

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**A REQUEST FOR A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY ACCEPTING REIMBURSEMENT OF THE COSTS FOR DEVELOPMENT OF PUBLIC INFRASTRUCTURE IMPROVEMENTS WITHIN THE TOWN FROM THE VICTOR VALLEY ECONOMIC DEVELOPMENT AUTHORITY AND RATIFYING THE EXECUTION AND DELIVERY OF A REIMBURSEMENT AGREEMENT**

**Summary Statement:**

As the Town Council is aware, the Brown Administration released its Budget Proposal on January 10, 2011. In his Budget Proposal, the Governor proposes to eliminate redevelopment agencies throughout California and re-direct any tax increment not currently pledged to existing debt or contractual obligations to defray certain costs of the State. Subsequently, the State Department of Finance drafted urgency legislation related to the proposal which, if passed, would prohibit redevelopment agencies from encumbering tax increment as of the date the legislation is adopted. The Legislature could take this action at any time.

Although the California Redevelopment Association intends to challenge any such legislation on the grounds that it violates certain provisions of the California Constitution, including, but not limited to, the newly adopted Proposition 22, which prohibits the State from raiding redevelopment funds, the California Redevelopment Association has also recommended that redevelopment agencies carefully document their existing obligations so each redevelopment agency's tax increment may be protected. In light of the fact that the future of redevelopment agencies is uncertain, it is important to move quickly in order to protect VVEDA funds and ensure that the funds remain available for the benefit of the residents of the Victor Valley as intended by the State Constitution. It is also important to note that, in the event the Legislature adopts the proposed legislation eliminating redevelopment agencies and, due to the timing, should the Town approve the attached Resolution, such action may still be subject to challenge by the State. However, due to the urgency of the situation, staff recommends approving the Resolution in an effort to best protect the interests of the residents of the Town. (Continued...)

**Recommended Action:**

Adopt Resolution No. 2011-11.

**Proposed by:** Ken Henderson, Assistant Town Manager      **Item Number** \_\_\_\_\_

**Town Manager Approval:** \_\_\_\_\_      **Budget Item**  Yes  No  N/A

On March 16, 2011, the VVEDA Board of Commissioners unanimously adopted Resolution No. 11-002, authorizing the expenditure of tax increment funds for the development of public infrastructure improvements benefitting the Victor Valley Project Area. The attached reimbursement agreement (the "Reimbursement Agreement") by and among the Victor Valley Economic Development Authority ("VVEDA"), and the Town of Apple Valley ("Apple Valley") allows VVEDA to use tax increment revenues VVEDA is entitled to receive pursuant to Article XIV, Section 16 of the California Constitution and the Redevelopment Plan for the 1993 Victor Valley Redevelopment Project (the "Redevelopment Plan"). The Plan has been previously adopted and amended by VVEDA for certain past and future infrastructure improvements located within, or outside, the Project Area as more fully described in the Agreement (collectively, the "Public Improvements"). Any such reimbursement would be paid from tax increment revenues available to VVEDA, subject to the terms of the Fourth Amended and Restated Joint Exercise of Powers Agreement forming the Victor Valley Economic Development Authority (the "Joint Exercise of Powers Agreement"). Such payments would be less existing debt service obligations and other current encumbrances of tax increment. The Reimbursement Agreement only encumbers tax increment to which the Town of Apple Valley is entitled under the VVEDA Joint Exercise of Powers Agreement. Although the Reimbursement Agreement was approved by the VVEDA Board, it requires subsequent ratification by the Apple Valley Town Council.

