

CITIES/SPECIAL DISTRICTS COMMITTEE



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Back row: William Hutson, Darrell Freeland, Robert Deao (chair), James Coughlin
Front row: Jon Haggard, Sandra Munson, Ignacio Nunez, Dianne Tolbert, Marilyn Trombetta

CITIES/SPECIAL DISTRICTS

Introduction

The Cities/Special Districts Committee has the responsibility of investigating the following County departments and agencies and special districts:

- Cities/Municipalities (Financial Responsibilities/Operational Performance)
- Community/Senior Centers
- School Districts and Community College Districts
- Special Districts (Water/Waste/Fire Protection)
- Superintendent of Schools

The following cities, departments and agencies were investigated:

- City of Rancho Cucamonga – Mobile Home Space Rent
- City of San Bernardino - Citation Appeal Process
- City of San Bernardino - Economic Development Agency Neighborhood Stabilization Program
- City of San Bernardino - Verdemont Community Center
- City of Victorville - Employee Retirement Health Benefits
- City of Victorville - Performance Audit
- Special Districts - Apple Valley Fire District
- Special Districts - Arrowhead Community Service District
- Special Districts - Moonridge Zoo, Big Bear Lake

A final report was issued on the following:

- City of San Bernardino - Citation Appeal Process
- City of San Bernardino - Economic Development Agency Neighborhood Stabilization Program
- City of San Bernardino – Verdemont Community Center
- City of Victorville – Performance Audit

CITY OF SAN BERNARDINO CITATION APPEAL PROCESS

BACKGROUND

A complaint was received by the Grand Jury from an individual who received a parking citation from the City of San Bernardino that was disputed. The individual appealed the parking citation. The first two levels of appeal upheld the citation. On the third level of the appeal process, the Superior Court dismissed the citation.

The Grand Jury reviewed the contract between the private company and the City of San Bernardino (City). They met with the City Attorney and with members of the Police Department who were responsible for the parking citation appeals. Also, members were furnished copies of the Hearing Officer Manual – California Public Parking Association, 2008, used to assist in hearing and disposition of all contested cases involving violations of the California Vehicle Code.

Members noted City parking citations state, on the reverse side, an appeal can be requested by writing to the City of San Bernardino, c/o a parking citation service center in Orange County. The City contracts with a company to handle the administrative actions associated with documenting the issue of citations, dispositions, scheduling appeal hearings, and collecting fees. The citation also states information can be obtained by calling a toll-free number.

The company does not participate in any of the appeal reviews, except to collect documents from the complainant and forward them to the City. The company does not have input into the upholding or dismissal of parking citations.

The City's website states what actions are required and how the parking citation appeal process works, for the three levels of appeals:

- The first level of the appeal process is an Administrative Review conducted by a member of the City of San Bernardino Police Department. If the first level of appeal does not result in the disposition the appellant desires, they may go to the second level of appeal.
- The second level of the appeal process is an Administrative Hearing conducted by a Hearing Officer that is not an employee of the City Police Department. If the second level of appeal does not result in the disposition the appellant desires, they may go to the third level of appeal.

- The third, and last, level of appeal is to have the appeal presented to the Superior Court.

FINDINGS

1. The company handling administrative actions for parking citations is paid once per citation.
2. Individuals do not receive sufficient information on the process of requesting an appeal to a parking citation or fully understand the information they are provided. They can obtain information either by writing to the address on the citation, or calling the toll-free number.

RECOMMENDATION

12-01 The City of San Bernardino provide detailed information regarding how parking citation appeals are handled. (Finding 2)

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Due Date</u>
City Manager, San Bernardino	12-01	September 29, 2012

CITY OF SAN BERNARDINO NEIGHBORHOOD STABILIZATION PROGRAM

BACKGROUND

The Grand Jury received a complaint regarding the sale of rehabilitated homes under the Neighborhood Stabilization Program (NSP) administered by the City of San Bernardino.

A federal grant for the NSP was congressionally appropriated under the Housing and Economic Recovery Act of 2008, which authorized \$8,408,558 to be spent over a 48-month period ending in March 2013. Eligible projects under the grant are rehabilitation of single-family residences for resale, demolition of uninhabitable properties, and rehabilitation of multi-family units. A nonprofit corporation, Affordable Housing Solutions, was formed to implement housing projects for the City of San Bernardino's Economic Development Agency (Agency), which is the office of primary responsibility for administration and management of the NSP funds.

This report is focused on the procedures the Agency employed in NSP rehabilitation of single family residences (SFR) and their resale. As an initial step, the Agency prepared and released a *Request for Proposal* to identify qualified construction contractors/developers and real estate agents to rehabilitate the properties. These entities were designated as *intermediaries*. Fifteen applications were submitted and six were selected and approved by the City Council. Through Memorandum of Understanding (MOU), the specific requirements for process of the rehabilitation and resale were detailed. Each Intermediary is responsible for selecting its vendors, employees (laborers) and real estate agents. The Agency is responsible for monitoring the processes of construction and resale.

The properties are selected and purchased by the Agency, the intermediaries provide quotes to complete the rehabilitation project, and the Agency selects the Intermediary, and negotiates final costs. The intermediaries are responsible for the entire rehabilitation process and security of properties through the resale. Upon project completion, the Agency inspects and approves construction quality and compliance with standards for reimbursement/payment.

An independent appraisal is requested by the Agency and the listing and sale price is based upon the fair market value with or without total rehabilitation costs, whichever is less. The real estate agent is to comply with *Affirmative Marketing Requirements*, as detailed in the MOU. Also, the real estate agent must recruit and refer to the Agency, qualified and eligible buyers at or below 120% of the local area median income. A third party consultant is utilized by the Agency to

ensure that potential buyers are confirmed eligible under the grant requirements prior to completion of the sale.

According to the complainant, the NSP single-family residences were being listed in the Multiple Listing Service (MLS) with a sales price and almost immediately put into the status of “hold-do-not-show” for six to nine months. Then status was later changed to ‘active’ with a revised sale price.

The Grand Jury interviewed Agency intermediaries, along with their respective real estate agents, regarding their involvement with the NSP rehabilitation of and resale of SFR. Seventeen properties are being listed in the MLS when the Intermediary takes control of the project without the knowledge of the Agency. A “For Sale” sign is posted and sale price is listed in the MLS at a “projected” market value based upon the real estate agent’s best estimate of what will be the fair market price upon rehabilitation. The status of sale is placed on “hold-do-not-show” in the MLS and a lockbox is not placed on the property. The MLS price is subsequently changed to correspond to the price that has been established by the outside appraisal and agreed to with the Agency, and the properties are sold within the six to nine month period after the rehabilitated properties are completed. There is evidence that on at least two occasions the agent has been the listing and selling agent, which is a widespread business practice.

The Grand Jury discovered a real estate agent that acknowledged that his involvement in the sale of NSP properties was a learning process. At the onset, he did not know or understand the required procedures for establishing the sales price and determination of qualified buyers until Agency staff worked with him to ensure NSP compliance in the sale process.

The MLS is a computerized system, which is governed by the California Real Estate Technology Services (CARETS) Rules and Regulations. MLS collects and maintains information on properties offered and sold within the San Bernardino/Riverside greater areas and makes it available to real estate agents through subscription. A function of the MLS is to preserve the absolute, explicit integrity of the data. Each agent that uses the system is bound by a Code of Ethics. According to CARETS rules, listings are entered into the MLS with the knowledge and written consent (contract) of the seller. At such time, there is a mutually agreed price, a lockbox is placed on the property and a “For Sale” sign is posted.

To date, the Agency has purchased 36 SFR under the NSP Grant for rehabilitation and homeownership; six are still in the process of being sold. Most rehabilitated SFR are on the market from six to nine months before sale.

The Agency maintains that they are on target to meet the goals of the grant. Currently the focus is on completing the few remaining rehabilitation projects and to sell the properties. Program

income from resale is used to acquire additional eligible properties until the grant is fully expended by the end of the grant period in March 2013.

In April 2011, the Agency received an additional funding of \$3,277,401 under the Dodd-Frank Wall Street Reform and Consumers Protection Act–Neighborhood Stabilization Program III (NSP3). This was in response to the residential foreclosure crisis facing the City of San Bernardino. NSP3 has been designated by the Agency as the “Local Street Reform and Protection” Program. The commencement of this program is projected after July 1, 2012. The Agency will use the Housing and Urban Development (HUD) designated Community Housing Development Organizations (CHDO) to conduct the rehabilitation activities under NSP3. These organizations are non-profit housing entities with a goal to increase the availability of affordable housing within their communities.

FINDINGS

1. The Agency does not provide sufficient oversight of the Intermediary’s resale process. There were numerous cases where the properties were listed in the MLS at the point when the Intermediary assumed the rehabilitation project and a “For Sale” sign was posted on the property prior to the SFR being ready for resale. This enhanced the notoriety of the agent, solely, not the NSP program. Although receiving profit as the listing agent and selling agent is not illegal, perhaps within the parameters of a federal program, the activity should not be allowed.
2. The Agency allows the properties to be listed in the MLS in a status of “hold-do-not-show” for a lengthy period of time during the rehabilitation process. This discouraged agents/subscribers of the MLS and inhibited a more extensive marketing effort for eligible qualified buyers.
3. The Agency provides an insufficient level of training and instruction to the intermediaries and their respective real estate agents. An emphasis on the need to use the Affirmative Marketing Principles to “identify persons in the housing market who are not likely to apply for housing without special outreach” is lacking.
4. The Agency provides an insufficient level of training and/or instruction to the intermediaries and their staff on the NSP program beyond the construction/re-sale requirements. There is a lack of distinction placed on the purposes of increasing homeownership to those who may not know that they can achieve such status. This federal program is more than just the business as usual of rehabilitating homes and selling.

COMMENDATION

The Agency is to be commended for its programmatic focus of the NSP funds/projects to neighborhoods (specific streets in high crime areas and number of vacant SFR) which, as a consequence of the rehabilitation, resulted in an improved quality of life to the neighborhood inhabitants.

The Grand Jury applauds the decision of the Agency in using the HUD vetted CHDO in the implementation of the next stage of NSP3, the 'Local Street Reform and Protection.'

RECOMMENDATIONS

- 12-02 Provide more intensive monitoring of the activities of the intermediaries, and in the future, the CHDO, during the rehabilitation resale process so that the use of the MLS is not used to convey status of the properties that is incorrect and further, not to discourage the involvement of other agents. (Findings 1, 2)
- 12-03 Prohibit properties from being placed into the MLS without a written agreement with the Agency, and not until such time as the property has been appraised, has fair market value established, and is ready for sale. (Findings 1, 2, 4)
- 12-04 Prohibit real estate agents from placing the properties into the MLS in a "hold-do-not-show" status. This has the de-facto effect of depressing advertisement and/or widespread exposure of the property. (Findings 1 - 4)
- 12-05 Provide sufficient training and instruction to intermediaries and their real estate agents on the use of the Affirmative Marketing Principles so that a wider variety of qualified buyers can be identified. (Finding 3)
- 12-06 Provide training and/or instruction to all persons, intermediaries or CHDO, that will be involved in implementation of the NSP program. This instruction should extend beyond the construction/resale requirements to the NSP intrinsic principles. All efforts are to focus on reaching the greatest number of possible qualified homebuyers, while improving the quality of life for both the persons becoming a part of the neighborhood and those who are existing members of the neighborhood. (Findings 1 - 4)

Responding Agency	Recommendations	Due Date
City Manager, San Bernardino	12-02 through 12-06	September 29, 2012

CITY OF SAN BERNARDINO VERDEMONT COMMUNITY CENTER

BACKGROUND

The Grand Jury initiated an investigation into the construction of the Verdemon Community Center (VCC) within the City of San Bernardino (City), based on information contained in a newspaper article. The VCC was constructed on City Parks and Recreation Department property.

The Building Inspection Department had not been contacted before construction of the VCC building began. A stop order was issued as a result of a supervising City Building Inspector by chance observing construction in progress. Three days later a building permit was issued.

The VCC was opened for public use on September 30, 2011, without issuance of a "Certificate of Occupancy." An inter-office memorandum dated December 19, 2011, from the Supervising Building Inspector was sent to the Community Development Department of the City describing the deficiencies the inspector observed. Beginning in 2012 the City Parks and Recreation Department took over management of the VCC.

Members of the Grand Jury on May 3, 2012, visited the VCC. It is located on City-owned land within a park complex. The Grand Jury members identified problem areas as follows:

- Three of six air-conditioning/heating units were not operating
- The kitchen area lacked commercial sinks, proper wall covering, and there existed a gas-connected commercial grill with no vent or fire protection system, as required by the California Fire Code
- The entry area lacked the International "Sign of Accessibility."

Two major structural problems were identified by the City Operations and Maintenance Department:

- The air-conditioning/ heating unit ducts do not conduct air properly which will require repairs above the ceiling
- There is improper welding to secure the numerous steel piers supporting the floor of the building as verified by numerous photographs provided by an official from the City.

FINDINGS

1. A Certificate of Occupancy is required and has yet to be issued. ¹

2. Construction of VCC was begun and completed without initial building permits and subsequent inspections during the construction process.²
3. The grill connected to a natural gas outlet in the kitchen area of VCC lacks an exhaust hood, ducts, and a fire protection system as required by the California Fire Code and Mechanical Code.³
4. The kitchen walls and sinks do not conform to *Build It Right Guidelines* for public food handling facilities. The VCC qualifies as a public food handling place by the San Bernardino County, Department of Public Health.⁴
5. The Grand Jury found that staff within City Departments had a general lack of understanding of the building requirements for this project.

RECOMMENDATIONS

- 12-07 Cease occupancy of VCC until a Certificate of Occupancy is issued, per San Bernardino Municipal Code 15.20.30. (Finding 1)
- 12-08 Conduct training so that all future construction projects adhere to all applicable City, County and State regulations. (Finding 5)
- 12-09 Install exhaust hood, ducts and fire suppression equipment as required by the California Fire and Uniform Mechanics Codes. (Findings 2 - 4)
- 12-10 Comply with kitchen wall and sink requirements contained within the *Build it Right Guidelines* issued by San Bernardino County, Department of Public Health. (Finding 4)

Footnotes:

¹ San Bernardino Municipal Code 15.20.030
² California Building Code 105.1. Adopted by reference by the City of San Bernardino per the San Bernardino Municipal Code 15.04.020.
³ California Fire Code Sections 609.1 and 609.2. California Uniform Mechanical Code Section 507.1.
⁴ Build It Right Guidelines, San Bernardino County, Department of Public Health. (Updated) As verified as applicable to a kitchen facility at a Community Center.

Responding Agency	Recommendations	Due Date
City Manager, San Bernardino	12-07 through 12-10	September 29, 2012

CITY OF VICTORVILLE

BACKGROUND

The City of Victorville (Victorville) and its finances were brought to the attention of the Grand Jury in spring of 2009. Many interviews and hours have been devoted to provide accurate information on this issue.

The review of Victorville's finances was outside the scope of the Grand Jury's expertise. Assistance was requested in order to provide a professional review and determination regarding Victorville's finances.

A forensic audit was conducted originally. In order to complement and enhance the information previously provided, a performance audit was recommended by the Grand Jury. Harvey M. Rose & Associates, LLC, was contracted to conduct the performance audit.

The focus of the audit concerned five specific topics:

1. The Financial Condition of the City of Victorville
2. Inter-fund Loans and Use of Restricted Funds
3. Power Plant Developments
4. Southern California Logistics Airport (SCLA) Hangar Developments
5. Southern California Logistics Airport Authority (SCLAA) Bond Expenditures

The audit report and recommendations (Attachment #1) are incorporated by reference into the Final Report.

Responding Agency	Recommendations	Due Date
City Manager, Victorville	Section 1: 1.1 through Section 5:5.7	September 29, 2012

Limited Scope Performance Audit of the Finances of the City of Victorville

**Prepared for the
2011-2012 San Bernardino County Grand Jury**

By

**Harvey M. Rose Associates, LLC
1390 Market Street, Suite 1150
San Francisco, CA 94102
(415) 552-9292
<http://www.harveyrose.com>**

May 15, 2012



May 15, 2012

Ted Burgnon, Foreman and Members of the
2011-12 San Bernardino County Grand Jury
351 North Arrowhead Avenue, Room 200
San Bernardino, CA 92415-0243

Dear Foreman Burgnon and Members of the 2011-12 San Bernardino County Grand Jury:

Harvey M. Rose Associates, LLC is pleased to present this *Limited Scope Performance Audit of the Finances of the City of Victorville*. The audit includes a review of the City's finances and related activities.

This performance audit was conducted in accordance with *Government Auditing Standards, December 2011 Revision*, by the U.S. Government Accountability Office, Comptroller General of the United States, as modified by directives from the Grand Jury to ensure investigative integrity. It contains five principal findings with recommendations to improve the City's overall financial condition; manage inter-fund borrowing and restricted funds; oversee complex capital projects including power plant and hangar development; and, administer bond expenditures. The performance audit relied, in part, on the results of forensic audit activities conducted by previous San Bernardino County grand juries.

We appreciate being provided with the opportunity to serve the Grand Jury during your term. We are available to assist you further on this matter or any other investigation that you believe may be appropriate.

Respectfully submitted,

A handwritten signature in black ink that reads 'Stephen Foti'. The signature is written in a cursive, flowing style.

Stephen Foti
Principal

Table of Contents

Executive Summary i

Introduction..... I-1

1. Financial Condition..... 1-1

2. Inter-fund Loans and Use of Restricted Funds 2-1

3. Power Plant Developments 3-1

4. SCLA Hangar Development 4-1

5. SCLAA Bond Expenditures..... 5-1

Executive Summary

Harvey M. Rose Associates, LLC was retained to conduct this *Limited Scope Performance Audit of the Finances of the City of Victorville*. This study was requested by 2011-2012 San Bernardino County Grand Jury to examine the finances of the City of Victorville.

To accomplish these objectives, Harvey M. Associates, LLC interviewed City management personnel; reviewed and analyzed City and Southern California Logistics Airport Authority (SCLAA) financial, planning, staffing, contract, and organizational documentation; reviewed City and SCLAA Board public records; and, reviewed data and documentation from outside sources and public record searches. Based on our research and analysis, we developed the findings and recommendations that are the subject of this report.

This performance audit was conducted in accordance with *Government Auditing Standards, December 2011 Revision*, by the U.S. Government Accountability Office, Comptroller General of the United States, as modified by directives from the Grand Jury to ensure investigative integrity.

A summary of the findings and recommendations contained in this report are presented on the pages that follow, by report section number.

Section 1. Financial Condition

An analysis of the City of Victorville financial statements, as well as those of the agencies for which the City has fiduciary responsibility, reveal that the City's solvency, capacity to provide current services, and ability to repay large debt obligations is a growing concern. As of June 30, 2011, the General Fund balance was \$3,103,630, which was \$4,978,874 or 61.6 percent less than the Government Finance Officers Association's target reserve level of \$8,082,504, or two months reserve based on annual expenditures in FY 2010-11. A General Fund balance of that level exposes the General Fund to the risk of not being able to meet cash flow requirements, economic uncertainties, or other financial hardships.

The General Fund balance has been depleted over the years as the result of several fiscal years when expenditures have exceeded revenues, leading to an operating deficit and a need to use reserves to meet expenditure obligations. Additionally, the General Fund has loaned or transferred money to other City funds, in the form of subsidies, to support the operations of other entities that receive the majority of funding from restricted sources.

The financial conditions of the Southern California Logistics Airport Authority, Victorville Municipal Utility Services, and City Golf Course are similarly weakened by operating deficits. More importantly, the financial conditions of SCLAA and VMUS are threatened by excessive debt and an inability to make debt service payments due to insufficient revenue and fund balance reserves. The General Fund's risk exposure is increased due to a potential need to absorb VMUS liabilities and obligations. Additionally, SCLAA has already defaulted on a debt payment. While the General Fund is not obligated to pay SCLAA's bond indebtedness, the General Fund has

supported SCLAA through advances to cover year-end negative cash balances. The City Manager has indicated that additional short term borrowing may be necessary at the end of the current fiscal year to again cover negative cash balances. The repeated use of advances on annual financial statements points to a serious cash flow problem. Further, a cycle of borrowing and repaying these short-term advances can also be interpreted as a mechanism for creating longer-term debt, while complying with the technical requirements of repaying the advances within the shorter one-year timeframe.

With the dissolution of the Victorville Redevelopment Agency and the City's assumption of VVRDA's assets and liabilities as the Successor Agency, the City's General Fund is further exposed to additional risk of having to absorb, but not being able to meet VVRDA's financial obligations. These obligations include bond indebtedness, payments to third party contractors, inter-fund loans and administrative costs associated with operating as the Successor Agency. Although the City will receive some amount of tax increment funds to meet these obligations, historical analysis suggest ongoing risk exposure, since the General Fund will likely be required to absorb obligations not being met by the tax increment.

Based on these findings, the Victorville City Council should:

- 1.1. Develop a plan to replenish the General Fund reserves to the Government Finance Officers Association's recommended level of two months annual revenue or expenditures. This plan should include further reductions in expenditures, identification of additional sources of revenue, earmarking income from major sources of revenues as the economy improves, and avoiding additional inter-fund loans and transfers from the General Fund to other City funds.
- 1.2. Direct the Southern California Logistics Airport Authority and Victorville Municipal Utility Services to further reduce expenditures and increase revenues in order to begin building its fund reserve, reduce the need for inter-fund loans, and have an additional source of revenue to make debt service payments.
- 1.3. Direct the Victorville Municipal Utility Services to closely monitor its programs for utility services and avoid any further attempts to self-generate power.
- 1.4. Direct the City Manager to further reduce expenditures and increase revenues for the golf course enterprise to reverse its operating deficit and eliminate its need for inter-fund loans and transfers. The City Council should also consider various alternatives to the continued operation or disposition of the Green Tree golf course.

Section 2. Inter-fund Loans and the Use of Restricted Funds

Although the City of Victorville finally adopted an Inter-fund Loan Policy on May 3, 2011, after repeated recommendations from independent auditors and City management dating back to 2009, the policy contains significant weaknesses. These weaknesses include a lack of guidelines and required analysis to determine: (1) the borrowing or lending funds' solvency, or ability to pay obligations; (2) timeframes for analysis and approval of the loan prior to June 30 of each fiscal

year to prevent backdating of inter-fund loans; and, (3) financial planning or monitoring of the repayment of inter-fund loans. Therefore, the Inter-fund Loan Policy as it currently exists, does not ensure that inter-fund loans do not: (a) significantly weaken the financial condition of a lending fund and its ability to pay obligations; (b) become a permanent contribution from the lending fund to the borrowing fund; or, (c) complicate or misrepresent the financial condition of all funds involved.

Analysis of existing inter-fund loans revealed that the City had \$69.7 million in outstanding inter-fund loans as of June 30, 2011, which includes the original loan amount and accrued interest. Though each of the loans has a five year term, a majority of the loans have not had any payments made toward the outstanding balance and internal controls are not formalized to ensure timely repayment. Further, the repayment of \$38.1 million, or 54.7 percent of the \$69.7 million in outstanding inter-fund loans is highly questionable. This is because these loans were made to the SCLAA and VMUS, two entities with significant debt obligations, structural cash flow difficulties and revenue concern. However, the City Manager has asserted that the City anticipates using approximately \$45 million of approximately \$52 million in judgment proceeds in FY 2012-13 resulting from a suit against a former contractor that was responsible for engineering work on the failed Foxborough Power Plant project to repay the balance of these loans. The suit is currently under appeal.

Finally, a review of the inter-fund loans made from the Victorville Water District (VWD) to VMUS and the transfer of funds from the Sanitary District to the General Fund suggest that the City may have violated State laws and local resolutions restricting the use of revenue collected for the delivery of property-related utility services. In particular, water fees and charges collected by the VWD were loaned to VMUS to support capital improvement and operation of electrical and power utility services. While the California Constitution does not prohibit investments or short-term loans, the financial state of VMUS and its inability to pay obligations may result in the inter-fund loan becoming a permanent contribution to VMUS, exposing the City to the risk of violating the Constitution. Similarly, restricted property tax revenue was transferred to the General Fund, without assurance that the revenue would be used for Sanitary District purposes. Further, the transfer of Sanitary District funds to the General Fund violates the LAFCO resolution which states that all Sanitary District assets should remain in a separate enterprise account.

Based on these findings, the Victorville City Council should:

- 2.1. Revise and improve the Inter-fund Loan Policy to include the following requirements, which should also be applied to existing inter-fund loans, to the extent possible:
 - a. Analysis of the financial condition of each fund involved in the inter-fund loan prior to approval, including a review of revenues, expenditures, assets, liabilities, and potential sources of revenue. The analysis should be used to determine the funds' ability to pay obligations such as ongoing operations, principal and interest payments for long-term debt, and agreements or contracts with third parties. To the extent possible, only funds with an ability to still meet all expenditure and debt obligations should be included in an inter-fund loan.

- b. A clear and reasonable timeframe for the financial analysis to be conducted prior to approval of an inter-fund loan, which should ideally be approved before June 30 of each fiscal year.
 - c. Financial planning and monitoring of repayment for each inter-fund loan. A financial plan could include a repayment schedule, targeted payment amounts based on a percentage of surplus revenues at the end of each fiscal year, and identification of potential revenue sources. Internal controls for monitoring repayment of inter-fund loans should be developed, approved, and formally documented.
- 2.2. The City should accurately reflect inter-fund loans in its financial statements and internal documents to fully represent the financial condition of funds.
 - 2.3. Evaluate the appropriateness of existing water fees and charges to ensure that revenues do not exceed funds required to provide water delivery services.
 - 2.4. Develop and implement a plan to return restricted funds from water fees and charges to the Victorville Water District, which were loaned to the Victorville Municipal Utility Services, but are at risk of becoming permanent contributions to the borrowing fund. This should be done as soon as possible in order to comply with State laws and regulations regarding the use of such property-related fees.
 - 2.5. Continue to maintain any revenues and assets associated with the Sanitary District in a separate enterprise fund in order to comply with the Local Agency Formation Commission (LAFCO) Resolution dissolving the District and designating the City of Victorville as the Successor Agency, as well as ensure compliance with State laws and regulations regarding the use of such property-related fees.
 - 2.6. Develop and implement a plan to return \$15 million in restricted funds from property tax revenue to the Sanitary District, which were inappropriately transferred to the General Fund. This should be done as soon as possible in order to comply with the LAFCO Resolution dissolving the District.

Section 3. Power Plant Developments

The City of Victorville and the Southern California Logistics Airport Authority (SCLAA) initiated large, high risk electrical generation-related capital projects in the mid 2000's without proper pre-project risk assessments or project controls. The analysis supporting such decision making has been based on recommendations from contractors who have had an interest in the projects. Further, this decision making has not been transparently presented to the public. The subsequent failure of these projects has resulted in substantial losses and contributed to a heavy long-term debt burden for the City and the Airport.

In September 2005, the City, acting as the governance board for the SCLAA, initiated a project to develop a 500 megawatt power plant, known as Victorville 2. The Victorville 2 project was

never completed and ultimately cost the Southern California Logistics Airport over \$50 million in losses with over \$76 million invested to date. City management did not conduct proper due diligence before initiating the project, entering into an onerous and open-ended agreement with Inland Energy Inc., or entering into a high risk \$182 million agreement to purchase power generation equipment from General Electric. Further, City management did not enforce all contract terms and has not formally managed the use of an open-ended provision in the agreement. In addition, the agreement with General Electric was adopted without proper transparency in closed session, likely violating the Brown Act.

In June 2004, the City began procuring no-bid professional services from Carter and Burgess, an architecture and engineering firm, to design, develop, and construct, a cogeneration power plant to service the energy needs of certain tenants at the Foxborough Industrial Park. The project was undertaken by the City without a thorough assessment of risks, a formal business plan or budget, or sufficient controls in place. Through a series of mishaps the project was never completed, resulting in the loss of tens of millions of dollars in public funds. Ultimately, the City was awarded \$52 million as a result of civil trial litigation against Carter and Burgess and its parent company, but this award, even if fully paid, would still leave the City with approximately \$40 million in losses.

Based on these findings, the Victorville City Council should:

- 3.1. Draft and implement planning policies and procedures for all City and SCLAA capital projects. Such policies should incorporate best practices, including an independent evaluation of risks and fiscal impact.
- 3.2. Draft and implement capital project controls, policies and procedures for all City and SCLAA capital projects. Such policies should incorporate best practices such as:
 - a. Establishment of a project plan, including a project budget, which is periodically re-visited and formally approved by the City Council and/or SCLAA Board of Directors in open sessions. The policies should also include requirements for implementing performance measures that are regularly reported to the Council during the life of a project.
 - b. Establishment of procurement controls, including requirements for competitive bidding, increasing levels of control over approval of professional service contracts based on cost to the City, and standard documentation requirements for the payment of invoices.
- 3.3. Schedule a workshop on transparency in municipal government, including an information session on the requirements of the Brown Act. Following the workshop, the City Council should establish policies to ensure that its operations are consistent with the requirements of the State Government Code relating to open meetings and best practices, as they relate to government transparency.

