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# **“IRVINE” GREAT PARK: A LEGACY OF HUBRIS?**

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**GRAND JURY 2014-2015**

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## **EXECUTIVE SUMMARY**

The lack of progress of the Great Park over the past ten years has been seen as unsatisfactory to a large number of residents of Orange County. Many were dissatisfied with its direction and lack of transparency. Lack of transparency was a serious issue of concern to the County's citizens as many citizens believed they were not adequately advised of many of the project's activities and spending.

There was strong evidence of serious mismanagement of the Great Park project, costing taxpayers significant amounts of public monies. Since the City of Irvine took on the role of land developer, it must be held responsible for the project's mismanagement. It also appeared that roles and responsibilities were not clearly defined and maintained. This created significant havoc within the operations and management of the project.

The project shifted course several times without a sense of direction. Overall objectives and the articulation of those objectives were characterized by vacillation, indecision, inconsistency, and confusion. As a result, the project lacked an effective decision-making process resulting in ever-increasing tension and contradictions within, often unknowingly and unintentionally. To the public the project seemed stultified and lacked leadership and direction. Unfortunately, what the public got bears little semblance to the pipedreams they were sold.

With the current agreement adopted by the City to construct 688 acres in the Great Park, there is hope that the project has been restored and moving toward completion. This will require the development of realistic, coherent objectives in an orderly, systematic way as the project takes on a new direction. These new objectives must be articulated openly, clearly, and consistently. It is essential that the Irvine City Council restore a sense of stability and confidence on a path to the completion of the project for all to enjoy.

## **BACKGROUND AND FACTS**

### **The Early Years**

After long, distinguished, and loyal service, Marine Corps Air Station, El Toro (MCAS El Toro), was decommissioned by a US government commission authorized under the Base Realignment and Closure Act of 1990. MCAS El Toro was formally closed in 1991. Initial proposals included developing the closed base into an international airport. This was codified with the passing of a 1994 county-wide ballot measure, Measure A, endorsing the development of a commercial, international airport on the site of the old base. Measure S, meant to overturn Measure A, was defeated in March 1996. Opponents of the airport proposed a third ballot initiative, Measure F, that would require a 2/3 majority of voters to build any airports near residential areas. This measure passed in 2000, but later the courts found the measure "constitutionally vague and illegal," thus the election result was disaffirmed.

With the annulment of Measure F, the City of Irvine proposed the creation of a Great Park (OCGP) at the old Marine Corps Air Station site of approximately 1,300 acres. This was to be a grand park embracing environmental sustainability and setting a

new standard for urban park design and planning. A chronology is presented in Appendix 1.

Proponents of the new park marshaled forces and Measure W<sup>1</sup>, “The Orange County Central Park and Nature Preserve Initiative,” was placed on the ballot. This measure banned any airport construction on the old MCAS El Toro site and amended the Orange County General Plan to allow the construction of an urban park for the benefit of all Orange County citizens. Measure W was passed by public vote on March 5, 2002.

The City of Irvine assumed control over this project stating that it would comply with the tenets of Measure W. In March 2003, Orange County Board of Supervisors agreed to a property tax transfer agreement with the City of Irvine paving the way for annexation. Annexation was formally approved in November 2003 by the Local Agency Formation Committee (LAFCO) with the consent of the Department of the Navy.

The initial plans for the full development of the 4,700 acres of the old El Toro Marine Corps Air Station were as follows:

- Area dedicated to agriculture
- Senior citizens’ housing
- University campus
- Retail establishments
- 1,678-acre parcel for 1,100 units of residential housing
- Residential housing adjacent to 45-hole golf course
- Elementary school
- Recreation area
- Public transportation center
- 1,500 residential unit “transit village” with mixed-use adjacent property
- Research and development business park
- Expansion of the Irvine Auto Center
- Wildlife corridor
- 1,347 acres for the Great Park

### **The Orange County Great Park Corporation**

The Orange County Great Park Corporation (OCGPC) was incorporated as a non-profit corporation [501(c)(3)] by the City of Irvine on July 7, 2003. The Board of Directors for OCGPC met for the first time on December 5, 2003 and formalized the makeup of the board to be nine directors, five of whom must be members of the City of Irvine City Council. The remaining four members would be “at large” members appointed by the Irvine City Council.

With the passage of Measure W, the City of Irvine annexed the former Marine Corps base on January 14, 2004. This annexation gave governmental control but not ownership to the City of Irvine. With annexation of the property, the City of Irvine gained control of zoning and other powers for the property and re-formed the Great Park

Corporation (OCGPC) to “...receive, develop, and operate property and improvements located in the City of Irvine...for public park, recreation, exposition and open space purposes as the ‘Orange County Great Park’ project...” (Orange County, Measure W, 2002).

### **City, Private, Federal Commitment**

The US Navy decided in 2005 to auction off ownership of the former MCAS El Toro’s four parcels. A residential and commercial developer (Lennar Corporation) purchased all of the parcels on February 16, 2005 for \$649.5 million. With this purchase, there was created a unique relationship between the City of Irvine, Lennar, and the Federal government. It was envisioned by the Navy that the 4,639-acre MCAS El Toro property would become a model to possibly be emulated by other decommissioned military properties.

After this purchase, the City of Irvine formed a development agreement with the Lennar where they were granted limited residential/commercial development rights in return for the land and capital that would allow for the construction of the Great Park. The agreement required Lennar to transfer more than 1,347 of the 4,639 acres it had purchased to public ownership.

There were caveats accompanying the sale. At the time of the sale the Navy had deemed certain portions of the base unsuitable for complete transfer as they were potentially contaminated from military operations. The Navy had responsibility for the continued environmental cleanup of these areas. The City was not prohibited from development in these areas, but was required to receive permission from the Navy prior to disturbing the land.

### **Financing the Great Park**

As listed in the 2004 business plan of the Great Park, a \$401 million budget was adopted based on an agreement with Lennar who agreed to pay a \$200 million developer fee. Additionally, Lennar agreed to construct \$201 million worth of infrastructure that would be recovered by a Community Facilities District (CFD), also known as “Mello Roos” and a bond sale secured by the property so that future home buyers would pay off the bond (Alshire & Wynder, 2015, p. 3).

The plan also projected that within five years the park could pay operating expenses by generating \$15 million per year in annual revenues from parking and user fees. This plan projected build out of the park in 6-7 years at a cost of \$350 million, though great urban parks of similar size had taken 50 years to complete.

### **Irvine Holds Worldwide Design Competition**

In April 2005, the Great Park board had a worldwide design competition for the Great Park. Submissions were received from around the world and a master designer was chosen.

The chosen design was a massive, ambitious undertaking with 16 major elements in its design (the "Original Design"). According to the master plan chosen by the City the following were proposed:

- Agriculture and Food center
- Arts and Culture Exhibition
- Aviation Museum
- Botanical Gardens
- Center for Communication Organizations
- Demonstration Garden
- Equestrian Center
- Fire Museum
- Library
- Multicultural Center
- National Archives
- Orangewood Academy
- Sports Park
- Visitors' Center
- Water Science Park
- Amphitheater
- Lake
- Canyon

The chairman of the Orange County Great Park Corporation board publicly stated:

What I learned on the visit to New York is that within the \$401 million available to us, \$201 million is buried for the most part in the ground in backbone infrastructure and \$200 million above ground, we can expect to see a master design that comfortably fits within the \$200 million above ground and includes, yes, the Great Canyon that has been proposed and has been such a signature piece which has its own microclimates and many more other elements within it, including the likely embedding of earthworks structures as the canyon moves along toward the lake, toward the amphitheater which will be included as well. All of these are affordable. (Aleshire & Wynder, 2014, p. 3)

On July 24, the OCGPC Board recommended and Irvine City Council approved the development of a schematic design contract ("Schematic Design (Contract #5759)") for \$27.3 million. The purpose of the contract was to develop construction documents in accordance with the Master Design Plan and to establish reasonable cost estimates for the Great Park features included in the Schematic Design. On September 27, the OCGPC Board adopted the Comprehensive Master Plan. The City was advised in 2007 by the original designer that the estimated total cost to build the park was \$979.8 million (Alshire & Wynder, 2005, p. 5) .

The master plan was completed in 2007 and the decision was made by the Board to proceed with the Schematic Design. Also approved was a "preview park" to be

constructed on 27.5 acres costing \$13.9 million in order to present to the public an overview of the final product.

### **Irvine Moves Ahead with Balloon and Preview Park**

**Great Park Balloon.** In 2007, Irvine City Council authorized approximately \$4.1 million in expenditures for design, construction, operations, and insurance for the Great Park balloon. Later that year, Irvine City Council authorized an additional \$11.4 million for design and construction of the Balloon Enhancement Project and \$2.5 million for first year operating costs, totaling \$18 million. Features included new signage and lighting, parking and site access, night flights, a revised multipurpose 5-acre landscaping, and cleaning and painting an existing hangar to be used for future events. On July 14, 2007, The Great Park Balloon opened to the public. Features included parking, lighting, temporary visitor center, the observation balloon, and associated infrastructure and utilities.

**Preview Park.** In 2008, the Balloon Enhancement Project was expanded to become the Preview Park, a 27.5 acre project. The features that opened in 2007 now became known as Phase 1 of the Preview Park. A Palm Court, an outdoor performance garden, and a visitor center were added to the existing plan. The Irvine City Council budgeted approximately \$7 million for construction of the entire Preview Park.

Later in April 2008, The City of Irvine entered into a contract for \$1.75 million to construct another portion of the Preview Park. This effort included night-lights, a multipurpose lawn area, a bio-swale demonstration, trees, ground covering planting, portable restrooms, fencing, and furniture. A total of approximately \$7.7 million in change orders was authorized for this construction.

The second phase of the Preview Park was completed in July 2008 and included a lawn, trees, park furnishings, additional lighting, a timeline prototype, shade structures, and a relocated and revamped visitor center. The third phase was completed in July 2009 and included transplanting mature trees into the lawn area and the construction of the Farm and Food Lab.

