



City Hall – Council Chambers
206 N. Main Street
Toledo, Oregon 97391

TOLEDO CITY COUNCIL
Work Session – also via Zoom Meeting Platform
September 27, 2023

6:00 p.m. or immediately following the Urban Renewal Agency meeting, whichever is later.

Virtual Meeting: The City Council will hold the meeting for the City Council and staff in person as well as through the Zoom video meeting platform. The public is encouraged to attend the meeting electronically. Visit the meetings page on the city website for details including meeting login information.

Public Comments: The City Council may take limited verbal comments during the meeting. Written comments may be submitted by email to lisa.figueroa@cityoftoledo.org 3:00 p.m. the day of the meeting to be included in the record. Comments received will be shared with the City Council and included in the record.

1. **Call to Order, Pledge of Allegiance and roll call**
2. **Presentations**
Presentation – My Sister's Place; Executive Director Amber Wishoff-Martin
Interview(s) – Interview City Council candidates
3. **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 three (3) minutes).
4. **Consent Agenda**
 - Minutes from the Budget Committee meeting held May 9, 2023 and the City Council meeting held July 5, 2023
5. **Discussion Items**
There are no items for consideration
6. **Decision Items**
 - Consideration of a revised Water Sales agreement with Georgia- Pacific Toledo, LLC
 - Interview and consideration of appointment to fill vacancies on the City Council
7. **Reports and Comments**
 - Committee updates
8. **Adjournment**

TOLEDO BUDGET COMMITTEE
REGULAR MEETING
May 9, 2023

1. CALL TO ORDER

Chairperson Kamikawa called the meeting to order at 6:15 p.m. electronically via Zoom in Toledo, Oregon.

Present	Absent	
X		Barry Bruster
X		Kim Bush
	X	Wade Carey
X		Rod Cross
	X	Michele Johnson
X		Betty Kamikawa
X		Jackie Kauffman
X		Anne Learned-Ellis
X		Jonathan Mix
X		Tracy Mix
X		David Robinson
		Vacant
		Vacant
		Vacant

Staff present: City Manager (CM) Judy Richter, City Recorder (CR) Lisa Figueroa, Accounting Supervisor (AS) Cindy Oleman, Public Works Director (PWD) Bill Zuspan, Police Chief (PC) Michael Pace, Library Director (LD) Deborah Trusty, Fire Chief (FC) Larry Robeson, Community Outreach Specialist Katy Keuter

2. APPROVAL OF MINUTES

Motion – Member Mix moved to approve the minutes from the training held April 11, 2023 and the meeting held May 2, 2023.

Member Learned-Ellis seconded the motion and it carried as follows:

	AYE	NAY	ABSTAIN	ABSENT
Barry Bruster	X			
Kim Bush	X			
Wade Carey				X
Rod Cross	X			
Michele Johnson				X
Betty Kamikawa	X			
Jackie Kauffman	X			
Anne Learned-Ellis	X			
Jonathan Mix	X			
Tracy Mix	X			
David Robinson	X			
Vacant				
Vacant				
Vacant				

1 **3. REVIEW/DISCUSSION OF THE BUDGET; BEGINNING WITH THE GENERAL FUND**

2 The Committee began to review the budget. CM Richter provided an update in regards to the Stabilization
3 Fund from the last meeting. She said one of the criteria is if the proposed revenue to the General Fund falls
4 within 7-10% below the previous year. She said the calculations showed the decrease was 6.16%, which
5 was less than 7%. She said she also checked the insurance costs, which said when the previous year's
6 insurance costs exceed the costs by more than 25%, but the increase was only 6.7%. She said the Council
7 voted to make some changes based on the new Public Employees Retirement System (PERS) rates. She
8 said Tier I & Tier II increased by 16.3% and the Oregon Public Service Retirement Plan (OPSRP) General
9 Service employee rate increased by 27.6%, while the OPSRP for fire/police increased by 21.78%. She said
10 she referenced Resolution No. 1335 when making those calculations. The Committee discussed the purpose
11 of the Stabilization Fund.

12
13 *Member Robinson left the meeting at 6:45 p.m.*

14
15 Chair Kamikawa directed the Committee to the beginning of the budget for review. As the Committee
16 proceeded through the budget, staff answered clarification questions related to funds, contracts and services,
17 anticipated number of employees, etc. The Committee discussed whether there were any other viable
18 alternatives to the storage addition for the fire department.

19
20 The Committee recessed at 7:07 and reconvened at 7:15 p.m.

21
22 The Committee continued to page 37.

23
24 **4. RECEIVE PUBLIC COMMENT ON THE PROPOSED FISCAL YEAR 2023-2024 BUDGET**

25 Chair Kamikawa opened the floor for public comment.

26 There were no comments.

27
28 **Motion** – Member Cross to approve the budget for fiscal year 2023-2024 in the amount of \$26,107,391.00,
29 approve a tax rate of \$5.18 per \$1,000 of assessed value, \$176,800 in bonded debt and accept the state
30 revenue sharing.

31
32 Member Mix seconded the motion and it carried as follows:

33

	AYE	NAY	ABSTAIN	ABSENT
Barry Bruster	X			
Kim Bush	X			
Wade Carey				X
Rod Cross	X			
Michele Johnson				X
Betty Kamikawa	X			
Jackie Kauffman	X			
Anne Learned-Ellis	X			
Jonathan Mix	X			
Tracy Mix	X			
David Robinson				X
Vacant				
Vacant				
Vacant				

34
35

1 **5. ADJOURNMENT**

2 The meeting adjourned at 8:10 p.m.

3
4 Respectfully Submitted,

5
6
7
8 _____
9 City Recorder Lisa Figueroa

**TOLEDO CITY COUNCIL
REGULAR MEETING
July 5, 2023**

1. CALL TO ORDER

Mayor Rod Cross called the meeting to order at 6:05 p.m. also via Zoom in Toledo, Oregon.

Present	Absent	
X		Mayor Rod Cross
X		Council President Betty Kamikawa
X		Councilor Jackie Kauffman
	X	Councilor Tracy Mix
X		Councilor Kim Bush
		Vacant
		Vacant

Staff present: City Manager (CM) Judy Richter, City Recorder (CR) Lisa Figueroa, City Attorney (CA) Mike Adams, Police Chief (PC) Michael Pace, Fire Chief (FC) Larry Robeson

2. VISITORS/PUBLIC COMMENT

There were no comments.

3. CONSENT AGENDA

Minutes from the executive session held April 5, 2023, May 24, 2023 and May 31, 2023 and the regular meeting held April 5, 2023

Motion – It was moved and seconded (Kamikawa/Kauffman) to approve the consent agenda as presented and the motion carried unanimously.

4. DISCUSSION ITEMS

Consider a proposed ordinance amendment to the Toledo Municipal Code; Title 8 – Health and Safety; Section 8.20.030

CA Adams presented the proposed ordinance. He said the change applies to the definition referenced in the council report. He indicated there were no other changes to the ordinance. He said it has been posted in accordance with the Municipal Code for adoption at the next Council meeting.

5. DECISION ITEMS

Resolution No 1523, A resolution approving a rate increase for Solid Waste Disposal Services and repealing Resolution No. 1517

CM Richter noted the Council approved Resolution No. 1517 was approved several months ago, however the rate sheet provided to the Council contained an error. She indicated the resolution presented would replace the one adopted. She said the percentage did not change but the cost per month has changed.

Motion – It was moved and seconded (Kamikawa/Bush) to adopt Resolution No. 1523, a resolution of the Toledo City Council approving a rate increase for Solid Waste Disposal Services provided by Dahl Disposal Services and repealing Resolution No 1517 and the motion carried unanimously.

Resolution No. 1524, a resolution determining the building located at 160 N. Main Street, Toledo, Oregon, is no longer a dangerous building, and repealing Resolution No. 1480

CA Adams presented the council report. He referenced Resolution No. 1480, which was included in the packet and recalled the public hearing the Council held in regards to the named property. He said the new building/property owner has done their due diligence to address every issue listed in the previous resolution. FC Robeson commended the owner for the effort.

Motion – It was moved and seconded (Bush/Kamikawa) to approve Resolution No, 1524, a resolution of the Toledo City Council determining the building located at 160 N. Main street, Toledo, Oregon, is no longer a dangerous building, and repealing Resolution No. 1480 and the motion carried unanimously.

Consideration of a permit to consume alcohol in public places; Oregon Beverage Services

CR Figueroa provided the council report and indicated Oregon Beverage Services is new to the event, however they specialize in outdoor and special events.

Motion – It was moved and seconded (Kauffman/Kamikawa) to approve the permit application request by Oregon Beverage Services and the motion carried unanimously.

Resolution No 1525, A resolution setting the Street Lighting Fee for Fiscal Year 2023-2024 and Repealing Resolution No. 1501

CM Richter summarized the council report and indicated the resolution has been prepared with the \$5.00 a month being added back to the Street Lighting Fee, with no net effect on the rate payers.

Motion – It was moved and seconded (Kamikawa/Bush) to adopt Resolution No. 1525, a resolution of the Toledo City Council setting the Street Lighting Fee for Fiscal Year 2023-2024 and repealing Resolution No. 1501 and the motion carried unanimously.

6. REPORTS AND COMMENTS

Councilor Bush reported on the Art, Oysters and Brews (AOB) event and indicated it was well attended. She commented on the community mural which will be unveiled at the September AOB.

Mayor Cross commented on AOB as well and indicated there will be a mural dedication to the memory of Michael Gibbons at the August AOB.

7. ADJOURNMENT

The meeting adjourned at 6:45 p.m.

Approve:

Attest:

Mayor Rod Cross

City Recorder Lisa Figueroa

**CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION**

	Meeting Date:	Agenda Topic:
	September 27, 2023	Consideration of a revised Water Sales agreement with Georgia- Pacific Toledo, LLC
Council Goal:	Agenda Type:	
Maintain and improve public infrastructure and facilities	Decision Items	
Prepared by:	Reviewed by:	Approved by:
City Attorney M. Adams	City Manager Doug Wiggins	City Manager Doug Wiggins

Recommendation:

Motion to enter into an Untreated Water Service Agreement with Georgia-Pacific Toledo, LLC (GP), which has been revised and is intended to replace the prior agreement entered on September 6, 2023.

