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December 20, 2012

Presiding Judge Thomas J. Borris
Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

Re: 2011-2012 Orange County Grand Jury report. "City of Santa Ana Special Assessment District"

Dear Judge Borris:

The city of Santa Ana is pleased to have the opportunity to respond to the findings and recommendations of the Orange County Grand Jury's June 28, 2012 report entitled: Santa Ana's Property Based Improvement District (PBID). This is especially true because the City desires to make important clarification of facts and misunderstandings of the law which we believe have significant bearing on the findings and recommendations of the Grand Jury.

The Grand Jury stated that it appeared that certain irregularities took place regarding the election process that established the district, that a sufficient number of property owners within the assessment area objected to the district and that the City had failed to address a property owner petition seeking disestablishment of the district, thereby denying the petitioner's their rightful consideration.

With the advantage of hindsight, the City would generally agree that all would have benefited from better communication with and between property owners during and after the formation of the district and a more thorough discussion of the differences between its enabling ordinance and the state statute authorizing formation of the PBID. Prior to the PBID, the Downtown had an active business improvement district assessing businesses and merchants for twenty-five years, with proceeds used for marketing and promotion. The City concedes that the transition from a business-based district to a property owner-based district would have benefited from additional initial discussion regarding the use of assessment revenues. The fact remains, however, that the City formed the district in compliance with the law and at all times has upheld the integrity of the assessment election process as explained in detail in the attached response.

Presiding Judge Thomas J. Borris
2011-2012 Orange County Grand Jury Report Response
December 20, 2012
Page 2

The City and its staff recognize that the City must play a role in resolving the differences between the property owners on both sides of the controversy surrounding the PBID. To this end staff continues discussions with the property owners and hopes to achieve a resolution that serves the best interests of all stakeholders in the City's downtown. The Grand Jury expressed concern that the City has not moved quickly enough to address the concerns raised by the public. Please know that our staff has been in discussions with the concerned parties in the Downtown since their issues have become known, including soliciting the help of the Orange County Human Relations Commission to help with resolution. The City's inability to take decisive legislative action in this matter stems from a number of factors, including the fact that three members of the council have worked with our City Attorney and the Fair Political Practices Commission to determine whether they have disqualifying conflicts of interest and one council member was absent from a number of council meetings for personal reasons. At times, this has left the City Council with a lack of a quorum and at other times with only four council members who could not come to agreement. The FPPC has issued an opinion confirming that one council member has a conflict and we are awaiting formal answers for the others. In the meantime, staff continues to work diligently on a resolution.

Thank you again for the opportunity to respond to the report. Should you have any questions, please feel free to contact me.

Sincerely,



MIGUEL A. PULIDO
MAYOR
CITY OF SANTA ANA

cc: Roy B. Baker III, Foreman
2011-2012 Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

CITY OF SANTA ANA'S RESPONSES TO FINDINGS AND RECOMMENDATIONS TO THE JUNE 26, 2012 ORANGE COUNTY GRAND JURY REPORT

SANTA ANA'S PROPERTY AND BUSINESS IMPROVEMENT DISTRICT (PBID)

HISTORIC CONTEXT:

Santa Ana's historic Downtown was the focus of the City's first redevelopment project area in 1973. An important initial emphasis was the establishment of a low interest loan program to assist property owners in complying with newly adopted seismic safety building codes and the implementation of a storefront improvement rebate program in 1983. Public infrastructure improvements were also made in the Downtown, most notably the enhancement of the customer experience through installation of brick sidewalks and other streetscape improvements, construction of public parking garages and installation of the Second Street Mall.

The following background information has been developed based upon review of City records and is provided as a factual backdrop to the City's responses to the findings and recommendations of the Orange County Grand Jury Report.

Improvement District Background:

On February 6, 1984, the City Council adopted Ordinance No. NS-1715 to establish a Business Improvement District (BID) in Downtown Santa Ana for the promotion and improvement of the Downtown area. (Tab 1) The BID boundary was generally the core Downtown area and included over 700 retail, service and professional members. The BID was funded through an assessment levied on each business license tax and the newly established Downtown Santa Ana Business Association (DSABA) was appointed by the City Council as the Downtown BID Advisory Board. In this role, DSABA fulfilled a critical element in the success of the BID by enabling the BID stakeholders to control and manage their own programs and budget. This arrangement continued until 2003 when the DSABA Board considered restructuring itself in order to better facilitate its BID advisory duties and by resolution of DSABA, requested that City Council approve a new organizational structure to act as the BID advisory board. A number of alternative organizational structures were presented to staff that did not follow the structure as set forth by the DSABA resolution. (Tab 2) On October 6, 2003, the City Council adopted Resolution 2003-078 appointing the Community Redevelopment and Housing Commission (CRHC) as the replacement BID Advisory Board. (Tab 3)

