



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

Thursday, March 28, 2024, 6:00 p.m.

**Dublin San Ramon Services District Board Room
7051 Dublin Boulevard
Dublin, California**

- 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 physically in the display case outside the DSRSD Building, and, as a courtesy when possible, under the circumstances, at 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.)
- Action 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.)
- Action Pages 3 – 4 6.a. Board Meeting Minutes for the March 14, 2024 meeting**
(The Board will consider approving the minutes from the March 14, 2024 Board meeting.)
- Resolution Pages 5 – 24 7. Resolution Approving Agreement for General Management Services with Levi Fuller, Jr., dba Fuller Management and Operational Process Services, LLC and Appointing the Same as General Manager and Board Secretary.**
(In anticipation of the current General Manager’s retirement on April 1, 2024, the Board will consider a Resolution approving an Agreement for General Management Services with Levi Fuller, Jr., dba Fuller Management and Operation Process Services, LLC and appointing same as General Manager and Board Secretary.)
- 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, May 15, 2024, 6:00 p.m. at DSRSD.

10. Adjournment

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 live comments and read into the record.

Live Comments: During the meeting, the Board Chair or designee will announce the opportunity to make public comments. Speakers will be asked to provide their name and city of residence, although providing this is not required for participation. Each speaker will be afforded up to 3 minutes to speak.

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.

CEQA NOTICE:

Unless expressly stated otherwise on the agenda (that a negative declaration, mitigated negative declaration, or environmental impact report is being considered), discretionary actions taken on agenda items will include a finding by the Board that the action is exempt under the California Environmental Quality Act (CEQA). More information about the CEQA determination can be found in the corresponding staff report.

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LAVWMA
Livermore-Amador Valley Water Management Agency
Minutes
Draft
Special Meeting of Board of Directors
Thursday, March 14, 2024
6:00 p.m.

1. Call to Order

Chair Bob Carling called the meeting to order at 6:00 p.m.

2. Pledge of Allegiance

The Pledge of Allegiance was recited.

3. Roll Call

Board Members Present: Chair Bob Carling, Vice Chair Arun Goel (arrived at 6:17), Directors John Marchand, Rich Halket, Jeff Nibert, and Julie Testa.

Staff Present: General Counsel Alexandra Barnhill and General Manager Chuck Weir

Member Agency Staff Present: None

4. Order of Agenda/Acknowledgement of Posting

There were no changes to the Agenda.

5. Comments from the Public

None.

6. Consent Calendar

a. Board Meeting Minutes for the November 15, 2023 meeting.

Director Nibert motioned, seconded by Director Testa, to approve Consent Calendar Item Nos. 6.a.

There were no comments from the public. The Motion passed unanimously (4 – 0 – 1 (Director Marchand abstained)).

7. Closed Session – Personnel Matters Pursuant to Gov’t Code § 54957(b) Public Employee Appointment

Title: General Manager

Chair Carling adjourned the regular session to closed session at 6:07 p.m.

Chair Carling reconvened the regular session at 8:10 p.m.

General Counsel Barnhill reported that the Board took no reportable action.

15. Matters From/For Board Members

There were no matters from/for Board members.

16. Next Regular Board Meeting, Wednesday, May 15, 2024 at 6:00 p.m. A Special Board meeting is scheduled for March 28, 2024.

The next Board meeting will be held in DSRSD's Board Room.

21. Adjournment

There being no further action, Chair Carling adjourned the meeting at 8:11 p.m.

Minutes Approved by the Board _____.

Charles V. Weir
General Manager

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ITEM NO. 7 RESOLUTION NO. 24-01 RESOLUTION APPROVING AGREEMENT FOR GENERAL MANAGEMENT SERVICES WITH LEVI FULLER, JR., DBA FULLER MANAGEMENT AND OPERATIONAL PROCESS SERVICES, LLP AND APPOINTING THE SAME AS GENERAL MANAGER AND BOARD SECRETARY

Action Requested

Approve Resolution No. 24-01 Resolution Approving Agreement for General Management Services with Levi Fuller, Jr., dba Fuller Management and Operational Process Services, LLP and Appointing the Same as General Manager and Board Secretary.

Background

Charles V. Weir has served as LAVWMA's General Manager since 2014 and recently announced his intent to retire. In response, the General Manager, General Counsel, and Staff Advisory Group met to evaluate LAVWMA's needs for the General Manager position and developed an updated job description. A formal announcement, including the application process was issued on January 24, 2024. The announcement was distributed at the 2024 Winter CASA Conference in Palm Springs. The announcement was also published on the following job board websites: CASA, California Water Environment Federation, California Special Districts Association, and California City News.

The application deadline was February 21, 2024. Eight applications were submitted. The Staff Advisory Group reviewed the applications and recommended three individuals for interviews by the Board based on their application materials, including education and experience.

Discussion

The Board conducted closed session interviews of the applicants at a special meeting on March 14, 2024. The applicants were asked the same questions and ranked based upon their qualifications and Levi Fuller Jr. was identified as the most qualified. Mr. Fuller has over 40 years of experience in the management, planning, operation and maintenance of water, wastewater and recycled water facilities.

