

"Making a difference through excellence of service"



CITY OF WARRENTON

AGENDA

CITY COMMISSION OF THE CITY OF WARRENTON
REGULAR MEETING
November 8, 2016 – 6:00 P.M.
Warrenton City Commission Chambers – 225 South Main Avenue
Warrenton, OR 97146

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

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

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. Public Hearing – Street Vacation – Petitioners John and Kenneth Yuill - a Portion of SE Galena
 - B. Consideration of NW Natural Gas Franchise Request
 - C. Consideration of IFA Grant Agreement for Warrenton Industrial User Agreement, and Resolution No. 2470; Approving and Adopting Increases to the 2016-2017 Budget by Increasing Appropriations for Unanticipated Revenues in the Sewer Fund

D. Change Order No. 1 for DeLaura Beach Lane – Bike Path Storm Water Culvert

E. Discussion on Library Lease

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**

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
WORK SESSION – October 25, 2016
5:15 p.m.
Warrenton City Hall - Commission Chambers
225 S. Main
Warrenton, Or 97146

Mayor Kujala convened the work session at 5:23 p.m.

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

Excused: Henry Balensifer

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

Purpose of Work Session: Water Rights Update from GSI Consultants

Public Works Director Jim Dunn introduced Adam Sussman from GSI Water Solutions Mr. Sussman gave a presentation on water rights, which was included in the meeting packet. He explained the life cycle of water rights in the State of Oregon and the process to obtain a permit. He noted that water rights are obtained from the State. The City’s permit was originally obtained in 1921, and has had routine extensions. The procedure changed in the 2005 legislative session and the City’s permit expired in October of 2000. Discussion continued on the timeline, noting that an extension was requested to the year 2050. Also discussed were forecast usage and the need for updated demand projections.

There being no further business Mayor Kujala adjourned the meeting at 5:58 p.m.

APPROVED:

Mark Kujala, Mayor

ATTEST:

Dawne Shaw, Administrative Assistant

Volume 10, Issue 3

Monthly Finance Report
September 2016

November 8, 2016

Economic Indicators

	Current	1 year ago
◆ Interest Rates:		
LGIP :	.94%	.54%
Columbia Bank:	.05%	.05%
◆ Prime Rate:	3.50%	3.25%
◆ L/T Bond Rate:	2.93%	3.78%
◆ CPI-U change:	1.5%	0.0%
◆ Unemployment Rates:		
Clatsop County:	5.5%	5.6%
Oregon:	5.5%	5.7%
U.S.:	5.0%	5.1%

Department Statistics

◆ Utility Bills mailed	3,276
◆ New Service Connections	9
◆ Reminder Letters	397
◆ Door Hangers	105
◆ Water Service Discontinued	12
◆ Walk-in counter payments	949
◆ Mail payments	1,270
◆ Auto Pay Customers/pymts	541
◆ Online (Web) payments	1,071
◆ Checks Issued	430

Current and Pending Projects

- ◆ M D & A / Audit
- ◆ SDC Annual Report
- ◆ Landfill Financial Assurance Report
- ◆ Warrenton Urban Renewal Agency Annual Report
- ◆ Health Insurance Open Enrollment-complete

Financial Narrative as of September 30, 2016

Note: Revenues and expenses should track at 3/12 or 25% of the budget.

Attached to this report is analysis and summaries of data for assessed value and property tax information for the City of Warrenton for the tax year 2016-2017

Assessed value for the City of Warrenton is \$538,455,553, an increase of 3.49% from the prior year. Of that amount, the Urban Renewal District boundary value represents \$62,370,427, an increase of 9.49%. The value of the Urban Renewal boundary represents 11.58% of the total city boundary value.

Tax amounts to be received are as follows for the permanent rate; \$795,137, local option rate (Library and Police), \$201,920, and bonded debt rate, \$722,734, for a total of \$1,719,791. Please keep in mind that these amounts will be reduced by discounts, uncollected taxes, and other reductions. The total levy last year was \$1,689,149.

The Urban Renewal Agency boundary value will raise \$593,665 at the rates of \$1.1045 per \$1,000 and at a rate of 57.09 cents per \$1,000 of assessed value depending on the tax code, for Urban Renewal. These rates are applied to each individual property's total assessed value whether you are inside the boundary or not. The tax amount is also subject to discounts, credits, etc. This is \$68,381 more than the budgeted revenue of \$525,284. If the Agency col-

lects 93.8% of the tax, then it is projected that we will be over budget by \$31,574.

19.34 cents per \$1,000, or \$104,111 is the amount of tax that the General Fund loses to the Urban Renewal Agency.

Taxpayers pay \$1.3422 per \$1,000 of assessed value for bonded debt compared to \$1.3843, last year.

If the County collects 93.8% of the total imposed taxes, the General Fund should see an excess of \$2,672 in property tax revenue compared to budget. The Library would see an excess of \$430 compared to budget. During budget projections, total assessed value was estimated at \$535,896,320 an underestimate of \$2,559,233. The urban renewal value was estimated at \$58,672,698 and the outside urban renewal boundary was estimated at \$477,223,622 for underestimate of \$3,697,729 and an over estimate of \$1,138,496.

For every one million of assessed value added, the permanent rate plus the local option rate would raise \$2,045.10, annually. \$1,950.10 for the General Fund and \$95 for the Library.

Also, attached are data for Warrenton and surrounding area cities' assessed value, permanent rates, and total tax rates by tax code. Code 0113 is the latest annexation (by the airport) up to our

Urban Growth Boundary and pays a different rate because they are in School 1 District as opposed to School 30 (Warrenton School District). Warrenton's population estimate for this year is 5,175

Taxpayers in code 3004/3010 and 0113 pay property taxes (to all jurisdictions) of \$1,481 and \$1,635, respectively on property assessed at \$125,000. Receipt of current property tax revenues begins in November.

Also, attached is Oregon population data. The city's per capital state distributions for 2016/2017 are based on Warrenton population of 5,175.

General Fund: Year to date revenues amount to \$621,232, which is 16.93% of the budget, and are comparable to the prior year amount of \$582,693, which was 16.56% of the budget and are up by \$38,539.

