

LICENSE AGREEMENT ALLOWING USE OF RIGHTS-OF-WAY

This agreement ("Agreement") is between the City of Newport, an Oregon municipal corporation ("City"), and Georgia-Pacific Toledo LLC, a Delaware limited liability company ("GP"). The territory of the City of Newport will be referred to as Newport. This Agreement shall be effective on _____, 2009 (the "Effective Date").

Recitals

A. GP operates a containerboard mill in Toledo, Oregon, east of Newport (the "Mill").

B. GP has a permit from the Oregon Department of Environmental Quality to discharge treated effluent from the Mill into the Pacific Ocean. The discharge point is at a point in the ocean adjacent to Newport.

C. The effluent is transported by pipeline from the Mill to the Pacific Ocean. A portion of the Mill's effluent pipeline route is within City-administered rights-of-way within Newport. Within Newport, the single pipeline from the Mill splits into two pipelines, which rejoin before the discharge point. Both routes are partially within City-administered rights-of-way. One of the pipelines is primarily within the Third Street right-of-way (the "Northern Pipeline"); the other pipeline is primarily within the NE First Street and W. Olive Street rights-of-way (the "Southern Pipeline"). The City and others have previously granted GP easements and permit rights for the Northern Pipeline. The Southern Pipeline was previously the subject of an agreement between the City and GP's predecessor in interest, but that agreement has lapsed.

D. The City and GP wish to formalize the arrangement by which the GP effluent pipelines are permitted to occupy City rights-of-way through execution of this Agreement.

Terms of Agreement

1. (a) The City hereby grants GP, and its permitted successors a license to place, operate and maintain treated effluent pipelines and related appurtenances within City-administered rights-of-way within Newport subject to the terms of this Agreement and all other applicable governmental and regulatory requirements. This license includes the right to construct, operate, maintain, repair, replace and remove the pipelines and related appurtenances, consistent with the terms of this Agreement. The term "Facility" or "Facilities" as used in this Agreement includes all or any portion, as the case may be, of the effluent pipelines or related

appurtenances. The Agreement covers the rights-of-way within the City of Newport described in Exhibit "A." This Agreement shall remain in effect, unless otherwise terminated as provided herein, until December 31, 2019.

(b) Either party may provide written notice to the other party between January 1, 2014 and January 31, 2014, stating its election to open Section 2 and/or Section 3 of this Agreement for renegotiation. The parties agree to negotiate in good faith if negotiations are reopened. If the parties are unable to reach a mutually acceptable agreement by December 31, 2014, or any later date agreed to in writing by the parties, either party may terminate the agreement effective December 31, 2015 by providing written notice no later than August 31, 2015.

(c) Either party may request renegotiation of this agreement (i) if there are material changed circumstances or (ii) if significant new information relating to the effluent and its effects become known. The parties agree to negotiate in good faith if negotiations are reopened. If the parties are unable to reach a mutually acceptable agreement within 12 months of the request for renegotiation, or any later date agreed to in writing by the parties, the parties agree to attempt to mediate the dispute using a neutral third party mediator. If the parties are unable to resolve the issues by mediation, either party may terminate the agreement by providing one year's notice, provided however that no termination under this subsection will be effective prior to December 31, 2015.

2. GP shall pay the City an annual fee for use of rights-of-way occupied by the Southern Pipeline within the City for 2008 and for each subsequent calendar year or portion of a calendar year that this Agreement remains in effect (the "License Fee"). The amount of the fee shall not be prorated for partial calendar years. The License Fee for 2008 shall be \$55,000, and the License Fee for 2009 shall be \$56,650. The License Fees for 2008 and 2009 are payable within 30 days of execution of the Agreement. There is no fee attributable to the Northern Pipeline.

The License Fee shall be increased by 3% over the previous year's License Fee starting in 2010. Payment for years after 2009 shall be made by January 31 of the year that the payment covers.

3. (a) The pipelines shall be used solely for the transport of treated effluent that: (i) meets all applicable laws and regulations, including the standards of GP's NPDES Waste Discharge Permit No.: 101409 for Outfall 001, issued by Oregon DEQ (the "Permit"), as amended or modified from time to time; (ii) is the byproduct of normal and customary paper or pulp operations at the Mill; and (iii) is generated solely at the Mill. In the event that any effluent not conforming to the requirements of subparagraphs (ii) or (iii) of this paragraph 3 ("Nonconforming Event") is deposited into, reaches, or is transported in or through the Facilities, the City may terminate this Agreement. In lieu thereof, or for any violation of the Permit or of

this Agreement ("Violation"), GP shall pay to the City, for each occasion or day on which a Nonconforming Event or Violation occurs, an amount up to \$5000 per day (the "Fine"). The City shall set the amount of the Fine based on the extent and nature of the violation and whether the violation was intentional, negligent, or without fault. The Fine shall be paid within 10 days of the date the City informs GP of the amount of the Fine.

