RESPONSES

TO THE

SAN BERNARDINO COUNTY

2011-2012 GRAND JURY

FINAL REPORT

SAN BERNARDINO COUNTY GRAND JURY
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RESPONSES

TO THE

SAN BERNARDINO COUNTY

2011-2012 GRAND JURY

FINAL REPORT

SECTION 1:

- COUNTY OF SAN BERNARDINO

SECTION II:

- SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT

SECTION III:

- CITY OF SAN BERNARDINO

SECTION IV:

- CITY OF VICTORVILLE
- VICTOR VALLEY ECONOMIC DEVELOPMENT AUTHORITY

SECTION IV

CITY OF VICTORVILLE

VICTOR VALLEY ECONOMIC
DEVELOPMENT AUTHORITY

CITY OF
VICTORVILLE

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September 6, 2012

Honorable Ronald M. Christianson, Presiding Judge
Superior Court of California, County of San Bernardino
303 West Third Street, Fourth Floor
San Bernardino, CA 92415-0302

Dear Judge Christianson:

On September 4, 2012 the City Council and the Southern California Logistics Airport Authority Board of Directors authorized staff to file the City of Victorville's responses to the 2011-2012 Grand Jury Report.

Sincerely,

Douglas B. Robertson
City Manager

cc: Grand Jury

INTRODUCTORY REMARKS

The City of Victorville ("City") would like to thank the Grand Jury for publishing the 2011-12 Grand Jury Final Report ("Final Report"). When the 2010-2011 Grand Jury failed to produce a report on Victorville, the public and the City were left with no information as to the reasons why. Although the City does not agree with some aspects of the Final Report and believes it unfairly ignores a significant amount of work that has been completed in the last three years, the City greatly appreciates the 2011-12 Grand Jury's commitment to producing a report so that the City can address any outstanding issues properly and continue to move forward in a positive way.

It should be noted that the Final Report focuses on several transactions that were undertaken or entered into over five years ago under a different City Manager. These are issues that the City is well aware of and have been previously addressed in several of the City's prior audits undertaken by the City's certified public accountant auditing firms. Accordingly, this response will indicate that several policies and procedures have been adopted and practices implemented which already address some of the concerns raised in the Final Report.

Prior to providing the responses to the Final Report as required by Penal Code sections 933 and 933.5, the City of Victorville would also like to take the opportunity to point out that some of the areas of disagreement were appropriately shared with the Grand Jury and its consultant Harvey M. Rose Associates ("HMR") by the City Manager and City Attorney on April 20, 2012 during an exit interview that included a review of a partial draft report. This response specifically cites areas of disagreement that were pointed out during the exit interview that for unknown reasons were not addressed in the Final Report issued over two months later. A copy of the written responses provided by the City at the exit interview, which addressed the requested corrections of the draft report prepared by HMR, are attached hereto as Attachment #1.

As instructed by the Grand Jury Legal Advisor since the Report as it pertains to Victorville, unlike the Report as it pertains to other agencies, does not delineate "Findings", the City is substituting the "Conclusions" paragraphs that appear near the end of each Final Report section as findings. These Conclusions and the Recommendations of the Grand Jury are repeated below, each followed by the City's response in accordance with the options afforded in Penal Code 933.05 which specifies the following:

933.05. (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

Section 1: Financial Condition

Conclusions (Paragraph 1, Page 1-19)

An analysis of the City 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.

City Response:

The City agrees with this Conclusion and has a reserve policy that uses the 5%-15% of revenue model which was consistent with GFOA recommendations when adopted.

Conclusions (Paragraph 2, Page 1-19)

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.

City Response:

The City agrees with this Conclusion, but would add that the decision to use reserves rather than cutting public safety or further cutting other essential City services was a calculated decision as part of priority budget discussions with the City Council in public meetings. The measured use of reserves was one of several options presented and ultimately approved by the City Council. This Conclusion is incomplete without the recognition that the use of reserves was part of those budgets, not an unforeseen revenue shortfall at year end. This information was shared with the Grand Jury and HMR during the exit interview. It is unknown why they chose not to include it in their Final Report to the public.

Conclusions (Paragraph 3, Page 1-19)

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.

City Response:

The City agrees with this Conclusion. As noted on Page 1-10 of the Final Report, the debt payment default has been resolved with payment in March, 2012.

Conclusions (Paragraph 4, Page 1-19)

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.

City's Response:

The City disagrees with this Conclusion. Section 33644 of the California Health & Safety Code states that a former Redevelopment Agency's ("RDA") obligations, including bond indebtedness, are not liabilities of a City. This section states:

> *"The bonds and other obligations of any agency are not a debt of the community, the State, or any of its political subdivisions and neither the community, the State, nor any of its political subdivisions is liable on them, nor in any event shall the bonds or obligations be payable out of the funds or properties other than those of the agency [the RDA]; and such bonds and other obligations shall so state on their face. . . ."*

Therefore, obligations from the City of Victorville's former RDA bonds, or otherwise, will not affect the City's General Fund. Moreover, Assembly Bill 1484 ("AB 1484"), which was passed subsequent to Assembly Bill 1 x 26 in order to make amendments to the same, and which was adopted subsequent to the release of the Final Report, clarifies and confirms that Successor Agencies are separate legal entities from cities that formed them. Health & Safety Code Section 34173(g) states:

> *(g) A successor agency is a separate public entity from the public agency that provides for its governance and the two entities shall not merge. The liabilities of the former redevelopment agency shall not be transferred to the sponsoring entity and the assets shall not become assets of the sponsoring entity.*

Thus, both the law in effect when the Final Report was released, and that enacted after its release indicate that the Report's conclusion regarding the City's General Fund being at risk due to the Dissolution of RDAs is incorrect. The City acknowledges that if the Successor Agency fails to timely meet certain deadlines, AB 1484 imposes civil penalties on the City. (e.g.,. Health & Safety Code sections 34183.5(b)(2) and 34177(m)(2).) However, the Final Report could not have been recognizing these civil penalties since AB 1484 was enacted after the Final Report was released. Moreover, the Successor Agency has met and/or intends to meet the relevant deadlines of AB 1484.

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.

City Response:

This Recommendation was implemented with the approval of an extension of a Letter of Credit agreement with BNP Paribas that specifically outlines the use of funds, upon receipt of judgment proceeds from the Carter Burgess lawsuit currently on appeal, which will fully replenish the General Fund reserves to adopted levels. Affirmation of the judgment award to the City and receipt of the funds is expected to occur during this fiscal year. This information was shared with the Grand Jury and HMR during the exit interview. A copy of the agreement was transmitted to HMR on April 23, 2012, the first business day following the exit interview. It is unknown why the Grand Jury and HMR chose not to include this vital information in this section of the Final Report to the public. Additionally, the FY 2012-2013 budget is revenue positive. The small surplus has been directed by City Council action toward reserve replenishment.

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.

City Response:

This Recommendation was implemented in 2009 and Airport Operations have been balanced with a surplus since then. Deficits in revenues of the Southern California Logistics Airport Authority ("SCLAA") as a whole have been due to state SERAF subventions which cost the Authority over $13 million in reserves. Absent that, SCLAA would have been able to rely on reserves to make bond payments when tax increment dipped below 100% coverage of debt service. The current economic recession and the resulting unforeseen catastrophic drop in property values within the redevelopment project area which has been experienced by redevelopment agencies throughout California, have been a major factor in the decrease of revenues.

Since 2009, operationally, Victorville Municipal Utility Services ("VMUS") has gone from a deficit of $8.2 million deficit to nearly break even in 2012. Operations have been revenue positive, absent the debt service payment for the Foxborough bonds. Receipt of lawsuit proceeds will guarantee this positive trend for the next five years and give the utility the opportunity to continue positive growth to fully fund the remaining debt service.

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.

City Response:

This Recommendation was implemented in 2009 as shown in the previous City Response. There is no interest on the part of the City Council or staff to resume 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.

City Response:

This Recommendation was implemented in 2010. Following a public Request for Proposal process, the City Council selected Billy Casper Golf ("BCG") to manage the Green Tree golf course. The contract is heavily incentivized for BCG to get the course profitable (20% share of profit). A failed attempt to reopen the Westwinds golf course accounted for a one-time skewing of the deficit in 2011. Knowing Westwinds had been closed as a result, the Final Report should have focused more on the performance of the Green Tree golf course which has steadily made progress toward becoming profitable under the management of BCG. Overall golf course deficits have been reduced from $1.8 million annually to an estimated $300,000 for FY 2012-2013.

Section 2: Inter-fund Loans and Use of Restricted Funds

Conclusions (Paragraph 1, Page 2-15)

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.

City Response:

The City agrees with these Conclusions, but notes that the Final Report fails to accurately portray or consider the events occurring at the time it suggests the City should have adopted a more stringent policy. Please see Attachment #1 for more detailed information that was shared with the Grand Jury and HMR during the exit interview. The City's existing Inter-fund Loan Policy ("Policy") was adopted after polling other cities to develop such a policy, a common practice among municipalities when drafting a new policy. Although the City currently prefers to avoid engaging in any additional inter-fund loans, the City Council will consider an update to the Policy to add the recommended language.

Conclusions (Paragraph 2, Page 2-15)

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.

City Response:

The City partially disagrees with this Conclusion. Specifically, the City's ability to repay $38.1 million of the inter-fund loans in not "highly questionable." By unanimous decision, the jury in the Carter & Burgess lawsuit awarded, the City $52,116,367--every penny the City asked for--on each of five causes of action independently. All twelve jurors (although only nine votes are needed for consensus in civil suits) voted in favor of each award. The trial judge also awarded the City nearly $2 million in attorney's fees, and because the judgment earns 10% interest from the date originally entered (December 16, 2010), the total proceeds currently expected are approximately $64 million. The amount of the judgment cannot be reduced by the appellate court. The decisive victory on all causes of action by a unanimous civil jury makes the repayment of VMUS debts highly likely upon final disposition of the appeal later this fiscal year.

Conclusions (Paragraph 3, Page 2-15)

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.

City Response:

The City partially disagrees with this Conclusion.

This Conclusion first suggests interfund loans may violate the law, then acknowledges that short-term loans are not constitutionally prohibited. This Conclusion goes on to state that if such loans become permanent contributions, the loans may violate the constitution. The City agrees that if loans of restricted funds become permanent contributions they may violate the law. However, to infer that the law may have already been violated as a result of interfund borrowing is a premature judgment that assumes inaction in the future.

City Management and the City Council have been advised and are well aware of the need to repay interfund loans and have no intention of allowing the borrowing to become a permanent transfer. This knowledge was shared in great detail with the Grand Jury and HMR during the exit interview. It is unknown why the Grand Jury and HMR chose to ignore those comments in its Final Report to the public. Please see Attachment #1.

Conclusions (Paragraph 1, Page 2-16)

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.

City Response:

The City disagrees with this Conclusion. Please refer to Attachment #1 for documentation. This information was previously shared with the Grand Jury and HMR during the exit interview including relevant attachments. The transfer of Sanitary District funds to the General Fund does not violate the LAFCO resolution and in fact was done in strict compliance with it. Condition 5 states, "All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, ... shall accrue and be transferred to the successor agency;". The Successor Agency to the Victorville Sanitary District is the City of Victorville.

The Final Report points to the LAFCO resolution that collapsed the Sanitary District into the City. Condition of Approval No. 8 provides as follows:

> *Condition No.8. The City of Victorville, as Successor Agency, shall accept all system facilities transferred from the Victorville Sanitary District in "as is" condition, without any payment or repair obligation from the assets of the District [Government Code Section 56886(h)]. All incidental liabilities, such as accounts payables, contract obligations and customer deposits, shall be transferred to the City of Victorville as the Successor Agency. 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.*

Upon the dissolution of the Sanitary District, the City transferred $15,000,000 from the Sanitary District Fund to the General Fund. The Final Report claims that such transfer should not have been to the general fund but to the specific enterprise fund. Conveniently, the Final Report does not analyze whether such transfer was authorized by the LAFCO resolution pursuant to Conditions No. 5, 7 and 9. When LAFCO considered the item, the Condition 8 subject matter was not deemed important enough by LAFCO staff to include in the staff recommendations, but Conditions 5 and 9 <u>were</u> included as recommendations 2 (b) and (e). Those items define the different handling of property tax revenue and funds collected for capital purposes. A copy of the full recommendations is part of Attachment #1 and below are the relevant excerpts.

> ***Recommendation 2.b.**: All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, including delinquent taxes and any and all other collections or assets of the District to be dissolved shall accrue and be transferred to the successor agency, the City of Victorville; and,*
>
> ***Recommendation 2.e.:** 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, Capital Reserve Accounts, Capital Improvement Accounts, Sewer Connection*

Fees, etc. on June 30, 2008 shall be transferred to the City as the successor agency and the successor agency shall separately maintain such funds in accordance with the provisions of Government Code Section 57462;

Condition No. 5. *All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, including delinquent taxes and any and all other collections or assets of the District to be dissolved shall accrue and be transferred to the successor agency;*

Condition No. 7. *The Appropriation Limit of the City of Victorville shall be adjusted based on property tax revenues that will be shifted to the City as a result of this dissolution, estimated to be $1,500,000 in Fiscal year 07-08;*

Condition No. 9. *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 service, 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;*

The above Recommendations of approval for the LAFCO Resolution were unanimously adopted by the LAFCO Commission in their entirety. The phrase "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 service," (emphasis added) specifically refers to capital reserves. Property taxes by definition are general in nature and not restricted. The City has received no notice of inquiry into this issue from LAFCO, let alone a notice of violation. The City maintains that the transfer of those particular taxes to the City was permissible and contained no requirement to place those taxes in a specific enterprise fund.

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.

City Response:

The City will implement the above Recommendations at a future City Council meeting later this fiscal year.

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.

City Response:

The City believes it has reflected inter-fund loans accurately. Specific treatment of inter-fund loans has been determined by city staff after discussions with independent auditors. Each year, the City's independent auditors, who are recognized certified public accounting firms, review and address the City's outstanding interfund loans.

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.

City Response:

This Recommendation was implemented in 2011 and 2012 by the Board of the Victorville Water District ("VWD") when it suspended rate increases upon review of existing fees and charges. Unfortunately, in raising concerns on page 2-12 of the Final Report, the Grand Jury and HMR failed to adequately research this issue to learn that the funds borrowed were accumulated by the former Victor Valley Water District and were not accumulated as a result of increases in fees by the VWD or the City Council sitting ex officio as the VWD Board.

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.

City Response:

This Recommendation was implemented in 2012 with the approval of an extension of a Letter of Credit agreement with BNP Paribas that specifically outlines the use of funds from lawsuit proceeds. The City Responses to Recommendation 1.1 and Conclusions (Paragraph 2, Page 2-15), on pages 4 and 6 of this Response Letter respectively, provide details on the expected Carter Burgess lawsuit proceeds and how the Letter of Credit agreement contains a plan for returning the funds to the VWD.

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.

City Response:

This Recommendation was implemented upon dissolution of the Sanitary District in 2008. Accounting records from the last 40 years did not separate capital funds from operating funds for the time the Sanitary District was a subsidiary of the City of Victorville. Staff estimated this split and reviewed it for accuracy against the property tax receipts received by the Sanitary District. Page 2-13 of the Final Report indicates, "the estimate appears to be reasonable."

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.

City Response:

This Recommendation will not be implemented because it is not warranted and is not reasonable. Specific reasons it is not warranted are outlined in the above Responses and in Attachment #1. Additionally, as the successor agency to the Sanitary District, the City is responsible for any shortfall in the operating or capital needs of the former Sanitary District and its customers. Should the $2,768,648 segregated in the capital account pursuant to the requirements of the LAFCO action not be enough for the capital needs, the City is required to carry out those obligations. The City would appropriately do so using the General Fund where the accumulated $15 million in property taxes of those customers, all Victorville residents, was transferred in accordance with and at the direction of the LAFCO resolution.

Furthermore, the City is confident that the customers of the former Sanitary District, all Victorville residents, would prefer that their paid property taxes be used to fund vital public safety priorities, such as police and fire, rather than have the money sit in an account as capital reserves for an enterprise for which sufficient reserves already exist. This funding priority is shared by the City's residents and was expressed in the priority discussions and determinations in the annual budget by the City Council.

Section 3: Power Plant Developments

Conclusions (Paragraph 1, Page 3-18)

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.

City Response:

The City partially agrees and partially disagrees with this Conclusion. The City agrees that the City initiated high risk electrical generation related to capital projects and the projects have contributed to the heavy long-term debt burden of the City and the Airport – but the City disagrees that the projects were not analyzed or presented with adequate transparency. Inland Energy has requested additional independent information regarding this project also be included in this Response. Please see Attachment #2.

Conclusions (Paragraph 2, Page 3-18)

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.

City Response:

The City agrees in large part, especially as related to the costs and risks of the Project to the City, but partially disagrees with this Conclusion. With respect to the alleged Brown Act violation associated with the General Electric ("GE") agreement approval. The City has reviewed the record which indicates that there was Brown Act compliance. Moreover, any alleged non-substantive violation was cured by action taken by the City *on its own initiative* by subsequently placing items on the open session agendas for the December 4 and December 18, 2007 meetings to ratify the GE agreement. While the action taken at the November 20, 2007 meeting approving the GE agreement was not challenged at the time, given its importance, the items were placed on two subsequent open session agendas to ensure that the full membership of the City Council had the opportunity to weigh in. As a result, the GE agreement was ratified in open session by a unanimous vote at the December 18, 2007 meeting. Although the entire GE agreement was

apparently not attached to the agenda items for the above meetings, a copy was, and continues to remain, available to be provided to the public upon request.

Conclusions (Paragraph 1, Page 3-19)

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.

City Response:

The City partially disagrees with this conclusion. The City rightfully relied on Carter & Burgess to perform a risk analyses, business plans, and budgeting. The failure of Carter & Burgess to perform was the basis for the lawsuit and a key factor in the City being awarded over $52 million. Some of the conclusions in this section of the Final Report inappropriately affix blame on the City, contrary to the unanimous decision of the jury who found Carter & Burgess at fault and subsequently awarded the City $52 million after a seven week trial with mountains of data. The Grand Jury and HMR should have relied more on the conclusions of the in-depth analysis required of the jurors than on its own analysis, which it has performed with limited data.

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.

City Response:

The City will implement the above recommendation at a future City Council meeting later this fiscal year for any projects not included in existing master planning efforts.

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.

City Response:

The City will implement the above recommendation at a future City Council meeting later this fiscal year.

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.

City Response:

Procurement controls were adopted as part of the revisions to the City's Municipal Code ("Code") on April 7, 2009. See Code Chapter 2.28 (Purchasing System) in general and Code section 2.28.280 (setting forth the rules governing procurement of professional/consulting services). Although Code section 2.28.280 does not specify the documentation requirements, the City's current standard form agreements for Consultant/Professional Services, which all City consultants and other professional services providers must sign, do require specific documentation prior to payment as specified in the form agreement excerpts below:

Section 3. COMPENSATION

The City shall pay to Consultant a sum not to exceed _____ DOLLARS ($ _____) for faithful performance of the services to be rendered under this Agreement, subject to the Payment Schedule provisions of Section 4, below (as may be applicable). No expense reimbursements, including, but not limited to, reimbursements for travel, parking, lodging, and/or meals shall be paid to Consultant unless such expense reimbursements: (i) are specifically provided for and described by nature and type in Exhibit "B", below; (ii) appear on Consultant's monthly invoices to City; (iii) are supported by the appropriate receipts and other such documentation as City shall require; and (iv) are directly related to the Scope of Services to be performed under this Agreement. In addition, any and all reimbursements shall be made in accordance with any City policy governing same.

Section 4. PAYMENT SCHEDULE

The City shall pay Consultant as provided in the Payment Schedule, attached hereto as Exhibit "B," (as may be applicable), and incorporated as part of this Agreement by this reference. The provisions of Exhibit "B" notwithstanding, in order to receive payments, Consultant shall be required to submit to the City detailed monthly invoices which include, if applicable, a description of all services/tasks performed, the number of hours expended on each service/task, the name of the person performing the service/task, and expense reimbursement information, if any, as required by Section 3, above. Provided that services have been satisfactorily rendered, invoices shall be paid by the City approximately thirty (30) working days following receipt of Consultant's invoice.

The City will review options to determine if additional clarification is needed.

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.

City Response:

While the City disagrees with assertions made elsewhere in the Final Report that the City Council may have violated the Brown Act, a workshop is warranted for the public good. On August 21, 2012, the City Council was provided an update on the Brown Act and a User's Guide on Brown Act compliance. In addition, the City Council discussed the implications of the suspension of the Brown Act by the Legislature on June 27, 2012. Thereafter, the City Council adopted Resolution No. 12-048_ indicating its commitment to continue compliance with the Brown Act even though Assembly Bill 1464 and Senate Bill 1006 suspend certain provisions of the Brown Act though FY 2014-15.

Section 4: SCLA Hangar Development

Conclusions (Paragraph 1, Page 4-11)

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.

Board Response:

The SCLAA Board partially disagrees with this Conclusion. Due diligence was initiated immediately upon the first contacts with CBS Aviation Development ("CBS"), through, among other things, telephone conversations with representatives of other airports where CBS (at that time known as ABS) had previously undertaken similar projects. The Final Report only references the actual documentation that was provided supporting the ongoing due diligence undertaken by the Agency's Counsel's office and ignores representations that certain forms of due diligence were initiated much earlier. Further, although the due diligence conducted by the Agency Counsel's office indicated CBS was involved in litigation, such litigation did not raise any red flags when selecting CBS as the developer. The subject matter of the litigation in which CBS was involved did not appear germane to the services CBS was to provide to the SCLAA. Further, the litigation (several of which were mechanics' lien claims) involved several defendants or cross-defendants with William Graven, or CBS, being named as one of several defendants.

