

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

ADOPT RESOLUTION No. 2010-05, TO APPROVE AND AUTHORIZE AN AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND THE CITY OF VICTORVILLE TO CONTINUE THE HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) CONSORTIUM FOR THE PERIOD JULY 1, 2010 – JUNE 30, 2013.

SUMMARY STATEMENT

On July 8, 2003, the Town Council approved an application to the U.S. Department of Housing and Urban Development (HUD) for designation as a HOME Investment Partnerships Program (HOME) Consortium consisting of the City of Victorville and the Town of Apple Valley. At that time, Staff was further directed to develop a consortium cooperative agreement between the Town of Apple Valley and the City of Victorville, identifying the Town of Apple Valley as the lead agency and bring back such agreement to the Town Council for review and approval. Staff is now bringing forward to the Town Council a cooperative agreement to renew the HOME Consortium.

Renewal of the HOME Consortium will result in an annual allocation of federal HOME funds to each member jurisdiction. The fiscal year 2010-2011 allocation is estimated to be \$289,135 to the Town of Apple Valley and \$406,402 to the City of Victorville. As a direct Participating Jurisdiction (PJ) with HUD, the Consortium will automatically continue to receive an entitlement allocation during the next three (3) year term of its existence, thus obviating the need for the Town to compete for funds each year without a guarantee of receiving an allocation. For your information, all HOME-funded programs require a match of 25%. HUD has, in the past, granted frequent match waivers to grantees located in the County of San Bernardino due to adverse economic conditions and/or federally declared disasters. Although the Consortium currently administers the HOME Program with a match waiver in effect, there is no guarantee that the Consortium will continue to qualify for a match waiver. Therefore, it is agreed that if in subsequent years a match requirement arises; it will be contributed by each jurisdiction, based on their respective allocations.

A copy of the proposed agreement is attached for your review and approval.

Recommended Action:

That the Town Council Adopt Resolution No. 2010-05 to approve and authorize execution of the agreement by the Town Manager; and further authorize the Town Manager to make non-substantive modifications or corrections as deemed necessary.

Proposed by: Assistant Town Manager, Econ. & Comm. Dev. **Item Number** _____

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

RESOLUTION NO. 2010-05

**A RESOLUTION OF THE TOWN OF APPLE VALLEY
AUTHORIZING THE EXECUTION OF AN AGREEMENT
TO RENEW A HOME INVESTMENT PARTNERSHIPS
PROGRAM (HOME) CONSORTIUM BETWEEN THE
TOWN OF APPLE VALLEY AND THE CITY OF
VICTORVILLE AND; THE EXECUTION OF ANY
RELATED DOCUMENTS NECESSARY TO
PARTICIPATE IN THE HOME CONSORTIUM.**

WHEREAS, there has been enacted into law the HOME Investment Partnerships Act under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (HOME), the primary objective of which is to increase the supply of decent affordable housing to low-and very low-income Americans; and

WHEREAS, HOME authorizes contiguous units of general government to join together in a consortium; and

WHEREAS, in 2003, the Town of Apple Valley and the City of Victorville formed a Consortium under the HOME program in order to meet the threshold qualifications for obtaining HOME entitlement status with the U.S. Department of Housing and Urban Development (HUD).

WHEREAS, the Town of Apple Valley and the City of Victorville, not being individually eligible for a formula allocation, desire to continue the Consortium, for purposes of receiving HOME funds and promoting affordable housing;

WHEREAS, it is the desire of both the Town of Apple Valley and the City of Victorville to continue said Consortium Agreement so as to continue to implement the objective of increasing the local supply of decent affordable housing available to low-and very-low income residents; and

WHEREAS, the Town of Apple Valley and the City of Victorville mutually agree that Apple Valley will continue to be the designated lead-sponsoring agency to administer and implement the HOME Program and will assume overall responsibility to ensure that the Consortium's HOME Program is carried out in compliance with all federal requirements of that program.

NOW, THEREFORE, the Town of Apple Valley does resolve as follows:

Section 1: Continuance of the Consortium between the Town of Apple Valley and the City of Victorville for the purpose of receiving Home Investment Partnerships Program (HOME) funds is hereby approved.

Section 2. The continued designation of the Town of Apple Valley as the lead entity acting in a representative capacity for the Consortium and as the Participating Jurisdiction (PJ) is hereby approved.

