

Meeting of the Board of Directors

May 15, 2019 REGULAR MEETING

Regular Session begins at 8:30 a.m. Estimated Ending Time 10:00 a.m.

City of Santa Rosa Council Chambers 100 Santa Rosa Avenue Santa Rosa, CA

Meeting Agenda and Documents

SONOMA COUNTY WASTE MANAGEMENT AGENCY

Meeting of the Board of Directors

May 15, 2019

REGULAR MEETING

Regular Meeting begins at 8:30 a.m.

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Note: This packet is 27 pages total



Zero Waste Sonoma

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Regular Session begins at 8:30 a.m. Estimated Ending Time 10:00 a.m.

City of Santa Rosa Council Chambers 100 Santa Rosa Avenue Santa Rosa, CA

<u>Agenda</u>

<u>Item</u>

- 1. Call to Order
- 2. Agenda Approval
- 3. Public Comments (items not on the agenda)

Consent (w/attachments)

- 4.1 Minutes of the April 17, 2019 Regular Meeting
- 4.2 April, May, and June 2019 Outreach Calendar
- 4.3 Third Quarter Financial Report [Collard]

Regular Calendar

- 5. Resolution Selecting Executive Director [Klassen/Walsh]
- 6. Boardmember Comments NO ACTION
- 7. Executive Director Report NO REPORT
- 8. Staff Comments NO ACTION
- 9. Next SCWMA meeting: June 19, 2019



10. Adjourn

Consent Calendar: These matters include routine financial and administrative actions and are usually approved by a single majority vote. Any Boardmember may remove an item from the consent calendar.

Regular Calendar: These items include significant and administrative actions of special interest and are classified by program area. The regular calendar also includes "Set Matters," which are noticed hearings, work sessions and public hearings.

Public Comments: Pursuant to Rule 6, Rules of Governance of the Sonoma County Waste Management Agency, members of the public desiring to speak on items that are within the jurisdiction of the Agency shall have an opportunity at the beginning and during each regular meeting of the Agency. When recognized by the Chair, each person should give his/her name and address and limit comments to 3 minutes. Public comments will follow the staff report and subsequent Boardmember questions on that Agenda item and before Boardmembers propose a motion to vote on any item.

Disabled Accommodation: If you have a disability that requires the agenda materials to be in an alternative format or requires an interpreter or other person to assist you while attending this meeting, please contact the Sonoma County Waste Management Agency Office at 2300 County Center Drive, Suite B100, Santa Rosa, (707) 565-3579, at least 72 hours prior to the meeting, to ensure arrangements for accommodation by the Agency.

Noticing: This notice is posted 72 hours prior to the meeting at The Board of Supervisors, 575 Administration Drive, Santa Rosa, and at the meeting site the City of Santa Rosa Council Chambers, 100 Santa Rosa Avenue, Santa Rosa. It is also available on the internet at <u>www.zerowastesonoma.gov</u>



Date:	May 6, 2019
То:	Zero Waste Sonoma Board Members
From:	Susan Klassen, Interim Executive Director
Subject:	Executive Summary Report for the SCWMA Board Meeting of April
	17, 2019

Closed Session: There was no reportable actions in Closed Session:

Consent Calendar: All Items listed below were approved, item 6.3 with a supermajority vote.

- 6.1 Minutes of the March 20, 2019 Regular Meeting
- 6.2 March, April and May 2019 Outreach Calendar
- 6.3 Adoption of FY 19/20 Final Budget

6.4 **Approval of the Eleventh Amendment to the Agreement with the City of Petaluma:** This is the Agreement under which the City of Petaluma pays their fair share cost for their on-going membership in the Joint Powers Agency.

Regular Calendar

7. <u>Approval of the Second Amendment to the Agreement for Household Hazardous Waste Operations</u> <u>Contract:</u> The Board of Directors approved a three year contract extension with Clean Harbors that will expire on June 30, 2022 with the option to terminate the agreement with a six (6) month notice in anticipation of a potential opening of a North County HHW Facility.

In response to labor, benefit, and disposal cost increases, as well as new taxes and regulations, the amendment provides for the following changes to the contractor's compensation:

<u>Year 2019-2020</u>: Up to 3% CPI increase to personnel costs, 2% increase to current disposal costs, and 2% California Road Repair and Accountability Act (CARRAA) fee applied to the new disposal rates

Year 2020-2021: Up to 3% CPI increase to all contract rates and 2% CARRAA fee applied to the new disposal rates

<u>Year 2021-2022</u>: Up to 3% CPI increase to all contract rates and 2% CARRAA fee applied to the new disposal rates



То:	Zero Waste Sonoma Board Members
From:	Susan Klassen, Executive Director
Subject:	May 15, 2019 Board Meeting Agenda Notes

Consent Calendar

These items include routine financial, informational and administrative items and **staff recommends that they be approved en masse by a single vote.** Any Board member may remove an item from the consent calendar for further discussion or a separate vote by bringing it to the attention of the Chair.

4.1 Minutes of the April 17, 2019 Regular Meeting: regular acceptance.

4.2 **April, May, June 2019 Outreach Calendar:** This item provides an update on outreach events since the last meeting and upcoming outreach events. No action is required.

4.3 **<u>Third Quarter Financial Report:</u>** The Third Quarter Budget Report indicates that both revenues and expenditures are projected to meet budget. Regular acceptance.

Regular Calendar

5. <u>**Resolution Selecting Executive Director:**</u> This item is requesting that the Board of Directors approve a Resolution appointing Leslie Lukacs, as the new Executive Director for the Sonoma County Waste Management Agency. The resolution requests that the County Board of Supervisors consider approval of the employment contract for Ms. Lukacs at their next regular meeting, expected to be May 21, 2019. Contingent upon approval of the employment agreement by the County Board of Supervisors Ms. Lukacs is expected to start work June 4, 2019.



Minutes of the April 17, 2019 Meeting

Zero Waste Sonoma met on April 17, 2019, at the City of Santa Rosa Council Chambers, 100 Santa Rosa Avenue, Santa Rosa, California.

Board Members Present:

City of Cloverdale	Melanie Bagby	City of Santa Rosa	John Sawyer
City of Cotati	Susan Harvey	City of Sebastopol	Neysa Hinton
City of Healdsburg	Larry Zimmer	City of Sonoma	Madolyn Agrimonti
City of Petaluma	Dan St. John	County of Sonoma	Susan Gorin
City of Rohnert Park	Pam Stafford	Town of Windsor	Bruce Okrepkie

Staff Present:

Executive Director: Not Present Counsel: Ethan Walsh Staff: Thora Collard, Courtney Scott Agency Clerk: Janel Perry

1. Call to Order Regular Meeting

Closed session was called to order at 8:00 a.m.

