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August 12, 2010

Honorable Kim G. Dunning
Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

RE: Response of the City of Irvine and the Irvine Redevelopment Agency to Orange County Grand Jury 2009-10 Grand Jury Report, dated June 3, 2010, titled "Financing the Great Park: Now You See It, Now You Don't"

Dear Judge Dunning:

This letter constitutes, in accordance with Section 933.05 of the California Penal Code, the response of the City of Irvine ("City") and the Irvine Redevelopment Agency ("Agency") to the Orange County Grand Jury 2009-10 Report, dated June 3, 2010, titled "Financing the Great Park: Now You See It, Now You Don't" (the "Grand Jury Report"). The enumerated items in this response correspond to the numbering of the Findings and Recommendations contained in the Grand Jury Report.

INTRODUCTORY STATEMENT

Although the City and the Agency appreciate the role of the Grand Jury, as well as the opportunity to respond to the Grand Jury Report, as outlined below in great detail the Grand Jury Report is seriously flawed and the findings and recommendations are unsupported and unsupportable. Over the course of some months the City and the Agency provided full and complete responses to questions posed to us by the Grand Jury's Continuity and Special Issues Committee ("Committee"). We encouraged the Committee to share a draft of the Grand Jury Report with us so that we could correct errors in it before the Grand Jury Report was made public. The Committee did so and several requested corrections were made, but many others were not, resulting in the issuance of a Report that is inaccurate and misleading.

The City and the Agency have worked tirelessly to bring about, right here in Orange County, this nation's first great municipal park of the 21st century. We have involved interested parties from the entire County through an open, public, and inclusive process. The Grand Jury, however, early in its Report, revealed the tone and tactics it intended to employ by speculating—and then simply leaving hanging in the air—that City officials have kept taxpayers in the dark about the financing structure for the Orange County Great Park. (Grand Jury Report, p. 3, §2, ¶2.) Arguably, the establishment of the Orange County Great Park, the Great Park plan, Great Park planning efforts, the financing issues and sources of funding, and every aspect of the Great

Park has been scrutinized more than any public project in the history of Orange County. The Great Park has been the subject of countless open and public hearings by the City Council, the Agency, the Orange County Great Park Board of Directors, and City commissions including the City Finance Commission. All of these bodies reviewed and unanimously approved the Purchase and Sale and Financing Agreement that is the main subject of the Grand Jury Report.[1] All of these bodies have held hours of public discussion and produced reams of publicly available reports and documents on the Great Park and its financing. The Grand Jury's suggestion that City officials have played "hide the ball" has absolutely no basis in fact and, indeed, exactly the opposite is true. Unfortunately, that tone of insinuation and the lack of factual or legal bases for the Grand Jury's assertions are rampant throughout the Grand Jury Report.

RESPONSE TO FINDINGS

6. Findings

F.1 ***Repayment of $134 million loan.*** **Terms of the Loan Agreement make it difficult for the Irvine Redevelopment Agency to fully repay its $134 million loan from the City of Irvine.** Response required from the Irvine City Council and the Irvine Redevelopment Agency.

Response: The Irvine City Council and the Irvine Redevelopment Agency disagree wholly with this Finding. (Penal Code §933.05(a)(2).)

Redevelopment agencies exist pursuant to a State law known as the Community Redevelopment Law (Health & Safety Code §33000 *et seq.*) ("CRL"). Under the CRL, a redevelopment agency exists in every community (defined as a city or a county for unincorporated territory). (Health & Safety Code §33100.) The redevelopment agency exists as a matter of State law, but is not effective and does not operate until "activated" by the adoption of an ordinance by the legislative body—the city council in the case of a city, or the board of supervisors in the case of a county. The City Council of the City of Irvine activated the Irvine Redevelopment Agency by Ordinance No. 99-09 on April 27, 1999. The Agency is defined in the CRL as a "public body, corporate and politic." (*Ibid.*) Although a city has the power to activate its redevelopment agency, redevelopment agencies are distinct legal entities that are treated as "creations of the state" pursuant to the CRL. (*Andrews v. City of San Bernardino* (1959) 175 Cal.App.2d 459, 462; *see also, Pacific State Enterprises, Inc. v. City of Coachella* (1993) 13 Cal. App. 4th 1414, 1424 ["Redevelopment agencies are governmental entities which exist by virtue of state law and are separate and distinct from the communities in which they exist."].

Under the CRL, the redevelopment agency and the legislative body (here, the Irvine City Council) may adopt a redevelopment plan that delineates a redevelopment project area within which the redevelopment agency has certain powers.[2] Facing a growing number of closures of

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[1] All of these bodies are required to and did fully comply with the Ralph M. Brown Act (Gov. Code §54950 *et seq.*), California's open meeting law.

[2] The redevelopment agency of a city may also fund certain limited activities, such as

military bases in California, and recognizing the unique effect those closures would have on their local communities, the State Legislature amended the CRL in 1993 and 1996 to facilitate the adoption of redevelopment plans for closed military bases. The State Legislature expressly recognized the need for a mechanism to assist local communities to transform closed bases into community assets by addressing the special blighting conditions that exist on former bases, including materials or facilities that require removal for development to occur, infrastructure that does not comply with community standards, incompatible land uses, and buildings that do not conform to local building codes. (Health & Safety Code §33492 *et seq.*)

In compliance with all required procedures, and pursuant to the CRL and other applicable law including the California Environmental Quality Act (Pub. Res. Code §21000 *et seq.*), the Agency and the City Council adopted the Orange County Great Park Redevelopment Plan ("Redevelopment Plan") on March 8, 2005. The Redevelopment Plan delineates the Orange County Great Park Redevelopment Project Area ("Project Area"), which is an area within the former "Marine Corps Air Station, El Toro" within the territorial jurisdiction of the City (the territory that constitutes the Project Area was annexed to the City in 2004).

Critical to understanding redevelopment financing is understanding the terms "tax increment," "indebtedness," and "tax increment financing." Redevelopment agencies are not taxing agencies and have no authority to levy taxes, "nor do redevelopment agencies in fact levy property taxes." (*Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 106.) Rather, the main funding source for redevelopment agencies is property tax increment, which is a reallocation or redistribution of a portion of the property taxes. The portion allocated to redevelopment agencies is referred to as tax increment. But unlike cities that receive property tax revenues and then may spend those revenues, a redevelopment agency has to first incur indebtedness, *i.e.*, debt, to demonstrate that it needs the tax increment to pay off the debt. (Health & Safety Code §33675.) If the agency has no debt, it is not undertaking redevelopment activities and thus is not eligible to receive tax increment. This concept of incurring indebtedness to be paid off from future tax increment revenues, is known as "tax increment financing."

Property tax increment and tax increment financing is specifically authorized by Article XVI, Section 16, of the California Constitution enacted by a vote of the people of California in 1952.[3] That State Constitutional provision permits the Legislature to adopt tax increment financing as the mechanism for funding redevelopment. The Legislature did so in the CRL, with that statutory implementation of the State Constitutional authorization set forth in Health and Safety Code §33670.

Property tax increment is that portion of property taxes derived from the increase in assessed valuations of the property within the Project Area over the assessed valuation existing at the time the redevelopment plan was adopted. Or, as the California Supreme Court summarized in

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affordable housing projects, outside the boundaries of the redevelopment project area but within the territorial jurisdiction of the city.

[3] The voters approved Article XIII, Section 19, later renumbered as Article XVI, Section 16.

Redevelopment Agency of the City of San Bernardino v. County of San Bernardino (1978) 21 Cal.3d 255, 259:

> In essence [Art. XVI, Sec. 16.] provides that if, after a redevelopment project has been approved, the assessed valuation of taxable property in the project increases, the taxes levied on such property in the project area are divided between the taxing agency and the redevelopment agency. The taxing agency receives the same amount of money it would have realized under the assessed valuation existing at the time the project was approved, while the additional money resulting from the rise in assessed valuation is placed in a special fund for repayment of indebtedness incurred in financing the project.