General Counsel, Alexandra M. Barnhill, was assigned the task of negotiating contractual terms with Mr. Fuller and his counsel. Ms. Barnhill and Mr. Fuller have agreed upon the terms of the Agreement for General Management Services (Agreement), which is attached and recommended for approval by the Board. Some of the key terms are as follows:

- Mr. Fuller (dba Fuller Management and Operational Services, a limited liability corporation) will serve as an independent contractor who acts as LAVMA's General Manager and Board Secretary.

- The duties of the General Manager are broadly defined and are illustrated in Exhibit A to the Agreement.
- Compensation will be \$200 / hour for up to 1,000 hours per year, with CPI adjustments starting on July 1, 2025.
- The Board may conduct yearly performance review with more frequent reviews occurring on an as needed basis.
- The contract term would begin upon execution of the Agreement, which is contingent on completion of a background check, but no sooner than April 1, 2024 and continue for 2 years. The term can be extended by mutual written agreement.
- LAVWMA may terminate the Agreement at will, effective immediately upon written notice.
- Mr. Fuller can terminate the Agreement upon 60-days prior notice. (LAVWMA can extend this period to allow for transition.)
- LAVWMA will obtain, on behalf of Mr. Fuller, insurance coverage from LAVMWA's carrier, SDRMA, and Mr. Fuller will obtain and hold separate commercial auto and liability policies.
- LAVWMA will reimburse Mr. Fuller for actual and necessary business expenses, pay a \$75/month overhead allowance, cover the costs of attending professional conferences, and reimburse for business travel at IRS mileage rates.

In addition to authorizing the Agreement, the Board also must formally appoint Mr. Fuller as the General Manager / Board Secretary.

Note that given the tight timeline between the interview and the need for action on this item, the General Counsel and Mr. Fuller's counsel were still negotiating certain terms as of the time of the posting of this staff report. To address the need for flexibility, the proposed Resolution clarifies that the General Counsel may make minor modifications to the Agreement. Any major modifications, if needed, would be brought back to the Board for approval as an amendment to the Agreement.

Recommendation

It is recommended that the Board adopt the attached Resolution No. 24-01 Approving the Agreement for General Management Services with Levi Fuller Jr., dba Fuller Management and Operational Services, LLC and Appointing the Same as General Manager and Board Secretary.

Attachments

1. Resolution No. 24-01, Resolution Approving Agreement for General Management Services with Levi Fuller, Jr, dba Fuller Management and Operational Services, LLC and Appointing the Same as General Manager and Board Secretary
2. Agreement For General Management Services Between Livermore-Amador Valley Water Management Agency and Levi Fuller, Dba Fuller Management and Operational Services, LLC

LIVERMORE AMADOR VALLEY WATER MANAGEMENT AGENCY

RESOLUTION NO. 24-01

RESOLUTION APPROVING THE AGREEMENT FOR GENERAL MANAGEMENT SERVICES WITH LEVI FULLER JR., dba FULLER MANAGEMENT AND OPERATIONAL PROCESS SERVICES, LLC AND APPOINTING THE SAME AS GENERAL MANAGER AND BOARD SECRETARY

WHEREAS, the Livermore-Amador Valley Water Management Agency (“LAVWMA”) is a joint powers agency formed pursuant to the Amended and Restated Joint Exercise of Powers Agreement for the Livermore-Amador Valley Water Management Agency dated July 21, 1997;

WHEREAS, LAVWMA owns and operates a pump station, pipeline and other facilities to transport treated wastewater treatment plant effluent from the jurisdictions of the Member Agencies to an outfall in San Leandro;

WHEREAS, LAVWMA requires services of a General Manager to serve as its chief executive officer to conduct its day-to-day business, and to carry out LAVWMA's wastewater transportation program and related activities;

WHEREAS, upon the announcement of the current General Manager’s retirement, LAVWMA conducted an extensive recruitment process to identify a consultant with the necessary education, experience, skills and expertise to serve as the General Manager;

WHEREAS, Levi Fuller Jr., dba Fuller Management and Operational Processes, LLC, has the necessary education, experience, skills and expertise to serve as the General Manager and is willing and able to provide such services; and

WHEREAS, LAVWMA and Levi Fuller Jr. now desire to enter into an Agreement for General Management Services and LAVWMA desires to make an official appointment for the General Manager / Board Secretary position.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Livermore Amador Valley Water Management Agency as follows:

1. Subject to successful completion of a criminal background check, the Agreement for General Management Services between LAVWMA and Levi Fuller Jr., dba Fuller Management and Operational Processes, LLC, which is attached hereto as Exhibit A and incorporated by this reference, is hereby approved, subject to minor modification by the General Counsel. The Board Chair is hereby authorized and directed to execute this Agreement for and on behalf of LAVWMA.
2. Levi Fuller Jr., dba Fuller Management and Operational Processes, LLC , is hereby appointed to act as the General Manager and Board Secretary of LAVWMA, consistent with the terms and conditions of the Agreement for General Management Services.

