



## STAFF REPORT

**TO:** Chairman and Board Members  
**FROM:** Mark Foree, General Manager  
**DATE:** October 7, 2012  
**SUBJECT:** General Manager performance review for contract year 2011/2012 and consideration of contract renewal

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### **RECOMMENDATION**

The TMWA Board review the General Manager's performance results for the past contract year and since the current term of the employment contract is expiring, consider renewal of the contract. Attached is a draft contract for the Board to consider.

### **DISCUSSION REGARDING OBJECTIVES**

In October 2011, the Board adopted the following specific objectives that the General Manager would be working to accomplish during the contract year and that the Board would use to evaluate the performance of the General Manager. The following is a brief summary of results (shown in italics).

#### **General Objectives**

- A) Direct the preparation of and propose financial plans, investment strategies, funding plans and adjustments to rates and charges that will continue to keep TMWA in long term financial stability; including preparation of budgets and financial reporting that comply with Nevada Revised Statutes and the Securities and Exchange Commission (SEC).

*Fiscal budgets including the Capital Improvement Plan were prepared and presented to the Board for preliminary and final approval. Regular updates regarding financial picture and investments were presented. Five year financial forecast was completed ahead of a presentation made to Fitch (rating agency) with a very good result of the retention of TMWA's AA- credit rating and removal of the negative watch that had been placed on the rating in 2010 (changed to stable). Moody's and S & P rating agencies also conducted surveillance reviews and retained TMWA's ratings of Aa2 stable (Moody's) and AA- stable (S&P).*

*A rate study was completed by staff and a 3-year rate adjustment proposal was submitted to the Standing Advisory Committee (SAC) and Board. After several public meetings, workshops and a public hearing, the Board approved the rate adjustment proposal.*

- B) Develop proactive communications plans to address upcoming issues (e.g., topics affecting water supply, drought planning, utility integration/consolidation and rate changes) and to keep all stakeholders including the Board, the employees, and the customers informed through a variety of mediums. Respond to media inquiries and provide informational interviews.

*Communications have been delivered through multiple media including newsprint, broadcast interviews, various presentations before local groups, bill print messages, bill inserts, TMWA's e-newsletter, workshops and special events booths. Focus this year has been on water resource and drought planning, responsible water use, water supply and water quality.*

- C) Create a community presence for TMWA through participation in community committees, boards, and networking organizations and by providing presentations and information to these groups; offer Truckee River, Chalk Bluff Plant and/or other informational Tours to the community.

*TMWA staff participates in a multitude of organizations including Rotary, Chambers (Reno and Sparks), EDAWN, WIN and participated in multiple community events including farmers markets, forums, River days, etc. Presentations to organizations like Rotary, the Builders Association of Northern Nevada, and HOA's have touched on many topics including water supply, drought planning, the proposed merger with Washoe County DWR and more. Several public tours were given this year including numerous tours of the Chalk Bluff plant as well as tours of the landscape award winners. TMWA has partnered with the Desert Research Institute to further the cloud seeding efforts of DRI which has an immediate benefit to TMWA and the Reno-Sparks community. TMWA will direct fund this program in conjunction with funding from the WRWC.*

- D) Continue to create a highly productive work environment and a highly motivated employee team by developing, training, retaining and recruiting the highest quality employees.

*TMWA continues to maintain high certification levels for staff, with more certified employees than any utility in the state, and provides both internal and external training opportunities. Management staff participated in emergency response training exercises and was given refresher media training this year.*

- E) Strive for continuous improvements in processes and operations targeting initiatives that will enhance revenues and/or reduce operating costs thus keeping customer rates as low as possible.

*Recent improvements expanding the capacity of the Highland Canal and other energy management initiatives have resulted in outstanding energy savings. In the last 3 years TMWA's annual electric bill has gone from \$7.2 million to \$4.2 million - a savings of*

*\$3.0 million or 42% and in the last fiscal year, water production increased by about 9% while TMWA's annual electric bill was about the same as the previous year. Hydro generation production broke an all-time record by generating 52 million kwh of power and earning a record \$3.5 million in revenue. Bringing many previously outsourced tasks and services in house (primarily in Engineering, Conservation and Communications areas) continues to provide significant savings. Vacated positions have been left unfilled whenever possible.*

### **Specific Objectives**

- 1) Pursue the merger of the water utility function of Washoe County Department of Water Resources (DWR) into TMWA as directed by the Board.

