



AGENDA

CITY COMMISSION OF THE CITY OF WARRENTON REGULAR MEETING

November 23, 2021– 6:00 P.M.

Warrenton City Commission Chambers – 225 South Main Avenue
Warrenton, OR 97146

Public Meetings will be conducted in the Commission Chambers with a limited seating arrangement. To adhere to social distancing recommendations, meetings will now also be audio and video live streamed. Go to <https://www.ci.warrenton.or.us/administration/page/live-stream-public-meetings> for connection instructions.

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **CONSENT CALENDAR**

- A. City Commission Meeting Minutes – 11.09.21
- B. Committees & Boards Vacancy Update
- C. Police Department Monthly Report – October 2021
- D. Community Center Advisory Board Meeting Minutes – May 2021

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.

4. **COMMISSIONER REPORTS**

5. **PUBLIC COMMENT**

At this time, anyone wishing to address the City Commission concerning items of interest may do so. The person addressing the Commission must complete a Public Comment Card and submit it to the City Recorder prior to the meeting. All remarks will be addressed to the whole City Commission and limited to 3 minutes per person. Public Comments may also be submitted by email to the City Recorder, at cityrecorder@ci.warrenton.or.us, no later than 5:00 p.m. the day of the meeting. The Commission reserves the right to delay any action, if required, until such time as they are fully informed on a matter.

6. **PUBLIC HEARINGS** – None

7. BUSINESS ITEMS

A. Consideration of Nuisance Abatement Status - Simonsen

B. Consideration of ODOT Grant Agreement; Tansy Point Connection NW 11th Path Project

8. DISCUSSION ITEMS – None

9. GOOD OF THE ORDER

10. EXECUTIVE SESSION

11. ADJOURNMENT

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

MINUTES
 Warrenton City Commission
 November 9, 2021
 6:00 p.m.
 Warrenton City Hall - Commission Chambers
 225 S. Main
 Warrenton, OR 97146

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

Commissioners Present: Mayor Henry Balensifer, Mark Baldwin, Tom Dyer, Gerald Poe, and Rick Newton

Staff Present: City Manager Linda Engbretson, Public Works Operations Manager Kyle Sharpsteen (via Zoom), Police Chief Mathew Workman, Planning Director Scott Hazelton, Library Director Kelly Knudsen, Engineering Technician Trisha Hayrynen (via Zoom), City Attorney Spencer Parsons, and Deputy City Recorder Rebecca Sprengeler

CONSENT CALENDAR

- A. City Commission Meeting Minutes – 10.26.21
- B. City Commission Work Session Minutes – 10.26.21
- C. Monthly Finance Report – September 2021
- D. Building Department Quarterly Report- July – September 2021
- E. Review and Revision of Library Policies
- F. Traffic Sign Revision Request - SW 9th Street

Mayor Balensifer requested unanimous consent to change 3E to 7G; there were no objections.

Commissioner Baldwin made the motion to approve the consent calendar as presented. Motion was seconded and passed unanimously.

Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye

COMMISSIONER REPORTS

Commissioner Newton discussed CREST (Columbia River Estuary Study Taskforce) projects.

PUBLIC COMMENT

Susan Walker spoke about the need for a sewer line and road repair on NW 7th Place. Mayor Balensifer noted many work sessions. Sewer is still in the plan. Staff will provide an update.

PUBLIC HEARINGS - None

BUSINESS ITEMS

Mayor Balensifer requested to move item 7G to the top of business; there were no objections. Chair Kelsey Balensifer of the Warrenton Community Library Board noted the new Library Polices Manual. She stated it has been reviewed and approved by the library board.

Commissioner Baldwin made the motion to approve the library policies as presented. Motion was seconded and passed unanimously.

Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye

Mayor Balensifer asked if these are the first adopted policies for the library. Library Director Kelly Knudsen confirmed no prior policies were found.

Public Works Operations Manager Kyle Sharpsteen (via Zoom) discussed solicitation and selection process for the Wastewater Treatment Facilities Master Plan Project. Kennedy Jenks Consultants was selected. Mr. Sharpsteen presented the negotiated contract.

Commissioner Dyer made the motion to approve awarding the professional service contract for Wastewater Treatment Facilities Master Plan project to Kennedy Jenks Consultants. Motion was seconded and passed unanimously.

Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye

City Manager Linda Engbretson discussed the solicitation and selection process realtor services to assist the city in negotiations and transaction of possible property sales and purchases. Ms. Engbretson presented a contract with Pam Ackley of Windemere Realty Trust. Mayor Balensifer clarified this is related to commission direction to consider selling properties that have no use.

Commissioner Newton made the motion to award the Professional Services contract for City Realtor Services to Pam Ackley of Windemere Realty Trust, for the amount of a 5-6% commission rate, depending on property type, plus additional costs as outlined in their proposal. Motion was seconded and passed with majority in favor.

Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – nay

Mayor Balensifer briefly discussed amendments to Resolution No. 2612 to add context to why the Daffodil was chosen to be the city flower.

