



**SPECIAL MEETING
OF THE BOARD OF DIRECTORS
OF THE LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY**

Wednesday, September 8, 2021, 6:00 p.m.

Due to Shelter in Place Orders, this meeting will be conducted via teleconference.

Meeting participants and the public may participate through computer video and audio by clicking on the following link:

<https://us02web.zoom.us/j/81364327563>

We recommend using your full name to log in for the meeting for ease of identification and recordkeeping purposes.

Meeting ID: 813 6432 7563

**One tap mobile if using audio only from a telephone and not a computer
+1 669 900 9128 - 81364327563# US (San Jose)**

See below for additional info on participation procedures.

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Order of Agenda/Acknowledgement of Posting**
(The agenda may be re-ordered by motion of the Board. The agenda has been posted virtually on the Agency's website and, to the extent possible under the circumstances, physically in the display case outside the DSRSD Building, Pleasanton City Hall and Livermore City Hall at least 72 hours prior to a regular meeting and 24 hours prior to a special meeting.)
- 5. Public Comment**
(See text in box below for information on how to observe and submit public comments.)
- 6. Consent Calendar**
(All items on the Consent Calendar will be considered together by one or more action(s) of the Board unless a Board member pulls an item.)

6.a. Board Meeting Minutes of August 18, 2021

Pages 4 – 8 (The Board will consider approving the minutes from the August 18, 2021 Board meeting.)

Action 7. Authorization for the General Manager to Award a Contract for the Purchase of Three Vertical Turbine Pumps

Pages 9 – 28 (The Board will consider options for the award of a contract for the Purchase of up to three vertical turbine pumps. The options include rejecting all bids and: 1) authorizing the General Manager to re-bid the procurement or to use an alternative procurement method with guidance from legal counsel, 2) authorize the General Manager to negotiate the procurement on terms acceptable to LAVWMA starting with the low bidder and moving to the next highest bidder if unable to reach a mutually acceptable agreement, 3) Directing the General Manager to return to the Board with alternatives to purchase, such as repairing existing pumps, or 4) some combination of these options.)

Information 8. Matters From/For Board Members

(Board members may make brief announcements or reports on his or her own activities, pose questions for clarification, and/or request that items be placed on a future agenda. Except as authorized by law, no other discussion or action may be taken.)

9. Next Regular Board Meeting, Wednesday, November 17, 2021, 6:00 p.m.

IMPORANT NOTICE REGARDING COVID-19 AND TELECONFERENCED MEETINGS:

Due to shelter in place mandates issued by the Governor in Executive Order 33-20 and the County Public Health Officer, to minimize the spread of the coronavirus, please note the following changes to LAVWMA’s ordinary meeting procedures:

- LAVWMA’s facilities are not open to the public during this emergency.
- The meeting will be conducted via teleconference. (See Executive Order 29-20)
- All members of the public seeking to observe and/or to address the Board may participate in the meeting telephonically in the manner described below.

HOW TO PARTICIPATE IN THE MEETING:

For both audio and video through a computer, click on the following link:

<https://us02web.zoom.us/j/81364327563> Meeting ID: 813 6432 7563

For audio only via telephone, dial 1 669 900 9128 then enter the following code 81364327563#

NOTE: This is a public meeting that can be heard live by any member of the public. It may be recorded to facilitate taking meeting minutes.

HOW TO SUBMIT PUBLIC COMMENTS:

Written / Read Aloud: Please email your comments to info@lavwma.com, write “Public Comment” in the subject line. In the body of the email, include the agenda item number and title, as well as your comments. If you would like your comment to be read aloud at the meeting (not to exceed three (3) minutes at staff’s cadence), prominently write “Read Aloud at Meeting” at the top of the email. All comments received before 12:00 PM the day of the meeting will be included as an agenda supplement on LAVWMA’s website under the relevant meeting date and provided to the Directors at the meeting. Comments received after this time will be treated as concurrent comments.

Concurrent Comments: During the meeting, the Board Chair or designee will announce the opportunity to make public comments and identify the cut off time for submission. A short recess (generally less than 5 minutes) will take place during the time public comment is open to allow the comments to be collected,

LAVWMA Regular Meeting of September 8, 2021

unless it is clear no member of the public is participating. Please email your comments to info@lavwma.com, write “Public Comment” in the subject line. In the body of the email, include the agenda item number and title, as well as your comments. Once the public comment period is closed, all comments timely received will be read aloud. Comments received after the close of the public comment period will be added to the record after the meeting.

ACCESSIBILITY INFORMATION:

Board Meetings are accessible to people with disabilities and others who need assistance. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to observe and/or participate in this meeting and access meeting-related materials should contact Chuck Weir, General Manager, as soon as possible but at least 72 hours before the meeting at (925)-875-2202 or info@lavwma.com. Advanced notification will enable LAVWMA to swiftly resolve such requests to ensure accessibility.

PUBLIC RECORDS:

Public records that relate to any item on the open session agenda for a meeting are available for public inspection. Those records that are distributed after the agenda posting deadline for the meeting are available for public inspection at the same time they are distributed to all or a majority of the members of the Board. The Board has designated LAVWMA’s website located at http://lavwma.com/agency_meetings.php as the place for making those public records available for inspection. The documents may also be obtained by contacting the General Manager.

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LAVWMA
Livermore-Amador Valley Water Management Agency
Minutes
DRAFT

Regular Meeting of Board of Directors
Wednesday, August 18, 2021

**Due to Shelter in Place Orders, this was a web meeting available to participants and the public through the following link: <https://us02web.zoom.us/j/88291240316>
6:00 p.m.**

1. Call to Order

Chair Ann Marie Johnson called the meeting to order at 6:01 p.m.