Background:

Upon further review, GP's legal counsel requested the following addition to the last sentence of Paragraph 8 of the Agreement entered on September 6, 2023:

“However, GP shall be relieved of the purchase obligation in the proceeding sentence if the City terminates this Agreement pursuant to Section 12 or Section 15 (d) of this Agreement.”

What this means is that GP would be relieved of the amount to purchase 1 Million Gallons a Day for 10 days if the City terminated the agreement due to Paragraph 12 (Environmental Concerns; Unforeseen Circumstances) or Paragraph 15(d) (For Convenience).

The City Attorney recommends the City Council accept this request to modify the Agreement. However, it is the City Council's decision.

Fiscal Impact:	Fiscal Year:	GL Number:
\$45,000 Income	2023-2024	N/A

Attachment:

1. Draft GP Water Agreement – Redlined
2. Draft GP Water Agreement – For Signature

UNTREATED WATER SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of September, 2023, by and between the **CITY OF TOLEDO, OREGON**, a municipal corporation (the “City”), and the **GEORGIA-PACIFIC TOLEDO LLC**, a Delaware limited liability company (“GP”),

RECITALS

1. City is a municipal corporation of the State of Oregon and is authorized by the charter of the City of Toledo and the Toledo Municipal Code to maintain water works for the furnishing of water to the city, its property, its inhabitants, and to non-inhabitants. The City is further authorized to enter into contracts for the supply of water by the City and to sell water to persons, public and private, both inside and outside the City, on terms and conditions the City finds appropriate.
2. City is further authorized by its charter to enter into Agreements for cooperation, consolidation and maintenance of services with any other public corporations or units of government.
3. GP is a duly incorporated Delaware limited liability company, operating within the City limits of the City of Toledo.
4. GP is interested in temporarily purchasing untreated water from the municipal water system of the City of Toledo, similar to any other customer, but the water is a very large quantity, will be used for industrial purposes, which falls within the definition of municipal use, and it is untreated water.
5. City has what are referred to as “senior water rights” on the Siletz River, including those two water rights evidenced by Water Right Certificate T-11451 for the use of 2.0 million gallons per day (MGD) issued from the Oregon Water Resources Department, which are the water rights that are the subject of this Agreement.
6. The parties believe that City can assist GP in the appropriation of untreated water and help to alleviate its current temporary shortfall.
7. City needs flexibility in amount of untreated water it can provide, so that it can continue to provide water for its municipal purpose.
8. City is willing to help GP using its existing rights, for this reasonable and usual municipal purpose, through its municipal system, to provide water to GP, an existing customer in the City.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Initial Term.** The Parties agree the term shall be from _____ (execution of this Agreement) through December 31, 2023, unless terminated as provided herein.
2. **Renewal Term(s).** Not less than one month prior to the expiration of the initial term, or not less than two months prior to the expiration of any additional term, GP may request renewal of this Agreement for an additional term of one year by providing written notice to the City Manager.

City shall have 30 days to determine if it wants to grant the renewal, subject to the terms of this paragraph. The parties agree that any renewal will be evidenced by a written addendum to this Agreement, signed by both parties. During any renewal period, the terms and conditions in this Agreement shall remain the same, except such written addendum will also include GP's financial obligation to the City for its share of major capital improvements, minor capital improvements, and operations and maintenance costs, administrative costs, and other issues agreed upon by the parties, for that portion of the municipal water system impacted by GP's use, if any, as agreed by the parties.

3. **Sale of Water.** GP agrees to purchase and City agrees to sell untreated water as described in this Agreement; provided, City reserves the right to continue to contract with any entity or person to sell water for its municipal purpose, as City determines in its sole discretion, which the parties understand will reduce the amount of water sold to GP; and, further, provided, the parties acknowledge that the City has the sole discretion of when to limit water delivery to GP, either temporarily or permanently, for City's continued adequate water supply needs for its municipal purpose, as determined by City at its sole discretion.
4. **Raw Water.** As provided herein, City agrees to furnish and sell, and GP agrees to purchase only untreated river water during the term of this Agreement; provided, however, GP further agrees that the City will continue to furnish and sell treated water from its municipal water supply system for culinary use to other customers, including GP, at the City's discretion subject to terms of this Agreement.
5. **Discretion to Stop Providing Water.** Regardless of any other provision in this Agreement, the City retains the right, at its sole discretion, without limitation, to immediately stop providing water, temporarily or permanently, to GP, for any reason, or without specifying a reason, if the needs of the water municipal system require it.
6. **Point of Delivery.** The parties agree that the City will provide water from the municipal water system into the Olalla reservoir, which the parties agree is not GP's place of use, but a temporary holding facility. For this to occur, the City has already completed limited construction required in paragraph 10 below to the valve that has a "T" off the water line near the dam, shown on the maps that are Exhibit 1. This will occur because the City's water line at GP's place of use is too small to allow for adequate water to accommodate quantities needed in this agreement. Water will travel down the natural stream bed instead of the City's pipeline to reach the place of use. Accordingly, the parties agree that there is no change in municipal use, to provide water for industrial purposes to an existing customer, or change in place of use, which is the Toledo Paper Mill, where GP pumps water out of the Olalla Slough vicinity of SE 10th Street in the City of Toledo, or change in diversion point, which remains the same in the Siletz River. This analysis has been completed after reviewing the definition in OAR 690-300-0010(29) of "municipal water use" that specifically includes "industrial water use," which is further defined in OAR 690-300-0010(25) and consistent with GP's activities.
7. **Rate.** The rate will be a single charge per unit of water purchased (1 unit equals 1,000 gallons) delivered to the point of delivery described in this Agreement. GP and City agrees the rate shall be **\$4.50 per 1,000 (one thousand) gallons**. A copy of any rate resolution will be forwarded to GP.

8. **Quantity.** City agrees to sell and provide to GP up to a maximum of one million two hundred fifty thousand gallons average per day (1.25 MGD) of water at a point of delivery to GP as described herein, but the City will not exceed to a total of 2.0 MGD for its entire water system from the Siletz River. In 2015, the City was limited by a “cap” not to exceed 2.0 MGD until a Water Conservation and Management Plan (Plan) was implemented by the City. Although the Plan was implemented by the City in 2017, the City does not have confirmation from the Oregon Water Resources Department (WRD) of the increased allowable amount, so the parties agree that at this point the use of water by the City will not exceed to a total of 2.0 MGD for its entire water system. At present, City estimates it is using less than .75 MGD, as it is no longer providing water to the Seal Rock Water District as it was in 2015, so it is realistic that the City can provide up to 1.25 MGD average per day. The parties agree that such quantity of water, which may be reduced as provided in this Agreement, will be provided to GP by the City over a 7 day period, so more or less 8.75 MGD over a one week period based on current water usage. The City is under no obligation to provide a specified amount of water, but will use reasonable efforts to provide what is requested. Regardless of when this contract is terminated, GP agrees to purchase an average daily rate of one million gallons for a minimum of 10 days. However, GP shall be relieved of the purchase obligation in the proceeding sentence if the -City terminates this Agreement pursuant to Section 12 or Section 15 (d) of this Agreement.
9. **Measurement.** City has inline magnetic meters at each pump in the intake facility that will be the basis for measurement of water quantity. The City doesn’t anticipate running water in the pipe for GP and for other City purposes at the same time, but City reserves the right to run the water for both purposes at the same time and measure of the amount of water delivered to the plant and subtract it from the amount measured at the pump station at the Siletz River.
10. **Construction completed by the City in 2015.** Connecting with the valve that has a “T” off the water line near the dam shown on Exhibit 1, City installed an 18 inch width diameter pipe and PVC structure to bring water from the bottom of the reservoir as follows: 24 inch long spool (although shown on Exhibit 1, the plan of construction, it didn’t then exist), 90 degree elbow, then section of 18 inch PVC pipe, then 45 degree elbow, and short piece of PVC (hereafter “Construction Pipe”) consistent with the drawing that is a part of Exhibit 1. The parties agree that any further construction, including further pipe or PVC, beyond what is contemplated in this paragraph, is the financial and work responsibility of GP, which is needed to prevent erosion of the bank.
11. **License to Install Construction.** Although the City believes it may fall within the easement granted by GP, GP agrees to permit the City to use the property for the purpose of installing the construction described in paragraph 10.
12. **Environmental Concerns; Unforeseen Circumstances.** GP and City acknowledge that there are unforeseen or unavoidable circumstances or environmental issues that may limit or terminate the amount of water available to City for sale and distribution, as determined by the City in its sole discretion, whether temporarily or permanently. The parties agree that such unforeseen or unavoidable circumstances may include, without limitation, the following: drought; drought declaration by the Governor; any notice or other significant regulatory action by the Water Resources Department or Oregon Department of Fish and Wildlife to prohibit such continued sale

of water or that puts the City's water rights in jeopardy; the threat or actual initiation of the emergency listing process of species or habitat in response to "any emergency posing a significant risk to the well-being of any species" found 16 USC 1533 (b)(7); the threat or the filing of any lawsuit, which the City deems to have some merit, including lawsuits claiming: (1) that by providing water to GP, the City is harming other water rights; (2) that contractual rights are being infringed that have been afforded the other party to an existing contract with the City; (3) that "threatened" or "endangered" species under the federal Endangered Species Act (ESA) or Oregon ESA are being harmed; or (4) that an Indian tribe in Oregon is being harmed, including under the Bald Eagle Protection Act, the Endangered Species Act, the Migratory Bird Acts, or the Marine Mammal Protection Act; or any other environmental event beyond the control of City.

