EDMUND F. SOTELO
City Manager

CITY MANAGER'S OFFICE
305 West Third Street • Oxnard, CA 93030 • (805) 385-7430 • Fax (805) 385-7595

September 8, 2003

Honorable Bruce A. Clark
Presiding Judge of the Superior Court
County of Ventura
Ventura County Hall of Justice
800 South Victoria Avenue
Ventura, California 93009

Subject: Response to Grand Jury Report – City of Oxnard River Ridge Golf Club

Dear Judge Clark:

This letter and enclosed responses to the Grand Jury Report of June 10, 2003 are respectfully submitted on behalf of the City of Oxnard, the Oxnard City Council, Dr. Manuel M. Lopez, Mayor, and Dale Belcher, City Treasurer. The City welcomes the opportunity to respond to the Grand Jury's concerns regarding the Oxnard River Ridge Golf Club.

The City does not concur with many of the findings, conclusions and recommendations of the Grand Jury Report. The City is concerned that those findings, conclusions, and recommendations were based merely on "cursory examination(s)", "partial examination(s)", and "indication(s)". After the City's in depth examination of the River Ridge Golf Club operations, the City concludes that a considerable portion of the Grand Jury Report was not based on factual data, but oftentimes, opinions.

The City's construction of the River Ridge Golf Club reclaimed the former Santa Clara Landfill, operated by the Ventura Regional Sanitation District, and converted the landfill and adjacent properties into a golf course, hotel, and NFL football training facility. Oxnard is proud to have converted what was for decades the dumping grounds for the County of Ventura, into a significant community asset. River Ridge Golf Club enjoys a deserved reputation as one of Ventura County's outstanding golf courses. Its success is evidenced by the thousands of rounds played each year and the continued demand for tee times.

The City's intent in developing the River Ridge Golf Club was to create a valuable and affordable municipal recreational asset. The conversion of the former landfill to a championship golf course has created substantial value to the City. The development of the golf course has

provided the City with property tax, sales tax, and transient occupancy tax revenues, and has shaped Oxnard's Northwest Community into a showcase residential and destination location.

The River Ridge Golf Club provides substantial contributions to the payment of bond debt (revenues exceeded operational costs during fiscal year 2001/2002 by $490,000). The golf course also provides considerable recreational opportunities for the residents of Oxnard and the County.

The City has submitted considerable documentation in response to the Grand Jury Report, in addition, to further allay any misperceptions, the City will also conduct a complete independent audit of the River Ridge Golf Club's financial condition, including a review of internal controls. An independent auditor not previously used by the City or Operator will conduct this additional complete independent audit, which will be a matter of public record.

The City invites the Grand Jury to review in depth both the enclosed responses to the Grand Jury Report, as well as subsequent independent audit results, with City staff. The City is committed to satisfactorily answer all of the Grand Jury's questions.

Respectfully,

Edmund F. Sotelo
City Manager

Enclosure

cc: Oxnard City Council
Dr. Manuel M. Lopez, Mayor
Dale Belcher, City Treasurer

Contract History & Lock-In Provisions

F-1. High Tide and Green Grass, Inc. filed for incorporation with the Secretary of State of California on November 24, 1993.

Concur

Attachment 7 Page 1

F-2. The Original Agreement between the City and High Tide states at subparagraph 2.a that "City hereby grants to Operator an exclusive contract to operate, maintain and manage the Golf Course for a period of five (5) years, beginning December 1, 1993..."

Concur

Attachment 2 Page/Paragraph 2/2a

F-3. Under Article 2.a. of that Agreement the full term of the contract was stated to be for five (5) years with the "opportunity to request renewal..." of the Agreement for two additional terms of ten (10) years each.

Concur

Attachment 2 Page/Paragraph 2/2a

F-4. The Second Agreement was agreed upon and came into effect on December 15, 1998.

Concur

Attachment 3 Page 1

F-5. Article 3.a. of the Second Agreement grants Operator the exclusive right to operate, manage and maintain the Golf Course for ten (10) years and seven (7) months ending June 30, 2009.

Concur

Attachment 3 Page/Paragraph 2/3a

F-6. Article 3.b. gives the Operator "an opportunity to request [within a stipulated time period] extension of this Agreement for an additional ten years..." until June 30, 2019.

Concur

Attachment 3 Page/Paragraph 2/3b

F-7. Article 3.c. excluded the "opportunity to request an extension of this Agreement...under three circumstances outlined in subparagraphs d., e., and f. See, Attachment A.

Concur With Comments

F-7 Paragraph 3c. does state that the Operator shall not have the opportunity to request an extension under three circumstances. Those exceptions are contained in paragraphs 3d, 3e and 3f of the Second Agreement. However, the Grand Jury "Summary of Excluded Opportunities to Extend the Second Agreement" adds the words, "on the low probability incident that" on the second line of paragraphs 1 and 2 of the summary. These additions are conclusions, and not factual findings. While these conclusions are valid today, they were real possibilities at the time the Second Agreement was executed. Further documentation of this is contained in the City Council agenda report that accompanied the Second Agreement.

Attachment 3 Page/Paragraph 2/3c
Attachment 1 Page 1-3

F-8. In fact, the second and third exceptions are the same except that in the second, if a third party pays the entire cost of constructing the additional 18 holes, that party has the first right to negotiate with the City of the operation, maintenance and management of the Golf Course.

