

TULARE REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

December 2012



JOHN CHIANG
California State Controller

December 21, 2012

Don Dorman, City Manager
City of Tulare Redevelopment/
Successor Agency
411 East Kern Avenue
Tulare, CA 93274

Dear Mr. Dorman:

Pursuant to Health and Safety (H&S) code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Tulare Redevelopment Agency to the City of Tulare or any other public agency during the period January 1, 2011, through January 31, 2012. As you know, this statutory provision explicitly states that, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether it should be returned to the Tulare Redevelopment Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights and any rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Tulare or any other public agencies have been reversed.

Our review found that the City of Tulare Redevelopment Agency transferred \$23,378,906 in assets. These included unallowable transfers of assets totaling \$18,878,066 or 80.75% that must be turned over to the Successor Agency. Pursuant to Health and Safety Code section 34167.5, the City of Tulare, and the City of Tulare Successor Housing Agency will be ordered to reverse all unallowable transfers identified and transfer them to the City of Tulare Redevelopment Successor Agency.

If you have any questions, please contact Mr. Steven Mar, Bureau Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Rita Woodard, Auditor-Controller
County of Tulare
Judy Silicato, Chairperson
Oversight Board, City of Tulare
Steve Slazay, Local Government Consultant
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Asset Transfer Assessment Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Tulare Redevelopment Agency for the period of January 1, 2011, through January 31, 2012. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payments of any kind from any source.

Our review disclosed that the Tulare Redevelopment Agency transferred \$23,378,906 in assets. These included unallowable transfers of assets totaling \$18,878,066 or 80.75%, that must be turned over to the Tulare Redevelopment Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (California Redevelopment Association et al. v. Matosantos) upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

On June 27, 2012 the Governor signed a trailer bill, AB 1484, which clarified provisions of ABX1 26, and imposed new tasks on county auditor-controllers and successor agencies related to RDA dissolution.

ABX1 26 and AB 1484 were codified in the Health and Safety Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of redevelopment agencies (RDAs), "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency, or any other public agency, and the redevelopment agency," and the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred during that period between the Tulare Redevelopment Agency, the City of Tulare, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

Objectives, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the Tulare City Council and the Tulare Redevelopment Agency.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

AB 1484 was passed on June 27, 2012 adding Health & Safety Code section 34178.8 which states “. . .the Controller shall review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012. . . .”

The SCO has initiated the review associated with AB 1484, and will complete the review at a later date.

Conclusion

Our review disclosed that the Tulare Redevelopment Agency transferred \$23,378,906 in assets during the period of January 1, 2011 through January 31, 2012, including unallowable transfers of assets totaling \$18,878,066 or 80.75% of the transferred assets. Those assets must be turned over to the City of Tulare Redevelopment Successor Agency for disposition in accordance with ABX1 26 and AB 1484.

Unallowable Assets Transferred:

Unallowable assets transferred to City of Tulare ¹	\$ 12,813,891
Unallowable assets transferred to Successor Housing Agency ²	<u>6,064,175</u>
Total Unallowable Transfers	<u>\$ 18,878,066</u>

¹ See Schedule 1 and Schedule 2

² See Schedule 3

The agencies named above as recipients of the unallowable asset transfers are ordered to immediately reverse the transfers, and return the assets identified in this report to the City of Tulare Redevelopment Successor Agency (see Schedule 1, Schedule 2, and Schedule 3).

Details of our findings and Orders of the Controller are in the Findings and Orders of the Controller section of this report. We also have included a detailed schedule of assets to be turned over to, or transferred to, the Successor Agency.

Views of Responsible Officials

We issued a draft audit report on November 6, 2012. The City of Tulare responded by letter dated November 16, 2012, disagreeing with the audit results. The auditee's response is included in this final audit report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Tulare, the City of Tulare Redevelopment Successor Agency, the City of Tulare Successor Agency Oversight Board, the City of Tulare Successor Housing Agency, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

December 21, 2012

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Tulare

The Tulare Redevelopment Agency (RDA) transferred \$12,813,891 in assets to the City of Tulare (City). Per the Agenda Report dated March 9, 2011, approved by the Chairperson of the RDA Board, the purpose of the asset transfers was to protect redevelopment agency resources from potential termination by the State of California action. All of the asset transfers to the City occurred during the period of January 1, 2011, through January 31, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of cash and capital assets.

Unallowable asset transfers were as follows:

- On March 11, 2011, the RDA transferred capital assets of \$7,013,891 in land to the City. To accomplish those transfers, the City and the RDA entered into an agreement under Resolution No. 2011-03 and Agenda Item Number II.1.c.
- On March 11, 2011, the RDA transferred assets of \$5,800,000 in cash to the City. To accomplish those transfers, the City and the RDA entered into an agreement under Resolution No. 2011-02 and Agenda Item Number II.1.a.

Pursuant to H&S Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be returned to the City of Tulare Redevelopment Successor Agency for disposition in accordance with H&S Code sections 34177 (d) and (e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) states, “The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency that were funded by tax increment revenues of the dissolved redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such as asset....”

Order of the Controller

Based on H&S Code section 34167.5, the City of Tulare is ordered to reverse the transfer of the above assets, described in Schedule 1 and Schedule 2, in the amount of \$12,813,891 plus any interest earned, and return them to the City of Tulare Redevelopment Successor Agency.

The City of Tulare Redevelopment Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

City's Response (Real Property – Page 2-3)¹

...The actual assets transferred are [also] misstated in the SCO Draft Audit. In fact, the RDA, in attempting to pay a portion of its \$16M debt to the City (all pursuant to a written repayment schedule which accelerated \$12.75M of the debt), transferred the following assets to the City:

- 30 parcels of real property, with an original purchase price (book value) of \$6,950,789;
- **\$4,165,037.45** in bond proceeds from the 2010 taxable Series B bonds, which were issued, in part, to repay a portion of RDA/City debt; and
- **\$1,634,962.36** journal entry transfer of funds, but no actual cash was available or transferred until December 2011 when the RDA received its property tax increment distribution.¹

...Notwithstanding the written repayment schedule, an “alternative repayment schedule” was also agreed to, which *allowed an accelerated debt repayment of \$12.75 million in fiscal year 2010/2011, payable by any combination of RDA assets, including real property.*²

The written loan agreements between the City and the RDA were “enforceable obligations” of the RDA as defined above under either italicized example of an “enforceable obligation,” up until the point of the RDA’s dissolution of February 1, 2012...