### **Strategic Master Plan Developed**

From 2006 to 2008 costs had escalated to a critical point. As a result, the Great Park CEO ordered a 10-year strategic plan to be developed for 2009-2020. This was to be a detailed plan that included objectives, goals, milestones, and budgets.

### **Revolving Door CEOs**

In August 2008 the last of five CEOs of the OCGPC was installed. The CEO was advised that he would report to the OCGPC Board of Directors, through the Chairman.

### **Moment of Truth**

Beginning in 2007, the US economy was facing a recession. Home construction started to grind to a halt. As the recession was in full swing over the next few years,

Lennar told the City of Irvine that their promise of \$201 million toward the Great Park infrastructure was not possible. City of Irvine renegotiated a Development Agreement to include the following, according to the Strategic Business Plan (2009):

- A sum of \$18 million for maintenance and operations (O&M) to be paid over five years beginning in 2010 through fiscal 2014.
- A sum of \$9 million in lieu of golf course fees to be paid over nine years, beginning in 2010.
- A maximum of \$9.5 million to be paid yearly from CFD tax revenue receipts to be used for park O&M on an "as needed" basis beginning in fiscal 2015.

In late 2008, OCGPC came to the stark realization that the project could not continue at the current "burn rate" which would deplete all funds in seven years. In December 2008, OCGPC instructed that the schematic design be closed down. By closing down the schematic design, the City was able to recover \$5 million which was applied to augment the budget for 2009. The situation now was that after spending \$46.9 million (\$11 million for the Master Plan and \$36 million for the Schematic Design of the Great Park), the master design was closed down.

At the current rate of expenditures, the coffers would soon be emptied. This became the tipping point of the project. With the projected delay of the \$201 million and a rocky economy, it became painfully obvious to OCGPC that this cash-hungry effort was "off the tracks" and needed to change direction.

### **Western Sector Park Development (WSPD)**

Upon the closure of the original master design, City staff proposed a new project plan, referred to as the Western Sector Park Development Plan (the "WSPD" Plan") that was fully approved in 2009 and included the North Lawn, Palm Courts Arts Complex, and other areas. WSPD's first phase was completed and opened to the public in 2011, and the entire project was finished in October 2013 with a total cost of the Great Park exceeding \$200 million.

### **Changing of the Guard (Election of 2012)**

The city election in 2012 changed the composition of the Irvine City Council. The Council voted in significant changes to the Great Park project in 2013:

- The four positions for at-large members on the Orange County Great Park Corporation Board of Directors were eliminated
- Management of the Great Park project was consolidated under the authority of the Irvine City Manager
- Contracted a forensic accounting firm, Hagan, Streiff, Newton, & Ohiro (HSNO), to audit the Great Park financial records
- A special counsel was retained to investigate the management of expenditures of Great Park funds
- The OCGPC remained, which only consisted of members of the City Council

## **New Development Plan**

On November 26, 2013, the City of Irvine entered into an agreement with Heritage Fields (a subsidiary of Lennar) wherein this entity committed to construct or cause the construction of the Great Park. This agreement became known as ALAll (ALAll, 2013, p. 2). The City granted Heritage Fields the role as the prime contractor with the right to fund, oversee, and cause the phased construction of selected improvements to the Great Park (p. 5). The agreement provided that Heritage Fields would spend at least \$172 million (Minimum Improvement Investment Amount [MIIA]) to design, obtain permits for, and build Great Park improvements including "backbone" (infrastructure). If there are any funds remaining from the initial \$172 million, Heritage Fields and the City of Irvine would agree upon additional improvements to be constructed (p. 5). The City obtained this additional funding in exchange for increases in the number of homes that could be developed by Heritage Fields.

For Heritage Fields' \$172 million investment, the City approved the addition of 4,606 residential units over the initial approval, totaling approximately 9,500 units. Heritage Fields also received approval for the addition of 3.8 million square feet of commercial development which quadrupled the development opportunity. It must be noted that the City does not directly receive any funds since Heritage Fields will manage the park's construction and its funding.

## **New Park Plan**

A new plan was developed to build 688 acres at the Great Park site (the "New Plan") An overview of the plan included a bosque<sup>3</sup>, wooded nature area (Upper Bee), 18-hole golf course, and sports complex.

The Upper Bee is 36 acres that consists of walking paths and trails and has an estimated cost of \$5 million. The Bosque is 40 acres and costs \$17 million and includes trees, shrubs, trails, dog-park, playground, small amphitheater, and Farm + Food Lab. The golf course includes 188 acres with a cost of circa \$26 million which will also fund 71 acres of farm fields. There will be 260 acres left for Irvine to develop a cultural terrace that may include museums and a library using funds from public and private sources. (A more definitive breakdown is provided under Investigation section.)

## **Community Facilities District**

On March 26, 2013, Irvine's City Council adopted a series of resolutions to authorize the formation of the City of Irvine Community Facilities District (CFD) No. 2013-3 (Great Park), designating three improvement areas (No. 1,2, & 3) which consisted of the OCGP and the Great Park Neighborhoods. These resolutions also imposed a special tax within Planning Areas #30 and #51.

The special tax proceeds were intended to fund the \$383.3 million estimated cost for the backbone infrastructure that will serve both the Great Park and the Great Park neighborhoods. Note that this special tax is in addition to the Proposition 13 primary property tax of 1% of market value. The special tax imposed by this CFD for detached

residential property ranges from \$4,385 to \$12,356 per year based on residential building square footage. The non-residential commercial and industrial property assessment is \$1.50 per square foot. The term of this CFD is for 40 years. After that time, 65.84% of this special assessment will be retired; however, the remaining percentage of this special tax will be levied into perpetuity.

### Great Park Redevelopment Agency

The City of Irvine created the Irvine Redevelopment Agency (IRDA) to support the development of the Great Park. This new organization allowed for the money to be borrowed for the development of the Great Park by committing future tax fund increases for debt payment. The City of Irvine gave 35 acres of the Great Park land that it obtained from Lennar to the IRDA. Then in 2007, the City of Irvine loaned the IRDA \$134 million of the Great Park money that it also obtained from the Lennar at 9% interest.

The State of California forced the dissolution of all RDAs. This forced the IRDA to transfer its assets to a successor agency in February of 2012. The Successor Agency was then authorized to only pay off the outstanding debt. The City of Irvine filed suit against the State in an effort to reconcile the obligations. In October of 2014, a settlement agreement was approved by the court which authorized \$292 million of future tax to be used to wind down the IRDA.

### Evolution of the Great Park

To present a clear picture of the development of the Great Park over ten years, Table 1 below is presented as a depiction of how the project evolved from 1,347 acres.

**Table 1: Evolution of the Great Park**

Year	Phase	Planned	Completion
2005-2007	Original Plan	1,200 acres	None
2007-2009	Preview Park	27 acres	27 acres
2009-2013	Western Sector Park Development	200 acres	200 acres
2013-present	Heritage Fields	688 acres	In work
TBD	Remaining (260 acres)	None	TBD

Source: 2014-2015 Grand Jury

Through 2014 the total expenditures, construction and non-construction costs, totaled approximately \$251 million as depicted in Table 2.

**Table 2: Construction and Non-Construction Costs**

<b>Construction Costs</b>	
Hard construction	\$61.8 million
Soft construction outside vendors	\$62.0 million
Soft construction GPC	\$0.311 million
Total Construction Costs	\$124 million (rounded)
<b>Non-construction costs</b>	
Outside vendors	\$32.2 million
City administration	\$54.6 million
GPC admin/non vendor	\$40.4 million
Total Non-Construction Costs	\$127 million
<b>TOTAL COST</b>	<b>\$251 million (rounded)</b>

Source: (HSNO, 2014)

### Measure V

The citizens of Irvine recognized the need for transparency regarding the Great Park and in 2014 voted in Measure V (Orange County Great Park Fiscal Transparency and Reforms Act) (Appendix F). This act: (1) prohibits any money from being spent on the Great Park until approved by the Orange County Great Park Board of Directors or the City Council at a public meeting, (2) requires an annual audit of the Great Park funds by an outside auditing firm and requires that it be posted on the city website, and (3) establishes whistleblower protections for anyone who reports waste, fraud, or abuse of the Great Park funds.

### REASON FOR STUDY

Over the ten plus years of the Great Park project, there have been various media reports, two Grand Jury investigations, and recently a forensic audit and special counsel's investigation appointed by the City of Irvine. The Grand Jury feels that it is important to conduct an objective investigation to inform the public as to what happened and where the money went, the current status of the park, and plans for the future.

### METHODOLOGY

The Great Park has been the subject of two previous Grand Jury reports, numerous news articles, a review by the District Attorney's office for possible criminal implications, a City of Irvine commissioned forensic audit, and an independent counsel appointed by the City of Irvine to investigate Great Park activities. This report is independent of these investigations; however, this report contains shared elements from these other inquiries.

The Grand Jury used the following in producing this report:

- City of Irvine, Orange County Great Park Corporation, and Redevelopment Agency documents, including agendas, minutes, staff reports, resolutions, agreements, and contracts

- City of Irvine Consolidated Annual Financial Reports (CAFR), financial projections, accounting records and audits
- Personal interviews with Irvine City Council members
- Personal interviews with selected members of the Board of Directors of Orange County Great Park Corporation
- Personal interviews with Irvine city personnel
- Review of publicly released sworn depositions
- Review of relevant city and corporation documents
- Design reviews
- News articles
- Internet sources
- Personal visits
- Review of various audits, including forensic audit

There were many variables encountered in this investigation due to the massive amount of data collected. It was very difficult to isolate specific factors that contributed to problems uncovered in the investigation. Nothing was taken on face value alone and attempts were made to provide verification, substantiation, and evidence in support of statements, facts, and findings.