Disagree

F-8 Paragraphs 3d, e and f of the Second Agreement outline three different circumstances. Grand Jury finding 8 (F-8) states, "In fact, the second and third exception (paragraphs 3e and 3f) are the same except...." What the finding should state is that if a private enterprise paid for the construction of the new holes and desired to operate all 36 holes, the agreement terminates (paragraph 3d). The second circumstance states that if a private enterprise paid for the construction of the new holes and *does not* desire to operate all 36 holes, the agreement will be renegotiated (paragraph 3e).

Attachment 3 Page/Paragraph 2, 3/3d, e, f

F-9. The Original Agreement and the Second Agreement characterize the Agreements as unique personal service agreements and stipulate that if during the term of the Agreement three named individuals "individually or collectively," are no longer involved "in the operation, maintenance and management..., the City may terminate..." the Agreement upon ninety days written notice.

Concur

Attachment 2 Page/Paragraph 22/59b
Attachment 3 Page/Paragraph 14/54b

F-10. A "Termination Without Cause" article was included in the Original Agreement but was omitted from the Second Agreement.

Concur

Attachment 2 Page/Paragraph 18/49

F-11. According to City management the "Termination Without Cause" article was omitted because "The City is sufficiently protected..." by the Termination for Cause Article and the unique personal services termination article.

Concur

Attachment 2 Page 18

Accounting Records, Recording and Statements

F-12. The Second Agreement states that "Operator shall maintain a method of accounting in accordance with generally accepted accounting principles [GAAP] which accurately reflects the gross receipts and disbursements of Operator in connection with Golf Course Operations..." Article 20. Accounting Records and Reporting.

Concur

Attachment 3 Page/Paragraph 7/20

F-13. It further states that "Operator shall submit...a financial statement for the fiscal year then ended..." Article 21. Financial Statements.

Concur with Comments

F-13 Operator submits a financial statement for the fiscal year then ended within 60 days of the completion of the fiscal year.

Attachment 3 Page/Paragraph 7/21

F-14. The Original Agreement required that "annual revenues as indicated on the financial statement shall be certified by an independent auditor and shall include a statement that the financial statements are in compliance with generally accepted accounting principles." Article 22. Financial Statements

Concur with Comments

F-14 However, the Original Agreement has been superceded by the Second Agreement.

Attachment 2 Page/Paragraph 9/22

F-15. The Second Agreement states that "The financial statement shall be audited by an independent auditor and shall include a statement that the financial statements were prepared in compliance with generally accepted accounting principles." Article 21. Financial Statements.

Concur With Comments

F-15 With the knowledge and concurrence of the City, Operator has performed only revenue audits per the terms of the Original Agreement. The City and Operator intend to amend the Second Agreement to reflect this practice by January 1, 2004.

Attachment 3 Page/Paragraph 7/21

F-16. The independent audit submitted to the City for the year ending June 30, 2002 in accordance with Article 21 included, among other things, the statement *"SELECTED INFORMATION – SUBSTANTIALLY ALL DISCLOSURES REQUIRED BY GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ARE NOT INCLUDED FOR THE YEAR ENDED JUNE 30, 2000."* (Emphasis supplied).

Disagree

F-16 This statement is a standard accounting statement for a "revenue only" audit and indicates that all (expenditures) disclosures were not reviewed as being outside the scope of the audit.

The Independent Auditor, Pyne, Waltrip, Lippert, & Olson, LLP for Operator audited the schedule of base revenues of Operator as defined in the Second Agreement for the year ended June 30, 2002. The schedule of base revenues referred to in the independent auditor's report present fairly, in all material respects, the base revenues of Operator for the year ended June 30, 2002, in conformity with accounting principles generally accepted in the United States of America.

According to the Grand Jury findings, all disclosures required by generally accepted accounting principles are not included for the year ended June 30, 2000. In fact, the independent auditor's report for Operator for the year ended June 30, 2000, included the schedule of base revenues and the notes/disclosures refer to the schedule of base revenues, similar to the disclosures included for the year ended June 30, 2002 (Nature of Business; Basis of Accounting and Tournament Sales), other disclosures required by generally accepted accounting principles are not included because the report covers only the required base revenues.

Attachment 6 Page 1-4

F-17. The independent audit for the year ending June 30, 2002 was merely an audit of the "the accompanying schedule of base revenues of High Tide..." and stated that the referenced schedule was the responsibility of High Tide's management and limited the auditor's responsibility to "express[ing] an opinion on this schedule based on our audit."

Concur With Comments

F-17 Defined in the Second Agreement. The terminology used in the audit, including the auditor's responsibility, is standard terminology used in revenue audits, and not "merely...".

Attachment 3 Page 8

F-18. "Subject to City Manager approval Operator agrees to develop, install and maintain necessary accounting, operating and administrative controls governing the financial affairs of the Golf Course..." Article 22. Internal Control.

Concur with Comments

F-18 Internal controls were established by Operator after consultation with independent auditor beginning in January 1994 and updated in March 1999. These controls were delivered to the City's Project Manager and to the independent auditor that audits the revenue.