Section 4. SCLAA Hangar Development

In September 2005 the City Council, in its role as the Southern California Logistics Airport Authority (SCLAA) Board of Directors, entered into a no-bid agreement with CBS Aviation Development, LLC for the construction of hangar facilities at Southern California Logistics Airport. The development agreement was based on a proposal put forward by the manager/owner of CBS Aviation Development, an individual with no prior relationship to the City and whose background and competency was not fully known. Further, there is no evidence that sufficient background research was conducted on CBS Aviation Development or its owner until two months after the SCLAA entered into a ground lease agreement with the contractor.

Although the original hangar development agreement called for the construction to be completely funded by CBS Aviation Development, the SCLAA spent approximately \$54 million for CBS Aviation Development work on the hangar development project and nearly an additional \$50 million for a second firm, KND Affiliates, LLC, to complete the project after City management lost confidence in the abilities of CBS Aviation Development. The hangar development project may have ultimately cost SCLAA approximately \$103 million to complete four aircraft hangars.

The hangar development project at the Southern California Logistics Airport was undertaken without proper controls to prevent cost overruns, the misuse or loss of public funds, or fraud. Specifically, there is no evidence that City management clearly estimated costs or presented the SCLAA Board (City Council) with a clear project budget or development plan before disbursing funds to CBS Aviation Development. Further, City and SCLAA management did not put proper controls in place during the project to ensure that outside contractors: (1) properly performed their duties; (2) used public funds efficiently; or, (3) were prevented from misusing public funds. The lack of controls is evidenced by the inability of City management to account for the entirety of public funds, including nearly \$13 million provided to CBS Aviation Development.

Based on these findings, the SCLAA Board of Directors should:

- 4.1. Adopt and implement procurement procedures for the management and operation of the Southern California Logistics Airport that incorporates competitive bidding for the design, development, and construction of airport facilities.
- 4.2. Adopt and implement SCLAA policies and procedures that institute sufficient financial controls for airport capital projects. Such controls should be consistent with best practices for public sector capital projects.

Section 5. SCLAA Bond Expenditures

The VVEDA JPA stipulates the uses of tax increment raised on parcels of the former GAFB as well as tax increment from the member jurisdictions' territories. The VVEDA JPA specifically requires that tax increment revenues which are to be allocated to GAFB should only be used for

purposes that directly benefit the redevelopment of GAFB. The VVEDA JPA also delegates the authority of the management and operation of the GAFB parcels, including budgeting authority, redevelopment authority, and all management and operational authority to the Victorville City Council, “which shall act on behalf of the [VVEDA] Commission on all such matters.” The City of Victorville also had authority and responsibility for the treasury function of the VVEDA JPA until late 2009, when the VVEDA Board of Directors voted to transfer the function to the City of Apple Valley.

The Victorville City Council, acting as the SCLAA Board of Directors, appears to have repeatedly mishandled SCLAA bond expenditures. In at least three instances the SCLAA Board and City management mishandled SCLAA bond funds by either: (1) poorly justifying expenditures; (2) failing to properly identify funding sources and accounting for Victorville’s pledged amount to SCLAA; or, (3) potentially expending funds allocated to GAFB on parcels outside of GAFB and not primarily or directly for the purpose for the redevelopment of GAFB.

Based on these findings, the City Council should:

- 5.1. Revise the loan agreement between SCLAA and the City so that it incorporates back interest that should have accrued between 2005 and 2010 based on the State Pooled Money Investment Account average annual yields for the Local Agency Investment Fund.
- 5.2. Review and amend the City’s financial statements so that the loan agreement between the City and SCLAA for the purchase of library parcels reflects the terms of the agreement. Specifically, that the loan is placed in the City’s Development Impact Fee fund.
- 5.3. Direct the City Manager to conduct an evaluation of the use of SCLAA bond funds for the Victorville 2 Power Plant project including an analysis of the amount of funds specifically allocated to SCLAA (less the Victorville pledge) that were used for the project. At the completion of such analysis, establish a loan agreement between the City and SCLAA for the repayment of the amount of SCLAA bond funds expended on the Victorville 2 Power Plant Project less the net amount¹ pledged by Victorville for repayment of the bonds.

Based on these findings, the SCLAA Board should:

- 5.4. Direct the City Manager to establish an accounting system for all expenditures of SCLAA bond funds. Such a system should include an estimate of the amount of expenditures that are unrelated to the redevelopment of the former GAFB and would therefore require use of the Victorville pledge of funds from its own territory.

¹ After the funds spent on the Interchange Project are considered.

- 5.5. Direct the City Manager to establish a policy requiring the SCLAA Board of Directors to justify the use of SCLAA bond funds when used for projects outside of GAFB parcels. Such a policy should require a detailed justification for how the expenditures directly benefit the redevelopment of the former GAFB before the issuance and expenditure of future tax increment bonds.
- 5.6. Review current contracts for potential conflicts of interest. This would help ensure that the SCLAA Board of Directors makes decisions in the interest of the SCLAA.

Based on these findings, the VVEDA Commission should:

- 5.7. Consider a review of the delegated authority provided to the City of Victorville for governance and administration of the SCLAA to ensure representation of each individual jurisdiction's interests in the governance and administration of redevelopment activities.

Introduction

Harvey M. Rose Associates, LLC is pleased to present this *Limited Scope Performance Audit of the Finances of the City of Victorville* conducted for the 2011-12 San Bernardino County Grand Jury pursuant to its authorities defined in California Penal Code Section 925, et seq.¹. This report is a continuation of work initiated by *Kessler International, LLC (Kessler)*, which had been retained by the 2009-10 and 2010-11 San Bernardino County grand juries to conduct a forensic audit of the City. This report builds upon the work of *Kessler* by conducting data validation steps and developing findings, conclusions and recommendations for those areas where *Kessler* compiled sufficient information and evidence to suggest areas where there may be opportunities for improvement.

Study Purpose and Scope

This performance audit was conducted to evaluate certain concerns originally identified by the 2009-10 San Bernardino County Grand Jury and pursued by subsequent grand juries for further investigation. After conducting data validation steps from the forensic audit, the 2011-12 San Bernardino County Grand Jury requested that the following areas be analyzed to determine identify areas for potential improvement:

1. The City's government-wide financial statements, as well as separate financial statements for the City's component units, for reporting consistency and appropriateness.
2. The use of restricted funds for general government and other purposes, including the use of money restricted for George Air Force Base redevelopment activities under the Victor Valley Economic Development Authority (VVEDA). The use of inter-fund borrowing and other inter-fund financial transactions made by the City between the General Fund, proprietary funds, special revenue funds and fiduciary funds.
3. The amount and status of loans made by the City to CBS Aviation Development, LLC and other contractors, including decisions that may have been made to substantially modify or forgive balances due.
4. Bond funding protocol and disbursements, including inter fund transactions subsequently reclassified as loans.

¹ California Penal Code Section 925 states, "The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts."

Methodology

The data validation and performance audit tasks for the limited scope performance audit were conducted in accordance with *Government Auditing Standards, December 2011 Revision*, by the U.S. Government Accountability Office, Comptroller General of the United States, as modified by directives from the Grand Jury to ensure investigative integrity. In accordance with these modified standards, the following key activities and tasks were conducted:

- An entrance conference was held with the executive staff from the City of Victorville to introduce HMR staff, describe the performance audit process and protocol, and request general information on the organization and the issues included in the scope.
- Documentation that had been compiled by *Kessler* during the forensic audit was catalogued and assessed. The *Kessler* documentation and finding summaries were then aligned with the San Bernardino County Grand Jury scope statements, including subsequent revisions.
- An initial assessment of the identified issues was conducted, in accordance with project goals defined in the work plan approved by the 2011-12 San Bernardino County Grand Jury and subsequent communications with the assigned Grand Jury committee. During this initial assessment phase, City management was interviewed, including the City Manager, the Assistant Director of Finance, the City Attorney, and the Assistant City Manager/Executive Director of the VVEDA. Seven formal information requests were submitted to City management and documentation was provided through CD-ROMs or email transmission.
- Field work tasks were conducted to further refine an understanding of the topics under review. The field work involved additional interviews of City management staff and the collection and analysis of additional information and documentation. In addition, a tour of the Southern California Logistics Airport and the Foxborough Industrial Park was conducted to gain perspective on certain projects and developments. At the conclusion of field work activities, preliminary findings, conclusions, and recommendations were developed.
- A draft report was produced and internally reviewed for quality assurance purposes. At the direction of the Grand Jury, an exit conference was held with City management prior to the release of the final report.

Background

The City of Victorville was incorporated in 1962 with a population of 8,110 and an area of 9.7 square miles in the Victor Valley region of San Bernardino County. The City experienced dramatic economic and population growth from about 2002 to 2006. During that period the City had an annual population growth over seven percent each year. Since 2008 annual population growth has slowed to less than one percent as the economy, particularly in the housing industry, has slumped. As of 2010, the City had a population of approximately 116,000 residing in an area of approximately 75 square miles.

Victorville was established as a general law city, meaning that when the City incorporated, City leaders chose to use the existing State codes as they relate to laws, functions, and powers of the Mayor and City Council, rather than write a charter. In July 2008 Victorville became a charter city, which articulates aspects of City affairs including the form of government; the method of election of Council members; contracting, public financing, franchises, and revenue; and revenue retention. The charter also states that the City retains general law powers and authority. The recent change to a charter city does not materially affect any findings in this report

The City operates with a council-manager form of government, whereby the Council appoints a City Manager who administers the daily operations of city government. The City Council also appoints a City Attorney who is responsible for advising the Council on legal issues affecting the City. The Mayor is a member of the City Council and is selected by a vote of the Council.

Organization and Staffing

The City of Victorville operates nine departments including:

- Administrative Services, which includes the City's Finance, Human Resources, and Information Services divisions. Since July 2011, the City Manager has assumed the responsibilities of managing the Administrative Services Department. In February 2012, the Assistant Director of Administrative Services-Finance was assigned City Treasurer responsibilities. Previous to this action, the City had not had a dedicated director for Finance since August 2009. The City Manager will continue to oversee Human Resources and Information Technology.
- The City Manager's Office, which includes the City Clerk and Risk Management. The Risk Management function is managed by the City Manager, but is contracted out to a third party.
- Community Services, which includes the Park, Library, Recreation and Community Services, Parks and City Facilities, and Golf divisions. The operation of the City's golf course is contracted out to a third party.
- The Development Department, which includes the Building and Safety, Code Enforcement, and Planning divisions.
- The Economic Development Department, which includes the Airport, Business Development, and Housing divisions. In addition, the Victorville Redevelopment Agency was managed under this Department until its dissolution in February 2012.²
- The Engineering Department, which includes the Engineering, Signal Maintenance, Street Lighting, and Traffic Control divisions.
- The Fire Department, which includes the Emergency Services, Fire Protection, Hazardous Materials and Hazardous Waste divisions. All Fire Department operations are provided, by contract, by the San Bernardino County Fire Department.

² Assembly Bill 26 (AB 26) dissolved local redevelopment agencies in 2012.

- The Police Department, which includes the Police Administration, Investigation, and Patrol/Traffic divisions. All Police Department services are provided, by contract, by the San Bernardino County Sheriff's Department.
- The Public Works Department, which includes the Animal Control/Graffiti Abatement, Solid Waste/Recycling, Storm Drain/Wastewater, Street Maintenance/Sweeping, Open Space and Municipal Utilities divisions. The Victorville Municipal Utility Services (VMUS) does not currently generate electricity. However, it provides electrical, cogeneration, and natural gas services for commercial and industrial customers at the Foxborough Industrial Park and the Southern California Logistics Airport through power purchase agreements with energy suppliers. The electricity is distributed through Southern California Edison transmission lines. VMUS and does not provide electric utility services to residential areas. Additionally, this Department provides all Water District functions.

In addition to the Departments listed above, the City contracts with Green, de Bortnowsky, and Quintanilla, LLP for City Attorney services. The City has contracted with this firm for general counsel since 2002. The firm has also provided legal counsel to the Victorville Redevelopment Agency and Southern California Logistics Airport Authority for approximately 15 years. According to the City Attorney, the firm retains 10 attorneys to provide services for the City, VVRDA and SCLAA for a pre-determined minimum number of hours and then on an as-needed basis.

In FY 2011-12, the City Council authorized a total of 315 budgeted full time positions. In addition, the City has budgeted funds for risk management services, City Attorney services, operation of the City's golf courses, operation of the Fire Department, and operation of the Police Department through contracts with third parties. An organization chart for the City of Victorville is provided on the next page.

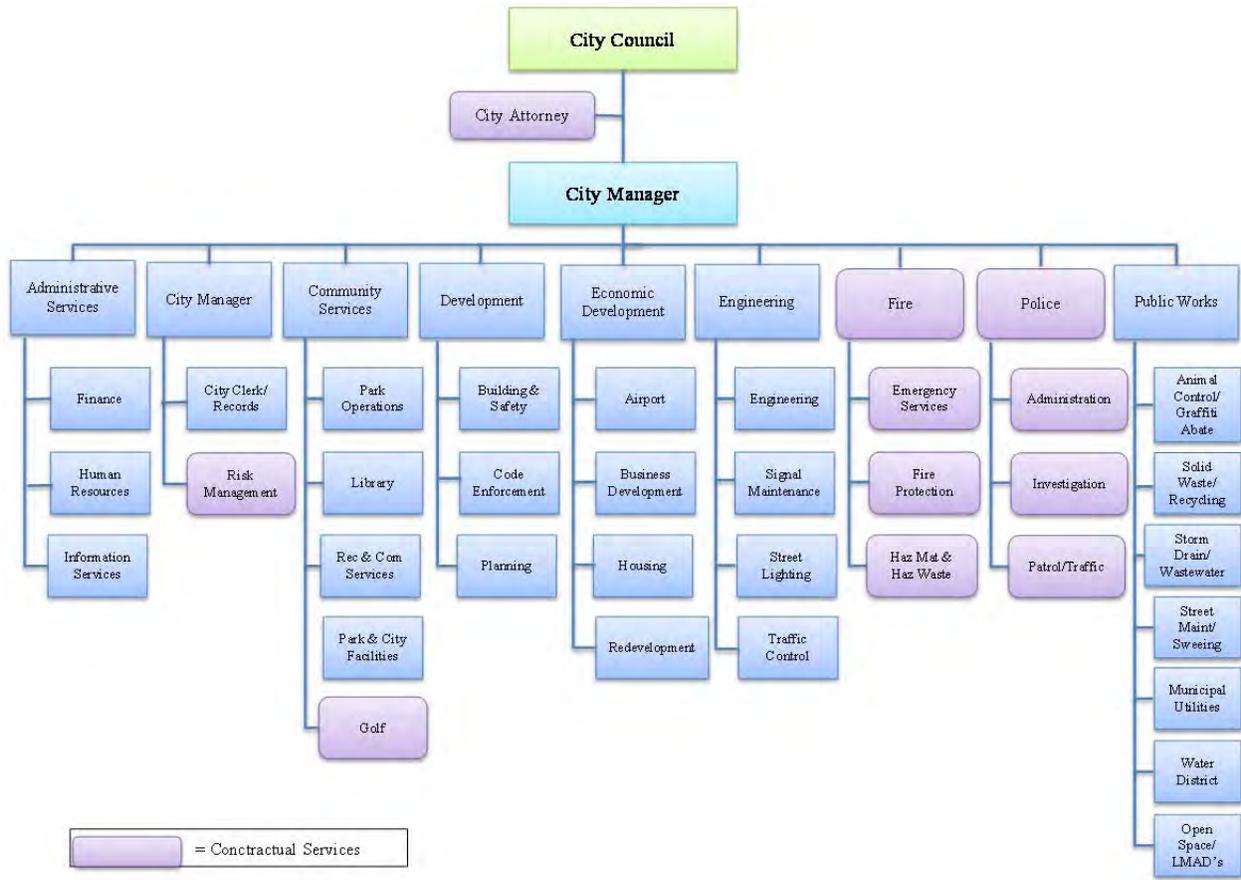
Victorville Water District

The Victorville Water District provides over 7.4 billion gallons of water each year to a population of over 100,000 people within the boundaries of the City of Victorville. Although operationally managed under the Department of Public Works, the Victorville Water District is technically an independent legal entity and an enterprise³ district of the City. In 2007 the Victorville Water District was established as a subsidiary district of the City from the consolidation of the Baldy Mesa Water District and the Victor Valley Water District. The Victorville City Council serves as the Victorville Water District Board.

³ Under Generally Accepted Accounting Standards (GAAS) enterprise funds are used to account for business-type activities. Business-type activities typically provide goods of services that are funded through user charges.

Exhibit 1

City of Victorville Organization Chart



Victorville Redevelopment Agency

The City of Victorville created the Victorville Redevelopment Agency in 1981 under the California Community Redevelopment Act with a mission to eliminate conditions of blight in the community by promoting and providing affordable housing to households with low to moderate incomes and encouraging opportunities for new and expanding commercial and industrial businesses. The Agency operated until February 1, 2012 when it was dissolved as the result of a December 2011 California Supreme Court decision upholding the passage of Assembly Bill 26, which dissolved all redevelopment agencies in the state.

At the time of its dissolution the Victorville Redevelopment Agency had three adopted redevelopment project areas including the: (1) Bear Valley Project Area; (2) Hook Project Area; and, (3) Old Town/Midtown Project Area.

Bear Valley and Hook Project Areas

The Bear Valley Project Area, located in the southeastern region of the City, was created in 1981 with an original goal of developing commercial, industrial and residential growth. In recent years the project area has experienced significant commercial and industrial growth, including the development of facilities for large industrial firms including ConAgra, Nutro, Goodyear Tire and Rubber Company, and M&M/Mars, among others. The project area includes the Victorville Medical Campus, the Foxborough Industrial Park, the Desert Valley Medical Hospital, and an apartment community that has a total of 285 affordable housing units.

The Hook Project Area, located in the central area of the City just north of City Hall, was adopted as an amendment to the Bear Valley Project Area in 1985. The area, which is not contiguous with the Bear Valley Project Area, has been zoned for commercial and residential development. Significant commercial developments in the project area include the Auto Park at Valley Center and the Desert Plazas retail center.

Old Town/Midtown Project Area

The Old Town/Midtown Project Area, located in the northeastern region of the City, was adopted in 1998. The Old Town/Midtown Project Area was adopted with the goal of redeveloping the Old Town area, which has experienced a significant amount of business vacancies and substandard housing, to a mixed-use downtown hub with specialty restaurants and retail. The actions taken by the Redevelopment Agency in this project area have primarily consisted of the purchase of certain sites and subsequent demolition to allow for redevelopment.

Victor Valley Economic Development Authority

The VVEDA was created in 1989 through a Joint Exercise of Powers Agreement (JPA) with Hesperia, Apple Valley, and the County.⁴ In 1993 the VVEDA members established the original

⁴ The County of San Bernardino Redevelopment Agency was the authorized recipient of tax increment accrued within unincorporated areas of the Victor Valley Project Area.

boundaries of the Victor Valley Project Area consisting of portions of each member's jurisdictional boundary within an eight mile radius of the former George Air Force Base. The VVEDA currently operates under the Fourth Amended and Restated JPA, which provided for the inclusion of the City of Adelanto in 2000. The current JPA also enables each member entity to enter into transactions and execute agreements within their respective portions of the VVEDA project area without approval of the full VVEDA Board, provided that any financial obligations would be backed by pledged tax increment revenue allocable solely to that member.

The purposes of the JPA, as stated on page eight of the agreement, are to provide for:

- The coordination of long range planning of the territory of George Air Force Base and surrounding areas;
- The interaction with the Federal Government;
- The acquisition, through public benefit transfer and economic development conveyance, and administration and management of an airport or other public facilities at George Air Force Base;
- The redevelopment of George Air Force Base and surrounding areas; and,
- The financing needed to effectuate such planning, interaction, airport, public facilities and redevelopment activities.

Importantly, the JPA sets out how the tax increments are to be divided and allocated between the redevelopment of the former George Air Force Base and the surrounding project area. This allocation, as defined by the JPA, is described in detail in Section Five of this report.

Victor Valley Amended Redevelopment Plan

The VVEDA established and amended a redevelopment plan to institute a framework for implementation of the VVEDA Project Area. The most recent and current plan (including Amendments one through eight) was established in December 2006. The primary purposes of the Redevelopment Plan are to provide the mechanism and funding to:

- Acquire the Air Base and facilitate the successful reuse of the property;
- Ensure that adequate access exists to and from the major transportation systems and the Air Base;
- Promote economic development within the area surrounding the Air Base; and,
- Cause the replacement of jobs which resulted from the closure of the Air Base and provide for affordable housing opportunities in accordance with participating jurisdictions' Housing Elements.

The VVEDA Redevelopment Plan: (1) defines the 22 redevelopment plan goals of the Authority; (2) lists the actions that member jurisdictions may take, such as the demolition and rehabilitation of buildings; (3) lists the major categories of land uses permitted in the Project Area; (4) provides a description of methods available for financing the project; (5) lists allowable actions by VVEDA's participating jurisdictions; and, (6) describes administration, enforcement, duration, and procedure for amendment of the plan.

The VVEDA may be dissolved under AB 26 and a subsequent California Supreme Court decision, which dissolved all redevelopment agencies as of February 1, 2012. The Executive Director of VVEDA currently maintains that the VVEDA, along with the Inland Valley Development Agency (IVDA), should not be subject to the provisions of AB 26. Both the IVDA and VVEDA have filed suit against the State in order to prevent dissolution.

Southern California Logistics Airport Authority

The VVEDA JPA provides for the delegation and assignment of the member jurisdictions' voting rights, with respect to all issues directly affecting the operation and redevelopment of the former George Air Force Base, to the Victorville City Council acting as the Southern California Logistics Airport Authority (SCLAA). The responsibilities delegated to the SCLAA include: (1) all budgeting authority; (2) all redevelopment authority; and, (3) all operational and management authority affecting the George Air Force Base parcels. Essentially, the Victorville City Council, acting as the SCLAA, has the authority to redevelop, operate, and manage all aspects of the former George Air Force Base, now known as the Southern California Logistics Airport.

In 1999, the Southern California International Airport, the predecessor agency to SCLAA, entered into a master agreement with Stirling Airports International, LLC (Stirling) "for the marketing, acquisition, operation, and development" of the airport. The primary purpose of this agreement was to allow Stirling to acquire portions of the airport property in phases and construct buildings for a variety of uses in order to develop the airport as a cargo and aircraft maintenance facility as well as a business and industrial center. Under this master agreement and subsequently under a separate Airport Management Agreement, a Disposition and Development Agreement, and other arrangements, SCLAA successfully developed several "on airport" and "off airport"⁵ parcels occupied by FedEx, GE, Boeing, Pratt and Whitney, Dr. Pepper/Snapple, and Newell Rubbermaid, among others, generating local job opportunities for the community and property tax increment for SCLAA. In addition, the SCLAA arranged for the development, construction, and operation of an 840 megawatt natural gas power plant, known as the High Desert Power Plant, through a third party. The power plant, which went online in 2003, has provided additional tax increment revenue to SCLAA. Despite these developments, the Southern California Logistics Airport has, through FY 2010-11, consistently had an annual operating deficit. However, despite the airport's recent accomplishment of generating an annual operating surplus for airport operations, a heavy debt load continues to keep SCLAA in an overall deficit position.

⁵ "On-airport" refers to former George Air Force Base parcels located within the security perimeter of the functioning airport while "off-airport" refers to former George Air Force Base parcels outside the security perimeter.

The SCLAA operated under a separate JPA between the City and the Victorville Redevelopment Agency until January 2012. On January 17, 2012 the Victorville Water District became a member of the SCLAA in order to avoid the dissolution of the SCLAA given the mandates of AB26 and the California Supreme Court decision upholding it. According to a staff report submitted by the City Attorney to the Water Board, if the Victorville Water District had not become a member of the SCLAA, the JPA would have been dissolved when the Redevelopment Agency was dissolved on February 1, 2012. The SCLAA now operates under a JPA between the City and the Victorville Water District. According to the agreement, the Water District shall not be responsible for the assets or liabilities of the SCLAA.

Audit Period

The Grand Jury requested the audit team to review the current financial condition and financial transactions that have occurred since 2005. The reader should note that City management has changed incrementally during this period. However, according to interviews with current City management the firm of Green, de Bortnowsky, and Quintanilla, LLP has served as the City Attorney since 2002. In addition, the current City Manager, who has been in that position since July 2011, previously served in other positions within the City Manager's Office starting in August 2002 as a Senior Management Analyst. Beginning in 2008, he was appointed to Deputy City Manager and assigned responsibilities to address a number of the topics in this report, including stabilization of the City's finances. Finally, the current Assistant City Manager has served in various roles in the City since 1996 including as an Administrative Intern, Deputy Director of Redevelopment, and Director of Economic Development.

Acknowledgements

Harvey M. Rose Associates, LLC would like to thank the Grand Jury for their participation and counsel during this performance audit. In addition, we would like to thank personnel from the City of Victorville and others for their insight into the finances and operations of the City and the SCLAA. In particular, we would like to thank the City Manager and his staff for their efforts in compiling and indexing the many documents required for this review.

1. Financial Condition

- Analysis of the financial statements for the City of Victorville and the agencies for which it has fiduciary responsibility, reveal that the City's solvency, capacity to continue operations at current service levels, and ability to repay large debt obligations is a growing concern. As of June 30, 2011, the General Fund balance was \$3.1 million, which was 6.4 percent of General Fund annual operating expenses of \$48.5 million. This General Fund balance was \$5.0 million, or 61.6 percent less than the Government Finance Officers Association (GFOA) recommended target of \$8.1 million, or two months reserve based on annual expenditures. Such reserves are needed for cash flow requirements, economic uncertainties, and other financial hardships.
- The General Fund balance has been depleted as the result of several fiscal years when expenditures have exceeded revenues, leading to an operating deficit and a need to use reserves to meet expenditure obligations. Additionally, the General Fund has loaned or transferred money to other City funds, in the form of subsidies, to support the operations of functions that receive the majority of funding from restricted sources.
- Similarly, the financial condition of Victorville Municipal Utility Services (VMUS) and the City Golf Course are concerning. Annual operating deficits, in which expenditures routinely exceed revenues; negative fund balances, because long-term liabilities exceed assets; and, the inability to meet debt service payments using VMUS resources, have required subsidies in the form of transfers from the General Fund, or inter-fund loans from other City funds. Further, VMUS' inability to repay significant debt obligations is of serious concern, increasing General Fund risk exposure due to the potential need to absorb VMUS liabilities and obligations. Similarly, the financial condition of the Southern California Logistics Airport Authority (SCLAA) is weak. SCLAA defaulted on a principal payment due on December 1, 2011, which was not cured until March 2012. Though the General Fund is not liable for SCLAA's bond indebtedness, the General Fund has loaned funds to SCLAA for other expenditures and the City Manager had indicated that it may do so again this fiscal year.
- As the Successor Agency for the Victorville Redevelopment Agency (VVRDA), which was dissolved this year pursuant to State law, the City is responsible for repaying VVRDA's recognized obligations, including bond indebtedness; payments due to third party contractors or other entities as a result of legally binding agreements; inter-fund loans; and administrative costs associated with operating as the Successor Agency. Although the City will receive some amount of tax increment funds to meet these obligations, analysis of previous fiscal year tax increment trends suggest ongoing risk exposure, since the General Fund will likely be required to absorb obligations not being met by the tax increment.

In the financial statements for the fiscal year that ended on June 30, 2007, the independent auditor for the City of Victorville stated that the City “has continued to suffer significant reductions in net assets from operations, which raises uncertainties regarding future operations.” Subsequent financial statements audited by a different independent auditor have concluded that, there is “a substantial doubt of the City’s ability to continue as a going concern.” Analysis of the financial statements for the City of Victorville and its component¹ agencies conducted for this audit reveal similar conclusions—that the City’s solvency, ability to repay large debt, and continue funding some operations is of concern.

The General Fund is in Poor Financial Condition

The ability of the General Fund to continue to support general City government operations, support the operations of enterprise funds, and meet debt obligations is questionable, based on various indicators, including: (1) a decreasing General Fund balance; (2) multiple years of operating at a deficit; (3) various inter-fund transfers from the General Fund to other City funds over the past few years; and, (4) a low cash balance.

Fund Balance is Very Low

As shown in Table 1.1 below, the City’s General Fund balance has steadily decreased over the past four fiscal years. As of June 30, 2011, the General Fund balance was \$3,103,630, which was 6.4 percent of the General Fund operating expenses of \$48,495,022 in Fiscal Year (FY) 2010-11. The General Fund balance as of June 30, 2011 was \$4,445,923 less than the General Fund balance of \$7,549,553 as of June 30, 2010, representing a 58.9 percent decrease in General Fund balance from the previous fiscal year.

