

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**APPROVAL OF THE SUBREGIONAL REIMBURSEMENT AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND THE VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY**

**Summary Statement:**

At the February 19, 2009 Victor Valley Wastewater Reclamation Authority (VWVRA) Board meeting the recommendation and approval to authorize the General Manager to enter into subregional reimbursement agreements with the Town of Apple Valley and the City of Hesperia. The purpose for the agreement is to allow the design of two subregional wastewater treatment facilities. Due to the timing of the issuance of bonds, proceeds will not be available to fund the design and VWVRA has requested that Apple Valley and Hesperia enter into the agreement to expedite the design process.

It is anticipated that VWVRA will issue bonds for the purpose of repaying each agency in July. The two member agencies will advance funding for the initial phases of the design contract. The Authority has agreed to pay 6% interest on any funds advanced by either agency.

A copy of the reimbursement agreement is attached for Council review.

**Recommended Action:**

Approve the recommendation of staff to enter into the reimbursement agreement with the VWVRA.

**Proposed by:** William B. Pattison Assistant Town Manager      **Item Number** \_\_\_\_\_

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

**VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY**  
**SUBREGIONAL PROJECT REIMBURSEMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into as of December \_\_, 2008 by and between the VICTOR VALLEY WATERWATER RECLAMATION AUTHORITY ("VVWRA"), a California Joint Powers Authority, and \_\_\_\_\_ (the "Member Agency"). VVWRA and the Member Agency are sometimes collectively referred to herein as the "Parties".

**RECITALS**

A. VVWRA owns and operates a regional wastewater collection and treatment system ("Regional System") through which it provides wastewater treatment service to its member agencies pursuant to the terms of the Joint Powers Agreement, Service Agreement and various other agreements between VVWRA and its member agencies (collectively, the "Member Agreements"), and the various ordinances, rules and regulations adopted by VVWRA ("VVWRA Ordinances").

B. In addition to operation of the Regional System, the Member Agreements and the long term capital expansion plan for VVWRA contemplate the use of local sub-regional facilities to handle various aspects of wastewater collection, treatment and recycling within the jurisdiction of one or more member agencies, including without limitation, additional plants for the treatment of industrial wastewater and the generation of reclaimed water for local use (referred to herein as "sub-regional projects").

C. In is contemplated that VVWRA will obtain funding from future bond financing and operating revenue for activities related to its long term capital expansion plan, including without limitation, the design and implementation of certain sub-regional projects, however, VVWRA has determined that it would be advantageous economically and from a planning perspective to commence design of such projects prior to the receipt of such bond financing and revenue.

D. As a short term interim funding mechanism, Member Agency agrees to advance certain costs and expenses related to the pre-design, design and preliminary planning process for the sub-regional project which is described in Section 1 of this Agreement, subject to reimbursement of such advances by VVWRA in accordance with the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the Parties hereby agree as follows:

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1. Description of the Project. VVWRA has prepared a request for proposal to move forward with certain pre-design, design and preliminary planning activities in connection with the sub-regional project within the jurisdictional boundary of Member Agency ("Project") which is described in the statement of work attached to this Agreement as Exhibit "A" ("Project RFP").

2. Obligations of VVWRA. VVWRA shall undertake the following obligations in connection with the Project and the Project RFP:

(a) Issue the Project RFP in the name of VVWRA as the contracting agency to engage one or more design, engineering and consulting firms (collectively, the "Consultants") to undertake the pre-design, design and/or preliminary planning described in the Project RFP;

(b) Supervise and conduct the bidding process for the Project RFP, including the review, negotiation, and selection of Consultants and the management and supervision of all work undertaken by Consultants pursuant to a contract or contracts to be entered into between the Consultants and VVWRA in connection with the Project RFP (collectively, the "Project Contract"). VVWRA shall confer with Member Agency during the bid review and selection process, provided, however, that VVWRA shall be responsible for selecting the Consultant and negotiating any Project Contract using its reasonable professional discretion; and

(c) Subject to funding approval for the Project Contract as described in Section 3, supervise the conduct of the work described in the Project Contract and review and submit for payment all invoices for services of Consultants pursuant to the Project Contract.

3. Member Agency Approval. Prior to any advance being made by Member Agency in connection with the Project Contract, the final budget and cost schedule for the Project Contract shall be subject to the written approval of the [City Manager][Town Manager] of Member Agency or such other approval mechanism as may be directed by the [City Council][Town Council] of Member Agency in the resolution approving this Agreement. Any change to the Project Contract which increases the total cost of the work by ten percent (10%) or more shall be subject to the approval of the Member Agency, which approval shall not be unreasonably withheld.

4. Advances for Project Contract.

(a) Member Agency shall provide advances to VVWRA to fund all costs and expenses properly invoiced pursuant to the Project Contract approved by Member Agency, as well as any penalty or late fee incurred by VVWRA as a result of Member Agency's failure to advance funds for the payment of invoices when due. The obligation of Member Agency to make advances in connection with the Project Contract shall terminate immediately in the event that VVWRA receives the proceeds of bond financing which are described in Section 6(b) or alternative financing as described in Section 6(c) prior to completion of the work set forth in the Project Contract.