Attachment 3 Page/Paragraph 8/22
Attachment 4 Page 1-2
Attachment 5 Page 1-5

F-19. There is no indication that the Operator ever drafted and submitted the necessary accounting, operating and administrative controls governing the financial affairs of the Golf Course to the City.

Disagree

F-19 See response to F-18.

F-20. There is no indication that the City Manager or his designated Project Manager ever received a written internal control plan or ever approved one.

Disagree

F-20 Written internal controls were prepared and provided to the Project Manager and independent auditor by Operator for each Agreement. These internal control plans were accepted and utilized by the Project Manager in the oversight and management of the Agreements.

Attachment 4 Page 1-2
Attachment 5 Page 1-5

F-21. A cursory examination on site revealed a serious lack of internal controls at River Ridge.

Disagree

F-21 The City's in depth examination, in fact, determined internal controls were established in writing by Operator after consultation with independent auditor beginning in January 1994 and updated in March 1999 (Attachment 5). These controls are maintained on a daily basis and are reviewed with each revenue audit. The checks and balances outlined in the controls protect the assets of the golf course, Operator and the City.

Attachment 4 Page 1-2
Attachment 5 Page 1-5

F-22. "City or its authorized auditors and representatives shall have access to and the right to audit and reproduce any of Operator's records related to gross receipts and expenses, to the extent the City deems necessary to ensure City is receiving all monies to which City is entitled...or for other purposes relating to this Agreement." Article 24.a. Inspection of Records.

Concur

Attachment 3 Page/Paragraph 8/24a

F-23. The City has never audited or had audited the Operator's records related to gross receipts and expenses to ensure that the City is receiving all monies to which it is entitled.

Disagree

F-23 The City's requirement for an independent audit of revenue has been satisfied annually, and the City is satisfied that that all monies to which it is entitled are received as required. Operator has performed only revenue audits per the Original Agreement. The City and Operator intend to amend the Second Agreement to reflect this practice by January 1, 2004.

Attachment 6 Page 1-4
Attachment 2 Page 9

F-24. A partial examination of High Tide financial records, relative to Golf Course operations, disclosed that from a formal accounting standpoint, certain practices can be characterized as inaccurate and undisciplined bookkeeping.

Disagree

F-24 The Grand Jury did not provide factual data to substantiate their finding of the practices it considered inaccurate or undisciplined based on their "partial" examination. Therefore, the City cannot comment in detail on this finding. However, the

City has determined that Operator maintains accurate records and bookkeeping practices utilizing modern accounting software and procedures. These practices have been audited and accepted by independent certified public accountants, the State Board of Equalization and the Internal Revenue Service.

Attachment 6 Page 1-4

The "Joint Account" Banking Provisions

F-25. Both the Original Agreement and Second Agreement state that Operator is an Independent Contractor and not an agent of the City (except as the City may specify in writing).

Concur

Attachment 2 Page/Paragraph 21/57
Attachment 3 Page/Paragraph 14/52

F-26. Under both the Original Agreement and the Second Agreement the Operator was required to "establish in the name of the City and the Operator, jointly, such bank accounts as required for the operation, maintenance and management of the Golf Course..."

Concur

Attachment 2 Page/Paragraph 9/24
Attachment 3 Page/Paragraph 8/23

F-27. When it was recognized by the City that the Agreement's "joint accounts" arrangement was improper, as between a municipality and a private corporation, the City entered into a letter agreement appointing High Tide the agent and/or partner of the City for management of the Golf Course and its operations.

Disagree

F-27 There was never a joint account. See F-32. Conversely, both agreements provided that the collection of funds was the responsibility of the Operator. Operator established a bank account in its own name on October 1, 1993 with Ventura County National Bank, now known as City National Bank.

The agreements provided that Operator did not act as the City's agent, "except as City may specify in writing" (Original Agreement section 57; Second Agreement section 52). By letter dated February 7, 1994, the City Treasurer notified the Ventura County National Bank, where Operator maintained a golf course bank account, that the City conveyed to Operator "the right to act as agent for the River Ridge Golf Club which is owned by the City" and to accept checks in the name of the golf course; and that the title of the account should be the name of Operator "as agent for River Ridge Golf Club or River Ridge Golf Course."

Attachment 19 Page 1

F-28. By letter dated November 30, 1993, High Tide and Green Grass, Inc. (soon to be the Operator) informed its bank that it was in "a partnership with the City of Oxnard to manage...the River Ridge Golf Club..." and agreed to "provide [the City] complete access to any and all activity involving [its] corporate accounts..."

Concur

Attachment 13 Page 1
Attachment 12 Page 1

F-29. In the November 30, 1993 letter High Tide also stated "this letter serves as notice that our company authorizes Ms. Belcher [then City Treasurer] to suspend financial activity in our accounts."

Concur

Attachment 13 Page 1
Attachment 12 Page 1

F-30. By letter dated February 7, 1994 the City Treasurer informed Operator's bank that the City had "conveyed to [Operator] the right to act as the City's agent for the River Ridge Golf Club..." and that the City agreed that the title of the account would be "High Tide & Green Grass, Inc. as agent for River Ridge Golf Club and River Ridge Golf Course."

Concur with Comments

F-30 Operator was appointed agent for the limited purpose of accepting checks as River Ridge Golf Club and River Ridge Golf Course. No other agency was authorized in this letter.

