

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

APPROVAL OF A COMMUNITY REMITTANCE AGREEMENT AND ADOPTION OF ACCOMPANYING RESOLUTIONS.

BACKGROUND

At its meeting on August 9, 2011, the Town Council introduced Urgency Ordinance No. 422 which determined the Town will comply with the State's Voluntary Alternative Redevelopment Program, under certain conditions, pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in order to permit the continued existence and operation of the Redevelopment Agency of the Town of Apple Valley.

Summary Statement:

To effect payment, the Town and the Agency can enter into a "Community Remittance Agreement" as contemplated by the legislation. By this agreement, the Agency would commit to transfer sufficient funds to the Town to make the required payments. Such an agreement would be necessary for the Agency to transfer funds to the Town to comply with the legislation. By entering into this Agreement the Town is free from committing General Fund Revenue or other Town assets to pay the remittance. The proposed Town and Agency Resolutions approve such a "Community Remittance Agreement."

(Continued)

Recommendation:

1. That the Town Council and Agency Board approve a conditional Community Remittance Agreement pursuant to California Health and Safety Code Section 34194.2
2. That the Town Council adopt RDA Resolution No. 2011-06, a resolution of the Town of Apple Valley conditionally approving a Community Remittance Agreement pursuant to California Health and Safety Code Section 34194.2
3. That the Town Council and Agency Board adopt RDA Resolution No. 2011-07, a resolution of the Apple Valley Redevelopment Agency conditionally approving a Community Remittance Agreement pursuant to California Health and Safety Code Section 34194.2
4. That the Agency Board adopt RDA Resolution No. 2011-08, a resolution of the Apple Valley Redevelopment Agency conditionally reducing its allocation to the Low and Moderate Income Housing Fund for the 2011-12 fiscal year and making certain findings and determinations.

Proposed by: Economic & Community Development Item Number _____

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

Council Meeting Date: 09/27/11

ABx1 27 also allows the Agency to reduce its allocation of tax increment to the Low and Moderate Income Housing Fund for the 2011-12 fiscal year only if the Town complies with the provisions of ABx1 27 and the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority programs or its obligations under the Remittance Agreement. RDA Resolution No. 2011-08 allows the Agency to reduce its otherwise required allocation to the Agency's Low and Moderate Income Housing Fund for FY 11-12, including a finding that there are insufficient other moneys available to the Agency to meet the Agency's debt and other obligations, current priority program needs and its obligations under the legislation to make the required remittances.

On July 18, 2011, the California Redevelopment Association and the League of California Cities filed a lawsuit challenging the constitutionality of these two bills. The lawsuit also sought a stay to enable agencies to continue operating without opting into the Program while the case is being decided. The California Supreme Court has agreed to hear this issue and has issued a stay related to ABx1 26 and ABx1 27. Even though the Town had adopted an Urgency Ordinance prior to the stay and the stay relates to this issue, staff believes it is in the Town and Agency's best interest to approve the agreement and adopt the related resolutions at this time in order to preserve our rights under ABx1 27 should it not be overturned by the Court. Pursuant to the Court order, the enforcement of ABx1 27 is suspended until the litigation is resolved. The adoption of the Community Remittance Agreement, its related resolutions, including the resolution allowing the Agency to reduce its otherwise required allocation to the Agency's Low and Moderate Income Housing Fund for FY 11-12 and use of those funds to pay the Program, will be contingent upon the stay being lifted and ABx1 27 being validated by the Court.

The following documents are attached for your information:

1. Conditional Remittance Agreement Pursuant to California Health and Safety Code Section 394.2 (Exhibit 1).
2. RDA Resolution No. 2011-06 a Resolution of the Town of Apple Valley conditionally approving a Remittance Agreement Pursuant to California Health and Safety Code Section 34194.2 (Exhibit 2).
3. RDA Resolution No. 2011-07 a Resolution of the Apple Valley Redevelopment Agency conditionally approving a Remittance Agreement Pursuant to California Health and Safety Code Section 34194.2 (Exhibit 3).
4. RDA Resolution No. 2011-08 a Resolution of the Apple Valley Redevelopment Agency conditionally Reducing its Allocation to the Low and Moderate Income Housing Fund for the 2011-12 Fiscal Year and Making Certain Findings and Determinations (Exhibit 4).

COMMUNITY REMITTANCE AGREEMENT

(CALIFORNIA HEALTH AND SAFETY CODE SECTION 34194.2)

This COMMUNITY REMITTANCE AGREEMENT (“Agreement”) is entered into this 27th day of September, 2011, by and between the TOWN OF APPLE VALLEY, a California municipal corporation (the “Town”), and the APPLE VALLEY REDEVELOPMENT AGENCY, a public body, corporate and politic (the “Agency”). The Town and the Agency (collectively, the “Parties” and individually, a “Party”) enter into this Agreement with reference to the following:

RECITALS

A. By previous actions duly and regular taken, the Town Council for the Town approved and adopted the Redevelopment Plan for the Apple Valley Redevelopment Agency, as amended from time to time (the “Redevelopment Plan”), covering certain properties located within the Town and defined in the Redevelopment Plan as the Project Area 2 (the “Project Area”).

B. The Agency has been and is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (“CRL”).

C. Since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private parties to create jobs and expand the local economy.

D. Over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, and increase, improve, and preserve the Town’s supply of low and moderate income housing.

E. As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, from the 2011-12 First Extraordinary Session, Assembly Bills 26 and 27 (“ABx1 26” and “ABx1 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments.

F. Specifically, ABx1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011.

G. ABx1 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL by

enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code ("Part 1.9").

H. The Alternative Voluntary Redevelopment Program requires that the Town agree by ordinance to remit specified annual amounts to the Apple Valley County Auditor-Controller ("County Auditor").

I. Town adopted Ordinance 422 at its August 9th Meeting as specified by ABx1 27 ("Ordinance") agreeing to participate in the "opt-in" Alternative Voluntary Redevelopment Program and to remit specified annual amounts in accordance therewith.

J. Pursuant to Health and Safety Code Section 34194.1, in making remittances to the County Auditor pursuant to Health and Safety Code Sections 34194 or 34194.5, the Town may use any available funds not otherwise obligated for other uses.

K. Pursuant to Health and Safety Code Section 34194.2 ("Section 34194.2"), the Town may enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the Town, in an amount not to exceed the annual remittance required that year pursuant to Chapter 3 of Part 1.9.

L. The purpose of this Agreement is to provide for the transfer of funds by the Agency to the Town pursuant to the authorization in Section 34194.2, with said transfer of funds to be in an amount not to exceed the annual amount that is sufficient for the Town, directly or indirectly, to make the remittances required by Chapter 3 of Part 1.9 for the applicable fiscal year.

M. Pursuant to Health and Safety Code Section 34194.3, for Fiscal Year 2011-12, the Agency, by complying with the provisions of Part 1.9, shall be exempt from making the full allocation required to the Agency's Low and Moderate Income Housing Fund required pursuant to Health and Safety Code Sections 33334.2, 33334.4 and 33334.6 ("Housing Fund") upon the Agency making the finding that there are insufficient other moneys available to meet its debt and other obligations, current priority program needs, or its obligations under Section 34194.2. In accordance with Section 34194.3, the Agency hereby finds and determines that the full allocation of the Agency's Housing Funds for Fiscal Year 2011-12 (the "FY 2011-12 Housing Fund Tax Increment Funds") cannot occur because the Agency has insufficient other moneys available to meet its debt and other obligations, current priority program needs, and its remittance payment obligations under Section 34194.2. The Agency makes these findings and determinations based on evidence that is on file with the Agency Secretary and has been presented to the Agency Board of Directors, which include the Agency's operating and capital budget, the Agency's current debt service obligations, current and ongoing third party contractual obligations, and current projects and programs occurring throughout the community.

N. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan for the Project Area.

O. Town understands and believes that an action or actions challenging the validity of ABx1 26 and ABx1 27 has or have been, or may be, filed on behalf of cities, counties and redevelopment agencies. While the Town intends to make the remittances as provided for in ABx1 27, and pursuant to this Agreement, the remittances shall be made under protest and without prejudice to the Town's right to recover such amounts and interest thereon, to the extent there is a final determination by a court of competent jurisdiction that ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise unlawful. The Town reserves the right, regardless of any remittance made pursuant to this Agreement, to challenge the legality of ABx1 26 or ABx1 27, or both.