Table 1.1
Four-Year Comparison of General Fund Balance and Annual Expenditures

Fiscal Year	Fund Balance (FB)	Unrestricted Portion	Annual Expenditures	FB as a % of Expenditures
FY 2007-08	\$2,455,670	\$12,132,307	\$42,632,770	29.2%
FY 2008-09	10,645,865	10,398,067	61,595,837	17.3%
FY 2009-10	7,549,553	2,229,649	51,141,804	14.8%
FY 2010-11	3,103,630	781,523	48,495,022	6.4%

Source: City of Victorville Financial Statements

On June 1, 2010, the City Council for the City of Victorville adopted a General Fund Reserve Policy (CP-10-04) that established a target reserve of 15 percent of the General Fund annual appropriations and transfers out. Further the policy states that:

¹ A unit that is legally separate from the City but financially accountable to the City; or, a unit which has a financial relationship with the City that would cause the City’s financial statements to be misleading or incomplete if excluded.

During times of fiscal hardship, a minimum of five percent (5%) of the General Fund annual appropriations and transfers out shall be maintained to provide provision for cash flow requirements, economic uncertainties, uninsured losses, local emergencies/disasters, or other unknown financial hardships.

As shown in Table 1.1 above, the City was close to meeting its target of 15 percent for reserves as of June 30, 2010, with a General Fund balance of \$7,549,553, or 14.8 percent of its annual expenditures of \$51,141,804 in FY 2009-10. However, within one year, the City's General Fund balance as a percent of annual expenditures decreased by more than half, from 14.8 percent to 6.4. Though the General Fund balance as a percent of expenditures in FY 2010-11 was above the City's established minimum of five percent, the rate of decrease in General Fund balance is significant. On April 19, 2011 the City Council suspended the minimum five percent reserve threshold so that the City may use General Fund reserves to close the gap between revenues and expenditures for FY 2011-12 without a commensurate cut in services

The Government Finance Officers Association (GFOA) currently recommends that governments establish a formal policy on the level of unrestricted fund balance that should be maintained in the general fund. The current policy is vague in stating that the "adequacy of unrestricted fund balance in the general fund should be assessed based upon a government's own specific circumstances." Though the existing GFOA policy is not specific, it recommends that regardless of size, general-purpose governments should maintain unrestricted fund balance in their general fund of "no less than two months of regular general fund operating revenues or expenditures." The City's General Fund balance is well below this threshold. The City's General Fund balance of \$3,103,630 is \$4,978,874, or 61.6 percent less than the target reserve of \$8,082,504, or two months reserve based on annual expenditures of \$48,495,022 in FY 2010-11.

It should be noted that \$2,322,107 of the General Fund balance is restricted, and therefore, unavailable to meet unforeseen expenditure obligations. A majority of the restricted portion of the General Fund Balance is due from other funds, as a result of General Fund advances and inter-fund loans² to other City funds. A small portion of the restricted funds, or \$7,256, is reserved for prepaid expenses. Therefore, only \$781,523 of the General Fund balance is actually available for immediate expenditures.

Three Consecutive Years of Operating Deficits

Over the past three fiscal years, actual General Fund expenditures have exceeded actual revenues, resulting in General Fund operating deficits for those three fiscal years. When there is an operating deficit, the General Fund balance is used to balance the operating budget, thus, partially explaining the depletion of the General Fund balance over the last few years. As shown in Table 1.2 and Chart 1.1 below, the General Fund had an operating *surplus* of \$8,972,198 in FY 2007-08, but in the following fiscal year, FY 2008-09, had an operating *deficit* of \$14,037,653. If the trend of operating deficits continues, the General Fund Balance will continue to decrease, very possibly leading to the City's insolvency, as well as an inability to pay for day-to-day operating expenses and outstanding debt.

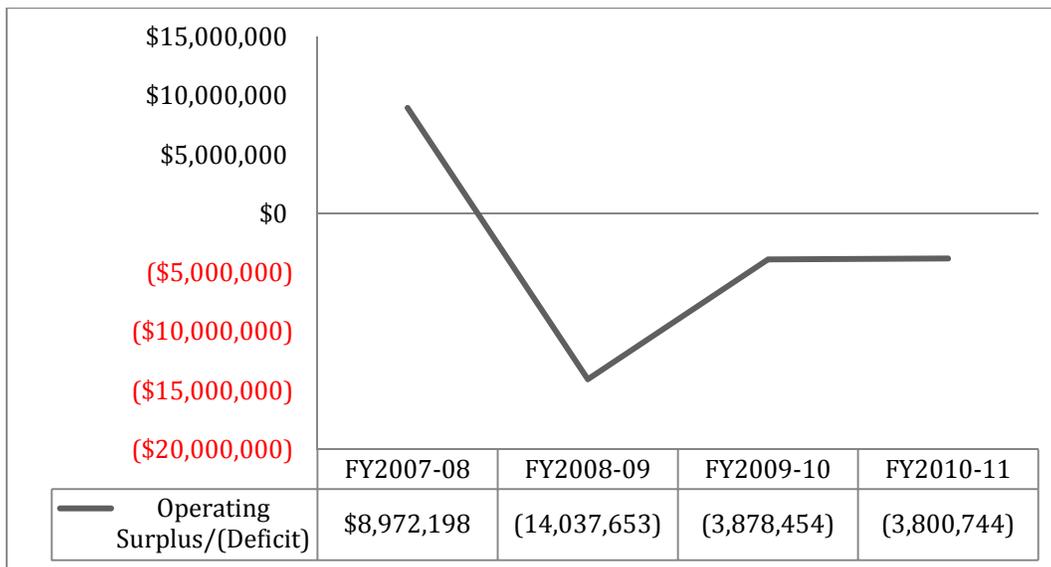
² The City Manager has asserted that an advance of approximately \$2.3 million from the General Fund to SCLAA to cover negative cash balances is not a long term loan and has been repaid since it was on the City's June 30, 2011 financial statements. However, the City Manager has also stated that another "short term" loan to SCLAA from the General Fund may be necessary at the end of the current fiscal year.

Table 1.2
Four-Year Comparison of General Fund Actual Revenues and Expenditures

Fiscal Year	Revenues	Expenditures	Operating Surplus/(Deficit)
FY 2007-08	\$51,604,968	\$42,632,770	\$8,972,198
FY 2008-09	47,558,184	61,595,837	(14,037,653)
FY 2009-10	47,263,350	51,141,804	(3,878,454)
FY 2010-11	44,694,278	48,495,022	(3,800,744)
4-Year Average	\$47,780,195	\$50,966,358	(\$3,186,163)

Source: City of Victorville Financial Statements

Chart 1.1
Four-Year Comparison of General Fund Operating Surplus/(Deficit)



Source: City of Victorville Financial Statements

Inter-fund Loan and Transfers from the General Fund

In addition to using the General Fund balance to support General Fund operations when there is an operating deficit, the City has used the General Fund balance to support other funds when there is a negative cash balance. As shown in Table 1.3 below, from FY 2007-08 through FY 2010-11, the General Fund has provided support to seven other funds in the form of:

- Short-term loans that are due within a year;
- Inter-fund loans that are due within more than a year; and,

- Transfers that are not to be repaid. These are otherwise known as subsidies if they are used to support operations, as opposed to payment for the exchange of services (i.e. utility services).

Table 1.3
Four-Year Comparison of General Fund Short-Term Loans,
Inter-fund Loans, and Transfers to Other Funds

Fund	Year	Short-Term	Inter-fund Loan	Transfer/Subsidy	Amount
City Golf	FY 2007-08			\$1,133,238	\$6,878,884
	FY 2008-09	\$5,745,646		1,253,552	1,253,552
	FY 2009-10		5,073,220		5,073,220
	FY 2010-11			1,400,322	1,400,322
Total City Golf					14,605,978
SCLAA	FY 2007-08			1,353,898	1,353,898
	FY 2008-09			1,755,396	1,755,396
	FY 2010-11		2,314,851		2,314,851
Total SCLAA					5,424,145
Municipal Utility	FY 2007-08			9,990,448	9,990,448
	FY 2008-09	818,427			818,427
Total Municipal Utility					10,808,875
Fire Protection	FY 2007-08	131,198		5,465,894	5,597,092
CDBG Grants	FY 2007-08	718,895			718,895
Other Federal Grants	FY 2007-08	4,624,051			4,624,051
Park and Recreation	FY 2007-08			1,115,412	1,115,412

Source: City of Victorville Financial Statements

Short-term loans to meet negative cash balances at the end of the year are typical of most jurisdictions. Because the short-term loans are intended to be repaid within a year, it is assumed that the loans listed in Table 1.3 above were repaid. However, inter-fund loans where repayment is expected beyond one year, without a clear repayment plan, are a sign of financial distress. Inter-fund loans are further discussed in Section 2 of this report.

Cash Balance

As of June 30, 2011, the City's cash and investments were \$88,306. While there is no specific standard for how much a City should have in cash and investments, the amount is very low when compared to the City's rate of expenditures of approximately \$4,000,000 per month, resulting in a cash flow risk for the City.

There are three ways in which cities typically address cash flow issues. The first is to resolve low cash balances through inter-fund loans. However, as previously discussed, the City's ability for the General Fund to engage in inter-fund borrowing has diminished because of long-term lending and the poor financial condition of other funds. Secondly, cities can borrow from Internal Service Funds on a temporary basis, yet the City of Victorville does not have any Internal Service Funds. Finally, through the California Statewide Communities Development Authority (CCDA or California Communities),³ cities can finance short-term cash flow deficits through Tax and Revenue Anticipation Notes (TRANs). However, the maximum maturity of TRANs issued by CCDA is 13 months and State law requires that funds be set aside for the repayment of TRANs from current fiscal year revenues, or the fiscal year in which the TRANs was actually issued. Based on the City's track record of setting aside cash, applying for TRANs may not be a viable option for the City either.

The City should develop a plan to replenish the General Fund reserves to the recommended level of two months annual revenue or expenditures. By doing so, the City would be eligible for TRANs should the City have major cash flow risks in the future. Such a plan should include further reducing expenditures and identifying additional sources of revenue while the economy improves and major sources of revenue—sales tax, property tax, and franchise tax—increase. Additionally, the City should avoid inter-fund loans and transfers from the General Fund to other City funds.

Other Entities are in Poor Financial Condition

Three entities for which the City has fiduciary responsibility have been operating at a deficit over the past four fiscal years (operating expenditures exceeded operating revenues). These entities are the Southern California Logistics Airport Authority (SCLAA), Victorville Municipal Utility Services (VMUS), and the City Golf Course. Additional factors, such as significant debt for SCLAA and VMUS, contribute to these entities' poor financial condition. As previously noted, the General Fund has had to transfer funds to support some of these operations.

³ The California Statewide Communities Development Authority is a joint powers authority sponsored by the California State Association of Counties and the League of California Cities. Its mission is to provide local governments and private entities access to low-cost, tax-exempt financing for projects.

Southern California Logistics Airport Authority

The Southern California Logistics Airport Authority is a joint powers agency that secures funding, oversees development and redevelopment in a joint project area, and manages and operates the former George Air Force Base under a base conversion agreement with the federal government. From FY 2007-08 through FY 2010-11, SCLAA has had negative net assets. In FY 2010-11, negative net assets grew to \$100,116,522 and is a result of (a) multi-year operating deficits; (b) long-term liabilities that exceed assets, including excessive debt; and (c) insufficient pledged revenue to meet debt payments, year after year. The SCLAA's solvency and ability to repay debt is another area of concern.

Operating Deficit

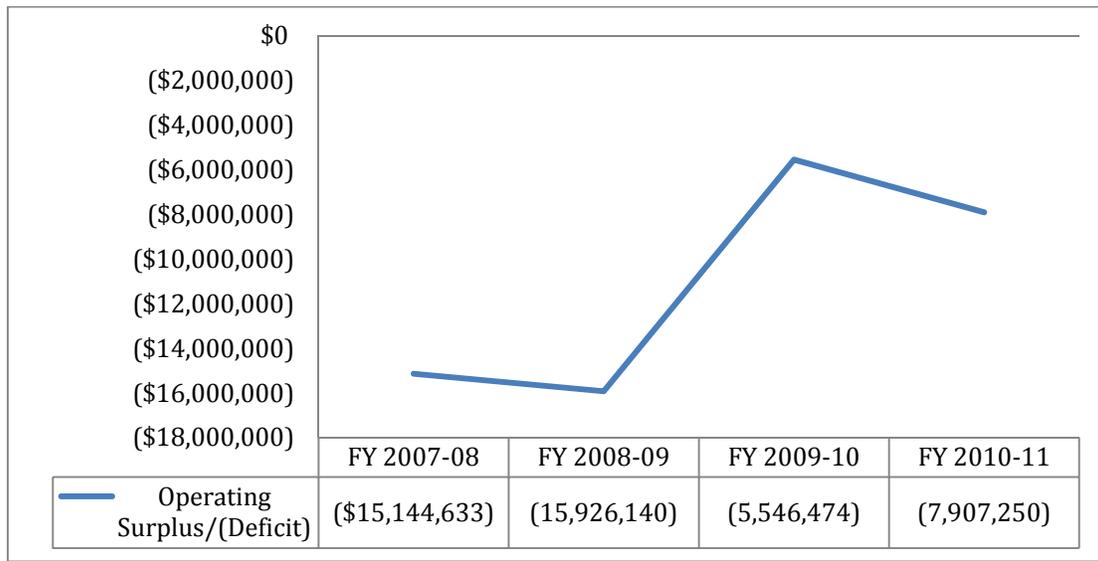
Similar to the General Fund, operating expenditures at SCLAA has exceeded operating revenues. In other words, SCLAA has not collected enough rent revenue from tenants at the airport to support its own operation. As a result, the General Fund, as well as other funds, has had to transfer funds to SCLAA to support airport operations. Table 1.4 below provides details of SCLAA's expenditures and revenues over the past four fiscal years. Chart 1.2 also illustrates SCLAA's on-going operating deficit.

Table 1.4
Four Year Comparison of SCLAA Actual Revenues and Expenditures

Fiscal Year	Revenues	Expenditures	Operating Surplus/(Deficit)
FY 2007-08	\$8,842,868	\$23,987,501	\$(15,144,633)
FY 2008-09	7,465,482	23,391,622	(15,926,140)
FY 2009-10	8,254,815	13,801,289	(5,546,474)
FY 2010-11	9,295,069	17,202,319	(7,907,250)
4-Year Average	\$8,464,559	\$19,595,683	\$(11,131,124)

Source: Southern California Airport Authority Financial Statements

Chart 1.2
Four-Year Comparison of SCLAA Operating Surplus/(Deficit)



Source: Southern California Airport Authority Financial Statements

City management has reported that SCLAA's airport operations⁴ is expected to break even this fiscal year, meaning that operating revenues will equal operating expenditures. However, long term debt, including bond indebtedness and inter-fund loans, is not considered part of the operating budget.

Insolvency

Over the past four fiscal years, SCLAA's liabilities have exceeded its assets, resulting in negative net assets. As shown in Table 1.5 below, SCLAA's net assets were negative \$100,116,522 as of June 30, 2011.

Table 1.5
Four-Year Comparison of SCLAA Assets and Liabilities

Fiscal Year	Assets	Liabilities	Net Assets
FY 2007-08	\$334,570,562	\$389,179,948	\$(54,609,386)
FY 2008-09	292,558,832	345,089,580	(52,530,748)
FY 2009-10	254,627,190	355,966,415	(101,339,225)
FY 2010-11	250,708,960	350,825,481	(100,116,521)
4-Year Average	\$283,116,386	\$360,265,356	\$(77,148,970)

Source: Southern California Airport Authority Financial Statements

⁴ "Airport operations" refers only to those operations directly related to the management and administration of the airport. Airport operations does not include development activities that are not directly related to the airport.

SCLAA’s liabilities are primarily due to long-term liabilities, which totaled \$329,562,038 as of June 30, 2011 and consisted of bond indebtedness from various Tax Allocation Bonds, a liability for compensated absences, and loan payables from the defunct EB-5 program.⁵ The decrease in net assets from FY 2008-09 to FY 2009-10 was caused by a \$50,020,000 write off of a deposit to General Electric for equipment for the proposed second power plant for SCLAA, or Victorville #2. Plans for the power plant, the General Electric contract, and the subsequent settlement litigation with General Electric are further discussed in Section 3 of this report.

In addition to bond indebtedness, SCLAA has borrowed funds from several City sources due to its negative cash balances and other purposes. Table 1.6 below details the source of funds for SCLAA’s \$15,965,603 in inter-fund loans as of June 30, 2011.

Table 1.6
SCLAA Inter-fund Loans, Since FY 2007-08⁶

Source of Loan	Original Amount	Date of Loan	Balance as of 6/30/11	Term	Interest Rate	Purpose
Redevelopment Agency - Project Area Bear Valley	\$10,000,000	9/5/2009	\$10,114,922	5	LAIF ⁷	Redevelopment activities on SCLA, such as the fuel farm
Redevelopment Agency - Low and Moderate Housing	1,700,000	10/12/2009	1,715,210	5	LAIF	Redevelopment activities on SCLA, prior years capital improvements, and project expenses
General Fund	2,314,851	6/30/2011	2,314,851	N/A	N/A	Inter-fund loan due to negative cash balances
Victorville Municipal Utility Services	1,230,671	6/30/2011	1,230,671	N/A	N/A	Inter-fund loan due to negative cash balances
Wastewater Enterprise Fund	589,949	6/30/2011	589,949	N/A	N/A	Inter-fund loan due to negative cash balances
Total	15,835,471		\$15,965,603			

Source: City of Victorville and Southern California Airport Authority Financial Statements

According to the Finance Department, the three loans made to SCLAA in FY 2010-11 due to negative cash balances were never formalized. These loans were made at the end of the fiscal year without documentation of loan terms or interest rates. The Finance Department noted that it

⁵ The EB-5 program was a part of a United States Customs and Immigration Services (USCIS) program. The SCLAA was supposed to obtain loans from foreign investors for development projects in exchange for eligibility for an immigration visa into the country. However, on October 20, 2010, the USCIS terminated the City’s participation in the program.

⁶ The inter-fund loan to SCLAA from the Redevelopment Agency Project Area Bear Valley for \$10,000,000 first appeared in the FY 2007-08 financial statements. However, the loan was not approved by City Council until September 15, 2009.

⁷ Interest rates for the two Redevelopment Agency loans are based on the annualized Local Agency Investment Fund (LAIF) rate of return. As of December 2011, the LAIF rate of return was .38 percent.

has not yet identified a long term financing entity for the inter-fund loan, because currently, the General Fund and Victorville Municipal Utility Services are not in a proper financial condition for making long term advances to SCLAA. The City Manager subsequently indicated that these three loans have been repaid, but “may exist again at the end of this fiscal year.” The repeated use of advances to cover negative cash balances points to a systemic cash flow problem in the City. Further, a cycle of borrowing and repaying these short-term advances can also be interpreted as a mechanism for creating longer-term debt, while complying with the technical requirements of repaying the advances within the shorter one-year timeframe.

The Southern California Logistic Airport Authority’s ability to repay long term debt and short term advances from other City funds is of serious concern. Though SCLAA is trying to break the cycle of operating at a deficit, there is still insufficient revenue to make debt payments. As shown in Table 1.7 below, from FY 2007-08 through FY 2010-11, SCLAA’s pledged revenues have been insufficient to make debt payments.

Table 1.7
Four-Year Comparison of SCLAA Pledged Revenue and Debt Payments

Fiscal Year	Pledged Revenue	Debt Payments	Surplus/ (Shortfall)
FY 2007-08	\$25,531,786	\$34,907,070	\$(9,375,284)
FY 2008-09	34,123,855	47,687,282	(13,563,427)
FY 2009-10	21,546,180	21,725,516	(179,336)
FY 2010-11	20,115,215	29,082,737	(8,967,522)
4-Year Average	\$25,329,259	\$33,350,651	\$(8,021,392)

Source: Southern California Airport Authority Financial Statements

Beginning with SCLAA’s financial statements for FY 2009-10, City management, with confirmation from independent auditors, noted that if pledged revenues were less than the debt service payments, the City would need to bridge the difference between the debt service payments and pledged revenue. The FY 2010-11 financial statements for SCLAA noted that SCLAA would need to “draw on reserves” held with SCLAA’s fiscal agent to bridge the gap between pledged revenues and debt service payments until the economy rebounds.

However, on December 1, 2011, SCLAA defaulted on the principal payment of two Tax Allocation Revenue Bonds, for a total of \$535,000 in unpaid principal. The Bank of New York Mellon, the Trustee that holds the City’s reserves for bond payments, stated that the reserves could only be used for interest payments, not payments on principal. City management reports that tax increment received in March 2012 has been used to re-pay the unpaid principal balance that was due as of December 2011.

SCLAA should continue to explore ways to decrease operating expenditures and increase operating revenues to begin building its fund reserve. Maintaining a positive cash balance and a healthy cash reserve should reduce the need for inter-fund loans and increase its ability to make debt service payments.

Victorville Municipal Utility Services

The Victorville Municipal Utility Services (VMUS) is a City enterprise that provides electrical, cogeneration, and natural gas services for commercial and industrial customers at the Southern California Logistics Airport and Foxborough Industrial Park. However, the enterprise does not provide utility services in residential areas. Operations, maintenance, and capital expenditures are funded by user charges, other fees, and loans. Similar to SCLAA, VMUS has had insufficient revenues to cover operating expenditures and has incurred significant debt due to failed contracts and projects.

Operating Deficit

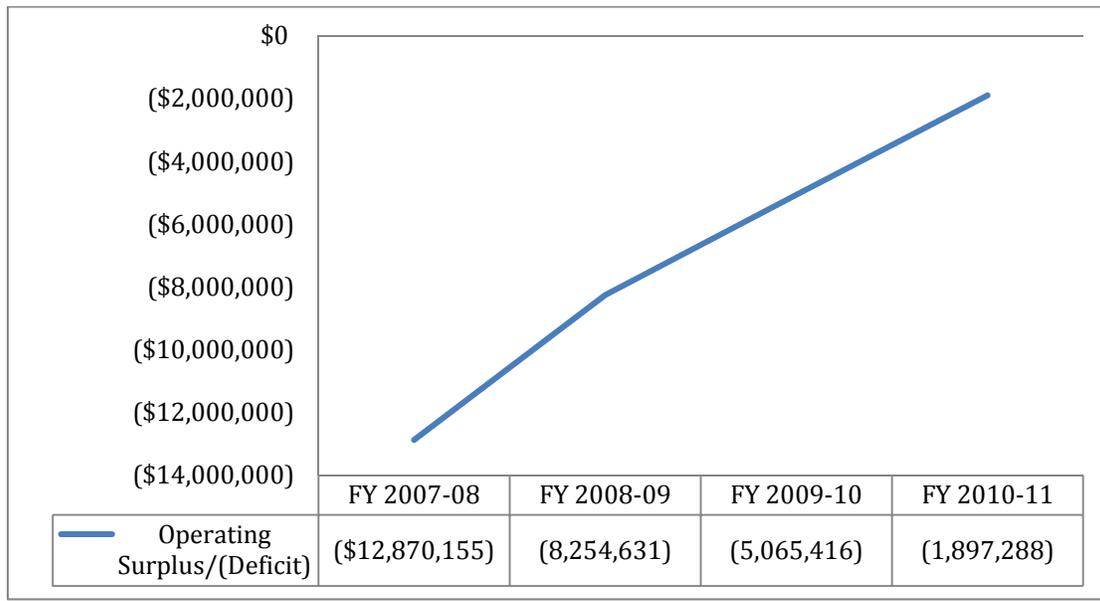
As shown in Table 1.8 and Chart 1.3 below, VMUS has had an operating deficit over the last four fiscal years. However, the deficit has decreased from *negative* \$12,870,155 in FY 2007-08 to *negative* \$1,897,288 in FY 2010-11.

Table 1.8
Four Year Comparison of VMUS Actual Revenues and Expenditures

Fiscal Year	Revenues	Expenditures	Operating Surplus/(Deficit)
FY 2007-08	\$5,660,317	\$18,530,472	\$(12,870,155)
FY 2008-09	6,175,912	14,430,543	(8,254,631)
FY 2009-10	5,963,060	11,028,476	(5,065,416)
FY 2010-11	9,627,295	11,524,583	(1,897,288)
4-Year Average	\$6,856,646	\$13,878,519	\$(7,021,873)

Source: City of Victorville Financial Statements

Chart 1.3
Four-Year Comparison of VMUS Operating Surplus/(Deficit)



Source: City of Victorville Financial Statements

The operating deficits in FY 2007-08 through FY 2009-10 are a result of the City's attempt to self-generate power through the construction of the Foxborough power plant, as well as the purchase and operation of gas fired generators. However, these attempts to make a profit from self-generated power failed in that the cost to construct and/or maintain the power generation exceeded expected revenues. The Foxborough power plant is further discussed in Section 3 of this report.

The Victorville Municipal Utility Services has since changed its business model and continues to incur expenses and receive revenue by buying power through power purchase agreements and reselling the power to tenants at the airport or industrial customers at the Foxborough Industrial Park. As a result, the operating deficit of VMUS has decreased over several years. Because the City is already providing power to these customers, VMUS should continue to operate, but closely monitor its programs and expenditures to generate an annual surplus and build up reserve funds. At the same time, VMUS should avoid any future plans to self-generate power, given its current debt obligations.

Insolvency

Despite the trend of decreasing operational deficits, VMUS remains insolvent due to significant debt. Table 1.9 below illustrates that as of June 30, 2011, VMUS had assets of \$31,978,746 and liabilities of \$107,966,697, resulting in *negative* net assets of \$75,987,951.

Table 1.9
Four-Year Comparison of VMUS Assets and Liabilities

Fiscal Year	Assets	Liabilities	Fund Balance
FY 2007-08	\$45,156,593	\$109,491,132	\$(64,334,539)
FY 2008-09	33,187,052	108,788,754	(75,601,702)
FY 2009-10	29,648,775	108,153,500	(78,504,725)
FY 2010-11	31,978,746	107,966,697	(75,987,951)
4-Year Average	\$34,992,792	\$108,600,021	\$(73,607,229)

Source: City of Victorville Financial Statements

The majority of debt for VMUS is due to 2007 Variable Rate Lease Revenue Bonds totaling \$83,770,000, the balance of which was \$83,470,000 as of June 30, 2011. The proceeds from the bond were used to liquidate earlier bonds in the amount of \$41 million and \$23 million, which were used to acquire generators and other equipment for installation at the Southern California Logistics Airport and the Foxborough Industrial Park.

The financing agreements for the bonds contain specific conditions that may constitute a default under the agreements, which include:

- Failure to submit annual financial statements;
- Failure to pay debt in excess of \$1 million;
- Deterioration in the financial condition of the City that would have a material adverse impact on the ability of the City to pay the lease amounts; and,
- Failure to obtain an unqualified opinion from the City's external CPA firm on the City's financial statements.

Unless cured or waived by BNP, Paribas (BNP), the institution that the City has the financing agreements with, any of these conditions would constitute a default. BNP would then have an ability to pursue any remedy permitted by law.

Finally, because VMUS has been operating at a deficit, the enterprise has had to execute two inter-fund loans from the Victorville Water District to pay for capital improvements, general administrative and operating expenditures. The balance of these loans was \$22,108,568 as of June 30, 2011 and is further discussed in Section 2 of this report.

Similar to SCLAA, VMUS should further reduce expenditures and increase revenues in order to begin building its fund reserve, reduce the need for inter-fund loans, and have an additional source of revenue to make debt service payments.

City Golf Course

The City once owned two golf courses, Green Tree and Westwinds golf courses. However, in FY 2011-12 the City closed down the Westwinds golf course to increase savings to the City and eliminate the annual General Fund subsidy to support golf course operations. Though the City has made efforts to improve the financial condition of the Golf Course, recent financial statements show little impact.

