

**Napa-Vallejo Waste
Management Authority**

City of American Canyon
City Council Meeting Chambers
4381 Broadway Street, Ste 201 - American Canyon, CA 94503



Agenda

Thursday, August 4, 2022

9:00 AM

Via Teleconferencing Only

Napa-Vallejo Waste Management Authority

Alfredo Pedroza, Chair
Mary Luros, Vice Chair
Robert McConnell, Member
Leon Garcia, Member
Bernie Narvaez, Alternate Member
Hakeem Brown, Alternate Member
Brad Wagenknecht, Alternate Member
David Oro, Alternate Member

Richard Luthy, Executive Director
Tracy Schulze, Auditor
Marie Nicholas, Secretary/Clerk
Thomas C. Zeleny, Legal Counsel
Robert Minahen, Treasurer

Meeting to be held Via Teleconferencing Only

Zoom Meeting: <https://countyofnapa.zoom.us/j/85681179525>

ANNOUNCEMENT

IN ACCORDANCE WITH ASSEMBLY BILL 361, THE GOVERNOR'S DECLARATION OF EMERGENCY DUE TO THE COVID-19 PANDEMIC, AND THE RECOMMENDATION OF LOCAL OFFICIALS FOR CONTINUED REMOTE ATTENDANCE AT BROWN ACT MEETINGS, THIS MEETING WILL BE STREAMED LIVE VIA ZOOM LINKS. THERE WILL NOT BE A PHYSICAL MEETING AT THE CITY OF AMERICAN CANYON CITY HALL. WE HAVE PROVIDED THE LINKS BELOW FOR YOUR CONVENIENCE.

**JOIN ZOOM MEETING @
<https://countyofnapa.zoom.us/j/85681179525>
Meeting ID: 856-8117-9525**

**Dial by your location
+1 669 900 6833 US (San Jose)**

Members of the public are encouraged to participate in the meeting by submitting written comments electronically to the Executive Director at NVWMA@countyofnapa.org. This email will be monitored during the meeting. Public comments will be accepted until the Chair closes public comment for each item during the meeting. All comments will be distributed to the Board members and included in the records.

**Submit Public Comments Via Email @:
NVWMA@countyofnapa.org**

GENERAL INFORMATION

The Napa-Vallejo Waste Management Authority meets the 1st Thursday of each month at 9:00 A.M. at 4381 Broadway Street, Suite 201, American Canyon, California 94503. The meeting room is wheelchair accessible. Requests for disability related modifications or accommodations, aids or services may be made no less than 72 hours prior to the meeting date by contacting 707 253-4471.

The Agenda is divided into two sections:

CONSENT ITEMS

These matters typically include routine financial or administrative actions, as well as final adoption of ordinances that cannot be both introduced and adopted at the same meeting. Any item on the CONSENT CALENDAR will be discussed separately at the request of any person. CONSENT CALENDAR items are usually approved with a single motion.

ADMINISTRATIVE ITEMS

These items include significant policy and administrative actions, and are classified by program areas. Immediately after approval of the CONSENT CALENDAR, ADMINISTRATIVE ITEMS will be considered.

All materials relating to an agenda item for an open session of a regular meeting of the Napa-Vallejo Waste Management Authority which are provided to a majority or all of the members of the Board by Board members, staff or the public within 72 hours of, but prior to the meeting, will be available for public inspection, at the time of such distribution, in the office of Auditor Controller, 1195 Third Street, Suite B-10, Napa CA 94559, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except for County holidays. Materials distributed to a majority or all of the members of the Board at the meeting will be available for public inspection at the public meeting if prepared by the members of the Board or Napa Vallejo Waste Management staff, and after the public meeting if prepared by some other person. Availability of materials related to agenda items for public inspection does not include materials which are exempt from public disclosure under Government Code sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

ANY MEMBER OF THE AUDIENCE DESIRING TO ADDRESS THE BOARD ON A MATTER ON THE AGENDA, please proceed to the rostrum and, after receiving recognition from the Chair, give your name and your comments or questions. In order that all interested parties have an opportunity to speak, please be brief and limit your comments to the specific subject under discussion. Time limitations shall be at the discretion of the Chair or Board.

AGENDA AVAILABLE ONLINE AT www.countyofnapa.org

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. PUBLIC COMMENT**

In this time period, anyone who wishes to speak to the Authority Board of Directors regarding any subject over which the Board has jurisdiction, that is not on the agenda, or to request consideration to place an item on a future Board agenda, may do so at this time. Individuals will be limited to a three minute presentation. The Board of Directors will take no action as a result of any item presented at this time.

- 5. PRESENTATIONS AND COMMENDATIONS**
- 6. APPROVAL OF MINUTES**

A. Approval of Board Minutes for the July 14, 2022 Regular Meeting.

[22-1489](#)

Attachments: [7-14-22 Minutes.pdf](#)

- 7. CONSENT ITEMS**

[22-1509](#)

- A. Approval of Resolution No. 2023-05 making findings and declaring the Board's intent to continue remote teleconference meetings pursuant to Government Code section 54953(e), based on the Governor's declaration of a state of emergency and local recommendation for continued remote attendance at Brown Act meetings due to the threat of COVID-19.
Attachments: [Resolution 2023-05](#)

- B. Approval and authorization for the Authority to exercise its right to renew and extend the disposal contract with Potrero Hills Landfill, Inc. for an additional five-year term beyond the current Base Term.

[22-1517](#)

8. ADMINISTRATIVE ITEMS

- A. Approval and authorization for the Chair to sign Authority Agreement #2023-04 to engage Christopher P. Celsi as Executive Director of the Authority.

[22-1514](#)

Attachments: [Employment Agreement 2023-04.pdf](#)

- B. Approval and authorization for the Chair to sign Agreement 2023-06 with Richard Luthy, in an amount not to exceed \$46,080.00 in wages and \$3,000.00 in expenses for a one-year term, to assist the Authority with the transition to a new Executive Director.

[22-1516](#)

Attachments: [Agreement 2023-06](#)

- C. Executive Director to report on Authority related activities.

[22-1510](#)

9. FACILITIES BUSINESS ITEMS

10. OTHER BUSINESS ITEMS

- A. Discussion of any items Board members may wish to have addressed at a future meeting date.

[22-1511](#)

- B. Reports of current information relevant to the Authority by the member jurisdictions:

[22-1513](#)

11. CLOSED SESSION

12. ADJOURNMENT

The next regularly scheduled meeting of the Authority Board of Directors will be held September 1, 2022.



Napa-Vallejo Waste
Management Authority
Board Agenda Letter

Napa-Vallejo Waste Management Authority **Agenda Date:** 8/4/2022

File ID #: 22-1489

TO: Napa-Vallejo Waste Management Authority Board of Directors
FROM: Richard Luthy, Executive Director
REPORT BY: Richard Luthy, Executive Director
SUBJECT: Approval of Minutes

RECOMMENDATION

Approval of Board Minutes for the July 14, 2022 Regular Meeting.

