



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Carlson, Mital, Helgeson, Schlossberg and Brown
FROM: Lena Kostopulos, Chief HR Officer
DATE: November 19, 2019
SUBJECT: Amended Employment Agreement for General Manager Lawson
OBJECTIVE: Board Action

Issue

This item is in follow-up to the Board's discussion during the November 5th Meeting regarding amending the terms of the General Manager's employment agreement.

Background

By resolution in October, the Board appointed EWEB Commissioner, John Brown as a liaison to work with Board General Counsel, Eric DeFreest and me to facilitate the Board's review and discussion of revisions to employment terms as proposed by General Manager, Frank Lawson.

During the Public Session of the November meeting, Commissioner Brown facilitated the Board's discussion of each item included in General Manager Lawson's proposal. The discussion concluded with the Board's direction that General Counsel DeFreest and I work together to prepare a draft agreement amending the terms of the General Manager's employment consistent with the Board direction provided. The direction included that the matter should appear as an item on the December 3, 2019 Board Meeting Agenda.

Discussion

In a November 8th email communication from me, President Carlson and Commissioner Brown were provided an opportunity to review the details of each proposed revision and to offer any correction. The attached draft agreement, prepared by General Counsel DeFreest, is presented for the Board's consideration and potential adoption.

Recommendation

There is no staff or management recommendation. The matter is at the Board's discretion.

Requested Board Action

I am requesting that the Board adopts the amended agreement as presented *or* provides further direction.



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Carlson, Mital, Helgeson, Schlossberg and Brown
FROM: Frank Lawson, General Manager
DATE: December 3, 2019
SUBJECT: Amended General Manager Contract Agreement
OBJECTIVE: Board Action

Issue

The General Manager has reviewed and concurs that the Amended General Manager Contract Agreement achieves the goals as proposed and discussed on September 3, 2019.

Background

On September 3, 2019, EWEB Commissions approved a motion authorizing EWEB's Chief Workforce Officer to work with legal counsel and a Board Liaison, John Brown, on amendments to the General Manager Employment Agreement for potential future approval by the Board.

Discussion

Following review of the presented draft, the General Manager believes that the amended contract is consistent with Board Policy EL-4, Compensation and Benefits, with the intent of remaining competitive with provisions that account for both market position within the public utility industry and personal performance. All amendments are consistent with EWEB policy, where applicable, and/or are comparable to the terms received by General Managers of comparative northwest public power utilities.

Action

Should the Board take Action to approve the Amended General Manager Employment Agreement, as presented, the General Manager intends to also ratify the amended agreement.

AMENDED
GENERAL MANAGER
EMPLOYMENT AGREEMENT

This AMENDED AGREEMENT is made by and between Eugene Water & Electric Board, a municipal utility (hereinafter referred to as "EWEB"), and Frank Jay Lawson (hereinafter referred to as "General Manager").

RECITALS

EWEB, by and through its Board of Commissioners, and the General Manager, personally, agree that the General Manager shall be employed by EWEB as the EWEB General Manager, subject to the terms and conditions stated herein. The prior Agreement dated June 26, 2016, is hereby superseded and this Amended Agreement shall prospectively comprise the continuing terms and conditions of employment.

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 the effective date as identified in Section J until December 31, 2028, unless terminated earlier by either party. In the event of continuing employment after December 31, 2028, this Amended Agreement may be renewed annually by mutual agreement.
2. Each party shall provide the other 180 days written 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 \$~~250,000~~ 311,827.00 per year effective at the beginning of the first full pay period following execution of this Amended Agreement. ~~upon execution of this Agreement.~~
2. In addition to base salary, EWEB ~~shall~~ has ~~established~~ an executive 401(a) defined plan for the benefit of the General Manager. ~~promptly after the effective date of hire. EWEB contributions to the 401(a) plan will commence~~

