



A Public Agency

EXECUTIVE DIRECTOR APPOINTMENT



STAFF REPORT

To: SBWMA Board Members
From: Bob Grassilli, Chair
Date: July 28, 2016 Board of Directors Meeting
Subject: Appointment of Joe La Mariana as Executive Director for SBWMA and Approval of an Employment Agreement

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2016-25 attached hereto authorizing appointment of Joe La Mariana as Executive Director for SBWMA, effective August 1, 2016, and authorizing the Board Chair Bob Grassilli to execute the Employment Agreement between SBWMA and Mr. La Mariana. (Attachment 1)

Background/Analysis

At the end of December 2015, SBWMA's Executive Director, Kevin McCarthy, resigned. Since that time, the Board of Directors has been engaged in a search for a new Executive Director. The recruitment process has now been completed and Joe La Mariana has been chosen by the Board for appointment as Executive Director.

A proposed Employment Agreement for Mr. La Mariana is attached for the Board's review and approval. (Attachment 2) If approved, the contract would become effective August 1, 2016. ¶1(B) Mr. La Mariana would serve as an at-will exempt/management employee reporting directly to the Board. ¶1(A) Mr. La Mariana's initial annual salary would be \$185,000. ¶2(A) The contract calls for a performance evaluation to be conducted six (6) months after the initial appointment of Mr. La Mariana (i.e., by February 1, 2017). Thereafter, an evaluation would be conducted annually, during which the Board would establish goals and objectives for Mr. La Mariana. His initial assigned duties are enumerated in Exhibit B to the contract. ¶4(A)-(D) In addition to his annual salary, Mr. La Mariana would be entitled to benefits as outlined in Exhibit A. These benefits would include 120 hours of administrative leave per year, 10 paid holidays per year, 20 days' vacation per year, sick leave accrual at the rate of 8 hours per month, medical, dental, vision, long-term disability and life insurance. Mr. La Mariana would also be entitled to participate in the SBWMA's 401(a) retirement plan and he would receive a car allowance of \$400 per month.

As required by state law, if Mr. La Mariana is ever suspended during the term of the contract, he would be responsible to reimburse SBWMA all leave salary paid to him during an investigation of employment related conduct if later convicted of a crime involving an abuse of his office or position as defined in California Government Code §53243.4. ¶15) The contract could be terminated by Mr. La Mariana's resignation. The contract could also be terminated by the Board "without cause" or "for cause." The grounds for cause termination are listed in the contract.

(¶6(C)) If the Board terminates the contract "without cause," Mr. La Mariana would be entitled to severance pay equal to six (6) months' salary upon execution of a release of all claims against SBWMA. If terminated for cause, no severance is due. (¶6(D)) Disputes regarding the contract must be mediated and if mediation is unsuccessful, litigation may be filed. The contract does not provide for an award of attorneys' fees in the event of litigation. (¶11)

Fiscal Impact

By this contract, SBWMA would be obligated to pay Mr. La Mariana the above-referenced annual salary of \$185,000 and the cost of the associated benefits enumerated in Exhibit A.

Attachments:

1. Resolution 2016 - 25
2. Employment Agreement

ATTACHMENT 1



RESOLUTION NO. 2016-25

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS

WHEREAS, in December 2015, South Bayside Waste Management Authority's Executive Director, Kevin McCarthy, resigned; and

WHEREAS, the Board of Directors appointed a Board Subcommittee to conduct interviews of candidates for the Executive Director position; and

WHEREAS, the recruitment process has been completed and Joe La Mariana has been identified as the Board's choice to serve as Executive Director for South Bayside Waste Management Authority.

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby authorizes the appointment of Joe La Mariana as Executive Director and authorizes Chair Bob Grassilli to sign the Employment Agreement with Joe La Mariana on behalf of South Bayside Waste Management Authority.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 28th day of July, 2016, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2016-25 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on July 28, 2016.