## **INVESTIGATION AND ANALYSIS**

The Great Park has been a topic of conversation and controversy over the past ten plus years. As previously mentioned, there have been various investigatory efforts by the media, previous Grand Juries, the District Attorney, and recently, an outside forensic audit and a review by a special counsel to the City of Irvine. This investigation examines “what went wrong.” This is followed up with an analysis of “where we are going” relative to the Great Park.

### **Great Park Vision**

The Irvine City Council and Great Park Corporation Board had a vision of a metropolitan park that would rival the country’s great city parks but neglected to realistically consider the costs involved with such a large project<sup>4</sup>. According to its own statement: “The City remains proud and steadfast in its proven commitment to create a world-class park development that will benefit all people of Orange County—and, indeed, all of Southern California<sup>5</sup>” (City of Irvine, 2006, p. 2). The Orange County Great Park Corporation made the following statement as late as 2008:

Other great metropolis parks have required fifty years or more to develop. By contrast, our Great Park development strategy—harnessing the power of private capital and the benefit of enlightened public planning—will enable all key elements of the Great Park to be developed in less time. We will have a Great Park larger than New York’s Central Park, San Francisco’s Golden Gate Park, and San Diego’s Balboa Park combined that will be developed in perpetuity with private dollars. (OCGPC Board of Directors, 2008, para. 1).

Over the years, the City reported in a press release to the public that the estimate to complete the Great Park was \$353 million (Alshire & Wynder, 2015, p. 25). However, through the years the City received estimates ranging from \$1.3 to \$1.5 billion up to \$3-5 billion over 25 years (p. 16). These highest estimates were not publicly reported by the City.

The Grand Jury concluded that the City of Irvine adopted a vision of the park that was beyond its ability to finance and did not develop a sufficiently detailed development plan to support this original vision.

### The Current Vision Looking Forward

The City of Irvine City Council has determined that it was better suited to assume the traditional role of policy and oversight of property development rather than the role of "prime" developer. Accordingly, the City entered into an agreement with a private developer, Heritage Fields, to develop 688 acres of the Great Park for \$172 million of Heritage Fields' funds. In exchange, the Heritage Fields' parent corporation would receive additional housing entitlements while the City would retain the right of permits, inspection, and oversight. The City also underwent organizational changes where program oversight would be under the City Manager (Appendix D).

The New Plan bears little resemblance to the Original Plan. The New Plan is for a "greenbelt, standard" park; and a new Master Plan was created which includes a bosque, wooded nature area (Upper Bee), 18-hole golf course, and sports complex (expected to open in 2016).

Table 3 is a breakdown of the New Plan according to acreage, cost to construct, and cost per acre. There will be 260 acres left for Irvine to develop a cultural terrace that includes museums and a library with the intention of using funds from public and private sources. To date, the City has not made a decision to build the cultural terrace or commit any funding.

**Table 3: Heritage Fields (FivePoints Communities) Plan**

Parcel	Parcel Name	Acreage/ Size	Cost to Construct	Cost/Acre
1	Sports Field	175	\$109,372,233	\$624,984
2	Bosque/Upper Bee Canyon	40	\$16,670,819	\$416,770
3	Trails	33	\$4,895,763	\$148,356
4	Golf Course	188	\$26,012,280	\$138,363
5	Agriculture	71	0	0
6	Wildlife Corridor	178	\$15,048,906	\$84,544
	<b>Total</b>	<b>688</b>	<b>\$172,000,001</b>	<b>\$251,095</b>

Source: FivePoints Communities (2013). "Concept Plans and Programming"

The Grand Jury has determined that the New Plan is supported by a viable detailed plan and by constrained funding as the New Plan is largely being funded by the Heritage Fields in exchange for housing permit increases given by the City.

## Management

The Orange County Board of Supervisors declined to take the lead in the development of the Great Park or accept any responsibility in its financing or construction (City of Irvine, 2006). The City of Irvine assumed total responsibility for the management and outcomes relative to the Great Park in the "Irvine Way." (The "Irvine Way" was coined by the City Council but was never fully explained or defined.)

The City of Irvine, as the entity with land use authority for the Orange County Great Park and which legally owns the 1,347 acres of land on which the Orange County Great Park will be developed, is obligated as a matter of law to retain ultimate control over Great Park land use decisions.

It is also appropriate for the City of Irvine to retain ultimate responsibility for the development of the Orange County Great Park because the City of Irvine has committed substantial resources to advance its development. (City of Irvine, 2006, p. 2)

The Orange County Great Park became, in effect, the Irvine Great Park. Therefore, any findings of mismanagement and misuse must fall on the Irvine City Council where it appropriately belongs.

## Organizational Structure

**The original structure.** The Irvine City Council and the Orange County Great Park Corporation eschewed the traditional organizational structure for large civic projects. The Council elected to have a structure wherein all of the meaningful decisions would rest at the top level. The City Council would have the OCGPC Board, the City Manager, and the Irvine Redevelopment Agency (IRDA) report to it. The OCGPC CEO would report to the OCGPC Board and the City Manager. The OCGPC Board of Directors was to become an advisory board to the City Council. A depiction can be found in Appendices C, D, and E.

The OCGPC was relegated to an advisory role. It became part of the City government and not a separate entity. Employees of the OCGPC would be City employees and would work within the City's organizational structure as a department under the City Manager. By 2006, the City and not the OCGPC was now acting as the prime contractor and operator of the Great Park.

The City Council members made all the important decisions on every aspect of the park. The Great Park board was more advisory and could recommend, but the City Council made the decisions and the City staff recommended things to them. (Urch, 2014, p. 48).

The City Council was now responsible for planning, developing, and operating the Great Park. This was approved in December, 2003 (OC Grand Jury, 2005-2006, p. 4). Members of the City Council also sat as members of the OCGPC Board of Directors. This organizational structure was a harbinger of future difficulties.

With the establishment of this dual-government structure, all decisions were funneled to the City Council. This relegated City staff, and its various development standards and procedures, into a relatively limited role (Alshire & Wynder, 2015, p. 68). The result was that the roles of the City Manager and the CEO became marginalized by the political leadership. Over the ensuing years, this structure resulted in confusion regarding lines of authority, responsibilities, and accountabilities as some elected officials took an active role in the operations of the Great Park.

A warning was issued by the Orange County Grand Jury of 2005-2006 when it released a report stating: “The current structure is especially egregious to the citizens of Orange County because the exercise of control is maintained by a three member bloc on the Irvine City Council<sup>7</sup>” (p. 7). These were to be very prescient words.

**Analysis.** The Grand Jury has concluded that the early organizational structure, with the City taking the lead, was not workable. The project shifted course several times without communicating a sense of direction or destination. Objectives and articulation of those objectives were characterized by vacillation, indecision, inconsistency, and confusion. With blurred lines of responsibility and authority and no effective institutional organizational structure, the result was protracted decision-making and a bloated bureaucracy.

## **Business Plan**

**Original plan.** In its earliest stages, the project was off to an inauspicious start as the City did not establish an adequately defined budget, milestones, schedules, or organizational structure. A proposed 2004 business plan, under the leadership of the City Manager, outlined a structure and contained budgets, schedules, timelines, and milestones. It was estimated that the project would cost \$353 million with revenues of \$200 million from developer fees and \$201 million from the developer for “backbone infrastructure” which would be repaid through a Community Financing District (CFD). This estimate was for a basic “grassy” horizontal plan without any structures (Sim, 2014). This business plan was rejected in 2004 (Alshire & Wynder, 2014, p. 2). A new business plan was drafted, but proved to be overly ambitious and eventually unsustainable over the ensuing years.

**2009 strategic plan.** Over ten years, there were five CEOs of the Orange County Great Park Corporation which might have hampered continuity of the project. A definitive, workable strategic plan was not developed until 2009 which finally gave structure and vision for the Park’s development.

**2013 plan.** The City adopted the New Plan. This plan is being developed and implemented by Heritage Fields, not the City of Irvine and ostensibly will replace the 2009 strategic plan. The City agreed to the deal as documented in the Memorandum of Agreement (ALAI). This agreement is a commitment by the contractor to provide all of the deliverables in a detailed plan according to a fixed schedule utilizing the contractor’s own funding. The value of this work has been determined to be \$172 million. In addition, a schedule for the work to be performed and a completion date is part of the plan. The Grand Jury has determined that this current plan is comprehensive and executable.

However, the City of Irvine still has a responsibility to ensure that the Agreement is implemented on behalf of its citizens. In addition, the Agreement retains the City of Irvine’s responsibility to support the development by ensuring code compliance, infrastructure implementation, and operations and maintenance support.

**Analysis.** The Grand Jury has concluded that the OCGPC did not develop a scope of work for its candidate firms that contained a definitive, comprehensive project plan with a budget, timelines, deliverables, and milestones. In the early stages of the project, the City appears to have not requested or given a budget restriction or timeline to participating contractors. The City’s rationale behind the no-budget approach was in order to avoid stifling the creativity of the applicants. This proved to have a deleterious effect on the project for several years.

The Grand Jury found that in support of the New Plan, the City has developed a definitive budget, timelines, deliverables, and milestones consistent with conventional practices in comparable land development projects.

## **Program Management**

**Contentious Relationships.** In the early years, there was a general lack of direction and an awkward relationship developed between the OCGPC staff, elected officials, and City staff. Many of those involved in the project were not comfortable with the authority structure (Joyce, 2014, pp. 101-102). The project had unclear lines of authority and responsibility resulting in various parties seeking to control different aspects of the project. With unclear lines of authority, the project became a rudderless ship. It became painfully obvious that the “train was running off the track.”