## RESOLUTION No. 2011-11

### RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY ACCEPTING REIMBURSEMENT OF THE COSTS FOR DEVELOPMENT OF PUBLIC INFRASTRUCTURE IMPROVEMENTS WITHIN THE TOWN FROM THE VICTOR VALLEY ECONOMIC DEVELOPMENT AUTHORITY AND RATIFYING THE EXECUTION AND DELIVERY OF A REIMBURSEMENT AGREEMENT

**WHEREAS**, in 1988, the Defense Base Closure and Realignment Commission recommended that former George Air Force Base, now located in Victorville, California and known as Southern California Logistics Airport (the "Airport") be closed, which closure has occurred; and

**WHEREAS**, in response to the closure, several of the local communities adjacent and in proximity to the Airport deemed it desirable to form a joint powers authority to create the Victor Valley Economic Development Authority ("VVEDA") to, among other things, provide for the effective reuse of the Airport; and

**WHEREAS**, VVEDA was established under the California Joint Powers Act, Government Code sections 6500 *et seq.* (the "Joint Powers Act"), and was formed pursuant to the provisions of a certain joint exercise of powers agreement, as amended (the "VVEDA Joint Exercise of Powers Agreement"); and

**WHEREAS**, VVEDA is comprised of the County of San Bernardino (the "County"), the City of Adelanto ("Adelanto"), the Town of Apple Valley ("Apple Valley"), the City of Hesperia ("Hesperia"), and the City of Victorville ("Victorville") (each individually, a "Member, and collectively, the "Members"); and

**WHEREAS**, in December of 1993, VVEDA caused the adoption of a Redevelopment Plan, as hereunder described, as amended, in accordance with the provisions of the Community Redevelopment Law, which redevelopment plan includes the Airport and adjacent properties (the "Redevelopment Plan"); and

**WHEREAS**, in accordance with the terms of the VVEDA Joint Exercise of Powers Agreement, VVEDA has delegated certain decision-making authority to the Town of Apple Valley (the "Town") with respect to the administration of the Redevelopment Plan in relation to that portion of the Project Area subject to the Redevelopment Plan (the "Project Area") which is located within the Town; and

**WHEREAS**, the Commission of the Victor Valley Economic Development Authority (the "Commission") desires to use tax increment funds which it receives pursuant to the terms and conditions of the Redevelopment Plan in accordance with Article XVI, Section 16 of the California Constitution, Section 96.6 of the California Revenue and Taxation Code, and Sections 33670 *et seq.* of the Community Redevelopment Law ("Tax Increment Revenues") to reimburse the Town for its cost of

the acquisition, installation, construction and/or reimbursement of public infrastructure improvements within the Project Area which are owned by the Town and located in the Town as generally described in Exhibit "A," attached hereto and made a part hereof (collectively, the "Project Improvements"); and

**WHEREAS**, VVEDA and the Town desire to enter into a reimbursement agreement in substantially the same form as Exhibit "B" attached hereto and incorporated herein by this reference (the "Reimbursement Agreement") in order to memorialize such reimbursement.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES HEREBY FIND, RESOLVE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1. Recitals**

The recitals set forth above are true and correct and incorporated herein by reference.

**Section 2. Findings**

The Town Council of the Town of Apple Valley (the "Town Council"), pursuant to Section 33445(a) of the Community Redevelopment Law, finds and determines, based on the information made available in the staff report and other such written and oral evidence presented to the Town Council, the following:

1. That VVEDA's reimbursement of the cost of the Project Improvements described herein is a benefit to the Project Areas;
2. That there are no other reasonable alternative means of financing the cost of the Project Improvements;
3. That VVEDA's reimbursement of the costs of the Project Improvements will assist in the elimination of physical and economic blighting conditions within that portion of the Project Area which is located within the Town and is in the vital and best interest of the Town and its residents; and
4. VVEDA's reimbursement of the costs of the Project Improvements is consistent with the Implementation Plan previously adopted by VVEDA.

**Section 3. Ratification and Acceptance**

The Town Council hereby accepts VVEDA's reimbursement of the costs of the Public Improvements as provided in the Reimbursement Agreement and subject to the terms and conditions set forth therein.

**Section 4. Reimbursement Agreement**

The Town Council hereby approves the form of the Reimbursement Agreement substantially in the same form as Exhibit "B" attached hereto and ratifies any actions previously taken to execute and deliver the Agreement.

**Section 5. Other Acts**

Each officer of the Town, including the Town Attorney, is hereby authorized and directed, jointly and severally, to execute and deliver such documents and instruments and to do such things which may be necessary or proper to effectuate the purposes of this Resolution, and any such actions previously taken by such officers are hereby ratified, approved and confirmed.