Conclusions (Paragraph 1, Page 4-12)

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.

Board Response:

The SCLAA Board partially disagrees with this Conclusion. Accounting records show the bond funds spent on the hangars was $92,917,295.86. The Report fails to acknowledge that a significant portion of the funds allocated to the hangar transaction went to fund related and required infrastructure improvements such as runway and ramp improvements, storm drain, sewer and utility improvements.

Conclusions (Paragraph 2, Page 4-12)

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.

Board Response:

The SCLAA Board agrees with this Conclusion. It should be noted that some portion of the unaccounted funds was spent on the hangars and associated infrastructure for which no record of payment to a vendor or subcontractor exists due to the lack of controls by the original contractor. Initially, the hangars were being developed as a private developer project. Because of a lack of documentation by the contractor, there is no way to calculate how much of the unaccounted funds were or were not actually expended on the project.

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.

Board Response:

This was implemented with the adoption of the revisions to the City's Municipal Code (Chapter 2.28 - Purchasing System) on April 7, 2009, and is specifically covered under section 2.28.280, Award of Consultant/Professional Services Contracts based on competence. Pursuant to the SCLAA Joint Powers Agreement and California's Joint Exercise of Powers Act (Government Code section 6500 et seq.), the City is the Government Code section 6509 agency, and therefore the City's procurement procedures apply to the SCLAA.

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.

Board Response:

This Recommendation item will be incorporated into the actions to be undertaken in response to Recommendation 3.1, to include a review of policies and procedures for projects where the City or SCLAA assist private developers with financing. No such projects are envisioned at this time.

Section 5: SCLAA Bond Expenditures

Conclusions (Page 5-11, Paragraph 1)

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."

Board Response:

The City of Victorville disagrees with this Conclusion as it doesn't consider all of the relevant provisions of the VVEDA JPA regarding how tax increment generated for SCLA shall be spent. Specifically, the VVEDA JPA contains the following sections that must all be considered in order to determine the appropriate use of tax increment revenues for GAFB:

(i) Section 8, Page 19, Paragraph 2 identifies that "All tax increment revenues attributable solely to the GAFB parcels".....,"shall be disbursed and used at the discretion of the Victorville City Council or the Board of the SCLAA, provided, however, that all such revenues can only be expended on the GAFB parcels or for improvements adjacent to and directly benefitting the GAFB parcels and must be expended for the purposes of causing the acquisition, reuse and redevelopment of GAFB in a manner consistent with the Redevelopment Plan".

(ii) Section 34, Page 39, Paragraph 2 & 4 identifies that "Participating Jurisdiction Tax Increment will be divided and allocated as follows: [1.)] twenty percent (20%) of the Participating Jurisdiction Tax Increment Revenues shall be set aside for low and moderate income housing purposes and will be allocated to each Member for use by each Member in its own portion of the Project Area"; [2.)] "Forty percent (40%) of the Net Revenues attributable to any Original Member's Territory, exclusive of the GAFB parcels, shall be allocated for use in such Original Member's Territory; and [3.)] forty percent (40%) attributable to such Original Member's Territory shall be allocated solely for use on the GAFB Parcels".

(iii) Section 38- Financing, Page 45, Paragraph 1 identifies that "the SCLAA may pledge that portion of Participating Member's Tax Increment Revenues which, pursuant to Section 34 of this Agreement, 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".

All of these particular sections of the VVEDA JPA must be considered since they distinguish the difference in how GAFB Tax Increment Revenues and Tax Increment Revenues generated from Member Jurisdictions shall be spent. Said differently, the aforementioned sections provide flexibility to the SCLAA Board in spending its tax increment as either tax increment or as bonded proceeds. The restriction cited by the Grand Jury that suggests that SCLAA Tax Increment must be spent only for purposes that directly benefit GAFB is the wrong citation as SCLAA's tax increment revenues have all been pledged to satisfy debt service. Section 38 is the appropriate provision dictating the expenditure of SCLAA Tax Increment revenues as bond proceeds, which provides that they may be spent for the purpose of causing (emphasis added) the redevelopment and development of the former GAFB. In determining what constitutes "causing the redevelopment and development of the former GAFB", one must refer to the Redevelopment Plan and the documents adopted in connection therewith.

The Redevelopment Plan and the Final 33352 Report approved in connection with the adoption of the Redevelopment Plan address the expenditure of tax increment revenues and the types of projects that can be undertaken throughout the Project Area. The Final Report fails to understand the relevance of the ability of Victorville to pledge fifty percent (50%) of the revenues generated in the Victorville portion of the Project Area for projects outside SCLA, but within the City of Victorville.

Conclusions (Page 5-11, Paragraph 2)

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.

City Response:

The conclusions above are misleading and ignore important provisions of the VVEDA JPA discussed immediately above, and as importantly, the critical underlying document that is relevant throughout each bond document, the VVEDA Redevelopment Plan. To support the Grand Jury's conclusion that SCLAA poorly justified expenditures of its bond funds, the body of the Final Report identifies $3.3 million of SCLAA bond funds being used to purchase land for the I-15/Nisqualli Road Interchange. The body of the Final Report also speaks to property acquired for a library and references the expenditures associated with the VV2 power plant as poorly justified expenditures.

In addition to being identified in an official statement for an SCLAA bond, the VVEDA Redevelopment Plan, which serves as a VVEDA approved document dating back to 1993, identifies the following to help satisfy the eligibility of the interchange as being an acceptable project:

- Exhibit C from the original 1993 Redevelopment Plan identifies by name, I-15 Nisqualli Road Interchange land acquisition as an intended project. Exhibit C from the original 1993 Redevelopment Plan has been attached hereto for reference as Attachment #3.

With respect to the property acquired for a library, the Grand Jury should have considered the following sections from the VVEDA Redevelopment Plan:

- Section 400 (3) identifies the intent of the Redevelopment Plan to assist the Participating Jurisdictions in pursuing programs for economic development and economic diversification.
- Section 400 (9) identifies the intent of the Redevelopment Plan to provide needed improvements to the community's education, cultural and other community facilities to better serve the Project Area
- Section 400 (12) identifies the intent of the Redevelopment Plan to remove impediments of land assembly and development through acquisition and re-parcelization of land into reasonably sized and shaped parcels served by an improved street system and improved public facilities.

With respect to property acquired for the VV2 Power Plant, Section 38 of the VVEDA JPA cited above is applicable in this particular case. Additionally, the Grand Jury report doesn't consider provisions of the Redevelopment Plan where:

- Attachment #3 of this document which is Exhibit C of the VVEDA 1993 Redevelopment Plan identifies Air Base Improvements to include Land Acquisition of 2,000 acres North, East and South of the former GAFB.
- Section 400 (1) identifies the ability to pursue the successful reuse and development of the Air Base and its facilities.
- Section 400 (3) identifies the ability to assist the Participating Jurisdictions in pursuing programs for economic development and economic diversification.

Despite the challenges experienced by Victorville in pursuing power ventures, Victorville can point to particular achievements where companies like Dr. Pepper Snapple and Plastipak Packaging would not have located to SCLA had Victorville/SCLA not positioned itself to provide an alternative and more cost effective electrical source.

Notwithstanding the above, Chart 5-1 has been developed to help identify for comparison purposes, the expenditures associated with the library parcel and the amounts generated by Victorville that are not required to be spent on GAFB Parcels but instead can be spent in its portion of the VVEDA Project Area (as described above). The amount identified in the Grand Jury report of $1,903,000 for the assemblage of what was to become a Victorville library project is substantially less than 50% of Victorville's 100% used to size the various bond issues. The $1,903,000 should be compared to $86,264,983 in bond proceeds (see Chart 5-2 below and calculate 50% of the Victorville 100%) that pursuant to the VVEDA JPA, could have legitimately been used to fund projects outside of GAFB but within Victorville's portion of the VVEDA Project Area. Taking this analysis one step further, Attachment #4 has been attached hereto to serve as summary of the actual expenditures from each of the respective bonds made on or at SCLA. Upon review of Attachment #4, it should become easy to conclude that the amount spent directly on SCLA more than exceeds that $30,847,782 contributed by the remaining Members Jurisdiction when considering the amount of bond proceeds their respective pledge security helped generate (Chart 5-1).

Chart 5-1

		Share of Pledged Revenue											
Bond Issue	Net Proceeds	SCLA 100%	%	VV 100%	%	A.V. 50%	%	Co.SB. 50%	%	Hesp. 50%	%	Adel. 50%	%
2005	37,046,215	2,937,383	40%	3,676,488	50%	556,131	8%	59,501	1%	$151,629	2%	-	0%
2006 (Ref.)	59,904,039	2,899,387	25%	7,561,350	64%	953,405	8%	74,514	1%	268,679	2%	-	0%
2006 (2)	68,221,939	2,899,387	25%	7,561,350	64%	953,405	8%	74,514	1%	268,679	2%	-	0%
2006 (Sub)	56,327,731	2,872,571	18%	11,077,479	70%	1,361,045	9%	120,360	1%	370,400	2%	102,779	1%
2007 (Sub)	37,446,632	4,220,624	19%	15,544,984	69%	1,672,688	7%	587,919	3%	454,363	2%	170,811	1%
2008 (Sub)	9,686,044	4,335,596	18%	16,574,080	70%	1,671,656	7%	587,836	2%	453,982	2%	170,749	1%
	268,632,600												

Chart 5-2

Bond Issue	SCLA 100%	VV 100%	A.V. 50%	Co.SB. 50%	Hesp. 50%	Adel. 50%	Total
2005	14,742,850	18,452,449	2,791,245	298,638	761,032	-	37,046,215
2006 (Ref.)	14,772,480	38,525,347	4,857,632	379,651	1,368,929	-	59,904,039
2006 (2)	16,823,694	43,874,735	5,532,133	432,368	1,559,010	-	68,221,939
2006 (Sub)	10,173,476	39,231,916	4,820,267	426,266	1,311,806	364,001	56,327,731
2007 (Sub)	6,977,415	25,698,525	2,765,240	971,931	751,140	282,380	37,446,632
2008 (Sub)	1,764,939	6,746,993	680,499	239,297	184,807	69,509	9,686,044
	$65,254,853	$ 172,529,965	$21,447,016	$2,748,151	$5,936,725	$715,890	$ 268,632,600

The purpose for Chart 5-2 above is to identify of the amount pledged by the respective jurisdictions, how their share of pledged revenue could be accounted for relating to the sizing of a particular bond issue of the SCLAA.

In addition to the VVEDA JPA and the VVEDA Redevelopment Plan discussed above, the conclusion in the Final Report also fails to take into account that bond expenditures are also governed by the Health and Safety Code Section 33352 Report adopted in connection with the Redevelopment Plan, the bond offering documents approved and adopted with each bond issue, and the Fiscal Consultant's Reports that support the bond offerings.

Each expenditure of bond proceeds must be made in a manner consistent with all of the foregoing documents. Fiscal consultants, underwriters and bond counsel all review the proposed projects to be funded with the bond proceeds and place numerous controls in the bond documents as to how proceeds are spent. The Final Report seems to ignore these documents. The Final Report only focuses on one document and tries to interpret specific provisions of that document in a manner that is inconsistent with the intent of the original members and the subsequent actions and direction of the VVEDA body.

The Final Report also fails to comprehend the basic intent of the Redevelopment Plan which was to allow for the development of infrastructure and related projects throughout the Project Area, all of which could be deemed to alleviate the economic impacts caused by the loss of jobs and revenues associated with the closure of the military base. The impacts of that closure were all fully considered by the VVEDA Board in adopting the original Redevelopment Plan. Projects such as the Nisqualli interchange (which was specifically delineated in the Redevelopment Plan) and the VV II Power Plant clearly fall within the type of projects contemplated by the governing bodies of each of the Participating Jurisdictions when they approved the adoption of the Redevelopment Plan.

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.

City Response:

This recommendation will be implemented prior to the close of this fiscal year.

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.

City Response:

This Recommendation will be implemented as a prior year adjustment in the financial statements year ending 6-30-2012.

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 amount pledged by Victorville for repayment of the bonds.

City Response:

As a result of this Recommendation (5.3), staff did conduct a detailed analysis to help determine more clearly, the appropriateness in spending bonded expenditures to be consistent with provisions of the VVEDA JPA. Charts 5-1 and 5-2 have been prepared resulting from Recommendation 5.3 and Exhibit 5-2 has been used to extract those bonded expenditures that more than clearly represent expenditures directly made to SCLA. The conclusion drawn from that analysis shows that of the $30,847,782 contributed in the form of leveraged funds generating bond proceeds from Member Jurisdictions (excluding Victorville), $152,448,806 was spent directly on SCLA (or the former GAFB grounds). The difference between the two numbers shows that an amount much greater than what has been contributed by the Member Jurisdiction's (excluding Victorville) has been spent directly on SCLA.

Accordingly, the recommendation provided for here suggesting that a loan agreement be established requiring repayment of the bonded expenditures, net those amounts pledged by Victorville, which effectively is said to represent a perceived share from the remaining Member Jurisdictions, is not appropriate since it has been determined that the remaining Member Jurisdiction contribution of $30,847,782 has been spent to directly support SCLA. Victorville also believes that resulting from this Grand Jury report along with the Member Jurisdiction inquisition of SCLAA bonded expenditures dating back to January of 2011 through VVEDA, Victorville has more than adequately dedicated time and resource to determine the appropriateness of bonded expenditures. The VV2 Power Plant is an acceptable use of funds according to the plan documents as discussed above.

<u>The SCLAA Board should:</u>

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.

Board Response:

An accounting system exists today with detail as to expenditures by bond issuance. It does not currently separate the Victorville portion due to the level of expenditures being nominal in relation to the total funds available for such purposes. However, this recommendation will be implemented during this fiscal year and has been completed preliminarily as part of this response, please see above. No additional bond funds exist or are anticipated pending outcome of the lawsuit against the state. If successful and additional bonds are available, a new accounting system will be utilized to clearly differentiate SCLAA from Victorville share.

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.

Board Response:

This recommendation will be reevaluated after disposition of the VVEDA lawsuit against the State. If VVEDA is unsuccessful there will be no additional funding to obtain 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.

Board Response:

The City Council and the SCLAA have reviewed the provisions of the VVEDA JPA. This Recommendation fails to take into account the history related to the delegation of authority and the fact that such delegation was at the specific request of the Town of Apple Valley and the City of Hesperia. The recommendation also fails to recognize the extent of the obligations and liabilities assumed by Victorville in agreeing to the delegation and the clear provisions of the VVEDA JPA that provide for indemnification to all other VVEDA members for any liability arising out of such delegation.

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.

City Response:

While not authorized to speak on behalf of VVEDA, the City points out that the delegation of authority to the City of Victorville was accomplished in 1997 at the request of the Town of Apple Valley and the City of Hesperia. As noted below, the history surrounding such delegation is important to understand. Before agreeing to such delegation, the City of Victorville had to consider the extent of the liabilities and obligations that it was to assume, especially given that it had been funding a significant portion of VVEDA's obligations up until such date. Accordingly, and in order to provide assurances to the City of Victorville that the delegation was going to provide the possibility of some long-term benefit if Victorville was willing to assume the risk, all of the VVEDA Members agreed to the delegation of authority by way of a binding contract. The Grand Jury Report fails to acknowledge the binding effect of this contract and other provisions of such contract which also provide for indemnification by Victorville to the VVEDA Members to the extent there is any liability associated with such delegation. The Grand Jury Report appears to question policy decisions made by the well-informed legislative bodies of several public agencies some fifteen years ago, while ignoring the reasoning, rationale and justification for such decisions.

As the largest financial contributing member to the VVEDA organization, Victorville finds it important for the Grand Jury to be familiar with the history surrounding the delegation of authority for SCLA to the City of Victorville. It is because of this history, notwithstanding the meaningful contractual provisions of the VVEDA JPA, that each Member Jurisdictions interest in the governance and administration of SCLA is fairly limited.

Dating back to the summer of 1996, members of VVEDA, particularly the City of Hesperia and the Town of Apple Valley, introduced and began discussing the a realignment of the governance structure for the former GAFB. The purpose for realigning the governance structure was three-fold. First, VVEDA members wanted to get reimbursed for amounts it contributed to help lead the transition of GAFB to VVEDA control. Second, VVEDA members wanted to shift away from VVEDA, development responsibilities that VVEDA had established through the adoption of its original redevelopment plan and provide more autonomy to the Member Jurisdictions with respect to developments that were envisioned to occur within each respective Member Jurisdiction's portion of the VVEDA Project Area. Third, VVEDA members sought a more efficient method of implementing the redevelopment plan for GAFB including the operations, maintenance and business development responsibilities at GAFB.

Due to either the inability or the lack of desire of certain Member Jurisdictions to continue to make financial contributions from its own funds to operate the former GAFB and due to the fact that Victorville had already began disproportionately shouldering the financial costs associated with maintaining the former GAFB, the 3rd Amendment to the VVEDA JPA was agreed upon by VVEDA and its individual Member Jurisdictions. Important to SCLA today is that the 3rd Amendment is the foundational document allowing Victorville to fulfill the reuse and redevelopment responsibilities envisioned from the delegation of authority provisions contained in the JPA (Section 8). This delegation of authority more specifically provides for the transfer of the former GAFB including all liabilities, obligations along with any benefits to be derived from the airport. Additionally, Victorville agreed to indemnify VVEDA from any liability realized in connection with this delegation of authority which is still provided for today. A thorough review of the VVEDA JPA will cause the reader to find that Victorville's contractual responsibility to VVEDA can be summarized with the following:

1. The governing board of SCLAA shall be comprised of the same persons who sit as the Victorville City Council (Section 8).
2. The meetings of SCLAA shall be held in accordance with the provisions of the Brown Act (Section 8).
3. Subject to Section 34, 38 and 45 of the JPA, VVEDA reserves to itself, the authority and power to make decisions relating to its redevelopment powers which concern all portions of the Project area, except for land contained within the GAFB Parcels (Section 8).
4. SCLAA will exercise its powers in accordance with the provisions of the VVEDA Redevelopment Plan (Section 8).
5. Victorville agrees to act in good faith and use prudent business techniques in connection with the development of the GAFB Parcels (Section 8).

6. The SCLAA shall adopt a budget pertaining to the properties comprising the GAFB Parcels and it shall distribute the budget to VVEDA for its information and non-binding recommendations, if any (Section 28).
7. The same provisions provided for in paragraph (ii) above.
8. The same provisions provided for in paragraph (iii) above.

Among the aforementioned interests, the most compelling of interest appears to be with respect to whether or not Victorville has administered the GAFB/SCLA share of tax increment in accord with Sections 34 and 38 of the JPA. To help further illustrate that Victorville has acted in accord with provisions of the JPA, Attachment #4 attached hereto provides the detail of expenditures from bond proceeds. As summarized in Chart 5-2 above, the Member Jurisdiction contribution toward SCLA has amounted to $117,112,765 in bond proceeds. Excluding Victorville's contribution to SCLA, the remaining Member Jurisdiction contribution towards the bond proceeds amounted to $30,847,782. The VVEDA Member Jurisdiction concern, excluding Victorville's contribution, can easily be satisfied by the expenditures extracted from Attachment #5 and provided for in Attachment #4.

Finally, it is important to recognize that this concern raised in the Grand Jury Final Report is identical in nature to the concern raised by certain VVEDA Member Jurisdictions in January 2011. Attachment #6 shall serve as summary as to the information requested and reviewed by each of those Member Jurisdictions. Resulting from those Member Jurisdiction inquisitions, none of the VVEDA Member Jurisdictions were able to identify Victorville as having violated provisions comprising the VVEDA JPA

Attachment No. 1

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April 19, 2012

Grand Jury Foreman
Members of the Grand Jury
Harvey M. Rose Associates, LLC via:
San Bernardino County Grand Jury
351 N. Arrowhead Ave. Room 200
San Bernardino, CA 92415-0243

Re: Limited Scope of Performance Audit of the Finances of the City of Victorville – Draft Report Dated April 13, 2012

Thank you for the opportunity to review the draft report from Harvey M. Rose Associates, LLC (HMR). After being notified of the request for an exit interview and opportunity to review and comment, the City Attorney and I decided to be the only ones present and reviewing the report believing we could adequately respond based on our combined knowledge of the subject areas. In compliance with the confidentiality requirements I have not copied nor shared the content of the report with anyone, including verbally. I have asked a few specific questions of key staff members to adequately document my below responses without revealing the content of the report.

Below I attempt to document errors or misleading statements in the draft report that I believe need correction before a final report is published. Due to the content, I respectfully request these errors be fully researched and addressed where appropriate prior to publication. This letter is intended to facilitate the discussion during the exit interview, not be the final word on these issues. Upon discussion, some comments may no longer be accurate or applicable.

One overarching comment I must make is the vague references to "City management" throughout the document. Although regularly preceded by a date that someone knowledgeable may understand refers to Jon Roberts, given the routine use of that phrase to describe actions in the past and present, most persons reading the final draft will associate the actions with me personally as the current City Manager. I have spent the last three years of my life attempting to prevent the financial disaster which this report rightfully warns is at risk and cleaning up problems I inherited as a result of actions and decisions of Jon Roberts. If the final report does not clearly point out the changes in City Management, it will be a disservice to me both personally and professionally, and one I will not be able to simply ignore.

