



STAFF REPORT

TO: TMWA Board of Directors
FROM: Jessica Atkinson, Human Resources Manager
 Jeff Tissier, Chief Financial Officer
DATE: December 3, 2014
SUBJECT: **Discussion and action on adoption of Resolution No. 220 approving the §115 Other Post-Employment Benefit Trust (§115 Trust) for the incoming Washoe County employees**

RECOMMENDATION

Staff recommends the TMWA Board adopt the Resolution to form a new §115 Other Post-Employment Benefit Trust (§115 Trust) for the incoming Washoe County employees.

DISCUSSION

The Truckee Meadows Water Authority (TMWA) and Washoe County Water Utility Division (WCWUD) employees both enjoy post-employment medical and life insurance benefits. TMWA will be onboarding 25 Washoe County employees who have post-employment benefits provided by a Washoe County Post-Retirement Medical Plan and Trust (§115). The number 115 refers to the Internal Revenue Code that this trust is formed under. TMWA formed a §509-c-9 trust for purposes of providing post-retirement medical and life insurance benefits for employees who transferred from Sierra Pacific Power Company (SPPCo) as a result of the purchase of the water assets from SPPCo by the City of Reno, the City of Sparks and Washoe County . TMWA utilized this form of trust because of assets being transferred from a private industry trust to a municipal trust. The contemplated water utility consolidation will see municipal trust assets being transferred to a new municipal trust.

The reasons for establishing a new trust for transferring employees from Washoe County are multifaceted. First there is no precedent for transferring trust assets of a §115 trust into a §509-c-9 trust and respective trust attorneys believe this may be difficult to achieve under current tax law. Second the vesting and benefits are significantly different between transferring Washoe County employees/beneficiaries and TMWA employees/beneficiaries where modifying the existing §509-c-9 trust document would create more complex administration for just one plan. Third, the funding level of the §509-c-9 trust is much different than the funding level of the proposed new §115 Trust which would reflect the funding level of the existing Washoe County Post-Retirement Medical Plan and Trust (§115).

Based upon the aforementioned challenges it was concluded by respective staffs of Washoe County and TMWA, in consultation with respective trust attorneys, that a new TMWA Post-Employment Benefit Trust (§115) be established and used solely for the benefit of transferring employees who are participants in the mirror trust of Washoe County. Washoe County staff had the opportunity to review the attached TMWA §115 Trust document to ensure that the TMWA§115 Trust mirror benefits and conditions of vesting in the Washoe County §115 Trust.

**TRUST AGREEMENT
FOR
TRUCKEE MEADOWS WATER AUTHORITY
OPEB TRUST FUND
EFFECTIVE JANUARY 1, 2015**

ARTICLE I

Purpose of the Trust

This Trust is intended to provide the means to fund all or a portion of the post-retirement benefits to be provided to those former employees of Washoe County, Nevada who became employees of Truckee Meadows Water Authority as a result of the merger of water utility services between Washoe County, Nevada and Truckee Meadows Water Authority which is to be effective on or about January 1, 2015. The Trust is intended to qualify as governmental trust established to provide an essential governmental function under Section 115 of the Internal Revenue Code of 1986, as amended, and is created pursuant to Nevada Revised Statutes § 287.017. The name of this Trust shall be the Truckee Meadows Water Authority OPEB Trust Fund.

ARTICLE II

Definitions

When used in this Trust, the following words shall have the following meanings, unless the context clearly indicates otherwise:

2.1 “Benefit Plan” means each of the post-employment welfare benefit plans maintained by TMWA that are listed on Exhibit A hereto, which may be amended from time to time.

2.2 “Benefits” mean those premiums paid by the Trust on behalf of a Participant (as more fully described in Article IV below) for the purpose providing the Participant with post-retirement benefits under one or more of the Benefit Plans.

2.3 “CBA” means the current collective bargaining agreement entered into between TMWA and the bargaining unit referred to as Local #1245 of the International Brotherhood of Electrical Workers (IBEW), together with any future amendments and successor agreements thereto.

2.4 “Code” means the Internal Revenue Code of 1986, as amended.

2.5 “Effective Date” means the Effective Date of this Trust, which shall be January 1, 2015.

2.6 “Investment Plan” means an investment plan developed by the Trustees pursuant to NRS 287.017(2)(g)(1) and NAC 287.788(2).

2.7 “NAC” means the Nevada Administrative Code, as amended from time to time.

2.8 “NRS” means the Nevada Revised Statutes, as amended from time to time.

2.9 “Participant” means a Retiree who is entitled to receive Benefits from this Trust pursuant to Section 3.1. and elects to receive such Benefits in accordance with the procedures adopted by the Trustees from time to time. A Participant shall not include any spouse or dependents of a Retiree, even if such spouse and dependents are covered under one or more of the Benefit Plans.

