



CITY OF FOUNTAIN VALLEY

10200 SLATER AVENUE • FOUNTAIN VALLEY, CA 92708-4736 • (714) 593-4400, FAX: (714) 593-4498

September 28, 2015

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

Re: **Grand Jury Report re Fountain Valley Joint Powers Financing Authority**

Honorable Judge Sanders:

This letter is in response to the 2014-2015 Orange County Grand Jury Report: "**Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency.**" The report requires the City of Fountain Valley ("City") and the Fountain Valley Financing Authority ("Authority") to respond to Findings 3, 4, 5, 6 and Recommendations 2, 3, 4.

FINDINGS & RESPONSES

F3. 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 Finding 3.

The Authority cannot be dissolved while revenue bonds remain outstanding. The Authority has bonds that do not fully mature until 2026. Doing so would violate covenants in contracts to which the Authority is party and the Authority's governing agreement. Additionally, the power of Joint Powers Authorities to issue revenue bonds has been further affirmed by the ruling of the Supreme Court in *Rider v. City of San Diego*, (1998) 18 Cal. 4th 1035, 1051, which noted that the power of a JPA to issue revenue bonds "does not derive from any power of the contracting parties to issue bonds," but rather from state law.

The Authority was created and has been maintained in compliance with all applicable laws. The Authority's financial activities are disclosed in the City's financial statements and are available to public.

F4. Vertical Joint Powers Authorities with a single controlling entity, such as a city council, have the potential to use the 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 Finding 4.

The City's Joint Powers Authorities are created pursuant to Articles 1, 2, and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500 (the Joint Exercise of Powers Act), which provides statutory authority for the creation of JPAs. In order to ensure transparency to taxpayers, JPAs must follow the Public Records Act, the Political Reform Act, and the Ralph M. Brown Act.

F5. 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 Finding 5.

The City understands that its redevelopment agency is in the process of dissolution as required by the State of California. Statutory authority for JPAs to issue revenue bonds is included in Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6584 (the Marks-Roos Local Bond Pooling Act of 1985). In order to ensure transparency to taxpayers, JPAs must follow the Public Records Act, the Political Reform Act, and the Ralph M. Brown Act. Transparency is further ensured through the regular reporting and data collection of JPAs by several state agencies, including the Secretary of State's Office, the State Controller's Office, and the California Debt and Investment Commission.

The use of the Authority was for the issuance of bonds that had a direct public benefit to the Fountain Valley community including the building of the Center at Founders Village prior to the requirement for dissolution. This facility provides ongoing senior and community programs to the residents of Fountain Valley. The issuance of bonds through the Authority allowed this facility to be built despite it not being a revenue generating facility itself. JPA bonds are authorized under several sections of the California Government Code and require public disclosure of their intended use.

- 1.) JPA bonds are authorized (and the related underlying contracts are approved) after a noticed public hearing, with certain limited exceptions for utility and school facility financings. Gov. Code. 6586.5.
- 2.) JPA bond issuances that are not subject to the noticed public hearing requirement are approved at regular public meetings of the JPA. Gov. Code 6592.1.
- 3.) A JPA may only issue bonds if a local agency JPA member finds that there are "significant public benefits" to the JPA bond issuance. Such benefits include demonstrable interest rate or bond issuance savings, significant reductions in user

charges, employment benefits or more efficient delivery of public services. Gov. Code 6586.

- 4.) The public capital improvements to be financed/refinanced by JPA bonds must be located within the geographic boundaries of a local agency JPA member. Gov. Code 6586.5.
- 5.) JPA bonds may be secured by contracts between a JPA and a local agency JPA member. Gov. Code 6588.

Before the Authority issued bonds it followed the required Government Code sections related to holding publicly noticed meetings and voting on bond authorization during regularly scheduled public City Council and Authority meetings.

F6. 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 year 2013.

Response: The Authority partially disagrees with Finding 6.

In accordance with California Government Code Section 6500 and SB 282, the Authority is currently submitting the required reports annually to the State. The audited financial statements incorporating the financial reports of the Authority are filed with the California State Controller's Office on an annual basis in conjunction with submittal of the City's annual Single Audit Report (if required by GAAP). The Authority also submits the City Financial Transactions Report electronically to the California State Controller's Office on an annual basis.

In accordance with the above recommendation, the CAFR will also be submitted to the County Controller's office on an annual basis. The FY 2013-14 CAFR was submitted to the County Controller on September 15, 2015 (see Attachment).

RECOMMENDATIONS AND RESPONSES

R2. 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.

Response: This recommendation has not been implemented because the City/Agency cannot terminate the JPA's existence based on existing contractual obligations.

The Authority is required to remain in place based on three legal requirements.