(b) GP shall provide the City with a copy of its monthly Discharge Monitoring Report, submitted each month to the DEQ, which report includes information on the standards and the level of effluent emissions on a daily basis. The report shall be submitted to the City not later than 3 days following its submission to the DEQ.

4. GP shall comply with all applicable governmental, regulatory and permit requirements, including City ordinances, in exercising its rights and in complying with its obligations under this Agreement.

5. (a) GP shall obtain, pay for, and maintain in full force and effect during the term of this Agreement, commercial general liability insurance covering bodily injury, death and property damage, including personal injury, contractual liability, broad-form property damage, and products and completed operations coverage on an "occurrence" form (1996 ISO or equivalent) acceptable to the City covering risks relating to the Facilities. The policy or policies shall provide three million dollars (\$3,000,000) per occurrence, and a general aggregate limit of not less than five million dollars (\$5,000,000).

(b) A certificate of insurance evidencing the coverages described in paragraph (a) shall be furnished to the City within 10 days following the execution of this Agreement by the last of the parties. The certificate of insurance will be endorsed to provide that the policy is primary insurance with respect to any other insurance carried by the City as to any claim for which coverage is afforded under the policy; and to provide that the policy shall apply separately to each insured against whom a claim is made or suit is brought.

(c) GP shall give thirty (30) days' prior written notice to the City of cancellation, non-renewal, or material change in coverage, scope, or amount of any policy. Should GP fail to keep in effect at all times the insurance coverages required under this paragraph 5, the City may purchase the required insurance coverage if GP does not do so following discussions between the City and GP. If the City purchases the required insurance coverage, it shall seek reimbursement of the cost of the coverage from GP. If no replacement coverage is in place within 30 days after coverage lapses, the City may terminate this Agreement.

(d) Whenever commercially reasonable or possible, insurance policies required hereunder shall be issued by insurance companies with a financial rating of

at least an A+ status as rated in the most recent edition of Best's Insurance Reports or equivalent. Upon written request by the City, GP will provide to the City policy form numbers to clarify an insurance certificate or as otherwise needed in the course of the City's business activities.

(e) The procuring of the insurance required by this Agreement shall not be construed to nor shall it limit GP's liability under this Agreement.

6. GP shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees) ("Claim", or "Claims") arising out of or related in any way to the Facilities, or any use thereof whatsoever, by paying all amounts: i) that a court finally awards or that GP agrees to in settlement of such Claims; and (ii) all expenses or charges arising from such Claims, including reasonable attorneys' fees, that are incurred by the City or any other party indemnified under this paragraph except to the extent that any Claims result from the negligence or wrongful conduct of the City and its officials, employees, contractors and agents. On notification of any Claim, the City shall notify GP and provide GP with an opportunity to provide defense regarding the Claim.

7. The Facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state, and local statutes, codes, ordinances, rules and regulations. All Facilities installed after the Effective Date shall comply with applicable design and/or installation standards, if any, imposed by any manufacturer of any part of the Facilities, or by regulation or permit. All Facilities shall be maintained in proper working order.

8. (a) GP has provided the City with two sets of plans for the Facilities, and represents that these are "as-built" plans. The City acknowledges receipt of these two sets of plans prior to execution of this Agreement. Beginning in January 2010 and thereafter, concurrent with its payment of the License Fee, GP will provide the City with revised as-built plans to document any changes in the Facilities that have occurred during the prior twelve months. The sets of as-built plans must show all Facilities that have been abandoned in place. The City acknowledges that GP has abandoned some Facilities in place that are within the City as of the Effective Date of this Agreement, and that all such abandoned Facilities are depicted in the as-built plans already provided to the City. GP remains responsible for those lines and shall defend, indemnify and hold the City harmless, in the same manner and to the same extent as specified in paragraph 6 above, from any Claim arising out of or relating to those Facilities that are abandoned in place except to the extent the Claims arise from the negligence or wrongful conduct of the City or its officials, employees, contractors or agents. City agrees that GP may allow others to use the

abandoned Facilities for conduit or other purposes, provided that the entity using the abandoned Facilities has a franchise to operate within the City or enters into an acceptable license agreement with the City for use of the line.