2. Closed Session:

PUBLIC EMPLOYMENT Title: Executive Director

3. Adjourn Closed Session at 8:33 a.m.

Call to Order Regular Meeting

Regular meeting was called to order at 8:39 a.m. Introductions There were no reportable actions from Closed Session.

4. Agenda Approval

5. Public Comments (items not on the agenda)

Allen Tose-Stage Gulch Organics in opposition of Renewable Sonoma's Development Plan and Schedule-distributed materials at meeting.

6. Consent_(w/attachments)

- 6.1 Minutes of the March 20, 2019 Regular Meeting
- 6.2 March, April and May 2019 Outreach Calendar
- 6.3 Discussion and Possible Action on the FY19/20 Final Budget [Supermajority Vote Required]
- 6.4 Approval of the Eleventh Amendment to the Agreement with the City of Petaluma [Collard]

April 17, 2019 – Zero Waste Sonoma Meeting Minutes

Public Comments: None.

Motion: For approval of all items on the consent calendar. First: City of Cotati-Susan Harvey Second: County of Sonoma-Susan Gorin

Vote Count:

City of Cloverdale	AYE	City of Santa Rosa	AYE
City of Cotati	AYE	City of Sebastopol	AYE
City of Healdsburg	AYE	City of Sonoma	AYE
City of Petaluma	AYE	County of Sonoma	AYE
City of Rohnert Park	AYE	Town of Windsor	AYE

AYES -10- NOES -0- ABSENT -0- ABSTAIN -0-Motion passed.

Regular Calendar

7. Approval of the Second Amendment to the Agreement for Household Hazardous Waste Operations [Scott]

Public Comments: None.

Motion: Approval of the Second Amendment to the Agreement for Household Hazardous Waste Operations Contract.
 First: City of Cotati-Susan Harvey
 Second: County of Sonoma-Susan Gorin

Vote Count:

Vote counti			
City of Cloverdale	AYE	City of Santa Rosa	AYE
City of Cotati	AYE	City of Sebastopol	AYE
City of Healdsburg	AYE	City of Sonoma	AYE
City of Petaluma	AYE	County of Sonoma	AYE
City of Rohnert Park	AYE	Town of Windsor	AYE

AYES -10- NOES -0- ABSENT -0- ABSTAIN -0- Motion passed.

8. **Boardmember Comments** – NO ACTION

Comments were received by chair from various board members.

April 17, 2019 – Zero Waste Sonoma Meeting Minutes

- 9. **Executive Director Report** NO REPORT
- 10. **Staff Comments** NO ACTION Comments were received by chair from various staff members.
- 11. Next SCWMA meeting: May 15, 2019
- 12. Adjourn at 9:08 a.m.

Submitted by: Janel Perry

April 17, 2019 – Zero Waste Sonoma Meeting Minutes



Agenda Item #: 4.2 Agenda Date: 5/15/2019

ITEM: April, May, and June 2019 Outreach Calendar

April 2019 Outreach Events	
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•		
April 2	4 PM – 8 PM	Community Toxic Collection – Sonoma
April 4	4 PM – 5 PM	HeadStart Parent Presentation – RL Stevens Elementary School in Santa Rosa
April 5	11 AM – 7 PM	E-Waste Event – Sonoma – Veterans Hall
April 6-7	9 AM – 5 PM	E-Waste Event – Sonoma – Veterans Hall
April 9	4 PM – 8 PM	Community Toxic Collection – Sebastopol
April 10	4:30 PM – 5:30 PM	HeadStart Parent Presentation – JX Wilson Elementary in Santa Rosa
April 12	4 PM – 7 PM	Family Expo & Camp Fair – Santa Rosa
April 13	10 AM – 1 PM	Sonoma Valley Community Health Fair 2019 – Sonoma
April 14	10 AM – 1 PM	Windsor Salud! Health + Wellness Festival – Windsor
April 13-14	9 AM – 5 PM	E-Waste Event – Monte Rio – Community Center
April 16	4 PM – 8 PM	Community Toxic Collection – Santa Rosa, E
April 17	4:30 PM – 5:30 PM	HeadStart Parent Presentation – Flowery Elementary School in Sonoma
April 17	8 AM – 9:30 AM	Healdsburg Labor Center presentation – Healdsburg
April 17	9:45 AM – 10:30 AM	Fulton Labor Center presentation – Fulton
April 19	11 AM – 1 PM	Los Cien Latino Leaders Meeting – Santa Rosa
April 20	11 AM – 2 PM	Earth Day Celebration – Sonoma
April 20	11 AM – 1 PM	Earth Day Celebration – Cloverdale
April 23	4 PM – 8 PM	Community Toxic Collection – Petaluma
April 26-27	9 AM – 1 PM	HazMobile – Sea Ranch
April 27	10 AM – 2 PM	DEA Prescription Drug Take Back Day – TBD
April 27	12 PM – 4 PM	Earth Day Celebration – Santa Rosa
April 28	10 AM – 4 PM	Day Under the Oaks – Santa Rosa
April 30	4 PM – 8 PM	Community Toxic Collection – Cloverdale

May 2019 Outreach Events

May 3	11 AM – 7 PM	E-Waste Event – Healdsburg – Community Center
May 3	11 AM – 7 PM	Mattress Collection Event – Healdsburg – Community Center
May 4	10 AM – 5 PM	Bodega Bay Fisherman's Festival – Bodega Bay
May 4-5	9 AM – 5 PM	E-Waste Event – Healdsburg – Community Center
May 4-5	9 AM – 5 PM	Mattress Collection Event – Healdsburg – Community Center
May 5	3 PM – 9 PM	Roseland 14th Annual Cinco de Mayo Festival – Santa Rosa
May 5	12 PM – 7 PM	Annual 5 de Mayo Family Celebration – Sonoma
May 7	4 PM – 8 PM	Community Toxic Collection – Guerneville
May 14	4 PM – 8 PM	Community Toxic Collection – Larkfield
May 15	8 AM – 9:30 AM	Healdsburg Labor Center presentation – Healdsburg
May 15	9:45 AM – 10:30 AM	Fulton Labor Center presentation – Fulton
May 18	9 AM – 2:30 PM	Luther Burbank Rose Parade and Festival – Santa Rosa
May 19	10 AM – 2 PM	Carillo Redline CarFest 2018 – Santa Rosa
May 21	4 PM – 8 PM	Community Toxic Collection – Cotati
May 22	5 PM – 8:30 PM	Water Expo during the Wednesday Night Market – Santa Rosa

May 28	4 PM – 8 PM	Community Toxic Collection – Oakmont
May 29	5 PM – 8:30 PM	Santa Rosa Wednesday Night Market – Santa Rosa

June 2019 Outreach Events

June 5	5 PM – 8:30 PM	Santa Rosa Wednesday Night Market – Santa Rosa
June 12	8 AM – 9:30 AM	Healdsburg Labor Center presentation – Healdsburg
June 12	9:45 AM – 10:30 AM	Fulton Labor Center presentation – Fulton
June 16	9:45 AM – 10:30 AM	Father's Day 25th Annual "Show & Shine" Car Show – Santa Rosa
June 19	5 PM – 8:30 PM	Santa Rosa Wednesday Night Market – Santa Rosa
June 26	5 PM – 8:30 PM	Santa Rosa Wednesday Night Market – Santa Rosa



Agenda Item #:4.3Cost Center:AllStaff Contact:CollardAgenda Date:5/15/2019Approved By:SRK

ITEM: SCWMA FY 2018/19 Third Quarter Financial Report

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Staff recommends approving the FY 2018-19 Third Quarter Financial Report on the Consent Calendar.