2.10 “Plan Year” means the calendar year.

2.11 “Retiree” means a Transferred Employee who separates from service or retires from TMWA, and under the terms of the CBA or resolutions adopted by TMWA, is eligible to receive Benefits from this Trust.

2.12 “TMWA” means the Truckee Meadows Water Authority, a local government agency within the meaning of NRS 354.474, and an entity the income of which is excluded from gross income under Code Section 115.

2.13 “Transferred Employees” mean those former Employees of Washoe County, who were either hired by Washoe County (i) on or before September 16, 1997, or (ii) after September 16, 1997 and before July 1, 2010, and who became employees of TMWA as a result of the merger of water utility services between Washoe County and TMWA which is effective on or about January 1, 2015. For purposes of this Trust, those Transferred Employees described in clause (i) of the preceding sentence are sometimes referred to as “Tier I Retirees,” and those Transferred Employees described in clause (ii) of the preceding sentence are sometimes referred to as “Tier II Retirees.”

2.14 “Trust” and “Trust Fund” mean the Trust, as set forth in and by this document and all subsequent amendments thereto.

2.15 “Trust Year” means the year beginning on January 1 of each calendar year and ending on December 31 of the same calendar year.

2.16 “Trustees” mean the persons appointed under Article VII and accepting the position as Trustees, and any duly appointed and qualified successor Trustees. The Trustees shall constitute the “board of trustees” as that term is used in NRS 287.017(2)(e).

2.17 “Washoe County” means Washoe County, Nevada, a political subdivision of the State of Nevada.

2.18 Words used in the singular shall include the plural, words used in the plural shall include the singular, and words of one gender shall include other genders when the context so requires.

ARTICLE III.

Eligibility and Participation

3.1 Eligibility and Commencement of Coverage. Each (i) Retiree who is covered

under a Benefit Plan and who satisfies the eligibility requirements set forth in Exhibit “B” shall be entitled to receive Benefits from this Trust.

3.2 Termination of Participation. A Participant’s right to receive Benefits under this Trust is to terminate upon the occurrence of the earliest event described in Exhibit “C” attached hereto.

ARTICLE IV.

Benefits Payable by the Trust

The Benefits to be paid by this Trust are to include the payment of all or a portion of the premiums that are required to be paid by TMWA on behalf of a Participant who is covered under one or more of the Benefit Plans. The actual share of the total premiums required to be paid by TMWA on behalf of a Participant is set forth in Exhibit “D” attached hereto. If the amount of the premiums required to be paid by TMWA is modified by the CBA or resolutions adopted by TMWA, then Exhibit “D” is to be amended to reflect such changes. Unless the Trustees determine otherwise, all premiums paid by this Trust for coverage of a Participant in a Benefit Plan will be paid directly to the company or institution that issues the Benefit Plan. The Trustees of this Trust may fund additional Benefits through this Plan, without amending this Plan, but only if such Benefits are authorized under the CBA and are benefits which may be funded by a trust described in NRS Section 287.017.

ARTICLE V

Contributions

5.1 Determination of Contribution:

(a) This Trust shall be funded by contributions by Participants and/or TMWA, and all such contributions to the Trust, and any earnings on such contributions, shall be irrevocable and shall become the property of the Trust.

(b) Contributions to this Trust shall be made in accordance with, and in amounts prescribed by, the Benefit Plans.

(c) TMWA may annually commission actuarial studies that estimate the liabilities of the Benefit Plans in accordance with applicable law and with generally accepted accounting principles. TMWA shall notify the Trustees of the level of funding it expects to contribute to the Trust Fund.

5.2 Funding Policy: The policy of TMWA is that this Trust shall be funded by Participant and/or TMWA contributions. Such funding shall be determined pursuant to NAC 287.786(1) in a manner consistent with the Code and any other applicable laws and regulations, in accordance with generally accepted accounting principles, and on a sound actuarial basis.

5.3 To Whom Contributions are to be Paid: Contributions shall be paid to the Trustees and shall become a part of the Trust Fund. All contributions to the Trust Fund and any earnings thereon shall be used only to:

(a) Provide for Benefits to Participants in accordance with the terms of the CBA, this Trust, and the Benefit Plans; and

(b) Pay the reasonable administrative expenses incident to the provision of those Benefits and expenses incurred in the administration of the Trust.

5.4 Corpus of Trust: The Trust shall consist of contributions made to the Trust, together with investments and reinvestments of the proceeds thereof, and all earnings and profits thereon, if any, less any losses, and less any expenses charged and distributions made pursuant to the terms of the Trust.

