

September 22, 2015

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

Re: Response of City of Buena Park and Buena Park Public Financing Authority to Orange County Grand Jury Report, entitled "*Joint Powers Authorities: Issues of Viability, Control, Transparency and Solvency*," released on June 29, 2015

Dear Judge Sanders:

The City Council of the City of Buena Park (the "City") and the Board of the Buena Park Public Financing Authority (the "Authority") have reviewed the above-referenced Grand Jury Report and have authorized the delivery of this letter, as the City's, the City Council's, the Mayor's, the Authority's and the Authority Board's comments to the Grand Jury's findings and recommendations pursuant to Penal Code Sections 933(c) and 933.05.

The City is also a member of the Orange County Council of Governments ("OCCOG") and the Orange County Fire Authority ("OCFA"). Responses by OCCOG and OCFA are being submitted separately and are not a part in this letter.

By way of background, the Authority is a joint powers authority, formed pursuant to the Joint Exercise of Powers Act, set forth in the California Government Code commencing with Section 6500 (the "Act") and a Joint Exercise of Powers Agreement, dated as of September 12, 1988, (the "Joint Powers Agreement"), by and between the City and the former Community Redevelopment Agency of the City of Buena Park (the "Former RDA"). Pursuant to the Joint Powers Agreement, the members of the City Council also serve as the members of the Authority's Board of Directors. The Authority has the powers to issue bonds to assist the financing (or refinancing) of public infrastructure and improvements pursuant to the provisions of the Act, including those set forth in Article 4 of the Act commencing with Government Code Section 6584, known as the Marks-Roos Local Bond Pooling Act of 1985 (the "Marks-Roos Act"). As further discussed below, there are Authority bonds issued in 2013 under the Marks-Roos Act that remain outstanding as of the date of this letter.

Refutation of Grand Report General Findings About Vertical JPAs Can be Found in 1998 State Report

Using the terminologies of the Grand Jury Report, the Authority is a “vertical JPA,” with the City being the “parent organization.” The Grand Jury Report contrasted the vertical JPAs against the “horizontal JPAs.” The Grand Jury used the term “horizontal JPA” to refer to a joint powers authority that is formed by multiple, similar local agencies, where the joint powers authority provide insurance pools or other shared services. The Grand Jury determined that, unlike horizontal JPAs, vertical JPAs “do not appear to comply with the spirit of the law.” Citing a case involving the City of Bell, the Grand Jury concluded that vertical JPAs are devices that breed “temptation to acquire...debt without a ceiling limit like that imposed on city governments” and give “the government the ability to obfuscate financial transaction within the parent organization and hence from the taxpayers.”

The City and the Authority disagree with these conclusions with respect to their applicability to the Authority. Many key questions raised by the Grand Jury regarding vertical JPAs have been explored and answered in a 70-plus page report issued by the California Debt and Investment Advisory Commission (“CDIAC”), entitled “*A Review of the Marks-Roos Local Bond Pooling Act of 1985*,” dated September 1998 (the “1998 CDIAC Report”). An electronic copy of the 1998 CDIAC Report is posted on the State Treasurer’s website at the following location: <http://www.treasurer.ca.gov/cdiac/reports/M-Roos/marks-roos.pdf>. As discussed in the 1998 CDIAC Report, vertical JPAs are the intentional creations of the State Legislatures through the enactment of the Marks-Roos Act.

The 1998 CDIAC Report recounted that, by the early 1980s, “it had become clear that the combined effects of Proposition 13 and sharp cuts in federal aid to state and local governments were resulting in structural shortfalls in spending for public infrastructure” and the State Legislature “held hearings and issued studies outlining the scope of California’s infrastructure deficiencies and identifying policy options.” See the 1998 CDIAC Report, p. 3. The enactment of the Marks-Roos Act in 1985 was “the culmination of a series of proposals...to afford local agencies greater flexibility in financing public infrastructure.” *Ibid.*, p. 19. The powers conferred by the Marks-Roos Act are not limited to bond pooling *per se*. The Marks-Roos Act confers a variety of financing powers – including the power to finance and refinance public infrastructure and improvements by a vertical JPA (or a “captive JPA,” which is the term used in the 1998 CDIAC Report). The 1998 CDIAC Report noted that most joint powers authorities which issue Marks-Roos bonds were established for the financing and refinancing of projects for a single local agency. *Ibid.*, pp. 13, 27-39 and 57. The 1998 CDIAC Report stated that the “flexibility in issuance afforded by the Marks-Roos Act may be justified on the grounds that many restrictions on public indebtedness have become anachronistic or that they have only very limited applicability given the financing structures in use today.” *Ibid.*, p. 56. The Marks-Roos Act provides an alternative method of borrowing. *Ibid.*, p. 57.

