



City Council Chambers
206 N. Main Street
Toledo, Oregon 97391
7:00 p.m.

TOLEDO CITY COUNCIL
Regular Meeting
January 16, 2019

- 1. Call to Order**
- 2. Visitors/Public Comment**
(The public comment period provides the public with an opportunity to address the City Council regarding items not on the agenda. Please limit your comments to five (5) minutes).
- 3. Consent Agenda**
Minutes from the Meeting held November 21, 2018
- 4. Discussion and Information Items**
 - Committee Updates
 - Consideration of draft Mutual Agreement and Order with the Department of Environmental Quality – Public Works Director Michael Adams
 - Seal Rock Water District presentation – General Manager Adam Denlinger
- 5. Decision Items**
 - Appointment of Council President – City Manager Craig Martin
 - Appointment to the Oregon Cascades West Council of Governments Board of Directors – City Manager Craig Martin
 - Water mainline replacement & potential Cost Share with Port of Toledo – Public Works Director Michael Adams
 - Request for Proposal – Contract City Attorney – City Manager Craig Martin
 - City Manager Evaluation Schedule – Mayor Rod Cross
- 6. Reports and Comments**
 - Department Reports
 - City Manager's Report
 - Council Reports
 - Mayor's Report
- 7. Adjournment**

TOLEDO CITY COUNCIL
MINUTES REGULAR SESSION
November 21, 2018
Toledo City Council Chambers
6:30 p.m.

1. Call to Order

Council President (CP) Joshua Smith called the meeting to order at 6:30 p.m.

Councilors present: Heather Jukich, Bill Dalbey and Betty Kamikawa

Councilors Absent: Jackie Kauffman

Staff present: City Manager (CM) Craig Martin, Police Chief (PC) Dave Enyeart, Library Director (LD) Deborah Trusty, Interim Fire Chief Larry Robeson, City Recorder (CR) Lisa Figueroa, and City Attorney (ACA) David Robinson

Visitors present: Nancy Bryant, Susie Duncan, Greg Harrison, Tracy Mix, Deanne Dunlap and Todd Michels

2. City Council Applicant Interviews

The Council requested Susie Duncan to step out while they interviewed applicant Greg Harrison.

Councilor Kauffman arrived at 6:35 p.m.

Before the interview started, Mr. Harrison indicated it was apparent that the Council did not intend to consider him for the Council position. He said he feels it would be a mistake if the Council appointed someone with the intent to remove the City Manager. He “officially withdrew” his application and left.

Ms. Duncan was called back into the Council Chambers and the City Council interviewed her for the vacancy on the City Council. Following the interview, Council President Smith indicated the appointment will be discussed later on the agenda.

3. Visitors/Public Comment

Deanne Dunlap, resident, commented on the recall election against her. She said there were lies spread through the community and was upset at the way she has been treated in the community. She said it has divided the City and she feels she has been victimized by a town that she served.

4. Consent Agenda

There were no items submitted.

1 **5. Discussion and Information Items**

2 **Committee Updates**

3 CP Smith said the December Cascades West Area Commission on Transportation meeting has
4 been rescheduled. Councilor Dalbey indicated he has a meeting with the Oregon Cascades West
5 Council of Governments (OCWCOG) in December.
6

7 **6. Decision Items**

8 **Contract review – Financial services agreement with Cascades West Council of**
9 **Governments**

10 CM Martin said it was included on the Agenda for their information and indicated the contract
11 will expire on December 31, 2018. He updated the Council on the recruitment to fill Finance
12 Director Position and said there are four applicants. He indicated he will present a new
13 agreement to the Council in December for financial services with OCWCOG to allow for the
14 transition and training of the new Finance Director. The Council inquired whether the financial
15 program Springbrook is a standard program used in other municipalities across the country. CM
16 Martin indicated experience with Springbrook was included in the recruitment, however if an
17 applicant were selected from another state, they would need to be trained on Oregon Budget
18 Laws.
19

20 **Contract review – legal services**

21 CM Martin indicated there was a question about the contract at the last work session, which
22 would expire December 31, 2018. Councilor Dalbey indicated he would prefer the City solicit
23 proposals for services and said he believes issues with the contract could not be discussed
24 outside of an Executive Session. Councilor Kauffman requested an Executive Session be held on
25 December 5 to review the lawsuits and suggested the Council table the discussion of the contract
26 until after the Executive Session. The Council considered whether they could evaluate the City
27 Attorney's contract in an Executive Session. CA Robinson stated there is no provision in Oregon
28 Revised Statutes that permits the review of a public contract within an Executive Session.
29 Councilor Kauffman clarified she does not want to discuss the contract.
30

31 CP Smith indicated the Council should determine whether the City wishes to continue the
32 contract with the current attorney or solicit legal services. Councilor Dalbey said he believes CA
33 Robinson had discretion and should not have pursued criminal charges. Councilor Kauffman
34 disagreed and said CA Robinson could have risked his career. CA Robinson said if he had
35 evidence a crime was committed he needed to refer it to the people who would conduct an
36 investigation. He said his job ended when he submitted his report and he is not tied to the
37 outcome of the investigation. Councilor Dalbey said attorneys have discretion on pursuing
38 criminal charges and CA Robinson proceeded without Council input. CA Robinson said it was
39 his decision to make after conferring with the City Manager, Mr. Osterlund and briefing the City
40 Council. Councilor Dalbey stated it was not the correct decision as far as he is concerned. He
41 said he needs to set personal feelings aside because he represents the citizens and has concerns
42 about CA Robinson's judgements in this particular case. CA Robinson said he hopes the contract
43 with the City continues and stands by the decision he made. CP Smith asked if the Council can
44 meet with legal counsel to get an update on the lawsuits. CM Martin indicated the Council can
45 review documents exempt from disclosure in accordance with the statutory exemptions.

1 Councilor Jukich asked if there is any way she and Councilor Kamikawa could be brought up on
2 those legal matters. CP Smith replied that is why Council has discussed Executive Session
3 minutes and record retention.
4

5 Councilor Dalbey said he has his notes and other documents from those Executive Sessions and
6 asked if he could share those notes individually with Councilor Jukich. CM Martin indicated if
7 the Council were to share information they received in an Executive Session with someone
8 outside of the Executive Session, it would be a violation of the disclosure law. He said the
9 Council could reconvene in an Executive Session under the same provision they originally met to
10 discuss and share information with the new Councilors. Councilor Kamikawa asked if Councilor
11 Dalbey could share his notes with the rest of the Council during the Executive Session. CM
12 Martin responded he believes he could share that information within the Executive Session
13 because it does not compromise the nondisclosure law. Councilor Dalbey asked if he could share
14 his concerns regarding the contract in the Executive Session. CA Robinson indicated the
15 litigation issue and public contracts are two separate issues and the Council could discuss the
16 lawsuits under the Executive Session provision. The Council continued to discuss the issue. CP
17 Smith asked Councilor Dalbey if he could draft a memo to the Council about his issues and not
18 include items that could not be discussed. Councilor Dalbey said he could. After further
19 discussion, a consensus of the Council agreed to hold an Executive Session on December 5, 2018
20 before the Council meeting.
21

22 **Council vacancy appointment to unexpired term**

23 CM Martin summarized the vacancy recruitment. Several Councilors expressed concern over
24 Mr. Harrison withdrawing his application. Councilor Jukich said she would prefer to choose
25 from more than one candidate but is willing to consider an appointment tonight if the rest of the
26 Council chooses to. Councilor Dalbey said he would like to have more than one person to choose
27 from as well. Councilor Kamikawa indicated she was interested in Mr. Harrison's background
28 and included the recruitment was opened twice and the Council should move forward.
29

30 **Motion** - It was moved and seconded (Kauffman/Dalbey) to reopen the recruitment. **Motion**
31 **passed 4-1, with Councilor Kamikawa opposed.**
32

33 CP Smith said he was surprised Mr. Harrison withdrew and indicated extending the recruitment
34 is not an indication of anything personal to the applicants. The Council determined to recruit
35 until 5:00 p.m. December 5, 2018.
36

37 **Motion** - It was moved and seconded (Dalbey/Jukich) to recruit for the vacant Council seat
38 through 5:00 p.m., December 5, 2018 with interviews held before the Regular Meeting. **Motion**
39 **passed unanimously.**
40

41 **Mayor vacancy**

42 CM Martin indicated he placed this on the agenda after it was presented at the work session. CP
43 Smith said after hearing he is having surgery he would like to wait until the first of the year.
44 There was a consensus of the Council to wait to appoint the Mayor until January, 2019.
45
46