Section 3. The renewed HOME Consortium Agreement between the Town of Apple Valley and the City of Victorville is hereby approved, and the Town Manager is hereby authorized to execute said agreement.

Section 4. The Town Manager is hereby authorized to execute any other HUD-related documents necessary for the HOME consortium, subject to the review and approval of the Town Attorney.

Section 5. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

Peter Allan, Mayor

ATTEST:

LaVonda Pearson, Town Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)ss.
TOWN OF APPLE VALLEY)

I, LaVonda Pearson, Town Clerk of the Town of Apple Valley, certify that the foregoing resolution was adopted by the Town Council of the Town of Apple Valley at a regular meeting held on the ____ day of _____, 2010.

AYES:

NOES:

ABSENT:

ABSTAIN:

LaVonda Pearson, Town Clerk

**COOPERATIVE AGREEMENT TO RENEW
A HOME CONSORTIUM**

This Agreement is entered into by and between the Town of Apple Valley and the City of Victorville as of January 26, 2010. This new agreement replaces in its entirety and supersedes the prior agreement.

WITNESSETH:

WHEREAS, there has been enacted into law the HOME Investment Partnerships Act under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (HOME), the primary objective of which is to increase the supply of decent affordable housing to low- and very low-income Americans; and

WHEREAS, HOME authorizes contiguous units of general government to join together in a consortium; and

WHEREAS, in 2003, the Town of Apple Valley and the City of Victorville, not being individually eligible for a formula allocation, formed a consortium for purposes of receiving HOME funds and promoting affordable housing (the "Consortium"); and

WHEREAS, The Town of Apple Valley and the City of Victorville prepared a joint Consolidated Plan which was submitted on May 15, 2007 for approval by the U.S. Department of Housing and Urban Development (HUD) for fiscal years 2007 through 2012; and

WHEREAS, the Town of Apple Valley and City of Victorville's Consolidated Plan includes Strategic Plan and Action Plan priorities for the Consortium; and

WHEREAS, it is the desire of the Town of Apple Valley and the City of Victorville to continue the existence of the Consortium by renewing their Consortium agreement so as to continue to implement the objective of increasing the local supply of decent affordable housing available to low- and very-low income residents; and

WHEREAS, it is the desire of the Town of Apple Valley and the City of Victorville that the term of this Agreement be automatically renewed every three years unless the Town of Apple Valley or the City of Victorville elects not to participate in the Consortium in an upcoming qualification period.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. TRUE AND CORRECT.** The above recitals are true and correct and are incorporated into this Agreement as though fully set forth herein.

- 2. RENEWAL OF CONSORTIUM.** The Town of Apple Valley and the City of Victorville hereby renew the Consortium for the purpose of receiving HOME funds and promoting affordable housing within their jurisdictions.
- 3. COMPLIANCE WITH LAW.** All members of the Consortium agree to comply with the applicable portions of: Title 24, Subtitle A, Part 92 of the Code of Federal Regulations (F.F.R.); the Housing and Community Development Act of 1974 as amended; Title 24, Chapter V, Part 570 of the C.F.R.; Title 24, Subtitle A, Part 58 of the C.F.R.; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Section 109 of the Housing and Community Development Act of 1974; Section 3 of the Housing and Urban Development Act of 1968; Excessive Orders 11246, 11063 and 11593; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Title 24, Part 42 of the C.F.R.; OMB Circular A-122 and Attachments A, B, C, F, H, N and O; the Archeological and Historical Preservation Act of 1974; the Architectural Barriers Act of 1968; the Hatch Act (Chapter 15 of Title 5, U.S.C.); the Flood Disaster Protection Act of 1974; the Clean Air Act (42 U.S.C. Section 1857 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.); the Drug-Free Workplace Act of 1988.
 - 3.1 FAIR HOUSING.** Each member of the Consortium shall affirmatively further fair housing.
- 4. TERM OF AGREEMENT.** In accordance with section 92.101(c) of the C.F.R., this Agreement cannot be terminated for a period of three federal fiscal years beginning with federal fiscal year 2010.
- 5. AUTOMATIC RENEWAL AND TERMINATION.** By the date specified in HUD's consortium designation notices, the Town of Apple Valley shall notify the City of Victorville in writing of City's right not to participate in the Consortium for the upcoming three-year qualification period. The Consortium shall also send a copy of the above notice to the HUD Field Office by the date specified in the Consortia designation notice. Prior to 150 days before the conclusion of each term, any member may withdraw from the Consortium for the upcoming period by notifying the Consortium in writing of its election not to participate. Unless such notice is received, this Agreement shall automatically renew upon the commencement of each three-year qualification period. If a notice not to participate is received from a member of the Consortium, the remaining members, if any, may elect to form a new consortium so long as they continue to meet all applicable requirements.
- 6. REQUIRED AMENDMENTS.** Notwithstanding the above, in the event that amendments to this Agreement are necessary to meet cooperation agreement requirements identified in this applicable Consortia Qualification Notice, the participating jurisdictions shall amend this Agreement for the subsequent three-year qualification period. In such event the Consortium shall submit the amendment to HUD as specified in the Consortia Qualification Notice. Failure to comply with the requirements set forth in this Section 6 will void the automatic renewal provision of this Agreement set forth in Section 5 above.