FISCAL & STRATEGIC PLAN IMPACT

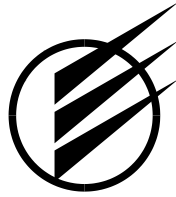
Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Please refer to the attached July 14, 2022 Minutes.



**NAPA-VALLEJO WASTE
MANAGEMENT AUTHORITY**

**MINUTES OF THE THURSDAY JULY 14, 2022,
9:00 A.M. REGULAR MEETING OF THE BOARD OF DIRECTORS**

1. CALL TO ORDER

The Napa-Vallejo Waste Management Authority met Thursday, July 14, 2022, via Zoom Meeting 88315106031. Chair Pedroza called the meeting to order at 9:04 a.m.

2. ROLL CALL

The following Directors were present: Director McConnell, Director Garcia, Vice-Chair Luros and Chair Pedroza.

3. PLEDGE OF ALLEGIANCE

4. PUBLIC COMMENT - NONE

5. PRESENTATIONS AND COMMENDATIONS

6. APPROVAL OF MINUTES

A. APPROVAL OF MINUTES

Approval of Board Minutes for the June 2, 2022 Meeting.

Item 6A: Approved as submitted. ML-RM-AP-LG

B. APPROVAL OF MINUTES

Approval of Board Minutes for the June 10, 2022 Closed Session Meeting.

Item 6B: Approved as submitted. ML-RM-AP-LG

7. CONSENT ITEMS

A. Requested Action: Approval and authorization for the Chair to sign Agreement 2023-02 with Sonoma RSA, Inc. DBA RSA+, for engineering, architectural and related services to support design and construction of the C&D Building at the Devlin Road Transfer Station, Project #17810 in an amount not to exceed \$2,220,000.

B. Approval of Resolution No. 2023-03 making findings and declaring the Board's intent to continue remote teleconference meetings pursuant to Government Code section 54953(e), based on the Governor's declaration of a state of emergency and local recommendation for continued remote attendance at Brown Act meetings due to the threat of COVID-19.

C. Approval and authorization for the Executive Director to sign a Budget Adjustment request, increasing the Transfer Station appropriations by \$350,000, due to continuing increases in received and transported tonnage for FY 2021-2022. These increased appropriations will be offset with the use of available Fund Balance.

Item 7: Approved as submitted ML-RM-AP-LG

8. ADMINISTRATIVE ITEMS

A. Staff to present results of NROWS operating contract performance review by R3 Consulting.

Item 8A: Report only – No Action Taken

C. Adoption of Resolution 2023-01 re-adopting the final budget for Fiscal Year 2022-2023, to correct a computation error and increase the total appropriations for Fund 8100/8100040 by \$22,072 for a new total of \$647, 072 to be effective immediately. (Unanimous approval required.)

Item 8B: Approved as submitted. AP-ML-RM-LG

D. Executive Director to report on Authority related activities.

Item 8C: Report only – No Action Taken

9. FACILITIES BUSINESS ITEMS - NONE

10. OTHER BUSINESS ITEMS

A. FUTURE AGENDA ITEMS

DISCUSSION ITEM: Discussion of any items Board members may wish to have addressed at a future meeting date.

Item 10A: None

B. REPORTS FROM JURISDICTIONS

DISCUSSION ITEM: Reports of current information relevant to the Authority by the member jurisdictions:

- i. Vallejo: - Robert McConnell reported for the City
- ii. Napa City: - Kevin Miller reported for the City
- iii. Napa County: - No Report
- iv. American Canyon: - Leon Garcia reported for the City

Item 10B: Reports Only – No Action Taken

11. CLOSED SESSION

A. PUBLIC EMPLOYEE APPOINTMENT (Government Code Section 54957(b)(1))

Title: Executive Director

Item 11A. The Board went into Closed Session at 9:24 and reconvened at 9:35. There was no reportable action.

12. ADJOURNMENT

The Meeting adjourned at 9:36 A.M. The next regularly scheduled meeting of the Authority Board of Directors will be held on August 4, 2022.

ATTEST: Marie Nicholas

Marie Nicholas, NVWMA Secretary

KEY

Vote: RM=Robert McConnell, AP=Alfredo Pedroza, LG=Leon Garcia, ML=Mary Luros
The maker of the motion and second are reflected respectively in the order of the recorded vote.

Notations next to vote: N = No; X = Excused; A = Abstain; B = Absent



Napa-Vallejo Waste
Management Authority
Board Agenda Letter

Napa-Vallejo Waste Management Authority **Agenda Date:** 8/4/2022

File ID #: 22-1509

TO: Napa-Vallejo Waste Management Authority Board of Directors
FROM: Richard Luthy, Executive Director
REPORT BY: Richard Luthy, Executive Director
SUBJECT: Remote Teleconference Meetings

RECOMMENDATION

Approval of Resolution No. 2023-05 making findings and declaring the Board's intent to continue remote teleconference meetings pursuant to Government Code section 54953(e), based on the Governor's declaration of a state of emergency and local recommendation for continued remote attendance at Brown Act meetings due to the threat of COVID-19.

EXECUTIVE SUMMARY

Board meetings have been held via teleconference pursuant to executive orders issued by the Governor to help reduce the spread of COVID-19. Those executive orders have expired, having been replaced by Assembly Bill ("AB") 361. AB 361 amended the Brown Act to allow local legislative bodies to continue meeting remotely during a state of emergency declared by the Governor, if state or local officials have also proposed or recommended measures to promote social distancing. These conditions currently exist. Staff is recommending the Board adopt Resolution 2023-05 to continue to meet by teleconference pursuant to AB 361. The Board will need to revisit the need to meet by teleconference at every regular meeting if it desires to continue meeting remotely.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

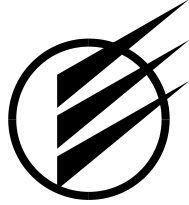
ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: This activity is not a project pursuant to CEQA Guidelines section 15378; therefore CEQA does not apply.

BACKGROUND AND DISCUSSION

Due to the health and safety risks of the COVID-19 pandemic, Board meetings have been held via teleconference pursuant to executive orders issued by the Governor. Those executive orders have expired, having been replaced by AB 361. AB 361 amended the Brown Act to allow local legislative bodies to continue meeting remotely during a state of emergency declared by the Governor, if state or local officials have also proposed or recommended measures to promote social distancing. These conditions currently exist. On September 27, 2021, the Napa County Executive Officer and Public Health Officer issued a memorandum recommending that boards and commissions continue to meet remotely in order to help minimize the spread and transmission of COVID-19.

The Governor's state of emergency due to COVID-19 is also still in effect. Staff continues to monitor the health and safety conditions related to COVID-19, the status of the Governor's state of emergency, and state and local health orders related to social distancing. Today's resolution confirms that the Board of Directors has considered the circumstances of the state of emergency due to COVID-19 and that state or local officials continue to recommend measures to promote social distancing and, therefore, intends that all Authority meetings subject to the Ralph M. Brown Act continue meeting via teleconference and to invoke the provisions of AB 361 related to teleconferencing as provided in Government Code section 54953(e) due to the threat of COVID-19.



