



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

6:00 p.m.

TOLEDO CITY COUNCIL
Regular Meeting – also via Zoom Meeting Platform
March 6, 2024

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 - Veterans of Foreign Wars
- 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. The comment period is limited to three (3) minutes per person.)
- 4. Consent Agenda**
 - Minutes from the meeting held on November 15, 2023 and the executive session held on December 20, 2023.
- 5. Discussion Items**
 - Draft resolution creating a City Charter review committee
- 6. Decision Items**
 - Review the General Services Agreements for City Engineering Services (Engineer of Record) with The Dyer Partnership, Engineers & Planners, Inc., and Civil West Engineering Services, Inc.
 - Approve an expenditure of up to \$1,000 to produce informational materials for the Ammon Tank replacement
 - Approve the Accounting Clerk position and salary range
- 7. Reports and Comments**
 - Committee updates
- 8. Adjournment**

Comments submitted in advance are preferable. Comments may be submitted by e-mail at lisa.figueroa@cityoftoledo.org. The meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting by calling city offices at (541) 336-2247.

**TOLEDO CITY COUNCIL
REGULAR MEETING
November 15, 2023**

1. CALL TO ORDER

Mayor Rod Cross called the meeting to order at 6:00 p.m. also via Zoom in Toledo, Oregon.

Present	Absent	
X		Mayor Rod Cross
X		Council President Kim Bush
X		Councilor Jackie Kauffman
X		Councilor Tracy Mix
X		Councilor Frank Silvia
X		Councilor Stu Strom
X		Councilor Jackie Burns

Staff present: City Manager (CM) Doug Wiggins, City Recorder (CR) Lisa Figueroa, Finance Director/Assistant City Manager (ACM) Amanda Carey, City Attorney (CA) Mike Adams, Police Sargent (S) Aaron Pitcher, Fire Chief (FC) Larry Robeson, Library Director (LD) Deborah Trusty, Planning Assistant (PA) Arlene Inukai, Code Enforcement Officer Ron Bush

2. PROCLAMATIONS/PRESENTATIONS

Presentation – Employee Recognition

CM Wiggins presented Planning Assistant Arlene Inukai with an award for serving the City for 30 years.

Presentation – Volunteer recognition

FC Robeson introduced several volunteers who graduated Fire 1 and Fire 2 Academy and conducted the oath of office for the volunteers.

The Council presented FC Robeson with two pieces of equipment the fire department can use on emergency calls. FC Robeson said it is a device to use for quick deployment of water and is much safer to use. FC Robeson thanked the Council.

Presentation – Toledo Jr./High school students

Cameron, Natalia and Thomas provided a presentation to the City Council in regards to park improvements for kids. They suggested replacing metal playground equipment with plastic to reduce heat related injuries in the summer, full basketball court, water fountains as well as monkey bars at several parks within the City that would improve quality of life.

3. VISITORS/PUBLIC COMMENT

There were no comments.

1 **4. CONSENT AGENDA**

2 **Minutes from the executive session held June 8, 2023, the work session held June 28, 2023**
3 **and the regular meeting held July 19, 2023**

4
5 **Motion** – It was moved and seconded (Strom/Bush) to approve the consent agenda as presented
6 and the motion carried unanimously.

7 **5. DISCUSSION ITEMS**

8 There were no items for discussion.
9

10 **6. DECISION ITEMS**

11 **Ordinance No. 1416, amending Title 8 of the Toledo Municipal Code, creating Chapter 8.24,**
12 **the Toledo Livability Code**

13
14 Mayor Cross opened the public hearing at 6:20 p.m. and asked if any Councilors wish to declare a
15 conflict of interest. Councilor Strom declared he spoke with several individuals to come to the
16 meeting in regards to this ordinance.
17

18 CA Adams presented the council report and indicated the Council has deliberated on the livability
19 code on several occasions. He highlighted several amendments listed on the council report based
20 on the Council discussion:
21

22 1. Change to complaint-based response; incorporation of “good neighbor” attempt to
23 resolve. Language added: “Before initiating a complaint, the person making the complaint
24 must take such actions that are a bonafide attempt to resolve the issue which at a minimum
25 is a neighborly conversation. As part of the complaint process, the complaining party must
26 provide an explanation of what actions were taken to resolve the issue.” Toledo Municipal
27 Code (TMC) 8.24.090(A)).

28 2. Change to complaint-based response; discretion of Director to not enforce. Language
29 added: “[T]he Director may choose to not initiate or continue administrative or
30 enforcement activities under this chapter when the Director has determined that the city
31 has received a complaint based on untruthfulness, or this chapter is being used as a pretext
32 to resolve a neighborhood dispute, property-line dispute, or other civil issue.” (TMC
33 8.24.090(C)).

34 3. Change definition of “junk” to exclude project vehicles. Language added: “Excluded
35 from a), b) and c) of this definition are projects where a motor vehicle, RV, trailer, or boat
36 are actively being repaired, and machinery or parts related to such projects are not
37 considered junk.” (TMC 8.24.130(D)(39)).

38 4. Clarifying section on heat in bathrooms and habitable rooms. Language changed to:
39 “The use of portable open flame and/or unvented fuel burning devices in occupancies or
40 situations where such use or operation would present an undue danger to life or property is
41 prohibited.” (TMC 8.24.240(B)).

42 5. Make more lenient for use of tarps. Language added: “except when weather conditions
43 necessitate keeping the building, home, or structure dry until the siding or roof can be
44 repaired,” (TMC 8.24.270(F)).

45 6. Make thickets focused on life and safety, not livability. Language added, in part: “Not
46 all thickets are required to be addressed, but keeping adequate defensible space is a

1 necessity, requiring an owner, occupant or agent to cut and remove and keep cut and
2 removed those thickets, in close proximity to buildings, structures and fences, to protect
3 life and property.” (TMC 8.24.280(F)).

4 7. Revise trash and debris section. Language added: “even if located behind a private fence
5 where not readily visible from the right-of-way or a neighboring lot or parcel,” (TMC
6 8.24.280(G)).

7 8. Clarify compost okay. Accumulations of dead organic matter and yard debris are
8 prohibited, “but only if it results in a nuisance, excluding an accumulation of such material
9 in a maintained compost area if such material does” not result in a nuisance (TMC
10 8.24.280(G)).

11 9. Change general maintenance definition. Language in quotes added: The exterior of a
12 building or structure and “any attached decorative features” shall be maintained in good
13 repair, “with proper anchorage,” and structurally sound “in a safe condition” so as not to
14 be in a state of deterioration, and in a sanitary condition so as not to pose a threat to the
15 public health, safety or welfare. (TMC 8.24.300(A)).

16 10. Related; delete Decorative Features section. “All cornices, belt courses, corbels, terra
17 cotta trim, wall facings and similar decorative features on a building or structure shall be
18 maintained in good repair with proper anchorage and in a safe condition, so as not to be in
19 a state of deterioration.” (See former deleted TMC 8.24.300(G)).

20 11. Change “Fire Marshal” to “Fire Inspector.” (TMC 8.24.400).

21 12. Clarify liens. Add “County’s Deed Recording System” to be used for liens, make liens
22 not applicable to landlords unless they are a responsible party. (TMC 8.24.420).

23
24 He said landlords and tenants would have to provide information on how they tried to resolve the
25 dispute before including the City in the process. Lenient for the use of parks, defensible space
26 (page 2) Clarified open flame. He referenced page 37 of the ordinance.

27
28 Barry Bruster, resident addressed the Council. He said he provides homes for 13 families and feels
29 it could be abused by landlords as well as tenants. He commented on the improvement
30 requirements for landlords and implied it will cause landlords to raise rental prices to bring their
31 rentals up to code. The Council clarified the program will be complaint based and will impact
32 absentee landlords who are not making improvements to structures that are deteriorating. The
33 Council debated with Mr. Bruster in regards to the purpose of the ordinance and its impact on both
34 landlords/tenants versus landlord/tenant state laws. The Council noted there is a stipulation in the
35 ordinance that requires the landlord and tenant to attempt to resolve the issue before the City
36 becomes involved in the process. Mr. Bruster he spoke with Legal Aid, who indicated to him they
37 did not know it existed but explained they would be able to assist tenants in situations that affect
38 their livability. The Council responded Legal Aid was not able to help the tenants of the former
39 Toledo Hotel who complained about the deteriorated quarters they lived in and Legal Aid provided
40 no assistance to the City when it abated the building and relocated those tenants in the middle of
41 winter. CM Wiggins noted there are clauses in the ordinance that give more power to the landlords
42 for eviction in the event they have problem tenants. Mr. Bruster suggested the ordinance include a
43 mediation component to it and the Council supported the suggestion.

44
45 Jerry Howe, landlord commented on the proposed ordinance and said he supported many of the
46 comments shared by Mr. Bruster. He appreciated the concern for landlords in addition to the

1 tenants and remarked the state law favors tenants over landlords, which makes it difficult for
2 landlords to evict problem tenants.

3
4 Officer Bush indicated the livability code is needed in the community and said if it is not
5 implemented then the City wasted time and money for nothing. He provided some examples of
6 issues within the City that could be addressed once the livability code were adopted.

7 Brian Aucker, resident addressed the Council and stated they rent an apartment on Main Street.
8 They said recently, the unit below them was completely flooded out and they could hear rushing
9 water through their closet. He said he has tried to contact his landlord and the property management
10 place but they have not returned his correspondence. He said he likes living in Toledo because it
11 is a nice town but plans to find another place to rent. He noted the unit he is currently in, he was
12 relocated in February of 2023 from another unit in the same building after that unit had a water
13 leak issue and to his knowledge has not been fixed yet.

14
15 Mayor Cross said the public hearing will continue to December 6, 2023 to hear receive additional
16 testimony.

17
18 The Council recessed at 7:40 p.m. and reconvened at 7:45 p.m.

19
20 **7. REPORTS AND COMMENTS**

21 **Sturdevant Road jurisdiction to reduce speed limit**

22 CA Adams provided a report to the Council in regards to the jurisdiction of Sturdevant and listed
23 the speed limits:

- 24 • The Southeast portion is currently 30 miles per hour (mph) until the last 500-feet North of
25 10th Street to 320-feet North to Chedestar Road, which increases to 35 mph,
- 26 • The North section of 15th Street to 80-feet North of 14h Street is 30 mph,
- 27 • Spar Lane to 10th Street is 30 mph,
- 28 • 500-feet North of Chedestar Road to Toledo Frontage Road is 45 mph.