Page ii Paragraph 1 – There are no long term loans from the General Fund to SCLAA. At year end, a short term advance was used to address negative balances in SCLAA. That amount has since been repaid and some amount will likely exist again at the end of this fiscal year, although annually this amount has been reducing. It is not a foregone conclusion that the General Fund will be used again for coverage.

Paragraph 2 – Liabilities of the former RDA and SCLAA are to be funded only by tax increment and do not put the General Fund at risk.

Paragraph 3 – Independent auditors' recommendations were to "Formally approve and document interfund long-term advances", not to adopt a policy regarding interfund borrowing. The City had previously relied on state law governing the structure of such borrowing and the policy that was adopted follows that law.

Page iii Paragraph 1 – A majority of the interfund loans will be repaid upon receipt of the Carter & Burgess lawsuit which is anticipated to be completed during FY 2012-2013, approximately $45 million.

Paragraph 2 – This paragraph is salacious and presumptuous. City Management is well aware that the use of restricted funds for purposes other than they were collected could constitute a violation of state law. The very comment further in the paragraph, "...may result in the inter-fund loan becoming a permanent contribution to VMUS, exposing the City to the risk of violating the Constitution", shows that the HMR is aware that the actions taken thus far are not a violation of law and could only become so if not repaid. While a welcome reminder, current City management is well aware of the need to repay the loans rather than allowing them to become permanent transfers.

Further, the transfer of Sanitary District funds to the General Fund does not violate the LAFCO resolution and in fact was done in strict compliance with same. Condition 5 states, "All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, ... shall accrue and be transferred to the successor agency;".

Condition 8, which the HMR report relies on, can only be interpreted in the manner HMR does by ignoring Condition 5. When LAFCO considered the item, the Condition 8 subject matter was not deemed important enough by LAFCO staff to include in the recommendations but the subject matter of Conditions 5 and 9 were included. Those items define the different handling of property tax revenue and funds collected for capital purposes. A copy of the full recommendations is attached and below are the relevant excerpts:

> b.: All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, including delinquent taxes and any and all other collections or assets of the

District to be dissolved shall accrue and be transferred to the successor agency, the City of Victorville; and,

e.: 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, Capital Reserve Accounts, Capital Improvement Accounts, Sewer Connection Fees, etc. on June 30, 2008 shall be transferred to the City as the successor agency and the successor agency shall separately maintain such funds in accordance with the provisions of Government Code Section 57462;

These recommendations were unanimously adopted by the Commission in their entirety. The phrase "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 service," (emphasis added) specifically refers to capital reserves. Property taxes by definition are general in nature and not restricted. The City has received no notice of inquiry into this issue from LAFCO, let alone a notice of violation.

Page iv Paragraph 2 – The City rightfully relied on Carter & Burgess to perform a risk analyses, business plans, and budgeting. The failure on Carter & Burgess' part was the basis for the lawsuit and a key factor in the City being awarded over $52 million.

Page I-3 Paragraph 1 – The City of Victorville was incorporated as a General Law city, however, it became a Charter city when the voters approved Measure P, effective July 18, 2008.

Page I-4 Since the commission of this report, there has been a small reorganization which combined the Engineering Department and Public Works Department and moved some divisions from Public Works to other departments in the process. Specifically, direct customer service functions such as Animal Control, Solid Waste, and Water Conservation were moved to Community Services and Utilities Administration was moved to the City Manager Department. These are not errors as the report is accurate as of the time it was prepared. I provide this as informational only.

Page 1-1 Paragraph 3 (end) – There are no long term loans from the General Fund to SCLAA. At year end, a short term advance was used to address negative balances in SCLAA. That amount has since been repaid and may exist again at the end of this fiscal year, although annually this amount has been reducing. It is not a foregone conclusion that the General Fund will be used again for coverage.

Paragraph 4 – The Successor Agency obligations are NOT a General Fund obligation. Those obligations are to be paid using tax increment only. It seems inappropriate to

discuss the ramifications of AB1X 26 as part of this report. Not only is it not a part of the stated purpose and scope but the law is vague and contradictory and will likely have several clean up actions before actual implementation is complete. Opining so definitively regarding the General Fund being required to absorb obligations not met by the tax increment is misleading according to our understanding of the law.

Page 1-2 Three years ago, the City put in place a plan of action to judiciously use reserves in order to maintain a high level of service. This was done at the recommendation of current management pursuant to priorities of the City Council and upon their approval. This document gives no deference to the merits of these actions and only focuses on the declining fund balances. Had the declining balances happened unintentionally I could agree with the opinions. The use of reserves were calculated decisions following discussions and direction as part of budget workshops. Other cities have maintained higher levels of reserves while cutting public safety. Choosing to fully fund public safety rather than a reserve is a policy decision, not a failure to properly manage the cash flow. This comment applies to this entire section as it references declining reserves. HMR's comments seek to replace its judgment for that of the City Council which, unlike HMR, was elected to make such difficult policy decisions.

Page 1-3 Paragraph 3 – There are no long term loans from the General Fund to SCLAA. At year end, a short term advance was used to address negative balances in SCLAA. That amount has since been repaid and may exist again at the end of this fiscal year, although annually this amount has been reducing. It is not a foregone conclusion that the General Fund will be used again for coverage.

Page 1-6 Paragraph 4 – It is misleading to refer to the $100,116,522 as a Negative Fund Balance. Because SCLAA is accounted in a fund, readers would believe these to be operational losses which should be covered by interfund loans. It would be more appropriate to show the distinction by referring to these losses as Negative Net Assets.

Page 1-7 Paragraph 2 – We expect to break even for the third year in Airport Operations, not SCLAA on the whole. The overwhelming financial obligations of the SCLAA are based on tax increment financing and long term debt. These funds are accounted for separately but rolled up as part of the annual financial statements.

Page 1-9 Paragraph 1 - At year end, a short term advance was used to address negative balances in SCLAA. That amount has since been repaid and may exist again at the end of this fiscal year, although annually this amount has been reducing. It is not a foregone conclusion that the General Fund will be used again for coverage.

Footnote 4 – The FY 2007-08 financial statements AND the first round of formal documentation of interfund borrowing were presented to City Council at the same meeting on September 15, 2009. The items were handled back to back so the Council

could inquire of staff and/or the independent auditors immediately after the issue was explained. The tone of this footnote suggests a prejudgment of wrong doing by the author rather than letting the facts speak.

Page 1-10 Paragraph 2 – The City is not responsible for the debt obligations of the SCLAA. Tax increment was received in March 2012 and the obligation has been met, curing the defaults.

Page 1-12 Paragraph 2 – It is misleading to refer to the $75,987,951 as a Negative Fund Balance. Because VMUS is accounted in a fund, readers would believe these to be operational losses. It would be more appropriate to show the distinction by referring to these losses as Negative Net Assets.

Page 1-13 Paragraph 4 – Victorville 2 and the costs associated are not carried as assets or liabilities of VMUS. Financed with SCLAA bonds, any recovery of investment through the sale of development rights would be for the benefit of SCLAA, not VMUS.

Page 1-16 Paragraph 4 – Liabilities of the former RDA are to be funded only by tax increment and do not put the General Fund at risk.

Page 1-17 Paragraph 1 – The City has not loaned funds to the SCLAA for debt service.

Paragraph 2 – We do not believe the City General Fund is obligated to pay obligations of the SCLAA or former VVRDA, however, Mr. de Bortnowsky can better address this issue.

Page 1-18 Paragraph 1 – While we may disagree in the appropriate gauge, the reduction in the use of General Fund reserves on an annual basis diminishes concern. We believe next year will have little or no use of reserves. We agree the GFOA's targets are good measures for cities in general and for Victorville, but they do not factor in other funds which are regularly used by many municipalities in pooled accounts. If Victorville had only the General Fund, the reserve level of that individual fund would be more critical. Because of the variety of funds available in a pooled cash scenario, they can and have relied on each at different times of economic upturn and downturn.

Paragraph 2 – Three years ago, the City put in place a plan of action to judiciously use reserves in order to maintain a high level of service. This was done at the recommendation of current management pursuant to priorities of the City Council and upon their approval. This document gives no deference to the merits of these actions and only focuses on the declining fund balances. Had the declining balances happened unintentionally I could agree with the opinions. The use of reserves were calculated decisions following discussions and direction as part of budget workshops. Other cities have maintained higher levels of reserves while cutting public safety. Choosing

to fully fund public safety rather than a reserve is a policy decision, not a failure to properly manage the cash flow.

Paragraph 3 – Oddly, this paragraph recognizes the General Fund is not obligated to pay SCLAA's bonded indebtedness. Short term borrowing has been repaid as noted above. It is not a foregone conclusion that the General Fund will be used again for coverage.

Paragraph 4 – Liabilities of the former RDA are to be funded only by tax increment and do not put the General Fund at risk. This seems in conflict with Paragraph 3 in this regard.

Section 2 The overwhelming majority of the interfund loans were inherited by current management as informal negative balances. Our work has been to attempt to clean these up with formal documentation and not enter into new loans. Unfortunately, at this time many of the funds do not have the ability to repay based on regular monthly or annual incremental payments. We believe action in the future will allow the swift repayment of the majority of the loans within the five year time frame.

Page 2-1 Paragraph 1 – The interfund loan policy submitted by the former Finance Director was one of over 200 policies he and his contract staff member were working on. In the face of significant budget deficits and threats from General Electric with regard to the power equipment discussed in Section 3 an interfund loan policy was not high on the priority list. State law is instructive with regard to interfund loans and we relied on existing legislation rather than spending energy trying to create something locally. As a Director, it would have been a normal and routine practice to submit items for the Council agenda by simply attaching a cover sheet. He regularly did this so it is unclear why he would have sought to have others do this work in his stead.

During his tenure, which included 14 months of work directly with Capporicci & Larson the former Finance Director did nothing to address the actual interfund borrowing which was originally cited by Capporicci & Larson as problematic , referenced in the HMR report. Rather than spending time drafting policies, he could have better spent his time actually addressing the issue raised by bringing formal loan documents to the City Council. And yet, the HMR report gives deference to his prioritizing implying it is superior.

In the spring/summer of 2009, the same time the report suggests we should have been concentrating on an interfund loan policy, we negotiated with General Electric and ultimately eliminated a $100+ million liability and reduced a projected $13+ million budget deficit by approximately $10 million in part by laying off 64 employees and demoting 29 others in order to keep the city afloat while maintaining service levels. Incidentally, due to the professional manner in which the layoffs and demotions were handled, not one has filed a claim or lawsuit as a result. While we recognize and have

addressed the past habits of overspending, it is important to understand the context in relation to other issues we were facing at the time.

Paragraph 3 – I would agree were it not for the judgment awarded in the Carter & Burgess lawsuit. Based on the definitive nature of the jury award, awarding over $52 million for each of five causes of action, it is highly likely we will prevail at the appellate level. If we do not, we are well aware of the need to ensure repayment of those funds in order to avoid the potential violations you cite.

Paragraph 4 – The City has shared the documentation used to determine the best fair estimate of unused property tax revenues. This report misinterprets the conditions in the LAFCO resolution as discussed earlier in this response.

Page 2-2 The interfund loan policy submitted by the former Finance Director was one of over 200 policies he and his contract staff member were working on. In the face of significant budget deficits and threats from General Electric with regard to the power equipment discussed in Section 3 an interfund loan policy was not high on the priority list. State law is instructive with regard to interfund loans and we relied on existing legislation rather than spending energy trying to create something locally. As a Director, it would have been a normal and routine practice to submit items for the Council agenda by simply attaching a cover sheet. He regularly did this so it is unclear why he would have sought to have others do this work in his stead.

During his tenure, which included 14 months of work directly with Capporicci & Larson the former Finance Director did nothing to address the actual interfund borrowing which was originally cited by Capporicci & Larson as problematic , referenced in the HMR report. Rather than spending time drafting policies, he could have better spent his time actually addressing the issue raised by bringing formal loan documents to the City Council. And yet, the HMR report gives deference to his prioritizing implying it is superior.

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Page 2-8 There are no long term loans from the General Fund to SCLAA. At year end, a short term advance was used to address negative balances in SCLAA. That amount has since been repaid and may exist again at the end of this fiscal year, although annually

this amount has been reducing. It is not a foregone conclusion that the General Fund will be used again for coverage.

Page 2-9 The statement, "the City essentially misrepresented the financial state and condition" is exaggerated and not accurate. The documentation of a formal loan at the amount needed at the time the loan is approved is intended to accurately reflect the current status of the borrowing.

Page 2-10 Paragraph 1 – A majority of the interfund loans will be repaid upon receipt of the Carter & Burgess lawsuit which is anticipated to be completed during FY 2012-2013, approximately $45 million. Long term SCLAA tax increment would suggest the ability for SCLAA to repay loans in the future.

Paragraph 3 – The City has analyzed the use of restricted funds and determined borrowing of these funds is allowable. The City is aware that converting that borrowing to a permanent subsidy through action or inaction would likely violate state law and has no intention of doing so.

Page 2-11 This section is unnecessarily presumptuous. City Management is well aware that the use of restricted funds for purposes other than they were collected could constitute a violation of state law. The comment, "if the borrowed funds are repaid", shows that the HMR is aware that the actions taken thus far are not a violation of law and could only become so if not repaid. While a welcome reminder, current City management is well aware of the need to repay the loans rather than allowing them to become permanent transfers.

Further, the transfer of Sanitary District funds to the General Fund does not violate the LAFCO resolution and in fact was done in strict compliance with same. Condition 5 states, "All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, … shall accrue and be transferred to the successor agency;".

Condition 8, which the HMR report relies on, can only be interpreted in the manner HMR does by ignoring Condition 5. When LAFCO considered the item, the Condition 8 subject matter was not deemed important enough by LAFCO staff to include in the recommendations but Conditions 5 and 9 were included. Those items define the different handling of property tax revenue and funds collected for capital purposes. A copy of the full recommendations is attached and below are the relevant excerpts:

> b.: All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, including delinquent taxes and any and all other collections or assets of the District to be dissolved shall accrue and be transferred to the successor agency, the City of Victorville; and,

e.: 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, Capital Reserve Accounts, Capital Improvement Accounts, Sewer Connection Fees, etc. on June 30, 2008 shall be transferred to the City as the successor agency and the successor agency shall separately maintain such funds in accordance with the provisions of Government Code Section 57462;

These recommendations were unanimously adopted by the Commission in their entirety. The phrase "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 service," (emphasis added) specifically refers to capital reserves. Property taxes by definition are general in nature and not restricted. The City has received no notice of inquiry into this issue from LAFCO, let alone a notice of violation.

Paragraph 5 – The funds used for this loan were from reserves of the former VVWD, not as a result of any action taken by the City or the subsidiary district. It would be inappropriate to consider these capital fees when setting operational rates whether they had been loaned or not.

Page 2-12 Paragraph 1 – Stating that taxpayer groups "could argue" the loans "may never be repaid" is presumptuous. If the five year term of the loan had expired without repayment, this may be an accurate statement. To make it now is misleading and unnecessarily encourages taxpayer action against Victorville.

Paragraph 6 – It is unfortunate that past accounting records did not clearly differentiate property tax from user fees and that they did not specifically call out property taxes in some 14 instances. It is inappropriate at best to criticize current staff for the lack of detail that occurred between 1970 and 1998, prior to their employment with the City.

Page 2-13 Paragraph 2 – The $2,768,648 was a best estimate the amount of cash on hand that represented capital fees collected from staff given an impossible assignment of trying to separate the property tax from other operating and capital reserves. Your comment in the previous paragraph suggests it was reasonable yet the rest of this section seems to criticize the work.

The remaining section inaccurately reflects the action of LAFCO, see comments above. The application of Condition 8 would come only at the expense of Condition 5. If the intent were as the report suggests, there would be no need for Condition 5 or Recommendation "a." from the LAFCO staff report.

Page 2-14 These conclusions should be revised following revisions of the detailed sections listed above. They contain unnecessarily presumptuous and misleading comments.

Section 3 In general, I will not be addressing the comments regarding the Victorville 2 Power Plant as I was not involved with that project until February 2009.

Page 3-1 The City rightfully relied on Carter & Burgess to perform a risk analyses, business plans, and budgeting. The failure on Carter & Burgess' part was the basis for the lawsuit and a key factor in the City being awarded over $52 million.

Page 3-2 Paragraph 2 – With regard to the Foxborough Power Plant, the City placed its trust in experts at Carter & Burgess for the risks, plans, and controls referenced. The violation of that trust was the basis for the lawsuit which awarded the City over $52 million in additional to attorneys' fees.

Page 3-6 Paragraph 3 – Inland Energy is aware that their bills will only be paid as a result of the ultimate financing of the plant following sale of the development rights to a third party. To use the phrase, "is unlikely to occur until the City is in a healthier fiscal condition" is misleading as they will only be paid out of proceeds from the sale of the development rights if and when that occurs. Please see the attached email string reaffirming and clarifying this issue (please read back-to-front). Since that time, Inland has indicated it has reached agreement with QGen on this issue and it will not result in a change to the compensation due the City in the purchase and sale agreement.

HMR has not been provided with documentation showing the amount that has been billed during that time because they have not asked for it. The request we received was for invoices paid to Inland, not unpaid invoices. If HMR would still like this documentation we can provide it. You will find them just as poorly documented as previous invoices.

Page 3-8 Paragraph 4 – The beginning of this paragraph seems to insinuate my defense of the profit clause. If this sentence if referring to statements made by me, I clearly indicated I was told it mirrored the previous agreement but had no knowledge of the actual terms of that agreement.

Page 3-14 The City rightfully relied on Carter & Burgess to perform a risk analyses, business plans, and budgeting. The failure on Carter & Burgess' part was the basis for the lawsuit and a key factor in the City being awarded over $52 million. Some of these comments may be inappropriately affixing blame on the City converse to the unanimous decision of the jury following a seven week trial with mountains of data. HMR should rely more on the conclusions of the much more in depth analysis required of the jurors than it has performed itself with limited data.

Page 3-17 These conclusions should be revised following revisions of the detailed sections listed above.

Sections 4&5 will be reviewed by City Attorney Andre de Bortnowsky as he is better equipped to respond in those areas. I was not involved with those projects and issues. My only comment is the vague reference to "City manager or city management" as discussed on the narrative portion of this memorandum.

Page 4-7 Chart – The chart states, "Total Amount Loaned According to City Manager's Office." This chart was not prepared by the City Manager's Office. I believe it was compiled based on loan documents received.

Once again, thank you for the opportunity to review the draft audit. I hope that working together to correct these issues will result in an accurate final report that will be informative for the people of Victorville. It is much anticipated. Thank you also for your commitment to issuing a report. Regardless of whether we agree or disagree on every issue raised, the publication is an important first step to rebuilding the City.

Sincerely,

Douglas B. Robertson
City Manager

LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

215 North D Street, Suite 204
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DATE: JULY 9, 2008

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #12: LAFCO 3073 – Dissolution of the Victorville Sanitary District

INITIATED BY:

Council Resolution of the City of Victorville

RECOMMENDATION:

Staff recommends that the Commission approve LAFCO 3073 by taking the following actions:

1. Determine that LAFCO 3073 is statutorily exempt from environmental review, and direct the Clerk of the Commission to file a Notice of Exemption within five (5) days;

2. Approve LAFCO 3073, Dissolution of the Victorville Sanitary District, subject to the following terms and conditions:

   a. The City of Victorville shall be designated as the successor agency to all rights, responsibilities, properties, equipment, contracts, assets and liabilities, obligations, and functions of the Victorville Sanitary District; and,

   b. All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, including delinquent taxes and any and all other collections or assets of the District to be dissolved shall accrue and be transferred to the successor agency, the City of Victorville; and,

   c. All previously authorized charges, assessments, and/or taxes of the Victorville Sanitary District shall be continued by the City of Victorville; and,

   d. The Appropriation Limit of the City of Victorville shall be adjusted based on the amount of property tax revenues that will be shifted to the City as a result of this

dissolution, estimated to be $1,500,000 for Fiscal Year 2007-08; and,

e. 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, Capital Reserve Accounts, Capital Improvement Accounts, Sewer Connection Fees, etc. on June 30, 2008 shall be transferred to the City as the successor agency and the successor agency shall separately maintain such funds in accordance with the provisions of Government Code Section 57462; and,

f. The City of Victorville shall defend, indemnify, and hold harmless the San Bernardino Local Agency Formation Commission in making these determinations; and,

g. Authorize the completion of these proceedings pursuant to Government Code Section 56854, without an election, unless at least 25% of the registered voters or 25% of the landowners within the District submit written protest to this proposal at the protest hearing.

3. Adopt LAFCO Resolution #3013 setting forth the Commission findings and determinations for the proposal.

BACKGROUND:

The Victorville Sanitary District (hereafter Victorville SD) was originally formed on November 13, 1923 as an independent Special District. In January of 1981 the City of Victorville and the Board of Directors of the Victorville Sanitary District submitted a joint application requesting that the district be established as a subsidiary district of the City. The proposal, LAFCO 2081, was determined to be abandoned in February 1982 following numerous continuances to allow for decisions to be made related to the operation of the Victor Valley Wastewater Reclamation Authority Treatment Plant. These determinations were necessary in order for the District to take off-line its existing treatment facility. The proposal was re-initiated by the City and District in March of 1982 and the District officially became a subsidiary District of the City of Victorville on August 10, 1982.