Expenses year to date amount to \$1,041,995, which is 25% of the budget, compared to the prior year amount of \$969,512, which was 24.6% of the budget.

Quincy Robinson Trust: The value of the trust at US Bank as of September 30, 2016 is \$916,482, up from \$882,950 as of July 1, 2016.

Financial data as of September 2016

	General Fund			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	967,975	1,269,879	950,000	133.67
Plus: Revenues	199,438	621,232	3,668,832	16.93
Less: Expenditures				
Municipal Court	8,813	29,285	126,320	23.18
Admin/Comm/Fin (ACF)	77,676	374,716	1,006,408	37.23
Planning	16,826	38,784	197,533	19.63
Police	154,965	406,379	1,702,215	23.87
Fire	50,558	157,638	833,463	18.91
Parks	9,459	35,193	171,673	20.50
Transfers	-	-	129,578	-
Total Expenditures	318,297	1,041,995	4,167,190	25.00
Ending Fund Balance	849,116	849,116	451,642	188.01

(see details of revenue, page 4)

	WBA			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	153,996	137,741	150,850	91.31
Plus: Revenues	(1,007)	46,216	46,200	100.03
Less: Expenditures	4,165	35,133	155,047	22.66
Ending Fund Balance	148,824	148,824	42,003	354.32

	Building Department			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	248,174	261,655	230,000	113.76
Plus: Revenues	17,191	40,780	213,890	19.07
Less: Expenditures	16,614	53,684	231,551	23.18
Ending Fund Balance	248,751	248,751	212,339	117.15

	State Tax Street			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	1,414,892	1,421,947	1,180,000	120.50
Plus: Revenues	58,405	84,321	799,407	10.55
Less: Expenditures	113,979	146,950	1,842,462	7.98
Ending Fund Balance	1,359,318	1,359,318	136,945	992.60

	Warrenton Marina			
	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	457,554	195,027	170,000	114.72
Plus: Revenues	17,347	386,914	489,001	79.12
Less: Expenditures	34,358	141,398	614,841	23.00
Ending Fund Balance	440,543	440,543	44,160	997.61

Financial data as of September 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	320,163	168,011	170,000	98.83	1,467,461	1,140,492	910,000	125.33
Plus: Revenues	18,086	248,350	271,701	91.41	309,519	971,377	4,236,400	22.93
Less: Expenditures	29,583	107,695	389,770	27.63	138,077	472,966	4,761,435	9.93
Ending Fund Balance	<u>308,666</u>	<u>308,666</u>	<u>51,931</u>	<u>594.38</u>	<u>1,638,903</u>	<u>1,638,903</u>	<u>384,965</u>	<u>425.73</u>

	Sewer Fund				Storm Sewer			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	1,557,321	1,369,458	1,300,000	105.34	308,351	284,330	210,000	135.40
Plus: Revenues	212,990	657,177	4,226,699	15.55	33,336	102,777	377,960	27.19
Less: Expenditures	105,006	361,330	4,309,630	8.38	51,039	96,459	532,049	18.13
Ending Fund Balance	<u>1,665,305</u>	<u>1,665,305</u>	<u>1,217,069</u>	<u>136.83</u>	<u>290,648</u>	<u>290,648</u>	<u>55,911</u>	<u>519.84</u>

	Sanitation Fund				Community Center			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	363,048	354,473	375,000	94.53	10,738	11,801	11,000	107.28
Plus: Revenues	93,968	277,070	1,016,132	27.27	797	2,969	12,515	23.72
Less: Expenditures	63,049	237,576	1,170,371	20.30	1,653	4,888	21,308	22.94
Ending Fund Balance	<u>393,967</u>	<u>393,967</u>	<u>220,761</u>	<u>178.46</u>	<u>9,882</u>	<u>9,882</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	21,524	31,129	21,000	148.23	2,210,132	42,123	19,154	219.92
Plus: Revenues	806	2,263	55,727	4.06	60	2,200,063	4,222,122	52.11
Less: Expenditures	4,518	15,580	60,172	25.89	15,674	47,668	4,241,276	1.12
Ending Fund Balance	<u>17,812</u>	<u>17,812</u>	<u>16,555</u>	<u>107.59</u>	<u>2,194,518</u>	<u>2,194,518</u>	<u>-</u>	<u>-</u>

Financial data as of September 2016, continued

(\$) Cash Balances as of September, 2016

General Fund	1,024,786	Warrenton Marina	378,874	Storm Sewer	278,541
WBA	148,505	Hammond Marina	311,701	Sanitation Fund	270,869
Building Department	251,824	Water Fund	1,174,321	Community Center	11,316
State Tax Street	1,454,927	Sewer Fund	1,298,848	Library	18,597

Warrenton Urban Renewal Agency

Capital Projects	2,206,238
Debt Service	746,169

General Fund Revenues	Collection Frequency	2016-2017 Budget	Actual as	Collections/Accruals		(over) under budget
			a % of Current Budget	Year to date		
				September 2016	September 2015	
Property taxes-current	AP	884,586	0.00	-	-	884,586
Property taxes-prior	AP	35,000	13.46	4,710	4,481	30,290
County land sales	A	-	0.00	-	-	-
Franchise fees	MA	534,000	12.34	65,875	67,468	468,125
COW - franchise fees	M	124,338	29.40	36,553	33,769	87,785
Transient room tax	Q	462,109	8.56	39,569	38,297	422,540
Liquor licenses	A	625	4.00	25	25	600
State revenue sharing	MQ	125,559	10.47	13,143	8,208	112,416
Municipal court	M	127,175	21.13	26,873	30,269	100,302
Planning charges	I	55,000	5.30	2,913	12,609	52,087
Police charges	I	6,000	29.53	1,772	1,412	4,228
Fire charges	SM	92,481	0.00	-	-	92,481
Park charges	I	-	0.00	250	100	-
Housing rehab loans	I	-	0.00	-	300	-
Miscellaneous	I	1,300	35.23	458	191	842
Interest	M	5,000	37.24	1,862	1,271	3,138
Lease receipts	M	209,251	25.10	52,514	30,615	156,737
Donations	I		0.00	-	-	-
Sub-total		2,662,424	9.26	246,517	229,015	2,415,907
Overhead	M	1,006,408	37.23	374,715	353,678	631,693
Total revenues		3,668,832	16.93	621,232	582,693	3,047,600

M - monthly

Q - quarterly

SM - Semi-annual in November then monthly

AP - As paid by taxpayer beginning in November

MA - pacificorp-monthly, Century Link-quarterly, others annually in March A - annual

S - semi-annual

I - intermittently

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

R - renewals due in July and new licenses intermittently

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.