P. To the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of ABx1 26 and ABx1 27, the Town shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay. Moreover, to the extent that a court of competent jurisdiction determines that either ABx1 26 or ABx1 27, or both, are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, this Agreement shall be deemed null and void and of no further force and effect.

AGREEMENT

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated herein by this reference and are an integral part of this Agreement, the Parties mutually agree as follows:

1. Definitions. For purposes of this Agreement, "Available Agency Funds" shall mean, collectively, (a) any and all funds received and held by Agency not otherwise restricted or dedicated for a particular use, project, or program ("Unrestricted Agency Funds"), (b) the FY 2011-12 Housing Fund Tax Increment Funds, and (c) Net Available Tax Increment Funds. For purposes of this Agreement, "Net Available Tax Increment Funds" means any and all tax increment funds allocated to the Agency pursuant to Article XVI, Section 16 of the California Constitution and Health and Safety Code Section 33670 ("tax increment"), less the following: (i) tax increment funds committed to existing debt service payments and any interest payment thereon, (ii) tax increment funds for existing third-party contractual payment obligations, (iii) tax increment funds for statutory or contractual "pass-through" payment obligations to any taxing entities that have not been remitted to a taxing entity before the Agency's receipt of the amount of tax increment funds that otherwise must be remitted to the taxing entity, and (iv) tax increment funds on deposit in the Agency's Housing Fund (except FY 2011-12 Housing Fund Tax Increment Funds).

2. Agency Obligation to Transfer Funds to Town; Determination of Remittance Payment Amounts. The Agency shall transfer to the Town in a timely manner, from Available Agency Funds, amounts sufficient for the Town to make the remittance payments required by Part 1.9. The amounts of the remittance payments for each fiscal year shall be determined pursuant to Part 1.9, including Health and Safety Code Section 34194 ("Section 34194"). In the event that the Town disputes the State Director of Finance's determination of the Town's remittance payment amount for Fiscal Year 2011-12, as determined pursuant to Section 34194, the Town reserves the right to appeal to the State Director of Finance pursuant to Section 34194. The Town's remittance payment amount for Fiscal Year 2011-12 shall be the final remittance payment amount determined after any applicable appeal to the State Director of Finance, and each remittance payment amount for fiscal years after Fiscal Year 2011-12 shall be based upon the final remittance payment amount for Fiscal Year 2011-12, as determined after any applicable appeal to the State Director of Finance, as adjusted pursuant to Section 34194.

3. Town Obligation to Transfer Remittance Payment Amounts to County Auditor; Limited Obligation of Town; No Commitment of Funds from Town General Fund. Subject to the receipt of sufficient Available Agency Funds from the Agency, the Town shall, pursuant to Part 1.9, timely remit to the County Auditor the remittance payment amounts as determined pursuant to this Agreement. The Town's obligation to make such remittances shall be a special limited obligation of the Town payable solely from payments received from the Agency pursuant to this Agreement. Nothing contained in this Agreement shall be deemed to be or is a pledge or commitment of the Town's general fund revenues or other Town assets to make the remittance payments as provided for in Part 1.9, and any remittance payments shall be solely from payments received from the Agency pursuant to this Agreement.

4. Termination of Agreement and All Town-Agency Agreements Upon Termination of Town's Participation in Alternative Voluntary Redevelopment Program; Self-Executing. In the event that the Town does not make a remittance as required by Part 1.9 and the State Director of Finance makes the determination described in Health and Safety Code Section 34194(d)(2) or 34194.5 that the Agency shall be subject to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code, this Agreement and all Town-Agency Cooperation Agreements shall be terminated, and of no further force and effect, without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative. For purposes of this Agreement, "Town-Agency Cooperation Agreements" shall mean any and all agreements, whether written or oral or by arrangement or general practice, by and between the Town and Agency, which are not defined as "enforceable obligations" pursuant to Health and Safety Code Sections 34167 or 34170.5 (as may be amended from time to time) and which obligate the Agency to pay the Town any amount of money or other consideration, including but not limited to Town-Agency loan agreements that are not otherwise "enforceable obligations" (as defined above). It is the intent of the Town and Agency by agreeing to the terms and conditions of this Section 4 that, upon the termination of the Town's and Agency's participation in the Alternative Voluntary Redevelopment Program, neither the Town nor the Agency shall

owe any payments to either Party, and that no payments from the Agency to the Town pursuant to any Town-Agency agreement shall be assigned to the State as contemplated by Health and Safety Code Sections 34193.2 and 34195(b).

5. Reservation of Rights; Payments Under Protest; Termination of Agreement If ABx1 26 and/or 27 Ruled Unlawful; Self-Executing. The Town and Agency reserve any and all rights to challenge the legality of ABx1 26 and ABx1 27, and the Town and Agency reserve any and all rights to benefit from any other legal challenge that determines ABx1 26 or ABx1 27, or both, are unlawful. All remittance payments made by the Town pursuant to this Agreement shall be made under protest and without prejudice to the Town's right to recover such amounts and interest thereon unless and until there is a final determination by a court of competent jurisdiction that ABx1 26 and ABx1 27 are constitutional and the remittance payments required therein are legally enforceable payment obligations of the Town. For any action or actions challenging the validity of ABx1 26 or ABx1 27, or both, in the event that a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligations of ABx1 26 and ABx1 27, the Town shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay, unless and until there is a final determination by a court of competent jurisdiction that ABx1 26 and ABx1 27 are constitutional and the remittance payments required therein are legally enforceable payment obligations of the Town. For any action or actions challenging the validity of ABx1 26 or ABx1 27, or both, in the event that a court of competent jurisdiction determines that either ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise legally invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, this Agreement shall be terminated, and of no further force and effect, without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative.

6. Indebtedness of Agency Prior to October 1, 2011. The Agency's funding obligations in this Agreement are intended to and shall constitute an indebtedness of the Agency, incurred prior to October 1, 2011, within the meaning of Article XVI, Section 16 of the California Constitution and Health and Safety Code Sections 33670(b) and 34194(c)(2). The Agency shall include the total estimated indebtedness incurred by Agency pursuant to this Agreement on the Agency's annual statements of indebtedness that Agency is required to annually file pursuant to Health and Safety Code Section 33675 (or successor statute). The estimated total indebtedness incurred by the Agency pursuant to this Agreement is shown on Exhibit "A" attached hereto and incorporated herein by this reference. Any increase to the total estimated indebtedness that may occur after the Effective Date of this Agreement shall constitute indebtedness incurred prior to October 1, 2011.

7. Subordination. Agency's funding obligations hereunder shall be junior and subordinate to (i) all existing Agency tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (ii) all pledges by Agency of tax increments for tax allocation bonds or other direct long-term

indebtedness of Agency secured and to be repaid by tax increment funds, (iii) other Agency financial agreements or other contractual obligations of Agency with any person or entity not a party to this Agreement, including but not limited to any and all tax sharing or so-called “pass-through” agreements entered into between Agency and any taxing entity; (iv) any contingent obligations of Agency; and (v) other financial agreements or other contractual obligations between the parties to this Agreement.

8. Non-Recourse Obligation. No officer, official, employee, agent, or representative of Agency or Town shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action herein shall be personally enforced against any such officer, official, employee, agent, or representative.

9. Indemnity. In contemplation of Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being a party to an agreement defined by Government Code Section 895, the Parties hereto, as between themselves, agree that the Agency shall indemnify, defend, and hold harmless the Town for any loss, costs, or expenses that may be imposed upon the Town by virtue of a third party prevailing in a legal challenge to the validity, enforceability, or administration of this Agreement. The provisions of Civil Code Section 2778 shall be applicable to this Agreement.

10. Entire Agreement and Full Integration. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

11. Intended Parties; No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Town and the Agency, and their respective successors in interest; provided, however, that this Agreement shall be terminated in accordance with the terms and conditions set forth above in the event that the Town or any other public agency becomes the “successor agency” to the Agency pursuant to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code. The Town and Agency expressly covenant that there shall be no third party beneficiaries under this Agreement.