The Orange County Great Park Corporation now operated as a stand-alone entity with its own budget and no control, review, or input by City staff (Joyce, 2014, p. 104). OCGPC never had a viable business plan and there were far too many managers (p. 108). As mentioned previously, the lack of clear roles and responsibilities resulted in some elected officials making operational decisions. The Grand Jury found several California communities including Mission Viejo, Belmont, Watsonville, and Norwalk that had ordinances restricting elected officials’ interference in operational activities under a city manager. The Grand Jury finds that the development of the Great Park would have benefitted from the existence of such an ordinance in Irvine.

## **Decision-Making**

The project lacked an effective decision-making process thereby creating an environment of tension and contradictions, often unknowingly and unintentionally. With the passing of the years, many factions in the public felt that the project seemed stultified and lacked direction.

## **Mass Grading Decision**

The construction plan as originally adopted by the City was to be one of mass grading and continuous construction versus building in segments. It appears that this mass grading was selected to keep the design plan intact and save on other costs

(OCGP Board, 2007, p. 3). The Grand Jury interviewed experts in the field who felt that phased construction would have been preferred where designed sections would be built in phases and the project would not move forward until funding was in place.

### **Summary of Irvine City Council's Questionable Decisions**

Over a period of ten years, the Irvine City Council has made many questionable decisions:

- The selection of organizational structure that proved unworkable
- Taking on the role of land developer versus putting project in the hands of experienced developers
- No comprehensive strategic plan and budget at the onset of the project
- The selection of mass grading versus phased/segmental construction
- Not maintaining reasonable controls over the invoices and pay applications
- No standard controls or quality controls were in place
- Allowing City Council members to be operationally involved in the project
- Revolving door CEOs that impacted continuity of the project
- Poorly written contracts
- Poor project monitoring
- Poor financial stewardship
- Excessive use of sole source and no-bid contracts
- No transparency to the public on progress and costs

With the acceptance of the role of land developer and center of all decisions, the Irvine City Council became accountable and responsible for all of the missteps the project has had over almost ten years.

### **Financial Stewardship**

#### **Organizational and Financial Complexity**

In order to obtain a more complete picture of the Great Park project, the Grand Jury found it helpful to "follow the money." The Grand Jury found that Orange County Great Park consolidated financial records do not exist. As a result, the Grand Jury compiled the records from several different funds in the City's financial reports.

The first recorded financial transactions related to the OCGP by the City of Irvine were made in the fiscal year 2004-2005. Subsequently, revenues and expenses related to the OCGP were booked through at least three legal entities and over eight different funds. The three legal entities were the City of Irvine, the OCGP Corporation, and the City of Irvine Redevelopment Agency. Four different City of Irvine funds were utilized: the General Fund, the City of Irvine OCGP Fund #180, the OCGP Fund #280, and the OCGP Fund #286. Four additional funds were also set up by the Irvine Redevelopment Agency: the Irvine fund, the RDA Debt Service fund, the RDA Housing fund, and the Transit Guideway fund.

The Grand Jury concluded that the lack of consolidated Great Park accounts and the lack of a multiyear budget perspective was a major contributor to the issues of mismanagement and accountability in the development of the project. This also caused much of the lack of transparency of information and performance to the public.

### **Contracts Management**

City requirements concerning bidding and sole source contracts were not followed<sup>7</sup>. Budgets, timelines, and controls were often absent in contracts. The Grand Jury could not uncover an appropriate project management plan as should have been delineated by the City in the master contract. The Grand Jury and HSNO found that many contract provisions were not monitored or enforced in several instances. In some instances, the City was not involved in the awarding of subcontractors, yet there existed a list of subcontractors which could not be terminated without City Council approval. This situation does not seem consistent with conventional practices. (See Appendix B for details.)

### **Questionable Expenses**

Analysis of the OCGP expenditures indicated to the Grand Jury that significant amounts were spent on non-capital expenses, e.g. entertainment, events, public relations, etc.

**Entertainment expenses.** Over the years, the OCGPC provided a significant amount of entertainment at the Park free of charge to the public. The concerts were paid for by OCGP funds and the costs to just one vendor exceeded \$2 million. The use of parking and valet services was often available as well as catering for the events. The OCGPC records do not indicate whether any revenues were received by the park from the parking, catering activities, or from ticket sales to events.

**Public relations and lobbying expenses.** HSNO was not able to obtain supporting documentation as to objectives achieved, hours billed, and goals met with respect to some public relations expenditure. Often the City entered into fixed fee contracts with no tangible deliverables.

**The Orange Balloon.** The centerpiece of the OCGP is the giant orange balloon that provides a panoramic view of the Great Park from 600 feet in the air. Initially, balloon rides were free and later a nominal fee was charged. It was surprising to the Grand Jury that the balloon has ended up costing the OCGP almost \$12 million in construction and operating costs. There is also a \$1 million + per year contract that includes balloon operations with charges for a pilot and co-pilot. A significant liability insurance policy carried by the City also adds to the cost of operating the balloon. Revenues from the ridership on the balloon are minimal at best.

**Food and Beverage Expenses.** The Grand Jury performed a cursory review of a Great Park contractor’s Non-Sub Check Register (2004-2014). The total spent for food and beverages was over \$46,000 for staff without justification for the expense. The Schematic Design Agreement, Financial Policies and Practices, Section 1.1—Business

Expenses clearly states "As a general rule, meal expenses incurred while conducting routine daily work assignments will not be considered reimbursable or payable (e.g., employee evaluations, project discussions, etc.). Additionally, unreasonable or unordinary meal expenses will not be reimbursable or payable" (p. 5).

**"Freebies"**. In the years 2012-2013, the Park spent over \$1.3 million on free entertainment (City of Irvine, 2014c) and over \$14 million from 2006-2013.

### **Analysis of the Funding Sources for the Great Park**

**Developer's fees.** The initial source of funding for the Great Park was planned to be from Lennar Corporation. Lennar provided the land for the Great Park as well as \$200 million to the City of Irvine to develop the Great Park and to provide the backbone infrastructure for the housing development area. This transaction was part of the original ALA Agreement. As a result, these funds transferred to the City of Irvine along with the total responsibility to be the prime contractor for the development of the Great Park. These funds were authorized and largely spent on the original concept. The Grand Jury concluded that these expenditures did not provide value to the taxpayers, since the original concept was abandoned, tangible results in the development of the Great Park were not realized.

Heritage Fields proposed a new park design, which is called the "FivePoints Design." The FivePoints design was a detailed design with a more conventional "green space" approach more commonly used by developers in Orange County. The City of Irvine and Heritage Fields signed the ALA II Agreement on November 26, 2013 in which Heritage Fields provides, but holds, the \$172 million funding to perform as the contractor. In exchange for providing these additional funds, Heritage Fields was granted additional development rights for more homes to be placed in the area.

Similar to most other contractor developments, the City of Irvine retains responsibility for oversight and code compliance support to the project. The City also is responsible for the operations and maintenance of the park after completion. The Grand Jury concluded that this role for the City of Irvine is more appropriate and should eliminate many of the problems with the original organizational plan in which the City was the prime contractor.

**Community Facility Districts (CFDs) or Mello-Roos special taxes.** The subsequent source of funds for the Great Park was planned to come from Community Facility Districts (CFD), commonly known as Mello-Roos, special taxes. This special tax is applied to all new owners in the MCAS El Toro development area. This is an additional tax on the citizens of Irvine who purchase homes in the development area.

The Grand Jury remains concerned whether the City of Irvine can responsibly spend this significant source of funding for the Great Park based on their past track record with public money. These CFD funds are estimated to be \$383.3 million over the next 40 years based on the increased number of homes in the ALA II Agreement.

**Irvine Redevelopment Agency (IRDA).** The third source of funds for the Great Park was to be from the Irvine Redevelopment Agency. A redevelopment agency is a

separate legal entity created by the City of Irvine. However, this agency was under the complete control of the City Council of Irvine. The original purpose of a redevelopment agency was for urban renewal, not for new development. A redevelopment agency is authorized to borrow funds which were to be used to upgrade a blighted part of a city. These borrowed funds were to be paid off from the increase in taxes generated by the upgraded properties.

The City of Irvine gave 35 acres of the land that it received from Lennar for the Great Park to the Irvine Redevelopment Agency. By making this transfer of an asset, the IRDA had the ability to borrow money on its own behalf as a separate legal entity by using this collateral. The City of Irvine then loaned the IRDA \$134 million at 9% interest in 2007 through the Purchase and Sale and Finance Agreement (PSFA). The expenditures of the IRDA consist primarily of interest expenses from this loan back to the City during the next five fiscal years which total over \$60 million.

The State of California realized the abuse potential of RDAs and forced the dissolution of RDAs through ABx1 26 and AB 1484. These acts caused the RDAs to cease doing business as a legal entity and created a successor agency for them. The only purpose of the successor agency is to pay off the bonds under State control and oversight, then cease to exist. As a result of this legislation, the IRDA transferred its liability to a successor agency on February 2012. The City of Irvine filed a law suit against the State in an attempt to still obtain the funding from the tax increase by asserting that the recognized obligations payment schedules for the IRDA amounted to \$1.943 billion. On October 24, 2014, the court approved a settlement agreement between the City of Irvine, IRDA Successor Agency, and the State Department of Finance in which the Successor Agency will receive \$292 million in future property tax revenue and turn it over to the City. The City will then provide \$14.6 million to the Land Trust, \$135 million for the operation of the Great Park and a \$142 million windfall for the City. The Grand Jury concluded that this was a significant win for the City. Regardless, the City has tax funds allocated to it for its operation from 2015/16 to 2027/28 from this IRDA settlement agreement.

### **Great Park Consolidated Income Statement.**

Government entities have a tendency to fund activities on a yearly basis. The challenge for a major development like the Great Park is that it is a multi-year initiative. As a result, it is more difficult to actually see the overall budget and performance to that budget. The Grand Jury obtained prior years' City of Irvine Consolidated Annual Financial Report (CAFR) to generate a consolidated income statement for the Great Park.

