

RESOLUTION No.

Authorize the Commissioner of Public Works to enter into an agreement with the Citizens' Utility Board of Oregon for a term of five years to provide an independent review of City utility bureaus on behalf of residential ratepayers (Resolution)

WHEREAS, the City of Portland provides sewer, stormwater, and water services to about 180,000 accounts, almost 90% of which are residential; and

WHEREAS, the Citizens' Utility Board of Oregon (CUB), an ORS Chapter 65 public benefit non-profit with members, was created in 1984 by a citizens' ballot initiative to represent the interests of residential utility customers; and

WHEREAS, CUB's approach to consumer advocacy occurs on many levels, pursuing the various goals of:

- Affordable utility service
- Energy efficiency measures
- Low-income consumer protection
- Environmental stewardship and responsibility
- Renewable resources use and promotion
- Smart Grid and other emerging technologies; and

WHEREAS, in its three decades of service, CUB estimates that it has achieved \$5.8 billion in savings for Oregon residential ratepayers; and

WHEREAS, CUB's advocacy has included policy initiatives, including leading the 2002 effort to create the Energy Trust of Oregon and cooperating with the City of Portland in the effort to close the Boardman coal power plant; and

WHEREAS, CUB has offered the City of Portland its services in advocacy for protection of the interests of residential ratepayers of the City's sewer, stormwater, and water services; and

WHEREAS, CUB will provide these services as an independent organization, funded through its members, with no direct financial support from the City; and

WHEREAS, the City's two utility bureaus, the Bureau of Environmental Services (BES) and Portland Water Bureau (PWB), together with residential customers, will benefit from CUB's independent review and expertise on a range of topics including utility ratemaking, capital planning, least-cost/least-risk analysis, customer services, billing patterns and uncollectibles; and

WHEREAS, CUB agrees, based on its nearly 30 years as a consumer advocate, to independently represent and advocate for City of Portland residential customers relating to quality and price of sewer, stormwater, and water services provided by the City; and

WHEREAS, CUB will, as part of this review, perform the following:

- Conduct independent research and analysis of issues that are important to ratepayers
- Conduct outreach to a wide variety of stakeholders including commercial customer groups, civic organizations, large industrial customers, and environmental organizations
- Attend District Coalition or Neighborhood Association meetings to identify citizen concerns
- Participate in the City budget process and make recommendations to the Council
- Seek opportunities for discussion of longer-term policy considerations during the time following budget adoption
- Attend BES and PWB Budget Advisory Committee meetings, City Council work sessions and public hearing on utility bureau budgets
- Establish relationships with staff of BES, PWB, and the City Budget Office
- Attend meetings of the Portland Utility Review Board (PURB), participate in PURB's discussions of the utility bureaus, and share CUB's analysis and recommendations
- Develop and publicize its independent analysis of bureau budget and policy proposals on an ongoing basis
- Meet with the Commissioner(s)-in-Charge of BES and PWB on a regular basis; and

WHEREAS, the City will:

- Make bureau Directors and staff, as well as Commissioner(s)' bureau liaisons, available for routine, ongoing meetings with CUB
- Schedule meetings with the Commissioner(s)-in-Charge of BES and PWB for updates from CUB
- Provide ongoing, timely information regarding the schedule for the budget development and adoption process for BES and PWB
- Provide CUB information on the development of bureau budgets and rates; and

WHEREAS, this groundbreaking new partnership, a first for CUB and the City of Portland, will provide a new voice for ratepayers, ensuring that residential customers have an outside, independent advocate at the table; and

WHEREAS, this new partnership will bring greater transparency and accountability to the operations and budgeting of the City's two utility bureaus; and

WHEREAS, this partnership will leverage 30 years of results for ratepayers to the benefit of Portland utility customers.

NOW, THEREFORE, BE IT RESOLVED, that the Council authorizes the Commissioner-in-Charge of BES and PWB to enter into an agreement with the CUB substantially in accordance with Exhibit A.