On April 19, 2005, the City Council of the City of Victorville initiated the dissolution of its three subsidiary districts – Fire, Park and Recreation and Sanitary – by a single resolution, Resolution No. 05-70 and submitted the proposals for Commission consideration in August 2006. Review of the Plan for Service by LAFCO staff and interested and affected agencies required the submission of supplemental information and a revised Plan for Service prepared by the City of Victorville's consultants was accepted in February 2008. Attachment #1 to the staff report provides an illustrative map of the area of the Victorville SD proposed for dissolution and Attachment #2 provides a copy of the City's initiating resolution, Plan for Service and Application Forms. The boundaries of the Victorville SD are shown below.

LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

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CERTIFICATE OF COMPLETION

I, Anna M. Raef, Clerk to the Local Agency Formation Commission for the County of San. Bernardino, hereby certify that the **Local Agency Formation Commission** has completed a change of organization.

The short title of the action is: **LAFCO 3073 – Dissolution of Victorville Sanitary District (Subsidiary District of the City Of Victorville)**

The name of each city and/or district involved in this change of organization or reorganization and the kind or type of change of organization ordered for each city and/or district are as follows:

City or District	Type of Change of Organization
Victorville Sanitary District	Dissolved

The above-listed district is located within the following county: County of San Bernardino.

The change of organization was ordered without an election. Resolution No. 3021 ordering the change of organization, a copy of which is attached as LAFCO Exhibit "A", was adopted by the Executive Officer of the Local Agency Formation Commission on September 11, 2008. The terms and conditions of the change of organization, as set forth in the LAFCO resolution approving the change, are contained in the attached resolution. A map of the dissolution area is set forth in Exhibit "A" to Resolution No. 3021.

LOCAL AGENCY FORMATION COMMISSION
CO. OF SAN BERNARDINO

KATHLEEN ROLLINGS-McDONALD
Executive Officer

By: Anna M Raef
Anna M. Raef
Clerk to the Commission

Dated: September 16, 2008

THE EFFECTIVE DATE OF THIS ACTION IS SEPTEMBER 16, 2008

LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

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PROPOSAL NO.: **LAFCO 3073**

HEARING DATE: **September 11, 2008**

RESOLUTION NO. 3021

A RESOLUTION OF THE EXECUTIVE OFFICER OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SAN BERNARDINO ORDERING LAFCO 3073 – DISSOLUTION OF VICTORVILLE SANITARY DISTRICT (SUBSIDIARY DISTRICT OF THE CITY OF VICTORVILLE)

WHEREAS, this action is being taken pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.); and,

WHEREAS, by policy adopted on December 20, 2000, and amended on November 21, 2001, the Local Agency Formation Commission of the County of San Bernardino ("the Commission") has delegated authority over all protest proceeding functions to the Executive Officer; and,

WHEREAS, the Commission adopted its Resolution No. 3013 on July 18, 2008, making determinations and approving the proposed dissolution of territory described in Exhibit "A" attached hereto and by this reference incorporated herein; and,

WHEREAS, the terms and conditions for LAFCO 3073, as approved by the Commission, are as follows:

CONDITIONS:

Condition No. 1. The boundaries of this change of organization are approved as set forth in Exhibit "A" attached;

Condition No. 2. The following distinctive short-form designation shall be used through this proceeding: LAFCO 3073;

Condition No. 3. The effective date of this dissolution shall be the date of issuance of the Certificate of Completion;

Condition No. 4. The City of Victorville is hereby designated the Successor Agency to the Victorville Sanitary District and shall function under and carry out all authorized duties and responsibilities assigned and required by applicable laws. Upon the effective date of this dissolution, the legal existence of the Victorville Sanitary District shall cease, except as otherwise required by law, and the Successor Agency shall succeed to all rights, duties, responsibilities, properties (both real and personal), contracts, equipment, assets,

liabilities, obligations, functions, executory provisions, entitlements, permits and approvals of the Victorville Sanitary District;

Condition No. 5. All property tax revenue attributable to the District prior to the calculations required by Section 98.6 of the Revenue and Taxation Code, including delinquent taxes and any and all other collections or assets of the District to be dissolved shall accrue and be transferred to the successor agency;

Condition No. 6. All previously authorized charges, fees, assessments, and/or taxes of the Victorville Sanitary District shall be continued and assumed by the City of Victorville, as the successor agency, in the same manner as provided in the original authorization pursuant to the provisions of Government Code Section 56886(t);.

Condition No.7. The Appropriation Limit of the City of Victorville shall be adjusted based on the amount of property tax revenues that will be shifted to the City as a result of this dissolution, estimated to be $1,500,000 in Fiscal Year 07-08;

Condition No. 8. The City of Victorville, as Successor Agency, shall accept all system facilities transferred from the Victorville Sanitary District in "as is" condition, without any payment or repair obligation from the assets of the District [Government Code Section 56886(h)]. All incidental liabilities, such as accounts payables, contract obligations and customer deposits, shall be transferred to the City of Victorville as the Successor Agency. 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.

Condition No. 9. 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 service, 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;

Condition No. 10. Upon completion of the reconsideration period specified by Government Code Section 56895(b), the Executive Officer shall complete the protest proceedings pursuant to Government Code Section 56854, without an election, unless at least 25% of the registered voters or 25% of the landowners within the District submit written protest to this proposal at the protest hearing;

Condition No. 11. Until duly revised by the City of Victorville, and unless otherwise expressly provided herein or legally required, all ordinances, resolutions, rules and regulations, policies, procedures, and practices existing on the effective date of this dissolution shall govern the wastewater collection and treatment service activities provided by the Successor Agency;

Condition No. 12. Pursuant to the provisions of Government Code Section 56885.5(a)(4), the City Council of the City of Victorville, as the ex-officio Board of Directors of the Victorville Sanitary District, is prohibited from taking the following actions unless an emergency situation exists as defined in Section 54956.5:

1. Approving any increase in compensation or benefits for members of the governing body, its officers, or the executive officer of the agency;

RESOLUTION NO. 3021

2. Appropriating, encumbering, expending or otherwise obligating, any revenues of the agencies beyond that provided in the current budget at the time the reorganization is approved by the Commission;

Condition No. 13. The City of Victorville, applicant, shall indemnify, defend, and hold harmless the Commission from any legal expense, legal action, or judgment arising out of the Commission's approval of this proposal, including any reimbursement of legal fees and costs incurred by the Commission.

WHEREAS, the reason for this proposal is to eliminate a special district previously established as a subsidiary district of the City of Victorville and to fully integrate its funding mechanisms and functions with the City of Victorville;

WHEREAS, on July 18, 2008, the Commission determined that this proposal is statutorily exempt from environmental review since it does not have the potential for resulting in physical changes in the environment, directly or ultimately, and directed its Clerk to file the Notice of Exemption within five days; and,

WHEREAS, a public hearing on this dissolution was called for and held by the Executive Officer of this Commission on September 11, 2008, at the time and place for which notice was given, and at the hearing the Executive Officer heard and received all oral and written protests, objections or evidence which were made, presented or filed;

NOW, THEREFORE, BE IT RESOLVED, that the Executive Officer hereby determines and orders as follows:

SECTION 1. No written protests were filed by landowners or registered voters during the protest period;

SECTION 2. The regular County assessment roll is utilized by the City of Victorville;

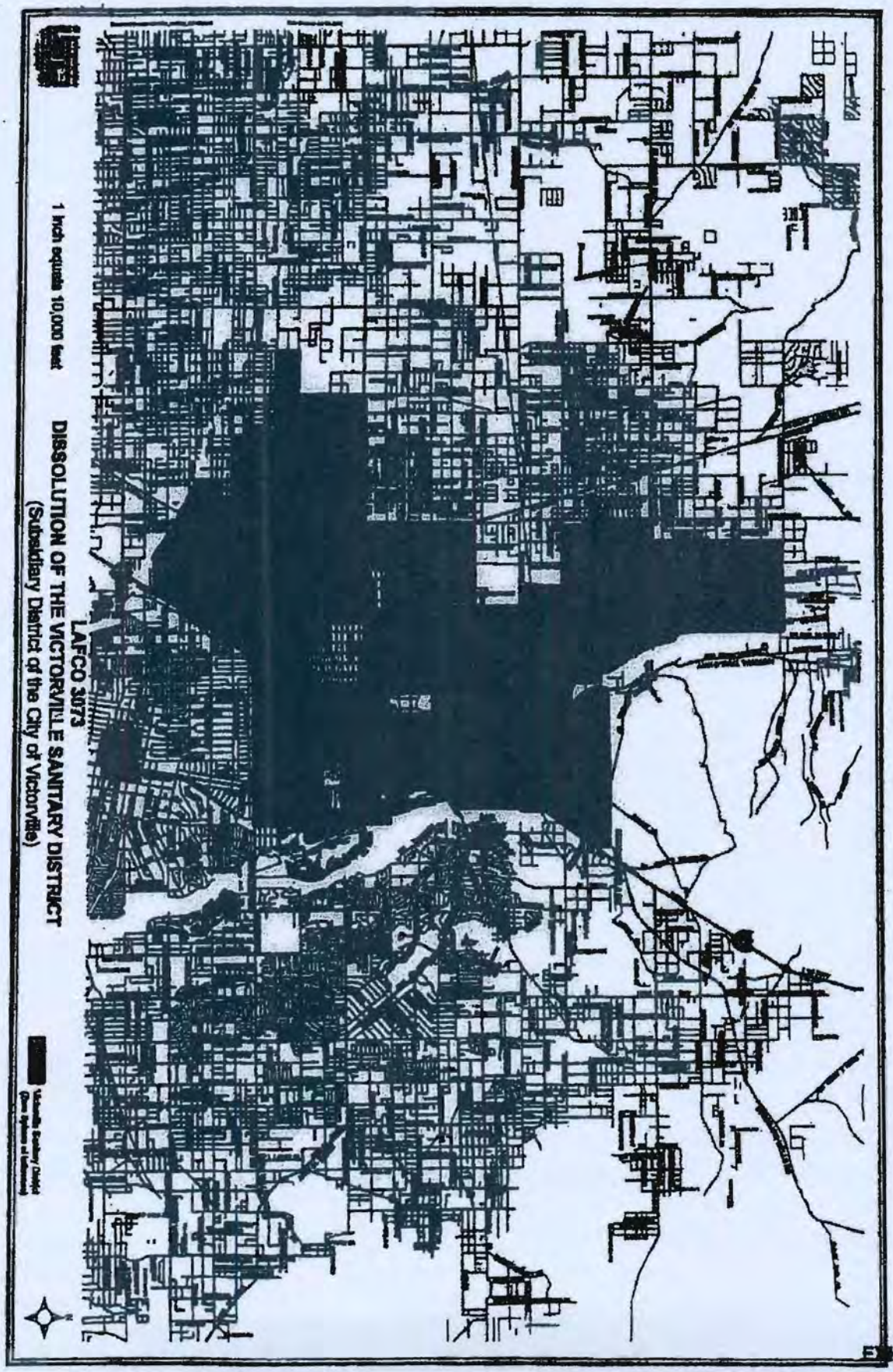
SECTION 3. The district being dissolved has no existing general bonded indebtedness and/or contractual obligations;

SECTION 4. The Executive Officer, on behalf of the Commission, hereby orders the dissolution of the territory described in Exhibit "A."

SECTION 5. The Executive Officer shall cause to be prepared and filed a Certificate of Completion, as required by Government Code Sections 57176 through 57203, and a Statement of Boundary Change, as required by Government Code Section 57204.

ADOPTED ON SEPTEMBER 11, 2008

KATHLEEN ROLLINGS-McDONALD
Executive Officer


1 inch equals 10,000 feet
LAFCO 3073
DISSOLUTION OF THE VICTORVILLE SANITARY DISTRICT
(Subsidiary District of the City of Victorville)

BOE-400-TA REV. 1 (2-00)

STATEMENT OF BOUNDARY CHANGE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

Please mail to the Board of Equalization, Tax Area Services Section, 450 N Street, MIC:59, P.O. Box 942879, Sacramento, California 94279-0059.

B.O.E. File No.: _____

County: San Bernardino	County # 36	Acreage: 71.65	Fee: $ 0	Res./Ord. No.:	3021
Conducting Authority: LAFCO				LAFCo. Res.:	3013
Short Form Designation: LAFCO 3073 - Dissolution of Victorville Sanitary District				Effective Date:	9/11/08

1. Type of action: (check one only)

	01 Annexation to district		06 Consolidation of TRA's		10 Redevelopment
	02 Annexation to city		07 Detachment from district		11 Name change
	04 City incorporation	✓	08 Dissolution of district		12 Reorganization
	05 Consolidation of district		09 Formation-District		13 School district change

2. Principal City/District(s) affected by action:

DISTRICT NAME	DISTRICT NAME
Victorville Sanitary District	

3. Affected territory is legally:

✓	Inhabited	✓	Developed	**Number of Areas:** 1
	Uninhabited		Undeveloped	

4. The affected territory:

	Will be taxed for existing bonded indebtedness or contractual obligations as set forth by the terms and conditions as stated in the resolution.
✓	Will not be taxed for existing bonded indebtedness or contractual obligations.

5. Election:

	An election authorizing this action was held on _____ date
✓	This action is exempt from election.

6. Enclosed are the following items required at the time of filing:

	Fees	✓	Map(s) and supporting documents
	Legal description		Assessor parcel number(s) of affected territory
✓	Resolution of conducting authority		County auditor's letter of TRA assignment (consolidated counties only)
✓	Certificate of Completion (LAFCO only)		

7. City boundary changes only:

	Map of limiting addresses (2 copies)		Vicinity maps (2 copies)
	Alphabetical list of all streets within the affected area to include beginning and ending street numbers		
	Estimated population is:		

8. Required: According to section 54902 of the Government Code, copies of these documents must be filed with the county auditor and county assessor.

Board of Equalization will acknowledge receipt of filing to:

NAME Anna Raef	
TITLE Clerk to the Commission	chk #:
AGENCY Local Agency Formation Commission	
STREET 215 N. D St., Suite 204	amt:
CITY San Bernardino / ZIP CODE 92415	
TELEPHONE NO. (909) 383-9900 / FAX NO. (909) 383-9901	
E-MAIL ADDRESS araef@lafco.sbcounty.gov	ltr #:
SIGNATURE OF AGENCY OFFICER Anna Raef / DATE 9/16/08	

Doug Robertson

From: Doug Robertson
Sent: Monday, January 09, 2012 10:32 AM
To: 'Tom Barnett'
Cc: Buck Johns; Andre De Bortnowsky
Subject: RE: VV2 Invoice Copies

Tom,

If all costs had been reimbursed over the past 30 months they would naturally be included in the third party development costs to be paid by QGen. Therefore, I would expect them to be covered as part of the deal. I don't have a preference as to whether those are paid by QGen directly or through us, but if it is to be through us then they should come at the financial close of the deal not as part of one of the milestone payments. I have not once asserted that Inland's outstanding invoices shouldn't be paid at all. If they are to come from the City, we need to have documentation of reimbursement from QGen. Quite honestly, it might be easier for all involved if they paid you directly but I'm open to discussion on that.

As I said in my first email, I recall discussing Inland getting paid at financial close. My last paragraph suggests that we sit down to discuss these payments and determine the appropriate payment amount schedule. There is no need to appeal to me "as a fair and ethical man" to do something I've already offered. Perhaps there is a misunderstanding with the intent of your first email but the sentence, "Now that it appears QGen is going to make a milestone payment to the City in connection with moving forward to acquire the Project, Inland expects to be reimbursed for these outstanding invoices as soon as that transaction occurs.", indicates to me a firm demand for immediate payment. That is precisely what drew my ire.

Obviously this issue needs to be resolved as part of the overall deal with QGen. We haven't heard from QGen after submitting the final costs estimates. I look forward to quickly resolving this issue and any others so we can finalize this deal and transfer maintenance of the permits to someone who can afford to keep them going.

-Doug

Douglas B. Robertson
City Manager
760-955-5029 (v)
760-269-0015 (f)

From: Tom Barnett [mailto:tbarnett@inlandenergy.com]
Sent: Thursday, January 05, 2012 6:10 PM
To: Doug Robertson
Cc: Buck Johns
Subject: RE: VV2 Invoice Copies

Doug:

I must say I was discouraged by the tone of your response to my earlier e-mail. I recognize that part of the problem lay in my lack of clarity and for that I apologize – Inland is not insisting upon payment for all of the past due invoices out of the first monies received by the City from QGen – we understand that the City is still

experiencing financial and political stresses and we are happy to discuss a schedule for payment; however, Inland does feel that it is appropriate for the City to acknowledge that this is an obligation that will be paid . . .at some point under a defined set of conditions. In that sense I was confused by your apparent assertion that it was somehow not the City's obligation to ultimately pay Inland's outstanding invoices for work done in good faith pursuant to an existing contract.

Doug, you and I have worked together for more than a decade and I believe that you are one of the relatively few City officials who have had the courage throughout to acknowledge that Inland has provided valuable services to the City during that time. I believe you recognize that the work covered by these invoices represents good and valuable services rendered to the City – as a recent very pertinent example, I don't believe QGen would be where they currently are without Inland's help. I readily acknowledge that we both agreed to defer reimbursement for post July 2009 services as an accommodation to the City. However, I don't believe that meant Inland would not receive payment until some indefinite future date or circumstances occurred.

Therefore, I appeal to you as the fair and ethical man I know you to be that Inland and the City should sit down very soon to resolve this issue with some certainty. Please let me know how quickly such a dialog can be opened. It would obviously not be in either of our best interests to allow this issue to become a political or media football.

I look forward to your thoughts.

Tom

Thomas M. Barnett
Executive Vice President
Inland Energy, Inc.
Ofc: (949) 856-2200
Cell: (949) 466-7317

From: Doug Robertson [mailto:DRobertson@CI.VICTORVILLE.CA.US]
Sent: Wednesday, January 04, 2012 12:14 PM
To: Tom Barnett; Jenele Davidson
Cc: Buck Johns; Jennifer Thompson
Subject: RE: VV2 Invoice Copies

Tom,

You sent this email to Jennifer Thompson instead of Jenele Davidson as intended so I have copied her on my response. I am still researching the record in regards to the exact language used when we discussed Inland working "at risk", however I wanted to get a response back to you as soon as possible considering this came in after we were closed for the holidays so it hasn't had a response in nearly two weeks.

Thank you for sending over the back up documentation Jenele requested. We need to discuss the Inland release and these requests for payment at this time. QGen has indicated their intent to purchase the project which is great news, however, the costs came in significantly higher than anticipated and therefore there is likely to still be some negotiation. The intent of the proposal from QGen was to reimburse our costs and provide a development fee over and above that amount. Any costs incurred by Inland should be part of that discussion and should not come from the City's reimbursement.

I understand Inland has incurred costs over the last 30 months that have not been reimbursed and I understand your desire to recover those costs, however, I am offended by the suggestion that your cost recovery should come at the expense of the City. The City has documented costs of approximately $25 million plus the losses incurred on the GE contract. After over $75 million in investment into this project, the majority of which has been written off and unrecoverable, it is reprehensible to think Inland would expect to receive half of the first $500,000 the City receives especially in light of the fact that it does not guarantee a project or any future payment from QGen.

If this deal goes forward, the three parties, the City, QGen , and Inland need to sit down to determine the appropriate payment amount and schedule. I recall in our original discussions the concept of Inland getting reimbursed to costs at financial close. Obviously, the proposed deal is different than originally conceived and the City is open to discussing an appropriate payment schedule but not at our expense. The deal points call for full reimbursement of the City's costs and does not contemplate the City incurring the additional costs of Inland's interim work only to be further reimbursed at a later date if the project continues to move forward.

-Doug

Douglas B. Robertson
City Manager
760-955-5029 (v)
760-268-0015 (f)

From: Tom Barnett [mailto:tbarnett@inlandenergy.com]
Sent: Friday, December 23, 2011 9:38 AM
To: Jennifer Thompson
Cc: Doug Robertson; Buck Johns
Subject: FW: VV2 Invoice Copies

Jenele:

Please find attached the two invoices in question.

Also related to the QGen situation, I have attached copies of the Inland invoices sent to the City in December, 2009 and November, 2010 for services performed between July 1 and December 31, 2009 and January, 2010 through September 2010, respectively. These invoices remains unpaid; however, by mutual agreement (Inland and the City), costs incurred after July 1, 2009 were to be deferred until such time as the Project's development effort was transferred to a private, third party which would begin making payments to the City for prior costs. Now that it appears QGen is going to make a milestone payment to the City in connection with moving forward to acquire the Project, Inland expects to be reimbursed for these outstanding invoices as soon as that transaction occurs.

Please note that Inland has continued to work on the City's behalf in connection with the VV2 from October 1, 2010 through December, 2011; I will prepare an invoice for this period and submit it shortly.

If you have any questions, please contact me.

Tom

Thomas M. Barnett
Executive Vice President
Inland Energy, Inc.
Ofc: (949) 856-2200
Cell: (949) 466-7317

From: Jenele Davidson [mailto:JDavidson@ci.victorville.ca.us]
Sent: Thursday, December 22, 2011 9:33 AM
To: Tom Barnett
Cc: Stephan Longoria
Subject: VV2 Invoice Copies

Hello Tom,

Doug Robertson has requested that I gather the back-up documentation to support the third party development costs incurred for the VV2 project. I have been unable to locate copies of the following Inland Energy invoices in the City's records:

Invoice No.	Amount	Date Paid	City Check No.
VV2-11-014	$236,056.34	12/11/2006	582357
VV2-12-015	$276,429.40	01/22/2007	583463

Does Inland retain copies of invoices/back-up going back that far? If so, can you please provide copies? This request is related to the QGEN matter, so we would appreciate a response at your earliest convenience.