**Table 4: Statement of Revenues and Expenditures: 2005-2014**

<b>Revenues</b>	<b>Amounts</b>	<b>Revenue Percentage</b>
Investment Revenue	\$31,217,000	11.5%
Services Revenue	\$26,196,000	9.6%
Developer Revenue	\$197,269,000	72.6%
Intergovt, Revenue	\$951,000	0.4%
Property Owner Rev.	\$14,892,000	5.5%
Other Revenues	\$1,171,000	0.4%
<b>Total Revenues</b>	<b>\$271,696,000</b>	<b>100%</b>
<b>Expenses</b>		<b>Expense Percentage*</b>
Capital	\$97,376,000	42.5%
Contract Services	\$83,930,000	36.6%
Salaries & Benefits	\$33,106,000	14.4%
Overhead	\$14,906,000	6.5%
<b>Total Expenses</b>	<b>\$229,318,000</b>	<b>100%</b>
<b>Excess of Revenues</b>	<b>\$42,378,000</b>	

Source: City of Irvine CAFR reports FY2005-2014 \*Rounded

**Analysis of Expenses:** From Table 4, only 42% of revenues received by the City were used for capital infrastructure. Salaries and overhead are 20% and contract services are 36% of total expenditure. Detailed analysis of the OCGP expenditures indicated that significant amounts of public funds were spent on non-capital expenses (e.g., events, entertainment, and public relations) not related to the development of the Great Park.

### Great Park Investment Results

What the public received for its investment in the Great Park falls dramatically short of the promises by the original City Council of Irvine. Of the 1,347 acres initially allocated to the Great Park, only 205 acres have been declared developed. 117.5 of those acres were for agriculture or farm, so only 88 acres should be considered improved. Only two vertical structures were built, the Visitor Center and a maintenance building. These are the results of the initial investment of \$229 million.

The Grand Jury concluded that the taxpayers did not get their money's worth regarding the Great Park investment during this first phase. The full responsibility for this lack of results must be with the Irvine City Council. An unfortunate result for the taxpayers was that the City of Irvine also purchased a master design concept costing over \$46 million which is now sitting on the shelf. Please see Table 5 below for details.

**Table 5: Great Park Construction through 2013**

<b>Name</b>	<b>Acreage</b>
Preview Park	7.70
Hangar 244/Carousel	1.73
Palm Court	7.77
Balloon Parking	5.04
North Lawn	16.27
South Lawn and Fields	25.88
Timeline-West	1.56
Timeline-East	1.53
Festival Site	17.07
Farm and Food Lab	1.68
Promenade Lawn	1.44
Road to Balloon Parking Lot	0.38
<b>Total Acres Improved</b>	<b>88.05</b>
Total of Built-up Areas	88.0
Incredible Edible Farm	6.5
Agriculture	111.0
<b>Total Areas Developed</b>	<b>205.5</b>
<b>Total Cost</b>	<b>\$229,233,864</b>
<b>Cost per Acre</b>	<b>\$1,115,493</b>

Source: HSNO, 2015, p. 3:

### **The Current Plan**

The Grand Jury has concluded that the Current Plan is consistent with current funding availability and is in the hands of a developer who is able to implement the plan as opposed to the City taking the developer role. The Grand Jury has also concluded that the City of Irvine has now assumed the traditional role of oversight. However, this support role must be carefully planned and coordinated to provide sufficient support to the Prime Contractor. The City of Irvine should also be capable of performing its role of providing park operation and maintenance. The Grand Jury also concluded that the windfall IRDA funds needed to be properly allocated by the City Council to the Great Park.

### **Looking Forward: The Future Plan for Construction and Funding**

With the completion of the Current Plan, a major second phase of the development will be completed. However, what has not been addressed is a construction plan supported by funding for the next phase. There has been discussion regarding a library, aviation museum, lake, and amphitheater. The City Council of Irvine has not brought forward an executable plan for these upgrades supported by a viable funding plan. The Grand Jury concluded that a transparent, comprehensive multiyear plan taking the Great Park to completion needs to be developed so that the public can

engage in the process. The City Council of Irvine should take on the leadership role of providing the public the vision and the results in a fiscally responsible manner.

In addition to the completion of the Great Park construction, there is an issue regarding the long-term funding for the operations and maintenance (O&M) of the Great Park. The Settlement Agreement for the IRDA provides the Great Park \$135 million; however, the payments of these funds are sequenced over 12 years. Therefore, in 2028, the City of Irvine will not be able to meet their commitments for O&M without the use of the City's general funds. The Grand Jury concluded that the City Council of Irvine again needs to immediately take the initiative to address this issue with a comprehensive funding plan.

The Grand Jury concluded that a comprehensive reconciliation of funds by the Great Park relative to the City of Irvine's transactions is needed. Special attention should be paid to the IRDA transactions and the associated settlement agreement. The payment of interest from the IRDA to the City of Irvine and the City Council's commitment of the settlement agreement to the Great Park of its \$142 million "windfall" should be confirmed.

### **Operations and Maintenance**

The City of Irvine made the decision to assume the operations and maintenance (O&M) responsibilities for the Great Park. These costs are the yearly recurring costs necessary after the capital investments are completed. According to the 2009-2020 Strategic Plan, the annual expenses in 2020, when the park is fully operational, are projected to be:



Funding for the Great Park O&M in 2020 is projected to be:



This results in a total deficit projection of \$2.5M per year. However, this deficit could be prevented over the next 12 years by the commitment by the City Council of the residual funds from the IRDA Settlement Agreement tax receipts. These funds have not been allocated by the City Council to the Great Park even though the source of the funds was from Great Park assets being given to the IRDA.

## Transparency

Public transparency is an integral element of public administration. There are three primary aspects of transparency: disclosure, clarity, and accuracy. It is of paramount importance that the decisions elected bodies make are made publicly and publicly archived. From the onset, the Grand Jury found that the City Council and OCGPC were not transparent with either the process or the relevant information associated with the Great Park to the public.

During the 2005 timeframe, contractors explained to the OCGPC that the estimated costs were to be nearly \$1 billion. Experts later estimated that the original plan would cost \$1.4-1.6 billion. However, this estimate was never revealed. Later estimates by contractors predicted it would cost \$3-5 billion over 25 years to build the entire park (horizontal and vertical). However, none of these estimates were publicly disclosed.

The City of Irvine plunged forward with the Great Park project but there were never definitive budgets, schedules, milestones, or deliverables open for public review. The flow of funding was so confusing that the public would have difficulty discerning what was actually occurring. Contracts were not always definitive as to deliverables and there was excessive use of no-bid contracts that was not publicly disclosed. It was never publicly discussed that even if the costs came in just over \$1 billion, the City would not be able to finance the park according to their financial plan.

## FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "Irvine" Great Park: A Legacy of Hubris," the 2014-2015 Orange County Grand Jury has arrived at 14 principal findings, as follows:

- F.1.** The Irvine City Council originally had a vision of a metropolitan park that would rival Central Park in New York, Golden Gate Park in San Francisco, and Balboa Park in San Diego but neglected to follow standard industry practices in managing such a large project.
- F.2.** From the outset, with the City of Irvine assuming a land developer role, the project was poorly managed and did not follow conventional program management principles. There was excessive political control, influence, and interference over the Great Park project. The City allowed individuals, including some elected officials to make technical decisions without ensuring that these individuals were qualified or experienced to make such decisions. Basically, the City abandoned sound project management principles.

- F.3.** The organizational structure established by the Irvine City Council was such that total control over the project rested with the City Council and the Orange County Great Park Corporation was relegated to an advisory role.
- F.4.** Many California communities, including Mission Viejo, Belmont, Watsonville, and Norwalk have ordinances restricting elected officials from interfering in operational activities under a city manager.
- F.5.** Appropriate transparency over the project was lacking. The City Council and the OCGPC did not publicly reveal the estimated true costs to build the park as originally designed as well as other non-capital expenditures.
- F.6.** There were serious questions about the ability of the City to implement the original design based on the City's available financing and U.S. Navy constraints.
- F.7.** Many of the contracts of the Great Park were open-ended and without defined deliverables, minor oversight, or safeguards. There seemingly was no effective oversight over invoices, contract compliance, or quality control.
- F.8.** There seemed to be over-use of no-bid and sole source contracts without full justification which possibly violates the City's processes and procedures. There are also questions of clarity relative to terms and conditions of current contracts.
- F.9.** Orange County Great Park financial statements indicated that less than 50% of expenses incurred were spent on capital, i.e., on the actual design and construction of the Great Park, which is well outside industry standards. The remaining expenses were on salaries, overhead, and contract services.
- F.10.** The complexity of financial transactions relative to the Great Park made it difficult to understand the flow of funds relative to sources and uses of monies. The lack of clarity on such basic issues as the number of units authorized to be constructed raises concerns about other issues in the contract that are unclear. This was a major flaw in the reporting system.
- F.11.** An inordinate amount of funds were spent on public relations and lobbying, "free" public events, exhibitions, food, and a balloon whose benefits did not justify its costs.
- F.12.** The current plan for the construction of the Great Park will require less funding than the original plan but will still require a high cost of construction and operations and maintenance that will be passed on to home buyers.
- F.13.** There was no explanation by the City Council as to where the tax increment of \$43 million received by the IRDA from 2005-2011 was utilized.
- F.14.** The OCGPC has become a "shell" corporation and serves no intrinsic function as members of the Board of Directors are the same as members of the Irvine City Council.

## RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "Irvine" Great Park: A Legacy of Hubris," the 2014-2015 Orange County Grand Jury makes the following eight recommendations:

- R.1.** All of the funds related to Great Park financial activity should be presented as a separate section in the City's CAFR to allow for greater transparency (F4; F9).
- R.2.** The City of Irvine should give serious consideration to dissolving the Orange County Great Park Corporation as it serves no intrinsic purpose (F13).
- R.3.** The City of Irvine should create and consider adopting an ordinance similar to that adopted in other cities, such as Mission Viejo<sup>8</sup>, that limits the interference and influence of City Council members with the operational aspects of the city. (F1; F2; F4).
- R.4.** The City of Irvine should develop and publish a new 10-year comprehensive strategic plan for all of the development activities beyond the ALA II plan with time commitments for the Cultural Terrace, including the library, lake, museums, etc. along with all of the funding and expenditure plans (F2, F7, F11).
- R.5.** The City of Irvine should discontinue extravagant expenditures in favor of more cost conscious public events. As an example, the City should consider "grounding" the balloon or severely limiting its use, as this expensive attraction costs over \$1 million per year to operate (F10).
- R.6.** The City should review and ensure compliance with its policies and guidelines regarding contracts and appropriately restricting the use of sole source and no-bid contracts. (F7)
- R.7.** The City of Irvine should create a master document that lays out all of the terms and conditions of the ALA, ARDA, ALA II contracts and alterations to the Master Plan and Land Use Agreements. These need to be consolidated into one document of record which clearly indicates each party's obligations under the contract (F7).
- R.8.** The City of Irvine needs to provide an explanation as to where the tax increment of \$43 million received by the IRDA from 2005-2011 was utilized. (F13).

## REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report,

to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

Irvine City Council – All Findings and Recommendations

:

### **COMMENDATIONS**

The Grand Jury is very appreciative of the cooperation and efforts of the staff of the City of Irvine and the Orange County Great Park Corporation. They could not have been more courteous, professional, and helpful. Appreciation also goes out to the Office of the Orange County District Attorney for their assistance.

## ENDNOTES

1. Measure W: County Parks Initiative:

Shall the initiative measure: 1) eliminating planned airport uses at the closed El Toro Marine Corps Air Station (MCAS El Toro) by repealing Measure A, and 2) amending the Orange County General Plan to authorize an urban regional park and a variety of agricultural, material recovery/recycling, recreational, cultural, educational, employment, public and housing land uses at MCAS El Toro, be adopted."

The intention of the initiative was to cease all activities to transform the former air base into a commercial airport and to "provide Orange County's three million residents with an opportunity to enjoy a park on par with Golden Gate Park and The Presidio in San Francisco, Griffith Park in Los Angeles, and Balboa Park in San Diego." Further rationale included: "The park will generate regional and state-wide economic benefits from tourism, education, and the attraction of businesses to the area." (Orange County, California Measure W. Retrieved August 13, 2014 from <http://airportnoiselaw.org/orangew.html> para H)

2. Bosque: The term *bosque* is from the Spanish meaning "woodlands." It refers to clumps of trees found along flood plains of stream and river banks in the southwestern United States.

3. The Irvine City Manager stated in 2003:

"The financial plan for the OC GP will fulfill the promise our City made to the people of Orange County when we drafted Measure W nearly two years ago.

"Working in cooperation with the Navy, we have created a sound financial plan for building and maintaining the Great Park without any federal, state, or local taxpayer subsidies.

"Master-planned communities throughout Southern California, including Irvine, maintain high standards and amenities by requiring developers and property buyers to contribute to the construction and maintenance of public facilities.

"Real estate experts who have reviewed the Orange County GP Plan all agree that the sale of the developable property will more than support the \$200 million in development fees. The assessments and special maintenance levies, plus the basic 1% property tax, will not exceed the overall 2% property tax levied on property owners in most master-planned communities.

"The most exciting feature of this plan is the speed in which it allows the GP to be developed.

"We will begin tearing up the runways within days of the completion of the sale of the property. Our children will be playing in the county's largest Sports Park, and people will be able to enjoy the first phase of the Meadows Park within three

years. Within only five years of the sale of the property, the OCGP will be fully landscaped and will serve all of our county for many generations to come.” (p. 1)

4. According to *Orange County Great Park Planning Report (2003)*: “Other great metropolitan parks have required fifty years or more to develop. By contrast, the Orange County Great Park development strategy—harnessing the power of private capital and the benefit of enlightened public planning—will enable all key elements of the Great Park to be developed within five to seven years of the sale of the property.”
5. The 2005-2006 Grand Jury stated in their report “Orange County Great Park: Whose Park Is It?”: “By merging the operations of the City of Irvine and the GPC, employees of the GPC are now employees of the City of Irvine and everything from job assignments to raises and other factors are at the behest of the City of Irvine. It raises the question, what exactly is the purpose or function of the OCGPC if the City of Irvine collects all park related revenue, hires employees whose duties are related to the park, and pays the other expenses related to the park.” (p. 9)
6. This is not in violation of public law. According to the Health & Safety Code (§33200, sub d). [a]) a city council, in activating the redevelopment agency in its community, is authorized under State law to name itself to 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.
7. City of Irvine Contract Award Process: A contract can primarily be awarded in the following three methods.
  - Use of Consultant Team Member
  - Request for Proposal (RFP)/Formal Bidding Process
  - Sole Sourced

The city creates a list of business needs and establishes a list of Consultant Team Members who have been properly vetted. When a need is discovered the responsible manager is to go to the Consultant Team first, next option is to request a RFP from any and all vendors, and last option is sole sourcing.

The following is a summary of the key levels of contract authority and signature levels contained in the Great Park Procurement policies. Authority to sign a contract must be preceded by approval of the contractor, program or expenditure, either through the budget process or through separate action of the Corporation’s Board of Directors. The levels and amounts are consistent with comparable functions in the City of Irvine.

Contract Amount	Contract Authority
\$100,000 or less	Orange County Great Park Managers
>\$100,000 up to \$1,000,000	Chief Executive Officer and Deputy Chief Executive Officer
>\$1,000,000	Chief Executive Officer and Chairman*

\*Any contract requiring the Chairman's signature must first be approved by the Board of Directors.

Additional highlights of the revised Orange County Great Park Procurement Policies include:

Purchases or contracts in excess of \$5,000 for supplies, equipment, or construction require three qualified bids or quotes.

Professional services or consultants require a formal proposal process for contracts expected to be greater than \$5,000. In this case, three qualified proposals are also required. Pricing, however, is of secondary consideration to qualifications (as required by applicable State law).

The use of a Consultant Team Program whereby certain professional consultants are pre-qualified through a competitive selection process and have master agreements which extend for a period of up to three years. (Consultant Teams pre-approved by the City are available for use by the Orange County Great Park.)

Sole source—the policies allow for sole source purchase or contract where a competitive bidding or selection process cannot be accomplished. Such situations could occur due to time constraints, proximity, highly specialized knowledge, or unique product. Sole source request, in all cases, must be accompanied by a justification memo to the Chief Executive Officer.

8. The following is an excerpt from the Mission Viejo Municipal Code:
 

“The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and neither the city council nor any member thereof shall give orders to any subordinate of the city manager. For purposes hereof, “inquiry” means any and all communications short of giving orders, directions, or instruction to any member of the administrative staff. Such members shall provide all information reasonably requested by any councilmember. The city manager shall take his orders and instructions from the city council only when sitting in a duly convened meeting of the city council and no individual councilmember shall give any orders or instructions to the city manager. The city council shall instruct the city manager in matters of policy. Any action, determination or omission of the city manager shall be subject to review by the city council. The city council may not overrule, change or modify any such action, determination or omission except by the affirmative vote of at least three members of the city council.” (Code 1988, § 2.08.070)

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**APPENDIX A:  
ORANGE COUNTY GREAT PARK CHRONOLOGY**

1993 July	Department of Defense places MCAS El Toro on the BRAC closure list.
2002, March 5	Orange County voters approve Measure W that creates the Orange County Central Park and Nature Preserve to replace MCAS El Toro.
2002, March 6	The Department of the Navy announces its intention to sell MCAS El Toro on a bid basis.
2003, January 28	Irvine City Council announces in a press release that the Great Park would cost a projected \$353 million to construct.
2003, July 7	The Orange County Great Park is incorporated.
2003, November 12	The Local Agency Formation Commission (LAFCO) approves the City of Irvine's annexation of the former MCAS El Toro, putting the City of Irvine in control of land use decisions for the entire property.
2003, December 5	The Orange County Great Park Corporation (OCGPC) holds its first public meeting and adopts a resolution that expands the Board of Directors to nine (9) members.
2004, January 14	City of Irvine officially annexes former MCAS El Toro.
2004, September	The Department of the Navy invites bids for MCAS El Toro.
2004, December 16	The OCGPC approves the 2004-2005 business plan with an anticipated budget to build the park at \$401 million.
2005, March 8	Redevelopment funding for the Great Park is authorized by ordinance.
2005, April	The OCGPC inaugurates design contest for the Great Park.
2005, June 23	Based on design submittals and recommendation by a "Design Jury," seven finalists are selected and each is given \$50,000 to develop and Conceptual Master Design Plan.
2005, July 12	Lennar had the winning bid for MCAS El Toro of \$649.5 million. Lennar contributes 1,347 acres to the City of Irvine, pays \$200 million in developer fees, and pledges an additional \$201 million for joint infrastructure and facilities intended to be funded by a Community Facilities District (CFD) bond sale.
2005, September	Finalists present their design plans during the OCGPC public meetings.
2006, January 23	OCGPC board selects the project designer and architect of the Orange County Great Park.
2006, March 9	OCGPC enters into Agreement for Master Designer Services to develop a Great Park Master Plan for \$372 million. The main purpose of the contract is to develop a conceptual design of the Great Park that would be approved by the OCGPC Board and the Irvine City Council.
2006, March 23	A contractor is selected from among five bidding firms to be the program manager for the Great Park.
2006, October 26	OCGPC Board approves the Preliminary Master Plan in concept.
2007, January 9	Irvine City Council authorizes approximately \$4.1 million in expenditures for design, construction, operations, and insurance for the Great Park balloon.