Operating Deficit

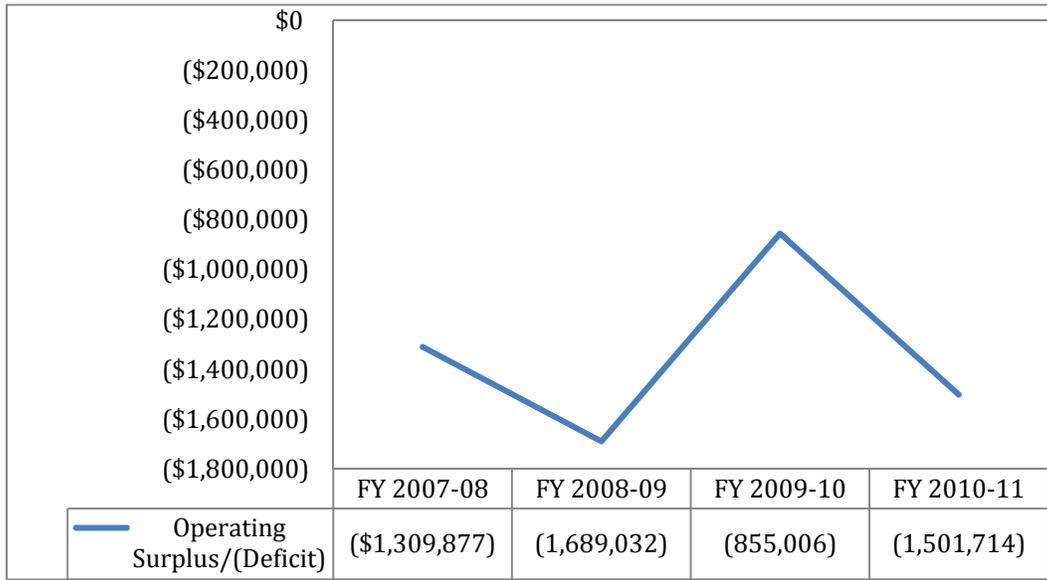
Over the past four fiscal years, the City Golf enterprise has had an average operating deficit of \$1,338,907, as shown in Table 1.10 and Chart 1.4 below.

Table 1.10
Four Year Comparison of City Golf Course
Actual Revenues and Expenditures

Fiscal Year	Revenues	Expenditures	Operating Surplus/(Deficit)
FY 2007-08	\$1,310,864	\$2,620,741	\$(1,309,877)
FY 2008-09	1,193,451	2,882,483	(1,689,032)
FY 2009-10	1,159,914	2,014,920	(855,006)
FY 2010-11	1,022,540	2,524,254	(1,501,714)
4-Year Average	\$1,171,692	\$2,510,600	\$(1,338,907)

Source: City of Victorville Financial Statements

Chart 1.4
Four-Year Comparison of City Golf Course Operating Surplus/(Deficit)



Source: City of Victorville Financial Statements

According to City Management, the golf courses had never been profitable, and for years, the General Fund has had to transfer funds to the golf course enterprise to support operations. These transfers were subsidies to the golf course enterprise, not formal loans, according to City Management. The transfers, shown in Table 1.3 of this report, averaged approximately \$1.3 million per year and are in addition to the inter-fund loans by the golf course enterprise.

In 2010, the City outsourced management of the golf courses, which was estimated to result in a savings of \$658,000 for FY 2010-11, according to the adopted FY 2010-11 budget. However, according to the City’s FY 2010-11 financial statements, there was only a total savings of \$109,479 in personnel services, from \$1,001,325 in personnel services in FY 2009-10 to \$891,846 in FY 2010-11. These savings were \$548,521 less than the estimated savings of \$658,000. Further, expenditures in maintenance and operations in FY 2010-11 increased by \$496,325 from \$565,905 in FY 2009-10 to \$1,062,230 in FY 2010-11. As a result, the operating deficit grew from \$855,006 in FY 2009-10 to \$1,501,714 in FY 2010-11, despite new management

The City should explore further reductions in expenditures in the golf course enterprise and increase revenue to eliminate its operating deficit. Options may include selling the golf course, shutting down the golf course, or finding alternative uses for the land.

Impact of Dissolving the Victorville Redevelopment Agency

With the California Supreme Court upholding the passage of Assembly Bill 26 (AB 26), or the dissolution of redevelopment agencies, the City of Victorville assumed the role of Successor Agency for the now dissolved Victorville Redevelopment Agency (VVRDA). As such, the City of Victorville, in its role as successor agency, is obligated to pay the VVRDA's enforceable obligations,⁸ including outstanding bond debt, as well as assume responsibility of collecting funds from other entities that borrowed money from the VVRDA.

Tax Increment Changes and Role of Successor Agency

Whereas redevelopment agencies' share of tax increment funds used to be deposited directly with the redevelopment agencies prior to AB 26, tax increment is now deposited into a Redevelopment Property Tax Trust Fund (Trust Fund), controlled by the County Auditor. The tax increment funds are then distributed by the County Auditor according to a priority distribution in the following order (the first being the top priority):

- (1) Pass-through payment obligations that existed prior to January 1, 2011, including payment obligations to a county, city, special district, schools, county education offices, and community colleges;
- (2) Payments listed in the Recognized Obligation Payments Schedule (ROPS),⁹ with the priority being for debt service for Tax Allocation Bonds;
- (3) Administrative costs;¹⁰ and,

⁸ Enforceable obligations are defined by the California Health and Safety Code, Section 34171 as (1) bonds, including the required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds; (2) loan of moneys borrowed by the redevelopment agency for a lawful purpose, to the extent they are legally required to be repaid pursuant to a repayment schedule or other mandatory loan terms; (3) payments required by the federal government, preexisting obligations to the state or obligations imposed by state law, or legally enforceable payments required in connection with the agencies' employees; (4) judgments or settlements; (5) legally binding and enforceable agreement or contracts; (6) contracts or agreements necessary for the administration or operation of the Successor Agency; and (7) amounts borrowed from or payments owing to the Low and Moderate Income Housing Fund of a redevelopment agency, which had been deferred as of February 1, 2012.

⁹ A Recognized Obligation Payment Schedule is defined by the California Health and Safety Code, Section 34171 as the document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period (with the first six-month fiscal period being from January 1, 2012 through June 30, 2012).

¹⁰ Per California Health and Safety Code, Section 34171, administrative costs consist of those incurred by (a) the Successor Agency and (b) the State Controller for audit and oversight functions. The administrative costs of the Successor Agency is a minimum of \$250,000 and a maximum of five percent of the property tax allocated to the Successor Agency in FY 2011-12, and three percent of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the Successor Agency for each subsequent fiscal year.

- (4) Any residual balance in the Trust Fund is then redistributed to any county, cities, special districts, schools, county education offices, and community colleges that were impacted by the creation, and now dissolution, of the redevelopment agency.

In accordance with AB 26, the City of Victorville now has control of the former VVRDA's assets and liabilities and must now dispose of the assets and meet all of VVRDA's payment obligations. Proceeds from the City's disposal of assets would be deposited into the Trust Fund controlled by the County Auditor and then distributed according to the priority distribution listed above. The City receives allocated tax increment from the County Auditor and makes the actual payments to the obligations listed in the ROPS.

Recognized Obligations

The City was required to submit a draft Recognized Obligation Payment Schedule (ROPS) to the County Auditor by March 1, 2012. There are three main categories of debt and obligations included in the City's ROPS which are eligible for payment through tax increment funds. In order of payment priority, these categories are:

- Debt obligation from Tax Allocation Bonds issued under the former VVRDA;
- Debt obligation from SCLAA issued bonds because tax increment designated for VVRDA were pledged to repay several of the bonds when they were first issued;
- Third party contracts and agreements, including inter-fund loans, and,
- Administrative costs associated with operating the Successor Agency, such as salaries for personnel.

However, if there is insufficient tax increment to meet these payment obligations, the City, as Successor Agency, would be required to meet these obligations through the use of reserve funds or inter-fund loans. This provision of the law has been upheld by the California Supreme Court.

According to the City's financial statements, the principal balance of Tax Allocation Bonds issued under the former VVRDA was \$42,395,000 as of June 30, 2011. Based on an analysis of VVRDA's receipt of tax increment and debt service payments over the last four fiscal years, the City should still be able to receive sufficient tax increment funds to make debt service payments for the VVRDA bonds. As shown in Table 1.11 below, the City had an average surplus of \$4,861,822 in tax increment over the past four fiscal years after debt service payments were made, though tax increment has steadily decreased.

Table 1.11
Four Year Comparison of VVRDA Tax Increment and
Debt Service Payments

Fiscal Year	Tax Increment	Debt Service			Surplus
		Principal	Interest	Total Debt	
FY 2007-08	\$9,635,117	\$780,000	\$2,644,204	\$3,424,204	\$6,210,913
FY 2008-09	8,291,658	815,000	2,545,864	3,360,864	4,930,794
FY 2009-10	8,364,404	850,000	2,435,851	3,285,851	5,078,553
FY 2010-11	6,523,217	885,000	2,411,189	3,296,189	3,227,028
4-Year Average	\$8,203,599	\$832,500	\$2,509,277	\$3,341,777	\$4,861,822

Source: Victorville Redevelopment Agency Financial Statements

According to the City's financial statements outstanding principal debt obligations from SCLAA issued bonds was \$330,173,644 (not including the unamortized discount) as of June 30, 2011. However, City management estimates that total debt for SCLAA bonds is \$829,187,009, which includes estimated principal and interest payments. As previously discussed in this report, there has not been sufficient pledged revenue, or tax increment, to cover SCLAA's debt service payments, and SCLAA has had to rely on its reserves with its fiscal agent and go into temporary default.

If the surplus funds available after payment of the VVRDA's loans, as illustrated in Table 1.11, are *not* sufficient to bridge the gap between pledged revenue and debt service payments for the SCLAA bonds, then the City is at risk for having insufficient tax increment funds to make payments to all other obligations listed on the ROPS. As such, the City's General Fund may have to subsidize the third party obligations listed on the ROPS and administrative costs associated with being the VVRDA's Successor Agency. This provision of the law has also been upheld by the California Supreme Court. As previously illustrated in this section, the Fund Balance and cash reserve for the General Fund is severely depleted and may not be in the condition to make such payments.

Inter-fund Loans

As shown in Table 1.6 above, the SCLAA had a balance of \$11,830,132 in unpaid inter-fund loans from VVRDA funds. Additionally, various VVRDA funds borrowed funds from the Low and Moderate Income Housing (LMIH) Fund of VVRDA. The outstanding balance owed to the LMIH Fund as of June 30, 2011 was \$9,813,531. Should these inter-fund loans be repaid back to the Successor Agency, the repayment of the loans would be considered assets and deposited into the Trust Fund. The funds would then be distributed for obligations in the following priority: (1) bond indebtedness, (2) third party obligations, (3) administrative costs, and (4) residual balance to other entities impacted by tax increment such as the County, cities, special districts, schools, county education offices, and community colleges. However, repayment of these inter-fund loans

prior to the end of the loan term is highly questionable, given the financial condition of SCLAA and the possible shortage of tax increment funding for obligations other than bond indebtedness.

Conclusions

An analysis of the City of Victorville financial statements, as well as those of the agencies for which the City has fiduciary responsibility, reveal that the City's solvency, capacity to provide current services, and ability to repay large debt obligations is a growing concern. As of June 30, 2011, the General Fund balance was \$3,103,630, which was \$4,978,874 or 61.6 percent less than the Government Finance Officers Association's target reserve level of \$8,082,504, or two months reserve based on annual expenditures in FY 2010-11. A General Fund balance of that level exposes the General Fund to the risk of not being able to meet cash flow requirements, economic uncertainties, or other financial hardships.

The General Fund balance has been depleted over the years as the result of several fiscal years when expenditures have exceeded revenues, leading to an operating deficit and a need to use reserves to meet expenditure obligations. Additionally, the General Fund has loaned or transferred money to other City funds, in the form of subsidies, to support the operations of other entities that receive the majority of funding from restricted sources.

The financial conditions of the Southern California Logistics Airport Authority, Victorville Municipal Utility Services, and City Golf Course are similarly weakened by operating deficits. More importantly, the financial conditions of SCLAA and VMUS are threatened by excessive debt and an inability to make debt service payments due to insufficient revenue and fund balance reserves. The General Fund's risk exposure is increased due to a potential need to absorb VMUS liabilities and obligations. Additionally, SCLAA, has already defaulted on a debt payment. While the General Fund is not obligated to pay SCLAA's bond indebtedness, the General Fund has supported SCLAA through advances to cover year-end negative cash balances. The City Manager has indicated that additional short term borrowing may be necessary at the end of the current fiscal year to again cover negative cash balances. The repeated use of advances on annual financial statements points to a serious cash flow problem. Further, a cycle of borrowing and repaying these short-term advances can also be interpreted as a mechanism for creating longer-term debt, while complying with the technical requirements of repaying the advances within the shorter one-year timeframe.

With the dissolution of the Victorville Redevelopment Agency and the City's assumption of VVRDA's assets and liabilities as the Successor Agency, the City's General Fund is further exposed to additional risk of having to absorb, but not being able to meet VVRDA's financial obligations. These obligations include bond indebtedness, payments to third party contractors, inter-fund loans and administrative costs associated with operating as the Successor Agency. Although the City will receive some amount of tax increment funds to meet these obligations, historical analysis suggest ongoing risk exposure, since the General Fund will likely be required to absorb obligations not being met by the tax increment.

Recommendations

The Victorville City Council should:

- 1.1. Develop a plan to replenish the General Fund reserves to the Government Finance Officers Association's recommended level of two months annual revenue or expenditures. This plan should include further reductions in expenditures, identification of additional sources of revenue, earmarking income from major sources of revenues as the economy improves, and avoiding additional inter-fund loans and transfers from the General Fund to other City funds.
- 1.2. Direct the Southern California Logistics Airport Authority and Victorville Municipal Utility Services to further reduce expenditures and increase revenues in order to begin building its fund reserve, reduce the need for inter-fund loans, and have an additional source of revenue to make debt service payments.
- 1.3. Direct the Victorville Municipal Utility Services to closely monitor its programs for utility services and avoid any further attempts to self-generate power.
- 1.4. Direct the City Manager to further reduce expenditures and increase revenues for the golf course enterprise to reverse its operating deficit and eliminate its need for inter-fund loans and transfers. The City Council should also consider various alternatives to the continued operation or disposition of the Green Tree golf course.

Costs and Benefits

Identifying further reductions in City expenditures and identifying other ways to replenish the fund balances and reserves of various City funds, including the General Fund, could result in a reduction in staffing and services while improving the City's financial condition and ability to repay large debt could reduce the risk of costly bankruptcy proceedings.

2. Inter-fund Loans and Use of Restricted Funds

- Despite repeated recommendations from independent auditors and members of City management as early as February of 2009, the City of Victorville did not adopt a formal Inter-fund Loan policy until May 3, 2011. The adopted policy contains significant weaknesses, including the lack of guidelines and required analysis to determine: (1) the borrowing and lending funds' solvency; (2) timeframes for analysis and approval prior to June 30 of each fiscal year to prevent backdating of loans; and, (3) financial planning and monitoring of the repayment of the loans. Without such guidelines, approval of inter-fund loans could weaken the financial condition of lending funds, result in permanent contributions from the lending fund to the borrowing funds, and complicate or misrepresent the financial condition of all funds involved.
- As of June 30, 2011, the City had at least \$69.7 million in outstanding inter-fund loans. A review of these loans demonstrates that a majority of the borrowing funds have not made any repayment toward the loans, and internal controls are not formalized to ensure repayment. Additionally, \$38.1 million, or 54.7 percent of the borrowed funds were provided to the Southern California Logistics Airport Authority (SCLAA) or the Victorville Municipal Utility Services (VMUS), two entities with significant debt obligations, structural cash flow difficulties, and revenue concerns. The ability of these two entities to repay the inter-fund loans is highly questionable.
- The California Constitution imposes restrictions on the use of fees imposed for water delivery, sewer services, and garbage collection. Specifically, revenue from property related fees or charges should not exceed the amount required to provide such services, or be used for any purpose other than what the fee or charge is intended. The Constitution does not prohibit investments or short-term loans from restricted funds. However, given that the financial condition of VMUS makes it likely that the \$22.1 million in outstanding inter-fund loans from the Victorville Water District (VWD) could go unpaid, making it a permanent contribution to VMUS operations, then the City is at risk of violating the Constitution. Notably, the City Manager asserts that the City will use approximately \$45 million of \$52 million in judgment proceeds from a suit against a prior engineering contractor to repay the loans.
- In September 2008, the Local Agency Formation Commission (LAFCO) adopted a resolution to dissolve the Sanitary District and designate the City of Victorville as the Successor Agency. Subsequent to the dissolution, the City transferred \$15 million in property tax revenue from the Sanitary District to the General Fund. To date, the City has not provided sufficient documentation for the reason why only \$15.0 million of the \$17.8 million in property tax revenue was transferred to the General Fund. More importantly, however, the transfer of such funds violates the conditions set forth in the LAFCO resolution, which states that all Sanitary District funds shall be maintained in a separate enterprise account. Additionally, use of the property tax revenue for purposes other than for Sanitary District services would also be in direct violation of the California Constitution.

Inter-fund Loan Policy Adopted, but Contains Weaknesses

According to City management, the City has been engaging in inter-fund loans when various funds draw a negative cash balance, or expenditures exceed cash on hand, for several years. Despite recommendations from several parties to formalize these inter-fund loans through loan documents, the City has inconsistently formalized loan documents for inter-fund loans. Additionally, it is not clear what standards and criteria the City has used to guide its inter-fund loans until a policy was adopted by the City Council on May 3, 2011. Improvements should be made to the Inter-fund Loan Policy to ensure that inter-fund loans do not: (a) significantly weaken the financial condition of a lending fund and its ability to pay obligations; (b) become a permanent contribution to the borrowing fund; or, (c) misrepresent the financial condition of all funds involved.

City was Slow to Adopt Inter-fund Loan Policy

In February 2009, Caporicci and Larson, the independent auditors for the 2007 financial statements, recommended that formal agreements should be obtained between funds providing and borrowing cash. In May and June of 2009, the former Director of Finance submitted a draft and a revised draft of an Inter-fund Loan Policy to City management. The former Director of Finance recommended approval by the City Council prior to June 30, 2009, in anticipation of inter-fund loans that were proposed to be a part of Fiscal Year (FY) 2008-09. Current City management reports that they do not know why the Inter-fund Loan Policy was never adopted in 2009 under the former City Manager, though several members of the existing City management were recipients of the draft Inter-fund Loan Policy.

In its audit of the 2008 financial statements, Mayer Hoffman McCann P.C. also recommended that the City formally approve and document inter-fund loans that were approved as long-term advances between funds. As a result, the City approved formal loan documentation for two inter-fund loans on September 15, 2009: loans between (1) the Victorville Water District and VMUS, and (2) the Victorville Redevelopment Agency and SCLAA, which are discussed later in this Section of the report. Subsequent to the auditors' recommendations, several inter-fund loans have been formalized, while others have not. This is also further discussed later in this Section.

Since the draft Inter-fund Loan Policy submitted to City management in 2009 was never adopted, it is not clear what criteria and guidelines were used to identify lending agencies and repayment terms of the loans approved prior to May 3, 2011, when the City Council adopted its current Inter-fund Loan Policy.

Vague Inter-fund Loan Policy

The Inter-fund Policy states that loan documents in the form of a Promissory Note must be prepared by the City Attorney and approved by the City Council when the following conditions are met:

- A fund has insufficient cash in the bank to pay for incurred expenditures, or has a cash shortfall;
- Temporary borrowing of funds from another fund is needed to meet expenditure requirements prior to the close of the fiscal year; and,
- The loan or advance of funds cannot be repaid in the current fiscal year, but will be repaid within five years.

Financial Analysis Prior to Loan Documentation

The existing policy only vaguely states that a periodic analysis is done to identify a fund that has significant expenditures that cause the borrowing need and that a proposed lending fund is identified. According to City management, the periodic analysis is currently a quarterly report on cash balances prepared by the Finance Department and presented to the City Council, though the goal is to make the reports monthly.

However, the Inter-fund Loan Policy does not provide guidelines nor require an analysis of the borrowing and lending funds' solvency, or ability to pay obligations. For example, if the lending fund is in a poor financial condition, then the lending fund may not have sufficient funds to pay for salaries, operations, or debt service after providing funds to the borrowing fund. Similarly, if the borrowing fund is in a poor financial condition and is unable to repay the debt within the terms set for the inter-fund loan, the inter-fund loan could become a permanent contribution to the borrowing fund. In certain circumstances, as discussed in more detail later in this section, this would be a violation of the California Constitution.

The Inter-fund Loan Policy should be revised to include an analysis of the financial condition of each fund involved in the inter-fund loan. To the extent possible, only funds in a relatively stable financial condition should be included in the inter-fund loan. Key factors to review for determining each fund's ability to continue to pay obligations such as the cost of ongoing operations; principal and interest payments for long-term debt, whether it's commercial debt or inter-fund loans; and other legal obligations specified in agreements or contracts with third parties, include:

- **Annual revenues and expenditures:** do revenues match or exceed annual expenditures, or is the fund consistently spending more money than it receives, resulting in the use of reserve funds or reliance of inter-fund loans to address cash shortfalls;
- **Annual assets and liabilities:** does the fund have so much debt that its total liabilities annually exceed its assets, indicating that the fund may have obligations with a higher priority of repayment than an inter-fund loan, such as bonded indebtedness; and,
- **Potential sources of revenue:** will the fund see a predictable increase in revenue, such as an increase in property, sales and franchise taxes with a rebounding economy; additional rent revenue from existing and/or new airport tenants; increases in user fees and charges; or significant proceeds from the sale of property or other assets?

Clear and Reasonable Timeframe for Analysis and Approval

According to the staff report to the City Council when the Inter-fund Loan Policy was approved, a promissory note will be submitted for approval to the City Council prior to the close of the books for any given fiscal year. Therefore, the promissory note could be submitted for approval two to three months after the end of the fiscal year because revenue collection still occurs after June 30, the last day of the previous fiscal year. In other words, the existing Inter-fund Policy permits the backdating of inter-fund loans.

The backdating of inter-fund loans, generally, is not fiscally prudent and should be avoided except in unique circumstances. Approving an inter-fund loan months after determining a need to enter into one to close cash shortfalls identified on June 30 of the fiscal year, and then backdating that loan, is like taking a car home from a dealership, then waiting to receive additional commission or a raise in the next couple of months before returning to get approval for a loan to pay for the car. With adequate tools such as financial reports on cash balances, expected revenue and projected expenditures, the City should be able to determine an appropriate amount for a loan and approve the loan prior to June 30 of the fiscal year. Should revenues collected after June 30 be more than expected, then the borrowing fund could repay the inter-fund loan more quickly.

Financial Planning and Monitoring of Repayment

Although the Inter-fund Loan Policy makes some reference to repayment terms, City management has reported that it currently does not have any internal controls to ensure that the borrowing fund meets the repayment terms specified in the loan documents. The policy only states that the loan documents should include: (a) the maturity date on which all principal together with all accrued and unpaid interest will be due and payable; (b) an applicable interest rate; and, (c) that the borrowing fund has a right to make full prepayment at any time without penalty. However, according to the Government Finance Officers Association (GFOA), prudent measures should include documentation of a financial plan reflecting a repayment schedule.

To prevent inter-fund loans from becoming permanent contributions or transfers to the borrowing fund, the City should include financial plans in its loan documentation for approval by the City Council. The financial plans could include specific amounts in the repayment schedule, starting with low payment amounts and then increasing throughout the term of the inter-fund loan. Alternatively, financial plans could specify that a percentage of surplus revenue at the end of every year in the term of the loan should be made toward the payment of the loan, with the total balance due by the maturity date. The financial plan could also document any anticipated increases in revenue, such as the completion of revenue generating projects, or the sale of assets.

At a minimum, City management should be monitoring a borrowing fund's ability to make payments throughout the term of the loan. City management reports that during the budget process, the Finance Department conducts an informal analysis of surplus funds that could be used to pay off some of the inter-fund loan. This process should be formalized and tied to any financial plans included in loan documentation.

Outstanding Inter-fund Loans Exceed \$69 Million

As shown in Table 2.1 below, the City had at least \$69,666,316 in outstanding inter-fund loans as of June 30, 2011, including original loan amounts and accrued interest. The inter-fund loans included in Table 2.1 are those transactions included in the City's FY 2010-11 financial statements as "Advances to/other funds," which should have had loan documentation executed by June 30, 2011. Note that all of the loans below were executed on or after June 30, 2009 because, according to City management, this is when the City began to formalize inter-fund loans from one entity to another in response to independent auditors' feedback.

Table 2.1
Inter-fund Loans for the City of Victorville as of June 30, 2011

Borrowing Fund¹	Lending Fund	Original Amount	Date of Loan	Balance as of 6/30/11	Purpose
SCLAA	RDA - Project Area Bear Valley	\$10,000,000	9/15/2009	\$10,114,922	Redevelopment activities on SCLA, ² such as the fuel farm
SCLAA	RDA - Low and Moderate Housing	1,700,000	10/20/2009	1,715,210	Redevelopment activities on SCLA, prior years' capital improvements, and project expenses
SCLAA	General Fund	2,314,851 ³	6/30/2011	2,314,851	Inter-fund borrowing due to negative cash balances
SCLAA	VMUS	1,230,671	6/30/2011	1,230,671	Inter-fund borrowing due to negative cash balances
SCLAA	Wastewater Enterprise Fund	589,949	6/30/2011	589,949	Inter-fund borrowing due to negative cash balances
Subtotal for SCLAA		15,835,471		15,965,603	
VMUS	VWD	20,000,000	6/30/2009	20,229,844	Capital improvements, general administrative and operating expenditures from prior years
VMUS	VWD	2,700,000	11/09/2009	1,878,724	Capital improvements, general administrative and operating expenditures from prior years
Subtotal for VMUS		22,700,000		22,108,568	
RDA - Low and Moderate Housing	SCLAA	6,906,148	7/21/2009	6,978,386	Land acquisitions associated with the Old Town Project Area
VWD	SCLAA	20,000,000	7/23/2009	22,711,781	Wastewater Treatment Facility on SCLA
General Fund /Development Impact Fund	SCLAA	1,895,090	9/21/2010	1,901,978	Land acquisitions associated with the public library
Total		\$67,336,709		\$69,666,316	

Source: City of Victorville Financial Statements

¹ Borrowing/lending funds include: Southern California Logistics Airport Authority (SCLAA), Victorville Redevelopment Agency (RDA), Municipal Utility Services (VMUS), and Victorville Water District (VWD).

² Southern California Logistics Airport (SCLA) is the physical airport property.

³ The City Manager had stated that these funds were provided to SCLAA as "a short term advance" and have since been repaid. The City Manager has further stated that this amount "may exist again at the end of this fiscal year."

Table 2.1 does not include inter-fund loans made between the Low and Moderate Income Housing Fund and other Victorville Redevelopment Agency (RDA) funds. The balance of inter-fund loans within the RDA was an additional \$9,813,531 as of June 30, 2011.

Terms and Repayment

With a few exceptions, the inter-fund loans listed in Table 2.1 have a term of five years and have an interest rate equivalent to the Local Agency Investment Fund (LAIF) rate of return. As of December 2011, the LAIF rate of return was 0.38 percent. These terms and interest rates appear to be consistent with the City's inter-fund loan policy, which requires repayment within five years and at an appropriate interest rate.

Unlike the other inter-fund loans, the inter-fund loan between the Victorville Water District (VWD) and SCLAA for \$20,000,000 was originally for a two year term with a seven percent interest rate. According to City management, the loan was originally set for two years because the City anticipated funds from the EB-5 program, which would have secured foreign investor money for planned development projects. However, after the EB-5 program was terminated, the City requested an extension of the inter-fund loan between VWD and SCLAA to five years. Additionally, the interest rate for this loan is seven percent, because the source of funds for the loan is unencumbered funds from SCLAA Housing bonds, which, according to the indenture, must be set at a market rate interest rate.

Based on internal work papers provided by City management, most of the borrowing funds have yet to make a single payment toward the repayment of the inter-fund loans. However, there was a payment made from VMUS to the VWD and the outstanding balance is now \$1,878,724, as of June 30, 2011. It is not clear why payment installments were not made on both outstanding inter-fund loans between VMUS and VWD. As previously mentioned, City management does not have any formal internal controls to ensure that the inter-fund loans are repaid within five years.

Financial Condition of Borrowing and Lending Funds

As previously discussed, an adequate inter-fund loan policy should include an analysis of the financial condition of the borrowing and lending funds. A review of the annual revenues, expenditures, assets, liabilities, and potential sources of revenue for the borrowing funds listed in Table 2.1 suggest that SCLAA, VMUS, and the General Fund may have insufficient financial capacity to repay the inter-fund loans within the terms of the loans. Additionally, SCLAA and VMUS have significant bonded indebtedness, which have a higher priority of repayment based on conditions established in the bond indentures, including penalties if the borrowing entities miss scheduled payments or default on other debt obligations. The financial condition of SCLAA, VMUS, and the General Fund are further discussed in Section 1 of this report.

Three of the inter-fund loans listed above, between SCLAA and other funds, do not have any formal loan documentation. According to City management, appropriate lending funds still need to be identified prior to requesting approval from City Council, because the current funds listed in the financial statements—the General Fund, VMUS, and Wastewater Enterprise Fund – are in a weak financial state.