*Detailed financial analysis (TMWA's five year financial forecast) related to the merger was completed in March, 2011. DWR's financial analysis was completed in August, 2011. TMWA completed the draft combined financial model in May, 2011; it was updated in August and sent to the financial advisor (Public Financial Management, PFM) in September. PFM completed review of the combined model on 9/20/11 – only minor changes recommended. Tracking TMWA and DWR financial performance against merger analysis – based on preliminary financial results for FY 2012, both are doing better than anticipated in the merger financial analysis.*

*A large amount of other work has been done this year related to the merger including work on operating plans; capital improvement plans; water quality monitoring plans; land and easement assessments; water rights assessments; extensive work on updating DWR facility charges and ordinances to more closely follow TMWA's to provide for a smooth transition upon merger; work related to the County Bond Bank ordinance; work with the selected bank underwriters regarding potential future bond sale to defease Washoe County DWR publically issued debt; preliminary meeting with State Treasurer's office regarding TMWA assumption of DWR's DWSRF loans upon merger; and work on merger related HR items including post-retirement medical benefit issues.*

- 2) Monitor and participate in Legislative activities during the interim, keep the Board updated and informed regarding legislative matters, and pursue Board direction regarding Legislative issues. Facilitate open communications between legislators and the TMWA Board.

*Made presentations with TMWA chairman and other TMWA staff at two meetings of the Legislative Oversight Committee of the Western Regional Water Commission.*

- 3) Continue to monitor federal legislation for opportunities to obtain funding for a variety of TMWA projects, including TROA.

*Worked with Senator Reid's office to get another \$5,000,000 for TROA implementation (to be shared by 4 TROA parties and the Federal Watermaster's Office) which has been secured this year with \$1,000,000 going to TMWA to reimburse costs related to TROA. Also, \$15,000,000 to acquire water rights (for the City of Reno, City of Sparks and Washoe County to meet the TROA 6,700 AF requirement) was previously requested.*

*Although funding for this item has not yet been secured, I am told that it is still a possibility.*

*Through an interlocal agreement with the WRWC and Washoe County, TMWA received \$180,000 from the WRWC for reimbursement nearly all of TMWA's expenses related to the consolidation analysis.*

*Through another interlocal agreement with the WRWC, TMWA received \$64,000 for reimbursement of a portion of TMWA's expenses for the customer water audit program.*

- 4) Manage financing and funding options to maximize benefits to TMWA customers through investment income strategies and short-term commercial paper programs. Evaluate market conditions for opportunities for bond refinancing(s) to achieve cost savings in compliance with TMWA's Debt Management Policy if market conditions present.

*TMWA's Liquidity Facility (which backs TMWA's Tax Exempt Commercial Paper "TECP" program) with Lloyd's TSB Bank was successfully replaced by Wells Fargo and JP Morgan with reasonable terms given the current credit environment. The number of remarketings have been reduced significantly because of the credit quality of the new banks. TMWA reduced its interest expense by \$550,000 during the last fiscal year as a result of redeeming the last of the 2001A bonds using TECP proceeds and taking advantage of interest rate differentials between long term fixed rate debt and variable rate short term debt. TMWA continues with a well-balanced asset/liability management effort.*

- 5) Update the 5-year Funding Plan and propose Board actions based on the results of the planning cycle updates. Implement Board directions with regard to funding plan outcomes.

*This was completed ahead of the credit rating review by Fitch Ratings.*

- 6) Evaluate the need for adjustment of rates and if deemed necessary, proceed with the rate adjustment process.

*Based on the 5-year funding plan, a 3-year rate adjustment proposal was presented to the Board and after several public meetings, workshops and a public hearing, the Board approved the rate adjustment.*

- 7) Carefully analyze opportunities to acquire water rights and resources in the market in consideration of current inventory and financial constraints. Insure adequate resources are available through TMWA Rule 7.