5.5 Investment of Trust:

(a) In accordance with the purpose of the Trust Fund stated in NRS 287.017(2)(a), the Trust Fund shall invest monies for the purpose of funding all or a portion of the unfunded actuarial accrued liabilities associated with providing future retirement welfare benefits for Participants covered by the Benefit Plans. The Trust Fund may be used to pay current retirement welfare benefits under the Benefit Plans.

(b) The investment of the assets of the Trust Fund shall be limited to the Retirement Benefits Investment Fund established pursuant to NRS 355.220 and authorized pursuant to NRS 287.017(2)(g)(1); provided however, that the Trustees may direct that the assets of the Trust Fund be invested on a short-term basis in any investment described in NRS 355.170 and authorized pursuant to NRS 287.017(2)(g)(2).

(c) All interest, earnings, dividends and distributions with respect to the investment of the Trust Fund, less any expenses charged with respect to such investments, must be deposited in the Trust Fund.

(d) The Trust Fund shall be maintained as a separate account and no other funds shall be co-mingled with the funds in the Trust Fund, except to the extent otherwise permitted by NRS 287.017(2)(h) and NAC 287.790(4).

(e) Trust Fund monies shall not be used to finance the debt of TMWA and shall not be available for loans to other funds of TMWA.

ARICLE VI

Payments From Trust

6.1 Payments Directed by TMWA: The Trustees must transfer funds from the Trust Fund to the account designated by TMWA upon the request of TMWA's governing body in accordance with the requirements of the Retiree Benefits Investment Board pursuant to NRS 355.220. The request must include:

- (a) An explanation of how the proposed transfer will be used to fulfill the requirements of the Benefit Plans;
- (b) A copy of TMWA's approved budget reflecting the authorization of retirement benefits;
- (c) Minutes of the meeting of TMWA's governing body during which the transfer was proposed; and
- (d) The signature of the chairperson of the TMWA's governing body.

If the request and supporting documentation do not meet the criteria of this Section 6.1, the Trustees may delay transfer until TMWA's governing body corrects the request. Payments from the Trust may be made only to the extent that the Benefit Plan benefits for which such payment is made are benefits permitted under the NRS.

6.2 Trust for Exclusive Benefit of Participants; Reversion Prohibited: This Trust has been established for the exclusive benefit of those Retirees and their Dependents who are entitled to receive Benefits from this Trust pursuant to Article III. Under no circumstances shall any funds contributed to or held by the Trustees at any time revert to the benefit of TMWA, except upon termination of the Trust as provided in Article IX.

6.3 Transfer of Trust Assets Permitted: Notwithstanding Section 6.2 above, TMWA's governing body may amend the Benefit Plans to reserve the classification of Participants eligible for Benefits under the Trust, and terminate such Participants' participation in the Trust or transfer their coverage to another trust complying with the provisions of NRS 287.017 to the extent permitted under the CBA and Code Section 115. In the event a classification of Participants is transferred to another such trust, the Trustees may determine the allocable portion of reserves held by the Trust attributable to such transferred Participants and authorize such portion of Trust assets be transferred to the new trust. Any such transferred Trust assets shall be used exclusively for the purpose of providing health and welfare benefits to the Participants so transferred and similarly situated participants. Upon the transfer of such Participants, any and all right of such Participants and their beneficiaries under this Trust shall terminate, except as provided in the Benefit Plan, to the extent not inconsistent with the terms of this Trust, and except as otherwise required by law.

ARTICLE VII.

Trustees - Appointment, Resignation, and Removal

7.1 Appointment Of Trustees: The Trust shall be administered by three or more Trustees who shall be selected by the General Manager of TMWA and confirmed and approved by the TMWA's governing board, and such Trustees are to act in a fiduciary capacity for the beneficiaries of the Trust pursuant to NRS 287.017(2)(e) and NAC 287.788(1)(a). No member of TMWA's governing body may be appointed as a Trustee. By signing this Trust, each Trustee hereby accepts the trusteeship and agrees to receive and hold the Trust solely for the uses and purposes set forth herein and solely in accordance with the terms hereof.

- (a) Pursuant to Section 5.5(b), assets of the Trust Fund shall be invested in the Retirement Benefits Investment Fund established pursuant to NRS 355.220; provided, however, that the Trustees may direct that the assets of the Trust Fund be invested in investments established pursuant to NRS 355.170. As a result, TMWA's governing body shall appoint at least three but no more than five Trustees who must include:
 - (i) At least one member who has a combination of education and experience of at least 5 (five) years in finance or economics;
 - (ii) A public officer or employee of TMWA who manages its fiscal affairs; and
 - (iii) A beneficiary of the Trust.
- (b) A person appointed as a Trustee shall not have a substantial financial interest in the ownership or negotiation of securities or other financial instruments in which monies in the Trust Fund are invested.
- (c) Each Trustee shall be appointed for a term of at least two years but not to exceed four years. However, TMWA's governing body may renew the term of any Trustee.