In December 2004, the CRHC recommended a 2005 budget for the BID. In developing the budget recommendation, the CRHC conducted extensive outreach to the Downtown business community, which included two community forums, to gain understanding of the general issues affecting Downtown businesses and to allow businesses to provide feedback on potential budgetary scenarios. Five general themes emerged from the first community forum: 1) business/government relations; 2) infrastructure, cleanliness, maintenance; 3) change; 4) Downtown Santa Ana's image; and 5) lack of participation. As a result, the CRHC recommended budget contained two components: 1) retain a consultant to address the key policy

issue of whether to keep, revamp or dissolve the BID; and 2) conduct sidewalk steam cleaning maintenance. The CHRC also recommended a reduction of the BID assessment to 25% of the formula. (Tab 4) At the City Council meeting of December 20, 2004 to consider the recommended budget, the Council received oral and written input from the public. Areas of interest focused on two main elements: the BID structure and the assessment. The requests from the interested parties relating to the structure of the district ranged from the dissolution of the BID to developing a two zone structure. Speaking in favor of the annual assessment at 100% were Brad Romoff, Dan Bradley, Bill Gaiennie, Justin Reuter, and Bob Stewart. Manuel Pena spoke requesting a continuation; Rigoberto Rodriguez supported the CHRC recommendation; and Michael Macres and Elsa Gomez asked that there be no BID assessment and that the BID be disestablished. (Tab 5) A letter was received from Irving Chase, S & A Properties, suggesting alternatively that a) the City Council delay action and consider instead establishment of two BIDs to address Downtown's various special interest groups – a Fourth Street BID and a Artist Village and Restaurant BID; and b) the City Council retain the existing BID structure and approved two overlay BIDS as described above. (Tab 4, page 19D-13) In addition, several (quantity not identified) petitions were lodged with the City Council with content falling into three general categories: 1) those which in some way object to or protest the assessments in general; 2) those calling for dissolution of the BID; and 3) those requesting to withdraw from membership in DSABA. (Tab 6) The City Council continued consideration of the subject to their meeting of January 3, 2005. (Tab 5)

On January 3, 2005, the City Council adopted a resolution of intention to levy the annual BID assessment at 100% and directed staff to work with the Downtown Business Community, the CRHC and all other interested parties to develop a new Business Improvement District structure with two zones and a partial year assessment levy for City Council consideration within six months. (Tab 7) On January 18, 2005, the City Council held a public hearing regarding the 2005 Downtown BID annual assessment. Based upon the City Attorney's recommendation, the petitions lodged on December 20, 2004 were deemed invalid protests. Fifteen valid protests were received representing 2.6769% of the BID valuation; the City Council approved levying the 2005 BID assessment. (Tab 8) On June 20, 2005, the City Council authorized an agreement with a Business Improvement District consultant not to exceed \$15,000. (Tab 9)

During this period of review in 2005, the BID assessments continued to be collected, with oversight by CRHC. With respect to the actual programming and activities that had been implemented by DSABA, two new groups emerged and entered into agreements with the City for marketing and promotion of the Downtown: Downtown Santa Ana Business Council (DSABC) and La Calle Cuatro de Santa Ana (LACCSA). The intent of the groups was to develop programs and manage the BID funds by way of contract with the City. The two groups shared the BID revenues according to an agreed upon formula. (Tab 10) On December 13, 2006, the CHRC sent a report and recommendation to the City Council and on February 5, 2007, the

City Council adopted the 2007 budget for the BID in Downtown. The budget called for \$9,900 to be allocated toward winter holiday decorations, while the remainder (\$219,200) was generally designated for promotions and marketing, with the anticipation that a more detailed work plan would be submitted by stakeholders. No such work plan was submitted and therefore, the assessments collected in 2007 were not spent. (Tab 11)

On April 7, 2008, the City Council approved the 2008 BID budget and authorized use of prior year balances rather than levy an assessment. The 2008 BID budget included programs of general benefit to the greater Downtown (\$105,000), programs targeted to benefit businesses generally considered to be represented by the DSABC, including the Artist Village area (\$136,000) and programs targeted to benefit businesses along and adjacent to Fourth Street that were formerly represented by LACCSA and which were generally characterized as appealing predominantly to a Spanish-speaking market sector (\$137,500). An agreement was approved with DSABC at that time in the amount of \$136,000. There was no agreement approved with LACCSA. (Tab 12)

As noted earlier, in June 2005 the City Council directed staff to investigate alternatives to the existing BID structure for the Downtown. Mr. Marco Li Mandri, President of New City America, Inc, was retained in November 2005 to explore potential options. The scope of the New City America contract included meetings with City staff regarding strengths and weaknesses of the existing BID; meetings with various stakeholder groups to determine level of support for the existing BID; study of potential changes to make existing district more responsive to various stakeholder needs; and findings regarding the existing BID and recommendations for action. (Tab 13) Mr. Li Mandri's final consultant report dated May 22, 2006 recommended a property-based community benefit district and included three recommendations to the City Manager: 1) The current BID, formed under the 1970 Parking and Business Improvement District Act, should remain in place until December 2007; 2) A new "Downtown District management Steering Committee" should be established to determine the type of special benefits district that would be formed; and the district management Steering Committee would continue its work for the next 18 months (June 2006-December 2007). (Tab 14) Mr. Irv Chase reported in a letter dated June 29, 2006 to David Ream, City Manager, that Mr. Li Mandri had presented a group of Downtown stakeholders his "Final Downtown Report and Recommendations" and that the Downtown property owners and tenants in attendance were highly supportive. The letter was endorsed by Elsa Gomez (representing La Calle Cuatro de Santa Ana Association), Ryan Chase (Fiesta Marketplace Partners), Teresa Saldivar (Teresa's Jewelers), Dan Bradley (Memphis Café), Brad Romanoff (Pangra Café), Bob Steward (Downtown Santa Ana Business Council), and Art Lomeli (Downtown professional). (Tab 15)

