

***CANBY UTILITY
REGULAR BOARD MEETING
NOVEMBER 9, 2021
7:00 P.M.***

AGENDA

- I. CALL TO ORDER
- II. AGENDA
 - Additions, Deletions or Corrections to the Meeting Agenda
- III. CONSENT AGENDA
 - Approval of Agenda
 - Approval of Regular Board Meeting Minutes of October 12, 2021, and Special Meeting and Executive Session Minutes of October 13, 2021 (pp. 1-5)
 - Approval of Write-Offs
 - Approval of Payment of Water and Electric Bills
- IV. CITIZEN INPUT ON NON-AGENDA ITEMS
- V. DISCUSSION ITEM Intergovernmental Agreement for South Ivy Road Widening Project – Carol Sullivan, Interim General Manager and Jason Berning, Operations Manager (pp. 6-8)
- VI. DISCUSSION ITEM Options for General Manager Recruitment – Melody Thompson, Board Chair
- VII. BOARD REPORT
 - Chair Comments
 - Board Member Comments
- VIII. STAFF REPORTS

Board Secretary:

 - Employee Recognition Event
- IX. ADJOURN

CANBY UTILITY REGULAR BOARD MEETING MINUTES OCTOBER 12, 2021

Due to COVID-19 Pandemic, the Board of Directors and staff attended the meeting virtually. The public was invited to attend the meeting in person at Canby Utility's office, with measures in place to comply with the Governor's Executive Order regarding social distancing.

Board Present: Chair Thompson; Members Hill, Wagner, Horrax, and Gustafson

Staff Present: Daniel P. Murphy, General Manager; Barbara Benson, Board Secretary; Carol Sullivan, Finance Manager; Jason Berning, Operations Manager; Sue Arthur, Purchasing Agent; and Cindy Dittmar, Customer Service Supervisor

Others Present: Jennifer Joly, Oregon Municipal Electric Utilities

Chair Thompson called the Regular Board Meeting to order at 7:02 p.m.

Chair Thompson presented the meeting agenda for consideration. She asked for any additions, deletions, or corrections to the meeting agenda, and there were none.

Chair Thompson presented the consent agenda for approval. Member Hill made the *MOTION to approve the consent agenda, consisting of the meeting agenda, regular meeting minutes of September 14, 2021, write-offs in the amount of \$1,368.68, payment of the electric and water department bills in the amount of \$2,268,048.62. Member Gustafson seconded, and the motion passed unanimously.

Chair Thompson asked for citizen input on non-agenda items, and there was none.

Operations Manager Jason Berning presented the quarterly reliability report. There was one outage during the reporting quarter that was caused by a homeowner backing their vehicle over a transformer that feed power to their home and the neighbor's home. The Board had no questions.

Finance Manager Carol Sullivan presented the fourth quarter, year-end financials through June 30, 2021. Sullivan reviewed the profit resulting from operations and capital contributions year-to-date twelve months ending June 30, 2021. The electric operating profit was \$2,751,630, plus the capital contributions of \$740,288 for a net income of \$3,491,918. The water operating profit was \$440,505, plus the capital contributions of \$959,218 for a net income of \$1,399,723.

Sullivan then compared the operations with capital contributions to the budget. The electric fund's net income was under budget \$316,432. The year-to-date (YTD) operating revenue is 1.83% or \$249,122 under budget, mainly due to lower small commercial sales. The YTD operating expenses are 9.87% or \$1,331,364 under budget, mainly due to more labor being

capitalized, vacant positions, and lower purchased power costs. The YTD capital contributions are 46.58% or \$235,345 over budget due to more hook-up fees than budgeted. The YTD change in net assets is 8.31% or \$316,432 under budget, mainly due to the land sale to the water fund being less than budgeted. A brief discussion ensued regarding the reason for lower small commercial customer class sales.

The water fund was over budget \$286,689. The YTD operating revenue is 17.41% or \$578,316 over budget, mainly due to higher residential sales. The YTD operating expenses are 7.53% or \$273,948 under budget, mainly due to vacant positions, capitalized labor, no rate study, and depreciation expense. The YTD capital contributions are 32.54% or \$462,633 under budget, mainly due to the timing of contributions of infrastructure from developers. The YTD change in net assets is 25.76% or \$286,689 over budget due to higher sales.

Sullivan then reviewed the cash reserves targeted amount for year-end June 30, 2021 summary. The electric reserves are over the year-end target by \$5,670,728 and over the minimum threshold by \$5,841,755. The water reserves are over the year-end target by \$3,039,674 and over the minimum threshold by \$3,069,163. Sullivan explained the reason for the reserve balances being significantly higher than the year-end targets.