1 **City Attorney/City Planner Communication**

2 Councilor Dalbey said he forgot to bring the letter and he can forward a copy to the Council. CM
3 Martin advised Councilor Dalbey forward that letter to the City Attorney, who will distribute it
4 to the Council so as not to violate Open Meeting Law.
5

6 **7. Reports and Comments**
7

8 **Department Reports**

9 PC Enyeart indicated they are hiring a dispatcher early December and will be fully staffed with
10 dispatchers and Sergeant Pace continues to recover.
11

12 LD Trusty reported the library will get some new flooring near the entryway and around the front
13 desk soon. They will host an ornament making activity on December 5 and encouraged everyone
14 to attend.
15

16 IFC Robeson said the strike team is back safely from assisting with the fires in California.
17

18 CM Martin reminded the Council to let staff know if they plan to attend the Elected Essentials
19 training.
20

21 Councilor Kamikawa handed out a report from the Office of Inspector General regarding
22 biosolids. She said she does not represent the City on this issue but represents the Save our Siletz
23 group. She said she would like the City to consider alternatives to handling biosolids. She said
24 she will attend the permit application meeting opposing the City's permit.
25

26 **8. Adjournment**
27

28 The meeting adjourned at 8:08 p.m.
29

30 ATTEST:

APPROVE:

31
32
33
34 _____
City Recorder

Council President

CITY OF TOLEDO
CITY COUNCIL INFORMATION

DATE INFORMATION CONSIDERED: January 16, 2019			
Ordinance ☐	Resolution ☐	Motion ☐	Information ☒
Date Prepared: January 11, 2019		Dept.: Public Works	
SUBJECT: DRAFT Mutual Agreement & Order (MAO) w/DEQ		Contact Person for this Item: Michael J Adams, Public Works Director	

INFORMATION BEFORE COUNCIL:

Review and discuss DRAFT Mutual Agreement and Order (MAO) with representatives of DEQ and consider moving forward with finalizing.

FISCAL IMPACT:

Formal acceptance of a MAO with Department of Environmental Quality (DEQ) will require significant financial investment and specific project completions in the coming 2-5 years. Funding strategies have been previously identified for the projects listed within the attached DRAFT document and formal financing applications have been submitted and/or are still in process for official submittal.

COUNCIL GOAL: Be fiscally responsible & maximize available revenue
Maintain and Improve public infrastructure and facilities
Assure and provide services that protect the public.

BACKGROUND:

On December 27, 2005, the Department of Environmental Quality (DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 101713 (Permit) to the City of Toledo. The Permit authorizes the City to construct, install, modify or operate wastewater treatment control and disposal facilities (Facility) and discharge adequately treated wastewaters into the Yaquina River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expired on November 30, 2010, but is administratively extended as the City has made timely application for renewal.

Due to the current conditions of the sanitary sewer system, as well as the age and condition of the treatment plant facility, the City sometimes has difficulty maintaining compliance with the Permit during wet weather and heavy rain periods primarily due to excessive inflow and infiltration (I/I) of unwanted storm water leaking into the sewer system. As such, the City and DEQ have entered into negotiations of a legal agreement known as a MAO to settle pending and likely future violations in exchange for a schedule by the City to make improvements to the system.

The first draft of an MAO was created in August of 2017 and after some discussion between staff members of the City and DEQ, and after a presentation by DEQ at a Council work session January 9, 2018, the latest draft MAO version was presented to Council on September 11, 2018 at a regular scheduled work session for consideration. Also presented at that time was an anticipated timeline and potential project cost associated with meeting the timeline. After good discussion and consideration by the Council at the work session it was recommended this topic be brought forward at the next available regular City Council meeting for further discussion and consideration.

On September 12, 2018 staff communicated to DEQ what was discussed at the council work session and relayed City concerns regarding the financial impacts acceptance of the DRAFT MAO would have on the community. As

such, staff submitted another revised DRAFT MAO to be considered by DEQ as well as clarifying questions that need consideration as we attempt to move forward.

On or about September 26, 2018, City received comment back from DEQ with a revised MAO per the earlier correspondence of September 12, 2018 (See Attached). This same email indicated that DEQ would be providing an analysis for the comparison of having an MAO vs. not having an MAO.

Subsequently on October 24, 2018, the City received an email from DEQ indicating they would not be able to provide a comparison of the penalties with the MAO and without the MAO however they were willing to have representatives from the office of compliance and enforcement available to speak with the city and explain their reasoning of not being able to provide the cost comparison as originally requested.

On November 2, 2018, and upon consensus & direction of the council regarding this issue, staff requested DEQ representatives provide presentation to the Council at an upcoming regular City Council meeting.

OPTIONS:

- A. Choose to finalize MAO language as currently written and submit to DEQ for their final review/acceptance.

Entering into a formal Mutual Agreement and Order will serve to settle past violations the City incurred and address future violations that are expected to occur until. The MAO language as written is the result of various conversations between staff and DEQ over the past year and one-half and includes project milestones that are accomplishable if given enough time and resources. Funding for the projects have been identified and staff is currently working on financial applications to the State for these projects. The targeted funding, if approved, is anticipated to provide significant amounts of grant funding to the City.

- B. Choose to revise proposed language/timeframes in DRAFT MAO and submit to DEQ for their final review and possible acceptance.

As mentioned above, the existing language is result of continuous discussion and negotiations between staff and DEQ. Proposing changes will delay the process further with the possibility DEQ may not be acceptable to any additional changes at this time.

- C. Choose not to enter into MAO at this time.

This option will require City to settle outstanding violations identified within the DRAFT MAO, most likely at larger cost, and will not provide protection against potential penalties for future permit violations. Due to the current condition of the sanitary sewer system, it is expected future permit violations will occur.

RECOMMENDATION: Based upon past discussion between the City and DEQ, it is recommended City Council identify a preferred option and move to upcoming Council meeting for official action.

ATTACHMENT(S): Toledo Final Draft MAO09262018 – DEQ Tracked changes summary

PREPARED BY:

Michael J. Adams
Michael J Adams, Public Works Director

SUBMITTED BY:

Craig Martin
Craig Martin, City Manager

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:	)	MUTUAL AGREEMENT
	)	AND ORDER
CITY OF TOLEDO,	)	NO. WQ/M-WR-2017-211____
Permittee.	)	LINCOLN COUNTY
	)	

WHEREAS:

1. On December 27, 2005, the Department of Environmental Quality (DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 101713 (Permit) to the City of Toledo (Permittee). The Permit authorizes the Permittee to construct, install, modify or operate wastewater treatment control and disposal facilities (Facility) and discharge adequately treated wastewaters into the Yaquina River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expired on November 30, 2010, but is administratively extended as Permittee made timely application for renewal.

2. The Permit has the following requirements:
- a. Schedule A, Condition (1)(a)(3) of the Permit states that the removal efficiency for biochemical oxygen demand (BOD₅) shall not be less than an 85% monthly average.
 - b. Schedule B, Condition (3)(a) of the Permit requires Permittee to submit an annual inflow and infiltration (I/I) report to DEQ by February 1 of each year.
 - c. Schedule F, Condition (B)(6)(c) of the Permit prohibits overflows.
 - d. Schedule F, Condition (B)(6)(e) of the Permit requires Permittee to report overflows to DEQ within 24 hours of becoming aware of the overflow.

3. Permittee has violated the Permit as follows:

a. According to its discharge monitoring reports, Permittee failed to meet the 85% removal efficiency for BOD₅ as follows:

<u>Month</u>	<u>Reported BOD Removal Efficiency</u>
December 2015	65
January 2016	82
November 2016	76
December 2016	84
January 2017	83
February 2017	84

b. Permittee submitted its 2014 I/I report on March 13, 2015, its 2015 I/I report on June 29, 2017, and its 2016 I/I report on February 16, 2017.

c. On January 2, 2018, the Permittee discharged approximately 45,000 gallons of municipal water containing raw sewage from a broken sewer pipe into a storm drain near Sturdevant Road, which then discharged into the Olalla Slough, which is waters of the state and a tributary to the Yaquina River.

d. Permittee failed to orally report the January 2, 2018 overflow to DEQ within 24 hours of becoming aware of the overflow.

4. DEQ and the Permittee recognize that until tasks in Paragraph 8 are completed, Permittee might continue to violate the BOD removal efficiency requirement at times and have sanitary sewer overflows.