- 1.) The Joint Exercise of Powers Agreement establishing the Authority, Section 7.01; page 7 state "this Agreement and the Authority shall thereafter continue in full force and effect so long as (a) any Bonds remain outstanding". The Authority has outstanding bonds that do not mature until 2026. (See Attachment)

- 2.) The 2003 Bond Lease/Purchase Agreement between the City and the Authority is one of the security documents for the City's 2003 Certificates of Participation. Section 2.2(d); page 6: "To the extent permitted by law, the Authority agrees that during the term hereof [i.e. through 2026 unless prepayments were made] it will maintain its existence as a joint powers authority . . ." (See Attachment)
- 3.) Health and Safety Code Sections 34178(b) (1) and (b) (3) (part of the redevelopment dissolution act) state that the above described agreements are valid notwithstanding the dissolution of redevelopment agencies.

"(b) Notwithstanding subdivision (a), any of the following agreements are not invalid and may bind the successor agency:

(1) A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations ...

(3) A joint exercise of powers agreement in which the redevelopment agency is a member of the joint powers authority. However, upon assignment to the successor agency by operation of the act adding this part, the successor agency's rights, duties, and performance obligations under that joint exercise of powers agreement shall be limited by the constraints imposed on successor agencies by the act adding this part."

The Successor Agency is a separate legal entity under Health and Safety Code 34173 (g)

R3. 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: Implemented. In accordance with California Government Code Section 6505 (b) and (c), the Authority is audited on an annual basis by a certified public accounting firm. The audit of the Authority is completed in conjunction with the City's annual financial statement audit and is incorporated in the City's Comprehensive Annual Financial Report (CAFR). The audited financial statements are posted, by year, on the City's website at the following location: <http://www.fountainvalley.org/Archive.aspx?AMID=40>

In addition, the audited financial statement incorporating the financial reports of the City of Fountain Valley Financing Authority are filed with the California State Controller's Office on an annual basis in conjunction with submittal of the City's Annual Single Audit Report (when required by GAAP).

In accordance with the above recommendation, the CAFR will also be submitted to the County Auditor-Controller's Office on an annual basis. The FY 2013/14 CAFR was previously submitted to the County Controller on September 15, 2015.

R4. 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. (F.6.)

Response: Partially implemented. The response to R4 is similar to R3 above, that the JPA is currently submitting the required reports annually to the California State Controller's Office and will also send them on an annual basis to the County Auditor-Controller's Office, starting with the submission of the FY 2013/14 CAFR on September 15, 2015.

On behalf of the City of Fountain Valley Financing Authority, I want to thank you for the opportunity to provide this response to the Orange County Grand Jury. Should you have any questions regarding the responses provided in this letter, please do not hesitate to contact Mr. David Cain, Director of Finance/Treasurer, at (714) 593-4418.

Respectfully,

A handwritten signature in blue ink, appearing to read "Bob Hall", written over a horizontal line.

Bob Hall, City Manager/Executive Director
City of Fountain Valley

Enclosures:

Joint Powers Authority Agreement
2003 Bond Lease/Purchase Agreement
Email: Confirming Filing CAFR with Orange County

cc: Mayor and City Council
Colin Burns, Harper & Burns, Attorney for the City
David Cain, Director of Finance/Treasurer
Paul S. Borzcik, Foreman, FY 2014-15 Orange County Grand Jury

Section 6.03. Funds. Subject to the applicable provisions of any instruments or agreement which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, and shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

Section 6.04. Annual Budget and Administrative Expenses. The Board shall adopt a budget for administrative expenses, which shall include all expenses not included in any financing issue of the Authority, annually prior to July 1st of each year. The estimated annual administrative expenses of the Authority shall be allocated by the Authority to the Members equally.

ARTICLE VII

TERM

Section 7.01. Term. This Agreement shall become effective, and the Authority shall come into existence, on the date hereof, and this Agreement and the Authority shall thereafter continue in full force and effect so long as either (a) any Bonds remain outstanding, or (b) the Authority shall own or hold any interest in a Public Capital Improvement.

Section 7.02. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided between the Members in such manner as shall be agreed upon by the Members.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to:

Fountain Valley Agency for Community Development
10200 Slater Avenue
Fountain Valley, CA 92708

City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708

Section 8.02. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 8.03. Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 8.04. Law Governing. This Agreement is made in the State under the constitution and laws of the State, and is to be so construed.

that would cause the Certificates to be "arbitrage bonds" within the meaning of Section 148 of the Code. To that end, the City shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Certificates.

The City shall not make any use of the proceeds of the Certificates or any other funds of the City, or take or omit to take any other action, that would cause the Certificates to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(g) Property Serves Public Purpose. The City hereby represents that the Property is essential for the City's performance of its governmental functions and serves an important public service.

(h) Zoning Environmental and Safety Ordinance Compliance. The City hereby represents that the Leased Premises complies in all respects with applicable zoning, environmental and safety ordinances.