(b) GP has requested that the as-built plans remain confidential and the City has agreed to maintain the confidentiality of the as-built plans to the extent permitted by state public records law as described in more detail below. The confidentiality provisions in this paragraph do not apply to abandoned Facilities. The City acknowledges and agrees that the City shall keep confidential all as-built plans of the Facilities delivered by GP to the City. The City recognizes that the disclosure of the as-built plans to persons or entities other than the City may pose a security and safety risk for the general public and for GP, that GP may suffer immediate, irreparable and incalculable harm or damages in the event of the disclosure of the as-built plans to any other party and that GP shall be entitled to specific performance of this Agreement and to seek injunctive relief to prevent the disclosure (or unauthorized use) of the as-built plans. The City shall immediately notify GP of any request for GP's as-built plans. The City shall deny the request for the as-built plans unless GP consents to their release, and will do so under one or more of the following provisions: ORS 192.501(2) (trade secrets), 192.501(22)(a) (information allowing access to property); 192.501(23)(b) (information relating to security measures for property); 192.503(4) (information submitted in confidence), or any other applicable provision. If the denial of the public records request is appealed to the District Attorney, the City shall advise GP of the appeal and provide GP with the opportunity to submit argument and information to the District Attorney. If the District Attorney orders disclosure ("Order"), the City will comply with the Order unless GP: (1) pays all costs, including reasonable attorneys fees, incurred by the City in connection with an appeal of the Order; and (2) agrees to indemnify and hold harmless the City from all future costs, including reasonable attorneys fees, incurred in connection with the appeal of the Order; or (3) otherwise obtains a court order prohibiting disclosure. Upon GP's request, the City will cooperate with GP in any appeal of an Order to disclose.

9. GP shall make a good faith effort to coordinate its construction schedules with those of the City and other users of the rights-of-way.

(a) Prior to January 1 of each year, GP shall provide the City with a schedule of known construction work for that year in the City's rights-of-way.

(b) Prior to January 1 of each year, the City shall provide GP with a schedule of known construction work for that year in rights-of-way that are occupied by the Facilities.

(c) All construction projects within rights-of-way shall be coordinated as ordered by the City Engineer or designee, to minimize public inconvenience, disruption, or damages.

(d) The failure of a party to provide a construction schedule as required shall be remedied by such party's providing the construction schedule within 30 days after a written request by the other party for the construction schedule.

10. GP shall temporarily or permanently remove, relocate, change or alter the position of any Facility within a right-of-way (a "Modification") when requested to do so in writing by the City after the City has determined in good faith that the Modification is necessary and the parties have agreed that there is not a more cost-effective alternative that is reasonable and that will accomplish the purpose that resulted in the request for the Modification. The Modification shall be at GP's expense when it is needed because of construction, repair, maintenance, or installation of public improvements by the City or other operations of the City within the right-of-way. In the event that the Modification is needed to accommodate a utility company (other than any utility owned by the City), a private developer, or other private use of the right-of-way, the utility company, developer or other private party requiring the Modification shall be responsible for the cost of such Modification, which shall require the approval of GP, which shall not be unreasonably withheld. GP shall be under no obligation to approve a Modification to benefit the aforementioned utility, developer or other private party unless and until said utility, developer or other private party has made arrangements that are, in GP's reasonable determination, sufficient to cover all costs that will be incurred by GP to perform the Modification. The City shall specify in the written notice the amount of time for completing the Modification, which time period shall be: (i) consistent with public health and welfare needs; and (ii) commercially reasonable.

11. If GP plans to permanently discontinue its use of any portion of its Facilities not previously abandoned, GP shall submit a plan for discontinuance to the City. The plan shall provide either for removal of discontinued Facilities or for abandonment in place. The City Engineer shall review the plan and issue an order to GP specifying which Facilities are to be removed and which may be abandoned in place, based on the most cost effective, technically feasible and commercially reasonable approach that protects the public welfare. Any lines abandoned in place must be drained and rinsed. While GP and the City may negotiate which Facilities may be abandoned in place, the ultimate decision as to whether a Facility may be abandoned in place shall be the City's in its sole reasonable discretion. GP shall remain responsible for any lines abandoned in place and shall defend, indemnify and hold the City harmless, in the same manner and to the same extent as specified in paragraph 6 above, from any liability or Claim relating to those lines that are abandoned in place except to the extent that the Claims arise from the

City's negligence or wrongful conduct. City agrees that GP may allow others to use the abandoned lines for conduit or other purposes, provided that the entity using the abandoned line has a franchise to operate within the City or enters into an acceptable license agreement with the City for use of the line.