II. BACKGROUND

In accordance with the requirement in the joint powers agreement the Sonoma County Waste Management Agency (SCWMA) staff make quarterly reports to the Board of Directors of Agency operations and of all receipts to and disbursements from the SCWMA, this report covers the Third Quarter of FY 18-19 (January 1, 2019 - March 31, 2019).

III. DISCUSSION

The Third Quarter Financial Report uses information from the County accounting system, Enterprise Financial System (EFS), for expenditures and revenues. The FY 2018-19 Third Quarter Financial Report contains the actual amounts spent or received to date at the end of the quarter, the projected revenues and expenses, the adjusted budget, and the difference between the budget and the projections.

Staff expects revenues to meet budget expectations by the end of the Fiscal Year. Actual revenues are lower than budget predictions in the report as the revenue from the County of Sonoma (tipping fees and SCWMA surcharge) run approximately two months behind. Staff is confident the transfers will be fully accounted for by the end of the Fiscal Year.

Staff expects expenditures to all be within budget.

IV. ATTACHMENTS

Third Quarter Financial Report FY 2018-19 Revenue and Expenditure Summary

Account	Description	Final	Year to Date	Remaining	%
				Balance	Remaining
SCWMA - A	ll Accounts				
All Revenues					
42358	State Other Funding	315,443.00	0.00	315,443.00	100.00%
12601	County of Sonoma	6,718,229.00	3,797,432.74	2,920,796.26	43.48%
4002	Interest on Pooled Cash	45,706.00	70,489.47	(24,783.47)	-54.22%
14050	Unrealized Gains and Losses	0.00	43,904.53	(43,904.53)	0.00%
6029	Donations/Contributions	321,369.00	135,138.51	186,230.49	57.95%
6050	Cancelled/Stale Dated Warrants	0.00	5,779.00	(5,779.00)	0.00%
6200	PY Revenue - Miscellaneous	0.00	43,214.62	(43,214.62)	0.00%
8004	Residual Equity Transfers	0.00	0.00	0.00	0.00%
II Revenues		7,400,747.00	4,095,958.87	3,304,788.13	44.65%
All Expense/E	xpenditure Accts				
1041	Insurance - Liability	16,560.00	10,439.97	6,120.03	36.96%
1201	Administration Services	1,443,859.00	445,475.96	998,383.04	69.15%
1205	Advertising/Marketing Svc	21,000.00	12,593.77	8,406.23	40.03%
1206	Accounting/Auditing Services	32,500.00	0.00	32,500.00	100.00%
1207	Client Accounting Services	20,997.00	0.00	20,997.00	100.00%
1212 1249	Outside Counsel - Legal Advice Other Professional Services	67,000.00 265,338.00	26,957.99 68,812.08	40,042.01 196,525.92	59.76% 74.07%
1401	Rents and Leases - Equipment	6,000.00	0.00	6,000.00	100.00%
1421	Rents and Leases - Bldg/Land	25,500.00	6,731.50	18,768.50	73.60%
1801	Other Services	0.00	668.08	(668.08)	0.00%
1803	Other Contract Services	11,555,040.00	3,767,495.51	7,787,544.49	67.40%
1901	Telecommunication Data Lines	11,336.00	2,323.32	9,012.68	79.50%
1902	Telecommunication Usage	2,120.00	593.18	1,526.82	72.02%
1903	Telecommunication Installation	0.00	267.11	(267.11)	0.00%
1904	ISD - Baseline Services	54,854.00	33,683.98	21,170.02	38.59%
1905	ISD - Improvement Projects	0.00	3,738.93	(3,738.93)	0.00%
1906	ISD - Supplemental Projects	2,000.00	570.00	1,430.00	71.50%
1909	Telecommunication Wireless Svc	4,092.00	2,243.15	1,848.85	45.18%
1911	Mail Services	1,600.00	75.03	1,524.97	95.31%
1912	Records Services	0.00	22.00	(22.00)	0.00%
1916	County Services Chgs	97,014.00	0.00	97,014.00	100.00%
1922	County Car Expense	2,000.00	1,784.48	215.52	10.78%
1923	Unclaimable county car exp	0.00	15.67	(15.67)	0.00%
2091	Memberships/Certifications	16,750.00	13,800.00	2,950.00	17.61%
2111	Office Supplies	66,340.00	29,367.56	36,972.44	55.73%
2162 2163	Special Department Expense Professional Development	0.00 50,000.00	217.34 14,791.93	(217.34) 35,208.07	0.00% 70.42%
All Expense/Exp	enditure Accts	13,761,900.00	4,442,668.54	9,319,231.46	67.72%
II Expense/Exp	enditure Accts	13,761,900.00	4,442,668.54	9,319,231.46	
II Revenues		7,400,747.00	4,095,958.87	3,304,788.13	
let Cost		6,361,153.00	4,095,958.87 346,709.67	6,014,443.33	