29
30 He noted there were several changes in the 2023 legislative session via House Bill 2095 which
31 now allows all cities to use photo radar to issue tickets. He referenced Section 11, which authorizes
32 cities to designate a speed up to 10 mph lower than the statutory speed by ordinance. He stated the
33 road is located within the city limits, however it is under the jurisdiction of Lincoln County
34 (County). He said it is possible to transfer road jurisdiction from the County to the City, which has
35 to be in the best interest of both the County and the City. He said the process can be initiated by
36 either the County or the City. He said it appears a traffic study is no longer needed for the City to
37 lower the jurisdiction.

38
39 Following discussion, there was a consensus of the Council to submit a request to the County to
40 reduce the speed limit to 25 mph between Chedestar Road to 18th Street.

41
42 LD Trusty updated the County on the department activities including ‘Lincoln County Reads’.

43
44 FC Robeson provided updates on recent trainings.

45
46 PA Inukai noted the Council will see amendments to the Comprehensive Plan in December.

1
2 CM Wiggins introduced Brian Lorimor as the new Public Works Director to the Council.
3
4 ACM Carey reported she is still trying to get up to speed on current procedures. She noted she
5 would like to implement something called Positive Pay, which will reduce the amount of time staff
6 takes to manually process checks to the bank. She explained how the process works and said it
7 will reduce chances of fraud as well.
8
9 Mayor Cross said he was been working with the Governor’s office regarding housing issues in the
10 state. He said he and several staff met with Senate President Wagner and Senator Anderson to
11 discuss housing and the public safety building and ways the legislature can help address some of
12 those issues. He updated the Council on the current lawsuit against the City of Newport regarding
13 recreational immunity.

14
15 **8. ADJOURNMENT**

16 The meeting adjourned at 8:45 p.m.

17
18 Approve:

Attest:

19
20
21 _____
22 Mayor Rod Cross

City Recorder Lisa Figueroa

TOLEDO CITY COUNCIL
EXECUTIVE SESSION
December 20, 2023

1. EXECUTIVE SESSION

Mayor Rod Cross called the Executive Session to order at 5:00 p.m. electronically via Zoom in Toledo, Oregon. He read the declaration of meeting in Executive Session under the provisions of ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection and ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

Representatives of the news media and designated staff were allowed to attend the Executive Session. All other members of the audience were prohibited. Representatives of the news media were specifically directed not to report on any of the deliberations except to state the general subject of the session as previously announced.

Present	Absent	
X		Mayor Rod Cross
X		Council President Kim Bush
X		Councilor Jackie Kauffman
	X	Councilor Tracy Mix
X		Councilor Frank Silvia
	X	Councilor Jackie Burns
X		Councilor Stu Strom
X		City Manager Doug Wiggins
		Finance Director/Assistant City Manager
X		Amanda Carey
X		City Recorder Lisa Figueroa
X		City Attorney Mike Adams

Others Present:

There were no other attendees.

No decisions were made in Executive Session.

2. ADJOURNMENT

The Executive Session adjourned at 5:29 p.m.


APPROVE:

ATTEST:

Mayor Rod Cross

City Recorder Lisa Figueroa

**CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION**

	Meeting Date:	Agenda Topic:
	March 6, 2024	Draft resolution creating a committee to review the City Charter
Council Goal:	Agenda Type:	
Keep the community informed about council and city activities through outreach by diverse methods	Discussion Items	
Prepared by:	Reviewed by:	Approved by:
City Recorder L. Figueroa	City Manager Doug Wiggins	City Manager Doug Wiggins

Recommendation:

No motion is required. Staff seeks direction to bring back the resolution for adoption with a list of individuals willing to serve on the Committee.

Background:

The City Council held various discussions over the last year in regards to their operations, procedures and whether Council members should be compensated. The City Council operates under the City Charter, which has been in effect since November of 1993.

The City Council expressed interest in reviewing the City Charter to consider updating it. According to state law, the City Charter must be approved by the electors. Updating a City Charter has been successful in other cities when they have appointed an advisory committee to review the charter and recommend changes (if any) to the City Council to submit to the voters.

On January 17, 2024 the City Council directed staff to prepare information to bring back for the establishment of a City Charter review committee. Attached is a draft resolution creating said committee including Exhibit A, which outlines the purpose, membership and operating policies of the committee. Staff is requesting the Council review the resolution and Exhibit A and direction to bring forward for adoption on March 20 with a list of individuals who are willing to serve on the committee.

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

Attachment:

1. Draft resolution with Exhibit A

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**CITY OF TOLEDO
RESOLUTION NO.**

A RESOLUTION OF THE TOLEDO CITY COUNCIL CREATING AN ADVISORY COMMITTEE TO REVIEW THE CITY CHARTER

WHEREAS, the City Charter for the City of Toledo is the equivalent to the constitution for the City; and

WHEREAS, the voters of Toledo adopted the current City Charter in November of 1993; and

WHEREAS, the City Council desires to establish a City Charter Review Committee to evaluate the existing City Charter and to determine if the charter should be updated or changed; and

WHEREAS, the Toledo City Council desires to establish a charter advisory committee to assist the City Council in the evaluation and preparation of the City's charter and assist the City in its efforts to educate the community about the process and purpose of the Charter.

NOW, THEREFORE, THE CITY OF TOLEDO RESOLVES AS FOLLOWS:

Section 1. A City Charter Review Committee is hereby established for the purpose of advising the City Council on proposed changes to the City Charter and the possible referral of said changes to City voters at a future 2024 election.

Section 2. The Committee may consist of up to seven (7) members appointed by the City Council. The committee will be comprised of the following members: three (3) City Council members, one (1) Budget Committee member and three (3) citizens who are residents of the City.

Section 3. The Committee is an official public body governed by Oregon Public Meeting Law and other applicable statutes. Meetings shall be publically noticed and minutes shall be kept of all committee meetings in accordance with applicable law.

Section 4. If the Committee determines changes to the City Charter are warranted, it shall recommend draft amendments to the existing charter for review by the City Council to place on the ballot for the voters of Toledo.

Section 5. The Committee shall be subject to, and shall follow, to the greatest extent feasible, the attached document, Exhibit A, entitled "Expectations of the Charter Review Committee".

Section 6. The Committee shall terminate at the time charter amendments are voted on by the people of Toledo, unless the Committee determines changes are not warranted. In such case, the Committee shall terminate when it makes such report to the City Council.

1 Section 7. That this Resolution shall be effective immediately upon passage by the Toledo City
2 Council.

3
4 That this resolution is hereby adopted by the Toledo City Council on this __ day of _____, 2024.

5
6 APPROVED

ATTEST

7
8
9
10 _____
11 Mayor Rod Cross

City Recorder Lisa Figueroa

DRAFT



1 **Exhibit A to Resolution No. XX**
2 **Expectations of the City Charter Review Committee**
3

4 **Purpose**

5 The primary function of the City Charter Review Committee is to review the existing City Charter
6 to determine if it will adequately serve the Toledo community into the future. If necessary, the
7 committee will recommend draft amendments to the City Charter for the City of Toledo. The
8 proposed charter amendments will ultimately be reviewed by the City Council for placement on
9 the ballot for the voters of Toledo.

10
11 The committee must be impartial non-biased, and free of any perceived political gain and may
12 approach the task in whatever means results in a document that best serves the citizens of
13 Toledo.

14
15 **Council Expectations**

16 The Council expects the committee to follow proper decorum and be civil at all times the
17 committee is operating. Committee members serve at the discretion of the Council and may be
18 removed by vote of a majority of Council.

19
20 **Membership**

21 The Committee may consist of up to seven (7) members appointed by the City Council. The
22 committee will be comprised of the following members:

- 23
- 24 • Three (3) City Council members
- 25 • One (1) Budget Committee member
- 26 • Three (3) citizens who are residents of the City

27 Members will receive no compensation.

28
29 **Terms of office**

30 Except as otherwise provided in this resolution, each member will be appointed for a limited term
31 of approximately eight (8) months. Terms will commence on April 1, 2024 and will end at the time
32 the charter is voted on by the people of the City. Any vacancy in the Committee will be filled by
33 the City Council for the unexpired term of the predecessor in office.

34
35 **Removal of Committee Members**

36 Notwithstanding anything contained in this Resolution to the contrary, a member may be removed
37 by the City Council for any of the following reasons:

- 38 a. failure to attend three regular Committee meetings;
- 39 b. failure to declare conflicts of interest; and/or
- 40 c. any other member acts of misconduct or nonperformance.

41
42 **Member Responsibilities**

43 In addition to any other duties or responsibilities assigned to the members under this Resolution,
44 each member must regularly attend Committee meetings and must notify the City Recorder when
45 they will be unable to attend a Committee meeting. In addition, if requested by the City Council,
46 the Committee will attend any City Council meeting that relates to charter issues that may impact
47 or affect the City. Prior to each Committee meeting, members will review all pertinent written
48 documents in preparation for deliberation and decision making. All Committee recommendations
49 and suggestions made to the City Council will be in writing.



1
2
3 The Committee will act as an advisory body to the City Council. To this end, and except as
4 otherwise provided or directed by the City Council from time to time, the Committee will have the
5 following advisory duties and responsibilities:

- 6 a. prepare, for the City Council's review, a draft charter that will serve the community on
7 or before **DATE**;
- 8 b. serve as an advisory body to the City Council concerning the preparation and adoption
9 of the charter;
- 10 c. inform and educate the community about the process and purpose of the city charter
11 and the importance of the city charter; and
- 12 d. solicit community input concerning the city charter.

13 The Committee will review charter-related issues that have been referred to the Committee by
14 the City Council from time to time and will make recommendations on these issues.

15
16 **Election of Officers**

17 The Committee will, at its first meeting, elect a chair and vice-chair. The chair and vice-chair will
18 hold office at the pleasure of the Committee. The City Recorder will serve as the secretary of the
19 Committee.

20
21 *Duties of the Chair and Vice-Chair*

22 The chair preside at all meetings, and sign all correspondence on behalf of the Committee. The
23 vice-chair will perform the duties of the chair in the absence of the chair and such other duties as
24 may be assigned by the chair from time to time. In the absence of the chair and vice-chair, the
25 Committee will elect a temporary chair for the particular meeting in question.

