



## MEET AND CONFER REQUEST FORM

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**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](mailto: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](mailto:Redevelopment_Administration@dof.ca.gov).

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### AGENCY (SELECT ONE):

Successor Agency       Housing Entity

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**AGENCY NAME: Victor Valley Economic Development Authority**

### TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

Housing Assets Transfers     Due Diligence Reviews     ROPS Period 15-16B

DATE OF FINANCE’S DETERMINATION LETTER: November 13th, 2015

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

Meeting at Finance     Conference Call     Combination Meeting/Conference Call

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## DETAIL OF REQUEST

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

- Item # 18- Payment of defaulted amounts owed for bonds related to Item #2
- Item # 19- Payment of reserve shortfalls related to Item #2
- Item # 20- SCLA operational shortfalls as provided for in Sections 3, 4(ii)(c )(k)(l)(m) and 8 of the JPA
- Item # 21- SCLA capital expenditures as provided in Sections 3, 4(ii)(c )(k)(l)(m) and 8 of the JPA
- Item # 22- Adelanto repayment of JPA Section 34 amounts.
- Item # 23- April 23<sup>rd</sup>, 2003 Cooperative Agreement- City of Adelanto

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

The Victor Valley Economic Development Agency (VVEDA) was formed in 1989 pursuant to a Joint Exercise of Powers Agreement (JPA) under government code section 6500 to provide a regional agency response for the reuse of George Air Force Base (GAFB), now known as the Southern California Logistics Airport (SCLA). Being in such a unique position, VVEDA was, and its Successor Agency is, different from other redevelopment and successor agencies, and VVEDA's agreements and delegations of authority should therefore be considered during dissolution.

The JPA was created to effectuate redevelopment and reuse of the former GAFB and areas in proximity thereto in accordance with the Victor Valley Redevelopment Project Area (Project Area). Pursuant to Health and Safety Code Section 33492.40, VVEDA was provided with the exclusive authority to exercise powers of a redevelopment agency within the Project Area. Accordingly, the VVEDA JPA defined tax increment as one of the main Sources of Funds (Section 31- VVEDA JPA) and set forth the application of said tax increment within the Project Area.

Among the more significant provisions of the VVEDA JPA, VVEDA delegated authority to Victorville, and Victorville assumed the delegation of authority, for matters concerning SCLA which included "all of the powers afforded to VVEDA by this Agreement" (Section 8-VVEDA JPA). Victorville did so relying on provisions of the JPA that provided it with, among other things, tax increment generated from the Project Area. Relying on provisions contained in Sections 8, 31, 34, and 38, Victorville (through SCLA) incurred several contractual obligations, including bonds, which relied on VVEDA's pledge of tax increment revenues generated from the Project Area to ultimately satisfy said obligations.

The delegation of authority provided to Victorville in the VVEDA JPA occurred prior to the effective date of AB x1 26. Victorville's (through SCLA) obligations identified in the 15-16B ROPS occurred well before the effective date of AB x1 26. Absent delegation of authority provided for in Section 8 of the JPA the contractual obligations would have remained with VVEDA and effectively would exist today as VVEDA obligations. Therefore, obligations undertaken by Victorville or any of the VVEDA Member Jurisdictions pursuant to the delegation of authority provisions in the VVEDA JPA must be considered enforceable obligations of VVEDA. A Department of Finance (DOF) denial effectively impairs the respective Member Jurisdiction Contract.

The assignment of VVEDA's contractual obligations and SCLA's assumption of VVEDA's contractual obligations is further set forth in that certain Assignment Agreement By and Between the Victor Valley Economic Development Authority and Southern California Logistics Airport Authority dated as of October 13, 2000 (the "Assignment Agreement").

All of the bonds in question were issued prior to AB x1 26 and secured by a pledge of tax increment from both the Victorville portion of the VVEDA project area (as subsequently amended) and the amount of tax increment pledged to SCLA by each of the VVEDA member jurisdictions (i.e., Victorville, County of San Bernardino, Hesperia, Adelanto, and Apple Valley, hereafter referred to as tax increment generated within the SCLA portion of the project area) pursuant to the instructions in the JPA. On ROPS 15-16B, the Successor Agency requested revenues under items #18 and #19 to:

- 1) Repay bond debt service payments on subordinate bonds that could not be paid for several years due to insufficient tax increment revenues generated in the Project Area due to significant reductions in property values and property taxes during the Great Recession in 2008-2013, and
- 2) Replenish the reserve fund, as legally required in both the Official Statement and Bond Indenture.

The Successor Agency provided the back up documentation on the reserve accounts and amounts due on unpaid bond payments to DOF during the ROPS 15-16B review.

**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 #18 & 19-** DOF is denying repayment totaling \$14,301,944 of defaulted debt service payment and reserve fund replenishment associated with SCLA Bonds. In its 15-16A Meet and Confer determination letter dated May 15, 2015, DOF stated that the excess more than the debt service due "is not eligible for RPTTF funding on this ROPS." Based on the language in the 15-16A M&C determination, the Successor Agency requested only the current debt service due for item 2 on the 15-16B ROPS and intended to fund items 18 and 19 with the remainder of tax increment generated by Victorville and SCLA's project areas. However, DOF stated in its current determination letter dated November 13, 2015 that "approval of RPTTF from WEDA to Victorville is limited to the increment generated by Victorville and SCLA's respective project areas, which is requested in Item No. 2."