13. **Emergency; reduction; water shortage.** The parties recognize that the City may temporarily interrupt or reduce deliveries of water to GP if City determines that such interruption or reduction is necessary or reasonable in case of system emergencies or to install equipment, make repairs, replacements, investigations, and inspections are performed or other maintenance work on the City water system is necessary. The City shall give GP reasonable notice of any such interruption or reduction, the reasons for and the probable duration, and will use best efforts to minimize interruptions to GP. In the event of localized emergency problems, GP acknowledges that temporary localized interruptions may occur for the duration of the emergency. Examples of such circumstances include, but are not limited to, main breaks and system failures or weather related events.
14. **Excess Demands.** Should GP consistently place demands on the system in excess of that agreed to between City and GP, the City may take such steps as are necessary or advisable to protect the system. Such actions may include, but are not limited to, reducing or terminating the supply of water flowing to GP.
15. **Termination.** This Agreement may be terminated as follows:
 - a. **Default.** Failure of a Party to perform any substantial obligation contained in this Contract within 30 days after written notice from the other Party specifying the nature of the default or, if the default cannot be cured within 30 days, failure within such time to commence and pursue curative action with reasonable diligence, shall constitute a default entitling the other Party to terminate this contract. The other Party may then give notice of termination to the defaulting Party with such termination date to be not less than six (6) months from the date of notice or the end of the contract term, whichever occurs first. However, such termination date will be adjusted to be not less than six (6) months from the date of final completion of the dispute resolution process pursuant to paragraph 22 if the default is confirmed.
 - b. **Nonpayment.** Except for billing disputes pursuant to paragraph 19, in the event GP is delinquent following the monthly billing in paragraph 17 by more than forty-five (45) days, City may notify GP in writing that unless payment is made by GP that service will be discontinued for nonpayment after fifteen (15) days from the date of notice and the Agreement terminated. GP may avoid termination by paying the amount demanded within the 15 days.

- c. **Dissolution.** In the event of GP's dissolution, this Agreement may be terminated immediately by City.
- d. **For Convenience.** Either party may terminate this Agreement without specifying any reason for termination by giving written notice of intent to terminate, in writing, personally delivered not less than 72 hours prior to the intended termination date, or mailed at least three (3) days before the intended termination date to the other party at the party's address below. Such termination shall be without liability or penalty. No such termination shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
- e. **For Cause.** In addition to its rights under this paragraph 15, it is further agreed that the City may immediately terminate this agreement, without liability or penalty for either of the following causes by the mailing of written notice to GP at GP's address below, specifying the cause:
 - i. Unsatisfactory performance or nonperformance. The City Manager is the sole judge of GP's unsatisfactory performance or nonperformance.
 - ii. Lack of funding to make needed improvements to water system.

16. **City's Water System.** The parties agree and acknowledge that the City is the owner and operator of the water supply, storage, transmission, and treatment system, and all facilities and infrastructure associated with the storage, treatment, transmission, and distribution systems used in its water system operations. GP's purchase of water or other costs described in this Agreement, including in any subsequent addendum that evidences a renewal term, shall not constitute purchase of ownership rights to water or any portion of the water system owned and operated by the City. GP agrees to assist the City in its future attempt to claim a perfected use for the sale of water under this Agreement at this point of diversion.

17. **Monthly Billing.** The City shall bill GP at the address specified in this Agreement on or about the 1st day of each month, with an itemized statement of the amount of water furnished to GP and the amount charged for the billing period.

18. **Payment Schedule.** Bills are due upon receipt, and if not paid on or before the forty-fifth (45) day following the invoice date, subject to a collection fee of 25% of the total amount then due and also subject to an interest rate at the statutory rate on the unpaid account. At 45 days following the invoice date, City will start charging the statutory interest rate, a collection fee added, and shut off notice will be sent.

19. **Billing Disputes.** In the case of disputes over billings for water, GP shall pay the undisputed amount when due and the disputed amount shall be resolved through Dispute Resolution as described in paragraph 20 of this Agreement. GP shall pay interest at the statutory rate on unpaid accounts on any disputed amounts found through dispute resolution or litigation to be due the City.

20. **Dispute Resolution.** The Parties agree that this Agreement is conditional upon the faithful performance by both Parties of all the terms and provisions stated herein. In case of disputes arising out of this Agreement, including default of any provisions or disputes regarding the

interpretation of any provision of the Agreement, subject to the terms of this paragraph, either party may seek all remedies available at law or in equity, including termination upon giving notice of termination for default of this Agreement pursuant to paragraph 15. The parties agree, however, prior to the commencement of any suit or termination for default, they shall first engage in dispute resolution as provided in this paragraph.

Step 1. Notice of Dispute

Prior to commencement of litigation of a dispute, either party must first provide the other with a written notice describing the dispute and submitting the dispute to resolution under this paragraph 20. Such notice shall commence the dispute resolution process.

Step 2. Negotiation

Each party shall designate a person or persons to negotiate the dispute on its behalf, shall make a good faith effort to exchange information and data related to the dispute, and shall meet to negotiate a dispute resolution. If the dispute is resolved at this step, the parties will memorialize the Agreement by a written determination of such resolution, signed by the designated representatives of the parties.

Step 3. Mediation

If the dispute has not been resolved within 45 days of the date of the notice of dispute, or such longer time as is mutually agreed by the parties, the parties shall submit the matter to mediation. The parties shall attempt in good faith to agree on a mediator. If they cannot agree, they shall request a list of three mediators from an entity or firm providing mediation services. The parties shall attempt in good faith to mutually agree on a mediator from the list provided, but if they cannot agree, each party shall select one name. The two selected shall select a third person and the dispute shall be heard by a panel of three mediators.

Any common costs of mediation, including the cost of mediation, shall be borne equally by the parties. Each party shall bear its own individual costs therefore. Mediation shall not continue more than 105 days past the initial notice of dispute unless mutually agreed by the parties. If the dispute is resolved at this step, a written determination of such resolution shall be signed by the designated representatives of the parties.

21. **Purchaser Insurance.** GP will purchase and carry in full force and effect during the term of this Agreement, a liability insurance policy in the amount of \$2,000,000 Comprehensive General Liability coverage protecting City and GP from liability of any nature whatsoever arising from GP's performance of its obligations under this Agreement.
22. **Indemnification.** To the extent allowed by the Oregon Constitution and the Oregon Revised Statutes not to exceed monetary limits of the Oregon Tort Claims Act, each party will indemnify, defend, save and hold harmless the other and the others officers and employees from any and all claims, suits, and liabilities arising out of the negligent acts or omissions of indemnifying party's performance under this Agreement or related to this Agreement. This indemnity obligations shall not include any obligation of one party to indemnify the other for actions or omissions of the other or the others officers, employees, or agents. In the event of joint acts, each party shall be responsible for its own acts or those of its own officers, employees or agents. If any aspect of this indemnification shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

23. **Hold Harmless.** As City needs to continue its municipal use, GP is essentially purchasing excess water not used in the water system by customers, so GP agrees to hold harmless the City for exercising its right, at its sole discretion, without limitation, to stop providing water, temporarily or permanently, to GP, for any reason, or without specifying a reason, pursuant to the termination provisions in paragraph 15, the unforeseen circumstance/environmental concerns provisions in paragraph 12, or the emergency/reduction/water shortage provisions in paragraph 13, of this Agreement. GP agrees that no liability for damages will attach to City on account of any failure of supply or changes in pressure, flow rate, or water quality due to circumstances beyond the reasonable control of City, acting in accordance with the standards of care common and usual in the delivery of untreated water. Examples, of such circumstances include, but are not limited to, natural events such as earthquakes, landslides and floods and human caused events such as terrorism, malevolent acts, contamination of the water supply, and acts of war.
24. **Assignment.** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by any party without the prior written consent of the other party.
25. **Notices.** All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties at the following addresses:
- | | |
|----------------------------------|--|
| City of Toledo | GP |
| Attn: Doug Wiggins, City Manager | Attn: Andrea Formo, Public Affairs Manager |
| P.O. Box 220 | 1400 SE Butler Bridge Road |
| Toledo, OR 97391 | Toledo, OR 97391 |
- Any notice or other communication will be deemed to be given (a) on the date of personal delivery, or (b) at the expiration of the third day after the date of deposit in the United States mail.
26. **Amendments.** This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.
27. **Construction.** The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words *include* or *including* are used in this Agreement, they will be deemed to be followed by the words *without limitation*.
28. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same Agreement.
29. **Further Assurances.** Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this Agreement.
30. **Time of Essence.** Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.
31. **Waiver.** Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any

provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

32. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.
33. **Attorney Fees.** If any suit or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such suit or action as determined by the trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.
34. **Injunctive and Other Equitable Relief.** The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties will be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.
35. **Venue.** Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement will be brought against any of the parties in Lincoln County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.
36. **Exhibits.** The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.
37. **Severability.** If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.
38. **Entire Agreement.** This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire Agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and Agreements, whether written or oral, among the parties with respect to such subject matter.
39. **Survival of Covenants.** Any provision of this Agreement which, by its terms has or may have application after the expiration or earlier termination of this Agreement, including all covenants, Agreements, and warranties, will be deemed to the extent of such application to survive the expiration or termination of this Agreement.
40. **Force Majeure.** No party will be considered in default in the performance of its obligations under this Agreement to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or in the future, which is beyond the reasonable control of the affected party, including, but not limited to, Acts of God, earthquake, drought, labor disputes, civil commotions, war and the like. In the event a party claims that performance of its obligations was prevented or delayed by any such cause, that party will promptly notify the other party of that fact and of the circumstance preventing or delaying performance. Such party so claiming a cause of delayed performance will endeavor to the extent reasonable to remove the obstacles which

preclude performance. This Force Majeure provision will also apply to each party in performing its duties and obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate by the duly authorized persons whose signatures appear below. Each party, by the signature below of the authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Each person signing this Agreement represents and warrants to have the authority to sign this Agreement.

