ORANGE WATER AND SEWER AUTHORITY

A public, non-profit agency providing water, sewer and reclaimed water services to the Carrboro-Chapel Hill community.

AGENDA
WORK SESSION OF THE OWASA BOARD OF DIRECTORS
THURSDAY, NOVEMBER 12, 2015, 6:00 P.M.
OWASA COMMUNITY ROOM

The Board of Directors appreciates and invites the public to attend and observe its meetings. For the Board's Work Session, public comments are invited on only items appearing on this agenda. Speakers are invited to submit more detailed comments via written materials, ideally submitted at least three days in advance of the meeting to the Clerk to the Board via email or US Postal Service (aorbich@owasa.org/400 Jones Ferry Road, Carrboro, NC 27510).

Public speakers are encouraged to organize their remarks for delivery within a four minute time frame allowed each speaker. Additional time may be allowed at the discretion of the Board of Directors.

The Board may take action on any item on the agenda.

Announcements

a. Announcements by the Vice Chair
   - Any Board Member who knows of a conflict of interest or potential conflict of interest with respect to any item on the agenda tonight is asked to disclose the same at this time.

b. Announcements by Board Members
   - Update on the October 28, 2015 Inter-Local Energy Collaboration Working Group meeting (Terri Buckner)

c. Announcements by Staff

Information and Reports

1. Presentation on OWASA's Cane Creek Reservoir and University Lake Dam Emergency Action Plans (Adam Haggerty)

Discussion

2. Discussion of Employee Total Compensation Philosophy (Stephanie Glasgow/John Anzivino, Senior Vice President at Springsted Incorporated)
3. Discussion of the Fiduciary Duties of OWASA Board Members (Robert Epting)
4. Review Board Work Schedule (Robert Morgan/Ed Kerwin)
   a. Request(s) by Board Committees, Board Members and Staff
   b. 12 Month Board Meeting Schedule
   c. December 10, 2015 Work Session
   d. January 14, 2016 Work Session

Summary of Work Session Items

5. Executive Director will summarize the key staff action items from the Work Session

Agenda Item 1:

Presentation on OWASA's Cane Creek Reservoir and University Lake Dam Emergency Action Plans

Purpose:

To update the Board on OWASA's Cane Creek Reservoir and University Lake Dam Emergency Action Plans (EAP) and the associated tabletop exercise. No Board action needed.

Background:

- The Coal Ash Management Act of 2014 required OWASA to submit Dam EAPs to the North Carolina Department of Environmental Quality (NCDEQ) Dam Safety Program and the North Carolina Department of Public Safety (NCDPS) no later than March 1, 2015.

- The purpose of a Dam EAP is to help minimize loss of life and property damage during a dam safety emergency. The EAP is intended to serve both as a dam safety training document and the primary reference document in the event of a suspected or ongoing dam safety event.

- Through a qualification based selection process, OWASA selected Hazen & Sawyer, P.C. to prepare EAPs for the Cane Creek Reservoir Dam and University Lake Dam. Draft EAPs were submitted to the NCDEQ Dam Safety Program on the March 1, 2015 deadline.

- OWASA, Orange County Emergency Management and Hazen and Sawyer conducted a joint tabletop exercise on October 1, 2015 to practice responding to a dam failure scenario. The tabletop exercise participants included staff from OWASA, Hazen and Sawyer, Orange County Emergency Management, Orange County 911 Communications, South Orange Rescue Squad, UNC Emergency Management, Carrboro Fire Department, Carrboro Public Works Department, and NCDEQ Dam Safety Program.

- The draft EAPs are being revised based on feedback received from the tabletop exercise participants. The final EAPs will be submitted to NCDEQ Dam Safety Program by December 31, 2015.

November 12, 2015

Agenda Item 2:

Discussion of Employee Total Compensation Philosophy

Purpose:

1. Springsted Incorporated to present a summary and key take-a-ways from the employee survey.
2. Springsted Incorporated to provide an overview of current industry best practices on compensation philosophy.
3. Seek the Board's understanding, comments and guidance regarding compensation philosophy.

Background:

- At the July 9, 2015 Work Session the Board of Director's discussed with Springsted and Staff the process and timeline for Phase I of the Total Compensation Study, determining a Compensation Philosophy.
- The process included an employee survey that was reviewed by the Board prior to implementation.
- Springsted would provide current industry best practices on compensation philosophy at the next meeting along with the survey results.
- At the Work Session on December 10, 2015 Springsted Incorporated will provide a draft Compensation Philosophy for Board review and comment.
- It is anticipated that the Board will consider adoption of a Compensation Philosophy at the January 14, 2016 Work Session.

Information:

Memorandum: Employee Survey Analysis and Overview of Industry Best Practices

Springsted Incorporated
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MEMORANDUM

TO: Mr. John Young, Chair and Members of the
Orange Water and Sewer Authority Board of Directors

FROM: John A. Anzivino, Senior Vice President

DATE: November 5, 2015

SUBJECT: Employee Survey Analysis and Overview of Industry Best Practices

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We are pleased to provide our initial findings in regard to the first phase of working with OWASA's Board and staff in developing a Total Compensation Philosophy for the Orange Water and Sewer Authority. The information, which follows, responds to the initial tasks of our approved work plan as indicated below:

- Prepare, administer and compile the survey data and provide a summary of key take-a-ways from the employee survey.
- Provide an overview of current industry "best practices" on overall compensation philosophy.
- Meet with the Board in a work session on November 12th to present results of work elements #3 and #4 of the work plan and to receive the Board's initial feedback about what is important regarding OWASA's Total Compensation Philosophy.

Employee Survey

Springsted staff, working with OWASA's Board and leadership team, developed an employee survey to gain a general understanding of the employees attitudes toward the Authority's compensation and benefits programs as well as to gain general insight into employees opinions concerning the importance of pay; benefits; opportunities for professional/personal growth and development; the current work culture of OWASA and related work factors that contribute to OWASA's success as an organization.

A series of five (5) meetings were held with employees on October 7 and 8, to discuss the focus of the study and explain the purpose of the survey and how findings would be used to help Board member's frame their discussions concerning development of a total compensation philosophy for the Authority. Four (4) meetings were held at OWASA's Operations Center and one (1) was held at the Mason Farms Wastewater Treatment Plant, to ensure that all employees were provided an opportunity to participate in the survey with a minimum level of disruption to their work day. During each of the five (5) meetings with OWASA employees, Springsted staff provided:

- An overview of the Authority's total compensation study work plan;
- A description of how a total compensation philosophy assists in guiding an organization in administration of their compensation and benefit programs;

- An explanation of the purpose of the employee survey and its questions, and;
- An opportunity for employees to ask questions and offer any comments concerning the survey and the process of developing a total compensation philosophy.

During each meeting with the Authority's employees it was emphasized that the individual employee's survey information would remain confidential and that results would be consolidated and analyzed by Springsted and presented to the Board in a public work session. Employees were provided an opportunity to complete the survey electronically, with the completed survey automatically being transmitted to Springsted's Richmond office, or to complete the survey in paper form and to seal it in an envelope with OWASA's Human Resources Director forwarding the sealed envelopes to Springsted's Richmond office.

Upon conclusion of the employee meetings, the survey period was opened beginning on October 8 and closed on October 13. Springsted received sixty-nine (69) online responses and thirty-seven (37) hard copy responses from employees, reflecting a total survey participation of one hundred and six (106). It should be noted that several employees did not complete the survey in accordance with instructions provided, therefore their responses are not included in the analysis. In addition, not all employees completed all questions.

Survey Analysis
Employee responses to the first four (4) survey questions, which dealt with base information of survey respondents, are as follows.

1. How long have you worked at OWASA?
    a. <2 years (11 responses)
    b. 2-5 years (25 responses)
    c. 6-10 years (16 responses)
    d. >10 years (53 responses)

2. Are you a:
    a. Supervisor (25 responses)
    b. Non-Supervisor (80 responses)

3. What is your gender?
    a. Male (81 responses)
    b. Female (22 responses)

4. What is your race?
    a. White (80 responses)
    b. Black (16 responses)
    c. Other (8 responses)

The next section of the survey was developed to gauge overall satisfaction of employees with their experience working for OWASA as well as gain insight into their attitudes toward current compensation practices and, finally, to gain insight into which areas of compensation and benefits employees value most and which play a factor in their decision to remain as an OWASA employee. The following questions were asked and responses received.