26
27 **Operating policies and procedures**

28 The Committee is an official public body governed by Oregon Public Meeting Law and other
29 applicable statutes. Minutes shall be kept of all committee meetings in accordance with applicable
30 law. Committee minutes are a public record available for public inspection. At the request of the
31 City Council, the Committee will prepare and deliver to the City Council a written report
32 summarizing all Committee activities, actions, and matters before the Committee (and any other
33 information requested by the City Council).

34
35 **Staff to the Committee**

36 The City Manager and/or Assistant City Manager, the City Attorney, and the City Recorder will
37 support the work of the Committee, serve as primary staff, attend all meetings and act in an
38 advisory roles. The City Attorney will act as the Committee's legal advisor in the conduct of all
39 hearings and matters. Notwithstanding anything contained in this resolution to the contrary, the
40 Committee must consult with the City Manager prior to requesting the assistance of the City
41 Attorney.

42
43 **Committee Meetings**

44 The Committee will hold at least one regularly scheduled meeting per month, unless cancelled at
45 the direction of the chair due to lack of Committee business or other reason. In addition to the
46 regular meetings, the Committee will meet at such other times and dates as may be deemed
47 necessary or appropriate to carry out Committee business. Meetings of the committee will occur
48 in the Council Chambers so that they may be televised and taped. All meetings of the Committee
49 will be held in accordance with applicable Oregon law.



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Attendance, Quorum

1. Due to the tight timeframe of the committee's work, attendance by committee members is very important to the success of this effort. Members unable to attend shall notify the City Recorder by phone or email in advance of the regular meeting.
2. A majority of the members of the committee will constitute a quorum.
3. A quorum of the committee members must be present to conduct business at any meeting.

Quorum and Voting

A majority vote of a quorum will be necessary to act on any matter before the Committee.


Final Report

1. The committee will prepare a final report with recommendations to City Council and present it at a regular meeting of the City Council.
2. The final report will be balanced and represent the majority opinions of the committee.
4. The final report will be reviewed by the entire committee and approved by motion prior to being submitted to Council.
5. The motion approving the final report must be approved by a quorum of the committee.

Authority and Expenditures

The Committee will operate at the direction of the City Council and in conformance with, and subject to, this resolution, Oregon law, and any and all City rules, procedures, resolutions, and ordinances now in force and/or which may hereafter be created, amended, modified, enacted, or promulgated. The Committee has no authority to bind the City or represent to any person that the Committee may bind the City. The Committee has no authority to make expenditures on behalf of the City, or to obligate the City for payment of any sums of money, unless and until the City Council has authorized such expenditures by appropriate ordinance or resolution (which ordinance or resolution will provide the administrative method by which funds will be drawn and expended).

**CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION**

	Meeting Date:	Agenda Topic:
	March 6, 2024	Review General Services Agreements for City Engineering Services (Engineer of Record) with The Dyer Partnership, Engineers & Planners, Inc., and Civil West Engineering Services, Inc.
Council Goal:	Agenda Type:	
Not Applicable	Decision Items	
Prepared by:	Reviewed by:	Approved by:
City Attorney M. Adams	City Manager Doug Wiggins	City Manager Doug Wiggins

Recommendation:

Motion to approve the General Services Agreements for City Engineering Services (Engineer of Record) with The Dyer Partnership, Engineers & Planners, Inc., and Civil West Engineering Services, Inc.

Background:

In September, 2022, the City the City of Toledo solicited statements of qualifications from engineering firms to provide general engineering services to the city and to serve in the role of an Engineer of Record (EOR). After advertisement on the city’s website, publication in the Daily Journal of Commerce, and firms being contacted by our Public Works Director, the city received two responses. On February 22, 2024, the Public Works Director sent a notice of intent to award to both firms, based on the needs of the city. The plan is for both firms to perform miscellaneous day-to-day services and designate both firms as pre-qualified EOR when task based services are necessary. Staff recommends approval.

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

Attachments:

1. Contract with Dyer Partnership, Engineers & Planners, Inc.
2. Contract with Civil West Engineering Services, Inc.

**GENERAL SERVICES AGREEMENT FOR
CITY ENGINEERING SERVICES (ENGINEER OF RECORD)**

This Agreement, made this ____ day of _____, 2024 (Effective Date of Agreement), by and between the **City of Toledo, Oregon** (hereafter “OWNER”) and **The Dyer Partnership, Engineers & Planners, Inc.**, (hereafter “ENGINEER”), collectively, “Parties”:

RECITALS

- The OWNER desires general professional engineering services to meet the needs of the OWNER and for ENGINEER to serve as one of two of the OWNER’s *Engineers of Record*.
- It is understood that OWNER will be provided the best service if a hybrid approach is used, so OWNER will work with two Engineers of Record (EOR) for Miscellaneous day-to-day services and designate both firms as pre-qualified Engineers of Record (EOR) when task based services are necessary.
- ENGINEER agrees to perform the various professional engineering services for the planning, design and construction of projects as directed, and to perform general miscellaneous City engineering as directed and required by the OWNER.
- It is understood that ENGINEER will only perform tasks that have been directed by or approved by the OWNER. This Agreement is not a guarantee that all project work will be done by ENGINEER however OWNER has selected ENGINEER through a competitive selection process, has been satisfied with the ENGINEER’S performance on past projects and retains the right to have ENGINEER conduct future project work as required by the OWNER in the position of Engineer of Record.
- Consideration for this Agreement includes the mutual covenants and promises given herein, which are the whole consideration.

A. Term

- A.1 The term of this agreement is three-years from the Effective Date as stated above.
- A.2 The OWNER reserves the right to extend the terms of this agreement in one-year increments, as is beneficial to the OWNER, for up to 5 years maximum. The OWNER further reserves the right to select the ENGINEER again for future work beyond the term covered in this contract.
- A.3 Termination of this agreement shall be in accordance with section J.

B. Engineering Services

B.1 Basic Engineering Services

B.1.1 ENGINEER will conduct basic engineering services necessary to properly plan, design, bid, manage and inspect construction for the completion of projects as requested by OWNER. The scope of services for any specific task or project shall be as agreed upon by the OWNER and ENGINEER. OWNER or ENGINEER may request a separate Agreement or Agreement Amendment for larger projects or as may be required by outside agencies.

B.1.2 Miscellaneous Services: ENGINEER will perform miscellaneous engineering tasks as directed by OWNER.

B.1.3 ENGINEER will attend meetings with the OWNER, or other interested parties as may be reasonably necessary. ENGINEER will cooperate and work closely with the OWNER.

B.1.4 ENGINEER will furnish copies of all preliminary documents for projects to the OWNER for review and comment prior to finalization.

B.1.5 ENGINEER will obtain OWNER approval prior to utilizing any sub-consultants.

B.1.6 ENGINEER will comply with applicable laws and regulations in the performance of the work and shall obtain regulatory approval of any system improvement design. OWNER will pay any required permit and regulatory review fees.

B.1.7 ENGINEER shall maintain confidentiality of any private confidential information and any public information which is exempt from disclosure under state or federal law to which the ENGINEER may have access by reason of this Agreement. ENGINEER warrants that its employees assigned to work on services provided in this Agreement shall maintain confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

B.2 Task-Based Services

B.2.1 The OWNER may assign a specific task order to the ENGINEER for work that does not fall with the “miscellaneous services” category. Task order items will typically be larger projects with finite and definable scopes of work.

B.2.2 The OWNER will assign each task order to the ENGINEER. The OWNER and the ENGINEER shall negotiate a scope of work and fee for each task order.

B.2.3 The ENGINEER shall prepare a written task order agreement for the OWNER to approve and sign. The task order agreement shall be numbered and shall become an appendage to this General Services Agreement as an exhibit to the agreement.

B.2.4 The ENGINEER shall assign a project number and provide separate and distinct billing for each task order to aid the OWNER with tracking budgets and project expenses.

C. Compensation

C.1 Basic Engineering Services

C.1.1 Miscellaneous Services

The OWNER shall compensate the ENGINEER for approved general miscellaneous services on a time and materials basis in accordance with the standard rate schedule shown in Exhibit A attached hereto and by this reference incorporated herein. ENGINEER may update and modify Exhibit A annually to compensate for inflation and other factors. OWNER must approve all annual updates to Exhibit A.

C.1.2 Project Specific Services – Task Orders

The OWNER shall compensate the ENGINEER for project specific services based upon the terms and conditions outlined in each task order that is approved by the OWNER

C.1.3 The compensation for the above services shall be payable as follows:

C.1.3.1 The ENGINEER will render to OWNER for such services an itemized invoice, once each month, for compensation for such services performed during such period, the same to be due and payable by the OWNER to the ENGINEER within 30 days.

C.1.3.2 ENGINEER's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.

C.2 Interest on Unpaid Sums

If OWNER fails to make any payment due ENGINEER within 60 days of receipt of an itemized bill for services and expenses and funds are available for the work, then the ENGINEER shall be entitled to interest at the rate of 1% per month.

D. OWNER’S Project Manager

OWNER’S Project Manager is Brian Lorimor. OWNER shall give ENGINEER prompt written notice of any change in designation of the Project Manager.

E. ENGINEER’S Project Manager

ENGINEER’S Project Manager is TBD. In the event that ENGINEER’S designated Project Manager is changed, ENGINEER shall give OWNER prompt written notification of such change.

F. Project Information

OWNER shall provide full information regarding its requirements for the work. ENGINEER agrees to share all project information, to fully cooperate with all corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the work. No information, news or press releases related to the work, whether made to representatives of newspaper, magazines or television and radio stations, shall be made without the authorization of OWNER’S Project Manager.

G. Duty to Inform

If at any time during the performance of this Agreement, or any future phase of this Agreement for which ENGINEER has been retained, ENGINEER becomes aware of actual or potential problems, faults or defects in the project or any portion thereof, any nonconformance with the federal, state or local law, rule, or regulation, or has any objection to any decision or order made by with respect to such laws, rules or regulations, ENGINEER shall give prompt written notice thereof to OWNER’S Project Manager. Any delay or failure on the part of OWNER to provide a written response to ENGINEER shall neither constitute agreement with nor acquiescence to ENGINEER’S statement or claim, nor constitute a waiver of any of OWNER’S rights.