Adopted by the Council:

Commissioners Nick Fish and Steve Novick
Prepared by: Sonia Schmanski
Date Prepared: December 17, 2013

LaVonne Griffin-Valade
Auditor of the City of Portland
By

Deputy

**AGREEMENT
BETWEEN
THE CITY OF PORTLAND, OREGON
AND
THE CITIZENS' UTILITY BOARD OF OREGON**

Whereas, the Citizens' Utility Board of Oregon (CUB), an ORS Chapter 65 public benefit non-profit with members, was created in 1984 by a citizens' ballot initiative to represent the interests of residential utility customers; and

Whereas, CUB's approach to consumer advocacy occurs on many levels, pursuing the various goals of:

- Affordable utility service
- Energy efficiency measures
- Low-income consumer protection
- Environmental stewardship and responsibility
- Renewable resources use and promotion
- Smart Grid and other emerging technologies

Whereas, in its three decades of service, CUB has been a leader in utility consumer advocacy, achieving savings for Oregon residential ratepayers to date of \$5.4 billion; and

Whereas, CUB's advocacy for residential ratepayers has also included pursuing policy initiatives, including leading the effort in 2002 to create the Energy Trust of Oregon, cooperating with the City of Portland in the effort to close the Boardman coal power plant and replace it with alternative resources that will emit fewer greenhouse gases while saving customers millions; and

Whereas, CUB has approached the City of Portland to offer its services in advocacy for protection of the interests of the residential ratepayers of the City's sewer, stormwater and water services; and

Whereas, CUB has offered to undertake to provide these services in its role as an independent organization, funded through its members, with no financial support or involvement by the City; and

Whereas, Commissioner Nick Fish is Commissioner-in-Charge of the Bureau of Environmental Services (BES) and the Portland Water Bureau (PWB); and

Whereas, BES and PWB, together with their residential customers, would benefit from CUB's independent review and expertise on a range of topics, including utility ratemaking, capital planning, least-cost/least-risk analysis, customer services, billing patterns and uncollectibles; and

Whereas, CUB agrees, based on its nearly 30 years of experience as a consumer advocate, to independently represent and advocate for City of Portland residential customers relating to quality and price of water, sewer and stormwater services provided by the City.

Now therefore, the City and CUB ("the Parties") agree to proceed in good faith on the following terms and conditions under this agreement ("Agreement"):

1. CUB RESPONSIBILITIES. In order to effectively advocate for residential customers, CUB expects, as appropriate, to engage in activities including but not limited to the following:

- a. Attend and monitor the Budget Advisory Committee (BAC) public meetings for the Bureau of Environmental Services (BES) and Portland Water Bureau (PWB); track the BAC's deliberative

processes in developing recommendations for the Council; provide analysis to the BACs, including evaluations of options to benefit ratepayers and keep the bureaus on solid financial ground.