				Remaining	%
Account	Description	Budget	Year to Date	Balance	Remaining
SCWMA - O	rganics Reserve 66110300				-
All Revenues					
44002	Interest on Pooled Cash	14,679.00	37,276.47	(22,597.47)	-153.94%
44050	Unrealized Gains and Losses	0.00	16,556.05	(16,556.05)	0.00%
All Revenues	xpenditure Accts	14,679.00	53,832.52	(39,153.52)	-266.73%
51201	Administration Services	45,723.00	19,049.01	26,673.99	58.34%
51206	Accounting/Auditing Services	2,500.00	0.00	2,500.00	100.00%
51212	Outside Counsel - Legal Advice	20,000.00	2,485.20	17,514.80	87.57%
51803	Other Contract Services	30,000.00	0.00	30,000.00	100.00%
51911	Mail Services	0.00	2.05	(2.05)	0.00%
52111	Office Supplies	1,000.00	0.00	1,000.00	100.00%
All Expense/Exp		99,223.00	21,536.26	77,686.74	78.30%
All Expense/Exp	enditure Accts	99,223.00	21,536.26	77,686.74	
All Revenues		14,679.00	53,832.52	(39,153.52)	
Net Cost		84,544.00	(32,296.26)	116,840.26	%
				Remaining	-
Account	Description	Rudget	Vear to Date	Balance	Remaining
Account	Description	Budget	Year to Date	Balance	Remaining
	Description ontingency Fund 66110900	•	Year to Date	Balance	Remaining
SCWMA - C	•	•	Year to Date 14,651.43	Balance 2,413.57	Remaining 14.14%
SCWMA - C All Revenues	ontingency Fund 66110900)			
SCWMA - C All Revenues 44002	Interest on Pooled Cash	17,065.00	14,651.43	2,413.57	14.14%
SCWMA - C All Revenues 44002 44050	Interest on Pooled Cash Unrealized Gains and Losses	17,065.00 0.00	14,651.43 886.31	2,413.57 (886.31)	14.14% 0.00%
SCWMA - C All Revenues 44002 44050 46200	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous	17,065.00 0.00 0.00	14,651.43 886.31 10,368.24	2,413.57 (886.31) (10,368.24)	14.14% 0.00% 0.00%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous	17,065.00 0.00 0.00 0.00	14,651.43 886.31 10,368.24 1,829,949.78	2,413.57 (886.31) (10,368.24) (1,829,949.78)	14.14% 0.00% 0.00%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers	17,065.00 0.00 0.00 0.00	14,651.43 886.31 10,368.24 1,829,949.78	2,413.57 (886.31) (10,368.24) (1,829,949.78)	14.14% 0.00% 0.00%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues All Expense/E	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers xpenditure Accts	17,065.00 0.00 0.00 0.00 17,065.00	14,651.43 886.31 10,368.24 1,829,949.78 1,855,855.76	2,413.57 (886.31) (10,368.24) (1,829,949.78) (1,838,790.76)	14.14% 0.00% 0.00% 0.00%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues All Expense/E 51201	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers xpenditure Accts Administration Services	17,065.00 0.00 0.00 0.00 17,065.00 37,348.00	14,651.43 886.31 10,368.24 1,829,949.78 1,855,855.76 7,509.52	2,413.57 (886.31) (10,368.24) (1,829,949.78) (1,838,790.76) 29,838.48	14.14% 0.00% 0.00% 0.00% 79.89%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues All Expense/E 51201 51205	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers xpenditure Accts Administration Services Advertising/Marketing Svc	17,065.00 0.00 0.00 0.00 17,065.00 37,348.00 8,000.00	14,651.43 886.31 10,368.24 1,829,949.78 1,855,855.76 7,509.52 0.00	2,413.57 (886.31) (10,368.24) (1,829,949.78) (1,838,790.76) 29,838.48 8,000.00	14.14% 0.00% 0.00% 0.00% 79.89% 100.00%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues All Expense/E 51201 51205 51206	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers xpenditure Accts Administration Services Advertising/Marketing Svc Accounting/Auditing Services	17,065.00 0.00 0.00 0.00 17,065.00 37,348.00 8,000.00 1,500.00	14,651.43 886.31 10,368.24 1,829,949.78 1,855,855.76 7,509.52 0.00 0.00	2,413.57 (886.31) (10,368.24) (1,829,949.78) (1,838,790.76) 29,838.48 8,000.00 1,500.00	14.14% 0.00% 0.00% 0.00% 79.89% 100.00% 100.00%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues All Expense/E 51201 51205 51206 51212	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers xpenditure Accts Administration Services Advertising/Marketing Svc Accounting/Auditing Services Outside Counsel - Legal Advice	17,065.00 0.00 0.00 0.00 17,065.00 37,348.00 8,000.00 1,500.00 2,000.00	14,651.43 886.31 10,368.24 1,829,949.78 1,855,855.76 7,509.52 0.00 0.00 1,094.40	2,413.57 (886.31) (10,368.24) (1,829,949.78) (1,838,790.76) 29,838.48 8,000.00 1,500.00 905.60	14.14% 0.00% 0.00% 0.00% 79.89% 100.00% 100.00% 45.28%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues All Expense/E 51201 51205 51206 51212 51803	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers xpenditure Accts Administration Services Advertising/Marketing Svc Accounting/Auditing Services Outside Counsel - Legal Advice Other Contract Services Office Supplies	17,065.00 0.00 0.00 17,065.00 37,348.00 8,000.00 1,500.00 115,000.00	14,651.43 886.31 10,368.24 1,829,949.78 1,855,855.76 7,509.52 0.00 0.00 1,094.40 91,141.25	2,413.57 (886.31) (10,368.24) (1,829,949.78) (1,838,790.76) 29,838.48 8,000.00 1,500.00 905.60 23,858.75	14.14% 0.00% 0.00% 0.00% 79.89% 100.00% 100.00% 45.28% 20.75%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues All Expense/E 51201 51205 51206 51212 51206 51212 51803 52111	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers xpenditure Accts Administration Services Advertising/Marketing Svc Accounting/Auditing Services Outside Counsel - Legal Advice Other Contract Services Office Supplies enditure Accts	17,065.00 0.00 0.00 17,065.00 37,348.00 8,000.00 1,500.00 2,000.00 115,000.00 13,000.00	14,651.43 886.31 10,368.24 1,829,949.78 1,855,855.76 7,509.52 0.00 0.00 1,094.40 91,141.25 2,779.76	2,413.57 (886.31) (10,368.24) (1,829,949.78) (1,838,790.76) 29,838.48 8,000.00 1,500.00 905.60 23,858.75 10,220.24	14.14% 0.00% 0.00% 0.00% 100.00% 100.00% 45.28% 20.75% 78.62%
SCWMA - C All Revenues 44002 44050 46200 48004 All Revenues All Expense/E 51201 51205 51206 51212 51206 51212 51803 52111 All Expense/Exp	Interest on Pooled Cash Unrealized Gains and Losses PY Revenue - Miscellaneous Residual Equity Transfers xpenditure Accts Administration Services Advertising/Marketing Svc Accounting/Auditing Services Outside Counsel - Legal Advice Other Contract Services Office Supplies enditure Accts	17,065.00 0.00 0.00 17,065.00 37,348.00 8,000.00 1,500.00 1,500.00 115,000.00 13,000.00 176,848.00	14,651.43 886.31 10,368.24 1,829,949.78 1,855,855.76 7,509.52 0.00 0.00 1,094.40 91,141.25 2,779.76 102,524.93	2,413.57 (886.31) (10,368.24) (1,829,949.78) (1,838,790.76) 29,838.48 8,000.00 1,500.00 905.60 23,858.75 10,220.24 74,323.07	14.14% 0.00% 0.00% 0.00% 100.00% 100.00% 45.28% 20.75% 78.62%

