



MEET AND CONFER REQUEST FORM

Instructions: Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment_Administration@dof.ca.gov

The subject line should state “[Agency Name] Request to Meet and Confer”. Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34177 (m) and (o).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance’s website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance’s Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

AGENCY (SELECT ONE):

Successor Agency Housing Entity

AGENCY NAME: Victor Valley Economic Development Authority (VVEDA)

TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

Housing Assets Transfers Due Diligence Reviews ROPS Period 16-17

DATE OF FINANCE’S DETERMINATION LETTER: April 13, 2016

REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

Meeting at Finance Conference Call Combination Meeting/Conference Call

DETAIL OF REQUEST

A. Summary of Disputed Issue(s) (List only the item number and description from the ROPS)

Item No. 19 - \$7,975 reclassified to Other Funds.

Item No. 22 - \$673,067 payable to VVEDA from Adelanto's portion of VVEDA tax increment

Item No. 23 - \$1,555,298 payable to the City of Victorville from Adelanto's portion of VVEDA tax increment

B. Background/History (Provide relevant background/history, if applicable.)

Item No. 19 – During the ROPS 15-16B Meet & Confer process, DOF conducted a thorough analysis of sources of revenues pledged to SCLAA debt service. In its Meet & Confer determination letter dated December 17, 2015 (Attachment 1) DOF acknowledged four (4) sources of pledged revenues for SCLAA debt service, although it only approved funding from one (1) of the four (4) sources.

As you may recall, in the actual order described in the bond documents, SCLAA's non-housing bonds describe the "Pledged Tax Revenues" to include:

- A. All tax increment revenue generated on property comprising the Airport (GAFB Parcels), net of housing set aside and pass-throughs.
- B. 50% of all tax increment generated from each Member community's portion (including Victorville) of the VVEDA Project area, net of housing set aside and pass-throughs.
- C. An SCLA tenant Ground Lease Guarantee.
- D. The Victorville Pledge, which is the remaining 50% of the amount described in B, above, from Victorville's portion of the VVEDA Project Area.

Although DOF's Meet & Confer letter dated December 17, 2015 allowed payment of SCLAA debt service (including previously defaulted amounts and reserve shortfalls) from only one (1) revenue source, on February 9, 2016, Justyn Howard, DOF Program Budget Manager, sent the attached email (Attachment 2) recognizing the additional sources of pledged revenue, thereby allowing SCLAA to receive any and all pledged revenues for debt service. Such clarification email was sent after correspondence from SCLAA legal counsel and a conference call with DOF legal counsel, Shelley Renner.

Item No. 22 – When the VVEDA Joint Powers Authority (JPA) was originally formed by the County of San Bernardino, the Cities of Victorville and Hesperia, and the Town of Apple Valley, each of the original JPA members (the Cities and County) utilized non-redevelopment funds, or City funds, for the startup costs of the JPA because tax increment was not generated at that time (Attachment 3). Such original members were to be reimbursed for such startup costs pursuant to Section 34 of the JPA (Attachment 4). Additionally, because Adelanto joined the JPA later than the other members, it agreed to reimburse VVEDA for its portion of the startup costs from a portion of its tax increment, also described in JPA Section 34. As of the dissolution date, Adelanto owed VVEDA \$673,067 as reimbursement for startup costs.

Item No. 23 – This item has been denied by DOF on VVEDA and Adelanto’s ROPS in the past. The subject agreement has been provided numerous times with highlights to demonstrate the City of Adelanto’s obligation to pay the City of Victorville for street improvements utilizing Adelanto’s tax increment generated from the VVEDA project area. (Attachment 5, Section 2.2)

C. Justification *(Must be specific and include attachments/documentation to support the Agency’s position. Please tie each attachment to the specific line item listed above that it supports.)*

Item No. 19 – In its April 13, 2016, ROPS 16-17 Determination letter, DOF is reclassifying \$7,975 to Other Funds. It appears DOF based this decision upon the attached email dated March 10, 2016, from Kofi Antobam, VVEDA Controller, describing such funds as “unrestricted” (Attachment 6). However, these funds do not fall within any of the four (4) pledged revenues for SCLAA debt service, and cannot be simply transfer from VVEDA to SCLAA as such.

Item No. 22 – In its April 13, 2016, ROPS 16-17 Determination letter, the DOF indicates the amounts due from Adelanto’s tax increment to VVEDA is “an internal accounting issue for VVEDA.” We are unsure as to the basis for DOF considering this item an accounting issue. As Adelanto generates tax increment from its portion of the VVEDA project area, it must repay VVEDA for its startup costs as it pledged in the VVEDA JPA Section 34 page 41. Please note, the VVEDA JPA members are the Cities and County previously mentioned, and as such, the VVEDA JPA continues to exist. When VVEDA was formed, it was formed as a JPA comprised of Cities/County, not RDAs, and as such, the JPA is entitled to receive the startup costs pledged by Adelanto from its tax increment. In fact, the VVEDA JPA continues to exist as it was previously determined by the Third Appellate District Court of Appeal for the State of California that the Dissolution Act did not dissolve VVEDA as a JPA (Attachment 7, page 14). As such, VVEDA the JPA is entitled to reimbursement from Adelanto for its unpaid startup costs as it pledged in the VVEDA JPA, which was executed in June 2000, several years prior to the Dissolution Act, which makes such pledge an enforceable obligation.

Item No. 23 – DOF continues to deny this payment to the City of Victorville from the City of Adelanto using its VVEDA tax increment because “the former redevelopment agency is not a party to the contract.” This basis for denial is in error. VVEDA is a multi-jurisdictional JPA comprised of the Cities of Adelanto and Victorville, among others, as its members. As such, the Cities, in addition to the redevelopment agencies, were empowered to pledge tax increment to enforceable obligations (Attachment 8). Page 1 of the JPA defines the “Members” as the Cities, and page 44 of the JPA reads, “...each of the Members or their respective Redevelopment Agency may, individually or jointly with other Members or their respective Redevelopment Agencies, undertake the issuance of tax increment bonds or similar forms of indebtedness secured by tax increment revenues by pledging that portion of the Participating Member’s jurisdictions and which would otherwise be allocated for use by such Member(s)...”. At the time the Cooperative Agreement was executed, the City of Adelanto clearly had the legal authority to pledge its tax increment from its portion of the VVEDA project area to the City of Victorville. Section 2.2 of the Cooperative Agreement (Attachment 5) clearly identifies the source of repayment from “...tax increment revenues generated within the Adelanto portion of the VVEDA Redevelopment Project Area...” To deny the City of Victorville repayment from Adelanto’s VVEDA project area tax increment is improper because at the time the contract was executed in April 2003, the pledge by the City of Adelanto of its tax increment was lawful.

Agency Contact Information

Name: Keith Metzler
Title: Executive Director
Phone: 760-955-5032
Email: kmetzler@victorvilleca.gov
ssmith@victorvilleca.gov

Name: Sophie Smith
Title: ED Director
Phone: 760-955-5033
Email:

Department of Finance Local Government Unit Use Only

REQUEST TO MEET AND CONFER DATE: _____ APPROVED ___ DENIED ___
REQUEST APPROVED/DENIED BY: _____ DATE: _____
MEET AND CONFER DATE/TIME/LOCATION: _____
MEET AND CONFER SESSION CONFIRMED: ___ YES DATE CONFIRMED: _____
DENIAL NOTICE PROVIDED: ___ YES DATE AGENCY NOTIFIED: _____

Form DF-MC (Revised 10/14/2015)

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Attachment 1



December 17, 2015

Mr. Keith C. Metzler, Executive Director
Victor Valley Economic Development Authority
14343 Civic Drive
Victorville, CA 92392

Dear Mr. Metzler:

Subject: Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated November 13, 2015. Pursuant to Health and Safety Code (HSC) section 34177 (m), the Victor Valley Economic Development Authority (VVEDA) Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 15-16B) to Finance on October 1, 2015, for the period of January 1 through June 30, 2016. Finance issued a ROPS determination letter on November 13, 2015. Subsequently, the Agency requested a Meet and Confer session on one or more of the determinations made by Finance. The Meet and Confer session was held on November 30, 2015.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific determinations being disputed.

- Item Nos. 2, 18 and 19 – VVEDA Joint Powers Authority (JPA) Agreement, Pass-Through Distributions to the City of Victorville (Victorville). During the meet and confer, the Agency clarified these items are related to various bonds issued by the Southern California Logistics Airport Authority (SCLAA) and the amounts being requested on the ROPS, as follows:
 - Item No. 2 is for debt service due during the ROPS 15-16B period.
 - Item No. 18 is for payment of defaulted amounts owed for bonds related to Item No. 2.
 - Item No. 19 is for payment of reserve shortfalls related to Item No. 2.

Finance previously approved Item No. 2 in the amount of \$8,378,161; however, Finance denied Item Nos. 18 and 19 as we determined the amounts are unnecessary as the amounts had been funded on previous ROPS. Based on additional review during the meet and confer, Finance has determined that, to the extent funding is approved for Item 2, 18 or 19, such amounts are only allowed funding from former tax increment generated from the George Air Force Base (GAFB) Parcels. With that limitation, Finance approves funding all three line items from the GAFB Parcels on the ROPS 15-16B.