Attachment 11 Page 1
Attachment 12 Page 1

F.31. By its letter dated February 7, 1994 the City Treasurer also provided that the letter gave Operator "the ability to accept checks as River Ridge Golf Club or River Ridge Golf Course."

Concur with Comments

F-31 See response to F-30.

Attachment 11 Page 1
Attachment 12 Page 1

F-32. Article 10 of the Second Agreement provides for deposit of all Golf Course revenues in "the joint account established for the City and Operator."

Concur With Comments

F-32 Language from the Original Agreement was changed from "established jointly" to "joint accounts". The City and Operator intend to amend the Second Agreement to reflect this practice by January 1, 2004. There was never a joint account

between the City and Operator. The distinction between an "account established jointly" and a "joint account" is significant. A "joint account", by bank definition, is an account with multiple owners, each owner as signer, and each owner with the ability to transact on the account. An "account established jointly" was intended to be an account with parameters meeting the needs of the City and Operator. The account established jointly was designed to:

A. Provide transaction capability to Operator (and designees). Operator (designees) is signer on the account.
B. Provide the City the authority to receive information on the account from the bank.
C. Provide the City the authority to terminate activity on the account.

Attachment 3 Page/Paragraph 5/10a
Attachment 19 Page 1

F-33. The City plays no role in reconciling the "joint accounts."

Disagree

F-33 There was never a joint account. See response to F-32.

F-34. The City has never written a check on the "joint accounts."

Concur with Comments

F-34 There was never a joint account. See response to F-32.

F-35. There is no evidence that a true "joint account" exists or has ever existed.

Concur with Comments

F-35 There was never a joint account. See response to F-32.

F-36. High Tide maintains two River Ridge accounts; one for Golf Course revenue and one for restaurant and restaurant related revenue.

Concur

Attachment 8 Page 1

F-37. High Tide has stated that all Golf Course revenue, except golf lesson fees, is deposited in Operator's River Ridge "joint accounts."

Disagree

F-37 Operator does not recall making that statement.

Attachment 3 Page/Paragraph 5/10a

F-38. High Tide controls the River Ridge revenue "joint accounts."

Disagree

F-38 There was never a joint account. See response to F-32.

Revenue Management

F-39. Under the Second Agreement High Tide is to collect "all revenues from the operation of the Golf Course and deposit such revenues into the joint account..."

Concur with Comments

F-39 There was never a joint account. See response to F-32. Operator collects all revenue from the operation of the golf club and deposits such revenue into the Operator's account.

F-40. The Second Agreement requires High Tide to submit an Annual Business Plan that includes a Facilities Maintenance Plan and a Marketing Plan.

Concur with Comments

F-40 Operator submits an Annual Business Plan including a Facilities Maintenance and Marketing Plan to the City's Project Manager by April 1st of each year.

Attachment 3 Page/Paragraph 4/4b

F-41. The Agreement also requires the annual submission of an Operations Budget and a Capital Improvements Budget in conjunction with the Annual Business Plan.

Concur with Comments

F-41 The Annual Business Plan includes Operations and Capital Improvements budgets.

Attachment 3 Page/Paragraph 6/16a

F-42. Under the Second Agreement the City is to pay High Tide a "minimum yearly amount" from which High Tide is to receive "minimum monthly payments" out of which it must pay all expenses incurred to operate the Golf Course.

Concur with Comments

F-42 In practice, Operator submits an annual budget to City Council for approval. Once approved, the City pays Operator the minimum yearly amount contained in the budget. In practice, Operator pays expenses incurred from revenues received and provides a monthly statement to the City's Project Manager and Finance Director reflecting these expenditures.

Attachment 3 Page/Paragraph 5/10a

F-43. The "minimum yearly amount" is to be called out in the Annual Business Plan submitted by High Tide to the City Manager and approved by the City Council.

Concur with Comments

F-43 See response to F-42.

Attachment 3 Page/Paragraph 5/10b

F-44. In practice the Operations Budget is submitted as part of the annual budget of the Parks and Facilities Division of Public Works for approval by City Council.

Concur with Comments

F-44 See response to F-42. For example, most recently, the budget was approved and adopted on July 8, 2003.

F-45. In practice a "minimum yearly amount" is not called out in the Annual Business Plan. The Operations Budget submitted by High Tide is treated as the "minimum yearly amount."

Concur with Comments

F-45 See response to F-42.

F-46. In practice the City does not pay High Tide the "yearly minimum amount" since all City Golf Course revenue, except golf lesson fees, is kept in the High Tide corporate "joint accounts."

Concur with Comments

F-46 There was never a joint account. See response to F-32 and F-42.

F-47. The Second Agreement provides that High Tide pay itself the "minimum monthly amount" from the "joint account" into which the City, presumably, would have paid the "minimum yearly amount."

Concur with Comments

F-47 There was never a joint account. See response to F-32 and F-42.

F-48. In practice High Tide pays its operating expenses as they arise and as are necessary directly from the "joint accounts."

Concur with Comments

F-48 There was never a joint account. See response to F-32 and F-42.

F-49. Under the wording of the Second Agreement these budgets are merely intended as reasonable estimates.

Concur with Comments

F-49 The City takes exception to the word "merely". Under the wording of the Second Agreement these budgets (as in all budgets prepared in government or the private sector) represent, in the best judgment of the Operator (preparer) and City (reviewer), a reasonable and considered estimate of expenses and revenues for the future.