SCO's Response

The State Controller’s Office practice has been to use the historical book value for real property and not an arbitrary fair market value. We neither agree nor disagree to the City of Tulare’s value of real property transferred as \$6,950,789 instead of \$7,013,891, as we primarily are concerned with the physical allocation of these properties. Thus, it remains that 24 of the 30 parcels are redevelopment assets and are in violation of ABX1 26 under H&S Code section 34167.5. These 24 parcels must be turned over to the Successor Agency for disposition.

The scope of the SCO review was not to determine what is deemed an “enforceable obligation.” Based on H&S Code section 34167.5, the scope of the SCO was to review whether all RDA assets properly were transferred to the Successor Agency.

The SCO Order remains the same.

¹ For the complete response from the City of Tulare, see Attachment 1.

City's Response (Journal Entry Transfer – Page 2-3) ¹

...The remaining \$1.6M of the transfer did not occur until December 2011; the City and the Successor Agency agree that this amount will be returned to the Successor Agency because the transfer was not accomplished pursuant to the RDA's Enforceable Obligation Payment Schedule. With the return of the \$1.6M in funds, the debt to the City will be increased by \$1.6M.

SCO's Response

The State Controller's Office is in agreement with the City of Tulare. The \$1.6M transferred will be turned over to the Successor Agency. Once the assets are transferred to the Successor Agency, the City can increase the amount on the ROPS by \$1,634,962.36.

City's Response (Bond Proceeds – Page 4-5) ¹

...approximately ***\$4.1M in bond funds*** was transferred to the City in March 2011. This was an appropriate use of the 2010 Series B bond funds...The SCO finding that suggests that this money can be ordered returned to the Successor Agency for distribution to the taxing entities is simply wrong. ***Bond funds cannot be redistributed to other taxing entities.*** Bond funds can only be spent for the purposes for which the bonds were issued. Even if the City were to return the \$4,165,037.45 in bond funds to the Successor Agency, which it does not agree is required under AB 1X 26/AB 1484, the bond funds would not be redistributed to other taxes entities. Instead, the Successor Agency would seek Oversight Board approval (pursuant to Health & Safety Code Section 34191.4) to expend the bonds for the purposes for which they were issued, which includes repayment of the City debt.

SCO's Response

This is inaccurate. According to the 2010 bond issuance statement, the majority of 2010 taxable Series B bonds were, in fact, issued for Deposit to Redevelopment Fund, with absolutely no issuance for Repayment of City Loan. These assets were for redevelopment use and therefore must be turned over to the Successor Agency to be paid back upon approval from the Oversight Board and Department of Finance. (See Attachment 2)

The SCO Order remains the same.

¹ For the complete response from the City of Tulare, see Attachment 1.

**FINDING 2—
Unallowable Assets
Transferred to
Successor Housing
Agency**

The Tulare Redevelopment Agency (RDA) made an unallowable asset transfer of \$6,064,175 to the Successor Housing Agency (SHA). The asset transfer to the SHA occurred during the period of January 1, 2011, through February 1, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011. See Schedule 2 for details.

Unallowable asset transfer was as follows:

- The RDA transferred \$6,064,175 to the SHA on February 1, 2012. Those assets consisted of cash and capital assets from the Low and Moderate Income Housing Fund (Encumbered Cash: \$3,058,204; Unencumbered Cash: \$2,920,873; Land Held for Resale: \$85,098).

The RDA was not allowed to transfer assets, including housing assets, per H&S Code sections 34163(d) and (f).

H&S Code section 34175(b) states, “All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012.”

Additionally, pursuant to H&S Code section 34167.5, any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011 must be turned over to the Successor Agency for disposition in accordance with H&S Code sections 34177(d) and (e).

Order of the Controller

Based on H&S Code section 34167.5, the Successor Housing Agency is ordered to reverse the transfer of the above assets, described in Schedule 3, in the amount of \$6,064,175, and turn over the assets to the City of Tulare Redevelopment Successor Agency. In addition, in accordance with H&S Code sections 34177(d) and (e), the City of Tulare Redevelopment Successor Agency is directed to properly dispose of those assets.

City’s Response (Page 5)¹

The Legislation, under Section 34176 authorizes the city which created the RDA to retain the housing assets and functions of the RDA, upon its dissolution. On January 3, 2012, the City of Tulare elected to become the Successor Agency to the former Tulare Redevelopment Agency and also to retain the housing functions and obligations, upon the dissolution of the RDA. Accordingly, by operation of law, all assets of the former RDA transferred to the Successor Agency. In Tulare’s case, the Successor Agency and housing Successor Agency are the same entity.⁵ However, as is required under Health and Safety Code

¹ For the complete response from the City of Tulare see Attachment 1.

Section 34176(d), all housing assets (as defined by Health & Safety Code Section 34176(e)) were transferred to the Low and Moderate Income Housing Asset Fund, retained by the housing Successor Agency.

⁵ If the SCO is concerned that there is no evidence that the Oversight Board directed and approved the transfer of all housing assets from the Successor Agency to the housing Successor Agency, as is required by Health & Safety Code Section 34181(c), this is an administrative matter that can be quickly remedied by the Oversight Board. An Oversight Board Resolution approving the transfer of assets to the housing Successor Agency will be forwarded to the SCO separately.

SCO's Response

The State Controller's Office is in agreement with the City of Tulare. The City of Tulare should provide documentation that the transfer of assets to the housing Successor Agency has been approved by the Oversight Board.

**Schedule 1—
Unallowable Asset Transfers to the City of Tulare
January 1, 2011, through January 31, 2012**

Capital Assets:	
Land and Improvements ¹	\$ 7,013,891
Current Assets	
Cash Transfer to City ¹	<u>5,800,000</u>
Total Unallowable Transfers – City of Tulare	<u>\$ 12,813,891</u>

¹ Detail listing of assets on Schedule 2.