5. How satisfied are you with your overall employment experience with OWASA?
    a. Extremely Satisfied (17 responses)
    b. Satisfied (74 responses)
    c. Neither Satisfied nor Dissatisfied (10 responses)
    d. Dissatisfied (4 responses)
    e. Extremely Dissatisfied (1 response)

In the question above, ninety–one (91) respondents (85.8%) indicated that they were either 'Extremely Satisfied' (16%) or 'Satisfied' (69.8%) with their overall employment experience at OWASA. Ten (10) employees (9.5%) indicated that they were 'Neither Satisfied nor Dissatisfied' with their overall employment experience. Only five (5) employees (4.7%) expressed their dissatisfaction or extreme dissatisfaction with employment at OWASA.

6. In rank order (1=highest; 7=lowest); what are the reasons you choose to stay employed at OWASA.

	1	2	3	4	5	6	7
Fair Pay	20	23	22	12	6	4	0
Good Benefits	42	29	9	4	2	2	0
Rewarding and Challenging Work	9	2	12	20	26	15	3
Career Growth, Learning and Development	2	4	7	17	24	28	6
Work Culture and Relationships	2	4	13	21	3	26	8
Job Security	8	24	22	10	12	8	4
Other - Please explain	4	3	3	4	5	4	55

The results above indicate that the three (3) primary reasons why respondents stay employed at OWASA, include 'Good Benefits', 'Fair Pay' and 'Job Security'. The forty-two (42) respondents that indicated 'Good Benefits' as being their top reason for staying employed with OWASA represents the immense value that employees place in their benefits offerings with the organization. Rounding out the lowest reasons for which employees stay employed with OWASA, according to survey responses, are 'Career Growth, Learning and Development' and 'Work Culture and Relationships'.

Additional 'Other' responses for this question were provided by thirty-two (32) employees and the following major themes were noted:

- Employees value their work schedule flexibility with the organization and current work schedules allow for a balance between work and home life;
- Employees value the Authority's participation in the North Carolina Local Government Employees' Retirement System (LGERS) and the Authority's 457 deferred compensation plan;
- Employees would like to see more opportunities to experience career growth in the organization as well as established goals to work toward in their jobs.

7. OWASA's current employee compensation practice encourages and rewards me to do my best.
    a. Strongly Agree (8 responses)
    b. Agree (50 responses)
    c. Neither Agree or Disagree (21 responses)
    d. Somewhat Disagree (11 responses)
    e. Strongly Disagree (16 responses)

Responses to this question indicate an approximate 50/50 split between those employees who are motivated and encouraged to perform at their highest level and those who feel either indifferent or unmotivated by the organization through OWASA's current employee compensation practices to perform at their highest level. This split indicates that there is significant room for improvement in gaining a consensus among employees so that they are encouraged to perform at a high level and rewarded appropriately by the organization.

The final question of the survey allowed all participants to supply open-ended responses concerning the most important factor(s) that they believe the OWASA Board of Directors should include/consider in the organization's overall employee compensation philosophy. Major themes from employee responses include:

- *Career Growth*. It was noted by multiple employees the desire to be rewarded for increased knowledge and experience by rising through the pay scale.
- *Equality in Treatment*. Employees indicated that all levels of the organization staff should be treated fairly and equitably in terms of allocation of resources, compensation practices and opportunities for growth and development.
- *Maintain High Quality.* Employees value the benefits currently in place and wish to maintain the level of benefits currently offered and improve upon certain areas such as the rising costs of health care coverage.

It should be noted that, throughout the survey, though not relevant to specific questions, several employees cited that the current performance evaluation system in place should be re-examined for effectiveness and efficiency, with several employees stating that their evaluation ratings are not an accurate depiction of how they feel they are performing.

In an effort to determine what employee's value as the most important reasons for continuing their employment with OWASA we separated the employees who responded to the survey into two (2) groups by length of tenure:

- those employed less than five (5) years (36 respondents)
- those employed five (5) or more years (69 respondents)

We discovered that, although the number of employees who had been with the organization five (5) years or less was considerably smaller than those who have been with OWASA for a longer tenure, when length of service is considered, there was not a significant difference between the two groups and the values they cited for continuing employment at OWASA.

For employees who had been with the organization five (5) years or less, the most important reasons for staying employed with OWASA were, in order:

- Good Benefits
- Fair Pay

For employees who had been with the organization longer than five (5) years, the most important reasons for remaining employed with OWASA were, in order:

- Good Benefits
- Rewarding and Challenging Work

Overall findings of the survey indicate that the majority of OWASA employees who participated in the survey are, for the most part, satisfied with their employment in the organization and with current benefits offered but wish to have an enhanced compensation and benefits package that addresses concerns such as rising health care costs, the organization's performance evaluation system and equity in pay.

Market Research Findings

An element of the first phase of work for OWASA and its Board to better understand is what is occurring in both the public and private sector concerning 'cutting edge' or best practices in both the public and private sector in conjunction with compensation and benefit practices. The following information represents a significant effort to gather information from nearby public sector employers and a survey of public and private sector trends from around the country.

Compensation

In addition to reviewing survey responses from employees in consideration for the development of OWASA's total compensation philosophy, Springsted reviewed several compensation programs and philosophies from organizations in the marketplace. Each of the practices gathered and reviewed were obtained from organizations recognized as a premier place to work within the State of North Carolina, or the country, and is considered an employer which places a high value on their workforce. Overall compensation philosophy highlights for those organizations reviewed are as follows:

- **City of Durham, North Carolina**
    - Pay-for-Performance system
    - Salary increases given each year in July
- **Town of Cary, North Carolina**
    - Pay-for-Performance system
    - Divides each pay range into four (4) segments: Developmental Segment, Market Rate, Performance Segment Range and the High Performance Range Segment
    - Seeks to provide incentives for continuous performance improvements and for sustaining performance improvements
- **Town of Carrboro, North Carolina**
    - Market-based pay structure which offers supplemental performance awards
    - The Town provides $500-$1,500 salary increases in the form of a "performance award"
    - Cost of Living Adjustment (COLA) of 2% annually for employees (based on approved percentage of the governing body)
- **Town of Chapel Hill, North Carolina**
    - Pay-for-Performance system
    - Divides each pay range into ranges (Development Range, Performance Range) based on annual performance reviews and dependent upon their review rating (Below Expected Level, Needs Improvement, Meets Standards, Exceeds Standards, Outstanding)

  - Utilizes the 'Job Rate' principle: an employee at or above Job Rate who has learned the job and is performing it well enough to remain employed should be paid at least at Job Rate, which is the level established for competent performance

- **Orange County, North Carolina**
  - Market-based pay structure which offers supplemental Meritorious Service Awards
    - 'Exceptional' Meritorious Service Award: $1,000
    - 'Superior' Meritorious Service Award: $750
  - Cost of Living Adjustments (COLAs) of 2% annually for employees (based on approved percentage of the governing body)
  - Offers Longevity Pay to each permanent employee with ten (10) or more years of service, in the form of a lump sum check

National Trends in the Public Sector

Additional research indicates that the public sector is beginning to rethink the underlying basis for their compensation programs and is recognizing that it is important for each organization to understand and articulate what it is the organization is compensating people for (time in service, results, skills, etc.). There is further recognition that, until there is an understanding of what the organization is paying for, it is virtually impossible to appropriately establish a compensation program that is appropriate. A second critical question that many entities are currently working to address in developing their overall compensation philosophy is how flexible should the compensation system be? Because of this, and an increased public demand for accountability, many public entities are moving to employee recognition systems that are based on employee performance and tied to goals defined by the governing body through their strategic plan.

Given that change is the norm and not the exception, many entities are moving in a direction that recognizes that their classification and compensation systems need to be sufficiently flexible to accommodate on-going and continuous change.