CITY OF WARRENTON
History of Assessed Property Values and Property Taxes to be Received

	2016-2017	2015-2016	2014-2015	2013-2014	2012-2013	2011-2012	2010-2011	2009-2010	2008-2009	2007-2008	2006-2007	2005-2006
Value	538,455,553	520,287,689	490,415,906	476,825,335	455,991,441	427,950,315	405,421,734	387,486,368	345,597,792	331,204,007	312,584,682	295,529,253
percentage increase from prior year	3.492%	6.091%	2.850%	4.569%	6.552%	5.557%	4.629%	12.121%	4.346%	5.957%	5.771%	6.507%
Perm Rate Tax	795,137	773,823	731,942	705,604	678,058	642,181	611,819	604,715	576,330	553,142	522,045	493,561
Local Option Tax	201,920	195,108	183,835	178,809	170,996	160,481	152,032	145,304	264,345	253,335	239,093	226,048
Bonded Debt	722,734	720,218	696,481	673,056	687,544	713,264	776,821	881,880	860,159	781,469	212,422	212,024
Total Tax Amount to be Received	\$ 1,719,791	\$ 1,689,149	\$ 1,612,258	\$ 1,557,469	\$ 1,536,598	\$ 1,515,926	\$ 1,540,672	\$ 1,631,899	\$ 1,700,834	\$ 1,587,946	\$ 973,560	\$ 931,633
Urban Renewal Excess Assessed Value	62,370,427	56,963,784	52,179,015	54,333,847	50,006,896	43,451,283	39,086,393	25,769,667	6,221,207			
percentage increase from prior year	9.491%	9.170%	-3.966%	8.653%	15.087%	11.167%	51.676%	314.223%				
Outside Urban Renewal Boundary Value	476,085,126	463,323,905	438,236,891	422,491,488	405,984,545	384,499,032	366,335,341	361,716,701	339,376,585			
percentage increase from prior year	2.754%	5.725%	3.727%	4.066%	5.588%	4.958%	1.277%	6.583%				
Total Assessed Value of the City	538,455,553	520,287,689	490,415,906	476,825,335	455,991,441	427,950,315	405,421,734	387,486,368	345,597,792			

CITY OF WARRENTON
PROPERTY TAX ALLOCATION
2016/2017

	<u>1.6701</u> PERM RATE	<u>0.2800 0.0950</u> LOCAL OPTION	<u>AMOUNT NEEDED OUTSIDE M5</u>	<u>TOTAL</u>	
GENERAL FUND	100.00	0.7467			
LIBRARY		0.2533			
MUNICIPAL BLDG			0.1974		
WWTP			0.8026		
AMOUNT TO BE REC'D	795,137.00	201,920.00	722,733.95	1,719,790.95	
					PERCENTAGE
GENERAL FUND	795,137.00	150,766.93		945,903.93	0.5500
LIBRARY		51,153.07		51,153.07	0.0297
MUNICIPAL BLDG			142,656.10	142,656.10	0.0829
WWTP			580,077.85	580,077.85	0.3373
	795,137.00	201,920.00	722,733.95	1,719,790.95	1.0000
	<u>Tax Rate</u>				
GF LOCAL OPTION - POLICE	0.2800	0.7467			
LIBRARY LOCAL OPTION	0.0950	0.2533			
	0.3750	1.0000			
			<u>Bonded Debt Tax Rate</u>		
WWTP	580,077.85	0.8026	1.0773		
MUNI BUILDING	142,656.10	0.1974	0.2649		
	722,733.95	1.00	1.3422		
Urban Renewal Assessed Value	62,370,427				
Outside Urban Renewal Boundary Value	476,085,126				
Total Assessed Value of the City	538,455,553				

Comparison to Budget:	<u>Budget</u>	<u>County Imposed Taxes</u>	<u>93.8% of Imposed Taxes</u>	<u>93.8% imposed taxes Variance to Budget</u>	
GF - Permanent Rate	744,434	795,137	745,839	1,405	
GF - Local Option Police	140,152	150,767	141,419	1,267	2,672
Local Option Library	47,552	51,153	47,982	430	
GO Bond Muni Bldg	124,450	142,656	133,811	9,361	
GO Bond WWTP	542,001	580,078	544,113	2,112	
	1,598,589	1,719,791 ¹	1,613,164	14,575	

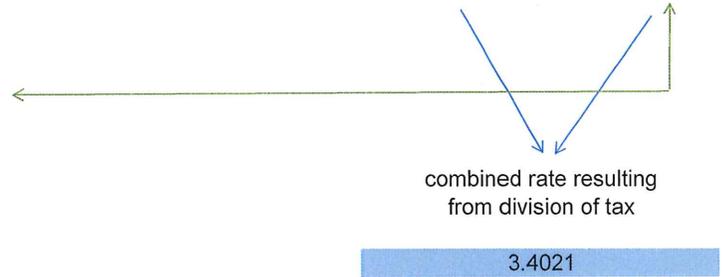
City of Warrenton
2016-2017 Analysis of Property Tax Rates and Assessed Values - Actual