Commissioner Newton made the motion to conduct the second reading, by title only, of Ordinance No. 1255. Motion was seconded and passed unanimously.

Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye

MINUTES

Mayor Balensifer conducted the second reading of Ordinance No. 1255; an Ordinance repealing Ordinance No. 123-A.

Commissioner Newton made the motion to adopt Ordinance No. 1255. Motion was seconded and passed unanimously.

Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye

Mayor Balensifer made the motion to adopt Resolution No. 2612, amended. Motion was seconded and passed unanimously.

Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye

Police Chief Mathew Workman presented a contract to purchase a Dodge Durango. He noted difficulty finding vehicles and is unsure where the F-150 is. He noted a scrivener's error; the state contract number is 1651. The price of \$34,0008.02 was noted to be correct. There was brief discussion about the F-150 delay. There was brief discussion about vehicles accommodating taller officers. There was brief discussion about additional funds for vehicle modifications.

Commissioner Newton made the motion to approve the goods and services contract between Withnell Dodge and the City of Warrenton to purchase one 2021 Dodge Durango and have the mayor sign the contract. Motion was seconded and passed unanimously.

Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye

Ms. Engbretson clarified the agenda addition of Mark Simonsen's appeal and stated the appellant was notified. Mayor Balensifer stated the item before them is whether a nuisance still exists by code and whether or not the points stated by the appellant are considered by the commission as valid. Commissioner Newton recused himself from voting. Mayor Balensifer read the appeal submitted by Mr. Simonsen and stated the appeal and comments must be constricted to those specific items. Mr. Simonsen noted most of his comments will fall under bias towards the complainant. He read a statement regarding new homeless legislation. He discussed statements made by staff at the October 26 hearing that he believes to be false. Mr. Simonsen feels he was falsely accused of violating WMC 8.16.120, noting staff testimony that vehicles moved and lack of documentation for vehicle registration. He feels this was an attack on his character. He discussed the definition of homelessness and the RV code, noting commissioner comments from the October 26 hearing. Mayor Balensifer stated Mr. Simonsen must be specific to the appeal, and requested comments be focused on the nuisance declaration. Discussion followed about what information and codes are pertinent to the hearing appeal. City Attorney Spencer Parsons clarified that permitted uses can still become a nuisance and are still subject to abatement. He explained further. Discussion continued. Mayor Balensifer asked staff if the nuisance has been abated. Mr. Hazelton outlined the remaining nuisances. There was brief discussion about applicable WMC. Mr. Hazelton noted there has been some effort to clean up, but some vehicles remain. It was noted vehicle registration needs to be determined. Mr. Simonsen stated he does not believe a nuisance exist on his property. He believes the motorhome has been moved and

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explained he is not responsible for who parks on city right-of-way. Mayor Balensifer clarified the property owner's responsibility for tenant's property spilling over. Mr. Parsons confirmed. Mr. Simonsen explained action taken with several vehicles and stated he thinks the vehicles are moved. He noted a meeting request with staff to clarify WMC violations. Mr. Parsons noted WMC 8.16.120 is the provision being used to determine existence of a nuisance and subject of this discussion. For clarification, Mayor Balensifer asked if Mr. Simonsen's has made significant progress. Mr. Simonsen confirmed significant but incomplete progress. He would like staff to look at it and work with the city towards resolution. He explained this is an ongoing issue and stated he does not contest any of the findings. He stated is in a dilemma of how to remove stuff from property that he did not allow. He would like commissioners to look at the property. He stated he is not contesting anything, he just needs some time. Commissioner Newton noted cost to remove vehicles. Mr. Simonsen discussed signage and towing to clean up the property two months ago. Commissioner Dyer noted good progress has been made. There was brief discussion. Mr. Hazelton confirmed progress has been made. Commissioner Dyer asked if the motorhome is still there and cannot be moved because of legalities. Mr. Simonsen responded he is he does not know and explained he has not been involved in moving equipment. Ms. Engbretson stated the motorhome is in the right-of-way. There was brief discussion about the license and registration status of vehicles. Mr. Parson requested that the commission members participating in discussion make a declaration about bias and their ability to render an impartial decision. Commissioner Poe stated he does not have bias and can render an impartial decision. Commissioner Baldwin stated he does not have bias and can decide impartially; he considers Mr. Simonsen a friend. Commissioner Dyer stated he has no bias and can decide impartially, noting he has known him and knows his situation. Mayor Balensifer noted he is related to the family by former marriage but believes he can make an impartial decision. Mr. Simonsen requested to make additional comments about his bias appeal. There was brief discussion about bias appeal. Mr. Parsons outlined a recommended process to address bias concerns. Mr. Simonsen stated he has a bias accusation against the mayor noting the complainant was not required to follow the public comment policy on the agenda. Mr. Parsons clarified the protocol is for general public comment at a meeting on every agenda. He further noted it is for items not on the agenda. He explained the commission has the authority to place items on the agenda and stated this is standard protocol. Mr. Simonsen stated the comments were allowed under public comment and not as an agenda item. He feels it should have been left to three minutes if allowed at all. Mayor Balensifer responded that the complainant is typically allowed to state the issue during a nuisance hearing; he was not made aware of the complainant. He further noted greater time allowed to Mr. Simonsen than others which could be portrayed as bias towards the appellant. He stated he will be more diligent in reviewing public comment cards as they relate to agenda items. Mr. Simonsen requested staff contact him. Mayor Balensifer asked if Commissioner Poe and Commissioner Baldwin can render fair and impartial decisions; both stated yes. Commissioner Poe asked to hear from Mr. Hazelton. Mr. Hazelton noted he last visited the site late this afternoon and did not see vehicles without tags. His visit was to observe placement of the RV. He explained vehicle registration status will take further research. He stated it looks like major junk items have been cleaned up; the RV has been moved into the right-of-way and appears to still be occupied. After brief discussion, it was noted the RV violates the health and safety code. There was brief discussion about the definition of a chronic nuisance. Commissioner Poe noted he feels they should continue to the next meeting. Mayor Balensifer stated a nuisance has been