2. Pledge of Allegiance

The Pledge of Allegiance was recited.

3. Roll Call

Board Members Present: Chair Ann Marie Johnson; Vice Chair Julie Testa; and Directors Valerie Arkin, Gina Bonanno, Bob Carling, and Arun Goel

Board Members Absent: None

Staff Present: General Counsel Alexandra Barnhill, General Manager Chuck Weir, Treasurer Carol Atwood, DSRSD, and Jeff Carson, DSRSD Operations Director

Staff Absent: None

Others Present: None

Introductions

Introductions were not made.

4. Order of Agenda

There were no changes to the order of the agenda.

5. Comments from the Public

There were no comments from the public.

6. Consent Calendar

a. Minutes of the May 19, 2021 and July 21, 2021 LAVWMA Board Meetings

Director Bonanno motioned, seconded by Director Arkin, to approve Consent Calendar Item No. 6.a.

There were no comments from the public. The Motion passed unanimously (6 – 0) by a roll call vote.

7. Financial Reporting for the Fiscal Year Ending June 30, 2021

General Manager Weir and Treasurer Atwood noted that due to the extraordinary effort related to the debt refunding and the yearend closeout process for the Fiscal Year ending June 30, 2021, there is no formal financial report for June 30, 2021. Financial reports for both fiscal years as well as the financial audit for the year ending June 30, 2021 will be presented at the November 17, 2021 meeting. The Board reviewed the O&M expenses and the capital project expenses through June 30, 2021 and noted that all expenses were in order.

There were no comments from the public. This was an information item requiring no action by the Board.

8. Status Report on LAVWMA Debt Refinancing

General Manager Weir and Treasurer Atwood provided a summary of the process that led to the successful sale of the bonds on August 11, 2021. All bonds were oversold by a factor ranging from 2-7 which allowed the underwriter to get the interest rate lowered by several basis points. The result is that the total cost savings increased from the July 21, 2021 estimate of \$12,849,244 to a total of \$14,214,819. The entire process should be completed in November. Treasurer Atwood noted that the first payment on the old debt has already been made and the second semi-annual payment will be based on the new debt schedule and will be substantially less. Both General Manager Weir and Treasurer Atwood thanked the staffs of LAWVMA, DSRSD, Livermore, and Pleasanton for their outstanding efforts to make this happen.

Director Bonanno asked if it would have been possible for Board members to buy some of the debt. She wondered if it would be a conflict of interest. Both Mr. Weir and Ms. Atwood indicated that since all information regarding the debt had been disclosed, and the investment would be immaterial to the entire issue, that it would be possible for Board members to invest in the debt, although it would likely be through an institutional investor. Note: this has since been confirmed with bond counsel.

There were no comments from the public. This was an information item requiring no action by the Board.

8. Modification to the Operating and Capital Budget for Fiscal Year 2021/22

General Manager Weir and General Counsel Barnhill described the bid process and some irregularities associated with the bids of the low bidders for the purchase of three vertical turbine pumps. The apparent low bidder clearly understood and addressed the technical specifications. However, the bidder provided additional information with its bid, including proposed possible alternative language to the contract, which was included in the bid packet, in particular, the liquidated damages clause. The second low bidder submitted their bid after the deadline, which excludes the bid from consideration. The third low bidder appears to have understood the technical specifications and did not object to the contract.

General Counsel cited existing case law that would allow all bids to be rejected and allow LAVWMA to negotiate the best deal with one of the low bidders. This would potentially involve some modifications to the contract terms, but likely not the bid price (unless the scope of work

was changed). As a result of the bids and the need to have available funds for an agreement with one of the three low bidders, the General Manager recommended that the cost for the pump purchase project be increased to \$510,000.

Director Carling asked if negotiations would be successful. Mr. Weir and Ms. Barnhill stated that they believed that they would be successful.

Director Bonanno encouraged staff to get the best possible deal and asked if the increase in project cost would have a negative impact on the member agencies. Mr. Weir showed the table in the budget that indicated that capital project costs come from the Renewal & Replacement Fund, which currently has a balance of over \$15 million and that it would not impact the member agencies.

Director Goel expressed concern with an apparent trend of bidders offering a low bid but proposing possible alternative terms and conditions to the contract. Mr. Weir noted that he had informal discussions with the low bidder regarding the low bidder's proposed schedule, as contemplated by the bid packet, during which he reminded the low bidder that the proposed schedule should generally be consistent with the target delivery date of 275 days from issuance of a purchase order, as identified in Addendum No. 1 to the bid packet. The low bidder stated that they could deliver the pumps in approximately 243 days, so they would have a cushion before liquidated damages would apply. Director Goel thought that was reasonable and that this demonstrated a possible misunderstanding about the way liquidated damages were being calculated, which could be acceptable to the low bidder without any contract modifications. He did not support the higher cost for the third low bidder at this time.

Director Arkin motioned, seconded by Director Carling, to approve Modification No. 1 to the Operating and Capital Budget for Fiscal Year 2021/22 with an increase in the pump purchase project to \$510,000.

There were no comments from the public. The Motion passed 5 – 1 by a roll call vote, with Director Goel voting No.

10. Approval of a Resolution Awarding an Agreement for the Purchase of Three Vertical Turbine Pumps to Trillium Pumps USA, Inc.

Based on the irregularities associated with the low bids as noted in Agenda Item No. 9, General Manager Weir and General Counsel Barnhill recommended the following: 1) reject all bids in light of the irregularities in the bids of all respondents who submitted a bid close to the budget, 2) invoke the common law exception to public bidding per *Greydon v. Pasadena Redevelopment Agency*, and 3) direct the General Manager to negotiate an agreement with one of the low bidders, subject to review and approval of the terms by General Counsel.