Some of the new trends in public sector compensation include:

- Flexible job bands and broader pay ranges with defined criteria regarding placement within a range (skill or competency based pay, performance based pay)
- More market focus in terms of overall pay levels with market being defined differently for jobs by level and occupational grouping
- Greater emphasis on results and less on longevity or "seat time"
- Emphasis on total compensation (including health care, leave time, pay stipends, alternative work schedules where appropriate and possible, and retirement benefits and the organization's contribution levels)
- Flatter pay structures with fewer pay levels and fewer job classes which allow for more flexibility in task assignments
- Pay for performance models tied to evaluation tools
- A developing trend in the industry involves the Wage and Hour Division of the U.S. Department of Labor looking into changing the compensation threshold exempt and non-exempt positions, which could have an effect on classifying positions

National Trends in the Private Sector

In reviewing private sector trends for overall compensation practices, for 2015, Mercer Human Resources reports that 82% of the more than 1,500 organizations surveyed, use a pay-for-performance compensation philosophy, well aligned with the philosophies of those public sector entities reviewed above. However, only 22% of these organizations measure their pay-for-performance program effectiveness, indicating that many organizations need to further review their practices for effectiveness. Of the 22% that tracked their pay-for-performance effectiveness, 68% gathered that their program was 'somewhat effective' and 30% gathered that their program was 'very effective'.

In reviewing private sector organizations, the following 'trends' and 'best practices' were gathered from external surveys:

- Many employers are expecting to raise the minimum wage for employees in the upcoming year to better reflect a potential 'living wage'.
- Amidst retention concerns, employers are aiming to focus on providing learning and career development opportunities for employees in the coming year, followed by merit-based pay increases.
- The Pay-for-Performance plan as part of an organization's compensation philosophy remains the most widely used recognition practice for rewarding employees.
- There is a growing 'push' to measure the effectiveness of organizations' Pay-for-Performance plans, in an effort to remain relevant in conjunction with goal assignment and achievement and professional growth.
- Determination of whether the company should set salaries at, above, or below market based upon availability of labor.
- Deciding the extent to which employee benefits should replace or supplement cash compensation.
- Providing variable pay as a type of pay, which is compensation linked directly to performance accomplishments. The most common types of variable pay for most employees are bonuses and incentive program payments.
- For executives, it is common to have longer-term rewards such as stock options or bonuses.

Other 'best practices' in managing compensation programs and contributing to the development of a total compensation philosophy include:

- Promoting an integrated view of rewards—not only traditional, quantifiable elements, but also more intangible, non-cash elements such as career opportunities, learning and development, work challenge, and supportive culture.
- Transparency—in other words, employees understand the process or system by which they are paid.
- Auditing front-end and back-ends of the recognition process with basic tests for irrelevant factors.
- Creating good dialogue at the top of the organization, with the CEO, owner or executive director and with employees.

Through analyzing the survey responses of one hundred and six (106) employees, reviewing market data and private sector major trends in compensation philosophies, it appears that the pay-for-performance system is the most widely used throughout private and public sector, and, through looking at the many varieties in both areas, there are many possible options to personalize OWASA's compensation philosophy and, we look forward to assisting the organization in defining what that is.

Benefits

Employee benefit offerings are changing in the marketplace. Historically, employers have offered a base salary, retirement and/or pension plans in addition to basic benefits coverage such as health care and employees were appreciative of the benefits provided. New trends in benefits show that the industry is aspiring to be more consumer, or employee, focused and centered around the health and well-being of employees and their financial stability, as programs that worked for the 'baby boomer' generation are beginning to leave the marketplace. In an effort to remain competitive in the market today, employers must be innovative and on the 'cutting edge' with their benefit practices if they wish to recruit and retain their talent.

New trends in health care coverage in the market indicate a rapid shift to what is known as the 'defined contribution strategy'. This new strategy allows employers to decide on a monthly amount they will provide for employee benefits and employees are becoming responsible for selecting the plan(s) that works best for their family. This option does away with making the employer the 'middleman'. New trends developing in health insurance programs include employers working to create a culture of health in the workplace that focuses on the following major areas:

- Focus on health rather than sickness
- Prevent disease before it begins
- Helping employees become good health care consumers
- Offering employee choice with consumer driven health care
- Provision of cafeteria style options for health care programs
- Provision of wellness coaches to assist employees in living a healthier lifestyle, which results in lower demand for health care visits

As an employer, in order to implement and create a culture centered on health and wellness, consider the following options, all of which are growing in popularity in the workplace:

- **Health Risk Assessments**– allows the employee to complete a questionnaire to evaluate their current health and quality of life. Promotes awareness by reviewing participants' personal lifestyle practices and revealing health issues that could be impacted by personal choices. The Assessment can help employees be aware of how much they should plan to contribute to their HSA or HRA at the time as well, based on the findings of their assessment
- **Wellness Teams:** Create a team of employees designated as 'wellness ambassadors' of the organization, creating a mission statement for wellness and develop goals and objectives for the company to meet, all in an effort to promote wellness awareness to employees. The wellness team should be responsible for constructing methods for employee engagement. Examples include holding fitness contests, providing fitness bands to employees or additional incentives to exercise.
- **Encourage Senior Management**: Often times, when employees see their manager participating in an initiative or displaying commitment and support to a topic, there are significant increases in the desire for the employee to *want* to participate as well. The manager should be an encourager and motivator to the employee.

Additional benefit trends, which have seen a rise in the workplace in the past five (5) years, and are expected to continue to increase, include the following:

- **HSA**: (health spending account) Works like a 401(k) and a checking account combined, that can be used for medical expenses. Most people add money to their HSA through their paycheck but an employee can add

to it at any time. Contributions to your HSA are tax deductible. It can also be used to cover the expenses of a spouse or dependent even if they are not on the plan

- **HRA**: (health reimbursement arrangement) A benefit account established by the employer. The employer contributes a certain amount of money to the account each year for the employee to use for medical expenses not covered by their health plan such as deductibles and coinsurance.
- **Alternative Work Schedules (AWS)**
  - Studies have shown that offering flexible work schedules fosters a better environment for teamwork, a more productive workforce, cost savings, more satisfied employees and opens doors to new sources of talent.
  - Flexible work schedules can come from allowing employees to compress work days, have flexible daily hours, or telecommuting.
    - *Flex-time*: a block of time at the start and end of traditional 8-hour shifts during which employees may report and complete their required shift hours
    - *Ten hour days*: a four-day workweek in which an employee works 10 hours per day
    - *Nine-hour days*: one day off every other week, in which an employee works nine-hour workdays and is permitted to reduce every other workweek to a four-day workweek.
  - An employee's AWS should be put into place as a 'trial period' of 6 months, then assessed after that time, and assessed annually after that to ensure it is effective for the employer as well as employees.
  - The employer can set certain limitations on employees in order to have an approved AWS such as a satisfactory attendance record, meeting performance expectations and demonstrating the ability to complete assigned tasks on time.
- **Paid Time Off**
  - Many employers are now moving toward adopting a 'PTO-Bank' style program, giving employees a cumulative number of paid days off that employees use as they wish for sick days, vacation, and other personal needs rather than having a time-off category for each area.
  - Most employers set up their PTO plans based on years of service with the organization, with a new employee having around 16 days available and a 20+ year employee having about 28 days available
  - The top benefits of a PTO system, with one (1) 'bank' of leave days for employees, include that it grants employees more flexibility, is easier to administer and helps the organization remain more competitive amongst others
  - In the 2014, WorldAtWork survey looking at PTO, 35% of the public sector organizations surveyed had transitioned to a PTO system from a traditional system

New Benefits Entering the Marketplace

- Hospice Care
- Nutritional Counseling
- Autism Therapy
- Infertility Treatments
- Home Health Care
- Chiropractor Services
- Hearing Ads

- Cardiac Rehabilitation
- Obesity Prevention Programs
- Egg Harvesting
- On-Site Physicians/Nurses

Each of the communities researched also has an extensive benefits offering to employees. In addition to the 'expected' benefits of the organization, unique and innovative benefits, which are consistent with outside market trends, include:

- **City of Durham, North Carolina**
    - The City offers four (4) types of health coverage plan options: Wellness Rate Core Plan, Wellness Rate Basic Plan, Non Wellness Rate Core Plan, Non Wellness Rate Basic Plan
    - Health Reimbursement Account (HRA) – the City will reimburse each household up to $250 per year for medical deductible costs
    - Critical Illness Insurance
    - Cancer Select Plus Insurance
    - Accident Insurance
    - Term/Whole Life Insurance
    - Hospital Indemnity Insurance
    - Legal Plans
- **Town of Cary, North Carolina**
    - Accidental Insurance
    - Short-Term Disability
    - Contributes 5% to employee 401(k) program
    - Credit Union
- **Town of Carrboro, North Carolina**
    - Town covers 100% of employee membership to fitness center
    - Death Benefit of up to $20,000 after one year of retirement service
    - Credit Union
- **Town of Chapel Hill, North Carolina**
    - Requires all employees to participate in the Retirement Health Savings Plan and contribute 1%
    - Short-Term and Long-Term Disability
    - Term/While Life Insurance
    - Credit Union
    - Longevity Pay after five (5) years of service
    - Free Employee Clinic through 'Wellness@Work' program
- **Orange County, North Carolina**
    - Traditional health care plan as well as a High Deductible Plan that utilizes an Health Savings Account (HSA)
    - Death Benefit of up to $50,000 after one year of retirement service