**Section 6. Effective Date**

This Resolution shall take effect upon its adoption.

**Section 7. Certification**

The Town Clerk shall certify to the passage and adoption of this Resolution; shall enter the same in the book of original Resolutions of the Town; and shall make a minute of passage and adoption thereof in the records of the proceedings of the Town Council, in the minutes of the meeting at which this Resolution is passed and adopted.

Adopted by the Town Council and signed by the Mayor and attested by the Town Clerk this 12<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
Scott Nassif, Mayor

ATTEST:

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

## **EXHIBIT "A"**

### **PROJECT IMPROVEMENTS**

This is a list of projects which are intended to be examples of projects which constitute the Project Improvements for purposes of the Agreement. Such list is not intended to be comprehensive or restrictive but rather to demonstrate the types of projects which may be considered Project Improvements subject to the terms of the Agreement. These items include, but are not limited to:

- Road Improvements
- Sewer Improvements
- Water Improvements
- Utility Improvements (gas, electrical, etc.)
- Storm Drain/Channel Improvements

## EXHIBIT "B"

### REIMBURSEMENT AGREEMENT by and between VICTOR VALLEY ECONOMIC DEVELOPMENT AUTHORITY and TOWN OF APPLE VALLEY

**THIS REIMBURSEMENT AGREEMENT** is made and entered into as of this 12th day of April, 2011 (the "Agreement") by and between the Victor Valley Economic Development Authority, a California joint powers authority ("VVEDA"), and the Town of Apple Valley, a municipal corporation and charter Town organized and existing under the constitution and laws of the State of California and the Town's charter (the "Member"), collectively the "Parties."

#### RECITALS:

**WHEREAS**, in 1988, the Defense Base Closure and Realignment Commission recommended that former George Air Force Base, now located in Town of Apple Valley, California and known as Southern California Logistics Airport (the "Airport") be closed, which closure has occurred; and

**WHEREAS**, in response to the closure, several of the local communities adjacent and in proximity to the Airport deemed it desirable to form a joint powers authority to create the Victor Valley Economic Development Authority ("VVEDA") to, among other things, provide for the effective reuse of the Airport; and

**WHEREAS**, VVEDA was established under the California Joint Powers Act, Government Code sections 6500 *et seq.* (the "Joint Powers Act"), and was formed pursuant to the provisions of a certain joint exercise of powers agreement, as amended (the "VVEDA Joint Exercise of Powers Agreement"); and

**WHEREAS**, in December of 1993, VVEDA caused the adoption of a Redevelopment Plan, as hereunder described, and as amended, in accordance with the provisions of the Community Redevelopment Law, which redevelopment plan includes the Airport and adjacent properties (the "VVEDA Redevelopment Plan"); and

**WHEREAS**, in accordance with the terms of the VVEDA Joint Exercise of Powers Agreement, VVEDA has delegated certain decision-making authority to the Member with respect to the administration of the VVEDA Redevelopment Plan in relation to that portion of the Project Area subject to the Redevelopment Plan (the "Project Area") which is located within the Member's territorial jurisdiction; and

**WHEREAS**, VVEDA desires to use tax increment funds which it receives pursuant to the terms and conditions of the VVEDA Joint Exercise of Powers Agreement and the Redevelopment Plan in accordance with Article XVI, Section 16 of the California Constitution, Section 96.6 of the California Revenue and Taxation Code, and Sections 33670 *et seq.* of the Community Redevelopment Law ("Tax Increment

Revenues”) to reimburse the Member for its cost of the acquisition, installation, construction and/or reimbursement of public infrastructure improvements within the Project Area owned by the Member and located in the Member’s territorial jurisdiction, as generally described on Exhibit “A,” attached hereto and made a part hereof (collectively, the “Project Improvements”).

**NOW THEREFORE**, the Parties to this Reimbursement Agreement agree as follows:

**Section 1. Term**

This Agreement shall remain in full force and effect until all the Project Improvements are completed and the Member’s costs are reimbursed by VVEDA pursuant to the terms of this Agreement.