Director Goel maintained that the low bidder should be required to adhere to their bid with no contract modifications. For the reasons described above, it seemed that the contract terms did not require any modification to provide the low bidder the cushion they proposed on liquidated damages. General Manager Weir stated that he would inform the low bidder of this, but that, if the low bidder disagreed, it could result in needing to come back to the Board to consider another

bidder. Board members stated that they would make themselves available for a special meeting, if needed.

Chair Johnson motioned, seconded by Director Goel, Approval of a Resolution Awarding an Agreement for the Purchase of Three Vertical Turbine Pumps to Trillium Pumps USA, Inc.

There were no comments from the public. The Motion passed unanimously (6 – 0) by a roll call vote.

16. Project Status Reports – Motor Control Center Replacement Project and the San Leandro Sample Station Improvements Project

Mr. Weir discussed both projects in some detail. The MCC replacement project is proceeding on schedule, despite the fact that some noncritical capacitors are back ordered. The team decided to have the MCCs shipped and installed and to install the capacitors in the field when they arrived.

HydroScience was the only proposer for the San Leandro Sample Station Improvements Project. Staff Advisory Group members reviewed and rated their proposal and agreed to award them the agreement. The final scope is nearing completion and will be attached to the agreement. The agreement should be executed before the end of August 2021. Director Bonanno asked Mr. Weir to describe the intent of the project. He stated that it would replace outdated equipment and automate the facility to the maximum extent possible to reduce the need to send staff to the facility during wet weather conditions.

There were no comments from the public. This was an information item only requiring no action by the Board.

17. Update and Response to Various Legal and Legislative Issues

Mr. Weir and Ms. Barnhill highlighted several legislative and legal issues described in the report as presented by CASA and BACWA. A blanket NPDES permit amendment for chlorine residual will allow treatment plants to use much less sodium bisulfite for dechlorination, which will save substantial costs. This applies to the EBDA permit and will result in savings for LAVWMA. The CASA and BACWA reports included information on wipes legislation at the state and federal level as well as continuing information on PFAS/PFOS and other issues.

General Counsel Barnhill noted that the Governor’s order allowing Zoom meetings for public agencies will be expiring and it is not certain what regulations will apply for future meetings. It is likely that Zoom meetings will be allowed, but there must also be physical location for members of the public to attend. The November 17, 2021 meeting will be set up as a Zoom meeting and adjusted if necessary. There was also discussion regarding holding meetings at Pleasanton City Hall, which was approved by the Board in early 2020 or at DSRSD. This will need to be an item of discussion at a future meeting. General Manager Weir will check with Pleasanton about holding future meetings there.

There were no comments from the public. This was an information item only requiring no action by the Board.

18. General Manager's Report

Mr. Weir referred to the list of issues and activities in his report. He noted that some items are getting backed up as a result of not having an administrative assistant for over the last year. He will be meeting with DSRSD staff next week to discuss options, including one possible candidate.

This was an information item only requiring no action by the Board.

19. Matters From/For Board Members

There were no matters from the Board.

20. Next Regular Board Meeting, Wednesday, November 17, 2021 at 6:00 p.m. The meeting will be set up as a Zoom meeting and adjusted as required.

21. Order of Adjournment to Wednesday, July 21, 2021, 6:00 p.m.

There being no further action, Chair Johnson adjourned the meeting at 7:30 p.m.

Minutes Approved by the Board _____.

Charles V. Weir
General Manager

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ITEM NO. 7 AUTHORIZATION FOR THE GENERAL MANAGER TO AWARD A CONTRACT FOR THE PURCHASE OF THREE VERTICAL TURBINE PUMPS

Action Requested

Consider options for the award of a contract for the purchase of up to three vertical turbine pumps. The options include rejecting all bids and: 1) authorizing the General Manager to rebid the procurement or to use an alternative procurement method with guidance from legal counsel, 2) authorizing the General Manager to negotiate the procurement on terms acceptable to LAVWMA starting with the low bidder and moving to the next highest bidder if unable to reach a mutually acceptable agreement, 3) directing the General Manager to return to the Board with alternatives to purchase, such as repairing existing pumps, or 4) some combination of these options.

Summary

At the last meeting, the Board approved Modification No. 1 to the Operating and Capital Budget for Fiscal Year 2021/22 to increase the pump purchase and motor rebuild project cost from \$216,000 to \$510,000.

A bid packet for the purchase of three new pumps was released on July 6, 2021. The due date for bids was August 5, 2021 at 3:00 p.m. Four bids were received, including one that was received after the deadline. A virtual Zoom bid opening was held that afternoon. The results of the bids are summarized below:

Bidder	Time Submitted	Pump Manufacturer	1. Base Bid
Trillium Pumps USA, Inc., aka Floway Pumps	10:02 a.m. and 11:11 a.m.	Trilium Pumps USA, Inc.	\$357,057.00
Flo-Line Technology, Inc.	11:51 a.m.	Johnson / Sulzer	\$941,200.00
Peerless Pump Co. in care of MuniQuip LLC	2:47 p.m.	Peerless Pump Company	\$444,509.00
Xylem-Goulds Water Technology - c/o R. R. MacDonald Co.	3:06 p.m. after the deadline	Xylem - Goulds Water Technology	\$414,892.00

A summary of the bids follows:

1. Trillium Pumps USA was the apparent low bidder at \$357,057. Attached to their bid were technical documents indicating they clearly understood the technical specifications. Their references spoke highly of their products and services. Also attached to the bid was a request to modify terms and conditions of LAVWMA's standard contract. Their objections included liquidated damages, liability, and ownership of documents.
2. Xylem Goulds Water Technology was the second low bidder at \$414,892. However, their bid was received after the bid deadline. In addition, their bid had exceptions to the technical specifications, including the type of stainless steel required for the pump. They had asked to change the stainless steel requirement. Addendum No. 1 to the bid packet was issued on August 2, 2021, which clearly stated that the stainless steel could not be changed. In addition, their bid included attachments requesting modifications to the standard contract language.
3. Peerless Pump / Muni Quip was the third low bidder at \$444,509. They included attachments that were related to their references. They did not object to the standard contract language. However, they attached standard submittals, did not recognize certain specifications, and included coatings and tests that did not meet the technical specifications. Their references spoke highly of their products and services. It should also be noted that MuniQuip was the supplier for the three pumps purchased in 2017. At that time, the manufacturer was American Marsh Pumps.
4. Flo-Line Technology was the high bidder at \$941,200. Due to the high price, their bid was rejected and not thoroughly reviewed.

There was much discussion at the last meeting regarding options for awarding a contract. Based on the irregularities associated with the low bids, the General Manager and General Counsel recommended the following: 1) reject all bids, 2) invoke the common law exception to public bidding per *Graydon v. Pasadena Redevelopment Agency*, and 3) direct the General Manager to negotiate an agreement with one of the low bidders, subject to review and approval of the terms by General Counsel.

Following discussion, the Board concluded that the low bidder, Trillium Pumps USA, appeared to misunderstand how liquidated damages would be calculated and should be held to their bid with no changes to the contract language. The Board felt that including contract modifications raised public policy concerns in that it could be interpreted as a way of gaming the public contracting process in order to get the equivalent of a "sole source" contract. As a consequence, the Board approved a Resolution Awarding an Agreement for the Purchase of Three Vertical Turbine Pumps to Trillium Pumps USA, Inc.

Agenda Explanation
Livermore-Amador Valley
Water Management Agency
Board of Directors
August 18, 2021

On August 23, 2021, the General Manager sent a Notice of Potential Award (NPA) to Trillium Pumps USA, **Attachment No. 7.a**. The NPA included an acknowledgement as well as a copy of the contract from the bid package. The contract was structured to allow for 275 days for delivery of the pumps, which staff believed may address Trillium's concerns with liquidated damages. Language in the NPA also addressed this concern. Unfortunately, Trillium declined the award as noted in their August 25, 2021 email, **Attachment No. 7.b**.

Since Trillium declined the award, the Board needs to consider its options. The options include rejecting all bids and: 1) authorizing the General Manager to rebid the procurement or to use an alternative procurement method with guidance from General Counsel, 2) authorizing the General Manager to negotiate the procurement on terms acceptable to LAVWMA starting with the low bidder and moving to the next highest bidder if unable to reach a mutually acceptable agreement, 3) directing the General Manager to return to the Board with alternatives to purchase, such as repairing existing pumps, or 4) some combination of these options.

Note that in all circumstances, Staff's recommendation is to reject all bids. LAVWMA expressly reserved the right to do so for any reason in the bid package and believes doing so is appropriate here given the various issues with irregularities, responsiveness, timeliness, price deviations, etc.

Option No. 1. It is doubtful that rebidding the pump purchase would change the results unless the contract in the bid packet is modified to meet the concerns of Trillium and Xylem, both in terms of the contract language and the variations to the specifications. Modifying the contract in the packet would not address the public policy concerns raised by the Board.

Option No. 2. Negotiating with the low bidder may result in more acceptable contract terms than modifying the terms in a new bid packet, but there is no guarantee of that. The advantage of this approach is that the General Manager can negotiate the best deal for LAVWMA taking into account the variables of contract terms, pricing, timing, etc. as a whole.

Option No. 3. Repairing the existing pumps is unlikely to yield desired results. Pump No. 1 was damaged beyond repair, so at a minimum, one new pump is required. The status of the other two pumps would not be known until they are removed and sent out for inspection. Since the first three pumps were badly damaged and determined to not be repairable, it is doubtful that the findings would be any different for the other two pumps.

Option No. 4. Not yet defined. This could be some combination of the above. For example, the Board may wish to direct that LAVWMA purchase two of the pumps and only purchase a third if it is unable to repair one.

Agenda Explanation
Livermore-Amador Valley
Water Management Agency
Board of Directors
August 18, 2021

Scheduling is also a consideration. Had Trillium accepted the award, the delivery date for the pumps would have been early June 2022. Going out to for rebid would likely add two months to that date, or early August 2022. Negotiating with the low bidders will likely only add a month to the timeline. Removing a pump for inspection would mean two pumps would be out of service until a rebuild pump is returned.

Recommendation

From a cost and timing perspective, Option No. 2 appears to be the best option. If the Board concurs with Option No. 2, then the motion should be to authorize the General Manager to negotiate the procurement on terms acceptable to LAVWMA starting with the low bidder and moving to the next highest bidder if unable to reach a mutually acceptable agreement,

Attachments

1. Attachment No. 7.a, Notice of Potential Award to Trillium.
2. Attachment No. 7.b, Trillium email response.



Livermore-Amador Valley Water Management Agency

Sent via email to Jeffrey DeClaro, Jeff.DeClaro@trilliumflow.com

August 23, 2021

Jeffrey DeClaro, Senior Application Engineer
 Trillium Pumps USA, Inc.
 2494 S. Railroad Ave.
 Fresno, CA 93706

Re: **NOTICE OF POTENTIAL AWARD**
 Vertical Turbine Pump Purchase, LAVWMA 2021-03

Dear Mr. DeClaro:

I am pleased to inform you that at its August 18, 2021 meeting, the Livermore-Amador Valley Water Management Agency ("Agency") Board of Directors approved a Resolution Awarding a Contract for the Purchase of Three Vertical Turbine Pumps ("Project") to Trillium Pumps USA, Inc. ("Supplier") for the Contract Price of \$357,057.00, based on Supplier's Bid Proposal submitted on August 5, 2021 and Supplier's proposed schedule submitted with the bid on August 5, 2021. Supplier's schedule included the following: 1) Pump Submittal – 8 weeks after receipt of approved Purchase Order; and 2) Pump Delivery – 25 weeks after receipt of approved submittal data.