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declared and outlined options for next steps. He explained past practices. Commissioner Poe restated he would like to continue it to the next meeting. Commissioner Baldwin noted he would like to allow another two weeks and would deny the appeal. Commissioner Poe stated he would deny the appeal. Commissioner Dyer stated he would deny appeal and would like to give him two weeks. Mayor Balensifer noted consensus to deny the appeal, no fines, and to review in two weeks.

Commissioner Baldwin made the motion to deny appeal and to review the cases again in the next commission meeting. Motion was seconded and passed with majority in favor.

Newton – abstain; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye

Mr. Parsons clarified the decision for Mr. Simonsen's benefit. Mayor Balensifer requested clarity on remaining vehicles' registration status. Commissioner Baldwin suggested proof of payment for registration verification, noting state delays. Mr. Parsons explained the RV being moved to the right-of-way violates WMC 10.16. He further noted the RV remains a nuisance regardless of where it is parked if not licensed and registered. Mr. Simonsen asked who is responsible for the RV as he does not have the authority to tell the occupant where to park it. He noted he is not the title owner of the RV or the nuisance vehicles on the property. He asked if removing vehicles from the property meets abatement requirements. He noted he intends to put up a chain to prevent vehicles from returning. Mr. Parsons noted Mr. Simonsen is involved as the responsible party for the property. He explained if the RV is not in Mr. Simonsen's name and becomes abandoned in the street, it may be impounded or removed. Brief discussion followed. Mayor Balensifer noted he wants to ensure all concerns can be address and expectation are clear. He noted the issue related to the nuisance abatement is left to junk vehicles. Mr. Simonsen stated in his belief, he has no vehicles on his property. Commissioner Poe noted he saw a vehicle on the property with no plates on his way to the meeting and discussed concern about ensuring this is resolved. Discussion followed. Ms. Engbretson would like an opportunity to discuss further with Mr. Simonsen, legal, and staff about other issues. There was discussion about property owner's responsibility for tenant's property. Mr. Simonsen noted he will post trespass signs. Mayor Balensifer clarified if the person that has taken possession of or is the title owner of the vehicles is no longer on the property, it becomes and different issue than a nuisance. Discussion continued.

DISCUSSION ITEMS - None

GOOD OF THE ORDER

Commissioner Newton noted he has empathy for Mr. Simonsen and discussed personal experience. He discussed additional business licenses issued. He noted CREST is using goats to clear land. He noted library youth programs. He also discussed an interview with KMUN.

Commissioner Dyer noted Mr. Simonsen is in an impossible situation. As a parent, he has worked hard to clean things up. He appreciates the effort and how they dealt with it.

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Commissioner Baldwin agreed, noting empathy for Mark and Kelly. He feels it could have been handled better. He hopes people will reach out to him and does not want to fine anyone.

Commissioner Poe noted the church parking lot use to be public use, but it has changed because of this situation. He noted he has never complained because he hoped things would work out on their own. He thinks they were fair, and it was handled okay. He noted it is hard to be accused of bias when he has been a patient neighbor.

Commissioner Newton discussed mental health regulations in Oregon, noting lack of services.

Ms. Engbretson added she was surprised that Mr. Simonsen said he requested help from staff six weeks ago. She noted extra effort to connect with him; staff will reach out. She also discussed an opportunity the Chamber of Commerce proposed regarding Travel Oregon's Destination Ready Program. She noted the e-permitting process has started and will take about 6-8 months.

Mayor Balensifer noted he has received calls about county development off of Clatsop Plains, not the Dunes, and asked public works if there has been an application for water. Mr. Sharpsteen stated not that he is aware of. He noted the current policy states no more water main extensions outside of city limits. Mayor Balensifer noted Spruce Up Warrenton's Daffodil planting event. He asked about funds for levy certification. Ms. Engbretson noted there is discussion about applying for funds for the geotechnical work. She will be bringing back a list of awarded grants. Mayor Balensifer asked that the commission be copied on the update to Ms. Walker.

Commissioner Newton commented on elk.

Commissioner Dyer commended public works for the tree removal on 1st.