5. DEQ and Permittee recognize that the Environmental Quality Commission has the authority to impose a civil penalty and to issue an abatement order for violations of Permit conditions. Therefore, pursuant to ORS 183.415(5), DEQ and Permittee wish to settle those past violations referred to in Paragraph 3 and address future violations referred to in Paragraph 4

(unless caused negligently, willfully or intentionally) in advance by this Mutual Agreement and Order (MAO).

6. The U.S. Environmental Protection Agency appropriately delegated the federal NPDES permitting program to DEQ, making DEQ the primary administrator and enforcer of the NPDES permits. DEQ believes that this MAO furthers the goals of the NPDES permitting program by ensuring progress towards compliance and is consistent with DEQ's goal of protecting human health and the environment. However, DEQ and Permittee recognize that this MAO does not eliminate the possibility of additional enforcement of Permit requirements by the U.S. Environmental Protection Agency or citizens under the federal citizen suit provisions.

7. This MAO is not intended to limit, in any way, DEQ's right to proceed against Permittee in any forum for any past or future violations not expressly settled herein.

NOW THEREFORE, it is stipulated and agreed that:

8. The Environmental Quality Commission shall issue a final order:

A. Requiring Permittee to comply with the following compliance order:

~~1. By no later than January 1, 2020 complete the Butler Bridge Pump Station and Force Main Project.~~

~~Gravity Sewer Collection System Improvements:~~

~~2.1.~~ By no later than March 1, 2019, Permittee must update cost estimates and develop funding alternatives to implement Priority 1, 2, and 3 Projects identified in Appendix C of the 2014 Civil West Engineering Services Wastewater Facility Plan. These include the Butler Bridge slope, NW 6th Street, SE 10th Street, N Nye Street, E Graham Street, NE 12th Street, Alley Repair, Business 20, Manhole Rehab, SE 5th Street, Alder Way, and SE Alder Street projects (Priority 1, 2, and 3 Projects).

2. By no later than December 1, 2019, Permittee must submit documentation that all inflow sources (missing cleanout caps, roof drains, storm water cross connections, etc.) identified in the 2011 Inflow and Infiltration study have been eliminated.
3. By no later than January 1, 2020, Permittee must submit to DEQ documentation that the Butler Bridge Force Main Project has been completed.
- 3.4. By no later than March 1, 2020, Permittee must submit to DEQ a copy of the City's notice to proceed to the contractor for construction of Priority 1 Projects.
5. By no later than ~~December~~ November 1, 2020, Permittee must clean, television inspect, and smoke test the entire public wastewater collection system and submit a document to DEQ that includes a summary of the findings. The document must rate all deficiencies found using a nationally recognized system. ~~The document must also include a plan, schedule, and budget to address prioritized deficiencies.~~
6. By no later than December 1, 2020, Permittee must submit to DEQ documentation that the Priority 1 Projects are substantially complete.
- 4.7. By no later than June 1, 2021 Permittee must submit a new I/I study that includes a comparison of the wet weather flows before and after completion of the Priority 1 Projects and a statement as to whether the wastewater treatment plant has the capacity to treat projected peak flows. The document must also include a plan,

schedule and budget to address deficiencies identified in the collection system evaluation described in Paragraph 8.A.5. above

~~5. By no later than May 1, 2021, Permittee must award bids and issue a notice to proceed for the Priority 1, 2, and 3 Projects.~~

~~6.8. By no later than December 1, 2022, Permittee must submit documentation that the Priority 1, 2, and 3 Projects are substantially complete.~~

B. Requiring Permittee to meet the following waste discharge limitations, measured as specified in the Permit, until this MAO is terminated per paragraph 14 or 19.

OTHER PARAMETERS (year-round)

LIMITATIONS

BOD Removal Efficiency

When monthly average influent flow is greater than 2 MGD, must not be less than 65%.

When monthly average influent flow is greater than 1.5 MGD but less than 2 MGD, must not be less than 75%.

C. Requiring Permittee, upon receipt of a written Penalty Demand Notice from DEQ, to pay the following civil penalties:

(1) \$600 for each day of violation of the compliance order set forth in Paragraph 8(A).

(2) \$100 for each violation of the waste discharge limitation set forth in Paragraph 8(B).

9. If any event occurs that is beyond Permittee's reasonable control and that causes or may cause a delay or deviation in performance of the requirements of this MAO, Permittee shall immediately notify DEQ verbally of the cause of delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and

the timetable by which Permittee proposes to carry out such measures. Permittee shall confirm in writing this information within five (5) working days of the onset of the event. It is Permittee's responsibility in the written notification to demonstrate to DEQ's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the control and despite due diligence of Permittee. If Permittee so demonstrates, DEQ shall extend times of performance of related activities under this MAO as appropriate. Circumstances or events beyond Permittee's control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, fires, explosion, riot, sabotage, or war. Increased cost of performance or a consultant's failure to provide timely reports are not considered circumstances beyond Permittee's control.

10. The violations set forth in Paragraph 3 are expressly settled herein as follows:

A. For the violation of Schedule A, Condition (1)(a)(3) of the Permit Set forth in Paragraph 3(a) above, DEQ hereby assesses a civil penalty of \$350. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated herein.

B. For the violation Schedule B, Condition (3)(a) of the Permit set forth in Paragraph 3(b) above, DEQ has not assessed a civil penalty.

C. For the violation of Schedule F, Condition (B)(6)(c) of the Permit set forth in Paragraph 3(c) above, DEQ hereby assesses a civil penalty of \$1,800. The determination of the civil penalty is attached as Exhibit No. 2 and is incorporated herein.

D. For the violation of Schedule F, Condition (B)(6)(e) of the Permit set forth in Paragraph 3(d) above, DEQ hereby assesses a civil penalty of \$1,800. The determination of the civil penalty is attached as Exhibit No. 3 and is incorporated herein.

E. The total civil penalty amount is \$3,950.

11. Permittee and DEQ hereby waive any and all of their rights to any and all notices, hearing, judicial review, and to service of a copy of the final order herein. DEQ reserves the right to enforce this order through appropriate administrative and judicial proceedings.

12. Regarding the order set forth in Paragraph 8(A) above, Permittee acknowledges that Permittee is responsible for complying with that order regardless of the availability of any federal or state grant monies.

13. The terms of this MAO may be amended by mutual agreement of DEQ and Permittee.

14. DEQ may amend the compliance order and conditions, or terminate, this MAO upon finding that such modification or termination is necessary because of changed circumstances or to protect public health and the environment. DEQ shall provide Permittee a minimum of thirty (30) days written notice prior to issuing an Order amending or terminating the MAO. If Permittee contests the Order, the applicable procedures for conduct of contested cases in such matters shall apply.

15. This MAO shall be binding on the parties and their respective successors, agents, and assigns. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this MAO. No change in ownership or corporate or partnership status relating to the Facility shall in any way alter Permittee's obligations under this MAO, unless otherwise approved in writing by DEQ.

16. All reports, notices and other communications required under or relating to this MAO should be directed to Julie Ulibarri, DEQ Western Region Eugene Office, 165 East 7th Avenue, Eugene, Oregon, 97401, phone number 541-687-7437. The contact person for Permittee shall be Michael J. Adams, Public Works Director, City of Toledo, P.O Box 220, Toledo, Oregon, 97391, phone number 541-336-2247 ext. 2070.

17. Permittee acknowledges that it has actual notice of the contents and requirements of this MAO and that failure to fulfill any of the requirements hereof will constitute a violation of this MAO and subject Permittee to payment of civil penalties pursuant to Paragraph 8(C) above.

18. Any stipulated civil penalty imposed pursuant to Paragraph 8(C) shall be due upon written demand. Stipulated civil penalties shall be paid by check or money order made payable

to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental Quality, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. Within 20 days of receipt of a "Demand for Payment of Stipulated Civil Penalty" Notice from DEQ, Permittee may request a hearing to contest the Demand Notice. At any such hearing, the issue shall be limited to Permittee's compliance or non-compliance with this MAO. The amount of each stipulated civil penalty for each violation and/or day of violation is established in advance by this MAO and shall not be a contestable issue.

19. This MAO shall terminate at the end of the day on the date the final compliance task in Paragraph 8A above is to be completed. However, Permittee remains liable for stipulated penalties for any violations of the MAO occurring during the period the MAO was in effect and demanded pursuant to Paragraph 18.

CITY OF TOLEDO,
PERMITTEE

Date

Michael J. Adams
Public Works Director

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

Date

Kieran O'Donnell, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170

on behalf of the EQC pursuant to OAR 340-011-0505

CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: January 16, 2019			
Ordinance ☐	Resolution ☐	Motion ☒	Information ☐
Date Prepared: January 11, 2019		Dept.: Administration	
SUBJECT: Appointment of Council President		Contact Person for this Item: Craig Martin, City Manager	

RECOMMENDATION: Motion to appoint (insert name) as Council President.