Beginning in January, 2008, City staff began working with Downtown stakeholders to form a Downtown Santa Ana Management District Formation Committee and established twice-

monthly meetings. (Tab 16) The Formation Committee consisted of Wendy Bryan, Northgate Markets; Irving Chase, Fiesta Marketplace; Ryan Chase, Fiesta Marketplace; Joe Duffy Truth & Advertising; Jon Gothold, DGWB; Adolfo Lopez, Property Owner; Elise Luckham, First American Title; Gil Marrero, Caribou Industries; Ray Rangel R & R Sportswear; Bob Stewart, Stewart Sound; and Raul Yanez, Property Owner. (Tab 17) In May 2008, the City retained an assessment engineer, Edward Henning & Associates, to work with the Formation Committee and City staff to develop a proposed structure for a new property-based district. (Tab 18)

In June 2008, the Formation Committee requested that the City amend the Municipal Code to enable the establishment of CMD's. Thereafter, on August 18, 2008, the City adopted Ordinance No. NS-2771 amending Chapter 13 of the *Santa Ana Municipal Code* to allow for the establishment of CMD's. This ordinance follows the provisions provided in state law, with minor modifications as allowed for charter cities by *Streets and Highways Code* §36603. (Tabs 19 and 20) On September 25, 2008, Downtown Inc sent a letter to property owners in the proposed CMD area informing property owners that Downtown Incorporated (DTI) was recently approved by the California Secretary of State as a nonprofit organization and inviting owners to an informational meeting covering the CMD to be held on October 2, 2008. (Tab 21)

Thereafter, the City received petitions from Downtown property owners to: 1) initiate proceeding to establish the Santa Ana Downtown Community Management District in accordance with the provisions of the Santa Ana Municipal Code, and; 2) conduct a Prop 218 ballot procedure of all property owners within the proposed District. Petitions were received from the following property owners (Tab 22):

Petitions to establish:

	SIGNATOR OF PETITION	MAILING INFORMATION IDENTIFIED ON PETITION	PETITIONER'S PROPOSED CMD ASSESSMENT
1	Elise Luckham	First American Title	\$29,405
2	Joseph Duffy	Phillips Hutton Partners	\$3,280
3	Irvine Chase	S&A Properties	\$64,627
4	Guillermina Madriles Adolfo Lopez	113 W Fourth St	\$6,688
5	Won Cha	314 W Fourth St	\$5,100
6	Meryl Fainbarg	112 E Fourth St	\$1,200
7	Cynthia J. Nelson	Santa Ana Redevelopment Agency	\$95,912
8	David N. Ream	City of Santa Ana	\$22,304
9	Steve Gafney		\$1,553
10	Jim Buffington	105 & 109 W Fourth	\$5,138
11	George E Avila Carmen Avila	310 E Fourth St	\$987
12	Robert Escalante	302 French St	\$5,596

13	Chris Taylor (sp).	E 2 nd LLC & Willard Trust	\$11,818
14	Francis Fina Chavez	Parking Company of America	\$2,127
15	Jon Gothold	DGWB Advertising	\$7,945
16	Miguel Gonzalez	Northgate Market	\$15,120
17	Michael F Harrah		\$15,591
18	Bryan Leighton		\$4,154
19	Gilbert Marrero Robert C Stewart		\$5,265
20	James D Meehan		\$22,945
21	Raymond Rangel	308 E Fourth St	\$5,687
22	Kathleen Rosenow	RSG Inc	\$2,650
23	Jill C Mahany	Santa Ana FCU	\$4,174
24	Raul Yanez		\$6,144
		TOTAL	\$345,410

On October 6, 2008, the City Council adopted Resolution No. 2008-068 stating its intention to establish the Downtown CMD with a five-year life span, and to levy and collect assessments within such district. This resolution also set the public hearing for the approval of the Downtown CMD for December 1, 2008. (Tab 23) Ballot packets were mailed on October 16, 2008 with receipt required prior to the close of the public hearing for the approval of the Downtown CMD. Two public information workshops were held in the Downtown on October 28, 2008. (Tab 24)

In response to the October 6, 2008 City Council action, a number of owners from the Town Square Condominium project raised concerns about the specific benefits they would receive should the CMD be established. (Tab 24) A November 20, 2008 memorandum from Edward Henning, the City's consulting assessment engineer, indicated that the Town Square Residential Condominium Complex was included in the proposed CMD and as a result, would receive the special benefit associated with the levied assessment. The memo went on to state that removal of the parcels from the proposed CMD and elimination of CMD funded programs adjacent to these parcels would also eliminate any special benefits accruing to the parcels. (Tab 25)