In addition, it is our expectation that VVEDA will distribute to Victorville all funds generated from the GAFB Parcels, and only the GAFB Parcels, for payment on the current and past due debt service. It is also our expectation that Victorville will, in turn, forward all funds received from VVEDA directly to the bond trustee to satisfy current and past due debt service, as well as, replenish the bond reserves previously drawn down. Finance notes that pursuant to HSC section 34183 (a) (2) (A), debt service payments have first priority for payment from distributed Redevelopment Property Tax Trust Fund (RPTTF) funding. Therefore, Item No. 2 has first priority for payment. Additionally, for Item No. 2, we note that the debt service due during the ROPS 15-16B period is \$7,033,345. As such, the remaining amount approved for this item should be used to fund reserves for payment of debt service due in the following period.

Please note that this determination is applicable only to the ROPS 15-16B period. During the meet and confer process, we determined, among other things, the SCLAA bond documents reference a pledge of funds from three other sources. However, the Agency has not provided the additional documents necessary for us to complete our review of the bonds. We will continue to work with the Agency to determine the sources of funding that should be used to fund the debt service of these bonds and the appropriate amounts to be paid.

- Item No. 20 – JPA Agreement, Pass-Through Distributions to Victorville in the amount of \$13,999,789. Finance continues to deny this item. The Agency claims this item represents accumulated operational shortfalls due to Victorville pursuant to the JPA Agreement (Agreement). However, the Agreement does not obligate the Agency to reimburse Victorville for these types of costs. Therefore, this item is not an enforceable obligation and is not eligible for RPTTF funding.
- Item No. 21 – JPA Agreement Pass-Through Distributions to Victorville in the amount of \$21,120,815. Finance continues to deny this item. The Agency claims this item represents accumulated capital improvement expenditures due to Victorville pursuant to the JPA Agreement. However, the Agreement does not obligate the Agency to reimburse Victorville for expenses Victorville incurred. In addition, the Agreement does not specify the terms of repayment for expenses incurred by Victorville. Therefore, this item is not an enforceable obligation and is not eligible for RPTTF funding.
- Item No. 22 – JPA Agreement in the amount of \$673,067. Finance continues to deny this item. It is our understanding this item represents amounts due to VVEDA from the City of Adelanto (Adelanto) for its proportional share of start-up costs pursuant to the JPA Agreement. Pursuant to the Agreement, VVEDA was to use a portion of its tax increment it received to off-set its own start-up costs. This item was an internal accounting issue for VVEDA and is not an enforceable obligation.
- Item No. 23 – Cooperative Agreement for Street Improvements in the amount of \$1,555,298. Finance continues to deny this item. It is our understanding this agreement entered into on April 23, 2003, is between Victorville and Adelanto, and the former RDA is not a party to the contract. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.

In addition, per Finance's letter dated November 13, 2015, we continue to make the following determinations not contested by the Agency during the Meet and Confer:

Pursuant to HSC section 34186 (a) (1), the Agency was required to report on the ROPS 15-16B form the estimated obligations versus actual payments (prior period adjustment) associated with the January through June 2015 period (ROPS 14-15B). HSC section 34186 (a) (1) also specifies the prior period adjustment self-reported by the Agency is subject to review by the county auditor-controller (CAC). Proposed CAC adjustments were not received in time for inclusion in this letter; therefore, the amount of RPTTF approved in the table below only reflects the Agency's self-reported prior period adjustment.

Except for the items denied in whole or in part, Finance is not objecting to the remaining items listed on your ROPS 15-16B. The Agency's maximum approved RPTTF distribution for the reporting period is \$23,654,441 as summarized in the Approved RPTTF Distribution table on the next page:

Approved RPTTF Distribution	
For the period of January through June 2016	
Total RPTTF requested for non-administrative obligations	60,753,410
Total RPTTF requested for administrative obligations	250,000
Total RPTTF requested for obligations on ROPS 15-16B	\$ 61,003,410
Total RPTTF requested for non-administrative obligations	60,753,410
<u>Denied Items</u>	
Item No. 20	(13,999,789)
Item No. 21	(21,120,815)
Item No. 22	(673,067)
Item No. 23	(1,555,298)
	(37,348,969)
Total RPTTF authorized for non-administrative obligations	\$ 23,404,441
Total RPTTF requested for administrative obligations	250,000
Total RPTTF authorized for administrative obligations	\$ 250,000
Total RPTTF authorized for obligations	\$ 23,654,441
ROPS 14-15B prior period adjustment	0
Total RPTTF approved for distribution	\$ 23,654,441

On the ROPS 15-16B form, the Agency reported cash balances and activity for the period January 1 through December 31, 2015. Finance will perform a review of the Agency's self-reported cash balances on an ongoing basis. Please be prepared to submit financial records and bridging documents to support the cash balances reported upon request. If it is determined the Agency possesses cash balances that are available to pay approved obligations, HSC section 34177 (l) (1) (E) requires these balances be used prior to requesting RPTTF.

Please refer to the ROPS 15-16B schedule used to calculate the total RPTTF approved for distribution:

<http://www.dof.ca.gov/redevelopment/ROPS>

This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2016. This determination only applies to items when funding was requested for the six-month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment available prior to the enactment of the redevelopment dissolution statutes. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the Agency in the RPTTF.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-3274.

Sincerely,



JUSTYN HOWARD
Program Budget Manager

cc: Mr. Marc Puckett, Treasurer, Victor Valley Economic Development Authority
Ms. Linda Santillano, Property Tax Manager, San Bernardino County

Attachment 2

Sophie Smith

From: Keith Metzler
Sent: Tuesday, February 09, 2016 3:38 PM
To: Sophie Smith
Subject: FW: VVEDA

From: Howard, Justyn [<mailto:Justyn.Howard@dof.ca.gov>]
Sent: Tuesday, February 09, 2016 2:58 PM
To: Keith Metzler
Subject: VVEDA

Hi Keith,

Thank you for being available for yesterday's conference call with DOF's staff counsel. As stated on the call, from information provided to DOF last month it is DOF's understanding that section 38 of the VVEDA JPA agreement authorizes SCLAA to pledge **more former tax increment than generated only from the GAFB parcels**. As such, the limitation of using only RPTTF generated in GAFB parcels for payment of ROPS line items 2, 18 and 19, as stated on page one of the December 17, 2015 DOF ROPS determination letter, should be ignored.

Please let us know if you need anything further.

Best Regards,
Justyn

Justyn Howard | Program Budget Manager
California Department of Finance | Employee Comp & Retirement, Local Government, Housing, Information Technology
Direct: 916-445-3274 | Email: Justyn.Howard@dof.ca.gov
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Attachment 3

the amount to be charged against it prior to any commitment of funds:

<u>Member</u>	<u>Percent of Cost</u>
The Town of Apple Valley, California	20%
The City of Hesperia, California	20%
The City of Victorville, California	20%
The County of San Bernardino, California	20%
The City of Adelanto	20%

Any member who, after the effective date of this Fourth Amendment contributes more than its percentage share toward approved expenditures of the Authority either by direct payment of funds or by the provision of in kind services as approved by the Authority (hereinafter referred to as a "Member Contribution"), shall, subject to the provisions of Section 34 hereof, be entitled to reimbursement from that portion of available Participating Jurisdictions Tax Increment Revenues which is allocated for reimbursement.

The Parties acknowledge that the Original Members have each made prior contributions of cash which are to be reimbursed (the "Prior Contributions") from a portion of the revenues to be generated from the issuance by the Authority of its \$7,000,000 Victor Valley Economic Development Authority Taxable Lease Revenue

Notes (Southern California International Airport Project) Series 1996 (the "1996 Bonds"). In connection with the approval of the Third Amendment, the Parties previously agreed that each Original Member shall receive a cash reimbursement of their Prior Contributions equal to Three Hundred and Fifty Thousand Dollars (\$350,000) from the proceeds of the 1996 Bonds. Thereafter, the remaining balance of each Original Member's Prior Contributions shall be reimbursed in accordance with Section 34 hereof. The amount of said remaining balance shall be the amount as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

With respect to the funding of any items on the GAFB Parcels after the date of this Fourth Amendment, Victorville either on its own or through the Southern California Logistics Airport Authority shall be solely responsible for such funding subject to the prior commitment of a portion of the Participating Jurisdictions Tax Increment Revenues from each Member's portion of the Project Area, GAFB Tax Increment Revenues and the other revenues to be allocated for use by Victorville as described in Sections 31 and 34 hereof and the ability to use all other revenues generated from the GAFB Parcels.

VICTOR VALLEY ECONOMIC DEVELOPMENT AUTHORITY

Fourth Amended Joint Powers Agreement
Exhibit A

Summary of Cash Contributions

Amount reported by VVEDA member agencies

<u>Period</u>	<u>Apple Valley</u>	<u>Hesperia</u>	<u>Victorville</u>	<u>SB County</u>	<u>Total By Year</u>
Pre 9/11/89				39,903.00	\$39,903.00
09/11/89 - 6/30/90	0.00	50,000.00	50,000.00	6,212.25	\$106,212.25
FY ended 6/30/91	103,543.00	80,314.00	80,313.93	(29,864.48)	\$234,306.45
FY ended 6/30/92	134,695.00	122,224.00	107,924.00	563,005.26	\$927,848.26
FY ended 6/30/93	191,771.00	296,345.00	501,998.69	(42,803.34)	\$947,311.35
FY ended 6/30/94	362,964.00	239,979.00	239,978.00	217,065.41	\$1,059,986.41
FY ended 6/30/95	0.00	0.00	1,962,164.59 **	112,633.19	\$2,074,797.78
FY ended 6/30/96	0.00	0.00	158,088.00 *	0.00	\$158,066.00
Total By Agency	\$792,973.00	\$788,862.00	\$3,100,445.21	\$888,151.29	\$5,548,431.50

* Litigation expenditures paid by Victorville.