(b) Except for the Project Contract, Member Agency shall not be obligated to advance funds to VVWRA for any direct or indirect costs and expenses of VVWRA in connection with the Project, including without limitation, VVWRA administrative or personnel

costs or any legal or out of pocket costs incurred in connection with preparing the Project RFP or administering the Project Contract.

5. Procedure for Advances.

(a) VVWRA shall review each invoice received from Consultants for accuracy and shall forward such invoice to Member Agency. Upon receipt of an invoice from VVWRA, Member Agency may request additional documentation or explanation of any amounts stated on an invoice. Undisputed amounts shall be paid by Member Agency to the Consultant within thirty (30) days of the invoice date.

(b) In the event that Member Agency disputes all or a portion of an invoiced amount, the Parties and a representative of the Consultant, if applicable, shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in resolving a dispute with a Consultant, then VVWRA and Member Agency shall reasonably cooperate to utilize the dispute resolution mechanism and any remedies which are set forth in the Project Contract, provided, however, that VVWRA, as the contracting entity, shall have final discretion with respect to all matters in connection with enforcement of the Project Contract.

6. Reimbursement of Advances.

(a) All advances made by Member Agency in connection with a Project Contract shall be recorded in a separate Project account on the accounting books and records of VVWRA as a debt obligation of VVWRA to the Member Agency. Such debt obligation shall accrue interest at the rate set forth in the Statement of Work or if no rate is specified, at six percent (6%) per annum.

(b) It is the intent of the Parties that Member Agency shall be reimbursed the outstanding balance of principal advances and interest in the Project account from the first available proceeds received by VVWRA in connection with a future bond offering, subject to any conditions or restrictions on the use of such proceeds. VVWRA shall make such payment to Member Agency within thirty (30) days of the release of any such proceeds to VVWRA.

(c) In the event that VVWRA determines to use operating revenue or an alternative source of financing for capital improvements in lieu of bond financing, including without limitations, public or private loans or grants, then VVWRA shall provide Member Agency with a schedule for the prompt repayment of the Project account to Member Agency from such revenue or the proceeds of such alternative source of financing.

(d) In the event that VVWRA fails to distribute funds to Member Agency as required in section 6(b) above or to provide a schedule for repayment pursuant to Section 6(c), then Member Agency shall have the right to offset the balance due from the Project account from connection fees that are collected by Member Agency on behalf of VVWRA. Any such offset shall be amortized and applied over a period of five years at the same interest rate which applied to the original advances.

7. Representatives of the Parties. The General Manager of VVWRA, or his designee shall, have the authority to act on behalf of VVWRA for all purposes under this Agreement. The

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[City Manager][Town Manager], or his written designee, of Member Agency shall have the authority to act on behalf of Member Agency for all purposes under this Agreement. The representatives shall work closely and cooperate fully with each other and shall cooperate when dealing with any other agencies which may have jurisdiction over or an interest in the Project.

8. Term and Termination.

(a) The term of this Agreement shall be from the date first herein above written until terminated in accordance with this Section 12.

(b) Either Member Agency or VVWRA may terminate this Agreement without cause upon thirty (30) days written notice at any time prior to the approval of the Project Contract by Member Agency.

(c) Following approval of the Project Contract, this Agreement shall remain in effect until such Project Contract has been completed or otherwise terminated in accordance with its terms and Member Agency has been reimbursed for all advances in accordance with the terms of this Agreement.

9. Amendments. Any amendment to this Agreement shall be subject to the written approval of VVWRA and Member Agency.

10. Books and Records. VVWRA shall maintain complete, accurate, and clearly identifiable records with respect to the administration of the Project Contract. Member Agency and its authorized agents, officers or employees shall have the right to review such records upon reasonable notice to the representative of VVWRA.

11. Effect on Member Agreements. Except for Section 6(d), this Agreement shall not alter the rights and duties of VVWRA and Member Agency under any of the Member Agreements.

12. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California.

13. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

14. Notices. All formal written notices required under this Agreement shall be delivered via overnight courier, shall be effective as of the date when actually received, and shall be addressed as follows:

If to VVWRA:

Victor Valley Wastewater Reclamation Authority  
15776 Main Street, Suite 3  
Hesperia, California 92345  
Attn: General Manager

If to Member Agency: \_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the PARTIES have caused to be executed by their duly authorized representatives to be signed, on the day and year first above written.

Attn: \_\_\_\_\_

15. **Integration.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. Any agreement or representation respecting matters addressed herein that are not expressly set forth in this Agreement, or in a fully executed contract amendment as described below, is null and void.

PACIFIC VALLEY WASTEWATER  
RECLAMATION AUTHORITY

[signature page follows]

Title: General Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_

Piero C. Dallarda of  
Best Best & Krieger LLP

MEMBER AGENCY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

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IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed by their duly authorized representatives to be effective on the day and year first above-written.

VVWRA:

VICTOR VALLEY WASTEWATER  
RECLAMATION AUTHORITY

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Piero C. Dallarda of  
Best Best & Krieger LLP

MEMBER AGENCY:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_