



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** February 14, 2017

From: Marc Puckett, Assistant Town Manager **Item No:** 9

Subject: INTERFUND LOAN AGREEMENT – GENERAL FUND/AVCE FUND

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

RECOMMENDED ACTION:

Adopt Interfund loan agreement between the General Fund and the Apple Valley Choice Energy Fund in an amount not-to-exceed \$2,500,000 for organizational and operational purposes for a term not-to-exceed seven (7) years.

SUMMARY:

Recently, the Town Council approved the implementation of a Community Choice Aggregation (CCA) plan to purchase and sell electricity to residents at a discount from the current private sector pricing structure. The CCA has been organized and will operate as Apple Valley Choice Energy (AVCE). In order to organize and implement the CCA, an Interfund loan is necessary as the new AVCE fund does not have sufficient resources at this time. Therefore, an Interfund loan between the General Fund and the AVCE Fund is proposed for a term not-to-exceed seven (7) years. This loan will be repaid to the General Fund with interest.

BACKGROUND:

The CCA is expected to begin operations on April 1. Council has adopted electric rates that will provide for a 3% discount from the existing Southern California Edison rates. As part of the implementation process, the Town has established a deposit account and a lockbox account that the energy providers will be paid from. Agreements with the energy providers require that the Town maintain a reserve in the lockbox account for the first five years of operation of the CCA. The initial reserve requirement is \$250,000. Also, as part of implementation process, the Town must pay the CPUC \$100,000 as part of the CCA

application process. Further, other costs such as attorney fees, bank fees and purchase of renewable energy are necessary. Resources will be transferred to the CCA only as needed and the loan repayment schedule attached hereto will be adjusted accordingly.

FISCAL IMPACT:

The General Fund loan will be repaid by the AVCE fund over a period of seven (7) years plus interest. No other additional costs are anticipated beyond those costs associated with the organization and capital required to initiate operations of the CCA.

CONCLUSION:

The Interfund loan agreement provides for a not to exceed loan from the General Fund to the AVCE Fund for a period not to exceed seven (7) years. The loan will be repaid to the General Fund plus interest with payments made semi-annually. The loan amount and repayment schedule will be adjusted based upon a determination of the final amount of capital necessary initially for organization and operation of the CCA.

Staff recommends adoption of the Interfund loan agreement between the General Fund and the AVCE Fund in an amount not to exceed \$2,500,000.

ATTACHMENT:

Interfund Loan Agreement

INTER-FUND LOAN AGREEMENT

by the

TOWN OF APPLE VALLEY

with reference to its

GENERAL FUND,

and

APPLE VALLEY CHOICE ENERGY (AVCE)] FUND

TOWN OF APPLE VALLEY
INTER-FUND LOAN AGREEMENT
(General Fund Loan to AVCE Fund)

THIS INTER-FUND LOAN AGREEMENT (this "Agreement") is made as of _____, 2017, by the TOWN OF APPLE VALLEY, a municipal corporation organized under the laws of the State of California (the "Town"), with reference to its GENERAL FUND (the "General Fund") and its APPLE VALLEY CHOICE ENERGY (AVCE) FUND (the "AVCE Fund"), with reference to the following recited facts:

RECITALS

A. WHEREAS, Town is authorized, pursuant to the Government Code as well as other applicable law, to exercise all rights and powers, expressed and implied, necessary to carry out its purposes; and

B. WHEREAS, it is desirous to establish a Community Choice Aggregation (CCA) program through AVCE to create savings for Town residents estimated to be 3% of residents' bills in the initial year of operation of the CCA; and

C. WHEREAS, the AVCE Fund is in need of initial operational capital assistance for the purposes of establishing the Community Choice Aggregation program; and

D. WHEREAS, it is projected that such inter-fund loan will be repaid to the General Fund within five years (or sooner) by the AVCE Fund; and

E. WHEREAS, the AVCE Fund does not have sufficient operating funds to establish the CCA without such a loan; and

F. WHEREAS, the Town desires to provide for the General Fund Loan, on the terms set forth in this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE TOWN AGREES, AS FOLLOWS:

ARTICLE 1

DEFINITIONS

1.1 **Defined Terms.** In addition to the usage of certain words, terms or phrases that are defined in the initial paragraph and Recitals of this Agreement, the following words, terms and phrases are used in this Agreement, as follows, unless the particular context of usage of a word, term or phrase requires another interpretation:

1.1.1 **“Biannual Due Date”** means each June 30 and December 31 of the Effective Date occurring between the Effective Date and the Maturity Date.