12. Waiver. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the Parties.

13. Severability. Each provision of this Agreement shall be severable from the whole, and if any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall remain in full force and effect.

14. Counterparts. This Agreement may be executed in duplicate originals, each of which shall be deemed to be an original.

15. Acknowledgment of Litigation Challenging ABx1 26 and ABx1 27. As of the date of approval of this Agreement, the California Supreme Court has exercised

original jurisdiction in *California Redevelopment Association, et al., Petitioners v. Ana Matosantos, et al., Respondents*, Case No. S194861, a lawsuit challenging the constitutionality and validity of ABx1 26 and ABx1 27. In conjunction with exercising original jurisdiction in that case, the Court issued a partial stay on the enforcement of ABx1 26 and ABx1 27 and the Court has indicated its intent to issue a ruling in the case in January 2012. As such, this Agreement is executed and entered subject to the condition subsequent that the Court upholds the constitutionality and validity of both ABx1 26 and ABx1 27 which would then implement the Town's remittance payment obligation under ABx1 27, as described in the Recitals of this Agreement, and require the payments by the Agency to the Town as provided in this Agreement and subject to the terms of this Agreement. As set forth in Section 5 of this Agreement, if the California Supreme Court, or any other court, determines that either ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise legally invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal there from has lapsed, this Agreement shall automatically, and without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative, be terminated and of no further force and effect.

EXHIBIT "A"

**ESTIMATED TOTAL INDEBTEDNESS
PURSUANT TO THIS AGREEMENT**

REDEVELOPMENT AGENCY OF THE TOWN OF APPLE VALLEY
SCHEDULE OF REMITTANCES
EXHIBIT A

Schedule assumes a 1% increase in property value per year

Estimated Remittance Amount by Fiscal Year	
2011-12	\$ 1,631,773.00
2012-13	\$ 383,446.00
2013-14	\$ 387,280.46
2014-15	\$ 395,026.07
2015-16	\$ 402,926.59
2016-17	\$ 410,985.12
2017-18	\$ 419,204.82
2018-19	\$ 427,588.92
2019-20	\$ 436,140.70
2020-21	\$ 444,863.51
2021-22	\$ 453,760.78
2022-23	\$ 462,836.00
2023-24	\$ 472,092.72
2024-25	\$ 481,534.57
2025-26	\$ 491,165.27
TOTAL FOR LIFE OF AGENCY	\$ 7,700,624.55

RDA RESOLUTION No. 2011-06

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA CONDITIONALLY APPROVING AND AUTHORIZING THE EXECUTION OF A COMMUNITY REMITTANCE FUNDING AGREEMENT BY AND BETWEEN THE TOWN OF APPLE VALLEY AND THE REDEVELOPMENT AGENCY OF THE TOWN OF APPLE VALLEY PROVIDING FOR THE TRANSFER OF TAX INCREMENT REVENUE TO THE TOWN IN AN AMOUNT NOT TO EXCEED THE AMOUNT OF THE COMMUNITY REMITTANCE REQUIRED UNDER ABX1 27

WHEREAS, pursuant to the Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*), the Town Council of the Town of Apple Valley ("Town") created the Redevelopment Agency of the Town of Apple Valley ("Agency") to serve as the redevelopment agency within the Town; and

WHEREAS, the Agency has been responsible for implementing the Redevelopment Plan for Project Area 2 Redevelopment Project Area covering certain properties within the Town ("Project Area"); and

WHEREAS, as part of the 2011-2012 State budget bill, the California Legislature enacted, and the Governor signed, companion bills ABx1 26 and ABx1 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, ABx1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, ABx1 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, on August 9, 2011, the Town Council adopted Ordinance No. 422, stating the Town's election to participate in the program, subject to certain terms and conditions, and of its intent to notify the San Bernardino County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of such election ("Ordinance"); and

WHEREAS, participation in the Alternative Voluntary Redevelopment Program requires the Town to remit specified annual amounts to the county auditor-controller ("Community Remittance"); and

WHEREAS, the California Director of Finance has notified the Town that its Community Remittance for Fiscal Year 2011-2012 is One Million, Six Hundred Thirty-One Thousand, Seven Hundred and Seventy Three Dollars (\$1,631,773); and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861), challenging the constitutionality of ABx1 26 and ABx1 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement; and

WHEREAS, on August 11, 2011, the Supreme Court agreed to take the case and issued an order for the immediate stay of enforcement of ABx1 26 in part and ABx1 27 in its entirety, such that the Town and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program; and

WHEREAS, on August 17, 2011, the Supreme Court modified its order to clarify that Health and Safety Code Sections 34161 through 34169.5, enacted by ABX1 26, and Health and Safety Code Section 34194(b)(2), enacted by ABx1 27, are not stayed ("Court's Stay"); and

WHEREAS, California Health and Safety Code Section 34194.2 provides that the Town may enter into an agreement with the Agency, whereby the Agency will annually transfer tax increment revenue to the Town, in an amount not to exceed the amount of the Community Remittance for such fiscal year, for the purpose of financing activities within the Project Area related to the Agency's goals ("Agreement"); and

WHEREAS, because the Health and Safety Code Section 34194.2 is stayed by the Court's Stay, the Agency and the Town desire to enter into this agreement, effective on the condition that the Supreme Court orders that the Court's Stay be lifted or modified in a manner that permits the Agency and the Town to enter the agreement, to establish a yearly obligation of the Agency to transfer tax increment revenue to the Town on condition that the Agency's transfer of tax increment revenues to the Town and the Town's payment of the Community Remittance will be made only if there is a final determination that ABx1 26 and ABx1 27 are constitutional and the Ordinance electing to participate in the Alternative voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program; and

WHEREAS, the Town reserves the right, whether any Community Remittance has been paid, to challenge the legality of ABx1 26 and ABx1 27; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED, ordered, and determined by the Town Council of the Town of Apple Valley:

SECTION 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

SECTION 2. Finding. Upon consideration of the facts set forth in the staff report accompanying this Resolution and other written and oral evidence presented to the Town Council, the Town Council finds that the transfer of tax increment revenue from the Agency to the Town for the funding of the Community Remittance payment by the Town will:

(1) allow the Agency to remain in existence and continue to act to accomplish the Agency's goals in the Project Area and is in the best interests of the health, safety and welfare of the Town's residents; and (2) free the Town from committing general fund revenues or other Town assets to pay the Community Remittance for any fiscal year.

SECTION 3. Approval of Agreement. The Town Council hereby approves the Agreement in substantially the form attached hereto as Exhibit A and incorporated herein by reference. The Agreement shall be effective upon the Court's Stay being lifted or modified in a manner that permits the Agency and the Town to enter into the Agreement and the Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. The Agreement provides that the Agency's obligation to transfer tax increment revenues to the Town and the Town's payment of the Community Remittance will be conditioned upon: (1) a final determination that ABx1 26 and ABx1 27 are constitutional; and (2) the Ordinance being valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. The Town Council authorizes and directs the Town Manager to execute the Agreement on behalf of the Town, subject to any minor clarifying, conforming and technical changes as may be approved by Town Attorney. The Town Manager is further authorized and directed to take such actions and execute such documents as may be necessary to carry out the Town under the Agreement.

SECTION 4. CEQA. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 5. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Town Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 6. Certification. The Town Clerk shall certify to the adoption of this Resolution.

SECTION 7. Effective Date. This Resolution shall become effective upon its adoption.

APPROVED and **ADOPTED** by the Board of Directors of the Redevelopment Agency of the Town of Apple Valley this 27th day of September, 2011.