ADC
 10/26/2016
 12:23 PM

Boundary Assessed Values		
62,370,427	urban renewal	11.58%
476,085,126	other	88.42%
<u>538,455,553</u>	<u>total assessed value</u>	<u>1</u>

	w/o division of tax	Tax Rates	
		Division of Tax cow rate	urban rate
permanent rate	1.6701	1.4766	0.1934
local option rate	0.3750	0.3750	0
bond-wwtp	1.0774	1.0774	0
bond-muni bldg	0.2474	0.2474	0.0323
	<u>3.3699</u>	<u>3.1764</u>	<u>0.2257</u>

division of warrenton tax rates for URA			
code 3004 and 3010		code 0113	
0.2257	city of warrenton	0.2257	
0.0061	4H	0.0061	
0.1776	clatsop county	0.1776	
0.0145	port of astoria	0.0145	
0.0204	care center	0.0204	
0.0901	clatsop community	0.0901	
0.0178	nw esd	0.0178	
0.5336	school 30/school 1	0.0000	
0.0187	sunset trans	0.0187	
<u>1.1045</u>	<u>division of tax rate</u>	<u>0.5709</u>	



code 3004 and 3010	536,472,210	X	1.1045 divided by 1,000	=	592,507.35
code 0113 (annexation)	1,983,343	X	0.5709 divided by 1,000	=	1,132.19
	<u>538,455,553</u>				<u>593,639.32</u>

Amount allocated to Urban Renewal

593,665.11 County Table 4f

(25.79) variance immaterial

tax rates from code 3004 and 3010 and 0113

1.4766		
0.3750		
1.3248	3.1764	City of Warrenton allocation
0.1934		
0.0323	0.2257	Warrenton Urban Renewal Agency allocation (Division of City of Warrenton Tax)
<u>3.4021</u>	<u>3.4021</u>	

amount diverted from COW General Fund to URA \$ 104,111.00

WARRENTON URBAN RENEWAL AGENCY
History of Assessed Property Values and Property Taxes to be Received

	2016-2017	2015-2016	2014-2015	2013-2014	2012-2013	2011-2012	2010-2011	2009-2010	2008-2009
Value	62,370,427	56,963,784	52,179,015	54,333,847	50,006,896	43,451,283	39,086,393	25,769,667	6,221,207
percentage increase from prior year	9.491%	9.170%	-3.966%	8.653%	15.087%	11.167%	51.676%	314.223%	
Total Amount to be Received¹	\$ 593,665	\$ 543,717	\$ 497,892	\$ 519,858	\$ 479,857	\$ 415,863	\$ 289,240	\$ 252,630	\$ 60,787
Budget	\$ 525,284	\$ 478,982	\$ 496,364	\$ 452,000	\$ 389,465	\$ 362,452	\$ 298,647	\$ 142,622	\$ 40,000
Variance of Budget to Amount to be Received	\$ 68,381	\$ 64,735	\$ 1,528	\$ 67,858	\$ 90,392	\$ 53,411	\$ (9,407)	\$ 110,008	\$ 20,787
Urban Renewal Assessed Value	62,370,427	56,963,784	52,179,015	54,333,847	50,006,896	43,451,283	39,086,393	25,769,667	6,221,207
Outside Urban Renewal Boundary Value	476,085,126	463,323,905	438,236,891	422,491,488	405,984,545	384,499,032	366,335,341	361,716,701	339,376,585
Total Assessed Value of the City	538,455,553	520,287,689	490,415,906	476,825,335	455,991,441	427,950,315	405,421,734	387,486,368	345,597,792

¹ These amounts are not what will actually be received as they are subject to discounts, uncollected taxes, and other reductions.

Area Cities' Property Tax Rates
Tax Year 2016-2017

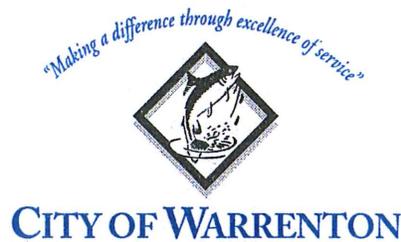
Tax Code	City of Warrenton		City of Astoria		City of Gearhart		City of Seaside		City of Cannon Beach	
	0113	3004, 3010	0100, 0101, 0109	1005	1001, 1027	1008				
School Government	5.8730	5.5225	5.8730	5.8628	5.8628	5.8628	5.8628	5.8628	5.8628	5.8628
School Bonds	4.1462	4.1462	10.2749	3.0071	6.5312	3.3865	0.1708	0.1708	0.1708	0.1708
Government Bonds	1.7102	0.8248	1.7102	1.5807	0.3112	0.5503				
	1.3570	1.3570	-							
Total Tax Rate	13.0864	11.8505	17.8581	10.6214	12.8760	9.9704				
Total Tax on \$125,000 Assessed Value	\$ 1,635.80	\$ 1,481.31	\$ 2,232.26	\$ 1,327.68	\$ 1,609.50	\$ 1,246.30				
Total Tax on \$150,000 Assessed Value	\$ 1,962.96	\$ 1,777.58	\$ 2,678.72	\$ 1,593.21	\$ 1,931.40	\$ 1,495.56				

Source: Clatsop County 2016-2017 Assessment and Taxation Summary, Tax Rate Schedules

**Area Cities' Property Tax Permanent Rate Levies
Tax Year 2016-2017**

	City of Warrenton	City of Astoria	City of Gearhart	City of Seaside	City of Cannon Beach
Population	5,175	9,580	1,480	6,585	1,705
Total Assessed Value	538,455,553	801,521,909	511,727,447	1,141,175,599	883,574,038
Permanent Rate	\$ 1.6701	\$ 8.1738	\$ 1.0053	\$ 3.1696	\$ 0.7049
Amount of tax raised by permanent rate after adjustments	\$ 795,136.75	\$ 5,958,614.67	\$ 514,439.26	\$ 3,616,534.58	\$ 622,831.67

Sources: Clatsop County 2016-2017 Assessment and Taxation Summary, Table 4a
Portland State University, Population Research Center, July 2015



AGENDA MEMORANDUM

TO: The Warrenton City Commission

FROM: Linda Engbretson, CMC, City Recorder/Asst. to the City Manager

DATE: November 8, 2016

SUBJ: Public Hearing – Street Vacation – Petitioners, John and Kenneth Yuill - A Portion of SE Galena

SUMMARY

The Commission initiated a street vacation on October 11, 2016, setting the Public Hearing for November 8. The proposed area for vacation is SE Galena that runs from SE 14th Place, south for a distance of 361.2 feet, in Block 2, Tract 3 of Chelsea. This is a public hearing, and the public should be given the opportunity to speak either in favor or against the proposed vacation.