At 7:23 p.m. Mayor Balensifer recessed the regular meeting and announced the Commission will now meet in executive session under the authority of ORS 192.660(2)(e); *to conduct deliberations with persons designated by the governing body to negotiate real property transactions.*

There being no further business, Mayor Balensifer adjourned the regular meeting at 7:37 p.m.

Respectfully prepared and submitted by Rebecca Sprengeler, Deputy City Recorder.

APPROVED:

Henry A. Balensifer III, Mayor

ATTEST:

Dawne Shaw, CMC, City Recorder

2021

Upcoming Committee & Board Vacancies

Updated 11.16.21

Committee/Board	Position/Vacancy	Term End Date	Apps Rec'd
Budget Committee	Position 3	12/31/21	0
Community Library Board	Position 6	12/31/22	0
Community Center Board	Position 2	12/31/21	0
Marinas Advisory Committee	N/A	N/A	N/A
Parks Advisory Board	Position 1, 2	12/31/21	2
Parks Advisory Board	Position 6	12/31/23	0
Planning Commission	Position 3	12/31/21	1
Urban Renewal Advisory Committee	Position 4, 5, 6, 7	12/31/21	2
Total Needed:	11	Total Received:	5



WARRENTON POLICE DEPARTMENT MONTHLY REPORT



TO: The Warrenton City Commission
 FROM: Chief Mathew Workman
 DATE: November 23, 2021
 RE: October 2021 Report

Upcoming Dates:

- November 30th – December 2nd partner with CCSO on firearms training at Camp Rilea Shoot House
- December 11th; Shop-With-A-Cop, Walmart

Month in Brief:

- November 1st: Chief Workman participated in a State/Federal Oregon roundtable discussion on current school threats.
- November 2nd: Chief Workman took 720lbs of medications to Covanta Energy in Brooks, OR for incineration.
- November 5th: Monthly CERT meeting. Reviewed participation in the Fall Festival, other events for 2022, and membership drive.
- November 8th: Katherine Stephen's 1st day as Police/Property Evidence Clerk replacing Kathi Smith
- November 9th: the 5th and last old patrol vehicle was decommissioned at Crossover Stereo. All that is left is to remove the graphics and then post them on govdeal.com to auction them off.
- November 18th & December 2nd: all officers will be getting annual hearing tests.
- November 1st to 21st: Ofc. Trujillo has completed 4-weeks at DPSST and is doing well.
- Sgt. Pierce continues his background investigations on the top two applicants. Going slow but well so far.

Challenges/Obstacles:

- Continue to be short-handed with one open position, one officer at the academy, and others being gone for training, vacations, etc.
- 2019 Charger needs a heater core replacement. Not an easy fix and difficulties in getting it scheduled and the parts.
- Still no new patrol vehicles yet as they are both in-production or believed to be.

Successes:

- Quick replacement of Kathi with Kat Stephens and the fact that she is very experienced and was the evidence tech at APD!
- The Fall Festival was a huge success and the WPD and CERT enjoyed participating!



Traffic Statistic Highlights:

- Two (2) DUII Arrests – (2) Alcohol, (0) Drugs
- Seventeen (17) Driving While Suspended Citations/Arrests
- Two (2) Reckless/Careless Driving Citations/Arrests
- Two (2) Hit & Run Citations/Arrests
- Four (4) Speeding Citations
- Fourteen (14) Insurance Citations
- Two (2) Interlock Device Citations
- Three (3) Driver's License Citations
- Seventy (70) other Citations and Warnings
- Eighteen (18) Accident Investigations



Overall Statistics:

October Statistics (% changes are compared to 2020)							
Category	2021	2020	% Chg	2019	% Chg	2018	% Chg
Calls for Service	694	662	5%	755	-8%	823	-16%
Incident Reports	194	238	-18%	249	-22%	230	-16%
Arrests/Citations	166	179	-7%	161	3%	163	2%
Traffic Stops/ Events	116	188	-38%	199	-42%	237	-51%
DUII's	2	2	0%	0	0%	3	-33%
Traffic Accidents	18	24	-25%	20	-10%	21	-14%
Property Crimes	106	117	-9%	108	-2%	106	0%
Person Crimes	53	57	-7%	77	-31%	71	-25%
Drug/Narcotics Calls	3	6	-50%	6	-50%	12	-75%
Animal Calls	23	17	35%	20	15%	37	-38%
Officer O.T.	175.5	158.4	11%	259.3	-32%	172	2%
Reserve Hours	0	0	0%	19.25	-100%	20	-100%

Category	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Calls for Service	682	626	772	776	736	783	868	834	695
Incident Reports	218	218	224	222	208	191	205	207	188
Arrests/Citations	214	196	181	188	143	169	167	160	149
Traffic Stops/ Events	107	107	142	208	153	167	173	159	106
DUII's	1	1	6	2	1	4	4	4	2
Traffic Accidents	17	17	9	17	11	15	17	22	7
Property Crimes	111	111	96	93	107	106	112	115	110
Person Crimes	109	78	80	84	68	97	112	91	88
Drug/Narcotics Calls	9	10	2	1	3	3	4	1	2
Animal Calls	19	17	22	21	14	27	28	31	25
Officer O.T.	19.5	72.25	63.25	69.25	79.5	272.64	129	169.5	152
Reserve Hours	0	0	0	0	0	0	0	0	0