7.2 Resignation, Removal and Substitution of Trustees:

(a) Resignation and Removal: Any Trustee may resign at any time upon 30 days' written notice to TMWA's governing body. Any Trustee may be removed with or without cause at any time by TMWA's governing body upon 30 days' written notice to such Trustee. TMWA's governing body may remove a Trustee if the Trustee fails to attend two consecutive meetings or three meetings during a calendar year. Upon resignation or removal of any Trustee, TMWA's governing body shall appoint a successor Trustee who shall have the same powers and duties as are conferred upon the Trustees appointed under this Trust. TMWA's governing body may reappoint a Trustee and may alter the composition of the Trustees if required pursuant to Section 7.1.

(b) Successors' Liability: No successor Trustee shall be liable or responsible for any acts or defaults of his or her predecessor or any predecessor co-Trustees, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration of the Trust prior to his or her appointment as Trustee, nor shall a successor Trustee be required to inquire into or take any notice of the prior administration of the Trust.

7.3 Organization and Operation of Offices of Trustees:

(a) The Trustees may adopt such procedures and regulations as they deem desirable for the conduct of their affairs.

(b) The Trustees shall select a Chairman and Vice Chairman from among their membership.

(c) The Chairman shall preside at all meetings of the Trustees. In case of the absence of the Chairman from any meeting of the Trustees or in case of the inability of the Chairman to act, the Vice Chairman shall perform the duties and acts authorized or required by the Chairman to be performed, as long as the inability of the Chairman to act may continue.

(d) TMWA's governing body shall provide the staff necessary to organize and notice meetings of the Trustees, take the minutes of the meetings, receive and disseminate financial reports of financial managers to the Trustees, and prepare financial reports and budgets for the Trustees.

(e) The Trustees shall meet quarterly or at the call of the Chairman whenever business is presented.

(f) A majority of the Trustees shall constitute a quorum of the Trustees for all purposes.

(g) All action by the Trustees at a meeting (and such meeting may be in person or a telephonic meeting) at which a quorum is present shall be by a majority of those present.

(h) Any action to be taken without a meeting (either in person or telephonically) of the Trustees must be approved in writing by all of the Trustees.

(i) Any action of the Trustees must be in writing.

(j) No item of business shall be considered at a meeting of the Trustees unless it shall first have been entered upon the agenda for that meeting, provided, however, that items not appearing on the agenda may be taken up with the approval of a majority of the Trustees present when it has been determined that the matter is an emergency as permitted under NRS Chapter 241.

(k) No member of the Trustees can bind the Trustees by word or action unless the Trustees have designated such member as the Trustees' agent for some specific purpose and for that purpose only.

(l) In the event of a deadlock in any vote of the Trustees with respect to the operation or administration of the Trust, then the matter at issue shall remain in status quo until the next meeting of the Trustees. If the Trustees do not resolve such deadlock among themselves prior to the next meeting of Trustees, the question or matter shall again be presented at such next meeting. If at such next meeting the Trustees shall still be deadlocked and remain so until such meeting be adjourned, then, upon written notice of any Trustee to the other Trustees, the Trustees shall, within 30 days after receipt of such notice by the Trustees, appoint an independent fiduciary solely for the purpose of deciding upon the deadlocked matter. Such independent fiduciary shall render its decision on the matter, which decision shall be implemented as if decided at a meeting of the Trustees.

(m) Any member of the Trustees may request a roll call vote of the Trustees, which shall be recorded in the minutes of the meeting.

ARTICLE VIII.

Trustees – Duties and Powers

8.1 Duties and Powers of Trustees--In General: Subject to the requirements imposed by law, the Trustees shall be fiduciaries who shall have all powers necessary or advisable to carry out the provisions of this Trust and all inherent, implied, and statutory powers now or subsequently provided by law and shall be subject to the duties imposed on fiduciaries under applicable law. The Trustees shall be responsible for the management and control of the Trust Fund. The Trustees shall formulate and execute appropriate investment policies to govern the Investment Plan of the Trust Fund consistent with the requirements of NRS 287.017 and Sections 5.5(b) or (c) of this Trust. The Trustees shall decide all questions arising in the administration, interpretation, and application of the Trust, except as may be reserved under this Trust to TMWA. In addition:

(a) As required by NRS 287.017(2)(e)(1), the Trust shall be administered in accordance with generally accepted accounting principles and actuarial studies applicable to the future provision of benefits to Participants;

(b) To the extent required by NRS 287.017(2)(f)(3) or any similar applicable regulation, the Trustees shall cause the Trust to be audited each Trust Year by an independent certified public accountant, and the results of such audit shall be reported to TMWA's governing body;

(c) As permitted by NRS 287.017, the Trust Fund assets may be pooled for the purposes of investment with the asset of any other employer and of any other trust fund established pursuant to NRS 287.017; provided, however, that each employer's interest in the Trust (1) is accounted for separately from the interest of any other employer, (2) is used to

provide benefits only to the participants covered by the plan or plans of such employer; and (3) is not subject to the liabilities of any other employer.