*Little activity here due to large inventory and local economic conditions that are limiting new business activity.*

- 8) Provide staff support to the Standing Advisory Committee, Truckee Meadows Community Forestry Coalition and the Truckee River Fund (TRF) Advisors and ensure communications regarding TRF projects.

*This was done.*

- 9) Manage and direct activities relative to legal issues, keeping the Board informed on all such matters.

*This was done.*

- 10) Update TMWA Administrative Instructions as required to ensure they are compliant with applicable laws and current practices. Deliver updates to the Board and employees, and implement the changes.

*None were required this year.*

- 11) Successfully complete contract negotiations with IBEW Local 1245 in accordance with TMWA's financial requirements and constraints.

*Successfully completed contract negotiations which resulted in a 3-year contract with IBEW Local 1245 that was approved by the TMWA Board and union membership. Interest Based Bargaining was utilized in the negotiation and the result was a fair and equitable contract that met TMWA's financial requirements and constraints.*

- 12) Minimize cost impacts to customers by maximizing investment and hydroelectric income, pursuing revenue enhancement and collection opportunities, pursuing process improvements and projects that drive savings in TMWA expenses, and actively pursuing grant/low-interest loan funding for projects.

*Hydro plants were operated at 99% availability and produced a record \$3.5 million in revenue. Recent improvements expanding the capacity of the Highland Canal and other energy management initiatives have resulted in outstanding energy savings which has been independently recognized by the American Water Works Association (AWWA). In the last 3 years TMWA's annual electric bill has gone from \$7.2 million to \$4.2 million - a savings of \$3.0 million or 42%. For the second consecutive year, TMWA generated more power from our renewable energy sources than we consumed in our entire operation. In fact, we generated 15% more power than we consumed!*

- 13) Develop a Workforce Strategic Plan to include employee retention and recruitment strategies as well as succession planning strategies.

*This year, TMWA began working on a Workforce Strategic Plan with an emphasis on succession planning. The initial emphasis was to provide training and team building opportunities to employees with the goal of getting more people involved in determining what they want TMWA to look like in the future. Many of TMWA's management team members are expected to retire within the next 5-10 years and there will be a need to train and prepare qualified individuals to move into supervisory/management ranks as*

*we believe that is the best way to move the utility forward and provide continuity for the employees, customers and stakeholders.*

- 14) Develop a policy for integrating a regional perspective into long term planning and development, based upon the assumption that TMWA will become the primary water purveyor for the region.

*See the discussion in item 1. above regarding all the merger related work that has been accomplished this year. Further progress in this area is pending direction from the TMWA Board.*

### **DISCUSSION REGARDING COMPENSATION AND POSSIBLE CONTRACT RENEWAL**

The current term of the General Manager's employment contract is expiring. Should the Board decide to consider renewal of the contract, a draft contract is attached. The draft contract contains only minor changes from the last contract and the compensation and term has been left blank. The last contract was for a three year term at a base salary of \$165,000 per year. The salary has not been changed during the last three years. Should the Board consider renewing the contract, below are some facts related to compensation and term of contract:

- TMWA's 2010 Salary survey showed the median base salary of water utility general managers of the agencies surveyed to be \$195,821 (salaries aged to July 1, 2011). Adjusting that number to July 1, 2012 results in a median salary of \$199,091 (1.67% salary structure adjustment for 1 year based on a report by Fox Lawson & Associates (FLA), TMWA's compensation consultant).
- When updated wage bands were developed (aged to July 1, 2011), the salary midpoint for the general manager wage band was \$173,582. The difference between the two numbers is that the wage band number is developed based on a trend line that is drawn taking into account all TMWA positions surveyed. Adjusting that number to July 1, 2012 results in a median salary of \$176,481 (1.67% salary structure adjustment for 1 year based on a report by FLA).
- TMWA general manager base salary in 2008 was \$179,956.
- Previous TMWA general manager contracts have had terms that have ranged from 3-5 years.
- The prior contract limited annual compensation adjustments (add-to-base plus lump sum) to 10 percent of annual base salary. The draft contract has that same provision.
- TMWA had excellent performance in FY2012 helped by fostering a culture of individual initiative coupled with teamwork a result of close coordination in all functional areas of TMWA operations.