  - Short-Term Disability
  - Accident Insurance
  - Critical Illness Insurance (includes cancer coverage)
  - Employee discount to the Orange County Sportsplex membership
  - Offers Flex-Time Work Schedule
  - Contributes $27.50 per pay period to each employee's 401(k) and will match up to $63 per pay period
- **City of Raleigh, North Carolina**
  - Offers employees a wellness incentive on medical insurance premiums for employees who complete the requirements of their Health Risk Screening/Assessment and Tobacco Attestation each year
  - Offers two (2) health care plans with a higher and lower deductible option
  - Term/Whole Life Insurance
  - FSA options
  - Accident Insurance
  - The City operates an Employee Health Center for its employees
  - Credit Union

Many of the communities that were researched also have specific aspirations as it relates to their philosophy on compensation and benefits. Statements of each include the following:

- **Town of Cary**: "To support the Town's mission by encouraging employees to develop and contribute to the maximum of their potential by providing compensating employees based on their job performance."
- **Orange County**: "The total compensation is designed to retain valued employees and give employees protection from loss of income due to illness, disability and retirement."
- **City of Raleigh**: "The City provides a comprehensive benefits package as part of the employee's total rewards program to support the employee through important events in his/her life, to enhance the employees life outside work, and to help the employee plan and prepare for the future."
- **Town of Chapel Hill**: "Our goal of providing outstanding services to our residents is supported by a compensation system for the Town of Chapel Hill that allows us to retain and recruit employees who provide excellent service consistent with the Town's adopted values of RESPECT."

It is evident that as the workplace of today moves into the future, most organizations are putting in place efforts to enhance total compensation package offerings to remain competitive in the marketplace. The workplace of the future will be driven by a wellness-centered set of benefits focused on a proper work-life balance, and a competitive compensation package driven by performance and merit. Many organizations are aspiring to be an 'employer of choice' by offering unique, innovative benefits that separate them from others in their industry and get high employee participation.

We appreciate the Board and employee cooperation to date and look forward to providing recommendations for OWASA's Total Compensation Philosophy for the Board's review at the November 12 work session. Please feel free to contact me with any questions you may have.

Question 6: In rank order (1=highest; 7=lowest); what are the reasons you choose to stay employed at OWASA?

1. Allow more levels of performance ratings.
2. I would like more opportunities to move laterally or vertically in the organization. Right now the chances are minimal and few and far between. I want to feel like I am working towards a goal like a new position.
3. This is a good company that cares about its employees. So far the Board Members that have been here during my time have been "pro employee." That really means a lot to know they have our best interests at heart when it comes to safety, pay, benefits & work environment.
4. Very good health insurance. One of very few places to my knowledge that still covers employees 100%.
5. Support of management.
6. Don't like our evaluation. We can only have a set number of employees get an E and when you care about your job & the company you get an S just like the ones that don't care and puts OWASA first.
7. All items would be #1 to me, I hated to have to choose.
8. Number of years on the job.
9. LGERS
10. Alternate Work Schedule.
11. The LGERS and 457 plans. I don't want to spend half a century in the workforce just to retire in poverty. If one takes appropriate advantage of the 457, it will yield a comfortable retirement when combined with LGERS and social security.
12. Work/Life Balance.
13. There have been many days of uncertainty for me with OWASA. It seems that some authorities have misplaced priorities.
14. I hope to take advantage of other assistance programs offered by OWASA. Namely the education assistance program.
15. The benefit of health insurance after retirement and retiring in 30 years is awesome! OWASA is a great place to work and I'm grateful for my job. It is a privilege to be a public servant and work alongside so many great people. That is what encourages me to do my best.
16. OWASA is a great place to work, some very nice people to work and deal with.
17. State pension.
18. Environmental stewardship and responsibility.
19. Too much work to look for new job.
20. More frequent review schedule.
21. Work-personal life balance. OWASA's flexible work schedule, limited travel (only for conferences/training I choose to attend), and lack of need for billable hours is huge. All factors in above list are important to me with exception of job security - I know I can get other job easily, if needed, and be paid a lot more money for what I do. (Continuation of answer to question 8 - Personally, I would take lower annual salary increase if OWASA made meaningful changes to these benefits; may not be true for younger employees or those in lower job classifications, but seems like OWASA could offer choice if funding limited).

22. OWASA's reputation as a leader in the industry; proximity to where I want to live; family-friendly culture.
23. Paid leave and flexible work schedules.
24. Mission of organization.
25. Vacation time.
26. Office is close to home.
27. Things are not always fair for some employees.
28. Strong leadership.
29. Bad accomine.
30. I like helping others. Working at OWASA allows me to help existing and new customers.
31. Work Life Balance - I have a full time salaried position that typically works 45 hours/week, ample vacation/sick leave, flex schedules, alternate work schedules, and doesn't require travel. This is basically non-existent in the private sector. I get to spend the rest of my time with my family.
32. Work schedule.

Question 8: What is the most important thing you believe the OWASA Board of Directors should include in the organization's overall employee compensation philosophy? Please tell us one factor that is most important to you.

1. Pay commensurate with education and experience and in line with market place for professionals, whether public or private sector employer.
2. I get the same score on my review as everyone else so there's no reason to try harder. Especially when raises have been so small.
3. 457 plan need more $ in this area.
4. Supervisory and tech employees are highly compensated with paid seminars, leave and stay. I am not sure if those expenses are quantified to calculate overall employee compensation. So those who are benefited from unlimited OWASA paid seminars/education should be measured separately for comparison. Certain departments are totally discarded/not actively encouraged to attend seminars/OWASA paid opportunities.
5. Retaining and recruiting the best in the field.
6. More incentive to take career development training.
7. Retirement.
8. Benefits are most important to me and it is the Health care benefit in particular that has kept me here.
9. Some recognition that, no matter what the board decides OWASA's compensation "philosophy" to be, the rest of the world operates on a market-based compensation philosophy. Adopting anything other than a market-based philosophy, or whatever wage-compressing experiment the Board has in mind, will result in a "brain drain", as professional staff get hired away by the Town of Cary or some other such jurisdiction that does not suffer from this existential malaise every budget year.
10. Equality and equal opportunity for advancement. OWASA currently has a 'pick and choose' method for career advancement and a 'rich get richer' method of compensation.
11. Keep good insurance with low deductible.
12. Keep insurance with low deductible and a benefit package.
13. Pay.
14. Pay.
15. Provide leadership among employers in our industry in implementing innovative compensation and benefits programs.
16. I don't think there is a lot of job satisfaction in most of what we do. We are a service organization, so the benefit of working here is not going to come from the work itself, but rather, from the job security, compensation and benefits.
17. I do think it's important to develop a system that will allow employees to move through their pay range.
18. Benefits.
19. Maintaining our excellent benefits. To not be pressured by the ACA or attitudes designed to create a one-size-fits-all reduced benefit environment.
20. Unequal level of training investment, commitment and effort should not receive equal compensation and increases. Affordable health/dental care with generous coverage is very desirable.