(d) In accordance with NRS 287.017 and NAC 287.786(2), the Trustees shall annually submit a tentative budget to TMWA's governing body for its consideration, approval and inclusion in the tentative and final budgets of the TMWA's governing body. The tentative budget submitted by the Trustees must incorporate the amount of contributions to the Trust determined pursuant to NAC 287.786(1). TMWA's governing body may modify the Trustees' tentative budget at its discretion.

8.2 Duties and Powers of Trustees--Investment: To the extent permitted under NRS 287.017, the Trustees shall have the power to invest and/or reinvest any and all money or property of any description at any time held by them and constituting a part of the Trust, without previous application to, or subsequent ratification of, any court, tribunal, or commission, or any federal or state governmental agency, in such investments as are permitted under the express terms of this Trust.

None of the earnings of the Fund shall inure to the benefit of any Trustee or any private person, except that a Trustee or other individual may be a beneficiary of the Trust through participation in the Benefit Plan. A Trustee shall not be interested, directly or indirectly, as principal, partner, agent or otherwise, in any contract or expenditure created by the Trustees, or in the profits or results thereof.

In addition, to the extent permitted under NRS 287.017 and as provided in NAC 287.790(1)(a), the Trustees shall have the following specific powers:

(a) To invest Trust assets in a "Retirement Benefits Investment Fund" established pursuant to NRS 355.220 and authorized pursuant to NRS 287.017(2)(g)(1) and Section 5.5(b); provided, however, that the Trustees may direct that the Trust assets be invested in investments established pursuant to NRS 355.170 and authorized pursuant to NRS 287.017(2)(g)(2) and Section 5.5(b).

(b) To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust Fund.

(c) To cause any securities or other property to be registered in, or transferred to, the individual names of the Trustees or in the name of one or more of their nominees, or to retain them in unregistered form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust Fund.

(d) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust; to commence or defend suits or legal proceedings whenever, in its judgment, any interest of the Trust requires it; and to represent the Trust in all suits or legal proceedings in any court of law or equity or before any other body or tribunal, insofar as such suits or proceedings relate to any property forming part of the Trust Fund or to the administration of the Trust Fund.

(e) Generally, to do all acts, whether or not expressly authorized, which the Trustees deem necessary, but acting at all times according to the provisions of Nevada law to the extent permitted under NRS 287.017(2)(e), which provides the Trustees with all powers and duties that may be exercised by a nonprofit corporation under Nevada laws, but prohibits the Trust from borrowing money.

(f) To file any tax returns required of the Trust.

Notwithstanding the above, the Trustees may not deposit the assets of the Trust Fund in the Retirement Benefits Investment Fund established pursuant to NRS 355.220, unless the Trustees obtain an opinion from TMWA's legal counsel that the investment of those Trust assets will not violate the provisions of Section 10 of Article 8 of the Constitution of the State of Nevada. Fiduciary responsibility for assets of the Trust Fund invested in the Retirement Benefits Investment Fund remains with the Trustees and not with the Retirement Benefits Investment Board. In addition, the Trustees have no authority to negotiate or otherwise determine the benefits afforded the beneficiaries of the Trust Fund pursuant to the Benefit Plans.

8.3 Valuation of Trust Fund: As of the last day of each Trust Year, the Trustees shall determine the fair market value of all assets of the Trust Fund.

8.4 Advice and Assistance to Trustees: The Trustees may employ such staff and may contract for the provision of such management, investment and other services, including without limitation, the services of accountants, actuaries and investment managers, as the Trustees determine necessary for the administration of the Trust. In addition, the Trustees may retain and consult with legal counsel, who may be counsel for TMWA or the Trustees' own counsel with respect to the meaning or construction of the Trust or the Trustees' obligations or duties. The Trustees shall be protected from any responsibility with respect to any action taken or omitted by them in good faith pursuant to the advice of such counsel, to the extent permitted by law.