H. ENGINEER is Independent Contractor

H.1 ENGINEER shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under Section C of this Agreement. ENGINEER binds itself, its partners, officers, successors, assigns and legal representatives to the OWNER. ENGINEER shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and OWNER does not have the right to control or interfere with the manner or method of accomplishing said results. OWNER, however, has the right to specify and control the results of the ENGINEER’S responsibilities.

H.2 ENGINEER shall be responsible for and indemnify and defend OWNER against any liability, cost or damage arising out of ENGINEER’S use of such subcontractor(s) and subcontractor’s negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of ENGINEER under this Agreement. Unless otherwise specifically agreed to by OWNER, ENGINEER shall require that subcontractors also comply with and be subject to the provisions of this Section H.

H.3 ENGINEER shall make prompt payment of any claim for labor, materials or services furnished to the ENGINEER by any person in connection with this Agreement as such claim becomes due. ENGINEER shall not permit any lien or claim to be filed or prosecuted against the OWNER on account of any labor or material furnished to or on behalf of the ENGINEER. If the ENGINEER fails, neglects or refuses to make prompt payment of any such claim, the OWNER may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the ENGINEER under this Agreement.

H.4 No person shall be employed under the terms of this agreement as described herein in violation of

all wage and hour laws.

- H.5 ENGINEER shall make prompt payment as due to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such ENGINEER of all sums which the ENGINEER agrees to pay for such services and all monies and sums which the ENGINEER collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H.6 Should ENGINEER elect to utilize employees on any aspect of this Agreement, ENGINEER shall be fully responsible for payment of all withholding required by law, including but not limited to taxes, including payroll, income, Social Security (FICA) and Medicaid. ENGINEER shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions and all other charges on account of any employees. ENGINEER shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be ENGINEER'S responsibility. ENGINEER shall indemnify, defend and hold OWNER harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which ENGINEER's compensation is based.
- H.7 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the OWNER.

I. Indemnity and Insurance

- I.1 ENGINEER acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto, and all liability resulting from or incidental to the acts, performance or errors or omissions of the ENGINEER or anyone acting on behalf of ENGINEER in connection with or incidental to the work performed under the contract. ENGINEER shall hold OWNER harmless from and indemnify OWNER of any and all liability, settlements, loss, costs, expenses, attorney's fees and damages in connection with any action, suit, or claim resulting or allegedly resulting from ENGINEER'S negligent acts, omissions, errors or willful misconduct provided pursuant to this Agreement or from ENGINEER'S failure to perform its responsibilities as set forth in this Agreement. The review, approval or acceptance by OWNER, its Project Manager or its employees of documents or other work prepared or submitted by ENGINEER shall not relieve ENGINEER of its responsibility to provide such materials in full conformity with OWNER'S requirements as set forth in this Agreement and to indemnify OWNER from any and all costs and damages resulting from ENGINEER'S failure to adhere to the standard of performance described in Section I.2.3. The provisions of this section shall survive termination of this Agreement.
- I.2 Insurance Requirements and ENGINEER'S Standard of Care.
- I.2.1 ENGINEER shall provide OWNER with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of the issuing company or at the discretion of the OWNER, in lieu thereof, a certificate in a form satisfactory to OWNER certifying to the issuance of such insurance, shall be furnished to OWNER. The cost of insurance shall not be the basis for additional reimbursement to ENGINEER.
- I.2.2 The OWNER agrees that in accordance with generally accepted construction practices, any construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the Project, including safety of all persons and property.

- I.2.3 In the performance of its professional services, the ENGINEER shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The ENGINEER will reperform any services not meeting this standard without additional compensation. ENGINEER'S reperformance of any services, even if done at OWNER'S request, shall not be considered as a limitation or waiver by OWNER of any other remedies or claims it may have arising out of ENGINEER'S failure to perform in accordance with the applicable standard of care or this Agreement.
- I.2.4 ENGINEER shall furnish the OWNER a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for ENGINEER'S Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following ENGINEER'S performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the OWNER before they may be revised, non-renewed, or canceled. The ENGINEER shall endeavor to provide for not less than 30 days' written notice to the OWNER before the policy coverage may be reduced. Excepting professional liability and workers' compensation coverage, all policies shall provide an endorsement naming the OWNER, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the OWNER may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of ENGINEER to proceed with work; pay an insurance carrier (either ENGINEER'S or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.
- I.2.5 Insurance Requirements. The ENGINEER, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The ENGINEER will maintain throughout this Agreement Liability insurance that shall meet the requirements set forth in the Oregon Tort Claims Act codified in ORS the following insurance:
- I.2.5.1 Workers' compensation and employers' liability insurance as required by the State of Oregon where the work is performed. Workers compensation liability coverage shall be \$500,000. A waiver of subrogation shall be provided.
- I.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 per occurrence. All coverage shall be on an occurrence basis and not on a claims made basis.
- I.2.5.3 Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the ENGINEER or of any of its employees, agents or subcontractors, with \$2,000,000 per occurrence and in the aggregate. Comprehensive commercial general liability insurance, including personal injury liability, blanket contractual liability and broad-form property damage liability coverage. The following minimum limits are required: Aggregate - \$2,000,000.00; Products - \$1,000,000.00; Personal & Advertising Injury - \$1,000,000.00; Each occurrence - \$2,000,000.00
- I.2.5.4 Professional Liability Insurance of \$2,000,000 per occurrence and \$2,000,000 annual aggregate, including contractual liability coverage. If ENGINEER proposes using subcontractors, in addition to any other requirements of this Agreement, OWNER may require subcontractors to

provide Professional Liability Insurance, provided the amount and form of coverage complies with the requirements of paragraphs I.2.1, I.2.2, I.2.3, I.2.4 and I.2.5.4.

I.2.5.5 OWNER and its elected officials, employees, agents and volunteers will be named as an additional insured with respect to ENGINEER's liabilities hereunder in insurance coverages identified in items I.2.5.2 and I.2.5.3.

I.2.5.6 Umbrella/Excess liability coverage of not less than \$2,000,000 each occurrence to provide excess limits of liability over the commercial general liability, automobile liability, and employer's liability coverage's.

I.2.6 The coverage provided by these policies shall be primary and any other insurance carried by OWNER is excess. ENGINEER shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between OWNER and ENGINEER for which ENGINEER has obtained insurance, the maximum amount which may be withheld by OWNER for all such claims shall be no more than the amount of the applicable insurance deductible.

I.2.7 All required coverage shall be written with companies that have at least an AmBest rating of B+VIII.

J. Termination

J.1 This Agreement may be terminated at any time:

J.1.1 By mutual written consent of the Parties;

J.1.2 By OWNER for any reason within its sole discretion, effective upon delivery of written notice to ENGINEER by mail or in person, or at such later date as may be established by the OWNER; and

J.1.3 By ENGINEER effective upon seven days' prior written notice in the event of substantial failure by the OWNER to perform in accordance with the terms through no fault of the ENGINEER.

J.1.4. Either party may terminate this Contract without specifying any reason for termination by giving written notice of intent to terminate, in writing, mailed at least thirty (30) days before the intended termination date to the party at the party's address given above. 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.

J.1.5. It is further agreed that the OWNER may immediately terminate this agreement without liability or penalty for either of the following causes by the mailing of written notice to the ENGINEER at ENGINEER's address given below, specifying the cause:

- i. Unsatisfactory performance or nonperformance. The City Council or City Manager, in the City's sole discretion, is the sole judge of Contractor's unsatisfactory performance or nonperformance; or
- ii. Loss of available funding.

J.2 If OWNER terminates the Agreement in whole or in part due to default or failure of ENGINEER to perform services in accordance with this Agreement, OWNER may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the OWNER may have, ENGINEER shall be liable for all costs and damages incurred by OWNER in procuring such similar service, and the Contract shall be in full force to the extent not terminated.

J.3 If OWNER terminates the Agreement for its own convenience, payment of ENGINEER shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by

ENGINEER against OWNER under this Agreement.

- J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of ENGINEER or OWNER which accrued prior to such termination. ENGINEER shall surrender to OWNER items of work or portions thereof, referred to in Section N for which ENGINEER has received payment, or OWNER has made payment. OWNER retains the right to elect whether or not to proceed with actual construction of the project.

K. Suspension of Work

OWNER may suspend, delay or interrupt all or any part of the work for such time as the OWNER deems appropriate for its own convenience by giving written notice thereof to ENGINEER. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within the ENGINEER'S control. OWNER shall not be responsible for work performed by any subcontractors after notice of suspension is given by OWNER to ENGINEER.

L. Subconsultants and Assignments

- L.1 ENGINEER shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the Project Manager. The ENGINEER shall ensure that in all subcontracts entered into by the ENGINEER pursuant to this contract, the OWNER is named as an express third party beneficiary of such subcontracts with full rights as such. ENGINEER acknowledges such services are provided to OWNER pursuant to a subcontract(s) between ENGINEER and subcontractor(s). OWNER incurs no liability to third persons for payment of any compensation provided herein to ENGINEER. Any attempted assignment of this contract without the written consent of OWNER shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of ENGINEER shall not be subject to additional reimbursement by OWNER.

- L.2 OWNER shall have the right to let other agreements be coordinated with this Agreement. ENGINEER shall cooperate with other firms, engineers or subconsultants on the Project and the OWNER so that all portions of the Project may be completed in the least possible time within normal working hours. ENGINEER shall furnish other engineers and subconsultants and affected public utilities, whose designs are fitted into ENGINEER'S design, detail drawings giving full information so that conflicts can be avoided.

M. Access to Records

The OWNER, Secretary of State's Office of the State of Oregon, the Federal Government and the duly authorized representatives of any of the above, shall have access to the books, documents, papers, records and receipts of the ENGINEER which are directly pertinent to this agreement for the purpose of making audit, examination, excerpts and transcripts. The OWNER, Secretary of State's Office of the State of Oregon, the federal Government and authorized representatives shall have the authority to inspect, audit and copy from time to time, any records of the ENGINEER regarding billings or work under this agreement for a period of six years after the completion or termination of this contract.

N. Work is Property of OWNER

- N.1 Originals or Certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by ENGINEER under this Agreement shall be the exclusive property of OWNER and shall be delivered to OWNER prior to completion or termination of this contract and prior to final payment. Any statutory or common law rights to such property held by ENGINEER as creator of such work shall be conveyed to OWNER upon request without additional compensation. Upon OWNER'S approval and provided OWNER is identified in connection therewith, ENGINEER may include ENGINEER'S work in its promotional materials.