General Manager Dan Murphy reported on the S. Ivy Street widening project. City Administrator Scott Archer was authorized by the City Council to enter into an Inter-governmental Agreement (IGA) with Canby Utility to underground Canby Utility's overhead electrical line within the project area. City Attorney Joe Lindsay drafted the IGA. Under the agreement, the city will take responsibility for the design and bidding of the underground construction project to qualified contractors. The city will also oversee all aspects of the project from start to completion. Upon completion of the project, Canby Utility will approve the contractor's work and assist them in transferring power from the existing overhead line to the new underground line section. Murphy has forwarded the IGA to the board attorney's office for review. He anticipates the final IGA will be presented to the Board at the November board meeting. Murphy added that the recording of the workshop is available on the city's website.

General Manager Murphy reported on the progress of the Combined Service Center Phase 2 construction project. The first punch list walk through was held to determine unfinished work to be addressed. Murphy noted that the list was fairly long, which was expected due to the delivery delays for key components needed to finish the project. Essex Construction has been making great progress at addressing that punch list items. The project is nearing the substantial completion status. Change orders are currently at 8.8% of the total project costs. Murphy said that the project should be complete in time for the open house that is scheduled for October 29.

Murphy reported that he will be on vacation October 14 and returns on October 28.

Chair Thompson asked for an update on the open house planning. Board Secretary Barb Benson reviewed activities planned for that day.

Canby Utility
Regular Board Meeting Minutes
October 12, 2021
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Member Hill made the *MOTION to adjourn the meeting. Member Wagner seconded, and the motion passed unanimously.

There being no further business, the meeting was adjourned at 7:20 p.m.

Melody Thompson, Chair

David Horrax, Member

Tim Gustafson, Member

Robert Hill, Member

Todd Wagner, Member

Barbara Benson, Board Secretary

***CANBY UTILITY
SPECIAL BOARD MEETING MINUTES
OCTOBER 13, 2021***

Board Present: Chair Thompson; Members Hill, Wagner, Horrax, and Gustafson

Others Present: Ashley Driscoll, Board Attorney

Chair Thompson called the meeting to order at 7:03p.m. Due to COVID-19 Pandemic, the meeting was held virtually.

The Board of Directors entered into Executive Session according to ORS 192.660(2)(f) to discuss exempt public records. Chair Thompson read the Executive Session statement.

The regular meeting was recessed at 7:04 p.m.

The public meeting was reconvened at 7:40 p.m.

Member Wagner made the *MOTION to adjourn the meeting. Member Gustafson seconded, and the motion passed unanimously.

There being no further business, the meeting was adjourned at 7:41 p.m.

Melody Thompson, Chair

David Horrax, Member

Tim Gustafson, Member

Robert Hill, Member

Todd Wagner, Member

Barbara Benson, Board Secretary

***CANBY UTILITY
EXECUTIVE SESSION MINUTES
OCTOBER 13, 2021***

Due to the COVID-19 Pandemic, the Board of Directors attended the meeting virtually.

Board Present: Chair Thompson; Members Hill, Wagner, Horrax, and Gustafson

Others Present: Ashley Driscoll, Board Attorney

The Executive Session was opened at 7:04 p.m. by Chair Thompson pursuant to ORS 192.660(2)(f) for the purpose of discussing exempt public records. There were no staff members present during the meeting.

Member Wagner made the *MOTION to adjourn the executive session. Member Hill seconded, and the motion passed unanimously.

The Executive Session was adjourned at 7:40 p.m.

Melody Thompson, Chair

David Horrax, Member

Tim Gustafson, Member

Robert Hill, Member

Todd Wagner, Member

Barbara Benson, Board Secretary

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY UTILITY BOARD
RELATED TO UNDERGROUNDING OF ELECTRIC LINES ALONG SOUTH IVY STREET IN CANBY, OREGON

This Intergovernmental agreement (IGA) is made on the date all required signatures have been obtained, between the City of Canby (herein referred to as "City") and Canby Utility Board (herein referred to as "CUB"), pursuant to ORS Chapter 190.

RECITALS

WHEREAS, Clackamas County (herein referred to as "County") currently owns and maintains South Ivy Street in Canby, Oregon; and

WHEREAS, the City and the County entered into an intergovernmental agreement for construction of street improvements and eventual transfer of Ivy Street to the City; and

WHEREAS, CUB currently has power poles, overhead electric lines, and other electrical facilities in the South Ivy Street Right-of-way ("ROW") which need to be moved for the construction of said County street improvements; and

WHEREAS, CUB's moving of the power poles, overhead electric lines, and other electrical facilities currently in the County ROW has associated costs and liabilities that would be borne by CUB; and

WHEREAS, the City desires to have these electrical facilities and lines placed underground instead of just moved; and

