



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** June 13, 2017

**From:** Greg Snyder, Director of Public Works                      **Item No:** 6  
Public Works Department

**Subject:** APPROVE WASTEWATER FACILITIES TRANSFER AGREEMENT  
WITH VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

**T.M. Approval:** \_\_\_\_\_                      **Budgeted Item:**  Yes  No  N/A

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### RECOMMENDED ACTION:

That the Town Council approve the Wastewater Facilities Transfer Agreement with VVWRA.

### SUMMARY:

Victor Valley Wastewater Reclamation Authority (VVWRA) will transfer to the Town of Apple Valley (Town) the Nanticoke Interceptor that was recently constructed and a force main that runs from Nanticoke to Highway 18. The Town will transfer to VVWRA the Otoe lift station and the force main that runs from Otoe to Highway 18. VVWRA's Board of Commissioners approved the transfer agreement at their May 18, 2017 Board Meeting.

### BACKGROUND:

The new Apple Valley sub-regional treatment plant is currently under construction and scheduled to be completed in August 2017. The Town owns a sewer lift station on Otoe Road next to the new sub-regional treatment. VVWRA has an obsolete pump station on Nanticoke Road in Apple Valley and the Authority is building the Nanticoke Interceptor to replace it. The Nanticoke Interceptor will be transferred to the Town and it is being built to Town standards. VVWRA will also be transferring the force main from Nanticoke to Highway 18 to the Town. The Town will be able to convert it to a gravity sewer.

VVWRA will receive from the Town the Otoe Lift Station and the force main from Otoe to Highway 18. This force main will be repurposed for reclaimed water to transport effluent to the percolation ponds at the Apple Valley Golf Course.

**FISCAL IMPACT:**

There is no financial impact to the Town.

**ATTACHMENT:**

Wastewater Facilities Transfer Agreement

## WASTEWATER FACILITIES TRANSFER AGREEMENT

This WASTEWATER FACILITIES TRANSFER AGREEMENT ("Agreement") is entered into as of June \_\_, 2017 ("Effective Date"), by and between the TOWN OF APPLY VALLEY, a California municipal corporation ("Town"), and VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY, a California joint powers authority ("VVWRA"). Town and VVWRA are sometimes individually referred to herein as "Party" and collectively as "Parties."

### RECITALS

- A. VVWRA owns and operates a regional wastewater treatment system that treats wastewater from the member agencies within its service area in the Victor Valley.
- B. Town is a member agency of VVWRA.
- C. VVWRA is in the process of building a sub-regional wastewater treatment facility in the Town of Apple Valley ("TOAV Plant") that will (i) treat wastewater generated by the residents and businesses located within the territorial boundaries of Town; and (ii) generate recycled water that can be put to beneficial use.
- D. Certain facilities currently owned by the Town will be necessary for the operation of the TOAV Plant and the Town has agreed to transfer these facilities to VVWRA as follows: (i) that certain pump station adjacent to the TOAV Plant on Otoe Road, a legal description of which is attached hereto as Exhibit "A" ("Otoe Pump Station"); and (ii) that certain force main for reclaimed water which runs from the Otoe Pump Station to Highway 18, the location of which is depicted on the attached Exhibit "B" ("Reclaimed Water Line").
- E. Certain facilities currently owned by VVWRA will be transferred to the Town for use in connection with the Town's operation of its wastewater collection system as follows: (i) the Nanticoke interceptor, the location of which is depicted on the attached Exhibit "C" ("Nanticoke Interceptor"), provided, however, that the pump station that is adjacent to the Nanticoke Interceptor will remain the property of VVWRA; and (ii) the force main for wastewater between the TOAV Plant and Highway 18, the location of which is depicted on the attached Exhibit "D" ("TOAV Wastewater Line").
- F. The terms and conditions for the transfer of the Otoe Pump Station, Reclaimed Water Line, Nanticoke Interceptor and the TOAV Wastewater Line (collectively, the "Transferred Facilities") are set forth in this Agreement.