**Schedule 2—
RDA Assets Transferred to the City of Tulare
January 1, 2011, through January 31, 2012**

Fund	APN	Address	Book Value ¹
70	169-140-013	SWC J & CROSS (A)	\$ 428,766
70	169-140-014	SWC J & CROSS (B)	584,389
70	170-232-008	424 NO N ST	407,297
70	170-232-010	450 1/2 NO N ST	116,462
70	170-232-011	446 NO N ST	95,947
70	170-232-016	400 BLK NO N ST	112,105
70	170-232-017	400 BLK NO O ST	218,532
70	170-233-012	400 BLK NO O ST	365,772
70	170-241-011	300 BLK NO M ST	163,018
70	170-241-012	300 BLK NO N ST	162,726
70	170-242-016	300 BLK NO N ST	136,772
70	170-242-017	300 BLK NO O ST	161,659
70	170-253-017	NWC M & SAN JOAQUIN	1,450
70	170-261-015	420 NO J ST	162,037
70	170-261-016	400 BLK NO K ST (POR)	118,724
70	170-263-002	424 NO K ST	251,624
70	170-263-016	400 BLK NO K ST	91,120
70	176-031-001	335 S J ST	473,031
70	176-076-004	113-117 SO M ST (RENTAL)	333,929
70	176-082-010	134 SO K ST	350,000
73	181-040-014/15	SEC K & O'NEAL	10,655
73	181-050-010	510 E ALMOND CT	244,906
73	191-070-015	1285 E PAIGE	1,729,453
73	191-350-010/11	4266 SO K ST	293,518
	Total Capital Assets		7,013,892
	Cash		5,800,000
	Total Unallowable		<u>\$ 12,813,891</u>

¹ Rounded

**Schedule 3—
Unallowable RDA Asset Transfers
to the Successor Housing Agency
January 1, 2011, through January 31, 2012**

Current Assets	
Encumbered Cash	\$ 3,058,204
Unencumbered Cash	2,920,873
Land Held for Resale	<u>85,098</u>
Total Unallowable Transfers – Successor Housing Agency	<u>\$ 6,064,175</u>

**Attachment 1—
City's Response to Review**

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October 15, 2012

Steven Mar, Chief
Local Governments Audit Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Initial Response to State Controller's Office Staff Audit Exit Conference Findings (S13-RDA-915; S13-RDX-906)

Dear Mr. Mar:

Colantuono & Levin, PC, represents the City of Tulare and the Successor Agency to the Tulare RDA (collectively referred to as "the City") in a special counsel capacity. We make this initial response to the State Controller's Office ("SCO") staff audit of RDA asset transfers occurring between January 1, 2011 through January 31, 2012, and Successor Agency asset transfers occurring between February 1, 2012 through August 15, 2012 and the resulting initial findings. (Copy of Exit Conference findings attached). We make this initial response, reserving all rights to make a further response once the two draft review reports have been provided. The purpose of this initial response is to hopefully avert the legally erroneous preliminary findings of SCO staff from becoming cemented in the draft review reports. Because the conclusions of a State Controller's Office review of transfers will impact the preparation of both the housing and non-housing due diligence reviews required by the Department of Finance, an early resolution of this matter is in everyone's interest.

EXIT CONFERENCE FINDING #1: "Unallowable transfer of RDA assets to the city for loan payment," citing Health & Safety Code 34167.5.

The City respectfully disagrees with SCO staff in its characterization of payments made pursuant to a written payment schedule for a long-standing loan agreement, as an "unallowable transfer."

First of all, the loan of City funds to the RDA was permissible under Community Redevelopment Law. There is substantial documentation of the loans, which originated in 1968,

the purposes for the loans (including funds for the creation of the RDA, advances for RDA expenditures, payment of third-party costs of construction, land acquisition costs, etc.), the ultimate consolidation of the loans and forgiveness of a substantial portion of the accrued interest in 2009, and the March 2011 Amended and Restated Loan Repayment Agreement and accelerated written repayment schedule. All of this documentation was provided to SCO audit staff for review. Under the March 2011 Amended and Restated Loan Repayment Agreement (a copy of which is attached), the RDA owed the City a principal amount of \$16,052,848 and the parties agreed to a written repayment schedule, requiring annual interest-only payments of \$481,000 until 2025, at which time payments of principal and interest would be required until the debt was paid in full. Notwithstanding the written repayment schedule, an "alternative repayment schedule" was also agreed to, which **allowed an accelerated debt repayment of \$12.75 million in fiscal year 2010/2011, payable by any combination of RDA assets, including real property.** The March 2011 Amended and Restated Loan Repayment Agreement placed a value of \$6.95 million on over 30 parcels of RDA-owned land. Consistent with the alternative payment schedule, the RDA transferred both money (approximately \$5.6 million) and property (with the fair market value of \$6.95 million) toward the debt in March 2011, prior to the effective date of the dissolution Legislation. This left a balance due of approximately \$3.3 million.

Second, as part of the dissolution process, the RDA was required to continue to make scheduled payments of its existing "enforceable obligations," but otherwise to preserve all assets for ultimate distribution to the taxing entities. An "enforceable obligation" of the RDA means those obligations **which existed prior** to the effective date of the Legislation and includes:

- bonds and required debt service and reserve set-asides;
- *repayment of RDA debts incurred for a lawful purpose to the extent they are legally required to be repaid pursuant to a required repayment schedule;* [emphasis added]
- payments required by state or federal government or imposed by statute (other than pass-through payments), including payroll, pension payments, pension obligation debt service or unemployment compensation payments;
- payments pursuant to judgments and settlements;
- *any legally binding and enforceable contract that does not violate the constitutional debt limit or public policy;* [emphasis added]
- contracts and agreements necessary for the continued administration of the RDA.²

¹ Note that the definition of "asset" under the Legislation includes both money and real property under section 34163(d)(1).

² Health & Safety Code Section 34167(d)(1-6)

The written loan agreements between the City and the RDA were "enforceable obligations" of the RDA as defined above under either italicized example of an "enforceable obligation," up until the point of the RDA's dissolution on February 1, 2012. Payments made by the RDA to the City pursuant to a written payment schedule entered into prior to the effective date of AB 1X 26/AB 1484 are **not** "unallowable transfers" under the dissolution Legislation. On the contrary, the Legislation specifically provides: "Nothing in this part [part 1.8] shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations.³ This provision is consistent with the provision which follows, which authorizes the SCO to order the return of any assets transferred where the transfer was not pursuant to an enforceable obligation of the RDA.