8.5 Records and Accounts of the Trustees: The Trustees shall keep a record of all the Trustees' proceedings and shall keep all such books of account records, and other data as may be necessary in the administration and conduct of this Trust, including records to reflect the affairs of this Trust, to determine the amount of the respective Participants' interests in the Trust Fund, and to determine the amount of all benefits payable under this Trust. Subject to the requirements of law, any person dealing with the Trustees may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the Trustees as evidence of any action taken or resolution adopted by the Trustees. The Trustees' records and accounts shall be open to inspection by TMWA's governing body at all reasonable times during business hours. The books and records of the Trust shall be kept in accordance with generally accepted accounting principles and the end of the fiscal year of the Trust shall be the Trust Year. After the close of each year of the Trust, the Trustees shall render a statement of assets and liabilities of the Trust Fund for such year.

8.6 Fees and Expenses: The Trustees may be paid such reasonable compensation as provided pursuant to Section 287.784 of the NAC. In addition, the Trustees shall be reimbursed

for any necessary and reasonable expenses, including reasonable counsel and accounting fees, as well as the expense of the audit required pursuant to NRS 287.017 and Section 8.1(b) of this Trust, incurred by the Trustees in the administration of the Trust Fund. Such compensation and expenses may be paid from the Trust Fund. All taxes of any kind that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof shall be paid by the Trustees from the Trust Fund.

ARTICLE IX.

Continuance, Termination, and Amendment of Trust

9.1 **Termination of Trust:** This Trust shall continue in full force and effect for such time as may be necessary to accomplish the purposes for which it is created. The expectation of TMWA is to continue this Trust indefinitely, but the continuance of the Trust is not assumed as a contractual obligation by TMWA. TMWA's governing body reserves the right to terminate this Trust in whole or in part at any time, including the termination of its participation in this Trust.

9.2 **Disposition of Trust Upon Termination:** Upon the termination of the Trust, to the extent that the Trust assets are not transferred to a successor trust pursuant to Section 6.3, the Trustees shall hold the Trust Fund until it is completely exhausted by paying those benefits provided under the Benefit Plans and paying the reasonable expenses of the Trust, including expenses incurred in the termination and liquidation of the Trust; provided, however, that upon the complete satisfaction of all obligations under the Benefit Plans and the satisfaction of all liabilities of the Trust, any remaining Trust Fund assets may be transferred to TMWA as determined by the Trustees and to the extent permitted by applicable law.

9.3 **Amendments to Trust:** At any time TMWA's governing body may amend this Trust for any purpose by delivering to the Trustees signed copies of such amendment. Such amendment shall be effective as of the date specified by TMWA's governing body, or if no date is specified, then on the first day of the next succeeding Trust Year.

ARTICLE X.

Miscellaneous

10.1 **Trust Not Subject to Creditors' Claims:** No assignment of any benefit under the Trust will be recognized or permitted; nor shall any such benefit or any assets of the Trust Fund be subject to attachment, garnishment or the claims of any creditors of TMWA or any Participant or beneficiary of the Trust.

10.2 **Text to Control:** The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of this Trust exists, the text shall control.

10.3 **Severability:** If any provision of this Trust is illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining

provisions. On the contrary, such remaining provisions shall be fully severable, and this Trust shall be construed and enforced as if such illegal, invalid or unenforceable provisions never had been inserted in the agreement.

10.4 Applicable Law: All questions, disputes or other issues relating to the Trust including but not limited to the interpretation, administration, operation and/or application of the Trust or its provisions shall be governed by the laws of the State of Nevada.

10.5 Changes in Governing Law: To the extent any provision in this Trust is included in compliance with the requirements of the NRS or the NAC, if any change to such requirement is made in the NRS or the NAC, this Trust Agreement shall be deemed to be amended to the extent required to reflect the corresponding change in the NRS or the NAC, provided that such deemed amendment does not cause the Trust to violate Code Section 115.

10.6 Execution in Counterparts. This Trust may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same agreement (and all signatures need not appear on any one counterpart), and this Trust will become effective when one or more counterparts has been signed by each party and delivered to the other party.

This Trust has been executed this ____ day of _____, 201__.

TRUCKEE MEADOWS WATER AUTHORITY

By: _____
Title: _____
Date: _____

TRUSTEES

Printed Name: _____
Signature: _____
Date: _____

Printed Name: _____
Signature: _____
Date: _____

Printed Name: _____
Signature: _____
Date: _____

EXHIBIT A

BENEFIT PLANS FUNDED THROUGH TRUST

The Benefit Plans that are to be funded by the Trust are to initially include the following:

1. Those group health plans currently offered to active employees of TMWA, which include a self-funded group health plan offered through the City of Reno, Nevada, and an exclusive provider organization group health plan offered through Hospital Health Plan. Retirees may elect coverage under either of the plans described in the preceding sentence. Both plans have full coordination of benefits integration with Medicare.