## EMPLOYMENT AGREEMENT

### 1. PARTIES AND RECITALS

This Employment Agreement ("Agreement") is entered into on \_\_\_\_\_, 2012 ("Effective Date") by and between the Truckee Meadows Water Authority, by and through its duly constituted Board of Directors ("TMWA"), a political subdivision of the State of Nevada and a public entity organized pursuant to NRS 277.110, et. seq., and Mark Foree ("Foree"), collectively the "Parties."

- 1.1 TMWA was formed to exercise powers, privileges and authorities to develop and maintain supplies of water for the benefit of the Truckee Meadows community;
- 1.2 TMWA desires to retain the services of Foree as General Manager;
- 1.3 Foree desires employment as General Manager of TMWA; and
- 1.4 The parties desire to enter into an agreement reflecting the terms and conditions under which Foree will be employed by TMWA as its General Manager.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, TMWA and Foree agree as follows:

### 2. EMPLOYMENT

TMWA hereby employs Foree and Foree agrees to serve as the General Manager of TMWA to perform the functions and duties specified in Section 3 for the term specified in Section 5.

### 3. DUTIES/ESSENTIAL JOB FUNCTIONS

3.1 Foree agrees that during the Term of Employment (as defined in Section 5.1) he will hold the office of General Manager of TMWA reporting to TMWA's Board of Directors ("the Board"). Foree agrees to perform faithfully and to the best of his ability such duties and assignments relating to the business of TMWA as the Board of Directors of TMWA shall direct.

3.2 During the Term of Employment Foree shall, except during customary vacation periods and periods of illness, devote his business time and attention to the performance of his duties hereunder and to the business and affairs of TMWA and to promoting the best interests of TMWA. Foree shall not, either during or outside of normal business hours, engage in any activity inimical to the best interests of TMWA. Foree acknowledges that he has ownership interest in a water company in Winnemucca, Nevada, for which he provides occasional services for compensation. Foree agrees to ensure that his ownership and any activities undertaken by Foree in connection with said company shall not interfere with his ability to devote his full time and attention to the business and affairs of TMWA. Except for said services, Foree shall not serve as a consultant to other public or private utilities. Notwithstanding the foregoing, Foree may

engage in charitable or civic pursuits provided that such service or pursuits do not interfere with Foree's obligations under the Agreement.

#### 4. SALARY

TMWA agrees to pay Foree for his services an annual base salary of \_\_\_\_\_ (\$\_\_\_\_\_) ("Base Salary"). Foree will have an opportunity to earn a Base Salary increase and a lump sum award based upon Foree's specific job performance in meeting the mutually agreed upon goals for the previous year. The Board and Foree will meet by December 1, 2012 to set initial performance goals for the 2012-13 fiscal year. The Board shall evaluate Foree's performance and in its sole discretion may determine a performance lump sum award or any salary adjustment in accordance with Section 6 of this Agreement. This adjustment may be made either to the Base Salary or in the form of a lump sum award or as a combination of the two at the sole discretion of TMWA. The total award (addition to Base Salary plus lump sum award) may be up to 10% of Base Salary. Any portion of a salary adjustment granted as a lump sum award shall not become part of Foree's Base Salary for future years.

#### 5. TERM AND TERMINATION

**5.1** The term of this Agreement ("Term of Employment") is \_\_\_\_\_ (\_\_) years beginning on the Effective Date of this Agreement; subject, however, to prior termination as provided herein.

**5.2 Events of Termination** . The Term of Employment, Foree's Base Salary, and any and all other rights of Foree under this Agreement or otherwise as an employee of TMWA may terminate (except as otherwise provided in this Section):

- (a) Upon the death of Foree;
- (b) Upon the disability of Foree (as defined in Section 5.3) immediately upon written notice from either party to the other;
- (c) For Cause (as defined in Section 5.4) immediately upon notice from TMWA to Foree, or at such later time as such notice may specify;
- (d) Upon Foree's 60 days written notice unless the parties subsequently agree to a different notice period; or
- (e) Upon termination by TMWA for any reason other than "For Cause" as defined in Section 5.4.