Specifically, Health & Safety Code section 34167.5 ("clawback provision") authorizes the State Controller to order the City to return assets transferred by the RDA to the City or any other public entity between January 1, 2011 and June 28, 2011, where the transfer was not pursuant to any enforceable obligation of the RDA or otherwise permitted by another provision in the Legislation. The purpose of this clawback provision was to reverse the wholesale transfer of property, monies and other RDA assets that occurred after January 1, 2011 when cities and redevelopment agencies became aware of the proposed redevelopment dissolution legislation, AB 1X 26, and sought to protect **uncommitted** RDA assets from distribution to the state or other taxing entities. An example of an asset transfer susceptible to an SCO finding of being an "unallowable transfer of RDA assets," would be a Cooperative Agreement between a city and its redevelopment agency in which all uncommitted agency assets are transferred to the city without legal commitment via a third party agreement to any redevelopment purpose or project by June 28, 2011. According to the Legislation such agreements and transfers are deemed to "not be in furtherance of Community Redevelopment Law and [are] thereby unauthorized."

In contrast, the Amended and Restated Loan Repayment Agreement between the City and the RDA was a long-standing loan agreement in which the City had every expectation of being repaid for monies it had outlaid over the years on behalf of the RDA for acquisitions of property for redevelopment purposes, payment for third-party construction of RDA projects, reimbursement to the City for use of City labor forces for construction within redevelopment areas, and other legitimate redevelopment purposes under Community Redevelopment Law. The Legislation specifically recognized the RDA's authority and obligation to continue to make payments when due for any enforceable obligation, under Health & Safety Code Section 34176(f). The "clawback" provision which follows under Health & Safety Code Section 34176.5, is not an exception to this provision, nor does it override the RDA's requirement to honor its enforceable obligations to the City. Moreover, it would be anomalous for the Legislation to require an RDA to continue to make payments required by a written payment schedule of an "enforceable obligation," but simultaneously authorize the State Controller's Office to "clawback" a portion of those same payments. This is recognized by the language in

³ Section 34167(f).

Section 34176.5, which states that the Controller shall order the return of transferred assets, "to the extent not prohibited by state and federal law." Put simply, treating these loan payments, made pursuant to a written repayment schedule for an enforceable loan agreement which expressly permitted repayment with cash or real property, as an "unallowable transfer of RDA assets to the city for loan payment" is prohibited by Section 34176(f).

EXIT CONFERENCE FINDING #2: "Unencumbered Housing cash balances transferred to Successor Housing Agency," citing Health and Safety Code Section 34167.5.

SCO staff's reference to Health & Safety Code Section 34167.5 for the transfer of housing assets, including any "unencumbered housing cash balances" is unclear, as this "clawback" provision does not apply to housing assets.⁴ Rather, the Legislation, under Section 34176 authorizes the city which created the RDA to retain the housing assets and functions of the RDA, upon its dissolution. The Successor Agency to the former Tulare Redevelopment Agency elected to take on the housing functions and obligations, and all housing assets held by the RDA transferred to the Successor Agency upon the dissolution of the RDA.

Health & Safety Code Section 34176(a)(1) also provides that the unencumbered amounts on deposit in the Low and Moderate Income Housing Fund are **not** "housing assets" that may be retained by the housing Successor Agency. Rather, any unencumbered balance in the Low and Moderate Income Housing Fund (excluding "program income," from rents, etc., pursuant to Health & Safety Code Section 34176(e)), will be required by the Department of Finance to be remitted to the County Auditor Controller's office upon the conclusion of the housing due diligence review, pursuant to Health & Safety Code Section 34179.6(c). This process has not yet been completed.

CONCLUSION

The City requests that the SCO revise the preliminary findings of its audit staff to reflect that the March 2011 transfer of RDA funds and property in satisfaction of a portion of the long-standing debt owed to the City, pursuant to a written repayment schedule which was legally enforceable in March 2011 and under Community Redevelopment Law, was a required payment and an enforceable obligation of the RDA pursuant to Health & Safety Code sections 34163 and 34167. Accordingly, the repayment of the loan in accordance with the terms of the loan agreement was not an "unallowable transfer of RDA assets to the city" and is not subject to an SCO order pursuant to Health & Safety Code section 34167.5, to return these "assets" to the Successor Agency.

The City also requests that the SCO acknowledge that all housing assets, as defined by Health & Safety Code Section 34176(e) were appropriately transferred to the housing Successor

⁴ Note that the Controller's authority under Section 34178.8 to review asset transfers between the Successor Agency and the City occurring after January 1, 2012, does not apply to housing assets.

Mr. Steven Mar
October 15, 2012
Page 5

Agency and that any unencumbered cash balances in the Low and Moderate Income Housing Fund should be held by the Successor Agency until the completion of the housing due diligence review and determination by the Department of Finance as to the amount of unencumbered Low and Moderate Income Housing funds to be transferred to the County Auditor-Controller for distribution to the applicable taxing entities.

Sincerely,



Teresa L. Highsmith

Attachments

cc: Steve Szalay, Local Government Consultant
Department of Finance, steve.szalay@dof.ca.gov
Martin Koczanowicz, Esq., City Attorney, City of Tulare
Don Dorman, City Manager, City of Tulare
Darlene Thompson, CPA, Finance Director, City of Tulare
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November 16, 2012

Steven Mar, Chief
Local Governments Audit Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Response to State Controller's Office Staff Draft Audit Findings (S13-RDA-915; S13-RDX-906)

Dear Mr. Mar:

Colantuono & Levin, PC, represents the City of Tulare and the Successor Agency to the Tulare RDA (collectively referred to as "the City") in a special counsel capacity. We make this response to the State Controller's Office ("SCO") draft audit findings regarding RDA asset transfers occurring between January 1, 2011 through January 31, 2012, and Successor Agency asset transfers occurring between February 1, 2012 through August 15, 2012 and the resulting findings in the draft audit. (Copy of Draft SCO Audit attached).

FINDING #1: "The Tulare Redevelopment Agency (RDA) transferred \$12,813,891 in assets to the City of Tulare (City). Per the Agenda Report dated March 9, 2011, approved by the Chairperson of the RDA Board, the purpose of the asset transfers was to protect redevelopment agency resources from potential termination by the State of California action."

We disagree with this finding. SCO staff appears to rely entirely on the characterization in a staff report for the erroneous conclusion that the "assets" were transferred to the City of Tulare in order to "protect redevelopment agency resources." This is factually inaccurate. The "assets" were transferred to repay of portion of a long standing loan to the City of Tulare for actual services performed, money advanced for third-party contracts (for both property acquisition and capital improvements)—all pursuant to a written repayment schedule and constituting a legally enforceable obligation of the RDA, pursuant to Health & Safety Code Section 34167(d). This loan agreement, and the backup documentation showing over 40 years of moneys borrowed from the City or advanced by the City for third party capital improvements or

property acquisition, was provided to SCO staff for review; yet the documentation has been entirely ignored in the "Finding #1" of the SCO draft audit.