“City”:
CITY OF TOLEDO

“GP”:
GEORGIA-PACIFIC TOLEDO, LLC

By _____

By _____

Name: Doug Wiggins

Name _____

Title: City Manager

Title _____

Date

Date

Attest:

Attest:

Lisa Figueroa, City Recorder

Approved as to form and content:

City Legal Counsel

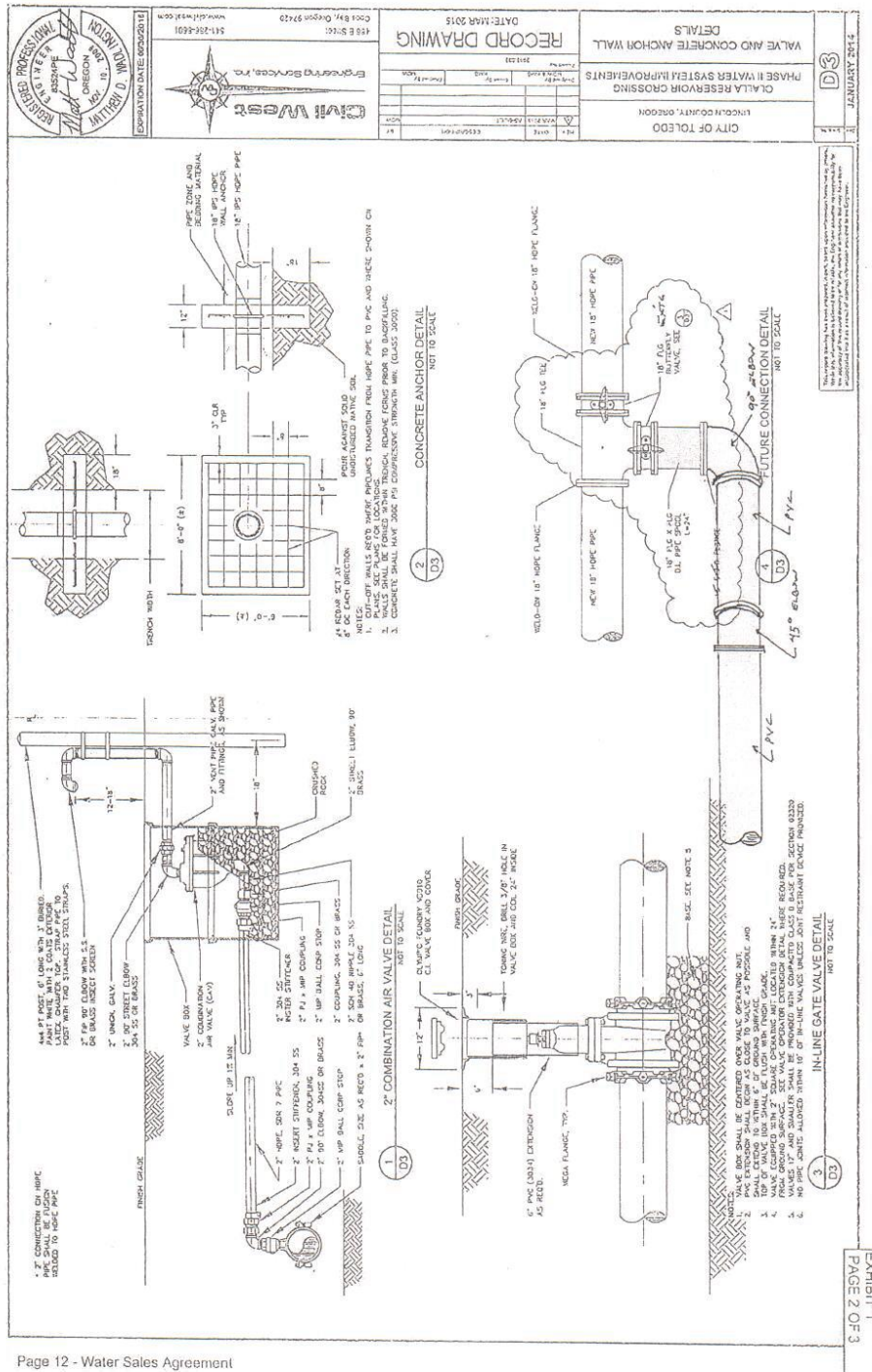
Date

GP Legal Counsel

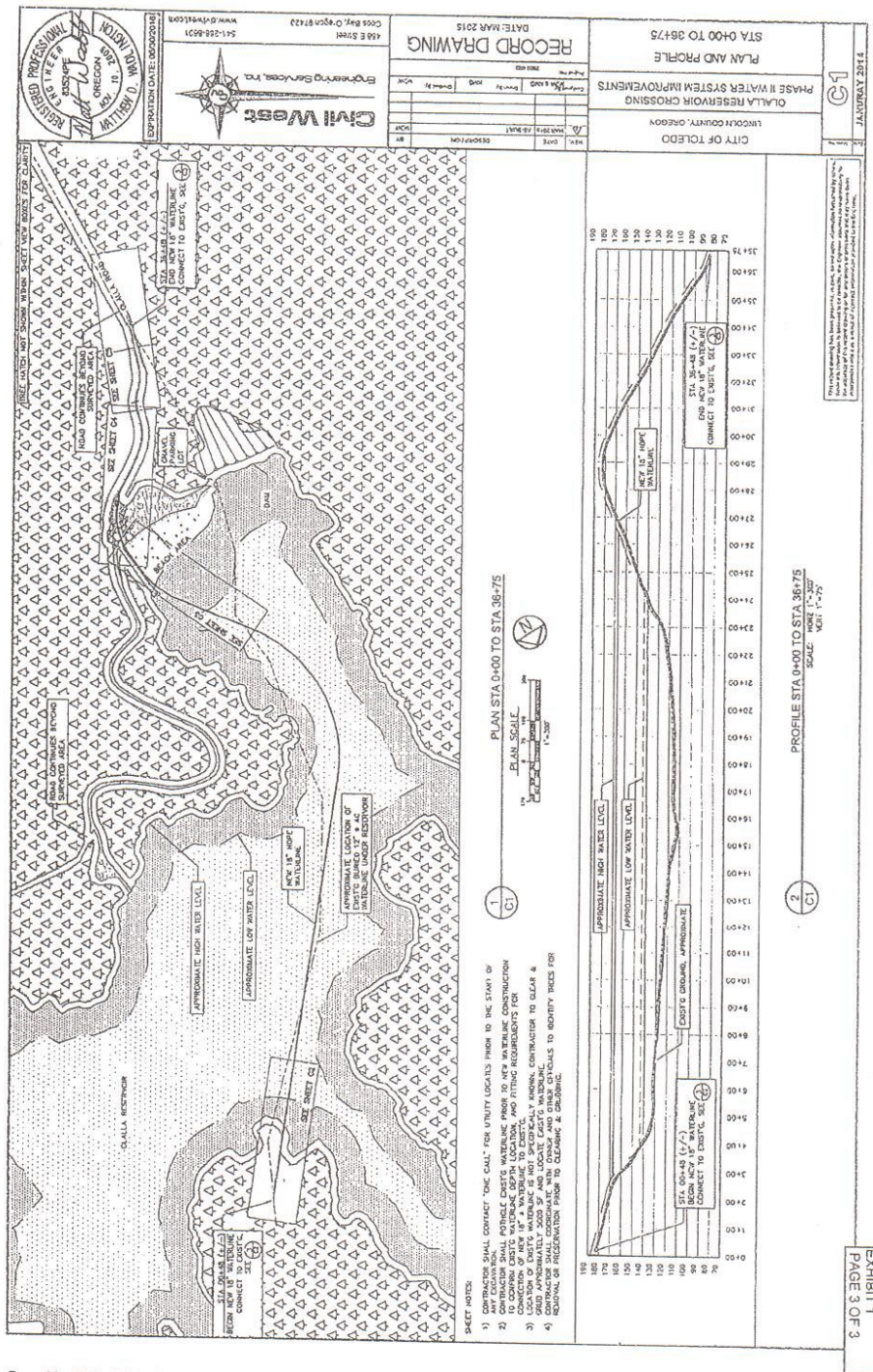
Date

Exhibit 1 to Water Sales Agreement – 3 attached Maps below

Redlined Draft



Page 12 - Water Sales Agreement



UNTREATED WATER SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of September, 2023, by and between the **CITY OF TOLEDO, OREGON**, a municipal corporation (the “**City**”), and the **GEORGIA-PACIFIC TOLEDO LLC**, a Delaware limited liability company (“**GP**”),

RECITALS

1. City is a municipal corporation of the State of Oregon and is authorized by the charter of the City of Toledo and the Toledo Municipal Code to maintain water works for the furnishing of water to the city, its property, its inhabitants, and to non-inhabitants. The City is further authorized to enter into contracts for the supply of water by the City and to sell water to persons, public and private, both inside and outside the City, on terms and conditions the City finds appropriate.
2. City is further authorized by its charter to enter into Agreements for cooperation, consolidation and maintenance of services with any other public corporations or units of government.
3. GP is a duly incorporated Delaware limited liability company, operating within the City limits of the City of Toledo.
4. GP is interested in temporarily purchasing untreated water from the municipal water system of the City of Toledo, similar to any other customer, but the water is a very large quantity, will be used for industrial purposes, which falls within the definition of municipal use, and it is untreated water.
5. City has what are referred to as “senior water rights” on the Siletz River, including those two water rights evidenced by Water Right Certificate T-11451 for the use of 2.0 million gallons per day (MGD) issued from the Oregon Water Resources Department, which are the water rights that are the subject of this Agreement.
6. The parties believe that City can assist GP in the appropriation of untreated water and help to alleviate its current temporary shortfall.
7. City needs flexibility in amount of untreated water it can provide, so that it can continue to provide water for its municipal purpose.
8. City is willing to help GP using its existing rights, for this reasonable and usual municipal purpose, through its municipal system, to provide water to GP, an existing customer in the City.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Initial Term.** The Parties agree the term shall be from _____ (execution of this Agreement) through December 31, 2023, unless terminated as provided herein.
2. **Renewal Term(s).** Not less than one month prior to the expiration of the initial term, or not less than two months prior to the expiration of any additional term, GP may request renewal of this Agreement for an additional term of one year by providing written notice to the City Manager.