DULY AND REGULARLY ADOPTED by LAVWMA this 28th day of March, 2024, by the following vote:

AYES:

NOES:

ABSENT:

LIVERMORE AMADOR VALLEY WATER MANAGEMENT AGENCY

By: _____
Robert Carling, Chair

ATTEST:

By: _____
Charles V. Weir, General Manager

**AGREEMENT FOR GENERAL MANAGEMENT SERVICES BETWEEN
LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY
AND LEVI FULLER JR., DBA FULLER MANAGEMENT AND OPERATIONAL
PROCESS SERVICES LLC**

This **AGREEMENT FOR GENERAL MANAGEMENT SERVICES** (“**Agreement**”), is made this March 28, 2024 by and between **LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY**, a joint powers agency in the state of California, hereinafter referred to as “**LAVWMA**,” and **LEVI FULLER Jr.**, dba Fuller Management and Operational Process Services LLC, a limited liability corporation, hereinafter referred to as “**CONSULTANT**” (LAVWMA and CONSULTANT are sometimes individually referred to as a “**Party**” and collectively as “**Parties**”), with reference to the following facts and intentions:

RECITALS

A. LAVWMA is a joint powers agency comprised of the Dublin San Ramon Services District and the Cities of Livermore and Pleasanton (the “**Member Agencies**”).

B. LAVWMA’s mission is to support its Member Agencies by providing cost effective operation and maintenance of all of the Agency export facilities in full compliance with federal, state, and local requirements. LAVWMA supports its member agencies in their efforts to implement comprehensive water recycling programs.

C. LAVWMA owns and operates a pump station, pipeline, and other facilities to recover water resources in the Livermore-Amador Valley and transport treated wastewater treatment plant effluent from the jurisdictions of the Member Agencies to an outfall in San Leandro.

D. LAVWMA requires services of a General Manager to serve as its chief executive officer to conduct its day-to-day business and to carry out LAVWMA’s effluent transportation program and related activities.

E. CONSULTANT has the necessary education, experience, skills, and expertise to serve as the General Manager and has been selected by LAVWMA to carry out said responsibilities. CONSULTANT is willing and able to provide such services in a manner consistent with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SCOPE OF SERVICES

A. General Manager Designation. Levi Fuller Jr. shall serve as General Manager of LAVWMA and oversee all management and administration of LAVWMA’s operations. No other

employees, consultants, subcontractors, or agents of Fuller Management and Operational Services LCC shall provide management services without prior written consent of LAVWMA. Levi Fuller Jr. shall be the designated contact for CONSULTANT and shall have immediate responsibility for the performance of the services under this Agreement and for all matters relating to them. CONSULTANT shall not change or replace Levi Fuller Jr. as the General Manager without the prior written consent of LAVWMA to such change.

B. Scope of Services. CONSULTANT shall provide all usual, ordinary, special, and extraordinary managerial services for LAVWMA as may be directed by LAVWMA Board of Directors, including but not limited to all those services set forth in the Scope of Services which is attached hereto and incorporated by this reference as Exhibit A.

C. Labor and Materials. Except as otherwise provided for in Section 5 of this Agreement, CONSULTANT shall furnish, at its own expense, all labor, materials, equipment, tools, transportation, and services necessary for the successful completion of the services to be provided under this Agreement.

D. Collaboration. CONSULTANT shall closely coordinate performance of the services provided under this Agreement with the LAVWMA Board of Directors, LAVWMA General Counsel, and the Technical Advisory Committee.

E. Time of Performance. CONSULTANT agrees to give his attention and supervision to and diligently carry out the work to be done under this Agreement. In the performance of this Agreement, CONSULTANT's availability, responsiveness, and timely performance of the services are critical.

2. **CONFIDENTIALITY.** CONSULTANT agrees to maintain in confidence and not disclose to any person, firm, governmental entity, or corporation, without LAVWMA's prior written consent, any trade secret or confidential information. The covenants contained in this Section 2 shall survive the termination of this Agreement for whatever cause.

3. **WORK FOR OTHER CLIENTS.** CONSULTANT shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or incompatibility of office as defined under California law. CONSULTANT shall neither pursue nor accept general management, design, construction management, project management, or related work from LAVWMA, from a Member Agency of LAVWMA, or from any other agency or entity that would have any potential to conflict with CONSULTANT's responsibilities hereunder. CONSULTANT shall advise LAVWMA's General Counsel of any work that CONSULTANT or Levi Fuller Jr. proposes to perform for any third party during the term of this Agreement. If in the opinion of General Counsel, the proposed work may present an appearance of conflict - even though not a conflict of interest under the laws of the State of California or policies of LAVWMA - CONSULTANT shall advise the Board of Directors of LAVWMA of the proposed work at a public meeting of the Board. If a majority of the Board so directs, CONSULTANT shall not undertake such work; if the Board takes no action or approves the outside work, the CONSULTANT may undertake such work.