Some of the property tax increment is statutorily required to be paid by the redevelopment agency to taxing agencies such as school districts, the county, and special districts that levy property taxes within the redevelopment project area. (Health & Safety Code §§33607.5; 33607.7.) The CRL also requires that of the portion of property tax increment allocated to the redevelopment agency, twenty percent (20%) must be set-aside in a Low and Moderate Income Housing Fund. (Health & Safety Code §33334.2 *et seq.*).

As such, tax increment results from taxes that are levied *not* by redevelopment agencies but by the taxing agencies that levy a property tax within the redevelopment project area. Redevelopment agencies "passively receive the [tax increment] revenue from taxes levied by other agencies." (*Huntington Park Redevelopment Agency v. Martin, supra,* 38 Cal.3d at pp. 106-107.)

Redevelopment plans are required by the CRL to have certain time limits, including the period within which to receive property tax increment generated from the levy and payment of property taxes on property located within the redevelopment project area. Pursuant to CRL provisions applicable to redevelopment plans for closed military bases, specifically Health and Safety Code section 33492.13(a)(4), the time period is 45 years from the date the county auditor-controller certifies the redevelopment agency received its first $100,000 in tax increment from the redevelopment project area. For the Orange County Great Park Redevelopment Project Area, that date was June 30, 2007 and so the Agency is eligible to receive tax increment from the Project Area until June 30, 2052.[4]

All redevelopment plans assume growth in assessed valuation of the project area due to development over time. Because property tax increment is generated by the increase in assessed

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[4] The Grand Jury Report incorrectly states the Agency's life is 45 years ["Tax increment would continue to flow annually to *a redevelopment agency during the 45 years to which its life is limited under state law*" (Grand Jury Report, p. 7, ¶1, emphasis added) and "Under the terms of the Loan Agreement, the Redevelopment Agency is to repay the loan at 9% interest, compounded annually, *over the 45-year life of the Agency*" (Grand Jury Report, p. 7, ¶6, emphasis added)]. In fact, a redevelopment agency's life exists independent of the duration of a *redevelopment plan* or the number of years in which the redevelopment agency receives tax increment pursuant to the CRL and the terms of the redevelopment plan.

valuation over the "base year" valuation (*i.e.*, the assessed valuation of the project area existing at the time of adoption of the redevelopment plan), projections of future property tax increment can vary widely depending on assumptions used. An important factor in the generation of property tax increment is the timetable for development by private developers of project area property in private ownership. In the case of the Orange County Great Park Redevelopment Project Area, that developer is Lennar Corporation or one or more of its affiliated entities including but not limited to Heritage Fields, LNR Property Corporation, and Great Park Neighborhoods (for ease of reference, the private property owners are referred to herein collectively as "Heritage Fields").

As development of the private property within the Project Area occurs, increasing property tax increment will be generated, a portion of which will be paid to the Agency. Thus the payment of property tax increment to the Agency is *not* the same in every year and will be low in the early years of a redevelopment project area because it is normal that in the early years of a redevelopment plan assessed valuation growth is slow. As development of the privately owned property within a project area occurs—usually in phases—over time, the property tax increment growth occurs. The precise timing of property tax increment growth is subject to numerous factors, particularly for a large closed military base, and include comprehensive planning requirements necessary to transform the privately owned portions of the closed military base into residential and commercial development, as well as economic and market factors.

Because a redevelopment agency does not have sufficient property tax increment funds in the early years of a redevelopment plan to undertake redevelopment activities or to meet operating expenses, an agency typically turns to the city or county in which they operate for a loan to be repaid from future tax increment revenues. Loans by a city to its redevelopment agency are expressly authorized in the CRL (Health & Safety Code §§33600, 33601) and are an indebtedness for which property tax increment may be paid.[5] Here, the City and the Agency effected such a loan in the amount of $134 million by approving and executing a Purchase and Sale and Financing Agreement dated August 14, 2007. The loan from the City enabled the Agency to acquire 35 acres of land from the City for future redevelopment purposes with the loan to be repaid from future property tax increment.

Instead of seeking to understand the complex nature of tax increment financing and the extraordinary benefit the Purchase and Sale and Financing Agreement brings to the City and the Agency's ability to leverage and manage financial resources, the Grand Jury opts for insinuation: "But City officials and the City's lawyers have woven a web of legal phraseology that seems designed to provide reasons not to make payments on the loan." (Grand Jury Report, page 10, ¶1.) Rather than taking the time to more fully consult with us or other professionals in the field so they could understand the terms and benefits of the Purchase and Sale and Financing Agreement, the Grand Jury instead attacks the motives of City officials and its legal counsel.

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[5] As noted earlier, unlike a city that spends tax revenues it receives, a redevelopment agency can only receive property tax increment if it first incurs indebtedness and thus demonstrates the need to receive the tax increment to pay the debt. (Health & Safety Code §33675.)

Contrary to the Grand Jury's finding, the terms of the Purchase and Sale and Financing Agreement do not "make it difficult" for the loan to be repaid. Rather, the terms of the Purchase and Sale and Financing Agreement provide the Agency with an ability to manage its revenues in the most effective manner, including issuing bonds. These are the facts:

(1) Contrary to the Grand Jury Report's assertion, the tax increment forecast set forth in the Orange County Great Park Strategic Business Plan 2009-2020 was conservative and took into account economic and market factors.

One of the central (but incorrect) assertions of the Grand Jury Report is that the tax increment forecast used in the Orange County Great Park Strategic Business Plan 2009-2020 (approved November 2009) did not take into account economic and market factors that could cause tax increment revenues to be lower than projected. The Grand Jury conveniently ignored, overlooked, or disregarded key portions of the Strategic Business Plan. As fully explained in the Strategic Business Plan, the tax increment projections were prepared using conservative assumptions *and* have taken into account economic and market factors. The estimate of future tax increment contained in the Great Park Strategic Business Plan was based on Heritage Fields' initial development plan as adjusted by a Price Point And Market Absorption Study 2009 (completed in August 2009). The 2009 update was included as part of the Great Park Strategic Plan.[6] The Price Point and Market Absorption Study provides an extensive discussion about the current recession and probable impacts on housing and commercial development over the next 10 years, and provides pricing adjustments to housing and commercial development over the forecast period. These pricing adjustments are integrated into the forecast of tax increment used in the Great Park Strategic Business Plan. As stated on page 22, ¶6, of the Business Plan: "The tax increment forecast is based on an updated analysis of residential and non-residential price points and market absorption of the Great Park Neighborhoods development that was updated in the Summer of 2009." That updated analysis was prepared by Empire Economics, Inc. and is Appendix A (pp. 54-91) to the Strategic Business Plan. The Strategic Business Plan further states:

> The Business Plan estimates that loan repayments [under the Purchase and Sale and Financing Agreement] to the Great Park Fund [the City account where Agency repayments go] will begin in FY 2012-2013. It is possible that payments may begin sooner, however, due to the recessionary economy and the corresponding delay in residential and non-residential development, *staff considered a more conservative approach to the receipt of these [tax increment] revenues to be the most prudent approach at this time*.

(Orange County Great Park Strategic Business Plan, page 31, emphasis added.)

The Grand Jury Report acknowledges—but under-reports by $100 million due to an apparent clerical error—that the net tax increment revenue over the 45 years is projected to be

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[6] The Great Park Strategic Business Plan is publicly available and may be viewed at <http://www.ocgp.org/2010/01/great-park-2009-202-business-plan/>.