The actual assets transferred are also misstated in the SCO Draft Audit. In fact, the RDA, in attempting to pay a portion of its \$16M debt to the City (all pursuant to a written repayment schedule which accelerated \$12.75 M of the debt), transferred the following assets to the City:

- 30 parcels of real property, with an original purchase price (book value) of \$6,950,789;
- **\$4,165,037.45** in bond proceeds from the 2010 taxable Series B bonds, which were issued, in part, to repay a portion of the RDA/City debt; and
- **\$1,634,962.36** journal entry transfer of funds, but no actual cash was available or transferred until December 2011 when the RDA received its property tax increment distribution.¹

First, the City and the Successor Agency assert that the loan of City funds to the RDA was permissible under Community Redevelopment Law. There is substantial documentation of the loans, which originated in 1968, the purposes for the loans (including funds for the creation of the RDA, advances for RDA expenditures, payment of third-party costs of construction, land acquisition costs, etc.), the ultimate consolidation of the loans and forgiveness of a substantial portion of the accrued interest in 2009, and the March 2011 Amended and Restated Loan Repayment Agreement and accelerated written repayment schedule. All of this documentation was provided to SCO audit staff for review. Under the March 2011 Amended and Restated Loan Repayment Agreement (a copy of which was previously provided to the SCO), the RDA owed the City a principal amount of \$16,052,848 and the parties agreed to a written repayment schedule, requiring annual interest-only payments of \$481,000 until 2025, at which time payments of principal and interest would be required until the debt was paid in full. **Notwithstanding the written repayment schedule, an "alternative repayment schedule" was also agreed to, which allowed an accelerated debt repayment of \$12.75 million in fiscal year 2010/2011, payable by any combination of RDA assets, including real property.**²

The March 2011 Amended and Restated Loan Repayment Agreement placed a value of \$6.95 million on over 30 parcels of RDA-owned land. Consistent with the alternative payment schedule, in March 2011 the RDA transferred both money (approximately \$4.1M of bond funds) and property (at the "book value" of the original purchase price, totaling \$6.95 million) toward the debt, prior to the effective date of the dissolution Legislation. **The remaining \$1.6M of the transfer did not occur until December 2011; the City and the Successor Agency agree that this amount will be returned to the Successor Agency because the transfer was not accomplished**

¹ The City recognizes that because the \$1.6M "cash" was not actually transferred until December 2011, that its ability to retain this amount of the loan repayment is subject to the RDA's compliance with Health & Safety Code Section 34165(h), e.g., that the RDA may only make payments pursuant to enforceable obligations listed on the Enforceable Obligation Payment Schedule.

² Note that the definition of "asset" under the Legislation includes both money and real property under section 34163(d)(1).

pursuant to the RDA's Enforceable Obligation Payment Schedule. With the return of the \$1.6M in funds, the debt to the City will be increased by \$1.6M.

Second, as part of the dissolution process, the RDA was required to continue to make scheduled payments of its existing "enforceable obligations," but otherwise to preserve all assets for ultimate distribution to the taxing entities. An "enforceable obligation" of the RDA means those obligations **which existed prior** to the effective date of the Legislation and includes:

- bonds and required debt service and reserve set-asides;
- ? • *repayment of RDA debts incurred for a lawful purpose to the extent they are legally required to be repaid pursuant to a required repayment schedule; [emphasis added]*
- payments required by state or federal government or imposed by statute (other than pass-through payments), including payroll, pension payments, pension obligation debt service or unemployment compensation payments;
- ? • payments pursuant to judgments and settlements;
- *any legally binding and enforceable contract that does not violate the constitutional debt limit or public policy; [emphasis added]*
- contracts and agreements necessary for the continued administration of the RDA.³

The written loan agreements between the City and the RDA were "enforceable obligations" of the RDA as defined above under either italicized example of an "enforceable obligation," up until the point of the RDA's dissolution on February 1, 2012. Payments made by the RDA to the City pursuant to a written payment schedule entered into **prior to the effective date** of AB 1X 26/AB 1484 are **not** "unallowable transfers" under the dissolution Legislation. On the contrary, the Legislation specifically provides: "Nothing in this part [part 1.8] shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations."⁴ This provision is consistent with the provision which follows, which authorizes the SCO to order the return of any assets transferred where the transfer was **not** pursuant to an enforceable obligation of the RDA.

Specifically, Health & Safety Code section 34167.5 ("clawback provision") authorizes the State Controller to order the City to return assets transferred by the RDA to the City or any other public entity between January 1, 2011 and June 28, 2011, **where the transfer was not pursuant to any enforceable obligation of the RDA** or otherwise permitted by another

³ Health & Safety Code Section 34167(d)(1-6)

⁴ Section 34167(f).

provision in the Legislation. The purpose of this clawback provision was to reverse the wholesale transfer of property, monies and other RDA assets that occurred after January 1, 2011 when cities and redevelopment agencies became aware of the proposed redevelopment dissolution legislation, AB 1X 26, and sought to protect **uncommitted** RDA assets from distribution to the state or other taxing entities. An example of an asset transfer susceptible to an SCO finding of being an "unallowable transfer of RDA assets," would be a Cooperative Agreement between a city and its redevelopment agency in which all uncommitted agency assets are transferred to the city without legal commitment via a third party agreement to any redevelopment purpose or project by June 28, 2011. According to the Legislation such agreements and transfers are deemed to "not be in furtherance of Community Redevelopment Law and [are] thereby unauthorized

In contrast, the Amended and Restated Loan Repayment Agreement between the City and the RDA was a long-standing loan agreement in which the City had every expectation of being repaid for monies it had outlaid over the years on behalf of the RDA for acquisitions of property for redevelopment purposes, payment for third-party construction of RDA projects, reimbursement to the City for use of City labor forces for construction within redevelopment areas, and other legitimate redevelopment purposes under Community Redevelopment Law. The Legislation specifically recognized the RDA's authority and obligation to continue to make payments when due for any enforceable obligation, under Health & Safety Code Section 34176(f). The "clawback" provision which follows under Health & Safety Code Section 34176.5, is not an exception to this provision, nor does it override the RDA's requirement to honor its enforceable obligations to the City. Moreover, it would be anomalous for the Legislation to require an RDA to continue to make payments required by a written payment schedule of an "enforceable obligation," but simultaneously authorize the State Controller's Office to "clawback" a portion of those same payments. This is recognized by the language in Section 34176.5, which states that the Controller shall order the return of transferred assets, "to the extent not prohibited by state and federal law." Put simply, treating these loan payments, made pursuant to a written repayment schedule for an enforceable loan agreement which expressly permitted repayment with cash or real property, as an "unallowable transfer of RDA assets to the city for loan payment" is prohibited by Section 34176(f).