**NAPA-VALLEJO WASTE
MANAGEMENT AUTHORITY**

RESOLUTION NO. 2023-05

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY MAKING
FINDINGS IN ACCORDANCE WITH AB 361 AND GOVERNMENT CODE SECTION
54953, TO HOLD REMOTE TELECONFERENCE MEETINGS**

WHEREAS, all meetings of Napa-Vallejo Waste Management Authority (Authority) Board of Directors meetings are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code §§ 54950 – 54963), so that any member of the public may attend, participate, and watch the Authority’s legislative body conduct its business; and

WHEREAS, Governor Newsom signed Assembly Bill (“AB”) 361, amending the Brown Act, including Government Code section 54953(e), that authorizes remote teleconferencing for meetings of members of a legislative body without compliance with the traditional teleconferencing requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition of AB 361 is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency in response to the COVID-19 pandemic; and

WHEREAS, the proclaimed state of emergency remains in effect; and

WHEREAS, California Department of Public Health and the Federal Center for Disease Control and Prevention caution that the Delta variant of COVID- 19 may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>); and

WHEREAS, on September 27, 2021, the Napa County Executive Officer and Public Health Officer jointly recommended measures to promote social distancing, including that all

boards and commissions may continue meeting remotely, in whole or in part, in order to help minimize the spread and transmission of COVID-19; and

WHEREAS, on November 26, 2021, the World Health Organization classified the new Omicron variant of COVID-19 as a variant of concern, and this variant has been detected in most states, including California, and is rapidly increasing the proportion of COVID-19 cases it is causing (<https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>); and

WHEREAS, the Authority is committed to preserving and nurturing public access and participation in meetings of the Board of Directors and to protecting the health, welfare, and safety of the participants; and

WHEREAS, the Board of Directors does hereby find that it has considered the circumstances of the state of emergency due to COVID-19 and that state or local officials continue to recommend measures to promote social distancing and, therefore, intends that all Authority meetings subject to the Ralph M. Brown Act continue meeting via teleconference and to invoke the provisions of AB 361 related to teleconferencing as provided in Government Code section 54953(e);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
2. The Board of Directors finds that in consideration of the recitals set forth above, the continued state of emergency, and recommended measures by state or local officials to promote social distancing, that meeting in person would present imminent risks to the health or safety of attendees and that all Authority meetings subject to the Ralph M. Brown Act continue to meet via teleconference.
3. Authority staff is hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including conducting open and public meetings by teleconference in accordance with Government Code section 54953(e), and other applicable provisions of the Brown Act.
4. Authority staff is further directed to continue to monitor the health and safety conditions related to COVID-19, the status of the Governor's state of emergency, the state regulations related to social distancing, and the local orders related to health and safety, and present to the Board of Directors for consideration at each regularly scheduled meeting the related information and recommendations for meetings by teleconference so long as the state of emergency continues to directly impact the ability of the members to meet safely in person, or state or local officials continue to impose or recommend measures to promote social distancing, pursuant to Government Code section 54953(e)(3).

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Board of Directors of the Napa-Vallejo Waste Management Authority at a regular meeting held on the 4th day of August, 2022, by the following vote:

AYES: DIRECTORS _____

 NOES: DIRECTORS _____

 ABSTAIN: DIRECTORS _____

 ABSENT: DIRECTORS _____

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Authority Counsel</p> <p>Date: <u>July 27, 2022</u> PL Doc. No. 75419</p>	<p>APPROVED BY THE AUTHORITY BOARD OF DIRECTORS</p> <p>Date: _____ Processed By: _____ Secretary of the Authority</p>	<p>ATTEST: MARIE NICHOLAS Secretary of the Authority</p> <p>By: _____</p>
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Napa-Vallejo Waste
Management Authority
Board Agenda Letter

Napa-Vallejo Waste Management Authority **Agenda Date:** 8/4/2022

File ID #: 22-1517

TO: Napa-Vallejo Waste Management Authority
FROM: Richard Luthy, Executive Director
REPORT BY: Richard Luthy, Executive Director
SUBJECT: Authorize Exercise of Five-year Term Extension - Agreement 2014-01 with Potrero Hills Landfill, Inc.

RECOMMENDATION

Approval and authorization for the Authority to exercise its right to renew and extend the disposal contract with Potrero Hills Landfill, Inc. for an additional five-year term beyond the current Base Term.

EXECUTIVE SUMMARY

In 2013, after a comprehensive RFP process, the Board authorized execution of a contract with Potrero Hills Landfill for Long Term Residue Disposal and ADC Capacity Services. The contract calls for an initial term of ten (10) years, commencing January 1, 2014. The Authority has the exclusive right to renew and extend the contract beyond ten (10) years for up to three (3) separate extensions of five (5) years each, not to exceed fifteen (15) years total extension time. The contract requires that the Authority must notify the contractor of its intent to extend the agreement no later than one (1) year prior to the end of the then-current term.

The current term will end on December 31, 2023 unless the Authority exercises its right to renew and extend the Base Term and notifies the contractor of that decision prior to December 31, 2022. Staff is recommending that the Board approve and authorize the exercise of the Authority's right to renew the contract for an additional five (5) years, and direct staff to notify the Contractor of that decision in accordance with the terms of the Agreement.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	Yes
Where is it budgeted?	Napa Vallejo Waste Management Authority

Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Continuity of Disposable Operations
Is the general fund affected?	No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

In 2013, after a comprehensive RFP process, the Board authorized execution of a contract with Potrero Hills Landfill for Long Term Residue Disposal and ADC Capacity Services. The contract calls for an initial term of ten (10) years, commencing January 1, 2014. The Authority has the exclusive right to renew and extend the contract beyond ten (10) years for up to three (3) separate extensions of five (5) years each, not to exceed fifteen (15) years total extension time. The contract requires that the Authority must notify the contractor of its intent to extend the agreement no later than one (1) year prior to the end of the then-current term.

The current term will end on December 31, 2023 unless the Authority exercises its right to renew and extend the Base Term and notifies the contractor of that decision prior to December 31, 2022. Staff is recommending that the Board approve and authorize the exercise of the Authority's right to renew the contract for an additional five (5) years, and direct staff to notify the Contractor of that decision in accordance with the terms of the Agreement.



Napa-Vallejo Waste
Management Authority
Board Agenda Letter

Napa-Vallejo Waste Management Authority **Agenda Date:** 8/4/2022

File ID #: 22-1514

TO: Napa Vallejo Waste Management Authority Board of Directors
FROM: Richard Luthy, Executive Director
REPORT BY: Richard Luthy, Executive Director
SUBJECT: Executive Director Employment Agreement

RECOMMENDATION

Approval and authorization for the Chair to sign Authority Agreement #2023-04 to engage Christopher P. Celsi as Executive Director of the Authority.