Allowing two weeks for review, possible modifications, and full approval of the pump submittal results in a total of 35 weeks or 245 days. To address Supplier's concerns with the liquidated damages clause in the Contract, LAVWMA proposes to make the Delivery Deadline, Paragraph 6, of the Contract, 275 days from the receipt of an approved Purchase Order. This time frame is based on Addendum No. 1 of the Bid Packet. As an example, the bid packet estimates the purchase order to be issued on September 3, 2021, which would make the Delivery Deadline, June 5, 2022.

A copy of the Contract accompanies this Notice and will be emailed to you at Jeff.DeClaro@trilliumflow.com via DocuSign. Note that any additional submittals such as the Quotation provided by Trillium have been deemed informational only and are not binding or made part of the Contract Documents. In other words, any proposed deviations from the Contract Documents in the Quotation will not apply and the parties will not be bound by those terms. Supplier must execute the Contract via DocuSign and submit the required Performance Bond (executed) and insurance certificates and endorsements via DocuSign or via email to weir@lavwma.com, no later than ten (10) days from the date of this Notice of Potential Award, above.



Livermore-Amador Valley Water Management Agency

This Notice of Potential Award does not bind the Agency to award the Contract. The Agency, acting through its Agency Board of Directors or authorized designee, reserves the right to reject any or all bids, and the right to decline to award the Contract, notwithstanding any staff recommendation.

Please acknowledge receipt of this Notice of Potential Award by signing the attached Acknowledgement of Notice of Potential Award, as indicated, and transmitting the Acknowledgement to my office via email at: weir@lavwma.com. Do not hesitate to contact me if you have any questions in this regard.

Sincerely,

A handwritten signature in black ink that reads "Charles V. Weir". The signature is written in a cursive style with a large initial "C".

Charles V. Weir
General Manager

Enclosure

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Livermore-Amador Valley Water Management Agency

Acknowledgement of Notice of Potential Award

On behalf of Trillium Pumps USA, Inc. (“Supplier”), I acknowledge receipt of the Notice of Potential Award for the Vertical Turbine Pump Purchase Project:

s/ _____

Name: Jeffrey DeClaro

Title: Senior Application Engineer

Date: _____

Contract

This contract (“**Contract**”) is entered into by and between Livermore-Amador Valley Water Management Agency (“**Agency**”) and Trillium Pumps USA, Inc. (“**Supplier**”), for sale and delivery of three vertical turbine pumps, including related components and services as further specified (collectively, the “**Equipment**”).

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Supplier has submitted a Bid Proposal for the fabrication, source testing, and delivery of three 500 horsepower vertical turbine pumps (individually, a “**Pump**,” and collectively, the “**Pumps**”) to the Agency’s pump station, located at 7176 Johnson Drive, Pleasanton, California 94588 (the “**Pump Station**”), including submission of submittals, operation and maintenance manuals, and commissioning and startup services, as further specified in the Contract Documents, as defined below. This Contract is being awarded for the following (select one):

- Base Bid only
- Base Bid plus Alternate #1 (Change One-Year Warranty in Section 15050 of the Specifications to Three-Year Warranty for the Equipment)
- Base Bid plus Alternate #2 (Change One-Year Warranty in Section 15050 of the Specifications to Five-Year Warranty for the Equipment)

2. **Contract Documents.** The following documents, all of which are incorporated into this Contract, are collectively referenced as the “**Contract Documents.**” Any references to “Owner” in the Specifications are deemed to mean Agency. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. In case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

- 2.1 Change orders or amendments, if any;
- 2.2 Addenda, if any;
- 2.3 Contract;
- 2.4 Performance Bond;
- 2.5 Specifications;
- 2.6 Notice of Potential Award;
- 2.7 Notice Inviting Bids;
- 2.8 Instructions to Bidders;
- 2.9 Agency’s Purchase Order;
- 2.10 Supplier’s Bid Proposal; and
- 2.11 Supplier’s Bid Schedule.

3. **Supplier’s Obligations.** Supplier must provide, furnish, and supply all things necessary and incidental for the timely fabrication and delivery of the Pumps and related

requirements, as set forth in the Contract Documents, including all necessary labor, materials, supplies, tools, equipment, facilities, shipping, and delivery costs. Representatives from the Supplier, and the manufacturer of the Pumps if the Pumps are provided by a separate manufacturer, must be present at the Pump Station for delivery and offloading of each Pump at the Pump Station, for an initial inspection of each Pump upon delivery to confirm that it meets the requirements of the Contract Documents, and for installation of each Pump at the Pump Station by DSRSD staff. Supplier may not change the pump manufacturer specified in Section 1.1 of the Bid Proposal without the approval of the Agency.

4. **Coordination with Project Manager.** Supplier and its representative must coordinate the fabrication and delivery of the Equipment, including all related services and documents, as further specified in the Specifications, with the Agency's Project Manager and be available to the Project Manager, and any other parties referred to Supplier by the Project Manager, to answer questions related to the Equipment. The Agency's Project Manager for this Contract is Charles V. Weir, available via email at weir@lavwma.com and via telephone at 510-410-5923. Agency reserves the right to replace its Project Manager without prior notice to Supplier. Supplier's representative for this Contract is Jeffrey DeClaro, Senior Product Manager, available via email at Jeff.DeClaro@trilliumflow.com and via telephone at 559-761-6095.