- b. Attempt to establish working relationships with staff for the Bureau of Environmental Services and Portland Water Bureau, as well as staff for the City's Budget Office (CBO); meet regularly with staff of BES and PWB including finance staff and operational staff as questions arise; endeavor to learn about bureau operations and to understand the relevant information for in-depth financial and ratemaking analysis; confer, and make suggestions to, CBO staff throughout the process of budget development and ratesetting, with a focus on providing additional capacity for substantive analysis and residential consumer protection.
- c. Attend City Council Work Sessions on utility bureau budgets.
- d. Attend public budget meetings and hearings on the proposed utility bureau budgets.
- e. Attend meetings of the Portland Utility Review Board (PURB), and participate in PURB's discussions of utility costs, budgets and rates and share with the PURB CUB's analysis and recommendations regarding bureau expenditures, budgets and rates.
- f. Develop and publicize its independent analysis of bureau budget and policy proposals on an ongoing basis.
- g. Meet with the City Commissioner(s) in charge of BES and PWB on a regular basis; be available to meet with other Council members as necessary.
- h. Conduct outreach to stakeholders including environmental organizations, non-residential customer groups, civic organizations and large industrial customers; seek to identify stakeholders and attempt to schedule meetings with them to discuss issues regarding City utility services; maintain a broad understanding of the potential range of issues affecting the City's utility bureaus.
- i. Attend District Coalition or Neighborhood Association meetings depending upon staffing capacity and other resources; identify citizen concerns; and seek to inform the coalitions and associations in regard to how to best reduce and manage utility costs.
- j. Participate in the various City budget processes during the cycle of the City's fiscal year, gathering information, providing insights and analysis and making recommendations to City Council; during the time period following budget adoption, CUB will seek opportunities for consideration and discussion of longer-term policy considerations.
- k. Monitor the proceedings of the Administrative Review Committee (ARC) to seek deeper understanding of customer interactions with the City with regard to utility billing.
- l. Conduct independent research and analysis of issues that are important to ratepayers. As part of that analysis, CUB will obtain information from other utilities and jurisdictions on best practices and opportunities for improvements, including rate spread, rate design, short-term and long-term capital planning, environmental concerns and regulations, billing methodologies, low-income support, late fees and other charges, and employment levels.
- m. Engage, as a member of National Association of State Utility Consumer Advocates (NASUCA), with the Water Committee to learn about national issues related to providing water services.
- n. Jointly, with the City Council, develop a billing insert designed to inform residential customers of CUB's work and advocacy on their behalf.
- o. Jointly with the City, develop press releases, media information and public announcements regarding the installation of CUB as consumer advocate for residential ratepayers of both BES and PWB.

- p. Provide staffing resources, including hiring a consumer advocate/utility analyst for this project.
- q. Disseminate the information that it generates related to City affairs through a variety of avenues, including print media, CUB's website and other outlets.
- r. Prepare recommendations for dissemination prior to the first BAC meetings for BES and PWB each fiscal year commencing with FY 2015-16.

2. CITY RESPONSIBILITIES. The City agrees to provide the following:

- a. The City will provide ongoing, timely information regarding the schedule for the budget development and adoption process for BES and PWB, including but not limited to the BAC process, PURB meetings, Council workshops and Council budget meetings.
- b. The City will make bureau directors and staff, as well as Commissioner(s)' bureau liaisons, available for routine, ongoing meetings with CUB to provide information on BES and PWB budgets, costs and rates, general finances, budget development and policy proposals.
- c. The City will provide CUB information on the development of bureau budgets and rates. City staff will share data and budget development information with CUB.
- d. Jointly, with CUB, the City will develop, and review and revise as appropriate, a billing insert designed to inform residential customers of CUB's work and advocacy on their behalf. The insert will be placed in quarterly bills at least twice per year; however, when 50% or more of customers receive monthly statements, the inserts may instead be placed in 4 monthly statements.
- e. Jointly, with CUB, the City will develop press releases, media information, and public announcements regarding CUB serving as consumer advocate for residential ratepayers of both BES and WB.
- f. The City will schedule meetings for CUB with the Commissioner(s)-in-Charge of BES and PWB for updates from CUB.

3. MISCELLANEOUS.

- a. **TERM.** The initial term of this Agreement is for a period of five years, commencing on the effective date of this Agreement. Within ninety days before the expiration of the initial term of this Agreement, the parties may mutually agree in writing to renew the term of this Agreement for one additional period of five years, upon the same terms and conditions. The renewal term shall commence on the first day after expiration of the initial term.
- b. **EARLY TERMINATION**
 - 1. The City and CUB, by mutual written agreement, may terminate this Agreement at any time.
 - 2. The City or CUB, on thirty (30) days written notice to the other party, may terminate this Agreement for any reason deemed appropriate at its sole discretion.
- c. The rights and responsibilities under this Agreement are solely between the City of Portland and CUB. Nothing in this Agreement creates any legal rights or inures to the benefit of any third party not a signatory to this Agreement.
- d. The parties agree that they will cooperate in good faith in the performance of their respective responsibilities under this Agreement.
- e. In connection with their respective activities under this Agreement, both CUB and the City will comply with all applicable federal, state and local laws and regulations.
- f. **INDEMNITY.** CUB shall hold harmless, defend, and indemnify the City, its officers, agents, and employees, from all claims, demands, suits, or actions of whatsoever nature, including all