7. PROGRAM ADMINISTRATION. The Program Administrator for this Consortium shall be the Town of Apple Valley. The Program Administrator shall assume overall responsibility for ensuring that the Consortium's HOME Program is carried out in compliance with Title 24, Part 92 of the Code of Federal Regulations. The Program Administrator shall be specifically responsible for the following:

7.1 RESPONSIBILITY OF THE TOWN OF APPLE VALLEY.

- a. Receipt, disbursement and accounting of all HOME Program and matching funds;
- b. Submission of a Consolidated Plan or other subsequent document as required by HUD;
- c. Submission of all reports and data as may be required by HUD, to include all the performance measurements and environmental up to the Request for Release of Funds;
- d. Preparation of annual sub-recipient agreements;
- e. Technical assistance on all aspects of the HOME Program.

7.2 RESPONSIBILITY OF THE CITY OF VICTORVILLE.

- a. Receipt, disbursement and accounting of all HOME Program and matching funds;
- b. Submission of a Action Plan, CAPER or other subsequent document as required by HUD;
- c. Submission of all reports and data as may be required by HUD, to include all the performance measurements required;
- d. Preparation of annual Victorville sub-recipient agreements.

8. CONTRACT ADMINISTRATION. The Assistant Town Manager, Economic and Community Development of the Town of Apple Valley shall administer this Agreement. The City of Victorville agrees to supply to the Town of Apple Valley within a reasonable period of time after request, progress reports, performance measurements, or other documentation as shall be required by the Town of Apple Valley's contract administrator to audit performance of this Agreement.

9. RECORDS AND REPORTS. The Program Administrator shall maintain records as required by HUD. All records of the Town of Apple Valley respecting individual projects and programs shall be open and available for inspection by auditors assigned by HUD during normal business hours of the Town of Apple Valley. The Town of Apple Valley and the City of Victorville shall maintain records and submit such reports and information as may be necessary for the Town of Apple Valley to fulfill its obligations as administrator of the Consortium.

10. LIABILITY AND INDEMNIFICATION. Pursuant to Section 895.4 of the Government Code, The Town of Apple Valley and the City of Victorville agree that each will assume the full liability imposed upon it or any of its officers, agents, or employees for injury caused to the extent of its own negligent or wrongful act or omission occurring in the performance of this Agreement, and each party or parties agree to indemnify and hold harmless the other party for any loss, cost or expense that may

be imposed upon such other party by virtue of Sections 895.2 and 895.6 of the Government Code.

11. NOTICE. Any notice or notices required or permitted to be given pursuant to this agreement may be personally served on the other party by the party giving such notice or may be served by certified mail.

12. DISTRIBUTION OF FUNDS. HOME Funds shall be distributed to Consortium members pursuant to the following formula:

HOME funds shall be distributed to Consortium Members pursuant to the formula(s) determined by HUD.

Consortium members may agree to swap or trade allocations and/or to develop a 2 or 3-year allocation approach for Community Housing Development Organizations (CHDO) funding.