5. **Payment.** As full and complete compensation for Supplier's timely fabrication and delivery of the Equipment, including all related services and documents, in strict accordance with the terms and conditions of the Contract Documents, Agency will pay Supplier \$357,057.00 ("**Contract Price**") for all of Supplier's direct and indirect costs to furnish and deliver the Equipment, including all labor, materials, supplies, equipment, taxes, licensing, permitting, travel expenses, insurance, the performance bond, all overhead costs, and any other costs, expenses, and charges incurred by Supplier, in accordance with the payment provisions contained herein. Supplier warrants that title to all work, materials and equipment incorporated into the Pumps will pass to Agency free of any claims, liens, or encumbrances upon payment to Supplier.
 - 5.1 **Application for Payment.** Supplier may submit an invoice for payment following installation and successful testing of each Pump as required by the Contract Documents. The invoice must be itemized to include all labor, materials, and equipment provided and delivered, consistent with the unit prices submitted with Supplier's Bid Schedule and any other substantiating data required by the Contract Documents. Within 30 days of receipt of an invoice submitted in compliance with this Section, Agency will pay all undisputed amounts. Agency will not pay for a Pump that is not fully functional as specified or otherwise does not meet the requirements of the Contract Documents.

 - 5.2 **Final Payment.** Supplier's acceptance of final payment will release Agency from any and all claims and liability for compensation under this Contract.

6. **Delivery Deadline.** Based on Supplier's proposed schedule submitted pursuant to attachments to Supplier's Bid Documents, Supplier will furnish, source test, and deliver the Pumps, as required by the Contract Documents, by [date to be 275 days from receipt of purchase order], unless extended by Agency by a duly authorized change order ("**Delivery Deadline**").
7. **Liquidated Damages.** Time is of the essence in performing all of Supplier's obligations under the Contract Documents. If Supplier fails to furnish and deliver any of the Pumps to Agency by the Delivery Deadline, or for any Pump that is not fully functional as specified and ready to install by the Delivery Deadline, Agency will assess liquidated damages in the amount of \$500 per day per Pump for each day of unexcused delay in delivery of a fully functional Pump as specified after the Delivery Deadline, and such liquidated damages may be deducted from any payment due or to become due to Supplier under this Contract.
8. **Performance Bond.** Within ten days following issuance of the Notice of Potential Award, Supplier is required to provide a performance bond in the penal sum of not less than 100% of the Contract Price, and executed by Supplier and its surety using the bond form included with the Contract Documents. The performance bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from Agency, Supplier must substitute a surety acceptable to Agency. If Supplier fails to substitute an acceptable surety within the specified time, Agency may, at its sole discretion, withhold payment from Supplier until the surety is replaced to Agency's satisfaction, or terminate the Contract for default.
9. **Freight.** Freight is to be shipped FOB Destination. Supplier owns the title to Equipment until delivery to the Pump Station and acceptance by Agency. No additional charges for containers, packing, storage, or any other similar charges will be allowed unless specified elsewhere in the Contract Documents.
10. **Insurance.** No later than ten days following issuance of the Notice of Potential Award, Supplier must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to Agency. The required insurance must cover the activities of Supplier and any subcontractors of Supplier under the Contract, and must remain in full force and effect at all times during the period covered by the Contract, through the date of Agency's acceptance of the Equipment. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Supplier fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, Agency may, at its sole discretion, purchase such coverage at Supplier's expense and deduct the cost from payments due to Supplier, or terminate the Contract for default. The procurement of the required insurance will not be construed to limit Supplier's liability under this Contract or to fulfill Supplier's indemnification obligations under this Contract.

10.1 Policies and Limits. The following insurance policies and limits are required for this Contract:

(A) *Commercial General Liability (“CGL”) Insurance:* The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from Supplier’s or its subcontractor’s acts or omissions in the fabrication and delivery of Equipment, including contractor’s protected coverage, contractual liability, products and completed operations, and broad form property damage, with limits of at least \$2,000,000 per occurrence and at least \$4,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including required endorsements.

(B) *Automobile Liability Insurance:* The automobile liability insurance policy must provide coverage of at least \$2,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired and non-owned auto liability.

(C) *Workers’ Compensation Insurance and Employer’s Liability:* The workers’ compensation and employer’s liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by the statute. If Supplier is self-insured, Supplier must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.

10.2 Notice. Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days written notice to Agency, unless due to non-payment of premiums, in which case ten days written notice must be made to Agency.

10.3 Waiver of Subrogation. Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against Agency.

10.4 Required Endorsements. The CGL policy and automobile liability policy must include the following specific endorsements:

(A) The Agency, including its Board of Directors, officials, officers, employees, agents, volunteers and consultants (collectively, “**Additional Insured**”) must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract. The

additional insured endorsement must be provided using ISO form CG 20 10 11 85 or an equivalent form approved by the Agency.

(B) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) The insurance provided by Supplier is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss.

(D) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

10.5 Supplier's Responsibilities. This Section 10 establishes the minimum requirements for Supplier's insurance coverage in relation to the fabrication and delivery of the Equipment, but is not intended to limit Supplier's ability to procure additional or greater coverage. Supplier is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Supplier is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Supplier's insurance coverage.