City shall have 30 days to determine if it wants to grant the renewal, subject to the terms of this paragraph. The parties agree that any renewal will be evidenced by a written addendum to this Agreement, signed by both parties. During any renewal period, the terms and conditions in this Agreement shall remain the same, except such written addendum will also include GP's financial obligation to the City for its share of major capital improvements, minor capital improvements, and operations and maintenance costs, administrative costs, and other issues agreed upon by the parties, for that portion of the municipal water system impacted by GP's use, if any, as agreed by the parties.

3. **Sale of Water.** GP agrees to purchase and City agrees to sell untreated water as described in this Agreement; provided, City reserves the right to continue to contract with any entity or person to sell water for its municipal purpose, as City determines in its sole discretion, which the parties understand will reduce the amount of water sold to GP; and, further, provided, the parties acknowledge that the City has the sole discretion of when to limit water delivery to GP, either temporarily or permanently, for City's continued adequate water supply needs for its municipal purpose, as determined by City at its sole discretion.
4. **Raw Water.** As provided herein, City agrees to furnish and sell, and GP agrees to purchase only untreated river water during the term of this Agreement; provided, however, GP further agrees that the City will continue to furnish and sell treated water from its municipal water supply system for culinary use to other customers, including GP, at the City's discretion subject to terms of this Agreement.
5. **Discretion to Stop Providing Water.** Regardless of any other provision in this Agreement, the City retains the right, at its sole discretion, without limitation, to immediately stop providing water, temporarily or permanently, to GP, for any reason, or without specifying a reason, if the needs of the water municipal system require it.
6. **Point of Delivery.** The parties agree that the City will provide water from the municipal water system into the Olalla reservoir, which the parties agree is not GP's place of use, but a temporary holding facility. For this to occur, the City has already completed limited construction required in paragraph 10 below to the valve that has a "T" off the water line near the dam, shown on the maps that are Exhibit 1. This will occur because the City's water line at GP's place of use is too small to allow for adequate water to accommodate quantities needed in this agreement. Water will travel down the natural stream bed instead of the City's pipeline to reach the place of use. Accordingly, the parties agree that there is no change in municipal use, to provide water for industrial purposes to an existing customer, or change in place of use, which is the Toledo Paper Mill, where GP pumps water out of the Olalla Slough vicinity of SE 10th Street in the City of Toledo, or change in diversion point, which remains the same in the Siletz River. This analysis has been completed after reviewing the definition in OAR 690-300-0010(29) of "municipal water use" that specifically includes "industrial water use," which is further defined in OAR 690-300-0010(25) and consistent with GP's activities.
7. **Rate.** The rate will be a single charge per unit of water purchased (1 unit equals 1,000 gallons) delivered to the point of delivery described in this Agreement. GP and City agrees the rate shall be **\$4.50 per 1,000 (one thousand) gallons**. A copy of any rate resolution will be forwarded to GP.

8. **Quantity.** City agrees to sell and provide to GP up to a maximum of one million two hundred fifty thousand gallons average per day (1.25 MGD) of water at a point of delivery to GP as described herein, but the City will not exceed to a total of 2.0 MGD for its entire water system from the Siletz River. In 2015, the City was limited by a “cap” not to exceed 2.0 MGD until a Water Conservation and Management Plan (Plan) was implemented by the City. Although the Plan was implemented by the City in 2017, the City does not have confirmation from the Oregon Water Resources Department (WRD) of the increased allowable amount, so the parties agree that at this point the use of water by the City will not exceed to a total of 2.0 MGD for its entire water system. At present, City estimates it is using less than .75 MGD, as it is no longer providing water to the Seal Rock Water District as it was in 2015, so it is realistic that the City can provide up to 1.25 MGD average per day. The parties agree that such quantity of water, which may be reduced as provided in this Agreement, will be provided to GP by the City over a 7 day period, so more or less 8.75 MGD over a one week period based on current water usage. The City is under no obligation to provide a specified amount of water, but will use reasonable efforts to provide what is requested. Regardless of when this contract is terminated, GP agrees to purchase an average daily rate of one million gallons for a minimum of 10 days. However, GP shall be relieved of the purchase obligation in the proceeding sentence if the City terminates this Agreement pursuant to Section 12 or Section 15 (d) of this Agreement.
9. **Measurement.** City has inline magnetic meters at each pump in the intake facility that will be the basis for measurement of water quantity. The City doesn’t anticipate running water in the pipe for GP and for other City purposes at the same time, but City reserves the right to run the water for both purposes at the same time and measure of the amount of water delivered to the plant and subtract it from the amount measured at the pump station at the Siletz River.
10. **Construction completed by the City in 2015.** Connecting with the valve that has a “T” off the water line near the dam shown on Exhibit 1, City installed an 18 inch width diameter pipe and PVC structure to bring water from the bottom of the reservoir as follows: 24 inch long spool (although shown on Exhibit 1, the plan of construction, it didn’t then exist), 90 degree elbow, then section of 18 inch PVC pipe, then 45 degree elbow, and short piece of PVC (hereafter “Construction Pipe”) consistent with the drawing that is a part of Exhibit 1. The parties agree that any further construction, including further pipe or PVC, beyond what is contemplated in this paragraph, is the financial and work responsibility of GP, which is needed to prevent erosion of the bank.
11. **License to Install Construction.** Although the City believes it may fall within the easement granted by GP, GP agrees to permit the City to use the property for the purpose of installing the construction described in paragraph 10.
12. **Environmental Concerns; Unforeseen Circumstances.** GP and City acknowledge that there are unforeseen or unavoidable circumstances or environmental issues that may limit or terminate the amount of water available to City for sale and distribution, as determined by the City in its sole discretion, whether temporarily or permanently. The parties agree that such unforeseen or unavoidable circumstances may include, without limitation, the following: drought; drought declaration by the Governor; any notice or other significant regulatory action by the Water Resources Department or Oregon Department of Fish and Wildlife to prohibit such continued sale

of water or that puts the City's water rights in jeopardy; the threat or actual initiation of the emergency listing process of species or habitat in response to "any emergency posing a significant risk to the well-being of any species" found 16 USC 1533 (b)(7); the threat or the filing of any lawsuit, which the City deems to have some merit, including lawsuits claiming: (1) that by providing water to GP, the City is harming other water rights; (2) that contractual rights are being infringed that have been afforded the other party to an existing contract with the City; (3) that "threatened" or "endangered" species under the federal Endangered Species Act (ESA) or Oregon ESA are being harmed; or (4) that an Indian tribe in Oregon is being harmed, including under the Bald Eagle Protection Act, the Endangered Species Act, the Migratory Bird Acts, or the Marine Mammal Protection Act; or any other environmental event beyond the control of City.

13. **Emergency; reduction; water shortage.** The parties recognize that the City may temporarily interrupt or reduce deliveries of water to GP if City determines that such interruption or reduction is necessary or reasonable in case of system emergencies or to install equipment, make repairs, replacements, investigations, and inspections are performed or other maintenance work on the City water system is necessary. The City shall give GP reasonable notice of any such interruption or reduction, the reasons for and the probable duration, and will use best efforts to minimize interruptions to GP. In the event of localized emergency problems, GP acknowledges that temporary localized interruptions may occur for the duration of the emergency. Examples of such circumstances include, but are not limited to, main breaks and system failures or weather related events.
14. **Excess Demands.** Should GP consistently place demands on the system in excess of that agreed to between City and GP, the City may take such steps as are necessary or advisable to protect the system. Such actions may include, but are not limited to, reducing or terminating the supply of water flowing to GP.
15. **Termination.** This Agreement may be terminated as follows:
 - a. **Default.** Failure of a Party to perform any substantial obligation contained in this Contract within 30 days after written notice from the other Party specifying the nature of the default or, if the default cannot be cured within 30 days, failure within such time to commence and pursue curative action with reasonable diligence, shall constitute a default entitling the other Party to terminate this contract. The other Party may then give notice of termination to the defaulting Party with such termination date to be not less than six (6) months from the date of notice or the end of the contract term, whichever occurs first. However, such termination date will be adjusted to be not less than six (6) months from the date of final completion of the dispute resolution process pursuant to paragraph 22 if the default is confirmed.
 - b. **Nonpayment.** Except for billing disputes pursuant to paragraph 19, in the event GP is delinquent following the monthly billing in paragraph 17 by more than forty-five (45) days, City may notify GP in writing that unless payment is made by GP that service will be discontinued for nonpayment after fifteen (15) days from the date of notice and the Agreement terminated. GP may avoid termination by paying the amount demanded within the 15 days.