At the December 1, 2008 public hearing, the City Council heard from the community and ballots were cast as part of a weighted vote of those that would be assessed by the CMD, as required by state law. The final tally in favor of the CMD was 27 ballots with a total weighted assessment amount of \$301,252, which equaled 60.03% of the total voted assessment value. The no votes totaled 42 ballots, but only had a weighted assessment amount of \$200,558, or 39.97%. With this passing vote, the City Council adopted Resolution No. 2008-078 on December 15, 2008, establishing the Downtown CMD (excluding the Town Square Residential Condominium Complex from the district) and levying assessments within such district. (Tabs 26 and 27) On April 24, 2009, Downtown Inc sent a letter to property owners communicating the CMD

formation and indicating that Downtown Inc was requesting that the City Council “postpone activation of the District and the levying of the special assessment for one year due to the economic pressures so many of us face”. (Tab 28)

On May 4, 2009, the City Council adopted Resolution No. 2009-020 stating its intention to modify the Management District Plan for the Downtown CMD. (Tab 29) On May 18, 2009, after a public hearing regarding the proposed modification, the City Council adopted Resolution No. 2009-26 adopting the modification to the CMD. Essentially, the City Council was approving a revision to the Plan that allowed the first assessment to be delayed until Fiscal Year 2009-2010, and set the initial five year term of the CMD from January 1, 2010, through December 31, 2014. At that meeting, the City Council also authorized the City Manager to enter into an agreement with Downtown, Inc. to manage the Downtown CMD and to execute a loan agreement with Downtown Inc in an amount equal to the City/Redevelopment Agency’s first year CMD assessment. (Tab 30)

On August 16, 2010, the City Council approved the 2010 annual report for the Downtown Santa Ana Community Management District from Downtown Inc. (Tab 31) At the end of the first year of operation, the City began to receive petitions requesting the disestablishment of the CMD. In response, Downtown, Inc. submitted a request to the City to amend the boundaries of the CMD in accordance with *Santa Ana Municipal Code* §13-212. (Tab 32) The City held a “working group meeting” moderated by the Orange County Human Relations Commission on July 6, 2011, with the goal of “exploring areas of common ground.” Attendees at the meeting were: Kim DesRochen, Tom Jackson, Fina Chaves, Jessica Cha, Robert Escalante, Ed Henning, Fernando Ceballos, Arturo Arellanes, Claudia Arellanes, Barbara DesRochen, Ralph Allen, Ryan Chase, Won Cha, David Lee, Nancy Edwards, Scott Kutner, Herb Rose, Susan Gorospe and Bob Stewart. (Tab 33) Also on July 9, 2011, in accordance with the DTI request, the City issued a notice of public hearing stating that the City would consider the adoption of a resolution of intent to modify the CMD boundaries on July 18, 2011, and that if the resolution was adopted, the public hearing would be held on August 1, 2011. The initial hearing was continued to August 1, 2011, and properly re-noticed on July 21, 2011. The City adopted the resolution of intent to modify, and the public hearing was scheduled for August 15, 2011, which was adjourned to August 24, 2011. At that public hearing, the City Council adopted Resolution No. 2011-56 modifying the CMD boundaries. (Tab 34)

During this same time, the City Council was also considering the disestablishment of the CMD. The City Council discussed the issue on August 1, August 24, September 19, October 3, October 17, and November 7, 2011. After thorough consideration, the City Council did not take any further action toward disestablishment of the CMD. The matter came back before the City Council on July 2, 2012, but the City Council lacked a quorum to take any action regarding the Downtown CMD at that meeting.

Fiesta Marketplace Background:

On November 7, 1985, the Community Redevelopment Agency entered into a Disposition and Development Agreement with Fiesta Marketplace Partners. Under this agreement and subsequent amendments, the “Redeveloper” was a limited partnership which included Allan Fainburg as the managing general partner, Irv Chase as a general partner, and Robert Escalante and Jose Ceballos as limited partners. “Participants” in the agreement were existing individual property owners within the site and included Allan Fainburg, Irving M. Chase, John Isaacson, Jose Ceballos, Raymond Rangel, Robert Benitez, Jesus Galvan and Robert Escalante. The site involved was generally a four block area bounded by French Street, Third Street, Bush Street and Fifth Street. The scope of development called for a new multi-plex theater with 3,600 sq ft of adjoining retail shops and a 1,500 sq ft food court, as well as two two-level building totaling 58,000 sq ft with ground floor office space. In addition, the Redeveloper was obligated to rehabilitate the Yost Theater and the Ritz Hotel buildings in accordance with the approved site master plan and construct an open-air market on vacated Spurgeon Street between Third and Fourth Streets. The Redeveloper was required to expend approximately \$5 million in new and rehabilitation construction. (Tab 35) A Certificate of Completion was recorded by the Community Redevelopment Agency on November 18, 1986. (Tab 36)

Downtown Rebate Program Background:

On July 7, 2008, the Community Redevelopment Agency adopted a façade improvement rebate program for the Downtown designed to encourage the revitalization and activation of key storefronts in an effort to stimulate private investment and customer patronage. (Tab 37) On October 18, 2010, the Community Redevelopment Agency considered modification of the program. As of October, 2010, one building (West End Theatre) was completed, one was under construction (Pacific Building) and five were pending start of construction. Staff indicated in the staff report that if the modifications were approved, they would apply to the five pending projects as well as future approvals. The five pending projects included the Spurgeon Building and four buildings in the Fiesta Marketplace. The proposed modifications included 1) Agency Board approval of all rebates after review by the Rebate Committee; 2) limiting the rebate to 50% of project costs, not to exceed \$75,000 per building as opposed to \$75,000 per storefront and 3) adding basement skylight repair or replacement to the eligible list of improvements. Program modifications also added a progress payment schedule for rebate proceeds. (Tab 38)

At the October 18, 2010 meeting, concern was expressed by a Councilmember that the program had not been marketed to all businesses and that only the Downtown Inc Board of Directors had been notified. Concern was also expressed that the intent of the program was to assist businesses that otherwise could not afford to make improvements and that some

applications were turned down due to process problems. The Community Redevelopment Agency's actions on October 18, 2010 were: 1) approve the rebates for the Chase Building in the amount of \$600,000 and the Rangel Building in the amount of \$165,000; 2) Balance (of the CRA account for the rebate program) be placed into an account; and 3) Establish an Ad Hoc Committee comprised of Chair Pulido, Vice Chair Alvarez and Agency member Martinez to develop a process (for program) and make rules clear, have equal opportunity (for all businesses to participate), and come back to the Board with recommendations. (Tab 39)

Subsequently, on May 16, 2011, the Community Redevelopment Agency approved and authorized Agency staff to implement the proposed modifications to the Downtown Façade Improvement Rebate Program. (Tab 40) The proposed modifications included 1) Redevelopment Agency Board approval of all Downtown Façade Improvement rebates; 2) Rebate limited to 50% of total project cost not to exceed \$75,000 per building, as opposed to the current \$75,000 per storefront. Rebate can exceed the rebate limits only at the discretion and approval of the Agency Board; 3) adding a list of eligible improvements to the program scope; 4) establishing an escrow agreement option for participants in addition to the current cost reimbursement mechanism; 5) continuation of the first-come, first-served basis for program funds; 6) rear, side facades and main building entrances, foyers and vestibules are eligible if determined by the Agency Board, of a case-by-case basis; 7) renovations for historically significant icons and large buildings with multiple tenants are eligible if determined by the Agency Board on a case-by-case basis; and 8) applicants will receive written notice of approval, including modifications or denial of the project.

The program then became inactive due to State of California legislation AB1x26, which eliminated redevelopment programs state-wide.

City Issues:

Two City factors may have complicated City involvement in the activities highlighted in the Grand Jury report. The first relates to City Councilmember participation in policy and legislative direction has also been inconsistent due to various conflicts of interest. From the adoption of the City's Community Management District ordinance and the creation of the Downtown Community Management District, Mayor Pulido and Councilman Sarmiento abstained from participation and voting on these matters due to the proximity of their business and financial interests to the district boundaries. In addition, Councilwoman Martinez moved her residence within the district boundaries in 2011, and thereafter abstained from participating or voting on the Downtown Community Management District.

The second factor to highlight pertains to an unusually high turn-over of key staff positions involved in the conceptualization, formation and administration of the BID and CMD

since 2003. Per City personnel records and consultant contracts, lead employees involved since 2003 have been as follows:

Downtown Manager / Lead from Community Development:

Matt Lamb – 2003 to 2005
Bill Manis – 2005-2006
Tom Eidem (consultant) – 2006 - 2008
Vacant – 2008 to present

Executive Director, Community Development:

Patricia Whitaker – 2003 - 2005
Steve Harding – 2005-2008
Cynthia Nelson (serving jointly as department head and Deputy City Manager) – 2008-2011
Nancy Edwards (interim) – 2011 – present

City Attorney:

Joseph Fletcher – 2003-2011
Joe Straka (interim) – 2011-2012
Sonia Carvalho (contract) – 2012 to present

City Manager:

David N. Ream – 2003- 2011
Paul Walters – 2011 to present

CLARIFICATION OF HISTORY AND FACTS:

There are several statements throughout the Grand Jury Report that the City would like to clarify and correct for the record.