$1,265,887,448. (Grand Jury Report, pp. 15-17; see especially Table I on p. 17.)[7] What the Grand Jury conveniently omitted from its discussion is that this net tax increment projection was based on the *conservative criteria of the Strategic Business Plan* which was information known to the Grand Jury but ignored without explanation. The tax increment table shown on Page 17 of the Grand Jury Report was provided to the Grand Jury by the Agency in a letter dated December 22, 2009, from Kurt Mowery, Manager of Finance, to Gerald Brown, Member of the Grand Jury's Continuity & Special Issues Committee. In that letter, Mr. Mowery stated "The estimate of future tax increment (Attachment 1) is based on Heritage Fields' initial development plan as adjusted by a Price Point and Market Absorption Study completed in August of 2009." Even though the Grand Jury knew the tax increment projection was based on the conservative criteria set forth in the Strategic Business Plan (which incorporated Heritage Fields' initial development plan as adjusted by an updated Price Point and Market Absorption Study completed in August of 2009), the Grand Jury chose to exclude from its Report that the estimate used conservative projections—a key detail for understanding the tax increment forecast.[8]

(2) Analyses prepared for the 2010 update to the Orange County Great Park Strategic Business Plan project that the loan under the Purchase and Sale and Financing Agreement will be fully repaid, including all of the interest at 9% per annum, by 2042, ten years earlier than the repayment deadline of June 30, 2052.

City and Agency staff are also continually engaged in analyzing and updating tax increment projections. As part of its planned 2010 update to the Orange County Great Park Strategic Business Plan (as noted above, approved by the Orange County Great Park Board in November 2009), staff engaged Empire Economics, Inc. to update the 2009 Price Point And Market Absorption Study and also asked Rosenow Spevacek Group, Inc. to update the forecast of tax increment revenue. The 2010 Price Point And Market Absorption Study Update takes into consideration the recent changes in the economic, financial, and real estate conditions since Summer 2009 so that it includes estimated price points for housing and an estimated absorption schedule based on the current conditions. The 2010 update to the forecast of tax increment revenue is based on the 2010 Price Point And Market Absorption Study Update. Moreover, the updated tax increment revenue projections assume that Heritage Fields will obtain assessed value reductions as a result of assessment appeals it has filed with the County Assessor. As a result,

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[7] The Grand Jury Report states: "Great Park management forecasts that during the 45-year life of the Redevelopment Agency, the [Agency] will have net tax increment revenue of $1,165,887,448." The Grand Jury shorted the Agency *One Hundred Million Dollars* in its discussion of the project net tax increment revenue. The figure shown on Table I on page 17 in the Grand Jury Report is $1,265,887,448.

[8] The Grand Jury Report also makes reference to a "10% yearly penalty required by the State" if the Agency fails to make an annual payment under the terms of the Purchase and Sale and Financing Agreement. The Grand Jury is misinformed. There is no 10% yearly penalty imposed by the State. Rather, Civil Code §3289(b) allows the collection of up to 10% annual interest on an amount not paid under a contract. (Civ. Code §3289, subd. (b) ["If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach."].)

the repayment scenario identified in the Orange County Great Park Strategic Business Plan 2009-2020 adopted in November 2009, as adjusted with the 2010 tax increment projection update, continues to reflect the most prudent and conservative approach to forecasting the receipt of tax increment revenues and the repayment of the loan under the Purchase and Sale and Financing Agreement.

The Agency's repayment obligation as set forth in the Purchase and Sale and Financing Agreement runs until the loan is repaid or until June 30, 2052, which is the date when the Agency is no longer legally eligible to receive tax increment. It has always been the assumption that the Agency's repayment will occur over those many years and it is the Agency and the City's intent that the loan be fully repaid. Attached as ***Exhibit "A"*** to this letter is the updated 2010 Redevelopment Tax Increment Projections and attached as ***Exhibit "B"*** to this letter is the updated 2010 Forecast Purchase and Sale and Financing Agreement Loan Repayment schedule. As shown in ***Exhibit "B"***, with the first repayment occurring in fiscal year 2012-2013, it is projected that the loan, including all of the interest at 9% per annum, will be fully repaid by fiscal year 2041-2042, ***a full 10 years prior*** to the June 30, 2052 date when the Agency is no longer eligible to receive tax increment.

(3) The Grand Jury's assertion that the Purchase and Sale and Financing Agreement creates "two categories of debt" is contrary to the redevelopment law.

To confuse matters more, the Grand Jury invents the notion that the Purchase and Sale and Financing Agreement somehow creates "two categories of debt."—an annual debt, used to determine if a payment on the Loan is due for any particular year, and "other debt" accumulated in earlier years. (Grand Jury Report, p. 10.) The Grand Jury then employs its incorrect premise to conclude that "the effect of creating two classes of debt is to relegate the $134 million loan to a secondary status." (*Ibid.*)

The Purchase and Sale and Financing Agreement creates an indebtedness of the Agency of $134 million plus interest, which is payable in annual installments when there is sufficient net property tax increment to make the payment. There is only the *one* indebtedness created under the Purchase and Sale and Financing Agreement which the Agency reported in its Fiscal Year 2007-08 Statement of Indebtedness ("SOI") that was submitted to the County Auditor-Controller pursuant to Health and Safety Code section 33675. (The Agency annually submits a SOI). The Agency, for any particular fiscal year, is entitled to the *total* tax increment the Agency reported on the SOI up the amount of the available tax increment revenues, even if an annual installment payment under a loan agreement was less than the total amount of indebtedness. The ability of redevelopment agencies to obtain property tax increment in this manner was affirmed by the California Supreme Court in the landmark case of *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal. 3d 1070. In that case the agency entered into a disposition and development agreement that required the agency to make future payments to a developer. The agency claimed the entire amount of the indebtedness on its SOI. The county auditor challenged the right of the agency to collect tax increment based on the entire indebtedness and argued for a narrower interpretation of "indebtedness." The auditor argued that because only lesser amounts were required to be paid by the agency in any particular year the agency should receive tax increment based on those smaller annual obligations and not the entire indebtedness. The

California Supreme Court rejected the county auditor's narrow interpretation and agreed with the agency. The Court held:

> Since redevelopment agencies are statutorily empowered to enter into binding contracts to complete redevelopment projects, the term "indebtedness" must be interpreted in a way that will enable those agencies to perform their contractual obligations. In this light, we think it clear that "indebtedness" was meant to include all redevelopment agency obligations, whether pursuant to an executory contract, a performed contract or to repay principal and interest on bonds or loans. To insure its ability to perform its obligations, a redevelopment agency is entitled to all tax increment funds as they become available, until its "loans, advances and indebtedness, if any, and interest thereon have been paid ...." [citations omitted.] [¶] The financial scheme prescribed in the California Constitution and the Community Redevelopment Law relating to the operation of redevelopment agencies likewise compels acceptance of the Agency's interpretation of "indebtedness." Article XVI, section 16, and section 33670, subdivision (b) dictate that tax increment revenues "*shall be allocated to* and when collected *shall be paid into a special fund of the redevelopment agency*" to pay its indebtedness. (Italics added.) The very notion of a "special fund of the redevelopment agency" plainly implies that the agency itself will control the utilization of tax increment funds and militates against the notion of a process budgetarily controlled by county auditors. This reading of the "special fund" language is virtually mandated by section 33603, the carry-over provision, which authorizes redevelopment agencies to "invest any money held in reserves or sinking funds, or any money not required for immediate disbursement, in property or securities ..." and section 33670 which mandates payment of tax increment revenues into the "special fund" until the agency's "loans, advances and indebtedness, if any, and interest thereon have been paid" [fn. ref. omitted]. Thus, the Auditor's notion that available tax increment funds not needed for expenditure in the upcoming fiscal year are to be distributed to other tax entities is wholly incorrect. It is clear the Legislature contemplated the "special fund" would provide a reliable fund of money to be used to pay any and all obligations incurred by a redevelopment agency and that up to the amount of the agency's total indebtedness, tax increment revenues not expended currently would be accumulated for payment of such indebtedness when due. (*Id.* at 1082-1083.)

The *Marek* case settled any doubt that a redevelopment agency may collect tax increment based on total indebtedness, rather than annual indebtedness. As such, there is only ***one*** indebtedness and it is the total indebtedness of the Agency as reported on the SOI.