~~as part of the first full payroll issued following the establishment of the 401(a) plan.~~ EWEB shall fund a Mandatory Employer Contribution to this executive 401(a) defined plan for the benefit of General Manager in the amount of \$10,000 per year, contributed bi-weekly. The Mandatory Employer Contributions shall become 20%, 40%, 60%, 80%, and fully vested on the first, second, third, fourth, and fifth anniversary of the original effective employment date of June 26, 2016~~this Agreement~~, respectively, except as noted in Section E. The General Manager irrevocably elects to have a \$20,000 (twenty thousand dollar) annual Mandatory Employee Contribution drawn from his earned salary and made to the 401(a) which will be remitted by the employer (the Pick-Up) on a pre-tax basis as an agreed-upon form of deferred compensation. In order to effect this election, EWEB agrees to deposit the Pick-up amount on General Manager's behalf to the 401(a) Plan on a *pro rata* bi-weekly basis as part of its regular payroll processing. The Board may modify the Pick-up amount if the cumulative contributions to the 401(a) are projected to exceed the 401(a) limits adopted by the Internal Revenue Service for any given tax year. ~~For the 401(a) Plan year 2016, the Mandatory Employer Contribution and Mandatory Employee Contributions will be prorated to reflect the number of calendar months of service (six-twelfths) expected from the General Manager because of the mid-calendar-year effective hiring date.~~

3. For so long as a majority of the currently-elected Board of Commissioners serve on the EWEB Board, ~~the~~ General Manager's base salary shall be ~~adjusted~~reviewed annually in January using the Consumer Price Index (CPI) escalator applied to non-represented EWEB employees, but is limited to a minimum of 2% (two percent) escalation and a maximum of 4% (four percent) escalation as applied to the prior year's base salary at the close of the previous calendar year. ~~The annual adjustment shall be effective at the beginning of the first full pay period of the new calendar year. For purposes of this subsection, a New Board takes office in the event that three (3) of the five (5) currently-seated EWEB Commissioners no longer hold office as EWEB Commissioners. Upon election of a New Board, this Amended Agreement shall continue in full force except that neither the CPI escalator nor the minimum/maximum percentages shall be prospectively applied to the General Manager's annual base salary adjustment unless ratified by the New Board.~~ 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 and water utilities ~~as determined by the Board using 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. Annual base salary adjustments will be effective on the first full pay period following May 1st of each year.~~
4. ~~If the Board elects to award any merit increase to base salary or lump-sum payment after conducting an annual review, it will be based upon the prior calendar year's performance assessment. 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 award based upon the General Manager's prior calendar year's performance assessment and upon the average merit award issued to non-represented EWEB employees. The Board may implement any such award by increase to base salary or lump sum payment. The timing of merit award under this provision shall coincide with the timing of non-represented EWEB employee merit process. 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.~~

5. During the term of this Employment Amended Agreement, in the discretion of the Board, the General Manager may receive one or more awards ~~in lieu of or~~ in addition to ~~and or~~ separate from the base salary adjustment provided in Section B.3 or the merit increase award, if any, authorized in accordance with Section B.4.

C. Benefits.

EWEB shall provide the General Manager with the same or similar fringe benefits received by other EWEB managers (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 7-year rate as negotiated at the time of original employment on June 26, 2016. The General Manager shall continue to move to the next step on the vacation accrual schedule on the General Manager's anniversary date, per usual practice. ~~As long as the General Manager uses at least eighty (80) vacation hours per year, there will be no maximum accrued limit of unused vacation hours eligible for lump-sum payment (at the then existing annual base salary rate) upon termination of this Agreement.~~ The maximum vacation accrual is 240 hours. At the end of each calendar year, if the General Manager has used at least 80 hours of vacation within the calendar year, the General Manager will receive a lump-sum payout for unused vacation above the 240 maximum. Vacation hours available for payout will be at the General Manager's regular straight time equivalent rate of pay. The payout will be included in the first payday of the succeeding calendar year. If the General Manager has not used 80 hours or more of vacation within the calendar year, vacation accruals above 240 hours at the end of the calendar year will be forfeited. Vacation leave donations do not count toward the 80 hours of required vacation usage for purposes of payout eligibility. Upon termination of EWEB employment, in this position, the General Manager will receive a lump-sum payment (at the then existing annual base salary rate) for all accumulative vacation without application of the 240 hour maximum.

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 to occur in April of each year to coincide with the reporting of the utility's final results for the previous calendar year.~~

Performance goals are subject to adjustment and modification by the Board.