				Remaining	%	
Account	Description	Budget	Year to Date	Balance	Remaining	
SCWMA - H	HW 66110400					
All Revenues						
42358	State Other Funding	173,443.00	0.00	173,443.00	100.00%	
42601	County of Sonoma	1,412,254.00	902,202.79	510,051.21	36.12%	
44002	Interest on Pooled Cash	5,162.00	11,432.00	(6,270.00)	-121.46%	
44050	Unrealized Gains and Losses	0.00	7,004.52	(7,004.52)	0.00%	
46029	Donations/Contributions	280,141.00	94,409.73	185,731.27	66.30%	
46050	Cancelled/Stale Dated Warrants	0.00	5,757.00	(5,757.00)	0.00%	
All Revenues		1,871,000.00	1,020,806.04	850,193.96	45.44%	
All Expense/E	xpenditure Accts					
51041	Insurance - Liability	7,440.00	6,472.78	967.22	13.00%	
51201	Administration Services	382,530.00	85,483.18	297,046.82	77.65%	
51205	Advertising/Marketing Svc	13,000.00	7,525.37	5,474.63	42.11%	
51206	Accounting/Auditing Services	7,500.00	0.00	7,500.00	100.00%	
51207	Client Accounting Services	9,433.00	0.00	9,433.00	100.00%	
51212	Outside Counsel - Legal Advice	5,000.00	1,960.80	3,039.20	60.78%	
51249	Other Professional Services	131,286.00	62,180.49	69,105.51	52.64%	
51421	Rents and Leases - Bldg/Land	9,000.00	2,730.00	6,270.00	69.67%	
51801	Other Services	0.00	668.08	(668.08)	0.00%	
51803	Other Contract Services	1,263,000.00	398,074.80	864,925.20	68.48%	
51901	Telecommunication Data Lines	2,000.00	0.00	2,000.00	100.00%	
51902	Telecommunication Usage	200.00	57.97	142.03	71.02%	
51904	ISD - Baseline Services	4,332.00	2,507.96	1,824.04	42.11%	
51911	Mail Services	100.00	0.00	100.00	100.00%	
51916	County Services Chgs	43,586.00	0.00	43,586.00	100.00%	
52091	Memberships/Certifications	10,450.00	10,450.00	0.00	0.00%	
52111 All Expense/Exp	Office Supplies enditure Accts	3,000.00 1,891,857.00	611.05 578,722.48	2,388.95 1,313,134.52	79.63% 69.41%	
All Expense/Exp	enditure Accts	1,891,857.00	578,722.48	1,313,134.52		
All Revenues		1,871,000.00	1,020,806.04	850,193.96		
Net Cost		20,857.00	(442,083.56)	462,940.56		

				Remaining	%
Account	Description	Budget	Year to Date	Balance	Remaining
Education 8	k Outreach 66111000				
All Revenues					
42358	State Other Funding	142,000.00	0.00	142,000.00	100.00%
42601	County of Sonoma	445,975.00	284,906.14	161,068.86	36.12%
44002	Interest on Pooled Cash	2,379.00	0.00	2,379.00	100.00%
46029	Donations/Contributions	41,228.00	25,935.48	15,292.52	37.09%
46200	PY Revenue - Miscellaneous	0.00	1,500.00	(1,500.00)	0.00%
48004	Residual Equity Transfers	0.00	451,300.45	(451,300.45)	0.00%
All Revenues		631,582.00	763,642.07	(132,060.07)	-20.91%
All Expense/E	xpenditure Accts				
51041	Insurance - Liability	3,000.00	2,609.99	390.01	13.00%
51201	Administration Services	347,688.00	313,038.96	34,649.04	9.97%
51205	Advertising/Marketing Svc	0.00	5,068.40	(5,068.40)	0.00%
51206	Accounting/Auditing Services	4,000.00	0.00	4,000.00	100.00%
51207	Client Accounting Services	3,804.00	0.00	3,804.00	100.00%
51212	Outside Counsel - Legal Advice	15,000.00	15,332.63	(332.63)	-2.22%
51249	Other Professional Services	67,026.00	6,631.59	60,394.41	90.11%
51401	Rents and Leases - Equipment	3,000.00	0.00	3,000.00	100.00%
51421	Rents and Leases - Bldg/Land	8,250.00	4,001.50	4,248.50	51.50%
51803	Other Contract Services	88,200.00	39,733.01	48,466.99	54.95%
51901	Telecommunication Data Lines	2,568.00	9,570.45	(7,002.45)	-272.68%
51902	Telecommunication Usage	960.00	561.57	398.43	41.50%
51904	ISD - Baseline Services	11,461.00	9,057.80	2,403.20	20.97%
51905	ISD - Improvement Projects	0.00	3,738.93	(3,738.93)	0.00%
51906	ISD - Supplemental Projects	1,000.00	570.00	430.00	43.00%
51909	Telecommunication Wireless Svc	2,046.00	1,981.90	64.10	3.13%
51911	Mail Services	500.00	71.77	428.23	85.65%
51912	Records Services	0.00	22.00	(22.00)	0.00%
51916	County Services Chgs	17,575.00	0.00	17,575.00	100.00%
51922	County Car Expense	1,000.00	1,228.95	(228.95)	-22.90%
52091	Memberships/Certifications	3,150.00	3,350.00	(200.00)	-6.35%
52111	Office Supplies	22,670.00	22,969.50	(299.50)	-1.32%
52162	Special Department Expense	0.00	217.34	(217.34)	0.00%
52163	Professional Development	25,000.00	13,991.93	11,008.07	44.03%
All Expense/Exp	enditure Accts	627,898.00	453,748.22	174,149.78	27.74%
All Expense/Exp	enditure Accts	627,898.00	453,748.22	174,149.78	
All Revenues		631,582.00	763,642.07	(132,060.07)	
Net Cost		(3,684.00)	(309,893.85)	306,209.85	