FISCAL IMPACT: None

COUNCIL GOAL: None

BACKGROUND: Per Toledo Municipal Code; Charter Section 17, the Council must appoint a President of the Council at its first meeting of each odd numbered year. It is presented to the Council now as it was not included on the agenda for January 2.

ATTACHMENT(S): None

PREPARED BY:

Lisa Figueroa
Lisa Figueroa, Executive Assistant/City Recorder

SUBMITTED BY:

Craig Martin
Craig Martin, City Manager

CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: January 16, 2019			
Ordinance ☐	Resolution ☐	Motion ☒	Information ☐
Date Prepared: January 11, 2019		Dept.: Administration	
SUBJECT: Appointments to the Oregon Cascades West Council of Governments Board of Directors		Contact Person for this Item: Craig Martin, City Manager	

RECOMMENDATION: Motion to appoint Mayor Rod Cross and an alternate to the Oregon Cascades West Council of Governments (OCWCOG) Board of Directors.

FISCAL IMPACT: None

COUNCIL GOAL: Promote economic growth

BACKGROUND: The Cascades West Council of Governments Board of Directors is composed of local elected officials which includes the Mayor of Toledo. Recently, a member of the Council was temporarily appointed to the OCWCOG Board until the seat of the Mayor was occupied.

ATTACHMENT(S): None

PREPARED BY:

Lisa Figueroa
Lisa Figueroa, Executive Assistant/City Recorder

SUBMITTED BY:

Craig Martin
Craig Martin, City Manager

CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: January 16, 2019			
Ordinance ☐	Resolution ☐	Motion ☒	Information ☐
Date Prepared: January 10, 2019		Dept.: Public Works	
SUBJECT: Water mainline replacement & potential Cost Share with Port of Toledo		Contact Person for this Item: Michael J Adams, Public Works Director	

REQUEST BEFORE COUNCIL:

Should the City of Toledo consider allocating funds for a potential cost share with the Port of Toledo for replacement of the existing 6" water mainline across Port property as referenced in an existing Intergovernmental Agreement the City and the Port of Toledo (Port)?

FISCAL IMPACT:

Request is to allocate up to an estimated \$90,000 to be paid directly to the Port as a reimbursement for the planned municipal water mainline relocation that is necessary to accommodate Port building project. Amount to be reimbursed to the Port will be based upon project bid costs and if the project is approved for completion by the Port Directors on Tuesday January 15, 2019.

Funds to be allocated will be those identified in the adopted operating budget previously intended for the Ammon Road Water Tank Project.

Water Reserve Fund: 041-410-620520

COUNCIL GOAL:

- Maintain and improve public infrastructure and facilities.
- Promote Economic Growth.

BACKGROUND:

The Port is in the process of erecting a new 18,000 square foot building that will be used to repair and improve nautical vessels consistent with Port operations & strategies. This \$4 Million dollar project will help improve Port efficiencies by allowing for year-round maintenance as well as providing economic benefit to the local Toledo area.

Given the significant size of the structure and desired location for this proposed building, there are two known conflicts between the Port and City that require resolution before this important project can begin: the footprint of the building will cause it to encroach onto city property (Altree Lane); and it will be placed directly over a 6" municipal water mainline.

Upon discussions between the Port and the City of Toledo on how best to resolve these conflicts to the maximum benefit of all involved, the City and Port entered into an Intergovernmental Agreement (IGA) on November 7, 2018 that effectively transferred legal ownership of Altree Lane property to the Port and keep the water mainline public and within a new easement once provisions of the IGA are met and approved by the City.

One of the provisions within the IGA (Section 4 & 4.1) required the Port to cover the entire cost associated with the water mainline relocation IF the existing 6" size was determined to not be adequate for Port

development needs (See section #4). However, it was agreed that should the existing 6" water mainline be proven adequate for the Port project, the City reserved the right to negotiate a cost share for the remaining portion of the water mainline relocation not otherwise required to be relocated for Port purposes.

OPTIONS:

- A. Choose to allocate up to \$90,000 for the completion of the water mainline relocation as presented. Funds to be paid directly to the Port on a reimbursement basis and based upon accepted bid project costs (Material & Labor only).

Approval of request will allow for the water mainline to be relocated in its entirety as described within the project plans all at one time. The existing line is extremely deep and subject to more frequent damage/repair due to its condition and age.

- B. Choose not to allocate funds at this time and budget/plan for line relocation in the future.

Although the proposed section of water mainline relocation identified herein is not necessary to relocate at this time, existing line is deep and is subject to future repair needs at any particular time. Delay will most certainly also increase cost of the relocation.

RECOMMENDATION: Based upon past discussion between the City and Port staff, it is recommended City Council choose Option "A" and **Make a motion to allocate up to \$90,000 for the completion of the water mainline relocation as presented.** This option best promotes Council Goal of maintaining and improving public infrastructure by relocating & improving existing municipal water mainline that is problematic in its current location. It also promotes economic growth to the local community by enhancing Port of Toledo operations and improved job opportunities.

Attached: Intergovernmental Agreement (IGA)
IGA – Exhibit B

PREPARED BY:

Michael J. Adams

Michael J Adams, Public Works Director

SUBMITTED BY:

Craig Martin

Craig Martin, City Manager

Intergovernmental Agreement

This Intergovernmental Agreement between the City of Toledo (City) and the Port of Toledo (Port) is for the purpose of memorializing the understanding between the City and the Port for the transfer by the City of all of its ownership interest in and to the real property commonly called the "Altree Lane property," the legal description of which is contained in exhibit A which is attached hereto and by this reference made a part hereof, and the obligations of the Port and consideration of said transfer. Hereinafter, said property will be referred to as the "Altree Lane property".

Recitals

1. The City desires to aid the Port in its proposed construction of a large work building that will be located in part on the "Altree Lane Property" that will allow much needed year-round maintenance of fishing vessels ; and
2. Currently the City has an ownership interest in the "Altree Lane property" which the Port needs to accommodate the proposed large work building; and
3. The City currently has a 6" municipal water mainline running through the "Altree Lane Property" to serve the Port and an additional single water customer; and
4. A description of the route of that line is set forth at exhibit B which is attached hereto and by this reference made a part hereof; and
5. The City's municipal water mainline described at exhibit B is located in an area of the "Altree Lane property" upon which the Port intends to locate its large work building; and
6. In exchange for the City transferring its interest in the "Altree Lane property" to the Port, the Port will relocate the City's existing municipal water mainline described in exhibit B beginning at the connection point of the existing 6" waterline at station 6+58.3 and extending to a new connection at station 14+00 on the "Altree Lane property" not interfering with the construction and placement of the Port's large work building; and
7. The Port will relocate and upgrade the municipal water mainline to comply with the specifications of the City and the cost thereof shall be paid exclusively by the Port.

The Agreement

1. The Port, as part of its proposed construction of a large work building on the "Altree Lane property" will relocate the existing municipal water mainline of the City serving the Port and one other city customer by installing and relocating a new 6" municipal water mainline in its place (as described in Recital 6 above) to City specifications and at the Port's expense.
2. Prior to the conveyance by the City, the route of the relocated replacement municipal water mainline will be surveyed by the Port at its expense and the City will reserve a ten foot wide easement to itself to accommodate said relocated replacement municipal water mainline in the instrument of conveyance to the Port.
3. Prior to the conveyance by the City, the Port will provide to the City's public works director (PWD) a preliminary layout of the proposed municipal water mainline alignment and depth throughout the entire project area for review by the PWD and the

City's engineers. For this purpose, water system design standards are available to the Port at the City website www.cityoftoledo.org/engineering/.

3.1 In addition, and included in its preliminary layout information, the Port must provide the City with (A) the present and future water demand for the proposed development (domestic and fire) for verification that the proposed replacement municipal water mainline 6" size is adequate to meet all regulatory permit requirements for this project; (B) provide detail of the proposed connection points within the project area; (C) approximate fire hydrant location(s)-target approximately 250 feet-300 feet; (D) approximate Valve locations/placement-target approximately every 300 feet-500 feet; (E) submit product information sheets in enough detail to describe the materials proposed for the project, i.e., pipe material, hydrants, valves, etc.. Once the foregoing information is supplied to the City through its PWD, it will be reviewed by the PWD and the City's engineers and at the conclusion of such review the Port will be notified if the proposal is acceptable to the City or if additional information is needed or changes required in the Port's layout and alignment proposal.

