



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: _____ Processed By: _____ Secretary of the Authority</p>	<p>ATTEST: MARIE NICHOLAS Secretary of the Authority</p> <p>By: _____</p>
--	---	---