(4) The subordination provision in the Purchase and Sale and Financing Agreement, which the Grand Jury questions, is a standard and necessary provision to permit the City Council and Agency Board to make prudent financial and budgetary decisions and for the Agency to issue tax allocation bonds.

The Grand Jury also questions the inclusion of a subordination provision in the Purchase and Sale and Financing Agreement and concludes: "That makes it crystal clear that the City of Irvine

is last in line to get a payment on its loan when the tax increment pie is divvied up." (Grand Jury Report, p. 13.) Not so. The Agency Board, which is composed of the members of the City Council,[9] controls the application of the tax increment funds and may make appropriate financial and budgetary decisions in the future to most effectively use the net tax increment it receives. The Purchase and Sale and Financing Agreement includes an annual review provision as part of the City and the Agency budget process with adjustments always possible through an amendment to the Agreement.

The Grand Jury also declares, as an afterthought at the conclusion of its discussion of the Agency's loan repayment, "City and Redevelopment officials say potential buyers would shun RDA bonds without the subordination clause." The Grand Jury dismisses the statement without comment. In fact, the City and Agency's concern is well-founded. Bonds issued by a redevelopment agency are known as "tax allocation bonds." Bond buyers look to a first pledge of tax increment funds for debt service on tax allocation bonds. Without that first position pledge the bonds become more difficult, if not impossible, to market and, even if marketable (which is doubtful), would cause a significantly higher interest rate to be paid. Thus, a redevelopment agency's contractual loan repayment obligation, such as set forth in the Purchase and Sale and Financing Agreement, needs to be subordinated to the debt service on tax allocation bonds, rather than the bonds being subordinated to the contractual loan repayment. As stated in the discussion on tax allocation bonds in the treatise *Redevelopment In California*: "These are bonds issued by the redevelopment agency and secured solely and directly by the pledge of tax increments from the redevelopment project. These tax allocation bonds are typically secured by a first pledge of the tax increment from the project—that is, *the bonds are usually not subordinated.*" (Joseph E. Coomes, Jr., et al., *Redevelopment In California*, 4th ed. (2009), p. 241, emphasis added.) In short, the subordination provision in the Purchase and Sale and Financing Agreement is a necessary, and a typical, provision that facilitates the issuance of tax allocation bonds at the lowest possible interest rates.

(5) The Grand Jury improperly focuses only on the next 10 years of tax increment and ignores the following 35 years of tax increment.

The Grand Jury also asserts the Agency will not be able to repay the $12 million annual interest on the loan (Grand Jury Report, p. 14, ¶1) by focusing on the next 10 fiscal years and ignoring the following 35 fiscal years of tax increment. As was explained to the Grand Jury in a November 9, 2009, letter to Gerald Brown of the Grand Jury's Continuity and Special Issues Committee, from Michael D. Ellzey, CEO of the Orange County Great Park:

> The apparent discrepancy noted in your question between the beginning payments outlined in the Great Park cash flow overview at "approximately $5 million per year" and the approximately "$12 million in annual interest payments alone

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[9] See the discussion later in this Response that, contrary to the Grand Jury's unsupported assertion that having City Council members serve as the Agency Board members is a conflict, the exact opposite is true: having the City Council serve as the members of the Agency Board is *not* a conflict of interest, is expressly authorized by the CRL, and more easily permits the members to effectively leverage and manage financial resources.

> required to repay a $134 million loan at 9%" is probably best found in the assumptions used to calculate the Loan payment. While not knowing exactly the assumptions used to calculate the [Grand Jury's] $12 million interest assumption, one can reasonably assume that it is based on a straight-line amortization of the loan, at 9% over a 45-year period. However, Project Area Cash Flow, used to repay the Loan, is not anticipated to occur in a straight line. Due to the raw, or undeveloped, nature of the project area, it is assumed that Heritage Fields residential and non-residential development will occur over a period of time. As homes and commercial buildings are built, Project Area Cash Flow will naturally increase allowing for repayment of the Loan with increasingly larger annual payments. Additionally, to ensure that the Orange County Great Park Corporation, for its business plan, does not rely on funds that may not be available, a more conservative estimate of Loan repayments is used.

The Grand Jury Report ignored this information and, as a result, repeats the Grand Jury's fundamental misunderstanding of tax increment and tax increment growth through property reassessments. That tax increment grows significantly in the middle and later years of a redevelopment plan can be seen in the updated 2010 forecast of tax increment, referred to earlier, which is attached as ***Exhibit "A"*** to this letter. As shown on that updated forecast of tax increment revenue, in the last eight years (from 2044 to 2052) the Agency is projected to receive net tax increment revenue of over $50 million *per year*.

(6) The City and Agency also reject the Grand Jury's inexplicable criticism that the Redevelopment Plan, adopted in 2005, should have included a commitment to repay the Loan that was not entered into until 2007.

Finally, the Grand Jury is critical that the Redevelopment Plan, adopted in 2005—*two years before the Purchase and Sale and Financing Agreement was entered into by the City and Agency*—did not contain a commitment to repay the Loan (Grand Jury Report, p. 16, ¶3). A redevelopment plan adopted in 2005 obviously cannot contain or refer to terms relating to an agreement adopted in 2007. Moreover, a redevelopment plan normally does not contain terms relating to a specific project. As noted in *County of Santa Cruz v. City of Watsonville* (1985) 177 Cal. App. 3d 831, 841:

> Redevelopment is also a process which occurs over a period of years. These realities dictate that a redevelopment plan be written in terms that enhance a redevelopment agency's ability to respond to market conditions, development opportunities and the desires and abilities of owners and tenants. Such a plan then cannot always outline in detail each project that a redevelopment agency will undertake during the life of the plan. [citations omitted.]

For all of the foregoing reasons the Irvine City Council and the Irvine Redevelopment Agency disagree wholly with Finding F.1 and reject the assertions on which Finding F.1 is based.

F.2 *Forgiving the loan.* **After setting difficult standards for loan repayment, City and Redevelopment officials then agreed to forgive the loan if it not repaid after the Redevelopment Agency expires in 45 years.** Response required from the Irvine City Council and the Irvine Redevelopment Agency.

Response: **The Irvine City Council and the Irvine Redevelopment Agency disagree wholly with this Finding. (Penal Code §933.05(a)(2).)**

To begin with, Finding F.2 contains both an incorrect premise and an incorrect statement of the law.

The incorrect premise is that the City and the Agency set "difficult standards for loan repayment." As explained in our Response to Finding F.1, which is incorporated into this Response to Finding F.2 by this reference, the Grand Jury's premise is plainly wrong.

The incorrect statement of the law is that the Irvine Redevelopment Agency expires in 45 years. Again, and as explained in our Response to Finding F.1, the Grand Jury confuses the "life of the Agency" with the time limit for the Agency to receive tax increment pursuant to the terms of the Orange County Great Park Redevelopment Plan and the provisions of the CRL (which require redevelopment plans adopted under the CRL provisions specifically applicable to closed military bases to set a time limit of not more than 45 years for receipt of tax increment from the project area).[10]

As noted above, the Agency was activated by Ordinance 99-09 adopted by the Irvine City Council in 1999. The Orange County Great Park Redevelopment Plan was not adopted until 2005. A redevelopment agency is a separate public entity that exists and remains in existence whether or not a redevelopment plan has been adopted or, if adopted, has expired (though without a redevelopment plan the agency's activities may be quite limited).

The Grand Jury's confusion notwithstanding, its basic assertion is that if there are remaining amounts on the loan to be repaid as of the time the Agency no longer may receive tax increment to make repayments, the remaining balance on the loan is discharged. The purpose of this provision is to end the requirement to make annual payments when the Agency becomes ineligible, *by law*, to receive tax increment. The Agency can only legally commit to repayment for the time period it is legally authorized to be allocated tax increment revenues. That time limit is June 30, 2052. Any amounts owed by the Agency to the City under the Purchase and Sale and Financing Agreement must be waived and discharged at that time. There is nothing sinister or imprudent about a provision that comports with applicable law.