EXECUTIVE SUMMARY

Approval of Agreement 2023-04 will allow for the employment of Christopher P. Celsi as Executive Director of the Authority.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	Yes
Where is it budgeted?	Napa-Vallejo Waste Management Authority
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Executive Management Continuity
Is the general fund affected?	No
Future fiscal impact:	Same
Consequences if not approved:	Continue to search for a new Executive Director

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

In February this year, the Board approved Agreement 2022-10 with CPS Human Resource Services for the recruitment of an Executive Director for the Authority, to succeed the current Executive director upon his retirement. On June 10, 2022 final interviews were held and Christopher Celsi was selected by the Board for the position. The proposed employment agreement would engage Mr. Celsi as the Authority Executive Director, with an effective date of August 29, 2022 at an annual salary of \$115,000. Total compensation, including equipment and vehicle allowances will be \$121,000.



NAPA-VALLEJO WASTE
MANAGEMENT AUTHORITY

**NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY
AGREEMENT NO. 2023-04**

**EMPLOYMENT AGREEMENT
(Executive Director)**

THIS AGREEMENT is made and entered into as of this 4th day of August, 2022, by and between the Napa-Vallejo Waste Management Authority, a joint powers authority organized under the laws of the State of California pursuant to the Joint Powers Act (Government Code section 6500 et seq.), hereinafter referred to as “Employer” or “Authority,” and Christopher S. Celsi, whose mailing address is 9252 Bright Stars Court, Elk Grove, CA 95624, hereinafter referred to as “Employee.”

RECITALS

WHEREAS, the Board of Directors of the Napa-Vallejo Waste Management Authority (“Board”) desires to retain the services of Employee as the Authority Executive Director, as authorized by Section 5 of the Napa-Vallejo Waste Management Authority Joint Exercise of Powers Agreement; and

WHEREAS, Employee is willing to accept such position subject to the benefits and conditions of employment set forth below;

NOW, THEREFORE, for valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

TERMS

1. **Scope of Services.** The Employee hereby agrees to perform the functions and duties of the Executive Director, overseeing the day-to-day operations of the Authority and being responsible for the executive implementation of the actions of the Board. Employee shall also perform other legally permissible and proper duties and functions consistent with the office of the Executive Director as the Board shall from time to time assign. Duties, functions and delegated authorities of the Executive Director shall be equivalent to those of the outgoing Authority Executive Director, unless otherwise modified by the Board.

1.1 **Hours of Work.** The parties recognize that the duties of the Executive Director require work outside of normal office hours and Employee agrees to devote such effort as may be needed to carry out those duties, and to carry out those duties with the highest degree of professionalism possible. Employee shall dedicate no less than 16 hours per

week towards the duties of the Executive Director; provided, however, Employee shall not work in excess of 80 hours in any given calendar month.

1.2 **Outside Activities.** Employee may engage in consulting or other non-Employer related business (not to exceed an average of twenty hours a week) on Employee's time off. Such activities shall not interfere with Employee's ability to faithfully, promptly and to the best of Employee's ability, experience and talent, perform all of Employee's obligations under this Agreement, to the reasonable satisfaction of the Board. Employee shall avoid any outside activity that creates a conflict of interest with the Employee's duties as the Executive Director or give rise to a reasonable perception of such a conflict.

1.3 **Other Terms and Conditions of Employment.** Employer shall have the right, by Resolution, to fix such other terms and conditions of employment relating to the duties, responsibilities and performance of Employee acting as the Executive Director as may be appropriate provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement or any applicable law. To the extent reasonably feasible, Authority shall maintain an office for the Executive Director to conduct Authority Business and to provide security for Authority documents and equipment.

2. **Term of the Agreement.**

2.1 **Term.** Employee's term of employment shall be for a period of one year, commencing on August 29, 2022 ("Hire Date"), subject to the conditions contained in this Agreement. Nothing in this Employment 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 this Agreement.

2.2 **Automatic Renewal.** The term of this Agreement shall automatically renew on the anniversary of the Hire Date for an additional year and continue in effect thereafter on the same terms and conditions as set forth in this Agreement unless the Board notifies Employee in writing on or before August 29, 2023, that no extensions of this Agreement will occur ("Notice of Termination"). Thereafter, every year on the anniversary of the Hire Date this Agreement shall be extended for an additional year unless, before the anniversary of the Hire Date, the Board has notified Employee, or Employee has notified the Board, in writing that no further extensions of the Agreement will occur. Employee understands and agrees that nothing contained in this section shall operate to affect the at-will status of Employee.

2.3 **Salary and Benefits to Continue For Duration of Term.** In the event a Notice of Termination is issued, all compensation, benefits and requirements of the Agreement shall remain in effect until the date of termination specified in such Notice of Termination.

3. **Compensation and Performance Review.**

3.1 **Salary.** Employer shall pay Employee a salary of \$ 115,000 annually, based on Employee working no less than sixteen (16) hours per week ("Base Salary"), payable in bi-weekly installments.

3.2 **Performance Review.**

3.2.1 **Review of Performance.** Reviews of the performance of Employee may occur as often as the Board deems appropriate but not less than once each calendar year. The Board shall advise Employee of the results of that review in writing no later than sixty (60) days following the conclusion of the review. The Board's review and evaluation shall be in accordance with specific criteria developed by it, from time to time, in its sole discretion. Any evaluation criteria established by the Board shall be shared with the Executive Director at the time they are established.

3.2.2 **Amendments to Agreement.** Following any annual evaluation, the Board may increase Employee's compensation in its sole discretion. Any such increase may be approved by resolution of the Board and the resolution signed by Employee. Any such signed resolution shall be deemed an amendment to this Agreement without further action being required by the parties.

3.3 **Vacation, Sick Leave and Other Benefits.**

3.3.1 **In General.** Employee shall not be entitled to any vacation accruals, sick leave benefits, pension, or health benefits. Employer warrants that it is not a participant in the California Public Employees' Retirement System ("CalPERS") and does not provide retirement benefits through CalPERS.

3.3.2 **Deferred Compensation.** Employee may elect to participate in any deferred compensation plan provided by Employer.

3.3.3 **Travel and Related Expenses.** For travel within a 50-mile radius of Employer's business office ("50-mile radius"), Employer shall pay a flat rate of \$250.00 per month as reimbursement for private vehicle mileage while on official business for Employer. For travel outside of the 50-mile radius, Employer shall reimburse Employee for necessary travel and related expenses in accordance with Employer's adopted Travel Policy.

3.3.4 **Cell Phone/Computer Allowance.** Employer shall pay a monthly allowance of \$250.00 per month for Employee's use of personal cell phone/computer for official business of Employer.

3.3.5 Expenses Relating to Professional Development. Employer agrees to pay a reasonable amount for the professional dues and subscriptions necessary for Employee's continued full participation in up to two (2) national, regional, state or local associations/organizations deemed necessary and desirable by Employee for the effective and professional performance of Employee's duties under this Agreement. Employer also agrees to pay the tuition and subsistence expenses of the Employee for courses, seminars or conferences deemed necessary or desirable by Employee for the effective and professional performance of Employee's duties under this Agreement. All expenses incurred under this section shall require Employer's advance consent.

3.4 Records. Employee shall keep receipts and accurate records of all expenses and charges claimed to be reimbursable under this Agreement, which records shall be suitable in form and content both for Employer's records and for Internal Revenue Service purposes.