Backdating of Loans

The inter-fund loans made to SCLAA from VMUS and the Wastewater Enterprise Fund⁴ in 2011, which have still not received City Council approval as of the date of this report, are examples of inter-fund loans that will be backdated, or approved, after they first appear in the City’s accounting records or audited financial statements. As previously noted, the Inter-fund Loan Policy allows City management to submit loan documentation two to three months after the end of the fiscal year because revenue collection still occurs past June 30, otherwise known as backdating loans. However, the suggested timeframe for backdating loans has significantly passed. As discussed in Section 1 of this report, the City should identify lending funds and formalize loan documentation as soon as possible.

As shown in Table 2.2, there have been other instances where inter-fund loans are first mentioned in the financial statements, but are not presented to City Council for consideration until months after the date of the loan.

**Table 2.2
Backdated Inter-fund Loans for the City of Victorville**

Borrowing Fund	Lending Fund	Original Amount	Date First Appeared, or Referenced in Financial Statement	Date on Promissory Note, or City Council Approval
SCLAA	RDA	\$10,000,000	6/30/2009	9/15/2009
VMUS	VWD	20,000,000	6/30/2009	9/15/2009
VMUS	VWD	2,700,000	4/13/2009	11/9/2009

Source: City of Victorville Financial Statements

In addition, the City has noted one lending fund and amount in its financial statements, but then approved a different lending fund or amount in backdated loans. For instance, the FY 2009-10 financial statement notes that \$5,073,220 was loaned from the General Fund to the Golf Course fund. However, when documentation of the inter-fund loan was requested, City management provided documentation of the approval of \$6,335,780 in total funds loaned to the Golf Course fund from the Solid Waste Management Fund (\$2,300,000), Source Reduction and Recycling Fund (\$2,935,780), and Landfill Mitigation Fund and (\$1,100,000).

According to City management, the amount included in the loan document for the inter-fund loans to the Golf Course fund will not reconcile with the figures in the financial statement because the advances were “simply used to document positive balance coverage of negative balances.” In other words, the amount documented in the audited financial statements represents the amount needed at the close of the fiscal year. However, as time passes between June 30 of a

⁴ As previously mentioned, the City Manager has stated that the \$2.3 million advance from the General Fund has been repaid, but may appear again at the end of the current fiscal year.

fiscal year and when a loan is finally presented to City Council, additional revenue may have been collected or expenditures incurred, resulting in a different amount requested in the loan.

Because the amount and sources of the inter-fund loan in the formally approved loan documentation are different from when the inter-fund loan first appeared in financial statements, the City may not have fully represented the financial state and condition of (1) the Golf Course Fund, because more funds were needed than originally anticipated and (2) the General Fund, because the General Fund financial condition is weak and should not be lending funds to other City operations, as previously discussed in this report.

While the City of Victorville is trying to improve and update its policies, procedures and practices, the backdating of loans, as opposed to conducting thorough analysis, discussion and approval prior to transactions, could result in non-disclosure of important financial information to the City Council prior to the use of borrowed funds. Further, internal controls that ensure that borrowing entities have sufficient funds to repay the loans or advances are weak. Therefore, strict adherence to a revised Inter-fund Loan Policy that includes full analysis and advance approval of loans prior to June 30 of every year should prevent further backdating of loans.

Documentation of Inter-fund Loans in Financial Documents

As demonstrated with the Golf Course inter-fund loan, the backdating of loans could lead to inconsistent information listed in audited financial statements and internal documents, particularly when the loan amount or the lending fund changes from the first time the loan is mentioned in a financial statement to when the loan is finally approved by City Council. However, all approved inter-fund loans should be consistently documented in all relevant financial statements and internal documents, which City management has failed to do.

Examples of the inconsistent documentation of loans in financial statements include:

- **Loan between SCLAA and General Fund:** The FY 2010-11 financial statement and inter-fund loan spreadsheet provided by City management note that the General Fund borrowed funds from SCLAA for the purchase of land, in the amount of \$1,895,090. However, the loan documentation provided by City management states that the loan for the purchase of land was for \$1,903,000; and,
- **Loan between SCLAA and RDA:** The FY 2010-11 City financial statement states that SCLAA borrowed funds from the RDA, while both the RDA and SCLAA financial statements are consistent with loan documentation, stating that it was the RDA that borrowed funds from SCLAA. Additionally, this loan was approved by City Council on July 21, 2009, but was not documented in the RDA, SCLAA or the City's FY 2009-10 financial statements.

The City should make every effort to accurately reflect inter-fund loans in its financial statements and internal documents to avoid misrepresenting the financial condition of funds.

Risks and Harm of Inter-fund Loans

The lack of payments made by borrowing funds to lending funds and the weak financial condition of the borrowing funds suggest that the inter-fund loans listed above are at risk of becoming permanent contributions by the lending funds to the borrowing funds. Additionally, the ongoing use of inter-fund loans, particularly when they occur almost annually, misrepresents the financial state of the borrowing funds. Of the \$69,666,316 in outstanding inter-fund loan balances, \$38,074,171, or 54.7 percent of the borrowed funds were for SCLAA and VMUS, two entities with significant cash flow issues, an inability to bring in sufficient revenues, and significant debt obligations.

The City Manager has asserted that a majority of the inter-fund loans, approximately \$45 million, will be repaid upon receipt of approximately \$52 million⁵ in judgment proceeds from the City's suit against Carter and Burgess (now Jacobs Engineering), an engineering firm that the City contracted with for the development of a power generation facility in the Bear Valley Redevelopment Area.⁶ The City Manager anticipates the suit, which is currently under appeal by Jacobs Engineering, to be completed in FY 2012-13. Nevertheless, the City should develop a financial plan for each of the existing inter-fund loans to ensure that payments are made to the lending funds with or without judgment proceeds. The financial plan should include steps to building up a reserve of funds available for repaying the loan, such as reducing operating expenditures or the identification of one-time or ongoing resources, such as the sale of assets, additional tenants, or increases to rents and/or user fees and charges. Additionally, the plan should include payment targets and schedules. If a set dollar amount cannot be included in a payment schedule through the end of the term of the inter-fund loan, the loan should be designated to be at risk and reported to the City Council with alternative justification for authorizing the loan. If the City cannot establish firm payment schedules, it should set annual targets as a percentage of surplus funds available after paying other obligations, such as debt service, and consider extending the terms of the loans.

Use of Restricted Funds

There are some City funds that are designated for specific uses and purposes, whether by local, State, or federal laws and policies. Any use of those funds for other than those restricted purposes would constitute a violation of laws. Therefore, the City of Victorville should analyze any potential violations of law from existing inter-fund loans and include such analysis prior to approving future inter-fund loans. This is particularly important when considering loans from City enterprises that rely upon property related taxes or fees to fund operations.

⁵ Under a reimbursement agreement with BNP Paribas, the City has designated that \$22 million of anticipated judgment proceeds be provided to VMUS to pay the VWD. VWD would then immediately pay SCLAA for amounts owed under outstanding inter-fund loans.

⁶ Section 3 of this report provides a more detailed summary of the development of the Foxborough Power Plant in the City's Bear Valley Redevelopment Area.

In November 1996, California voters passed Proposition 218 (Prop 218), which restricts the use of fees imposed on property owners for services that are available to the public at large, such as water delivery,⁷ sewer service, and garbage collection. Prop 218 added Article XIII D Sec. 6 (b) to the California Constitution, which states that:

“A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

- (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
- (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
- (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of service attributable to the parcel.
- (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.
- (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.”

Water District Funds and Potential Violations of Prop 218

As shown in Table 2.1 above, VMUS had a total of \$22,700,000 in inter-fund loans from the VWD. As of June 30, 2011, there was an outstanding balance of \$22,108,568 still owed to the VWD. According to loan documentation and financial statements provided by City management, the two loans from the VWD are to fund VMUS “capital improvements, general administrative and operating expenditures from prior years.” Additionally, City management reports that the sources of funds for the loan are water fees and charges accumulated over several years.

A review of the language in the loan documentation and that of Prop 218 suggests that the City of Victorville may be at risk of violating State law by providing VWD funds collected for the delivery of water services to VMUS, which were used for delivery of electrical and power utility services. It should be noted that VWD provides services to residential water customers in the City of Victorville, whereas VMUS currently does not serve residential customers, only industrial and commercial customers. While Prop 218 does not prohibit VWD from making investments or short-term loans, if the borrowed funds are not repaid, they could become a permanent contribution toward the operation of VMUS. Therefore, the City is exposed to potential litigation from taxpayers’ associations for the improper use of restricted water service funds for electrical and power utility capital improvements and operations.

⁷ *Bighorn-Desert View Water Agency v. Kari Verjil and EE.W. Kelley.*

Although City management has asserted that these water fees and charges may include amounts that are not subject to Proposition 218, such as connection fees or capacity fees, the City has not conducted any type of review or analysis to determine the amount that is or is not subject to the restrictions of Proposition 218. Additionally, City management has asserted that the City is anticipating that approximately \$45 million of the loans will be repaid upon receipt of approximately \$52 in judgment proceeds from a suit against a former engineering contractor. City management has stated that these proceeds will be used to re-pay the VWD.

The fact that the VWD funds are inter-fund loans intended to be repaid does not mitigate the following concerns regarding violations of Prop 218: (1) case law suggests that even transfers of funds from user fees and charges to another fund are restricted; (2) the ability to have enough reserved funds from years of water fees and charges to loan to another fund suggests that the water fees and charges “exceed the funds required to provide the property related service;” and, (3) the solvency of VMUS and its ability to repay the inter-fund loan is of great concern.

Case law such as *Howard Jarvis Taxpayers Association v. Roseville* and *Howard Jarvis Taxpayers Association v. Fresno* suggest that transfers from utility accounts into an agency’s general fund must be justified as repayment of a loan to the utility by the general fund or as reimbursement to the general fund of the cost of services provided to the utility. Though the transfer of VWD funds was not to the general fund, similar analysis can be applied for the justification of the inter-fund loan between VWD and VMUS. Because the transfer of funds to VMUS was not to repay a loan previously made to VWD or for services provided directly by VMUS to VWD, the City could be exposed to similar litigation from taxpayers.

An ability to lend over \$20 million to VMUS using water fees and charges suggests that the Water District may be inappropriately charging high fees to water customers. The City should reevaluate its fees and charges and adjust them accordingly to ensure that revenue from the fees and charges do not exceed the funds required to provide the service, and that the fees and charges imposed to a single person or parcel does not exceed the proportional cost of service attributable to the parcel.

Finally, as discussed extensively in Section 1 of this report, the ability of VMUS to repay the inter-fund loan, due to its inability to collect enough revenue to pay all of its operating costs and significant debt obligations, is of concern. Accordingly, tax payers’ associations could argue that the inter-fund loan may never be repaid and that revenue from water fees and charges would not be used for water delivery services to rate payers. Instead, the transfer of funds from VWD to VMUS could be classified as a permanent contribution to another utility service.

As previously discussed in this Section of the report, the City should develop a plan to return loaned funds to the Victorville Water Districts, as soon as possible, in order to comply with State laws and regulations and avoid costly potential litigation by taxpayers.

Sanitary District Funds and Violations of LAFCO Resolution

The use of restricted funds has not been limited to inter-fund loans executed by the City, but has also occurred through the transfer of monies from one fund to another fund. The difference

between the inter-fund loan and a transfer is that there is no expectation of repayment for a transfer, so any violation of state or local laws would have a greater exposure to the risk of backlash from rate payers, constituents, or other government entities. The transfer of Sanitary District Funds to the General Fund is an example of this risk exposure.

Dissolution of Sanitary District and Transfer to General Fund

The Sanitary District provides wastewater collection facilities to the residents of the City of Victorville. Revenues for the District consist of sewer user fees and property taxes. After a review of services, the San Bernardino County Local Agency Formation Commission (LAFCO) adopted Resolution No. 3021 on September 11, 2008 to officially dissolve the Sanitary District. The resolution contained 13 conditions as part of the dissolution and designated the City of Victorville as the Successor Agency.

Subsequent to the dissolution of the Sanitary District, the City transferred \$15,000,000 from the Sanitary District Fund to the General Fund on June 30, 2009. According to City management, the \$15,000,000 represents a portion of the property taxes received by the District since its inception in 1964 through 2008. Based on financial statements provided by the City, the Sanitary District collected a minimum of \$17,768,648 in property taxes since 1964. The City could not verify the property tax revenue collected for at least 14 fiscal years.

Calculation of Residual Property Tax Revenue

When questioned why only \$15,000,000 of the \$17,768,648 in verified property tax revenue was transferred to the General Fund, City management asserted that they were required to leave funds raised for capital improvement with the Sanitary District Fund, per the LAFCO resolution. However, when asked specifically how the City estimated the \$2,768,648 designated for capital (\$17,768,648 less \$15,000,000), members of City management provided conflicting responses. The Finance Department stated that \$2,768,648 was “ball-parked” to be a sufficient amount for capital improvements, despite the fact that there were no official capital improvement plans guiding the estimate. In contrast, the City Manager noted that there were specific guidelines to determine the portion of the user fees designated for capital improvements.

Despite several requests to provide work papers for how the City estimated \$2,768,648, sufficient documentation has not been provided. In response to the most recent request, the City provided a resolution adopted by City Council on September 16, 2008 which raised the sewer user fees from \$14.72 to \$19.95. A portion of the increase in sewer user fees, or \$3.24, was to raise funds for repairing or replacing the existing infrastructure to improve the sanitary collection system. However, the City has still not provided sufficient work papers to show how the \$3.24 fee for infrastructure improvement resulted in the estimate of \$2,768,648. The \$3.24 portion of fees designated for infrastructure improvement is approximately 16 percent of the total sewer user fee of \$19.95. Similarly, \$2,768,648 is approximately 16 percent of the total estimated \$17,768,648, so the estimate appears to be reasonable.

Nonetheless, the \$2,768,648 is a portion of property tax revenue collected for the Sanitary District, which is a separate source of revenue from sewer user fees. Therefore, provision of the sewer user fee rates is still nonresponsive to requests for work papers to show how \$2,768,648 in property tax revenue was estimated for capital improvements.

Violation of LAFCO Resolution

The transfer of property tax revenue collected for the Sanitary District to the General Fund is in violation of Condition No. 8 of the LAFCO resolution. Specifically, Condition No. 8 states that:

All assets including, but not limited to, cash reserves, buildings and other real property, water production equipment (pumps, storage tanks, etc.), transmission lines and rights-of-way, rolling stock, tools, and office furniture, fixtures and equipment, all lands, buildings, real and personal property, and appurtenances held by the Victorville Sanitary shall be transferred to the City of Victorville, as Successor Agency as of the effective date of this dissolution [Government Code Section 56886(h)] and **shall be maintained and accounted for separately as an enterprise activity**. (emphasis added)

The City of Victorville continues to maintain a separate account for the Sanitary District Fund as an enterprise activity. However, the \$15,000,000 in property tax revenue should have remained in the separate Sanitary District Fund and should not have been transferred to the General Fund, in accordance with Condition No. 8. Additionally, by transferring the \$15,000,000 to the General Fund, the City is unable to transparently account for the use of the \$15,000,000 and ensure that the funds are used for the direct benefit of property owners paying a sewer usage fee. Using the funds for any other purpose would be in violation of Article XIII D Sec. 6 (b) of the State Constitution. Similar to the funds loaned from the Water District to the Municipal Utility Services, the transfer of Sanitary District funds to the General Fund puts the City at risk of legal action by taxpayers.

City management has asserted that Condition No. 5 and Condition No. 9 of LAFCO Resolution 3021 permit the City to place the Sanitary District funds into the General Fund, making the transfer exempt from the cited State law. However, this assertion ignores the vague nature of Condition No. 5, which does not state where the successor agency shall place such funds. Further, Condition No. 9 is consistent with Condition No. 8 in that it states that:

Upon the effective date of this dissolution, any funds currently deposited for the benefit of the Victorville Sanitary District which has been impressed with a public trust, use or purpose, including but not limited to Sewer Connection Fees, charges for services, etc. shall be transferred to the City as the successor agency **and the successor agency shall separately maintain such funds in accordance with the provision of Government Code Section 57462**. (emphasis added)

City management has further asserted that property taxes by definition are general in nature, not restricted and therefore are not subject to the restrictions of Condition No. 9. However, property taxes that are collected by a special district must be designated to the function of that district.

To remain in compliance with the LAFCO resolution and Prop 218, the City should continue to maintain fees and revenue for the Sanitary District in a separate enterprise account. However, the City should also develop a plan to return the \$15,000,000 in property tax revenue specifically generated for the Sanitary District to the enterprise fund, as soon as possible. If the threat of pending litigation is imminent, the General Fund may have to return funds that it does not currently have, resulting in a negative cash balance, operating deficits, and/or negative fund balances.

Conclusions

Although the City of Victorville finally adopted an Inter-fund Loan Policy on May 3, 2011, after repeated recommendations from independent auditors and City management dating back to 2009, the policy contains significant weaknesses. These weaknesses include a lack of guidelines and required analysis to determine: (1) the borrowing or lending funds' solvency, or ability to pay obligations; (2) timeframes for analysis and approval of the loan prior to June 30 of each fiscal year to prevent backdating of inter-fund loans; and, (3) financial planning or monitoring of the repayment of inter-fund loans. Therefore, the Inter-fund Loan Policy as it currently exists, does not ensure that inter-fund loans do not: (a) significantly weaken the financial condition of a lending fund and its ability to pay obligations; (b) become a permanent contribution from the lending fund to the borrowing fund; or, (c) complicate or misrepresent the financial condition of all funds involved.

Analysis of existing inter-fund loans revealed that the City had \$69.7 million in outstanding inter-fund loans as of June 30, 2011, which includes the original loan amount and accrued interest. Though each of the loans has a five year term, a majority of the loans have not had any payments made toward the outstanding balance and internal controls are not formalized to ensure timely repayment. Further, the repayment of \$38.1 million, or 54.7 percent of the \$69.7 million in outstanding inter-fund loans is highly questionable. This is because these loans were made to the SCLAA and VMUS, two entities with significant debt obligations, structural cash flow difficulties and revenue concern. However, the City Manager has asserted that the City anticipates that approximately \$45 million will be repaid upon receipt of approximately \$52 million in judgment proceeds in FY 2012-13, resulting from a suit against a former contractor that was responsible for engineering work on the failed Foxborough Power Plant project. The suit is currently under appeal.

Finally, a review of the inter-fund loans made from the Victorville Water District (VWD) to VMUS and the transfer of funds from the Sanitary District to the General Fund suggest that the City may have violated State laws and local resolutions restricting the use of revenue collected for the delivery of property-related utility services. In particular, water fees and charges collected by the VWD were loaned to VMUS to support capital improvement and operation of electrical and power utility services. While the California Constitution does not prohibit investments or short-term loans, the financial state of VMUS and its inability to pay obligations may result in the inter-fund loan becoming a permanent contribution to VMUS, exposing the City to the risk of violating the Constitution. Similarly, restricted property tax revenue was transferred to the General Fund, without assurance that the revenue would be used for Sanitary District purposes.

Further, the transfer of Sanitary District funds to the General Fund violates the LAFCO resolution which states that all Sanitary District assets should remain in a separate enterprise account.

Recommendations

The Victorville City Council should:

- 2.1. Revise and improve the Inter-fund Loan Policy to include the following requirements, which should also be applied to existing inter-fund loans, to the extent possible:
 - a. Analysis of the financial condition of each fund involved in the inter-fund loan prior to approval, including a review of revenues, expenditures, assets, liabilities, and potential sources of revenue. The analysis should be used to determine the funds' ability to pay obligations such as ongoing operations, principal and interest payments for long-term debt, and agreements or contracts with third parties. To the extent possible, only funds with an ability to still meet all expenditure and debt obligations should be included in an inter-fund loan.
 - b. A clear and reasonable timeframe for the financial analysis to be conducted prior to approval of an inter-fund loan, which should ideally be approved before June 30 of each fiscal year.
 - c. Financial planning and monitoring of repayment for each inter-fund loan. A financial plan could include a repayment schedule, targeted payment amounts based on a percentage of surplus revenues at the end of each fiscal year, and identification of potential revenue sources. Internal controls for monitoring repayment of inter-fund loans should be developed, approved, and formally documented.
- 2.2. The City should accurately reflect inter-fund loans in its financial statements and internal documents to fully represent the financial condition of funds.
- 2.3. Evaluate the appropriateness of existing water fees and charges to ensure that revenues do not exceed funds required to provide water delivery services.
- 2.4. Develop and implement a plan to return restricted funds from water fees and charges to the Victorville Water District, which were loaned to the Victorville Municipal Utility Services, but are at risk of becoming permanent contributions to the borrowing fund. This should be done as soon as possible in order to comply with State laws and regulations regarding the use of such property-related fees.
- 2.5. Continue to maintain any revenues and assets associated with the Sanitary District in a separate enterprise fund in order to comply with the Local Agency Formation Commission (LAFCO) Resolution dissolving the District and designating the City of Victorville as the Successor Agency, as well as ensure compliance with State laws and regulations regarding the use of such property-related fees.

- 2.6. Develop and implement a plan to return \$15 million in restricted funds from property tax revenue to the Sanitary District, which were inappropriately transferred to the General Fund. This should be done as soon as possible in order to comply with the LAFCO Resolution dissolving the District.

Costs and Benefits

The costs associated with these recommendations would include staff time to: (a) prepare the revised policies and procedures for consideration and approval by the City Council; (b) develop financial plans and monitoring of repayment of loans, including loans or transfers or restricted funds; and, (c) evaluate existing water fees and charges for their appropriateness.

Improving the Inter-fund Loan Policy and conducting thorough analysis prior to the approval of inter-fund loans would reduce the risk of inter-fund loans (1) significantly weakening the financial condition of a lending fund and its ability to pay obligations, (2) becoming a permanent contribution or gift to the borrowing fund, (3) misrepresenting the financial state of funds and (4) misusing restricted funds and violating statutory laws. Further, returning borrowed restricted funds to the source of the funds would bring the City of Victorville in compliance with State laws. However, as a tradeoff of returning restricted funds, the General Fund and/or fund that borrowed the restricted funds may endure negative cash balances, operating deficits, and/or negative fund balances. Changes would then likely need to be made in management and operations to bring the General Fund and/or other borrowing fund back to positive cash balances and avoid operating deficits and/or negative fund balances.

3. Power Plant Developments

- The City of Victorville and the Southern California Logistics Airport Authority (SCLAA) initiated large, high risk electrical generation-related capital projects in the mid 2000's without proper pre-project risk assessments or project controls. The analysis supporting such decision making was based on recommendations from contractors who have had an interest in the projects. Further, this decision making has not been transparently presented to the public. The subsequent failure of these projects resulted in substantial losses and contributed to a heavy long-term debt burden for the City and the airport.
- In September 2005 the Victorville City Council, acting as the SCLAA Board, entered into a no-bid professional services agreement with Inland Energy, Inc. for the development of a 500 megawatt power plant, later known as Victorville Power Plant #2 (Victorville 2). The Victorville 2 project was initiated by City officials based on an evaluation and recommendation from Inland Energy, a firm with a significant financial interest in having the City build a large power plant. The project was initiated without a clear project plan, project goals or understanding of risks involved.
- Notably, the City's agreement with Inland Energy includes a provision giving the company a right to five percent of net operating profits in perpetuity. This clause created a conflict of interest for the company and may be hampering the City's efforts to sell development rights to the project. The agreement with Inland Energy also includes a provision that provides the City Manager with broad authorization to procure additional services unrelated to the Victorville 2 project.
- In December 2007 the City also entered into a high risk \$182 million agreement with General Electric for the procurement of turbines for the Victorville 2 power plant. City officials entered into this agreement without an independent risk assessment or secured financing to pay General Electric. The lack of funds resulted in the City defaulting on its obligation to General Electric, which ultimately cost SCLAA over \$50 million in losses, with over \$76 million invested in the project to date. Further, the City Council adopted this agreement in closed session, possibly violating the Brown Act.
- On another project, the City procured no-bid services from a consultant firm, Carter and Burgess, Inc., beginning in June 2004. This firm was retained to design, develop, and construct a cogeneration power plant to service the energy needs of tenants at the Foxborough Industrial Park in the City's former Bear Valley Redevelopment Area. The project was undertaken by the City without a thorough assessment of risks or sufficient controls. Through a series of mishaps the project was never completed, wasting tens of millions of dollars of public funds. Ultimately, the City was awarded \$52 million as a result of civil litigation against Carter and Burgess and its successor, but the City's costs for the failed project, over \$91 million, are nearly double the amount initially awarded.

Contrary to industry best practices, the City of Victorville, and by extension the SCLAA, have initiated large high-risk capital projects without conducting proper due diligence or ensuring proper controls. Rather than conducting a competitive process for awarding major development contracts, City management has executed contracts to companies and individuals with previous experience or familiarity with the City. Rather than conducting transparent risk assessments and establishing clear project plans, City management has failed to fully assess potential risks and has not established project plans with clearly stated goals, budgets, milestones, or performance measures. Instead of establishing clear and effective controls, policies, and procedures, City management has allowed contractors to operate without close oversight and has not consistently enforced contract terms.

The absence of fully assessed risks, established project plans, and instituted controls has contributed to substantial failures of at least two power generation projects that required considerable financial investment. These two projects, which have ultimately resulted in substantial financial losses for the City and for SCLAA, are the Victorville Power Plant #2 Project and the Foxborough Power Plant Project.

Victorville 2 Project Poorly Planned and Managed

In September 2005, the City initiated a project to develop a 500 megawatt power plant, known as Victorville 2. The Victorville 2 project was never completed and ultimately cost the Southern California Logistics Airport over \$50 million in losses with over \$76 million invested to date. City management did not conduct proper due diligence before initiating the project or entering into an onerous and open-ended agreement with Inland Energy Inc., an outside contractor. Further, City management did not enforce all contract terms and did not formally manage the use of an open-ended provision in the agreement.

Project Initiated Based on Inland Energy Evaluation and Recommendations

On October 10, 2003 the cities of Victorville and San Marcos became the founding members of the California Clean Energy Resources Authority (Cal-CLERA), a Joint Powers Agency (JPA). The idea behind founding this JPA was the concept that cities in California needed to develop new, publicly owned and privately operated power generating facilities in order to protect their residents from pricing abuses and power shortages that had occurred during the State's energy crisis in 2000 and 2001.

Cal-CLERA had aggressively pursued other jurisdictions to become member cities in order to fund the development of up to four new power plants. After a 16 month campaign, Cal-CLERA was unsuccessful in recruiting any additional member cities due to their unwillingness to make financial commitments. However, based on acknowledgments from officials of cities contacted by Cal-CLERA that new generation was needed, Victorville officials decided to have Inland Energy conduct an evaluation of developing a 500 megawatt electric generating facility at the Southern California Logistics Airport.

In its March 2005 evaluation, Inland Energy concluded that the City should “commit to undertaking the development of a 500 megawatt hybrid plant at Southern California Logistics Airport without delay.” This recommendation was based on (1) predictions by energy experts of a looming electric generating shortfall; (2) the City’s “unique blend of positive political, economic, and infrastructure factors that favor the development of such a plant;” and, (3) the fact that the Cal-CLERA effort had “stalled.” Inland Energy’s evaluation downplayed the financial risk to the City stating that,

The City’s economic risk is mitigated by the fact that such a fully permitted plant at the SCLA site could likely be sold or transferred in 2007-2010 for far more than it cost, if the City elected not to proceed with the plant’s construction.

The Inland Energy Evaluation also noted that the City could initiate the project without a definitive plan stating:

This approach appears to be the best way for the City to control its own energy destiny- a number of options will be available to the City in 2007 when the permits are in place but all of them would allow the City to secure reliable electricity for the needs of its constituents at a competitive price, regardless of the state of crisis that the rest of Southern California’s energy market may find itself in.

Lack of Due Diligence on Victorville 2 Project

City management did not conduct proper due diligence before initiating the Victorville 2 project. Specifically, management did not conduct a thorough independent analysis of risks prior to recommending that the Council approve the development agreement with Inland Energy and, notably, a subsequent agreement to purchase expensive turbine equipment from General Electric. Such analyses could have highlighted the significant financial, construction, and operational risks that the City and SCLAA were taking on with both contracts.

Neither City management nor Inland Energy established a formal business plan for the project and never established a project budget. Without such planning, the City and SCLAA proceeded without clearly defined goals, milestones, or performance measures. For instance, throughout the project and even after the City had committed over \$182 million to General Electric for fuel generation equipment and related services, it was still unclear whether the City would own the plant or if it would be sold to a third party operator.

No Risk Assessment

City management did not prepare an independent risk assessment and there is no evidence that potential risks were formally discussed by the City Council. The staff report prepared for the City Council for the approval of the Inland Energy agreement contains a brief (three paragraph) narrative. The staff report contains no detailed discussion or analysis of the project or agreement, including the terms, compensation, potential fiscal impacts, or policy considerations.