** This figure has been adjusted to remove SBCO. vs Adelanto RDA costs. The suit was subsidized by Victorville in the amount of \$1,174,000 of which \$971,405.41 was previously included in the \$3,091,636 total.

Attachment 4

33. Unexpended Funds. Any assets and any unexpended funds on deposit with the Authority and any direct or indirect moneys received or earned by the Authority shall, upon termination of this Agreement or upon the dissolution of the Authority, be distributed to the respective Members in proportion to outstanding balance of the amount that each Member's Contribution and/or Prior Contribution bears to the total allocation of revenues to the Authority up to the time of such termination or dissolution.

34. Tax Increment Agreement/Member Reimbursements. The Members hereby agree that the Authority shall not receive or use any property tax moneys, other than tax increment revenues as described in the Community Redevelopment Law and as provided in the Redevelopment Plan, which would have been received by any Member had the Redevelopment Plan not been adopted.

The Members further agree that for fiscal year 1997-98 and fiscal year 1998-99 all Participating Jurisdictions Tax Increment Revenues and GAFB Tax Increment Revenues received during such period, shall be allocated solely for use on property comprising the GAFB Parcels. Of said amount, twenty percent shall be set aside for low and moderate income housing purposes in accordance with the California Redevelopment Law. Thereafter, all GAFB Tax Increment Revenues will continue to be allocated for use

on GAFB with the understanding that Victorville shall set aside twenty percent thereof for low and moderate income housing purposes.

Commencing with the 1999-2000 fiscal year, the Participating Jurisdictions Tax Increment Revenues will be divided and allocated as follows: First, twenty percent (20%) of the Participating Jurisdictions Tax Increment Revenues shall be set aside for low and moderate income housing purposes and will be allocated to each Member for use by each Member in its own portion of the Project Area.

The remaining balance of Participating Jurisdictions Tax Increment Revenues, after the twenty percent set aside amounts, shall hereinafter be referred to as the "Net Revenues".

With respect to the Original Members, forty percent (40%) of the Net Revenues attributable to any Original Member's Territory, exclusive of the GAFB Parcels, shall be allocated for use in such Original Member's Territory and forty percent (40%) attributable to such Original Member's Territory shall be allocated solely for use on the GAFB Parcels.

The remaining balance equal to twenty percent (20%) of the Net Revenues attributable to each Original Member's portion of the Project Area, exclusive of the GAFB Parcel's, shall be placed into a separate reimbursement fund of the Authority and shall be paid out annually at the commencement of each fiscal year for eligible reimbursements to each Member in proportion to the outstanding balance of any Prior Contributions. After such reimbursements are made, such moneys may be used to reimburse Member Contributions.

Upon full reimbursement to each Original Member of their Prior Contributions and Original Member Contributions, the twenty percent (20%) portion of tax increment otherwise allocated for reimbursement shall be split such that fifty percent (50%) thereof shall be allocated for use in each Members territory with the remaining fifty percent (50%) to be allocated solely for use on GAFB.

With respect to the portion of the Project Area that lies within the boundaries of Adelanto, the Parties agree that (i) fifty per cent (50%) of the Net Revenues attributable to such area shall be allocated for use solely on GAFB, (ii) twenty-five percent (25%) of such Net Revenues shall be allocated for use in Adelanto's territory, and (iii) twenty-five percent (25%) shall be allocated

to reimburse the Authority for the administrative and start-up expenses and costs associated with the establishment of the Authority and the original Project Area as shown on Exhibit "B" attached hereto and incorporated herein by this reference until such time as said amount is paid in full, at which time said twenty-five percent (25%) portion shall thereafter be allocated for use by Adelanto in its portion of the Project Area.

Said reimbursement obligations of the Authority may, by a unanimous vote of all Commissioners, be subordinated to any bond financing or similar indebtedness as agreed to by the Authority.

The Parties further agree that there shall be no amendment of the Redevelopment Plan which would alter the allocation of tax increment revenues as provided in this Section 34 without the prior formal approval of each Member of the Authority.

G. ACCOUNTING AND AUDITS

35. Fiscal Year. The fiscal year of the Authority shall be from July 1, to and including June 30, following.

36. Accounting Procedures. Full books and accounts shall be maintained for the Authority in accordance with generally

Attachment 5

RECEIVED

APR 19 2006

ORIGINAL

Economic Development Dept.

**COOPERATIVE AGREEMENT
Revised March 2003**

THIS CONTRACT is entered into in the State of California by and between the CITY OF VICTORVILLE, hereinafter called "Victorville", and City of Adelanto, hereinafter called "ADELANTO", hereby agrees to follows;

WITNESSETH

WHEREAS, Victorville and Adelanto desire to cooperate and jointly participate in a project to re-construct Air Expressway from Route 395 to Emerald Road, and install traffic control signals and safety lighting at the intersection of Adelanto Road and Air Expressway, (hereinafter referred to as Project); and

WHEREAS, Project is partially (approximately 49%) in Adelanto and partially (approximately 51%) within Victorville and will be of mutual benefit to Victorville and Adelanto; and

WHEREAS, it is anticipated that the funding for the construction phase of the Project will be from Victorville \$1,610,000 road funds and Adelanto \$1,580,000 funds (Exhibit "A"); and

WHEREAS, Adelanto and Victorville have acquired the necessary right of way for the Project; and

WHEREAS, Victorville, evidenced by its certification by the state of California, is qualified and is agreeable to perform the Services as described in Sections 1.1 through 1.13 inclusive below, subject to the terms and conditions as herein set forth; and

WHEREAS, Victorville and Adelanto desire to set forth responsibilities and obligations of each as pertains to such participation and to the design, construction, and funding of the proposed Project.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows;

VICTORVILLE AGREES TO:

- 1.1 Act as the Lead Agency in the design and construction of the Project.
- 1.2 Provide plans and specifications and all necessary construction engineering for the Project.
- 1.3 Construct the Project by contract in accordance with the plans and specifications of City of Victorville, which must be approved by both parties in writing prior to commencement of any work.
- 1.4 Arrange for relocation of all utilities, which interfere with construction of the Project within Victorville's incorporated area.
- 1.5 Obtain a no-cost permit from Adelanto for work within Adelanto's right-of-way.
- 1.6 Advertise, award, administer, and fund the construction of the Project.

1.7 Require its contractors to maintain workmen's Compensation Insurance on all employees and a Public Property Damage Liability Insurance Policy of not less than \$1,000,000 combined single limits liability coverage for bodily injury and/or property damage which shall name Victorville and Adelanto as insured parties.

1.8 Provide adequate inspection of all items of work performed under the construction contract and maintain adequate records of inspection and materials testing for review by Adelanto.

1.9 Pay for Victorville's actual share of the cost of construction of the Project. The cost of construction shall include the cost of constructing the Project, including design before and after authorization, construction engineering, and overhead costs. Victorville share of cost of construction is estimated at \$1,610,000.00.

1.10 Submit to Adelanto an itemized accounting of the Project cost and a statement of Adelanto's actual share of the costs as provided herein.

1.11 After acceptance of the construction contract, maintain those portions of the Project within Victorville's incorporated area.

1.12 Assume full responsibility for administration of Project in compliance with all state requirements.

1.13 Prepare the proper environmental documents.

1.14 Cooperate with and assist the City of Adelanto in obtaining funding for Adelanto's portion of the project construction costs from the Victor Valley Economic Development Authority ("VVEDA").

ADELANTO AGREES TO:

2.1 Estimated share of project costs is \$1,580,000.00.

2.2 Shall reimburse Victorville for Adelanto's actual share of Project cost, including design, construction, engineering and administration, from tax increment revenues generated within the Adelanto portion of the VVEDA Redevelopment Project Area ~~less~~ the portion required to fund Adelanto's portion of the startup, plan adoption and administrative costs of VVEDA as provided in Section 34 of the VVEDA Joint Powers Agreement. All such revenues shall be applied to repayment of Adelanto's share until Victorville is fully reimbursed. Adelanto's share of costs shall come solely from tax increment revenues generated within the VVEDA Redevelopment Project Area. Costs shall be amended following Victorville and Adelanto acceptance of the final construction costs accounting.

2.3 After acceptance of the construction contract work, maintain those portions of the Project within the incorporated area of Adelanto.

2.4 Arrange for relocations within its incorporated area and bare any cost associated with same if required. Exclude the Kinder-Morgan (CALNEV) facility at the southeast corner of Air Expressway and Adelanto Road.

2.5 Provide a no-cost permit to Victorville for its work in Adelanto rights-of-way.

IT IS MUTUALLY AGREED:

3.1 Victorville agrees to indemnify and hold harmless Adelanto, its officers, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from Victorville's negligent acts or omissions which arise from Victorville's performance of its obligations under this Agreement.

3.2 Adelanto agrees to indemnify and hold harmless Victorville, its officers, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from Adelanto's negligent acts or omissions which arise from Victorville's performance of its obligations under this Agreement.

3.3 In the event Victorville and/or Adelanto is found to be comparatively at fault for any claim, action, loss or damage such results from their respective obligation under this Agreement, Victorville and/or Adelanto shall indemnify the other to the extent of its comparative fault.