Attachment 3 Page/Paragraph 7/19a, b

F-50. The Second Agreement further provides that High Tide make "no guarantee, warranty or representation whatsoever in connection with the budgets..." and may reallocate money within the budgets.

Concur

Attachment 3 Page/Paragraph 7/19b

F-51. There have been under-runs of the Operating Budget.

Concur

F-52. The City states that budget amounts resulting from under-runs remain as City revenue in the River Ridge "joint accounts" under an oral agreement between the parties.

Concur with Comments

F-52 There was never a joint account. See response to F-32.

F-53. High Tide states that though the budget amounts resulting from under-runs remained as City revenue under the Original Agreement, under the Second Agreement such money is taken as profit by High Tide.

Concur with Comments

F-53 Operator recalls stating to the Grand Jury that Operator agreed that under-runs would be treated the same as revenue over the minimum base revenue; that is, the under-runs would become part of the profit share between the City and Operator. The City Finance Director stated to the negotiating team that the approved budget was what would be paid to Operator and that under-runs were Operator's money under the Original Agreement. While not obligated to do so, Operator included under-runs in the profit sharing calculations during the term of the Original Agreement. With the implementation of the Second Agreement, Operator retains the under-runs.

Attachment 3 Page 39-40

City Treasurer's Management Re: River Ridge Revenue

F-54. By its letter of February 7, 1994 the then City Treasurer, apparently in accordance with Article 52 of the Second Agreement, appointed High Tide an agent for the City for the limited purpose of operating River Ridge.

Disagree

F-54 The letter of February 7, 1994 precedes the Second Agreement by more than four years and therefore was not in accordance with Article 52 of the Second Agreement, which was executed in 1998. Operator was appointed agent for the limited purpose of accepting checks as River Ridge Golf Club and River Ridge Golf Course. No other agency was authorized in this letter.

Attachment 3 Page/Paragraph 14/52
Attachment 11 Page 1

F-55. The Treasurer's letter of February 7, 1994 specifically extended the agency appointment to the collection of money for the City in connection with River Ridge operations.

Concur

Attachment 11 Page 1
Attachment 12 Page 1

F-56. High Tide and Green Grass collected money at River Ridge as the agent of the City.

Disagree

F-56 Operator is not an agent of the City. Operator is an agent for the River Ridge Golf Club, which is owned by the City.

Attachment 3 Page/Paragraph 14/52
Attachment 11 Page 1
Attachment 12 Page 1
Attachment 19 Page 1

F-57. It appears to the Grand Jury that under California law local agencies may not delegate the power to control or supervise municipal corporation money to a private person or body. See, Attachment B.

Disagree

F-57 The Grand Jury erred in citing this Government Code. Section 11 of Article 11 of the California Constitution concerns the powers of the State Legislature, not the powers of local agencies.

Attachment 15 Page 1

F-58. Under California law local agencies may deposit money in specified classes of banking, lending and investment businesses but only in accordance with stringent controls set forth in the Government and Finance Codes. See, Attachment C.

Concur with Comment

F-58 Attachment C does not refer to the Finance Code. Additionally, California Government Code for local agencies does not apply to the account held by Operator.

Attachment 16 Page 1

F-59. The Government Code requires that "Any officer or employee collecting or receiving any money belonging to,..., the city shall deposit it immediately in the treasury in the manner prescribed by the ordinance for the benefit of the funds to which it belongs..." See, Attachment D.

Concur with Comments

F-59 The City complies with California Government Code in all respects with regard to its collection of City revenues. In reference to Operator, see response to F-56.

Attachment 17 Page 1

F-60. The Government Code provides that "The city treasurer shall receive and safely keep all money coming into his hands as treasurer."

Concur with Comments

F-60 See response to F-59.

F-61. The Government Code provides that "He [the treasurer] shall comply with all laws governing the deposit and securing of public funds...in his possession."

Concur with Comments

F-61 See response to F-59.

F-62. The California Government Code provides that "He [the treasurer] shall pay out money only on warrants signed by legally designated persons."

Concur with Comments

F-62 See response to F-59.

F-63. Sections of the Government Code referred to above are internal controls mandated by State law to protect the assets of the State and local agencies.

Concur with Comments

F-63 See response to F-58.

F-64. California law provides that "An officer or employee of a local agency who deposits money belonging to, or in the custody of, the local agency in any other manner than prescribed in this article is subject to forfeiture of his office or employment." Government Code 53681.

Concur with Comments

F-64 See response to F-58.

Payment of Percentage of "Gross Receipts"

F-65. In addition to the "yearly minimum amount" to be paid to High Tide, the City is obligated to pay High Tide a percentage of the "annual gross receipts...as described in Exhibit C,..." to the Second Agreement.

Concur

Attachment 3 Page/Paragraph 5/10c
Attachment 3 Page 39-40

F-66. Exhibit C defines "gross receipts" and establishes "Minimum Base Revenues" for ten years beginning July 1, 1999.

Concur

Attachment 3 Page 39-40

F-67. "Gross receipts" as defined in Exhibit C is different than "all revenues from the operation of the golf course..."