				Remaining	%	
Account	Description	Budget	Year to Date	Balance	Remaining	
Organics 66	111100					
All Revenues						
42601	County of Sonoma	4,860,000.00	2,610,323.81	2,249,676.19	46.29%	
44002	Interest on Pooled Cash	6,421.00	0.00	6,421.00	100.00%	
46029	Donations/Contributions	0.00	13,293.30	(13,293.30)	0.00%	
46200	PY Revenue - Miscellaneous	0.00	17,103.24	(17,103.24)	0.00%	
48004	Residual Equity Transfers	0.00	1,379,625.29	(1,379,625.29)	0.00%	
All Revenues		4,866,421.00	4,020,345.64	846,075.36	17.39%	
All Expense/E	xpenditure Accts					
51041	Insurance - Liability	1,560.00	1,357.20	202.80	13.00%	
51201	Administration Services	141,441.00	20,395.29	121,045.71	85.58%	
51206	Accounting/Auditing Services	6,500.00	0.00	6,500.00	100.00%	
51207	Client Accounting Services	1,978.00	0.00	1,978.00	100.00%	
51212	Outside Counsel - Legal Advice	5,000.00	6,084.96	(1,084.96)	-21.70%	
51803	Other Contract Services	4,985,320.00	3,238,546.45	1,746,773.55	35.04%	
51901	Telecommunication Data Lines	2,100.00	5,717.81	(3,617.81)	-172.28%	
51903	Telecommunication Installation	0.00	267.11	(267.11)	0.00%	
51904	ISD - Baseline Services	13,800.00	6,375.08	7,424.92	53.80%	
51909	Telecommunication Wireless Svc	0.00	367.36	(367.36)	0.00%	
51911	Mail Services	250.00	1.21	248.79	99.52%	
51916	County Services Chgs	9,139.00	0.00	9,139.00	100.00%	
52111	Office Supplies	2,000.00	3,007.25	(1,007.25)	-50.36%	
All Expense/Exp	enditure Accts	5,169,088.00	3,282,119.72	1,886,968.28	36.50%	
All Expense/Exp	enditure Accts	5,169,088.00	3,282,119.72	1,886,968.28		
All Revenues		4,866,421.00	4,020,345.64	846,075.36		
Net Cost		302,667.00	(738,225.92)	1,040,892.92		

				Projected	Fund Balance
Fund		Beginning Balance	3/31/2019	Fund Balance	Goal
Organics Reserve	78103	2,866,753	2,899,049	2,796,964	-
HHW	78104	1,033,868	1,501,411	1,013,019	283,778
Contingency Reserve	78109	2,011,025	1,949,003	1,838,175	156,974
Education & Outreach	78110	447,684	330,572	451,229	62,790
Organics	78111	1,373,263	738,488	1,071,042	775,363

3rd Quarter Fund Balances FY 18/19



Agenda Item #:5Cost Center:AllStaff Contact:KlassenAgenda Date:05/15/19Approved By:SRK

ITEM: Resolution Selecting Executive Director and Forwarding the Selection to the County for Execution of an Employment Agreement between the County of Sonoma and the Executive Director

I. BACKGROUND

At the October 21, 2009 SCWMA Board meeting, the Board indicated its tentative approval of a staffing model where the Executive Director would serve at the pleasure of the Board, but would be an at-will employee of the County of Sonoma. All other SCWMA staff members would remain County of Sonoma employees.

At the January 20, 2010 meeting, the SCWMA Board tentatively approved the draft documents and authorized staff to work with the Staffing Subcommittee, the County Human Resources Department (HR) and County Counsel to finalize the agreements. At the May 19, 2010 Agency Board meeting, the Agency Board approved the Agreement for the Provision of Staff Services (Executive Director) by the County of Sonoma to the Sonoma County Waste Management Agency, including Attachment A, the job description, and the MOU for Special Staff Services. The Board directed staff to work with HR to secure the necessary Board of Supervisors approvals and to open the recruitment.

On June 1, 2010 the Board of Supervisors approved the Agreement for the Provision of Staff Services (Executive Director) by the County of Sonoma to the Sonoma County Waste Management Agency, including the job description, the MOU for Special Staff Services and the creation of the position. This Agreement had an Expiration Date of February 11, 2017.

On March 7, 2017 the County of Sonoma and SCWMA executed the First Amendment to the Agreement for the Provision of Staff Services (Executive Director) by the County of Sonoma to the Sonoma County Waste Management Agency which extended the agreement until such time as there was a dissolution of the SCWMA or one of the Parties requested Termination.

On August 15, 2018 Patrick Carter informed the Board of his resignation, subsequently the SCWMA requested the County to open a recruitment for a new permanent Executive Director for the SCWMA, the recruitment was advertised through normal County procedure as well as through list serves and newsletters within the California recycling organizations and agencies.

II. DISCUSSION

The selection process included screening of applications that met minimum qualifications, two sets of interviews, background checks, and reference checks which were performed by County HR staff, Agency staff and members of the Agency Board.

The process culminated in the selection of Ms. Leslie Lukacs as the most qualified candidate. The Agency Board authorized the staff to make an offer of employment contingent on completion of the County requirements for employment, formal selection by the Agency Board and final negotiation and approval of the at-will employment contract by the County Board of Supervisors. As the Agency Board is aware, Ms. Lukacs currently works for SCS Consulting Engineers, Inc., and it is anticipated that should the Agency enter into an agreement with Renewable Sonoma for organic materials processing services, SCS would be a subcontractor to Renewable Sonoma in connection with the development of a processing facility. While neither SCS nor Ms. Lukacs have been involved in any of the negotiations between Renewable Sonoma and Agency staff, the Agency sought to address any concerns regarding potential concerns regarding conflicts of interest related to the Renewable Sonoma negotiations prior to consideration of this item. In order to fully address any concerns regarding potential conflicts of interest, Agency Counsel requested an opinion from the California Fair Political Practices Commission ("FPPC") to determine whether Ms. Lukacs would have a conflict of interest that would prevent her from working on the negotiation of a proposed agreement with Renewable Sonoma. On April 29, 2019, the FPPC issued an opinion letter confirming that Ms. Lukacs does not have a conflict of interest, and can participate in the decision making related to the Agency's negotiations with Renewable Sonoma. This issue is discussed in more detail in the attached memo from Agency Counsel.

At this time, Ms. Lukacs has successfully completed the County's pre-employment requirements. Ms. Lukacs has agreed to a tentative start date of June 4, 2019, contingent on the Agency Board's passage of the attached Resolution of Appointment and the County Board of Supervisors approval of her employment contract, tentatively scheduled for the May 21, 2019 Board of Supervisors Agenda.

Given the great level of qualifications and experience in the industry that Ms. Lukacs brings to the position, it is recommended that Ms. Lukacs starting salary upon appointment be the "F" Step of the Executive Director Salary Range which equates to approximately \$125,028 per year including cash allowance. In addition it is recommended that Ms. Lukacs be granted 80 hours of vacation and 24 hours of sick leave upon hire.

III. FUNDING IMPACT

The adopted FY 19-20 Budget for SCWMA staff is \$1,106,314. This includes the fully burdened rate for the approved Executive Director position at the top step of the salary range, and six additional direct support staff. Therefore, the funds budgeted will be adequate to cover all expenses, associated with the selection of the Executive Director.

IV. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

It is recommended the Agency Board approve the Resolution Selecting Leslie Lukacs as Executive Director and Forwarding the Selection to the County for Execution of an Employment Agreement between the County of Sonoma and the Executive Director.