3.5 Tax Withholding. All amounts of Base Salary and other compensation, if any (including travel and cell phone/computer allowances), payable to Employee under this Agreement shall be reduced by any amounts that Employer is required to withhold with respect to such payments under the then applicable provisions of any state, federal or local income or other tax laws, regulations or statutes of a like nature, or any and all other state, federal or local laws of any kind or nature.

3.6 Adjustments. Salary, travel and related expenses and cell phone/computer allowance, shall each be adjusted on every anniversary of the Hire Date by the year over year percentage increase in the U.S. Bureau of Labor Statistics Consumer Price Index CPI-W for the San Francisco-Oakland-San Jose Area (CWURA422SAO) using the most recently published data at the time of the adjustment. Said increases shall be effective with the first pay period in September of each year. However, in no case shall any such percentage increase in salary and benefits be more than five percent or less than zero percent.

4. Insurance to be Provided by Employee. Employee shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, comprehensive automobile liability insurance (bodily injury and property damage) on owned, hired, leased and non-owned vehicles used in conjunction with Employee's employment of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence issued by a company licensed (admitted) to transact business in the State of California and having an A.M. Best rating of A VII or better.

4.1 Certificates. All insurance coverages shall be evidenced by one or more certificates of coverage, or demonstrated by other evidence of coverage acceptable to Authority's Risk Manager, which shall be filed by Employee with the Authority's Secretary prior to commencement of performance of any of Employee's duties; shall be kept current during the term of this Agreement; shall provide that Authority shall be

given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. Employee shall also file with the evidence of coverage an endorsement from the insurance provider naming Authority, its officers, employees, agents and volunteers as additional insureds and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of Employee not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of Authority shall pertain only to liability for activities of Employee under this Agreement, and that the insurance provided is primary coverage to Authority with respect to any insurance or self-insurance programs maintained by Authority. Upon request of Authority's Risk Manager, Employee shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

4.2 Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by Authority's Risk Manager, which approval shall not be denied unless the Authority's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of Employee by this Agreement. At the option of and upon request by Authority's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects Authority, its officers, employees, agents and volunteers or Employee shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

5. Early Termination by Employer. Employee is employed at the will of Employer and no express or implied promise has been made to Employee for any form of continued employment. Therefore, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate Employee and this Agreement at any time, with or without cause, by delivery of written notice of such termination to Employee. Employer shall provide such written notice not less than sixty (60) days before the effective date of termination set forth in the notice. Employee shall be entitled to no severance benefits upon such termination.

6. Early Termination by Employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time as the Executive Director by delivery of written notice of such termination to Employer not less than sixty (60) days in advance of the effective date of termination set forth in the notice, unless the parties otherwise agree in writing. In such a case, Employer shall pay to Employee, in full and complete payment

of compensation due to Employee under this Agreement, Employee's regular pay and accrued expenses through the effective date of termination.

7. **Indemnification.** In addition to any requirements imposed by state or local law, Employer shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action (collectively, a "Claim"), arising out of an alleged act or omission occurring in the performance of Employee's duties as the Executive Director, except to the extent caused by Employee's gross negligence, recklessness or intentional misconduct, or caused by actions of Employee that were outside of the course and scope of Employee's employment as the Executive Director. Employer shall have the right to select and employ counsel to defend the Employee and to compromise and settle any such Claim and shall pay (directly or through insurance) the amount of any settlement or judgment rendered with respect to such Claim. Employee agrees to cooperate fully with the Employer in its efforts to defend against any such Claims whether or not still employed by Employer.

8. **Bonding.** Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or administrative requirement. Employee shall complete all necessary applications and otherwise cooperate with Employer in applying for and obtaining such bond.

9. **Return of Property.** On or prior to the effective date of termination, regardless of how or why this Agreement is terminated, or whenever otherwise reasonably requested by Employer, Employee shall immediately return to Employer any or all of Employer's property, tangible or intangible, real, personal or mixed, including, but not limited to, any such property that is in Employee's possession or under Employee's control or which is used, produced or created by Employee in rendering services under this Agreement, all of which Employee hereby acknowledges and agrees is and shall be the property of Employer. Notwithstanding the above, Employee may retain a copy of a reasonable amount of work product personally created, but not work product created by the Executive Director's staff, for Employee's records and personal use in securing future employment with another employer. Any copyrightable or patentable work created by Employee while functioning as the Executive Director is a "work made for hire" for purposes of copyright or patent law and only Employer shall be entitled to claim or apply for the copyright or patent thereof.

10. **Conflict of Interest.** Employee is aware of the provisions of Government Code sections 1090, *et seq.* and 1125 *et seq.* relating to conflicts of interest, interests in contracts, incompatible activities and financial conflicts of interest of public officers and employees. Employee is further aware of the common law doctrine of incompatibility of offices. Employee hereby covenants that Employee presently has no potential conflicts of interest or incompatible activities which have not been disclosed to Employer. Employee further covenants that Employee shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of Employee's services hereunder, except to the extent the Employer may consent to in writing prior to the acquisition by Employee of such interest and such acquisition is permitted by law. Employee further warrants that he is unaware of any financial or economic interest that any public officer, or employee of any public entity, may have in the execution of this Agreement. Employee agrees that if such financial interest does exist at the inception of this

Agreement, Employer may terminate this Agreement immediately upon giving ten days written notice without further obligation by Employer to Employee under this Agreement. Employee further understands that engaging in activities contrary to the above statutory or common law provisions will constitute a substantial and material breach in the terms and conditions of this Agreement.

11. **Statement of Economic Interest.** Employee acknowledges that he is aware of the provisions of Government Code sections 87100, *et seq.* in the Political Reform Act. Employee further acknowledges and understands that Employer has developed and approved a Conflict of Interest Code which will require Employee to file with the Elections Division of the Napa County Assessor-Clerk.- Recorder "assuming office," "annual," and "leaving office" Statements of Economic Interest. Employee agrees to timely comply with all Statements of Economic Interest filing obligations required by California law and by Employer's Conflict of Interest Code during the duration of Employee's employment with the Authority.

12. **Non-Discrimination.** Employee agrees not to discriminate in the performance of Employee's functions and duties on the ground of, or because of, sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS) or any condition related thereto. Employee further understands that engaging in such discrimination will constitute a substantial and material breach in the terms and conditions of this Agreement.

13. **Employer Policies.** To the extent not inconsistent with the Agreement, Employee acknowledges and agrees that he is bound by all of the Employer's employment policies as they may be adopted and/or modified by Employer from time to time in its sole discretion. In the event of a conflict between the Employer's employment policies as may be adopted and/or modified, and any provision of this Agreement, the terms of this Agreement shall control.

14. **Binding Nature of Agreement; Assignment; 3rd Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns. Employee acknowledges that the services to be rendered by Employee pursuant to this Agreement are unique and personal. Accordingly, Employee may not assign or transfer any of Employee's rights or obligations under this Agreement without the prior written consent of Employer (which consent may be withheld by Employer in its sole discretion) and any purported assignment of Employee's rights or obligations without such written consent shall be void and of no force or effect. Except as expressly provided in this Agreement, no other person or entity is intended to or shall have any rights or benefits under this Agreement, whether as third party beneficiaries or otherwise.