If after the Public Hearing, the Commission sees no reason not to approve the vacation, it is appropriate to direct staff to prepare an ordinance to vacate the above described portion of SE Galena.

RECOMMENDATION/SUGGESTED MOTION

“I move to have staff prepare an ordinance to vacate a portion of SE Galena Avenue, per Street Vacation Petition No. 147.”

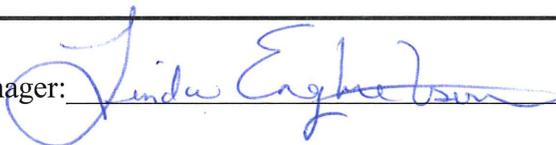
ALTERNATIVE

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

FISCAL IMPACT

Property will go on the County Tax Rolls.

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.

LEGISLATIVE PUBLIC HEARING PROCEDURE

This is the time set for a public hearing on consideration of Street Vacation Petition No. 147, for vacation of a portion of SE Galena Avenue.

1. **OPEN PUBLIC HEARING**

2. **DECLARATION OF CONFLICTS OF INTEREST**

Mayor calls for any conflict of interest from Commission members.

3. **STAFF REPORTS**

Mayor asks the City Manager or appropriate staff to make presentation or report.

4. **PUBLIC TESTIMONY**

Mayor requests speaker come to microphone and state name for the record.

Proponents

Opponents

5. **CLOSE PUBLIC HEARING**

6. **RECOMMENDATIONS FROM STAFF**

Mayor asks for any additional comments or presentation from the City Manager or Staff.

7. **COMMISSION DELIBERATES**

Commission deliberates towards decision.

8. **DECISION**

Motion required.

STREET VACATION PETITION
City of Warrenton

Fee: \$600.00

<u>Petitioner</u>	<u>Petitioner's Representative</u>
Name: Kenneth and John Yuill	Name: Kenneth Yuill
Mailing Address: 580 Hwy 101 Alt Warrenton Or 97146	Mailing Address: Same
Phone Number: (503) 861-3887	Phone Number: cell (503) 440-1202
Email Address: kjuill@msn.com	Email Address: same
<p>1. A description of the right-of-way area to be vacated. <i>(Don't forget to include a map highlighting the area. A survey or professionally developed legal description is required).</i></p> <p>Kenneth and John Yuill are requesting to vacate a portion of S.E. Galena Ave. That runs from S.E. 14th Place for a distance of 361.2 feet in Block 2, Sub Tract 3 of Chelsea. This area runs between tax lots 81027BC 01700 and 81027BC 01600. 81027BC 02100, 81027BC 02200 and 81027BC 01500.</p>	
<p>2. Reason for the Vacation Request. <i>(Advise if any buildings/structures will be in the area to be vacated).</i></p> <p>The first reason is to put this property on the tax rolls. The second is this area was plotted in 1889, and was never used as a street. This right-of-way ends 30 feet from the Home Depot if it were to continue into their parking lot they would need to fill in more of the wet lands area. There are no utilities that run thru this area. By vacating this, we will be protecting the remaining wet lands which is the main drainage for most of this acreage.</p> <p style="text-align: center;">Note: If additional room is necessary, please attach extra pages.</p>	
<p>3. Required affidavits.</p> <ul style="list-style-type: none">a. 100% of abutting property owners,b. Two-thirds in area of real property affected by proposal. Refer to <i>ORS Chapter 271</i> (attached).c. List of all abutting and affected property owners, mailing addresses, and corresponding square footage of property owned.	

Kenneth Yuill

Petitioner

Date

Return To:

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

For Questions – Contact:

Linda Engbretson, City Recorder
Phone: 503/ 861-0823
Email: cityrecorder@ci.warrenton.or.us

AFFIDAVIT

STATE OF OREGON)
COUNTY OF CLATSOP)

Dave E. and Janine M. Short

being the owners of the following real property: Tax Lot 81027BC01503

Located in the City of Warrenton Oregon

as a basis of the petition from Kenneth and John Yuill

do hereby consent to the vacation of a portion of S.E. Galena Ave. right- of -way

as described: This area runs from S.E. 14th Place, South for a distance of 361.2 feet.
Block 2, Tract 3 of Chelsea. This area runs between tax lots 81027BC 01700 and 81027BC 01600.
81027BC 02100, 81027BC 02200 and 81027BC 01500.

Signature: *Dave Short* Date: 6/27/16

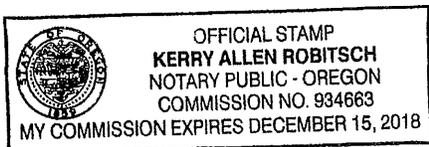
Signature: *Janine M. Short* Date: 6/27/16

On this 27 day of June, 2016, personally appeared before me, a
notary public in and for the State of Oregon, the within named Dave E.
and Janine M. Short acknowledged the following instrument to be an
voluntary act and deed.

Kerry Allen Robitsch

Notary Public for Oregon

My commission expires: 12/15/2018



AFFIDAVIT

STATE OF OREGON)
COUNTY OF CLATSOP)

Eddie J. and kathy L. Hanna

being the owners of the following real property: Tax Lot 81027BC01502

Located in the City of Warrenton Oregon

as a basis of the petition from Kenneth and John Yuill

do hereby consent to the vacation of a portion of S.E. Galena Ave. right-of-way

as described: This area runs from S.E. 14th Place, South for a distance of 361.2 feet.
Block 2, Tract 3 of Chelsea. This area runs between tax lots 81027BC 01700
and 81027BC 01600, 81027BC 02200 and 81027BC 01500.