12.1 METHOD OF DISTRIBUTION. No later than 30 calendar days from notification by HUD that HOME Investment Partnerships funds have been awarded to the Consortium, the Program Administrator shall notify each of the participating jurisdictions of their respective funding amount. Each jurisdiction will have 80 calendar days from the time of notification to sponsor or submit a proposal for an eligible activity. If a proposal is not sponsored by or received from the participating jurisdictions during that time period, that jurisdiction's share of HOME funds shall be distributed according to paragraph 12.2 below. An activity shall be considered eligible if it conforms to the requirements of Title 24, Part 92, Subpart E of the C.F.R. and is within the administrative capacity of the implementing jurisdiction.

12.2 METHOD OF REDISTRIBUTION. All funds recaptured or unused by any member of the Consortium shall be pooled and made available to a jurisdiction with an eligible and ready project or shall be disbursed through a Consortium Program described in Section 13 below. Every attempt shall be made to expend the funds in the housing market area from which they were recaptured.

12.3 ADMINISTRATIVE FEES. Administrative fees, at a percentage not to exceed that allowed by HUD regulations, shall be retained by the Program Administrator for the management of the HOME Program. Only costs associated with the management and administration of the HOME program may be charged against HOME administrative allocations. As the lead entity, the Town of Apple Valley shall retain 5% for its administrative responsibilities under this agreement for the 2010 – 2011 program year. In subsequent years, the Town of Apple Valley shall retain an amount between 5% and up to, but not-to-exceed 10% each successive year as reasonably determined by the Town of Apple Valley and reasonably approved by the City of Victorville,

in order to fairly compensate the Town of Apple Valley for its administrative responsibilities under the Agreement. If applicable, the Town of Apple Valley will provide reasonable justification for administrative charges exceeding 5% on an annual basis during the remaining term of this agreement.

12.4 MATCHING CONTRIBUTIONS. The Town of Apple Valley and City of Victorville shall be proportionately responsible for meeting the federal matching requirements of section 92.218 and section 92.220 of the F.F.R. for all activities proposed under the Consortium. Any eligible sources of match which are contributed on eligible projects in a member jurisdiction, shall also be reported to the Program Administrator as a matching contribution. Upon request the Program Administrator shall assist and advise member jurisdictions in determining eligible projects and sources of matching funds. If City of Victorville and/or Town of Apple Valley fees are waived for a project, such fee waivers shall be provided as HOME match. All program income generated by matching funds shall be deposited into the local HOME Trust Fund as defined in section 14 of this Agreement.

12.5 RECAPTURE OF FUNDS. Recapture of funds will be defined as follows:

- a. If a member of the Consortium does not sponsor or submit a proposal for an eligible activity in accordance with Section 12.1 of this Agreement, the funds available to the jurisdiction shall become available to all members of the Consortium in accordance with Paragraph 12.2.
- b. Notwithstanding the above, the Town of Apple Valley and the City of Victorville may agree to share funds, sponsor joint projects, or allocate all or some portion of their annual share to each other.
- c. Funds not used, including positive balances remaining after an activity is completed may be used by the jurisdiction for future projects unless the Consortium is in danger of recapture in which case the excess funds will be made available to all members of the Consortium in accordance with Section 12.2 of this Agreement.

12.6 COMMUNITY HOUSING DEVELOPMENT ORGANIZATION SET-ASIDE. The HOME Program requires that 15% of project funds be spent on projects which are owned, developed or sponsored by CONSORTIUM-certified CHDO. All Consortium members are encouraged to expend a substantial portion of their HOME funds on CHDO projects. In the event the Consortium does not meet its 15% requirement, every effort should be made to redistribute funds in order to meet the 15% requirement. If a portion of the funds is recaptured by the U.S. Dept. of Housing and Urban Development as a result of non-compliance with the CHDO requirement, that loss shall be shared proportionately by all Consortium members (excluding members who have expended at least 15% of their current allocation on CHDO projects).

12.7 EXCLUSION OF FUNDS. This Agreement applies only to those funds received under the HOME Program and program income generated by

HOME funds and matching contributions. This Agreement does not apply to or control funds other than those described in this section.

12.8 CONSORTIUM'S OBLIGATION TO DISTRIBUTE FUNDS. If HOME funds are not awarded to the Consortium by HUD, the Consortium's obligation to distribute those funds to Consortium members will be terminated.

13. HOUSING PROGRAMS AVAILABLE TO CONSORTIUM MEMBERS. The Program Administrator will administer the programs which will be available to Consortium member jurisdictions. Availability of the programs will be determined by each member jurisdiction and will be available until there are sufficient resources to operate the program and the administrative capacity of the Program Administrator.

