



City of Mission Viejo

Administrative Services Department

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September 4, 2015

Glenda Sanders, Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Re: Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency

Dear Judge Glenda Sanders:

This letter is in response to the Orange County Grand Jury Report, "*Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency*". The City of Mission Viejo ("City") and the Mission Viejo Community Development Financing Authority ("CDFA") have provided responses below at the request of the Orange County Grand Jury and in the format prescribed in the Report.

Finding 3 – Orange County has 18 vertical Joint Powers Authorities created by a city along with its redevelopment agency that no longer exists. The Grand Jury determined that these Joint Power Authorities serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.

The City and the CDFFA wholly disagree with the finding as it pertains to itself. The CDFFA was formed for the purpose of exercising powers common to both members of the CDFFA. In the case of the CDFFA, the commonality lies in collaboratively issuing and managing debt under one legal entity, rather than multiple entities. In the case of the 1999 Series A and B Variable Rate Demand Revenue Bonds, both Members of the CDFFA are responsible for providing a portion of the resources for the repayment of these bonds. While the Grand Jury may not see the benefit of this, the City knows that managing a debt issue and reporting under one entity is more effective, cost efficient, responsible and less confusing than issuing and managing multiple debt issues for the same purpose under different entities. In addition, under the agreement of the CDFFA, the debt, liability or obligations of the CDFFA are the sole responsibility of the CDFFA and not the Members of the CDFFA. This legality allows the City to better protect the assets and resources of Mission Viejo taxpayers from issues that may arise from the issuance and management of debt under a separate legal entity.



Addressing the issue of misuse or obfuscation of public funds, the Joint Exercise of Powers Agreement between the City and the Community Development Agency of the City of Mission Viejo (“CDA”) limits the powers of the CDFA to only those powers that its Members have in common; powers that are regulated via bylaws and contractually enforceable agreements. Also, section 6505 (a) of the California Government Code states that Joint Power Authorities shall provide for strict accountability of all funds and transactions and Section 6505 (b) provides for the annual audit of the accounts and records of Joint Power Authorities. Since the creation of the CDFA, the balances and transactions of the CDFA are included in the annual audit of the City’s financial statements and financial information is included in the Comprehensive Annual Financial Report (“CAFR”) of the City in accordance with Generally Accepted Accounting Principles (“GAAP”) and Government Accounting Standards Board Statements (“GASB”). The annual CAFR is presented to the public and the City Council during regular City Council meetings and the City’s CAFRs are available to the public on the City’s website. In addition, specifically for the CDFA, a budget is adopted annually every July, semi-annual financial reports are prepared as of December 31st and June 30th on CDFA balances and transactions, and monthly treasurer’s reports are prepared. The budget, financial reports and treasurer’s reports are all presented to the public and the City Council during regular City Council meetings. Finally, the CDFA is subject to the Brown Act and all open government laws and policies. Thus the CDFA, as a Joint Powers Authorities (“JPA”) entity, stands on equal process and transparency footing as the separate Member agencies of the CDFA.

Finding 4 – Vertical Joint Powers Authorities with a single controlling entity, such as a City Council, have the potential to use this organizational structure as a shell company to avoid other legal constraints on the controlling entity and to obfuscate taxpayer visibility.

The City and CDFA wholly disagree with the finding as it pertains to itself. Please refer to the response under Finding 3.

Finding 5 – Vertical Joint Powers Authorities in which the controlling entity transfers assets from itself to a Joint Powers Authority for the purpose of obtaining additional funding, or signs a long-term lease to a Joint Powers Authority to obtain assets are avoiding transparency and are not acting in the best financial interest of the taxpayers.

The City and CDFA wholly disagree with the finding as it pertains to itself. The Members of the CDFA have not transferred any assets to the CDFA for the purpose of obtaining additional funding. Nor have the Members of the CDFA entered a long-term lease with the CDFA to obtain assets.

Finding 6 – 32 of the Joint Powers Authorities identified in Orange County are not complying with the California State reporting requirements in code Section 6500 and SB 282 according to the latest information available from the year 2013.