12. Unless otherwise agreed to in writing by the City Engineer, within 30 days following written notice from the City, GP shall, at its own expense, remove any unauthorized Facility and restore the right-of-way. A Facility is unauthorized under the following circumstances:

(a) The Facility is outside the scope of authority granted by this Agreement, or GP has failed to comply with all terms of this Agreement and has not cured the default within the time allowed.

(b) The Facility has been abandoned and the City Engineer has not authorized abandonment in place. A Facility is abandoned if it is not in use and is not planned for further use. A Facility will be presumed abandoned if it is not used for a period of one year, but this presumption may be overcome by a demonstration of good faith, actual plans for future use or a demonstration that GP is capable of using the facility in the future.

(c) The Facility was constructed other than as authorized by the City.

This Section 12 applies only to the Southern Pipeline within City rights-of-way.

13. If GP fails to remove any Facilities in a timely fashion when required to do so under this Agreement, the City may remove the Facilities and GP shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the Facilities, and in obtaining reimbursement for such removal.

14. In addition to any other provision in this Agreement allowing a party to terminate the Agreement in whole or in part, and without limiting any other remedies available at law or in equity, if either party materially or repeatedly defaults in the performance of any of its duties or obligations hereunder, and: (i) within 30 days after written notice which specifies the default(s) is given to the defaulting party, it is not cured to the reasonable satisfaction of the party giving the notice of default, or (ii) with respect to those defaults that cannot reasonably be cured within 30 days, if the defaulting party fails within 15 days after receipt of the notice of default to commence curing the default with efforts reasonably acceptable to the party providing notice of the default, and fails to continue proceeding with all due diligence to cure the default, then the party not in default may terminate this Agreement by giving written notice of termination to the defaulting party, which termination shall be effective immediately upon receipt of the notice of termination.

15. GP shall obtain a separate right-of-way construction permit to cut, break, dig up, damage in any manner, undermine or tunnel for any purpose in any portion of a City-administered right of way. Application for permits shall be in the form prescribed by the City. Permits shall be issued for a limited time and shall specify the extent of the authority granted by the permit. In the event of an emergency, the City shall expedite the permit, and GP may take action without a permit to the extent needed to resolve the emergency.

16. All non-emergency GP work shall be in accordance with the applicable construction permit and approved plans and specifications. GP shall allow the City Engineer or designee access to the work site and the opportunity to inspect any work in the right-of-way. GP shall provide, upon request, any information reasonably needed by the City Engineer or designee to determine compliance with applicable requirements. All work that does not comply with all permit requirements shall either be corrected or removed at the sole expense of GP. The City is authorized to issue stop work orders to assure compliance with this Agreement or other city ordinance. Except in an emergency, GP shall notify the City Engineer not less than two working days prior to any excavation or construction in the right-of-way. In the event of an emergency, GP shall take action as needed to resolve the emergency, including excavation and construction in the right of way. The City may use any form of communication to direct GP to take actions in an emergency to protect the public safety, health and welfare.

17. GP shall complete all construction within the right-of-way so as to minimize disruption of the right-of-way and utility service and without interfering with other public and private property within the rights-of-way. All construction work within rights-of-way, including restoration, must be completed within 120 days of issuance of the construction permit unless an extension or alternate schedule has been approved by the City Engineer. GP shall comply with City traffic control procedures and standards.

18. GP shall make a good faith effort to coordinate construction schedules with those of the City and other users of the rights-of-way. Unless otherwise agreed to in writing by the City, at least thirty (30) days prior to any work that requires a cut or opening in the street of 400 linear feet or greater, GP shall provide written notice ("Notice") to the City and the City shall notify all other franchised utilities with permanent facilities in the affected right of way.

(a) The Notice shall state the anticipated location, project schedule and general description of the proposed work.

(b) No permits for work shall be issued until Notice has been sent and received.

19. When GP does any work in or affecting any rights-of-way, it shall, at its own expense, promptly remove any obstructions when no longer needed and restore such right-of-ways or city property to good order and condition unless otherwise directed by the City. If weather or other conditions do not permit complete restoration, GP shall temporarily restore the affected rights-of-way or property. The temporary restoration shall be at GP's sole expense and GP shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule is subject to approval by the City, such approval not to be unreasonably withheld, conditioned or delayed.

20. If GP fails to restore rights-of-way or property to good order and condition, the City shall give GP written notice and provide GP a reasonable period of time not exceeding thirty (30) days within which to restore the rights-of-way or property. If, after notice, GP fails to restore the rights-of-way or property to at least as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made and GP shall be responsible for paying the full cost of the restoration and any administrative costs incurred by the City in performing the restoration and in obtaining reimbursement from GP.