Joint powers authority bonds issued under the Marks-Roos Act often involve nominal transfer of assets between the joint powers authority and the local agency, such as in lease-lease back financings, local obligation purchases, among others. These financing structures are not abusive devices that violate the spirit of the law, as the Grand Jury had suspected (see Findings F.4 and F.5 of the Grand Jury Report, which are discussed more specifically below). To the contrary, they are the intentional creation of the law.

For example, in a lease-lease back arrangement, a joint powers agency issues lease revenue bonds to finance a city’s public improvements. The city leases an asset to the joint powers authority, and then the joint powers authority subleases the asset back to the city. The joint

powers authority, as the nominal sublessor, receives lease payments from the city under the sublease. Such lease payments received by the joint powers authority are then pledged and used to make principal and interest payments on the Authority lease revenue bonds. Such lease-lease back financing have existed for decades before the enactment of the Marks-Roos Act, often in the form of certificates of participation ("COPS"). As recounted in the 1998 CDIAC Report, by adopting the Marks-Roos Act, the State Legislature intentionally gave local agencies the tools to issue joint powers authority bonds that are similar in structure to COPS. COPS is a financing structure that arose from case law. In contrast, Marks-Roos bonds are issued under the express authority under statute (*i.e.*, the Marks-Roos Act) and are looked upon more favorably by the investors, thus providing local agencies the flexibility to finance projects at potentially lower costs in comparison to COPS. *Ibid.*, pp. iii, 11 and 12.

In a local obligation purchase arrangement, the joint powers authority issues bonds, the proceeds of which are used to purchase one or more series of bonds issued by multiple local agencies or one single local agency. The bonds issued by the local agencies are called the "local obligations." The joint powers authority becomes the owner of the local obligations, and therefore, is entitled to receive the principal and interest payable on the local obligations. The joint powers financing authority would use the payments received from the local obligations to pay principal and interest due on the joint powers authority bonds. The reasons for structuring a financing involving such local obligation purchases vary. Sometimes it is to aggregate so that the bonds to be sold to the public (*i.e.*, the joint powers authority bonds) would be of a sufficiently large size (in terms of principal amount) to be marketable at favorable terms. Sometimes, it is to accommodate requirements relating to multiple payment streams. Whether for these or other reasons, the goal, generally, of a local obligation purchase arrangement is to achieve a lower financing cost that would not otherwise be possible. A lower financing cost ultimately benefits the affected taxpayers or ratepayers of the related local agency.

While the Marks-Roos Act provides flexibility in terms of structure, it does not give local agencies the ability to access new sources of revenues. *Ibid.*, p. 57. The underlying financial pledge that secures the Marks-Roos bonds must comply with the Constitutional and statutory limits applicable to the local agencies.

For example, in 2013, the City determined that, in light of historic low interest rates, a refinancing for the City's Community Facilities District No. 2001-1 (Buena Park Mall) ("CFD 2001-1") would reduce the special tax levy for the CFD 2001-1. CFD 2001-1 had previously incurred bonded debt to finance authorized public improvements. Even though the proposed 2013 refunding bonds would be primarily secured by the special tax levied in CFD 2001-1, part of the payment stream would also involve moneys that had been pledged by the Former RDA ("Pledged Tax Increment Revenues") under a 2002 agreement. Pursuant to the AB X1 26 enacted in 2011 ("AB X1 26"), all redevelopment agencies, in the State including the Former RDA, were dissolved as of February 1, 2012, and the Successor Agency to the Buena Park Redevelopment Agency (the "Successor Agency") was established as the successor entity to the Former RDA. (AB X1 26, as amended and supplemented by AB 1484 enacted in 2012, together with subsequent amendments thereto, are referred to below as the "RDA Dissolution Act.") For the refunding to achieve the desired savings result, it was necessary for the 2013 transaction to be structured in a way to preserve the Pledged Tax Increment Revenues, under the regime of the newly implemented, relatively untested RDA Dissolution Act. Upon consultation with bond counsel and the financing team, the City determined that the issuance of bonds by the Authority under the Marks-Roos Act (the "2013 Authority CFD Refunding Bonds") would address requirements and complexities of the RDA Dissolution Act and other relevant laws. The 2013 Authority CFD Refunding Bonds were successfully issued in April 2013. The

Marks-Roos Act provided the flexibility for the City to accomplish the refunding and reduce the burden of the payers of the CFD 2001-1 special tax, while complying with the underlying laws governing with the CFD special tax and the Pledged Tax Increment Revenues.