ATTEST:

Bob Grassilli, Chairperson of SBWMA

Cyndi Urman, Board Secretary

ATTACHMENT 2

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is entered into this 1st day of August, 2016, by and between **South Bayside Waste Management Authority**, a California Joint Powers Authority (hereinafter "**SBWMA**"), and **Joe La Mariana**, an individual (hereinafter "**EMPLOYEE**"). In consideration of the mutual covenants and conditions contained herein and the faithful performance of the terms as set forth below, the parties agree as follows:

1. **EMPLOYMENT – TERM.**

- A. Pursuant to the terms of this Agreement, **EMPLOYEE** agrees to serve as Executive Director for **SBWMA**. This is an at-will, exempt/management position appointed and directed by the Board of Directors of **SBWMA**. **EMPLOYEE** agrees to serve as Executive Director of **SBWMA** and to perform those duties and responsibilities as more particularly set forth in Exhibit B as currently stated and as may be changed or added to, under and pursuant to the general direction of the **BOARD**.
- B. The term of this Agreement shall commence on August 1, 2016. This Agreement shall remain in full force and effect until terminated as set forth in Section 6.
- C. **EMPLOYEE** agrees to remain in the exclusive employ of **SBWMA** throughout the life of this Agreement and, except as described in Section 6 below, to neither accept other employment nor to become employed by any other employer.
- D. During the period of employment hereunder **EMPLOYEE** shall devote best efforts, attention, and skills to the business and affairs of **SBWMA** as such business and affairs now exist and as they may be hereafter changed or added to, under and pursuant to the general direction of the **BOARD**.
- E. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the **BOARD** to terminate the services of **EMPLOYEE** at any time, subject only to the provisions set forth in Section 6 of this Agreement.
- F. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the **EMPLOYEE** to resign at any time from his position with **SBWMA**, subject only to the provisions set forth in Section 6 of this Agreement.

2. **COMPENSATION.**

- A. **EMPLOYEE'S** base salary shall be One Hundred Eighty-Five Thousand Dollars (\$185,000.00) per year.

- B. **EMPLOYEE** shall be a salaried employee and exempt from the Fair Labor Standards Act (FLSA).
- C. The **BOARD** may, from time to time, at its sole discretion, grant merit increases to **EMPLOYEE**.

3. **BENEFITS.**

EMPLOYEE shall be entitled to the benefits listed in Exhibit A.

4. **PERFORMANCE EVALUATION.**

- A. **BOARD** agrees to meet with **EMPLOYEE** six (6) months from the effective date of this Agreement to evaluate **EMPLOYEE'S** performance.
- B. Thereafter, the **BOARD** shall review and evaluate the performance of **EMPLOYEE** annually. Said review and evaluation shall be in accordance with specific criteria developed jointly by **BOARD** and **EMPLOYEE**. Said criteria may be added to or deleted from as the **BOARD** may from time to time determine, in consultation with **EMPLOYEE**. The **BOARD** shall provide **EMPLOYEE** with a summary written or oral evaluation of the **BOARD** and provide an adequate opportunity for **EMPLOYEE** to discuss his evaluation with the **BOARD** in closed session.
- C. Annually, the **BOARD** and **EMPLOYEE** shall define goals and performance objectives as they determine necessary for the proper operation of **SBWMA** and in the attainment of the **BOARD'S** policy objectives. The **BOARD** and **EMPLOYEE** shall establish a relative priority among those various goals and objectives, or if not done in consultation with the **BOARD**, **EMPLOYEE** shall establish same and submit it to the **BOARD**, and said goals and objectives will be reduced to writing. The goals and objectives shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.
- D. The **BOARD** and **EMPLOYEE** are committed to developing a productive working relationship. Therefore, **BOARD** or **EMPLOYEE** may periodically request review sessions to address issues affecting said working relationship in addition to the annual evaluation process.

5. **SUSPENSION.**

The **BOARD** may suspend **EMPLOYEE** with full pay and benefits at any time during the term of this Agreement. Notwithstanding any provision to the contrary, **EMPLOYEE** shall reimburse **SBWMA** any and all leave salary which may be paid to **EMPLOYEE** pending any investigation of the employment related conduct of

EMPLOYEE if **EMPLOYEE** is convicted of a crime involving abuse of his office or position as defined in Government Code Section 53243.4 [GC 53243].