**5.3 Definition of Disability**. For purposes of Section 5.2, Foree will be deemed to have a "disability" if, for physical or mental reasons, Foree is unable to perform the essential functions of Foree's duties under this Agreement for a period of ninety (90) days. The disability of Foree will be determined by a medical doctor selected by written

agreement of TMWA and Foree upon the request of either party by notice to the other. If TMWA and Foree cannot agree on the selection of a medical doctor, each of them will select a medical doctor and the two medical doctors will select a third medical doctor who will determine whether Foree has a disability. The determination of the medical doctor selected under this Section 5.3 will be binding on both parties. Foree must submit to a reasonable number of examinations by the medical doctor making the determination of disability under this Section 5.3, and Foree hereby authorizes the disclosure and release to TMWA of such determination and all supporting medical records. If Foree is not legally competent, Foree's legal guardian or duly authorized attorney-in-fact will act in Foree's stead, under this Section 5.3, for the purposes of submitting Foree to the examinations, and providing the authorization of disclosure, required under this Section 5.3.

**5.4 Definition of "For Cause".** For purposes of Section 5.2, the phrase "For Cause" means: (a) Foree's breach of this Agreement; (b) Foree's failure to adhere to any written policy of TMWA if Foree has been given a reasonable opportunity to comply with such policy or cure his failure to comply; (c) the appropriation or attempted appropriation of a material business opportunity of TMWA, including attempting to secure or securing any personal profit in connection with any transaction entered into on behalf of TMWA; (d) the misappropriation or attempted misappropriation of any of TMWA's funds or property; or (e) the conviction of, the indictment for or its procedural equivalent, or the entering of a guilty plea or plea of no contest with respect to, a felony, the equivalent thereof, or any other crime with respect to which imprisonment is a possible punishment.

**5.5 Termination Pay.** Effective upon the termination of this Agreement, TMWA will be obligated to pay Foree (or, in the event of his death, his designated beneficiary as defined below) only such compensation as is provided in this Section 5.5, and in lieu of all other amounts and in settlement and complete release of all claims Foree may have against TMWA. For purposes of this Section 5.5, Foree's designated beneficiary will be such individual beneficiary or trust, located at such address, as Foree may designate by notice to TMWA from time to time or, if Foree fails to give notice to TMWA of such a beneficiary, Foree's estate. Notwithstanding the preceding sentence, TMWA will have no duty, in any circumstances, to attempt to open an estate on behalf of Foree, but will act reasonably in ascertaining the whereabouts of Foree's beneficiaries and seeing to it that such beneficiaries are properly paid.

(a) If this Agreement is terminated by either party as a result of Foree's death or disability as determined under Section 5.3, TMWA shall pay Foree his Base Salary accrued through the date of termination plus any accrued unused banked vacation and PTO as set forth in section 8 below.

(b) If this Agreement is terminated by TMWA "For Cause" pursuant to Section 5.2(c) or by Foree pursuant to Section 5.2(d), TMWA shall pay Foree his Base Salary accrued through the date of termination, but not any accrued unused banked vacation and PTO.

(c) If TMWA terminates this Agreement for any reason other than “For Cause” pursuant to Section 5.2(e), TMWA agrees to pay Foree severance pay equal to Foree’s six-month Base Salary.

**5.6 Renewal of Agreement.** In the event TMWA elects not to renew or extend this Agreement or offer some other mutually agreeable contract, TMWA will give Foree six months written notice of its intent not to renew the Agreement. Failure to give such notice on the part of TMWA shall be treated as a termination and Foree will receive severance pay as set forth in Section 5.5(c) above.

**6. PERFORMANCE EVALUATION**

TMWA's Board of Directors will review and evaluate Foree’s performance at least once annually on or within four months of the end of the fiscal year. Foree’s annual salary review and any adjustment to compensation will coincide with the annual performance evaluation timeframes established for all TMWA employees.

**7. RETIREMENT**

**7.1** Subject to applicable laws, TMWA will contribute an amount equal to 6% of Foree’s base salary to a deferred compensation plan on Foree’s behalf.

**7.2** TMWA agrees that Foree will be a member of the Nevada Public Employees Retirement System at TMWA's expense.

**8. PAID TIME OFF**

**8.1** Foree will be granted 40 days of compensated paid time off (“PTO”) each year for personal use, including vacation and illness. Unused PTO may be taken as pay, at any time, or carried over to the next calendar year as set forth in Section 8.2.