- N.2 ENGINEER shall not be held liable for any damage, loss, increased expenses or otherwise caused by or attributed to the reuse, by OWNER or their designees, of all work performed by ENGINEER pursuant to this contract without the express written permission of the ENGINEER.

O. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279B to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein. ENGINEER shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which ENGINEER is required by law to obtain or maintain in order to perform work described shall be obtained and maintained throughout the term of this Agreement.

P. Adherence to Law

ENGINEER shall comply with all federal, state and local laws and ordinances, rules and regulations applicable to the work under this contract. ENGINEER agrees that the public contract law provisions contained in ORS chapter 279A, 279B, and 279C shall apply to and govern the performance of this contract. ENGINEER shall certify compliance with ORS 670.600. Further, ENGINEER agrees to comply with applicable provisions of and amendments to the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and with all applicable requirements of federal and state and rehabilitation statutes, rules and regulations. Further, all certificates, licenses or permits, which the ENGINEER is required by law to obtain or maintain in order to perform work described, shall be obtained and maintained throughout the term of this Agreement.

Q. Modification

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by the Parties. A modification is a written document, contemporaneously executed by OWNER and ENGINEER, which increases or decreases the cost to OWNER over the agreed sum or changes or modifies the scope of service or time of performance. No modification shall be binding unless executed in writing by ENGINEER and OWNER. In the event that ENGINEER receives any communication of whatsoever nature from OWNER, which communication ENGINEER contends to give rise to any modification of this Agreement, ENGINEER shall, within thirty (30) days after receipt, make a written request for modification to OWNER'S Project Manager. ENGINEER'S failure to submit such written request for modification in the manner outlined herein may be the basis for refusal by the OWNER to treat said communication as a basis for modification. In connection with any modification to the contract affecting any change in price, ENGINEER shall submit a complete breakdown of labor, material, equipment and other costs. If ENGINEER incurs additional costs or devotes additional time on Project tasks which were reasonably expected as part of the original agreement or any mutually approved modifications, then OWNER shall be responsible for payment of only those costs for which it has agreed to pay.

R. Attorney Fees

In the event any action, suit, arbitration or other proceeding shall be instituted by either party to this Agreement to enforce any provision of this agreement or any matter arising there from, or to interpret any provision of this agreement, including any proceeding to compel arbitration, the prevailing party shall be entitled to recover from the other a reasonable attorney fee to be determined by the court or arbitrator(s). In addition to recovery of a reasonable attorney fee, the prevailing party shall be entitled to recover from the other, costs and disbursements, including all costs of arbitration and the arbitrator(s) fees, and expert witness fees, as fixed by the court or tribunal in which the case is heard.

In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party shall recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney fees in the lower court or courts or arbitration proceeding, such fee to be determined by the appellate court or lower court or arbitrator, as the appellate court may determine. In addition to recovery of a reasonable attorney fee on appeal, the prevailing party shall be entitled to recovery from the other costs and disbursements and expert witness fees as fixed by the appellate court. All costs and disbursements which may be awarded pursuant to this paragraph shall bear

interest at the maximum legal rate from the date they are incurred until the date they are paid by the losing party.

S. Other Conditions

S.1 Except as otherwise provided in paragraphs S.1.1, S.1.2, and S.1.3 ENGINEER represents and agrees that the contract specifications and plans, if any, prepared by the ENGINEER will be adequate and sufficient to accomplish the purposes of the project; and further, that any review or approval by the owner of the plans and specifications shall not be deemed to diminish the adequacy of ENGINEER'S work.

S.1.1 Subsurface Investigations. In soils, foundation, ground water, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

S.1.2 Opinions of Cost, Financial Considerations, and Schedules. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for a Project, ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, ENGINEER makes no warranty that Owner's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from ENGINEER'S opinions, analyses, projections, or estimates.

S.1.3 Record Drawings. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. ENGINEER is responsible for any errors or omissions about which the ENGINEER knew or should have known in the information from those employees or firms employed by the ENGINEER under the terms of the contract as stated therein that is incorporated into the record drawings.

S.2 Notwithstanding any acceptance or payments, OWNER shall not be precluded or stopped from recovering from ENGINEER, or its insurer or surety, such damages as may be sustained by reason of ENGINEER'S failure to comply with the terms of this Agreement. A waiver by OWNER of any breach by ENGINEER shall not be deemed to be a waiver of any subsequent breach by ENGINEER.

T. Assignments of Products Rights

The ENGINEER hereby assigns to the OWNER all rights, title and interest, including but not limited to copyright rights, all notes, designs, drawings, specifications, technical data reports, computer programs and documentation, and other materials resulting from the ENGINEER'S work under this contract.

U. Integration

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. ENGINEER, by the signature below of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

V. Arbitration

- V.1 Any controversy or claim arising out of or relating to this agreement, including, without limitation, the making, performance or interpretation of this agreement, shall be settled by arbitration in Lincoln County, Oregon, and any judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.
- V.2 Any party asserting a claim arising out of or relating to this Agreement may make a written demand for arbitration. In this event, the parties shall agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator shall be an attorney licensed to practice law in the State of Oregon. If the parties cannot agree within 30 days to the selection of a single arbitrator after the election to arbitrate, either party may request that the selection of an arbitrator be made by a judge of the Circuit Court of the State of Oregon for Lincoln County. The dispute shall be heard by the arbitrator selected within 60 days thereafter, unless the parties agree otherwise.
- V.3 The parties will pay their own costs of arbitration, and each will be obligated for one-half of the arbitrator’s fee. The provision of Section R shall also apply to arbitration; and in the event of arbitration under the provisions of this Agreement, the prevailing party shall be awarded reasonable attorney fees and related costs.
- V.4 If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recess of, the arbitration hearings. ORS 183.450(1) through (4), where applicable, shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided however no error by the arbitrator in application of the statute shall be grounds as such for vacating the arbitrator’s award. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall give written notice to the parties stating the arbitration determination and shall furnish to each party a signed copy of such determination and judgment so the award may be entered in any court having jurisdiction over the parties. The parties agree that all facts and other information relating to any arbitration arising under this agreement shall be kept confidential to the fullest extent permitted by law.
- V.5 The parties agree that the arbitrator shall have no jurisdiction to render an award or judgment for punitive damages. The parties agree that the decision of the arbitrator shall be final and binding on the parties and a judgment may be entered on the arbitrator’s award. Unless otherwise inconsistent herewith, the provisions of ORS Chapter 36 shall apply to any arbitration hereunder. The duty to arbitrate shall survive the cancellation or termination of this agreement.

W. Miscellaneous / General

- W.1 ENGINEER binds itself, its partners, officers, successors, assigns and legal representatives to the OWNER under the terms and conditions of this Agreement as described herein.
- W.2 The ENGINEER and the OWNER hereby agree to all provisions of this Agreement.
- W.3 Each Party may sign an original document, and the Agreement shall be comprised of the collective signed originals.

IN WITNESS WHEREOF, the Parties by their signatures below enter into this Agreement.

CITY OF TOLEDO, OR

THE DYER PARTNERSHIP ENGINEERS AND PLANNERS, INC.

By _____
Mayor Rod Cross

By _____

Date

Mailing Address:
Public Works Director Brian Lorimor
City of Toledo
PO Box 220
Toledo, OR 97391

Date

Mailing Address:
The Dyer Partnership, Engineers & Planners, Inc.
481 S. Main St.
Lebanon, OR 97355

Employer ID No. _____

Attest:

City Recorder Lisa Figueroa

Date

Approved as to content and form:

City Attorney Mike Adams

Date

Exhibit A – Standard Hourly Rate Schedule

**GENERAL SERVICES AGREEMENT FOR
CITY ENGINEERING SERVICES (ENGINEER OF RECORD)**

This Agreement, made this ____ day of _____, 2024 (Effective Date of Agreement), by and between the **City of Toledo, Oregon** (hereafter “OWNER”) and **Civil West Engineering Services, Inc.**, (hereafter “ENGINEER”), collectively, “Parties”:

RECITALS

- The OWNER desires general professional engineering services to meet the needs of the OWNER and for ENGINEER to serve as one of two of the OWNER’s *Engineers of Record*.
- It is understood that OWNER will be provided the best service if a hybrid approach is used, so OWNER will work with two Engineers of Record (EOR) for Miscellaneous day-to-day services and designate both firms as pre-qualified Engineers of Record (EOR) when task based services are necessary.
- ENGINEER agrees to perform the various professional engineering services for the planning, design and construction of projects as directed, and to perform general miscellaneous City engineering as directed and required by the OWNER.
- It is understood that ENGINEER will only perform tasks that have been directed by or approved by the OWNER. This Agreement is not a guarantee that all project work will be done by ENGINEER however OWNER has selected ENGINEER through a competitive selection process, has been satisfied with the ENGINEER’S performance on past projects and retains the right to have ENGINEER conduct future project work as required by the OWNER in the position of Engineer of Record.
- Consideration for this Agreement includes the mutual covenants and promises given herein, which are the whole consideration.

A. Term

- A.1 The term of this agreement is three-years from the Effective Date as stated above.
- A.2 The OWNER reserves the right to extend the terms of this agreement in one-year increments, as is beneficial to the OWNER, for up to 5 years maximum. The OWNER further reserves the right to select the ENGINEER again for future work beyond the term covered in this contract.
- A.3 Termination of this agreement shall be in accordance with section J.

B. Engineering Services

B.1 Basic Engineering Services

B.1.1 ENGINEER will conduct basic engineering services necessary to properly plan, design, bid, manage and inspect construction for the completion of projects as requested by OWNER. The scope of services for any specific task or project shall be as agreed upon by the OWNER and ENGINEER. OWNER or ENGINEER may request a separate Agreement or Agreement Amendment for larger projects or as may be required by outside agencies.

B.1.2 Miscellaneous Services: ENGINEER will perform miscellaneous engineering tasks as directed by OWNER.

B.1.3 ENGINEER will attend meetings with the OWNER, or other interested parties as may be reasonably necessary. ENGINEER will cooperate and work closely with the OWNER.

B.1.4 ENGINEER will furnish copies of all preliminary documents for projects to the OWNER for review and comment prior to finalization.

B.1.5 ENGINEER will obtain OWNER approval prior to utilizing any sub-consultants.