3.4 Furthermore, if Victorville or Adelanto attempts to seek recovery from the other for Workers Compensation benefits paid to an employee, Victorville and Adelanto agree that any alleged negligence of the employee shall not be construed against the employer of the employee.

3.5 After opening of bids, estimate of cost will be revised based on actual bid prices.

3.6 If after opening bids for the Project and if bids indicate a cost overrun of no more than 25% of the estimate, Victorville may award the contract and notwithstanding anything herein to the contrary Victorville and Adelanto shall pay for the cost of construction as herein provided.

3.7 If, upon opening of bids, it is found that the costs exceed 25% of the cost estimate of construction, Victorville and Adelanto shall endeavor to agree upon an alternative course of action. If, after 30 days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

3.8 This Agreement may be canceled upon thirty (30) days written notice of either party, however, costs incurred up to the effective date of cancellation shall be shared in the manner provided heretofore.

3.9 This Agreement shall terminate upon completion of the Project and payment of final billing by Adelanto for its share of the Project, excepting Section 2.3, which shall continue to be in force.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both parties.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their respective officials thereunto duly authorized.

CITY OF VICTORVILLE

Date: 4-15-03

Terry E. Caldwell

Approved as to form and content

[Signature]
City Attorney

Attest:

Carole Bates
City Clerk

CITY OF ADELANTO

Date: 4/23/03

[Signature]

Approved as to form ~~and content~~

Marquanda P. Butler
City Attorney

Attest:

Cindy Vance
City Clerk

EXHIBIT "A"
(REVISED 2/24/03)

VICTORVILLE/ADELANTO JOINT PROJECTS
Cost Estimate/Share

		Air Expressway		
<u>No.</u>	<u>Description</u>	<u>Adelanto's Cost</u>	<u>Victorville's Cost</u>	<u>Total Cost</u>
1	Air Expressway From Adelanto Rd. to Emerald Rd. (52' wide road)	\$ 647,000.00	\$ 1,610,000.00	\$ 1,800,000.00
2	Traffic Signal at Air Expressway/ Adelanto Road	\$ 210,000.00		\$ 210,000.00
3	Air Expressway from Adelanto Rd to Hwy 395	\$ 718,000.00		\$ 718,000.00
4	Monument Sign	\$ 5,000.00		\$ 5,000.00
	Total	\$ 1,580,000.00	\$ 1,610,000.00	\$ 3,190,000.00

**West Southern California Logistics Airport (SCLA)
Air Expressway Street Improvement Project**

ITEM	VICTORVILLE QTY	ADELANTO QTY	APP. QTY	UNIT DESCRIPTION	UNIT PRICE	VICTORVILLE PRICE	ADELANTO PRICE	TOTAL PRICE
1	1	1	1	LS Mobilization.	\$ 137,300.00	\$ 74,142.00	\$ 63,158.00	\$ 137,300.00
2	1	1	1	LS Clearing and grubbing.	\$ 3,000.00	\$ 1,620.00	\$ 1,380.00	\$ 3,000.00
3	19,548	16,652	36,200	CY Roadway excavation.	\$ 1.75	\$ 34,209.00	\$ 29,141.00	\$ 63,350.00
4	1,458	1,242	2,700	CY Roadway embankment.	\$ 17.50	\$ 25,515.00	\$ 21,735.00	\$ 47,250.00
5	10,800	9,200	20,000	CY Unclassified Excavation.	\$ 2.80	\$ 30,240.00	\$ 25,760.00	\$ 56,000.00
6	1	1	1	LS Roadside Ditch Grading.	\$ 7,000.00	\$ 3,780.00	\$ 3,220.00	\$ 7,000.00
7	13,395	15,105	28,500	TON Asphalt concrete (AC) pavement.	\$ 33.20	\$ 444,714.00	\$ 501,486.00	\$ 946,200.00
8	24,675	27,825	52,500	TON Class II Aggregate Base.	\$ 9.90	\$ 244,282.50	\$ 275,467.50	\$ 519,750.00
9	14,881	11,619	26,500	SY Grind and recycle AC for Aggregate Base.	\$ 0.80	\$ 11,904.80	\$ 9,295.20	\$ 21,200.00
10	3,055	3,445	6,500	TON Place recycled AC pavement as Class II Aggregate Base.	\$ 2.35	\$ 7,179.25	\$ 8,095.75	\$ 15,275.00
11	0	1	1	EA Relocate light pole.	\$ 1,000.00	\$ -	\$ 1,000.00	\$ 1,000.00
12	0	1	1	EA Relocate sign on private property.	\$ 427.00	\$ -	\$ 427.00	\$ 427.00
13	0	1,700	1,700	LF Const. 8" curb and gutter per City Std. S-01.	\$ 8.75	\$ -	\$ 14,875.00	\$ 14,875.00

**West Southern California Logistics Airport (SCLA)
Air Expressway Street Improvement Project**

ITEM	VICTORVILLE QTY	ADELANTO QTY	APP. QTY	UNIT DESCRIPTION	UNIT PRICE	VICTORVILLE PRICE	ADELANTO PRICE	TOTAL PRICE
14	0	2,000	2,000	SF Const. 4" sidewalk & handicap ramp per City Stds. S-04 & S-11.	\$ 4.00	\$ -	\$ 8,000.00	\$ 8,000.00
15	0	600	600	SF Const. P.C.C. Drive Approach.	\$ 6.00	\$ -	\$ 3,600.00	\$ 3,600.00
16	0	600	600	SF Const. P.C.C. Cross Gutter.	\$ 7.75	\$ -	\$ 4,650.00	\$ 4,650.00
17	3	12	15	EA Adjust manhole to finish grade.	\$ 900.00	\$ 2,700.00	\$ 10,800.00	\$ 13,500.00
18	1	20	21	EA Adjust valve to finished grade.	\$ 20.00	\$ 20.00	\$ 400.00	\$ 420.00
19	0	2	2	EA Adjust vault to finished grade.	\$ 500.00	\$ -	\$ 1,000.00	\$ 1,000.00
20	1	1	1	LS Traffic Signing & Striping.	\$ 12,500.00	\$ 6,250.00	\$ 6,250.00	\$ 12,500.00
21	0	1	1	LS Traffic signal at Air Expressway / Adelanto Road.	\$ 172,400.00	\$ -	\$ 172,400.00	\$ 172,400.00
22	1	1	1	LS Traffic control.	\$ 48,000.00	\$ 24,000.00	\$ 24,000.00	\$ 48,000.00
23	0	373	373	LF 35" x 24" CMP Arch Culvert.	\$ 58.00	\$ -	\$ 21,634.00	\$ 21,634.00
24	0	25	25	CY Major concrete structure - Culvert 1 - Cutoff wall for drainage channel.	\$ 195.00	\$ -	\$ 4,875.00	\$ 4,875.00
25	165	45	210	CY Major concrete structure - Culvert 2 - (3) 7'W x 4'H RCB.	\$ 634.00	\$ 104,610.00	\$ 28,530.00	\$ 133,140.00
26	0	20	20	CY Major concrete structure - Culvert 2 - Upstream Headwall.	\$ 576.00	\$ -	\$ 11,520.00	\$ 11,520.00

**West Southern California Logistics Airport (SCLA)
Air Expressway Street Improvement Project**

ITEM	VICTORVILLE QTY	ADELANTO QTY	APP. QTY	UNIT DESCRIPTION	UNIT PRICE	VICTORVILLE PRICE	ADELANTO PRICE	TOTAL PRICE
27	14	0	14	CY Major concrete structure - Culvert 2 - Downstream Headwall.	\$ 576.00	\$ 8,064.00	\$ -	\$ 8,064.00
28	65	8	73	CY Major concrete structure - Culvert 3 - 7'W x 4'H x RCB.	\$ 876.00	\$ 56,940.00	\$ 7,008.00	\$ 63,948.00
29	0	16	16	CY Major concrete structure - Culvert 3 - Upstream Headwall.	\$ 576.00	\$ -	\$ 9,216.00	\$ 9,216.00
30	18	0	18	CY Major concrete structure - Culvert 3 - Downstream Headwall.	\$ 576.00	\$ 10,368.00	\$ -	\$ 10,368.00
31	430	24	454	CY Major concrete structure - Culvert 4 - (4) 10"W x 6'H x RCB.	\$ 510.00	\$ 219,300.00	\$ 12,240.00	\$ 231,540.00
32	0	22	22	CY Major concrete structure - Culvert 4 - Upstream Headwall.	\$ 576.00	\$ -	\$ 12,672.00	\$ 12,672.00
33	29	0	29	CY Major concrete structure - Culvert 4 - Downstream Headwall.	\$ 576.00	\$ 16,704.00	\$ -	\$ 16,704.00
34	184	231	415	LF 6' High Chain Link Fence.	\$ 26.00	\$ 4,784.00	\$ 6,006.00	\$ 10,790.00
TOTALS						\$ 1,331,326.55	\$ 1,299,841.45	\$ 2,631,168.00