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2007, January 25	Original plan designer makes proposal to OCGPC Board to continue services for the design development of the entire park, including park schematics, mass grading, and construction documents for the initial park construction.
2007, July 14	The Great Park Balloon opens to the public. Features include parking, lighting, temporary visitor center, construction of the observation balloon, and associated infrastructure and utilities.
2007, July 24	OCGPC Board and Irvine City Council approve a schematic design contract (Contract #5759) for \$27.3 million. The purpose of the contract is to develop construction documents in accordance with the Master Design Plan and to establish reasonable cost estimates for the Great Park features included in the Schematic Design.
2007, September 27	The OCGPC Board adopts the Comprehensive Master Plan. Contractor estimates total cost to build park at \$979.8 million.
2007, December 11	Irvine City Council authorizes \$11.4 million for design and construction of the Balloon Enhancement Project and \$2.5 million for first year operating costs, totaling \$13.9 million. Features include new signage and lighting, parking and site access, night flights, a revised multipurpose 5-acre landscaping, and cleaning and painting an existing hangar that will be used for future events.
2008, January 8	Decision to proceed with the Schematic Design to ultimately develop construction documents for the improvements.
2008, March 25	Balloon Enhancement Project is expanded by Irvine City Council to become the 27.5-acre "Preview Park." Irvine budgets approximately \$6.97 million for construction of the entire Preview Park. Balloon project is considered Phase One.
2008, July	Second phase of Preview Park is completed. This phase consists of a lawn, trees, park furnishings, additional lighting, timeline prototype, shade structures, and a relocated and improved visitor center.
2008, July 11	Program Manager estimates the cost of horizontal construction (not including buildings) to be over \$1.6 billion.
2008, August	The City of Irvine hires an independent public accounting firm to audit contract compliance under the Agreement for Master Designer Services (Contract 1).
2009, January	OCGP Board commissions consulting firm to evaluate the merits and feasibility of a major fundraising effort to generate private funds for selected facilities and programs within the Great Park Master Plan.
2009, February	Schematic design is halted by CEO and states no further work necessary on the design. Staff concludes that the project budget to be approximately \$1.4 billion.
2009, March 19	Contractor presents a 36-month construction plan to develop 500 acres for \$61 million.
2009, April 23	OCGP Board votes to recommend that the Irvine City Council appropriate \$61.2 million for the 500-acre park from development proposal.
2009, May 21	Contractor presents Phase 1 plan of the 500-acre plan and attains an additional \$4.7 million to implement Phase 1.
2009, July	Phase 3 of the Preview Park is completed. Third phase included transplanting mature trees into the lawn area and the Farm and Food Lab.
2009, October	Accounting firm auditing contract compliance under the Agreement for Master

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	Designer Services delivered their report.
2009, October 22	GP CEO submitted a proposal for \$65.5 million to develop 200 acres (Western Sector) and to replace the 500-acre plan. The proposal was approved by the OCGPC Board. This area is adjacent to Park Preview.
2009, November 10	The City of Irvine approves a sole source contract with WRNS Studio, an architectural firm, for \$10.1 million for design and pre-construction services for the Western Sector. Construction design of Western Sector began shortly thereafter.
2009, November 12	Consulting firm delivered its report to the OCGP Board, concluding that it is infeasible to raise enough private funds to construct facilities for the Great Park due to many obstacles.
2010, June 17	A Close Out Agreement between the original designer and the City of Irvine is presented at a joint meeting with OCGPC and Irvine City Council.
2010, August 13	Final Close Out Agreement with the original designer and City of Irvine is executed.
2011, January	Governor Brown proposes statewide elimination of Redevelopment Agencies (RDA) beginning with 2011-2012 budgets.
2011, June 15	California Legislature passes ABX1 26 which eliminates RDAs and sets up Successor Agencies and Oversight Boards to wind down dissolved RDAs.
2011, November	An independent public accounting firm, is engaged by the City of Irvine to review contract compliance of the Schematic Design contract (Contract 2).
2012, June 7	Irvine enters into a contract with USS Cal Builders, Inc. for \$22 million to complete construction of 30 acres of the Western Sector.
2012, June 21	Independent accounting firm delivered Schematic Design Contract Compliance Review to Board and city. The report did not reveal any significant or material findings.
2012, November	City Council election was held resulting in the composition of the council being significantly changed. Four of the at-large members were dismissed.
2013, January	City Council cancelled the park public relations contract.
2013, June 17	The City of Irvine retained Hagen, Streiff, Newton, & Oshiro Accountants, PC (HSNO) for \$240,000 to perform a forensic audit of the planning, development, and construction of the Great Park.
2013, November	The Prime Contractor proposed 688-acre park project to the Irvine City Council.
2014, August	City of Irvine readjusts its Master Plan and Design Review to be in concert with the Prime Contractor proposal.
2014, November	The 5-year Master Plan for 688 acres is approved by the City Council.

## **APPENDIX B: PROBLEMS WITH FORMER CONTRACTS**

The Grand Jury found many inconsistencies and problems in managing contracts involving the Great Park.

An examination of the previous largest contracts revealed that many of them contained no deliverables or milestones. Several were open-ended, had minor oversights, and provided for no true safeguards. It seems that there was never an outside audit of finances or contracts.

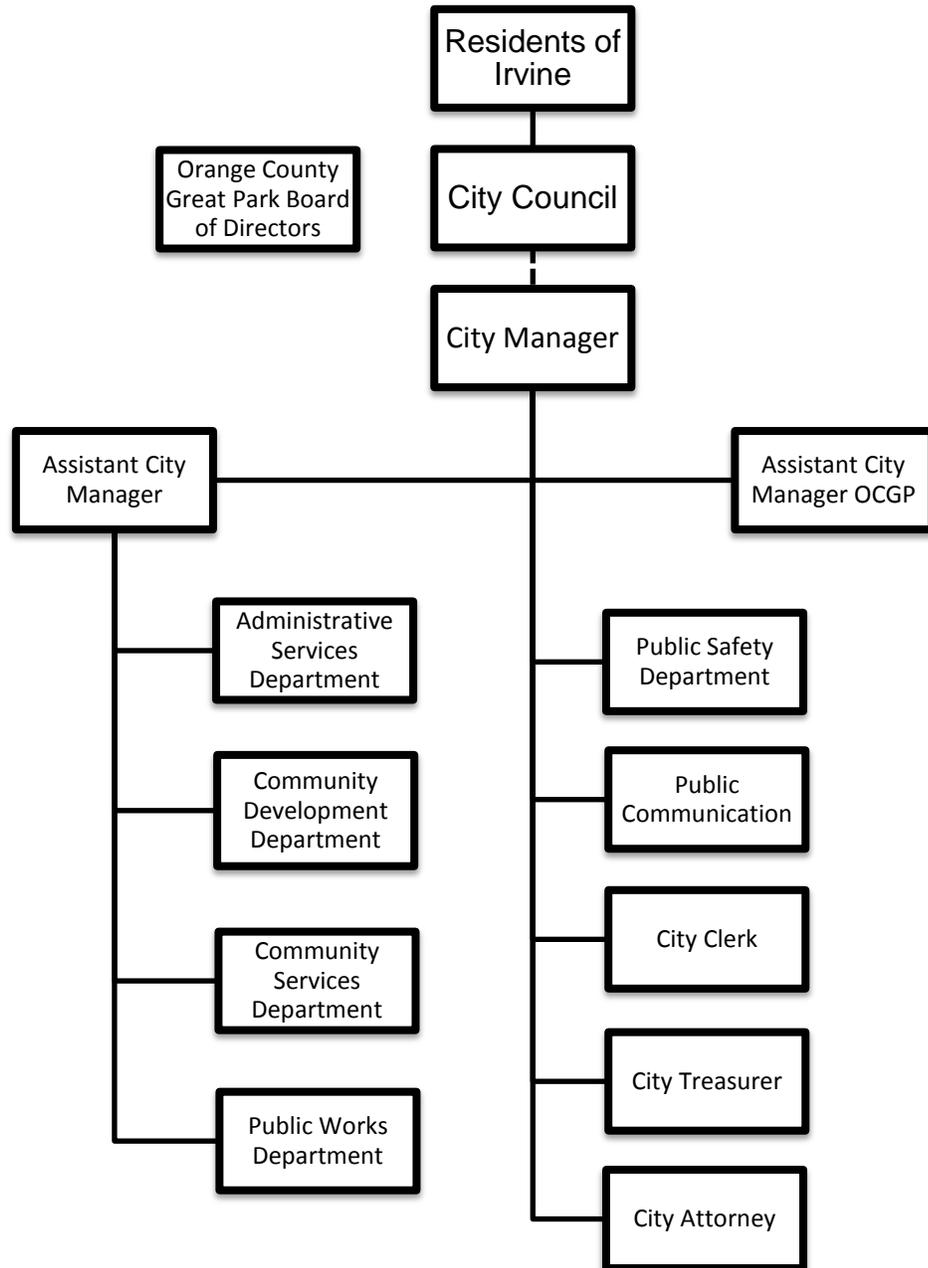
**No-Bid Contracts.** Very early in the life of the project, the 2005-2006 Grand Jury had recommended that "The Irvine City Council should review current practices involving no-bid contracts to ensure that appropriate business controls are in place to protect the citizens of the City of Irvine" (p. 11). In the response from the City of Irvine, they "wholly" disagreed with this finding. In the City's response they referenced the current policy on purchasing<sup>8</sup> which they claimed they were following.

However the practice of no-bid contracts continued over the years. In projects costing over \$100,000, 29 of 83 (35%) were sole source contracts according to records from the Office of the Irvine City Clerk. This seems extraordinarily high; however, the law does not prohibit these contracts if they are for highly specialized services. As an example, the Western Sector was built with sole source contracts, but to management's credit, the project was completed within 10% of its budget (\$69.9 million actual versus budgeted \$65.5 million).

**Change Orders.** A review of several contracts revealed an extensive use of change orders. These change orders allowed for additional expenditures. A cursory review determined that over \$15 million was spent on change orders alone.