1.1.2 **“Available Revenues”** means all lawfully available and unrestricted revenues of AVCE, less all of the following: (i) payment of debt service or other amounts relating to any outstanding bonds of AVCE, whether existing as of the Effective Date or issued after the Effective Date; (ii) satisfaction of all obligations of the AVCE under existing loans and agreements (exclusive of this Agreement); and (iii) any other obligations of AVCE, incurred, established or agreed to prior to the Effective Date or to which this Agreement may be subordinated by the terms of this Agreement or by separate agreement.

1.1.3 **“Effective Date”** means the date on which this Agreement is approved by the Town of Apple Valley governing body.

1.1.4 **“Interest Rate”** means 5.25%.

1.1.5 **“Maturity Date”** means the tenth anniversary of the Effective Date.

1.1.6 **“Maximum Loan Amount”** means the amount of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00).

1.1.7 **“Person”** means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.1.8 **“AVCE”** means Apple Valley Choice Energy, a community choice aggregator organized under the laws of the State of California.

1.1.9 **“Town”** means the Town of Apple Valley, a municipal corporation and general law city organized under the laws of the State of California.

ARTICLE 2

AVCE FUND LOAN

2.1 **General Fund Loan to AVCE Fund for Organizational and Operational Expense.** The General Fund shall loan to the AVCE Fund an amount not to exceed the Maximum Loan Amount, for the payment of the Organizational and Operational Expense, on the terms and conditions set forth in Section 2.2. The General Fund Loan shall be evidenced by this Agreement.

2.2 Terms and Conditions of Loans.

2.2.1 Disbursement. The General Fund shall disburse money to the AVCE Fund for the Organizational and Operational Expense not to exceed the Maximum Loan Amount.

2.2.2 Repayment. The AVCE Fund shall repay amounts disbursed under the General Fund Loan and any interest becoming due under this Agreement solely from Available

Revenues. To the extent that there is an outstanding balance or interest due under the General Fund Loan, the AVCE Fund shall pay the General Fund amounts due and owing, on or before each Annual Due Date, from Available Revenues; provided, however, if Available Revenues are not sufficient to pay all such amounts, any unpaid balance under the General Fund Loan (whether principal or interest) shall be carried forward to the succeeding year, without default, except as provided in Section 2.2.6. Attached as Exhibit A to this Agreement is an estimated repayment schedule for the General Fund Loan.

2.2.3 Application of Payments. Each payment under the General Fund Loan shall be credited in the following order: (i) costs, fees, charges, and advances paid or incurred by the General Fund regarding the General Fund Loan; (ii) interest payable under this Agreement; and (iii) outstanding principal under the General Fund Loan.

2.2.4 Interest. Any outstanding principal balance of the General Fund Loan that is not paid on or before the next Annual Due Date shall bear interest at the Interest Rate, from such Annual Due Date until paid.

2.2.5 Usury. This Agreement is expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of the General Fund Loan or otherwise, shall the amount paid or agreed to be paid to the General Fund for the use, forbearance, or retention of the money to be advanced under the General Fund Loan exceed the highest lawful rate permissible under applicable law. If, under any circumstances, fulfillment of any provision of the General Fund Loan, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then the obligations to be fulfilled shall be reduced to the maximum limit of such validity. If, under any circumstances, the Operating Funds shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under the General Fund Loan and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under the General Fund Loan, such excess shall be refunded to the Operating Funds.

2.2.6 Obligations at Maturity. Any amounts of principal or interest becoming due under the General Fund Loan that are not repaid by the AVCE Fund on or before the Maturity Date, pursuant to the terms of this Agreement, shall be due and payable within ninety (90) days following the Maturity Date.