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[10] As noted earlier, the 45-year time limit applicable to redevelopment plans for closed military basis runs from the date the county auditor-controller certifies the redevelopment agency received its first $100,000 of tax increment. For the Orange County Great Park Redevelopment Plan, that date was June 30, 2007, and so the 45-year period runs to June 30, 2052. (Health & Safety Code §33492.13(a)(4).)

The Irvine City Council and the Irvine Redevelopment Agency therefore disagree wholly with Finding F.2 and reject the assertions on which Finding F.2 is based.

F.3 ***Business cycle ignored.*** **In forecasting steadily increasing tax increment revenue over the Redevelopment Agency's 45-year life, Agency officials ignored the periodic recessionary effect that the business cycle has on assessed valuation.** Response required from the Irvine Redevelopment Agency.

Response: **The Irvine Redevelopment Agency disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)**

There is no support for the Grand Jury's assertion in Finding F.3[11] that Agency officials "ignored the periodic recessionary effect that the business cycle has on assessed valuation" or the Grand Jury's ultimate conclusion, which it stated as follows: "But with assessed value of much Orange County property decreasing in the recession that began in 2008, the original projections of potential tax increments now seem unrealistic." (Grand Jury Report, p. 7.) The Grand Jury Report cites no facts for these assertions. Indeed, the facts show the exact opposite is true.

As fully explained in response to Finding F.1, which is incorporated into this Response to Finding F.3 by this reference, the assessed valuation growth projections used by the Agency have been conservative and take into account downturns in assessed valuations. The following points made in the Response to Finding F.1 bear repeating: *(i)* the 2010 Price Point And Market Absorption Study Update, obtained in preparation for the 2010 update to the Great Park Strategic Business Plan, takes into account the changes in the economic, financial, and real estate conditions since Summer 2009 so that it includes estimated price points for housing and an estimated absorption schedule based on the current conditions; *(ii)* the recently updated 2010 Redevelopment Tax Increment Projections, attached as ***Exhibit "A"*** to this letter, is based on the 2010 Price Point And Market Absorption Study Update and assumes that Heritage Fields will obtain assessed value reductions as a result of assessment appeals they have filed with the County Assessor; and *(iii)* the updated 2010 Forecast Purchase and Sale and Financing Agreement Loan Repayment schedule attached as ***Exhibit "B"*** to this letter, project sufficient tax increment so that Loan, including all of the interest at 9% per annum, will be fully repaid by fiscal year 2041-2042, ***a full 10 years prior*** to the June 30, 2052 date when the Agency is no longer eligible to receive tax increment. The updates set forth in ***Exhibit "A"*** and ***Exhibit "B"*** to this letter fully rebut the Grand Jury's statement that the tax increment projections "now seem unrealistic." (Grand Jury Report, p. 7.)

Moreover, other information, publicly available to the Grand Jury but ignored, also demonstrates the Grand Jury is simply wrong. The Grand Jury, without checking the facts, assumed that real property in the City of Irvine suffered from the same assessed valuation reductions seen in other

[11] Again, and without belaboring the point as it is discussed in the Responses to F.1 and F.2 above, the Grand Jury, in Finding F.3, again confuses the life of the Agency with the duration of time within which the Agency is entitled to receive tax increment under the terms of the Orange County Great Park Redevelopment Plan and the CRL.

parts of Orange County. The facts are otherwise. Irvine is well-positioned to cope with economic downturns that lead to decreases in assessed valuation. As reported by the Orange County Auditor-Controller, from fiscal year 2005-06 through fiscal year 2008-09, the assessed valuation growth of total values (the secured roll and unsecured roll combined) in the City of Irvine grew from $33,764,042,231 to $47,212,001,153, *a growth* of nearly 40% in four years. (Orange County Auditor-Controller, Assessed Valuation, Cities[12]). Even over the difficult three fiscal years from FY 2008-09 through FY 2010-11, the total assessed valuation in the City of Irvine declined only 1.52% (from $47,257,608,206 to $46,538,576,173).

Given the historic growth in assessed valuation in Irvine, the ability of Irvine to weather the storm of significant downturns in the economy, and the conservative assumptions used by the Agency in projecting tax increment, the inescapable conclusion is that Finding F.3 is without merit.

The Irvine Redevelopment Agency therefore disagrees wholly with Finding F.3 and rejects the assertions on which Finding F.3 is based.

F.4 ***Promises of no new taxes.*** **Despite pledges that no new taxes would be needed to build the Great Park, much of the Park's proposed funding will come from new taxes and the redirecting of increased property taxes.** Response required from the Irvine City Council.

Response: **The Irvine City Council disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)**

It is unfortunate that the Grand Jury, in the section of the Grand Jury Report titled "Promises and Taxes" (pp. 18-19) chose to (1) characterize tax increment and the efforts of the City to seek federal stimulus funds as "new taxes," and (2) contend that the use of community facilities districts to finance developers' obligations to construct public infrastructure is a concept foreign to Irvine when, in fact, it is commonplace.

If the Grand Jury philosophically disagrees with the concepts of redevelopment and tax increment financing, it should say so and present its objections to the State Legislature. It should not state or imply in the Grand Jury Report that tax increment constitutes "new taxes" by using the misleading phrase "the redirecting of increased property taxes."

As noted in response to Finding F.1, incorporated into this Response to Finding F.4 by this reference, the Agency is not a taxing agency, the Agency has no authority to levy taxes, and tax increment is not "new taxes" or taxes a property owner otherwise would not pay. Rather, tax increment results from an allocation of a portion of property taxes already paid by property owners. The Grand Jury well knows that property tax increment does not raise taxes and is not "new taxes." The Grand Jury Report itself describes property tax increment as "the portion of property taxes generated from the increased assessed value from a land transfer or new real estate development in a redevelopment project area, compared to the value in the 'base year' when the redevelopment area was established." (Grand Jury Report, pp. 6-7.) Even though the

[12] See <http://acapps.ocgov.com/txfdr_eGov/av/default_egov.asp>.

Grand Jury describes property tax increment in a generally correct manner, it later ignores its own explanation and implies tax increment is "new taxes" because it "redirects" "increased property taxes."

To put the Grand Jury's canard to rest, property tax increment works this way: If a person owns property in a redevelopment project area that was assessed at $200,000 in the fiscal year the redevelopment plan was adopted, and so paid $2,000 in Proposition 13 taxes (at the rate of 1%), and then the person later sold the property for $250,000, the new owner will pay $2,500 in Proposition 13 taxes because the property will be reassessed by the County (which performs the reassessment, not the City or the Agency) due to the sale. The new owner pays the $2,500 in property taxes regardless of whether the property is in a redevelopment project area. But because the property *is* in a redevelopment project area, the $2,500 in property taxes that is paid is divided into two pots. The first pot gets the original $2,000 and the second pot gets the additional $500 which is the "tax increment." The first pot with the original $2,000 is split among the taxing agencies according to their respective tax rates. The second pot with the $500 in tax increment goes to the redevelopment agency but is divided so that the redevelopment agency keeps $400 and the taxing agencies split, again according to their respective tax rates, the other $100 (via a pass-through payment from the redevelopment agency that is required by the CRL). Thus, tax increment is not a "new tax"—a property owner, as in the example above, pays the same property taxes whether the property is inside or outside a redevelopment project area. Rather, tax increment is generated from how property reassessment and property tax allocation work to enable a portion of the property taxes on property within a redevelopment project area to remain with the project area to repay indebtedness for redevelopment activities. The Grand Jury knows the truth and, for reasons unknown to the Agency and the City, chose to deceive the public into thinking tax increment revenues are "new taxes."

It is also not clear why the Grand Jury chose to mischaracterize the City's efforts to seek a share of federal stimulus funds as "new taxes." Federal tax rates are obviously not controlled by the City of Irvine. Federal stimulus funds are funds that are requested by cities and counties across the country and are obviously *not* new taxes applied to any community. The City should be applauded, not criticized, for seeking its fair share of available state and federal resources to create local jobs.