No Formal Business Plan

Although no formal business or project plan was established, it is apparent from interviews with City officials and from a review of the Inland Energy agreement that the initial goal of the project was to make the necessary preparations so that the project could be “build ready.” Essentially, the goal was to design the plant, obtain the requisite permits, and procure land so that another firm could construct and operate it. According to the Inland agreement, the process to fully permit the plant would take approximately 24 months to complete. A developer, such as an energy firm, could then theoretically purchase the development rights, build the plant, and either operate it or allow another firm or the City, through Victorville Municipal Utility Services, to operate it.

As the project evolved from the initial goal of preparing the plant for a “build ready” status, there was no formal reevaluation by City management or by Inland Energy regarding the potential changes to risks and costs.

No Formal Budget Established

City management and the City Council never formally established a budget for the Victorville 2 project. The closest approximation of a project budget can be found in the Inland Energy contract, which is discussed in detail below. However, this budget, which estimates \$5.5 million in costs over a two year period, was simply for the “permitting” of the power plant and did not include the cost of land purchases; potential borrowing costs, such as bond issuances; and, staff time. Further, as the project evolved and grew from the initial goal of obtaining permits to constructing the power plant, there was no attempt to reevaluate or establish cost estimates.

Contract with Inland Energy Poorly Constructed and Implemented

Project and Contract Based on High Desert Power Plant Project

The City entered into the no-bid contract with Inland Energy based on a proposal from the company. City management and City Council members appear to have entered into the agreement with Inland Energy based on the company’s experience in helping to develop the High Desert Power Plant,¹ which was widely seen as a lucrative success for the private interests involved. While the City did not commit public funds to construct the High Desert Power Plant, officials assumed that the City would see similar benefits by either: (1) selling the development rights (and retaining rights to a certain portion of the power generated) or (2) retaining ownership of the plant and, through private operation of the plant, selling electricity via power purchase agreements. There is no evidence that City management or City Council members formally evaluated or discussed the risks involved in using public funds to develop a large power plant.

¹ The High Desert Power Plant is an 840 megawatt plant that went online in 2003 at the Southern California Logistics Airport. The plant, which is privately owned and operated, generates power for the state grid by selling electricity through power purchase agreements. While the plant does not generate power for the airport or the City, it does provide tax increment revenue to SCLAA.

The development agreement with Inland Energy was based on a previous agreement between Inland Energy and Constellation Energy for development of the High Desert Power Plant. The agreement was written by attorneys representing Inland Energy using the High Desert Power Plant contract as a template. Although the City Attorney reviewed and provided comments on a draft contract, it does not appear that the City Attorney or other City managers actively negotiated the terms of the agreement to be substantively more beneficial to the City than the template contract it was based on. In fact, the agreement that the City entered into appears to be significantly *more* generous to the developer than the template agreement.

Inadequate Review of Contract Terms

City management did not conduct adequate research, in 2005, to determine if the agreement was consistent with other municipal power plant development agreements and in the best interests of SCLAA. When asked for briefing materials that went to City councilmembers prior to the adoption of the agreement, the City Attorney provided two memorandum that were issued in late August and early September 2005. As discussed later in this section, these two memoranda, which review Inland Energy's right to five percent (5%) of project operating profits in perpetuity, are vague and provide cursory analyses, given the financial risk that the City undertook. Further, one of these memoranda was provided as a response to a request from Inland Energy executives while the second memorandum is dated two days *after* the contract was executed.

Agreement Vaguely Defines and Poorly Controls Provision of Services

The agreement with Inland Energy allows for the company to be compensated for two types of services: (1) "development services" and (2) "supplemental services." While development services relates directly to the development of the power plant, supplemental services may include unrelated tasks.

Development Services

The agreement defines "development services" as including:

negotiating any agreements necessary to implement the Project, and securing those permits and approvals required to entitle the Project for development, including any task having the purpose of improving or enhancing the value of such entitlements.

These services were the core of Inland Energy's role in the Victorville 2 project and included the permitting of the plant. These services were eventually expanded to include assistance with the construction of the plant. Inland Energy was paid approximately \$12.2 million from 2005 to 2010 for development services related to the Victorville 2 project.

Supplemental Services

The agreement broadly defines "supplemental services" as including:

any on-going technical or management task deemed necessary by the City Manager of Victorville including supervisory, administrative, consulting, advisement and other management services.

While these services, to an extent, may have been related to the Victorville 2 project, the supplemental services clause has been used to justify services completely unrelated to the project. Specifically, the City has paid over \$607,000 to Inland Energy through May 2010 under this clause for other, consistently unsuccessful, projects. These expenditures have included:

- Over \$166,000 for consulting services related to the City’s unsuccessful efforts to obtain federal grant funding under the U.S. Department of Homeland Security’s Immigrant Investor Program, also known as “EB-5;”
- Over \$182,000 for consulting services related to the City’s unsuccessful attempt to develop and construct a power plant at the Foxborough Industrial Park in the Bear Valley Redevelopment Project Area.

Additionally, Inland Energy was paid over \$258,000 for consulting services related to the City’s efforts to investigate the possibility of becoming a community choice aggregator.² While this service was related to the Victorville 2 project, it ultimately provided no tangible benefits to the project, the City, or SCLAA.

The supplemental services clause provides broad authority to the City Manager to procure additional services for “any on-going technical or management task” from Inland Energy without prior approval from the City Council. In fact, there is no evidence that the City Council formally approved the no-bid procurement of supplemental services from Inland Energy.

City Manager Curtailed Relationship with Inland Energy in 2009, but Firm Continues to Bill

In March 2009 the former City Manager formally notified Inland Energy that the City would no longer be procuring services outside of the Victorville 2 project beyond April 1, 2009. Subsequently, in July 2009, the successor City Manager informed Inland Energy that the City would no longer pay invoices for any work. However, under an informal and undocumented agreement with the City, Inland Energy may continue to provide services “at-risk,” meaning that the company may continue to bill, but compensation is unlikely to occur until the City is able to sell development rights for the project to a third party. Inland Energy has continued to invoice the City for services provided on the Victorville 2 project under this informal agreement..

² Community Choice Aggregation, under State law, permits cities and counties to offer procurement service to electric customers within their boundaries. Community Choice Aggregation is the process cities and/or counties must go through to establish publicly owned electric utility services.

Inland Energy Invoices Poorly Documented

In May 2009, about four years after the commencement of the Victorville 2 project, the former City Manager formally notified Inland Energy that the firm's invoices to the City were not sufficiently documented. Specifically, the former City Manager noted that all of the invoices submitted by Inland Energy and 11 sub-consultants lacked "significant supporting documentation that report tangible details of services rendered." The former City Manager requested stronger documentation from Inland Energy and its subcontractors and gave a list specifying details that would have to be included in separate written reports on all future invoices.

In June 2009 the former City Manager sent another letter to Inland Energy reiterating the documentation required for payment of future invoices from Inland Energy. In the June 2009 letter, the City Manager indicated that Inland Energy failed to comply with these documentation requirements. The current City Manager has indicated that invoices submitted by Inland Energy under the informal "at risk" agreement since July 2009 have been just as poorly documented as the previous invoices.

Inland Energy Compensated for Victorville 2 Project Services Prior to Contract Execution

The City began compensating Inland Energy for work on the Victorville 2 project prior to the execution of the development agreement. Although the development agreement was executed on September 7, 2005, the City disbursed approximately \$123,000 for "consultant services" related to the Victorville 2 project on June 29, 2005 and approximately \$33,000 for services provided in July 2005 on the date that the contract was executed.

Compensation Structure is Generous, Broadly Defined, and Has Lasting Financial Implications

The compensation structure, as established in the development agreement is generous, broadly defined, and has lasting financial implications for the project and for SCLAA. The compensation structure of the development agreement with Inland Energy provides for two methods of compensation to the contractor: (1) a monthly management fee, and (2) a portion of "Project Operating Profit." While the monthly management fee reflects a common method for compensating purveyors of professional services, the fee appears to cover most of the costs that the company would incur and there is no cap to the amount that can be billed. The Project Operating Profit clause appears to be an unusual form of compensation and potentially troublesome for the effective sale and operation of the plant. A detailed description of these two types of compensation is provided below.

Monthly Management Fee

The monthly management fee, as defined in the development agreement, consists of:

1. The monthly costs of services based on hourly rates. The rates, as defined in the agreement were \$150 per hour for "Consultant" staff and \$250 per hour for "Senior Consultant" staff. The contract notes that the City would not be billed for the services of Mr. Buck Johns, the President of Inland Energy.

2. Reimbursement costs for “reasonable and necessary travel” (excluding travel to or from meetings in Victorville with City officials and staff).
3. Reimbursement for other “out-of-pocket” expenses incurred by Inland Energy in performing the services, including subcontracted services. Although the contract excludes legal services from reimbursement, a preliminary budget provided by Inland Energy estimates that \$725,000 will be needed for legal services.
4. A 10% premium on all reimbursable costs. This fee is presumably to compensate Inland Energy for time spent on (1) administrative matters, including negotiating and administering contracts of subcontractors; (2) billing or reviewing the invoices of subcontractors; and, (3) administering accountancy requirements associated with subcontractor matters.³

Project Operating Profit

In addition to the conventional compensation structure established by the monthly management fee clause, the development agreement contains an “Additional Compensation” clause that provides Inland Energy with the “right to receive five percent (5%) of ‘Project Operating Profit.’” The contract states that Inland Energy is entitled to this portion of the profit from the plant in “recognition of the unique value of the experience and expertise which Inland [Energy] commits to the performance of [development] services.”

The additional compensation clause in the development agreement provides a much larger and more sustained form of compensation to Inland Energy than the monthly management fee and yet is only loosely tied to the consultant services provided by the company. In fact, the company’s 2008 projections for the operational expenses of the 500 megawatt plant, includes this compensation, which was estimated to be \$4.5 million per year by Grand Jury sources. Further, the development agreement contains no clauses to limit this compensation to a defined period of time (e.g. two years) or a capped amount (e.g. \$10 million). Assuming that the plant was built and then operated for 30 years, Inland Energy would be entitled to compensation of approximately \$135 million over the life of the plant (without adjusting for inflation). Under this scenario, Inland Energy would be compensated with an *additional* \$135 million over 30 years for what was estimated in the agreement as 24 months of design, development, and permitting work.

Little Precedent to Support Project Operating Profit Clause

There is little precedent to support the five percent (5%) of Project Operating Profit included in the development agreement. No other City or SCLAA contract includes such a clause. Further, at the time the contract was considered, City officials knew of no other similar public contract that provided five percent of operating profit for development and permitting work.

³ We have assumed that the 10 percent fee would cover these administrative costs, since the contract specifically states that the 10% fee may be charged provided that the labor covered by the hourly fees does not include administrative tasks.

Although City management has asserted that previous management based the profit clause on a 1999 agreement between Inland Energy and other private entities for the High Desert Power Plant Project, there is little evidence to support the relevance of this “template” agreement as a basis or justification for the fee. Under the “template” agreement, Inland Energy was providing similar services to two commercial entities⁴ that it had previously been sharing membership interest with in the High Desert Power Project. Conversely, Inland Energy never had an ownership interest in Victorville 2; it was simply providing development services to the City. Further, under the “template” agreement Inland Energy’s only form of compensation for such services was this percentage of operating profits and it was only 2.5 percent or *half* of what is provided for in the development agreement with the City. Conversely, the City agreed to pay Inland Energy a management fee based on hourly billings *and* five percent of operating profit for the life of the plant.

City Did Not Perform Sufficient Due Diligence of Project Operating Clause Prior to Adoption of Agreement with Inland Energy

As previously mentioned, the City did not conduct adequate research and due diligence in 2005 to determine if the agreement was consistent with other municipal power plant development agreements and in the best interests of SCLAA. Specifically, City management relied on two memoranda, both of which provide vague and cursory justification for the five percent project operating profit to be paid in perpetuity.

First Memorandum Written by a Firm at the Request of Inland Energy Executives

The first of these two memoranda was written by an attorney at the request of Inland Energy executives, *not* by City staff or by agents purported to represent the City’s interests. This memorandum made a broad assumption that the hourly management fees would not cover the costs and expenses of Inland Energy. The memorandum does not provide further analysis or discussion of what costs may not be covered by management fees other than to state that the reimbursements would “not cover the lost opportunity costs associated with pursuing the project.” Further, the memorandum infers that the project operating clause, which provides for five percent of project operating profits in perpetuity, as more in the City’s interest than a large upfront cash payment. The memorandum provides no financial analysis to support this conclusion. Finally, there is no attempt to estimate or even provide a range of estimates for the potential payments that will be made to Inland Energy under various alternatives.

*Second Memorandum Dated Two Days **After** Contract Execution*

The second of these two memoranda reviewing contract terms was written by an attorney at the request of the former City Manager. Notably, the date of the memorandum is two days *after* the agreement with Inland Energy was executed, thereby negating any possible analysis or

⁴ Inland Energy entered into the management services agreement (the template for the City’s development agreement) with CP High Desert, LP, a Maryland limited partnership and CP High Desert I, Inc., a Maryland corporation pursuant with a Membership Interest Purchase Agreement on January 4, 1999. Under the Membership Interest Purchase Agreement, Inland Energy sold its 50% ownership to these two entities in the High Desert Power Plant project.

recommendations. Additionally, the author of the memorandum did not present his review as a service of a law firm. Rather, the memorandum, which lacks a letterhead, has the appearance of an informal or personal letter to the former City Manager.

This second memorandum opines that the five percent project operating profit is “not outside a range that *commercial* parties should find acceptable for a well-structured and profitable project.” (emphasis added) Similar to the first memorandum, this review did not present any evidence that the clause would be in line with other municipally developed power plants. Further, the second memorandum does not provide any financial analysis of the impact of the clause or of potential alternatives.

The second memorandum also states that the Development Fee (project operating profit) “may be renegotiated downward” at the time that the City sells the project. However, this assumption ignores terms in the agreement, as discussed below, that shelter Inland Energy’s “right” to five percent of net operating profits. Finally, the memorandum recommends that the development fee “should be subordinate to debt and available to be paid only if loan documents will not be violated by such payment.” The executed contract did not contain such a clause.

Agreement Terms Strongly Protect Operating Profit Clause

At least three clauses in the development agreement protect Inland Energy’s “right” to five percent of the net operating profits even if the agreement is terminated or the project is sold to a third party developer. Specifically, the clause on Inland Energy’s right to five percent of net operating profits cannot be dissolved even if the contract is terminated or expires (unless it is terminated because Inland Energy breaches contract terms). Additionally, the agreement stipulates that Inland Energy will continue to have a right to five percent of net operating profits if the City were to sell development rights to a third party. Finally, Inland Energy could continue to be entitled to five percent of operating costs under the contract, even if the operating permits were denied by the State. That is, the company would retain its right to the additional compensation if the City were to terminate the agreement for failure to fully entitle the plant and subsequently resume and successfully obtain permits for the project within two years.

These clauses have substantial long-term implications for the potential development of the project as the City may not simply terminate the contract and any potential buyer of the development rights would be obligated to compensate Inland Energy for its right to five percent of lifetime net operating profits.

Contract Performance Terms Poorly Constructed and Implemented

The development agreement contains no effective performance measures for Inland Energy. The only clause that relates to the performance of the company states that Inland Energy “shall use its reasonable best efforts to perform the services and devote the time necessary to fulfill its obligations under this agreement.” However, there are no specific mechanisms that would allow the City Council or City management to hold the contractor accountable for its performance.

Annual Budgets Not Provided

According to at least one City official, Inland Energy has not submitted proposed annual budgets as required under the agreement. This clause, if it had been enforced, could have provided an annual forum for the City Council and the public to revisit the project and obtain a status update on the progress of the project. The agreement had an initial two year budget of \$5.5 million. In fact, the City has paid the company over \$12 million over a five year period with Inland Energy continuing to invoice.

City Entered High Risk Agreement with General Electric without Proper Due Diligence or Transparency

In 2007, as Victorville 2 permitting was nearly completed, Inland Energy began advising the City to move forward with the purchase of equipment for the proposed plant. Inland Energy initiated negotiations with General Electric (GE) and advised the City, with some urgency, that it was important to make a commitment to GE due to the length of time required to procure the equipment and the desire for the plant to go online in accordance with the State's energy demand schedule.

Several City officials have stated that Inland Energy was driving the process to develop the Victorville 2 project with equipment purchases. Specifically, Inland Energy officials were briefing City officials, in closed session "workshops," with slide presentations that recommended the City move forward with a large financial commitment for the equipment purchase. Although we requested all briefing materials provided to City Councilmembers on the agreement with General Electric, none were provided.

Council Made Huge Financial Commitment to General Electric without Secure Funding Source

On December 4, 2007 the City Council ratified a resolution, which had been previously adopted in closed session, authorizing the City to execute an agreement with General Electric to purchase certain power plant generation equipment at a total contract price of \$182,036,824. The contract called for the City to make an immediate initial down payment of \$52 million⁵ on the equipment. While the City used SCLAA bond funds for the initial down payment, financing for the remaining \$130 million that was due in November 2008, had not been secured. According to City management, City officials were confident at the time that additional funding could be secured due to perceived demand from other jurisdictions in Southern California. Ultimately, City officials moved forward without any written or legal commitments from these jurisdictions, without bond financing in place, and without a committed third party prepared to purchase the development rights.

City Proceeded Despite Continuing to Lack an Independent Risk Assessment or Project Plan

The City proceeded with the adoption of this high cost, high risk contract with General Electric without an independent risk assessment or a formal project plan. As previously mentioned, City

⁵ Based on a subsequent settlement agreement, we believe the actual amount of the down payment was likely \$50,020,000.

management initiated the Victorville 2 project, specifically the development agreement with Inland Energy, without conducting an independent risk assessment. While the agreement with Inland Energy was initially estimated to cost the City \$5.5 million over two years, the contract with GE was massively more costly, and therefore inherently carried more risk. Despite this elevated risk, the City continued to proceed with the project without the consideration of any independent evaluation of financial or operational risk to the City or SCLAA.

The City continued to proceed with the Victorville 2 project without a formal project plan. Essentially, the City did not have formal project goals, milestones, or a budget by which management, staff, contractors, and the public could understand the amount of progress and the ultimate aim of the project. This is illustrated, in part, by the fact that the City had not yet determined whether the development would be sold to a private firm or if the City would retain ownership and operate the plant through its Municipal Utility Services.

GE Contract Adopted without Transparency, Likely Violating the Brown Act

The consideration, deliberation, and adoption of the agreement with General Electric was conducted in an opaque manner and was likely in violation of State government code sections on open meetings known as the “Brown Act.” The adoption of the contract in closed session does not appear to be permissible, since it was a public contract. Further, the consideration and adoption of the contract in closed session, even if deemed permissible, was not properly posted in the City Council’s agenda. There is no mention of the resolution on the agenda or minutes for the November 20, 2007 City Council meeting, even though the agenda and a staff report for the Council Meetings on December 4 and December 18, 2007 stated that the resolution was “reported out of closed session” at the November 20, 2007 meeting. Further, an audio recording from the November 20, 2007 meeting posted by the City Clerk did not document any report out of closed session.

The first official public mention of the contract in a Council meeting about the contract was not made until December 4, 2007, the day before the contract became effective. Despite the enormous fiscal impact on the City and the SCLAA, the residents of Victorville and the other member jurisdictions of VVEDA⁶ had no opportunity to obtain knowledge about the contract prior to Council adoption.

Weak Staff Disclosure of GE Contract Implications

The official Council meeting description of the GE contract and accompanying resolution did not clearly state the extent of the commitment. Specifically, the staff report accompanying the resolution to ratify the contract stated that there was no fiscal impact and provided no indication regarding what the resolution contained. The resolution itself, Resolution 07-340, was less than a page and contained only a broad description regarding equipment to be purchased for the Victorville 2 Project. The only portion of the contract that was made public was a copy of the one page table of contents.

⁶ The City utilized SCLAA bond funds, which are secured by tax increment revenues supplied by all member jurisdictions of the VVEDA including Victorville, Hesperia, Adelanto, Apple Valley, and certain non-incorporated areas of the County.

City Defaulted on Payments to GE Resulting in Loss of up to \$50 Million for SCLAA

City officials ultimately could not secure funding for the remainder of the purchase price of the power plant equipment. As a result, the City did not make its second scheduled payment in November 2008 and, on April 16, 2009, GE declared that the City had defaulted under the contract. Further, GE asserted that the City still owed additional amounts under the contract termination clause, although the City disputed the obligation.

On May 18, 2010, approximately one year after the City defaulted on its obligation, the City and SCLAA came to an agreement with GE to settle the dispute. According to the settlement agreement, GE shall retain all funds (\$50,020,000) provided in the initial payment. However, as a future sales incentive, the City is entitled to credits of up to \$10 million on future purchases from GE, subject to certain conditions. The credits expire on April 30, 2016.

City Management Continues Attempts to Sell Development Rights to the Project

City management asserts that the Victorville 2 Project is still “active” as the City has purchased land and accumulated entitlement permits for the power plant. City management has made attempts for over three years to sell the development rights to the project. Despite a request for proposals sent out in May 2009 to 13 firms, which had expressed interest, the City has not been able to successfully identify a project developer. City officials have noted that potential buyers must negotiate primarily with Inland Energy, due to the clause in the firm’s development agreement with the City granting the right to five percent of project operating profits, estimated at \$4.0 to \$5.0 million annually, for the life of the project.

Victorville 2 Project Costs to Date Exceed \$76 Million

The Victorville 2 project has cost the City over \$76 million to date including approximately \$50 million⁷ lost to General Electric for the power plant equipment, \$12.1 million disbursed to Inland Energy for development services, \$3.8 million to other services providers, and \$8.6 million for the purchase of parcels for the project. This estimate of project costs does not include funds dispensed for consulting services provided by Kinsell, Newcomb, & De Dios, the City’s bond underwriter and to Goldman Sachs for financial services.⁸

The costs to date are a substantial departure from the preliminary budget prepared by Inland Energy and included in the development agreement. The preliminary budget, prepared in 2005 and shown in Table 3.1 below, estimated that it would cost \$5.5 million over two years to fully entitle the project. While it’s unclear if land costs were considered in 2005 when the Inland Energy contract was approved, the total costs incurred by the City, as shown in Table 3.2 below, are more than ten-fold what was estimated in September 2005.

⁷ As previously noted, under a settlement agreement with GE, the City is entitled to credits of up to \$10 million on future purchases from GE, subject to certain conditions. The credits expire on April 30, 2016.

⁸ These services were primarily related to the efforts to secure private funding after the City entered into its commitment with General Electric for expensive power turbine equipment.

Although City management has asserted that there is substantial value in the permits that have been obtained, there has been no public independent accounting or estimation of this value. Further, while the permits are set to expire, there has been no analysis to determine the costs of keeping them active beyond the termination date. The City does not maintain a schedule of permit expiration, instead relying on Inland Energy to maintain such information.

Table 3.1
Victorville 2 Preliminary Budget Estimate for Permitting
As of September 2005

Cost Category	Pre-application months 1-6	Post-application months 7-24	Total
Environmental Consultant	\$550,000	\$800,000	\$1,350,000
Engineer	275,000	400,000	675,000
Legal	125,000	600,000	725,000
Miscellaneous	100,000	200,000	300,000
Emission Offsets (ERC's)	550,000	0	550,000
Project Management	400,000	1,000,000	1,400,000
Contingency	200,000	300,000	500,000
Total	\$2,200,000	\$3,300,000	\$5,500,000

Source: Services Agreement with Inland Energy dated September 7, 2005

Table 3.2
Victorville 2 Project Total Estimated Costs as of March 2012

Item	Cost
Development Services (including permitting) Provided by Inland Energy	\$12,145,917
Other Professional Services (including legal and services provided by other energy firms)	3,786,692
Power Plant Equipment (paid to General Electric)	50,020,000
Land Costs	10,190,737
Consulting Services provided by Kinsell, Newcomb, & De Dios	Data Not Provided by City
Financial Services provided by Goldman Sachs	Data Not Provided by City
Total	Over \$76,143,346

Source: Victorville Finance Division

Foxborough Power Plant Project Poorly Planned and Managed

The City procured no-bid services from a consultant firm, Carter and Burgess, Inc., beginning in June 2004. This firm was retained to design, develop, and construct a cogeneration power plant to service the energy needs of tenants at the Foxborough Industrial Park in the City's Bear Valley Redevelopment Area. The project was undertaken by the City without a thorough assessment of risks or sufficient expertise. Through a series of mishaps the project was never completed, wasting tens of millions of dollars of public funds. Ultimately, the City was awarded \$52 million as a result of civil litigation against Carter and Burgess and its successor, but the City's costs for the failed project, over \$91 million, are nearly double the amount awarded.

Foxborough Plant Initially Conceived to Provide Power to Incoming Industrial Tenants

The Foxborough Power Plant project was initially conceived as a method to provide low cost energy and steam to two incoming tenants at the Foxborough Industrial Park.⁹ When the project commenced in mid-2004, City management was operating on the assumption that these two incoming tenants, Nutro and ConAgra, required a total of between five and ten megawatts of power for their operations.

⁹ The Foxborough Industrial Park is a 233-acre industrial park located on Victorville's east side within the former Bear Valley Redevelopment Area.

Development Services Procured Without Competitive Bidding

The firm responsible for overseeing the viability, design, and construction of the Foxborough Power Plant, Carter and Burgess, Inc., was selected to initiate the project based on previous work with the City rather than on a competitive bid. Carter and Burgess was initially hired by the City in October 2002 for assistance with the development, operation, and management of electric and related utility services at the Southern California Logistics Airport. The October 2002 professional services agreement reflected initial steps the City had been taking toward the development of Victorville 2. The City's selection of the firm for this work was not based on a competitive bid process.

City management began procuring professional services from Carter and Burgess in June 2004 for the Foxborough Power Plant based on the consulting relationship that City management initiated with the firm in 2002. In July 2005, about a year after commencement of the Foxborough project, the City entered into a formal agreement with Carter and Burgess for the construction of the Foxborough Power Plant. Prior to entering into this formal agreement, Carter and Burgess received about \$1.5 million from the City for services relating to the Foxborough Power Plant project.

Foxborough Power Plant Lacked Adequate Planning and Controls

Neither City management nor Carter and Burgess established a risk assessment, business plan, or formal budget. Without such planning, the City proceeded without clearly defined goals, milestones, or performance measures. In fact, the project was initiated with the broad objective of providing low cost power directly to tenants at the Foxborough Industrial Park without connecting to the California electrical grid system. However, toward the end of the project City management changed course and looked at options to connect the plant to the grid system.

No Risk Assessment

City management did not prepare an independent risk assessment and there is no evidence that potential risks were formally discussed by the City Council. Specifically, City management did not formally evaluate the risks and potential benefits of self-generating power versus acquiring power from the electrical grid via power purchase agreements before commencing the project. The Foxborough Plant, initially estimated to cost approximately \$17.5 million to build, was a major step forward in the City's efforts to create a municipal utility. Despite this major investment of funds and the City's inexperience at constructing and operating a power plant, no efforts were made to identify and mitigate financial, construction, or operational risks of the project.

No Formal Business Plan or Project Budget

City management did not establish a business plan or formal budget for the Foxborough Power Plant project. It is apparent from interviews with City officials and from a review of related documents that the initial goal of the project was to construct a plant that could provide sufficient electricity and steam to certain tenants at the Foxborough Industrial Park.

As the project progressed, the objective evolved from the initial goal of self-generating to providing excess power to the grid. The basic design elements of the plant also evolved from using natural gas-powered generators to using diesel generators to using bio-fueled generators. City management did not formally brief the City Council on the financial, construction, or operational implications of the changes to the objectives and design during the course of the project even as project costs grew dramatically.

Weak Project Controls

A review of project documentation and interviews with City officials indicate that City management did not establish strong controls for the Foxborough Power Plant project. Specifically, neither Carter and Burgess nor City officials responsible for the project were required to submit regular or formal project updates or briefings to the City Council. Rather, the Council would only be formally briefed on the project when a request for additional finances was brought forward. Further, no apparent performance measures were established in either the October 2002 or July 2005 contracts with Carter and Burgess, which were used for the Foxborough Power Plant project.

Although Carter and Burgess were not required to formally brief the Council on a regular basis, according to the City Manager, Carter and Burgess was required to periodically submit pro forma statements.¹⁰ City officials have indicated however that these pro formas tended to be overly optimistic, were not consistently provided to the City, and were never accompanied by supporting documentation. There is no evidence that City management recognized these weaknesses or took action to place additional requirements on the contractor during the project.