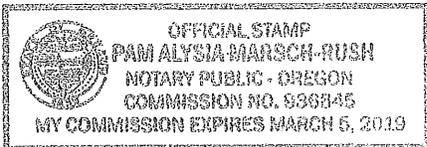
Signature: *Eddie Hanna* Date: 7-15-2016

Signature: *Kathy Hanna* Date: 7-15-2016

On this 15 day of JULY, 2016, personally appeared before me, a
notary public in and for the State of Oregon, the within named EDDIE J HANNA
KATHY L. HANNA acknowledged the following instrument to be
voluntary act and deed.

Pam Rush
Notary Public for Oregon

My commission expires: 3-5-19



Attachment (A)

Background

My brother John Yuill and I own all of the connecting lots on the southernmost section of S.E. Galena Avenue. I have lived at my home since 1977 and in this section of Warrenton almost continually since 1965. I have experienced all of the major changes that have occurred in this area. Around 1998, I worked with Pat Heaton to have the sewer system extended into our area. Due to all of the traffic accidents that occurred in the area over the years, I worked hard to have a traffic light located at the intersection of Highway 101 and Ensign when the Home Depot was being developed.

We are now looking to vacate the portion of S.E. Galena Avenue that runs through our property. S.E. Galena Avenue was plotted in 1889 and runs from Harbor Drive south to just about the location of the Home Depot property. Over the course of these many years, a number of sections of this plotted street have been vacated. At their March 22, 2016 meeting, the Warrenton City Commission approved the vacation of a section of Galena Avenue. The area of S.E. Galena just north of S.E. 14th Place was vacated in 1949. The proposed area to be vacated runs through our tax lots and has never been used as a road. This is a right-of-way that goes nowhere and is at the end of the plotted streets in our area. There are no maps showing roads leading out of the Home Depot area from the north side of that property. If Home Depot was to build a road to directly connect to Galena Avenue, they would need to fill in more of the wetland area.

Listed below are the reasons for the vacation request:

- (1) Place the Property on the Tax Rolls. Eddie and Kathy Hanna and I have maintained this area for many years. After purchasing the last of the connecting lots to this right-of-way, we have no need for a 60 foot wide street.
- (2) Our Privacy/Wetlands. By vacating S.E. Galena Avenue there would no longer be any reason to develop that right-of-way thus guaranteeing the privacy that we have enjoyed all these years. In addition, the last of the small wetlands adjacent to my home will be protected. There is a plotted 30 foot right-of-way that starts at S.E. Galena Court (see attachment B) and runs west to Highway 101 Alt. The most western part of this right-of-way is wetlands. In order to develop this into a street, you would need to fill in much of what is left of this wetland area. This wetland once ran from Highway 101 Alt. east for approximately a mile. About 50 years ago, there was the clearing and filling in of the area formally known as the Aluminum Plant site, then came the new section of Highway 101, and the latest was the filling in that Home Depot was allowed to do. This wetland area is now less than 300 feet in length and is still the main drainage for much of the acreage in our area.
- (3) Affected Property Owners. There are only two property owners in this two block area – Eddie and Kathy Hanna and Dave and Jan Short. Both use S.E. Galena Court to access their properties and they would not be affected by the vacation of Galena Avenue. Both the Hannas and Shorts have consented to this request.
- (4) Inadequate Water Supply. Currently, the only water line running up S.E. 14th Place is a two inch line. The Warrenton Fire Chief is requesting that any new homes that are built must have a fire hydrant within 150 feet of them. We cannot afford to upgrade the water service for our area. The water main is located on Highway 101 Alt. and at this time there are a number of lots that cannot be developed. The same is true for the entire area from S.E. 14th Place north until you reach the Ocean Crest Car Dealership. In my opinion, this area has some of the greatest development potential, but this portion of Warrenton is being overlooked.
- (5) If the interest is there this would connect two city blocks into one larger one of about 4 acres in size for more opportunity for commercial development.



West land area where
S.F. Galeana Exds

The area that is between Highway 101 and the Alternate Highway 101 is out of the flood area and the Tsunami zone. The zoning in this area is a mixture from C-1 commercial, to R-10 intermediate density Residential, to I-1 general industrial.

In 1998, the LID sewer project was finished. The agreement between the city and the property owners in the area was one sewer lateral hookup per tax lot. Because of the commercial development in this area and the problems of having just 2 inch water lines running up S.E. 14th Place and Street this has become the forgotten zone. I still have the option of five more sewer hookups but with the restrictions because of the water issue I have not been able to do anything.

As for the commercial development there is not much more that can go in on the East side of Highway 101. I have been trying to vacate the section of S.E. Galena that runs between my properties off S.E. 14th Place. Linda Engbretson sent me an e-mail showing that our city Engineer has pointed out that the Home Depot is needed to sign off on my request. I am getting no response back from them. I need to point out that with this right-of-way removed; this will make an area of about 4 acres next to the Home Depot. This is including the Hanna's and the Short's properties. They have signed off on the affidavits. I have had people walk the property but without this street vacation I believe more Commercial development in our area will not happen.

On S.E. 14th Place to S.E. 14th Street, Dorrie Caruana is also looking to vacate a section of the S.E. Galena Court and again the Home Depot would need to sign off on this. I have talked her and with the Nygaard's and we are in agreement to work together on this matter.

The question for the Commission is what do they see this area as? If Commercial, can they help? If because of the great need for housing, could Urban Renewal money be used for the needed improvements so more housing can be built?

"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 8, 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.

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 joint-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 fo 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.

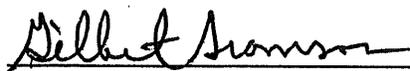
The Grantee shall, within thirty (30) days from the date this ordinance takes effect, files with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

Section 25: Effective Date.

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

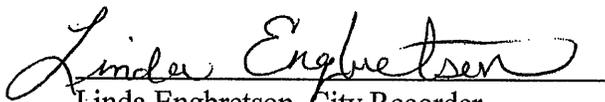
ADOPTED by the City Commission of the City of Warrenton this 26th day of September, 2006.

