

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

ADOPT RESOLUTION 2009-38, APPROVING A REIMBURSEMENT AGREEMENT, A CUSTODY AGREEMENT AND A SECURITY AGREEMENT IN CONNECTION WITH THE SUBSTITUTION OF A LETTER OF CREDIT RELATING TO THE VARIABLE RATE DEMAND REFUNDING CERTIFICATES OF PARTICIPATION (TOWN CENTER PROJECT) SERIES 2001, AND AUTHORIZIING OFFICAL ACTIONS AND EXECUTION OF DOCUMENTS RETLATED THERETO

Summary Statement:

In 2001 the Town of Apple Valley issued Variable Rate Demand Refunding Certificates of Participation (COPS). With the issuance of the COPS the Town of Apple Valley entered into an irrevocable direct pay letter of credit with Allied Irish Banks, plc. The letter of credit is set to expire on September 21, 2009 and the Bank has informed the Town that it is not intending to extend the letter of credit beyond the scheduled expiration date.

The Town has procured a commitment from Union Bank, N.A. to issue a letter of credit pursuant to the terms of a reimbursement agreement by and between Union Bank and the Town of Apple Valley, the payment obligations of the Town under which will be secured by the pledge of security interest in certain collateral pursuant to the terms of a security agreement by and between the Town and Union Bank.

Recommended Action:

1. Adopt Resolution 2009-38, approving a reimbursement agreement, a custody agreement and a security agreement in connection with the substitution of a letter of credit relating to the variable rate demand refunding certificates of participation (Town center project) series 2001, and authorizing official actions and execution of documents related thereto.

Proposed by: William Pattison, Asst. Town Manager

Item Number _____

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

RESOLUTION NO. 2009-38

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY APPROVING A REIMBURSEMENT AGREEMENT, A CUSTODY AGREEMENT AND A SECURITY AGREEMENT IN CONNECTION WITH THE SUBSTITUTION OF A LETTER OF CREDIT RELATING TO THE VARIABLE RATE DEMAND REFUNDING CERTIFICATES OF PARTICIPATION (TOWN CENTER PROJECT) SERIES 2001, AND AUTHORIZING OFFICIAL ACTIONS AND EXECUTION OF DOCUMENTS RELATED THERETO

WHEREAS, the Redevelopment Agency of the Town of Apple Valley and the Town of Apple Valley (the "Town") have previously caused the execution and delivery of the Variable Rate Demand Refunding Certificates of Participation (Town Center Project) Series 2001 (the "Certificates"); and

WHEREAS, the payments of principal and up to 103 days accrued interest (but not any premium), and purchase price, with respect to the Certificates bearing interest at an adjustable interest rate are supported by an irrevocable direct pay letter of credit (the "AIB LOC") issued by Allied Irish Banks, p.l.c., New York Branch ("AIB"); and

WHEREAS, the AIB LOC is scheduled to expire on September 21, 2009 and AIB has informed the Town that it is not intending to extend the AIB LOC beyond the scheduled expiration date; and

WHEREAS, the Town has procured a commitment from Union Bank, N.A. ("Union Bank") to issue a letter of credit (the "Union Bank LOC"), pursuant to the terms of a reimbursement agreement by and between Union Bank and the Town (the "Reimbursement Agreement"), the payment obligations of the Town under which will be secured by its pledge of security interest in certain collateral (the "Collateral") pursuant to the terms of a security agreement (the "Security Agreement") by and between the Town and Union Bank; and

WHEREAS, the Town intends that the Union Bank LOC, which shall have a term of not longer than two years and be terminable upon reasonable notice by the Town at any time, be substituted for the AIB LOC to provide credit enhancement in respect of the Certificates on an interim basis until a longer term credit instrument to enhance the Certificates is procured by the Town; and

WHEREAS, the Town Council has reviewed the documentation related to the Union Bank LOC, which documentation is on file with the Town Clerk of the Town of Apple Valley; and

WHEREAS, the Town Council desires to approve such agreements;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, AS FOLLOWS:

Section 1. The Town Council hereby approves the Reimbursement Agreement, the Custody Agreement and the Security Agreement (the “Agreements”) in substantially the forms annexed hereto. The Mayor, the Mayor Pro Tem, the Town Manager and the Assistant Town Manager (each, a “Responsible Officer”), are hereby authorized to execute the Agreements in substantially the forms annexed hereto, with such revisions, amendments and completions as shall be approved by a Responsible Officer, with the advice of Bond Counsel, such approval to be conclusively evidenced by the execution and delivery thereof

Section 2. The Town Council hereby directs that the Collateral be maintained at all times invested in debt obligations the interest on which is excluded from gross income under section 103(a) of the Internal Revenue Code of 1986 (the “Code”) and is not a “specified private activity bond” under section 57(a)(5)(C) of the Code or in such other investments as in the opinion of nationally recognized bond counsel will not adversely affect the exclusion under section 103(a) of the Code of the interest components of distributions on the Certificates from the gross income of the owners thereof for federal income tax purposes.

Section 3. The Town Council hereby directs the Responsible Officers to work diligently to have the security interest in the Collateral released on the earliest possible date (whether through the procurement of an alternative credit enhancement that does not require this type of collateral or otherwise) but, the Town covenants that should such pursuit be unsuccessful, then it will prepay the Certificates by no later than September 21, 2011.

Section 4. The Mayor, the Vice-Mayor, the Town Manager, the Assistant Town Manager, the Town Clerk, and any and all other officers of the Town are hereby authorized and directed, for and in the name and on behalf of the Town, to do any and all things and take any and all actions, including the execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, deem necessary or advisable in order to consummate the transactions as described herein.

Section 5. This Resolution shall take effect immediately upon adoption.

Approved and adopted this 11th day of August 2009.

Mayor

ATTEST:

Town Clerk