The City and the CDFA wholly disagree with the finding as it pertains to itself. The City completes and submits an annual Special Districts Annual Report to the California State Controller’s Office (“SCO”) in the format prescribed by the SCO and within reporting timelines. The information from our annual report is reflected in the SCO Special Districts Annual Reports, located at http://www.sco.ca.gov/ard_locarep_districts.html . The City also submits its annual CAFR to both the SCO and the County of Orange Auditor-Controller each fiscal year.

Recommendation 2 – All Vertical Joint Powers Authorities created by a city along with its redevelopment agency should submit the necessary paperwork with the State of California requesting termination of their existence.

The City, Successor Agency to the Community Development Agency of the City of Mission Viejo (“SA”) and CDFA will not implement this recommendation. The bond documents that relate to bonds issued by the CDFA contain express covenants in those contracts that we believe would be violated if the CDFA were to be dissolved while bonds are still outstanding. In addition, Section 7.01 of the Joint Exercise of Powers Agreement between the City and the CDA states that “... this Agreement and the Authority shall thereafter continue in full force and effect so long as any Bonds remain outstanding”. Also, Section 8.08 of same Agreement states that “This Agreement shall be binding upon and shall insure to the benefit of the successors of the Members, respectively.” Upon dissolution of redevelopment agencies, the SA became the successor agency to the CDA and Dissolution Law, in particular Health & Safety Code Section 34178, subdivision (b)(1) and (b)(3) expressly provide that security agreements such as those executed by the CDFA as part of the issuance of all bonds are valid and may bind the successor agency notwithstanding the dissolution of California redevelopment agencies.

It is the position of the City, SA and CDFA that the SA, as successor to the CDA, is bound by the terms of the Joint Exercise of Powers Agreement.

Recommendation 3 – All Joint Powers Authorities should take the following actions to insure transparency to the taxpayers: (1) have an annual outside audit, (2) post the complete audit on their city website as a separate Joint Powers Authority entity, (3) send the audit to the County Controller and the State Auditor, and (4) ensure the required reports are filed annually to the County and the State.

The recommendation does not require implementation, as the City and CDFA have consistently fulfilled each applicable requirement to insure transparency.

- (1) An annual audit has been conducted on the CDFA every year since the formation of the CDFA and annual audits will continue to be conducted every year going forward. We provided a copy of the City’s most recently available audited financial statements to the Grand Jury under cover letter dated February 10, 2015.
- (2) The audited balances and transactions of the CDFA are included in the City’s CAFR in accordance with GAAP and GASB. We provided a link to our audited financial statements in the same letter dated February 10, 2015; however, CAFR’s for the last six fiscal years are located on the City’s website at <http://cityofmissionviejo.org/DepartmentPage.aspx?id=102> . For fiscal year ended June 30, 2014, information specific to the CDFA is located on pages 59, 68-71 and 111-116. Separate financial statements for the CDFA are not deemed necessary and will not be prepared separately from the CAFR.
- (3) The annual CAFR has been distributed to both the County of Orange Auditor-Controller and the SCO in past years and these entities will continue to receive the CAFR going forward.
- (4) The required Special District Annual Report has been prepared and filed with the SCO on an annual basis in past years and we will continue to prepare and submit this report to the SCO



going forward. We are not aware of similar reporting requirements imposed by the County of Orange.

In addition to the above actions, we believe that additional transparency is achieved by presenting the following to the public and the governing body during regular City Council meetings.

- (1) An annual budget adopted each July.
- (2) Semi-annual financial reports are prepared as of December 31st and June 30th of each fiscal year. The most recent semi-annual report is available at the same website location referenced above.
- (3) Monthly Treasurer's Reports. The Treasurer's Reports are also presented to the City's Investment Advisory Commission.

Recommendation 4 – The 32 Joint Powers Authorities that are not complying with the California State Law requiring annual reporting should become compliant by submitting their 2014 report by December 31, 2015, and submitting the required reports annually thereafter.

The recommendation does not require implementation, as the City and CDFA have consistently complied with the annual reporting requirements of the SCO in past years and will continue to do so.

Respectfully,



Cheryl Dyas

Director of Administrative Services

cc: Orange County Grand Jury
Mission Viejo City Council