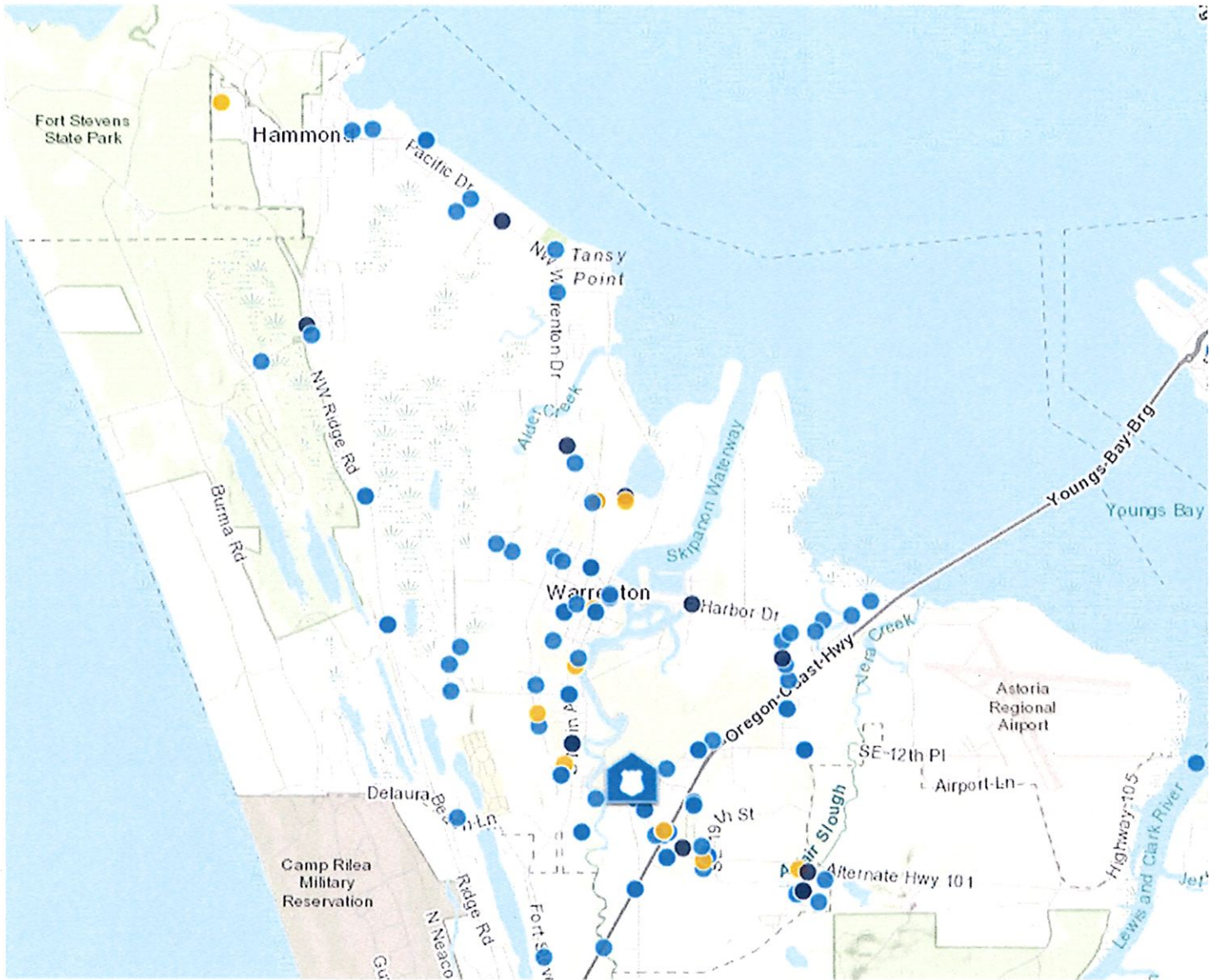
Oct	Nov	Dec	2021 YTD	2021Estimate	2020	2021v.2020	2019	2021v.2019	2018	2021v.2018
694			7466	8959	7955	13%	9270	-3%	9819	-9%
194			2075	2490	2442	2%	2469	1%	2608	-5%
166			1733	2080	1891	10%	2095	-1%	1731	20%
116			1438	1726	2000	-14%	2489	-31%	2627	-34%
2			27	32	27	20%	36	-10%	33	-2%
18			150	180	228	-21%	246	-27%	275	-35%
106			1067	1280	1191	8%	1230	4%	1094	17%
53			860	1032	830	24%	863	20%	849	22%
3			38	46	58	-21%	86	-47%	117	-61%
23			227	272	207	32%	289	-6%	271	1%
175.5			1202	1443	2075.4	-30%	2194.5	-34%	1731.7	-17%
0			0	0	12.5	-100%	259.5	-100%	359.5	-100%

Homeless Incidents	2021	2020
Code 40 (Normal)	44	47
Code 41 (Aggressive)	4	0

Elk Incidents	2021
Interaction:	2
Traffic Accidents:	2
Traffic Complaints:	1
Total:	5

The following is a graphic representation of statistics for **October 2021** using our **CityProject** membership (formerly [CrimeReports.com](https://www.crimereports.com)). The "Dots" represent a location of a call and if you would zoom in on the map you would see an icon for the type of call and some basic time/date details. Some dots represent multiple calls at one location. If you go to the website, you can zoom in on each incident for more details.