V. ATTACHMENTS

- A. Proposed Resolution
- B. Memo by Agency Counsel
- C. FPPC Opinion Letter dated 4-29-2019

VI. ON FILE WITH THE AGENCY CLERK - Draft Employment Agreement

RESOLUTION NO.: 2019 -

DATED: May 15, 2019

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY ("AGENCY") SELECTING LESLIE LUKACS AS THE EXECUTIVE DIRECTOR AND FORWARDING THE SELECTION TO THE COUNTY FOR EXECUTION OF AN EMPLOYMENT AGREEMENT BETWEEN THE COUNTY OF SONOMA AND THE EXECUTIVE DIRECTOR

WHEREAS, the Agency and the County of Sonoma have agreed through approval of the Agreement for the Provision of Staff Services (Executive Director) by the County of Sonoma to the Sonoma County Waste Management Agency, that the position of Agency Executive Director shall be selected by and serve at the pleasure of the Agency Board, but shall be an at-will employee of the County of Sonoma; and

WHEREAS, the recruitment consisted of advertisement of the position, a screening of applications, two sets of interviews and background and reference checks; and

WHEREAS, the successful candidate has accepted an offer of employment contingent upon formal selection by the Agency Board and execution of an employment agreement with the County of Sonoma.

NOW, THEREFORE, BE IT RESOLVED that the Agency hereby selects Leslie Lukacs as Executive Director of the Sonoma County Waste Management Agency and directs staff to forward this selection to the County of Sonoma for execution of an at-will employment agreement between the County of Sonoma and Ms. Lukacs in conformance with the terms of the Agreement for the Provision of Staff Services (Executive Director) by the County of Sonoma to the Sonoma County Waste Management Agency and including a starting salary of \$125,028 per annum, and the granting of 80 hours of vacation and 24 hours of sick leave upon hire.

MEMBERS:

 Cloverdale		 Cotati		 County	 Healdsburg	 Petaluma
 Rohnert Park		- - Santa Ro	sa	 Sebastopol	 Sonoma	 Windsor
AYES:	NOES:		ABSENT:	ABSTAIN:		
		SO ORE	DERED			
The within insti of the original o						
ATTEST:		DATE	: May 15, 2019			
 Clerk of the Sor	noma Co	unty Wa	aste Managemer	 nt Agency		

Agency of the State of California in and for the

County of Sonoma

BEST BEST & KRIEGER

Memorandum

To:	Agency Board
	Sonoma County Waste Management Agency

From: Ethan J. Walsh Agency Counsel

Date: May 7, 2019

Re: FPPC Opinion regarding Leslie Lukacs

The Agency Board has been in the process of recruiting for its permanent Executive Director position. After conducting interviews, the Agency Board's preferred candidate was Leslie Lukacs. Ms. Lukacs is currently employed by SCS Consulting Engineers, Inc. ("SCS"), which was proposed as a subcontractor in Renewable Sonoma's proposal to the Agency for Organic Materials Processing Services. The Agency is currently negotiating the terms of a proposed Agreement for Organic Materials Processing Services with Renewable Sonoma for future consideration by the Board, and will continue to do so after the new Executive Director is selected. Although SCS has not been involved in any of the negotiations between Agency staff and Renewable Sonoma, the Agency Board desired to make sure that Ms. Lukacs would not have a conflict of interest that would prevent her from participating in the negotiations with Renewable Sonoma, based on her prior employment with SCS.

The potential concern was that Ms. Lukacs could have a financial interest in SCS that would prevent her from participating in decisions related to the Renewable Sonoma agreement based on either the Political Reform Act (Government Code §§81000-91014) or Government Code Section 1090. In order to provide certainty that Ms. Lukacs does not have a legal conflict of interest before considering her appointment, the Agency decided to request a formal written opinion from the Fair Political Practices Commission ("FPPC") as to whether or not Ms. Lukacs would have a conflict of interest under either the Political Reform Act or Government Code Section 1090. The FPPC is the state agency that interprets and enforces state conflict of interest laws, and as part of these functions they issue formal written opinions to interested parties.

The FPPC issued their formal written opinion to our office on April 29, 2019. In that opinion, the FPPC found that Ms. Lukacs would not have a conflict of interest under either the Political Reform Act or Government Code section 1090 that would prohibit Ms. Lukacs from taking part in decisions regarding the proposed agreement with Renewable Sonoma. The opinion, which is enclosed with this memo, outlines the background facts and the reasoning behind the FPPC's opinion in more detail. Please contact me if you have any questions.

cc: Susan Klassen, Interim Executive Director



STATE OF CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION 1102 Q Street • Suite 3000 • Sacramento, CA 95811 (916) 322-5660 • Fax (916) 322-0886

April 29, 2019

Kara K. Ueda Attorney Best Best & Krieger LLP 500 Capitol Mall, Suite 1700 Sacramento, CA 95814

Re: Your Request for Advice Our File No. A-19-073

Dear Ms. Ueda:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act")¹ and Government Code section 1090. Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

In regard to our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General's Office and the Sonoma County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTION

Do the conflict provisions of the Act or Section 1090 prohibit the incoming Executive Director of the Sonoma County Waste Management Agency ("Agency") from taking part in decisions concerning a potential contract between the Agency and Renewable Sonoma where the Executive Director was a former employee and defined contribution plan participant of the company who will be a subcontractor?

CONCLUSION

No. As explained below, neither the Act nor Section 1090 would prohibit the incoming Executive Director from taking part in such decisions.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

Your law firm serves as General Counsel for the Sonoma County Waste Management Agency ("Agency"). The Agency has extended a conditional employment offer to Leslie Lukacs to fill its vacant Executive Director position, which will be voted on by the Agency Board. She currently works at SCS Consulting Engineers, Inc. ("SCS"), an environmental consulting firm.

The Agency issued a Request for Proposals ("RFP") for organic materials processing services. Renewable Sonoma, LLP, among others, submitted a proposal in response to the RFP. SCS assisted Renewable Sonoma with its proposal. Following the RFP process, the Agency began negotiating an agreement with Renewable Sonoma pursuant to an Exclusive Negotiating Agreement between the Agency and Renewable Sonoma. Those negotiations are ongoing, and an agreement has not been executed yet.

Renewable Sonoma and SCS have a separate agreement whereby SCS would be a subcontractor to Renewable Sonoma in the event Renewable Sonoma executes an agreement with the Agency and performs the work for the Agency. Thus, the agreement between Renewable Sonoma and the Agency will cause SCS to receive more income since SCS would be a subcontractor to Renewable Sonoma.