As for the use of community facilities districts ("CFDs"), also known as Mello-Roos districts, the Grand Jury Report states: "A CFD is an area in which a special property tax on real estate, in addition to the normal property tax, is imposed on owners of real property. These districts may sell bonds to finance public improvements and services, such as streets, water, sewage and drainage, electricity, infrastructure, schools, parks and police protections." (Grand Jury Report, pp. 7-8.)

What the Grand Jury Report omits is that CFDs are a common financing tool used throughout the State to finance public infrastructure cost and the use of a CFD for the Great Park simply continues an approach that is common throughout Irvine. There are currently *sixteen* active assessment districts in the City. The City has CFDs for Columbus Grove and Central Park. CFDs have been established with respect to property in Irvine by the Irvine Ranch Water District, the Santa Ana Unified School District, the Tustin Unified School District, and the Irvine

Unified School District (which has approximately eight different CFDs). (*City of Irvine Finance Department.)*

The Grand Jury also fails to note the benefits of CFDs to finance backbone infrastructure improvements. Because the developer's cost of funds to construct infrastructure using a CFD can be significantly lower than the cost of conventional financing to construct the same infrastructure, and given that developers pass on these costs to a homebuyer in the price of a home, the lower financing costs can reduce home prices even if the special tax lien is paid by the homeowners over time as part of the property tax bill.

The Grand Jury points to no facts or reasons why CFDs should not be used with respect to residential communities or commercial developments within the Project Area or why use of a CFD financing structure for payment of a portion of the costs for the Great Park is improper.

The Irvine City Council therefore disagrees wholly with Finding F.4 and reject the assertions on which Finding F.4 is based.

F.5 ***Potential conflict of interest.*** **It is difficult for differing views to be adopted in Great Park planning because the five people who are City Council members also are the Redevelopment Agency Board members as well as the majority of the Great Park Board.** Response required from the Irvine City Council.

Response: The Irvine City Council disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)

A city council, in activating the redevelopment agency in its community, is authorized under State law to name itself as the members of the redevelopment agency board, as the Irvine City Council did when it adopted Ordinance 99-04 in 1999 activating the Irvine Redevelopment Agency. (Health & Safety Code §33200, subd. (a).) Although the Grand Jury grudgingly admits "It is common practice throughout California for Council members to also be Redevelopment Agency board members," (Grand Jury Report, p. 15), the Grand Jury believes this arrangement presents "an enormous potential for conflict of interest because each of the three entities [City, Agency, Great Park Board] has its own goals, which do not always coincide with the other two." (Grand Jury Report, p. 18.)

What the Grand Jury fails to tell the public is that there are 398 active redevelopment agencies in the State of California, and of that number, 393 have the members of their legislative body serve as the members of their redevelopment agency board.[13] That's *98%* of all redevelopment agencies in the State. (*See, Community Redevelopment Agencies Annual Report*, California State

[13] A few redevelopment agencies are joint powers authorities and are counted in the 393. The five with separately appointed boards are the redevelopment agencies of the cities of Los Angeles, San Francisco, Bakersfield, Long Beach, and Santa Rosa.

Controller's Office, September 30, 2009.) [14] In other words, Irvine is just like the other 392 (of the 398) redevelopment agencies in the State.

The Grand Jury also asserts, without foundation, that a conflict exists because "no California city of Irvine's size has a $1.6 billion park project and a Redevelopment Agency that owes its City $134 million for a loan." (Grand Jury Report, p. 15.)[15] What the Grand Jury is essentially asserting is that a conflict exists for each and every redevelopment project where a city council constitutes the redevelopment agency board. If the Grand Jury is right, 393 redevelopment agencies and city councils in this State have a conflict notwithstanding the statutory authorization for the members of a city council to serve as the members of the redevelopment agency board. Consider this one example. The City of San Jose has just under five times the population of Irvine (1,023,083 versus 217,686)[16] but its redevelopment agency has more than *seven* times the indebtedness. The Irvine Redevelopment Agency's indebtedness, as of June 30, 2009, was $321,000,162. (*Irvine Redevelopment Agency, Statement of Indebtedness,* 6/30/09.) The San Jose Redevelopment Agency's indebtedness, as of June 30, 2009 was $2,271,640,000. (*City of San Jose, Comprehensive Annual Debt Report, Fiscal Year Ended June 30, 2009*, p. 57.) The members of the San Jose City Council serve as the members of the board of the San Jose Redevelopment Agency.

In short, no conflict arises from city council members serving as members of the board of the community's redevelopment agency, regardless of the amount of outstanding indebtedness or size of community, or size of a particular project.

The Irvine City Council therefore disagrees wholly with Finding F.5 and rejects the assertions on which Finding F.5 is based.[17]

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[14] The State Controller's annual report on redevelopment agencies is readily and publicly available on the State Controller's website, <www.sco.ca.gov>.

[15] The Grand Jury's reference to $1.6 billion as the estimated cost of the Great Park project (see Grand Jury Report, pp. 3 & 15) is incorrect. While not material to the Grand Jury's findings or recommendations, the current estimated cost is $1.43 billion. (Orange County Great Park Corporation, February 19, 2009.)

[16] Population as of January 1, 2010. (California Department of Finance, City/County Population Estimates With Annual Percent Change, January 1, 2009 and 2010, Table E-1.) See < http://www.dof.ca.gov/research/demographic/reports/estimates/e-1/2009-10/>.

[17] Furthermore, the Grand Jury's use of the term "conflict of interest" is irresponsible. Whether or not intended by the Grand Jury, the assertion in its Report of a conflict of interest connotes to the reader activity that is corrupt or otherwise illegal. For example, the State Political Reform Act (Gov. Code §81000 *et seq.*) and the accompanying regulations promulgated by the Fair Political Practices Commission deal with conflicts of interest relating to public officials having financial interests in governmental decisions. In specified circumstances, such officials are required to disclose their interests and prohibited from making or participating in the making of those decisions. The Grand Jury's careless suggestion to the general public that members of the

RESPONSE TO RECOMMENDATIONS

7. **Recommendations**

R.1 ***Repayment of $134 million loan.*** **Irvine Redevelopment Agency Board members (who also are Irvine City Council members) should decide whether they will commit to repaying the $134 million which they borrowed from the City. If they will not make that commitment, they should amend the Loan Agreement by removing conditions that make full repayment extremely difficult.** Response required from the Irvine City Council and Irvine Redevelopment Agency.

Response: **This Recommendation will not be implemented because it is not warranted and is not reasonable. (Penal Code §933.05(b)(4).)**

As the Irvine City Council and Irvine Redevelopment Agency explained in great detail above, the premise of Recommendation R.1 is faulty. The Purchase and Sale and Financing Agreement contains loan terms consistent with redevelopment best management practices that provide the Agency Board and the City Council with the greatest ability to manage financial resources and leverage tax increment funds. The Agency Board has every intention of repaying the loan in full from future tax increment revenues. Conservative projections of tax increment provide ample support for the unanimous decision of the Agency Board and the City Council (with the unanimous recommendation of the City's Finance Commission) to have approved the Purchase and Sale and Finance Agreement. The myth that the repayment will be "extremely difficult" has been thoroughly debunked in the discussion set forth earlier in this letter.

R.2 ***Forgiving the loan.*** **The City Council and Redevelopment Agency Board should consider amending the forgiveness clause in the Loan Agreement to ensure that the $134 million loan is repaid.** Response required from the Irvine City Council and the Irvine Redevelopment Agency.

Response: **This Recommendation will not be implemented because it is not warranted and is not reasonable. (Penal Code §933.05(b)(4).)**

The Irvine City Council and the Irvine Redevelopment Agency explained in response to Finding F.2 that the CRL requires redevelopment plans to set forth a time limit on the receipt of tax increment that is not greater than the time limits required by the CRL. The Agency can only legally commit to repayment for the time period it is legally authorized to be allocated tax increment revenues. That time limit is June 30, 2052. Any amounts owed by the Agency to the City under the Purchase and Sale and Financing Agreement must be waived and discharged at that time. The Grand Jury apparently does not understand this legal requirement.