The Grand Jury suggests wrong doing by stating: “Also, the life span of the CMD was set for 10 years while state law limits the life span to five years, with renewals of 10 year periods.” The state law provides that the “maximum number of years [in which assessments will be levied] shall be five.” In accordance with these regulations, the CMD specifically provided that the assessments could only be levied for a period of five, not ten years. Therefore, there was no wrong doing because the CMD was limited to only five years. (Tab 19)

The Grand Jury further states that the property owners were not informed of the certified votes for over 10 months. In fact, the property owners were individually notified of the election outcome by mail in April 2009, six months prior to the time stated by the Grand Jury. (Tab 28)

The Grand Jury also states that the City Council never approved the bylaws or the agreement with Downtown Inc. In fact, the agreement with Downtown, Inc. was approved by the City Council in an open and public meeting on May 18, 2009. (Tab 30)

The Grand Jury then states that, "The petitions to disestablish the assessment district were in an amount representing numbers considerably in excess of the minimum required and have been submitted to the City of Santa Ana." The Grand Jury cites to *Health and Safety Code* §36670, which provides that a district may be disestablished "[u]pon the written petition of the owners or authorized representatives of real property or representatives of businesses in the area who pay 50 percent or more of the assessments levied." In fact, at no time has the city received petitions from property owners or businesses representing over half, or \$360,000 or more, of the assessments levied.

FINDINGS:

In compliance with the requirements of *Penal Code* §933.05(a), the City responds to the Findings in the Report as follows:

F1. City of Santa Ana appears to be in violation of California State Law in the formation of this Improvement District.

The City disagrees wholly with the first finding of the Grand Jury.

According to the Report, the Grand Jury questions the legality of the City's pre-formation petition requirement and the use of weighted voting in the formation of the Downtown CMD. However, these practices are completely within the mandates of state law, as detailed herein.

Pre-Formation Petitioning Requirement:

In the Report, the Grand Jury discusses the legitimacy of the City's CMD pre-formation petitioning requirement. The concern is apparently based on the fact that *Santa Ana Municipal Code* §13-202 provides for a 30% petition benchmark, as opposed to the 50% petition benchmark set forth in *Streets and Highways Code* §36621(a). However, *Streets and Highways Code* §36603 specifically states that, "Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part." Based on this charter authority, the City adopted its own Ordinance for the establishment of CMD's and decided to set the petition benchmark at 30% in *Santa Ana Municipal Code* §13-202. Other cities that have

exercised such authority and enacted a 30% petition benchmark include: Los Angeles (*Charter and Administrative Code* §6.602), San Francisco (*Business and Tax Regulations Code* §1511(a)), Oakland (*Code of Ordinances* §4.48.050), Berkeley (*Municipal Code and Zoning Ordinance* §7.94.030), and San Jose (*Code of Ordinances* §14.31.060). As a charter city, the City of Santa Ana possessed the legal authority to enact such a requirement for the formation of a CMD within the City.

Weighted Voting:

Any vote for the formation of a CMD is *required* to be weighted according to the proposed assessments. With respect to a vote on an assessment, Article 13D, Section 4(e), of the *California Constitution* requires that, “In tabulating the ballots, the ballots *shall be weighted* according to the proportional financial obligation of the affected property.” (Emphasis added.) The requirements of the *California Constitution* are binding upon all municipalities. *Government Code* §53753(b), which was adopted by the *Santa Ana Municipal Code*, also requires weighted ballots according to the proportional financial obligation of the affected property. Further, *Streets and Highways Code* §36623(b) also mandates voting to be weighted based upon the proposed assessments to be levied. The weighted vote must also include public properties, which are required to be assessed by Article 13D, Section 4(a), of the *California Constitution*, unless there is clear and convincing evidence that the publicly owned parcel would receive no special benefit. Thus, according to these regulations, the City was required to implement a weighted majority vote for the formation of the Downtown CMD that included publicly owned properties.

F2. Monies collected from the improvement district appear to have only benefited a few and have not resulted in a direct benefit to the assessed property as required by California law.

The City disagrees wholly with the finding that there is no direct benefit to the property owners and that monies “appear” to have only benefitted a few.

Direct Benefit:

The Report raises concern regarding the allocation of benefits to the assessed properties in the Downtown CMD. However, the City has complied with all obligations regarding the calculation of assessments and determination of benefits.

As to the formation of the CMD, according to Article 13D, Section 2, of the *California Constitution*, “Assessment means any levy or charge upon real property by an agency for a special benefit conferred upon the real property.” This section defines “special benefit” as “a

particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute special benefit.”

In order to confirm that any assessment is appropriately based on special benefits to the parcel, Article 13D, Section 4(b) of the *California Constitution* requires that, “All assessments shall be supported by a detailed engineer’s report prepared by a registered professional engineer certified by the State of California.” A specialized engineer was retained specifically to draft such a report for the Downtown CMD, and the actual basis of the assessments was calculated and confirmed in the required engineer’s report, which was reviewed and approved by the City at the time of the formation of the Downtown CMD. Recently, the engineer again reviewed the materials and confirmed the determination of special benefits. (Tab 41)

Monies Collected Appear to Benefit Some More Than Others:

The City relies upon its specialized civil engineer to determine the special benefit to assessed properties. The findings of the civil engineer are similar to those made for the over 200 PBID’s that exist throughout the State of California. In many of these other PBID’s assessment revenue is used to pay for marketing and promotions within the assessment district area. Resolution No. 2008-068, approved by the City Council on October 6, 2008, approved the Management District Plan which included a description of the improvements and activities proposed for the district. (Tab 23) The City Council has subsequently approved during noticed public hearings annual budgets for Downtown, Inc., the manager of the CMD. These budgets included implementation of the improvements and activities described by the Management District Plan. Therefore, the special benefits contemplated by the assessment engineer are being achieved.