Scott Nassif, Chairman

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

John Brown, Town Attorney

Exhibit "A"

Conditional Community Remittance Funding Agreement

COMMUNITY REMITTANCE AGREEMENT

(CALIFORNIA HEALTH AND SAFETY CODE SECTION 34194.2)

This COMMUNITY REMITTANCE AGREEMENT (“Agreement”) is entered into this 27th day of September, 2011, by and between the TOWN OF APPLE VALLEY, a California municipal corporation (the “Town”), and the APPLE VALLEY REDEVELOPMENT AGENCY, a public body, corporate and politic (the “Agency”). The Town and the Agency (collectively, the “Parties” and individually, a “Party”) enter into this Agreement with reference to the following:

RECITALS

A. By previous actions duly and regular taken, the Town Council for the Town approved and adopted the Redevelopment Plan for the Apple Valley Redevelopment Agency, as amended from time to time (the “Redevelopment Plan”), covering certain properties located within the Town and defined in the Redevelopment Plan as the Project Area 2 (the “Project Area”).

B. The Agency has been and is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (“CRL”).

C. Since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private parties to create jobs and expand the local economy.

D. Over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, and increase, improve, and preserve the Town’s supply of low and moderate income housing.

E. As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, from the 2011-12 First Extraordinary Session, Assembly Bills 26 and 27 (“ABx1 26” and “ABx1 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments.

F. Specifically, ABx1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011.

G. ABx1 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by

enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code ("Part 1.9").

H. The Alternative Voluntary Redevelopment Program requires that the Town agree by ordinance to remit specified annual amounts to the Apple Valley County Auditor-Controller ("County Auditor").

I. Town adopted Ordinance 422 at its August 9th Meeting as specified by ABx1 27 ("Ordinance") agreeing to participate in the "opt-in" Alternative Voluntary Redevelopment Program and to remit specified annual amounts in accordance therewith.

J. Pursuant to Health and Safety Code Section 34194.1, in making remittances to the County Auditor pursuant to Health and Safety Code Sections 34194 or 34194.5, the Town may use any available funds not otherwise obligated for other uses.

K. Pursuant to Health and Safety Code Section 34194.2 ("Section 34194.2"), the Town may enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the Town, in an amount not to exceed the annual remittance required that year pursuant to Chapter 3 of Part 1.9.

L. The purpose of this Agreement is to provide for the transfer of funds by the Agency to the Town pursuant to the authorization in Section 34194.2, with said transfer of funds to be in an amount not to exceed the annual amount that is sufficient for the Town, directly or indirectly, to make the remittances required by Chapter 3 of Part 1.9 for the applicable fiscal year.

M. Pursuant to Health and Safety Code Section 34194.3, for Fiscal Year 2011-12, the Agency, by complying with the provisions of Part 1.9, shall be exempt from making the full allocation required to the Agency's Low and Moderate Income Housing Fund required pursuant to Health and Safety Code Sections 33334.2, 33334.4 and 33334.6 ("Housing Fund") upon the Agency making the finding that there are insufficient other moneys available to meet its debt and other obligations, current priority program needs, or its obligations under Section 34194.2. In accordance with Section 34194.3, the Agency hereby finds and determines that the full allocation of the Agency's Housing Funds for Fiscal Year 2011-12 (the "FY 2011-12 Housing Fund Tax Increment Funds") cannot occur because the Agency has insufficient other moneys available to meet its debt and other obligations, current priority program needs, and its remittance payment obligations under Section 34194.2. The Agency makes these findings and determinations based on evidence that is on file with the Agency Secretary and has been presented to the Agency Board of Directors, which include the Agency's operating and capital budget, the Agency's current debt service obligations, current and ongoing third party contractual obligations, and current projects and programs occurring throughout the community.

N. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan for the Project Area.

O. Town understands and believes that an action or actions challenging the validity of ABx1 26 and ABx1 27 has or have been, or may be filed on behalf of cities, counties and redevelopment agencies. While the Town intends to make the remittances as provided for in ABx1 27 and pursuant to this Agreement, the remittances shall be made under protest and without prejudice to the Town's right to recover such amounts and interest thereon, to the extent there is a final determination by a court of competent jurisdiction that ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise unlawful. The Town reserves the right, regardless of any remittance made pursuant to this Agreement, to challenge the legality of ABx1 26 or ABx1 27, or both.

P. To the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of ABx1 26 and ABx1 27, the Town shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay. Moreover, to the extent that a court of competent jurisdiction determines that either ABx1 26 or ABx1 27, or both, are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, this Agreement shall be deemed null and void and of no further force and effect.

AGREEMENT

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated herein by this reference and are an integral part of this Agreement, the Parties mutually agree as follows:

16. Definitions. For purposes of this Agreement, "Available Agency Funds" shall mean, collectively, (a) any and all funds received and held by Agency not otherwise restricted or dedicated for a particular use, project, or program ("Unrestricted Agency Funds"), (b) the FY 2011-12 Housing Fund Tax Increment Funds, and (c) Net Available Tax Increment Funds. For purposes of this Agreement, "Net Available Tax Increment Funds" means any and all tax increment funds allocated to the Agency pursuant to Article XVI, Section 16 of the California Constitution and Health and Safety Code Section 33670 ("tax increment"), less the following: (i) tax increment funds committed to existing debt service payments and any interest payment thereon, (ii) tax increment funds for existing third-party contractual payment obligations, (iii) tax increment funds for statutory or contractual "pass-through" payment obligations to any taxing entities that have not been remitted to a taxing entity before the Agency's receipt of the amount of tax increment funds that otherwise must be remitted to the taxing entity, and (iv) tax increment funds on deposit in the Agency's Housing Fund (except FY 2011-12 Housing Fund Tax Increment Funds).

17. Agency Obligation to Transfer Funds to Town; Determination of Remittance Payment Amounts. The Agency shall transfer to the Town in a timely

manner, from Available Agency Funds, amounts sufficient for the Town to make the remittance payments required by Part 1.9. The amounts of the remittance payments for each fiscal year shall be determined pursuant to Part 1.9, including Health and Safety Code Section 34194 ("Section 34194"). In the event that the Town disputes the State Director of Finance's determination of the Town's remittance payment amount for Fiscal Year 2011-12, as determined pursuant to Section 34194, the Town reserves the right to appeal to the State Director of Finance pursuant to Section 34194. The Town's remittance payment amount for Fiscal Year 2011-12 shall be the final remittance payment amount determined after any applicable appeal to the State Director of Finance, and each remittance payment amount for fiscal years after Fiscal Year 2011-12 shall be based upon the final remittance payment amount for Fiscal Year 2011-12, as determined after any applicable appeal to the State Director of Finance, as adjusted pursuant to Section 34194.

18. Town Obligation to Transfer Remittance Payment Amounts to County Auditor; Limited Obligation of Town; No Commitment of Funds from Town General Fund. Subject to the receipt of sufficient Available Agency Funds from the Agency, the Town shall, pursuant to Part 1.9, timely remit to the County Auditor the remittance payment amounts as determined pursuant to this Agreement. The Town's obligation to make such remittances shall be a special limited obligation of the Town payable solely from payments received from the Agency pursuant to this Agreement. Nothing contained in this Agreement shall be deemed to be or is a pledge or commitment of the Town's general fund revenues or other Town assets to make the remittance payments as provided for in Part 1.9, and any remittance payments shall be solely from payments received from the Agency pursuant to this Agreement.

19. Termination of Agreement and All Town-Agency Agreements Upon Termination of Town's Participation in Alternative Voluntary Redevelopment Program; Self-Executing. In the event that the Town does not make a remittance as required by Part 1.9 and the State Director of Finance makes the determination described in Health and Safety Code Section 34194(d)(2) or 34194.5 that the Agency shall be subject to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code, this Agreement and all Town-Agency Cooperation Agreements shall be terminated, and of no further force and effect, without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative. For purposes of this Agreement, "Town-Agency Cooperation Agreements" shall mean any and all agreements, whether written or oral or by arrangement or general practice, by and between the Town and Agency, which are not defined as "enforceable obligations" pursuant to Health and Safety Code Sections 34167 or 34170.5 (as may be amended from time to time) and which obligate the Agency to pay the Town any amount of money or other consideration, including but not limited to Town-Agency loan agreements that are not otherwise "enforceable obligations" (as defined above). It is the intent of the Town and Agency by agreeing to the terms and conditions of this Section 4 that, upon the termination of the Town's and Agency's participation in the Alternative Voluntary Redevelopment Program, neither the Town nor the Agency shall owe any payments to either Party, and that no payments from the Agency to the Town

pursuant to any Town-Agency agreement shall be assigned to the State as contemplated by Health and Safety Code Sections 34193.2 and 34195(b).