4. **STANDARD OF PERFORMANCE.**

A. Standards. In performing services hereunder, CONSULTANT shall adhere to the standards generally prevailing in the State of California for the performance of services similar to those requested of and to be performed by CONSULTANT, including but not limited to the management and engineering professions. All services of CONSULTANT shall be performed in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders. CONSULTANT represents that he has the professional skills necessary to perform the services and that he will perform the services in a skillful and professional manner. CONSULTANT represents that he has all the necessary licenses to perform the services, including without limitation, business licensing, and shall maintain them throughout the term of this Agreement. LAVWMA and CONSULTANT agree that CONSULTANT is in charge of and responsible for the services. Acceptance by LAVWMA of the services does not operate as a release of CONSULTANT from professional responsibility for the services performed.

B. Performance Reviews. LAVWMA's Board of Directors may annually conduct reviews of CONSULTANT's performance, hourly rate and other terms of compensation, and at such additional times as the Board deems appropriate. CONSULTANT shall participate in and cooperate with LAVWMA's Board in the execution of all such reviews, including without limitation, appearing at Board meetings upon reasonable notice. CONSULTANT understands that his regular availability to LAVWMA and his responsiveness to the LAVWMA Board of Directors are of the utmost importance and will be considered important elements of the performance reviews provided for in this Section 4.

C. Performance. CONSULTANT shall use his best efforts to comply with reasonable performance standards and expectations established from time to time by LAVWMA.

5. **COMPENSATION; REIMBURSEMENT OF EXPENSES.**

A. Compensation. LAVWMA shall compensate CONSULTANT for all services performed pursuant to this Agreement at an initial hourly rate of Two Hundred Dollars (\$200.00) per hour. The hourly rate of Two Hundred Dollars (\$200.00) per hour shall be increased on July 1, 2025 and each July 1 thereafter, by an amount equal to any increase in the All Items Consumer Price Index for the San Francisco-Oakland-San Jose area for the previous 12 months. The hourly rate and other terms of compensation are subject to review as provided in Section 4.

B. Limitation on Hours. CONSULTANT shall not provide more than one thousand (1,000) hours of service per fiscal year (beginning on the Effective Date) without prior written agreement of Board in the form of an amendment to this Agreement. CONSULTANT shall provide a report to Board at each regular meeting advising how many hours of contract services have been provided since the last report and for the year to date.

C. Reimbursements. LAVWMA shall reimburse CONSULTANT for actual and necessary out-of-pocket costs and expenses advanced or paid on behalf of LAVWMA in the performance of CONSULTANT's services under this Agreement, together with certain ordinary and necessary overhead expenses, as specified below, with no mark-up or profit. Such costs or

expenses shall be submitted to the LAVWMA Treasurer in itemized monthly requests for reimbursement, together with receipts for each expenditure where applicable.

1. Overhead. For each full month that this Agreement is in effect, LAVWMA shall pay CONSULTANT Seventy-Five Dollars (\$75.00) as an overhead allowance; this amount shall be pro-rated for any partial months.

2. Insurance Premiums. LAVWMA shall pay for CONSULTANT to be listed as a Covered Individual under its Liability Coverage Agreement with Special District Risk Management Authority (SDRMA). With respect to CONSULTANT's private insurance, LAVWMA shall pay all of CONSULTANT's excess premiums for general liability insurance, automobile insurance and professional liability insurance, to the extent that such additional insurance is required as a result of CONSULTANT's duties under this Agreement.

3. Conference Attendance. LAVWMA shall pay the full cost of attendance at conferences or professional organization meetings related to LAVWMA's business, travel, lodging and incidental expenses (including meals) incurred in carrying out the duties or performing the services hereunder, and other costs or expenses similarly incurred by CONSULTANT hereunder. Conference, travel, lodging and incidental expenses shall conform with the expense reimbursement policies established by LAVWMA for its Board of Directors and staff.

4. Mileage. CONSULTANT shall provide a vehicle for use to the extent necessary for travel required in the performance of services under this Agreement. LAVWMA shall reimburse CONSULTANT for business-related vehicular travel on an actual mileage basis, payable at the rate established from time to time by the United States Internal Revenue Service for income tax business deduction purposes.

D. Invoices. CONSULTANT shall submit monthly invoices in a form satisfactory to LAVWMA on or before the tenth day of each month setting forth the services rendered and expenses incurred in the previous month. CONSULTANT shall submit time and cost records as necessary to substantiate the charges. Within thirty-five (35) days after receipt of each such invoice, LAVWMA's General Counsel shall verify the accuracy of the invoice, correct the charge, where appropriate and as discussed and mutually agreed with CONSULTANT, and LAVWMA shall make payment to CONSULTANT in an amount equal to the amount of such invoices as verified or corrected by LAVWMA's General Counsel.

6. **OFFICE**. LAVWMA shall provide CONSULTANT with administrative assistance and records storage at 7051 Dublin Boulevard, Dublin, California 94568. Office space may be made available at 7051 Dublin Boulevard, Dublin, California 94568 or on LAVWMA property, if feasible.

