMPENSATION**

CITY agrees to pay CONSULTANT for the services described in 1(A) and 1(B) above, at the following rates:

Partner / Of Counsel:	\$225.00/ hour
Senior Associate:	\$200.00/ hour
Associate:	\$200.00/ hour
Paralegal:	\$125.00/ hour
Legal Assistant:	\$95.00/ hour

Consultant shall submit monthly invoices to:

City of Warrenton  
Accounts Payable Department  
PO Box 250  
Warrenton, OR 97146

not later than the 10<sup>th</sup> working day after the end of each billing period in which billing activity occurred.

3. **CONSULTANT IDENTIFICATION**

CONSULTANT shall furnish its employer identification number to CITY as the same has been designated by the Internal Revenue Service.

4. **CITY / CONSULTANT'S REPRESENTATIVES**

For general communications between CITY and CONSULTANT, Linda Engbretson will be the CITY's representative and Paul C. Elsner or Chad A. Jacobs will be CONSULTANT's representative.

5. **CONSULTANT IS INDEPENDENT CONTRACTOR**

- A. CONSULTANT's services shall be provided under the general direction of Linda Engbretson; notwithstanding the foregoing, CONSULTANT is and shall be deemed 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. CONSULTANT acknowledges that for all purposes related to this Contract, it (and its employees) are NOT employee(s) of CITY and shall be entitled to NO benefits of any kind to which a CITY employee is entitled and shall be solely responsible for all payments and taxes required by law.
- C. In the event CONSULTANT is found by a court of law or administrative agency to be an employee of CITY for any purpose, CITY is and shall be entitled to offset compensation due or demand repayment of any amount paid CONSULTANT under the terms of this Agreement to the full extent of the cost of any benefits or other remuneration CONSULTANT received from CITY or a third party as result of said finding and to the full extent any payments CITY is required to make to CONSULTANT or a third party as a result of said finding.
- D. CONSULTANT represents no CITY employee or any partnership or corporation in which a Warrenton employee has an interest has or will receive any remuneration of any description from CONSULTANT either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

6. **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 sums a 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.

7. **CONFLICT BETWEEN TERMS**

Should there be any conflict between the terms of this contract and CONSULTANT'S proposal (if any), this contract controls and nothing herein shall be considered as an acceptance of the terms of said conflicting proposal.

8. **OREGON STATE BAR**

CONSULTANT'S attorneys shall be and remain at all time herein members in good standing of the Oregon State Bar.

9. **REQUIRED CLAUSES**

CITY and CONSULTANT hereby incorporate by reference the clauses required by ORS 279B.220, 279B.230 and 279B.235.

10. **STANDARD OF CARE**

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

11. **NO THIRD PARTY BENEFICIARIES**

This Agreement gives no rights or benefits to anyone other than the CITY and CONSULTANT and as such there are no third party beneficiaries to this Agreement.

12. **SEVERABILITY AND SURVIVAL**

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

13. **COMPLETE CONTRACT**

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



IN WITNESS WHEREOF, CONSULTANT and CITY execute this Contract the day(s) and year noted below.

CITY OF WARRENTON, an Oregon  
municipal corporation

By: \_\_\_\_\_  
Linda Engbretson  
Warrenton City Manager

Date: November \_\_, 2016

ATTEST:

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

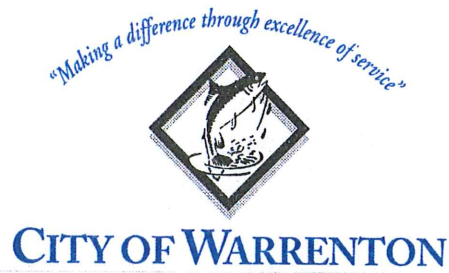
Date: November \_\_, 2016

CONSULTANT  
Beery Elsner & Hammond LLP:

\_\_\_\_\_  
Chad A. Jacobs  
Partner

Date: November \_\_, 2016

6-D



## AGENDA MEMORANDUM

TO: The Honorable Mayor and Warrenton City Commission  
FROM: Linda Engbretson, City Manager  
DATE: November 22, 2016  
SUBJ: IGA for Administrative Fees and Costs in Connection with  
Hammond Marina Conveyance

### SUMMARY

Attached is the agreement between the City and the Dept. of the Army for payment of administrative fees and costs associated with the conveyance of the Hammond Marina. The \$50,000 fee is not unexpected. I checked in with Benjamin Heir at the USACE, and he explained that once the survey of the property (the City has a contract with OTAK to complete this work), renewing our lease with Sturgeon Paul, and paying the administrative fee are complete, they will begin the environmental and cultural resource reviews and finish the lease renewal between the City and the Corps. The expected timeline for completion of the renewal process is spring 2017. There are several levels of further review, and he estimates at least a one year process for disposal, barring any major issues.

### RECOMMENDATION/SUGGESTED MOTION

*" I move to authorize the City Manager's signature on the Agreement to Pay Administrative Fees and Costs in Connection with the Conveyance of US*

*Government Property from the Department of the Army to the City of Warrenton, Oregon."*

**ALTERNATIVE**

None recommended.

**FISCAL IMPACT**

The City has \$150,000 budgeted for the conveyance process.

Approved by City Manager: ImE

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

**AGREEMENT TO PAY ADMINISTRATIVE FEES  
AND COSTS IN CONNECTION WITH  
THE CONVEYANCE OF U.S. GOVERNMENT PROPERTY FROM  
THE DEPARTMENT OF THE ARMY  
TO  
THE CITY OF WARRENTON, OREGON**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016,  
by and between the DEPARTMENT OF THE ARMY (hereinafter "the  
Government"), represented by the Chief of Real Estate, Real Estate Division,  
Portland District, U.S. Army Corps of Engineers, and the City of Warrenton,  
Oregon (hereinafter "City")

WITNESSETH THAT:

WHEREAS, Sections 6005(d) and (g) of the Water Resources Reform  
Development Act of 2014 (WRRDA) authorized the Army Corps of Engineers to  
convey by quitclaim deed approximately 59 acres of land together with any  
improvements thereon, including the Hammond Marina to the City of Warrenton,  
Oregon, located in Clatsop County, Oregon; and

WHEREAS, Section 6005(g)(4) of the 2014 WRRDA states the City of  
Warrenton shall be responsible for all reasonable and necessary costs, including  
real estate transaction and environmental documentation costs, associated with the  
conveyance; and

WHEREAS, 31 U.S.C. 9701 expresses the sense of Congress that each service  
or thing of value provided by an agency is to be self-sustaining to the extent  
possible, and 10 U.S.C. Section 2695 authorizes the Government to accept funds  
provided by Requestor to cover administrative expenses incurred by the  
Government in entering into and completing the transaction; and

WHEREAS, the Government is authorized to, and therefore shall investigate  
matters relevant thereto, prepare and deliver in conveyance approximately 59  
acres of land with respect to the subject real property and subsequent to payment  
by the City to the Government of the Government-determined administrative  
expense; but only after the Government has received the full amount of funds from  
the City sufficient to cover the Government's costs, fees and expenses incurred in  
providing the real estate services necessary to effect preparation and delivery of  
the conveyance to the City (administrative expenses); and

WHEREAS, the Government has determined that its anticipated administrative expenses associated with this transaction are within the range of those normally incurred in completing a real estate interest transfer of the kind proposed, and therefore the Government's administrative expenses anticipated for this transaction have been determined based on an estimate of actual project work.