While the City wholly disagrees with the finding, it does also acknowledge that there was clear disagreement among the property owners regarding the specific use of the funds within the budget categories. Some owners desired additional marketing for Fourth Street retail activity while others desired additional marketing for the night time attractions, the restaurants, the Artist Village and/or for the broader Downtown. As noted in the Grand Jury Report, allegations have been made by some property owners and merchants that the marketing efforts undertaken are an attempt to accelerate the gentrification of Downtown. The presence of this acrimony does not indicate, however, that the funds are being expended in a manner inconsistent with the definition of “special benefit” in the California Constitution.

F3. An appearance of impropriety exists in the relationship between the developer and the City of Santa Ana.

The City disagrees wholly with the third finding of the Grand Jury.

The Report seems to suggest that an improper relationship exists between the developers of the Fiesta Marketplace, owned in part by Irv and Ryan Chase, and the City based upon the Fiesta Marketplace's receipt of a rebate from the Downtown Façade Improvement Rebate Program. However, this Program was completely unrelated to the Downtown CMD. The Program was adopted in 2008, prior to the approval of the Downtown CMD. The Program followed common criteria for the disbursement of redevelopment tax increment dollars that were established and utilized in several similar programs administered by the City and other jurisdictions throughout the state. The criteria included a sliding rebate scale based upon the frontage length of the building, such that larger buildings requiring higher improvement expenditure qualified for larger rebates. The property owners were required to submit an application, receive approval from the City, document the expenses, and complete the work prior to the payment of any refund. The property owners cited in the Report own several large buildings in the Downtown and have been active investors in the Downtown for several years. The properties improved by these owners were within the rebate area and met all of the rebate criteria. As such, the rebates were approved for these property owners by the Redevelopment Agency on October 18, 2010. (Tab 39) Thus, the use of this Program by any particular property owner did not create any conflict or impropriety in future relationships with the City.

Of further note, the developers of the Fiesta Marketplace are not statutorily designated Form 700 filers. Therefore, they are not subject to the *Political Reform Act* or *Government Code* §1090 for their receipt of any monies from the Redevelopment Agency for the Downtown Façade Improvement Rebate Program. In addition, as owners within the Downtown CMD who sit on the board of the association, which by definition includes property owners, they are not public officials. Such position is confirmed by *Santa Ana Municipal Code* §13-201(c), which provides in pertinent part that, "An owners association is a private entity and shall not be considered a public entity for any purpose, nor shall its board members or staff be considered to be public officials for any purpose." Also, the developers are not officers or employees of the City, and Fiesta Marketplace is not utilized by the City in any capacity for City services. Even the City's contract with Downtown, Inc. provides that Downtown, Inc. is an independent contractor of the City only. Accordingly, the developers of Fiesta Marketplace are a private entity, and Irv and Ryan Chase, as representatives of Fiesta Marketplace, are merely private persons. Therefore, the City does not find any appearance of legal impropriety in the relationship between the developer of the Fiesta Marketplace and the City.

F4. An appearance of impropriety exists in the relationship between the developer and Downtown Inc., the administrator of the funds from the special district.

The City disagrees wholly with the fourth finding of the Grand Jury.

Both Downtown, Inc. and the Fiesta Marketplace are private entities. Thus, the state and local rules pertaining to conflicts of interest do not apply to this relationship. Nonetheless, the Downtown, Inc. association bylaws create some protections against potential conflicts of interest. More specifically, Section 1 of Article VIII notes that, "It is understood and accepted that from time-to-time the members of the committee, including the Chair and Vice-Chair, may have an interest or specific bias with a project under review by the committee." Accordingly, the bylaws create a procedure to follow when conflicts arise in the business conducted by standing committees. There is also a prohibition against cost-sharing at Section 1 of Article XIV providing that persons connected with the corporation cannot receive earnings or profits from the corporation, excluding payments for services performed. Of course, the bylaws also recognize that Downtown, Inc.'s projects are exempt from this consideration due to the "inherent conflict of interest on either side of the approval process." However, there is no evidence that the Fiesta Marketplace has been provided any benefit from the Downtown CMD greater than any other business in the CMD. As a result, the City is not able to find an appearance of legal impropriety in the relationship between the developers of the Fiesta Marketplace and Downtown, Inc.

F5. The process by which the district was established in regard to the mailing of ballots, the process of tabulation, and the voting by the City of Santa Ana does not appear to be in compliance with the statutory requirements for establishing an assessment on property owners.

The City disagrees wholly with the fifth finding of the Grand Jury.

According to the Report, the Grand Jury questions the legality of the City's mailing of ballots, the process of tabulation, and the voting by the City in the formation of the Downtown CMD. However, these practices are completely within the mandates of state law, as detailed herein.