20. Reservation of Rights; Payments Under Protest; Termination of Agreement If ABx1 26 and/or 27 Ruled Unlawful; Self-Executing. The Town and Agency reserve any and all rights to challenge the legality of ABx1 26 and ABx1 27, and the Town and Agency reserve any and all rights to benefit from any other legal challenge that determines ABx1 26 or ABx1 27, or both, are unlawful. All remittance payments made by the Town pursuant to this Agreement shall be made under protest and without prejudice to the Town's right to recover such amounts and interest thereon unless and until there is a final determination by a court of competent jurisdiction that ABx1 26 and ABx1 27 are constitutional and the remittance payments required therein are legally enforceable payment obligations of the Town. For any action or actions challenging the validity of ABx1 26 or ABx1 27, or both, in the event that a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligations of ABx1 26 and ABx1 27, the Town shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay, unless and until there is a final determination by a court of competent jurisdiction that ABx1 26 and ABx1 27 are constitutional and the remittance payments required therein are legally enforceable payment obligations of the Town. For any action or actions challenging the validity of ABx1 26 or ABx1 27, or both, in the event that a court of competent jurisdiction determines that either ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise legally invalid, and all appeals there from are exhausted or unsuccessful, or time for filing an appeal there from has lapsed, this Agreement shall be terminated, and of no further force and effect, without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative.

21. Indebtedness of Agency Prior to October 1, 2011. The Agency's funding obligations in this Agreement are intended to and shall constitute an indebtedness of the Agency, incurred prior to October 1, 2011, within the meaning of Article XVI, Section 16 of the California Constitution and Health and Safety Code Sections 33670(b) and 34194(c)(2). The Agency shall include the total estimated indebtedness incurred by Agency pursuant to this Agreement on the Agency's annual statements of indebtedness that Agency is required to annually file pursuant to Health and Safety Code Section 33675 (or successor statute). The estimated total indebtedness incurred by the Agency pursuant to this Agreement is shown on Exhibit "A" attached hereto and incorporated herein by this reference. Any increase to the total estimated indebtedness that may occur after the Effective Date of this Agreement shall constitute indebtedness incurred prior to October 1, 2011.

22. Subordination. Agency's funding obligations hereunder shall be junior and subordinate to (i) all existing Agency tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (ii) all pledges by Agency of tax increments for tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (iii) other

Agency financial agreements or other contractual obligations of Agency with any person or entity not a party to this Agreement, including but not limited to any and all tax sharing or so-called “pass-through” agreements entered into between Agency and any taxing entity; (iv) any contingent obligations of Agency; and (v) other financial agreements or other contractual obligations between the parties to this Agreement.

23. Non-Recourse Obligation. No officer, official, employee, agent, or representative of Agency or Town shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action herein shall be personally enforced against any such officer, official, employee, agent, or representative.

24. Indemnity. In contemplation of Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being a party to an agreement defined by Government Code Section 895, the Parties hereto, as between themselves, agree that the Agency shall indemnify, defend, and hold harmless the Town for any loss, costs, or expenses that may be imposed upon the Town by virtue of a third party prevailing in a legal challenge to the validity, enforceability, or administration of this Agreement. The provisions of Civil Code Section 2778 shall be applicable to this Agreement.

25. Entire Agreement and Full Integration. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

26. Intended Parties; No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Town and the Agency, and their respective successors in interest; provided, however, that this Agreement shall be terminated in accordance with the terms and conditions set forth above in the event that the Town or any other public agency becomes the “successor agency” to the Agency pursuant to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code. The Town and Agency expressly covenant that there shall be no third party beneficiaries under this Agreement.

27. Waiver. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the Parties.

28. Severability. Each provision of this Agreement shall be severable from the whole, and if any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall remain in full force and effect.

29. Counterparts. This Agreement may be executed in duplicate originals, each of which shall be deemed to be an original.

30. Acknowledgment of Litigation Challenging ABx1 26 and ABx1 27. As of the date of approval of this Agreement, the California Supreme Court has exercised original jurisdiction in *California Redevelopment Association, et al., Petitioners v. Ana*

Matosantos, et al., Respondents, Case No. S194861, a lawsuit challenging the constitutionality and validity of ABx1 26 and ABx1 27. In conjunction with exercising original jurisdiction in that case, the Court issued a partial stay on the enforcement of ABx1 26 and ABx1 27 and the Court has indicated its intent to issue a ruling in the case in January 2012. As such, this Agreement is executed and entered subject to the condition subsequent that the Court upholds the constitutionality and validity of both ABx1 26 and ABx1 27 which would then implement the Town's remittance payment obligation under ABx1 27, as described in the Recitals of this Agreement, and require the payments by the Agency to the Town as provided in this Agreement and subject to the terms of this Agreement. As set forth in Section 5 of this Agreement, if the California Supreme Court, or any other court, determines that either ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise legally invalid, and all appeals there from are exhausted or unsuccessful, or time for filing an appeal there from has lapsed, this Agreement shall automatically, and without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative, be terminated and of no further force and effect.

EXHIBIT "A"

**ESTIMATED TOTAL INDEBTEDNESS
PURSUANT TO THIS AGREEMENT**

REDEVELOPMENT AGENCY OF THE TOWN OF APPLE VALLEY

SCHEDULE OF REMITTANCES

EXHIBIT A

Schedule assumes a 1% increase in property value per year

Estimated Remittance Amount by Fiscal Year	
2011-12	\$ 1,631,773.00
2012-13	\$ 383,446.00
2013-14	\$ 387,280.46
2014-15	\$ 395,026.07
2015-16	\$ 402,926.59
2016-17	\$ 410,985.12
2017-18	\$ 419,204.82
2018-19	\$ 427,588.92
2019-20	\$ 436,140.70
2020-21	\$ 444,863.51
2021-22	\$ 453,760.78
2022-23	\$ 462,836.00
2023-24	\$ 472,092.72
2024-25	\$ 481,534.57
2025-26	\$ 491,165.27
TOTAL FOR LIFE OF AGENCY	\$ 7,700,624.55

RDA RESOLUTION No. 2011-07

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE TOWN OF APPLE VALLEY, CALIFORNIA CONDITIONALLY APPROVING AND AUTHORIZING THE EXECUTION OF A COMMUNITY REMITTANCE FUNDING AGREEMENT BY AND BETWEEN THE TOWN OF APPLE VALLEY AND THE REDEVELOPMENT AGENCY OF THE TOWN OF APPLE VALLEY PROVIDING FOR THE TRANSFER OF TAX INCREMENT REVENUE TO THE TOWN IN AN AMOUNT NOT TO EXCEED THE AMOUNT OF THE COMMUNITY REMITTANCE REQUIRED UNDER ABx1 27

WHEREAS, pursuant to the Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*), the Town Council of the Town of Apple Valley ("Town") created the Redevelopment Agency of the Town of Apple Valley ("Agency") to serve as the redevelopment agency within the Town; and

WHEREAS, the Agency has been responsible for implementing the Redevelopment Plan for Project Area 2 Redevelopment Project Area covering certain properties within the Town ("Project Area"); and

WHEREAS, as part of the 2011-2012 State budget bill, the California Legislature enacted, and the Governor signed, companion bills ABx1 26 and ABx1 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, ABx1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, ABx1 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, on August 9, 2011, the Town Council adopted Ordinance No. 422, stating the Town's election to participate in the program, subject to certain terms and conditions, and of its intent to notify the San Bernardino Auditor-Controller, the Controller of the State of California, and the California Department of Finance of such election ("Ordinance"); and

WHEREAS, participation in the Alternative Voluntary Redevelopment Program requires the Town to remit specified annual amounts to the county auditor-controller (“Community Remittance”); and

WHEREAS, the California Director of Finance has notified the Town that its Community Remittance for Fiscal Year 2011-2012 is; and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861), challenging the constitutionality of ABx1 26 and ABx1 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement; and

WHEREAS, on August 11, 2011, the Supreme Court agreed to take the case and issued an order for the immediate stay of enforcement of ABx1 26 in part and ABx1 27 in its entirety, such that the Town and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program; and