7. **TERM; TERMINATION.**

A. Term. Services under this Agreement shall commence after Board authorization and upon receipt of a fully executed Agreement and delivery of satisfactory evidence of obtaining the required insurance coverage to LAVWMA (hereinafter, "**Effective Date**"), but no sooner than

April 1, 2024. Services under this Agreement shall continue in effect for two (2) years unless sooner terminated by either of the Parties. In the event of termination, neither Party shall have any further obligations under this Agreement, other than those obligations which by their terms survive expiration or termination of this Agreement. This Agreement may be extended for additional two (2) year terms by mutual consent of the Parties.

B. Termination by LAVWMA. This Agreement or any portion thereof may be suspended or terminated at any time by LAVWMA for any reason upon written notice to CONSULTANT, which shall be effective immediately. Upon receipt of such notice, CONSULTANT shall immediately cease all work under this Agreement, unless the notice provides otherwise. Upon submission of an invoice as provided for herein, CONSULTANT shall be entitled to compensation for services performed up to the time of such suspension or termination, it being understood that any payments are full compensation for the services rendered under this Agreement. If LAVWMA suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement. LAVWMA shall not be obligated to or liable for payment hereunder to any party other than CONSULTANT.

C. Termination by CONSULTANT. CONSULTANT may terminate this Agreement upon sixty (60) days written notice to LAVWMA. Upon receipt of such notice from CONSULTANT, LAVWMA may determine, in its sole discretion, that CONSULTANT's services shall be continued for an additional thirty (30) days to adequately transition any ongoing work to LAVWMA's new General Manager. CONSULTANT shall, during such continuation period, perform sufficient work pursuant to the terms and conditions of this Agreement, to provide for an orderly transition.

8. **DOCUMENTS AND RECORDS.** CONSULTANT shall deliver to LAVWMA all finished and unfinished records, data, and reports prepared or obtained in the performance of this Agreement, which shall be and remain the sole property of LAVWMA and shall be subject to LAVWMA's records retention policy and procedures. CONSULTANT shall maintain and permit LAVWMA and its authorized agents and/or representatives to examine, re-examine, make excerpts, transcribe and copy CONSULTANT's books, documents, papers, materials, payrolls, records, accounts, computer disks, tapes and any and all data relevant to this Agreement at any reasonable time within four (4) years after final payment under this Agreement.

9. **NON-ASSIGNABILITY.** CONSULTANT shall not subcontract, assign, or otherwise transfer, in whole or in part, his interest or obligations in this Agreement in any manner, without the express prior written consent of LAVWMA.

10. **INDEPENDENT CONTRACTOR.**

A. Status. CONSULTANT is an independent contractor and shall not be considered an employee of LAVWMA or a Member Agency of LAVWMA. CONSULTANT is solely responsible for payment of all taxes, including federal, state, and local income tax, payroll taxes, social security tax, workers' compensation insurance, state disability insurance, and other taxes, assessments and premiums or insurance contributions which CONSULTANT is responsible for

paying under federal, state or local law by reason of or in connection with the services to be performed by CONSULTANT, except for the compensation and reimbursement of expenses specified in Section 5 above. No taxes will be withheld from payments made by LAVWMA. CONSULTANT shall not receive or be entitled to receive retirement or pension benefits, Public Employees Retirement System benefits, workers' compensation insurance coverage, health insurance coverage, or any other benefit from LAVWMA, except for the compensation and reimbursement of expenses specified in Section 5 above.

B. No Overtime or Premium Pay. CONSULTANT shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized holiday. CONSULTANT shall not receive paid time off for days not worked, whether it is in the form of sick leave, administrative leave, or for any other form of absence.

11. **INSURANCE.** CONSULTANT and all of CONSULTANT'S employees, subcontractors, consultants and other associates shall provide and maintain at all times during the performance of this Agreement, and for such additional periods as described herein, the insurance listed below. CONSULTANT shall promptly furnish to LAVWMA certificates of insurance and an endorsement to the policy evidencing that all described coverage is to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to LAVWMA. In addition, the certificates of insurance are to require thirty (30) days prior written notice to LAVWMA of policy lapse, cancellation or material change in coverage. CONSULTANT agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

A. SDRMA Covered Individual. On behalf of CONSULTANT, LAVWMA shall obtain an endorsement and Certificate of Insurance from the Special District Risk Management Authority adding Levi Fuller Jr., dba Fuller Management and Operational Services, LLC as a "COVERED INDIVIDUAL" under the Liability Coverage Agreement for LAVWMA. This coverage shall be in addition to the other insurance requirements listed herein, which CONSULTANT must maintain independently.

B. Comprehensive Automobile Liability Insurance. Comprehensive Automobile Liability Insurance providing bodily injury liability and property damage, to protect CONSULTANT and LAVWMA against all liability arising out of the use of any owned, leased, passenger or commercial automobile; limits of liability shall not be less than \$1,000,000 combined single limit and \$2,000,000 aggregate. Coverage shall apply to hired and non-owned autos.