In sum, the Marks-Roos Act deliberately allows local agencies to create vertical JPAs to finance (and refinance) needed public infrastructure and improvements, to provide flexibility in light of alternative financing methods and procedures otherwise available under the law but may have become antiquated. As noted in the 1998 CDIAC Report, unfortunately, the “semantics of the joint powers law...can obscure the fact that most Marks-Roos bond issues are undertaken on behalf of a single agency, often for a single capital project.” *Ibid.*, p. 13. Contrary to the Grand Jury’s findings, the creation of vertical JPAs not only complies with the spirit of the law, they are the intentional result of the law.

Grand Jury Finding F.1 and R.1 Are Incorrect With Respect to Buena Park Public Financing Authority

The City and the Authority wholly disagree with the description of the Authority is currently “inactive” under the Grand Jury’s Finding F.1 and Recommendation R.1. In Finding F.1, the Grand Jury found: “Orange County has nine ‘inactive’ Joint Powers Authorities that have no viable activity...[and therefore,] serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.” In Recommendation R.1, the Grand Jury recommended that all inactive joint powers authorities “submit paperwork with the State of California requesting termination of their existence or provide at the next public meeting the justification for continuing” their existence.

As discussed, the Authority issued the 2013 Authority CFD Refunding Bonds, which are *currently outstanding*. Therefore, the Authority is not currently “inactive” as described in Finding F.1 of the Grand Jury Report. The 2013 Authority CFD Refunding Bonds were issued to accomplish a refunding that resulted in reducing the burden of the payers of the CFD 2001-1 special tax. A termination of the Authority’s existence would cause a major disruption to the 2013 Authority CFD Refunding Bonds. The implementation of Recommendation R.1 is not reasonable and is not warranted.

Grand Jury Finding F.3 and R.2 are Contrary to Intent of Existing Law and Would Cause Disruption with Respect to Outstanding Bond Issues

The City and the Authority wholly disagree with the Grand Jury’s Finding F.3 and Recommendation R.2 regarding joint powers authorities for which former redevelopment agencies were members. In Finding F.3, the Grand Jury determined that joint powers authorities which are formed by a city and its redevelopment agency serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds. Accordingly, in Recommendation R.2, the Grand Jury recommended that all such joint powers authorities submit the necessary paper work to terminate their existence.

The Authority was formed with the City and the Former RDA as members. Pursuant to the RDA Dissolution Act, the Successor Agency serves as the successor entity to the Former RDA. The RDA Dissolution Act (specifically Health and Safety Code Section 34178(c)) expressly provides that a joint exercise of powers agreement between a city and a former redevelopment agency is not invalidated as the result of the former redevelopment agency’s dissolution. Such an agreement continues to be binding on the successor agency and the city. The State Legislature intended that there would be no disruption with respect to any outstanding bonds on the account of whether a joint powers authority formed by a city and a former redevelopment agency continues to exist in light of the RDA Dissolution Act.

The 2013 Authority CFD Refunding Bonds are *currently outstanding*. A termination of the Authority's existence would require major amendments to the bond documents and cause a disruption with respect to the 2013 Authority CFD Refunding Bonds, contrary to the intent of the State Legislature reflected in Health and Safety Code Section 34178(c). The implementation of Recommendation R.2 is not reasonable and is not warranted.

Grand Jury Findings F.4 and F.5 Are Not Applicable to Buena Park Public Financing Authority

The City and the Authority wholly disagree with the Grand Jury's Findings F.4 and F.5, as applied to the Authority. Specifically, in Finding F.4, the Grand Jury found that a vertical JPA with "a single controlling entity, such as a city council, [has] 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." In Finding F.5, the Grand Jury found that a vertical JPA "in which the controlling entity transfers assets from itself to [the vertical JPA] for purpose of obtaining additional funding or signs a long term lease to [the vertical JPA] to obtain assets are avoiding transparency and are not acting in the best financial interest of the taxpayers."

These findings are premised on a lack of consideration that the Marks-Roos Act intentionally allows vertical JPAs to serve as conduits for local agency financing and refinancing transactions. The City and the Authority cannot speak to "potential abuses" by other agencies. The City and the Authority can state that they have acted in a manner that is consistent with law and that fulfills the intent of the Marks-Roos Act. In connection with the 2013 Authority CFD Refunding Bonds, there was no illicit transfer of assets or purposeful avoidance of transparency to the public. Instead, by serving as a conduit bond-issuing entity as contemplated by the Marks-Roos Act in connection with the 2013 Authority CFD Refunding Bonds, the Authority assisted in a refinancing that achieved savings, resulted in a reduced special tax levy, and served the best interests of taxpayers.