Concur with Comments

F-67 The Grand Jury makes no reference to "all revenues from the operation of the golf course," so the City cannot evaluate this finding. However, both Gross Receipts and Base Revenue are defined in Exhibit C.

Attachment 3 Page 39-40

F-68. "Base Revenue" is defined in Exhibit C as "the Gross Receipts derived from all Golf Course operations except receipts from golf lessons."

Concur

Attachment 3 Page 39-40

F-69. The amount of the Gross Receipts to be paid to High Tide, in addition to the "minimum yearly amount," is determined by a percentage to the extent to which "Base Revenue" exceeds that stated "Minimum Base Revenue" for the year in which the payment is to be made.

Concur

Attachment 3 Page 39-40

F-70. In practice, rather than the City paying High Tide its Exhibit C "profit share" as required under the Agreement, High Tide pays the City's share of Exhibit C money to the City out of the High Tide corporate "joint accounts" in a highly publicized ceremony.

Disagree

F-70 The respective compensation of Operator and City is calculated at the end of each fiscal year after completion of the independent audit pursuant to Exhibit C of the Second Agreement. The City does not publicize Operator's annual comprehensive review of golf course operations to City Council except as a part of the City Council agenda. There was never a joint account. See response to F-32.

Attachment 3 Page/Paragraph 5/10a
Attachment 3 Page 39-40

F-71. The percentage of excess "Base Revenue" to be paid is inversely scaled starting at fifty percent (50%) of any excess between $1 and $300,000 and ending at twenty-five percent (25%) for such excess over $400,000.

Concur

Attachment 3 Page 39-40

F-72. The "profit sharing" provisions of Exhibit C are apparently calculated at times other than provided for in the Agreement (end of the "Period," the Fiscal year) and are recorded as "Salaries, Wages and Benefits" on the City's books.

Disagree

F-72 The profit sharing calculations are completed after the completion of the fiscal year independent audit to verify the actual revenue.

Attachment 3 Page 39-40

F-73. Under Exhibit C payment to High Tide under Gross Receipts percentage provisions shall not exceed the "minimum yearly amount," apparently referred to in Exhibit C as "the minimum period amount provided for in the Business Plan."

Concur

Attachment 3 Page 39-40

River Ridge Bond Financing & Debt

F-74. In 1984 the City issued $11,890,000.00 in Leasehold Mortgage Revenue Bonds for construction of River Ridge for which the Golf Course was posted as collateral.

Concur

F-75. In 1988 the debt created in 1984 to build the Golf Course was refinanced at a cost of $16,422,541.34 used to refund bondholders of the original debt issuance in order to reduce interest on the debt and change the call date. The Golf Course remained as collateral for the debt.

Concur with Comments

F-75 The cost of the refinancing was $14,920,000. Total sources of funds and total uses of funds each totaled $16,422,541.34.

F-76. For various reasons, at the time of the issuance of the "Refunding Bonds" in 1988 only a nominal amount of the principal had been paid ($65,000.00).

Concur

F-77. In 1993 the River Ridge debt, along with other outstanding bond issues of the City, was again refinanced with Lease Revenue Refunding Bonds in the amount of $31,565,000.00, of which $15,795,000.00 was related to Refunding Bonds.

Concur

F-78. Under the second refunding debt issue in 1993 the Golf Course was no longer pledged as collateral. The collateral for the 1993 refinancing was the City Hall and other City assets.

Concur

F-79. As of October 2002 there remains $11,870,000.00 in debt remaining related to River Ridge. This is an obligation of the general fund of the City and not the Golf Course.

Concur

F-80. The original projections of the City for sources of repayment of the Golf Course construction debt were excessively optimistic and never realized.

Disagree

F-80 The City did not anticipate that golf course revenues alone would be sufficient to pay the golf course construction debt. At the time of development of the golf course, other sources of revenue to offset the debt were addressed as outlined in the City Council agenda report of October 27, 1987 (Attachment 18).

Attachment 18 Page 5, 6

F-81. The City considers River Ridge a recreational resource and part of the City's open space and as such is not expected to repay the bonds with River Ridge revenue.

Disagree

F-81 While River Ridge Golf Club is considered to be a recreational resource and part of the City's open space, its revenues exceed operational cost. Any net revenues received from the operation of the golf course contribute to but are not expected to completely repay the construction debt. There is nothing which prohibits this action. Refer to response to F-80.

Attachment 18 Page 5, 6

F-82. The City's general fund has contributed toward the debt service originally incurred for construction of the Golf Course though Golf Course operation's revenues contribute approximately $400,000.00 annually to the general fund.

Concur with Comments

F-82 The City's general fund contributes toward the debt service originally incurred for the construction of the golf course. The golf course operation's net operating revenues provided to the City have been approximately $400,000 annually.

F-83. The interest on the debt remaining attributable to River Ridge construction is approximately $500,000.00 annually.

Disagree

F-83 Interest and principal are fully amortized over the life of the bonds, meaning that the annual payment is generally the same but the interest portion and principal portion vary each year.

Selected Contract Deficiencies

F-84. The provisions for the maintenance of and for the conduct of operations from the "Joint Account" appear to the Grand Jury to be contrary to State law.

Disagree

F-84 There was never a joint account. See response to F-32.

F-85. There is no contractual provision that establishes ownership of the money resulting from under-runs of the Operating and Capital Investment Budgets.