C. Commercial General Liability Insurance. Commercial General Liability Insurance protecting CONSULTANT and LAVWMA from any and all claims for damages for personal injuries, including death, or for damages to or destruction of the property of others, which may arise from CONSULTANT's performance under this Agreement. Said policy shall cover the indemnity provisions under this Agreement and shall provide a minimum of

\$1,000,000 combined single limit coverage for each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate.

D. Workers Compensation Insurance. Workers Compensation Insurance shall be required if CONSULTANT engages any employees. Prior to engaging employees, CONSULTANT shall inform the General Counsel in writing of his intent. The Parties shall amend this agreement to address the Workers Compensation Insurance terms and conditions prior to engagement of employees.

E. Excess or Umbrella Liability Insurance. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to LAVWMA for injury to CONSULTANT’s employees, subcontractors, consultants and other associates involved in the services under this Agreement. The scope of coverage provided is subject to approval of LAVWMA following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

F. Professional Liability or Errors and Omissions Insurance. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form with coverage specifically designed to protect against acts, errors or omissions of the CONSULTANT and “Covered Professional Services” as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

G. Policy Terms. With respect to evidence of commercial general liability and automobile liability insurance coverage, CONSULTANT shall furnish LAVWMA with original endorsements with the following documentation:

1. Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after LAVWMA shall have received written notification thereof from CONSULTANT by United States mail;
2. Providing that CONSULTANT’s insurance shall apply separately to each insured against whom claim is made or suit is brought, and include a “separation of insureds” or “severability” clause which treats each insured separately, except with respect to the limits of the insurer’s liability (cross-liability endorsement);

3. Naming LAVWMA, its Board of Directors, boards, commissions, committees, officers, employees and agents, as well as the LAVWMA Member Agencies (Dublin San Ramon Services District and the Cities of Livermore and Pleasanton) as additional insureds;

4. Providing that for any claims relating to CONSULTANT's services hereunder, CONSULTANT's insurance coverage shall be primary insurance with respect to LAVWMA, its Board of Directors, officers, employees and agents, and that any insurance or self-insurance maintained by LAVWMA for itself, its Board of Directors, officers, employees and agents shall be in excess of CONSULTANT's insurance and shall not be contributory with it; and

5. Requirements of specific coverage features, or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverages requirements and/or limits shall be available to the Additional Insured, including but not limited to any umbrella or excess insurance. Furthermore, the requirements for coverage and limits shall be the greater of: (a) the minimum coverage and limits specified in this Agreement; or (b) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

H. Proof of Coverage. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to CONSULTANT'S general liability policy, shall be delivered to LAVWMA at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, LAVWMA has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by LAVWMA shall be charged to and promptly paid by CONSULTANT or deducted from sums due CONSULTANT, at LAVWMA's option. CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of LAVWMA to inform CONSULTANT of non-compliance with any insurance requirement in no way imposes any additional obligations on LAVWMA nor does it waive any rights hereunder in this or any other regard.

I. Material Breach. If CONSULTANT fails to maintain insurance coverage which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. LAVWMA, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, LAVWMA may purchase the required insurance coverage, and without further notice to CONSULTANT, may deduct from sums due to CONSULTANT any premium costs advanced by LAVWMA for such insurance. These remedies shall be in addition to any other remedies available to LAVWMA.

12. **INDEMNIFICATION.**

A. Indemnification by CONSULTANT. To the fullest extent allowed by law, CONSULTANT shall hold harmless, indemnify, protect, and defend LAVWMA, its Board of

Directors, officers, employees, agents, subcontractors and consultants (collectively “**Indemnitees**”), with legal counsel approved by LAVWMA, from and against all claims for liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings), losses, damages, expenses, costs (including, without limitation, costs and fees of litigation, including attorney’s fees and costs, court costs, interest, defense costs and expert witness fees) of every nature, kind and description, whether actual, alleged or threatened (“**Claims**”), which may be brought against or suffered or sustained by Indemnitees, to the extent such Claims arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by CONSULTANT, or by any individual or entity for whom CONSULTANT is legally liable, including but not limited to, its officers, agents, employees, subcontractors or consultants. The only exception to CONSULTANT’s responsibility hereunder is due to the active negligence or willful misconduct of LAVWMA or its Indemnitees. CONSULTANT’S defense, indemnity, and other obligations under this Agreement shall survive the termination or completion of this Agreement for the full period of time allowed by law and shall not in any way be limited by the insurance requirements of Section 12 of this Agreement. No member of LAVWMA and no other Indemnitee shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of LAVWMA, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

B. Indemnification by LAVWMA. To the fullest extent allowed by law, LAVWMA shall hold harmless, indemnify and defend CONSULTANT, its officers, employees, agents, subcontractors and consultants from and against all claims for liability, losses, damages, expenses, costs (including, without limitation, costs and fees of litigation) of every nature, kind and description, which may be brought against or suffered or sustained by Indemnitees, to the extent caused by the active negligence or willful misconduct of LAVWMA or its Indemnitees.