**8.2** Accrued but unused PTO will be carried over from year to year. A maximum of 320 PTO hours can be carried over each calendar year. Upon termination of Foree’s employment, Foree will be entitled to full compensation for his accrued, unused PTO, up to a maximum of 320 hours.

**8.3** Banked vacation which Foree has already accrued as of July 1, 2009 will remain in the banked vacation account until used. Such banked vacation time may also be cashed out as pay at any time and upon Foree’s employment termination, except for termination “For Cause” pursuant to Section 5.4.

**9. DUES, SUBSCRIPTIONS AND PROFESSIONAL DEVELOPMENT**

**9.1** TMWA agrees to pay the professional dues, certifications and subscriptions of Foree necessary for his continuation and participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of TMWA.

**9.2** TMWA agrees to pay the travel and subsistence expenses of Foree for professional and official travel and meetings adequate to continue the professional development of Foree as the chief executive of a water utility and to adequately pursue necessary official functions for TMWA. Such travel and subsistence expenses must be approved by TMWA's Chief Financial Officer and submitted to the Chair of the TMWA Board for review. TMWA will also pay for Foree's attendance at conferences, seminars and short courses which are deemed to be of value to TMWA.

**10. EXPENSES, ALLOWANCES AND OTHER BENEFITS**

**10.1** Foree will be paid a fixed sum of \$750 per month for the use of his personal vehicle for TMWA business, with future increases to be determined by TMWA as a part of the budget cycle.

**10.2** TMWA agrees to pay Foree a fixed sum of \$150 per month as a cell phone/personal digital assistance (PDA) allowance.

**10.3** TMWA will pay all costs of any fidelity or other bonds required of Foree by virtue of his employment with TMWA.

**10.4** Foree will be provided all other benefits given to management employees, such as observed paid holidays, group health coverage (medical, dental, vision), short and long term disability.

**11. TEAM BUILDING, GOALS AND RETREATS**

TMWA agrees that annually TMWA's Board of Directors will schedule and participate in the following:

- (a) A goals-setting session to develop objectives for TMWA; and
- (b) A session to develop specific criteria to serve as the basis for Foree's pay-for-performance clause set forth in Section 6 of this agreement. This session will be held within four months of the end of each fiscal year of the Term of Employment.

**12. MISCELLANEOUS**

**12.1** The captions in this agreement are not part of the provisions hereof, are merely for the purpose of reference and shall have no force or effect for any purpose whatsoever, including the construction of the provisions of this Agreement, and if any caption is inconsistent with any provisions of this Agreement, such provisions shall govern. The Recitals are part of this Agreement.

**12.2** This Agreement is made in, and shall be governed by and construed in accordance with the internal laws of the State of Nevada.

**12.3** This Agreement contains a complete statement of all of the arrangements between the parties with respect to the subject matter hereof. There are no representations,

agreements, arrangements or understandings, oral or written between the parties relating to the subject matter of this Agreement, which are not fully expressed in this Agreement.

**12.4** This Agreement may not be waived, changed, modified or discharged orally, but only by an agreement in writing signed by the party against whom any waiver, change, modification or discharge is sought.

**12.5** All notices given hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested as such other address as TMWA and Foree designate. Each such notice shall be deemed to be given on the date received at the address of the addressee.

**12.6** If litigation over this Agreement is initiated in any court, the Parties agree the proper venue is Washoe County, Nevada. Foree irrevocably (i) waives and agrees not to assert in any such action, suit or other proceeding that he is not personally subject to the jurisdiction of such courts, that the action, suit or other proceeding is brought in an inconvenient forum or that the venue of the action , suit or other proceeding is improper, (ii) waives personal service of any summons, complaint or other process and (iii) agrees that the service thereof may be made by certified or registered mail directed to Foree at his address for purposes of notices hereunder. Should Foree fail to appear or answer within the time prescribed by law, he shall be deemed in default and judgment may be entered by TMWA against him for the amount or other relief as demanded in any summons, complaint or other process so served.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first hereinabove written.

**TMWA**

**GENERAL MANAGER**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Mike Carrigan, Chairman

By: \_\_\_\_\_  
Mark W. Foree