B.1.6 ENGINEER will comply with applicable laws and regulations in the performance of the work and shall obtain regulatory approval of any system improvement design. OWNER will pay any required permit and regulatory review fees.

B.1.7 ENGINEER shall maintain confidentiality of any private confidential information and any public information which is exempt from disclosure under state or federal law to which the ENGINEER may have access by reason of this Agreement. ENGINEER warrants that its employees assigned to work on services provided in this Agreement shall maintain confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

B.2 Task-Based Services

B.2.1 The OWNER may assign a specific task order to the ENGINEER for work that does not fall with the “miscellaneous services” category. Task order items will typically be larger projects with finite and definable scopes of work.

B.2.2 The OWNER will assign each task order to the ENGINEER. The OWNER and the ENGINEER shall negotiate a scope of work and fee for each task order.

B.2.3 The ENGINEER shall prepare a written task order agreement for the OWNER to approve and sign. The task order agreement shall be numbered and shall become an appendage to this General Services Agreement as an exhibit to the agreement.

B.2.4 The ENGINEER shall assign a project number and provide separate and distinct billing for each task order to aid the OWNER with tracking budgets and project expenses.

C. Compensation

C.1 Basic Engineering Services

C.1.1 Miscellaneous Services

The OWNER shall compensate the ENGINEER for approved general miscellaneous services on a time and materials basis in accordance with the standard rate schedule shown in Exhibit A attached hereto and by this reference incorporated herein. ENGINEER may update and modify Exhibit A annually to compensate for inflation and other factors. OWNER must approve all annual updates to Exhibit A.

C.1.2 Project Specific Services – Task Orders

The OWNER shall compensate the ENGINEER for project specific services based upon the terms and conditions outlined in each task order that is approved by the OWNER

C.1.3 The compensation for the above services shall be payable as follows:

C.1.3.1 The ENGINEER will render to OWNER for such services an itemized invoice, once each month, for compensation for such services performed during such period, the same to be due and payable by the OWNER to the ENGINEER within 30 days.

C.1.3.2 ENGINEER's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.

C.2 Interest on Unpaid Sums

If OWNER fails to make any payment due ENGINEER within 60 days of receipt of an itemized bill for services and expenses and funds are available for the work, then the ENGINEER shall be entitled to interest at the rate of 1% per month.

D. OWNER’S Project Manager

OWNER’S Project Manager is Brian Lorimor. OWNER shall give ENGINEER prompt written notice of any change in designation of the Project Manager.

E. ENGINEER’S Project Manager

ENGINEER’S Project Manager is TBD. In the event that ENGINEER’S designated Project Manager is changed, ENGINEER shall give OWNER prompt written notification of such change.

F. Project Information

OWNER shall provide full information regarding its requirements for the work. ENGINEER agrees to share all project information, to fully cooperate with all corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the work. No information, news or press releases related to the work, whether made to representatives of newspaper, magazines or television and radio stations, shall be made without the authorization of OWNER’S Project Manager.

G. Duty to Inform

If at any time during the performance of this Agreement, or any future phase of this Agreement for which ENGINEER has been retained, ENGINEER becomes aware of actual or potential problems, faults or defects in the project or any portion thereof, any nonconformance with the federal, state or local law, rule, or regulation, or has any objection to any decision or order made by with respect to such laws, rules or regulations, ENGINEER shall give prompt written notice thereof to OWNER’S Project Manager. Any delay or failure on the part of OWNER to provide a written response to ENGINEER shall neither constitute agreement with nor acquiescence to ENGINEER’S statement or claim, nor constitute a waiver of any of OWNER’S rights.

H. ENGINEER is Independent Contractor

H.1 ENGINEER shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under Section C of this Agreement. ENGINEER binds itself, its partners, officers, successors, assigns and legal representatives to the OWNER. ENGINEER shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and OWNER does not have the right to control or interfere with the manner or method of accomplishing said results. OWNER, however, has the right to specify and control the results of the ENGINEER’S responsibilities.

H.2 ENGINEER shall be responsible for and indemnify and defend OWNER against any liability, cost or damage arising out of ENGINEER’S use of such subcontractor(s) and subcontractor’s negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of ENGINEER under this Agreement. Unless otherwise specifically agreed to by OWNER, ENGINEER shall require that subcontractors also comply with and be subject to the provisions of this Section H.

H.3 ENGINEER shall make prompt payment of any claim for labor, materials or services furnished to the ENGINEER by any person in connection with this Agreement as such claim becomes due. ENGINEER shall not permit any lien or claim to be filed or prosecuted against the OWNER on account of any labor or material furnished to or on behalf of the ENGINEER. If the ENGINEER fails, neglects or refuses to make prompt payment of any such claim, the OWNER may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the ENGINEER under this Agreement.

H.4 No person shall be employed under the terms of this agreement as described herein in violation of

all wage and hour laws.

- H.5 ENGINEER shall make prompt payment as due to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such ENGINEER of all sums which the ENGINEER agrees to pay for such services and all monies and sums which the ENGINEER collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H.6 Should ENGINEER elect to utilize employees on any aspect of this Agreement, ENGINEER shall be fully responsible for payment of all withholding required by law, including but not limited to taxes, including payroll, income, Social Security (FICA) and Medicaid. ENGINEER shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions and all other charges on account of any employees. ENGINEER shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be ENGINEER'S responsibility. ENGINEER shall indemnify, defend and hold OWNER harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which ENGINEER's compensation is based.
- H.7 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the OWNER.

I. Indemnity and Insurance

- I.1 ENGINEER acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto, and all liability resulting from or incidental to the acts, performance or errors or omissions of the ENGINEER or anyone acting on behalf of ENGINEER in connection with or incidental to the work performed under the contract. ENGINEER shall hold OWNER harmless from and indemnify OWNER of any and all liability, settlements, loss, costs, expenses, attorney's fees and damages in connection with any action, suit, or claim resulting or allegedly resulting from ENGINEER'S negligent acts, omissions, errors or willful misconduct provided pursuant to this Agreement or from ENGINEER'S failure to perform its responsibilities as set forth in this Agreement. The review, approval or acceptance by OWNER, its Project Manager or its employees of documents or other work prepared or submitted by ENGINEER shall not relieve ENGINEER of its responsibility to provide such materials in full conformity with OWNER'S requirements as set forth in this Agreement and to indemnify OWNER from any and all costs and damages resulting from ENGINEER'S failure to adhere to the standard of performance described in Section I.2.3. The provisions of this section shall survive termination of this Agreement.
- I.2 Insurance Requirements and ENGINEER'S Standard of Care.
 - I.2.1 ENGINEER shall provide OWNER with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of the issuing company or at the discretion of the OWNER, in lieu thereof, a certificate in a form satisfactory to OWNER certifying to the issuance of such insurance, shall be furnished to OWNER. The cost of insurance shall not be the basis for additional reimbursement to ENGINEER.
 - I.2.2 The OWNER agrees that in accordance with generally accepted construction practices, any construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the Project, including safety of all persons and property.

- I.2.3 In the performance of its professional services, the ENGINEER shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The ENGINEER will reperform any services not meeting this standard without additional compensation. ENGINEER'S reperformance of any services, even if done at OWNER'S request, shall not be considered as a limitation or waiver by OWNER of any other remedies or claims it may have arising out of ENGINEER'S failure to perform in accordance with the applicable standard of care or this Agreement.
- I.2.4 ENGINEER shall furnish the OWNER a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for ENGINEER'S Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following ENGINEER'S performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the OWNER before they may be revised, non-renewed, or canceled. The ENGINEER shall endeavor to provide for not less than 30 days' written notice to the OWNER before the policy coverage may be reduced. Excepting professional liability and workers' compensation coverage, all policies shall provide an endorsement naming the OWNER, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the OWNER may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of ENGINEER to proceed with work; pay an insurance carrier (either ENGINEER'S or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.
- I.2.5 Insurance Requirements. The ENGINEER, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The ENGINEER will maintain throughout this Agreement Liability insurance that shall meet the requirements set forth in the Oregon Tort Claims Act codified in ORS the following insurance:
- I.2.5.1 Workers' compensation and employers' liability insurance as required by the State of Oregon where the work is performed. Workers compensation liability coverage shall be \$500,000. A waiver of subrogation shall be provided.
- I.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 per occurrence. All coverage shall be on an occurrence basis and not on a claims made basis.
- I.2.5.3 Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the ENGINEER or of any of its employees, agents or subcontractors, with \$2,000,000 per occurrence and in the aggregate. Comprehensive commercial general liability insurance, including personal injury liability, blanket contractual liability and broad-form property damage liability coverage. The following minimum limits are required: Aggregate - \$2,000,000.00; Products - \$1,000,000.00; Personal & Advertising Injury - \$1,000,000.00; Each occurrence - \$2,000,000.00
- I.2.5.4 Professional Liability Insurance of \$2,000,000 per occurrence and \$2,000,000 annual aggregate, including contractual liability coverage. If ENGINEER proposes using subcontractors, in addition to any other requirements of this Agreement, OWNER may require subcontractors to

provide Professional Liability Insurance, provided the amount and form of coverage complies with the requirements of paragraphs I.2.1, I.2.2, I.2.3, I.2.4 and I.2.5.4.

I.2.5.5 OWNER and its elected officials, employees, agents and volunteers will be named as an additional insured with respect to ENGINEER's liabilities hereunder in insurance coverages identified in items I.2.5.2 and I.2.5.3.

I.2.5.6 Umbrella/Excess liability coverage of not less than \$2,000,000 each occurrence to provide excess limits of liability over the commercial general liability, automobile liability, and employer's liability coverage's.

I.2.6 The coverage provided by these policies shall be primary and any other insurance carried by OWNER is excess. ENGINEER shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between OWNER and ENGINEER for which ENGINEER has obtained insurance, the maximum amount which may be withheld by OWNER for all such claims shall be no more than the amount of the applicable insurance deductible.

I.2.7 All required coverage shall be written with companies that have at least an AmBest rating of B+VIII.

J. Termination

J.1 This Agreement may be terminated at any time:

J.1.1 By mutual written consent of the Parties;

J.1.2 By OWNER for any reason within its sole discretion, effective upon delivery of written notice to ENGINEER by mail or in person, or at such later date as may be established by the OWNER; and

J.1.3 By ENGINEER effective upon seven days' prior written notice in the event of substantial failure by the OWNER to perform in accordance with the terms through no fault of the ENGINEER.