NOW, THEREFORE, in consideration of the above facts, incorporated herein, and for the covenants and agreements contained herein, the Parties hereto agree as follows:

1. FACILITIES TRANSFER.

1.1 Transfer to Town. Upon the satisfaction of the conditions set forth in Section 2, VVWRA will execute grant deeds transferring to the Town all of its right, title and interest in the Nanticoke Interceptor and the TOAV Wastewater Line, together with any easements or rights of way that VVWRA may have in connection with such facilities.

1.2 Transfer to VVWRA. Upon the satisfaction of the conditions set forth in Section 2, the Town will execute grant deeds transferring to VVWRA all of its right, title and interest in the Otoe Pump Station and the Reclaimed Water Line, together with any easements or rights of way that are necessary for VVWRA to own and operate such facilities.

2. CONDITIONS TO TRANSFER.

2.1 Legal Descriptions; Transfer Documents. VVWRA will obtain the legal descriptions necessary for the transfer of the Transferred Facilities and the Town will cooperate with VVWRA to provide all information in the Town's possession with respect to the location, legal description and any easements that will need to be transferred or created in connection with the Transferred Facilities. VVWRA will further prepare the grant deeds, easements and any other transfer documents necessary to evidence the transfer of the Transferred Facilities, which transfer documents will be subject to review and approval by the Town.

2.2 Title Review by VVWRA. VVWRA may obtain a standard preliminary report for the Otoe Pump Station parcel and the Reclaimed Water Line to verify that there are no liens or encumbrances on such parcel and facilities that would interfere with their ownership and use by VVWRA and that VVWRA will have all easements necessary for the ownership and use of the Reclaimed Water Line. VVWRA may further obtain a policy of title insurance ("Title Policy"), at VVWRA's sole cost and expense, which Title Policy shall indicate that upon closing and the recording of the grant deed for the Otoe Pump Station parcel, fee title to the Otoe Pump Station parcel shall be vested in VVWRA. VVWRA shall not be obligated to close the transfer of the Transferred Facilities unless it is satisfied with the condition of title, in its sole discretion. Town shall reasonably cooperate with VVWRA to investigate any matter that is disclosed on the preliminary title reports, provided however, that in no event shall Town be obligated to remove or cure any lien or encumbrance on the Otoe Pump Station parcel or the Reclaimed Water Line and VVWRA's sole remedy for any disapproval of title shall be to terminate this Agreement.

2.3 Title Review by Town. Town may obtain a standard preliminary report for the Nanticoke Interceptor and the TOAV Wastewater Line to verify that there are no liens or encumbrances on such facilities that would interfere with their ownership and use by the Town. Town shall not be obligated to close the transfer of the Transferred Facilities unless it is satisfied with the condition of title, in its sole discretion. VVWRA shall reasonably cooperate with Town to investigate any matter that is disclosed on the preliminary title reports, provided however, that in no event shall VVWRA be obligated to remove or cure any lien or encumbrance on the Nanticoke Interceptor or the TOAV Wastewater Line and Town's sole remedy for any disapproval of title shall be to terminate this Agreement.

2.4 Debt on Nanticoke Interceptor. All debt with respect to the construction of the Nanticoke Interceptor will remain the sole responsibility of VVWRA and the Town does not assume any liability in connection with such debt.

2.5 Cleaning of TOAV Wastewater Line. Prior to the transfer of the TOAV Wastewater Line to the Town, VVWRA will conduct an inspection and routine cleaning of the TOAV Wastewater Line to ensure that it is in good working condition. VVWRA will provide written documentation to the Town as to the results of its inspection and cleaning, which documentation will be subject to the reasonable review and approval of the Town.

2.6 As Is Transfer. Each of VVWRA and the Town acknowledge and agree that they are familiar with the Transferred Facilities and that except for the obligations of each party contained in this Agreement, to the maximum extent permitted by law, the transfer of the Transferred Facilities is being made on an "As Is" condition and basis with all faults, and that either party has an obligations to make repairs, replacements or improvements to the Transferred Facilities.