Concur with Comments

F-85 See response to F-53.

F-86. Operator is contractually absolved of accountability for the budgets it presents to the City but takes the under-runs from those budgets as profit.

Disagree

F-86 Operator is not contractually absolved from responsibility for the budget. Operator submits a budget on a yearly basis, which budget is examined and approved by City Council. Thereafter, if previously unanticipated expenses arise, Operator may request adjustments from the City Manager, who may, but is not required to, increase the budget by up to three percent. On a monthly basis, Operator submits to the City Manager a statement showing budgeted and actual expenditures.

There is no provision in the Second Agreement which requires the City to pay to Operator amounts greater than set forth in the budget in the Annual Business Plan, except to the extent that revenue exceeds the Minimum Base Revenue set forth in Exhibit C.

Operator is required to operate a first class golf course facility as provided in paragraph 9. City has the right to terminate the agreement if the budget is not reasonable and if the golf course is not operated as a first class facility, as provided in the Second Agreement, see, e.g. paragraphs 43-45.

Attachment 3 Page 4, 12, 39, 40

F-87. Unlike the Original Agreement, there is no Termination for the Convenience of the City in the Second Agreement.

Concur

Attachment 2 Page 18

F-88. The Dispute Resolution Procedure Article provides that the city and High Tide will "request the Presiding Judge...to provide a list of names..." as the initial act for the process of selection of an arbitrator for an unresolved dispute and does not delineate governing procedure or restrict venue.

Concur

Attachment 3 Page/Paragraph 12/44

F-89. Though the Second Agreement requires the Operator to maintain appropriate books and records and to set up internal controls, the agreement does not specifically provide the City with the right to access, examine and copy those books and records in such detail that the City could, if moved to do so, appropriately audit those books and records.

Disagree

F-89 Paragraph 24a provides the City with the ability to access, examine and copy any of Operator's records.

Attachment 3 Page/Paragraph 8/24a

F-90. There is no provision for excluding golf lesson fees from Golf Course revenue to be deposited in the so-called "Joint Account."

Disagree

F-90 River Ridge Golf Club revenue is defined as "Base Revenue," which "shall mean the Gross Receipts derived from all golf course operations except receipts from golf lessons." There was never a joint account. See response to F-32.

Attachment 3 Page 39-40

F-91. There are no provisions for the exceptional administration and accounting practices presently utilized under oral agreement for special events, tournaments and the like.

Disagree

F-91 Provisions are contained in the letter dated January 29, 1996 from Operator to the City's Project Manager. These provisions are reconfirmed in writing each year by the Project Manager as a part of the independent audit.

Attachment 3 Page/Paragraph 10, 7/33b, 20
Attachment 9 Page 1
Attachment 10 Page 1

Conclusions

C-1. The Agreement's extension provisions shield the venture from competition. (F-2, 3, 5, 6, 8, 10)

C-1 The intent of the Second Agreement was to establish a long-term relationship. Both the City and Operator understood that the development of the River Ridge Golf Club to achieve its potential as a top quality facility was a lengthy process. In order to develop relationships with the community and the facility users, that process required continuity in the River Ridge Golf Club operation. At the end of the ten-year period the City has the option, if the City is satisfied with Operator's performance, to enter into negotiations with Operator (if Operator desires to do so) for another ten-year period.

C-2. Under current "lock-in" provisions, there is only one very unlikely possibility that the Operator will not have the absolute right, subject only to good faith negotiation, to become the manager of the Golf Course should it be expanded and that is if a third party pays for the entire construction of the added 18 holes and claims the right to operate, maintain and manage the completed Golf Course. (F-5-8)

C-2 The City disagrees with Grand Jury Finding F-8. The City also disagrees that there are any "lock-in" provisions in the Second Agreement, which is a performance-based contract. The City agrees that the intent was to retain Operator to manage any expansion of the River Ridge Golf Club should it materialize within the ten year time frame outlined by the Second Agreement "subject to good faith negotiation". See response to F-8.

C-3. Independent Auditor's Reports accepted by the City are not in accordance with Article 21 of the Agreement, cited above, in that they do not constitute an audit of the financial statements of High Tide and do not include a statement that "the financial statements were prepared in compliance with generally accepted accounting principles." (F-15-17)

C-3 The City concurs with comments F-15 and F-17 of the Grand Jury. The independent auditor's reports ensure revenue is reported in accordance with generally accepted accounting principles. The revenue is the only portion of the financial statement that is of concern to the City. Operator's planned expenditures are examined in publicly noticed meetings during the budget process. See response to F-15 and F-17.

C-4. The recording of "profit sharing" on the City's records as "Salaries, Wages and Benefits" is improper in that it does not with reasonable accuracy reflect the underlying transaction. (F-12, 13, 15)

C-4 The City disagrees with the Grand Jury's conclusion. The City records golf course profit sharing under golf course revenue account number 651-6401-615-7751.

C-5. The absence of an independent audit as required by the Agreement has potentially permitted undisciplined accounting practices and procedures. (F-16, 17, 23)

C-5 The City disagrees with the Grand Jury's conclusion. There are independent auditor's reports that ensure revenue is reported in accordance with generally accepted accounting principles. The independent auditor's reports and findings ensure the financial reports meet professional standards.