6. **TERMINATION OF EMPLOYMENT/SEVERANCE.**

This Agreement may be terminated in the following manner:

- A. Resignation – **EMPLOYEE** may voluntarily resign by delivering a letter of resignation to the **BOARD** not less than sixty (60) days prior to the effective date of resignation. Upon the effective date of such voluntary resignation, **SBWMA** shall pay to **EMPLOYEE** all monthly compensation and benefits accrued and owing to **EMPLOYEE** at that time. During the sixty (60) day notice period, **EMPLOYEE** may accept other employment, provided that the start date of that other employment does not commence before the effective date of resignation.
- B. Termination of Employment Without Cause – **EMPLOYEE** acknowledges that he is an at-will employee who serves at the pleasure of the **BOARD**. As such, his employment may be terminated by the **BOARD** at any time without cause.
- C. Termination For Cause – In the event **EMPLOYEE** is terminated by **BOARD** for cause, no severance or termination pay shall be awarded to **EMPLOYEE**. In this Agreement “for cause” means:
1. Dishonesty, willful misconduct or gross neglect by **EMPLOYEE** in the performance of his obligations under this Agreement;
 2. Theft, embezzlement or other similar misappropriation of funds or property of **SBWMA** by **EMPLOYEE**;
 3. Intentional damage to any property of **SBWMA** that results in a significant liability to **SBWMA**;
 4. The failure of **EMPLOYEE** to follow the reasonable and lawful instructions of the **BOARD** and/or policies of **SBWMA** with respect to **EMPLOYEE’S** duties hereunder;
 5. Conviction of a felony;
 6. Loss of mental capacity for a period of six consecutive months;
 7. Habitual intoxication on duty, whether by alcohol or drugs;
 8. Inexcusable absences without leave;
 9. Willful violation of Federal/State law;

10. Willful violation of any conflict of interest law;
11. Performance of material outside business activity that conflicts with his duties as **SBWMA's** Executive Director.

D. Severance – If the **BOARD** terminates **EMPLOYEE** without cause under Subsection 6B, then **EMPLOYEE** shall, upon execution of an agreement releasing all claims which could be made against **SBWMA**, be entitled to severance pay equal to six (6) months' salary.

7 **NOTICES.**

Notices to **EMPLOYEE** pursuant to this Agreement shall be given by deposit in the United States mail, postage prepaid, addressed as follows:

Joe La Mariana, 610 Elm Street, Suite 202, San Carlos, CA 94070, or such other address as **EMPLOYEE** may list with **SBWMA** from time to time. Alternatively, notices to **EMPLOYEE** required pursuant to this Agreement may be personally served. Notice shall be deemed given as of the date of personal service or two days after the date of deposit of such written notice in the United States mail.

Notices to **SBWMA** shall be personally delivered to **SBWMA** at 610 Elm Street, Suite 202, San Carlos, CA 94070, with a copy to the **SBWMA** Counsel at his/her business address.

8. **NON-DISCLOSURE OF CONFIDENTIAL INFORMATION.**

EMPLOYEE shall not, during the term of this Agreement, or any time thereafter, impart to anyone any confidential information which he may acquire in the performance of his duties as Executive Director under this Agreement, except as permitted by **SBWMA** or under compulsion of law.

9. **BINDING AGREEMENT.**

This Agreement shall be binding on the heirs, successors and assigns of the parties.

10. **ENTIRE AGREEMENT.**

This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been or is relied upon by either party to this Agreement.

11. **MEDIATION.**

Neither **EMPLOYEE** nor **SBWMA** shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution which mediation shall be conducted within thirty (30) days of the request to initiate mediation by either party to this Agreement. The parties may, by mutual consent, agree to a longer period of time for mediation. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own costs.

12. **AMENDMENT OF AGREEMENT.**

This Agreement may be amended in writing by mutual agreement of the parties.

13. **GOVERNING LAW.**

This Agreement has been executed in San Carlos, California, and shall be governed in accordance with the laws of the State of California in every respect.

14. **NON-ASSIGNABLE.**

This Agreement shall not be assignable.