21. Treat everyone the same and not show favoritism.
22. Appearances by them. The BOD should be required to make face to face, people/personable encounters so that employees know who they are but more importantly, that they show some interest in who we are.
23. OWASA is one of the best in the industry and we want to maintain this distinction by attracting and retaining the best employees. The previous pay study significantly reduced the minimum requirements for education and experience for some of the positions. I don't believe OWASA should lower their standards just to fall in line with the market average. To remain exceptional we should seek out and retain exceptional employees.
24. They should look at evaluations. You have people get S on evaluation that should be a S+. But not strong enough to be a E. So they get the same raise that a S- receives. In other words there should be a distinction between S on the evaluation! So S+ receives a bigger raise than a S or S- would receive.
25. A fair rating system. The current one is so far off it has created sub-classes of employees. It only allows for 10% of the company to achieve a high rating on their evaluation. Then the same 10% get the high raises every time leaving nothing for the rest of us. The current evaluation system is an absolute failure to the 90% of the company.
26. Maintaining a very good benefits package.
27. The Insurance that is provided to OWASA employees and their families is a very good plan. However this plan is rather expensive; not only to the company but also to the employee as you begin to add family members. Mostly the higher costs are associated with lower deductibles, copays, pharmaceuticals and the like. This is all great; however I believe there are other options that could significantly reduce not only the participation costs for the company but also their employees.
28. Get rid of the 10% for exceptional performance. Keep your eye on the big picture and not get stuck in the weeds.
29. The ability to create a non-supervisory career path for employees that allows them to ascend through their pay scale and be rewarded for increased knowledge and experience needs to be created. The current system leaves the bulk of employee salaries stagnant at the bottom of their ranges. Our current system of only allowing 10% of employees to receive an "exceptional" rating on performance reviews and therefore get a higher raise puts upward mobility out of reach for the bulk of employees.
30. Beneficiary life insurance
31. The staff should be more diverse and the people that is in the position of hiring need to be in question in their selection process, because that is one of the reason there is a true diversity problem at OWASA.
32. Too many people who don’t contribute get the same raise I do.
33. Providing a salary fair and equitable to the cost of living within OWASA's service area.
34. Develop opportunity to incentivize exemplary performance; especially important for supervisors to challenge staff. Also need process to insure staff move thru their pay grade - shouldn't have 15+ year employees still below midpoint
35. I don't know why it takes so long for the board to vote for our raise every year. One year it was even late.
36. Insurance is really expensive for my family.
37. I believe that they should focus on our benefits for multiple reasons; such as retirement and our 457 plan for those who desire to work for OWASA long term. Also for health insurance for employees who have children and families included on their insurance.

38. To make any philosophy successful it has to be a vibrant vision that everyone sees themselves as a valued component. The standardization of a compensation philosophy may reduce the value of uniqueness in and individual. I believe a compensation philosophy must be founded in fairness yet enable d to reward measurable difference makers.
39. Fringe benefits - while the health insurance is awesome (and important to me to continue spouse coverage), lack of vacation time (12 days at >25 yr exp when I made 27 at former job). I've never worked anywhere with no 401(k) match and the $20 they will offer after 4 years is ludicrous. I also believe that OWASA could further increase flexibility by allowing telecommuting (even 1-2 days a week) and offering part time employment for those looking to retire (5-10 years off for me).
40. More monetary locations for outside education relevant to the employee's job and/or advancement.
41. Just to try and keep a good insurance provider I think blue cross and blue shield is good one.
42. You have to be the best to attract and retain the best.
43. All these factors are equally important to me and they are all what keep me here.
44. Provide managers and supervisors the flexibility and resources to incentivize peak performance.
45. The longevity of the employee's future and retirement benefits
46. Continue to provide high level benefits, including full payment of insurance benefit for employees with 30 years of service, at the same level currently promised. And to ensure no employee ever has to worry about a reduction in work force.
47. To have good benefits and good cost, reward the person who works hard and efficiently in a good way and "continues". I think this way, will not change their attitude and way of working
the employee needs to be motivated and my opinion the best way is reward his work ,and of course we are rewarded by having a job but it's always good to give 110% to obtain better opportunities and better salary
48. Benefits.
49. Raises that at minimum keep up with cost of living every year for all employees at level N/I or higher. Merit raises should be redone to truly reward high performance by getting rid false quotas for E ratings.
50. Raises have been bad lately. They should be like they used to be.
51. Flexibility/options, where practical.
52. Pay commensurate with skill and experience.
53. Fairness in distributing equity.
54. Everybody needs more money.
55. Preserving strong benefits and keeping pay competitive.
56. What we do, not what the supervisors think we do!
57. Reward for consistent above average performance.
58. Keeping the existing benefits (no one wants to step backwards).
59. Consistency. As employees for a utility, we're expected to be extremely consistent. The board's compensation policy over the last few years has been uncertain. They've dedicated a significant amount of resources to determining the optimal compensation strategy, but there never seems to be a final resolution.
60. Money.
61. Maintain competitive pay and benefits at all levels of the organization.

62. OWASA's current compensation package encourages me to work just hard enough to get an S.
63. Learning and development for career growth.
64. More opportunities for advancement or goals to work toward.
65. Equal treatment for all employees. We are all a team after the same goal.
66. To make sure the best and brightest within the company are rewarded accordingly. I also think the more options we have as employees RE: the types of benefits would be nice. For example: some employees have families that are on our insurance and those benefits are extremely important to me. On the other hand, some employees may be young and single & those benefits may be less important to them. Multiple choices would be great.
67. Fair pay.
68. Cost of living.
69. A raise.
70. Higher annual raises.
71. We need more money.
72. The obvious thing is money. Keep your important, valuable people here. Show them you appreciate their value.
73. Good.
74. We have a great Board and management.
75. Only 10% of employees got E on evaluation.
76. Be transparent about their compensation philosophy and having an official pay strategy.
77. I think good benefits are vital to a public workplace. Right now OWASA is one of the best. Just a few things could be a little better. If an employee is well taken care of then I feel you create a loyal and hard working employee.
78. Items such as insurance, 457 retirement and time obtained (sick/vacation) are very important.
79. All employees be treated fairly.
80. OWASA, as a whole, is a very good company. You can't beat the benefits. I do wish they had kept the longevity. The one thing I would like to see if treat everyone fairly.
81. Please improve our retirement & health programs. Most benefits are good. Would like to see 457 plan contributions increased.
82. Fair pay/Benefits. Good equipment to work with.
83. Pay wise better raises for the workers that care about OWASA and not just here for 8 hours a day. Our benefits are awesome.
84. Cost of living raises yearly.
85. I can't say I really like what I do for a living, but OWASA treats us very well as far as benefits go. I feel we have great job security & I do like most of the people I work with & have worked with here. But benefits & pay are definitely the primary reason I stay and plan to stay at OWASA.
86. Health & dental benefits overall are most important and should be included.
87. Retirement, when comes from another utility, has 32 years altogether, cannot retire OWASA will pay the benefits.

88. Merit wise OWASA does well but beyond that it's bad on what dept. you are in. No Bonus Rewards. Our mission statement says a lot don't you think?
89. Consistent way to pay that allows people to move into the pay range.
90. Good benefit package - deferred compensation.
91. Pay and the ability to work your way up through the pay range. This year only those ranked E (10% of staff) move up in the range at all.

Agenda Item 3:

Discussion of the Fiduciary Duties of OWASA Board Members

Purpose:

To discuss General Counsel's Memorandum on the nature and meaning of the fiduciary duties undertaken by Board Members upon their oath of office.

Information:

- *The Fiduciary Duties of OWASA Board Members* – by Robert Epting, OWASA's General Counsel dated September 30, 2015
- March 17, 1992, letter from Robert Epting, OWASA's General Counsel, to Mrs. Lois Herring, Chairman, OWASA Board of Directors, regarding Nature and Function of Orange Water and Sewer Authority; Fiduciary Duties of Members of the Board of Directors

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THE FIDUCIARY DUTIES OF OWASA BOARD MEMBERS

Robert Epting, General Counsel

September 30, 2015

The Board of Directors has asked that I provide an explanation of the duties undertaken by Board Members, upon their oath, including in particular the "fiduciary" character of their service.

The Oath of Office each member of the Board of Directors takes, subsequent to his or her appointment, requires the new appointee to "diligently, faithfully, and truly perform the duties of a Member to the best of my ability, so help me God."

A "fiduciary" is one who is entrusted with power over, or with the care of property of another, called the "principal." Because that entrustment is based upon a relationship depending upon special confidence, reliance, or even dependency, the fiduciary owes a special duty of loyalty and careful practice in acting for the principal.

For example, one who agrees to serve as power of attorney for another owes his or her principal the highest degree of care, of loyalty, and best efforts to protect the interests of the principal. A fiduciary relationship usually arises out of the entrustment of property or business interests by one to another, such as bankers, lawyers, and accountants, or the guardianship of the interests of a disabled person, or the stewardship or governance of a community of interests.