Thank you, and happy holidays!

Jenele Davidson
Project Coordinator
City of Victorville- Public Works
Phone: (760) 243-6343
Fax: (760) 269-0032

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Suite 1015
Calabasas, CA 91302
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Fax 818.704.4729

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760.770.0873
Fax 760.770.1724

COPY

Direct e-mail address:
adebortnowsky@gdqlaw.com

Reply to:
Calabasas Office

CONFIDENTIAL

April 19, 2012

Grand Jury Foreman
Members of the Grand Jury
SAN BERNARDINO GRAND JURY
351 N. Arrowhead Ave., Rm. 200
San Bernardino, CA 92415-0243

Re: Limited Scope of Performance Audit of the Finances of the City of Victorville – Draft Report Dated April 13, 2012

Dear Foreman and Members of the Grand Jury:

I appreciate the opportunity to review the Draft Audit Report prepared by Harvey M. Rose and Associates, LLC ("Harvey Rose") and to participate in the Exit Interview on April 20, 2012. I have reviewed the Draft Report and have prepared an attached Memorandum to address specific points related to the Report.

I am drafting this correspondence to address several general issues which I think are important and should be considered prior to release of any final report.

First, as I am sure you are all aware, the initial request for a "forensic audit" of the City of Victorville and its financial position was requested by Mayor Ryan McEachron shortly after he first took office in 2008. His purpose and intent was to address third party allegations that laws had been breached and that corruption was occurring within City Hall. In response to that request, the 2010 Grand Jury initiated an independent audit and retained the services of Mr. Kessler, who was engaged to undertake a full scale investigation of the City of Victorville and its various subsidiary entities.

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After two years of investigation, there was no mention of the City of Victorville or it subsidiary entities in the 2010 Grand Jury Report. Subsequently, the 2011-2012 Grand Jury initiated its own investigation as a follow up to the prior efforts of Kessler and the prior Grand Juries. An initial interview was held with representatives from the City of Victorville along with my office and representatives of Harvey Rose. During those discussions, the City made it clear that it was aware of several of the prior concerns as to its past perceived management and financial liabilities and associated exposure. As was made clear during the initial interview and in connection with subsequent interviews with members of Harvey Rose, the City has initiated numerous reform mandates and has addressed several of the items that were previously brought to the attention of the prior Grand Jury. Unfortunately, the current draft audit makes only minimal mention of those reforms and does not take into account the change of management, the change of policy and the change of direction initiated by the City of Victorville. This is disappointing, given that the majority of the report tends to focus on transactions that occurred more than five years ago and which have been subsequently addressed ad nauseam.

In the Audit there is no mention of corruption and it seems only appropriate that an affirmative statement that no evidence of corruption has been found in the three-year process to which the City has been subjected. Further, although Harvey Rose makes vague assertions that laws may have been violated there is no clear evidence of that fact. Harvey Rose, in fact, is unlikely to have the requisite legal competence to make such a determination and their vague and unsupported assertions serve only to damage the reputation of the City and its prior leaders.

The Draft Report makes no mention of the fact that the City is under new management and control and has implemented numerous policies and procedures to address these issues. The report tends to re-hash previously investigated transactions and facts which have been the subject of numerous press articles and public comment.

While this may be a legitimate role of this Grand Jury, its seems inconsistent with the stated representations at the introductory meeting whereby it was indicated that the Harvey Rose firm would approach this audit with the hopes of providing guidance and recommendations as to how the City could best address past practices. Unfortunately, the Draft Report redacts all of the proposed recommendations and therefore, we would request and hope that the corrective actions taken to date, as well as the additional recommendations, become the emphasis of the report.

The second major concern with the Audit Report is that the credibility of the entire report must be called into question by several very basic and fundamental errors or misrepresentations in the Harvey Rose report. The first of those occurs in the introductory section on Page I-3, where the

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report states that "Victorville is a general law city, meaning when that when the City incorporated, City leaders chose to use the existing state codes as they relates to laws, functions, and powers of the Mayor and the City Council, rather than write a charter".

The City of Victorville is not a general law city, but is instead a charter city functioning under the provisions of its charter and has been doing so since 2008. The City's charter has a profound effect on the laws which apply to it and the methods it may use in a number of areas. For Harvey Rose to miss this critical and fundamental issue brings into question any conclusion, or to put it more accurately, any innuendo, in the report regarding alleged illegalities. A second major error is that the report indicates that the Victorville Redevelopment Agency has, as one of its adopted redevelopment project areas, "the Victor Valley Project Area". The Victor Valley Project Area is a redevelopment project area of the Victor Valley Economic Development Authority, not of the Victor Valley Redevelopment Agency. This is a fundamental misstatement of fact that impacts the entire report.

Another significant issue of concern with the report is that Harvey Rose has taken the liberty of interpreting the applicability of AB 1x 26 and its impacts on the City of Victorville. There is absolutely no support for Harvey Rose's conclusions, either in the specific provisions of AB 1x 26 or in connection with any of the analyses undertaken of AB 1x 26 and its applicability to municipalities. In fact, the League of Cities has challenged the application of AB 1x 26 and continues to seek amendments and clarifications as to the provisions and applicability of AB 1x 26 to redevelopment agencies and municipal governments. For Harvey Rose, who are not attorneys, to interpret the applicability of the provisions of AB 1x 26 and apply it to the City of Victorville is incomprehensible at this time.

Lastly, of general concern is a basic misunderstanding of the relationships between VVEDA and the Southern California Logistics Airport Authority and failure to address specific provisions of the Joint Powers Agreement in which there is (i) authority for the Airport Authority to expend funds on "improvements adjacent to and directly benefitting the GAFB parcels....."; and (ii) authority for Victorville to use tax increment revenues generated from its portion of the VVEDA Project Area for projects that benefit Victorville. The report in several instances indicates and opines that Victorville, through the Airport Authority, has inappropriately funded projects inconsistent with the terms of the JPA Agreement and the redevelopment plan, which is completely false. Moreover, based on this misrepresentation, the Audit Report recommends "the JPA members of the VVEDA Commission should consider establishing a reformed SCLAA Board of Directors with members from all JPA jurisdictions, to ensure full, fair and proportionate representation of each individual jurisdiction's interests in the Board." The parties to VVEDA made policy decisions 15 years ago, based upon a complicated set of facts, not the least of which was the City of Victorville's willingness to solely fund early VVEDA operations and start-up costs, including legal fees required to fight a plethora of

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suits against VVEDA and its acquisition of the former George Air Force Base. This fact, along with many others, led to the agreements which presently exist. Harvey Rose, without the benefit of any of the financial and political factors, takes it upon itself to recommend changes in the agreements and the roles of the member jurisdictions, essentially substituting its judgment for that of three city councils and the Board of Supervisors. If, in fact, the City of Victorville has ever achieved any advantage in its role with VVEDA and/or SCLAA, which the Harvey Rose Audit makes clear it did not, it would not seem unreasonable given Victorville's 20 years of financial burden associated with undertaking the reuse of GAFB. The recommendations that the parties restructure their agreements is far beyond the role of Harvey Rose and its responsibility in this matter. More importantly, such statements and opinions are highly incendiary and are likely to result in disputes and litigation between the communities of the Victor Valley in direct contravention of the intent and purposes of the founding members of VVEDA. The ramifications of such rash and tactically incorrect opinions must be considered, especially in light of the previously stated goal of the Grand Jury, which was to make recommendations to better enhance the management and fiscal affairs of the City.

As you will note, I have attached specific comments to specific provisions of the Audit Report. I anticipate that these will be supplemented by additional comments from the City Manager who is also in receipt of the Audit Report.

Very truly yours,

GREEN de BORTNOWSKY & QUINTANILLA, LLP

Andre de Bortnowsky

ADB:law
enc
VVCA\0001-10\LTR\11-3

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760.770.0873
Fax 760.770.1724

Direct e-mail address:
adebortnowsky@gdqlaw.com

Reply to:
Calabasas Office

MEMORANDUM

TO: Grand Jury Foreman and Members of the Grand Jury

FROM: Andre de Bortnowsky, City Attorney for the City of Victorville

DATE: April 19, 2012

RE: Comments and Concerns Related to Draft Limited Scope Performance Audit of the Finances of the City of Victorville Prepared by Harvey M. Rose and Associates Dated April 13, 2012

The following are the City Attorney's office's comments to the draft Limited Scope Performance Audit (the "Audit") provided in anticipation of an Exit interview to be held on April 20, 2012. Our office has received a confidential copy of the draft Audit and have reviewed it, and have the following comments:

Executive Summary – Page ii

As part of the Executive Summary, the Audit indicates that "SCLAA has already defaulted on a debt payment". While this may have been technically correct, the Audit fails to mention that the default of the debt payment has been cured and that it was a default directly caused by the California Supreme Court's stay of the implementation of Assembly Bill x1 26 ("AB 26") which affected most (if not all) redevelopment agencies in the State of California. In other words, the "technical default" was caused by timing discrepancies between receipt of tax increment and the stay imposed by the Matosantos litigation. The Audit is misleading by failing to address the unique nature of the default which was not caused by a failure of the City to act properly and has subsequently been cured.

Page ii

The Audit assumes that the City, as a successor agency, will be exposed to absorb the obligations of the Victorville Redevelopment Agency or the Southern California Logistics Airport Authority ("SCLAA") to the extent that tax increment is not received. There is nothing in AB 26 or any

existing law that indicates that the City of Victorville or any municipality for that matter will be liable for the debts and obligations of its redevelopment agency based on the loss of tax increment financing. This assertion is at odds with the fundamental tenets of redevelopment law which indicated that debt related to tax increment does not pass on to the municipality that created the redevelopment agency. Harvey Rose is apparently making a legal interpretation as to the applicability of AB 26, which is not supported by the League of California Cities and which is an issue being addressed by the California Legislature to clean up the ambiguous provisions of AB 26. Furthermore, SCLAA, as a joint powers authority, is a separate legal entity and the liabilities of SCLAA are separate and apart from those of the City's. This is a fundamental principal of joint powers law that has been ignored throughout the Audit.

Page iii

The Audit indicates that the City may have violated state laws and local resolutions through use of revenue collected for delivery of property-related utility services. There is no citation to any law that is being violated, other than references to the Constitution. Please see the comments from Mr. Doug Robertson, City Manager, which indicate that this assertion is completely unfounded.

Page iv

There is a reference to the due diligence on CBS Aviation not occurring until two months after SCLAA entered into a Ground Lease. This is inconsistent with my prior comments in the interview with the auditors, wherein I indicated that due diligence was initiated immediately upon the first contacts with CBS, through, amongst other things, phone calls with representatives of other airports, where CBS (at that time known as ABS) has previously undertaken projects. The Audit only references the actual documentation that was provided supporting the ongoing due diligence and ignores representations that certain forms of due diligence were initiated much earlier. This is misleading.

Page v

In connection with the VVEDA JPA, the Audit ignores certain provisions of the Joint Powers Agreement that specifically authorize the expenditure of tax increment allocated to George Air Force Base to be used "on parcels and improvements adjacent to and directly benefitting the George Air Force Base parcels". This provision is set forth in Section 8 of the Joint Powers Agreement which addresses the delegation of authority from VVEDA to SCLAA, and while it creates some ambiguity, it does allow for development of projects on property adjacent to and of benefit to GAFB.

The statement that the City has repeatedly used bond funds for projects that primarily benefitted the City is inconsistent with the facts.

Page I-2

Although there are references to interviews with City representatives, and while the Audit makes several assertions about the relationship between VVEDA, the SCLAA and the City there is no reference to any interviews being conducted with members of the VVEDA Board.

Page I-3

The credibility of the entire Audit is compromised by the fact that on Page I-3 of the Introduction, the Audit indicates that the City is a general law city. The City is not a general law city, it is a charter city.

Page I-7

The Audit incorrectly states that the Victorville Redevelopment Agency has an adopted project area which includes the "Victor Valley Project Area". The Victor Valley Project Area is a redevelopment project area of VVEDA and not of the Victorville Redevelopment Agency. This mischaracterization leads to other incorrect assumptions throughout the Audit.

Page I-8

VVEDA and IVDA have both filed lawsuits challenging the applicability of AB 26 to them. Accordingly, the Audit should be updated to reflect this fact. Further, as of this date, VVEDA is not under threat to dissolve and its continued existence has been recognized by the California Department of Finance.

Page I-9

There are references throughout the Audit that the SCLAA has a heavy debt load. The Audit, however, does not reflect the fact that in order for any redevelopment agency (and in this case, the SCLAA via the VVEDA organizational documents) to receive tax increment and undertake redevelopment property, it must have incurred debt. This is a fundamental tenet of redevelopment law that seems to be ignored.

Page 1-1

There is a reference to SCLAA's default for payment due on December 1, 2011. This default has been cured. However, to provide clarification, this default was associated with the stay of AB 26, which legislation has detrimentally impacted many redevelopment agencies in California that have issued debt. Without further explanation, this is an unfair characterization.

Page 1-6

There is reference to the City as a successor agency being responsible for paying the Victorville Redevelopment Agency's obligations. The statement that "the General Fund will likely be required to absorb obligations not being met by tax increment" is unsupported by any provision of law and is inconsistent with positions taken by the League of California Cities as to the applicability and interpretation of AB 26.

Page 1-9

While there is reference to SCLAA's questionable ability to repay debt based upon pledged revenues, there is no reference to the unexpected impact of the general downturn in the economy and

the dramatic drop in assessed valuation which has affected most redevelopment agencies in California in a similar manner and could not have been predicted or accounted for.

Page 1-10

As previously noted, there is a reference to SCLAA's default on the principal payment of two tax allocation revenues bonds. There is no mention that SCLAA has since cured this default.

Page 1-15

The statement "as such, the City of Victorville is obligated to pay VVRDA's enforceable obligations, including outstanding bond debt, as well as assume responsibility for collecting funds from other entities that borrowed money from the VVRDA" is unsupported by law. It fails to reference the City's role as a successor agency and therefore is misleading and erroneous.

Page 1-16

There is an assertion that if there is insufficient tax increment to meet payment obligations, the City as successor agency "would be required to meet these obligations through the use of reserve funds or interfund loans". There is no legal support for that statement.

Page 1-17

Again, there is a reference to the City being responsible for the failure of tax increment to fund obligations of the VVRDA. This is inconsistent with established redevelopment law.

Page 2-1

There is a reference to the fact that the City is in violation of the Constitution. This is unsupported by neither the facts nor any applicable law.

Page 2-3

There is a reference to permanent contributions or borrowing funds becoming a violation of the California Constitution. No recitation is made to the provisions of the Constitution that are deemed to be violated.

Page 2-11

The Audit never precisely identifies the source of funds loaned by VWD to VMUS, but merely states that "City management reports that the sources of funds for the loan are water fees and charges accumulated over several years." Nor does the Audit make it clear that the surplus funds were accumulated by the predecessor districts to the VWD, not the VWD itself.[1]

In any event, not all types of water fees and charges are subject to Proposition 218. The surplus funds loaned by the VWD to VMUS could have been derived from any number of sources—some of

[1] It may even be the case that some or all of such surplus funds were accumulated prior to the passage of Proposition 218.

which are not subject to Proposition 218 restrictions—such as connection fees or capacity fees.[2] The surplus could also have been accumulated due to interest on funds invested, sales of real property or from other non-restricted sources. It is therefore misleading to make the assumption that the funds lent were accumulated from fees and charges restricted by Proposition 218.

Even assuming the funds loaned were all derived from water user fees subject to Proposition 218, the transaction at issue is not the type of in-lieu transfer challenged in *HJTA v. Fresno and HJTA v. Roseville*, but an inter-fund loan to be repaid upon the City's receipt of judgment proceeds in the Carter & Burgess litigation.

Page 2-14

The Audit alleges a violation of state law related to the delivery of property-related utility services. The Audit wrongfully asserts that there is a violation of state or local law related to the Sanitary District's transfer of property-related utility service funds to the City's General Fund. This assertion fails miserably to take into account Condition No. 5 of the Local Agency Formation Commission's Resolution No. 3021, which dissolved the Sanitary District. In particular, Condition No. 5 states:

> All property tax revenue attributable to the District prior to the calculations required by section 98.6 of the Revenue and Taxation Code, including delinquent taxes and any and all other collections or assets of the District to be dissolved shall accrue and be transferred to the successor agency [the City of Victorville].

The City did exactly what LAFCO required it to do.

Page 3-5

The Audit indicates that the City Attorney wrote the High Desert Power Plant contract. The document was not a document generated by the City Attorney's office. While we were involved in the negotiation of the contract, a separate firm unaffiliated with the City Attorney's office and which specializes in power plant matters generated the contract. The Audit indicates that City management did not conduct research to determine if the Agreement was consistent with other municipal power plant development agreements. This ignores the submittal to Harvey Rose of documentation from two other law firms with expertise in municipal utilities, which indicate that the agreement was consistent with industry standards.

Page 3-5

The Audit indicates the City engaged in projects with Inland that were "completely unrelated to the project". As an example, the Audit cites "over $258,000 for consulting services related to the City's efforts to investigate the possibility of becoming a Community Choice Aggregator". Community Choice Aggregation is directly related to the City's ability to provide utility services. As such, this is a completely misleading statement.

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[2] See *Richmond v. Shasta Community Services District* (2004) 32 Cal 4th 409, 415.

Page 3-10

The Audit states that "on December 4, 2007, the City Council 'in closed session' adopted a resolution authorizing the City to execute an agreement with General Electric to purchase certain of the power plant generation equipment at a total cost price of $182,036,824.00". The resolution adopted December 4, 2007 was adopted in open session. Another misstatement of fact.

Page 4-2

The Audit indicates that funds were disbursed three days after the CBS background check. As I made clear in my interviews with Harvey Rose, initial background checks commenced significantly prior to that date through verbal contacts with representatives of prior projects involving Mr. Graven.

Page 4-3

Although the due diligence conducted by the City Attorney's office indicated CBS was involved in litigation, such litigation did not raise any red flags when selecting CBS as the developer. The subject of the litigation matters did not appear to be germane to the services CBS was to provide for SCLAA. Further, the cases involved several defendants or cross-defendants with William Graven, or CBS, being named as one of several defendants.

Page 4-3

The Audit states that it is unclear whether the City Council/SCLAA Board formally approved the loan agreement with CBS. The $20,000,000 Loan Agreement by and between SCLAA and CBS was approved by the SCLAA Board on November 1, 2005, pursuant to Resolution No. SCLAA 05-10. This is a public document available through the City Clerk's office.

Page 4-4

There is an assertion that the SCLAA Board never approved the "four" hangar project. The Audit should be updated to reflect that the SCLAA Board granted CBS authority to construct four hangar facilities pursuant to Resolution No. SCLAA 05-09 which was adopted on November 1, 2005. Resolution No. SCLAA 05-09 approved two Ground Leases: one for Parcels "A" and "D", and another for Parcels "B" and "C". The Ground Lease for Parcels "A" and "D" contemplated the construction of two hangars. The Ground Lease for Parcels "B" and "C" contemplated the construction of an additional five hangars. This Resolution is also available through the City Clerk's office.

Page 4-11

Under Conclusions, as already noted, the background check conducted on CBS was initiated prior to the two months referenced in the Audit.

Page 5-1

The statement in the Audit that the VVEDA JPA requires that tax increment revenues which are allocated to GAFB "shall only be used for the purposes of causing the redevelopment and development of George Air Force Base" ignores Section 8 of the Joint Powers agreement – Delegation of Authority –

which is inconsistent with the quoted provision. The intent of the provisions of Section 8 was to create greater flexibility with respect to where tax increment funds attributable to GAFB could be used.

Page 5-1

The Audit's opinion as to the proportion of benefit fails to account for the voluntary policy decisions of the governing bodies of four independent municipal jurisdictions and the Board of Supervisors made 15 years ago.

Page 5-1

Questioning the benefit of Power Plant No. 2 ignores the history of Power Plant No. 1 and the benefits it provided to GAFB and VVEDA. The proximity of Power Plant No. 2 to SCLAA is relevant as is the fact that to the extent VMUS received power from Power Plant No. 2, it could only serve new industrial uses (i.e., SCLAA properties).

Page 5-1

Loan repayment agreements and reaffirmation by the Board of Directors are policy decisions. It is not the role of Harvey Rose to opine as to the appropriateness of policy decisions made by elected officials.

Page 5-5

The Audit ignores the fact that Victorville had the ability to pledge the 50% of tax increment generated in Victorville but not allocated to George Air Force Base for its own purposes.

Page 5-6

The purchase of the library has been fully explained and documented. It was a loan transaction that inadvertently did not get documented in a timely manner and has been addressed and corrected.

Purchase of Nisqualli Interchange Project

Harvey Rose has repeatedly displayed a lack of knowledge about, or understanding of, the provisions of California Redevelopment Law and the Redevelopment Plan. The Nisqualli Interchange directly benefits residents of the City of Hesperia, the Town of Apple Valley and the City of Victorville, as well as county unincorporated residents, and is the exact type of regional infrastructure project that is entirely contemplated by the Redevelopment Plan.

Harvey Rose also ignores the fact that Victorville has the authority and legal ability to pledge 50% of the tax increment generated off-base, but within its portion of the redevelopment project area, for projects within its portion of the redevelopment project area. The Nisqualli Interchange and the High Desert Power Project both fall within this category.