Foxborough Project Failed After Dramatic Growth in Costs

According to interviews with City officials, the Foxborough Power Plant project was initially estimated to cost the City approximately \$17.5 million. However, the costs of the project quickly rose to \$22 million. In April 2005, approximately 10 months after the project commenced, the City Council approved a \$41 million bond issuance for the project. In June 2006, approximately two years after the initiation of the project and four months after the anticipated completion, the City Council approved a second bond issuance that provided an additional \$21 million in financing to Carter and Burgess. The final cost of the Foxborough Power Plant project topped \$91 million with press accounts stating that over \$95 million had been spent. Out of this amount, Carter and Burgess was paid approximately \$8.2 million. An estimate of the costs of the Foxborough Power Plant project are shown in Table 3.3 below.

¹⁰ Pro forma statements are hypothetical financial statements showing assets and liabilities or income and expenses that might be recognized in the future. Business firms are often asked to submit pro forma statements when applying for loan funds.

Table 3.3
Foxborough Power Plant Project Total Estimated Costs

Cost Category	Amount
Construction Costs	\$76,050,011
Debt Service Interest Paid	11,588,625
Debt Issuance Costs	3,521,372
Total	\$91,160,008

Source: Foxborough Cost Data provided by City Manager's Office

Judgment Against Developer Covers Just Over Half of the Foxborough Project Losses

Due to a series of mishaps, including an overestimation of the power needs for certain tenants, multiple design revisions, and the failure of certain power generation equipment, the Foxborough Power Plant was never completed. Following the cancellation of the construction project, the City initiated civil litigation against Carter and Burgess relating to the failure of the project. In December 2010 a Riverside County jury unanimously ruled in favor of the City and awarded Victorville \$52,116,367 to be paid by the developer's parent company. Despite the award of approximately \$52 million, the City will still be left with approximately \$40 million in losses. Further, the judgment award has not yet been paid and is under appeal.

Conclusions

The City of Victorville and the Southern California Logistics Airport Authority (SCLAA) initiated large, high risk electrical generation-related capital projects in the mid 2000's without proper pre-project risk assessments or project controls. The analysis supporting such decision making has been based on recommendations from contractors who have had an interest in the projects. Further, this decision making has not been transparently presented to the public. The subsequent failure of these projects has resulted in substantial losses and contributed to a heavy long-term debt burden for the City and the Airport.

In September 2005, the City, acting as the governance board for the SCLAA, initiated a project to develop a 500 megawatt power plant, known as Victorville 2. The Victorville 2 project was never completed and ultimately cost the Southern California Logistics Airport over \$50 million in losses with over \$76 million invested to date. City management did not conduct proper due diligence before initiating the project, entering into an onerous and open-ended agreement with Inland Energy Inc., or entering into a high risk \$182 million agreement to purchase power generation equipment from General Electric. Further, City management did not enforce all contract terms and has not formally managed the use of an open-ended provision in the agreement. In addition, the agreement with General Electric was adopted without proper transparency in closed session, likely violating the Brown Act.

In June 2004, the City began procuring no-bid professional services from Carter and Burgess, an architecture and engineering firm, to design, develop, and construct, a cogeneration power plant to service the energy needs of certain tenants at the Foxborough Industrial Park. The project was undertaken by the City without a thorough assessment of risks, a formal business plan or budget, or sufficient controls in place. Through a series of mishaps the project was never completed, resulting in the loss of tens of millions of dollars in public funds. Ultimately, the City was awarded \$52 million as a result of civil trial litigation against Carter and Burgess and its parent company, but this award, even if fully paid, would still leave the City with approximately \$40 million in losses.

Recommendations

The Victorville City Council should:

- 3.1. Draft and implement planning policies and procedures for all City and SCLAA capital projects. Such policies should incorporate best practices, including an independent evaluation of risks and fiscal impact.
- 3.2. Draft and implement capital project controls, policies and procedures for all City and SCLAA capital projects. Such policies should incorporate best practices such as:
 - a. Establishment of a project plan, including a project budget, which is periodically revisited and formally approved by the City Council and/or SCLAA Board of Directors in open sessions. The policies should also include requirements for implementing performance measures that are regularly reported to the Council during the life of a project.
 - b. Establishment of procurement controls, including requirements for competitive bidding, increasing levels of control over approval of professional service contracts based on cost to the City, and standard documentation requirements for the payment of invoices.
- 3.3. Schedule a workshop on transparency in municipal government, including an information session on the requirements of the Brown Act. Following the workshop, the City Council should establish policies to ensure that its operations are consistent with the requirements of the State Government Code relating to open meetings and best practices, as they relate to government transparency.

Costs and Benefits

The costs associated with these recommendations would include staff time to prepare policies and procedures for consideration and approval by the City Council, as well as for preparation of a workshop on the Brown Act. The benefits of these recommendations would include stronger controls over the planning and implementation of costly capital projects, which would help reduce the risk of: (1) initiating poorly planned projects; (2) projects going over-budget; and, (3) the loss or misuse of public funding.

4. SCLA Hangar Development

- **In September 2005 the City Council, in its role as the Southern California Logistics Airport Authority (SCLAA) Board of Directors, entered into a no-bid development agreement with CBS Aviation Development, LLC for the construction of hangar facilities at Southern California Logistics Airport. The development agreement was based on a proposal put forward by the manager/owner of CBS Aviation Development, an individual with no prior relationship with the City and whose background and competency was not fully known. Further, there is no evidence that sufficient background research was conducted on CBS Aviation Development or its owner until two months after the SCLAA entered into a ground lease agreement with the contractor.**
- **Although the original hangar development agreement called for the construction to be completely funded by CBS Aviation Development, the SCLAA spent approximately \$54 million for CBS Aviation Development work on the hangar development project and nearly an additional \$50 million for a second firm, KND Affiliates, LLC, to complete the project after City management lost confidence in the abilities of CBS Aviation Development. The hangar development project may have ultimately cost SCLAA approximately \$103 million to construct four aircraft hangars.**
- **The hangar development project at the Southern California Logistics Airport was undertaken without proper controls to prevent cost overruns, the misuse or loss of public funds, or fraud. Specifically, there is no evidence that City management clearly estimated costs or presented the SCLAA Board (City Council) with a clear project budget or development plan before disbursing funds to CBS Aviation Development. Further, City and SCLAA management did not put proper controls in place during the project to ensure that outside contractors: (1) properly performed their duties; (2) used public funds efficiently; or, (3) were prevented from misusing public funds. The lack of controls is evidenced by the inability of City management to account for the entirety of public funds, including nearly \$13 million provided to CBS Aviation Development.**

Hangar Development Project Poorly Planned and Managed

The hangar development project at the Southern California Logistics Airport was undertaken without proper controls to prevent cost overruns or the misuse or loss of public funds. Although the construction of the hangar facilities was initially to be self-funded by the contractor, the project has ultimately cost SCLAA over \$100 million. There is no evidence that City management clearly estimated costs or presented the SCLAA Board (City Council) with a clear project budget or development plan before disbursing funds to CBS Aviation Development or KND Affiliates, the subsequent developer.

City and SCLAA management did not put proper controls in place during the project to ensure that outside contractors: (1) sufficiently performed their duties; (2) used public funds efficiently; or, (3) were prevented from misusing public funds. The lack of controls is evidenced by the inability of City management to account for the entirety of public funds, including nearly \$13 million provided to CBS Aviation Development.

Hangar Development Initially Self-Funded by CBS Aviation Development

In September 2005 the City Council, in its role as the SCLAA Board, entered into a no-bid contract agreement with CBS Aviation Development, LLC for the development of hangar facilities at Southern California Logistics Airport. The development agreement reportedly was based on a proposal put forward by the manager/owner of CBS Aviation Development, an individual with no prior relationship to the City or the airport. Further, there is no evidence that this proposal was documented in writing.¹

The ground lease agreement with CBS Aviation Development stipulated that the company would construct two aircraft hangars by December 31, 2005 (within three months of contract execution) and a 200,000 square foot cargo complex by December 31, 2006 (within 15 months of contract execution) at the contractor's "sole cost and expense." At the time the lease was executed there is no evidence that CBS Aviation Development, SCLAA, or City officials had estimated the costs associated with constructing the facilities. Rather, it appears that City and airport officials simply relied on the contractor to plan, manage, and finance the project independently.

The lease had a term of 40 years and noted that "upon completion of the facilities, Lessee [CBS Aviation Development] seeks to lease the facilities to prospective tenants who are engaged in the business of cargo transport and aircraft maintenance and development, and then sell the leased facilities to one or more institutional investors."

Contractor Poorly Vetted

There is no evidence to show that City management conducted sufficient due diligence on CBS Aviation Development or its owner prior to entering into a lease agreement (in September 2005) and later a loan agreement (in November 2005) with the contractor. Specifically, there is no documented evidence to show that City management conducted adequate background research on CBS Aviation Development, its owner, or Arizona Building Systems, Inc. (another company affiliated with the owner) until November 29, 2005, two months after the lease agreement was executed and about a month after the loan agreement was established. Notably, City management conducted a limited background check three days before the funds were disbursed.

The City Attorney's Office has stated that the former Southern California Logistics Airport Director contacted officials from the Sky Harbor Airport in Phoenix, Arizona in July or August of 2005 to determine whether or not the owner, CBS Aviation Development, or their Arizona affiliate, ABS had performed adequately in connection with prior projects. The City Attorney's Office has also asserted that, as a result of the contacts, the Airport Director learned that the owner's "companies successfully caused the construction and completion of cargo facilities at

¹ Although a copy of any proposal documentation was requested, no such documentation was provided.

Sky Harbor Airport and caused the leasing of those facilities to third parties.” However, no documentation was provided to our audit team as to the dates or extent of the Airport Director’s contacts or to the level of the owner’s involvement in these projects, despite a request for the documentation and commitments made by the City Attorney at the exit conference.

Contractor Was Party to Civil Litigation Before Engaged by City

While the background research conducted by the City Attorney’s Office in late November of 2005 revealed that CBS Aviation Development and its owner were listed as defendants in civil suits, the City Attorney has maintained that “such litigation did not raise red flags.” Specifically, the research revealed that CBS Aviation Development was listed as a defendant in two civil suits filed in August 2003 as well as a civil suit filed in August 2005 in San Bernardino County Superior Court. In addition, the owner of CBS Aviation was listed as a defendant in a civil suit filed in November 2000 in San Mateo County Superior Court. The suits filed in San Bernardino County appear to have multiple plaintiffs, many of which appear to be private construction-related entities. As discussed later in this section, the City eventually removed CBS Aviation Development from the hangar project due in part to the failure to pay subcontractors.

SCLAA Quick to Provide Funding to CBS Aviation Development, but Not to Establish a Budget, Project Plan, or Controls

Although the ground lease agreement called for the hangar development project to be self-funded, the SCLAA executed a loan agreement for \$20 million with CBS Aviation Development on November 1, 2005, just 32 days after the execution of the ground lease. Approximately \$17.7 million was directly disbursed to the manager/owner of CBS Aviation on December 2, 2005.

No Budget, Project Plan, or Controls Established

City and SCLAA management did not institute any kind of budget, project plan, or controls before executing the loan agreement with CBS Aviation. The provision of nearly \$20 million of public funds, for a project that a month earlier had been intended to be privately funded, does not appear to have triggered any sense of alarm among City management or Council members that the SCLAA’s role and risk in the project fundamentally changed. The absence of any kind of project reevaluation by City officials was a clear failure of the City and SCLAA governance structure and control environment.

SCLAA Provided Additional Funding After CBS Aviation Missed Performance Deadlines

CBS Aviation Development did not adhere to the “schedule of performance” in the ground lease agreement, which called for the developer to complete the hangar facilities by December 31, 2005. Despite the developer’s failure to adhere to this performance schedule, the City did not take action to establish controls or terminate the contract. Rather, on February 1, 2006, the SCLAA entered into a second loan agreement providing additional bond funds. This second loan agreement provided an additional \$7.7 million to the owner/manager of CBS Aviation Development. The supporting bond used for the loan was later refinanced, providing an additional \$4.5 million to CBS. This final payment brought the total amount disbursed to the developer to approximately \$30 million for the Hangar Development project.

Ground Lease Amended in February 2006

On February 14, 2006, SCLAA amended the ground lease agreement with CBS Aviation Development two weeks after the entering into the second loan agreement and only three days before funds were disbursed. The lease amendment primarily eliminated the developer's responsibilities relating to the cargo complex (which was to be completed by December 31, 2006 under the original lease). It does not appear that funding was reduced or reevaluated as a result of this amendment.

Additional Ground Lease Approved with CBS Aviation in July 2006, but Withheld by City

At its regularly scheduled meeting on July 18, 2006, the SCLAA Board approved two additional ground lease agreements and amendments with CBS Aviation Development, LLC. Although the original lease with CBS Aviation and all amendments were requested as part of this audit, copies of these additional agreements and amendments were not provided to us by City management.

SCLAA Severed Agreement with CBS Aviation & Brought in New Contractor

In June and July of 2006, approximately seven months after the hangar facilities were to be completed under the lease agreement, about 25 subcontractors of CBS Aviation Development alerted City officials that they had not been paid by the company for work done on the hangars. On August 11, 2006, the City, SCLAA, CBS Aviation Development, and KND Affiliates, LLC (an LLC established by Jeff Kinsell, the principal of Kinsell, Newcomb, & De Dios, the City's bond underwriter) entered into a settlement agreement to remove CBS Aviation Development from the project as the developer and replace it with KND Affiliates, LLC.

Settlement Agreement Implies KND would Buyout CBS and Finance Remainder of Project

The August 2006 settlement agreement implies that KND Affiliates, LLC would commit \$70 million to buy out the CBS leaseholder rights, repay the City's previous loans to CBS, and complete the project. According to the settlement agreement, KND Affiliates agreed to accept the partially completed project and immediately place \$19.2 million into an escrow account with \$12.7 million intended for unpaid CBS subcontractors and \$6.5 million to buy out CBS's interests in the project. The settlement agreement also states that KND would place an additional \$31.9 million into an escrow account to repay previous project financing and \$18.8 million to complete the project. Essentially, according to the settlement agreement, KND would accept all assets and liabilities of CBS Aviation, including obligations to subcontractors, unpaid loan amounts, and the costs to complete the four hangar facilities. In return, KND would have the right to lease the facilities to tenants or sell the leased facilities to one or more institutional investors. The amounts of KND Affiliates' implied financial commitments are summarized in Table 4.1 below.

Table 4.1
Implied Financial Commitments of KND Affiliates & Jeff Kinsell
From August 2006 Settlement Agreement

Amount to be Deposited into Escrow by KND Affiliates and Jeff Kinsell	Purpose of Funds	Timeframe for Deposit into an Escrow Account
\$12,700,000	To pay CBS Aviation Development subcontractors for design, development and construction work.	Upon execution of the agreement.
\$3,000,000	To buy out CBS Aviation Development's interests in the project.	Upon execution of the agreement.
\$3,500,000	To buy out CBS Aviation Development's interests in the project	Upon execution of the agreement, but disbursed after \$12.7 million is fully paid to subcontractors.
\$30,000,000	To repay previous financing arranged by SCLAA.	Within 90 days of execution of the agreement (November 9, 2006).
\$1,909,862	To repay Jeff Kinsell for amounts previously provided to assist the project.	Within 90 days of execution of the agreement (November 9, 2006).
\$18,777,880	To complete the hangar facilities. Amount based on estimate by CBS Aviation to complete all design, development, and construction.	Upon payment of all above amounts.
\$69,887,742	Total to be deposited into escrow by KND Affiliates, LLC	

Source: August 2006 Settlement Agreement between SCLAA, City of Victorville, KND Affiliates, LLC, Jeff Kinsell, CBS Aviation Development, LLC, and the owner of CBS Aviation Development

KND Never Invested Any of its Own Funds or Had Any Financial Exposure

KND Affiliates and Jeff Kinsell never invested their own funds into the hangar project, even though the settlement agreement implied that they would take over the project and pay for previous financial outlays. Rather, the SCLAA provided KND Affiliates with a series of loans as detailed in Table 4.2 and 4.3 below.

Table 4.2 is a listing of loans as provided by the City Manager's Office in response to a request for all loans made to KND Affiliates relating to the hangar project. Table 4.3, which contradicts Table 4.2, is based on a December 18, 2007 staff report to the SCLAA Board, which summarized the SCLAA's lending to KND. It is unclear why the City has not provided all loan documentation, as requested.

The City's inability to provide a clear accounting of the loans made to KND is evidence that there were few, if any, controls established for this project even after CBS Aviation Development was removed. The City had no staff actively managing this project. Rather, the City was completely reliant on outside contractors to manage this major capital project.

Table 4.2
SCLAA Loans to KND Affiliates as Provided by the City Manager

Loan Date	Loan Amount	Terms	Purpose	Security
July 27, 2006	\$10,000,000	12 months; Interest only with a balloon payment	Not specified	Personal guaranty by Jeffrey Kinsell
August 17, 2006	\$12,200,000	12 months; Interest only with a balloon payment	To pay CBS Aviation Development and its subcontractors	Deed of trust in certain real property and personal guaranty by Jeffrey Kinsell
December 30, 2007	\$13,492,640	30 years; Interest only; Upon expiration of term entire outstanding unpaid balance forgiven	Not specified	Deed of trust in certain real property with assignment of rents
December 30, 2007	\$15,187,368	30 years; Interest only; Upon expiration of term entire outstanding unpaid balance forgiven	Not specified	Deed of trust in certain real property with assignment of rents
December 30, 2007	\$10,683,236	30 years; Interest only; Upon expiration of term entire outstanding unpaid balance forgiven	Not specified	Deed of trust in certain real property with assignment of rents
December 30, 2007	\$21,249,279	30 years; Interest only; Upon expiration of term entire outstanding unpaid balance forgiven	Not specified	Deed of trust in certain real property with assignment of rents
	\$82,812,087	Total Amount Loaned According to documentation provided by the City Manager's Office		

Source: Loan Documents provided by Victorville City Manager's Office

As noted in Table 4.2 above, the SCLAA provided a \$10 million loan to KND Affiliates before the settlement agreement was even executed. This loan agreement was executed about two weeks

before the settlement agreement for a term of 12 months. The loan note is just over one page and was secured only by a two page personal guaranty by Jeffrey Kinsell. The loan agreement required interest only payments with a balloon payment due 13 months from the note start date, which was 90 days from the disbursement of funds.

Within a week of the execution of the settlement agreement, KND Affiliates was provided a second, \$12.2 million, 12 month loan for the purpose of paying CBS Aviation Development and its subcontractors. This loan was also secured by a personal guaranty of Jeffrey Kinsell, but unlike the first loan, it was secured by a deed of trust in certain real property. The promissory note and deed of trust do not describe the exact parcels that securitized the loan. Rather, this information is included in an exhibit that was not provided for this audit.

In December 2007, about 17 months after the security agreement was executed, SCLAA provided KND Affiliates with four loans totaling about \$61 million and ranging from \$10.7 million to \$21.3 million. Each loan was securitized by a deed of trust in certain real property with assignment in rents, presumably the four hangar facilities that were under development. However, unlike the other loans, these notes contain a provision that states:

Upon the expiration of the Term, provided Payor is not or has not been in material breach or default of this Note, Payee shall forgive the entire outstanding unpaid principal balance due under this Note.

Table 4.3
SCLAA Loans to KND Affiliates as Summarized by the City Attorney

Loan Dates	Loan Description	Total Loan Amounts
Not specified	Four separate loan agreements for purposes of assisting KND in meeting its obligations under the settlement agreement.	\$47,977,880 Note: Total amount equaled <u>\$52,881,839</u> as of December 18, 2007 due to accrued interest.
Not specified	Additional loan for purposes of assisting KND in meeting its obligations under the settlement agreement.	\$2,000,000
December 18, 2007	To complete KND's obligations under the settlement agreement and develop improvements not budgeted for under settlement agreement, develop additional tenant improvements, and finance certain change orders.	\$12,300,000
Total Amount Loaned as of December 18, 2007 According to SCLAA Board Staff Report:		\$67,181,839

Source: SCLAA Board staff report submitted by Authority Counsel on December 18, 2007 regarding resolution 07-009.

Loan Documents Do Not Reflect KND's True Role in Hangar Project

Although the settlement agreement and the loan documents indicate that KND Affiliates would be assuming the role and obligations of CBS Aviation, KND Affiliates was actually acting as an agent of the City. According to City documents, KND was acting on behalf of the City to conclude the construction of the hangar facilities and then deed the property back to the City in exchange for forgiveness of all debt.

Project Continued without Strong Controls

Through the loan agreements the City (via the SCLAA) was, in essence, contracting with KND Affiliates to complete the hangar development project. City management handled the relationship with KND Affiliates similar to the way it dealt with CBS Aviation Development. That is, the City provided direct funding to KND Affiliates with no controls such as invoice documentation requirements, performance measures, or budget milestones. The City once again loosely disbursed funds and became heavily reliant on an outside contractor.

KND Loans Forgiven in Exchange for Hangar Facilities

Ultimately, the loans provided to KND Affiliates were forgiven in whole by the City on June 30, 2011. According to a listing provided by the City Manager's Office, the total of all loans to KND Affiliates, when forgiven, was \$68,243,436.

Total Cost of Hangar Development Project May Have Exceeded \$100 Million with \$13 Million in CBS Aviation Funds Unaccounted For

While the City has no official accounting of the total costs of the hangar development project (mostly due to the fact that the City never had staff actively planning or managing the project), current City management relies on an outside analysis of the sources and uses of SCLAA construction funds as the closest approximation. This analysis was conducted in the fall of 2008 by the Hodgdon Group, an affiliate of Hogdon Miank Construction, Inc. (HMC), the general contractor for the hangar project under KND Affiliates.

According to the Hodgdon Group report, the City spent over \$90 million of SCLAA funds on the hangar construction project. The report notes that this amount does not include the cost of bond issuances or \$1.6 million set aside by the City for future settlement costs with CBS Aviation.

Hogdon Group Report Based on Limited Records

The Hodgdon Group report was based on limited information available to them, consisting primarily of project contracts and records of payments made to subcontractors. These documents were provided directly by KND Affiliates for their portion of the project. The Hodgdon Group was also able to use payment records left behind by CBS Aviation Development at CBS's former offices at the airport after the developer had been removed from the project. The report notes that the cost estimate is "based on information available and may not reflect all project costs and expenses by various parties."

If the City or SCLAA had instituted controls or oversight there would have likely been a much clearer accounting of the project's costs. Specifically, if at least one staff member was assigned to oversee the project or if the City had instituted financial controls, it is unlikely that the accounting of the project's costs would be so murky.

Hogdon Group Could Not Account for \$12.9 Million of Project Funds

The Hogdon Group report's most alarming finding is the unknown use of \$12,899,664 of funds provided to CBS Aviation Development by SCLAA. The inability to document the use of these funds is the direct result of City management's heavy reliance on outside contractors and its failure to institute sufficient financial controls over public funds.

City Management Will Not Pursue Collection from CBS Aviation

City management has asserted that the unaccounted funds may have been for project assets, such as building materials, which were not entered into the accounting record. However, there has been no attempt to reconcile this accounting. Without a thorough accounting of such costs, which City management years ago determined was unnecessary, the City and its residents will never have a full understanding of the use of public funds for the hangar development project. City management made a determination in 2008, after the project concluded, not to pursue the matter further. Rather, management determined that these funds would simply be aggregated into the total costs of the project.

Total Costs for Hangar Construction Project May Have Exceeded \$100 Million

As previously noted, City management has no official or definitive accounting of the funds spent on the hangar development project. Therefore, it is not possible to accurately state how much the hangar development project cost the taxpayers of the City and other VVEDA jurisdictions. However, based on City documents we have estimated the total costs. This estimate of total costs for the hangar development project is shown in Table 4.4 below.

Table 4.4
Estimated Total Costs of Hangar Development Project

Source	Use	Amount
2005 Schedule A SCLAA Bonds	CBS Construction Costs	\$17,730,000
2006 Schedule A SCLAA Bonds	CBS Construction Costs	7,653,425
2006 Schedule A SCLAA Bonds (Refinanced)	CBS Construction Costs	4,704,076
2005 & 2006 SCLAA Bonds	Costs of Bond Issuances	4,600,000
SCLAA Loans to KND Affiliates ²	Buyout of CBS Aviation Development Interests	6,400,000
SCLAA Loans to KND Affiliates	Payments to CBS Aviation Subcontractors in August 2006	12,640,071
CBS Aviation Development Costs Subtotal		\$53,727,572
SCLAA Loans to KND Affiliates	KND Construction Costs	38,925,758
SCLAA Loans to KND Affiliates	KND Contingency & Excess Funds	2,037,611
SCLAA Loans to KND Affiliates	KND General Project Expenses	380,802
SCLAA Loans to KND Affiliates	KND Costs (Interest Accrual and Not Allocated)	7,865,555
KND Affiliates Costs Subtotal		\$49,209,726
Estimated Total Costs of Hangar Development Project		\$102,937,298

Source: City documentation on Hangar Development Project

Conclusions

In September 2005 the City Council, in its role as the Southern California Logistics Airport Authority (SCLAA) Board of Directors, entered into a no-bid agreement with CBS Aviation Development, LLC for the construction of hangar facilities at Southern California Logistics Airport. The development agreement was based on a proposal put forward by the manager/owner of CBS Aviation Development, an individual with no prior relationship to the City and whose background and competency was not fully known. Further, there is no evidence that sufficient background research was conducted on CBS Aviation Development or its owner until two months after the SCLAA entered into a ground lease agreement with the contractor.

² It is unclear the sources of funding provided to KND Affiliates by SCLAA.

Although the original hangar development agreement called for the construction to be completely funded by CBS Aviation Development, the SCLAA spent approximately \$54 million for CBS Aviation Development work on the hangar development project and nearly an additional \$50 million for a second firm, KND Affiliates, LLC, to complete the project after City management lost confidence in the abilities of CBS Aviation Development. The hangar development project may have ultimately cost SCLAA approximately \$103 million to complete four aircraft hangars.

The hangar development project at the Southern California Logistics Airport was undertaken without proper controls to prevent cost overruns, the misuse or loss of public funds, or fraud. Specifically, there is no evidence that City management clearly estimated costs or presented the SCLAA Board (City Council) with a clear project budget or development plan before disbursing funds to CBS Aviation Development. Further, City and SCLAA management did not put proper controls in place during the project to ensure that outside contractors: (1) properly performed their duties; (2) used public funds efficiently; or, (3) were prevented from misusing public funds. The lack of controls is evidenced by the inability of City management to account for the entirety of public funds, including nearly \$13 million provided to CBS Aviation Development.

Recommendations

The SCLAA Board of Directors should:

- 4.1. Adopt and implement procurement procedures for the management and operation of the Southern California Logistics Airport that incorporates competitive bidding for the design, development, and construction of airport facilities.
- 4.2. Adopt and implement SCLAA policies and procedures that institute sufficient financial controls for airport capital projects. Such controls should be consistent with best practices for public sector capital projects.

Costs and Benefits

The costs of implementing these recommendations include staff time to draft and present policies and procedures to the SCLAA Board of Directors. The implementation of the policies and procedures will also likely require additional staff time for oversight responsibilities. The benefits of implementing these recommendations include reducing the risk of the misuse or loss of public funds to contractors. The recommendations would also help ensure that airport capital projects involving public funds are carried out in an efficient manner.

5. SCLAA Bond Expenditures

- **The Victor Valley Economic Development Authority (VVEDA) Joint Exercise of Powers Agreement stipulates the uses of tax increment that is raised on parcels of the former George Air Force Base (GAFB), as well as the tax increment from the member jurisdictions' territories. The VVEDA JPA specifically requires that tax increment revenues, which are to be allocated to GAFB shall only be used for purposes that directly benefit redevelopment of GAFB. The VVEDA JPA also delegates the authority of the management and operation of the GAFB parcels, including budgeting authority, redevelopment authority, and all management and operational authority to the Victorville City Council, "which shall act on behalf of the [VVEDA] Commission on all such matters."**
- **The Victorville City Council, acting as the Southern California Logistics Airport Authority (SCLAA) Board of Directors, and City management mishandled SCLAA bond funds in three separate instances.**
- **In late 2005 and early 2006 the City, through its Redevelopment Agency, inappropriately purchased several parcels near city hall for the purpose of constructing a library using nearly \$2 million of SCLAA bond funds that were restricted for the development and redevelopment of GAFB and not disclosed in the bond's official statements. Attempts to correct the inappropriate use of such funds have been inadequate.**
- **In June 2005 the City purchased land for the I-15/Nisqualli Road interchange project using approximately \$3.3 million of SCLAA bond funds. Although this project was listed in the bond disclosures, the expenditure was weakly justified. Further, the City has no controls to ensure that funds restricted to GAFB were not used for this expenditure.**
- **From June 2005 through 2010, the City procured professional services, land, and power generating equipment for the Victorville Power Plant 2 (Victorville 2) project using over \$76 million of SCLAA bond funds that were restricted for the redevelopment of GAFB. City management has asserted that the power plant, which was to be built on parcels near GAFB, would benefit the redevelopment of GAFB by helping to attract commercial tenants with competitively priced electricity. However, official documentation of the project shows that it was primarily for the purposes of providing the City a revenue stream and to secure competitively priced electricity for its constituents and potentially for other jurisdictions in Southern California.**

VVEDA JPA Stipulates the Development and Redevelopment of GAFB and the Surrounding Redevelopment Project Area

The Victor Valley Economic Development Agency (VVEDA) was created in 1989 through a JPA between Victorville, Hesperia, Apple Valley, and the County of San Bernardino¹ in response to the economic repercussions of the imminent closing of GAFB. In 1993 the VVEDA members established the original boundaries of the Victor Valley Project Area consisting of portions of each member's jurisdictional boundary within an eight mile radius of GAFB. The VVEDA currently operates under the Fourth Amended and Restated JPA, which provided for the inclusion of the City of Adelanto in 2000. The current JPA enables each member entity to enter into transactions and execute agreements within their respective portions of the VVEDA project area without approval of the full VVEDA Commission, provided that any pledged tax increment revenue would be allocable to that member.