WHEREAS, CUB is amenable to the undergrounding of electrical lines and facilities if the costs above and beyond the moving of the poles, overhead lines and facilities are paid by the City.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and CUB hereby agree as follows:

1. City Obligations

- A. The City will assume all responsibility and control of the design of the underground lines, bidding out the project in accordance with Oregon Contracting Law, selecting a contractor, and payment of all project costs related to the construction of the subject underground electric line.
- B. The City will submit to CUB for approval the engineered design for the new underground electric line. City will obtain such approval prior to going out for bid on the project. CUB will not unreasonably withhold approval of the engineered design of the project.
- C. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, hold harmless, and defend CUB, its officers, board members, agents, and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by: (i) the negligent or willful acts or omissions of the City or its officers,

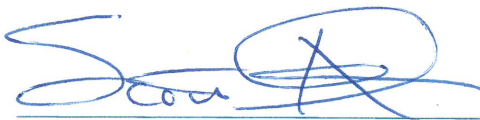
elected officials, employees, agents, or its subcontractors or anyone over which the City has a right to control regarding this project; or (ii) the negligent acts or omissions of CUB staff in rendering to City the technical assistance regarding the undergrounding of the electrical line and facilities, as described in Section 2(A), below.

2. CUB Obligations

- A. CUB will provide, at CUB's expense, technical assistance from senior staff to assist the City's engineering design team and project manager regarding the undergrounding of electrical lines and facilities. The scope of CUB's participation will be limited to assisting and advising during design, giving approval of design (such approval will not be unreasonably withheld), providing supervision and inspection throughout construction, and other such assistance. CUB's intentions in contributing this "free assistance" are aimed at providing "an additional layer of supervision" in a cooperative spirit to assist the City in achieving successful completion of the project—including avoiding delays and cost over-runs, and assisting in any other way possible to help the City achieve timely project success.
- B. CUB agrees that at all times during this project, any CUB employees who assist or otherwise work on this project will be covered by Worker's Compensation insurance.
- C. Within 30 days of completion and approval of the underground electric line and electrical facilities, CUB will remit a lump sum payment to the City in the amount of three hundred ten thousand dollars (\$310,000). This payment serves to reimburse the City in full for CUB's identified avoided costs associated with Clackamas County's original Ivy Street Improvements project requirements, to relocate the existing overhead electric line, the costs of which CUB would have solely borne.
- D. CUB will handle all aspects of removal of the overhead electric poles, conductor, and other appurtenances as necessary for the removal of the original overhead electric line that is subject to Clackamas County's Ivy Street Improvement project.
- E. CUB will promptly schedule and coordinate with Clackamas County the removal of the existing overhead electric line upon the completion, inspection, approval, and cutting-over (energizing and integration of the new underground line) of the new line into CUB service.
- F. CUB will at all times own the electric line and other electrical facilities used in the project. As such, CUB's insurance will continuously cover their property.
- G. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, and except as provided in Section 1(C)(ii), CUB agrees to indemnify, hold harmless, and defend the City, its officers, elected officials, agents, and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of CUB or its officers, board members, employees, agents, or its subcontractors or anyone over which CUB has a right to control regarding this project.

- 3. Term. The agreement is effective upon signing and will remain in effect until the underground electrical lines and facilities along South Ivy Street between 1st and 13th Avenues are constructed and approved, the remaining overhead electrical lines, poles, and facilities are removed, and payment remitted, unless this agreement is otherwise terminated.

4. Termination. The City and CUB, by mutual written agreement, may terminate this IGA at any time. Any early termination of this agreement shall not prejudice any rights of obligations accrued to the parties prior to termination. Any costs or liabilities associated with the project will be worked out and agreed upon in writing prior to early termination of this agreement.
5. Limitations. The agreement doesn't replace or remove any existing rights or obligations either party has independently with the County regarding the Ivy Street Improvement project. Neither party intends that this agreement benefit, or create any right or cause of action in, or on behalf of, any other person or entity other than the City and CUB. No party shall have the right to assign its interest in this agreement to any third party for any reason without the prior written consent of the other party.
6. Applicable Law. The agreement shall be construed according to the laws of the State of Oregon.
7. Severability. If any provision of this agreement is found or held to be unconstitutional, illegal, or unenforceable, this agreement nevertheless shall remain in full force and effect and the offending provisions shall be stricken.
8. Independent Contractor. The City and CUB shall be deemed independent contractors for the purposes of this agreement. No representative, agent, employee, or contractor of one party shall be deemed to be a representative, agent, employee, or contractor for the other party. Nothing in this agreement is intended, nor shall it be construed, to create any relationship between the parties, such as principal and agent, partnership, joint venture, or any similar relationship under law.



Scott Archer, Canby City Administrator

10/12/2021

Date

Dan Murphy, Canby Utility Board General Manager

Date