10.6 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions that apply to the required insurance (collectively, "**deductibles**") in excess of \$100,000 are subject to approval by the Agency's Risk Manager, acting in his or her sole discretion, and must be declared by Supplier when it submits its certificates of insurance and endorsements pursuant to this Section 10. If the Agency's Risk Manager determines that the deductibles are unacceptably high, at Agency's option, Supplier must either reduce or eliminate the deductibles as they apply to Agency and all required Additional Insured; or must provide a financial guarantee, to Agency's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

10.7 Third-Party Transportation Companies. Supplier must ensure that any third party transportation companies contracted by Supplier to transport and deliver the Equipment maintain the same insurance coverage required under this Section 10, sufficient to cover the entire cost to replace the Equipment. Transportation companies may be eligible for reduced insurance coverage or limits, but only to the extent approved in writing in advance by the Agency's Risk Manager. Supplier must confirm that each transportation company has complied with these insurance requirements, including those requirements related to the Additional Insureds and waiver of subrogation. Upon request by the Agency, Supplier must provide certificates and endorsements submitted by each transportation company to prove

compliance with this requirement. The insurance requirements for transportation companies do not replace or limit the Supplier's insurance obligations.

- 11. Indemnity.** To the full extent permitted by law, Supplier will indemnify, defend with counsel acceptable to Agency, and hold harmless Agency, its governing body, officials, officers, agents, employees, and volunteers (collectively, “**Agency Indemnitees**”) from and against any and all liability, demands, loss, damage, claims, settlements, expenses, and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) (collectively, “**Liability**”) of every nature arising out of or in connection with Supplier's acts or omissions with respect to this Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of any of the Agency Indemnitees. This indemnification obligation applies to any and all intellectual property claims. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers' Compensation or other employee benefit acts, or by insurance coverage limits, and will survive the expiration or early termination of this Contract.
- 12. Correction of Defects.** Supplier must promptly correct, at Supplier's sole expense, any deficient or defective Equipment, including submittals and related services, as determined by Agency in its sole discretion. Workmanship, materials, parts or equipment that do not conform to the requirements of the Specifications and every other Contract Document, as determined by Agency, will be considered defective and subject to rejection. This paragraph also applies to any defects or deficiencies discovered during the warranty period set forth in Section 15050 of the Specifications.
- 13. Ownership.** No portion of the Contract Documents may be used for any purpose other than the fabrication and delivery of Equipment, including submittals and related services, without prior written consent from Agency. Supplier is deemed to have conveyed the copyright in any designs, drawings, specifications, shop drawings, or other documents (in paper or electronic form) developed by Supplier for the Equipment, and Agency will retain all rights to such works, including the right to possession.
- 14. Intellectual Property Rights.** Supplier must, at its sole expense, obtain and possess any authorization or license required for use of patented or copyright-protected materials, equipment, devices or processes that are incorporated into the Equipment. Supplier grants a license to such items for the benefit of Agency. All licenses shall be perpetual, world-wide, non-exclusive, non-transferable, and royalty free and sufficient in scope to permit Agency's full use and enjoyment of its ownership rights in the Equipment. Supplier's indemnity obligations in Section 11 apply to any claimed violation of intellectual property rights in violation of this provision.
- 15. Records.** Supplier will maintain records related to this Contract, including records related to the Equipment delivered and services performed, on a daily basis if necessary, for a period of four years from expiration or termination of this Contract. Supplier will permit Agency to inspect, examine, and audit Supplier's books, records, accounts, and any and all

data relevant to this Contract at any reasonable time, and will furnish to the Agency any other evidence or information requested by Agency.

16. Confidentiality. Unless disclosure is required by applicable law or valid court order, Supplier will maintain the confidentiality of all non-public information made known to or discovered by Supplier in connection with this Contract and will not disclose or otherwise disseminate any information conveyed by or through the Agency to Supplier relating to this Contract. Supplier will immediately notify Agency in writing if it is requested to disclose any such information. This provision survives termination or expiration of the Contract.

17. Suspension and Termination.

17.1 Suspension and Cancellation. Agency reserves the right to suspend, delay, or interrupt the delivery of the Equipment, including submission of submittals and/or related services, in whole or in part, for a period of time determined to be appropriate for Agency's convenience or due to Supplier's fault. Upon notice by Agency pursuant to this provision, Supplier must immediately suspend, delay, or interrupt the delivery of the Equipment, including submission of submittals and/or related services, and secure the Equipment, if necessary. Agency will compensate Supplier for reasonable extra costs resulting from such directives only to the extent that Agency issues such directives for its convenience and not due to Supplier's fault and provided that Supplier provides advance written notice to Agency of such extra costs. Agency reserves the right to cancel the Contract prior to fabrication of the Pumps upon written notice to Supplier.

17.2 Termination for Default. Agency may terminate this Contract for cause for any material default. Supplier may be deemed in default for a material breach of the Contract Documents, including failure to furnish and deliver the Equipment by the Delivery Deadline; failure to correct rejected work; disregard of applicable laws, regulations, ordinances, rules, or orders; or responsibility for any other material breach of the Contract requirements. If Agency terminates the Contract for cause, Agency will only owe Supplier payment for Equipment accepted by Agency.

18. Dispute Resolution.

18.1 Written Claim. In the event that any dispute arises in relation to this Contract, Supplier must submit a written claim to Agency, which must clearly identify and describe the dispute and attach any documents necessary to substantiate the claim. Agency will respond in writing within 15 business days following receipt of the claim. Within 10 days of Agency's response, Agency's Project Manager and Supplier's representative will meet either in person or via video conference, as mutually agreed, in order to engage in a good faith effort to resolve the matter informally. If the dispute is not resolved by informal discussions, the parties agree to submit the dispute to mediation.

