



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Mital, Helgeson, Manning and Simpson
FROM: John Brown, Board President
DATE: February 4, 2014
SUBJECT: Amended GM Employment Agreement
OBJECTIVE: Board Action

Background

Over the last year, the Board has become increasingly sensitive to its need to revisit the General Manager's employment agreement.

The Board's motivation is two-fold; 1) to ensure the terms of the agreement continue to be up-to-date and enforceable, and 2) to limit EWEB's exposure to disruption in executive leadership by offering terms of employment which are competitive with other utilities, specifically power utilities, in the northwest.

It was brought to the Board's attention that the terms related to the continuation of health insurance benefits upon termination of the agreement could not be executed as written since the language did not comport with benefits plan provisions. The proposed agreement has been revised to include language which details the specific conditions under which the General Manager would continue to have access to EWEB health insurance plans.

For some time, the Board has suspected the General Manager's salary has fallen below a rate which would be considered competitive among northwest utilities. At the time of the GM's original hire in 2010, the Board's decision was to offer a salary equal to that of the departing General Manager which was understood to be less than the rate being paid by northwest comparators. It was the Board's intent to revisit the salary, conditioned upon one year's satisfactory performance. However, in years 2011, 12 and 13, as EWEB engaged in making considerable budget reductions, the General Manager declined any salary adjustment broadening the suspected salary gap. It also merits mention that the scope of the General Manager's role and responsibilities has increased with the elimination of an Assistant General Manager position in 2013.

While it does not articulate a specific salary, the proposed agreement describes a methodology to determine an appropriate competitive salary rate for the Board's consideration with the potential for the Board to adjust the General Manager's salary conditioned upon the successful completion of his next scheduled annual performance review in April 2014. The proposed agreement also includes language which enables the General Manager's compensation to be reviewed annually as an accompaniment to his annual performance review.

Finally, the term of the agreement is now proposed to be from February 4, 2014 through December 31, 2017 and now also includes a requirement that either party provide notification if its intent is not to renew the agreement which eliminates the risk that EWEB would be left with an executive leadership void while a search for a replacement occurs.

Recommendation

It is this Commissioner's recommendation that the Board adopt the proposed General Manager's Amended Agreement as presented.

GENERAL MANAGER
AMENDED EMPLOYMENT AGREEMENT

THIS AMENDED AGREEMENT is made by and between Eugene Water & Electric Board, a municipal utility (hereinafter referred to as "EWEB"), and Roger J. Gray (hereinafter referred to as "General Manager"). This Amended Agreement supersedes and replaces the original agreement between EWEB and the General Manager that was effective April 30, 2010.

RECITALS

EWEB, by and through its Board of Commissioners, and the General Manager, personally, agree that the General Manager shall continue to be employed by EWEB as the EWEB General Manager, subject to the terms and conditions stated herein.

AGREEMENTS

The parties hereby agree to the following:

The General Manager shall be employed as an "at will" employee of EWEB. The General Manager shall devote substantially all professional attention to rendering services as General Manager.

A. Term of Amended Agreement.

1. The term of this Amended Agreement shall be from February 5, 2014 until December 31, 2017, unless terminated earlier by either party. In the event of continuing employment after December 31, 2017, this Amended Agreement may be renewed annually by mutual agreement.

2. Each party shall provide the other 180 days notice of intent to allow the contract to expire or in the alternative to engage in good faith negotiation for renewal of the Amended Agreement in accordance with subsection A.1. Such notice of intent to allow expiration or engagement in good faith negotiation does not waive any rights held by either party as provided in Section E.

B. Salary.

1. The General Manager's base salary shall be \$ 207,268 per year effective upon execution of this Amended Agreement.

2. Subject to and conditioned upon a finding of continued satisfactory job performance as determined by the Board of Commissioners after evaluation for the General Manager's performance through the end of 2013, the General Manager's salary shall be adjusted to a rate to be

determined by the Board from data derived from a custom survey and/or as reported by published third-party survey(s) indicating the most recent salary and other compensation information of comparative northwest power utilities and taking into consideration utilities with similar revenue and customer classes. The adjustment will be effective on the first full-pay period following April 30, 2014, the General Manager's 4th-year anniversary date.

3. Following April 30, 2014, the General Manager's base salary shall be reviewed annually based on the prior calendar year's performance and in accordance with EWEB pay survey and compensation practices. It is intended that the General Manager's salary will be kept competitive with the public utility industry and comparative northwest power utilities as determined by the Board in the manner of paragraph B2 above.
4. If the Board elects to award any Merit increase for the General Manager's salary, it will be based upon the total performance assessment from the particular performance period. The effective date of any earned merit will be applied on the first pay period following Board authorization, or as otherwise established by the Board. The Board has discretion to approve or not approve a merit increase.
5. After April 30, 2014, as determined under the Board's annual performance review (Section D), the General Manager may receive an annual one-time award in lieu of or in addition to and separate from the base salary adjustment provided in Section B3 or the merit increase, if any, authorized in accordance with Section B4.