Other cities in the VVEDA JPA have used their 50% share to build a variety of projects that do not appear to be directly related to the reuse of GAFB. The suggestion that Victorville is inappropriately

using funds on the Nisqualli project will likely call into question the appropriateness of other VVEDA Member Entity expenditures.

Page 5-9

Harvey Rose indicates that Power Plant No. 2 was not of benefit to the Project. It ignores the impact of Power Plant No. 1 and the benefits that it provided to the entire redevelopment project area. It also ignores the provisions on Page 19 of the VVEDA JPA that allow for the expenditure on projects that directly benefit George Air Force Base which are either adjacent to or directly benefit the project area. The Power Plant falls within both categories.

Conflict of Interest Between VVEDA and Victorville

This is a policy issue that has been addressed previously in prior VVEDA documentation, including the receipt of waivers of conflict of interest between GDQ representing both VVEDA and Victorville / SCLAA.

ADB:law
VVCA\0001-11\MEM\001-3

Attachment No. 2

Setting the Record Straight

on the Inland Services Agreement

with the City of Victorville

July 2012

Background

On September 7, 2005, the City of Victorville's City Council unanimously voted to approve a contract (the "Services Agreement") with Inland Energy, Inc. ("Inland") under which Inland was charged with developing a 570 MW hybrid (gas and solar) power plant at SCLA ("VV2" or the "Project") which would be initially owned by the City. Inland's principal initial task under the contract was the obtaining of a permit from the California Energy Commission ("CEC"); this overriding task was successfully completed on July 16, 2008, when the CEC voted unanimously to issue the Project a Certificate to Construct.

However, in the intervening years, as a result of the unforeseen and unprecedented 2008-2009 collapse of the worldwide capital markets, the Project has been thus far unable to achieve financing that would enable the start of construction. Despite the fact that the economy is in the throes of the worst economic recession in recent memory, the Project is still viable and valuable due to the attributes that were developed as a result of the Inland Services Agreement.

The GJ Report (written by Harvey M. Rose Assoc., LLC ("Rose"), an Oakland based consulting firm hired by the Grand Jury), that the Services Agreement was a flawed document that was to blame for much of the City's problems relating to the Project. This report will address that claim and will lay out in detail the many misstatements and inaccuracies contained in the Rose GJ Report as it relates to Inland, the Services Agreement and the Project.

First, it is important to place the actions of the City and Inland in context, as the world of 2012 is a much different place than the world of 2005, when the Services Agreement was entered into. At that time, the memory of the disastrous 2000-2001 California Energy Crisis was still fresh in everyone's mind and the 830 MW, $650 million High Desert Power Project ("HDPP") located at Southern California Logistics Airport ("SCLA") in Victorville had just been completed and was generating more than $3 million/year in tax increment for the City; Inland had played the key role in HDPP's successful development - a fact that was documented in the August 2003 Power Magazine cover story naming HDPP as "Power Plant of the Year". The accompanying article specifically highlighted the roles that Buck Johns (Inland's President and founder of HDPP) and Tom Barnett (who later in 2003 became Inland's Executive Vice President and had been the Project Manager for HDPP's successful development during1998-2003) played in making the project a success. Barnett, who has a Master's Degree in Environmental Science and has worked in the power plant business for more than 30 years,

has developed power plants of all kinds and sizes in a dozen different states. His qualifications as an expert in power plant development are well documented.

Events Leading Up to the Services Agreement

As a result of the demonstrated success of HDPP and the tax revenues it was generating, the City decided to pursue development of a second power plant at SCLA. Because of its close involvement with HDPP and its successful track record with Inland. Inland was the logical entity with which to discuss such an undertaking. In addition, the fact that Inland did not finance, build, own or operate projects, nor did it have any attachments to any particular technologies made it an ideal candidate for the kind of objectivity that the City was looking for in considering the development of a second power plant.

As a result of these early discussions with the City, Inland performed (at its own cost) a feasibility study (issued in March, 2005), focusing on the development of the kind of project that Inland believed made the most sense given the state of the energy market and the particular attributes of a Victorville location. The study concluded that a 500MW Hybrid (gas and solar) project at SCLA would be feasible. Note that at this time, there was no Services Agreement, there was no formal relationship with Inland - there was simply a well-documented, objective study providing a convincing case for the feasibility of such a project. The Rose GJ Report makes much of the fact that the study cited the City for a "unique blend" of attributes and concluded that the development should be undertaken "without delay" and Rose further claims that the study did not contain a definitive plan, suggesting through innuendo that the study was "overstated" in some way. In reality, in early 2005, all of the study's conclusions were demonstrably accurate - the fact that Rose's seven year later, post-recession hindsight finds them to now be inaccurate can hardly be considered a reasonable condemnation; and the purpose of the feasibility study itself was not to lay out a definitive plan - that was developed later, in the detailed negotiations that led to the Services Agreement, which was not executed until September, 2005.

Rose claims that the City "did not conduct proper due diligence"; in reality, Inland's study was the appropriate due diligence - again, at the time, Inland had no contract with the City, was an expert in the field and its objectivity was attested to through its lack of any kind of "secondary" attachments (no financing, build, own or operate downstream benefits). Further, the study did not rely only on Inland's opinion but extensively cited experts in the field (reports from the CEC, SCE, etc.) to back up the conclusions set forth. In the months following the study's issuance, at the City's request Inland set up extensive meetings between the City and many of these industry experts so the City officials could ask questions of them face-to-face, without the "filter" of Inland's opinions. It was not until the City had been fully satisfied and had independently confirmed the study's conclusions that the City elected to move forward with the Project.

By mid-2005, the City had determined that it wanted to develop its own power plant at SCLA along the lines of the approach outlined in the Inland feasibility study. The City also decided to see if it could negotiate a contract with Inland to oversee the Project's development.

There was nothing inappropriate about the decision to pursue Inland; far from it - Inland had all of the attributes that a municipality would look for in selecting a consultant for this task:

- Inland had played a key role in the success of HDPP, located at SCLA - its familiarity with and understanding of the issues associated with a second plant at the same location were unequaled
- Inland was objective, having no ties to financing, construction, ownership or operation of such a plant
- Inland's overall credentials in the power plant development field were (and are) impeccable
- And finally, Inland was familiar with the City, its environs, staff and decision-makers - a track record had been established over the preceding seven years (Rose actually insinuates that this is a bad thing, stating that the City should not have "executed contracts [with] companies and individuals with previous experience or familiarity with the City" (!))

Errors Contained in the Rose Report re the Services Agreement

With regard to the content of the Services Agreement itself, the Rose GJ Report suggests that the City entered into a one sided agreement. Again, this is inconsistent with the facts as they occurred. Negotiations on the Service Agreement took place over many months. In connection with the negotiation of the contract the City Manager and the City Attorney, secured the expertise of two outside expert attorneys - one from the internationally respected energy law firm of Hogan and Hartson based in Baltimore and one from the prestigious Washington, D.C. based Venable law firm. The City insisted on numerous provisions that were atypical of such contracts and disadvantageous to Inland: for example, Inland's President, Buck Johns was not allowed to charge for his time or expenses - and Johns was expected to be (and in fact was) heavily involved on a day to day basis - the documented unbilled labor alone for Johns over the past seven years is substantial; Inland could not charge for any local expenses, such as mileage or meals - and given the number of trips Inland made from its offices in Newport Beach to Victorville (often, several in one week), this was not insignificant; Inland was not allowed to charge a management fee on subcontractor legal services - typically, primary consultants charge a management fee on all subcontractors. Contrary to the statements in the Rose Report, the contract contained very specific requirements for Inland's compensation: labor rates were specified and a budget was included as Exhibit B.

The Services Agreement provision which Rose attempts to paint as the most controversial had to do with the 5% "carried interest" for Inland which was included in the Additional Compensation section; this provision was included for the following reasons:

1) Since Inland was not charging for Johns, it would be running a monthly deficit on the contract - as indicated above, it expected to be (and ultimately is) actually nearly $2 million in the negative; this was a way for Inland to eventually realize a profit

2) Since Inland and the City recognized that this would be an intensive multi-year effort, Inland would have to forego other profitable business opportunities in order to devote the time and resources that this Project would require in order to be successful; consultants typically recoup this lost "opportunity cost" through increased monthly labor and expense charges, but in order to keep those charges low at the City's request, Inland sought to recoup them through a deferred, at risk form of payment

3) This payment would ultimately not be charged to the City but to the Project's owner; contrary to allegations in the Rose GJ Report, it was always contemplated that a private third party would own the Project and therefore be responsible for paying this cost to Inland

4) Finally, and perhaps most importantly, the City felt strongly that the best way to insure that the City's interests and Inland's were aligned was to structure the contract so that Inland would not realize any profit until the Project was actually successful - built and operating; in direct contradiction to the claim by Rose that the Service Agreement contained a "conflict of interest." This provision insured that Inland would not stretch out the consulting effort in order to pad invoices or paint unrealistically rosy pictures as many "pay as you go" consultants have been known to do - because to do so would harm Inland's ability to get to the profit generating phase - a successfully operating project - which was what the City desired as well.

Rose also takes issue with the analysis of the two independent attorneys who advised the City that the Inland Additional Compensation provision was not unusual in this type of contract. Moreover, Rose implies that because the Hogan and Hartson attorney was asked by Inland to comment, the objectivity of his comments are somehow lessened. Hogan and Hartson ("H&H") is an internationally recognized firm with an impeccable reputation - the firm was retained as an advisor to the City and had no financial connection with Inland in any way. There was absolutely no reason for Hogan and Hartson to submit anything other than an honest, objective opinion. Similarly Rose highlights the fact that the Venable Law Firm letter stating that the Inland compensation was not unusual was dated after the Services Agreement was executed - implying that it arrived too late for the City to have taken it into consideration; the fact is that Venable was also under contract to the City (with no financial connection to Inland) and the attorney responsible for the letter had been in continuous contact with the City Manager on this subject - his opinion had already been passed on to the City officials verbally and in written draft[1] well before the Services Agreement was executed and the letter was simply the written confirmation.

[1] A draft of the memo on Venable letterhead dated August 31, 2005 is in the files; the draft is unchanged from the final letter. Rose makes much of the fact that the "final letter" was not on Venable letterhead – it is not clear what document Rose looked at, but the fact that the draft is on Venable letterhead seems to make that issue moot – the City was clearly not confused as to where the opinion came from.

As Rose acknowledges, the basis for the language in the Additional Compensation provision of the Inland Services Agreement was an agreement Inland had entered into in 1999 with affiliates of Constellation Energy in connection with HDPP. Rose again makes much of the fact the Services Agreement had differences from that earlier agreement that were in Inland's favor and that somehow the City should have negotiated something more favorable than the private sector attorneys from the giant national energy company Constellation were able to secure. The flaw with Rose's reasoning is twofold:

- First, the percentage was higher in the Services Agreement because Inland received no reimbursement of prior costs at financial closing unlike the Constellation agreements[2] which made a significant reimbursement to Inland at the closing for HDPP; the higher percentage reflects the fact that Inland's entire source of reimbursement was the fee to be paid over time once the Project went into successful operation
- Secondly, Rose asserts that the letters from the two independent expert attorneys stating that the Inland fee arrangement was not unusual specifically conditioned their opinions on the fee being subordinated to the debt service; Rose erroneously claimed that the Services Agreement did not contain such a condition; in reality, the Services Agreement, like the Constellation Agreement upon which it was modeled, does contain such subordination (see page 4 of the Services Agreement, Section 4.2 Subordination of Additional Compensation); Rose misstated this fact.

The point that Rose fails to address is that Inland would not receive this potentially valuable Additional Compensation unless the Project went on to be successfully developed, built and operated; the proof of this is that Inland has not received a penny of this Additional Compensation nearly seven years after the Services Agreement was executed and will not receive any before 2015, at the earliest (the Project will take 24 months to construct after financing is put in place). Rose seems to suggest that Inland would insist on enforcing the terms of the Contract even if it would inhibit the Project from moving forward - how would this make any sense? In reality, Inland was able to negotiate agreements with several of the private entities seeking to purchase VV2, including Beowulf, the entity which was in the process of acquiring the Project in 2008 when the financial markets collapsed. The supposedly "onerous" Additional Compensation provision did not prove to be an obstacle, nor does it in the discussions that continue today with interested private parties.

Finally, Rose's GJ Report makes a series of assertions regarding the amounts of money involved in the Inland Services Agreement. The first set involves the amount actually paid to Inland under the contract. Rose claims that Inland has been paid $12,145,917 to date under the Services Agreement; in reality Inland was paid $11,951,851 for its services for VV2, but

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[2] Rose refers only selectively to the agreements with the Constellation affiliates, CP High Desert, LP and CP High Desert I, Inc.; a careful review of the complete set of agreements would reveal that, in direct contradiction to Rose's allegations, Constellation paid Inland a substantial monthly fee for Management Services during HDPP's development period (just as the City did in the Services Agreement) in addition to the prior cost reimbursements mentioned above; this information could have easily been provided to Rose had they bothered to contact Inland; as it was, Rose never so much as made a single phone call to Inland in connection with the GJ Report.

only $4,571,808 (38%) actually went to Inland; the rest ($7,380,043 or 62%) went to one of the 25 subcontractors Inland employed to conduct the massive effort required to permit and develop a major power plant in California. The majority of the amount paid to Inland's subs went to two firms: Latham & Watkins ($1.76 mil), the Project's permitting/regulatory legal advisor, and; AECOM ($3.085 mil), the internationally recognized environmental services firm that performed the majority of the technical analyses for the permits. The Rose GJ Report never shows these accurate figures.

The second set of unsubstantiated figures appears in the Rose report as the revenue that Inland would supposedly receive from the 5% Additional Compensation: Rose asserts that according to unnamed "Grand Jury sources", this would amount to $4.5 mil/year or, as Rose puts it, "$135 mil over the life of the plant". For these figures to be accurate, the Project would have to generate more than $90 mil/year in Operating Profit - a patently absurd amount for a 500 MW plant in today's market. And, of course, as has been previously pointed out, Inland has never received a penny of this grandiose, inflated figure[3]. Rose also fails to note that, in return for this Additional Compensation, Inland is obligated in the Services Agreement to perform ongoing Management Services as requested by the City (or new owner) even "after the Project has begun operation".

Other errors contained in the Rose GJ report are too numerous to refute in detail; among the more notable are:

- The assertion that Inland's invoices were "Poorly Documented"; the "proof' for this is that the new City Manager, who took over in early 2009 (after the economy had cratered) requested additional documentation; Rose fails to point out that Inland had submitted (and been paid for) four years of monthly invoices without such a request from the City; nevertheless, upon receiving the request, Inland promptly provided the additional documentation; Rose's claim that subsequent invoices "have been just as poorly documented" is baseless.
- Rose claims that the City Manager "curtailed" the relationship with Inland after July 2009 "but [Inland] continues to bill." The facts are that Inland continues to provide services for the City in connection with VV2 under the contract with the knowledge and approval of the City. However, in recognition of the City's financial difficulties, Inland agreed to continue to work to develop the Project on a deferred "at risk" payment basis - i.e., Inland would not get paid until and unless the Project is sold to a private entity. This deferred payment now amounts to more than $250,000 as Inland continues to work diligently to make the Project a success.
- Rose makes the assertion that Inland did not provide annual budgets as required by the Services agreement and that there was never a plan for

[3] Inland and many knowledgeable representatives of the City remain confident that the Project will eventually be built and the City will recoup much, if not all, of its sunk costs; however, in today's energy marketplace, with wholesale electricity selling for less than 3.5 cents/kilowatt hour, the gross revenues from the 500 MW project would not be more than $100 mil; operating profits can be expected to be significantly less than half once costs are deducted.

developing the Project; the former misstatement is disproved by dated correspondence with City officials that Inland possesses showing the annually updated budgets (had Rose contacted Inland this information could have easily been provided); the latter fails to acknowledge that there was a plan for the Project's development that was continuously updated and revised through the weekly meetings and discussions held between Inland, its advisors and the City and when and if significant, the revisions to the plan were taken to the council for a vote (which was always unanimous in support of the Team's recommendations); however, the plan was not a single document that someone could show Rose years after the fact, it was the compilation of all of the activities that were ongoing and subject to continuous review. This approach has been used by many cities and businesses to develop and manage complex projects in fluid environments. The fact that Rose found "no evidence" does not mean it did not exist.

Summary

Was the Inland Services Agreement well-constructed and managed? In hindsight, it's easy to point out things that may have been done better, but the Rose GJ Report's failure to address the impacts of the unprecedented economic recession that started in 2008 as the principal cause of the problems associated with VV2 is troublesome. As is detailed above, had it not been for the collapse of the economy, VV2 would be in operation today, delivering all of the City's intended benefits to the citizens of Victorville. The problems that arose had nothing to do with the structure of the Inland contract, the amount of compensation Inland would get in the future or the nature of Inland's invoices; it was the economy.

Documentation Supporting

the City's Due Diligence Efforts re VV2's Financing[1]

July 2012

The City of Victorville, as owners of the Victorville 2 Hybrid Power Plant ("VV2" or the "Project"), took a publicly transparent and very careful approach to developing the Project: all major issues were discussed in City Council Meetings and every decision received a unanimous vote. In particular, the City exercised careful due diligence in procuring financing advice for moving forward with the Project once it became apparent that the valuable and essential CEC permit was going to be obtained by the Project Team[2].

For a financing of this magnitude (projected to be approximately $1.2 billion) it was unanimously agreed that it would be prudent to procure the services of the best financial institution available -- a major financial institution with experience in financing major power plants. Members of the Project Team had experience with most of the firms that met this qualification and a list was circulated for approval by City decision makers in early 2008. The list included:

Goldman Sachs: Generally regarded as the world's leading investment banking institution; financier of many power plants, both public and private; more than $900 billion in assets with more than 30,000 employees worldwide

Deutsche Bank: A leading global investment bank with broad experience in energy projects as well as specific experience with Victorville bonds; $2.3 trillion in assets and more than 80,000 employees

Barclays Bank: A major global financial services provider with over 300 years ofglobal investing on behalf of clients now numbering 48 million worldwide; extensive experience in the energy sector;$1.8 trillion in assets and 156,000 employees

Morgan Stanley: Innovative U.S. investment banker with strong experience in the energy market; more than $800 billion in assets and 62,500 employees

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[1] It should be noted that concurrent with the events described in this document, the Project Team was actively pursuing selection of an EPC and O&M contractor as well as successfully completing the intense final effort required to obtain the CEC permit on July 16, 2008. These efforts were essential to Goldman's ability to successfully market VV2 as a fully realized project, ready for groundbreaking.

[2] For the purposes of this report, "Project Team" refers to the following organizations and individuals: City – Terry Caldwell and Mike Rothschild (City Councilmen), Jon Roberts (City Manager), John Sullivan (CFO), Glen Casanova (Exec. Dir. Of VMUS); Inland Energy – Buck Johns and Tom Barnett; Legal Advisors – Andre De Bortnowsky (GDQ), Ed Sledge (Hogan & Hartson, an internationally recognized energy law firm, based in Baltimore), Dick Powers (Venable – an old line U.S law firm with extensive energy experience based in Washington, DC); Financial Advisors – Jeff Kinsell (KND, which handled many of the City's prior bond issues), Jill Toporek and Vivek Bantwal (Goldman). While not all of these individuals participated in all Project Team meetings or deliberations, all were regularly informed and most were present (or on the phone) during significant discussions.

J.P. Morgan (now Chase): 200 year old U.S. investment banker with clients in more than 100 countries; good experience in financing power plants; assets of $2.3 trillion with 260,000 employees world wide

These firms, all of whom are based in New York, were contacted and each expressed interest in being a part of the Project Team. Accordingly, arrangements were made to meet with each firm in February 2008, at which time the Project Team would give a presentation on the Project and afford both sides an opportunity to ask questions face to face. The presentations took place on February 21, 2008 at the respective Manhattan offices of the five financial firms; participants from the Project Team included:

Terry Caldwell, Mayor
Jon Roberts, City Manager
John Sullivan, City CFO
Jeff Kinsell, City Financial Advisor
Buck Johns, Inland Energy
Tom Barnett, Inland Energy
Dick Powers, Venable Law Firm

The Project Team participants all agreed that all five of the financial institutions were very impressive and, with the exception of J.P. Morgan, all expressed serious interest in being selected as the entity that would be responsible for assembling a successful financing for the Project. At the time, all of the Project Team participants felt that J.P. Morgan's level of enthusiasm was noticeably lower than the other four.