ITEM	CONTRACT QTY	QUANTITIES PREVIOUS ESTIMATE	QUANTITIES PREVIOUS ESTIMATE	TOTAL QUANTITIES TO DATE	UNIT	CONTRACT PRICES	TOTALS	Victorville Share	Adelanto Share	Victorville	Adelanto						
1 Mobilization	1	1.00	1.00	1.00	LS	137,300.00	137,300.00	50%	50%	68,650.00	68,650.00						
2 Clearing & grubbing	1	1.00	1.00	1.00	LS	3,000.00	3,000.00	50%	50%	1,500.00	1,500.00						
3 Roadway excavation	36,200	27,518.05	27,518.05	27,518.05	CY	2.70	74,298.74	36.10%	63.90%	26,821.84	47,476.89						
4 Roadway embankment	2,700	27,518.05	27,518.05	27,518.05	CY	1.80	49,532.49	54.82%	45.18%	27,153.71	22,378.78						
5 Unclassified excavation	20,000				CY	2.80				0.00	0.00						
6 Roadside ditch grading	1				LS	7,000.00				0.00	0.00						
7 Asphalt concrete (AC) pavement	28,500	27,811.00	27,811.00	27,811.00	TON	33.20	923,325.20	50.5%	49.5%	466,279.23	457,045.97					225601.9	327412.7
8 Class II aggregate base	52,500	36,340.33	36,340.33	36,340.33	TON	9.60	359,769.27	50.5%	49.5%	181,683.43	179,085.79					59602.77	62792.91
9 Sand & recycle AC for aggregate base	26,500	44,068.50	44,068.50	44,068.50	SY	0.80	35,254.40	48.0%	51.0%	17,274.65	17,978.65						787523.9
10 Place recycle AC pmt. as Class II AB	6,500	21,342.43	21,342.43	21,342.43	TON	2.35	50,154.71	48.0%	51.0%	24,575.61	25,578.90					0.504516	0.495484
11 Relocate light pole	1	1.00	1.00	1.00	EA	1,000.00	1,000.00	0%	100%	1,000.00	1,000.00						
12 Relocate sign on private property	1	1.00	1.00	1.00	EA	427.00	427.00	0%	100%	427.00	427.00						
13 Const. 8" curb & gutter per City Std. S-01	1,700	1,021.25	1,021.25	1,021.25	LF	6.75	8,935.94	0%	100%	8,935.94	8,935.94						
14 Const. 4" sidewalk & handicap ramp per City	2,000	2,604.50	2,604.50	2,604.50	SF	4.00	10,418.00	0%	100%	10,418.00	10,418.00					229601.9	158061.3
15 Const. P.C.C. drive approach	600	1,021.25	1,021.25	1,021.25	SF	6.00	6,127.50	0%	100%	6,127.50	6,127.50					59602.77	62792.91
16 Const. P.C.C. cross gutter	600	1,904.00	1,904.00	1,904.00	SF	7.75	14,756.00	0%	100%	14,756.00	14,756.00						412663
17 Adjust manhole to finished grade	15	2.00	2.00	2.00	EA	900.00	1,800.00	0%	100%	1,800.00	1,800.00					0.484607	0.535193
18 Adjust valve to finished grade	21	44.00	44.00	44.00	EA	20.00	880.00	50%	50%	440.00	440.00						
19 Adjust valve to finished grade DELETED	2				EA	500.00											
20 Traffic sign to finished grade	1	1.00	1.00	1.00	LS	12,500.00	12,500.00	50%	50%	6,250.00	6,250.00						
21 Traffic sign @ Air Expressway/Adelanto Rd.	1	1.00	1.00	1.00	LS	172,400.00	172,400.00	0%	100%	172,400.00	172,400.00						
22 Traffic control	1	512.00	512.00	512.00	LF	48,000.00	48,000.00	50%	50%	24,000.00	24,000.00						
23 35" x 24" CMP arch culvert	512	45.00	45.00	45.00	CY	75.00	38,400.00	0%	100%	38,400.00	38,400.00						
24 Major concrete structure - Culvert 1, cut-off wall for drainage channel	45				CY	200.00	9,000.00	0%	100%	9,000.00	9,000.00						
25 Major concrete structure - Culvert 2, (3) 7'W x 4'H RCB	210	49.50	49.50	49.50	CY	1,310.00	84,845.00	0%	100%	84,845.00	84,845.00						
26 Major concrete structure - Culvert 2, upstream headwall	6	6.00	6.00	6.00	CY	1,135.90	6,815.40	0%	100%	6,815.40	6,815.40						
27 Major concrete structure - Culvert 2, downstream headwall	14	4.00	4.00	4.00	CY	1,135.90	4,543.60	0%	100%	4,543.60	4,543.60						
28 Major concrete structure - Culvert 3, 7'W x 4'H RCB	124	128.40	128.40	128.40	CY	785.50	100,855.20	83.5%	16.5%	84,216.60	16,641.60						
29 Major concrete structure - Culvert 3, upstream headwall	5	5.00	5.00	5.00	CY	1,135.90	5,679.50	0%	100%	5,679.50	5,679.50						
30 Major concrete structure - Culvert 3, downstream headwall	3	3.00	3.00	3.00	CY	1,135.90	3,407.70	100%	0%	3,407.70	3,407.70						
31 Major concrete structure - Culvert 4, (4) 10'W x 6'H RCB	42	43.00	43.00	43.00	CY	1,180.00	50,740.00	84.4%	15.6%	42,824.56	7,915.44						
32 Major concrete structure - Culvert 4, upstream headwall	6	6.00	6.00	6.00	CY	1,135.90	6,815.40	0%	100%	6,815.40	6,815.40						
33 Major concrete structure - Culvert 4, downstream headwall	3	3.00	3.00	3.00	CY	1,135.90	3,407.70	100%	0%	3,407.70	3,407.70						
34 6" high chain link fence DELETED	415				LF	26.00		50%	50%	0.00	0.00						
35 18-in RCP - Culvert 5	256	256.00	256.00	256.00	LF	54.00	13,824.00	100%	0%	13,824.00	13,824.00						
36 Major concrete structure - Culvert 5, upstream headwall	1	1.00	1.00	1.00	CY	2,725.00	2,725.00	100%	0%	2,725.00	2,725.00						
37 Major concrete structure - Culvert 5, downstream headwall	1	1.00	1.00	1.00	CY	2,725.00	2,725.00	100%	0%	2,725.00	2,725.00						
38 Major concrete structure - Culvert 6, (2) 5'W x 2'H RCB	80	81.00	81.00	81.00	CY	73.00	62,613.00	100%	0%	62,613.00	62,613.00						
39 Major concrete structure - Culvert 6, upstream headwall	3	3.00	3.00	3.00	CY	1,163.00	3,489.00	100%	0%	3,489.00	3,489.00						

Attachment 6

Sophie Smith

From: Kofi Antobam [KAntobam@applevalley.org]
Sent: Thursday, March 10, 2016 9:37 AM
To: Sophie Smith; Painter, Michael
Cc: Barr, Michael; Keith Metzler
Subject: RE: Victor Valley ROPS 16-17 Revenue report follow-up

Good morning Michael,

The \$7,974.81 revenue was erroneously omitted from the Cash Balances report. It represents \$2,468 refund from PERMA for insurance paid and the balance of \$5,506.81 is interest earned on the available cash prior to distribution to members. **It is unrestricted revenue.** Let me know if you have any further question.

Thank you,

Kofi Antobam, CPA, CIA, CFE, CGAP
Assistant Director of Finance
Town of Apple Valley
14955 Dale Evans Pkwy
Apple Valley, CA 92307
Phone: 760-240-7000 ext. 7701
kantobam@applevalley.org

-----CONFIDENTIAL COMMUNICATION-----

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-----Original Message-----

From: Sophie Smith [mailto:ssmith@CI.VICTORVILLE.CA.US]
Sent: Tuesday, March 08, 2016 5:11 PM
To: Painter, Michael; Kofi Antobam
Cc: Barr, Michael; Keith Metzler
Subject: Re: Victor Valley ROPS 16-17 Revenue report follow-up

Hi Michael I've copied Kofi on this email as he can better answer the question about the revenue report

Sent from my iPhone

On Mar 7, 2016, at 5:02 PM, Painter, Michael
<Michael.Painter@dof.ca.gov<mailto:Michael.Painter@dof.ca.gov>> wrote:

Hi Sophie,

I have a quick follow-up question regarding the revenue report sent. The report indicates \$7,974.81 in revenue from refunds, interest earnings and other sources. This revenue does not appear to be reported on the Report of Cash Balances form on the ROPS.

Is this revenue restricted? Please indicate the nature of this income and whether it is available to use on enforceable obligations.

Thank you.

Michael J. Painter, Analyst
CA Department of Finance
915 L Street
Sacramento, CA 95814
(916) 445-1546 x3767

From: Sophie Smith [mailto:ssmith@CI.VICTORVILLE.CA.US]
Sent: Friday, February 12, 2016 4:28 PM
To: Painter, Michael
Cc: Barr, Michael; Keith Metzler
Subject: FW: Victor Valley ROPS 16-17 Information

Hi Michael,

Below are the responses and attached is documentation for your questions below. I have also included amortization schedules for our 2 housing bond issuances because I'm not sure if you have those. I have noticed in the more recent ROPS approval letters, DOF has calculated current debt service due (Line #2), but has only used the 7 non-housing bond issuances in their calculations. There are actually a total of 9 SCLAA bonds, housing and non-housing, and current debt service for all 9 would have to be approved in Line Item #2 otherwise we would short the bondholders.

Thank you and please let me know if you have any follow-up questions or require any additional information.