The City and the Successor Agency request that the SCO revise its findings on this matter. As long as the City/RDA loan was deemed to be an enforceable obligation of the RDA, any payments made on the loan, pursuant to the written repayment schedule, were appropriate when made **prior** to the dissolution of the RDA and the passage of the dissolution legislation.

Moreover, the SCO audit needs to be revised to properly reflect the assets actually transferred for the debt repayment and the date that they were transferred. For example, the **approximately \$4.1M in bond funds** was transferred to the City in March 2011. This was an appropriate use of the 2010 Series B bond funds (see attached copy of Official Statement for the 2010 bond issuance). Moreover, bond counsel has confirmed this in writing. (A copy of the bond counsel opinion will be forwarded to the SCO). The SCO finding that suggests that this

money can be ordered returned to the Successor Agency for distribution to the taxing entities is simply wrong. **Bond funds cannot be redistributed to other taxing entities.** Bond funds can only be spent for the purposes for which the bonds were issued.. Even if the City were to return the \$4,165,037.45 in bond funds to the Successor Agency, which it does not agree is required under AB 1X 26/AB 1484, the bond funds would not be redistributed to other taxes entities. Instead, the Successor Agency would seek Oversight Board approval (pursuant to Health & Safety Code Section 34191.4) to expend the bonds for the purposes for which they were issued, which includes repayment of the City debt.

FINDING #2: "The Tulare Redevelopment Agency (RDA) made an unallowable asset transfer of \$6,064,175 to the Successor Housing Agency (SHA). The asset transfer to the SHA occurred during the period of January 1, 2011, through February 1, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011.

SCO draft audit now references Health & Safety Code Section 34163 for the proposition that the "RDA was not allowed to transfer assets, including housing assets." Both the facts and the legal reference to any "unallowed transfer" of housing assets are simply wrong.

The Legislation, under Section 34176 authorizes the city which created the RDA to retain the housing assets and functions of the RDA, upon its dissolution. On January 3, 2012, the City of Tulare elected to become the Successor Agency to the former Tulare Redevelopment Agency and also to retain the housing functions and obligations, upon the dissolution of the RDA. Accordingly, by operation of law, all assets of the former RDA transferred to the Successor Agency. In Tulare's case, the Successor Agency and housing Successor Agency are the same entity.³ However, as is required under Health & Safety Code Section 34176(d), all housing assets (as defined by Health & Safety Code Section 34176(e)) were transferred to the Low and Moderate Income Housing Asset Fund, retained by the housing Successor Agency.

The unencumbered 20% set aside funds (e.g., not required to pay for existing affordable housing enforceable obligations) will be remitted to the County Auditor-Controller in accordance with Department of Finance determination on the housing Due Diligence Review ("DDR") In fact, on November 9, 2012, the housing Successor Agency received its housing DDR determination from the DOF, wherein the DOF has determined that there is only \$516,082 in unencumbered housing cash balance which must be remitted to the County Auditor-Controller by November 16, 2012, for the purpose of distribution to affected taxing entities.. The Successor Agency will comply with this DOF determination, a copy of which is attached. Other than the unencumbered cash balance identified by the DOF determination on the housing DDR, the remaining housing assets (including "program income," from rents, etc., pursuant to Health &

³ If the SCO is concerned that there is no evidence that the Oversight Board directed and approved the transfer of all housing assets from the Successor Agency to the housing Successor Agency, as is required by Health & Safety Code Section 34181(c), this is an administrative matter that can be quickly remedied by the Oversight Board. An Oversight Board Resolution approving the transfer of assets to the housing Successor Agency will be forwarded to the SCO separately.

Mr. Steven Mar
November 16, 2012
Page 6

Safety Code Section 34176(e)) are to be retained by the housing Successor Agency to be used for affordable housing purposes. (See Health & Safety Code Section 34176(a).

CONCLUSION

The City requests that the SCO revise the factually and legally erroneous findings of its draft audit to reflect that the March 2011 transfer of **\$4,165,037.45 in RDA bond funds** and approximately 30 parcels of property (with a "book value" of **\$6,950,789**) in satisfaction of a portion of the long-standing debt owed to the City, pursuant to a written repayment schedule which was legally enforceable in March 2011 and under Community Redevelopment Law, was a required payment and an enforceable obligation of the RDA pursuant to Health & Safety Code sections 34163 and 34167. Accordingly, the repayment of the loan in accordance with the terms of the loan agreement was **not** an "unallowable transfer of RDA assets to the city" and is not subject to an SCO order pursuant to Health & Safety Code section 34167.5, to return these "assets" to the Successor Agency.

The City and Successor Agency agree that **\$1,634,962.36 of tax increment funds** transferred by the RDA to the City in December 2011 must be returned to the Successor Agency because the transfer did not comply with Health & Safety Code Section 34165(h), which requires that no payments may be made by the RDA after June 27, 2011 unless pursuant to an approved Enforceable Obligation Payment Schedule (EOPS). As the RDA did not follow the required procedure, the \$1.6M will be returned by the City to the Successor Agency and the loan due to the City will be adjusted by the same \$1.6M amount. Accordingly, the only "unauthorized transfer" that the SCO audit should be reporting is the \$1,634,962.36 in property tax increment (cash).

The City and Successor Agency also request that the SCO acknowledge that all housing assets, as defined by Health & Safety Code Section 34176(e) were appropriately transferred to the housing Successor Agency and that the unencumbered cash balances in the Low and Moderate Income Housing Fund from 20% tax increment monies will be remitted to the County Auditor-Controller, pursuant to the DOF determination on the housing DDR. The remaining "housing assets" are appropriately retained by the housing Successor Agency as specifically authorized by Health & Safety Code Section 34176(a), (e). The draft SCO audit must be revised to reflect and harmonize with the findings of the DOF regarding the same funds. In a word, there were **NO** unauthorized transfers of assets to the housing Successor Agency, and the final SCO audit must be revised to reflect this.