A fiduciary must never engage in conflicts with his principal's interests, or obtain his or her principal's assets during or as a result of their relationship, or obtain individual benefit for himself or herself by such service.

Directors of corporations are said to be entrusted with the property and governance of the corporation, and serve as fiduciaries of the corporation and its shareholders. In that relationship, Directors must be loyal to and not act in conflict with the interests of the corporation. They must avoid conduct that conflicts with the interests of the corporation, or that may appear self-interested.

OWASA is a public, corporate body, a limited purpose unit of local government. It was formed by agreement and formal resolutions adopted by Chapel Hill, Carrboro, and Orange County, to combine, accept title to, and operate the water and sewer systems previously owned by the Towns and the University. In place of the elected officials who previously had charge of the utility system, OWASA's Board members serve as Trustees of their combined assets and exercise its lawful authority for the benefit of the entire service community. As such, OWASA's Board members undertake fiduciary duties to the corporate entity, and to its service community.

Board members of public, corporate bodies such as OWASA serve in a special fiduciary relationship to those bodies, and must be sworn to an oath promising to abide by the laws of the United States, and of the State, and to "diligently, faithfully and truly perform the duties" as members of the Boards of those corporations. The words of the oath are not mere adverbs. Rather, they refer to the duties of loyalty and honest service historically required because of the fiduciary nature of their office as a member of the Board of Directors.

The oath taken by every Board member is a solemn promise to be "faithful" and loyal in serving the corporation's interests; to be "diligent" in the work required to prepare to give honest service; and to be "true and honest" in dealing with the assets and governance of the public body, and in avoiding conflicts of interest, including conflicting relationships, self-dealing, or obtaining benefits for themselves at the expense of the public body.

OWASA Board members are appointed by three separate public, elected bodies. Nevertheless, their appointment to serve as Directors of this public corporate body requires them to acknowledge (in their oath) and to undertake (in their service) to be loyal and to give faithful service to OWASA's purposes; to give time and attention as necessary to understand and give reasonable direction to its governance; to avoid conflicts of interest in such service; and to support and serve the interests of the entirety of the community OWASA serves.

In return for their oath, Board members are entrusted with OWASA's assets and management, which trust they must exercise in the interests of the OWASA service community, who are the beneficiaries, the real principals, in this fiduciary relationship. Stated another way, Board members are prohibited to obtain individual benefits for themselves, or to act in any way disloyal to its mission and purposes.

A fiduciary should avoid giving his or her oath for such service, when he or she has already taken an oath of loyalty that may pose conflicts with the interests of the OWASA community. For if a fiduciary has taken oaths to conflicting entities, his or her service thereafter necessarily falls short of the fiduciary duties then owed to both.

From my perspective over more than thirty years as General Counsel, the most important duties of OWASA Board members fall into several principal categories, each requiring Board Members' due regard for the fiduciary nature of their service and to their best efforts in the performance of their duties.

The statutes impose upon the Board specific duties to determine what services are to be provided, what costs will be incurred, and what rates should be imposed to recover sufficient

revenues to fund those operations, including financial reserves for future growth, including rehabilitation and replacement, of the system.

The financial system adopted by the Board to meet this end is critical to every aspect of its operation, and every Board member comes to his or her office with a duty to recognize and follow the constraints of the statutes, as well as the lawful direction given by OWASA's original founding agreements with Chapel Hill, Carrboro and the University, (as well as by the Bond security agreements securing its indebtedness), including their direction to calculate rates based upon the costs incurred by the utility to provide water and sewer service in the community, not to discriminate in the rates charged for service provided within each user class it determines to be appropriate, and to avoid the provision of any free service.

These are fundamental fiduciary duties in which the Board acts for the entire community, and each Director should therefore avoid personal interests or undertakings that conflict with these interests and obligations to the service community as a whole.

Another crucial duty undertaken by every Board member is to do the work required to understand, plan for, and assure the future needs of the service community. The cost-of-service principle necessarily requires that Board members exercise and use their reasonable judgment, and consider the opinions and advice of others, to come to reasonable conclusions about the nature of services presently needed, and those that will have to be added to match supply with increasing demand, and to meet unexpected needs or emergencies as they may arise. Indeed, this is a fiduciary responsibility assigned by the Sale and Purchase Agreements to the OWASA Board, because it is tasked to act for the consolidated user community in this regard, "to assure a sufficient supply of potable water to meet the needs of the community."

Third, their oath to follow the law imposes upon every Board Member the duty to understand the statutory legal constructs under which OWASA was formed: that OWASA is a limited purpose unit of local government, whose powers and duties include only those set out in the statute; and, conversely, that it is not a general purpose unit of government, and may not undertake broader or more general "public benefit" projects, or pursue other charitable purposes, permitted to Towns, Counties, and other entities created by state statute.

Further, by virtue of those laws, OWASA consists of a nine member Board of Directors, and only decisions approved by a majority of the nine Members of the Authority are acts of the Authority. Put another way, part of the fiduciary duty of every Board member is to prepare to involve himself or herself in such discussions and thus in governance by the Board, as necessary to understand the subjects at hand, and to agree to be loyal to that principle, i.e., that each is required to offer his or her own, and to receive and digest the opinions of the others, and to knit together from their discussions the best way forward, as determined by majority vote.

Thus, none may act alone for OWASA, nor may any speak for OWASA except with the support of a majority of the Board. This principle reflects the primary strength of the democratic form of government, i.e., to require that actions taken be synthesized from discussion, and that they be the product of the energy and efforts of all nine Members. Respect for this principle assures that actions and decisions of the Board will be stronger for that communion. The oath of office binds every Member to respect this principle, to encourage and entertain the ideas of every other Member, and to insist upon the sanctity, for the moment, of the decisions made by a majority of the Board.

OWASA Board members will find themselves involved in deciding matters of policy and governance having to do with other important topics as well, including recruitment, retention, and fair and reasonable compensation of employees representative of the diverse populations of our community; conservation of the natural resources necessary to sustain OWASA's service community; providing a transparent and accessible program for keeping community leaders and citizens informed and involved in OWASA's work; and a host of other topics. In all of these, their duty under their oath of office is to prepare themselves, to confer by speaking and listening, and to respect decisions made by majority vote as the actions of the body.

Finally, Board Members are cautioned to abide and protect their roles as Directors, from the natural tendency usually described as "just trying to be helpful," to become involved directly with the operations managed by the Executive Director. When Directors step out of their policy and oversight roles, and communicate directly or otherwise engage with staff in what may be perceived as "directions from the Board," the Executive Director's directions to his or her staff, are naturally affected, and may be weakened. Staff may thus be led to await or calculate how the Board member might react before following directions given by the Executive Director.

Equally, a Board Member who might think to perform work ordinarily assigned to staff effectively "changes clothes" from his or her formal habit as a Board Member, to that of one subordinate to the Executive Director's operational authority, which may be detrimental to his or her position and authority as a Board Member, not to mention his liability as an employee or agent of OWASA rather than one clothed in the governmental immunity of a Board Member.

Each therefore has a fiduciary duty not to "act out of office." Board Members are encouraged to interact with staff through the procedures set up for Board governance by Board Members, to act only as Board Members, to be careful not to engage in staff activities, and not to give direction or make requests directly to staff employees, except as provided for in formal Board policy.

Said another way, the Board is the boss of the Executive Director, with respect to goals and policies of the organization, while the Executive Director is responsible for management of the enterprise itself, as well as interacting with the service community's needs and requests. Such

needs and requests may be brought to the attention of the Executive Director or appropriate staff by Board Members, but should be left with appropriate staff for resolution. When a Director attempts to respond directly for OWASA to individual requests or complaints, they step out of their roles as Board Members, and, give the impression that the Board Member is acting for OWASA, which he or she has no authority to do. Their duty is to bring the matter to the attention of the Executive Director, or to the full Board, so that appropriate action can be taken by the Board or the Executive Director.

In all of this, each Board member is bound by his or her oath and as a fiduciary to serve loyally, to work diligently, and to give to the enterprise his or her best effort, to avoid any conflict of interest with the organization or the whole community it serves, and not to obtain or accept any individual benefit or advantage by reason of such service.

Board Members also have a duty to remain mindful of their fiduciary duties, to be vigilant to prevent breaches of fiduciary responsibilities by others, and to inquire when circumstances suggest conflicts of interest, inappropriate practices or improper benefits, or other questionable actions are being contemplated, or to report when it appears they may already have been taken. Such inquiries or reports should be made to the Board Chair, or to General Counsel or the Executive Director, as circumstances may indicate.