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



WARRENTON COMMUNITY CENTER
Advisory Board Meeting
May 20, 2021
4:00 – 5:00 PM

Meeting Date: May 20, 2021

Call to Order: Chairman, Debbie Little, called the regular meeting to order at 4:03 PM.

Roll Call: Chairman, Debbie Little; Vice Chairman, Ronald LeChurch; Penny Morris, Secretary; Carol Snell and April Clark, Financial Director for the City of Warrenton. Absent and excused: Ken Culp.

Introduction of Guests: None

Public Comment: None

Approval of the regular minutes for April 15, 2021:
Penny Morris moved to accept the minutes as written, seconded by Carol Snell. Motion was approved

Financial Report: April reported she had no financial report.

Old Business: April reported that she and Ken Culp met on Tuesday, May 18, 2021. Their inspection resulted in the attached report. The areas inspected were the Main Hall, kitchen, bathrooms, exterior, and cleanup/landscaping.

We discussed the list and decided that the work in the main hall, kitchen, bathrooms and exterior would take some time to arrange. We did, however, decide to pursue the clean-up/landscaping as a day project. Debbie was to check several places for ground cover

donations/price. Ron stated he has a trailer that he could use to haul ground cover. Carol was going to check with Spruce up Warrenton for funds and/or volunteers.

New Business:

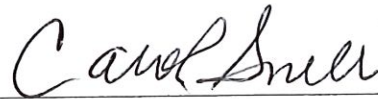
Correspondence: None

Next Meeting: Our next meeting will be June 17, 2021.

It was moved and seconded to close the meeting at 5:30 PM



Debbie Little, Chairman



Carol Snell, Secretary



AGENDA MEMORANDUM

TO: The Warrenton City Commission
 FROM: Scott Hazelton, Planning Director
 DATE: November 23, 2021
 SUBJ: Nuisance Abatement Status

SUMMARY

On September 9th, 2021 the Planning Department received a complaint that a Recreational Vehicle was parked and occupied on a vacant portion of a property owned by Mark and Kelly Simonsen at 874 5th Ave. Hammond, OR 97121 also known as Tax Lot, 81005DC02500, 81005DC02400, and 81005DC02300 in the Commercial-Mixed Use (CMU) zone. The complaint also cited junk vehicles and vehicles parked in the right of way.

The Planning Department mailed notice to the Simonsen's on September 14th, 2021 and requested abatement of the issue by September 29th, 2021.

At the October 26th, 2021 meeting the property and activity was declared a nuisance by the City Commission. Mr. Simonsen, as a legally standing appellant, appealed the decision on November 9th, 2021. The commission granted Mr. Simonsen a continuance to the November 23rd, 2021 City Commission meeting.

Staff observed the property at the date of this memo and consider the nuisance abated on Tax Lot, 81005DC02500, 81005DC02400, and 81005DC02300. Staff will also observe the property prior to the November 23rd, 2021 meeting.

CONCLUSION AND RECOMMENDATION

The nuisance has been abated on Tax Lot, 81005DC02500, 81005DC02400, and 81005DC02300 and staff has no recommendation for further action at this time.

FINDINGS

1. A nuisance was declared by the City Commission at their regularly scheduled meeting on October 26th, 2021.
2. This declaration of nuisance was appealed by Mr. Simonsen at the November 9th, 2021 regularly scheduled City Commission meeting.
3. The City Commission offered Mr. Simonsen a continuance to the November 23rd, 2021 regularly scheduled meeting.

4. Between November 9th, 2021 and November 15th, 2021 the nuisance had been abated to City Staff's satisfaction on Tax Lot, 81005DC02500, 81005DC02400, and 81005DC02300.
5. Due to this being declared a nuisance at the October 26th, 2021 meeting future nuisances within the time period laid out by WMC 8.28.070 could move this property to the process of a chronic nuisance.

Suggested Motion:

Motion to accept staff findings that the nuisances on Tax Lot, 81005DC02500, 81005DC02400, and 81005DC02300 have been abated at the time of this meeting.

ATTACHMENTS

- N/A

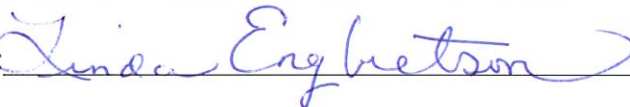
ALTERNATIVE

- 1) Other action as deemed appropriate by the City Commission
- 2) None recommended

FISCAL IMPACT

N/A

Approved by City Manager:

A handwritten signature in blue ink, reading "Linda Engbretson", is written over a horizontal line.