City Council, the Agency, and the Orange County Great Park Corporation Board suffer from a conflict of interest is inappropriate.

R.3 *Business cycle ignored.* **Tax increment revenue projections made by the Redevelopment Agency should be revised to take into account the business cycle that regularly puts the economy through predictable periods of recession and recovery.** Response required from the Irvine Redevelopment Agency.

Response: **This Recommendation as presented will not be implemented because it is not warranted and is not reasonable. (Penal Code §933.05(b)(4).) The Agency has from the outset continually analyzed economic and market factors and updated tax increment projections accordingly.**

The Irvine Redevelopment Agency explained in response to Findings F.1 and F.3 the faulty basis for the Grand Jury's belief that the tax increment projections did not take into account the business cycle. As explained in those responses, the Grand Jury was provided with, but misunderstood or chose to ignore, the contents of the Great Park Strategic Business Plan that incorporated updated analyses and conservative projections from which the tax increment estimates were formed. The tax increment projections therefore do not need to be revised to take into account the business cycle when they already do. Moreover, the Agency reviews these economic models annually to determine whether the projections remain viable so that financial planning efforts can be adjusted as needed. For example, staff and consultants recently completed a 2010 update to the 2009 analysis in preparation for the upcoming 2010 edition of the Orange County Great Park Strategic Business Plan. As explained in response to Finding F.1, the 2010 updated projections show repayment of the Loan in full, with all of the accrued interest at 9% per annum, ten years earlier than the June 20, 2052 date when the Agency is no longer eligible to receive tax increment.

R.4 *Promises of no new taxes.* **City officials should inform Irvine residents that new taxes and/or increases in existing taxes may be needed for Great Park construction.** Response required from the Irvine City Council.

Response: **This Recommendation will not be implemented because it is not warranted and is not reasonable. (Penal Code §933.05(b)(4).)**

It remains a mystery why the Grand Jury chose to mischaracterize tax increment and federal stimulus funds as "new taxes." As set forth by the Irvine City Council in its Response to Finding F.4 above, tax increment is a redistribution of the property taxes, not "new taxes." Federal stimulus funds received by the City are a distribution of federal tax dollars to Irvine that, if the City did not seek them, would go to other communities. The Grand Jury knows full well neither tax increment allocated to the Agency nor federal stimulus dollars received by the City are "new taxes." The Grand Jury also knows, or should know, that CFDs are a commonplace financing structure used in Irvine and throughout California to fund public infrastructure facilities at lower interest rates. The Grand Jury presents no evidence as to why communities located within the Orange County Great Park Redevelopment Project Area should be excluded from using a financing tool that is commonplace in Irvine and throughout California.

R.5 *Potential conflict of interest.* **The five Irvine City Council members should make the boards of the Great Park Corp. and the Redevelopment Agency and the Council independent of one another.** Response required from the Irvine City Council.

Response: **This Recommendation will not be implemented because it is not warranted and is not reasonable. (Penal Code §933.05(b)(4).)**

There is no conflict of interest with the current governing structures of the City Council, the Agency, and the Orange County Great Park Corporation. All are structured in a manner completely consistent with State law. As the Irvine City Council fully explained in Response to Finding F.5, the City Council and the Agency are separate legal entities and having the City Council members serve as the members of the Agency Board is expressly authorized by the CRL. Indeed, 393 of 398 active redevelopment agencies in the State are structured in exactly the same way. The mere fact that the Project Area is the location for a substantial project is not a basis for a conflict of interest.

Furthermore, the decision to include the full City Council as members of the Great Park Corporation Board was motivated by a desire to enable all City Council members to participate in the stewardship of this important public property that not only is located within the jurisdiction of the City, but the development of which with the Great Park will have long lasting impact on the City. In all respects the governing structure of the City Council, the Agency, and the Orange County Great Park Corporation Board enhances, rather than compromises, the effective management of public resources. The Grand Jury has ignored the facts and the law and Recommendation R.5 has no merit.

CONCLUDING STATEMENT

The City Council of the City of Irvine and the Board of Directors of the Irvine Redevelopment Agency acknowledge the work of the Orange County Grand Jury 2009-2010 and its efforts to produce a study of the Purchase and Sale and Financing Agreement. Regrettably, the Grand Jury's lack of understanding of the facts and California redevelopment law, its selective reading of documents provided to them by the City and the Agency, and its unfortunate use of insinuation and sarcasm, compromised the value of the Grand Jury Report and had the effect of misleading the public.

The Irvine City Council and the Irvine Redevelopment Agency, along with the Orange County Great Park Corporation, are partnering on the most exciting and vibrant public project in California. The Orange County Great Park project has been the product of extensive public outreach, constant communication with stakeholders, and engagement of civic leaders from all walks of life. The initial projects and activities at the Great Park have enjoyed great success and are the recipient of numerous planning and design awards, and there are more accomplishments to come.

The open and public process that has been the hallmark of Great Park planning and development will continue. The Irvine City Council and Irvine Redevelopment Agency welcome any

constructive dialogue as it moves forward in its undertaking of the Orange County Great Park, the first great public park of the 21st Century.

Sincerely,

Sukhee Kang
Mayor, City of Irvine
Chair, Irvine Redevelopment Agency

cc: Orange County Grand Jury

EXHIBIT A

REDEVELOPMENT TAX INCREMENT PROJECTIONS

July 1, 2010 Scenario - Land Value of $478.8 Million (Which Reflects Heritage Fields' 2009-10 Opinion of Value per Filed Appeals)