NOW THEREFORE, the Government and the City agree as follows:

1. Upon execution of this Agreement, the City shall pay administrative fees to the Government in the amount of **\$50,000.00**, which represents estimated expenses, including environmental and cultural resource reviews in compliance with the National Environmental Policy Act (NEPA) and preparation of real estate conveyance documents, etc., the Government anticipates it will incur in preparing and completing the transaction with respect to the real property described in Exhibit "A" attached hereto and made a part hereof.
2. The City acknowledges and agrees that: (a) the Government is not authorized to perform any actions in connection with this transaction until the Government has received from the City the full amount of administrative fees; and (b) acknowledges and agrees the City may be entitled to a partial or full refund of the administrative fees it has provided to the Government in accordance with Paragraph 1., above, in the event the City elects to terminate or suspend performance of this Agreement, elects to not complete the transaction, or for any other reason. (c) In no event shall the City be entitled to a refund though unused portions of the administrative fee may be returned to the City following the conveyance.
3. The City acknowledges and agrees that: (a) the administrative fees only reflect estimated amounts which the Real Estate Division, Portland District, U.S. Army Corps of Engineers will incur in processing the conveyance and that process may include consultation with, and application review by other elements of the U.S. Army Corps of Engineers responsible for insuring compliance with environmental, cultural, regulatory, or other laws and regulations applicable to the Government's responsibility in managing the subject property; (b) that though no other administrative fees are anticipated to be charged to the City than those described in Paragraph 1, above, it may become evident during the conveyance process that in order to lawfully convey the requested interest to the City certain requirements must be met, the fulfillment of which could result in additional administrative fees charged to the City; and (c) it may become evident during the conveyance process that due to the nature and magnitude of the concerns discovered the City's application for the instrument may be denied altogether.



4. Upon execution of this Agreement in duplicate, the City shall return both originals to the Corps of Engineers, Portland District, ATTN: Real Estate Division, P.O. Box 2946, Portland, OR 97208-2946 along with its check for the full amount of administrative fees and made payable to "FAO, USAED, Portland", whereupon the Government shall forward to the City one fully executed original Agreement and begin processing the transaction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Government.

THE DEPARTMENT OF THE ARMY

THE CITY

By: \_\_\_\_\_  
AMANDA J DETHMAN  
District Chief of Real Estate  
Real Estate Contracting Officer



By: \_\_\_\_\_  
LINDA ENGBRETSON  
Interim City Manager  
City of Warrenton, Oregon

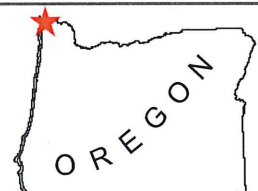
DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



# HAMMOND BOAT BASIN USAGES CLATSOP COUNTY, OR

-  NMFS: 0.67 Acres Not Included
-  Hammond Boat Basin: 59.9 Acres

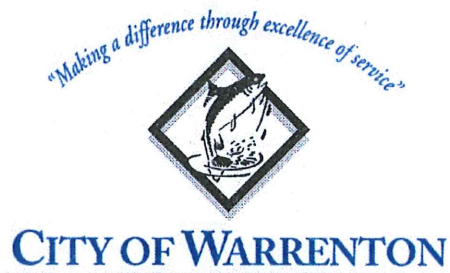


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## EXHIBIT A



6-E



## AGENDA MEMORANDUM

TO: The Warrenton City Commission  
FROM: Dawne Shaw, Administrative Assistant  
DATE: November 16, 2016  
SUBJ: Library Board Recommendation

### SUMMARY

The Warrenton Community Library Advisory Board held a meeting on November 16<sup>th</sup> to discuss the newly proposed Serendipity Building location and will present a report to the Commission for comments and/or recommendation.

### RECOMMENDATION/SUGGESTED MOTION

Library Advisory Board Chair, Kelsey Balensifer will be at the meeting to comment and present recommendations.

## ALTERNATIVE

Other action as deemed appropriate by the City Commission

## FISCAL IMPACT

Funds will need to be transferred from the Building Maintenance Fund – Flooring City Hall Line Item, to cover the lease payments through June 30, 2017.

Approved by City Manager:

A handwritten signature in blue ink, appearing to read "Lme", is written over a horizontal line.

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