E. Termination.

This 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 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 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. If separation from employment occurs under circumstances of this subsection E.2., the General Manager shall be entitled to regular compensation prorated through the effective date of termination and any vested Mandatory Employer Contributions made to the executive 401(a) defined plan as established by Section B.2.
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 written notice. If EWEB, through its Board of Commissioners, terminates the Agreement under this sub-paragraph, EWEB shall provide the General Manager the equivalent of ~~six~~^{sixteen} (~~6~~¹²) months of severance pay (at the then existing annual base salary) in addition to regular compensation prorated through the effective date of termination and employer contributions made to an executive 401(a) defined plan for the benefit of General Manager prior to the effective termination date will become fully vested.

4. If terminated without cause, the General Manager will be separated in the status of an EWEB retiree thus ensuring continued access to health insurance through EWEB's post-retirement health insurance plan, and other retiree benefits. The General Manager shall bear the responsibility of the cost of insurance premiums in accordance with the plan requirements at the time of employment separation.
5. The General Manager may terminate this 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.
6. If the General Manager separates from employment prior to June 26, 2021~~the fifth anniversary of this Agreement~~, then EWEB shall be entitled to retain all non-vested contributions, including non-vested interest proceeds, held in the executive 401(a) plan.

F. Arbitration.

Any controversy or claim arising out of, or relating to, this Amended Agreement (including discipline) or a breach of this Amended 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 Amended Agreement shall be binding upon the parties hereto, their heirs, successors and assigns, provided, however, that this Amended Agreement is personal to the General Manager and may not be assigned by the General Manager.

H. Entire Agreement.

This Amended 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 Amended 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:
Frank Jay Lawson, 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.

J. Contract Execution.

IN WITNESS WHEREOF, the Eugene Water & Electric Board and the General Manager have executed this Amended General Manager Employment Agreement on the date entered below for an effective date, commencing ~~June 26,~~ December 14, 2019.

DATE: _____

AMENDED
GENERAL MANAGER
EMPLOYMENT AGREEMENT

This AMENDED AGREEMENT is made by and between Eugene Water & Electric Board, a municipal utility (hereinafter referred to as "EWEB"), and Frank Jay Lawson (hereinafter referred to as "General Manager").

RECITALS

EWEB, by and through its Board of Commissioners, and the General Manager, personally, agree that the General Manager shall be employed by EWEB as the EWEB General Manager, subject to the terms and conditions stated herein. The prior Agreement dated June 26, 2016, is hereby superseded and this Amended Agreement shall prospectively comprise the continuing terms and conditions of employment.

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 the effective date as identified in Section J until December 31, 2028, unless terminated earlier by either party. In the event of continuing employment after December 31, 2028, this Amended Agreement may be renewed annually by mutual agreement.
2. Each party shall provide the other 180 days written 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 \$311,827.00 per year effective at the beginning of the first full pay period following execution of this Amended Agreement.
2. In addition to base salary, EWEB has established an executive 401(a) defined plan for the benefit of the General Manager. EWEB shall fund a Mandatory Employer Contribution to this executive 401(a) defined plan for the benefit of

General Manager in the amount of \$10,000 per year, contributed bi-weekly. The Mandatory Employer Contributions shall become 20%, 40%, 60%, 80%, and fully vested on the first, second, third, fourth, and fifth anniversary of the original effective employment date of June 26, 2016, respectively, except as noted in Section E. The General Manager irrevocably elects to have a \$20,000 (twenty thousand dollar) annual Mandatory Employee Contribution drawn from his earned salary and made to the 401(a) which will be remitted by the employer (the Pick-Up) on a pre-tax basis as an agreed-upon form of deferred compensation. In order to effect this election, EWEB agrees to deposit the Pick-up amount on General Manager's behalf to the 401(a) Plan on a *pro rata* bi-weekly basis as part of its regular payroll processing. The Board may modify the Pick-up amount if the cumulative contributions to the 401(a) are projected to exceed the 401(a) limits adopted by the Internal Revenue Service for any given tax year.