WHEREAS, on August 17, 2011, the Supreme Court modified its order to clarify that Health and Safety Code Sections 34161 through 34169.5, enacted by ABx1 26, and Health and Safety Code Section 34194(b)(2), enacted by ABx1 27, are not stayed (“Court’s Stay”); and

WHEREAS, California Health and Safety Code Section 34194.2 provides that the Town may enter into an agreement with the Agency, whereby the Agency will annually transfer tax increment revenue to the Town, in an amount not to exceed the amount of the Community Remittance for such fiscal year, for the purpose of financing activities within the Project Area related to the Agency’s goals (“Agreement”); and

WHEREAS, because the Health and Safety Code Section 34194.2 is stayed by the Court’s Stay, the Agency and the Town desire to enter into this agreement, effective on the condition that the Supreme Court orders that the Court’s Stay be lifted or modified in a manner that permits the Agency and the Town to enter the agreement, to establish a yearly obligation of the Agency to transfer tax increment revenue to the Town on condition that the Agency’s transfer of tax increment revenues to the Town and the Town’s payment of the Community Remittance will be made only if there is a final determination that ABx1 26 and ABx1 27 are constitutional and the Ordinance electing to participate in the Alternative voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program; and

WHEREAS, the Town reserves the right, whether any Community Remittance has been paid, to challenge the legality of ABx1 26 and ABx1 27; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED, ordered, and determined by the Town Council of the Town of Apple Valley:

SECTION 8. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

SECTION 9. Finding. Upon consideration of the facts set forth in the staff report accompanying this Resolution and other written and oral evidence presented to the Town Council, the Town Council finds that the transfer of tax increment revenue from the Agency to the Town for the funding of the Community Remittance payment by the Town will: (1) allow the Agency to remain in existence and continue to act to accomplish the Agency's goals in the Project Area and is in the best interests of the health, safety and welfare of the Town's residents; and (2) free the Town from committing general fund revenues or other Town assets to pay the Community Remittance for any fiscal year.

SECTION 10. Approval of Agreement. The Agency hereby approves the Agreement in substantially the form attached hereto as **Exhibit A** and incorporated herein by reference. The Agreement shall be effective upon the Court's Stay being lifted or modified in a manner that permits the Agency and the Town to enter into the Agreement and the Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. The Agreement provides that the Agency's obligation to transfer tax increment revenues to the Town and the Town's payment of the Community Remittance will be conditioned upon: (1) a final determination that ABx1 26 and ABx1 27 are constitutional; and (2) the Ordinance being valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. The Agency authorizes and directs the Executive Director to execute the Agreement on behalf of the Agency, subject to any minor clarifying, conforming and technical changes as may be approved by Agency Counsel. The Executive Director is further authorized and directed to take such actions and execute such documents as may be necessary to carry out the obligations of the Agency under the Agreement.

SECTION 11. CEQA. The Agency finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The Town Council, therefore, directs that a

Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 12. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Town Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 13. Certification. The Agency Secretary shall certify to the adoption of this Resolution.

SECTION 14. Effective Date. This Resolution shall become effective upon its adoption.

APPROVED and **ADOPTED** by the Board of Directors of the Redevelopment Agency of the Town of Apple Valley this 27th day of September, 2011.

Scott Nassif, Chairman

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

John Brown, Town Attorney

Exhibit "A"

Conditional Community Remittance Funding Agreement

COMMUNITY REMITTANCE AGREEMENT

(CALIFORNIA HEALTH AND SAFETY CODE SECTION 34194.2)

This COMMUNITY REMITTANCE AGREEMENT (“Agreement”) is entered into this 27th day of September, 2011, by and between the TOWN OF APPLE VALLEY, a California municipal corporation (the “Town”), and the APPLE VALLEY REDEVELOPMENT AGENCY, a public body, corporate and politic (the “Agency”). The Town and the Agency (collectively, the “Parties” and individually, a “Party”) enter into this Agreement with reference to the following:

RECITALS

A. By previous actions duly and regular taken, the Town Council for the Town approved and adopted the Redevelopment Plan for the Apple Valley Redevelopment Agency, as amended from time to time (the “Redevelopment Plan”), covering certain properties located within the Town and defined in the Redevelopment Plan as the Project Area 2 (the “Project Area”).

B. The Agency has been and is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (“CRL”).

C. Since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private parties to create jobs and expand the local economy.

D. Over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, and increase, improve, and preserve the Town’s supply of low and moderate income housing.

E. As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, from the 2011-12 First Extraordinary Session, Assembly Bills 26 and 27 (“ABx1 26” and “ABx1 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments.

F. Specifically, ABx1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011.

G. ABx1 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by

enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code ("Part 1.9").

H. The Alternative Voluntary Redevelopment Program requires that the Town agree by ordinance to remit specified annual amounts to the Apple Valley County Auditor-Controller ("County Auditor").

I. Town adopted Ordinance 422 at its August 9th Meeting as specified by ABx1 27 ("Ordinance") agreeing to participate in the "opt-in" Alternative Voluntary Redevelopment Program and to remit specified annual amounts in accordance therewith.

J. Pursuant to Health and Safety Code Section 34194.1, in making remittances to the County Auditor pursuant to Health and Safety Code Sections 34194 or 34194.5, the Town may use any available funds not otherwise obligated for other uses.

K. Pursuant to Health and Safety Code Section 34194.2 ("Section 34194.2"), the Town may enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the Town, in an amount not to exceed the annual remittance required that year pursuant to Chapter 3 of Part 1.9.

L. The purpose of this Agreement is to provide for the transfer of funds by the Agency to the Town pursuant to the authorization in Section 34194.2, with said transfer of funds to be in an amount not to exceed the annual amount that is sufficient for the Town, directly or indirectly, to make the remittances required by Chapter 3 of Part 1.9 for the applicable fiscal year.

M. Pursuant to Health and Safety Code Section 34194.3, for Fiscal Year 2011-12, the Agency, by complying with the provisions of Part 1.9, shall be exempt from making the full allocation required to the Agency's Low and Moderate Income Housing Fund required pursuant to Health and Safety Code Sections 33334.2, 33334.4 and 33334.6 ("Housing Fund") upon the Agency making the finding that there are insufficient other moneys available to meet its debt and other obligations, current priority program needs, or its obligations under Section 34194.2. In accordance with Section 34194.3, the Agency hereby finds and determines that the full allocation of the Agency's Housing Funds for Fiscal Year 2011-12 (the "FY 2011-12 Housing Fund Tax Increment Funds") cannot occur because the Agency has insufficient other moneys available to meet its debt and other obligations, current priority program needs, and its remittance payment obligations under Section 34194.2. The Agency makes these findings and determinations based on evidence that is on file with the Agency Secretary and has been presented to the Agency Board of Directors, which include the Agency's operating and capital budget, the Agency's current debt service obligations, current and ongoing third party contractual obligations, and current projects and programs occurring throughout the community.

N. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan for the Project Area.

O. Town understands and believes that an action or actions challenging the validity of ABx1 26 and ABx1 27 has or have been, or may be filed on behalf of cities, counties and redevelopment agencies. While the Town intends to make the remittances as provided for in ABx1 27 and pursuant to this Agreement, the remittances shall be made under protest and without prejudice to the Town's right to recover such amounts and interest thereon, to the extent there is a final determination by a court of competent jurisdiction that ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise unlawful. The Town reserves the right, regardless of any remittance made pursuant to this Agreement, to challenge the legality of ABx1 26 or ABx1 27, or both.

P. To the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of ABx1 26 and ABx1 27, the Town shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay. Moreover, to the extent that a court of competent jurisdiction determines that either ABx1 26 or ABx1 27, or both, are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, this Agreement shall be deemed null and void and of no further force and effect.