2. The group prescription drug plan currently offered to active employees of TMWA.

3. The group vision plan currently offered to active employees of TMWA.

4. The group life insurance plans offered to retirees of TMWA who enroll in either of the group health plans described in paragraph 1. above. The amount of life insurance coverage available to Retirees currently varies according to the Retiree's age as indicated below:

For Retirees –

Under age 70 – the maximum life insurance benefits available to a Retiree are equal to 1 times the retiree's "Basic Annual Earnings," (as defined in the life insurance plan) rounded to the next highest \$1,000, if not already a multiple of \$1,000, with a maximum benefit of 175,000.

Ages 70 to 74 – the maximum life insurance benefits available to a Retiree are equal to 50% of the retiree's Basic Annual Earnings, rounded to the next highest \$1,000, if not already a multiple of \$1,000.

Ages 75 or older – the maximum life insurance benefits available to a Retiree are equal to \$2,000.

Although Retirees may elect coverage for themselves and their qualified dependents under TMWA's group dental plans, and may also elect coverage for qualified dependents under the group health plans, group prescription plans, group vision plans, and group life insurance plans described above, the Retirees are currently responsible for 100% of these coverages. Accordingly, the Trust does not currently fund any portion of the premiums attributable to these types of coverage.

EXHIBIT B

ELIGIBILITY REQUIREMENTS FOR RETIREE TO RECEIVE TRUST BENEFITS

To be eligible to become a Participant and receive benefits from the Trust, a Retiree must meet the following requirements:

1. The Retiree must be a Transferred Employee (as defined in Section 2.13 of Article II of the Trust,
2. The Retiree must receive monthly retirement payments under the Public Employees Retirement System (“PERS”) of Nevada, and
3. The Retiree must complete such forms to enroll for Benefits from the Trust as the Trustees may require from time to time.

In addition, a Retiree who separated from service from TMWA prior to his or her retirement may receive benefits from the Trust if TMWA was the Retiree’s last public employer, the Retiree satisfies the requirements described in paragraphs 1. through 3. above, and the Retiree meets any requirements of NRS Section 287.045, but only to the extent that NRS Section 287.045 is applicable to Benefits provided by the Trust.

EXHIBIT C

EVENTS CAUSING TERMINATION OF TRUST BENEFITS

A Participant's benefits received from the Trust shall cease upon the occurrence of the earlier of the following events:

The death of the Participant,

The date the Participant's coverage under the Benefit Plans is cancelled for any reason whatsoever, including, without limitation, the execution of an instrument permanently waiving coverage under the Benefit Plans and/or Benefits from the Trust, or

The date this Trust is terminated.

In addition to the events causing termination of benefits described above, for "Tier II Retirees" only (as defined in Section 2.13 of this Trust), benefits under this Trust will be terminated if the Tier II Retiree becomes employed by another public employer in the State of Nevada.

EXHIBIT D

TRUST BENEFITS TO BE PAID TO PARTICIPANTS

The Benefits payable to Participants under this Trust will vary depending upon whether the Participants is classified as a “Tier I Retiree” or a “Tier II Retiree,” as those terms are defined in Section 2.13 of this Trust.

A. Benefits for Tier I Retirees. The maximum Benefits to be paid by the Trust to Tier I Retirees shall be as follows:

1. For Tier I Retirees with at least ten (10) years of combined full-time employment with Washoe County and/or TMWA, but less than fifteen (15) years of combined full-time employment with Washoe County and/or TMWA, the maximum Benefits payable by the Trust will be 50% of the premium attributable for coverage of such Retirees under the Benefit Plans.

2. For Tier I Retirees with at least fifteen (15) years of combined full-time employment with Washoe County and/or TMWA, but less than twenty (20) years of combined full-time employment with Washoe County and/or TMWA, the maximum Benefits payable by the Trust will be 75% of the premium attributable for coverage of such Retirees under the Benefit Plans.

3. For Tier I Retirees with twenty (20) or more years of combined full-time employment with Washoe County and/or TMWA, the maximum Benefits payable by the Trust will be 100% of the premium attributable for coverage of such Retirees under the Benefit Plans.

The payments specified in subparagraphs A.1., A.2., and A.3. above will be made in accordance with and are subject to all applicable laws in effect at the time of the retirement of the Tier I Retiree.

NOTE:---For those Tier I Retirees who were hired by Washoe County on or after January 13, 1981, the provisions listed in paragraph A. above, are applicable except that in order to receive such Benefits the Retiree must have been an employee of TMWA immediately prior to receiving Benefits from the Trust.