In early March 2008, the Project Team invited all five firms to Victorville for an interview before the City Council members. Four firms accepted (J.P. Morgan declined, as expected). On March 11, 2008, Tom Barnett, who was already on the east coast on an unrelated matter, met separately in New York with Morgan Stanley and Goldman Sachs at the firms' request to address some follow up questions. The Project Team held conference calls with the other two firms in preparation for the interviews. The remaining four firms were interviewed in City Hall according to the following schedule:

Goldman Sachs: 3/19 a.m. (Project Team attending: Jon Roberts, Terry Caldwell, Mike Rothschild, Dick Powers, John Sullivan, Buck Johns, Tom Barnett)

Morgan Stanley: 3/19 p.m. (same as above)

Deutsche Bank: 3/20 a.m. (Jon Roberts, Glen Casanova, Ed Sledge, Jeff Kinsell, Buck Johns, Tom Barnett)

Barclays Bank: 3/20 p.m. (same as above)

The Project Team subsequently got together and prepared a matrix evaluation of the four firms' relative strengths and weaknesses. On March 27, 2008, the Project Team assembled (some participated by phone) and a vote was taken to determine which firm should be selected to manage the Project's financing. Results of the vote are shown below:

Caldwell - Goldman Sachs (GS)
Roberts - Morgan Stanley (MS)
Sullivan - GS
De Bortnowsky - GS
Casanova - MS
Kinsell - Deutsche Bank (1st)/GS (2nd) - switched his initial vote to GS
Johns - MS
Barnett - GS
Sledge - GS
Powers - GS
Final Tally: GS - 7, MS - 3

Goldman Sachs was the clear majority preference, for two primary reasons: 1) they were, and are, the largest and most successful financier of public and private power plants - the "gold standard", and; 2) their commodities trading affiliate, J. Aron, was committed to providing a seven year "financial hedge" to purchase the Project's electric output. This latter commitment was particularly significant in that it meant that the Project did not have to obtain a Power Purchase Agreement ("PPA") before proceeding to construction financing - for seven years J.Aron would buy the power for a firm price and re-sell it in the market place. The Project Team believed that this time period would be more than sufficient to enable the Project to obtain a more conventional long-term PPA from Edison, probably before the Project's two year construction was even completed. With this critical component in place, Goldman's primary remaining task was to help select a private entity that would purchase the Project from the City and ultimately finance, construct, own and operate it.

After selection, the City and Goldman negotiated an Engagement Letter addressing Goldman's roles, responsibilities and fees; this took several weeks and involved review by the City's team of attorneys and its Financial Advisor, Jeff Kinsell. Goldman typically received $20,000/month in addition to its pro rata portion of the financing, but the Project Team was able to negotiate a deal whereby all of Goldman's fees were deferred until financing [as a result, contrary to allegations in the press, GS was never paid a dime]. On April 15, 2008, the City Council voted unanimously to authorize the City entering into the Goldman Letter of Engagement.

Over the next several months[3] the Project Team worked with Goldman to produce a Request for Expressions of Interest (called a "Teaser" by the finance industry) summarizing the key details of the project, which Goldman then distributed to 18 major players in the power plant marketplace to determine if they had interest in acquiring VV2. 14 firms responded expressing interest, signing expansive Confidentiality Agreements to protect eventual bids; Goldman (again working closely with the Project Team) prepared and issued the 14 interested parties a detailed Confidential Information Memorandum ("CIM") on July 17, 2008[4], containing all of the Project's relevant details including financial and economic pro formas based on J. Aron's "PPA" pricing, Construction/Operating costs from Inland's negotiations with EPC and O&M firms, and Goldman's projections of financing costs. In order to support these documents, the Project Team created a sophisticated electronic "Data Room" which enabled the interested parties to gain access to all of the Project documents while still maintaining their individual confidentiality. The interested firms were requested to submit offers for purchase of VV2 by August 13, 2008.

After nearly a month of intense coordination with the interested parties (answering written and telephoned questions, submitting additional documentation), two responsive bids were received on August 13; several other bids were received but they were deemed unresponsive by the Project Team. One of the responsive bids offered more favorable terms than the other - this most potentially attractive bid was from Beowulf, LLC, a major New York based energy company with municipal power plant experience in California as well as EPC and O&M experience. Goldman had familiarity with them and felt comfortable that Beowulf was well-qualified to deliver an acceptable deal.

On August 19, 2008, the Project Team conducted an extensive interview with the Beowulf team in City Hall; Beowulf sent a team of senior executives including the President of its EPC and operating company. The interview concluded with a tour of the site and environs. On August 20, the Project Team conducted a telephone interview with the other responsive bidder's team; the call generally confirmed that Beowulf offered the most potentially attractive deal and, although telephone discussions continued with this "No. 2 Bidder" for several weeks, it was clear that Beowulf was the front runner.

Between August 22 and October 8, 2008, the Project Team conducted extensive negotiations with Beowulf in an effort to reach agreement on a term sheet for acquisition of VV2; during that period the negotiations progressed relatively smoothly and virtually all major points were agreed upon including: upfront fee payments to the City, milestone payments, assumption of ongoing costs, purchase price (including re-imbursement of all sunk costs) at construction

[3] After two months of simultaneous negotiations and several interviews with the top two Engineering, Procurement and Construction ("EPC") bidders, on April 16, 2008, the Project Team selected Kiewit Constructors as the preferred EPC firm; a limited Notice to Proceed contract ("LNTP") based on Kiewit's firm EPC price was executed on May 20, 2008 after unanimous approval by the City Council. Kiewit is one of a small group of U.S. builders that are qualified to build major power plants – they were the constructors of HDPP.

[4] Note that on July 16, 2008, the CEC, following a unanimous vote of the Commission, issued VV2 its Certificate to Construct (aka the "CEC Permit), the culmination of a three year, $ multi-million effort and representing a major milestone for the Project.

finance closing and agreement with Inland was reached that would enable Inland to execute a release of its contract to the City upon signing the definitive purchase and sale agreements (the "PSA Docs)".

The Project Team was in New York on October 8, meeting with Beowulf and Goldman to finalize the PSA Docs as the news from Wall Street worsened almost hourly; Lehman Brothers had declared bankruptcy on September 15 and by the end of September the Dow Jones had dropped more than 10%. During a phone call on September 19, in response to a direct question regarding the impact of Lehman's demise, Goldman stated that although "financing in general was getting more iffy", J.Aron was "relatively unaffected" and "good projects were still getting done". At the October 8 meeting, both Goldman and Beowulf suggested that, while the situation was worsening, energy projects should be unaffected and Beowulf's interest in moving forward was unabated.

The Project team returned to California feeling cautiously optimistic - pleased with the progress with Beowulf but concerned about the deepening financial crisis; however, on October 17, 2008, Goldman informed the Project Team that they and Beowulf believed that it would be prudent to push the signing of the PSA Docs back to the "first quarter of 2009". Then, on October 20, Goldman delivered the disturbing news to the Project Team that "the financial markets were in chaos" and that the financeability of capital intensive projects of all kinds had "collapsed across the board".

This news was as disappointing as it was surprising; up until just one month before, the Project Team had every reason to believe that the Project would move forward with Beowulf to achieve financing in early 2009. Despite this news, the Project Team (including Goldman) and Beowulf continued to work to find a way to finance the Project in the first part of 2009. Several innovative ideas were pursued but, unfortunately, the collapse of the worldwide economy made it impossible for J. Aron to provide the financial hedge that had been serving as the Project's PPA - without a viable PPA, financing a $1.2 billion project was simply not practical. Exacerbating the problem was the fact that the economic downturn had brought with it a sharp decline in electric demand, thereby lessening the need for a baseload facility. In light of these events, there was ultimately no choice but to put the Project on hold pending some level of economic recovery.

The above description of events should make it clear that the Project Team pursued a perfectly reasonable, prudent process in attempting to bring the Project to a successful conclusion; the most experienced advisors in the business were brought on board through competitive procurements and all decisions were transparently made on a unanimous vote basis - in every case. There was never the slightest hint of cronyism, malfeasance or concealment. The only thing the Project Team could be reasonably accused of is bad timing and an inability to accurately foresee the future (it's harder than hindsight), something virtually all project developers, city (and state) governments and millions of Americans were also "guilty" of.

Attachment No. 3

EXHIBIT C

PROJECT IMPROVEMENTS LIST

EXHIBIT C
PROJECT IMPROVEMENT LIST
for the
1993 VICTOR VALLEY REDEVELOPMENT PROJECT

I. AIR BASE IMPROVEMENTS

Land Acquisition
North, East & South of Base (2000 acres)

Preparation
Grading
Building Removal
Clearing and Drainage

Airport Pavement
Pavement Rehabilitation
Parallel Taxiways
Other Taxiways/Hold Apron
Helipads
Runway Extension (2,000 feet)

Airport Lighting and Navaids
Taxiway Lighting
Runway End Identifier Lights
Precision Approach Path Indicators
High Density Runway Lights
VOR/DME
Outer Marker Beacon

Access Roads and Parking
Terminal Circulation
Terminal Parking
East Side Access
Perimeter Road

Existing Streets Reconstruction

Buildings
Existing Buildings to Code
Building Modifications
Other Building Improvements
New Passenger Terminal
T-Hangars

Urban Serving and Related Facilities
Emergency Operation Equipment Center
Transportation Center
Reclaimed Water Systems
Median Movements, Landscape & Related Facilities
Security Fencing
Water and Sewer Systems

Fire Department & Related Facilities
Fire/Crash Rescue Facilities
Aircraft Fire Fighting Truck
Fire Vehicles/Equipment

Park and Recreation and Related Facilities
George AFB Renovation/Expansion (Rec./Golf/Related)

Miscellaneous
Fencing
Noise Monitoring System
Vehicular/Maintenance Equipment
Aircraft Tie Down Anchors
Signing
Waterlines On- and Off-Site

Planning and Construction Administration
Contingency

II. TRANSPORTATION/CIRCULATION IMPROVEMENTS

This section includes improvements needed to provide access to the Air Base and to upgrade deficient roadways in support of reuse of the Air Base.

1. **Town of Apple Valley**
   I-15 Apple Valley Road Interchange
   Alt SR 18-I-15 to Bell Mt. Road
   State Route 18 Widening
   Apple Valley Road = SR18 to I-15
   Stoddard Wells Road - I-15 Boundary
   Johnson Road-Stoddard Wells Boundary
   Other Major Streets - 7.7 Miles Secondary

2. **City of Hesperia**
   Mojave Street I-15 to Maple Avenue
   Hesperia Road Widening/Dohert Street to Mesa Street (50%)
   Maple Avenue Widening Bear Valley Road to Mojave (50%)
   East/West Road Grade Separation (Regional)
   East/West Road Widening Maple to "I" Avenue (Regional)
   North/South Road Widening Bear Valley/Mojave (4 lanes approximately one mile west of Hesperia Road (Regional)
   North/South Road Wideining Bear Valley (4 lanes approximatley one mile east of Hesperia Road) (Regional)

3. **City of Victorville**
   Freeway Improvements
   I-15 - National Trails Interchange
   I-15 - Nisqualli Road Interchange/Land Acquisition
   I-15 - Rancho Road Interchange/Land Acquisition
   I-15 - Mojave Drive Interchange

   Super Arterial Improvements
   Bear Valley Road from I-15 to Caughlin (8.0 miles)
   Bear Valley Road from I-15 to Ridgecrest Road (4.0 miles)
   Mojave Drive from I-15 to Caughlin Road (9.8 miles)
   Highway 395 from Bear Valley Road to Air Base Road (7.0 miles)

Major Arterial Improvements
Palmdale Road from Caughlin Road to I-15 (9.3 miles)
Rancho Road from Highway 395 to National Trails (5.7 miles)
Rancho Road from National Trails to I-15 (3.0 miles)
National Trails from Rancho Road to I-15 (1.0 miles)
Amethyst Road from Bear Valley Road to Palmdale Road (2.4 miles)
Amethyst Road from Palmdale Road to Mojave Drive (1.5 miles)
Amethyst Road from Mojave Drive to Air Base Road (2.3 miles)
Green Tree Boulevard from Hesperia Road to Ridgecrest Road (1.0 miles)
Green Tree/Yucca Loma Bridge
Hook Road from Amargosa to Highway 395

Arterial Improvements
Air Base Road from Highway 395 to National Trails (5.4 miles)
Air Base Road - Addition of 2 lanes
La Mesa Road from Highway 395 to Triple Tree Road (2.2 miles)
Seneca Road from Hesperia Road to Green Tree Road (2.0 miles)
Topaz Road from Bear Valley Road to Seneca Road (3.0 miles)
El Evado Road from Seneca Road to Mojave Drive (1.0 mile)
El Evado Road from Palmdale Road to Hopland Street (2.7 miles)
El Evado Road from Hopland Street to Rancho Road (1.0 mile)
El Evado Road from Rancho Road to Air Base Road (.08 mile)
Stoddard Wells from I-15 to Highway 18 (2.5 miles)
National Trails from Air Base Road to Rancho Road (.08 mile)
National Trails - Addition of 2 lanes
Highway 395 Parallels from Bear Valley Road to Air Base Road (16.0 miles)
Amargosa Road from La Mesa Road to Dos Palmas (1.2 miles)
Amargosa Road from Dos Palmas to Palmdale Road (0.5 mile)
Amargosa Road from Village Drive to Rancho Road (1.0 mile)
Amargosa Road from Rancho Road to Air Base Road (0.5 mile)
Mariposa Road from Bear Valley Road to Green Tree Boulevard (3.0 miles)
Hesperia Road from Highway 18 to Seneca Road (1.6 miles)
Seventh Avenue from Green Tree Boulevard to Ottawa Street (0.6 mile)
Seventh Avenue from Ottawa Street to Nisqualli Road (0.5 miles)
Seventh Avenue from Nisqualli Road to Bear Valley Road (1.0 mile)
Third Avenue from Green Tree Boulevard to Nisqualli Road (1.0 mile)
Third Avenue from Nisqualli Road to Bear Valley Road (1.0 mile)
Ridgecrest Road from Bear Valley Road to Green Tree Boulevard (2.0 miles)
Median Movements, landscape and related facilities

Signalization
Citywide (40 ea)
Connections to local streets

4. **San Bernardino County**
   Traffic Signal (Oak Hills Area)
   Traffic Signal (Oak Hills Area)
   Traffic Signal (Helendale/Oro Grande)
   Railroad Crossing (Helendale/Oro Grande)
   Colusa Road - Helendale Road to 395 (Helendale/Oro Grande - Construct two land roads)
   Signal at Colusa
   Adelanto Road from Colusa Road to Sonoma Road (Helendale/Oro Grande
   Helendale Road from Colusa Road to Mourning Glory Road (Helendale/Oro Grande)
   National Trails Highway from Project Boundary to Brymon Road (2.0 miles)
   National Trails Highway - Victorville City Limits to Bonanza (Widen to four lane divided highway)
   National Trails Highway - Oro Grande Underpass Drainage/Alignment Studies
   National Trails Highway - Mojave River Crossing at Mojave Narrows
   National Trails Highway - Underpass Northeast - resurface/drainage construction
   Helendale - Linson Road to Brymon (Construct two lane road)
   Linson Avenue - Helendale Road to Shay (Construct two lane road)
   Shay - Victorville City Limits to Linson (Improve two lane road)
   Adelanto Road - Adelanto City Limits to Colusa Road (Construct two lane road)

III. STORM DRAIN/FLOOD CONTROL SYSTEM IMPROVEMENTS

1. **Town of Apple Valley**
   Winston-Desert Knolls
   Corwin Road-West of Bell Mt. Road
   Bell Mt. Road - Near Corwin
   Highway 18 at boundary
   Thunderbird Road - East of I-18

2. **City of Hesperia**
   Drainage Channel/Storm Drain Improvements

3. **City of Victorville**
   Storm Drain Master Plann - Capital Improvement and Related Facilities
   Line D-01
   Line D-02
   Line D-03
   Line E-01
   Line E-02
   Line E-03
   Line E-04
   Line E-05
   Line E-06
   Line E-07
   Line F-01
   Bell Mountain Wash
   Green Tree Drainage & Related Facilities
   Detention Basin - Oro Grande Wash
   Water Reclaimed System & Distribution Facility

4. **San Bernardino County**
   Storm Drain Improvements

IV. WATER SYSTEM IMPROVEMENTS

1. **Town of Apple Valley**
   Water Lines in Major Streets
   Ten million gallon capacity water reservoir; welded steel above ground construction; cost includes land acquisition

2. **City of Hesperia**
   Water Line Extension - Santa Fe Area
   North Central Water System

3. **San Bernardino County**
   Water System Improvements

4. **City of Victorville**
   Water System Improvements

V. SEWER SYSTEM IMPROVEMENTS

1. **City of Apple Valley**
   Sewer System Improvements

2. **City of Hesperia**
   Sewer Trunk Line - Eucalyptus
   Sewer Reclamation Site & Life

3. **County of San Bernardino**
   Sewer System Improvements

4. **City of Victorville**
   Sewer System Improvements

VI. COMMUNITY FACILITIES PROGRAMS

1. **City of Hesperia**
   Park Sites (2) in RSA's 8 and 9
   Fire Station - 11th & Eucalyptus
   School Sites

VII. COMMUNITY DEVELOPMENT PROGRAMS

1. **All Areas**
   Off-Site Improvements
   Land Development

VIII. HOUSING - LOW/MODERATE INCOME ASSISTANCE

As provided by Section 33334.2(a) of the Health and Safety Code (unless certain findings are made), not less than 20 percent of all tax increment allocated to VVEDA shall be "used by the agency for the purpose of increasing, improving, or preserving the community's supply of low and moderate income housing." It is contemplated that this assistance will be provided in the form of rehabilitation loans and grants to low and moderate income housing owners and renters, through the preservation of low and moderate income housing units and potential development of new housing for owner and renter occuupied units, and through the encouragement of develoment of rental units held at low and moderate income levels.

IX PROJECT ADMINISTRATION AND PLANNING

VVEDA will pay for planning and administration costs associated with implementation of the Plan. Over the life of the Plan it is estimated that such costs will total less than five percent (5%) of the total tax increment collected.

Attachment No. 4
Select Direct Bonded Expenditures for SCLA

		Payoff Prior Notes (1997 Taxable Lease Revenue Notes)	$7,000,000
	96051	Hangar 676: Black Top Repair	$314,407
	96031	Phantom Street	
	96043	Taxiway Charli Extension South	$171,239
	90039	Blackhawk Bldg 761-771	$389,917
	96024	Runway 17-35 Pavement Overlay	$54,138
	96039	Building 717 ADA Compliance	$80,000
	96035	Runway 17-35 Extension	$436,396
	96037	Runway 17-35 Extension Phase II	$521,744
	96040	Building 717 Roof	$93,412
76944	70708	SCLA Power Plant #1-Construction	$2,464,138
76944	80421	Ice Bears for Bldg 728	$35,718
76944	90081	Engr Costs for Construction of Fabric Hangar	$461,247
76944	90081	Fabric Hangar-Ramp Imprvmnts	$461,247
76944	90082	New Roof for SCLA Adm Bldg (Bldg 728)	$68,750
76944	90095	New Roof & HVAC (Bldg 733)	$75,650
76944	96037	2000' R/W Ext-Install & Land Purchase	$363,118
76944	96043	Taxiway Charlie	$10,908
76944	96044	Taxiway Bravo Reconstruction*	$88,116
76944	96045	Airport Master Plan*	$22,000
76944	96048	Foam Suppression (756 & 676)*	$402,890
76944	96049	Tail End Enclosures (756 and 676)	$3,075,624
76944	96052	Reroofing Hangars 676 & 683	$15,784
76944	96053	Aircraft Tools (Hangars 676 & 683)	$58,185
76944	96054	HVAC (Hangar 756)	$523,000
76944	96055	Engine Run-Up Area - Installation*	$296,326
76944	96056	SCLA Fire Apparatus Equipment	$290,279
76944	96057	New Hangar Site Preparation	$390,149
76944	96058	Fuel Farm Relocation*	$418,104
76944	96059	Wind Sock Installations	$3,225
76944	96060	Airfield Lighting System*	$240,793
76944	96064	Fire Sprinkler System*	$212,298
76944	96069	2000' R/W Ext Glide & Treshold Relocation	$18,199
76944	96077	Airport Security Upgrade Project*	$138,555
76944	00000	Air Traffic Control Tower - Voice Recorder	$15,268
76944	00000	Install Fiber Cable on Ramp (Bldgs 728 & 723)	$12,026
76947	00000	06 Stirling Master Development Agreement	$672,331
76947	00000	07 Stirling Master Development Agreement	$2,150,746
76947	00000	Airport 240-acre Land Acq. DCB Loan - Principal & Interest	$294,379

Attachment No. 4
Select Direct Bonded Expenditures for SCLA

76947	70708	SCLA Power Plant #1 Expansion	$6,759,163
76947	70710	Natural Gas Vehicles @ SCLA	$254,763
76947	70711	Temporary Power - Hangar 3 & 4	$38,809
76947	70712	Natural Gas Metering Station	$25,000
76947	70713	Natural Gas Backbone Infrastructure	$57,377
76947	90027	Re-Roof of Bldg 762	$20,650
76947	90056	New Roof (Bldg 552)	$55,330
76947	90059	Modifications to Hangar 676	$1,634,527
76947	90060	Bldg 717 - A & P School	$104,895
76947	90075	Bldg 732 - A & P School (Lab)	$33,212
76947	90076	Environmental & Safety Upgrades (Hgr 756)	$450,810
76947	96063	Helicopter Op Area - Site Prep	$5,900
76947	96065	Hangars 1,2 & 676-Concrete Apron/Deluge	$2,246,575
76947	96066	Fire Suppression & Water Related Equipment	$911,181
76947	96068	Automatic Weather Observation System	$23,125
76947	96070	Modification to Fire Sprinklers-Hgr 676 & 683	$186,038
76947	96071	Perimeter Improvements	$32,649
76947		SCLA/Stirling DDA (Transfer to 30912-90067)	$22,867,090
76947	96074	Helo Pad Tie Down	$21,300
76947	96075	Tooling for A&P School	$21,229
76947	96078	Re-Roofing - Bldg 739	$49,800
76948	96067	Taxable Revenue Notes (Hangar Facility Proj)	$9,550,752
76948	96067	Promissory Note - KND Affiliates - Hangars	$26,499,339
76949		Taxable Revenue Notes (Hangar Facility Proj)	$20,000,000
76949		Repay loan to Stevens Capital (CBS)-Hangar Constr.	$1,988,664
76949	96067	Promissory Note - KND Affiliates - Hangars	$9,906,836
76951	96067	Promissory Note - KND Affiliates - Hangars	$13,571,705
76951	70712	Natural Gas Metering Station	$875
76951	Stirling	08 Stirling Master Development Agreement-Infrastructure	$2,390,904
76954	96067	Promissory Note - KND Affiliates - Hangars	$10,400,000
			$152,448,806