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



AGENDA MEMORANDUM

TO: The Warrenton City Commission
 FROM: Collin Stelzig, Public Works Director
 DATE: November 23rd, 2021
 SUBJ: Grant Agreement – Tansy Point Connection NW 11th Path Project

SUMMARY:

Attached is a grant agreement between the City and the Oregon Department of Transportation's Community Paths Program for the project refinement portion of the Tansy Point Connection NW 11th Path project. Within the agreement is the project description (key milestones, schedule, budget), recipient requirements, sub agreement insurance requirements, and documentation provided prior to execution of the agreement. ODOT will be grant funding \$93,919.20 towards this project and the City will match \$10,080.80, making the project total \$104,000.00

RECOMMENDATION/SUGGESTED MOTION

"I move to authorize the Mayor's signature for the grant agreement between the City and Oregon Department of Transportation's Community Paths Program for the Tansy Point Connection NW 11th Path project."

ALTERNATIVE

- 1) Other action as deemed appropriate by the City Commission
- 2) None recommended

FISCAL IMPACT

This Capital Improvement Project (project number 620029) has been approved by the City Commission and is included in the City of Warrenton 2021-2022 Adopted Budget.

Approved by City Manager:

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

A156-G092921

**ODOT Delivered Project Federal Project
On Behalf of City of Warrenton
Tansy Point Connection NW 11th Path
Key Number: 22463**

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

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform
2. Warrenton Drive, NW 11th Street, NW 13th Street, Waterfront Trail, and River Front Trail are a part of the city street system under the jurisdiction and control of Recipient.
3. Agency has agreed that State will deliver this project on behalf of the Agency.
4. The Project was selected as a part of the Oregon Community Paths (OCP) program and may include a combination of federal and state funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

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

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering Tansy Point Connection NW 11th Path on behalf of Agency, hereinafter referred to as "Project." Project includes a project refinement study to identify a community path, approximately 1.5 miles long, that would connect downtown Warrenton with the Tansy Point

community, the Parkview community and the Fort Stevens State Park area.. The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.
3. Project Costs and Funding.
 - a. The total Project cost is estimated at \$104,000.00, which is subject to change. Federal funds for this Project shall be limited to \$93,319.20. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27% match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.
 - b. With the exception of Americans with Disabilities Act of 1990-related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency's concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget.
 - c. Federal funds under this Agreement are provided under Title 23, United States Code.
 - d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
 - e. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.
 - f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is

sooner.

5. Termination.

- a. This Agreement may be terminated by mutual written consent of both Parties.
- b. State may terminate this Agreement upon 30 days' written notice to Agency.
- c. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - i. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - iii. If Agency fails to provide payment of its share of the cost of the Project.
 - iv. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - v. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
- d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **Americans with Disabilities Act Compliance:**

- a. Agency shall utilize ODOT standards to assess and ensure that the Project and all component activities comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all plans and proposed alternatives for future design or construction of pedestrian, bicycle, and transit routes and facilities will result in ADA-compliant facilities and improvements.
- b. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the

existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the establishment of any work zone.

7. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
8. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
9. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.
10. The Special and Standard Provisions attached hereto, marked Exhibits B and C, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Exhibits B and C.
11. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.
12. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
13. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

14. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 3.e (Funding), 5.d (Termination), and 9-14, 17 (Integration, Merger; Waiver).
15. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
16. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.
18. State's Contract Administrator for this Agreement is Kenneth Shonkwiler, Senior Transportation Planner, Oregon Department of Transportation, 350 W Marine Drive, Astoria, Oregon 97103; phone: (503) 325-5281; email: kenneth.d.shonkwiler@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
19. Agency's Contract Administrator for this Agreement is Collin Stelzig, PE, Public Works Director, City of Warrenton, 45 SW 2nd Street / P.O. Box 250, Warrenton, Oregon 97146; phone: (503) 861-0912; email: rstelzig@ci.warrenton.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Signature Page to Follow

Agency / ODOT
Agreement No. 35248

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

This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), (Key #22463) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

CITY OF WARRENTON, by and through
its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

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

By _____

Agency's Legal Counsel

Date _____

Agency Contact:

Collin Stelzig, PE
Public Works Director
City of Warrenton
45 SW 2nd Street / P.O. Box 250
Warrenton, Oregon 97146
(503) 861-0912
rstelzig@ci.warrenton.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Public Transportation Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____