NOTE----In order for Tier I Retirees to be eligible to receive the Benefits listed in paragraph A. above, Tier I Retirees who have attained the Medicare Eligibility Age (currently age 65) during a Trust’s Plan Year must enroll in and pay the cost of Medicare Part “A” and Medicare Part “B,” or Medicare Part “C” coverage, and they must enroll in and pay the cost of Medicare Part “A”

and Medicare Part “B” coverage or, Medicare Part “C” coverage, and TMWA plans will become the secondary payer regardless of whether the retiree enrolls in the Medicare program or not. If the Medicare Eligibility Age is revised, the revised age is to be substituted for the current Medicare Eligibility Age of 65.

B. Benefits for Tier II Retirees. The maximum Benefits to be paid by the Trust to Tier II Retirees who have not attained age 65 is to be the same amount of the premium paid for group health coverage by an employer for coverage of non-state employees under the Nevada State Public Employee Benefit Plan (“PEBP”) Retiree Health Insurance plan .

By way of background, the 2003 Nevada Legislature passed legislation (AB286) that afforded public employees of Nevada political subdivisions the opportunity to enroll, upon their retirement, in the (PEBP) Retiree Health Plan. The 2003 legislation also obligated public employers of said retirees who enrolled in the plan to pay a portion of the medical premium on the retiree’s behalf (the “Subsidy”). Tier II Retirees are entitled to receive this same Subsidy from the Trust towards their coverage under the Benefit Plans rather than the PEBP Retiree Health Plan.

Tier II Retirees who have attained the Medicare Eligibility Age (currently age 65) or older will instead receive the equivalent of the State of Nevada’s Medicare Exchange Retiree HRA contribution subsidy based upon the combined number of years of service with Washoe County and/or TMWA and must elect Medicare. At that time, Medicare then becomes the primary carrier, and the Benefit Plans funded by this Trust are to become secondary. If the Medicare Eligibility Age is revised, the revised age is to be substituted for the current Medicare Eligibility Age of 65. In order to receive the Benefits described in this paragraph, the Tier II Retiree must be an employee of TMWA immediately prior to drawing his or her retirement benefits.

NOTE: The PEBP non-State retiree subsidy and Medicare Exchange Retiree HRA Contribution subsidy amounts are revised annually by the State of Nevada. In the event that these benefits are discontinued by the State of Nevada, then Tier II Retirees shall continue to receive the same premium amount that they were entitled to receive during the last year that these benefits remained in effect.

Truckee Meadows Water Authority
Resolution 220

TRUCKEE MEADOWS WATER AUTHORITY
(TMWA)

RESOLUTION NO. 220

**A Resolution to Adopt a TMWA §115 Other Post-Employment Benefit Trust
In Connection With the Merger of Washoe County Water Utility**

WHEREAS, following approval in a duly noticed public meeting, on or about January 29, 2010, the County and TMWA entered into that certain Interlocal Agreement Governing the Merger of the Washoe County Community Services Department's Water Utility Into the Truckee Meadows Water Authority ("County Merger Agreement") pursuant to which the parties agreed to consolidate the County Water Utility into TMWA.

WHEREAS, TMWA has determined and approved, by separate resolution that it is in the best interests of TMWA, its customers and the community to proceed with the implementation and consummation of the merger of the County Water Utility into TMWA on the terms of and in accordance with the County Merger Agreement.

WHEREAS, TMWA has approved, by separate resolution, various actions to satisfy conditions necessary to facilitate the implementation of the Merger, including transactions pursuant to which TMWA will assume certain debt of the County Water Utility and issue new commercial paper indebtedness at the Closing and various modifications to the TMWA Rules and Rate schedules.

WHEREAS, affected employees of Washoe County that will transfer to TMWA currently enjoy certain post-employment medical benefits that are administered under a §115 Trust;

WHEREAS, it is the intent that affected employees of Washoe County that will transfer to TMWA as part of the Merger will continue such benefits as an inducement to be employed by TMWA;

WHEREAS, to support the transfer of affected employees in connection with the Merger TMWA desires to establish a §115 Trust to receive a proportionate share of assets held by the Washoe County §115 Trust and provide future post-employment benefits to affected employees.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Truckee Meadows Water Authority: that a TMWA §115 Other Post-employment Benefits

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Trust be formed to provide certain post-employment benefits to transferring Washoe County employees upon their retirement.

Upon motion of _____, seconded by _____, the foregoing Resolution was passed and adopted this 17th day of December, 2014, by the following vote of the Board:

Ayes: _____
Nays: _____
Abstain: _____ Absent: _____

Approved this ____ day of _____, 2014

Geno Martini, Chairman

STATE OF NEVADA,)
 : ss.
COUNTY OF WASHOE.)

On this 17th day of December, 2014, Geno Martini, Chairman of the Board of Truckee Meadows Water Authority, personally appeared before me, a Notary Public in and for said County and State, and acknowledged that he executed the above instrument freely and voluntarily and for the purposes therein mentioned.

Notary Public