Grand Jury Finding F.6 and Recommendation R.4 Are Incorrect with Respect to Buena Park Public Financing Authority

The City and the Authority wholly disagree with the categorization of the Authority as a non-compliant entity under the Grand Jury's Finding F.6 and Recommendation R.4. In Finding F.6, the Grand Jury found that many joint powers authorities are not complying with the State's reporting requirement in Government Code Section 6500 and SB 282 (enacted in 2001), according to the latest information available from year 2013. Therefore, in Recommendation R.4, the Grand Jury recommended that the non-compliant joint powers authorities should become compliant by submitting (i) their 2014 report by December 31, 2015, and (ii) the required reports thereafter.

The Authority is included as a component unit in the City's annual audited financial reports. The City and the Authority note that Government Code Section 6500 (referenced in Finding F.6) does not set forth any specific reporting requirement. Elsewhere in the Grand Jury Report, references are made to the accounting and auditing requirements under Government Code Section 6505. In light of the fact that the Authority's current sole active role is a conduit assisting in the City's financings, the City and the Authority believe that the inclusion of the Authority as a component unit in the City's annual audited financial reports is sufficient to comply with Government Code Section 6505.

Finding F.6 also references SB 282, which was enacted in 2001. SB 282 amended Government Code Section 12461. Government Code Section 12461 pertains to annual reports *by* the State Controller. Such State Controller report is based on information gathered from reports

submitted by local agencies pursuant to other statutes. For reference, attached in Exhibit A is a copy of the Authority's report to the State Controller for fiscal year 2013-14, in the form prescribed by the State Controller's office and submitted pursuant to Government Code Section 53891. The deadline for the fiscal year 2014-15 report has not passed. The Authority plans to submit such report on or before the applicable deadline. In addition, pursuant to Government Code Section 26909, copies of the City's audited financial statements (which, as stated above, include the Authority as a blended component unit) have been submitted to the County Auditor-Controller and the State Controller within 12 months of the end of fiscal year 2013-14. The City and the Authority intend to submit the City's audited financial statements for fiscal year 2014-15 within 12 months of the end of the fiscal year.

In sum, the Authority is compliant with its reporting requirements under Government Code Sections 6505, 53891 and 26909. In that sense, Recommendation R.4 has already been implemented despite the mischaracterization that the Authority as a non-compliant entity. The City and the Authority have no control over the State Controller's reports prepared pursuant to Government Code Section 12461, and provided no comment on the content or timeliness of such State Controller reports.

Grand Jury Recommendation R.3 Will Result in Unnecessary Costs and Burden on City

In Recommendation R.3, the Grand Jury recommended that every joint powers authority take the following actions to insure transparency: (1) has an annual outside audit, (2) post the complete audit on their city website as a separate joint powers entity, (3) send the audit to the County Controller and State Auditor, and (4) ensure the required reports are filed annually to the County and the State.

As the Authority already has been complying with the reporting requirements for submissions to the State Controller and County Auditor-Controller as noted above, the implementation of additional actions pursuant to Recommendation R.3 is not warranted.

The Authority's current sole active role is being a conduit for the City's financings. The Authority does not engage in any other independent activity. The inclusion of the Authority as a component unit in the City's audited financial statements provides sufficient transparency to account for the financial activities undertaken by the Authority. A separate outside audit arguably is an unnecessary waste of the City's monies and other resources.

* * *

The City and the Authority hope that this response is helpful and take this opportunity to thank the Grand Jury for its services and efforts.

Respectfully submitted,



Arthur C. Brown
Mayor of the City of Buena Park &
Chair of the Governing Board of the Buena Park Public Financing Authority

Cc: Paul S. Borzcik, Foreman
2014-15 Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

EXHIBIT A

**Buena Park Public Financing Authority's Report
to the State Controller for fiscal year 2013-14**

(see attached)

INACTIVE

**SPECIAL DISTRICTS FINANCIAL TRANSACTIONS
AND COMPENSATION REPORT**

COVER PAGE

District Name: BUENA PARK PUBLIC FINANCE AUTHORITY

SCO Reporting Year: 2014

ID Number: 12503001600

Fiscal Year Ended: 6/30/2014 (MM/DD/YY)

Certification:

I hereby certify that, to the best of my knowledge and belief, the report forms fairly reflect the financial transactions of the district in accordance with the requirements as prescribed by the California State Controller.