So long as every Member accepts these responsibilities as a part of the oath he or she has taken as a Board Member, and determines to meet these responsibilities and to see that they are met by others, I am confident that the Authority will be made to operate within the legal constructs upon which it was created, and that each Member's service will be made more rewarding, to the ultimate benefit of our community.

I have also attached my Memorandum to the Board dated March 17, 1992, which addresses a similar request from the Board. I trust these remarks, along with that Memorandum, will be useful to you in understanding your fiduciary duties as Board members.

Robert Epting
General Counsel to the
Orange Water and Sewer Authority

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March 17, 1992

Mrs. Lois Herring, Chairman
Board of Directors
Orange Water and Sewer Authority
P.O. Box 366
Carrboro, NC 27510

Re: Nature and Function of Orange Water and Sewer Authority; Fiduciary Duties of Members of Board of Directors

Dear Mrs. Herring:

I am glad to respond to your request for a memorandum describing the legal nature and function of the Orange Water and Sewer Authority, as well as the nature and duties of the office of Members of the Board of Directors of the Authority.

The Orange Water and Sewer Authority, along with numerous other water and sewer authorities in North Carolina, are created and operate pursuant to the provisions of Chapter 162A of the North Carolina General Statutes.

That statute provides that:

> Each authority created hereunder shall be deemed a public instrumentality exercising public and essentially governmental functions to provide for the public health and welfare." 162A-6.

Moreover, 162A-3.1(c) makes clear that a water and sewer authority is "a public body, politic and corporate of the State of North Carolina."

Thus, OWASA is an independent public body, politic and corporate, of the State, established to exercise governmental functions to provide for the public health and welfare.

The governmental functions exercised by water and sewer authorities are those described in 162A-6, primarily:

> "To own and operate any water or sewer system ... within or without the participating political subdivisions; (5)

To fix, revise, and collect rates, fees and charges for such water or sewer services; (9)

To enter into contracts and agreements as necessary or incidental to the performance of its duties and powers under the statutes, and to do all acts necessary or convenient to carry out the powers granted by the statutes." (14a, 15)

Though the appointing political subdivisions are permitted by statute to remove their appointees "with or without cause," (162A-5), the statutes contemplate and require certain independence of water and sewer authorities from the political subdivisions which appoint their members. Perhaps the most specific direction given in this regard by the statute is that:

"Each authority shall fix, and may revise from time to time, reasonable rates, fees and other charges for the use of and for the services furnished... Such rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the state or of any political subdivision." (162A-9)

The Authority's duty to set rates is thus separated from the supervision or regulation of the appointing political subdivisions and underscores the independent character of the Authority as a (separate) public instrumentality whose Board members have duties independent of their appointing political subdivisions. The Authority Board's duty to set rates is not undirected however, as the statute prescribes the Board's duty as follows:

"Rates, fees and charges shall be fixed and revised so that the revenues of the Authority, together with any other available funds, will be sufficient at all times:

1) To pay the cost of maintaining, repairing and operating the systems... including reserves for such purposes, and including provision for the payment of indebtedness of the local political subdivisions assumed by the Authority..., and

2) To pay all of the principal and interest on all bonds issued by the Authority.

Fees established as provided in this subsection shall be made applicable throughout the service area." (162A-9)

An authority board's duty to fix rates is thus concurrent with and to be exercised depending upon the members' judgment as to what is necessary to provide for and assure the maintenance, repair and operation of the water and sewer system, in order to provide for the public health and welfare.

In my judgment, therefore, the fiduciary responsibility undertaken by each OWASA Board member upon the oath prescribed by the statute "to discharge faithfully the duties of his office...," (162A-5), is to exercise his or her best judgment as a member of the Board of Directors of OWASA to determine and provide for the operation of the water and sewer systems as necessary to provide for the public health and welfare. Board members are not bound first to differentiate, then to support, the needs or interests of their separate appointing political jurisdictions.

Along with this fiduciary duty comes every Board member's potential liability to bond holders, rate payers, and others alleging injury from improvident fiscal management or negligent failure to direct the operation of the Authority in accordance with law and regulation, and prudent standards of care. Few persons would subject themselves to such liability as a Board member without the ultimate authority to control the fiscal and operational affairs of the Authority. Of course, the statute's imposition of nondelegable fiscal duties upon Authority Board members, to be kept in light of their determination of the reasonable requirements of the system, grants that authority.

As General Counsel, I have been inspired by the efforts of Authority Board members to identify and serve water and sewer needs of all the customers of the Authority as a public health serving system, and to respect the political judgment and prerogative of the appointing elected bodies with respect to planning, zoning and politically sensitive interests within the political domain of those boards. Of course, from time to time over the years Board members have respectfully disagreed, but in latter years with lessening regard for each others' addresses.

I am mindful that recalling the independence of OWASA as a public, corporate entity risks fueling the concern of those who might insist, regardless of the Authority Board's nondelegable, statutory duties, that the statutory power of the political subdivisions to remove their appointees without cause is tantamount to the power to direct their appointees' judgment respecting OWASA's operations. Clearly that power is reserved to the elected bodies as a safety cord which, not insignificantly, assures certain

democratic control over Board members as they go about their tasks.

Yet, the statute's reservation of rate-making authority to Authority Board members, and its direction that rates be set in order to provide sufficient funds for operation and maintenance of the systems, establishes in the OWASA Board of Directors certain responsibility for the operation and the fiscal integrity of the water and sewer system as they in their combined judgment deem appropriate to serve the public heath and welfare.

In practice, that judgment has been exercised, as it should be, in balance with and recognition of the natural political considerations reserved by the elected political Boards.

With kind regards, I remain

Very truly yours,

Robert Epting
OWASA General Counsel

cc: OWASA Board Members
Mr. Everett Billingsley

Agenda Item 4:

Review Board Work Schedule

Purpose:

a) Request(s) by Board Committees, Board Members and Staff
b) Review and update the 12 Month Board Meeting Schedule
c) Review the draft agenda and discuss expectations for the December 10, 2015 work session
d) Review the draft agenda and discuss expectations for the January 14, 2016 work session

Information:

- Draft 12 Month Board Meeting Schedule
- Draft agenda for the December 10, 2015 work session
- Draft agenda for the January 14, 2016 work session

OWASA Board of Directors – 12 Month Board Meeting Schedule (November 6, 2015)

Month	Board Meetings		Committee & Other Meetings
	Work Session	Business Meeting	
November 2015	***Discuss Employee Total Compensation Philosophy*** Discuss Board Fiduciary Duties *11/12/2015*	*Holiday - no meeting*	Special Closed Session (11-4-2015)
December 2015	***Draft AMI Feasibility Study Presentation/ Report*** ***Discuss Draft Employee Total Compensation Philosophy*** ***Review Cost Allocation Study*** Discuss Draft ED Performance Goals *12/10/2015*	*Holiday - no meeting*	
January 2016	***Final AMI Feasibility Study Presentation/ Report*** ***Approve Employee Total Compensation Philosophy*** Update on Employee Health Insurance Discuss Financial Reserves Policies Discuss FY17 budget calendar and assumptions () *1/14/2016*	Community Engagement Approach/ Process Annual Lakes Recreation Report Discuss CIP Investment Practices **Discuss Rate Structure** (if needed) Discuss Customer Survey Q2 Financial Report () CIP Semiannual Report () *1/28/2016*	***NRTS - Energy Plan – Strategy Evaluation (TBD)***
February 2016	***Determine AMI Next Steps*** ***Review Energy Plan – Strategy Evaluation*** Discuss Review & Update of Strategic Plan ***Approve Rate Structure*** CS - General Counsel Interim Review () *2/11/2016*	Discuss Staff's Proposed Process to Update Strategic Plan CS - General Counsel Interim Review () *2/25/2016*	
March 2016	Review findings of Easement Pilot Draft Budget and Rates () Set date for public hearings () CS – ED Interim Review () *3/10/2016*	Draft Budget and Rates () CS – ED Interim Review () *3/24/2016*	**NRTS** – ***Draft Energy Plan (TBD)***
April 2016	Review Employee Health and Dental Insurance Renewal () FY 17 Draft Budget and Rates () Authorize staff to publish proposed rates () *4/14/2016*	*Q3 Financial Report* () *Audit Firm Selection* () Award the Rosemary, Henderson, and Hillsborough St Water Main Project Contract *4/28/2016*	
May 2016	***Discuss LRWSP – Goals and Metrics*** ***Review Draft Energy Plan*** Award the Cane Creek Permanganate Facility Project Contract Review Employee Health and Dental Insurance Renewal (if needed) () Review Employee Merit Pay for FY 2017 () Appointment of Nominating Committee () *5/12/2016*	Public Hearings - FY 17 Budget and Rates () Approve Employee Health and Dental Insurance () Approve LRWSP – Goals and Metrics *5/26/2016*	
June 2016	***Public Comment on Draft Energy Plan*** Approve Employee Merit Pay for FY 2017 () Approve FY 17 Budget and Rates () Election of Officer () *6/9/2016*	To Be Determined *6/23/2016*	
July 2016	***Discuss LRWSP - Demands and Yield*** *7/14/2016*	To Be Determined *7/28/2016*	
August 2016	***Discuss & Approve/Disapprove AMI Phase 2 with DS&A*** (if needed) CS – General Counsel Review ()	12 Month Financial Report () CIP Semiannual Report () CS – General Counsel Review ()	