- c. **Dissolution.** In the event of GP's dissolution, this Agreement may be terminated immediately by City.
 - d. **For Convenience.** Either party may terminate this Agreement without specifying any reason for termination by giving written notice of intent to terminate, in writing, personally delivered not less than 72 hours prior to the intended termination date, or mailed at least three (3) days before the intended termination date to the other party at the party's address below. Such termination shall be without liability or penalty. No such termination shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
 - e. **For Cause.** In addition to its rights under this paragraph 15, it is further agreed that the City may immediately terminate this agreement, without liability or penalty for either of the following causes by the mailing of written notice to GP at GP's address below, specifying the cause:
 - i. Unsatisfactory performance or nonperformance. The City Manager is the sole judge of GP's unsatisfactory performance or nonperformance.
 - ii. Lack of funding to make needed improvements to water system.
16. **City's Water System.** The parties agree and acknowledge that the City is the owner and operator of the water supply, storage, transmission, and treatment system, and all facilities and infrastructure associated with the storage, treatment, transmission, and distribution systems used in its water system operations. GP's purchase of water or other costs described in this Agreement, including in any subsequent addendum that evidences a renewal term, shall not constitute purchase of ownership rights to water or any portion of the water system owned and operated by the City. GP agrees to assist the City in its future attempt to claim a perfected use for the sale of water under this Agreement at this point of diversion.
17. **Monthly Billing.** The City shall bill GP at the address specified in this Agreement on or about the 1st day of each month, with an itemized statement of the amount of water furnished to GP and the amount charged for the billing period.
18. **Payment Schedule.** Bills are due upon receipt, and if not paid on or before the forty-fifth (45) day following the invoice date, subject to a collection fee of 25% of the total amount then due and also subject to an interest rate at the statutory rate on the unpaid account. At 45 days following the invoice date, City will start charging the statutory interest rate, a collection fee added, and shut off notice will be sent.
19. **Billing Disputes.** In the case of disputes over billings for water, GP shall pay the undisputed amount when due and the disputed amount shall be resolved through Dispute Resolution as described in paragraph 20 of this Agreement. GP shall pay interest at the statutory rate on unpaid accounts on any disputed amounts found through dispute resolution or litigation to be due the City.
20. **Dispute Resolution.** The Parties agree that this Agreement is conditional upon the faithful performance by both Parties of all the terms and provisions stated herein. In case of disputes arising out of this Agreement, including default of any provisions or disputes regarding the

interpretation of any provision of the Agreement, subject to the terms of this paragraph, either party may seek all remedies available at law or in equity, including termination upon giving notice of termination for default of this Agreement pursuant to paragraph 15. The parties agree, however, prior to the commencement of any suit or termination for default, they shall first engage in dispute resolution as provided in this paragraph.

Step 1. Notice of Dispute

Prior to commencement of litigation of a dispute, either party must first provide the other with a written notice describing the dispute and submitting the dispute to resolution under this paragraph 20. Such notice shall commence the dispute resolution process.

Step 2. Negotiation

Each party shall designate a person or persons to negotiate the dispute on its behalf, shall make a good faith effort to exchange information and data related to the dispute, and shall meet to negotiate a dispute resolution. If the dispute is resolved at this step, the parties will memorialize the Agreement by a written determination of such resolution, signed by the designated representatives of the parties.

Step 3. Mediation

If the dispute has not been resolved within 45 days of the date of the notice of dispute, or such longer time as is mutually agreed by the parties, the parties shall submit the matter to mediation. The parties shall attempt in good faith to agree on a mediator. If they cannot agree, they shall request a list of three mediators from an entity or firm providing mediation services. The parties shall attempt in good faith to mutually agree on a mediator from the list provided, but if they cannot agree, each party shall select one name. The two selected shall select a third person and the dispute shall be heard by a panel of three mediators.

Any common costs of mediation, including the cost of mediation, shall be borne equally by the parties. Each party shall bear its own individual costs therefore. Mediation shall not continue more than 105 days past the initial notice of dispute unless mutually agreed by the parties. If the dispute is resolved at this step, a written determination of such resolution shall be signed by the designated representatives of the parties.

21. **Purchaser Insurance.** GP will purchase and carry in full force and effect during the term of this Agreement, a liability insurance policy in the amount of \$2,000,000 Comprehensive General Liability coverage protecting City and GP from liability of any nature whatsoever arising from GP's performance of its obligations under this Agreement.
22. **Indemnification.** To the extent allowed by the Oregon Constitution and the Oregon Revised Statutes not to exceed monetary limits of the Oregon Tort Claims Act, each party will indemnify, defend, save and hold harmless the other and the others officers and employees from any and all claims, suits, and liabilities arising out of the negligent acts or omissions of indemnifying party's performance under this Agreement or related to this Agreement. This indemnity obligations shall not include any obligation of one party to indemnify the other for actions or omissions of the other or the others officers, employees, or agents. In the event of joint acts, each party shall be responsible for its own acts or those of its own officers, employees or agents. If any aspect of this indemnification shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

23. **Hold Harmless.** As City needs to continue its municipal use, GP is essentially purchasing excess water not used in the water system by customers, so GP agrees to hold harmless the City for exercising its right, at its sole discretion, without limitation, to stop providing water, temporarily or permanently, to GP, for any reason, or without specifying a reason, pursuant to the termination provisions in paragraph 15, the unforeseen circumstance/environmental concerns provisions in paragraph 12, or the emergency/reduction/water shortage provisions in paragraph 13, of this Agreement. GP agrees that no liability for damages will attach to City on account of any failure of supply or changes in pressure, flow rate, or water quality due to circumstances beyond the reasonable control of City, acting in accordance with the standards of care common and usual in the delivery of untreated water. Examples, of such circumstances include, but are not limited to, natural events such as earthquakes, landslides and floods and human caused events such as terrorism, malevolent acts, contamination of the water supply, and acts of war.
24. **Assignment.** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by any party without the prior written consent of the other party.
25. **Notices.** All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties at the following addresses:
- | | |
|----------------------------------|--|
| City of Toledo | GP |
| Attn: Doug Wiggins, City Manager | Attn: Andrea Formo, Public Affairs Manager |
| P.O. Box 220 | 1400 SE Butler Bridge Road |
| Toledo, OR 97391 | Toledo, OR 97391 |
- Any notice or other communication will be deemed to be given (a) on the date of personal delivery, or (b) at the expiration of the third day after the date of deposit in the United States mail.
26. **Amendments.** This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.
27. **Construction.** The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words *include* or *including* are used in this Agreement, they will be deemed to be followed by the words *without limitation*.
28. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same Agreement.
29. **Further Assurances.** Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this Agreement.
30. **Time of Essence.** Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.
31. **Waiver.** Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any

provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

32. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.
33. **Attorney Fees.** If any suit or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such suit or action as determined by the trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.
34. **Injunctive and Other Equitable Relief.** The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties will be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.
35. **Venue.** Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement will be brought against any of the parties in Lincoln County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.
36. **Exhibits.** The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.
37. **Severability.** If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.
38. **Entire Agreement.** This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire Agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and Agreements, whether written or oral, among the parties with respect to such subject matter.
39. **Survival of Covenants.** Any provision of this Agreement which, by its terms has or may have application after the expiration or earlier termination of this Agreement, including all covenants, Agreements, and warranties, will be deemed to the extent of such application to survive the expiration or termination of this Agreement.
40. **Force Majeure.** No party will be considered in default in the performance of its obligations under this Agreement to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or in the future, which is beyond the reasonable control of the affected party, including, but not limited to, Acts of God, earthquake, drought, labor disputes, civil commotions, war and the like. In the event a party claims that performance of its obligations was prevented or delayed by any such cause, that party will promptly notify the other party of that fact and of the circumstance preventing or delaying performance. Such party so claiming a cause of delayed performance will endeavor to the extent reasonable to remove the obstacles which

preclude performance. This Force Majeure provision will also apply to each party in performing its duties and obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate by the duly authorized persons whose signatures appear below. Each party, by the signature below of the authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Each person signing this Agreement represents and warrants to have the authority to sign this Agreement.

“City”:
CITY OF TOLEDO

“GP”:
GEORGIA-PACIFIC TOLEDO, LLC

By _____

By _____

Name: Doug Wiggins

Name _____

Title: City Manager

Title _____

Date

Date

Attest:

Attest:

Lisa Figueroa, City Recorder

Approved as to form and content:

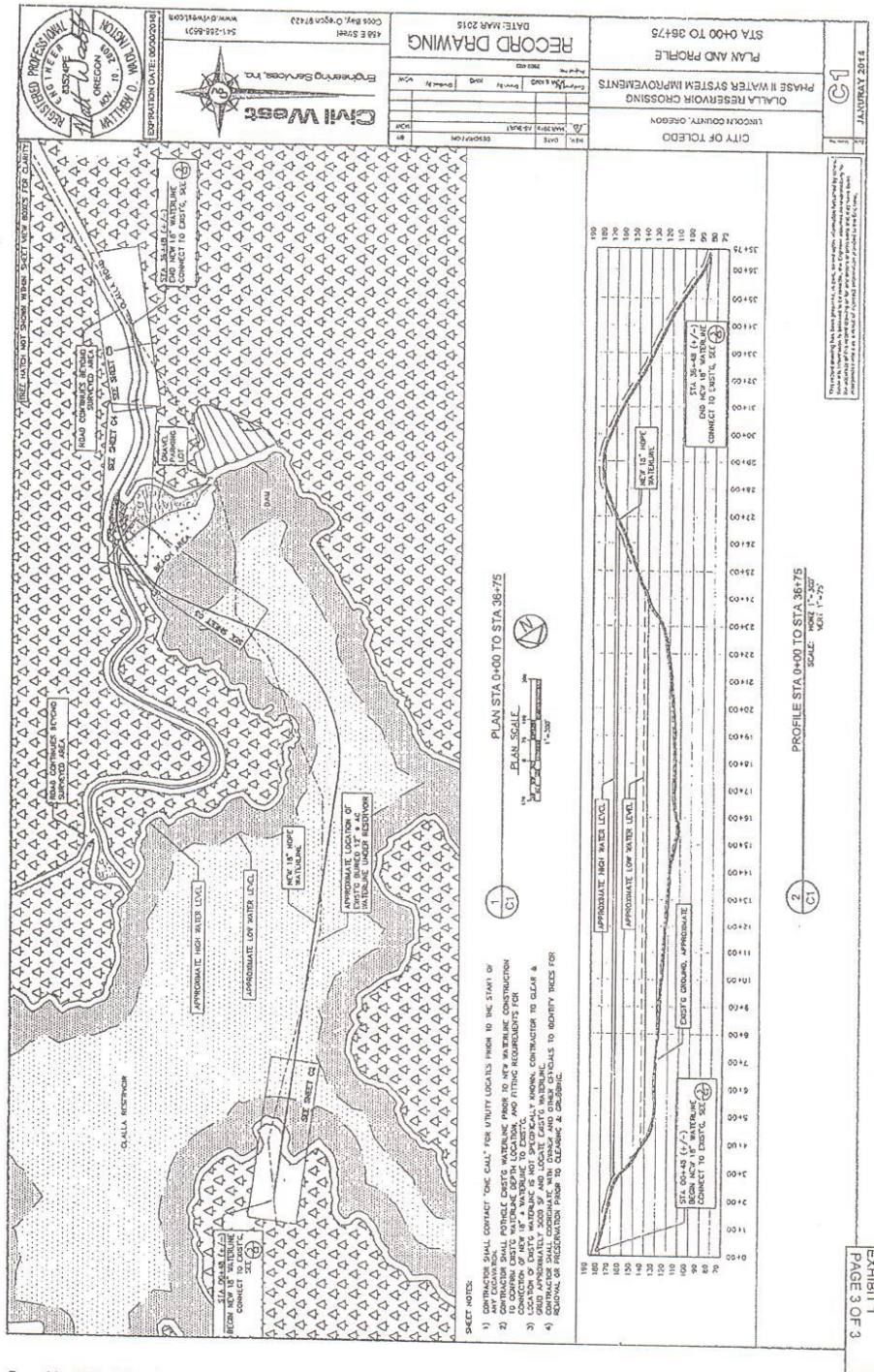
City Legal Counsel

Date

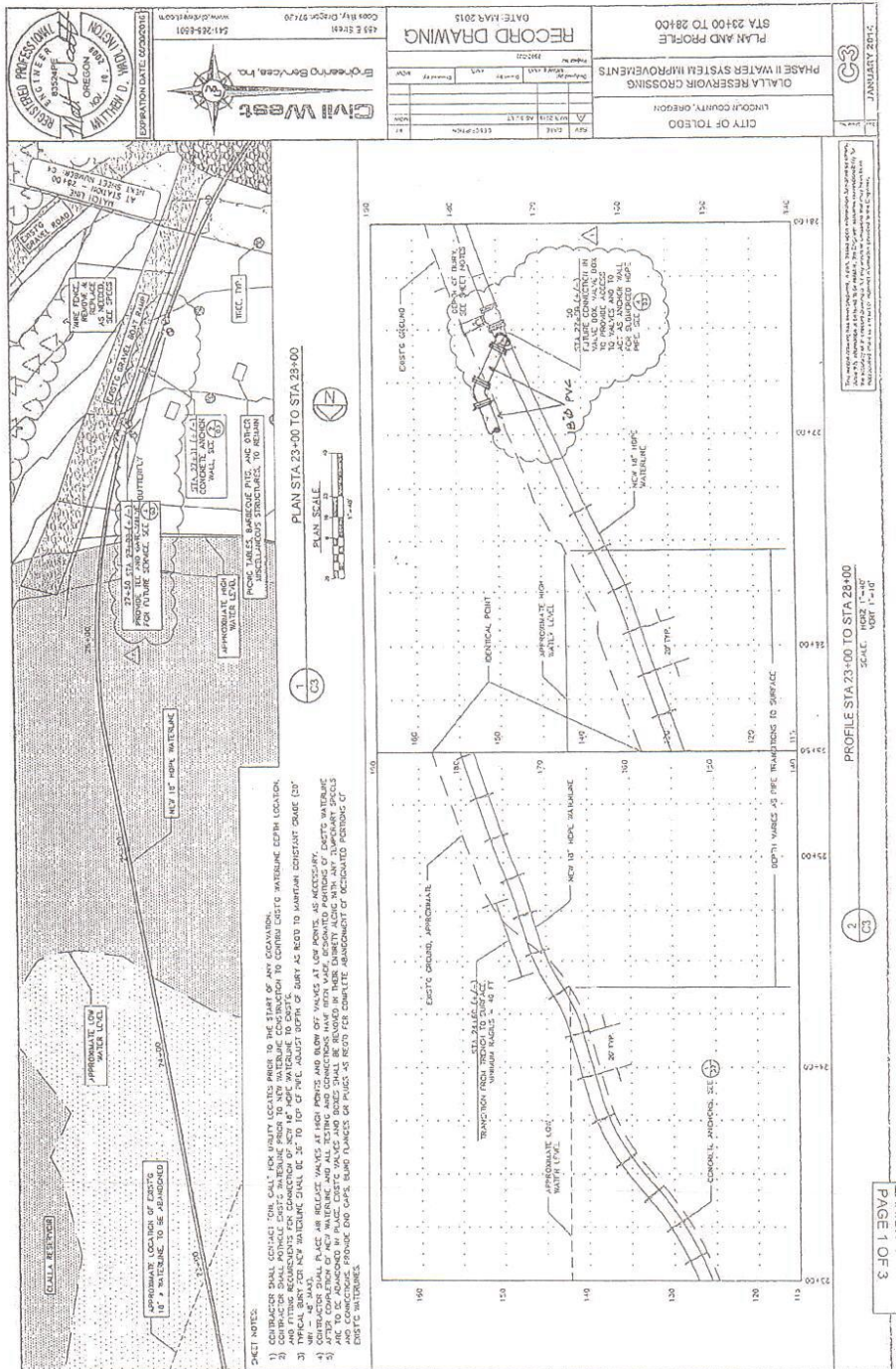
GP Legal Counsel

Date

Exhibit 1 to Water Sales Agreement – 3 attached Maps below



Page 13 - Water Sales Agreement



Page 11 - Water Sales Agreement

**CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION**

	Meeting Date:	Agenda Topic:
	September 27, 2023	Interview and consideration of appointments to fill vacancies on the City Council
Council Goal:	Agenda Type:	
Not Applicable	Decision Items	
Prepared by:	Reviewed by:	Approved by:
City Recorder L. Figueroa	City Manager Doug Wiggins	City Manager Doug Wiggins

Recommendation:

Staff makes no recommendation. Council may make a motion to appoint each individual to fill the [unexpired terms] vacancies on the City Council or Council may keep the recruitment open.

Background:

The City Council has had an on-going recruitment to fill vacancies on the Council. Recently after several months of vacancies, three applications were submitted, which are included with this packet.

Interviews of the applicants are scheduled at the beginning of the meeting and the appointments will be considered under decision items. Each of the candidates are qualified electors within the City limits as required by the City Charter.

Fiscal Impact:	Fiscal Year:	GL Number:
N/A	2023-2024	N/A

Attachment:

1. Applications
2. Interview questions

**Toledo City Council
Volunteer Application**

Thank you for your interest in serving on the City Council! Fill out the application, including the statement of reasons as to why you are interested in the position and attach a resume. Submit the completed packet to the City Recorder at City Hall.

CANDIDATE INFORMATION

Name:

Frank R. Silvia III

Physical Address:

[REDACTED] Toledo OH 43691

Mailing Address
(if different):

[REDACTED]

Phone:

[REDACTED] ☐ Home ☒ Cell

E-mail Address:

[REDACTED]

GENERAL BACKGROUND

Qualifications:

[REDACTED]

Experience:

I Currently have zero experience in this field. However I learn fast, and am eager to learn.

GENERAL BACKGROUND

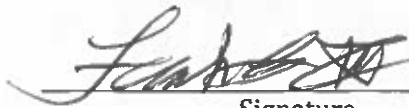
Community
Involvement:

I currently do, or help out with numerous fundraisers, locally, and abroad.

STATEMENT OF REASONS

Please include a statement of reasons why you desire to be considered for appointment to fill the vacancy.

I have lived here in Toledo now for a few years, Newport prior to. And I absolutely love this community and want to help out where I can. I'm raising my 3 boys here, so I can't think of a better place to help out, than the community my kids are being raised in.


Signature

9-6-23
Date

OFFICE USE ONLY

Date received: 9/7/2023

Initials: 

**Toledo City Council
Volunteer Application**

Thank you for your interest in serving on the City Council! Fill out the application, including the statement of reasons as to why you are interested in the position and attach a resume. Submit the completed packet to the City Recorder at City Hall.

CANDIDATE INFORMATION

Name:

STU STROM

Physical Address:

Mailing Address
(if different):

Toledo Ore 97391

- Same -

Phone:

☒ Home ☐ Cell

E-mail Address:

GENERAL BACKGROUND

Qualifications:

Served on Toledo City Council + Various Commissions
Served on Port of Toledo Board 20 yrs
Educated in Toledo Schools
Attended OCE Month Oregon Visit Eugene

Experience:

Member several local groups - Chamber-TAG
Ran Toledo Firework for 20+ years
Served on Toledo History Center board

GENERAL BACKGROUND

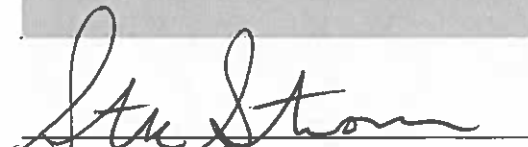
Community
Involvement:

Currently Helping at Ace Hardware -
Help at Summerfest - Swapmeets -
Cook pancakes - wooden Boat Show
put up Decorations at Xmas

STATEMENT OF REASONS

Please include a statement of reasons why you desire to be considered for appointment to fill the vacancy.

Toledo is a great Working Town
It provides needed services to
our citizens. We need a
Council with a balance of New people
and ones with "a Little History".
We Learn from The past And plan for
The future -
Please consider me for The seat exp - 2025


Signature

9/19/23
Date

OFFICE USE ONLY

Date received: 9/20/23

Initials: LF

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CANDIDATE INFORMATION

Name:

Jackie Burns

Physical Address:

Toledo

Mailing Address
(if different):

Phone:

☐ Home ☒ Cell

E-mail Address:

GENERAL BACKGROUND

Qualifications:

I am honest, reliable, accountable & dedicated to those I serve i.e. mentoring, leading & serving in each endeavor I commit to

Experience:

Retired 2010

Co-owned & operated a business for 10 yrs. Formed a non-profit group to buy a tractor for a small village in Uganda - completed.

Volunteered in other capacities - serving others

Retired as a credit counselor in 2010.