**Section 2. Reimbursement Payments**

VVEDA hereby agrees to reimburse the Member for all costs associated with the Project Improvements that have been or will be paid or provided for initially by the Member either directly or through reimbursement in the cumulative total amount not to exceed Tax Increment Revenues made available to VVEDA for the lifetime of the Redevelopment Plan, as may be extended from time to time, subject to the provisions of the VVEDA Joint Exercise of Powers Agreement, less any debt service obligations. This reimbursement obligation shall constitute an indebtedness of VVEDA, which indebtedness shall be payable out of taxes levied in the Project Area and out of any other available funds, in periodic payments as agreed upon by the Parties.

**Section 3. Administrative Services Costs**

The Member agrees to provide for VVEDA such staff assistance, supplies, technical services and other services and facilities of the Member as VVEDA may require in carrying out its functions to implement or facilitate the planning, installation, construction and completion of the Project Improvements, with such assistance and services including, but not limited to, the services of officers and employees and special consultants. The Member will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof in order that an accurate record of VVEDA’s liability to the Member can be ascertained. The Member shall periodically, but not less than annually, submit to VVEDA a statement of the costs incurred by the Member in rendering activities and services of the Member to VVEDA pursuant to this Agreement. Such statement of costs may include a proration of the Member’s administrative and salary expenses attributable to services of Member officials, employees and departments rendered for VVEDA. VVEDA agrees to reimburse the Member for all costs incurred for services by the Member pursuant to this Agreement from the funds available to VVEDA for such purpose pursuant to Section 33670 of the Health and Safety Code or from other sources. Although the Parties recognize that payment may occur over a period of time, it is the express intent of the parties that the Member shall be entitled to repayment of the expenses incurred by the Member under this Agreement, consistent with VVEDA’s financial ability, in order to make the Member whole as soon as practically possible. In addition, the Member agrees to include VVEDA within the terms of the Member’s insurance policies. VVEDA shall pay to the

Member its pro rata share of the costs of insurance and other activities constituting general overhead costs incurred by the Member.

**Section 4. Pledge of Tax Increment Revenues**

VVEDA hereby pledges and grants to the Member a security interest in and lien on the Tax Increment Revenues, except such pledge shall be subordinate to any existing bonds, notes, or other forms of indebtedness incurred by VVEDA or as otherwise agreed upon by the Parties.

**Section 5. Additional Obligations**

Nothing herein shall limit VVEDA's ability to incur additional obligations with a lien on and pledge of the Tax Increment Revenues. The Parties do hereby agree that in such event, the Tax Increment Revenues granted hereunder shall, subject to the Member's prior written consent which shall not be unreasonably withheld, be considered subordinate to those additional obligations.

**Section 6. Liability of Agency Limited to Tax Revenues**

Notwithstanding anything herein contained, VVEDA shall not be required to make any reimbursement payments from any source of income other than the Tax Increment Revenues or other legally available funds.

**Section 7. No Personal Liability**

No member, officer or employee of VVEDA shall be individually or personally liable for the reimbursement payments hereunder; but nothing herein contained shall relieve any member, officer or employee of VVEDA from the performance of any official duty provided by law.

**Section 8. Section Headings and References**

The Section headings shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

**Section 9. Partial Invalidity**

If any one or more of the agreements or covenants or portions thereof provided in this Agreement to be performed on the part of VVEDA should be contrary to law, then such agreement or agreements, covenant or covenants, or portions thereof, shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof.

**Section 10. Governing Law**

This Agreement shall be controlled by and construed in accordance with the laws of the State of California and the United States Constitution, as the case may be.

**IN WITNESS WHEREOF**, VVEDA and the Town of Apple Valley have each caused this Agreement to be signed in its name by its authorized representative, as of the day and year first written above.

**TOWN OF APPLE VALLEY**

**VICTOR VALLEY ECONOMIC  
DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Scott Nassif, Mayor

\_\_\_\_\_  
Chairman

**ATTEST:**

**ATTEST:**

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

\_\_\_\_\_  
Authority Secretary

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mr. John Brown, Town Attorney

\_\_\_\_\_  
Authority Counsel