- 18.2 Mediation.** Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session must take place within 60 business days after the date that such notice is given, or sooner if reasonably practicable. The parties will jointly appoint a mutually acceptable mediator. The parties further agree to share equally the costs of the mediation, except costs incurred by each party for representation by legal counsel. Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute.
- 18.3 Claim Presentment.** Nothing in this Contract will be construed as a waiver of any of the claim presentment requirements set forth in Government Code section 900 et seq.
- 19. Remedies.** All of the Agency's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the Agency reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or fabrication and delivery of the Equipment.
- 20. Waiver.** Agency's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by Agency. Agency's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by Agency.
- 21. Acceptance of Equipment.** Agency's acceptance of, or payment to Supplier for, the Equipment does not release Supplier from its responsibility for the accuracy, completeness, or competency of the Equipment, nor do the actions constitute an assumption of Supplier's responsibility or liability by Agency for any defect or error in the Equipment.
- 22. Warranty.** See Specifications, Section 15050, Article 1.10.
- 23. Conflicts of Interest.** Supplier, its employees, subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any Agency requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
- 24. Independent Contractor.** Supplier is an independent contractor under this Contract and will have control of the fabrication and delivery of the Equipment and the means and methods by which it is performed. Supplier and any subcontractors of Supplier are not employees of Agency and are not entitled to participate in any health, retirement, or any other employee benefits from Agency.

- 25. Force Majeure.** If either party is delayed or hindered in or prevented from the performance of any act required under this Contract because of natural disasters, strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability (“**Force Majeure Event**”), performance of that act will be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance will be extended for an equivalent period. Delays or failures to perform resulting from lack of funds will not be Force Majeure Events.
- 26. Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

Agency:

Livermore-Amador Valley Water Management Agency
7051 Dublin Boulevard
Dublin, CA 94568
Attn: Charles V. Weir, General Manager
weir@lavwma.com

Supplier:

Name: Trillium Pumps USA, Inc.
Address: 2494 S. Railroad Avenue
City/State/Zip: Fresno, CA 93706
Phone: 559-761-6095
Attn: Jeffrey DeClaro
Email: Jeff.DeClaro@trilliumflow.com
Copy to: Richard Plitt, richard.plitt@trilliumflow.com

27. General Provisions.

- 27.1 Compliance with All Laws.** Supplier will comply with all applicable federal, state, and local laws and regulations including, but not limited to, unemployment insurance benefits, FICA laws, conflict of interest laws, and local ordinances.
- 27.2 Assignment and Successors.** Supplier may not assign its rights or obligations under this Contract, in part or in whole, without Agency’s written consent. This Contract is binding on Supplier’s and Agency’s lawful heirs, successors and permitted assigns.

- 27.3 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 27.4 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Alameda County Superior Court, and no other place. Supplier waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Alameda County, California.
- 27.5 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 27.6 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between Agency and Supplier.
- 27.7 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 27.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Supplier is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313.

The parties agree to this Contract as witnessed by the signatures below:

AGENCY:

Approved as to form:

s/ _____
Charles V. Weir
General Manager

s/ _____
Alexandra M. Barnhill
General Counsel

Date: _____

Date: _____

SUPPLIER: Trillium Pumps USA, Inc.

s/ _____

Seal:

Name, Title

Date: _____

Second Signature (See Section 27.8):

s/ _____

Name, Title

Date: _____

END OF CONTRACT

weir@lavwma.com

From: Richard Plitt <Richard.Plitt@trilliumflow.com>
Sent: Wednesday, August 25, 2021 10:28 AM
To: weir@lavwma.com; Jeff DeClaro
Cc: 'Alexandra M. Barnhill'; Joshua Jensen
Subject: RE: [EXTERNAL] Notice of Potential Award for Purchase of Three Vertical Turbine Pumps

Flag Status: Flagged

Good morning Chuck,

I have discussed this project again with Floway's management. Unfortunately, Floway's parent company Trillium will not allow us to accept the terms as written. We included a comment in our quote stating we would need to negotiate several modifications before we could accept an order. Unfortunately based on this we must decline the award. If LAVMA is open to negotiating several items please let me know. We appreciate you giving us the opportunity to provide you a quote.

If you have any questions feel free to contact me.

Best Regards,



Richard Plitt

Regional Sales Manager – Municipal Market – CA, AZ, NV
& HI

MOBILE +1 (559) 348-7553
PHONE (FLOWAY) +1 (559) 442-4000
PHONE (WEMCO) +1 (801) 359-8731
EMAIL richard.plitt@trilliumflow.com

FLOWAY®
2494 S. Railroad Ave.
 Fresno, CA 93706
trilliumflow.com

WEMCO®
440 W. 800 South
 Salt Lake City, UT 84101



From: weir@lavwma.com <weir@lavwma.com>
Sent: Monday, August 23, 2021 2:50 PM
To: Jeff DeClaro <Jeff.DeClaro@trilliumflow.com>; Richard Plitt <Richard.Plitt@trilliumflow.com>
Cc: 'Alexandra M. Barnhill' <abarnhill@jarvisfay.com>
Subject: [EXTERNAL] Notice of Potential Award for Purchase of Three Vertical Turbine Pumps

Good afternoon gentlemen,

Attached is your Notice of Potential Award and Contract for the Purchase of three Vertical Turbine Pumps based on the action taken by our board at its meeting on August 18, 2021. Please advise as to the two parties that will be signing the

Attachment No. 7.b

contract and I will add that information to the contract prior to sending through DocuSign. Please let me know if you have any questions.

Thanks,

Chuck Weir
General Manager
Livermore-Amador Valley Water Management Agency
7051 Dublin Boulevard
Dublin, CA 94568
510-410-5923
925-829-1180 (fax)
weir@lavwma.com

This e-mail and any attachments are confidential and may contain legally privileged information. When you are not the intended recipient, any use, disclosure or copying of this e-mail is unauthorised. Should you have received this e-mail in error, please telephone the above number.