4. In consideration for this conveyance by the City to the Port, the Port agrees to relocate and upgrade (if upgrade is shown to be necessary by data provided by the City) a replacement municipal water mainline at size necessary to meet project regulatory permit requirements for the entire length of the existing municipal water mainline, beginning at the connection point of the existing 6" waterline at station 6+58.3 and extending to a new connection at station 25+00 to City's specifications at the expense of the Port as detailed above.

4.1 Should the existing 6" municipal water mainline be proven adequate for the Port project, the City and Port reserve the right to negotiate a cost share for the relocation of the remaining portion of the 6" municipal water mainline from the new connection point at station 14+00 and extending it to the end point at station 25+00.

5. During construction of the municipal water mainline, the City, through its PWD or its engineers, shall have the right to inspect the work being done and the materials used and furnished and have the right to stop construction if they either find that the manner in which the work is being done or the materials being used are not in accord with the City's requirements pursuant to the agreed upon plans and specifications at paragraph 3 of this agreement. In such instance the PWD shall issue an Order for correction of any deficiencies in materials used or work done and with the corrections made to the satisfaction of the PWD work on the water pipeline shall proceed.

6. Once the construction of the municipal water mainline has been completed and approved/accepted by the City, the Port will provide the City with a final "as built" drawing that indicates the exact location of the mainline, appurtenances, and all other project specific items common with this type of work. "As built" information shall be presented to the City within 60 calendar days of City acceptance.

7. Indemnification. The Port shall indemnify, protect and hold harmless the City, its Council, its employees, representatives and agents (hereinafter collectively "City of Toledo indemnified parties") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees

and/or litigation expenses, brought or made against or incurred by the City of Toledo indemnified parties resulting from, arising out of, or in any way connected to the conduct of the Port hereunder.

8. Required insurance of the Port and any of its contractors.

8.1 Worker's Compensation in accordance with the state and/or federal statutes and Employer's Liability with limits of not less than \$1 million applicable to each accident, to disease-each employee, to disease-policy limit.

8.2 Commercial General Liability written on an occurrence basis with limits of not less than \$2 million each occurrence/general aggregate covering bodily injury and property damage. Coverage shall include: independent contractors, contractual liability, products and completed operations, broad form property damage, and sudden and accidental pollution liability. The City shall be named additional insured under the policy.

8.3 Business automobile liability with limits of not less than \$2 million each accident, covering bodily injury and property damage arising from motorized vehicles whether owned, hired or non-owned.

8.4 All policies shall be primary insurance with respect to the interest of the City and any other insurance or self-insurance maintained by the Port and shall include waivers of subrogation in favor of the City.

8.5 Prior to commencement of work by the Port or its contractors, the Port shall provide written confirmation of compliance with all insurance requirements to the City, in the form of certificates of insurance with attachments of endorsements to each policy as required in this section.

8.6 The Port is a public entity subject to any applicable statutory tort law, the limits of insurance described herein shall be replaced with the limits Port then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured.

9. If litigation is instituted arising directly or indirectly out of this Lease, the losing party will pay the prevailing parties reasonable attorney fees and court costs as determined by the court at trial or any appeal or review therefrom.

10. Upon completion of construction, the new replacement municipal water mainline shall be owned by the City upon its acceptance of same.

11. Conveyance to the Port by the City of its interest in Altree Lane is conditional upon the City accepting the completed pipeline project.

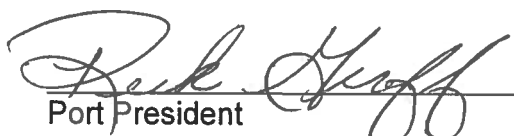
Dated this 28 day of NOVEMBER, 2018.

City of Toledo, a Municipal Corporation



Mayor/Council President

Port of Toledo, a Municipal Corporation

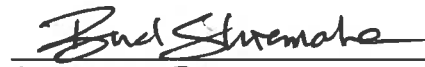


Port President

Attested:



City Manager



Secretary PORT MANAGER

EXHIBIT "A"
Legal Description

A strip of land 50' in width 25' on either side of the following described centerline:

Commencing at a point on the Easterly right of way of the Southern Pacific Railroad, said point being 1122.67 feet South and 1879.15 feet West of the Northeast corner of Section 18, Township 11 South, Range 10 West, Willamette Meridian, Lincoln County, Oregon, said point being the true point of beginning; thence South 7° 47' 08" West, 110.51 feet; thence South 20° 59' 23" West, 252.50 feet; thence South 17° 17' 33" West, 511.92 feet; thence South 10° 25' 13" West, 161.89 feet; thence South 5° 35' 55" West, 168.98 feet; thence South 21° 50' 59" West, 279.18 feet; thence South 15° 41' 38" West, 85.39 feet to the termination of said centerline on the Easterly right of way of said Southern Pacific Railroad.

PORT OF TOLEDO
BOAT YARD – ENVIROMENTAL WORK BUILDING
WATER MAIN RELOCATION

WATER SYSTEM STANDARD GENERAL NOTES:

1. ALL WATERLINES AND APPURTENANCES SHALL BE INSTALLED IN ACCORDANCE WITH CURRENT EDITIONS OF THE CITY OF TOLEDO DESIGN AND CONSTRUCTION STANDARDS, AMERICAN WATER WORKS ASSOCIATION (AWWA) STANDARDS, OREGON ADMINISTRATIVE RULES (OAR), AND THE OREGON PLUMBING SPECIALTY CODE (OPSC).
2. LOCATIONS SHOWN FOR EXISTING UTILITIES ARE BASED ON AVAILABLE INFORMATION AND ARE APPROXIMATE. THE CONTRACTOR SHALL BE RESPONSIBLE TO FIELD VERIFY DEPTH AND LOCATION OF EXISTING UTILITIES PRIOR TO CONSTRUCTION; POTHOLE ALL EXISTING UTILITIES AS REQUIRED TO AVOID CONFLICTS WITH THE PROPOSED WATER LINE, AND INFORM THE ENGINEER OF ANY DISCREPANCIES IN THE PLANS.
3. THE CONTRACTOR SHALL CALL THE OREGON UTILITY NOTIFICATION CENTER (811) AT LEAST 48 HOURS, BUT NOT MORE THAN 10 BUSINESS DAYS, BEFORE BEGINNING EXCAVATION. OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. COPIES OF THE RULES ARE AVAILABLE THROUGH THE NOTIFICATION CENTER. IF ADDITIONAL INFORMATION IS DESIRED, YOU MAY CONTACT THE WATER DEPARTMENT AT 503-615-6700.
4. THE CONTRACTOR SHALL NOTIFY THE CITY OF TOLEDO WATER DEPARTMENT AT 541-336-2247 A MINIMUM 48 HOURS (TWO BUSINESS DAYS) PRIOR TO CONSTRUCTION. WEEKENDS AND HOLIDAYS ARE NOT TO BE COUNTED AS PART OF NOTIFICATION TIME.
5. ALL WATER SERVICE LINES SHALL HAVE A MINIMUM COVER OVER THE TOP OF THE PIPE OF 30 INCHES ON IMPROVED ROADS AND 42 INCHES ON UNIMPROVED AREAS, UNLESS OTHERWISE NOTED ON THE PLANS OR IN THE SPECIFICATIONS.
6. ALL WATER MAIN LINES, SERVICE FITTINGS, AND JOINTS SHALL BE RESTRAINED WITH MECHANICAL RESTRAINTS, FIELD LOCK GASKETS, OR APPROVED EQUIVALENT.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING THE PROPER HORIZONTAL AND VERTICAL SEPARATION BETWEEN SANITARY SEWER LINES AND WATERLINES AS REQUIRED BY THE OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION, OAR 333-061-0050.
8. ON-SITE DOMESTIC WATER SERVICE LINES SHALL BE INSTALLED AS REQUIRED BY OPSC. CONTACT THE CITY OF TOLEDO BUILDING DEPARTMENT FOR REQUIREMENTS.
9. PRIOR TO BEING PLACED IN SERVICE, ALL WATERLINES AND SERVICES SHALL BE LEAK TESTED, FLUSHED, STERILIZED, AND BACTERIOLOGICALLY TESTED BY THE CONTRACTOR, ALL IN ACCORDANCE WITH CITY OF TOLEDO DESIGN AND CONSTRUCTION STANDARDS AND OPSC. A WATER DEPARTMENT REPRESENTATIVE MUST BE PRESENT DURING PRESSURE TESTING, FLUSHING AND DISINFECTION.
10. THE CONTRACTOR SHALL PROTECT ALL WATER APPURTENANCES DURING CONSTRUCTION. ANY TESTED AND APPROVED WATER SERVICE THAT IS DISTURBED PRIOR TO THE CITY'S FINAL ACCEPTANCE OF ALL PUBLIC IMPROVEMENTS SHALL BE REMOVED AND REPLACED BACK TO THE WATER MAIN AT THE DEVELOPER'S EXPENSE.
11. NO CONNECTION TO AN EXISTING WATERLINE SHALL BE MADE WITHOUT AUTHORIZATION BY THE CITY OF TOLEDO WATER DEPARTMENT.
12. NO WATER VALVE SHALL BE OPERATED WITHOUT AUTHORIZATION BY THE CITY OF TOLEDO WATER DEPARTMENT.
13. IN THE EVENT OF A CONFLICT OR CHANGE IN CONDITIONS, THE CITY OF TOLEDO WATER DEPARTMENT RESERVES THE RIGHT TO MAKE FIELD ADJUSTMENTS TO THE LOCATION OF A WATERLINE OR APPURTENANCE AS REQUIRED FOR CONSTRUCTION.
14. THE CONTRACTOR SHALL INSTALL AND MAINTAIN ALL REQUIRED EROSION CONTROL MEASURES IN ACCORDANCE WITH THE CURRENT EDITION OF CLEAN WATER SERVICES' "EROSION PREVENTION AND SEDIMENT CONTROL STANDARDS" AND CITY OF TOLEDO GRADING AND EROSION CONTROL PERMITS. COORDINATE EROSION CONTROL MEASURES WITH THE CITY OF TOLEDO INSPECTOR.
15. WATER MAIN AND SERVICE SHUT-OFFS SHALL BE COORDINATED THROUGH A WATER DEPARTMENT REPRESENTATIVE. REQUIRED NOTIFICATION FOR SHUT-OFFS SHALL BE DONE ONLY AFTER ACCEPTANCE OF WATERLINE BY WATER DEPARTMENT. SHUT-OFFS SHALL BE DONE 48 HOURS PRIOR FOR RESIDENTIAL PROPERTIES AND 72 HOURS PRIOR FOR COMMERCIAL OR INDUSTRIAL PROPERTIES, NOT COUNTING WEEKENDS & HOLIDAYS. FAILURE TO PERFORM WORK WITHIN THE STATED TIME WILL REQUIRE RE-NOTIFICATION.