District Fiscal Officer

Lisa McMoran
Signature

FINANCE MANAGER
Title

LISA MCMORAN
Name (Please Print)

1/8/2015
Date

Per Government Code section 53891, this report is due within 90 days after the end of the fiscal year. If filed in electronic format, the report is due within 110 days after the end of the fiscal year.

Per Government Code section 26909, a copy of the independent audit is to be filed with the Controller within 12 months after the close of the fiscal year.

Please complete, sign, and mail this cover page to either address below.

Mailing Address:

State Controller's Office
Division of Accounting and Reporting
Local Government Reporting Section
P. O. Box 942850
Sacramento, CA 94250

Express Mailing Address:

State Controller's Office
Division of Accounting and Reporting
Local Government Reporting Section
3301 C Street, Suite 700
Sacramento, CA 95816

District Name: BUENA PARK PUBLIC FINANCE AUTHORITY

Special Districts Financial Transactions Report

General Information

Fiscal Year 20 14

Mailing Address

Street 1 Is Address Changed?

Street 2

City State Zip

Email

Members of the Governing Body

	First Name	Middle Initial	Last Name	Title
Member	<input type="text" value="STEVE"/>	<input type="text"/>	<input type="text" value="BOGARY"/>	<input type="text" value="CHAIRMAN"/>
Member	<input type="text" value="ELIZABETH"/>	<input type="text"/>	<input type="text" value="SWIFT"/>	<input type="text" value="MEMBER"/>
Member	<input type="text" value="FLOD"/>	<input type="text"/>	<input type="text" value="SMITH"/>	<input type="text" value="MEMBER"/>
Member	<input type="text" value="ART"/>	<input type="text"/>	<input type="text" value="BLOWN"/>	<input type="text" value="MEMBER"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Other Officials

First Name	Middle Initial	Last Name	Title
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Report Prepared By

First Name	Middle Initial	Last Name	Phone No
<input type="text" value="LISA"/>	<input type="text"/>	<input type="text" value="MCLAUGHLIN"/>	<input type="text" value="714/562-3709"/>

Independent Auditor

First Name	Middle Initial	Last Name	Phone No
<input type="text" value="AHMED"/>	<input type="text"/>	<input type="text" value="BARANI"/>	<input type="text" value="510/768-8244"/>

District Name: BUENA PARK PUBLIC FINANCES AUTHORITY
Special Districts Financial Transactions Report
Comments for the Special District Report

Fiscal Year: 20 14

Comment

INACTIVE .

Supplement to the Annual Report of Special Districts

Special District ID Number:	12503001600
Name of District:	TRUONA PARK PUBLIC FINANCE AUTHORITY

Mark the appropriate box below to indicate the ending date of your agency's fiscal year. Report data for that period only.

- | | | | |
|---|--|--|---|
| <input type="checkbox"/> July 2013 | <input type="checkbox"/> October 2013 | <input type="checkbox"/> January 2014 | <input type="checkbox"/> April 2014 |
| <input type="checkbox"/> August 2013 | <input type="checkbox"/> December 2013 | <input type="checkbox"/> February 2014 | <input type="checkbox"/> May 2014 |
| <input type="checkbox"/> September 2013 | | <input type="checkbox"/> March 2014 | <input checked="" type="checkbox"/> June 2014 |

Return this form to the **California State Controller's Office**. If you have any questions regarding this form please contact:

U.S. Bureau of the Census, Robyn Harris, 1-800-242-4523

A. Personnel Expenditures

Please report your government's total expenditures for salaries and wages during the year, including amounts paid on force account construction projects.

Z00:	\$ 0
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B. Capital Outlay Expenditures for Enterprise Activities

Please report your government's capital outlay expenditures for the following enterprise activities, if applicable:

Airport Enterprise	Amount
Land and Equipment (Census Code G01)	\$ 0
Construction (Census Code F01)	\$ 0

Electric Enterprise	Amount
Land and Equipment (Census Code G92)	\$ 0
Construction (Census Code F92)	\$ 0

Harbor and Port Enterprise	Amount
Land and Equipment (Census Code G87)	\$ 0
Construction (Census Code F87)	\$ 0

Hospital Enterprise	Amount
Land and Equipment (Census Code G36)	\$ 0
Construction (Census Code F36)	\$ 0

Waste Disposal Enterprise	Amount
Land and Equipment (Census Code G80)	\$ 0
Construction (Census Code F80)	\$ 0

Water Enterprise	Amount
Land and Equipment (Census Code G91)	\$ 0
Construction (Census Code F91)	\$ 0

U.S. Bureau of the Census – Revised 9/2013