J.1.4. Either party may terminate this Contract without specifying any reason for termination by giving written notice of intent to terminate, in writing, mailed at least thirty (30) days before the intended termination date to the party at the party's address given above. 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.

J.1.5. It is further agreed that the OWNER may immediately terminate this agreement without liability or penalty for either of the following causes by the mailing of written notice to the ENGINEER at ENGINEER's address given below, specifying the cause:

- i. Unsatisfactory performance or nonperformance. The City Council or City Manager, in the City's sole discretion, is the sole judge of Contractor's unsatisfactory performance or nonperformance; or
- ii. Loss of available funding.

J.2 If OWNER terminates the Agreement in whole or in part due to default or failure of ENGINEER to perform services in accordance with this Agreement, OWNER may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the OWNER may have, ENGINEER shall be liable for all costs and damages incurred by OWNER in procuring such similar service, and the Contract shall be in full force to the extent not terminated.

J.3 If OWNER terminates the Agreement for its own convenience, payment of ENGINEER shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by

ENGINEER against OWNER under this Agreement.

- J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of ENGINEER or OWNER which accrued prior to such termination. ENGINEER shall surrender to OWNER items of work or portions thereof, referred to in Section N for which ENGINEER has received payment, or OWNER has made payment. OWNER retains the right to elect whether or not to proceed with actual construction of the project.

K. Suspension of Work

OWNER may suspend, delay or interrupt all or any part of the work for such time as the OWNER deems appropriate for its own convenience by giving written notice thereof to ENGINEER. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within the ENGINEER'S control. OWNER shall not be responsible for work performed by any subcontractors after notice of suspension is given by OWNER to ENGINEER.

L. Subconsultants and Assignments

- L.1 ENGINEER shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the Project Manager. The ENGINEER shall ensure that in all subcontracts entered into by the ENGINEER pursuant to this contract, the OWNER is named as an express third party beneficiary of such subcontracts with full rights as such. ENGINEER acknowledges such services are provided to OWNER pursuant to a subcontract(s) between ENGINEER and subcontractor(s). OWNER incurs no liability to third persons for payment of any compensation provided herein to ENGINEER. Any attempted assignment of this contract without the written consent of OWNER shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of ENGINEER shall not be subject to additional reimbursement by OWNER.

- L.2 OWNER shall have the right to let other agreements be coordinated with this Agreement. ENGINEER shall cooperate with other firms, engineers or subconsultants on the Project and the OWNER so that all portions of the Project may be completed in the least possible time within normal working hours. ENGINEER shall furnish other engineers and subconsultants and affected public utilities, whose designs are fitted into ENGINEER'S design, detail drawings giving full information so that conflicts can be avoided.

M. Access to Records

The OWNER, Secretary of State's Office of the State of Oregon, the Federal Government and the duly authorized representatives of any of the above, shall have access to the books, documents, papers, records and receipts of the ENGINEER which are directly pertinent to this agreement for the purpose of making audit, examination, excerpts and transcripts. The OWNER, Secretary of State's Office of the State of Oregon, the federal Government and authorized representatives shall have the authority to inspect, audit and copy from time to time, any records of the ENGINEER regarding billings or work under this agreement for a period of six years after the completion or termination of this contract.

N. Work is Property of OWNER

- N.1 Originals or Certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by ENGINEER under this Agreement shall be the exclusive property of OWNER and shall be delivered to OWNER prior to completion or termination of this contract and prior to final payment. Any statutory or common law rights to such property held by ENGINEER as creator of such work shall be conveyed to OWNER upon request without additional compensation. Upon OWNER'S approval and provided OWNER is identified in connection therewith, ENGINEER may include ENGINEER'S work in its promotional materials.

- N.2 ENGINEER shall not be held liable for any damage, loss, increased expenses or otherwise caused by or attributed to the reuse, by OWNER or their designees, of all work performed by ENGINEER pursuant to this contract without the express written permission of the ENGINEER.

O. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279B to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein. ENGINEER shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which ENGINEER is required by law to obtain or maintain in order to perform work described shall be obtained and maintained throughout the term of this Agreement.

P. Adherence to Law

ENGINEER shall comply with all federal, state and local laws and ordinances, rules and regulations applicable to the work under this contract. ENGINEER agrees that the public contract law provisions contained in ORS chapter 279A, 279B, and 279C shall apply to and govern the performance of this contract. ENGINEER shall certify compliance with ORS 670.600. Further, ENGINEER agrees to comply with applicable provisions of and amendments to the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and with all applicable requirements of federal and state and rehabilitation statutes, rules and regulations. Further, all certificates, licenses or permits, which the ENGINEER is required by law to obtain or maintain in order to perform work described, shall be obtained and maintained throughout the term of this Agreement.

Q. Modification

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by the Parties. A modification is a written document, contemporaneously executed by OWNER and ENGINEER, which increases or decreases the cost to OWNER over the agreed sum or changes or modifies the scope of service or time of performance. No modification shall be binding unless executed in writing by ENGINEER and OWNER. In the event that ENGINEER receives any communication of whatsoever nature from OWNER, which communication ENGINEER contends to give rise to any modification of this Agreement, ENGINEER shall, within thirty (30) days after receipt, make a written request for modification to OWNER'S Project Manager. ENGINEER'S failure to submit such written request for modification in the manner outlined herein may be the basis for refusal by the OWNER to treat said communication as a basis for modification. In connection with any modification to the contract affecting any change in price, ENGINEER shall submit a complete breakdown of labor, material, equipment and other costs. If ENGINEER incurs additional costs or devotes additional time on Project tasks which were reasonably expected as part of the original agreement or any mutually approved modifications, then OWNER shall be responsible for payment of only those costs for which it has agreed to pay.

R. Attorney Fees

In the event any action, suit, arbitration or other proceeding shall be instituted by either party to this Agreement to enforce any provision of this agreement or any matter arising there from, or to interpret any provision of this agreement, including any proceeding to compel arbitration, the prevailing party shall be entitled to recover from the other a reasonable attorney fee to be determined by the court or arbitrator(s). In addition to recovery of a reasonable attorney fee, the prevailing party shall be entitled to recover from the other, costs and disbursements, including all costs of arbitration and the arbitrator(s) fees, and expert witness fees, as fixed by the court or tribunal in which the case is heard.

In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party shall recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney fees in the lower court or courts or arbitration proceeding, such fee to be determined by the appellate court or lower court or arbitrator, as the appellate court may determine. In addition to recovery of a reasonable attorney fee on appeal, the prevailing party shall be entitled to recovery from the other costs and disbursements and expert witness fees as fixed by the appellate court. All costs and disbursements which may be awarded pursuant to this paragraph shall bear

interest at the maximum legal rate from the date they are incurred until the date they are paid by the losing party.

S. Other Conditions

S.1 Except as otherwise provided in paragraphs S.1.1, S.1.2, and S.1.3 ENGINEER represents and agrees that the contract specifications and plans, if any, prepared by the ENGINEER will be adequate and sufficient to accomplish the purposes of the project; and further, that any review or approval by the owner of the plans and specifications shall not be deemed to diminish the adequacy of ENGINEER'S work.

S.1.1 Subsurface Investigations. In soils, foundation, ground water, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

S.1.2 Opinions of Cost, Financial Considerations, and Schedules. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for a Project, ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, ENGINEER makes no warranty that Owner's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from ENGINEER'S opinions, analyses, projections, or estimates.

S.1.3 Record Drawings. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. ENGINEER is responsible for any errors or omissions about which the ENGINEER knew or should have known in the information from those employees or firms employed by the ENGINEER under the terms of the contract as stated therein that is incorporated into the record drawings.

S.2 Notwithstanding any acceptance or payments, OWNER shall not be precluded or stopped from recovering from ENGINEER, or its insurer or surety, such damages as may be sustained by reason of ENGINEER'S failure to comply with the terms of this Agreement. A waiver by OWNER of any breach by ENGINEER shall not be deemed to be a waiver of any subsequent breach by ENGINEER.

T. Assignments of Products Rights

The ENGINEER hereby assigns to the OWNER all rights, title and interest, including but not limited to copyright rights, all notes, designs, drawings, specifications, technical data reports, computer programs and documentation, and other materials resulting from the ENGINEER'S work under this contract.

U. Integration

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. ENGINEER, by the signature below of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

V. Arbitration

- V.1 Any controversy or claim arising out of or relating to this agreement, including, without limitation, the making, performance or interpretation of this agreement, shall be settled by arbitration in Lincoln County, Oregon, and any judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.
- V.2 Any party asserting a claim arising out of or relating to this Agreement may make a written demand for arbitration. In this event, the parties shall agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator shall be an attorney licensed to practice law in the State of Oregon. If the parties cannot agree within 30 days to the selection of a single arbitrator after the election to arbitrate, either party may request that the selection of an arbitrator be made by a judge of the Circuit Court of the State of Oregon for Lincoln County. The dispute shall be heard by the arbitrator selected within 60 days thereafter, unless the parties agree otherwise.
- V.3 The parties will pay their own costs of arbitration, and each will be obligated for one-half of the arbitrator’s fee. The provision of Section R shall also apply to arbitration; and in the event of arbitration under the provisions of this Agreement, the prevailing party shall be awarded reasonable attorney fees and related costs.
- V.4 If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recess of, the arbitration hearings. ORS 183.450(1) through (4), where applicable, shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided however no error by the arbitrator in application of the statute shall be grounds as such for vacating the arbitrator’s award. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall give written notice to the parties stating the arbitration determination and shall furnish to each party a signed copy of such determination and judgment so the award may be entered in any court having jurisdiction over the parties. The parties agree that all facts and other information relating to any arbitration arising under this agreement shall be kept confidential to the fullest extent permitted by law.
- V.5 The parties agree that the arbitrator shall have no jurisdiction to render an award or judgment for punitive damages. The parties agree that the decision of the arbitrator shall be final and binding on the parties and a judgment may be entered on the arbitrator’s award. Unless otherwise inconsistent herewith, the provisions of ORS Chapter 36 shall apply to any arbitration hereunder. The duty to arbitrate shall survive the cancellation or termination of this agreement.