Sincerely,



Teresa L. Highsmith

Mr. Steven Mar
November 16, 2012
Page 7

Attachments

cc: Steve Szalay, Local Government Consultant
Department of Finance, steve.szalay@dof.ca.gov
Martin Koczanowicz, Esq., City Attorney, City of Tulare
Don Dorman, City Manager, City of Tulare
Darlene Thompson, CPA, Finance Director, City of Tulare
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November 30, 2012

Steven Mar, Chief
Local Governments Audit Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Response to State Controller's Office Staff Draft Audit Findings (S13-RDA-915; S13-RDX-906)

Dear Mr. Mar:

As promised, in follow up to our November 16, 2012 letter objecting to the Findings in the State Controller's Office Staff Draft Audit Findings, please see the attached opinion from bond counsel confirming that the use of \$4.1M in 2010 Series B taxable bonds for repayment of a portion of the RDA's debt to the City was an appropriate use of bond funding.

Sincerely,


Teresa L. Highsmith

Attachment

cc: Steve Szalay, Local Government Consultant
Department of Finance, steve.szalay@dof.ca.gov
Martin Koczanowicz, Esq., City Attorney, City of Tulare
Don Dorman, City Manager, City of Tulare
Darlene Thompson, CPA, Finance Director, City of Tulare
Albert Sim, Auditor, State Controller's Office, ASim@sco.ca.gov

Quint & Thimmig LLP

Attorneys at Law

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San Francisco, CA 94105-2874

Telephone: 415/765-1550
Fax: 415/765-1555

November 29, 2012

City of Tulare
City of Tulare Successor Agency
411 East Kern Avenue
Tulare, California 93274

OPINION: Use of Proceeds of Redevelopment Agency of the City of Tulare Merged
Tulare Redevelopment Projects 2010 Tax Allocation Bonds, Series B
(Taxable)

Members of the Tulare City Council acting
for the City of Tulare and the City of
Tulare Successor Agency:

We acted as bond counsel in connection with the issuance by the Redevelopment Agency of the City of Tulare (the "Agency") of its Redevelopment Agency of the City of Tulare Merged Tulare Redevelopment Projects 2010 Tax Allocation Bonds, Series B (Taxable) (the "Bonds"), pursuant to the provisions of the Community Redevelopment Law of the State of California (the "Law"), Resolution No. 2010-06, adopted by the Agency on May 12, 2010, and an Indenture of Trust, dated as of June 1, 2010 (the "Indenture"), between the Agency and U.S. Bank National Association, as trustee.

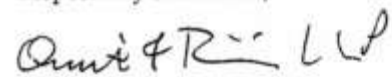
We understand that \$4,100,000 of the proceeds of the Bonds were used by the Agency to repay a portion of a loan (the "Loan") by the City of Tulare (the "City") to the Agency as described in a Third Amended and Restated Loan Repayment Agreement, entered into as of March 9, 2011 (the "Loan Agreement"), between the City and the Agency. We further understand that the Loan Agreement amended and restated a Second Amended and Restated Loan Repayment Agreement, entered into as of January 26, 2011, between the City and the Agency, which amended and restated a Loan Repayment Agreement, entered into as of April 20, 2010, between the City and the Agency, which acknowledged prior advances by the City to the Agency (the "Advances") under prior cooperation agreements between the City and the Agency, and provided for a reduction of up to \$44,300,000 in the amount then owed by the Agency to the City so that the outstanding balance of the Loan would be \$22,052,848. Finally, we have been advised that the Advances were in respect of services rendered by the City to the Agency in respect of the Agency's former Downtown, Alpine, West Tulare and South "K" Street redevelopment projects (referred to below as the "Constituent Project Areas," all of which were merged to constitute the Tulare Merged Project Area), including cost for the design and improvements for street reconstruction, land acquisition costs (including demolition and relocation), development of parking facilities, water system construction, storm drain improvements and improvements (ponding basin and fencing) to a local school. Finally, we have been advised that the improvements that were the subject of the Advances were all contemplated by the adopted redevelopment plans of the Agency for one or more of the Constituent Project Areas.

City of Tulare
City of Tulare Successor Agency
November 29, 2012
Page 2 of 2

In connection with this opinion, we have examined the Indenture, the Loan Agreement, the Law and such other papers as we deem necessary to render this opinion. As to questions of fact material to our opinion, we have relied upon the accuracy of the factual matters described above.

Based on the foregoing, we are of the opinion that the use of proceeds of the Bonds to repay a portion of the Loan was and is an appropriate use of the Bond proceeds under the Law and the Indenture.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Owen & Rice LLP". The signature is written in a cursive, flowing style.

**Attachment 2—
2010 Bond Issuance Statement**

NEW ISSUE—BOOK-ENTRY ONLY

RATING:
S&P: "BBB+"
See "RATING" herein.

In the opinion of Quint & Thimmig LLP, San Francisco, California, Bond Counsel, subject, however, to certain qualifications described in this Official Statement, under existing law, interest on the 2010 Series A Bonds (i) is excludable from gross income of the owners thereof for federal income tax purposes, (ii) is not included as an item of tax preference in computing the federal alternative minimum tax for individuals and corporations, and (iii) is not taken into account in computing adjusted current earnings, which is used as an adjustment in determining the federal alternative minimum tax for certain corporations. Interest on the 2010 Series B Bonds is subject to all applicable federal taxation. In addition, in the opinion of Bond Counsel, interest on the 2010 Series A and interest on the 2010 Series B Bonds is exempt from personal income taxation imposed by the State of California. See "TAX MATTERS" herein.



\$8,605,000
Redevelopment Agency of the
City of Tulare
Merged Tulare Redevelopment Projects
2010 Tax Allocation Bonds, Series A
(Tax-Exempt)

\$4,915,000
Redevelopment Agency of the
City of Tulare
Merged Tulare Redevelopment Projects
2010 Tax Allocation Bonds, Series B
(Taxable)

Dated: Date of Delivery

Due: August 1, as shown on the inside cover

Proceeds from the sale by the Redevelopment Agency of the City of Tulare (the "Agency") of its Merged Tulare Redevelopment Projects 2010 Tax Allocation Bonds, Series A (Tax-Exempt) (the "2010 Series A Bonds") and its Merged Tulare Redevelopment Projects 2010 Tax Allocation Bonds, Series B (Taxable) (the "2010 Series B Bonds" and, together with the 2010 Series A Bonds, the "Bonds"), will be used to: (a) finance redevelopment activities of the Agency within or of benefit to the Agency's Merged Tulare Redevelopment Projects, (b) refund and repay certain outstanding obligations of the Agency, (c) fund interest on a portion of the Bonds for a limited period of time, (d) make a deposit to a reserve account for the Bonds, and (e) pay the costs of issuing the Bonds. See "FINANCING PLAN" herein.