APPROVED:



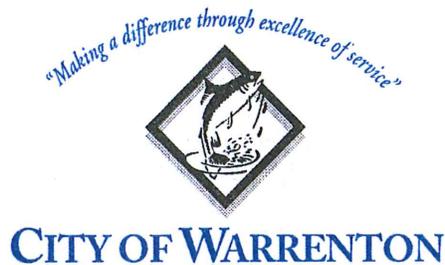
Gilbert Gramson, Mayor

ATTEST:



Linda Engbretson, City Recorder

6-C



AGENDA MEMORANDUM

TO: The Warrenton City Commission

FROM: Public Works Director, James Dunn

DATE: November 8, 2016

SUBJ: Consideration of IFA Grant Agreement for Warrenton Industrial User Agreement and Consideration of Resolution No. 2470 Approving and Adopting Increases to the 2016-2017 Budget by Increasing Appropriations for Unanticipated Revenues in the Sewer Fund

SUMMARY

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. Then on Thursday October 24th 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 these funds.

RECOMMENDATION/SUGGESTED MOTIONS

Staff recommends the following motions;

- 1) "I move to authorize the grant agreement between the Oregon Infrastructure Finance Authority and the City of Warrenton for the Warrenton Industrial User Agreement project"

- 2) "I move to Adopt Resolution No. 2470 Approving and Adopting Increases to the 2016-2017 Budget by Increasing Appropriations for Unanticipated Revenues"

ALTERNATIVE

- 1) None Recommended

FISCAL IMPACT

This increases revenues in the Sewer Fund in the amount of \$46,580 and increases expenses by the same amount. The total project cost is estimated at \$54,800. The \$8,220 matching funds for this project are available in the current sewer fund budget.

Approved by City Manager:

_____

SPECIAL PUBLIC WORKS FUND PLANNING PROJECT
FINANCING CONTRACT

Project Name: Warrenton Industrial User Agreement

Project Number: A17003

This financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority ("IFA"), and the City of Warrenton ("Recipient") for financing of the project referred to above and described in Exhibit C ("Project"). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A General Definitions
- Exhibit B NOT APPLICABLE
- Exhibit C Project Description
- Exhibit D Project Budget

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$54,800.

"Grant Amount" means \$46,580.

"Project Closeout Deadline" means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

"Project Completion Deadline" means 24 months after the date of this Contract.

SECTION 2 - FINANCIAL ASSISTANCE

Commitment. The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project as a grant in an aggregate amount not to exceed the Grant Amount (the "Grant").

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form ("Disbursement Request").
- B. Financing Availability. The IFA's obligation to make and Recipient's right to request disbursements under this Contract terminates on the Project Closeout Deadline.

SECTION 4 - CONDITIONS PRECEDENT

- A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
 - (2) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (6) Any conditions to disbursement elsewhere in this Contract are met.

SECTION 5 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act, and Oregon law as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

SECTION 6 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded.
- B. Organization and Authority.
- (1) The Recipient is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.
 - (3) This Contract has been duly executed by Recipient, and when executed by IFA, is legal, valid and binding, and enforceable in accordance with their terms.
 - (4) This Contract executed and delivered by Recipient has been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- E. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
 - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

SECTION 7 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the Project. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
 - (2) OAR 123-042-0165 (5) requirements for signs and notifications.
- These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.
- C. Project Completion Obligations. The Recipient shall:
- (1) When procuring professional consulting services, provide IFA with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
 - (2) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
 - (3) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
 - (4) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.
- D. Industrial Lands. The land involved in this Project must remain zoned industrial and not be converted to another use for at least 5 years after the completion of the Project. If this condition is not met, the Grant must be immediately repaid, unless otherwise allowed by IFA and agreed in writing by IFA and Recipient.
- E. Inspections; Information. The Recipient shall permit IFA and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as IFA may reasonably require.
- F. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds until the date that is three years following the later of the final maturity of the Lottery Bonds, or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Lottery Bonds, or such longer period as may be required by other provisions of this Contract or applicable law.

- G. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- H. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans owned and emerging small businesses...” The IFA encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at https://www.oregonlegislature.gov/bills_laws/ors/ors200.html. Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- I. Professional Responsibility. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- J. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- K. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- L. [Reserved]
- M. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
 - (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be “private activity bonds” within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of IFA, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute “private business use” within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be “disproportionate related business use” or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of IFA, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.

- (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.
- (4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist IFA to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to IFA such amounts as may be directed by IFA to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse IFA for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon IFA’s request, Recipient shall furnish written information regarding its investments and use of Financing Proceeds, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the Project, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Grant.

SECTION 8 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. Any false or misleading representation is made by or on behalf of Recipient in this Contract or in any document provided by Recipient related to the Project or in regard to compliance with the requirements of Section 103 and Sections 141 through 150 of the Code.
- B. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- C. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through B of this section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 9 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
 - (1) Terminating IFA’s commitment and obligation to make the Grant or disbursements under the Contract.
 - (2) Barring Recipient from applying for future awards.
 - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.449.
 - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by IFA pursuant to section 9.A will be applied first, to pay any attorneys’ fees and other fees and expenses incurred by IFA; then, as applicable, to repay any Grant proceeds owed; and last, to pay any other amounts due and payable under this Contract.

- C. No Remedy Exclusive; Waiver; Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 8 of this Contract.
- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA's obligations.

SECTION 10 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.
 - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of IFA. The IFA may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of IFA's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of IFA beyond those in this Contract, nor does assignment relieve Recipient of any of its duties or obligations under this Contract.
 - (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract that IFA deems to be necessary.
- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:
- (1) The IFA makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
 - (2) In no event are IFA or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

J. Integration. This Contract (including all exhibits, schedules or attachments) constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through the
Oregon Infrastructure Finance Authority



CITY OF WARRENTON

By: *Robert Ault*
Robert Ault, Manager
Program Services Division

By: *Mark Kujala*
The Honorable Mark Kujala
Mayor of Warrenton

Date: 10/20/16

Date: 10/17/16

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not Required as per OAR 137-045-0030



EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285B.410 through 285B.482, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 28 September 2016.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, IFA or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Proceeds” means the proceeds of the Grant.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Grant.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

EXHIBIT C - PROJECT DESCRIPTION

Recipient will contract with a licensed engineer and/or consultant to develop an industrial user agreement that may be used to accept all, or a portion of, seafood processors’ wastewater. The Recipient may also contract for engineering services to evaluate expansion of its wastewater plant, and/or develop a pre-treatment program as solutions to accepting seafood processors’ wastewater.

