

November 3, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Response of Tustin Unified School District to 2014-2015 Orange County Grand Jury Report – *“Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency”*

To the Honorable Judge Sanders:

As required by Penal Code 933.05, the Tustin Unified School District (“TUSD”) is providing the following response to the 2014-2015 Orange County Grand Jury Report – *“Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency”* (“Report”), Findings F.4, F.5 and F.6, and Recommendations R.3 and R.4. TUSD is providing this letter on behalf of itself, the Tustin Unified School District Financing Authority (“Authority”) and the other entities which have participated with the Authority in the financing/refinancing transactions referenced herein. The Findings and Recommendations applicable to TUSD and the Authority, and TUSD’s responses, are set forth below. TUSD notes that, except as described above, TUSD is not providing any comment or response to the Report on behalf of any other governmental entity.

Finding 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 to Finding F.4: TUSD disagrees with Finding F.4 as it applies to the Authority.

The Authority is a joint powers authority duly organized and existing under the Government Code of the State of California, Division 7 of Title 1, Section 6500 *et seq.*, pursuant to a joint exercise of powers agreement dated February 11, 2014, entered into by and between the TUSD and Community Facilities District No. 07-1 (a Mello-Roos Community Facilities District) of TUSD. The purpose of the Authority has been to finance and refinance the acquisition,

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construction, modification, and rehabilitation of public facilities; and to undertake a program of local agency bond pooled financing, refinancing, and lending pursuant to the Marks-Roos Local Bond Pooling Act of 1985, as amended (“Marks-Roos Act”).

The Authority holds public meetings, at a minimum of once a year, posts its agenda items for public review - consistent with the applicable provisions of the Ralph M. Brown Act (“Brown Act”); and holds its annual public meeting following a TUSD Regular Board of Education meeting to reduce costs, make more efficient use of staff time, and to encourage and provide for more public participation. On an annual basis, the Authority receives and files, as an action item, its annual audit(s) during which time members of the public can also review and make comments to the Authority in a public meeting format.

The Authority has undertaken one (1) financing/refunding program, completed in 2014, which resulted in reduced risk and payment exposure and debt service savings to taxpayers within the boundaries of participating community facilities districts formed by TUSD.

TUSD disagrees with any assertion, express or implied, that TUSD and/or the Authority have acted to avoid legal constraints on matters such as debt authorization, tax authorization(s), tax duration, disclosure obligations or to obfuscate taxpayer visibility.

While TUSD does not speak to the actions of other public or governmental entities, TUSD’s position is that the Authority is a valuable tool to allow utilization of available financing, and refinancing tools to better serve TUSD and its citizens and taxpayers.

Finding 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 to Finding No. F.5: TUSD disagrees wholly with Finding F.5 as it applies to TUSD or the Authority.

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 has not received any transferred assets from TUSD, or the participating community facilities districts, for the purpose of obtaining additional funding. The Authority has not signed or entered into any long-term lease, or lease obligations, with TUSD or any other

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governmental entity. The Authority has fulfilled its intended purpose of providing financing and refinancing for the acquisition, construction, modification, and rehabilitation of school facilities; and has undertaken a program of local agency bond pooled financing and refinancing pursuant to the Marks-Roos Act, whereby the public facilities are financed and/or refinanced to improve service, reduce cost through economies of scale, and which are in the best interest of the TUSD and the residents, property owners and taxpayers within TUSD's participating community facilities districts.

Finding F.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.

Response to Finding F.6: TUSD cannot respond to this Finding. TUSD is unable to ascertain what sources the Orange County Grand Jury was using, or relying upon, to reach this Finding. Additionally, TUSD notes that the Authority was not formed until 2014 and thus would not appear in any listings of existing JPA's formed or operating prior to that date (i.e. 2013). Notice of the formation of the Authority was filed as required by applicable law.

Recommendation 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 to Recommendation R.3: TUSD has already implemented (or already complies with) portions of this recommendation. Specifically:

- (1) on an annual basis and following the closing of its fiscal year, an annual audit is performed of TUSD with references to the Authority by an outside audit firm;
- (2) the annual audit of TUSD/Authority is shown on TUSD's website;
- (3) the annual audits are submitted to the State Controller, the Superintendent of Public Instruction and the Orange County Department of Education; and
- (4) TUSD will continue to submit such annual audit reports to the State Controller, the Superintendent of Public Instruction and the Orange County Department of Education.

Recommendation R.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.

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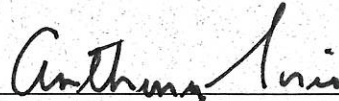
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Response to Recommendation R.4: TUSD has already implemented this recommendation. TUSD and the Authority will comply with applicable reporting requirements.

Respectfully Submitted,

TUSTIN UNIFIED SCHOOL DISTRICT



Anthony Soria
Chief Financial Officer