

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

A REQUEST FOR ADOPTION OF RESOLUTION 2011-28 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 PROPOSED AMENDMENT NO. 1 TO THE REIMBURSEMENT AGREEMENT

Background:

Resolution No. 2011-11 and accompanying Reimbursement Agreement were approved by the Apple Valley Town Council at its April 12, 2011 meeting.

Summary Statement:

The Victor Valley Economic Development Authority (VVEDA) Technical Advisory Committee convened on April 20, 2011, whereby the previously approved Reimbursement Agreement was brought forward for further discussion. Member jurisdictions expressed concerns over the need for additional language in the Reimbursement Agreement. At the VVEDA Technical Advisory Committee and Special Board meeting held May 18, 2011, the VVEDA Counsel brought forward an amended agreement for distribution to its member jurisdictions for approval and execution.

(continued)

Recommended Action:

That the Town Council Adopt Resolution No. 2011-28 and approve Amendment No. 1 to the Reimbursement Agreement between the Victor Valley Economic Development Authority and the Town of Apple Valley.

Proposed by: Emily Wong, Assistant Director of Economic Development Item Number _____

Town Manager Approval: _____ Budget Item Yes No N/A

Summary Statement Continued
Adopt Resolution 2011-28
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Amendment No. 1, as described in Exhibit "A", provides additional clarification language to strengthen our efforts to protect Victor Valley Economic Development Authority funds by specifying an effective date, as well as broadening the types of improvements eligible for reimbursement as described in Exhibit "B". It is the intent of the parties that the terms of Amendment No. 1 shall supersede and replace in their entirety the terms contained in the original Reimbursement Agreement.

A copy of the agreement, with the proposed changes underlined, is attached for your information.

RESOLUTION No. 2011-28

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 28th day of June, 2011.

MAYOR

ATTEST:

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"

**AMENDMENT NO. 1 TO
THE REIMBURSEMENT AGREEMENT
BY AND BETWEEN
VICTOR VALLEY ECONOMIC DEVELOPMENT AUTHORITY
AND
TOWN OF APPLE VALLEY**

THIS REIMBURSEMENT AGREEMENT (this "Agreement") is made and entered into (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"), and is dated as of this 28th day of June, 2011 for reference purposes only. VVEDA and the Member shall sometimes hereinafter be collectively referred to as the "Parties."

RECITALS:

WHEREAS, in 1988, the Defense Base Closure and Realignment Commission recommended that former George Air Force Base, now located in the City 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~~ certain improvements within the Project Area owned by the Member and located in the Member’s territorial jurisdiction, including, but not limited to public infrastructure improvements, or any associated costs incurred for which expenditure is appropriate under and consistent with the Community Redevelopment Law, as generally described on Exhibit “A,” attached hereto and made a part hereof (collectively, the “Project Improvements”).

WHEREAS, this Agreement shall not supplant or suspend required timely disbursements of low and moderate income housing funds by VVEDA to the Members as required by Community Redevelopment Law and the provisions of the Fourth Restated VVEDA Joint Exercise of Powers Agreement.

WHEREAS, it is the intent of the parties that the terms of Amendment No. 1 shall supersede and replace in their entirety the terms contained in the original Reimbursement Agreement.

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

Section 1. **Recitals**

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

Section 2. **Term**

The term of this Agreement shall commence upon the Effective Date, as hereinafter defined, and 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 (the “Term”).

Section 3. **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 (the “Available Tax Increment Revenues”). For purposes of this Agreement, Available Tax Increment Revenues shall include only the amount available to the Member pursuant to the terms

and conditions of the VVEDA Joint Exercise of Powers Agreement. Further, the Parties do hereby acknowledge and agree that the Available Tax Increment Revenues shall not include any debt service obligations of VVEDA, or any of its members, which are to be paid out of the Tax Increment Revenues as contemplated by the VVEDA Joint Exercise of Powers Agreement. This reimbursement obligation shall constitute an indebtedness and enforceable obligation 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, and subject to the terms and conditions of the VVEDA Joint Exercise of Powers Agreement.

Section 4. Administrative Services Costs

Commencing January 1, 2011, and for the life of the Redevelopment Plan, including any amendments thereto, 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 within thirty (30) calendar days of receipt of said statement of costs from the Member. 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. Any monies due and payable to the Member, and not paid within thirty (30) calendar days pursuant to this section shall, to the extent permitted by law, accrue interest at the annual (averaged) Local Agency Investment Fund ("LAIF") rate or three percent (3%), whichever is greater. In the event VVEDA is in arrears of any obligations to its Members pursuant to this section, it shall retire such obligations prior to incurring any other costs debts, excepting a reasonable annual operating budget approved unanimously by the members, chargeable to Tax Increment Revenues. 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 5. 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 6. Additional Obligations

Nothing herein shall limit VVEDA's ability to incur additional obligations with a lien on and pledge of the Tax Increment Revenues, subject to the terms and conditions of the VVEDA Joint Exercise of Powers Agreement and Section 4 of this Agreement. The Parties do hereby agree that in such event, the Available Tax Increment Revenues granted hereunder shall, subject to the Member's sole and absolute discretion and evidenced by its prior written consent, be considered subordinate to those additional obligations. Notwithstanding anything to the contrary provided for in this Agreement, at no time may VVEDA encumber, pledge, hypothecate, or otherwise expend any Tax Increment Revenues, including, but not limited to, the Member's Available Tax Increment Revenues, in a manner which is contrary to the VVEDA Joint Exercise of Powers as set forth in the Fourth Amended Joint Exercise of Powers Agreement.

Section 7. 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 8. 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 9. 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 10. 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 11. **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.

Section 12. **Effect on VVEDA Joint Exercise of Powers Agreement**

Nothing in this Agreement shall be construed so as to provide for the disbursement of the Tax Increment Revenues to the Member, or any other member of VVEDA, in a manner which is inconsistent with the ~~Fourth Amended~~ VVEDA Joint Exercise of Powers Agreement and any amendments thereto.

Section 13. **Effective Date**

Time is of the essence in the implementation of this Agreement. For purposes of this Agreement, the Effective Date shall be January 1, 2011 (the "Effective Date"). Notwithstanding the foregoing, the Parties do hereby acknowledge and agree that the effectiveness of this Agreement is expressly conditioned on the Legislature of the State of California adopting legislation eliminating redevelopment agencies, and this Agreement shall be of no force and effect until such time.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

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 indicated below.

TOWN OF APPLE VALLEY

**VICTOR VALLEY ECONOMIC
DEVELOPMENT AUTHORITY**

Mayor
Dated: _____

Chairman
Dated: _____

ATTEST:

ATTEST:

City Clerk

Authority Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Authority Counsel