Notice of Ballots:

With respect to the notice of ballots issue raised in the Report, Article 13D, Section 4(d), of the *California Constitution* requires that ballots for the vote be "mailed to owners of identified parcels within the district..." Section 2(g) of Article 13D does state that, "property ownership shall be deemed to include tenancies of real property where tenants are directly liable to pay the

assessment, fee, or charge in question.” However, the City would have no knowledge of such arrangements and can only be required to send the ballots to the property owners. In addition, Article 13D, Section 4(g) states that, “Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment.” Accordingly, the City complied with these constitutional requirements regarding the notice and mailing of ballots when it mailed ballots to each of the property owners within the proposed boundaries of the Downtown CMD.

The Process of Tabulation:

As to the Grand Jury’s concerns regarding the tabulation of the ballots, Article 13D, Section 4(e), of the *California Constitution* requires that, “the agency shall consider all protests against the proposed assessment and tabulate the ballots.” In this scenario, the agency is defined by the Constitution as the City. The City conducted the required vote at the December 1, 2008 public hearing, at which time the City Council heard from the community and took a weighted vote of those assessed by the Downtown CMD. The votes were tabulated in public view in the lobby of City Hall. As noted in the Report, *Government Code* §53753(e)(1) requires that an impartial person shall be designated to tabulate the ballots. That same section further states that, “an impartial person includes, but is not limited to, the clerk of the agency.” Based on this authority, the City used the Clerk of the Council to tabulate the ballots. The Report intimates that anyone related to the City should have been conflicted out of counting the ballots because of the City’s involvement with the CMD. However, as discussed below, the City is required to participate in the CMD, which was a known requirement at the time the state legislature determined that the clerk of the agency is an impartial person for purposes of tabulating the Downtown CMD ballots. Thus, the use of the Clerk of the Council to count the Downtown CMD ballots did not create a conflict, legal or otherwise, for the City.

Voting by the City:

With respect to the assertion in the Report that the City should not have participated in the creation of the CMD, Article 13D, Section 4(a), of the *California Constitution* states that, “Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.” Pursuant to this authority, the City Council authorized a vote on the City’s assessment on October 6, 2008 (Tab 23), and the Redevelopment Agency authorized a vote on the Agency’s assessment on November 17, 2008. (Tab 42) Not only is there no conflict in the City participating in the CMD, the City is required to participate in the CMD as an assessment paying member, unless a special showing is made regarding a lack of benefit.

RECOMMENDATIONS:

In compliance with the requirements of *Penal Code* §933.05(b), the City responds to the Recommendations in the Report as follows:

- R1. The City of Santa Ana should request that its City Attorney or independent counsel conduct an investigation into whether the City of Santa Ana complied with the requirements of establishing a formation district; whether that district benefits all property owners proportionately; and whether there are any violations or conflicts of interest. If so, the City of Santa Ana should immediately take action to disestablish the district.***

The first recommendation has been implemented by the City.

The Santa Ana City Attorney's Office, both prior to and after the release of the Report, has investigated the legality of the Downtown CMD and its compliance with pertinent requirements of both state and local laws. In addition, the Santa Ana City Attorney's Office retained outside counsel from Richards Watson & Gershon to review the City's CMD formation procedures after first receiving complaints regarding the Downtown CMD. All of these investigations confirmed the legality of the Downtown CMD. More specifically, as detailed above, the Santa Ana City Attorney's Office, as a result of its investigation, determined that the City complied with the requirements of establishing a CMD, that the Downtown CMD benefits all property owners proportionately, and that there were no violations or conflicts of interest. Accordingly, the City respectfully disagrees with any assertion in the Report that the City should immediately take action to disestablish the Downtown CMD.

Of additional note, the petitions submitted to the City in opposition to the Downtown CMD did not require the City Council to begin proceedings to disestablish the District. *Santa Ana Municipal Code* §13-214 provides a process for the dissolution of the district by resolution of the City Council. Any decision to begin such dissolution proceedings is at the discretion of the City Council. This process is not triggered by a signed petition. Under *Santa Ana Municipal Code* §13-214, if there is a decision to proceed with the dissolution process, the City Council shall adopt a resolution of intent to disestablish the district prior to a public hearing for the final decision on disestablishment. This procedure is based upon a similar process set forth in *Streets and Highways Code* §36670. However, pursuant to *Streets and Highways Code* section 36621(a), as previously discussed, the City, as a charter city, was not required to mirror the *Streets and Highways Code* procedures. Thus, the petitions submitted in opposition to the Downtown CMD did not create any legal obligation on the City to take any specific action.

R2. The Santa Ana City Attorney and the Orange County District Attorney should investigate the alleged violations of election laws and procedures.

The second recommendation has been implemented by the City.

The Santa Ana City Attorney's Office thoroughly investigated the Downtown CMD formation proceedings and did not find any violations of election laws or procedures. The City has provided extensive responses herein to the allegations in the Report that the pre-formation petition requirement, the use of weighted voting, the notice of ballots, the tabulation of the ballots by the Clerk of the Council, and the City's ability to vote were improper. As detailed in the Findings section above, each of these election related activities were within the requirements of state and local codes for the formation of a CMD. Thus, the City did not violate any election laws or procedures during the formation of the Downtown CMD.