attorney's fees and costs, resulting from or arising out of the activities of CUB, including intentional acts, or of its subcontractors, agents or employees under this Agreement. CUB's indemnity obligation, however, is limited to the proceeds of insurance required by this agreement. Nothing in this clause requires CUB to indemnify the City for negligent or intentional actions of the City, its officers, employees or agents.

- g. **INSURANCE.** CUB shall maintain generally applicable insurance types and limits for the nature of the Program, including but not limited to:
1. **WORKERS' COMPENSATION.** CUB shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the period during which work is performed under this Program.
 2. **COMMERCIAL GENERAL LIABILITY INSURANCE.** CUB shall have commercial general liability insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in a per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that it shall not terminate or be canceled without 30 days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of this Agreement, CUB shall provide a new policy with the same terms. CUB agrees to maintain continuous, uninterrupted coverage for the duration of this Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by CUB.
 3. Within ten (10) business days of the effective date of this Agreement, CUB shall provide certificates of insurance certifying the coverage required under this subsection 3(g) to the City Auditor. CUB shall maintain on file with the City Auditor certificates of insurance certifying the coverage required under this subsection 3(g). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by the City.
- h. **GOVERNING LAW.** This Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its choice of law provisions. Any action or suits involving any question arising under this Agreement shall be brought in the appropriate court in Multnomah County, Oregon.
- i. **INDEPENDENT CONTRACTOR.** CUB is acting as an independent contractor under this Agreement. CUB is not otherwise acting in any capacity as the City's agent under this Agreement.
- j. **ASSIGNMENT AND SUBCONTRACTING.** The City is entering into this Agreement with CUB based upon CUB's established expertise and prior experience in utility customer advocacy. CUB shall not assign its responsibilities or interests in this Agreement to any other party or parties. Any attempted assignment shall be void. CUB shall not subcontract any of its responsibilities under this Agreement, in whole or in part, without the prior written approval of the City. Notwithstanding the City's approval of a subcontractor, CUB shall remain obligated for full performance, and the City shall incur no obligation other than its obligations to CUB under

this Agreement. Nothing in this subsection 3(j) shall restrict CUB from hiring consultants for assistance in performing its responsibilities under this Agreement with respect to particular areas of expertise.

- k. NONSEVERABILITY. If a court, government agency, or regulatory agency with proper jurisdiction determines that this Agreement, or any provision of this Agreement, is unlawful, this Agreement shall terminate.
- l. Some of the information that CUB may seek access to may be exempt from disclosure to the general public under the Oregon Public Records Law, ORS 192.410 *et. seq.* Prior to disclosing any such information to CUB, the City may request that CUB enter into a non-disclosure, confidentiality agreement pertaining to such information. Should CUB be of the opinion that the information sought should not be considered confidential under the Oregon Public Records Law, ORS 192.410 *et.seq.* CUB may pursue any remedies available under Oregon law, including any remedies available under the provisions of the Oregon Public Records Law.
- m. INTEGRATION. This Agreement contains the entire agreement between the Parties and supersedes and completely integrates all prior written or oral discussions or agreements between the parties respecting the subject matter of this Agreement.. There are no representations, understandings, promises or agreements, oral or written, that vary or supplement the conditions of this Agreement that are not contained herein.
- n. EFFECTIVE DATE. The effective date of this Agreement shall be the latest date of execution of this Agreement by all Parties as set forth in Parties' respective signature blocks.

Signed,

City of Portland, Oregon

Citizens' Utility Board

Commissioner Nick Fish
Commissioner of Public Works

Bob Jenks
Executive Director

Date: _____

Date: _____