### 3. CLOSING.

3.1 Closing. For purposes of this Agreement, "Closing" means the recordation in the Official Records of San Bernardino County, California, of the grant deeds and any easements necessary for the transfer of the Transferred Facilities, which recordation will take place upon the satisfaction of the conditions set forth in Section 2 to the satisfaction of the Town and VVWRA. It is not contemplated that any escrow or escrow agent will be used for the Closing. The cost of recording the grant deeds and any easements or other documents in connection with the Transferred Facilities will be paid by VVWRA.

### 4. REPRESENTATIONS AND WARRANTIES.

4.1 VVWRA's Representations and Warranties. VVWRA hereby represents and warrants to Town that the following statements are true and correct as of the Effective Date, and shall be true and correct as of Closing, and the truth and accuracy of such statements shall constitute a condition precedent to all of Town's obligations under this Agreement:

4.1.1 Authority. VVWRA has full power and authority to own, transfer and convey the Nanticoke Interceptor and the TOAV Wastewater Line to Town and to perform its obligations pursuant to this Agreement. This Agreement and all other documents delivered by VVWRA to Town now or at Closing have been or will be duly executed and delivered by VVWRA and are or will be legal, valid and binding obligations of VVWRA and are enforceable in accordance with their respective terms.

4.1.2 Litigation. There are no claims, actions, suits or proceedings at law or in equity, continuing, pending or threatened against or affecting VVWRA or the Transferred Facilities, or involving the validity or enforceability of this Agreement or of any other documents or instruments to be delivered by VVWRA at Closing. VVWRA is not subject to or in default under any notice, order, writ, injunction, decree or demand of any court or any governmental

department, board, commission or instrumentality with regard to the Transferred Facilities.

4.1.3 No Condemnation or Other Proceedings. VVWRA is unaware of any contemplated condemnation of the Transferred Facilities or any portion thereof by any other public entity. Town and VVWRA have negotiated in good faith for Town to take possession of the Nanticoke Interceptor and the TOAV Wastewater Line.

4.2 Town's Representations and Warranties. Town hereby represents and warrants to VVWRA that the following statements are true and correct as of the Effective Date, and shall be true and correct as of Closing, and the truth and accuracy of such statements shall constitute a condition precedent to all of VVWRA's obligations under this Agreement:

4.2.1 Authority. Town has full power and authority to perform its obligations pursuant to this Agreement. This Agreement and all other documents delivered by Town to VVWRA now or at Closing have been or will be duly executed and delivered by Town and are or will be legal, valid and binding obligations of Town and are enforceable in accordance with their respective terms.

4.2.2 Litigation. There are no claims, actions, suits or proceedings at law or in equity, continuing, pending or threatened against or affecting the Town or the Transferred Facilities, or involving the validity or enforceability of this Agreement or of any other documents or instruments to be delivered by Town at Closing. Town is not subject to or in default under any notice, order, writ, injunction, decree or demand of any court or any governmental department, board, commission or instrumentality with regard to the Transferred Facilities.

4.2.3 No Condemnation or Other Proceedings. Town is unaware of any contemplated condemnation of the Transferred Facilities or any portion thereof by any other public entity. Town and VVWRA have negotiated in good faith for Town to take possession of the Otoe Pump Station and the Reclaimed Water Line.

4.3 Survival of Representations and Warranties. The covenants, representations and warranties of VVWRA under this Agreement shall be true on and as of the Closing and shall survive the recordation of the Grant Deed and Easement Agreement for a period of twelve (12) months.

## 5. MISCELLANEOUS

5.1 Notices and Demands. All notices or other communications required or permitted between the Parties hereunder shall be in writing, and shall be (i) personally delivered, or (ii) sent by nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service), addressed to the Party to whom the notice is given at the addresses provided below, subject to the right of any Party to designate a different address for itself by notice similarly given. Notice shall be deemed to have been given upon receipt.

To Town: Town of Apple Valley  
Attn: Greg Snyder  
14955 Dale Evans Pkwy,  
Apple Valley, CA 92307

If to VVWRA: Victor Valley Wastewater Reclamation Authority  
Attn: Logan Olds  
20111 Shay Rd,  
Victorville, CA 92394

5.2 Required Actions of Town and VVWRA. Town and VVWRA agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use their best efforts to accomplish the Closing in accordance with the provisions hereof.