SCS is an employee-owned company. It has an Employee Stock Ownership Plan ("ESOP"), which is a defined contribution plan that is administered by SCS as the Plan Administrator. According to the Summary Plan Description, the Plan qualifies under Section 401(a) of the Internal Revenue Code. Ms. Lukacs is currently vested in the ESOP and owns stock in SCS through the ESOP.

When an employee leaves SCS and takes a position with another employer that the employee believes creates a conflict of interest were the employee to continue to have stock, SCS will convert the employee's stock into cash. Although the cash will remain within the SCS ESOP, it will be invested in assets other than SCS company stock by the ESOP third-party administrator. The non-SCS investments held by the ESOP are held by a separate trust (they are not held by SCS), and are not subject to recapture by SCS under any circumstances. They belong to the former employee exactly the same as the investments held by Fidelity in trust under the 401(k) for the former employee.

The money invested in other assets has no impact on the well-being of SCS. Whether SCS makes or loses money on the subcontract for the Sonoma project has no effect on the value of the non-SCS investments held by the ESOP trustee (and managed by UBS²). Performance of the work under the instant subcontract (or any other contract) will not affect the value of Ms. Lukacs' ESOP account, nor will it have any effect on the ability of the ESOP trustee to pay out the funds due to her when they are due to be paid.

Upon request by Ms. Lukacs, as with similar situations in the past where an employee accepted an offer from a new employer that required them to divest from SCS stock, she will be divested out of SCS stock upon termination in what is referred to as OIA (Other Investment

² Union Bank of Switzerland.

Accounts), which is like investing her money in the outside stock market. This will be done through a UBS brokerage account which is not tied to SCS stock, and therefore not impacted by the profitability of SCS. Performance of Ms. Lukacs' ESOP account, once in the OIA, is driven entirely by the stock market.

Employees who leave SCS prior to retirement age do not receive a distribution or liquidation from the ESOP; nor do their funds roll over to another retirement vehicle outside of the ESOP. Rather, when employees with company stock and other investments have \$20,000 or more in the ESOP (as Ms. Lukacs does), distribution of benefits begins during the sixth plan year following the plan year in which the employee separated from service provided that the employee does not return to SCS employment during the intervening five years. Distribution of benefits occurs in one lump sum during the sixth year following departure if the total value of the account is \$50,000 or less. If the account value exceeds \$50,000 (as Ms. Lukacs' account does), the account balances are distributed in annual installments over a period of, at most, five years.

ANALYSIS

The Act

Under Section 87100, a public official may not make, participate in making, or use his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests. (Section 87103; Regulation 18700(a).)

Section 87103 identifies interests from which a conflict of interest may arise and, potentially applicable to the present situation, includes:

• Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more. (Section 87103(a).)

• Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)

In the *Gillian* Advice Letter, No. A-95-304, a CalPERS employee had previously worked at a private company where she participated in an employee profit-sharing plan that was a qualified plan under Internal Revenue Code Section 401(a) – specifically a 401(k) defined contribution plan. Under the plan administered by the company, it had no access to the funds, each participating employee had an investment account and investing in the company itself was not an investment option. The company made contributions to the plan but the contributions ceased when the employee stopped working. The employee had not received any distribution from this plan at the time she began her employment with CalPERS.

While under employment with CalPERS, the employee's former employer sought the award of a contract from CalPERS. The issue arose as to whether the Act prohibited the employee from participating in the decision based on her financial interest in the defined contribution plan administered by her former employer. The Commission explained:

The term "investment" as used above means, in pertinent part, any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or his or her immediate family. The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code. (Section 82034.)

The term "income" as used above means, in pertinent part, a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, loan, etc. The term "income" does not include payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a). (Section 82030.)

In finding that the CalPERS employee did not have a potential conflict based on her interests in, or future payments from, the defined contribution plan, the *Gillian* Advice Letter cites to the *Harris* Advice Letter, No. A-82-207, and advises that neither an interest in a private profit sharing plan, nor the investments held through it, are "investments" within the meaning of Act if the plan qualifies under Internal Revenue Code Section 401(a). It then stated the advice is consistent with the Act's provision exempting payments under a defined benefit pension plan from the definition of "income."

The present situation is similar. In order to avoid a conflict of interest, Ms. Lukacs' stock in SCS, through the ESOP administered by SCS and qualified under Internal Revenue Code Section 401(a), will be converted into cash, held in a separate trust from SCS stock, and invested in non-SCS assets – similar to the investments held by Fidelity in trust under Ms. Lukacs' 401(k) plan. This process will ensure that the performance of Ms. Lukacs' ESOP account, once in the separate trust, is driven entirely by the stock market.

Therefore, as in the *Gillian* matter, supra, Ms. Lukacs does not have a potential conflict of interest under the Act based on her interests in, or future payments from, the ESOP plan.

Additionally, any salary Ms. Lukacs received pursuant to her employment with SCS would ordinarily cause Ms. Lukacs to have a financial interest in SCS as a source of income. However, there is a limited exception, applicable here, for income from a former employer found in

Regulation 18700.1(b).³ Under this exception, an official does not have an interest in a former employer as a source of income if the income was received by or accrued to the public official prior to the time he or she became a public official, the income was received in the normal course of the previous employment and there was no expectation by the official at the time the official assumed office of renewed employment with the former employer. After terminating her current employment with SCS, Ms. Lukacs intends to become the Executive Director of the Agency and there is no indication that she has any expectation of renewed employment with SCS.

Accordingly, the Act's conflict of interest provisions would not prohibit Ms. Lukacs, as the Executive Director of the Agency, from taking part in decisions concerning an agreement between the Agency and Renewable Sonoma.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.)

The determinative issue here is whether Ms. Lukacs has a prohibitive financial interest in the potential contract between Agency and Renewable Sonoma.

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest." (*People v. Honig, supra*, at p. 333.) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 does not specifically define the term "financial interest," case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn.5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

Here, the Agency is negotiating an agreement with Renewable Sonoma for organic materials processing services. Should the Agency enter into this contract, Renewable Sonoma will then hire SCS, Ms. Lukacs' former employer, as a subcontractor.

Although SCS stands to profit from the potential contract between the Agency and Renewable Sonoma, the same is not true for Ms. Lukacs. As mentioned, her SCS ESOP stock will be converted into cash, placed in a separate trust and invested in non-SCS assets. Thus, whether SCS makes or loses money on this subcontract, or any other contract, will have no effect on the value of her investments. Moreover, it will not have any effect on the ability of the ESOP trustee to pay out the funds due to Ms. Lukacs when they are due to be paid.

³ This includes any contribution by SCS to Ms. Lukacs' ESOP account that occurs during her employment.

Accordingly, Ms. Lukacs does not have a financial interest under Section 1090 in the proposed contract between the Agency and Renewable Sonoma.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge General Counsel

By: Woodside Senior Counsel, Legal Division

JW:aja