Sophie L. Smith
Economic Development Division Head
City of Victorville/Southern California Logistics Airport
14343 Civic Drive
Victorville, CA 92392
760-955-5033 office
760-559-3065 cell
www.victorvillecity.com<http://www.victorvillecity.com>

From: Keith Metzler
Sent: Wednesday, February 03, 2016 4:35 PM
To: Sophie Smith; Jennifer Thompson
Subject: Fwd: Victor Valley ROPS 16-17 Information

From: "Painter, Michael" <Michael.Painter@dof.ca.gov<mailto:Michael.Painter@dof.ca.gov>>
Date: February 3, 2016 at 4:32:17 PM PST
To: "Keith Metzler (KMetzler@ci.victorville.ca.us<mailto:KMetzler@ci.victorville.ca.us>)"
<KMetzler@ci.victorville.ca.us<mailto:KMetzler@ci.victorville.ca.us>>,"
"mpuckett@applevalley.org<mailto:mpuckett@applevalley.org>"
<mpuckett@applevalley.org<mailto:mpuckett@applevalley.org>>
Cc: "Barr, Michael" <Michael.Barr@dof.ca.gov<mailto:Michael.Barr@dof.ca.gov>>
Subject: Victor Valley ROPS 16-17 Information Good Afternoon Mr. Metzler,

I am reviewing Victor Valley's ROPS 16-17. Please send the following documentation and/or information within 5 business days:

- Item Nos. 18 and 19: Please provide updated documentation verifying the outstanding amounts for these items. Attached is the updated Defaults and Reserve Shortfall spreadsheet that our Finance department maintains and updates as shortages occur. It has been updated through December 2015.

- Item Nos. 20, 21, 22, and 23: Please provide any relevant documentation not previously provided to Finance as support for these items. There is no additional documentation to attach for these items. For Item #23, my understanding is the DOF does not believe this is an obligation of Adelanto's tax increment from the Victor Valley project area because the City of Victorville and the City of Adelanto are the named parties to the Cooperation Agreement (attached). However, please review Section 2.2 of that agreement because it clearly indicates that the City of Adelanto will use its tax increment from the VVEDA project area to repay this debt to the City of Victorville. The Cities and their respective RDA's were all party to the VVEDA JPA (attached) and as such the City of Adelanto had full authority to pledge its VVEDA tax increment for this debt. I'm hoping you can run this one by your legal counsel so they can see the correlation between this and the authority granted to the City of Adelanto in the VVEDA JPA to pledge tax increment to repay Victorville for street improvements benefitting both cities.

- With regards to the Report of Cash Balance Form: Please provide documentation including a trial balance and revenue report for the period 7/1/15 through 12/31/15. Also, please provide trustee statements showing current bond proceeds balances including reserve balances. Attached

Thank you for taking the time to provide me this documentation. I will continue to review your Agency's ROPS and will let you know if I have any additional requests. If you have any questions, please feel free to contact me.

Michael J. Painter, Analyst
CA Department of Finance
915 L Street
Sacramento, CA 95814
(916) 445-1546 x3767

Attachment 7

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

VICTOR VALLEY ECONOMIC DEVELOPMENT
AUTHORITY,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

C072518

(Super. Ct. No. 34-2012-
80001113-CU-WM-GDS)

This case arises out of the legislative dissolution of California redevelopment agencies. Plaintiff Victor Valley Economic Development Authority (Victor Valley), formed to oversee the reuse of a former military base, sued the State of California and various officials (collectively, the State), contending Victor Valley should retain its redevelopment powers. Following a dismissal based on a demurrer sustained without leave to amend, Victor Valley appeals, contending: (1) it is not a redevelopment agency;

(2) it is entitled to continue to receive tax money; (3) dissolving it would impair obligations and be preempted by federal law; and (4) it can amend to state a viable cause of action.

The trial court correctly ruled that Victor Valley's redevelopment powers were lawfully stripped from it by the Legislature. Nor has Victor Valley identified any specific *material* facts it might allege if given leave to amend. During the briefing and oral argument on appeal, the parties agreed that the judgment *does not* require that Victor Valley itself be dissolved. Although we do not read the judgment as compelling such dissolution, to ensure there is no later confusion on this point, we shall modify the judgment to include an explicit clarification of this point, and affirm as modified.

STANDARD OF REVIEW

When reviewing a judgment following an order sustaining a demurrer, “we examine the complaint’s factual allegations to determine whether they state a cause of action on any available legal theory. [Citation.] We treat the demurrer as admitting all material facts which were properly pleaded. [Citation.] However, we will not assume the truth of contentions, deductions, or conclusions of fact or law [citation] and we may disregard any allegations that are contrary to the law or to a fact of which judicial notice may be taken.” (*Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 947; see *Blank v. Kirwin* (1985) 39 Cal.3d 311, 318.) We may also accept the factual stipulations of counsel. (See, e.g., *Ramirez v. USAA Casualty Ins. Co.* (1991) 234 Cal.App.3d 391, 402 [judgment on the pleadings, mutual concessions at oral argument accepted as true].)

BACKGROUND

Legal Background Regarding Redevelopment Agencies

As briefly summarized by our Supreme Court:

“In the aftermath of World War II, the Legislature authorized the formation of community redevelopment agencies in order to remediate urban decay. [Citations.] The Community Redevelopment Law [CRL] ‘was intended to help

local governments revitalize blighted communities.’ [Citations.] It has since become a principal instrument of economic development, mostly for cities, with nearly 400 redevelopment agencies now active in California.” (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 245-246 (*Matosantos*).)

“Responding to a declared state fiscal emergency, in the summer of 2011 the Legislature enacted two measures intended to stabilize school funding by reducing or eliminating the diversion of property tax revenues from school districts to the state’s community redevelopment agencies. (Assem. Bill Nos. 26 & 27 (2011-2012 1st Ex. Sess.) enacted as Stats. 2011, 1st Ex. Sess. 2011-2012, chs. 5-6 (hereafter Assem. Bill 26 and Assem. Bill 27) [Citations].) [Assem. Bill 26] bars redevelopment agencies from engaging in new business and provides for their windup and dissolution. [Assem. Bill 27] offers an alternative: redevelopment agencies can continue to operate if the cities and counties that created them agree to make payments into funds benefiting the state’s schools and special districts.” (*Matosantos, supra*, 54 Cal.4th at p. 241.)

Our Supreme Court invalidated Assembly Bill 27, because it conflicted with a provision of the California Constitution forbidding the payments required thereunder. (*Matosantos, supra*, 54 Cal.4th at pp. 242, 264-274.) Thus, the only lawful option for redevelopment agencies was windup and dissolution, as provided by Assembly Bill 26, set forth in the Health and Safety Code,¹ although *Matosantos* judicially reformed certain dates in Assembly Bill 26 to best effectuate the Legislature’s intent. (*Matosantos*, at pp. 274-276.)

Assembly Bill 26 provided that successor agencies would “[e]xpeditiously wind down the affairs of the redevelopment agency pursuant to the provisions of this part and in accordance with the direction of the oversight board.” (§ 34179, subd. (h).) Each oversight board consists of members appointed as set forth by statute (§ 34179, subd. (a)), and has a fiduciary duty towards “holders of enforceable obligations and the taxing entities that benefit from distributions of property tax” (§ 34177, subd. (i)), including the duty to review specified actions by the successor agencies, such as “Establishment of the

¹ All undesignated statutory references are to the Health and Safety Code.

Recognized Obligation Payment Schedule [ROPS].” (§ 34180, subd. (g).) The ROPS is “the document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period.” (§ 34171, subd. (h).) The successor agency must “[c]ontinue to make payments due for enforceable obligations.” (§ 34177, subd. (a).) “ ‘Enforceable obligation’ ” is defined by section 34171, subdivision (d)(1), to include, inter alia, “Payments required by the federal government,” “Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy,” and “Contracts or agreements necessary for the administration or operation of the successor agency” (§ 34171, subd. (d)(1)(C), (E), and (F).)

We continue our discussion of Assembly Bill 26 in Part I of the Discussion, *post*.

Procedural Background

Because a major contention by Victor Valley pertains to the timing and manner of its formation, we set out facts regarding Victor Valley chronologically.

After Congress passed the Defense Authorization Amendments and Base Closure and Realignment Act in 1988 (Pub. L. No. 100-526; 102 Stat. 2623), George Air Force Base (George) and Norton Air Force Base (Norton) were selected for closure.

The Eaves Bill, former section 33320.5 (now § 33492.40), part of the CRL, was signed on September 20, 1989. (Stats. 1989, ch. 545, § 1.) It anticipated creation of joint powers authorities (see Gov. Code, § 6500 et seq.) to oversee the transition of George and Norton.

On or about October 27, 1989, Victor Valley was formed by multiple public entities, as a joint powers authority to plan for the closure and reuse of George.

On January 1, 1990, the Eaves Bill took effect. (See Gov. Code, § 9600, subd. (a) [ordinary bills take effect January 1 “next following a 90-day period” post-enactment].)