13.1 HOMEBUYER ASSISTANCE PROGRAM. The Program Administrator will operate a program for low-income, homebuyers. The program will provide deferred payment loans to eligible families to purchase eligible housing and, depending upon the circumstances, for targeted new developments. Each member jurisdiction will develop and implement their programs based on their respective guidelines and available resources.

13.2 HOUSING REHABILITATION PROGRAM. The Program Administrator will administer the rehabilitation programs for low-income homeowners on owner-occupied units and for small rental projects occupied by low-income renters. Each member jurisdiction will develop and implement their programs based on their respective guidelines and available resources.

13.3 HOUSING DEVELOPMENT PROGRAM. The Program Administrator will work with housing developers, as well as Community Development Housing Organizations (CHDOs) to develop single family, multi-family or other housing development that is determined to be needed within the communities. Each member jurisdiction will develop and implement their programs based on their respective guidelines and available resources.

14. LOCAL HOME TRUST FUND. The Program Administrator shall be responsible for maintaining a local HOME Trust Fund account. Any repayments of HOME funds and matching contributions and any payment of interest or other return on the investment of HOME funds and matching contributions must be placed in the local HOME Trust Fund account. The Town of Apple Valley has the responsibility for monitoring and reporting to HUD on the use of any such local HOME Fund moneys and the Consortium shall require appropriate record keeping and reporting by its members as may be needed for this purpose. In the event the Consortium dissolves, any HOME program income that is on hand or received subsequent to the dissolution shall be paid into the local HOME Trust Fund administered by the Town of Apple Valley as a Program Administrator for use by former consortium members from which the program income was received. In the event the Consortium is renewed at the end of the 3-year term of this Agreement, any currently participating jurisdiction

that does not continue to participate, automatically forfeits any and all future program income.

15. CONSOLIDATED PLAN. The Program Administrator shall be responsible for preparation and submission of a consolidated plan or subsequent document that may replace the Consolidated Plan under 24 CFR 91.

15.1 APPROVAL OF CONSOLIDATED PLAN: The Consolidated Plan, or other subsequent document that may replace the Consolidated Plan, shall not be submitted to HUD until it has been approved by a majority of the designated representatives of the Consortium.

15.2 AMENDMENTS TO THE CONSOLIDATED PLAN: Any required amendments to the Consolidated Plan, or other subsequent document required by HUD, shall be made in accordance with 24 C.F.R. Part 91.

16. NEW MEMBERS. New members to the Consortium may be allowed to participate, upon proof that they do not belong to any other Consortium and upon request to join the Consortium as provided for below.

16.1 AUTHORIZING RESOLUTIONS. Each request to join the Consortium must be accompanied by certified copies of authorizing resolutions by the governing body of the local government.

16.2 AVAILABILITY OF HOME FUNDS. HOME funds shall not be available to a new member of the Consortium until the fiscal year in which HUD includes that locality in its calculations for distribution of HOME funds.

16.3 AUTHORITY TO AMEND AGREEMENT TO ADD NEW MEMBERS. The Program Administrator is authorized to amend the Consortium Agreement on behalf of the entire Consortium to add new members to the Consortium.

17. AUTHORITY TO JOIN CONSORTIUM. Each member of the Consortium hereby certifies that it is authorized to enter into this Agreement. Authorizing Resolutions from the governing body of each unit of local government joining the Consortium are incorporated into this Agreement under Attachment A and made part of this Agreement.

18. COOPERATION UNDERTAKING HOUSING ASSISTANCE UNDER HOME. Each member of the Consortium agrees to cooperate to undertake or to assist in the undertaking of housing assistance activities for the HOME Program.

19. MINOR AMENDMENTS TO THE AGREEMENT. Should it become necessary to change the language of this agreement to meet HUD approval, without making substantive changes and without altering the intent of this Agreement, such changes may be made administratively with the unanimous written consent of the City of

Victorville Administrator/Manager and the Town of Apple Valley Program Administrator.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date stated below for execution.

TOWN OF APPLE VALLEY

By:

Mayor

ATTEST:

Town Clerk

(Seal)

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Town Attorney

Town Manager

CITY OF VICTORVILLE

By:

Mayor

ATTEST:

City Clerk

(Seal)

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

City Attorney

City Manager