Serve as state director for a group/organization growing grassroots involvement in Article V of the US Constitution

I have no resume since I have been retired since 2010.

GENERAL BACKGROUND

Community Involvement:

I lead women thru a mentoring program + attend bible study classes on-line + at my church.
Have been looking how I might get involved to serve my community - Moved to Oregon Dec 2021

STATEMENT OF REASONS

Please include a statement of reasons why you desire to be considered for appointment to fill the vacancy.

I have not served my community in any way other than what I previously listed.
My desire is to seek involvement to learn, grow + serve my community. I know I have much to learn - I am willing.


Signature

Date

OFFICE USE ONLY

Date received: 9/20/2023

Initials: LF

Toledo City Council Interview Questions

1. The City Council meets on the first (1st), third (3rd) and fourth (4th) Wednesday of each month at 6:00 p.m. Meetings typically last two to three hours. In addition, councilors serve on special council or intergovernmental committees as needed. Is there any reason that this commitment will conflict with your personal schedule?
2. What is your motivation for wanting to serve on the City Council?
3. Please describe your experience in community and/or volunteer service including groups or organizations that you have been involved in within the City of Toledo and how those experiences have prepared you for serving as a City Councilor?
4. What do you believe are the City of Toledo's strengths and weaknesses?
5. What will be your main priorities if appointed to the Toledo City Council?
6. Sometimes City Councilors have to make decisions that are unpopular to some members of the community. How would you respond to criticism from citizens for a decision made or supported that they did not like?
7. After reviewing the City Charter and Council Rules documents, what provisions stand out to you and why?
8. According to the City Charter, the role of a City Councilor is to serve as a link between the community and city government. How will you fill this role?
9. From time to time you will get complaints or ideas from citizens. How do you think these should be handled?
10. Does the applicant have any questions?



Knappa School District No. 4
William Fritz Superintendent

September 12, 2023

Larry Robeson
Fire Chief
Toledo Volunteer Fire Department
285 NE Burgess Road
Toledo, OR 97391

Dr. Majalise Tolan
Superintendent
Lincoln County School District
P.O. Box 1110
Newport, OR 97365

Dear Chief Robeson and Superintendent Tolan:

The Knappa High School football team played at Toledo High School on September 1, 2023. During the game, one of the Knappa players experienced extreme medical distress.

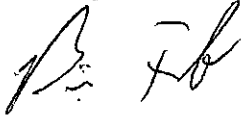
We are writing to thank the Toledo Volunteer Fire Department for the quality response to this incident and precautions taken to provide care for our student athlete during this incident. I also wish to complement the Toledo High School athletes and school leadership for their sportsmanship during the event.

The involved athlete is recovering and back to school now.

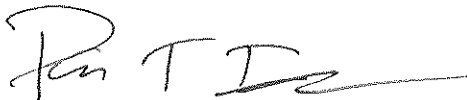
We appreciate the dedication and training showed by the medical team and the fact that Toledo High School students, athletes and community were a "class act."

When it comes to high school athletics, we all want what is best for the student athletes, those representing our own school or those of the "opposing team." The events of that night demonstrate that we are all in this together and for that we are thankful.

With gratitude,



Bill Fritz, Ph.D.
Superintendent
Knappa School District



Paul Isom
Principal
Knappa High School



Jenny Smith
Athletic Director
Knappa High School

Cc: Chloe' Minch, Principal, Toledo Jr/Sr High School
Chris Jackson, Head Football Coach, Knappa High School
Bruce Marthaller, Head Football Coach, Toledo Jr/Sr High School
Lindsay DeVries, Athletic Director, Toledo Jr/Sr High School

NATURAL DISASTER AWARENESS FOR COMMUNITY LEADERS



WHO SHOULD TAKE THIS COURSE

MODULES

DATE:

TIME:

HOSTING AGENCY:

REGISTRATION POC:

REGISTRATION LINK/ INFORMATION:

LOCATION:

ELIGIBLE CONTINUING EDUCATION:



NOAA Inouye Regional Center
1845 Wasp Blvd Building 176, Honolulu, HI 96818
PHONE: 808.725.5220 • FAX: 808.725.5230



As a member of the National Domestic Preparedness Consortium, the NDPTC is a DHS/ FEMA training partner dedicated to providing critical all-hazards training throughout the United States and its territories with an emphasis on natural hazards and island and coastal communities



FEMA



Toledo City Council Dashboard – August 2023

Police

Traffic

Citations	
Driving Uninsured	4
Driving W/O Privileges	1
DWS-Violation	1
Fail Carry Proof Insurance	3
Failure to use Ignition Interlock Device	1
Improper Display of Sticker	2
Violation of Basic Speed Rule	3
Violation of Posted Speed	1
Violation of Posted Truck Route	1
Total	17

	Citations	Warnings	Total	Average Warning	DUII
Total	17	71	88	81%	1

Overtime

Dispatch	161.25
Patrol	131.25
Total	292.5

Crimes

Person

Assault	3
Harassment	2
Sex Offense	1
Total	6

Property

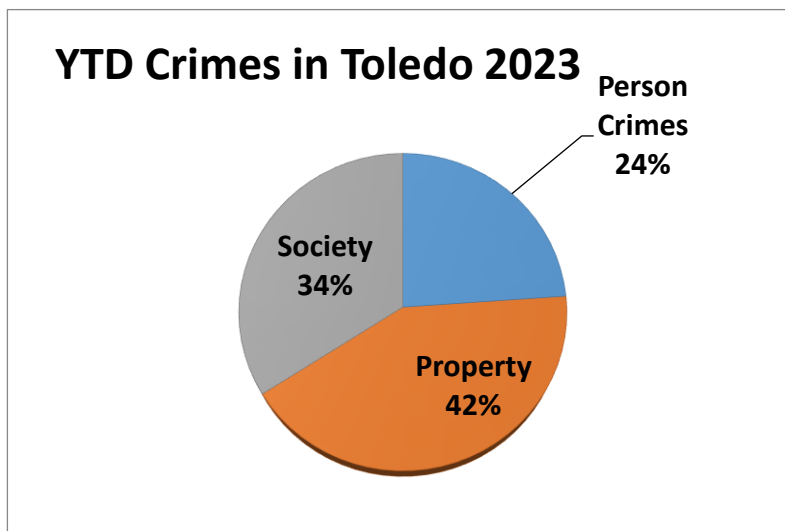
Burglary	1
Criminal Mischief	5
Fraud	4
Hit and Run - Property	1
Total	11



Society

Drugs	2
DUII	1
Parole/Probation Detainer	1
Warrant	3
Total	7

Total Crimes	24
Total Cleared Crimes	9
Cleared by Arrest	38%



Library

	August
Circulation of all items	3335
Hotspots	20
Laptops	19
In person visits	1355
Programs	
Childrens Programs	190
Podcast	64
Computers sessions	225
Reference	



Facebook Viewings

Post reach	6,632
Post Engagement	1,337
New Page Likes	10
Volunteer Hours	31.5
Community Room Use	24
Upstairs conference room	5

Fire

No report this month

Municipal Court

Court collected \$440.00

Citations 11

Warnings 7

Water accounts 1403 Billing \$135,095.12

Sewer Accounts 1273 Billing \$120,931.24

Administration – RARE

No report this month

Public Works

New Construction Applications:

Commercial roof at 333 N Main Street

Room addition at 1650 SE 16th Place

Sprinkler system at 740 SE 6th Street

Siding, roof, doors, and window replacement at 222 NE Hwy 20

New water/sewer service at 80 NW A Street

Work in the Right-of-Way permit for sidewalk repairs at 227 E Graham Street

Land Use Applications:

1. Floodplain Development Permit to replace underground storage tanks at 254 W Hwy 20



Annual Department Statistics				
Type of Permit	August	2023	2022	2021
Building Permit	4	22	21	27
Other Permits*	2	28	38	20
Land Use Application	1	14	23	29
Truck Permit	0	14	14	13
Value of Construction Improvements	\$186,633	\$904,089	\$2,267,667	\$4,167,776

*includes permits for excavation, work in the right-of-way, demolition, and water/sewer connections.

August Public Works Report 2023

- Locates: Sewer, storm and treated water
- General work orders, Shut-offs/Re-connects, chlorine-water residuals, Blow-offs
- Water meter installs, meter bottom replacements on leaking ones
- Meter reading, re-reads and installation of new registers to replace faulty ones
- Patching asphalt from water line breaks
- Arcadia Park, bathroom preparation and planning
- Arcadia Park water line install
- Parks: General clean-up, mow and maintenance
- Watering Memorial Field
- Art, Oysters and Brew set-up/staging and takedown
- Set-up/takedown for National Night Out
- 556 South Bay rd. water leak/repair
- General route maintenance, mow/trim/limb
- Vactor repair
- Pump station weekly exercising of generators and monthly maintenance
- SE 6th backflow
- Weekly blowing-down of Main St. in preparation for sweeping
- Weekly/Monthly street sweeping
- Guard rail repair, Business 20/ NW 1st ST.
- Tree removal on Arcadia
- Collections training
- Wastewater training
- Rebuild of damaged picnic tables
- Sewer camera work
- Job estimates
- Storm station pump rebuild
- A-Street pump station troubleshooting
- Weed-eating at WWTP
- Mowing Butler Bridge pump station
- Blackberry apartments, planning and parts collection



- Sewer back-up on Business 20 at Radio Court
- Cleaning or reclamation basin at Water treatment plant
- Weed-eating at Lincoln Way pump station
- Hydrant meter at Western Cascade
- Weed-eating at Butler Bridge
- Bac-T sampling to lab from line-break at Westwood street
- Parking space painting on Graham St.
- Hydrant replacement on Skelton Road
- 221 Wright Creek leak
- Mill Creek water level readings
- Wagon Road generator repair
- Put up murals at Rock Park
- Clean-up of transfer station
- Sludge maintenance
- Disposal of dead deer/roadkill
- Cinder block-flower bed removal at the Water Treatment Plant