15. **Amendment.** Except as otherwise provided herein, this Agreement may be modified or amended only in writing signed by both parties. Therefore, any purported oral agreement to amend any term of this Agreement must be reduced to writing before it can be given effect.

16. **Governing Law; Choice of Forum.** This Agreement is executed, delivered and will be performed in the State of California, and the substantive laws of the State of California (without reference to choice of law or conflicts of laws principles) shall govern its interpretation and enforcement. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court, and each of the parties irrevocably consents to jurisdiction and venue in such Court for such purposes. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration of any dispute arising under this Agreement.

17. **Relationship Created.** The relationship created by this Agreement shall be deemed and construed to be, and shall be, solely that of employer and employee and not of any other type or nature.

18. **Attorneys' Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

19. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

20. **Further Assurances.** Employee shall execute and deliver all other instruments and documents and shall take all other actions as Employer may reasonably request from time to time, before or after the execution of this Agreement, in order to effectuate the transactions provided for in this Agreement.

21. **Construction.** This Agreement is intended to express the intent of both parties, and irrespective of the identity of the party or counsel who prepared this Agreement or any draft of this Agreement, no rule of strict construction shall be applied against any party. All words used in this Agreement are intended to refer to the appropriate number or gender, regardless of the number or gender stated. Employee acknowledges that he has been advised by Employer prior to execution of this Agreement to consult with legal counsel, should he feel the need to do so, regarding the meaning of the terms and conditions contained herein as the terms of this Agreement will not be construed to apply for or against him in the event of litigation due to the inclusion of this section in the Agreement.

22. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

23. **Costs and Expenses.** Each party shall bear its own costs, including counsel fees and accounting fees, incurred in connection with the negotiation, drafting and consummation of this Agreement and all matters incident to this Agreement.

24. **Headings.** The captions or headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provision hereof. The terms of the Agreement are set out in the text under the headings.

25. **Authority to Contract.** Employee warrants that he is legally permitted and otherwise has the ability to enter into and perform this Agreement.

26. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

EMPLOYER

Napa Vallejo Waste Management Authority
Authority Secretary
1195 Third Street, Ste. #301
Napa, CA 94559-3035

EMPLOYEE

Chris Celsi
9252 Bright Stars Court
Elk Grove, CA 95624

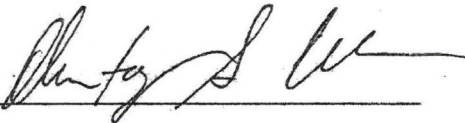
27. **Prior Approvals.** Unless otherwise required by law or expressly stated in this Agreement, in any case where the prior approval of Employer is required to authorize the incurrence of a job-related expense by Employee, the written approval of the Board Chair shall constitute approval by Employer.

28. **Entire Agreement.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

29. **Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by the Authority, acting by and through the Chair of the Board of Directors, and by Employee.

CHRISTOPHER S. CELSI

By: 

NAPA-VALLEJO WASTE MANAGEMENT
AUTHORITY, a joint powers agency

By: _____
ALFREDO PEDROZA, NVWMA Chair

APPROVED AS TO FORM Office of County Counsel By: <u>Thomas C. Zeleny</u> Authority Counsel Date: <u>July 20, 2022</u>	APPROVED BY THE AUTHORITY BOARD OF DIRECTORS Date: _____ Processed By: _____ Secretary of the Authority	ATTEST: MARIE NICHOLAS Secretary of the Authority By: _____
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Napa-Vallejo Waste
Management Authority
Board Agenda Letter

Napa-Vallejo Waste Management Authority **Agenda Date:** 8/4/2022

File ID #: 22-1516

TO: Napa-Vallejo Waste Management Authority
FROM: Thomas Zeleny, Authority Counsel
REPORT BY: Thomas Zeleny, Authority Counsel
SUBJECT: Proposed Contract with Richard Luthy to Serve as a Technical Advisor

RECOMMENDATION

Approval and authorization for the Chair to sign Agreement 2023-06 with Richard Luthy, in an amount not to exceed \$46,080.00 in wages and \$3,000.00 in expenses for a one-year term, to assist the Authority with the transition to a new Executive Director.

EXECUTIVE SUMMARY

Richard Luthy, the Executive Director of the Authority, is retiring from the position after 12 years of service. The Authority is considering hiring a new Executive Director today. Richard Luthy has an intimate and extensive knowledge of Authority operations and issues. Under this proposed agreement, Richard Luthy will report to the new Executive Director to help provide for a smooth transition of the day to day management of the Authority.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	Operating Reserves
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Richard Luthy's experience will help with a smooth transition to a new Executive Director.
Future fiscal impact:	None after one year.
Consequences if not approved:	The Authority will not have the benefit of Richard Luthy's experience in transitioning to a new Executive Director.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Richard Luthy, the Executive Director of the Authority, is retiring from the position after 12 years of service. The Authority is considering hiring a new Executive Director today. Richard Luthy has an intimate and extensive knowledge of Authority operations and issues, which will be very helpful in transitioning to a new Executive Director.

Under this proposed agreement, Richard Luthy will report to the new Executive Director to provide assistance on an as-needed basis as a Technical Advisor. Richard Luthy will be paid \$120 per hour, which is the equivalent of his current salary reduced to an hourly rate. The maximum amount of the agreement is \$46,080.00 over the one-year term of the agreement, the equivalent of 32 hours per month, plus a maximum of \$3,000.00 in expenses, if any. The agreement with Richard Luthy will commence on the first day of work of the new Executive Director.



NAPA-VALLEJO WASTE
MANAGEMENT AUTHORITY

**NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY
AGREEMENT NO. 2023-06**

**EMPLOYMENT AGREEMENT
(Technical Advisor)**

THIS AGREEMENT is made and entered into as of this 4th day of August, 2022, by and between the Napa-Vallejo Waste Management Authority, a joint powers authority organized under the laws of the State of California pursuant to the Joint Powers Act (Government Code section 6500 et seq.), hereinafter referred to as “Employer” or “Authority,” and Richard Luthy, whose mailing address is 1185 Ross Circle, Napa, CA 94558, hereinafter referred to as “Employee.”

RECITALS

WHEREAS, Employee is retiring from his current position as Executive Director; and

WHEREAS, the Board of Directors of the Authority (“Board”) is hiring a new Executive Director, who is not currently an employee or consultant of the Authority who would already be familiar with Authority’s operations; and

WHEREAS, the Board desires to retain the services of Employee as a Technical Advisor, to assist the Authority with the transition to a new Executive Director; and

WHEREAS, Employee is willing to accept such position subject to the benefits and conditions of employment set forth below;

NOW, THEREFORE, for valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

TERMS

1. **Scope of Services.** The Employee shall serve as a part time Technical Advisor, reporting to the Executive Director, to provide information and assistance during the transition to new management. Work will be performed both in person and through teleconferencing, as requested by the Executive Director, during normal business hours.

1.1 **Hours of Work.** Employee’s work is limited to 32 hours per month, on average, recognizing some months may be more or less depending on the needs of the Board and the Executive Director.

