



September 29, 2015

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

Mayor
Scott Voigts

Mayor Pro Tem
Andrew Hamilton

Council Members
Dr. Jim Gardner
Adam Nick
Dwight Robinson

City Manager
Robert C. Dunek

Re: Response to the Orange County Grand Jury Report – “Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency”

Honorable Judge Sanders:

Please accept this as the Rancho Canada Financing Authority’s (“Authority”) official response to the Grand Jury’s 2014-2015 Report, “Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency.”

Responses to Grand Jury’s Findings

F.3. Orange County has 18 vertical Joint Powers Authorities created by a city along with its redevelopment agency that no longer exist. 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.

The Authority wholly disagrees with Grand Jury Report Finding F.3. The Authority was created pursuant to Government Code Section 6500 *et seq.* (the “JPA Act”) for the purpose of financing of public capital improvements for the City and its former Redevelopment Agency, such as improvements to El Toro Road and Alton Parkway, major arterials in the City. As authorized in the JPA Act, two bonds were issued by the Authority to finance those roadway improvements, and the bonds are outstanding until 2026 and 2033.

The Authority is responsible for the repayment of debt service on any outstanding indebtedness. As long as bonds issued by the Authority are outstanding, the Authority may not be dissolved for the following reasons:

- The Amended and Restated Joint Exercise of Powers Agreement, dated September 15, 2015, provides that the Authority may only be dissolved if at the time of such dissolution, the Authority has no indebtedness outstanding and is not a party to any contract remaining in effect. (JPA Agmt. § 7.04.)
- In issuing the bonds, the Authority entered into multiple contracts, such as lease agreements, which secure the bonds. Any requirement that the Authority be dissolved before the Authority’s contractual obligations are



met would likely violate constitutional provisions prohibiting the interference of contractual obligations. (*See* Cal. Const., Art. I, § 9; USCS Const. Art. I, § 10, Cl. 1.)

- The Act governing the Dissolution of Redevelopment Agencies (Health & Safe. Code §§ 34170 *et seq.*) provides that the above described agreements continue to be valid. Specifically, Section 34178 provides that notwithstanding the dissolution of redevelopment agencies, the following agreements into which a former redevelopment agency entered continue to be effective:
 - “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;” and
 - “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.” (Health & Safe. § 34178(b)(1) and (b)(3).)

Although not required by law, as a result of the State’s dissolution of redevelopment agencies, the Authority’s Joint Exercise of Powers Agreement is in the process of being amended to include the City, the City’s Housing Authority, and the Successor Agency to the City’s former Redevelopment Agency.

Moreover, in carrying out its duties, the Authority acts in accordance with all relevant statutes, including transparency laws such as the Brown Act (Gov. Code §§ 54950 *et seq.*) and Public Records Act (Gov. Code §§ 6250 *et seq.*). Pursuant to the Brown Act, the Authority’s actions are only taken pursuant to noticed and agendaized public meetings. Pursuant to the Public Records Act, the Authority’s documents are available for public inspection. Moreover, the Authority’s finances are audited annually by a certified public accounting firm as a component of the City of Lake Forest’s (“City”) annual financial statement audit, which is incorporated into the City’s Comprehensive Annual Financial Report (“CAFR”). The CAFR is posted on the City’s website and sent to the County Auditor-Controller. In addition, the Authority complies with State law by filing a Special Districts Financial Transactions Report and Compensation Report, yearly. Through these processes, the Authority operates transparently and without the potential for the misuse or obfuscation of public funds.

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.

The Authority wholly disagrees with Grand Jury Finding F.4. The Authority was not created as a “shell company” to avoid the City’s legal constraints. Rather, the Authority was created for the purpose of assisting in the financing of public capital improvements for the City and its former Redevelopment Agency.