14. TRAFFIC CONTROL IN THE RIGHT-OF-WAY SHALL BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" (MUTCD) AND ODOT "MANUAL ON TRAFFIC PRACTICES HANDBOOK FOR LOCAL ROADS AND STREETS IN OREGON." DURING THE WORK DAY, ONE LANE OF TRAFFIC SHALL BE MAINTAINED AT ALL TIMES.
15. THE CONTRACTOR SHALL CONFINED PUBLIC IMPROVEMENT WORK TO THE DEDICATED RIGHT-OF-WAY AND UTILITY EASEMENT AREAS.
16. DURING CONSTRUCTION, THE CONTRACTOR AND/OR SUBCONTRACTORS SHALL HAVE A MINIMUM OF ONE (1) SET OF ENGINEER APPROVED AND CITY STAMPED PLANS AND SPECIFICATIONS ON THE JOB SITE AT ALL TIMES.
17. THE CONTRACTOR SHALL VERIFY THE RESTRAINED CONDITION OF EXISTING WATER SYSTEM PIPES AND APPURTENANCES, AND INSTALL THRUST RESTRAINTS AND STRADDLE BLOCKS WHERE REQUIRED OR AS DIRECTED, PRIOR TO CUTTING AND REMOVAL OF ANY PORTION OF THE EXISTING WATER SYSTEM.

SHEET INDEX:

SHEET NUMBER	SHEET NAME	SHEET DESCRIPTION
01	G01	COVER SHEET
02	W1	WATER MAIN PLAN
03	W2	WATER MAIN PLAN
04	W3	WATER MAIN PLAN
05	WD1	WATER MAIN DETAILS

Pg 1/2

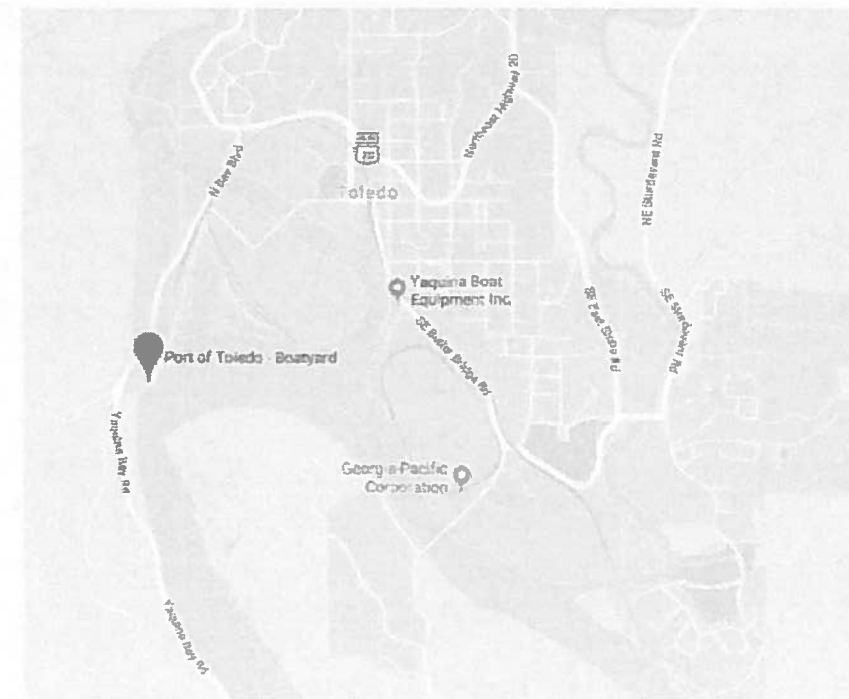
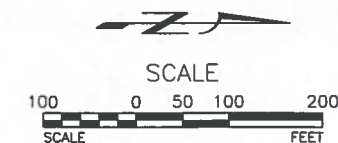
PRE-BID REVIEW SET
10/17/2018

- PORT REVIEW _____
- CITY REVIEW _____

Port of Toledo

PORT of TOLEDO OR City Portion
Per IGA - Agreement Paragraph 494.1
SEE Attached IGA

PROJECT AREA



BOAT YARD
NEW ENVIRONMENTAL
WORK BUILDING
WATER MAIN RELOCATION

OF TOLEDO
PROJECT SITE:
496 NE HWY 20, UNIT 1,
TOLEDO, OR 97123

**WATER ENVIRONMENT
RESOURCES INC.**
13467 SW SUMMERWOOD DR.
TIGARD, OR 97223
(503)-333-3470

DATE 6/2/16	
SCALE: N/A	PROJ. N N/A
DRAWN BY: MJJ	CHECKED WLC
SHEET NO.	