In 1993, Victor Valley adopted a redevelopment plan accepted by the federal government, with changes over time. In 1993 through 1994, the federal government

required that part of George be used as a civil airport with a “qualified sponsor,” which Victor Valley was, and the property was given to Victor Valley on the condition that Victor Valley remediated certain environmental problems. In 1996, Victor Valley and the federal government entered into agreements whereby Victor Valley received other property in exchange for a promissory note which Victor Valley “could only honor through reliance on tax increment revenues which were designated as the primary funding source.”²

A separate joint powers authority consisting of the City of Victorville and the Victorville Redevelopment Agency was formed to run the civil airport “as well as reduce [Victor Valley’s] exposure to any possible catastrophic events which might otherwise be associated with airport operations.” That entity is now the Southern California Logistics

² We must explain the term “tax increment”: “[C]ounties have a mandatory duty to collect property taxes, then allocate and distribute the appropriate amounts to various taxing entities pursuant to a complex statutory scheme. [Citation.] Allocation and distribution of property tax revenue is further subject to the [CRL]. [Citation.] The CRL sets forth the procedures for financing redevelopment projects. [Citation.] Under the CRL, such projects are financed by ‘tax increment financing.’” [¶] Under tax increment financing, ‘[a]ll taxable property within the area to be redeveloped is subject to ad valorem property taxes. The properties lying within a redevelopment area have a certain assessed value as of the date a redevelopment plan ordinance is adopted. A local taxing agency, such as a city or county, continues in future years to receive property taxes on the redevelopment area properties, but may only claim the taxes allocable to the base year value. If the taxable properties within the redevelopment area increase in value after the base year, the taxes on the increment of value over and above the base year value are assigned to a special fund for the redevelopment agency. [¶] ‘Once the redevelopment plan is adopted, the redevelopment agency may issue bonds to raise funds for the project. As the renewal and redevelopment is completed, the property values in the redevelopment area are expected to rise. The taxes attributable to the increase in assessed value above the base year value are assigned to the redevelopment agency, which then uses these funds to retire the bonds. The local taxing agencies still receive taxes attributable to the base year assessed value of the properties within the redevelopment area. This way, the redevelopment project in effect pays for itself.’” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865-866, fn. omitted; see *Matosantos, supra*, 53 Cal.4th at pp. 246-247.)

Airport Authority (SCLAA). Victor Valley pledged tax increments generated on George to the SCLAA and assigned rights with respect to those increments to the SCLAA, pledging half of the tax increments “generated from all other properties located within the project area subject to the Redevelopment Plan . . . to SCLAA.” This allowed Victor Valley to fulfill its federal obligations and facilitate reuse of George in compliance with federal law.

After our Supreme Court upheld Assembly Bill 26, Victor Valley complied with its terms “under protest,” but the Department of Finance (Finance) determined that Victor Valley could not continue to exercise the powers of a redevelopment agency, and directed Victor Valley to begin to make only “payments that are listed in a [ROPS] as contemplated under [Assem. Bill 26].”

Victor Valley sued the State, seeking a writ of administrative mandamus as well as declaratory and injunctive relief, contending it was not a redevelopment agency, and sought to prevent the State from compelling compliance with Assembly Bill 26. Attached to the petition were Finance documents concluding Assembly Bill 26 stripped Victor Valley of redevelopment authority (but *not* stating Victor Valley had to be *dissolved*). Victor Valley asserted that applying Assembly Bill 26 to it would impair contracts in violation of the federal and California constitutions, and be preempted by federal law by impeding Victor Valley’s base reuse obligations.

The State demurred, arguing as relevant here that Assembly Bill 26 required Victor Valley to be *dissolved*, or, alternatively, that its authority to receive tax increments or perform redevelopment activity was eliminated by Assembly Bill 26, and no impairment of contracts had been shown, because the successor agency to be created by Assembly Bill 26 would receive allocations sufficient to satisfy any enforceable federal obligations. At oral argument on appeal, the State withdrew its claim that dissolution was required.

Victor Valley replied that it was entitled to a declaration of rights, no pleaded facts showed Finance would satisfy obligations to the federal government, and reiterated that Assembly Bill 26 did not dissolve Victor Valley.

The trial court sustained the demurrer without leave to amend.

Victor Valley timely appealed from the judgment of dismissal.

DISCUSSION

I

The Application of Assembly Bill 26 to Victor Valley

Victor Valley contends it is not a redevelopment agency and therefore was not subject to the provisions of Assembly Bill 26. It argues that it was created as a joint powers authority under the Government Code, not as a redevelopment agency. It adds that it was created *prior to* the effective date of the Eaves Act, therefore the fact that the Eaves Act is located in the Health and Safety Code is not relevant. We conclude Victor Valley was subject to Assembly Bill 26.

We begin with the principle that the Legislature is free, within the confines of the California Constitution, to reconfigure its various subdivisions as it chooses. (See *Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 6 (*Star-Kist Foods*); *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 209.)

The CRL is located in part I of division 24 of the Health and Safety Code. The Eaves Bill (§ 33492 et seq.) is *within* the CRL, as Chapter 4.5 thereof, and was passed to mitigate “the economic and social degradation” caused by the closure of military bases. (§ 33492, subd. (a).) However, “Chapter 4 (commencing with Section 33300) shall be applicable to any project area formed pursuant to this chapter, except to the extent that Chapter 4 is inconsistent with this chapter.” (§ 33492.4.) The referenced “Chapter 4” describes the requirements and procedures for forming a redevelopment agency. (§ 33300, et seq.) Parts of the Eaves Bill apply to specific areas, and, in particular, section 33492.40 references George and Norton, and subdivision (j) thereof provides:

“The Legislature finds and declares that the closure of two or more military facilities or installations within the County of San Bernardino will cause serious economic hardship in that county, including loss of jobs, increased unemployment, deterioration of properties and land utilization and undue disruption of the lives and activities of the people. Therefore, the Legislature finds and declares that to avoid serious economic hardship *and accompanying blight*, it is necessary to enact this act which shall apply only within the County of San Bernardino. In enacting this act, it is the policy of the Legislature to assist communities within the County of San Bernardino in their attempt to preserve the military facilities and installations for their continued use as airports and aviation-related purposes.

“It is the intent of the Legislature and the commitment of the local authorities to ensure that the existing airfields at both [Norton and George] are protected, developed, and enhanced as civil aviation public use airports. Therefore, the joint powers authorities authorized by this section should make every reasonable effort to guarantee that these vital airport facilities are retained for general aviation use now and into the future.” (Italics added.)

The Eaves Bill also provides:

“The legislative bodies for communities having territory within, adjacent to, or in proximity to a military facility or installation described in subdivision (a) may create a separate joint powers agency pursuant to [Gov. Code, § 6500 et seq.], which shall have and exclusively exercise powers of an agency *in furtherance of the redevelopment of a project area approved by the joint powers agency*. The joint powers agency so formed shall include as one of its members the county in which the project area is located. In addition to the powers of an agency, the joint powers agency so formed shall also act as the legislative body and planning commission for all approvals and actions required by this part of legislative bodies and planning commissions *for the adoption and implementation of a redevelopment plan*. However, all land use, planning, and development decisions with regard to the land within the project area shall continue to be under the control and jurisdiction of each of the respective local legislative bodies or planning commissions, as applicable.” (§ 33492.40, subd. (b), italics added.)³

³ The Legislative Counsel’s Digest to the Eaves Bill partly provides: “Under the existing [CRL], territory included within a project area . . . is required to be a predominantly urbanized area of a community . . . which is a blighted area . . . [¶] This bill would make an exception . . . in the case of a project area containing privately owned land adjacent to, or in close proximity to, as defined, [Norton and George] which are proposed to be closed . . . [¶] The bill would permit the legislative bodies of

Assembly Bill 26 in part provides: “All redevelopment agencies *and redevelopment agency components* of community development agencies created under Part 1 (commencing with Section 33000) . . . that were in existence on the effective date of this part are hereby dissolved and shall no longer exist as a public body, corporate or politic.” (§ 34172, subd. (a)(1), italics added.) Although Victor Valley points out in its reply brief that “ ‘community development agency’ ” is not explicitly defined, by its terms it plausibly means an agency that “develops” a community in some fashion, which would include *redevelopment*. Victor Valley offers no alternative candidate of meaning, except to reiterate that it is a “joint powers authority and federal base reuse authority.” That does not mean it does not also function in part as a community development agency.

Further, section 34189 partly provides:

“(a) Commencing on the effective date of this part, all provisions of the [CRL] that depend on the allocation of tax increment to redevelopment agencies . . . shall be inoperative, except as those sections apply to a redevelopment agency operating pursuant to Part 1.9 (commencing with Section 34192).

“(b) To the extent that a provision of Part 1 (commencing with Section 33000) . . . conflicts with this part, *the provisions of this part shall control*. Further, if a provision of Part 1 . . . provides an authority that the act adding this part is restricting or eliminating, *the restriction and elimination provisions of the act adding this part shall control.*”⁴ (Italics added.)

Because Victor Valley was created under the authority of part 1 of the CRL, the statute authorizing it to exercise redevelopment powers is trumped by Assembly Bill 26.

communities as defined under the [CRL] to form a joint powers authority for purposes of the redevelopment of territory covered by the bill. It would establish exemptions . . . from the [CRL] as necessary *for the effective redevelopment of the area . . .*” (Legis. Counsel’s Dig., Assem. Bill No. 419 (1989-1990 Reg. Sess.) 4 Stats. 1989 Summary Dig., p. 177, italics added.)

⁴ Section 34189 as originally phrased in Assembly Bill 26 reads slightly differently, but the differences are not material. (See Stats. 2012, ch. 26, § 31; Stats. 2012, ch. 162, § 93.)