Items 18 and 19 represent payment of defaulted amounts and reserve shortfalls owed for the same bonds for which item 2 provides the current debt service payment, as recognized and approved by DOF in its Final and Conclusive Determination dated November 12, 2014. The obligation of SCLA (assigned to Victorville) to pay past due debt service on the bonds and to replenish the reserve accounts under the Indentures clearly meet the definition of "enforceable obligation" under Health and Safety Code Section 34171 as defined to include "any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds of the former redevelopment agency." As such, the defaulted amounts and reserve shortfalls are obligated by tax increment generated by Victorville and SCLA's respective project areas in the same way as current debt service.

In at least one previous ROPS period (14-15B), Victorville and SCLA received less than the tax increment generated within their project areas despite the fact that there were unpaid debt service payments and the current amount of bond reserves does not meet the requirement of the indenture. Victorville (as the authority delegated by VVEDA for matters concerning SCLA) should receive all of the tax increment generated within the Victorville and SCLA project areas to pay the current debt service, pay previous unpaid debt service, and replenish the reserve balance until previously unpaid debt service payments are made and the reserve balance meets the amount required by the indenture. Any alternative distribution is a violation of the bond indenture.

The Successor Agency therefore requests that payments for defaulted amounts and reserve shortfalls be approved either as separate items (i.e., 18 and 19) or as part of item 2 so that Victorville (as the authority delegated by VVEDA for matters concerning SCLA) can use all of the tax increment generated by Victorville and SCLA's respective project areas to continue making current due payments and remedy defaulted payments and the reserve shortfall.

**Item Nos. 20 and 21-** DOF's denial of items 20 and 21 ignores the Delegation of Authority, described in Section 8 of the VVEDA JPA. Section 8 of the VVEDA JPA delegates authority and obligates Victorville and SCLA to manage, develop, and reuse the former GAFB. To facilitate the delegation of these responsibilities, Section 34

of the VVEDA JPA requires tax increment revenues generated by it to be distributed to Victorville and SCLA in an amount that is equivalent to the amount generated by Victorville and SCLA's respective project areas.

The JPA further requires Victorville and SCLA to accept responsibilities in satisfying Federal Aviation Administration and US Air Force obligations, including operational, maintenance, and development responsibilities. If not delegated to Victorville and SCLA, these responsibilities would have remained with VVEDA, which would have relied on the JPA to continue to serve as the funding mechanism for said enforceable obligations. Victorville and SCLA's acceptance of these responsibilities imposed by VVEDA were agreed to relying on revenues committed by VVEDA in Section 34 of the JPA. Accordingly, Victorville and SCLA have incurred costs associated in performing the responsibilities required by VVEDA in Section 8 of the VVEDA JPA.

Absent this funding obligation, Victorville and SCLA would not have been in a position to fulfill the delegation of responsibilities. Victorville and SCLA did so in good faith reliance on the VVEDA JPA serving as a mechanism to be a funding solution for its short term needs. Accordingly, Victorville and SCLA must be provided with RPTTF to compensate them for the operational deficiencies they incurred while attempting to satisfy VVEDA's obligations in Section 8 of the VVEDA JPA.

**Item No. 22-** The claim for repayment is from RPTTF generated from Adelanto's portion of the VVEDA Project Area, an amount calculated as separate and distinct from other members of the VVEDA Project area. The Third District California Court of Appeals issued an opinion on November 25<sup>th</sup>, 2014 stating in part "that AB x1 26 precludes Victor Valley from acting as a redevelopment agency", though it immediately clarified..."that Victor Valley may continue to exist as a joint powers authority ...." (Page 11 of opinion). Accordingly, the JPA remains a governing document of VVEDA, and VVEDA remains obligated to enforce the obligations contained in the JPA.

Pages 40 and 41 in Section 34 of the VVEDA JPA clearly identify Adelanto's obligation to reimburse VVEDA its start up costs with tax increment (now RPTTF) generated in Adelanto's project areas. Adelanto pledged repayment of VVEDA costs totaling \$673,067 relying on its ability to generate tax increment over the life of the Redevelopment Plan. This amount was affirmed separately via resolution 10-001 and staff reconciliation dated June 16, 2010. The JPA and Resolution were approved prior to AB x1 26 and meet the definition provided for in Health and Safety Code Section 34171. Accordingly, this item must be approved for payment as an Enforceable Obligation.

**Item No. 23-** DOF's denial of the Cooperative Agreement ignores Section 34 of the VVEDA Joint Powers Agreement and Section 2.2 of the Cooperative Agreement between Victorville and Adelanto. Section 34 of the Joint Powers Agreement clearly establishes that

- 1) Tax increment revenues generated in Adelanto's portion of the Project Area shall be allocated to Adelanto for its use in its portion of the Project Area; and
- 2) Adelanto agreed in the Cooperative Agreement to reimburse Victorville for certain public improvement costs relying on the same money described in Section 34 of the JPA. Combined, both documents establish a delegated and exercised authority relying on funds that have now become RPTTF money. Both the JPA (which has been upheld by the Court of Appeal) and the Cooperative Agreement (which is a legally binding contract) were entered into prior to AB x1 26 and meet the definition of enforceable obligations provided for in Health and Safety Code Section 34171. Accordingly, this item must be approved for payment.

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**Agency Contact Information**

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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)