G01

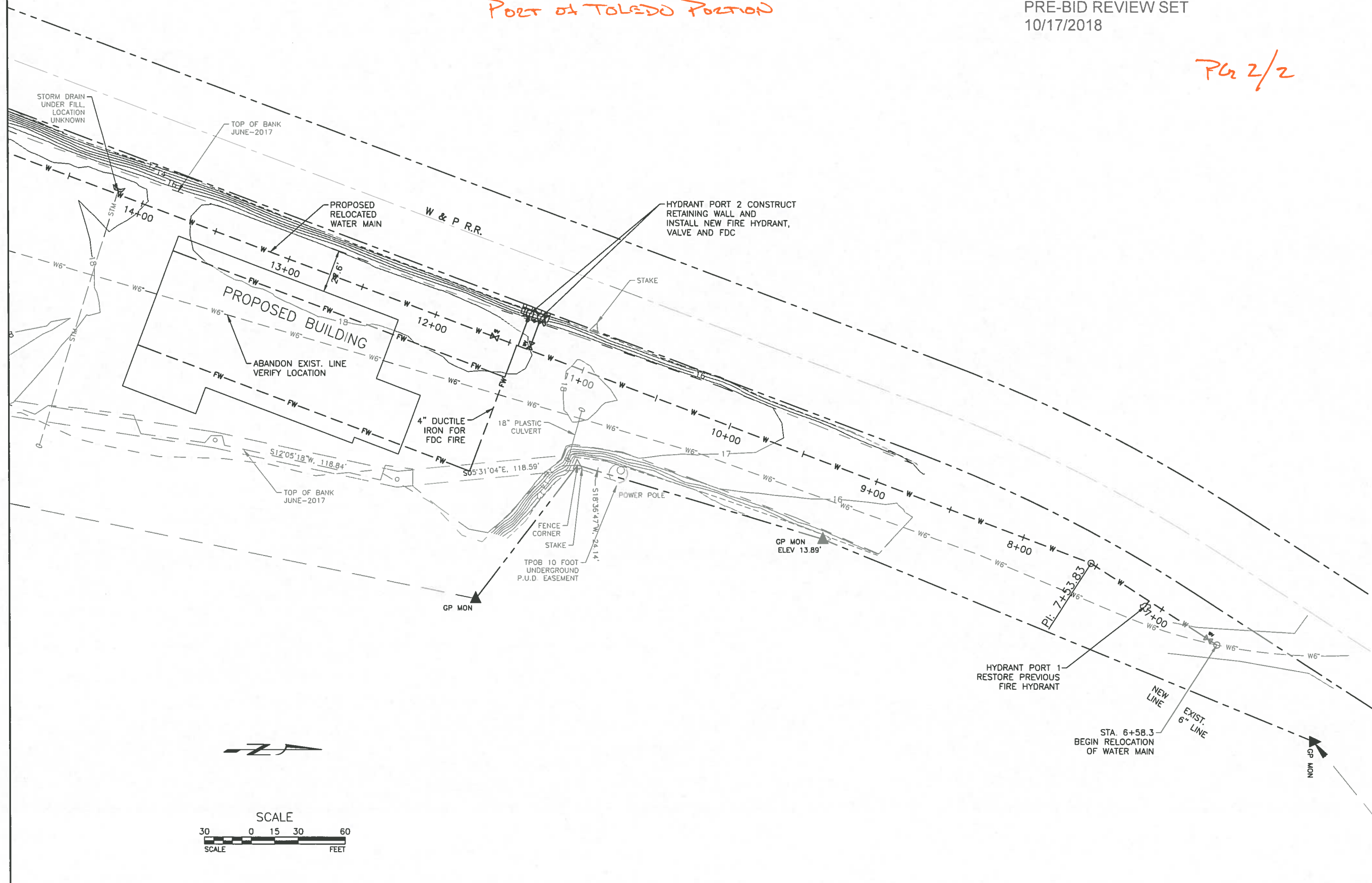
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Exhibit B
ENLARGED

PORT OF TOLEDO PORTION

PRE-BID REVIEW SET
10/17/2018

PG 2/2



REVISIONS	
NO.	DATE

PORT OF TOLEDO PROJECT SITE: 496 NE HWY 20, UNIT 1, TOLEDO, OR 97123	BOAT YARD
	NEW ENVIRONMENTAL WORK BUILDING
WATER MAIN RELOCATION	

WATER ENVIRONMENT RESOURCES INC. 13467 SW SUMMERWOOD DR. TIGARD, OR 97223 (503)-333-3470 WALTER L. COOK P.E.	WATER MAIN PLAN
---	------------------------

DATE: 8/2/18	
SCALE: 1" = 30'	PROJ. NO.: N/A
DRAWN BY: MAJ	CHECKED BY: WLC
SHEET NO.	

W1
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CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: January 16, 2019			
Ordinance ☐	Resolution ☐	Motion ☒	Information ☐
Date Prepared: January 11, 2019		Dept.: Administration	
SUBJECT: RFP – Contract City Attorney		Contact Person for this Item: Craig Martin, City Manager	

RECOMMENDATION: Motion to authorize the City Manager to issue a request for proposals for interim City Attorney services.

FISCAL IMPACT: Funds for the payment of the temporary services are budgeted in the 2018 – 2019 City Budget. The amount of expense will vary depending on the negotiated terms and rate(s) of the successor personal services agreement.

COUNCIL GOAL: FINANCIAL SECURITY

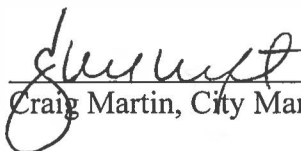
Be fiscally responsible and maximize available revenue.

BACKGROUND: The City of Toledo entered into a personal services agreement with Paul Osterlund P.C. to provide legal services for the City while the City Attorney/City Planner position remains vacant due to a leave of absence. The personal services contract was originally approved on August 3, 2017 in accordance with the provisions of the City of Toledo Purchasing rules as adopted in Resolution No. 1394, and in accordance with TMC 2.32. Due to the continuation of the leave of absence of the City Attorney/City Planner, the City Council extended the professional services agreement several times with the most recent extension being through June 30, 2019. At the December 5, 2018 City Council meeting, a motion was passed to formally solicit proposals for interim City Attorney Services. The attached Request for proposals is responsive to that Council directive.

ALTERNATIVES:

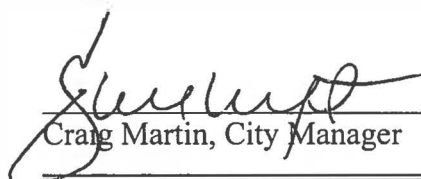
Modify and/or not approve the solicitation.

PREPARED BY:



Craig Martin, City Manager

SUBMITTED BY:



Craig Martin, City Manager



City of Toledo

Toledo, Oregon

REQUEST FOR PROPOSALS CITY ATTORNEY

The City of Toledo, Oregon invites interested individual attorneys and law firms to submit written proposals to provide City Attorney services to the city. City Attorney services include the services as general legal counsel and City Prosecutor. The city desires proposals that will provide full City Attorney services both as general legal counsel and City Prosecutor.

THE WORK OF THE CITY ATTORNEY

A. General Counsel

The City Attorney currently provides all legal services needed by the city for the City Council and administrative staff, except for occasional services that require unusual expertise not ordinarily within the scope of City Attorney services, such as condemnation counsel in the acquisition of real property, labor negotiations, as bond counsel and areas of special expertise requiring outside counsel as the parties may mutually agree. Because the city is insured by the City County Insurance Services (CIS) for tort-type claims, the City Attorney does not provide defense services in insured cases except for monitoring of significant cases and occasionally assisting lead CIS defense counsel in the assembly of city records. The City Attorney is appointed by and reports directly to the City Council.

As routine legal services the City Attorney will:

- Advise city officials on matters relating to city business.
- Attend City Council meetings.
- Prepare or review staff-developed ordinances, resolutions, contracts, agreements, leases, deeds and related documents.
- Review current state and federal legislation and/or litigation as such may relate to the city and advise city officials thereon.
- Provide legal opinions on matters relating to city activities.
- Participate in the development of staff recommendations for action by the City Council.
- Advise and participate in code enforcement activities.

- Make recommendations for updating existing city codes, resolutions and other policies and practices.
- Represent the city in intergovernmental relations as appropriate.
- Maintain appropriate records and files.
- Assist in meeting election requirements.
- Perform related duties as necessary.

On occasion, the City Attorney may represent the city in non-tort litigation and threatened litigation, proceedings before the state and federal courts, and administrative tribunals, and proceedings before state and federal administrative agencies.

B. City Prosecutor

The City Attorney can also serve as the City Prosecutor. The City Prosecutor attends all sessions of Municipal Court, currently held the first and third Thursday of each month at 8:30 AM, and is responsible for prosecution of all municipal court traffic offenses and violations (including minor misdemeanors converted to violations) in which defendants have legal counsel, misdemeanor offenses and cases, including jury and non-jury trials, plea negotiations and diversion agreements. The City Prosecutor evaluates all new criminal cases coming before the Court, prior to initial arraignment, for the purpose of preparing and negotiating plea offers for presentation to defendants or their attorney either prior to or at arraignment. The City Prosecutor assists the Police Department in preparation of search warrant requests and arrests.

C. Information

The City Council meets regularly on the first and third Wednesdays of each month at 7:00 PM. Occasional work sessions, executive sessions, and special meetings may be held, based upon need and at the request of the Mayor and or City Council. The City Attorney will be required to attend City Council meetings unless excused by the City Council.

The City Council by majority vote will appoint the City Attorney for an indefinite term. The City Attorney serves at the pleasure of the Council and may be removed at any time by a majority vote of the Council.

This request is for services for an indefinite time period pending the return of the staff City Attorney from active duty military deployment.

PROPOSAL TYPES

The City is accepting proposals to provide the services described above either on a monthly retainer or by set hourly rates.