1.2 **Outside Activities.** Employee may engage in consulting or other non-Employer related business (not to exceed an average of twenty hours a week) on Employee's time off. Such activities shall not interfere with Employee's ability to faithfully, promptly and to the best of Employee's ability, experience and talent, perform all of Employee's obligations under this Agreement, to the reasonable satisfaction of the Board. Employee shall avoid any outside activity that creates a conflict of interest with the Employee's duties as the Executive Director or give rise to a reasonable perception of such a conflict.

1.3 **Other Terms and Conditions of Employment.** Employer shall have the right, by resolution, to fix such other terms and conditions of employment relating to the duties, responsibilities and performance of Employee acting as the Technical Advisor as may be appropriate provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement or any applicable law.

2. **Term of the Agreement.**

2.1 **Term.** Employee's term of employment shall be for a period of twelve (12) months, commencing on the first day of work of the new Executive Director ("Hire Date"), subject to the conditions contained in this Agreement. Nothing in this Employment 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 this Agreement.

2.2 [reserved]

2.3 **Salary and Benefits to Continue For Duration of Term.** In the event a Notice of Termination is issued, all compensation, benefits and requirements of the Agreement shall remain in effect until the date of termination specified in such Notice of Termination.

3. **Compensation and Performance Review.**

3.1 **Salary.** Employee shall submit timesheets showing hours worked and tasks performed to the Executive Director for approval. Employer shall pay Employee for hours worked at an hourly rate of \$120.00, payable bi-weekly in arrears. Notwithstanding the foregoing, the total compensation paid to Employee under this Agreement shall not exceed FORTY SIX THOUSAND AND EIGHTY DOLLARS (\$46,080.00).

3.2 **Expenses.** Authority shall reimburse Employee for documented work-related expenses in accordance with current Authority expense reimbursement policies, in an amount not to exceed THREE THOUSAND DOLLARD (\$3,000.00). This amount is in addition to the maximum compensation for salary in section 3.1 above.

3.3 **Vacation, Sick Leave and Other Benefits.**

3.3.1 **In General.** Employee shall not be entitled to any vacation accruals, sick leave benefits, pension, or health benefits. Employer warrants that it is not a participant in the California Public Employees' Retirement System ("CalPERS") and does not provide retirement benefits through CalPERS.

3.3.2 **Deferred Compensation.** Employee may elect to participate in any deferred compensation plan provided by Employer.

3.4 **Records.** Employee shall keep accurate records of tasks performed and time spent working under this Agreement, which records shall be suitable in form and content both for Employer's records and for Internal Revenue Service purposes.

3.5 **Tax Withholding.** All compensation payable to Employee under this Agreement shall be reduced by any amounts that Employer is required to withhold with respect to such payments under the then applicable provisions of any state, federal or local income or other tax laws, regulations or statutes of a like nature, or any and all other state, federal or local laws of any kind or nature.

4. **Insurance to be Provided by Employee.** Employee shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, comprehensive automobile liability insurance (bodily injury and property damage) on owned, hired, leased and non-owned vehicles used in conjunction with Employee's employment of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence issued by a company licensed (admitted) to transact business in the State of California and having an A.M. Best rating of A VII or better.

4.1 **Certificates.** All insurance coverages shall be evidenced by one or more certificates of coverage, or demonstrated by other evidence of coverage acceptable to Authority's Risk Manager, which shall be filed by Employee with the Authority's Secretary prior to commencement of performance of any of Employee's duties; shall be kept current during the term of this Agreement; shall provide that Authority shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. Employee shall also file with the evidence of coverage an endorsement from the insurance provider naming Authority, its officers, employees, agents and volunteers as additional insureds and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of Employee not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of Authority

shall pertain only to liability for activities of Employee under this Agreement, and that the insurance provided is primary coverage to Authority with respect to any insurance or self-insurance programs maintained by Authority. Upon request of Authority's Risk Manager, Employee shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

4.2 Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by Authority's Risk Manager, which approval shall not be denied unless the Authority's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of Employee by this Agreement. At the option of and upon request by Authority's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects Authority, its officers, employees, agents and volunteers or Employee shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

5. Early Termination by Employer. Employee is employed at the will of the Authority and no express or implied promise has been made to Employee for any form of continued employment. Therefore, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Authority to terminate Employee and this Agreement at any time, with or without cause, by delivery of written notice of such termination to Employee. Employer shall provide such written notice not less than sixty (60) days before the effective date of termination set forth in the notice. Employee shall be entitled to no severance benefits upon such termination.

6. Early Termination by Employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time as the Technical Advisor by delivery of written notice of such termination to the Executive Director not less than thirty (30) days in advance of the effective date of termination set forth in the notice, unless the parties otherwise agree in writing. In such a case, the Authority shall pay to Employee, in full and complete payment of compensation due to Employee under this Agreement, Employee's regular pay through the effective date of termination.

7. Indemnification. In addition to any requirements imposed by state or local law, Employer shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action (collectively, a "Claim"), arising out of an alleged act or omission occurring in the performance of Employee's duties as the Technical Advisor, except to the extent caused by Employee's gross negligence, recklessness or intentional misconduct, or caused by actions of Employee that were outside of the course and scope of Employee's employment as the Technical Advisor. Employer shall have the right to select and employ counsel to defend the Employee and to compromise and settle any such Claim and shall pay (directly or through insurance) the amount of any settlement or judgment rendered with

respect to such Claim. Employee agrees to cooperate fully with the Employer in its efforts to defend against any such Claims whether or not still employed by Employer.

8. **Bonding.** Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or administrative requirement. Employee shall complete all necessary applications and otherwise cooperate with Employer in applying for and obtaining such bond.

9. **Return of Property.** On or prior to the effective date of termination, regardless of how or why this Agreement is terminated, or whenever otherwise reasonably requested by Employer, Employee shall immediately return to Employer any or all of Employer's property, tangible or intangible, real, personal or mixed, including, but not limited to, any such property that is in Employee's possession or under Employee's control or which is used, produced or created by Employee in rendering services under this Agreement, all of which Employee hereby acknowledges and agrees is and shall be the property of Employer. Notwithstanding the above, Employee may retain a copy of a reasonable amount of work product personally created for Employee's records and personal use in securing future employment with another employer. Any copyrightable or patentable work created by Employee while functioning as the Technical Advisor is a "work made for hire" for purposes of copyright or patent law and only Employer shall be entitled to claim or apply for the copyright or patent thereof.

10. **Conflict of Interest.** Employee is aware of the provisions of Government Code sections 1090, *et seq.* and 1125 *et seq.* relating to conflicts of interest, interests in contracts, incompatible activities and financial conflicts of interest of public officers and employees. Employee is further aware of the common law doctrine of incompatibility of offices. Employee hereby covenants that Employee presently has no potential conflicts of interest or incompatible activities which have not been disclosed to Employer. Employee further covenants that Employee shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of Employee's services hereunder, except to the extent the Employer may consent to in writing prior to the acquisition by Employee of such interest and such acquisition is permitted by law. Employee further warrants that he is unaware of any financial or economic interest that any public officer, or employee of any public entity, may have in the execution of this Agreement. Employee agrees that if such financial interest does exist at the inception of this Agreement, Employer may terminate this Agreement immediately upon giving ten days written notice without further obligation by Employer to Employee under this Agreement. Employee further understands that engaging in activities contrary to the above statutory or common law provisions will constitute a substantial and material breach in the terms and conditions of this Agreement.