15. **SEVERABILITY.**

Should any section, subsection, sentence, clause, phrase or word included in this Agreement be found invalid by a court of competent jurisdiction, the balance of the Agreement shall remain in full force and effect.

16. **RIGHT TO COUNSEL.**

The parties acknowledge that they have been or have had a right to be represented by counsel of their own choice with regard to this Employment Agreement; that they have executed this Agreement with the consent and upon the advice of their own counsel, if such advice has been sought; and they have fully read and fully understood and voluntarily accepted the terms of this Agreement.

17. **COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall be considered one and the same instrument.

18. **WAIVER.**

Waiver by either party of any term or condition of this Agreement, or any breach, shall not constitute a waiver of any other term or condition or breach of the Agreement.

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

DATED: _____, 2016

SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY, a
California Joint Powers Authority

By: _____

DATED: _____, 2016

JOE LA MARIANA, EMPLOYEE

EXHIBIT A

Benefits

1. ADMINISTRATIVE/FLOAT LEAVE

EMPLOYEE shall receive one hundred and twenty (120) hours of Administrative Leave per year. Administrative Leave shall be prorated based on the effective date of employment during a calendar year. Such time shall be arranged at least two (2) weeks in advance of the day(s) desired. Unused Administrative Leave time is paid out at the end of the year or upon termination of employment with **SBWMA**.

2. HOLIDAYS

(1)	January 1	New Year's Day
(2)	Third Monday in January	Martin Luther King, Jr. Day
(3)	Third Monday in February	President's Day
(4)	Last Monday in May	Memorial Day
(5)	July 4	Independence Day
(6)	First Monday in September	Labor Day
(7)	November 11	Veterans Day
(8)	Fourth Thursday in November	Thanksgiving Day
(9)	Fourth Friday in November	Day after Thanksgiving
(10)	December 25	Christmas Day

If any of the listed holidays falls on a Saturday, the Friday preceding shall be celebrated as a holiday; if the holiday falls on a Sunday, the following Monday shall be celebrated as the holiday.

3. VACATION

3.1 Entitlement

EMPLOYEE shall accrue vacation at the rate of twenty (20) days per year.

3.2 Vacation Accrual

EMPLOYEE shall not be allowed to have an accumulation of more than two (2) years vacation accrual to his credit at any one time unless the **SBWMA BOARD** authorizes in writing, more than two (2) years vacation accrual. Vacation accrued in excess of the maximum allowed will be liquidated by monetary payment during the month of December.

4. SICK LEAVE

4.1 Accrual

EMPLOYEE shall accrue sick leave credit at the rate of eight (8) hours per month.

4.2 Family Sick Leave

EMPLOYEE is entitled to use sick leave for the care of the **EMPLOYEE's** ill or injured immediate family member (as defined in Bereavement Leave) for up to half of the **EMPLOYEE's** annual sick leave accrual (6 days a year). **EMPLOYEE** will not be compensated for unused sick leave upon termination.

4.3 Bereavement Leave

In case of death within the immediate family, **EMPLOYEE** shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a maximum of three (3) consecutive workdays.

If the **EMPLOYEE** must travel outside the state of California and at least four hundred (400) miles, **EMPLOYEE** shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a maximum of five (5) consecutive workdays.

For the purpose of this Section, immediate family is defined as husband, wife, domestic partner as defined by the State of California, father, mother, grandfather, grandmother, sister, brother, son, daughter, mother-in-law, father-in-law, stepchild, stepmother, stepfather, or such person who has served in the place of the **EMPLOYEE's** parent. Such leave shall not be charged against **EMPLOYEE** as leave without pay nor deducted from **EMPLOYEE's** annual leave.

4.4 Military Leave

Military leaves are granted in accordance with provisions of State and Federal law, including Section 395 of the Military and Veterans Code of the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Section 4301 et seq.