5.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

5.4 Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

5.5 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to, any person or entity other than the Parties.

5.6 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference.

5.7 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

5.8 Applicable Law. All questions with respect to this Agreement, and the rights and liabilities of the Parties and venue hereto, shall be governed by the laws of the State of California. Any and all legal actions sought to enforce the terms and provisions of the Agreement shall be brought in the courts of the County of San Bernardino.

5.9 Successors and Assigns. Neither party shall assign this Agreement, or any right or obligation herein, to any party without the prior written consent of the other party, which consent may be given or withheld in the other party's sole discretion.

5.10 Severability. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

5.11 Construction. This Agreement will be liberally construed to effectuate the intention of the Parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either Party (including the Party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the Parties have participated equally or have had equal opportunity to participate in the drafting thereof.

5.12 Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

5.13 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

[signature page follows]



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

**TOWN OF APPLE VALLEY**

**VVWRA:  
VICTOR VALLEY WASTEWATER  
RECLAMATION AUTHORITY**

By: \_\_\_\_\_  
Scott Nassif, Mayor

By: \_\_\_\_\_  
Name: Logan Olds, General Manager

*ATTEST:*

\_\_\_\_\_  
Ms. La Vonda M. Pearson, Town Clerk

*APPROVED AS TO CONTENT:*

\_\_\_\_\_  
Frank Robinson, Town Manager

*APPROVED AS TO FORM:*

BEST BEST & KRIEGER, LLP

\_\_\_\_\_  
John Brown, Town Attorney

**EXHIBIT A  
TO  
FACILITIES TRANSFER AGREEMENT**

**Legal Description of Otoe Pump Station Parcel**

See Attached

28314.00001\29810158.1

**EXHIBIT B  
TO  
FACILITIES TRANSFER AGREEMENT**

**Location of Reclaimed Water Line**

See Attached

28314.00001\29810158.1

**EXHIBIT C  
TO  
FACILITIES TRANSFER AGREEMENT**

**Location of Nanticoke Interceptor**

See Attached

28314.00001\29810158.1

**EXHIBIT D  
TO  
FACILITIES TRANSFER AGREEMENT**

**Location of TOAV Wastewater Line**

See Attached

28314.00001\29810158.1

**EXHIBIT A  
TO  
FACILITIES TRANSFER AGREEMENT**

**Legal Description of Otoe Pump Station Parcel**

THAT PORTION OF THE SOUTHWEST ONE-QUARTER OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE TOWN OF APPLE VALLEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF TRACT 5436, AS PER PLAT RECORDED IN MAP BOOK 65, PAGES 17 AND 18, RECORDS OF SAID COUNTY OF SAN BERNARDINO;

1. THENCE NORTH 00°14'00" WEST ALONG THE EAST LINE OF SAID TRACT 5436 A DISTANCE OF 40.00 FEET TO THE **TRUE POINT OF BEGINNING**;
2. THENCE CONTINUING NORTH 00°14'00" WEST ALONG SAID EAST LINE, A DISTANCE OF 150.00 FEET;
3. THENCE NORTH 89°57'30" EAST A DISTANCE OF 150.00 FEET;
4. THENCE SOUTH 00°14'00" EAST A DISTANCE OF 150.00 FEET TO A POINT BEING 40 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHWEST ONE-QUARTER;
5. THENCE SOUTH 89°57'30" WEST A DISTANCE OF 150.00 FEET TO THE **TRUE POINT OF BEGINNING**.