11. **Statement of Economic Interest.** Employee acknowledges that he is aware of the provisions of Government Code sections 87100, *et seq.* in the Political Reform Act. Employee further acknowledges and understands that Employer has developed and approved a Conflict of Interest Code which will require Employee to file with the Elections Division of the Napa County Assessor-Clerk.- Recorder "assuming office," "annual," and "leaving office" Statements of Economic Interest. Employee agrees to timely comply with all Statements of Economic

Interest filing obligations required by California law and by Employer's Conflict of Interest Code during the duration of Employee's employment with the Authority.

12. **Non-Discrimination.** Employee agrees not to discriminate in the performance of Employee's functions and duties on the ground of, or because of, sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS) or any condition related thereto. Employee further understands that engaging in such discrimination will constitute a substantial and material breach in the terms and conditions of this Agreement.

13. **Employer Policies.** To the extent not inconsistent with the Agreement, Employee acknowledges and agrees that he is bound by all of the Employer's employment policies as they may be adopted and/or modified by Employer from time to time in its sole discretion. In the event of a conflict between the Employer's employment policies as may be adopted and/or modified, and any provision of this Agreement, the terms of this Agreement shall control.

14. **Binding Nature of Agreement; Assignment; 3rd Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns. Employee acknowledges that the services to be rendered by Employee pursuant to this Agreement are unique and personal. Accordingly, Employee may not assign or transfer any of Employee's rights or obligations under this Agreement without the prior written consent of Employer (which consent may be withheld by Employer in its sole discretion) and any purported assignment of Employee's rights or obligations without such written consent shall be void and of no force or effect. Except as expressly provided in this Agreement, no other person or entity is intended to or shall have any rights or benefits under this Agreement, whether as third party beneficiaries or otherwise.

15. **Amendment.** Except as otherwise provided herein, this Agreement may be modified or amended only in writing signed by both parties. Therefore, any purported oral agreement to amend any term of this Agreement must be reduced to writing before it can be given effect.

16. **Governing Law; Choice of Forum.** This Agreement is executed, delivered and will be performed in the State of California, and the substantive laws of the State of California (without reference to choice of law or conflicts of laws principles) shall govern its interpretation and enforcement. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court, and each of the parties irrevocably consents to jurisdiction and venue in such Court for such purposes. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration of any dispute arising under this Agreement.

17. **Relationship Created.** The relationship created by this Agreement shall be deemed and construed to be, and shall be, solely that of employer and employee and not of any other type or nature.

18. **Attorneys' Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

19. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

20. **Further Assurances.** Employee shall execute and deliver all other instruments and documents and shall take all other actions as Employer may reasonably request from time to time, before or after the execution of this Agreement, in order to effectuate the transactions provided for in this Agreement.

21. **Construction.** This Agreement is intended to express the intent of both parties, and irrespective of the identity of the party or counsel who prepared this Agreement or any draft of this Agreement, no rule of strict construction shall be applied against any party. All words used in this Agreement are intended to refer to the appropriate number or gender, regardless of the number or gender stated. Employee acknowledges that he has been advised by Employer prior to execution of this Agreement to consult with legal counsel, should he feel the need to do so, regarding the meaning of the terms and conditions contained herein as the terms of this Agreement will not be construed to apply for or against him in the event of litigation due to the inclusion of this section in the Agreement.

22. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

23. **Costs and Expenses.** Each party shall bear its own costs, including counsel fees and accounting fees, incurred in connection with the negotiation, drafting and consummation of this Agreement and all matters incident to this Agreement.

24. **Headings.** The captions or headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provision hereof. The terms of the Agreement are set out in the text under the headings.

25. **Authority to Contract.** Employee warrants that he is legally permitted and otherwise has the ability to enter into and perform this Agreement.

26. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

EMPLOYER

Napa Vallejo Waste Management Authority
Authority Secretary
1195 Third Street, Ste. B-10
Napa, CA 94559-3035

EMPLOYEE

Richard Luthy
1185 Ross Circle
Napa, CA 94558

27. **Prior Approvals.** Unless otherwise required by law or expressly stated in this Agreement, in any case where the prior approval of Employer is required to authorize the incurrence of a job-related expense by Employee, the written approval of the Board Chair shall constitute approval by Employer.

28. **Entire Agreement.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

29. **Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, this Agreement is executed by the Authority, acting by and through the Chair of the Board of Directors, and by Employee.

RICHARD LUTHY

By: _____

NAPA-VALLEJO WASTE MANAGEMENT
AUTHORITY, a joint powers agency

By _____
ALFREDO PEDROZA, NVWMA Chair

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Authority Counsel</p> <p>Date: <u>July 20, 2022</u></p>	<p>APPROVED BY THE AUTHORITY BOARD OF DIRECTORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Secretary of the Authority</p>	<p>ATTEST: MARIE NICHOLAS Secretary of the Authority</p> <p>By: _____</p>
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Napa-Vallejo Waste
Management Authority
Board Agenda Letter

Napa-Vallejo Waste Management Authority **Agenda Date:** 8/4/2022

File ID #: 22-1510

TO: Napa-Vallejo Waste Management Authority Board of Directors
FROM: Richard Luthy, Executive Director
REPORT BY: Richard Luthy, Executive Director
SUBJECT: Executive Director's Report

RECOMMENDATION

Executive Director to report on Authority related activities.

EXECUTIVE SUMMARY

The Executive Director will report on recent activities relating to the Authority.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The Executive Director will report on recent activities concerning the Authority.



Napa-Vallejo Waste
Management Authority
Board Agenda Letter

Napa-Vallejo Waste Management Authority **Agenda Date:** 8/4/2022

File ID #: 22-1511

TO: Napa-Vallejo Waste Management Authority Board of Directors
FROM: Richard Luthy, Executive Director
REPORT BY: Richard Luthy, Executive Director
SUBJECT: Future Agenda Items

RECOMMENDATION

Discussion of any items Board members may wish to have addressed at a future meeting date.

EXECUTIVE SUMMARY

Discussion of any items Board members wish to have addressed at a future meeting date.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.



Napa-Vallejo Waste
Management Authority
Board Agenda Letter

Napa-Vallejo Waste Management Authority **Agenda Date:** 8/4/2022

File ID #: 22-1513

TO: Napa-Vallejo Waste Management Authority Board of Directors
FROM: Richard Luthy, Executive Director
REPORT BY: Richard Luthy, Executive Director
SUBJECT: Reports from Jurisdictions

RECOMMENDATION

Reports of current information relevant to the Authority by the member jurisdictions:

EXECUTIVE SUMMARY

- i. Vallejo: Robert McConnell
- ii. Napa City: Mary Luros
- iii. Napa County: Alfredo Pedroza
- iv. American Canyon: Leon Garcia

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.