13. **GENERAL PROVISIONS.**

A. Recitals. The recitals to this Agreement are true and correct and material to this Agreement and are incorporated as if set forth in full.

B. Interpretation. The terms and provisions of this Agreement shall be liberally construed to effectuate the purpose of this Agreement. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against either party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

C. Waiver. No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. A waiver by either LAVWMA or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party’s rights with respect to any other or further breach.

D. Mediation. If the Parties are unable to resolve a dispute arising under this Agreement through good faith negotiations, the Parties agree to submit the matter to mediation with a mutually agreeable mediator. Prior to the mediation, the Parties shall exchange any documents reasonably necessary to resolve the matter to be mediated.

E. Integration and Amendment. This Agreement, together with the Scope of Services attached hereto as Exhibit A, respectively, is adopted by LAVWMA and CONSULTANT as a complete and exclusive statement of the terms of the Agreement between LAVWMA and CONSULTANT. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between LAVWMA and CONSULTANT pertaining to CONSULTANT's services, whether written or oral. No amendment or modification of this Agreement shall be effective unless and until such modification or amendment is evidenced by a writing signed by both Parties to this Agreement.

F. Successors and Assigns. This Agreement shall be binding upon the respective successors, executors, administrators, assigns, and legal representatives to the parties.

G. Choice of Law. This Agreement shall be governed by the procedural and substantive laws of the State of California and venue shall be in the appropriate court in Alameda County, California.

H. Notice. Except as otherwise expressly provided by law, any and all notices or other communication required or permitted by this Agreement or by law to be served on or delivered or given to a party by another party to this Agreement shall be in writing, and shall be deemed duly served, given, or delivered: (i) when delivered personally; (ii) when sent by confirmed facsimile during the recipient's business day (or otherwise on the next business day); (iii) three days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (iv) one business day after deposit with a commercial overnight carrier with tracking, specifying next-business day delivery; or (v) when sent electronically by confirmed read receipt.

Any party may change their address for the purpose of this Section by giving written notice of such change to the other party in the manner provided in this Section.

Notice to CONSULTANT shall be sent to:

Levi Fuller Jr., dba Fuller Management and Operational Process Services, LLC
15 Via Pescara
American Canyon, CA 94503
Phone: (707)-373-7030
Fax:
Email: fullerlevi130@gmail.com

Notice to LAVWMA shall be sent to:

Livermore Amador Valley Water Management Agency
c/o Sheree Davis, Administrative Assistant
7051 Dublin Blvd.
Dublin, CA 94568
Phone: (925) 551-4841
Fax: (925) 828-4907
Email: sdavis@dsrsd.com

With copy to:

Alexandra M. Barnhill
LAVWMA General Counsel
c/o Jarvis Fay LLP
555 12th Street, Suite 1630
Oakland, CA 94607
Phone: (510) 238-1400
Fax: (510) 238-1404
Email: ABarnhill@jarvisfay.com

I. Advice of Counsel. CONSULTANT specifically acknowledges that he has been advised by the General Counsel that the General Counsel does not represent him in connection with any of the negotiations leading to the drafting of this document and that the General Counsel has advised him to consult with an attorney of his own choosing in connection with any questions he may have concerning the legal effect of any of the provisions of this Agreement.

J. Litigation Costs. In the event any action is brought to enforce or interpret the terms of this Agreement or for damages on account of the breach hereof, the prevailing party therein shall be entitled to recover from the other party its costs and expenses incurred in connection therewith, including without limitation, reasonable attorneys' fees and the costs and expenses of litigation.

K. Authorization. All officers and individuals executing this and other documents on behalf of the respective parties hereby certify and warrant that they have the capacity and have been duly authorized to execute said documents on behalf of the entities indicated.

L. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Signatures transmitted via portable document format ("pdf") to the other Party to this Agreement shall be deemed equivalent to original signatures on counterparts.

M. Survivability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of

the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

LIVERMORE-AMADOR VALLEY WATER
MANAGEMENT AGENCY

By: _____ Date: _____
Bob Carling, Chair

LEVI FULLER Jr., dba Fuller Management
Operational and Process Services, LLC

By: _____ Date: _____
Levi Fuller Jr.

Approved as to Form:

By: _____ Date: _____
Alexandra M. Barnhill, General Counsel

Exhibit A:**Scope of Services
Description of Job Responsibilities
LAVWMA General Manager**

BASIC FUNCTION: Under policy direction of the Livermore-Amador Valley Water Management Agency (LAVWMA) Board of Directors, the General Manager has the primary responsibility for planning, organizing, coordinating and directing the operation and maintenance of LAVWMA, a regional wastewater transportation system that includes three storage basins, a pump station, export pipelines, the San Leandro Sample Station, radio/computer monitoring and control systems and other facilities.

REPRESENTATIVE DUTIES: Note that the duties listed below are “representative only” and are not intended to cover the full range or scope of duties of this position.

1.0 Administrative Responsibilities**1.1 *Research & Recommend Policy***

The General Manager is responsible for researching and working with General Counsel to formulate draft policy language for consideration by the Board. Also disseminates information to the Board and Member Agency managers on regulatory requirements, new or proposed legislation, and other information critical to the effective and efficient operation of LAVWMA.