(i) Title Insurance. The City hereby represents that the Property is the same property which is the subject of the ALTA title insurance policy (with western regional exceptions) issued by the Title Insurance Company pursuant to Section 5.5 hereof.

Section 2.2. Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to the City as follows:

(a) Due Organization and Existence; Enforceability. The Authority is a joint exercise of powers authority duly organized, existing and in good standing under and by virtue of the laws of the State, has the power to enter into this Lease, the Assignment Agreement, the Site Lease and the Trust Agreement; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid leases and agreements. This Lease, the Assignment Agreement, the Site Lease and the Trust Agreement constitute the legal, valid and binding obligations of the Authority, enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(b) No Conflicts or Defaults; No Liens or Encumbrances. Neither the execution and delivery of this Lease, the Assignment Agreement, the Site Lease or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the joint powers agreement of the Authority or any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Authority, or upon the Leased Premises except by Permitted Encumbrances and by the pledge contained in the Trust Agreement.

(c) Execution and Delivery. The Authority has duly authorized and executed this Lease in accordance with the laws of the State.

(d) Maintenance of Existence. To the extent permitted by law, the Authority agrees that during the term hereof it will maintain its existence as a joint powers authority, will not become a general or limited partner in any partnership and will not combine or consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it.

(e) General Tax and Arbitrage Covenant. The Authority covenants that, notwithstanding any other provision of this Lease, it shall not take any action if any such action would adversely affect the exclusion from gross income of interest with respect to the Certificates under Section 103 of the Code. To the extent that the Authority may control the Leased Premises or the proceeds of the Certificates, the Authority shall not, directly or indirectly, use or permit the use of proceeds of the Certificates or the Leased Premises, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of interest with respect to the Certificates.

The Authority shall not take any action if any such action would cause the Certificates to be "private activity bonds" within the meaning of Section 141 of the Code, and in furtherance thereof, to the extent that the Authority may control the Leased Premises or the proceeds of the Certificates, shall not make any use of the proceeds of the Certificates or the Leased Premises, or any portion thereof, or any other funds of the City, that would cause the Certificates to be "private activity bonds" within the meaning of Section 141 of the Code. To that end, so long as any Certificates are outstanding, to the extent that the Authority may control the Leased Premises or the proceeds of the Certificates, the Authority, with respect to such proceeds and the Project and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Code, to the extent such requirements are, at the time, applicable and in effect.

To the extent that the Authority may control the Leased Premises or the proceeds of the Certificates, the Authority shall not, directly or indirectly, use or permit the use of any proceeds of any Certificates, or of the Leased Premises, or other funds of the City, or take or omit to take any action, that would cause the Certificates to be "arbitrage bonds" within the meaning of Section 148 of the Code. To that end, to the extent that the Authority may control the Leased Premises or the proceeds of the Certificates, the Authority shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Certificates.

To the extent that the Authority may control the proceeds of the Certificates, the Authority shall not make any use of the proceeds of the Certificates or any other of its funds, or take or omit to take any other action, that would cause the Certificates to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

ARTICLE III

ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE PROJECT

Section 3.1. Deposit of Certificate Proceeds. On the Closing Date for the Certificates and on the Closing Date for any Additional Certificates, the Authority agrees to pay or cause to be paid to the Trustee the proceeds of the sale of the Certificates and Additional Certificates, which moneys, in the case of the Certificates, shall be deposited with the Trustee as provided in Section 2.05 of the

Monica Kerr

From: Ishida, Nancy [AC] <Nancy.Ishida@ac.ocgov.com>
Sent: Thursday, September 17, 2015 9:44 AM
To: Monica Kerr
Cc: David Cain; Teresa Gonzalez
Subject: RE: City of Fountain Valley: Request for Audited Financial Statements

Hi Monica,

Thank you for the City of Fountain Valley CAFR as of 6/30/14,

Nancy

*Nancy N. Ishida, CPA, CIA, CISA, CCSA, CITP, CGMA
Audit Manager
County of Orange Auditor-Controller's Office*

nancy.ishida@ac.ocgov.com
714-796-8067

From: Monica Kerr [mailto:Monica.Kerr@fountainvalley.org]
Sent: Tuesday, September 15, 2015 11:32 AM
To: Ishida, Nancy [AC]
Cc: David Cain; Teresa Gonzalez
Subject: City of Fountain Valley: Request for Audited Financial Statements

Good morning Nancy,

Per the County of Orange letter, dated September 2, 2015, in request for our Audited Financial Statements, please find attached our June 30, 2014, PDF of our CAFR. We have also listed your agency to receive this document in the future and it is available on our own website at www.fountainvalley.org for public viewing. If you have any questions, please don't hesitate to contact me at 714-593-4418. Thank you.



Monica G. Kerr
Finance Assistant
City of Fountain Valley
(714) 593-4418