3. For so long as a majority of the currently-elected Board of Commissioners serve on the EWEB Board, the General Manager's base salary shall be adjusted annually in January using the Consumer Price Index (CPI) escalator applied to non-represented EWEB employees, but is limited to a minimum of 2% (two percent) escalation and a maximum of 4% (four percent) escalation as applied to the base salary at the close of the previous calendar year. The annual adjustment shall be effective at the beginning of the first full pay period of the new calendar year. For purposes of this subsection, a New Board takes office in the event that three (3) of the five (5) currently-seated EWEB Commissioners no longer hold office as EWEB Commissioners. Upon election of a New Board, this Amended Agreement shall continue in full force except that neither the CPI escalator nor the minimum/maximum percentages shall be prospectively applied to the General Manager's annual base salary adjustment unless ratified by the New Board. It is intended that the General Manager's salary will be kept competitive with the public utility industry and comparative northwest power and water utilities with similar revenue and customer classes.
4. The Board has discretion to approve or not approve a merit award based upon the General Manager's prior calendar year's performance assessment and upon the average merit award issued to non-represented EWEB employees. The Board may implement any such award by increase to base salary or lump sum payment. The timing of merit award under this provision shall coincide with the timing of non-represented EWEB employee merit process. 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.
5. During the term of this Amended Agreement, in the discretion of the Board, the General Manager may receive one or more awards in addition to or separate from the base salary adjustment provided in Section B.3 or the merit award, if any, authorized in accordance with Section B.4.

C. Benefits.

EWEB shall provide the General Manager with the same or similar fringe benefits received by other EWEB managers (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 7-year rate as negotiated at the time of original employment on June 26, 2016. The General Manager shall continue to move to the next step on the vacation accrual schedule on the General Manager's anniversary date, per usual practice. The maximum vacation accrual is 240 hours. At the end of each calendar year, if the General Manager has used at least 80 hours of vacation within the calendar year, the General Manager will receive a lump-sum payout for unused vacation above the 240 maximum. Vacation hours available for payout will be at the General Manager's regular straight time equivalent rate of pay. The payout will be included in the first payday of the succeeding calendar year. If the General Manager has not used 80 hours or more of vacation within the calendar year, vacation accruals above 240 hours at the end of the calendar year will be forfeited. Vacation leave donations do not count toward the 80 hours of required vacation usage for purposes of payout eligibility. Upon termination of EWEB employment, in this position, the General Manager will receive a lump-sum payment (at the then existing annual base salary rate) for all accumulative vacation without application of the 240 hour maximum.

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), to occur in April of each year to coincide with the reporting of the utility's final results for the previous calendar year. Performance goals are subject to adjustment and modification by the Board.

E. Termination.

This 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 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 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. If separation from employment occurs under circumstances of this subsection E.2., the General Manager shall be entitled to regular compensation prorated through the effective date of termination and any vested Mandatory Employer Contributions made to the executive 401(a) defined plan as established by Section B.2.

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 written notice. If EWEB, through its Board of Commissioners, terminates the Agreement under this sub-paragraph, EWEB shall provide the General Manager the equivalent of twelve (12) months of severance pay (at the then existing annual base salary) in addition to regular compensation prorated through the effective date of termination and employer contributions made to an executive 401(a) defined plan for the benefit of General Manager prior to the effective termination date will become fully vested.
4. If terminated without cause, the General Manager will be separated in the status of an EWEB retiree thus ensuring continued access to health insurance through EWEB's post-retirement health insurance plan, and other retiree benefits. The General Manager shall bear the responsibility of the cost of insurance premiums in accordance with the plan requirements at the time of employment separation.
5. The General Manager may terminate this 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.
6. If the General Manager separates from employment prior to June 26, 2021, then EWEB shall be entitled to retain all non-vested contributions, including non-vested interest proceeds, held in the executive 401(a) plan.

F. Arbitration.

Any controversy or claim arising out of, or relating to, this Amended Agreement (including discipline) or a breach of this Amended 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 Amended Agreement shall be binding upon the parties hereto, their heirs, successors and assigns, provided, however, that this Amended Agreement is personal to the General Manager and may not be assigned by the General Manager.

H. Entire Agreement.

This Amended 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 Amended 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:
Frank Jay Lawson, 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.

J. Contract Execution.

IN WITNESS WHEREOF, the Eugene Water & Electric Board and the General Manager have executed this Amended General Manager Employment Agreement on the date entered below for an effective date, commencing December 14, 2019.

EUGENE WATER & ELECTRIC BOARD

Date: _____ By: _____
Title: _____

Date: _____
Frank Jay Lawson