2.3 **Not a Pledge of Revenues from the AVCE Fund**. Notwithstanding any other provision of this Agreement, the AVCE Fund's obligations under this Agreement do not constitute a formal pledge of Available Revenues or any other revenues of the AVCE Fund. The AVCE Fund's repayment obligations under this Agreement shall be a special, limited fund obligation of the AVCE Fund, payable solely from Available Revenues. The AVCE Fund's obligations under this Agreement are subject and subordinate to payment of debt service or other amounts relating to any outstanding bonds to which the AVCE Fund is pledged and that were issued before or after the Effective Date, satisfaction of all obligations of the AVCE Fund under existing agreements of the Town or CCA (exclusive of this Agreement) and any other obligations of the AVCE Fund, incurred, established or agreed to prior to the Effective Date or to which this Agreement is subordinated by the terms of this Agreement or by separate agreement. The AVCE Fund's

obligations regarding repayment of the General Fund Loan shall be automatically junior and subordinate to any bonded indebtedness to which the AVCE Fund is pledged after the Effective Date, without further notice or action.

ARTICLE 3

GENERAL PROVISIONS

3.1 **Incorporation of Recitals.** The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

3.2 **Calculation of Time Periods.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to business days in this Agreement shall mean and refer to business days of the Town.

3.3 **Amendment.** No amendment or modification of this Agreement shall be effective, unless it is made in writing by the Town.

3.4 **Severability.** If any provision of this Agreement as applied to any Person or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision regarding another Person or under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

3.5 **Construction.** Unless otherwise indicated, all article and section references are to the articles and sections of this Agreement. The headings used in this Agreement are provided for convenience of reference only and this Agreement shall be interpreted without reference to any headings. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. If the date on which any action is required to be taken under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day. The use of the word "or" in this Agreement shall also include the word "and." The use of the word "including" in this Agreement shall be interpreted as though followed by the phrase "without limitation."

3.6 **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California, without application of conflicts of laws principals.

3.7 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Town.

3.8 **Binding on Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

3.9 **Entire Agreement.**

3.9.1 This Agreement includes seven (7) pages that constitute the entire understanding and agreement regarding the subjects addressed in this Agreement.

3.9.2 This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all previous agreements with respect to the subjects addressed in this Agreement.

[EXECUTED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO
INTER-FUND LOAN AGREEMENT
(General Fund Loan to AVCE Fund)**

IN WITNESS WHEREOF, the Town executes this Agreement with reference to its General Fund and AVCE Fund, to evidence the obligations of each such fund under the terms and conditions of this Agreement.

TOWN OF APPLE VALLEY

By: _____
Frank Robinson, Town Manager

ATTEST:

By: _____
La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP

By: _____
John Brown, Town Attorney

EXHIBIT A
ESTIMATED REPAYMENT SCHEDULE

Loan Amount:	\$2,500,000.00	Scheduled Payment Amount:	\$256,612.90
Interest Rate (%):	5.25%	Total No. Payments:	14
Number of Years:	7	Total Payment Amount:	\$3,592,580.53
Number of Payments Per Year:	2	Total Interest Paid:	\$1,092,580.53
Start Date (optional):	June 30, 2017	Date of Last Payment:	31-Dec-2023

Payment No.	Date	Starting Balance	Payment Amount	Interest	Principal	Balance
1	6/30/2017	2,500,000.00	256,612.90	131,250.00	125,362.90	2,374,637.10
2	12/31/2017	2,374,637.10	256,612.90	124,668.45	131,944.45	2,242,692.66
3	6/30/2018	2,242,692.66	256,612.90	117,741.36	138,871.53	2,103,821.13
4	12/31/2018	2,103,821.13	256,612.90	110,450.61	146,162.29	1,957,658.84
5	6/30/2019	1,957,658.84	256,612.90	102,777.09	153,835.81	1,803,823.03
6	12/31/2019	1,803,823.03	256,612.90	94,700.71	161,912.19	1,641,910.85
7	6/30/2020	1,641,910.85	256,612.90	86,200.32	170,412.58	1,471,498.27
8	12/31/2020	1,471,498.27	256,612.90	77,253.66	179,359.24	1,292,139.04
9	6/30/2021	1,292,139.04	256,612.90	67,837.30	188,775.60	1,103,363.44
10	12/31/2021	1,103,363.44	256,612.90	57,926.58	198,686.31	904,677.13
11	6/30/2022	904,677.13	256,612.90	47,495.55	209,117.35	695,559.78
12	12/31/2022	695,559.78	256,612.90	36,516.89	220,096.01	475,463.77
13	6/30/2023	475,463.77	256,612.90	24,961.85	231,651.05	243,812.73
14	12/31/2023	243,812.73	256,612.90	12,800.17	243,812.73	0.00

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