C. Benefits.

EWEB shall provide the General Manager with the same or similar fringe benefits received by department managers who report to him (Summary of Benefits attached), and shall also receive the following benefits:

The General Manager shall continue to accrue vacation time in accordance with EWEB's established accrual schedule, with accruals having commenced at the 15-year rate as negotiated at the time of the General Manager's original employment date of April 30, 2010. The General Manager shall continue to move to the next step on the vacation accrual schedule on his anniversary date, per usual practice.

D. Performance Review.

EWEB's Board of Commissioners shall conduct an annual General Manager's performance review based upon the Board's General Manager Performance Process (GM Performance Process: Goal Setting, Performance and Salary Adjustments), which is usually conducted by the end of the first quarter of the calendar year. Performance goals are subject

to adjustment and modification by the Board.

E. Termination.

This Amended Agreement may be terminated under any of the following circumstances:

1. Mutual consent of the parties set forth in writing.
2. EWEB, upon majority vote of the Board of Commissioners, may terminate the contract for just cause. If just cause exists EWEB shall have no responsibility to pay the General Manager any compensation after the termination date. Definition of Just Cause: For purposes of this Amended Agreement, "just cause" shall consist of any one of more of the following: (a) any act of fraud by the General Manager that is determined by investigation to the satisfaction of the Board of Commissioners; (b) the General Manager's conviction of a crime involving fraud, embezzlement, or conviction of a felony; (c) the General Manager's gross negligence or willful misconduct or material neglect in the performance of his duties; (d) the General Manager's engagement in acts seriously detrimental to the business or reputation of EWEB; (e) the General Manager's willful failure to abide by EWEB's charter or the policies and regulations of EWEB; (f) the General Manager's willful failure to abide by the policies and directives of the Board; or (g) the General Manager's absence from work for a period in excess of ninety (90) days in any twelve month period, unless such absence is due to the disability of the General Manager or his immediate family member under federal or state guidelines, or is excused by the Board. A resignation by the General Manager at any time after and in connection with the occurrence of an event which would constitute just cause for termination by EWEB shall be considered a termination by EWEB for just cause
3. EWEB, upon majority vote of the Board of Commissioners, may terminate this Amended Agreement without cause at any time for any reason or no reason and with ninety (90) days notice. If EWEB, through its Board of Commissioners, terminates the Amended Agreement under this sub-paragraph, EWEB shall provide the General Manager the equivalent of six (6) months of severance pay (at the then existing annual base salary) in addition to regular compensation prorated through the effective date of termination.
4. If terminated without cause, the General Manager will be separated in the status of an EWEB retiree thus ensuring his continued access

to health insurance through EWEB's post-retirement health insurance plan. The General Manager shall bear the responsibility of the cost of insurance premiums in accordance with the plan requirements at the time of his separation.

5. The General Manager may terminate this Amended Agreement by giving ninety (90) days' written notice, in which case no severance pay will be paid, unless termination is equivalent to a resignation in lieu of non-just cause discharge.

F. Arbitration.

Any controversy or claim arising out of, or relating to, this Agreement (including discipline) or a breach of this Agreement shall be resolved exclusively by arbitration in accordance with the applicable procedural Rules for the Resolution of Employment Disputes of the American Arbitration Association, but with the arbitrator to be selected by mutual agreement of the parties. The arbitrator shall hear the case within sixty (60) days of being appointed, and shall render a written award within thirty (30) days thereafter. The award shall be final and binding and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Costs of retaining the services of an arbitrator shall be split equally by the parties with each party responsible for their own attorney's fees and costs. Arbitration hearings will be conducted in Eugene, Oregon.

G. Successors.

This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns, provided, however, that this Agreement is personal to the General Manager and may not be assigned by the General Manager.

H. Entire Agreement.

This Agreement contains the entire understanding of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

I. Notice Provision.

Any notice required or desired to be given pursuant to this Agreement shall be in writing and either personally delivered by hand or mailed by certified mail, return receipt requested, to the parties at the following address:

EWEB:
Eugene Water & Electric Board
c/o President of the Board
500 East 4th Avenue
P. O. Box 10148
Eugene, Oregon 97440

General Manager:
Roger J. Gray, General Manager
Eugene Water & Electric Board
500 East Fourth Avenue
P.O. Box 10148
Eugene, OR 97440

Such notice shall be deemed to have been given upon personal delivery or 72 hours after deposition in the United States mail.

IN WITNESS WHEREOF, the Eugene Water & Electric Board and the General Manager have executed this General Manager Employment Agreement on the date entered below for an effective date, commencing _____2014.

DATE _____

John Brown, President
Eugene Water & Electric Board

DATE _____

Roger J. Gray