- A. Retainer Agreement with Additional Hourly Fee: The city is prepared to review

proposals from individuals and/or firms to provide the following legal services on a set retainer:

City Attorney services (providing general legal counsel routine services and City Prosecutor services as previously described.) Non-routine legal services would be provided on a contracted hourly basis beyond the established retainer fee. If you are proposing to provide services under a retainer, you will also need to provide the hourly rate for services outside the scope of the retainer services. Describe any areas of law listed above in which you would need to retain specialized counsel.

- B. Hourly Rate for Services. The city is prepared to receive and review proposals from individuals and/or firms to provide legal services at an established hourly rate based on the areas of services provided above; City Attorney services (both general legal counsel and City Prosecutor services). If there are any areas of law listed above that you are unable to provide, and would require special counsel, please identify those areas.

PROPOSAL FORM AND CONTENT

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this Request for Proposal, and should be easily reproducible. Emphasis should be on completeness and clarity of content and cost effectiveness of the proposal.

All pages of the proposal must be numbered consecutively. The proposal shall not exceed fifteen pages in length. Resumes, licenses and work examples shall not count against this page limit.

The proposal must be organized in accordance with the list of proposal contents.

Proposals should include the following items herein described. All items must fall within the maximum page count. Proposal and cost schedule shall be valid and binding for sixty (60) days following the proposal due date and will become part of the contract that is negotiated with the city.

- A. Letter of Transmittal. All proposals must include a cover letter addressed to the City Council, and signed by a duly constituted official legally authorized to bind the applicant to both its proposal and cost schedule. The cover letter must include name, address and telephone number of the proposer submitting the proposal, and name, title, address, telephone number, fax number and email address of the person, or persons, to contact who are authorized to represent the proposer and to whom correspondence should be directed.
- B. Table of Contents. Include a clear identification of the material by section and by page number.

- C. **Executive Summary.** The proposal shall use this section to introduce the scope of the proposal and to summarize the key provisions of the proposal. Provide a statement describing why you or the firm is qualified to perform this work.
- D. **Proposal.** A description of how you or your firm propose to provide legal services to the city. This should address whether you propose a contract based solely on billable hours, or whether you are proposing a retainer for basic services with an hourly rate for additional services. This should also address issues such as office location; accessibility to City Council members and city staff; attendance at City Council meetings and occasional other meetings; services, if any, that you would expect to receive from the city; and if a firm, how you propose to manage the firm's provision of services to the city—for example, would there be a lead attorney and, if so, who would that attorney be and how would other attorneys be involved. Describe any work, whether by subject area or nature of work, which would not be covered by your compensation proposal.
- E. **Fee Schedule.** The proposal must describe the fee arrangement and whether you or your firm charge a monthly retainer fee, and if so, the fee and what services that fee will include. The proposal should include whether there is an hourly fee for services outside the monthly retainer fee and what would they be. If the proposal is for an hourly rate, the proposal must provide a proposed hourly rate and fee schedule for all services and travel time. The proposal should address whether there are additional costs that will be billed separately and if so, at what rate. The proposal should indicate the frequency of billing.
- F. **Proposed Attorney(s), Paralegals and Qualifications.** The proposal should:
- a. Summarize your, or the firm's, background and history; include number of years in business and scope of services you or your firm have provided.
 - b. Describe your municipal legal services, training, experience, and current government clients; include number of years.
 - c. Provide a statement describing the capability to respond to time-sensitive or short notice requests and/or complicated issues.
 - d. Provide at least two examples of complex issues you or your firm have successfully handled for municipal or other public agency clients.
 - e. Provide the date you would be able to begin providing legal services to the city; including how you propose to familiarize yourself with the laws, rules, regulations, and operating procedures relative to the conduct of business for the city in order to efficiently and effectively assume responsibilities.
 - f. Provide the name and summary of experience of those who will provide legal support.

- g. Also, include: a) address of your office where most services will be rendered; b) if you desire/require a city furnished office (describe appropriate space and furnishings/equipment needs) c) provide what days of the week and hours of the day you or your firm will be available for conversations.

G. Work Examples. The proposal should:

- a. Provide examples of two or more memos and letters explaining, interpreting, or applying the law to a client (preferably municipal or public entity).
- b. Provide two or more recent examples of filed legal briefs regarding a matter under litigation, preferably litigation involving a municipal or public entity.
- c. Provide two or more recent examples of an ordinance, resolution or other public policy document or rule drafted by you or your firm.

H. References. Provide contact information for three municipal clients, current and/or prior, so reference checks can be conducted.

I. Additional Information. Any other information that the proposer feels applicable to the evaluation of the proposal or of their qualifications for accomplishing the legal services should be included in this section. You may use this section to address those aspects of your services that distinguish you or your firm from others.

HOW TO APPLY/TIMELINE

Proposals may be mailed to:

City of Toledo Oregon

Attention: City Attorney Proposal
P.O. Box 220
Toledo, OR 97391

Alternatively, proposals may be delivered to the Toledo City Hall, 206 N. Main Street, Toledo, Oregon, in an envelope addressed to Attention: City Attorney Proposal.

As a further alternative, proposals may be emailed as an attachment, with the email subject "City Attorney Proposal" and with the email addressed to manager@cityoftoledo.org.

The deadline for submission of proposals is 5:00 pm, Friday, February 15, 2019.

ADDITIONAL INFORMATION

The City of Toledo Oregon has a population of 3580 with 44.13 employees.

The city will be able to provide office space to a contract City Attorney who proposes to have some office hours at City Hall.

Additional information, city charter, municipal code, development code, budgets and organizational information is available on the city's website at:

www.cityoftoledo.org

EVALUATION/SELECTION OF PROPOSALS

Evaluation Criteria. The following information will be taken into consideration during the evaluation process.

Qualifications identified in the proposals.

- Complete and clear responses to items in the Proposal Form and Content section.
- Familiarity with laws and regulations governing Oregon local governments and operating procedures relative to conduct of city business.
- Demonstrated expertise and experience in the following areas as it relates to municipalities: land use and zoning law; municipal court prosecution and operations; franchise and right of way law; utility services; public contracting and purchasing law; drafting or reviewing municipal ordinances and resolutions; public meetings; public records; administrative law; government ethics; employment law; water law; labor law; urban renewal law; real estate law; and environmental law.
- Range of services offered and available support staff.
- Demonstration of workload capacity commensurate with the level of service required by the city.
- Professional reputation for providing high-quality services, ability to work cooperatively with City Council, City Manager, department heads and media.
- Demonstration of sound judgment, integrity and reliability as determined by the references provided.
- Cost of providing services as per the submitted retainer or hourly rate schedule. Please note that while proposed fees are a significant factor in determining the successful proposer, they are balanced against criteria specified in this section.

Clarifications. The City reserves the right to seek clarification of each proposal submitted. The city also reserves the right to require other evidence of technical, managerial, financial, or other abilities prior to selection.

The successful attorney(s) or firm(s) will be the one that in the judgment of the City Council best demonstrates the ability to cover the broadest range of legal services in the most cost-effective manner. If the Council has satisfied the prerequisites of ORS 192.660(2)(a), the Council may review proposals and conduct interviews with finalists in executive session pursuant to ORS 192.660(2)(a). No final decision will be made in executive session. Upon completion of the evaluation process, a member designated by the City Council will advise the proposers of the selection and negotiate the appropriate agreement(s). The agreement(s) will define the extent of services to be rendered, method and amount of compensation. The city reserves the right to negotiate a final contract that is in the best interest of the city. The proposal will become a part of the agreement. The city attorney serves at the pleasure of the City Council. The contract may be terminated at any time by the City Council. Once a tentative agreement is prepared, it will be presented to the City Council to award the personal services contract.

NOTICE/RESERVATION OF RIGHTS

In addition to all other rights granted to it under Oregon law, the city reserves the right to waive formalities in the proposal process; to accept or reject any or all proposals received as a result of this request; to request additional information concerning any proposal; to accept or negotiate modifications to any proposal; to negotiate with qualified attorneys; to interview any proposer; to cancel, in part or in its entirety, the request for proposals; or to waive any irregularities in any proposal following the proposal submission deadline date in order to serve the best interests of the city. The city also reserves the right to negotiate separately with any proposer whatsoever, in any manner necessary to serve the best interests of the city. This request for proposals does not commit the city to pay any costs incurred in the preparation of a proposal.

All inquiries regarding this Request for Proposals should be directed to: City Manager Craig Martin, 541 635-2003, manager@cityoftoledo.org