Attachment No. 5

Attachment No. 5 Detail of Expenditures-SCLAA Bond Procees			
		Payoff Prior Notes (1997 Taxable Lease Revenue Notes	7,000,000
	96051	Hangar 676: Black Top Repair	314,407
	96031	Phantom Street	
	96043	Taxiway Charli Extension South	171,239
	90039	Blackhawk Bldg 761-771	389,917
	96024	Runway 17-35 Pavement Overlay	54,138
	96039	Building 717 ADA Compliance	80,000
	96035	Runway 17-35 Extension	436,396
	96037	Runway 17-35 Extension Phase II	521,744
	96040	Building 717 Roof	93,412
76944	70708	Power Plant 1 Debt Service	212,750
76944	70708	SCLA Power Plant #1-Construction	2,464,138
76944	80421	Ice Bears for Bldg 728	35,718
76944	90081	Engr Costs for Construction of Fabric Hangar	461,247
76944	90081	Fabric Hangar-Ramp Imprvmnts	461,247
76944	90082	New Roof for SCLA Adm Bldg (Bldg 728)	68,750
76944	90095	New Roof & HVAC (Bldg 733)	75,650
76944	90601	Rail Right of Way Acquisition	7,372,974
76944	96037	2000' R/W Ext-Install & Land Purchase	363,118
76944	96043	Taxiway Charlie	10,908
76944	96044	Taxiway Bravo Reconstruction*	88,116
76944	96045	Airport Master Plan*	22,000
76944	96048	Foam Suppression (756 & 676)*	402,890
76944	96049	Tail End Enclosures (756 and 676)	3,075,624
76944	96050	SCLA Rail Alignnment Land Survey	246,388
76944	96052	Reroofing Hangars 676 & 683	15,784
76944	96053	Aircraft Tools (Hangars 676 & 683)	58,185
76944	96054	HVAC (Hangar 756)	523,000
76944	96055	Engine Run-Up Area - Installation*	296,326
76944	96056	SCLA Fire Apparatus Equipment	290,279
76944	96057	New Hangar Site Preparation	390,149
76944	96058	Fuel Farm Relocation*	418,104
76944	96059	Wind Sock Installations	3,225
76944	96060	Airfield Lighting System*	240,793
76944	96062	VV Power Plant 2 & Land Purchases	26,115,446
76944	96064	Fire Sprinkler System*	212,298
76944	96069	2000' R/W Ext Glide & Treshold Relocation	18,199
76944	96077	Airport Security Upgrade Project*	138,555
76944	00000	John F. Porter-Commission	105,000
76944	00000	Air Traffic Control Tower - Voice Recorder	15,268
76944	00000	Install Fiber Cable on Ramp (Bldgs 728 & 723)	12,026
76947	00000	06 Stirling MDA (Transfer to 30912- 90058)	672,331
76947	00000	07 Stirling MDA (Transfer to 30912- 90058)	2,150,746

Attachment No. 5

76947	00000	Land Purchase (near City Hall)	1,898,565
76947	00000	Airport DCB Loan - Principal & Interest	294,379
76947	65047	Land purchased at I15 and Nisqualli	3,306,098
76947	70708	SCLA Power Plant #1 Expansion	6,759,163
76947	70710	Natural Gas Vehicles @ SCLA	254,763
76947	70711	Temporary Power - Hangar 3 & 4	38,809
76947	70712	Natural Gas Metering Station	25,000
76947	70713	Natural Gas Backbone Infrastructure	57,377
76947	90027	Re-Roof of Bldg 762	20,650
76947	90056	New Roof (Bldg 552)	55,330
76947	90059	Modifications to Hangar 676	1,634,527
76947	90060	Bldg 717 - A & P School	104,895
76947	90075	Bldg 732 - A & P School (Lab)	33,212
76947	90076	Environmental & Safety Upgrades (Hgr 756)	450,810
76947	90501	Airport Business Development	1,712,411
76947	90601	Rail Right of Way Acq (Transfer to 30914)	3,049,683
76947	96063	Helicopter Op Area - Site Prep	5,900
76947	96065	Hangars 1,2 & 676-Concrete Apron/Deluge	2,246,575
76947	96066	Fire Suppression & Water Related Equipment	911,181
76947	96068	Automatic Weather Observation System	23,125
76947	96070	Modification to Fire Sprinklers-Hgr 676 & 683	186,038
76947	96071	Perimeter Improvements	32,649
76947		SCLA/Stirling DDA (Transfer to 30912-90067)	22,867,090
76947	96074	Helo Pad Tie Down	21,300
76947	96075	Tooling for A&P School	21,229
76947	96078	Re-Roofing - Bldg 739	49,800
76948	96067	Taxable Revenue Notes (Hangar Facility Proj)	9,550,752
76948	70708	SCLA Power Plant Debt Service	212,750
76948	96067	Promissory Note - KND Affiliates - Hangars	26,499,339
76949		Taxable Revenue Notes (Hangar Facility Proj)	20,000,000
76949		Repay loan to Stevens Capital (CBS)	1,988,664
76949	96067	Promissory Note - KND Affiliates - Hangars	9,906,836
76949	65128	Paving for PM 10 Credits	515,125
76951	96067	Promissory Note - KND Affiliates - Hangars	13,571,705
76951	70712	Natural Gas Metering Station	875
76951	70714	Bio-Fuel Power Generation	11,704,203
76951	Stirling	08 Stirling MDA (Transfer to 30912)	2,390,904
76951	City	Rail - City - Legal (Transfer to 30914)	2,765,354
76951	Stirling	Rail - Stirling - General (Transfer to 30914)	4,942,368
76951	90602	Lead Track-City Portion (transfer to 30914)	11,219,671
76951	90602	Rail - Stirling - Lead Track (Transfer to 30914	696,860
76951	90603	Rail - Stirling - So Industrial (Transfer to 30914)	16,265
76951	90604	Rail - Stirling - Intermodal (Transfer to 30914)	1,706,529
76951	90605	Rail - Stirling - Multimodal Track (Transfer to 30914)	75,990
76951	90606	Rail - Stirling - BNSF Sidings Track (Transfer to 30914)	22,450

Attachment No. 5

76951	90607	Rail - Stirling - Mojave River WYE (Transfer to 30914)	270,416
76951	90608	Rail - Stirling - Intermodal Yard (Transfer to 30914)	219,000
76951	96072	Nat'l Trails Overhead (transfer to 30914)	5,917,343
76953	96062	VV Power Plant 2 - Turbines	37,446,632
76954	96062	VV Power Plant 2 - Turbines	12,573,438
76954	96067	Promissory Note - KND Affiliates - Hangars	10,400,000
76954	96080	Inland Port	175,920
76954	96081	Waste to Energy Plant	72,750
			287,021,184

Attachment No. 6

Board of Supervisors
County of San Bernardino

BRAD MITZELFELT
SUPERVISOR, FIRST DISTRICT

November 24, 2008

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

Re: Request for Special Meeting of VVEDA on Tuesday, December 2, 2008 at 2:00 p.m.

Dear Mr. Metzler:

I do hereby request that a special meeting of the Victor Valley Economic Development Authority be scheduled for Tuesday, December 2, 2008, at 2:00 p.m., for the purpose of discussing certain changes in the governance structure of the Southern California Logistics Airport Authority ("Authority") contained in the most recent third amendment to the Authority Joint Powers Agreement.

Please list the following two agenda items:

1. Consider and direct staff as to any changes in the governance structure of the Southern California Logistics Airport Authority.

2. Consider and approve a change in general counsel.

It is important that this meeting be scheduled prior to the 5:00 p.m. meeting that day of the Authority, so that the comments of the VVEDA Commission regarding these changes can be conveyed to the Authority prior to its meeting.

Sincerely,

Joyce Murthy for Brad Mitzelfelt

BRAD MITZELFELT
Supervisor, First District
San Bernardino County

San Bernardino County Government Center • 385 North Arrowhead Avenue, Fifth Floor • San Bernardino, CA 92415-0110 • (909) 387-4830
District Office • 9329 Mariposa Road, Suite 205 • Hesperia, CA 92344 • (760) 955-5400 • (800) 472-8597
Barstow Office • 301 East Mt. View • Barstow, CA 92312 • (760) 256-4748
Twentynine Palms Office • 6136 Adobe Road • Twentynine Palms, CA 92277 • (760) 361-8577

RECEIVED JAN 05 2011

City of Hesperia

January 3, 2011

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

RE: Request for Information – Victor Valley Economic Development Authority (VVEDA)

Dear Mr. Metzler,

As a member of VVEDA, the City of Hesperia hereby requests the following information related to any and all debt obligations of VVEDA, including those obligations for which VVEDA has pledged its tax increment (i.e. Southern California Logistics Airport [SCLA] debt):

For each debt obligation, please provide the following:

1) The name/type of the debt obligation;
2) The purpose of the obligation;
3) Original principal amount;
4) Principal amount outstanding (estimated through the life of the obligation);
5) Interest rate(s) of the obligation;
6) Maturity date;
7) Funding source;
8) Debt service payment information (budget and actual for the years specified);
9) The debt service schedule for the obligation, by year, for all years of the obligation;
10) The fiscal agent reserve requirement, including a notation as to whether or not the reserve requirement is currently intact;
11) Comments as to whether all required debt service payments to date have been made as well as detailed information related to any amount due that was not paid;
12) Any other pertinent information related to the obligation, including any defaults of bond covenants etc., regardless of circumstances.

For your convenience, a template outlining the format for the requested information has been attached and an electronic version of the template can be e-mailed upon request to Lorraine Mazzuca at lmazzuca@cityofhesperia.us .

Mike Leonard, Mayor
Russell Blewett, Mayor Pro Tem
Paul Bowdle, Council Member
Bill Holland, Council Member
Thomas "Sandy" Sloan, Council Member

Mike Pahagroz, City Manager

9700 Seventh Avenue,
Hesperia CA 92345
760-947-1000
FAX 760-947-1111

City of Hesperia

In addition to the above debt repayment information, for each debt obligation, please also provide a detailed accounting of how the proceeds of the debt issue were used (i.e. projects/purposes). Please also include information detailing the original amount of the available proceeds, as well as the amount of any unspent proceeds that remain at June 30, 2010.

Thank you for your prompt attention to this request.

Sincerely,

Mike Podegracz
City Manager

C: Brad Mitzelfelt, County of San Bernardino 1st District Supervisor
City of Adelanto City Council
City of Adelanto City Manager
City of Hesperia City Council
City of Victorville City Council
City of Victorville City Manager
Gregory Devereaux, County of San Bernardino County Administrative Officer
Town of Apple Valley Town Council
Town of Apple Valley Town Manager

ATTACHMENT

1) Name/Type of Debt Obligation

2) Purpose/History:

3) Original Principal Amount: $

4) Principal Outstanding Balance as of:

July 1, 2010:	$
Estimated July 1, 2011:	$
Estimated July 1, 2012:	$
Estimated July 1, 2013:	$
Estimated July 1, 2014:	$
Estimated July 1, 2015:	$
Estimated July 1, 2016:	$
Estimated July 1, 2017	$
Estimated July 1, 2018:	$
Etc.	

5) Interest Rate(s):

6) Maturity Date:

7) Funding Source:

8)

Payment Amounts	FY 2008-09 Budget	FY 2008-09 Actual	FY 2009-10 Budget	FY 2009-10 Actual	FY 2010-11 Budget
Principal Amount					
Interest Amount					
Admin/Other Costs					
Total					

9) Debt Service Schedule by year for all years of the obligation:

Fiscal Year	Interest	Principal	Principal Outstanding

10) Fiscal Agent Reserve Requirement

11) Comments regarding debt service payments

12) Other Pertinent Information

FEB 01 2011

CITY OF
VICTORVILLE

AIRPORT 760.955.5000
FAX 760.245.7243
vville@ci.victorville.ca.us
http://ci.victorville.ca.us

14343 Civic Drive
P.O. Box 5001
Victorville, California 92393-5001

January 27, 2011

Keith C. Metzler, Executive Director
Victor Valley Economic Development Authority
18374 Phantom St.
Victorville, CA 92394

RE: VVEDA Accounting of Expenditures Among Member Jurisdictions

Dear Mr. Metzler:

In light of the request by the City of Hesperia for information relating to indebtedness of VVEDA, I do understand that VVEDA largely passes through the receipt of its tax increment to member jurisdictions redevelopment agencies. I also understand each of the member jurisdictions as being responsible for properly administering their tax increment expenditures. As the largest member entity comprising VVEDA, I am concerned that VVEDA has not received and reported detailed expenditure information as to how member jurisdiction tax increment has been spent.

Since VVEDA is the singular entity recognizing by the State of California as to accountability of its tax increment expenditures, I am requesting that you obtain detailed expenditure reports for the last five (5) years for each member jurisdiction expenditure of VVEDA Tax Increment and that you make this a part of your effort to supplement the City of Hesperia's request.

Should you have any questions, I can be reached at (760) 955-5029.

Sincerely,

James L. Cox

James L. Cox
City Manager

JLC/cg

cc: Victorville City Council Member
VVEDA Board Members
Marc Puckett, VVEDA Treasurer

Board of Supervisors
County of San Bernardino

BRAD MITZELFELT
VICE-CHAIRMAN
SUPERVISOR, FIRST DISTRICT

March 16, 2011

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

Dear Mr. Metzler:

RE: Request for Information – Victor Valley Economic Development Authority (VVEDA) and Southern California Logistics Airport Authority (SCLAA)

As San Bernardino County's representative to VVEDA, I hereby request the following information related to the finances and activities of VVEDA and SCLAA. The requests with respect to VVEDA are for the Joint Powers Authority itself and not for the individual member jurisdictions that might have issued their own debt using tax increment generated by the VVEDA project area.

1. As it pertains to the issuance of bonds for both VVEDA and SCLAA, please provide the following:

    a. Documents showing the approval date, obligation amount, purpose and location of the use of all bond proceeds, identified by bond issue (i.e., SCLAA Tax Allocation Parity Bonds, Series 2005A).
    b. The aggregate principal amount, outstanding principal amount and debt service schedules by bond issue.
    c. Cash flows for Fiscal Year 2010-11 and projected cash flows for the next two fiscal years that identify the financial resources, funding of ongoing operations, and debt service coverage.

2. Please also provide the following:

    a. Mayer Hoffman McCann audit report for the City of Victorville and SCLAA for fiscal year ended June 30, 2010.

b. Documents pertaining to the approval of "interfund" loans from SCLAA or VVEDA to any of the following entities:

   i. Victorville Water District
   ii. Victor Valley Wastewater Reclamation Authority
   iii. Victor Valley Waste Water Treatment Facility
   iv. SCLA Industrial Wastewater Treatment Facility
   v. Victorville Redevelopment Agency
   vi. City of Victorville
   vii. Southern California Rail Authority

3. The VVEDA's 2009-10 Fiscal Year Statement of Activities states that, "[i]n accordance with the terms of the Third Amended Joint Exercise of Powers Agreement, VVEDA delegated its decision-making authority with respect to SCLA to the Southern California Logistics Airport Authority, which enabled the Authority to enter into a number of lease, sales, and disposition transactions on behalf of VVEDA pertaining to SCLA" (page 5). Please provide the following:

   a. Master Development Agreement with Stirling Airports International, including subsequent amendments and Operating Memoranda
   b. SCLA Specific Plan
   c. SCLA Infrastructure Plan/Capital Improvement Program
   d. Airport Layout Plan
   e. Airport Management Plan
   f. Master Railway Development Agreement with Stirling Airports International, including subsequent amendments and Operating Memoranda
   g. Public Benefit Transfer and Economic Development Conveyance documents

Thank you for your prompt attention to this request. Requests for information relative to this request should be directed to David Zook in my office at (909) 387-4830.

Sincerely,

Brad Mitzelfelt
Chairman, VVEDA
San Bernardino County Supervisor

CITY OF
VICTORVILLE

760-955-5000
FAX 760-245-7243
E-mail: vville@ci.victorville.ca.us
14343 Civic Drive
P.O. Box 5001
Victorville, CA 92393-5001

April 14, 2011

Brad Mitzelfelt, Chairman
VVEDA
385 North Arrowhead Ave., 5th Floor
San Bernardino, CA 92415-0121

RE: VVEDA Tax Increment

Dear Mr. Chairman,

Since January of this year, Member Jurisdictions of the Victor Valley Economic Development Authority (VVEDA), particularly the City of Hesperia, the County of San Bernardino and the City of Victorville have expressed interest in how tax increment has been spent by member jurisdictions within their respective redevelopment project areas, including the Southern California Logistics Airport. Since that time, Victorville has produced volumes of documents detailing the expenditure of tax increment funds received by it through the Victorville Redevelopment Agency or the Southern California Logistics Airport Authority (SCLAA). Despite public opinion written to the contrary, you should find that Victorville's expenditures are consistent with the 4th Amended and Restated Joint Powers of Authority Agreement (JPA) when giving particular attention to Sections 8, 34, 38 and 45. I hope your review will also give attention to California Community Redevelopment Law (including Section 33492.40) along with the 6th Amendment to the Redevelopment plan since these provide fairly meaningful flexibilities to our Redevelopment Authority that is very different from that of traditional Redevelopment Agencies.

Despite having fulfilled the very detailed request from Hesperia and the County, I do remain concerned that those entities along with Apple Valley and Adelanto haven't yet satisfied Victorville's concern as to those jurisdictions having properly spent their respective tax increment funds consistent with both Redevelopment Law and the governing JPA. More specifically, the following are my observations with respect to the individual entities:

Apple Valley:
Due to the lack of response, VVEDA should be concerned that there isn't sufficient detail to support whether or not the tax increment it received (or its bond proceeds realized through its leveraging of tax increment) was or is being spent on improvements that are of benefit and/or primary benefit to the Project Area (*See e.g.*, H&SC 33445 & 33678). This concern should also extend to Apple Valley's expenditure of the 20% set-aside to be used for purposes of increasing, improving, and preserving the supply of low- and moderate-income housing (H&SC 33334.2).

Hesperia:
The 06/07 and 07/08 non-housing expenditures towards the Hesperia branch library appear to be in conflict with the JPA since its branch library is not located within its portion of the VVEDA project area nor does it appear to be close in proximity to suggest findings of benefit or findings of primary benefit could be made to justify the expenditure (H&SC 33445). Also, I have estimated that between the 05/06

and 09/10 fiscal years, non-housing revenue generated amounted to $1,317,541 and housing revenue amounted to $1,433,957. Comparing these amounts to the amounts shown as expenditure, there remain two areas of concerns. The first is not being able to determine if the remaining non-housing revenue had been spent disproportionately on salaries/overhead or altogether not being spent for redevelopment purposes of benefit to the project area. The second is with respect to whether or not an excess surplus issue exists relating to having not spent its 20% set-aside fund.

County of San Bernardino:
Over the fiscal years of 05/06 through 09/10, I have estimated that the County's non-housing fund has generated $2,641,695 and housing fund has generated $2,253,002. The concerns shared above in the Hesperia scenario are equally applicable here excepting of course the fact that their library is not applicable.

Adelanto:
I estimated that Adelanto has generated over the subject period, $408,968 in non-housing revenue and $806,524 in housing revenue. The concerns shared above in the Hesperia scenario are equally applicable here excepting of course the fact that their library is not applicable.

Finally, the responsibility to justify expenditures as conforming with Redevelopment Law and the governing JPA is serious. If we can't get the requested cooperation as to the items above, I must encourage you to consider an independent audit of the Member Jurisdictions' financial reports detailing the receipt & expenditure of VVEDA Tax Increment and determine if expenditures are legally and contractually permissible.

Sincerely,

Ryan McEachron
Mayor

cc: VVEDA Board
VVEDA TAC
Marc Puckett, VVEDA Treasurer
Kaye Reynolds, VVEDA Controller
Keith Metzler, VVEDA Executive Director
Andre de Bortnowsky, VVEDA Legal Counsel
Victorville City Council
Hesperia City Council
Adelanto City Council
San Bernardino County Board of Supervisors
Apple Valley Town Council
James L. Cox, City Manager
Kathy Rosenow, Redevelopment Consultant

Victor Valley CALIFORNIA
Adelanto \ San Bernardino County

(800) 747-5840
www.VictorValleyCA.com
info@VictorValleyCA.com

September 25, 2012

San Bernardino County Grand Jury
351 North Arrowhead Avenue, Room 200 Courthouse
San Bernardino, CA 92415-0243

RE: 2011-2012 Grand Jury Final Report

Members of the Grand Jury:

The Victor Valley Economic Development Authority ("VVEDA") is providing this response to the above referenced Grand Jury Final Report. Specifically, Page 5-12 of said Report includes the following:

> *"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 the redevelopment activities."*

On September 19, the VVEDA Commission, by unanimous vote, formally indicated that it is in agreement with the Recommendation and VVEDA intends to conduct a review as recommended in the Grand Jury Report.

If you have any questions regarding the foregoing, please contact the undersigned.

Brad Mitzelfelt, Chairman of the Board
Victor Valley Economic Development Authority

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