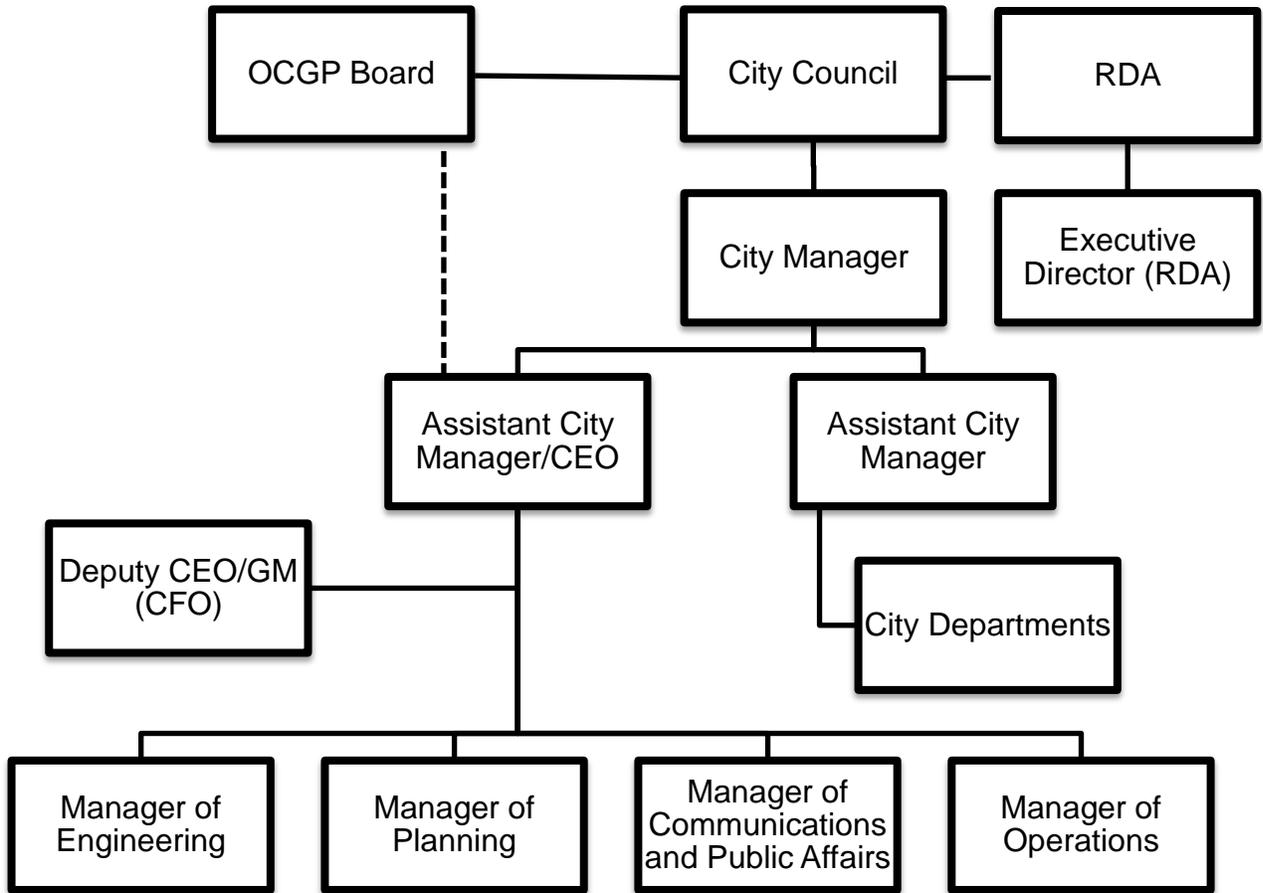
The forensic auditor found strong evidence of a lack of definition of scope in contracts until after the work had begun (HSNO, 2014). Also found was significant confusion concerning scope of work. There were various testimonies in sworn dispositions that one contractor was performing work outside of its scope. Other testimony stated that the same contractor would begin work prior to the contract being approved. The magnitude of change orders indicated a lack of definition of scope of work or poor project management by the City.

**APPENDIX C:  
CITY OF IRVINE ORGANIZATION CHART**



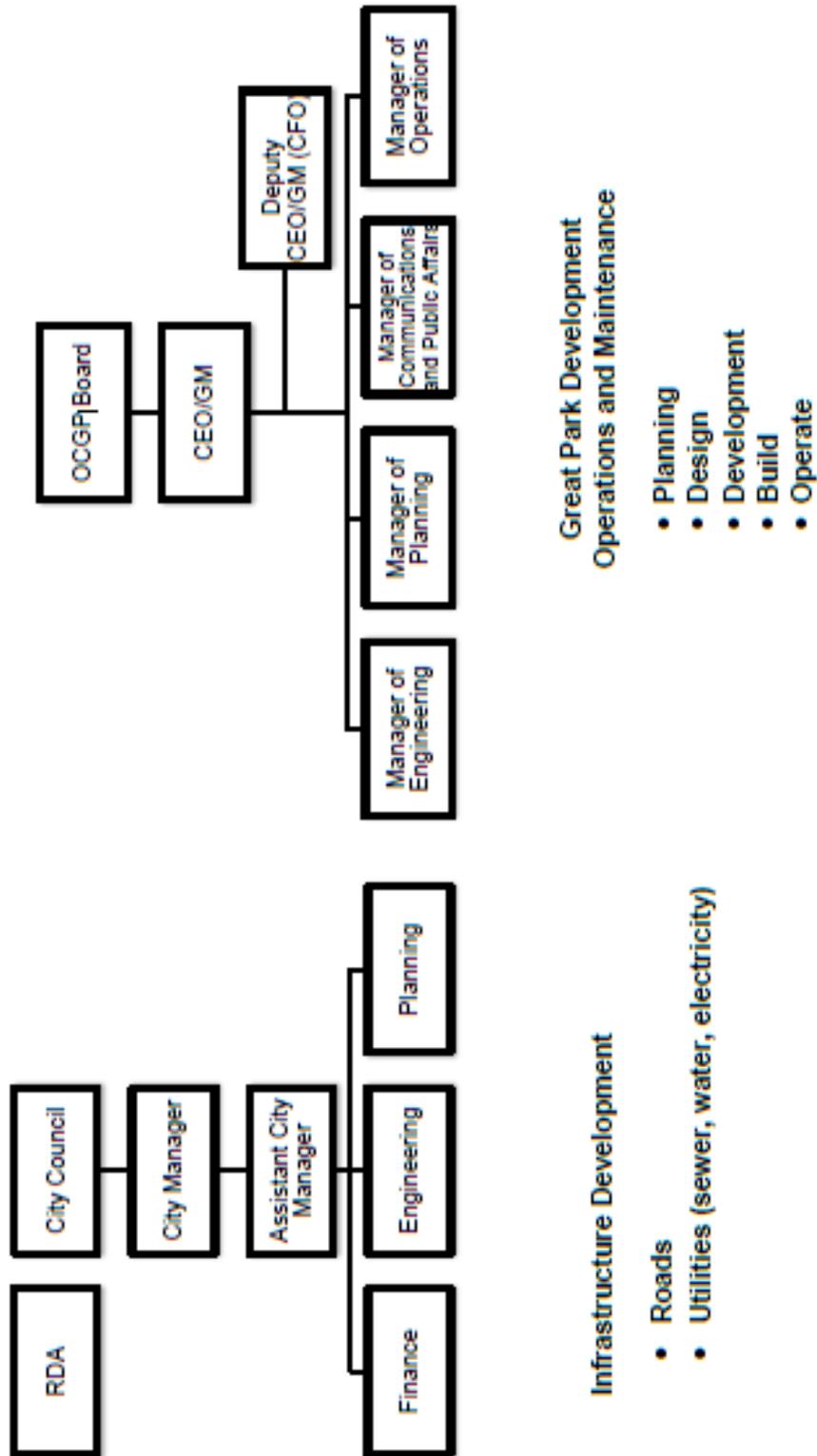
**APPENDIX D:  
OCGP ORGANIZATION STRUCTURES**

**Single Organization Staffing Structure  
(Approved by Irvine City Council)**



**Traditional Structure (Rejected by Irvine City Council)**

**Appendix A:  
Dual Organization Staffing Structure  
(Traditional Public/Private Sector Model)**



**APPENDIX E:  
CITY OF IRVINE COUNCIL RESOLUTION OF APRIL, 2006**

**Organization**

- The Orange County Great Park Corporation Board of Directors consists of five members of the Irvine City Council and four appointed directors.
- Employees serving the Corporation are employees of the City of Irvine, working within the City's organizational structure, (i.e., as a distinct operating department of the City) and functioning under the general direction and supervision of the City Manager.

**Funding**

- Funds for the development of the Park are managed by the City of Irvine in a separate city fund.

**Operations and Maintenance**

- Operation and maintenance of the Park shall be based on a self-sustaining budget.

**The Great Park Board of Directors**

- May develop policies for presentation for City Council adoption.
- Is responsible for direction and oversight with respect to planning, designing, and constructing the Park.
- Is responsible for ensuring that applicable policy guidelines and design principles are implemented.
- Will oversee construction of the Park and will provide recommendations to the City Council for approval of all contracts and change orders.

**The Irvine City Council**

- Must initiate and approve all land use modifications.
- Has final authority over all financial matters, including contracts for construction, operation, and maintenance of the Park.
- Is responsible for the management, dispensation, and investment of funds available for the park.

**APPENDIX F: MEASURE V**

Measure V: Orange County Great Park Fiscal Transparency and Reforms Act:

- Prohibit any money from being spent on the Great Park until approved by the Orange County Great Park board of directors or the City Council at a public meeting.
- Require an annual audit of the Great Park funds by an outside auditing firm and require that it be posted on the city website.
- Establish whistleblower protections for anyone who reports waste, fraud, or abuse of the Great Park funds.
-