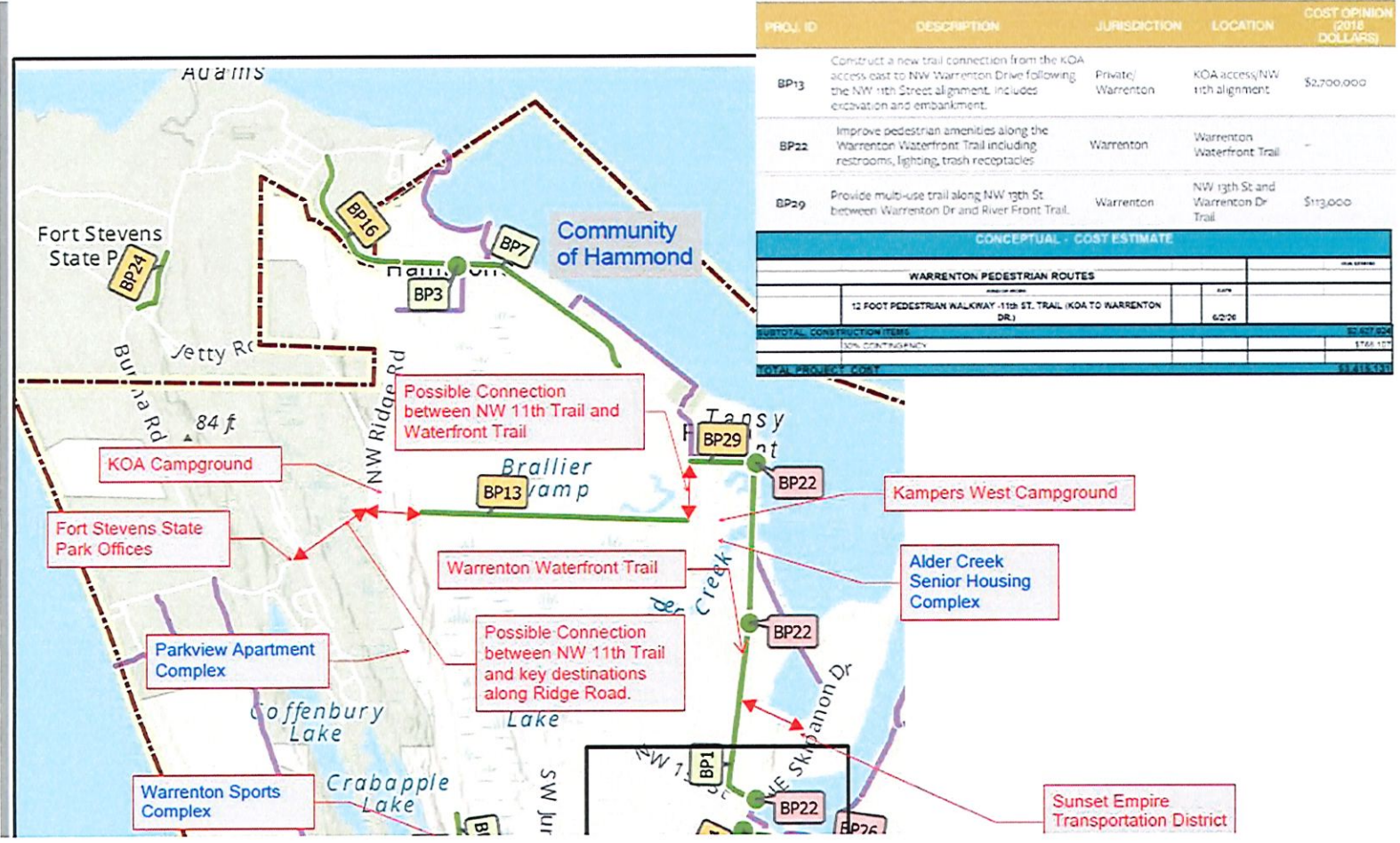
Oregon Community Paths Program
Manager

Date _____

State Contact:

Kenneth Shonkwiler
Senior Transportation Planner
Oregon Department of Transportation
350 W Marine Drive
Astoria, Oregon 97103
(503) 325-5281
kenneth.d.shonkwiler@odot.state.or.us

EXHIBIT A – Project Location Map



Agency / ODOT
Agreement No. 35248

Project Description:

This project refinement study is to identify a community path, approximately 1.5 miles long, that would connect downtown Warrenton with the Tansy Point community, the Parkview community and the Fort Stevens State Park area. The Project is shown as Project #BP-13 on the City's Transportation System Plan, it will also scope and estimate the remaining tasks to implement this project.

Project Scope of Work / Deliverables:

As a project refinement study, the following Planning and Engineering steps detail the scope of work / deliverables:

1. Existing Conditions Inventory
2. Alignment Alternatives
3. Preferred Design Option
4. Implementation Scope and Cost Estimate

Project Planning Milestones:

Begin Date: 1 week after NTP

End Date: 48 weeks after NTP

Project Completion:

End Date: 52 weeks after NTP

Agency / ODOT
Agreement No. 35248

For purposes of Exhibits B and C, references to Department shall mean STATE, references to Contractor shall mean Recipient, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS-PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in

this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-2710) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal

Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. **Compliance with Regulations.** Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.
2. **Solicitation for Subcontractors, including Procurement of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. **Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act).** During the performance of this Contract, Contractor agrees as follows:

- a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
- a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS
ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business

Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

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2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING DEPARTMENT'S DBE PROGRAM REQUIREMENT CONTACT
OFFICE OF CIVIL RIGHTS AT (503)986-4354.