Current and Pending Key Projects and Stages – in ***bold italics***

OWASA Board of Directors – 12 Month Board Meeting Schedule (November 6, 2015)

Month	Board Meetings		Committee & Other Meetings
	Work Session	Business Meeting	
	8/11/2016	*8/25/2016*	
September 2016	CS - General Counsel Review ↻ CS – ED Review ↻ *9/8/2016*	***Approve contract with DS&A for AMI Procurement Phase*** (if needed) Annual Report and Financial Audit ↻ Approve General Counsel Engagement ↻ CS – ED Review ↻ *9/22/2016*	
October 2016	TBD *10/13/2015*	Q1 Financial Report ↻ Strategic Trends Report ↻ *10/27/2016*	

The 12 Month Board Meeting Schedule shows Strategic Plan initiatives and other priority efforts that the Board and staff plan to give greatest consideration to during the next twelve months. The schedule also shows major recurring agenda items that require Board action, or items that have been scheduled in response to the Board's prior standing request. This schedule does not show all the items the Board may consider in a work session or business meeting.

The 12 Month Board Meeting Schedule will be reviewed and updated at each monthly work session and may also be discussed and updated at the Board's business meetings.

In addition to the initiatives shown in this schedule, staff will be working on other Strategic Plan and organizational priorities that are not expected to require major additional discussion with the Board except as part of budget deliberations (e.g., continuing our comprehensive asset management work).

The schedule implies that the following Strategic Plan initiatives would be addressed beyond the 12 month period. The Board may conclude that one or more of the following initiatives are higher priority. The schedule will be revised as needed to reflect the Board's priorities, and any additional initiatives that the Board may decide to address.

- Development of a plan and policy framework for OWASA lands is considered a longer-term priority.
- Improve effectiveness as a learning organization is considered a longer-term priority.
- Water Conservation Plan will be prepared concurrent with update of the Long-Range Water Supply Plan.

The OWASA Board determines which topics it wants to explore as a full Board (potentially in a work session format) and which topics it wants to assign to Board committees or committee chairs for further analysis and development of recommendations. Board also determines priorities and desired timeframes for addressing topics. Committee meetings will be updated on the schedule routinely.

Abbreviations Used in Draft Schedule:

↻	Recurring agenda item (generally these are "required" items)
AMI	Advanced Metering Infrastructure
CIP	Capital Improvements Program
COLA	Cost of Labor Adjustment
CS	Closed Session of the Board
CY	Calendar Year
ED	Executive Director
FY	Fiscal Year
JLP	Jordan Lake Partnership
LRWSP	Long-Range Water Supply Plan
Q	Quarter
WTP	Water Treatment Plant
WWTP	Wastewater Treatment Plan

Current and Pending Key Projects and Stages – in ***bold italics***

Current and Pending Key Projects and Stages

Project	Strategic Initiative	Project Lead	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	June-16	July-16	Aug-16	Sep-16	Oct-16
AMI	6	Przybyl	Feasibility Study			Determine Next Steps	Community Engagement (TBD)					Board Actions (if needed)		
Total Compensation Study		Glasgow	Board Review		Board Action									
Rate Structure Study	4	Winters		Board Review	Board Review	Action		Community Engagement		Action				
LRWSP	1	Rouse							Goals & Metrics	Goals & Metrics	Demands & Yields			
Energy Plan	5	Tiger/Davis			NRTS	Strategy Evaluation	NRTS		Review Draft Plan	Comm. Eng.				

Stages	Committee Discussion	Feasibility Study	Board Review	Community Engagement	Action	Procurement

AGENDA
WORK SESSION OF THE OWASA BOARD OF DIRECTORS
THURSDAY, DECEMBER 10, 2015, 6:00 P.M.
OWASA COMMUNITY ROOM

The Board of Directors appreciates and invites the public to attend and observe its meetings. For the Board's Work Session, public comments are invited on only items appearing on this agenda. Speakers are invited to submit more detailed comments via written materials, ideally submitted at least three days in advance of the meeting to the Clerk to the Board via email or US Postal Service (aorbich@owasa.org/400 Jones Ferry Road, Carrboro, NC 27510).

Public speakers are encouraged to organize their remarks for delivery within a four minute time frame allowed each speaker. Additional time may be allowed at the discretion of the Board of Directors.

The Board may take action on any item on the agenda.

Announcements

a. Announcements by the Chair
   - Any Board Member who knows of a conflict of interest or potential conflict of interest with respect to any item on the agenda tonight is asked to disclose the same at this time.

b. Announcements by Board Members

c. Announcements by Staff

Discussion

1. Discuss Draft Advanced Metering Infrastructure Feasibility Study Report (Dan Przybyl/Todd Taylor/Don Schlenger, Don Schlenger and Associates, LLC)
2. Discuss Draft Employee Total Compensation Philosophy (Stephanie Glasgow/John Anzivino, Senior Vice President at Springsted Incorporated)
3. Discuss Cost Allocation Study (Stephen Winters)
4. Discuss Draft Executive Director Performance Goals
5. Review Board Work Schedule (John Young/Ed Kerwin)
   a. Request(s) by Board Committees, Board Members and Staff
   b. 12 Month Board Meeting Schedule
   c. January 14, 2016 Work Session
   d. January 28, 2016 Board Meeting

Summary of Work Session Items

6. Executive Director will summarize the key staff action items from the Work Session

DRAFT

AGENDA
WORK SESSION OF THE OWASA BOARD OF DIRECTORS
THURSDAY, JANUARY 14, 2016, 6:00 P.M.
OWASA COMMUNITY ROOM

The Board of Directors appreciates and invites the public to attend and observe its meetings. For the Board's Work Session, public comments are invited on only items appearing on this agenda. Speakers are invited to submit more detailed comments via written materials, ideally submitted at least three days in advance of the meeting to the Clerk to the Board via email or US Postal Service (aorbich@owasa.org/400 Jones Ferry Road, Carrboro, NC 27510).

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Announcements

a. Announcements by the Chair
   - Any Board Member who knows of a conflict of interest or potential conflict of interest with respect to any item on the agenda tonight is asked to disclose the same at this time.

b. Announcements by Board Members

c. Announcements by Staff

Discussion

1. Consider Approval of the Final Draft Advanced Metering Infrastructure Feasibility Study Report (Dan Przybyl/Todd Taylor)
2. Consider Approval of the Employee Total Compensation Philosophy (Stephanie Glasgow/John Anzivino, Senior Vice President at Springsted Incorporated)
3. Information Regarding Employee Health Insurance for Fiscal Year 2017 (Stephanie Glasgow/Ellen Tucker, Hill Chesson & Woody)
4. Discuss Financial Reserves Policies (Stephen Winters)
5. Discuss Fiscal Year 2017 Budget Calendar and Assumptions (Stephen Winters)
6. Review Board Work Schedule (John Young/Ed Kerwin)
   a. Request(s) by Board Committees, Board Members and Staff
   b. 12 Month Board Meeting Schedule
   c. January 28, 2016 Board Meeting
   d. February 11, 2016 Work Session

Summary of Work Session Items

7. Executive Director will summarize the key staff action items from the Work Session

DRAFT