THIS LEGAL DESCRIPTION WAS PREPARED  
BY ME OR UNDER MY DIRECT SUPERVISION

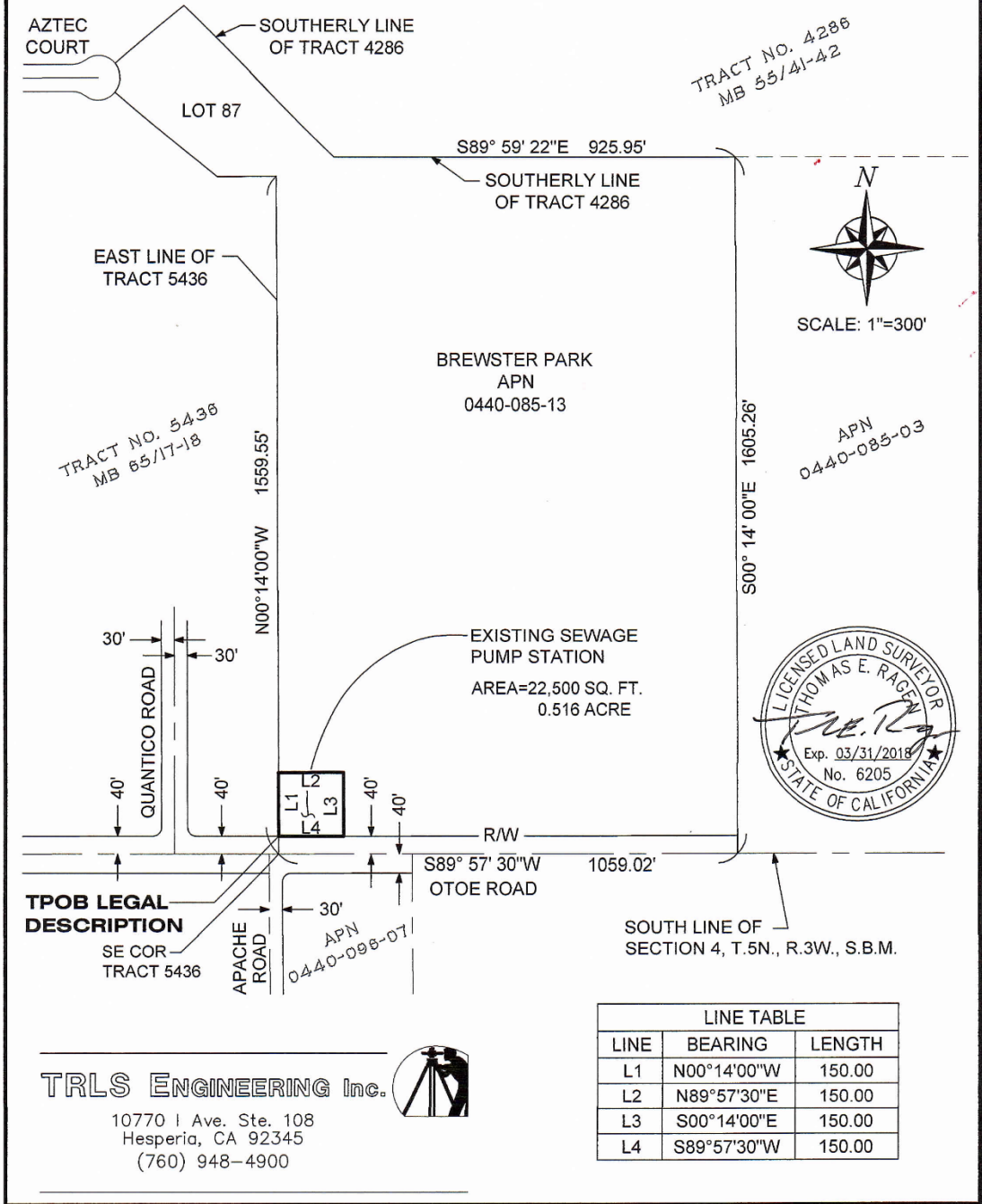
 DATE 06/01/17

THOMAS E. RAGEN LS 6205



# EXHIBIT "A1"

PLAT OF OTOE PUMP STATION PARCEL



LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°14'00"W	150.00
L2	N89°57'30"E	150.00
L3	S00°14'00"E	150.00
L4	S89°57'30"W	150.00

**TRLS ENGINEERING Inc.**  
 10770 I Ave. Ste. 108  
 Hesperia, CA 92345  
 (760) 948-4900





Exhibit "B"  
Reclaimed Water Line





Exhibit "C"  
Nanticoke Interceptor





Exhibit "D"  
TOAV Wastewater Line