The VVEDA JPA provides for the delegation and assignment of the member jurisdictions' voting rights with respect to all issues directly affecting the operation and redevelopment of the former George Air Force Base to the Victorville City Council acting as the SCLAA Board. The responsibilities delegated to the City Council for SCLAA include: (1) all budgeting authority; (2) all redevelopment authority; and, (3) all operational and management authority affecting the GAFB parcels. Essentially, the Victorville City Council, acting as the SCLAA, has the authority to redevelop, operate, and manage all aspects of the former GAFB, now known as the Southern California Logistics Airport (SCLA). Notably, the City of Victorville fulfilled the responsibilities for the treasury function of VVEDA (separate from its responsibilities over SCLAA finances) until 2009, when the VVEDA Board transferred such responsibility to the City of Apple Valley.

VVEDA JPA Stipulates the Allocation of Tax Increment Revenues

The VVEDA JPA sets out how tax increment revenues are to be divided and allocated between the redevelopment of the former GAFB and the surrounding project area. The VVEDA JPA also places restrictions on certain portions of the tax increment revenues to be set aside for low and moderate-income housing and for eligible annual reimbursements to member jurisdictions for outstanding balances of prior contributions.

As illustrated in Chart 5.1 and Chart 5.2 below, the VVEDA JPA sets specific restrictions on the allocation of tax increment revenues raised on and off the GAFB parcels to comply with State redevelopment law and to ensure that there are sufficient resources to develop and redevelop the former air force base.

¹ The County of San Bernardino Redevelopment Agency was the authorized recipient of tax increment accrued within unincorporated areas of the Victor Valley Project Area.

Restrictions on Use of Tax Revenue Raised on GAFB Parcels

As illustrated in Chart 5.1 below, the VVEDA JPA requires that all tax increment revenues from the GAFB parcels be allocated for use on GAFB with the understanding that Victorville, acting as the SCLAA Board, shall set aside 20 percent of these revenues for low and moderate-income housing purposes.

Restrictions on Use of Tax Revenue Raised in Member Jurisdictions' Territories

As illustrated in Chart 5.2 below, the VVEDA JPA places several stipulations on the allocation of tax increment revenue that is raised within individual member jurisdictions' territories of the VVEDA project area. The VVEDA JPA specifically states that:

- The first 20 percent of participating jurisdictions' tax increment revenues shall be set aside for low and moderate income housing purposes and will be allocated for use by each member jurisdiction in its own portion of the VVEDA project area.

VVEDA JPA Stipulations on Use of "Net Revenues"

As illustrated in Chart 5.2 below, the VVEDA JPA states that the tax revenues raised from within individual member jurisdictions' territories, after the first 20 percent is allocated to low and moderate income housing, shall be referred to as the "net revenues." The VVEDA JPA places the following stipulations on net revenues:

- 40 percent of net revenues shall be allocated solely for use on the GAFB parcels;
- 40 percent of net revenues shall be allocated for use in the originating member's territory within the VVEDA project area;
- 20 percent of net revenues shall be placed into a separate reimbursement fund of the VVEDA 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.

Chart 5.1
Allocation of VVEDA Tax Increment Revenue from GAFB (SCLA) Parcels

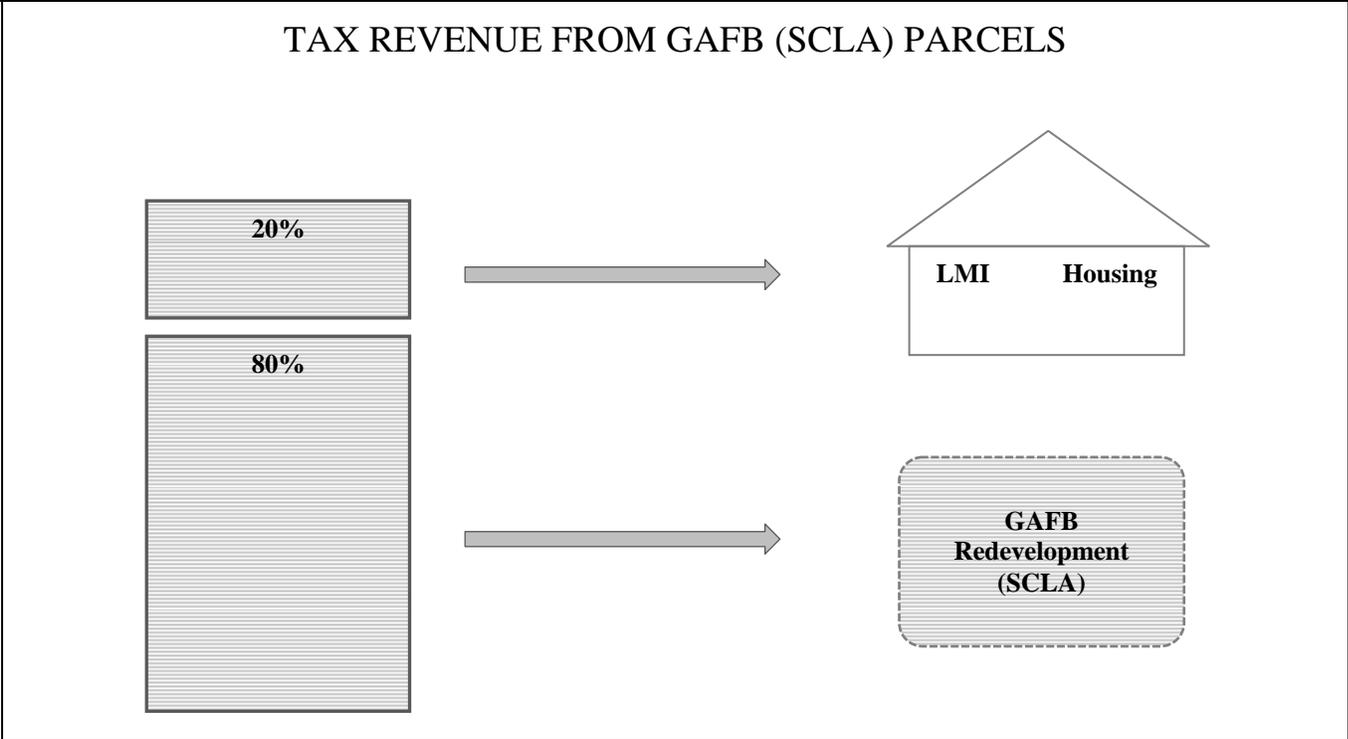
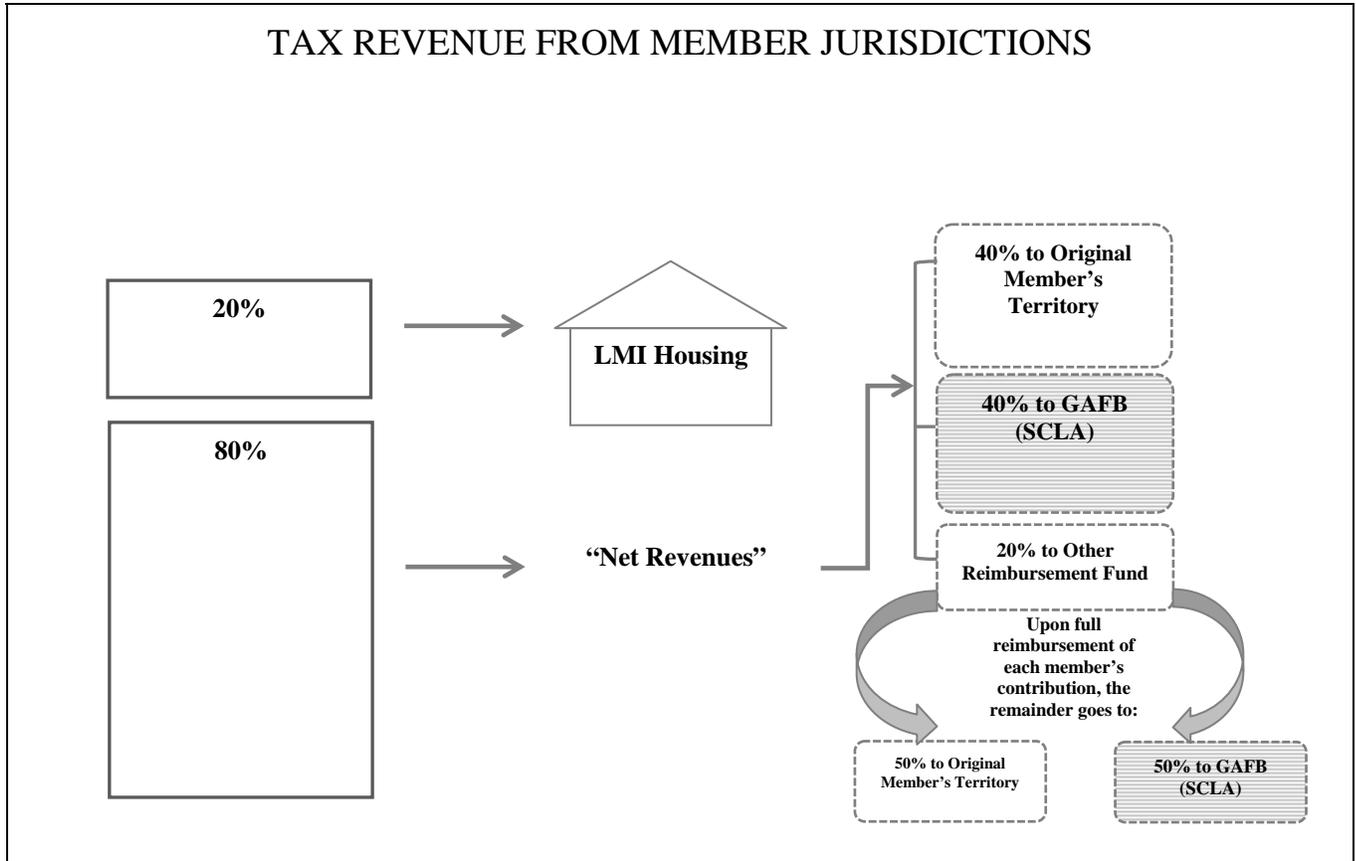


Chart 5.2
Allocation of VVEDA Tax Increment Revenue from Member Jurisdictions (Outside of GAFB/SCLA)



Restrictions on Use of Pledged Revenues

The VVEDA JPA also places restrictions on the use of proceeds of SCLAA debt issuances. Specifically, the VVEDA JPA states that:

Victorville, the Victorville RDA, or the SCLA Authority may pledge that portion of Participating Member’s Tax Increment Revenues which is to be allocated to GAFB along with any GAFB Tax Increment Revenues, to secure the issuance of tax increment bonds or similar indebtedness, provided, however, that the proceeds of any such debt issuance shall only be used for the purposes of causing the redevelopment and development of GAFB.

SCLAA Redevelopment Project Priorities Delegated to Victorville

The VVEDA JPA delegates authority over the prioritization of development and redevelopment projects to the City of Victorville, subject to the restrictions as previously described. Specifically, the VVEDA JPA states:

With respect to the GAFB Parcels, Victorville shall determine the priority as to which projects should be undertaken on the GAFB Parcels *provided that such projects will be consistent with the provisions of the Redevelopment Plan and the intent of this Agreement.* (emphasis added)

City Poorly Managed Expenditure of SCLAA Bond Funds in Several Instances

The Victorville City Council, acting in its delegated authority as the Board of Directors of SCLAA, and City management repeatedly mishandled SCLAA bond expenditures. In at least three instances the SCLAA Board and City management mishandled SCLAA bond funds by either: (1) poorly justifying expenditures; (2) failing to properly identify funding sources and accounting for Victorville's pledged amount to SCLAA; or, (3) potentially expending funds allocated to GAFB on parcels outside of GAFB and not primarily or directly for the redevelopment of GAFB. These instances include expenditures on: (1) the purchase of several parcels near city hall for the construction of a city library; (2) the purchase of land for the I-15/Nisqualli Road interchange project; and, (3) for professional services, land purchases, and the procurement of power generation equipment for a City-owned power plant. Each of these instances is described below.

Purchase of Parcels for a Library Constituted Inappropriate Use of SCLAA Bond Funds; Attempts to Correct the Mistake are Inadequate

In November 2005 and February 2006, the City inappropriately used approximately \$1.9 million of SCLAA Tax Allocation Parity Bonds (Series 2005 Schedule A) for the purchase of land parcels near city hall. These expenditures were an inappropriate use of SCLAA bond funds since they: (1) were not spent on the development and redevelopment of the GAFB parcels; (2) involved using bond proceeds that were to be repaid from tax increment from other VVEDA members for a City-owned asset without sufficient justification or accounting of revenues pledged from Victorville's portion of the VVEDA project area; and, (3) the official bond statements did not disclose that the bond proceeds would be used for a City-owned library facility.

City Management Intended to Repay SCLAA Bond Fund

According to two memorandum drafted around the time the properties were purchased, it was the intension of a previous City Manager to repay the 2005 SCLAA Bond Fund for the funds used to purchase the library parcels. Although it isn't clearly stated why the Victorville Redevelopment Agency would be repaying the bond fund, both SCLAA and Victorville Redevelopment Agency resolutions point out that the costs, "shall be paid from funds derived from the City's portion of the VVEDA Project Area." However, there has been no formal accounting of SCLAA bond fund expenditures which delineate between funds that are derived from revenues allocated to the airport versus revenues derived from the City's portion of the VVEDA project area that had been pledged to the airport.

Loan Documentation Not Established as Intended in 2005 and 2006

In 2010 it came to the attention of City management that no loan documentation had been put in place to repay the 2005 SCLA Bond Fund as intended in late 2005 and early 2006. According to a September 21, 2010 staff report from the City Attorney (and SCLAA Counsel), “at the time the properties were acquired, through inadvertence, the loan documentation was not completed.” Accordingly, in October 2010, the City Council adopted a resolution approving a loan agreement in the amount of \$1,903,000 between the City and SCLAA.

October 2010 Loan Agreement Permits Unlimited Deferral of Payments to SCLAA

The promissory note established in October 2010 allows the City to defer payment back to SCLAA for an unlimited amount of time. Although the note has a term of only six months, the note states that “the term of this note shall be automatically renewed until there are sufficient funds in the Development Impact Fee Fund to fully repay all amounts due...” As of March 2012, the City had made no payments under the loan agreement.

Loan Agreement Set Up in an Incorrect Fund for an Incorrect Amount

The loan agreement established in October 2010 was set up for an incorrect amount and under the incorrect fund. Although all documentation associated with this loan, including the promissory note, Council resolution, and associated City Attorney staff report state that the loan is to be repaid from Development Impact Fee funds, the loan was booked onto the City’s General Fund. Although the loan documentation established by the City Council and signed by the Mayor states that the loan amount is \$1,903,000, the loan was booked at \$1,895,090. There is no explanation offered in the financial statements for the discrepancy.

Loan Agreement Does Not Require Payment of Back Interest to SCLAA

Although the funds were borrowed from the SCLAA by the City in late 2005 and early 2006, the loan documents established in 2010 did not take into account funds owed for past unpaid interest. Rather, according to the financial statements, the loan has only accrued interest for part of the 2010-11 fiscal year. If the City were to pay SCLAA interest for the entire length of time that the funds had been made available, the actual amount of interest owed would be approximately \$250,000. City management should adjust the loan amount to reflect the amount of interest owed since funds were disbursed for use by Victorville in late 2005.

Purchase of Parcels for La Mesa/Nisqualli Interchange Project Were Not Well Justified or Accounted For

In June 2005 the City expended \$4,306,295 in SCLAA bond funds² for the purchase of land related to the La Mesa/Nisqualli Interchange Project, which is unrelated to the development or redevelopment of the former GAFB. While City management has asserted that Victorville’s portion of the VVEDA tax increment has been pledged to pay a portion of the bond issuance,

² SCLA Tax Allocation Parity Bonds Series 2005 Schedule A

there has been no accounting or analysis to show that the Victorville pledge is sufficient to pay for this project and there are no apparent controls to ensure that other JPA members' tax increment is not used for projects that are not for the development or redevelopment of the former GAFB.

Project Expenditures Poorly Justified in Official Bond Documents

The City has pledged tax increment revenue raised within its portion of the VVEDA project area that would have otherwise been designated for projects within Victorville's territory (see "40% to Original Members Territory" in Chart 5.2) to SCLAA for the purpose of issuing tax increment revenue bonds. City management has asserted that this pledge justifies the City's use of SCLAA bond proceeds for the interchange project, which is unrelated to the development and redevelopment of the former air force base, even though the bond's official statement proclaims that the SCLAA "will use the proceeds of the sale of the Bonds to (i) *finance certain public capital improvements benefiting the Southern California Logistics Airport*, (ii) fund a Reserve Account for the Bonds, and (iii) pay cost of issuance of the Bonds." (emphasis added)

While the expenditure of SCLAA bond proceeds on the Interchange Project is unlikely to be illegal, it was poorly justified in official bond documentation. Although these expenditures were listed on official bond documents as "public capital improvements benefiting the SCLA," the expenditures were not on GAFB parcels and there is no direct link to the development and redevelopment of the former air force base. Rather, the parcels purchased are approximately a 10 mile drive from the Southern California Logistics Airport and do not have a direct benefit to the Airport. The description of the project in the official statement of the bonds is brief and gives only a cursory explanation of the project and its benefit to the VVEDA project area. The description concludes that the Interchange "project has been determined as a benefit to the *VVEDA project area*." (emphasis added)

Weak Controls for Use of SCLAA Bond Funds

The use of tax increment from Victorville's portion of the VVEDA project area for the interchange project by and of itself does not appear to be inappropriate. Rather, the pledging of this tax increment revenue to SCLAA and the subsequent use of such funds for a purpose that is inconsistent with the purpose of the SCLAA bonds *without strong justification and proper controls* is troubling. Interviews with several members of City management revealed that no controls have been put in place over SCLAA bond proceeds to ensure that tax increment revenue designated for GAFB redevelopment (see "40% to GAFB (SCLA)" in Chart 5.2) is used by Victorville for non-GAFB purposes. Even if the Victorville pledged revenues are sufficient to pay for the interchange project expenditures, City management should establish stronger controls over expenditure of SCLAA bond funds to ensure that such funds are not used inappropriately. .

Victorville 2 Power Plant Expenditures Appear to Have Disproportionally Benefitted City of Victorville

From June 2005 through December 2010, the City expended over \$76.2 million in SCLAA bonds for the development of the Victorville Power Plant 2 (Victorville 2) project. The use of

SCLAA bond funds for this project appear inappropriate because it: (1) was not an investment in the GAFB parcels; (2) did not have a primary purpose of directly benefitting the development and redevelopment of the GAFB; and (3) had a disproportionate benefit to the City of Victorville.

As detailed in Section 3 of this report, the purpose of the Victorville 2 Project was to acquire land and permits for a 500 megawatt power plant. Once the plant had been “entitled,” or in a “build ready” state, the City would have the option of either (1) selling the development rights to a third party for the construction and operation of the plant, or (2) constructing and operating the plant itself through a municipal utility service.

Funds Were to Primarily Benefit City of Victorville, Not SCLAA or other JPA Members

Official documentation relating to the Victorville 2 Project shows that, contrary to assertions made by City management, the power plant was being developed primarily to benefit the City, not SCLA. This documentation includes a March 2005 evaluation of the project by Inland Energy; the Development Agreement between the City and Inland Energy; the contract for the purchase of power generation equipment from General Electric and related Council and SCLAA resolutions; and, a City press release dated November 29, 2007 announcing the execution of the contract with General Electric.

March 2005 Evaluation of Victorville 2 Project

An evaluation of the proposed 500 megawatt power plant, prepared by Inland Energy, Inc. in March 2005 for City officials, made no mention of any benefit to the efforts of redeveloping the former GAFB. Contrary to assertions from City management that the power plant was being built to service the current and future tenants of SCLA, there is no mention of their current or estimated future power needs or analysis showing that tenants would receive less expensive power. Rather, the evaluation only mentions the potential benefits that the City may see from the project including the potential for “the City to control its own energy destiny.”

Inland Energy Development Agreement with City

The Inland Energy contract makes no mention of the SCLAA as having any interest in or receiving a direct benefit from the Victorville 2 project. Rather, the contract speaks to the interests of the City in building a 500 megawatt power plant. The contract specifically states, the Victorville Municipal Utility Services

was formed for the purpose of, among other things, providing electricity to its constituents, accomplishment of which purpose may include development and entitlement of power plant facilities for the generation or transmission of electrical energy for public or private uses within the state of California.

Agreement between City and General Electric

The City’s contract with General Electric is further evidence that the Victorville 2 Project was not initiated to primarily serve the interests of SCLAA. Specifically, SCLAA is not a party to the contract. Rather, the Authority’s involvement in the purchase is limited to providing funds for the security agreement and purchase of the equipment. SCLAA Resolution 07-008, adopted in

December 2007 to authorize the security agreement with General Electric for the purchase of Victorville 2 power generation equipment, provides only a vague justification for the use of SCLAA bond funds. Specifically, the resolution states that SCLAA is:

empowered to raise revenues by the issuance of bonds secured by incremental financing proceeds collected within the Project Area in order to finance redevelopment activities within and benefitting the Project Area.

While the resolution does not define or specify the “Project Area,” the City generally refers to the Project Area as the parcels outside of the GAFB that have been designated as part of the VVEDA Redevelopment Project Area. While the Victorville 2 project does fall within this project area, it is not within the powers of the SCLAA to cause the redevelopment outside of the former GAFB parcels or than for improvements “adjacent to and *directly* benefitting the GAFB Parcels.”³ (emphasis added)

City Press Release Announcing Agreement with General Electric

On November 29, 2007 the Victorville Director of Public Information posted a press release announcing that the City had entered into a contract with General Electric for power generation equipment. The press release is additional evidence that the Victorville 2 project used SCLAA bond funds for the primary benefit of the City of Victorville. Specifically, the press release touts that the “project is going to change Southern California’s energy supply picture and place Victorville on the global energy map.” The document also confirms that the project is owned by the City, not by the SCLAA. Specifically, the press release states that the City could sell the development rights to the plant or:

the City could retain ownership [of the power plant] and use the project as the centerpiece of a Community Choice Aggregation entity, which would allow its member communities to receive the benefit of lower priced electricity.

The Community Choice Aggregation entity mentioned in the quote above refers to a joint powers agency that the City had formed with the City of San Marcos and described in Section 3 of this report. Specifically, the JPA with San Marcos formed the California Clean Energy Resources Authority (Cal-CLERA). City officials had previously considered the potential of Cal-CLERA as a vehicle for selling power to other jurisdictions from the Victorville 2 Plant.

The only mention of the airport in the press release states that the project will be built at the Southern California Logistics Airport and that it will be a “major milestone in the complex.” The actual parcels designated for this project are outside of the former GAFB approximately two miles north of the airport.

Unclear Tax Increment Benefit to SCLAA

Although City management has asserted that questioning the benefit of the Victorville 2 power plant ignores the benefits received by the previously built High Desert Power Plant, it is unclear that SCLAA would see the same benefits with this second plant. Specifically, the High Desert Power Plant provides increased tax increment financing to SCLAA. However, the Victorville 2

³ Fourth Amended and Restated VVEDA JPA Section 8 (Delegation of Authority).

plant would be located approximately two miles outside of the former GAFB parcels on purchased land. Given that these parcels are not within the former GAFB, but rather within the Victorville portion of the VVEDA project area, it is unclear whether tax increment derived from such property would be designated to SCLAA or to the City of Victorville.

Delegated Governance and Management of SCLAA Creates a Potential Conflict of Interest for City of Victorville

The delegated authority that the VVEDA Commission has given to Victorville for the governance and management of SCLAA creates a potential conflict of interest for the City. Even if the projects discussed in this section were deemed as appropriate by all members of the VVEDA, there remains an appearance that decisions made by Victorville City Council and Victorville management may have been biased in favor of the City's interests, instead of the interests of all of the members of the JPA. The poorly justified use of SCLAA bond funds illustrates the potential conflicts of interest that the City Council and City staff have between representing the interests of the City and representing the interests of all JPA members in redeveloping the former GAFB. The JPA members of the VVEDA Commission should consider a review of the delegated authority provided to the City of Victorville for governance and administration of SCLAA to ensure representation of each individual jurisdictions' interests in the governance and administration of redevelopment activities.

Conclusions

The VVEDA JPA stipulates the uses of tax increment raised on parcels of the former GAFB as well as tax increment from the member jurisdictions' territories. The VVEDA JPA specifically requires that tax increment revenues which are to be allocated to GAFB should only be used for purposes that directly benefit the redevelopment of GAFB. The VVEDA JPA also delegates the authority of the management and operation of the GAFB parcels, including budgeting authority, redevelopment authority, and all management and operational authority to the Victorville City Council, "which shall act on behalf of the [VVEDA] Commission on all such matters."

The Victorville City Council, acting as the SCLAA Board of Directors, appears to have repeatedly mishandled SCLAA bond expenditures. In at least three instances the SCLAA Board and City management mishandled SCLAA bond funds by either: (1) poorly justifying expenditures; (2) failing to properly identify funding sources and accounting for Victorville's pledged amount to SCLAA; or, (3) potentially expending funds allocated to GAFB on parcels outside of GAFB and not primarily or directly for the purpose for the redevelopment of GAFB.

Recommendations

The City Council should:

- 5.1. Revise the loan agreement between SCLAA and the City so that it incorporates back interest that should have accrued between 2005 and 2010 based on the State Pooled Money Investment Account average annual yields for the Local Agency Investment Fund.

- 5.2. Review and amend the City's financial statements so that the loan agreement between the City and SCLAA for the purchase of library parcels reflects the terms of the agreement. Specifically, that the loan is placed in the City's Development Impact Fee fund.
- 5.3. Direct the City Manager to conduct an evaluation of the use of SCLAA bond funds for the Victorville 2 Power Plant project including an analysis of the amount of funds specifically allocated to SCLAA (less the Victorville pledge) that were used for the project. At the completion of such analysis, establish a loan agreement between the City and SCLAA for the repayment of the amount of SCLAA bond funds expended on the Victorville 2 Power Plant Project less the net amount⁴ pledged by Victorville for repayment of the bonds.

The SCLAA Board should:

- 5.4. Direct the City Manager to establish an accounting system for all expenditures of SCLAA bond funds. Such a system should include an estimate of the amount of expenditures that are unrelated to the redevelopment of the former GAFB and would therefore require use of the Victorville pledge of funds from its own territory.
- 5.5. Direct the City Manager to establish a policy requiring the SCLAA Board of Directors to justify the use of SCLAA bond funds when used for projects outside of GAFB parcels. Such a policy should require a detailed justification for how the expenditures directly benefit the redevelopment of the former GAFB before the issuance and expenditure of future tax increment bonds.
- 5.6. Review current contracts for potential conflicts of interest. This would help ensure that the SCLAA Board of Directors makes decisions in the interest of the SCLAA.

The VVEDA Commission should:

- 5.7. Consider a review of the delegated authority provided to the City of Victorville for governance and administration of the SCLAA to ensure representation of each individual jurisdiction's interests in the governance and administration of redevelopment activities.

Costs and Benefits

The costs to the City of implementing these recommendations would include staff time and approximately \$250,000 for the revision of the loan agreement for the library parcels and up to \$76.2 million (but likely less after subtracting the amounts pledged by Victorville that would have otherwise been allocated to its own territory) to pay back the funds expended for the Victorville 2 Power Plant Project. The benefits of implementing the recommendations would include improved financial health of SCLAA. Implementation of governance recommendations would ensure that full, fair and proportionate representation of each jurisdictions' interests would be represented on the Board.

⁴ After the funds spent on the Interchange Project are considered.