

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

Whereas, the Oregon Citizens' Utility Board (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 is grounded in least cost/least risk analysis as well as values for the common good including environmental stewardship and low-income consumer protection; and

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, in 2014 CUB and the City of Portland entered into an agreement where CUB has offered 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 provided 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 Commissioner Amanda Fritz is Commissioner-in-Charge of the Portland Water Bureau (PWB); and

Whereas, BES and PWB, together with their residential customers, have benefited from CUB's independent review and expertise on a range of topics.; 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.

Whereas, the City of Portland and CUB wish to have CUB continue to provide outside independent review of PWB and BES on behalf of residential ratepayers; and,

Whereas, the Portland Utility Board and CUB are intended to provide two independent sources of utility analysis and oversight for the public and the Portland City Council.

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. 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 financial and ratemaking analysis as well as assessment of BES and PWB operational and policy decision making.
- b. Attend City Council Work Sessions and participate as appropriate as invited testimony on utility bureau budgets.
- c. Attend public budget meetings and hearings on the proposed utility bureau budgets.
- d. Develop independent analysis of bureau budget and policy proposals on an ongoing basis.
- e. Meet with the City Commissioners in charge of BES and PWB on a regular basis, be available to meet with other Council members as necessary, and meet with the Mayor and mayoral staff as part of development and release of the Mayor's budget.
- f. As necessary, conduct outreach to stakeholders including environmental organizations, non-residential customer groups, civic organizations and large industrial customers; maintain a broad understanding of the potential range of issues affecting the City's utility bureaus.
- g. Participate in the various City budget processes during the cycle of the City's fiscal year by 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.
- h. Monitor the deliberations of the Portland Utility Board in developing recommendations for the Council.
- i. Jointly, with Commissioners-in-Charge, PWB, and BES, develop a billing insert designed to inform residential customers of CUB's work and advocacy on their behalf.
- j. Provide CUB staffing resources to carry out roles and responsibilities of this agreement.
- k. CUB may disseminate the information that it generates related to City affairs through a variety of avenues, including CUB's website and other outlets.

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 PUB meetings, Council workshops, and Council budget meetings.
- b. The City will make bureau directors and staff, as well as Commissioners' 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 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 PWB.

- f. The City will schedule meetings for CUB with the Commissioners-in-Charge of BES and PWB for updates from CUB.

3. MISCELLANEOUS.

- a. **TERM.** The 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 192.311 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 192.311 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-in-Charge of BES

Bob Jenks
Executive Director

Date: _____

Date: _____

City of Portland, Oregon

Commissioner Amanda Fritz
Commissioner-in-Charge of PWB

Date: _____

APPROVED AS TO FORM

City Attorney



CERTIFICATE OF LIABILITY INSURANCE

37444

DATE (MM/DD/YYYY)
8/12/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Liberty Mutual Insurance PO Box 188065 Fairfield, OH 45018	CONTACT NAME: PHONE (A/C, No, Ext): 800-962-7132 FAX (A/C, No): 800-845-3666 E-MAIL ADDRESS: BusinessService@LibertyMutual.com														
INSURED Oregon Citizens' Utility Board DBA Citizens' Utility Board 610 SW Broadway Ste 400 Portland OR 97205	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A : West American Insurance Company</td> <td>44393</td> </tr> <tr> <td>INSURER B : American Fire and Casualty Company</td> <td>24066</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : West American Insurance Company	44393	INSURER B : American Fire and Casualty Company	24066	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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COVERAGES **CERTIFICATE NUMBER:** 50526806 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS															
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	✓		BKW57572726	1/6/2019	1/6/2020	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 15,000</td></tr> <tr><td>PERSONAL & ADV INJURY</td><td style="text-align: right;">\$ Excluded</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ 15,000	PERSONAL & ADV INJURY	\$ Excluded	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000		\$	
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B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			BAA57572726	1/6/2019	1/6/2020	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td style="text-align: right;">\$</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$		\$		\$	
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	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">PER STATUTE</td> <td style="width: 20%;">OTH-ER</td> <td style="width: 60%;"></td> </tr> <tr><td colspan="2"></td><td style="text-align: right;">E.L. EACH ACCIDENT</td><td style="text-align: right;">\$</td></tr> <tr><td colspan="2"></td><td style="text-align: right;">E.L. DISEASE - EA EMPLOYEE</td><td style="text-align: right;">\$</td></tr> <tr><td colspan="2"></td><td style="text-align: right;">E.L. DISEASE - POLICY LIMIT</td><td style="text-align: right;">\$</td></tr> </table>	PER STATUTE	OTH-ER				E.L. EACH ACCIDENT	\$			E.L. DISEASE - EA EMPLOYEE	\$			E.L. DISEASE - POLICY LIMIT	\$
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Portland is listed as Additional Insured Designated Person or Organization per form CG2026.

CERTIFICATE HOLDER City of Portland Jamie Dunphy Senior Policy Director Office of Commissioner Nick Fish 1221 SW 4th - Room 240 Portland OR 97204	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Brittany Cochran <i>Brittany Cochran</i>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

City of Portland
Jamie Dunphy Senior Policy Director
Office of Commissioner Nick Fish
1221 SW 4th - Room 240, Portland OR 97204

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.