1.2 *Board Meeting Documents*

The General Manager is responsible for developing and researching agenda items, writing all staff memos, compiling the agenda, overseeing reproduction and distribution, and creating meeting minutes.

1.3 *Board Communications*

The General Manager communicates regularly with the Board Chair on agenda items, and with the Board on other items of a critical nature.

1.4 *Public Agency Communications*

The General Manager is the first point of contact for all concerns or questions from outside agencies, state and federal regulatory agencies, professional organizations, business owners, the press, and the public. The General Manager addresses all questions and concerns, including attending meetings as needed to appropriately represent LAVWMA.

1.5 *Manage Treasurer, Auditor, Financial Business*

The General Manager is responsible for overseeing ongoing work related to accounting for LAVWMA, the biennial replacement study, annual audit, and management of invested funds.

1.6 *Manage Other Admin Needs*

1.6.1 Terms of existing agreements

LAVWMA has obligations related to agreements with East Bay Dischargers Authority, Alameda County Water District, Castro Valley Sanitary District, Alameda County Public Works Agency, and easement agreements with property owners along the pipeline alignment. The General Manager is responsible for reviewing these agreements from time to time, so that LAVWMA can continue to meet the various agreement terms.

1.6.2 Complaints and actions against agency

From time to time, complaints or legal actions may be filed against LAVWMA. The General Manager is responsible for working with General Counsel to address and resolve these issues. CONSULTANT agrees to testify at LAVWMA's request if litigation is brought against LAVWMA in connection with its work under this Agreement. Unless the action is brought by the CONSULTANT or is based upon CONSULTANT's negligence, LAVWMA shall compensate CONSULTANT for the preparation and the testimony at CONSULTANT's standard hourly rates.

1.6.3 Renegotiate Insurance

The General Manager evaluates LAVWMA's assets and negotiates terms of liability and property insurance on an annual basis. The General Manager is responsible for collecting and confirming required information, for interfacing with the insurance provider, and for recommending coverage to the Board for approval.

1.6.4 Purchasing - Authorizing, Approving & Tracking Expenses

The General Manager authorizes and monitors all agreements and purchase orders and processes all invoices.

1.6.5 Records Management

The General Manager interfaces with Dublin San Ramon Services District records management staff to ensure that LAVWMA records are being retained and destroyed in accordance with policy.

1.7 *Prepare and Monitor Budget*

The General Manager monitors all LAVWMA expenditures as compared to the approved budget and works with DSRSD staff to ensure all expenditures are within allocated limits. Prepares an annual Operations and Maintenance (O&M) and Capital budget for consideration by the Board.

1.8 *Board and SAG meetings*

The General Manager prepares for, attends, and handles all follow-on items from the LAVWMA's Board and Staff Advisory Group meetings.

1.9 *Other Meetings as Required*

The General Manager participates in and may prepare materials or other items for other meetings that relate to the business of LAVWMA, as may be deemed reasonably necessary by the General Manager.

2.0 Operational Responsibilities

2.1 *Permit Compliance*

Dublin San Ramon Services District and the City of Livermore, individually, are responsible for delivering to LAVWMA effluent which is in compliance with NPDES permit requirements at LAVWMA's wet weather outfalls (at LAVWMA's pump station and the SLSS) and at the EBDA outfall. The Operator of LAVWMA's facilities (currently DSRSD) act as the Legally Responsible Officer for LAVWMA and the General Manager may also be designated for recordkeeping purposes. The Operator is responsible for generating and submitting all NPDES and EPA monthly, quarterly, semiannual and annual compliance reports and, when necessary, non-compliance reports.

The General Manager is responsible for the renewal of NPDES permits and ensuring that LAVWMA has a current NPDES permit. The General Manager is responsible for reviewing all compliance and, when necessary, non-compliance reports generated by the Operator. The General Manager is also responsible for keeping LAVWMA, LAVWMA's General Counsel, and LAVWMA's Board of Directors informed about the status of those reports.

2.2 *Contract Implementation*

The General Manager contracts and coordinates with DSRSD, LAVWMA member agencies, and/or EBDA to implement the Joint Powers Agreement and other agreements between the parties that provide for the operations and maintenance of LAVWMA facilities, management of joint facilities (including, but not limited to, during peak wet-weather events), and all other aspects of LAVWMA activities.

2.3 *Capital Improvement and Maintenance Projects*

The General Manager plans, oversees, and coordinates the capital improvement program and maintenance projects for LAVWMA. This includes reviewing and approving all plans and specifications; drafting, distributing and reviewing Requests for Proposals; negotiating contracts with and supervising engineers, construction managers, manufacturers, consultants, and contractors; monitoring costs; and enforcing the schedule of performance.

2.4 *System Efficiency*

Coordinates with DSRSD and LAVWMA member agencies to evaluate performance of pumps, motors, control systems, pipelines and other facilities to optimize system usage, minimize power consumption, and avoid unnecessary costs.

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