Victor Valley emphasizes that it was created under the joint powers statutes (Gov. Code, 6500 et seq.). While the State concedes for the first time on appeal that Victor Valley might continue to exist for other purposes, Assembly Bill 26 precludes it from exercising *redevelopment powers*, which have been vested in its successor agency.⁵

We see no reason why a joint powers authority could not previously have exercised redevelopment authority, even if it also had other powers. Indeed, a provision of the redevelopment law allowed this (§ 33210), and the published cases suggest it is not uncommon for a public agency to form a joint powers authority for redevelopment purposes. (See *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135, 1137-1138 [joint powers authority created after closure of March Air Force Base exercises redevelopment powers]; see also *People v. Gnass* (2002) 101 Cal.App.4th 1271, 1279 [city and its redevelopment agency formed a joint powers authority]; *City of Costa Mesa v. Connell* (1999) 74 Cal.App.4th 188, 191 [same]; *People v. Parmar* (2001) 86 Cal.App.4th 781, 788, 799 [Sacramento Housing and Redevelopment Agency is a “joint powers authority” which “serves as both housing authority and redevelopment agency for the city and the county”].)

As set forth *ante*, the Eaves Bill contemplated the use of joint powers agencies, which would exercise their powers in furtherance of the redevelopment of project areas. The fact that Victor Valley is a joint powers authority does not mean that it is exempt from Assembly Bill 26’s provisions stripping it of all redevelopment authority.

Victor Valley also emphasizes that it was formed as a joint powers authority *before* the Eaves Bill became effective, but this temporal claim is not persuasive. The

⁵ At oral argument, counsel for the State conceded Victor Valley, as a joint powers authority, could be the successor agency under section 34173, subdivision (c) for purposes of continuing to fulfill enforceable obligations as provided by Assembly Bill 26, and counsel for Victor Valley asserted that that, in fact, was what Victor Valley is doing.

Eaves Bill was signed by the Governor on September 20, 1989. Although Victor Valley alleges it was formed a month after the Eaves Bill passed, but before its effective date, because Victor Valley seeks shelter under the Eaves Bill, we do not see how it cannot have the purpose of redevelopment, at least as part of its mission. Indeed, its organic document provided Victor Valley would have the power to redevelop George and its environs “at such time as California law permits this [Joint Powers] Authority to exercise redevelopment powers.” Thus, Victor Valley as an entity at least partly hinged its existence on the Eaves Act. To the extent it seeks to exercise redevelopment powers post-Assembly Bill 26, it cannot do so, except in its capacity as a successor agency to facilitate the windup of remaining enforceable obligations. (See fn. 5, *ante*.)

As the State observes, Victor Valley’s focus on issues of formation and whether it continues to exist as an *entity* misses the point. The point is that Assembly Bill 26 precludes Victor Valley from acting as a *redevelopment agency*.

However, the State originally argued in its demurrer that Victor Valley had to be dissolved, and although the State has now withdrawn that claim, Victor Valley plausibly made the point at oral argument that a mere affirmation of the judgment of dismissal in such circumstances could cloud the question about its continued viability. Accordingly, we shall modify the judgment to clarify that Victor Valley may continued to exist as a joint powers authority, as agreed by the parties at oral argument.

II

The Impairment of Contractual Obligations by Assembly Bill 26

Victor Valley contends that precluding it from obtaining tax increment funding will cause it to violate federal contracts. In related arguments, it contends Assembly Bill 26 is preempted by the federal obligations, and also claims those obligations will be impaired in violation of the federal and California constitutions.

First, Victor Valley’s opening brief is bereft of legal authority on these points, other than a passing reference to “the ‘Contracts Clauses’ of the United States and

California Constitutions,” therefore these arguments are forfeited on appeal for lack of coherent argument, supported by legal authority. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 408; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3.)

Second, as explained earlier, Victor Valley’s successor agency will be responsible for reporting and fulfilling outstanding enforceable obligations.⁶ Part of Assembly Bill 26 provides: “It is the intent of this part that pledges of revenues associated with enforceable obligations of the former redevelopment agencies are to be honored. It is intended that the cessation of any redevelopment agency shall not affect either the pledge, the legal existence of that pledge, or the stream of revenues available to meet the requirements of the pledge.” (§ 34175, subd. (a).) Further, the federal government has not intervened, and Victor Valley cannot raise claims on its behalf. Our Supreme Court has held that “subordinate political entities, as ‘creatures’ of the state, may not challenge state action as violating the entities’ rights under the due process or equal protection clauses of the Fourteenth Amendment or under the contract clause of the federal Constitution.” (*Star Kist Foods, supra*, 42 Cal.3d at p. 6.) Accordingly, we reject Victor Valley’s impairment of contracts and related claims.

III

Leave to Amend

Under a “a counterintuitive quirk of California appellate law” (*Connerly v. State of California* (2014) 229 Cal.App.4th 457, 460 (*Connerly*)), a plaintiff may propose new facts and theories for the first time on appeal to explain how the complaint may be amended to state a cause of action, thereby showing the trial court “abused its discretion” (Code Civ. Proc., § 472c, subd. (a)) in not granting leave to amend.⁷ (See *City of*

⁶ As stated, the successor agency is, apparently, Victor Valley itself. (See fn. 5, *ante*.)

⁷ The statute dictates that we frame the issue as whether the trial court abused its discretion in denying leave to amend. (Code Civ. Proc., § 472c, subd. (a).) “This is

Stockton v. Superior Court (2007) 42 Cal.4th 730, 746.) However, to succeed, the plaintiff “must show in what manner he can amend his complaint *and how that amendment will change the legal effect of his pleading.*” (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636, italics added (*Cooper*)).) Victor Valley’s opening brief claims it should be given leave to amend, but never explained what material facts it would plead.

For the first time in the reply brief, Victor Valley seizes on a concession in the State’s briefing, to the effect that Victor Valley may not have to be dissolved, and argues this means leave to amend should be granted. The trial court accepted the State’s view at oral argument in the trial court, although the judgment of dismissal does not command dissolution of Victor Valley. As stated earlier, we agree that the judgment should be modified to state that Victory Valley was *not* dissolved by Assembly Bill 26. Such modification adequately declares the rights of the parties on the question of Victor Valley’s right to exist as a joint powers authority, therefore no remand for amendment of the complaint is warranted. (See *Haley v. Los Angeles County Flood Control Dist.* (1959) 172 Cal.App.2d 285, 292-294.)

However, Victor Valley has not tendered new facts showing it retains any *redevelopment* powers following passage of Assembly Bill 26.⁸ Victor Valley merely replicates arguments we have rejected about why it should keep such powers. Thus Victor Valley has failed to point out exactly *how* it would amend to state a viable cause of action that would allow it to continue exercising redevelopment powers. (See *Cooper*,

arguably misleading and unfair.” (*Connerly, supra*, 229 Cal.App.4th at p. 460, fn. 2.) The trial court rules on the facts and law presented in the operative complaint and moving papers on demurrer, whereas the appellate court may be presented with entirely different facts tendered to show that leave to amend is proper.

⁸ As set forth in its opening brief, Victor Valley sought judicial notice of various documents, however, by previous order we denied the request for judicial notice (interim), so we disregard references to those documents. Victor Valley does not contend those documents add to its claim that it should be given leave to amend.

supra, 70 Cal.2d at pp. 636-637; *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 889-890.) Therefore, we decline to grant leave to amend.

DISPOSITION

The judgment is modified to add a sentence stating: “This judgment does not compel the dissolution of Victor Valley as a joint powers authority.” The trial court is directed to prepare a new judgment containing such modification. As so modified, the judgment is affirmed. The parties shall bear their own costs on appeal. (See Cal. Rules of Court, rule 8.278(a)(3).)

DUARTE, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.

Attachment 8

FOURTH AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT
CREATING
VICTOR VALLEY ECONOMIC DEVELOPMENT AUTHORITY

THIS FOURTH AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (the "Fourth Amendment") is made and entered into among the Town of Apple Valley ("Apple Valley"), the City of Hesperia ("Hesperia"), the City of Victorville ("Victorville"), the City of Adelanto ("Adelanto") and the County of San Bernardino ("County"), each duly organized and existing under the laws of the State of California (sometimes referred to herein individually as "Member" or "Member of the Authority" and collectively as "Members" or "Members of the Authority"):

R E C I T A L S

WHEREAS, each of the parties hereto is a public agency authorized and empowered to contract for the joint exercise of powers under Article 1, Chapter 5, Division 7, Title 1 (Sections 6500, et seq.) of the Government Code of the State of California; and

WHEREAS, Apple Valley, Hesperia, Victorville and the County (the "Original Members") have previously approved and executed an original joint powers agreement entitled "Joint

to cause the development and redevelopment of GAFB and shall not be used for activities outside of the boundaries of GAFB.

In connection with the issuance of any bonds or similar forms of indebtedness to be issued by the Authority which are to be secured by a pledge of Participating Jurisdictions Tax Increment Revenues, the Members agree that the Authority shall only issue such bonds or indebtedness to the extent the Authority receives the consent of all Members and the pledge by all Members of that portion of each Participating Member's Tax Increment Revenues which would otherwise be allocated for use by such Member in its own territory pursuant to Section 34 hereof.

Notwithstanding the foregoing, each of the Members or their respective Redevelopment Agencies may, individually or jointly with other Members or their respective Redevelopment Agencies, undertake the issuance of tax increment bonds or similar forms of indebtedness secured by tax increment revenues by pledging that portion of the Participating Members' Tax Increment Revenues which is attributable to such Participating Member's jurisdiction and which would otherwise be allocated for use by such Member(s) pursuant to Section 34 hereof and which is not otherwise earmarked for use in connection with the development and redevelopment of