The Authority acts in accordance with all relevant statutes, including transparency laws such as the Brown Act and Public Records Act. Pursuant to the Brown Act, the Authority’s actions are only taken pursuant to noticed and agenda public meetings. Pursuant to the Public Records Act, the Authority’s documents are available for public inspection. Moreover, the Authority’s finances are audited annually by a certified public accounting firm as a component of the City’s annual financial statement audit, which is incorporated into the City’s CAFR. The CAFR is posted on the City’s website and also sent to the County Auditor-Controller. In addition, the Authority complies with State law by filing a Special Districts Financial Transactions Report and Compensation Report, yearly. Through these processes, the Authority operates openly and transparently.

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.

The Authority wholly disagrees with Grand Jury Finding F.5. The Authority has the statutory authority to issue revenue bonds pursuant to Government Code Sections 6584 *et seq.* (the Marks-Roos Local Bond Pooling Act of 1985). The courts have affirmed joint powers authorities’ power to issue revenue bonds. (*Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 1051 [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 acts in accordance with all relevant statutes, including transparency laws such as the Brown Act and Public Records Act. Pursuant to the Brown Act, the Authority’s actions are only taken pursuant to noticed and agenda public meetings. Pursuant to the Public Records Act, the Authority’s documents are available for public inspection. Moreover, the Authority’s finances are audited annually as a component of the City’s annual financial statement audit, which is incorporated into the City’s CAFR. The CAFR is posted on the City’s website and also sent to the County Auditor-Controller. In addition, the Authority complies with State law by filing a Special Districts Financial Transactions Report and Compensation Report, yearly. Through these processes, the Authority operates openly and transparently.

The Authority has, and continues to act in the taxpayers’ best financial interests to assist in the financing of public capital improvements for the City. Without the Authority’s financial assistance, major capital projects, such as improvements to El Toro Road and Alton Parkway, would not have been completed at this time.

Responses to Grand Jury's 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.)

The Authority will not implement Grand Jury Recommendation R.2 because it is not warranted, and it is not reasonable since it would likely violate constitutional provisions prohibiting the interference with contractual obligations. (*See* Cal. Const., Art. 1, § 9; U.S. Const., Art. I, § 10.) The Authority has bonds that do not fully mature until 2026 and 2033. Moreover, the Authority is a party to multiple contracts. Should the Authority terminate or dissolve at this time, the Authority would be unable to fulfill its contractual obligations. (*See Rider, supra*, 18 Cal.4th at p. 1051 [a joint powers agency holds the power to issue bonds independently of the contracting parties to the JPA.]

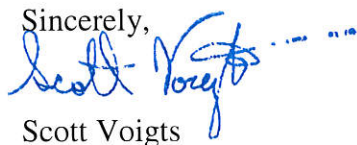
R.3. All Joint Powers Authorities should take the following actions to insure transparency to the taxpayers: (1) have an annual outside audit, (2) post the complete audit on their city website as a separate Joint Powers Authority entity, (3) send the audit to the County Controller and the State Auditor, and (4) ensure the required reports are filed annually to the County and the State. (F.4., F.5.)

The Authority will not implement Grand Jury Recommendation R.3 because it is not warranted and it is not reasonable. The Authority is in compliance with the law, and its practices already conform to Recommendation R.3.

(1), (2), (3) Annual outside audit; website posting; audit transmittal to County and State: The Authority's finances are audited annually as a "component unit" within the City's CAFR. The CAFR is posted on the City's website. Moreover, the Authority (through the City) sends a copy of this audit annually to the County Auditor/Controller. The City sends a copy of its CAFR to the State Auditor when the City files its single audit reporting package.

(4) Required Reports: As required by State law, the Authority is required to, and does annually file a Special Districts Financial Transactions Report and a Compensation Report with the State of California.

If further information is required regarding this matter, please contact the Authority's Treasurer, Keith Neves, at (949) 461-3431.

Sincerely,

Scott Voigts
Mayor

cc: Orange County Grand Jury
Authority Board of Directors
Matthew E. Richardson, City Attorney