AGREEMENT

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated herein by this reference and are an integral part of this Agreement, the Parties mutually agree as follows:

31. Definitions. For purposes of this Agreement, "Available Agency Funds" shall mean, collectively, (a) any and all funds received and held by Agency not otherwise restricted or dedicated for a particular use, project, or program ("Unrestricted Agency Funds"), (b) the FY 2011-12 Housing Fund Tax Increment Funds, and (c) Net Available Tax Increment Funds. For purposes of this Agreement, "Net Available Tax Increment Funds" means any and all tax increment funds allocated to the Agency pursuant to Article XVI, Section 16 of the California Constitution and Health and Safety Code Section 33670 ("tax increment"), less the following: (i) tax increment funds committed to existing debt service payments and any interest payment thereon, (ii) tax increment funds for existing third-party contractual payment obligations, (iii) tax increment funds for statutory or contractual "pass-through" payment obligations to any taxing entities that have not been remitted to a taxing entity before the Agency's receipt of the amount of tax increment funds that otherwise must be remitted to the taxing entity, and (iv) tax increment funds on deposit in the Agency's Housing Fund (except FY 2011-12 Housing Fund Tax Increment Funds).

32. Agency Obligation to Transfer Funds to Town; Determination of Remittance Payment Amounts. The Agency shall transfer to the Town in a timely

manner, from Available Agency Funds, amounts sufficient for the Town to make the remittance payments required by Part 1.9. The amounts of the remittance payments for each fiscal year shall be determined pursuant to Part 1.9, including Health and Safety Code Section 34194 ("Section 34194"). In the event that the Town disputes the State Director of Finance's determination of the Town's remittance payment amount for Fiscal Year 2011-12, as determined pursuant to Section 34194, the Town reserves the right to appeal to the State Director of Finance pursuant to Section 34194. The Town's remittance payment amount for Fiscal Year 2011-12 shall be the final remittance payment amount determined after any applicable appeal to the State Director of Finance, and each remittance payment amount for fiscal years after Fiscal Year 2011-12 shall be based upon the final remittance payment amount for Fiscal Year 2011-12, as determined after any applicable appeal to the State Director of Finance, as adjusted pursuant to Section 34194.

33. Town Obligation to Transfer Remittance Payment Amounts to County Auditor; Limited Obligation of Town; No Commitment of Funds from Town General Fund. Subject to the receipt of sufficient Available Agency Funds from the Agency, the Town shall, pursuant to Part 1.9, timely remit to the County Auditor the remittance payment amounts as determined pursuant to this Agreement. The Town's obligation to make such remittances shall be a special limited obligation of the Town payable solely from payments received from the Agency pursuant to this Agreement. Nothing contained in this Agreement shall be deemed to be or is a pledge or commitment of the Town's general fund revenues or other Town assets to make the remittance payments as provided for in Part 1.9, and any remittance payments shall be solely from payments received from the Agency pursuant to this Agreement.

34. Termination of Agreement and All Town-Agency Agreements Upon Termination of Town's Participation in Alternative Voluntary Redevelopment Program; Self-Executing. In the event that the Town does not make a remittance as required by Part 1.9 and the State Director of Finance makes the determination described in Health and Safety Code Section 34194(d)(2) or 34194.5 that the Agency shall be subject to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code, this Agreement and all Town-Agency Cooperation Agreements shall be terminated, and of no further force and effect, without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative. For purposes of this Agreement, "Town-Agency Cooperation Agreements" shall mean any and all agreements, whether written or oral or by arrangement or general practice, by and between the Town and Agency, which are not defined as "enforceable obligations" pursuant to Health and Safety Code Sections 34167 or 34170.5 (as may be amended from time to time) and which obligate the Agency to pay the Town any amount of money or other consideration, including but not limited to Town-Agency loan agreements that are not otherwise "enforceable obligations" (as defined above). It is the intent of the Town and Agency by agreeing to the terms and conditions of this Section 4 that, upon the termination of the Town's and Agency's participation in the Alternative Voluntary Redevelopment Program, neither the Town nor the Agency shall owe any payments to either Party, and that no payments from the Agency to the Town

pursuant to any Town-Agency agreement shall be assigned to the State as contemplated by Health and Safety Code Sections 34193.2 and 34195(b).

35. Reservation of Rights; Payments Under Protest; Termination of Agreement If ABx1 26 and/or 27 Ruled Unlawful; Self-Executing. The Town and Agency reserve any and all rights to challenge the legality of ABx1 26 and ABx1 27, and the Town and Agency reserve any and all rights to benefit from any other legal challenge that determines ABx1 26 or ABx1 27, or both, are unlawful. All remittance payments made by the Town pursuant to this Agreement shall be made under protest and without prejudice to the Town's right to recover such amounts and interest thereon unless and until there is a final determination by a court of competent jurisdiction that ABx1 26 and ABx1 27 are constitutional and the remittance payments required therein are legally enforceable payment obligations of the Town. For any action or actions challenging the validity of ABx1 26 or ABx1 27, or both, in the event that a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligations of ABx1 26 and ABx1 27, the Town shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay, unless and until there is a final determination by a court of competent jurisdiction that ABx1 26 and ABx1 27 are constitutional and the remittance payments required therein are legally enforceable payment obligations of the Town. For any action or actions challenging the validity of ABx1 26 or ABx1 27, or both, in the event that a court of competent jurisdiction determines that either ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise legally invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, this Agreement shall be terminated, and of no further force and effect, without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative.

36. Indebtedness of Agency Prior to October 1, 2011. The Agency's funding obligations in this Agreement are intended to and shall constitute an indebtedness of the Agency, incurred prior to October 1, 2011, within the meaning of Article XVI, Section 16 of the California Constitution and Health and Safety Code Sections 33670(b) and 34194(c)(2). The Agency shall include the total estimated indebtedness incurred by Agency pursuant to this Agreement on the Agency's annual statements of indebtedness that Agency is required to annually file pursuant to Health and Safety Code Section 33675 (or successor statute). The estimated total indebtedness incurred by the Agency pursuant to this Agreement is shown on Exhibit "A" attached hereto and incorporated herein by this reference. Any increase to the total estimated indebtedness that may occur after the Effective Date of this Agreement shall constitute indebtedness incurred prior to October 1, 2011.

37. Subordination. Agency's funding obligations hereunder shall be junior and subordinate to (i) all existing Agency tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (ii) all pledges by Agency of tax increments for tax allocation bonds or other direct long-term indebtedness of Agency secured and to be repaid by tax increment funds, (iii) other

Agency financial agreements or other contractual obligations of Agency with any person or entity not a party to this Agreement, including but not limited to any and all tax sharing or so-called “pass-through” agreements entered into between Agency and any taxing entity; (iv) any contingent obligations of Agency; and (v) other financial agreements or other contractual obligations between the parties to this Agreement.

38. Non-Recourse Obligation. No officer, official, employee, agent, or representative of Agency or Town shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action herein shall be personally enforced against any such officer, official, employee, agent, or representative.

39. Indemnity. In contemplation of Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being a party to an agreement defined by Government Code Section 895, the Parties hereto, as between themselves, agree that the Agency shall indemnify, defend, and hold harmless the Town for any loss, costs, or expenses that may be imposed upon the Town by virtue of a third party prevailing in a legal challenge to the validity, enforceability, or administration of this Agreement. The provisions of Civil Code Section 2778 shall be applicable to this Agreement.

40. Entire Agreement and Full Integration. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

41. Intended Parties; No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Town and the Agency, and their respective successors in interest; provided, however, that this Agreement shall be terminated in accordance with the terms and conditions set forth above in the event that the Town or any other public agency becomes the “successor agency” to the Agency pursuant to Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code. The Town and Agency expressly covenant that there shall be no third party beneficiaries under this Agreement.

42. Waiver. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the Parties.

43. Severability. Each provision of this Agreement shall be severable from the whole, and if any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall remain in full force and effect.

44. Counterparts. This Agreement may be executed in duplicate originals, each of which shall be deemed to be an original.