4.5 Crime Victims Leave and Leave Related to Domestic Violence Sexual Assault or Stalking, Time Off to Vote, School Activities and Volunteer Firefighter, Reserve Peace Officer and Emergency Rescue Personnel

Crime Victims Leave and Leave Related to Domestic Violence Sexual Assault or Stalking, Time Off to Vote, School Activities and Volunteer Firefighter, Reserve Peace Officer and Emergency Rescue Personnel shall also be provided as outlined in **SBWMA's** Employee Policies and Benefits Plan.

5. JURY DUTY

If **EMPLOYEE** is summoned to jury duty, **EMPLOYEE** may be absent from duty with full pay; provided, however, **EMPLOYEE** must remit to the **SBWMA**, through the Chief Financial Officer, within fifteen (15) days after receipt, all fees received except those specifically allowed for mileage and expenses.

6. HOSPITALIZATION AND MEDICAL CARE

6.1 Health Plan

SBWMA shall contribute the premium cost for **EMPLOYEE** and his eligible dependents to participate in its medical plans.

6.2 Dental Plan

SBWMA shall contribute the premium cost for **EMPLOYEE** and his eligible dependents to participate in its dental plan.

6.3 Vision Care Plan

SBWMA shall contribute the premium cost for **EMPLOYEE** and his eligible dependents to participate in its vision care plan.

6.4 Long-term Disability

SBWMA shall provide long-term disability insurance at no cost to **EMPLOYEE**. The waiting period for long-term disability benefits is sixty (60) calendar days. The Long-Term Disability premium is taxed to allow the long-term disability payment to be issued on a tax-free basis.

6.5 Alternate Medical Benefit Program

If **EMPLOYEE** provides proof of existing medical coverage from another source, he will receive a benefit in lieu of **SBWMA's** contribution for health insurance in an amount set at the applicable employee single rate.

7. LIFE INSURANCE

SBWMA shall provide for **EMPLOYEE**, life insurance in the amount of one (1) times regular salary to a maximum of Two Hundred Thousand Dollars (\$200,000.00).

8. RETIREMENT

SBWMA has adopted a self-directed Section 401(a) of the Internal Revenue Service Code retirement plan to which **SBWMA** contributes an amount equal to ten (10) percent of the **EMPLOYEE's** base salary. The **EMPLOYEE** vests in the 401(a) retirement plan immediately. In addition, **SBWMA** will contribute to the 401(a) plan a match of the **EMPLOYEE's** contribution to a 457(b) deferred contribution plan up to an additional two (2) percent of the **EMPLOYEE's** base salary. The match will be a one-for-one match,

i.e. the employer will match each dollar of the **EMPLOYEE's** contribution up to two percent.

9. **CAR ALLOWANCE**

EMPLOYEE shall receive a monthly car allowance of Four Hundred Dollars (\$400.00) per month to cover all costs associated with the use and maintenance of his car.

10. **BONDING EXPENSE**

SBWMA shall be responsible to pay any bonding expense of **EMPLOYEE**.

EXHIBIT B

ASSIGNED DUTIES

EMPLOYEE will act as the **SBWMA** Executive Director. In that role the Executive Director will:

- Prepare for the Board's review an evaluation of the organization and develop recommendations for staffing and operations by November 1, 2016;
- Develop for the Board's review a strategy for engagement with First Tier Subcontractors;
- Plan, develop, implement, coordinate and evaluate resource conservation programs, projects and activities in the **SBWMA**;
- Assure compliance with federal, state, local and other pertinent waste management and environmental mandates, laws, codes, rules, regulations and agreements;
- Serve as primary subject matter expert in assigned area, external agencies, businesses, community groups and the public;
- Supervise professional, technical, support, contract and volunteer staff;
- Assist in planning, developing and monitoring the budget;
- Attend all **SBWMA** meetings of the **BOARD** of Directors, **BOARD** subcommittees, and staff; and attend **SBWMA** member meetings as necessary;
- Assist the **BOARD** of Directors in the discharge of its duties;
- Prepare and submit a proposed budget to the **BOARD**;
- Within authority given by the **BOARD**, execute contracts and expend funds for supplies, equipment and services;
- Manage contracts entered into by the **SBWMA**; and
- Perform such other duties consistent with the position of **SBWMA** Executive Director as required by the **BOARD** of Directors.