W. Miscellaneous / General

- W.1 ENGINEER binds itself, its partners, officers, successors, assigns and legal representatives to the OWNER under the terms and conditions of this Agreement as described herein.
- W.2 The ENGINEER and the OWNER hereby agree to all provisions of this Agreement.
- W.3 Each Party may sign an original document, and the Agreement shall be comprised of the collective signed originals.

IN WITNESS WHEREOF, the Parties by their signatures below enter into this Agreement.

CITY OF TOLEDO, OR

CIVIL WEST ENGINEERING SERVICES, INC

By _____
Mayor Rod Cross

By _____

Date

Mailing Address:
Public Works Director Brian Lorimor
City of Toledo
PO Box 220
Toledo, OR 97391

Date

Mailing Address:
Civil West Engineering Services, Inc.
409 SW 10th Street
Newport, OR 97365

Employer ID No. 26-2914006

Attest:

City Recorder Lisa Figueroa

Date


Approved as to content and form:

City Attorney Mike Adams

Date

Exhibit A – Standard Hourly Rate Schedule

**CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION**

	Meeting Date:	Agenda Topic:
	March 6, 2024	Approve an expenditure of up to \$1,000 to produce informational materials for the Ammon Tank replacement
Council Goal:	Agenda Type:	
Maintain and improve public infrastructure and facilities	Decision Items	
Prepared by:	Reviewed by:	Approved by:
City Recorder L. Figueroa	City Manager Doug Wiggins	City Manager Doug Wiggins

Recommendation:

Motion to approve an expenditure of up to \$1,000 to produce informational materials for the Ammon Tank replacement.

Background:

The City Council will be placing a ballot measure on the May 2024 primary election seeking approval of General Obligation Bond from the voters for \$2,650,000.

The City Council directed staff to prepare an informational flyer that could be mailed to all the electors within the City. Staff conducted some research into the cost of the flyer. There is an approximate cost of \$387 to use the ‘Every Door Direct Mail’ service through the United States Postal Service, which would include roughly 1,900 mailings. If the flyers were printed in-house, the cost for the brochure paper would be \$400. Staff was seeking cost estimates from local printer/vendors and can report those estimates at the meeting.


Staff is seeking a motion to authorize an expenditure of up to \$1,000, which would cover in-house expenses (or possibly having a vendor print the flyers, saving staff time) as well as cover expenses on Facebook to target audiences through the “marketing feature” of the platform. The expenses would be used from the City Council Strategic Reserve, ‘special purchases’ line item.

Fiscal Impact:	Fiscal Year:	GL Number:
\$1,000	2023-2024	020-000-607500

Attachment:

None

**CITY OF TOLEDO
REQUEST FOR COUNCIL ACTION**

	Meeting Date:	Agenda Topic:
	March 6, 2024	Approve the Accounting Clerk position and salary range
Council Goal:	Agenda Type:	
Not Applicable	Decision Items	
Prepared by:	Reviewed by:	Approved by:
Finance Director/Asst. CM A. Carey	City Manager Doug Wiggins	City Manager Doug Wiggins

Recommendation:

Motion to approve the position and salary range for the Accounting Clerk position.

Background:

With the vacancy created in the Finance Department, the Finance Director/Assistant City Manager would like to change the Utility Billing job description to better fit the needs of the department. In the past, the Finance Department has had both Utility Billing and Accounting Clerk positions.

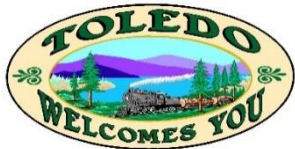
As business processes change and adapt, the Accounting Clerk position has been updated to include the duties needed to assist with the daily and monthly department needs of both finance and administrative duties which include some Utility Billing work, as well as Accounting Clerk and administrative duties. The salary range has been increased by one grade from the previous Accounting Clerk position to reflect the increased level of responsibility.

Following Council approval, the Toledo Employee Association will be notified for their approval. Once approved, it will become a represented position for the City of Toledo.

Fiscal Impact:	Fiscal Year:	GL Number:
\$4,087 - \$4,740/Month	2023-2024	011-110-500053 013-130-500053 013-135-500053 012-120-500053 001-100-500053 012-125-500053

Attachment:

1. Draft Job Description

	City of Toledo Accounting Clerk Job Description	
	Salary Range: \$4,087 – \$4,740/month	Department: Finance Department
	Classification: FLSA Non-Exempt	Supervisor: Finance Director / Assistant City Manager
	Representation: Toledo Employee’s Association	Location: City Hall

General Roles and Responsibilities

The Accounting Clerk performs various accounting duties including; processing accounts receivable, invoicing, processing accounts payable, collections, and unclaimed property reporting. The Accounting Clerk is also responsible for dealing with utility accounts, processing utility billing, and service orders; municipal court clerk duties, and business licensing. This position performs receptionist duties for City Hall including; answering the telephone, greeting customers at the front desk, taking over the counter payments and mail duties. This position supports the Finance Department by cross training with the Accounting Supervisor to back up the position as needed, and by performing other clerical duties as assigned.

This position must follow the established City of Toledo policies and procedures at all times and maintain effective working relationships with other City departments and staff in order to promote a cooperative and team spirit within the organization. Must also maintain a professional image and positive public relations.

Supervision Received and Exercised

- Works under the supervision of the Finance Director / Assistant City Manager
- Supervisory functions are not expectation of this position

Knowledge and Skills Required

Minimum Education

- H.S. Diploma or equivalent (GED)
- Some College Preferred

Minimum Skills

- Proficiency in Microsoft Word, Outlook and Excel preferred
- Ability to type 40 words per minute
- Ability to work in and gain proficiency in various software and computer programs

Experience

- The position requires a minimum 2 years’ experience of office work including accounting duties and/or data entry or processing. Two years equivalent education, or 2 years combined education and related work experience will qualify.

Certifications/Licenses

- Current Notary Public commission or ability to obtain one within 1 year of hire
- Current Municipal Court Clerk certification or the ability to obtain one within 90 days of hire

Skill & Ability in:

- Analyzing data and applying critical thinking
- Performing arithmetic computations accurately and quickly
- Communicating effectively verbally and in writing
- Establishing successful working relationships
- Working under pressure and/or frequent interruption
- Operating the following equipment: 10-key calculator, multi-line telephone system with voicemail, and copy machine
- Keeping certain materials and conversations confidential, as specified
- Working independently and managing time effectively

Primary/Essential Responsibilities

Accounting Clerk (60% of Time)

- Processes, computes, and finalizes payables, including the maintenance of vendor files
- Serves as main contact for vendor inquiries (outstanding invoices, credits issued, etc.)
- Collects banking information and sets up ACH payments
- Daily cash and general ledger balancing
- Processes miscellaneous accounts receivable
- Creates AR invoices for payments owed to the City
- Reporting delinquent accounts to collection agency and maintaining records
- Performs due diligence and reports unclaimed property to the state(s)
- Makes bank deposits
- Assists the finance department with other duties as needed

Utility Clerk/Court Clerk/City Hall Cashier (40% of Time)

- Answers the phones and responds to general inquiries, generally related to water/sewer and Municipal Court accounts
- Collects payments from the public, processes transactions and balances the cash drawer
- Acts as a notary public, as requested, for both City staff and the public
- Serves as the Court Clerk, processing citations at the counter and orders to DMV to release driver's license holds upon receipt of payment
- Process new licenses and process annual license renewals
- Maintain business licensing records
- Performs mailroom duties
- Assists City Hall with other administrative duties as needed

Working Conditions

Usual office working conditions: the noise level in the work area is typical of most office environments with telephones, personal interruptions, and background noises. Frequent contact with all departments within the City, co-workers, and the public by phone, email, online, and in person.

Physical Requirements: The incumbent is expected to lift or move material under 5 pounds on a daily basis.

A typical work week consists of 40 hours, consistent with City Hall business hours. Occasionally required to work outside normal hours or as assigned by supervisor.

Additional Information

Reasonable accommodation may be made to enable qualified individuals with disabilities to perform essential functions.

Essential competencies of this job are described under the headings above. They may be subject to change at any time. The omission of specific statements of duties, does not exclude them from the position, if the work is similar, related, or a logical assignment to the position. The job description does not constitute an employment agreement between the employer and employee and may be changed by the employer at any time.

Revised: March 1, 2024

Adopted:

DRAFT

FEB 26 2024

Dear Supporters,

I am thrilled to share with you the significant milestones achieved last year on one of our highest priority projects amid our Stronger Together campaign.

Thanks to your unwavering support in establishing the Coastal Samaritan Treatment and Recovery Services (C-STARS), you are improving access to care and helping create the first residential and outpatient recovery center in Lincoln County. This haven will inspire hope and foster healing for adults with substance use disorder by ensuring that support and resources essential for their recovery is within reach.

Crucial milestones achieved to date in establishing C-STARS include:

- Welcomed friends and neighbors to a groundbreaking ceremony, marking the official commencement of the project and prepared the construction site.
- Successfully obtained the necessary permits for the project.
- Finalized the building design and furniture, fixture and equipment needs with Clark Kjos Architects, thanks in part to advice from community partners and members with lived experience.
- Secured a contract with Gerding Builders, the general contractor.
- Hired leadership staff, including a business director and a clinical supervisor.



The most remarkable aspect of our progress is the incredible financial support from a wide range of donors - individuals, businesses, public and private foundations, and governmental entities – all building community around this project. Together, we have raised an astounding \$10.4 million! There is excellent momentum, and your continued support can help raise the additional \$1.3 million needed to complete it.

Meanwhile, the need for residential and outpatient recovery services in Lincoln County is escalating. Brandon Bates, the operations director of Samaritan's recovery center in Lebanon, just this week underscored the importance of this project. "We have 20 people on our 'actively waiting' list right now and bed availability is more than a month out. We could fill the center immediately if it were open."

We are excited about the positive impact this recovery center will have on people who need our help and yours to heal. You are a driving force behind our accomplishments so far and, with your ongoing support, we can complete the construction of this transformative space and begin offering services in spring 2025. Visit samhealth.org/supportCoastSTARS to make a gift.

Thank you again for leaving a legacy of generosity for our rural health care community. We look forward to sharing more progress on this project and the many other ways you are building healthier communities together in 2024! For more information about the difference you make, please visit samhealth.org/Giving or contact me at kclem@samhealth.org or 541-574-4745.

With gratitude,



Karla Clem, Executive Director
Pacific Communities Health District Foundation