45. Acknowledgment of Litigation Challenging ABx1 26 and ABx1 27. As of the date of approval of this Agreement, the California Supreme Court has exercised original jurisdiction in *California Redevelopment Association, et al., Petitioners v. Ana*

Matosantos, et al., Respondents, Case No. S194861, a lawsuit challenging the constitutionality and validity of ABx1 26 and ABx1 27. In conjunction with exercising original jurisdiction in that case, the Court issued a partial stay on the enforcement of ABx1 26 and ABx1 27 and the Court has indicated its intent to issue a ruling in the case in January 2012. As such, this Agreement is executed and entered subject to the condition subsequent that the Court upholds the constitutionality and validity of both ABx1 26 and ABx1 27 which would then implement the Town's remittance payment obligation under ABx1 27, as described in the Recitals of this Agreement, and require the payments by the Agency to the Town as provided in this Agreement and subject to the terms of this Agreement. As set forth in Section 5 of this Agreement, if the California Supreme Court, or any other court, determines that either ABx1 26 or ABx1 27, or both, are unconstitutional or otherwise legally invalid, and all appeals there from are exhausted or unsuccessful, or time for filing an appeal there from has lapsed, this Agreement shall automatically, and without the need for any further action by the Town Council, Agency Board of Directors, or any Town or Agency officer, official, employee, agent, or representative, be terminated and of no further force and effect.

EXHIBIT "A"

**ESTIMATED TOTAL INDEBTEDNESS
PURSUANT TO THIS AGREEMENT**

REDEVELOPMENT AGENCY OF THE TOWN OF APPLE VALLEY

SCHEDULE OF REMITTANCES

EXHIBIT A

Schedule assumes a 1% increase in property value per year

Estimated Remittance Amount by Fiscal Year	
2011-12	\$ 1,631,773.00
2012-13	\$ 383,446.00
2013-14	\$ 387,280.46
2014-15	\$ 395,026.07
2015-16	\$ 402,926.59
2016-17	\$ 410,985.12
2017-18	\$ 419,204.82
2018-19	\$ 427,588.92
2019-20	\$ 436,140.70
2020-21	\$ 444,863.51
2021-22	\$ 453,760.78
2022-23	\$ 462,836.00
2023-24	\$ 472,092.72
2024-25	\$ 481,534.57
2025-26	\$ 491,165.27
TOTAL FOR LIFE OF AGENCY	\$ 7,700,624.55

RDA RESOLUTION No. 2011-08

A RESOLUTION OF REDEVELOPMENT AGENCY OF THE TOWN OF APPLE VALLEY CONDITIONALLY REDUCING ITS ALLOCATION TO THE LOW AND MODERATE INCOME HOUSING FUND FOR FISCAL YEAR 2011-12 AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

WHEREAS, pursuant to the Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*) ("CRL"), the Town Council of the Town of Apple Valley ("Town") created the Apple Valley Redevelopment Agency ("Agency") to serve as the redevelopment agency within the Town; and

WHEREAS, the Agency has been responsible for implementing the Redevelopment Plans) for the Apple Valley Redevelopment Agency Project Area Two covering certain properties within the Town; and

WHEREAS, Health and Safety Code Sections 33334.2 and 33334.3 require every redevelopment agency to deposit 20 percent of taxes allocated to the agency pursuant to Health and Safety Code Section 33670 ("Tax Increment") in a Low and Moderate Income Housing Fund ("Housing Fund") for the purpose of increasing, improving and preserving the community's supply of low and moderate income housing; and

WHEREAS, as part of the 2011-2012 State budget bill, the California Legislature enacted, and the Governor signed, companion bills ABx1 26 and ABx1 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, ABx1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, ABx1 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, on August 9, 2011, the Town Council adopted Ordinance No. 422, stating the Town's election to participate in the Alternative Voluntary Redevelopment Program, subject to certain terms and conditions, and of its intent to notify the Los Angeles County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of such election; and

WHEREAS, participation in the Alternative Voluntary Redevelopment Program requires the Town to remit specified annual amounts to the county auditor-controller ("Community Remittance"); and

WHEREAS, the California Director of Finance has notified the Town that its Community Remittance for Fiscal Year 2011-2012 is One Million, Six Hundred Thirty-One Thousand, Seven Hundred and Seventy Three Dollars (\$1,631,773); and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861), challenging the constitutionality of ABx1 26 and ABx1 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of ABx1 26 and ABx1 27 pending the Supreme Court's determination of the constitutionality of ABX1 26and ABX1 27; and

WHEREAS, on August 11, 2011, the Supreme Court agreed to take the case and issued an order for the immediate stay of enforcement of ABx1 26 in part, which suspended all new redevelopment activity, and ABx1 27 in its entirety, such that the Town and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program; and

WHEREAS, on August 17, 2011, the Supreme Court modified its order to clarify that Health and Safety Code Sections 34161 through 34169.5, enacted by ABx1 26, and Health and Safety Code Section 34194(b)(2), enacted by ABx1 27, are not stayed ("Court's Stay"); and

WHEREAS, the Town and the Agency conditionally entered into that certain Community Remittance Funding Agreement, dated as of September 27, 2011 ("Funding Agreement"), pursuant to Health and Safety Code Section 34194.2, as enacted by ABx1 27, whereby the Agency agreed to transfer a portion of its annual Tax Increment each fiscal year to the Town, in an amount not to exceed the amount of the Town's Community Remittance payable for such fiscal year; and

WHEREAS, because Health and Safety Code Section 34194.2 is stayed by the Court's Stay, the Funding Agreement is only effective on the condition that the Supreme Court orders that the Court's Stay be lifted or modified in a manner that permits the Agency and the Town to enter into the Funding Agreement to establish a yearly obligation of the Agency to transfer Tax Increment to the Town on the condition that the Agency's transfer of Tax Increment and the Town's payment of the Community Remittance will be made only if there is a final determination that ABx1 26and ABx1 27 are constitutional and the Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program; and

WHEREAS, for Fiscal Year 2011-2012, Health and Safety Code Section 34194.3, as enacted by ABx1 27, authorizes a redevelopment agency to be exempt from making the full allocation required to be made to the agency's Housing Fund, if the agency finds that there are insufficient other moneys to meet the agency's debt and other obligations, current priority program needs, or the agency's obligations under the Funding Agreement; and

WHEREAS, because Health and Safety Code Section 34914.3 is also stayed by the Court's Stay, the Agency desires to make the findings required in Health and Safety Code Section 34194.3 and reduce its allocation of Tax Increment to the Housing Fund for Fiscal Year 2011-12 on the following conditions: (1) the Court's Stay is lifted or modified in a manner that permits the Town and the Agency to enter into the Funding Agreement; (2) a final determination is made that ABx1 26 and ABx1 27 are constitutional so that the Agency's transfer of Tax Increment to the Town and the Town's payment of the Community Remittance can be made; and (3) the Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

THE APPLE VALLEY REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Finding of Insufficient Other Moneys. Upon consideration of the facts set forth in the staff report accompanying this Resolution and other written and oral evidence presented to the Agency, the Agency finds that there are insufficient other moneys to meet the Agency's debt and other obligations, current priority program needs, and the Agency's obligations under the Funding Agreement, unless it is able to use the Tax Increment that would otherwise be allocated to the Agency's Housing Fund for Fiscal Year 2011-2012. The Agency hereby determines that it is necessary to reduce its allocation of Tax Increment to the Housing Fund for Fiscal Year 2011-12 by Seven Hundred Thousand Dollars (\$700,000) (the "Housing Allocation Reduction").

Section 3. Authorization to Execute Documents. The Agency hereby authorizes the Agency Executive Director, or designee, to take such actions as are necessary and appropriate to implement the Housing Allocation Reduction for Fiscal Year 2011-12.

Section 4. Conditional Effectiveness. This Resolution shall become effective only upon the occurrence of the following conditions: (1) the Court's Stay is lifted or modified in a manner that permits the Agency and the Town to enter into the Funding Agreement; (2) a final determination is made that ABx1 26 and ABx1 27 are constitutional so that the Agency's transfer of Tax Increment to the Town and the Town's payment of the Community Remittance can be made; and (3) the Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such Ordinance by the Town or adoption of a new ordinance by the Town and, in each case, such action is effective to allow the Town and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.

Section 5. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Agency hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

Section 6. Certification. The Agency Secretary shall certify to the adoption of this Resolution.

Section 7. Effective Date. This Resolution shall become effective upon its adoption.

APPROVED and **ADOPTED** by the Board of Directors of the Redevelopment Agency of the Town of Apple Valley this 27th day of September, 2011.

Scott Nassif, Chairman

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

John Brown, Town Attorney