The Bonds will be issued under and pursuant to an Indenture of Trust, dated as of June 1, 2010 (the "Indenture"), by and between the Agency and U.S. Bank National Association, as trustee (the "Trustee"). The Bonds initially will be sold by the Agency to the City of Tulare Public Financing Authority (the "Authority") for concurrent resale to the Underwriter. The Bonds are special obligations of the Agency and are payable solely from and secured by a pledge of the Tax Increment Revenues (as defined herein), and by a pledge of amounts in certain funds and accounts established under the Indenture, as further described herein. The pledge of the Tax Increment Revenues and other funds under the Indenture will be on a parity with the pledge thereof with respect to any future Parity Debt (as such term is defined in the Indenture). See "SECURITY FOR THE BONDS—Pledge Under the Indenture" herein.

Interest on the Bonds will be payable semi-annually on each February 1 and August 1, commencing August 1, 2010. The Bonds will be issued in fully registered form without coupons and will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Bonds. Purchases of beneficial interests in the Bonds will be made in book-entry form only in denominations of \$5,000 or any integral multiple thereof. Purchasers of such beneficial interests will not receive physical certificates representing their interests in the Bonds. Payment of principal of, interest and premium, if any, on the Bonds will be made directly to DTC or its nominee, Cede & Co., so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursement of such payments to the DTC Participants (as defined herein) is the responsibility of DTC and disbursement of such payments to the Beneficial Owners (as defined herein) is the responsibility of the DTC Participants, as more fully described herein. See "THE BONDS—Book-Entry System" herein.

The Bonds are subject to optional and mandatory sinking account redemption prior to maturity. See "THE BONDS—Optional Redemption" and "THE BONDS—Sinking Account Redemption" herein.

THE BONDS ARE SPECIAL OBLIGATIONS OF THE AGENCY PAYABLE SOLELY FROM THE TAX INCREMENT REVENUES, AS DESCRIBED HEREIN, AND AMOUNTS IN CERTAIN FUNDS AND ACCOUNTS MAINTAINED UNDER THE INDENTURE, AND ARE NOT A DEBT OF THE AUTHORITY, THE CITY OF TULARE, CALIFORNIA (THE "CITY"), OR THE STATE OF CALIFORNIA (THE "STATE") OR ANY POLITICAL SUBDIVISION OF THE STATE (OTHER THAN THE AGENCY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE), AND NONE OF THE AUTHORITY, THE CITY OR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE AGENCY) IS LIABLE THEREFOR. THE BONDS ARE NOT PAYABLE FROM, AND ARE NOT SECURED BY, ANY FUNDS OF THE AGENCY, OTHER THAN THE TAX INCREMENT REVENUES AND OTHER MONEYS EXPRESSLY PLEDGED PURSUANT TO THE INDENTURE. NEITHER THE MEMBERS OF THE GOVERNING BOARD OF THE AGENCY NOR ANY PERSONS RESPONSIBLE FOR THE EXECUTION OF THE BONDS ARE LIABLE PERSONALLY FOR THE PAYMENT OF THE BONDS.

MATURITY SCHEDULE (see inside cover page)

This cover page is not intended to be a summary of the Bonds or the security therefore. Investors are advised to read this Official Statement in its entirety to obtain information essential to the making of an informed investment decision with respect to the Bonds.

The Bonds are offered when, as and if issued and accepted by the Underwriter, subject to the approval as to their legality by Quint & Thimmig LLP, San Francisco, California, Bond Counsel. Certain legal matters related to this offering will be passed upon for the Agency by McDonough, Holland & Allen PC, Sacramento, California, acting as Special Counsel to the Agency, and by Quint & Thimmig LLP, San Francisco, California, which also is acting as Disclosure Counsel to the Agency for the Bonds. Certain legal matters will be passed upon for the Underwriter by Nossaman LLP, Irvine, California. It is expected that the Bonds in book-entry form will be available for delivery to DTC in New York, New York on or about June 30, 2010.

SOUTHWEST SECURITIES, INC.

The date of this Official Statement is June 17, 2010.

ESTIMATED SOURCES AND USES OF FUNDS

The following table sets forth a summary of the estimated sources and uses of funds associated with the issuance and sale of the Bonds.

	2010		Total
	Series A Bonds	Series B Bonds	
Sources of Funds			
Principal Amount of Bonds	\$8,605,000	\$4,915,000	\$13,520,000
1997 Bonds Reserve Fund	29,104		29,104
Less: Underwriters' Discount	(49,909)	(28,507)	(78,416)
Less: Original Issue Discount	(183,420)	(107,522)	(290,942)
Total Sources	\$8,400,774	\$4,778,972	\$13,179,746
Uses of Funds			
Deposit to Redevelopment Fund ⁽¹⁾		\$4,161,673	\$4,161,673
Deposit to Capitalized Interest Fund ⁽²⁾	\$ 204,766	133,129	337,895
Deposit to Reserve Account ⁽³⁾	770,952	440,352	1,211,304
Deposit to Costs of Issuance Fund ⁽⁴⁾	81,668	43,818	125,486
Repayment of City Loan ⁽⁵⁾	6,000,000		6,000,000
Redemption of 1997 Bonds ⁽⁶⁾	1,343,388		1,343,388
Total Uses	\$8,400,774	\$4,778,972	\$13,179,746

- (1) Expected to be used to finance redevelopment activities of the Agency within or of benefit to the Merged Project Areas. See "FINANCING PLAN."
- (2) To be used to pay interest on a portion of the Bonds for a limited period of time. See "SECURITY FOR THE BONDS—Capitalized Interest Fund."
- (3) An amount equal to the initial Reserve Requirement. See "SECURITY FOR THE BONDS—Reserve Account."
- (4) To be used to pay the fees and expenses of the Trustee, the Fiscal Consultant, the Financial Advisor, Bond Counsel and Disclosure Counsel, printing expenses, rating agency fees and other costs incurred in connection with the issuance of the Bonds.
- (5) To be used to repay a portion of the outstanding City Loan. See "FINANCING PLAN."
- (6) To be used to defease and redeem in full the 1997 Bonds. See "FINANCING PLAN."

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>