Exhibit D: Project Budget

	IFA Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Engineering / Consultant Services	\$46,580	\$8,220
Total	\$46,580	\$8,220

RESOLUTION NO. 2470

Introduced by All Commissioners

**APPROVING AND ADOPTING INCREASES TO THE 2016-2017 BUDGET BY
INCREASING APPROPRIATIONS FOR UNANTICIPATED REVENUES**

BE IT RESOLVED that the City Commission of the City of Warrenton hereby adopts the following 2016-2017 budget changes for unanticipated revenues and expenses.

Whereas, the city has been awarded financing for an Industrial User Agreement by the Infrastructure Finance Authority, in the form of a \$46,580.00 grant.

Whereas, these funds will be deposited into the Sewer Fund, and

Whereas, these funds totaling \$46,580.00 will be used to complete an: Industrial User Agreement and evaluation of solutions to accept seafood processors' wastewater:

Sewer Fund	Existing	Changes	Adjusted
Total Resources	\$ 5,581,699	46,580	\$5,628,279
Sewer Department	1,753,537	46,580	1,800,117
Debt Service	61,868		61,868
Contingency	434,419		434,419
Transfers to Other Funds	2,549,225		2,549,225
Total Expenditures	\$ 4,799,049	\$ 46,580	\$ 4,845,629

PASSED by the City Commission of the City of Warrenton this ____ day of _____, 2016

APPROVED by the Mayor of the City of Warrenton this ____ day of _____, 2016

This resolution is effective on November 8, 2016.

Mayor

ATTEST:

City Recorder

"Making a difference through excellence of service"



**CITY OF WARRENTON
PUBLIC WORKS**

Agenda Item 6-D

Agenda Item Memorandum

TO: The Honorable Mayor and Members of the Warrenton City Commission
Linda Engbretson, City Manager

From: James Dunn, Public Works Director

Date: November 8, 2016

Subj: Change Order Number 1 for DeLaura Beach Lane – Bike Path Storm Water Culvert

Summary:

North Pacific Excavation 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 should be completed before paving.

Recommendation:

Staff recommends the following motions;

"I move to approve Change Order Number 1 for the replacement of the 18" culvert for the DeLaura Beach Lane – Bike Path Project"

Alternative:

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

Fiscal Impact:

Funds for this project are budgeted in the current fiscal year's Fund under the State Tax Streets Fund. This will increase the cost for the DeLaura Beach Ln- Bike Path to \$134,810.85.

Approved by City Manager: _____

Linda Engbretson

North Pacific Excavation
 580 SW Juniper Ave
 Warrenton OR 97146
 503-298-8654
 CCB# 172484

Estimate

Name/Address
City of Warrenton
Attn: Colin Stelzig
PO Box 250
Warrenton OR 97146

Date	Estimate No.	Project
10/24/16	580	

Item	Description	Quantity	Cost	Total
Construction	Replace 18" aluminum culvert with 18" HDPE smooth-walled culvert on Delaura Beach Lane	1	8,970.00	8,970.00
			Total	\$8,970.00

City of Warrenton Project: Delaura Beach Lane - Bike Path	Contract Section Change Order Form
--	---------------------------------------

Change Order No.

Date of Issuance: November 8, 2016

Effective Date: November 8, 2016

Owner: City of Warrenton	
Project: Delaura Beach Lane - Bike Path	City Project #: 40431620010
Engineer: R Collin Stelzig, P.E.	Engineer's Proj #:
Contractor: North Pacific Excavation	Contractor's #:
Original Contract: \$125,840.85	Notice to Proceed Date: August 19, 2016
City Project Manager: Jim Dunn, Public Works Director	
Project Location: Delaura Beach Road STA 7+66	

The Contract Documents are modified as follows upon execution of this Change Order

Description:

Work shall include:

1. Replace 18" Aluminum culvert with 18" HDPE smooth-walled culvert

Original contract times: Working days Calendar days
 Extend contract days 45 Original contract time 60 New contract days 105
 Substantial Completion Date: October 18, 2016
 This will require substantial completion by: December 2, 2016

Attachments:	Contractor's request and invoices
Current Contract Price:	\$ 125,840.85
Increase of this Change Order:	\$ 8,970.00
Contract Price incorporating this Change Order:	\$ 134,810.85

The above prices and specifications of the change order are satisfactory and are hereby accepted. This change order amount and extension of time constitutes total compensation for the change, including compensation for all impacts and delays relating to the change and their cumulative effect on the project to date. All work shall be performed under same terms and conditions as specified in original contract unless otherwise stipulated.

RECOMMENDED	ACCEPTED:	ACCEPTED:
_____ Engineer signature	_____ Contractor signature	_____ Owner Signature/Title
Date: _____	Date: _____	Date: _____

Approved by Funding Agency (if applicable):
 Agency: _____ Title: _____ Date: _____

Project Status Form

Owner: City of Warrenton
 Project: Delaura Beach Lane - Bike Path
 Engineer: R Collin Stelzig, P.E.
 Contractor: North Pacific Excavation
 Original Contract: \$125,840.85
 City Project Manager: Jim Dunn, Public Works Director
 Project Location: Delaura Beach Road STA 7+66

City Project #: 40431620010
 Engineer's Proj #: 0
 Contractor's #: 0
 Notice to Proceed Date: August 19, 2016

CO	Change Order Amount/ Allowance Amt.	C.O. Days	Commission Date	REASON FOR CHANGE
	New Contract Amount	New Total	New Comp. Date	
#1	\$ 8,970.00	45	November 8, 2016	Severe weak soils and pumping of base rock. If work had not been completed, the new asphalt would fall soon after construction.
	\$134,810.85	105	December 2, 2016	
#2				
#3				
#4				
#5				
#6				
#7				
#8				
Project Summary				
	Contract amount	Contract days	Completion Date	
	\$ 134,810.85	105	December 2, 2016	