



# City of Anaheim

## FINANCE DEPARTMENT

September 15, 2015

The Honorable Glenda Sanders  
Presiding Judge  
Orange County Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

Subject: 2014 - 2015 Orange County Grand Jury Report, "Joint Powers  
Authorities: Issues of Viability, Control, Transparency, and Solvency"

Honorable Judge Sanders:

As the Executive Director of the Anaheim Public Financing Authority (Authority), I am pleased to respond on behalf of the Authority to the 2014 - 2015 Orange County Grand Jury Report, "Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency." The responses contained in this letter have been approved by the board of directors of the Authority. The Authority's response addresses the Orange County Grand Jury Report's findings and recommendations relevant to our Authority in accordance with the California Penal Code Sections 933 and 933.05.

### Findings

F.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 Powers Authorities serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.

*Response: The Authority disagrees with this finding. In the legislation eliminating redevelopment agencies, the State Legislature was careful to provide for the continuation of joint powers agencies such as the Authority of which redevelopment agencies were members. By providing that successor agencies replaced redevelopment agencies as members of joint powers agencies, the State Legislature assured that the benefits to the public and the taxpayers provided by such joint powers agencies continue.*

*There is no potential for misuse or obfuscation of public funds relating to debt issued by the Authority as all such funds are deposited with corporate trustees and applied only as provided in trust indentures. Further, all such public funds are accounted for in audited financial statements readily available to the public. The City of Anaheim (City) and the Authority have only operated for the benefit of the public and have continually sought ways to further transparency to the public, as evidenced by the new Citywide Long Term Obligations section of the City's Adopted FY 2015/16 budget.*

F.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.

*Response: The Authority disagrees with this finding. Neither the existence nor the use of the Authority can affect legal constraints applicable to the City, which constraints continue to independently regulate the City's actions. While there may be different legal constraints applicable to each entity, each entity must comply with all such applicable constraints.*

*Additionally City transactions with the Authority are undertaken to maximize, not obfuscate, taxpayer visibility. Such transactions are taken at regularly scheduled City Council meetings, only after taking public input on the transactions, and the transaction documents are available to the taxpayers and the public in general as part of the City Council agenda. Further the City and Authority have continually sought ways to further transparency to the public, as evidenced by the new Citywide Long Term Obligations section of the City's Adopted FY 2015/16 budget.*

F.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.

*Response: The Authority disagrees with this finding. City transactions with the Authority are undertaken to maximize transparency. Such transactions are taken at regularly scheduled City Council meetings, following public input, and the transactions documents are available to the taxpayers and the public in general as part of the City Council agenda. Further the City and Authority have continually sought ways to further transparency to the public, as evidenced by the new Citywide Long Term Obligations section of the City's Adopted FY 2015/16 budget.*

*City financing transactions with the Authority are undertaken only with respect to long-term assets which will benefit the City and its residents and only when the transaction offers cost-efficient financing.*

F.10. The Anaheim Public Financing Authority has a debt exposure of \$1.2 billion which the Grand Jury has determined to be excessive in light of the fact that it was incurred without voter approval.

*Response: The Authority disagrees with this finding. The Report itself determines that debt is "excessive" based on the income of a joint powers authority. All City financing transactions with the Authority provide that the Authority is to receive income with respect to the financing in each year sufficient to pay all related Authority obligations in such year - in essence the debt is revenue/expense neutral. The comparison of total Authority obligations to its income in any year ignores the income stream the Authority is to receive with respect to such obligations. The Authority's debt is not excessive under the criteria established in the Report. Voter approval is not required for debt issued by the Authority of this nature.*

Recommendations

R.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. (F.3.)

*Response: The Authority will not implement this recommendation because it is not warranted. The recommendation is contrary to purposes of State law and would place an enormous financial burden on the City and its residents and taxpayers.*

*California Health and Safety Code Section 34178(b) specifically provides for continuation of a joint exercise of powers agreement in which a redevelopment agency is a member of the joint powers authority. Pursuant to California Health & Safety Code Section 34173 and a resolution adopted by the Anaheim City Council on January 10, 2012, the City is the Successor Agency to the Anaheim Redevelopment Agency (ARA). California Health & Safety Code Section 34178(b) provides that the Successor Agency succeeds to the position of the ARA under the Joint Powers Agreement by operation of the act adding such section.*

*Implementation of the recommendation would also require the immediate retirement of all of the Authority's debt, which is not in the City's or its residents' interests. Anything less could constitute a violation of State law and an Authority default under its financing documents. As noted in the response to Finding 10, the Authority is to receive income in each year sufficient to pay such year's debt service on its debts. The termination of the Authority is inconsistent with continuing its debt obligations as currently structured. Currently providing for the retirement of all such obligations would be impractical, uneconomic and, given the long-term nature of the financed assets, unfair to the City's current residents, businesses and taxpayers.*

R.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. (F.4., F.5.)

*Response: The Authority has implemented this recommendation.*

R.8. The City of Anaheim City Council should redress the debt incurred by the Anaheim Public Financing Authority under its direction by an aggressive plan to reduce their public debt. (F.10.)

*Response: Recommendation R.8. recommends action by the Anaheim City Council not the Authority so the Authority cannot implement this recommendation. Nonetheless, the Authority believes the recommendation is not warranted. The City and the Authority have cost-effective financing arrangements for critical infrastructure (water, electric and sewer) and revenue producing assets (Anaheim Resort improvements and the Anaheim Convention Center). Implementation of the recommendation would require the early retirement of the Authority's debt. As noted in the response to Finding 10, the Authority is to receive income in each year sufficient to pay such year's debt service on its debts. The recommendation is inconsistent with continuing its debt obligations as currently structured. Providing for the early retirement of Authority obligations would be uneconomic and, given the long-term nature of the financed assets, unfair to the City's current residents, businesses and taxpayers.*

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The Authority would like to express its appreciation for the efforts of the Orange County Grand Jury. The Authority is committed to public disclosure and transparency in its governmental affairs. Should you have any questions or need additional information, please contact me at (714) 765-4651 or [dmoreno@anaheim.net](mailto:dmoreno@anaheim.net)

Respectfully submitted,  
ANAHEIM PUBLIC FINANCING AUTHORITY



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Executive Director

Cc: Orange County Grand Jury  
City Clerk, City of Anaheim