Tax Increment Collection Year	Fiscal Year	Total Assessed Valuation	Estimated Gross Tax Increment @ 1.00%	Other Mandated Allocations			Net Revenue for RDA After All Other Allocations
				Low/Mod Housing Set-aside @ 20%	Total Statutory Pass-Thrus	Additional County Facility Payment	
Base Year	2004-05	3,975,071					
5	2010-11	478,938,475	4,749,634	949,927	949,927	350,703	2,499,077
6	2011-12	528,407,763	5,244,327	1,048,865	1,048,865	387,231	2,759,366
7	2012-13	902,570,512	8,985,954	1,797,191	1,797,191	663,505	4,728,068
8	2013-14	1,299,020,897	12,950,458	2,590,092	2,590,092	956,236	6,814,039
9	2014-15	1,762,234,632	17,582,596	3,516,519	3,516,519	1,298,264	9,251,294
10	2015-16	2,336,233,046	23,322,580	4,664,516	4,664,516	1,722,093	12,271,455
11	2016-17	2,911,557,083	29,075,820	5,815,164	6,781,708	2,037,874	14,441,073
12	2017-18	3,419,151,568	34,151,765	6,830,353	8,649,656	2,316,481	16,355,275
13	2018-19	4,100,415,282	40,964,402	8,192,880	11,156,707	2,690,410	18,924,405
14	2019-20	4,754,598,649	47,506,236	9,501,247	13,564,101	3,049,475	21,391,412
15	2020-21	5,707,393,866	57,034,188	11,406,838	17,070,388	3,572,442	24,984,521
16	2021-22	6,822,066,296	68,180,912	13,638,182	21,172,382	4,184,259	29,188,089
17	2022-23	6,958,423,040	69,544,480	13,908,896	21,674,175	4,259,102	29,702,307
18	2023-24	7,167,048,858	71,630,738	14,326,148	22,441,918	4,373,612	30,489,061
19	2024-25	7,381,933,450	73,779,584	14,755,917	23,232,693	4,491,556	31,299,417
20	2025-26	7,603,264,581	75,992,895	15,198,579	24,047,192	4,613,040	32,134,084
21	2026-27	7,831,235,645	78,272,606	15,654,521	24,886,126	4,738,168	32,993,791
22	2027-28	8,066,045,841	80,620,708	16,124,142	25,750,227	4,867,049	33,879,290
23	2028-29	8,307,900,343	83,039,253	16,607,851	26,640,252	4,999,798	34,791,353
24	2029-30	8,557,010,480	85,530,354	17,106,071	27,556,977	5,136,528	35,730,778
25	2030-31	8,813,593,921	88,096,188	17,619,238	28,501,204	5,277,361	36,698,386
26	2031-32	9,077,874,865	90,738,998	18,147,800	29,473,758	5,422,418	37,695,022
27	2032-33	9,350,084,238	93,461,092	18,692,218	30,475,488	5,571,827	38,721,558
28	2033-34	9,630,459,891	96,264,848	19,252,970	31,507,271	5,725,719	39,778,889
29	2034-35	9,919,246,815	99,152,717	19,830,543	32,570,007	5,884,227	40,867,940
30	2035-36	10,216,697,346	102,127,223	20,425,445	33,664,625	6,047,490	41,989,663
31	2036-37	10,523,071,393	105,190,963	21,038,193	35,135,220	6,176,946	42,840,605
32	2037-38	10,838,636,662	108,346,616	21,669,323	36,649,933	6,310,285	43,717,075
33	2038-39	11,163,668,888	111,596,938	22,319,388	38,210,088	6,447,624	44,619,839
34	2039-40	11,498,452,082	114,944,770	22,988,954	39,817,047	6,589,083	45,549,686
35	2040-41	11,843,278,771	118,393,037	23,678,607	41,472,215	6,734,786	46,507,428
36	2041-42	12,198,450,261	121,944,752	24,388,950	43,177,039	6,884,860	47,493,903
37	2042-43	12,564,276,895	125,603,018	25,120,604	44,933,006	7,039,437	48,509,972
38	2043-44	12,941,078,329	129,371,033	25,874,207	46,741,653	7,198,650	49,556,522
39	2044-45	13,329,183,805	133,252,087	26,650,417	48,604,560	7,362,640	50,634,470
40	2045-46	13,728,932,446	137,249,574	27,449,915	50,523,353	7,531,550	51,744,756
41	2046-47	14,140,673,546	141,366,985	28,273,397	52,499,710	7,705,527	52,888,350
42	2047-48	14,564,766,879	145,607,918	29,121,584	54,535,358	7,884,724	54,066,252
43	2048-49	15,001,583,012	149,976,079	29,995,216	56,632,076	8,069,296	55,279,492
44	2049-50	15,451,503,629	154,475,286	30,895,057	58,791,695	8,259,405	56,529,128
45	2050-51	15,914,921,865	159,109,468	31,821,894	61,016,102	8,455,218	57,816,254
46*	2051-52	16,392,242,648	163,882,676	32,776,535	63,307,242	8,656,905	59,141,993
Total of Years Shown on Chart			3,658,311,755	731,662,351	1,247,430,263	211,943,803	1,467,275,339
Net Present Value of Years Shown @ 6%			877,171,884	175,434,377	279,301,159	53,052,445	369,383,904

* Pursuant to Health and Safety Code Section 33492.13(a)(4), the Agency will collect tax increment from the Orange County Great Park Redevelopment Project Area for 45 years from the date the county auditor-controller certified the Agency received its first $100,000 in tax increment, which date was June 30, 2007. Therefore the Agency will collect tax increment from the Orange County Great Park Redevelopment Project Area until June 30, 2052.

EXHIBIT B

FORECAST PURCHASE, SALE AND FINANCING AGREEMENT LOAN REPAYMENT

Assumptions: RDA Loan Date: August 14, 2007
Principal Amount: $134,000,000
Interest Rate: 9.00%

Tax Increment Collection Year	Fiscal Year	Loan Date August 14,	Beginning of Period Loan Balance	Forecast Tax Increment Available for Loan Payment	Loan Balance After Annual Payment	Annual Interest	End of Period Loan Balance
2	2007-08	2007	134,000,000	0	134,000,000	12,060,000	146,060,000
3	2008-09	2008	146,060,000	0	146,060,000	13,145,400	159,205,400
4	2009-10	2009	159,205,400	0	159,205,400	14,328,486	173,533,886
5	2010-11	2010	173,533,886	0	173,533,886	15,618,050	189,151,936
6	2011-12	2011	189,151,936	0	189,151,936	17,023,674	206,175,610
7	2012-13	2012	206,175,610	(2,900,000)	203,275,610	18,294,805	221,570,415
8	2013-14	2013	221,570,415	(4,700,000)	216,870,415	19,518,337	236,388,752
9	2014-15	2014	236,388,752	(6,700,000)	229,688,752	20,671,988	250,360,740
10	2015-16	2015	250,360,740	(6,800,000)	243,560,740	21,920,467	265,481,206
11	2016-17	2016	265,481,206	(8,700,000)	256,781,206	23,110,309	279,891,515
12	2017-18	2017	279,891,515	(9,500,000)	270,391,515	24,335,236	294,726,751
13	2018-19	2018	294,726,751	(11,100,000)	283,626,751	25,526,408	309,153,159
14	2019-20	2019	309,153,159	(12,700,000)	296,453,159	26,680,784	323,133,943
15	2020-21	2020	323,133,943	(18,100,000)	305,033,943	27,453,055	332,486,998
16	2021-22	2021	332,486,998	(25,900,000)	306,586,998	27,592,830	334,179,828
17	2022-23	2022	334,179,828	(30,700,000)	303,479,828	27,313,185	330,793,013
18	2023-24	2023	330,793,013	(31,800,000)	298,993,013	26,909,371	325,902,384
19	2024-25	2024	325,902,384	(29,900,000)	296,002,384	26,640,215	322,642,598
20	2025-26	2025	322,642,598	(32,900,000)	289,742,598	26,076,834	315,819,432
21	2026-27	2026	315,819,432	(30,100,000)	285,719,432	25,714,749	311,434,181
22	2027-28	2027	311,434,181	(30,800,000)	280,634,181	25,257,076	305,891,257
23	2028-29	2028	305,891,257	(31,700,000)	274,191,257	24,677,213	298,868,471
24	2029-30	2029	298,868,471	(32,500,000)	266,368,471	23,973,162	290,341,633
25	2030-31	2030	290,341,633	(33,300,000)	257,041,633	23,133,747	280,175,380
26	2031-32	2031	280,175,380	(34,200,000)	245,975,380	22,137,784	268,113,164
27	2032-33	2032	268,113,164	(35,100,000)	233,013,164	20,971,185	253,984,349
28	2033-34	2033	253,984,349	(36,100,000)	217,884,349	19,609,591	237,493,940
29	2034-35	2034	237,493,940	(37,000,000)	200,493,940	18,044,455	218,538,395
30	2035-36	2035	218,538,395	(38,000,000)	180,538,395	16,248,456	196,786,850
31	2036-37	2036	196,786,850	(39,100,000)	157,686,850	14,191,817	171,878,667
32	2037-38	2037	171,878,667	(39,800,000)	132,078,667	11,887,080	143,965,747
33	2038-39	2038	143,965,747	(40,600,000)	103,365,747	9,302,917	112,668,664
34	2039-40	2039	112,668,664	(41,400,000)	71,268,664	6,414,180	77,682,844
35	2040-41	2040	77,682,844	(42,200,000)	35,482,844	3,193,456	38,676,300
36	2041-42	2041	38,676,300	(38,676,300)	0	0	0
37	2042-43	2042	0	0	0	0	0
38	2043-44	2043	0	0	0	0	0
39	2044-45	2044	0	0	0	0	0
40	2045-46	2045	0	0	0	0	0
41	2046-47	2046	0	0	0	0	0
42	2047-48	2047	0	0	0	0	0
43	2048-49	2048	0	0	0	0	0
44	2049-50	2049	0	0	0	0	0
45	2050-51	2050	0	0	0	0	0
48*	2051-52	2051	0	0	0	0	0
Last Pmt. Date	2052-53	2052	0	0	0	0	0

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