21. GP must notify the City Engineer or designee upon completion of any work in rights-of-way prior to final approval of the work. Approval by the City does not relieve GP of its maintenance and repair obligations.

22. (a) All of the terms, covenants, and conditions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their permitted respective successors and assigns. GP shall have the right to delegate the license rights granted herein to its employees, agents, contractors, and licensees.

(b) With prior written notice to and approval of City, GP may assign or transfer this Agreement and its rights and obligations hereunder to any entity that operates the Mill. GP may also assign this Agreement as collateral to a lender in connection with financing on the Mill. The City shall not unreasonably withhold or delay approval of a transfer. The City may condition its approval of a transfer referenced in this subparagraph subject to a requirement that the transferee possesses a permit authorizing effluent discharge allowed hereunder from DEQ, and that such transferee is otherwise reasonably capable of fully performing under this Agreement. Changes in ownership of GP shall not be considered a transfer.

(c) No permitted assignment or transfer of this Agreement shall be effective unless either: (i) GP continues to be bound by all of the terms hereof inuring to the benefit of the City; or (ii) the assignee agrees in writing to be bound by all of the terms hereof inuring to the benefit of the City.

23. GP and the City agree to execute and record (at GP's expense) with the land records of Lincoln County, Oregon a memorandum of this Agreement in substance and form satisfactory to both parties.

24. GP has in place standard operating procedures for dealing with effluent spills, pipeline breaks, and the like. GP has provided copies of those procedures to the City and agrees to provide any amendments to the City for informational purposes, upon request by the City.

25. In the event that GP decides to cease operations at the Mill, GP shall have the right to terminate this Agreement upon not less than 60 days' prior written notice to the City, in which event the Facilities shall be removed or abandoned in place in accordance with this Agreement. The City shall have no obligation to refund to GP any sums previously paid hereunder.

26. Both City and GP agree that they will, from time to time, upon thirty (30) days' request by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement.

27. City and GP acknowledge and agree that this Agreement shall not terminate or replace any existing easement(s) or other existing legal rights held by GP for its pipelines, nor shall the termination of this Agreement for any reason operate as a termination of GP's existing Northern Pipeline rights.

28. This agreement shall be construed under the laws of the State of Oregon. The only venue for any action arising out of or in connection with this Agreement shall be the Circuit Court for Lincoln County, Oregon. Nothing in this provision precludes the parties from mutually agreeing to mediation or arbitration.

29. Written notice required by this agreement shall be directed to:

If to City:

City Engineer
169 SW Coast Highway
Newport, OR 97365
Fax: 541-574-0609

If to GP:

Notices may also be sent by email to the persons listed above and shall be effective on receipt if acknowledgment of receipt by the recipient is documented. Notice sent by mail shall be presumed to be received 3 business days after sending, and faxes shall be presumed to be received on the next business day after sending.

30. The expiration or termination of this Agreement for any reason will not release either party from liabilities or obligations that: (i) the parties have expressly agreed will survive any such expiration or termination; or (ii) remain to be performed or that by their nature would be intended to remain applicable after such expiration or termination.

CITY OF NEWPORT

Dale Shaddox, City Manager
Date:

Approved and signature authorized by the Newport City Council by Motion at a public meeting on _____.

GEORGIA-PACIFIC TOLEDO LLC

By:
Its:
Date:

EXHIBIT A

LIST OF RIGHTS-OF-WAY COVERED BY THIS AGREEMENT

Northern Pipeline

3rd Street Pipeline Route (installed 1966; Description from East to West)

- Harney Street (between Highway 20 and 3rd Street)
- 3rd Street (between Harney Street and the Pacific Ocean, West of Cliff Street)
- Transverses from end of 3rd street down bluff to beach (Unsure in this area where the boundary between the State of Oregon and the City of Newport exists)

Southern Pipeline

Olive Street Pipeline Route (installed in 1983; Description from East to West)

- From intersection of Harney St and Highway 20 in general Northwest direction until it intersects Grant St. (doesn't follow a street through this area; transverses a deep ravine)
- 1st street (between Grant Street and across Highway 101)
- Olive Street (between Highway 101 and Brook St)
- Brook Street (between Olive and 3rd Street)
- 3rd Street (between Brook Street and High Street; Converges with the 3rd street pipeline route at this location)

This list shall be amended from time to time by the parties to correct or amend the list based upon the rights-of-way indicated on the as-built plans provided to the City.