C-6. There are no written internal controls, approved or otherwise, for High Tide Golf Course operations that would permit and facilitate an efficient audit of those operations. (F-18-21)

C-6 The City disagrees with the Grand Jury's conclusion. Internal controls were prepared by Operator and the independent auditor with each agreement. These controls facilitate an efficient audit of revenue on an annual basis. See response to F-21.

C-7. Lack of a City approved written internal financial control as required by the Agreement has exposed the system to potential manipulation and would inhibit the performance of any compliance audit. (F-18-21, 23)

C-7 The City disagrees with the Grand Jury's conclusion. See response to C-5 and C-6.

C-8. The Agreement's financial accounting processes are unduly vague and arcane. (F-14-17, 22, 23)

C-8 The City disagrees with Grand Jury's conclusion. The Second Agreement's financial accounting procedures are open and automated, and employ modern accounting software. The independent auditor had no concerns or problems with the accounting processes, nor did the independent auditor arrive at the same conclusion as the Grand Jury.

C-9. The City has not retained or assured adequate audit rights. (F-19-21, 23, 57, 62)

C-9 The City disagrees with the conclusion of the Grand Jury. The City disagrees with F19-21 and F-23, which are the basis for conclusion C-9.

C-10. The City has not adequately exercised such audit rights as it possesses. (F-22,23, 33, 34, 38)

C-10 The City disagrees with the conclusion of the Grand Jury. The City has already commented on its disagreement with Grand Jury's finding F-23, which is apparently the basis of the Grand Jury's conclusion. The City has adequately protected its financial interest by receiving an annual revenue audit as previously stated.

C-11. Revenue from Golf Course operations is the City's money. (F-25-32, 37, 45, 46, 51-55, 67-70)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

C-12. It appears to the Grand Jury that the Agreement to deposit the City's revenue from the operation of River Ridge Golf Course into the corporate accounts of High Tide is improper under California Law. (F-25-32, 38, 53, 54, 57-60, 62, 63)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

C-13. The Agreement's provision for a "joint accounts" has never been revised and, though improper, is not followed. (F27-30, 34, 37, 47, 48)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

With regard to C-13, the City disagrees with the conclusion of the Grand Jury for the reasons stated in the City's comments to F-27 and F-32.

C-14. Money in the hands of the City's agent for collection of money is in the hands of the City. (F-26-32, 38, 47, 53-56, 69)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

C-15. Permitting High Tides to operate its financial business with City money deposited in its corporate accounts appears to the Grand Jury to be improper under California law, contrary to the provisions of the Agreement and avoids reasonable and mandated internal controls over City money. (F-28-33, 45, 47-49, 54, 56-58, 60, 63)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

C-16. Permitting High Tide to pay itself and its creditors City money in its operation of River Ridge appears to the Grand Jury to be contrary to the internal controls for the deposit and disbursement of City funds mandated by California law. (F-12, 23, 26, 29, 31, 54-63)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

C-17. With respect to the deposit of City funds by the City's agent it appears to the Grand Jury that the City Treasurer has not complied with the requirements of California law as described above. (F-26, 30, 31, 38, 47, 57, 58-60, 62)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

C-18. In the case of the bank deposit of City funds by the City's agent it appears to the Grand Jury that the City may not now and may never have been in compliance with California law with respect to the collection and deposit of its money relative to the operation of River Ridge. (F-25-27, 29, 30, 32, 37, 38, 45, 47, 56-60, 62)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

C-19. In the opinion of the Grand Jury the City has circumvented the internal controls mandated by the Government and Finance Codes. (F-20, 23, 25-27, 29-34, 37, 38, 45-47, 54, 55, 57-60, 62)

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

C-20. In the opinion of the Grand Jury, responsible officials with the City have not properly carried out their fiduciary duties with respect to their financial management and the accountability of the River Ridge Golf Course. (F-10, 16, 20, 21, 23, 26, 27, 29-32, 44, 50, 52, 53, 54-56, 57-63)

C-11 through C-20

The City disagrees with the conclusions of the Grand Jury contained in Conclusions C-11 through C-20. Because those conclusions concern the same issues, City comments following C-20 pertain to all those conclusions.

As stated in the City's comments concerning some other items in the Grand Jury's report (e.g., F-27 and F-32), the "joint account" referred to in the Second Agreement was never opened. The only bank accounts into which revenues from the operation of the golf course were deposited and expenses for operation of the golf course were paid were in Operator's name alone. See Attachment 19.

Both agreements required Operator "to manage the day-to-day financial affairs of the Golf Course" (Original Agreement and Second Agreement section 15); to establish "bank accounts as required for the operation, maintenance and management of the Golf Course" (Original Agreement section 24; Second Agreement section 23); and to exercise certain "management prerogatives," including "the collection of proceeds, the incurring of trade debts, the approval and payment of checks and the negotiating and signing of licenses and contracts" (Original Agreement section 35; Second Agreement section 33).

The agreements provided that Operator did not act as the City's agent, "except as City may specify in writing" (Original Agreement section 57; Second Agreement section 52). By letter dated February 7, 1994, the City Treasurer notified the Ventura County National Bank, where Operator maintained a golf course bank account, that the City conveyed to Operator "the right to act as agent for the River Ridge Golf Club which is owned by the City" and to accept checks in the name of the golf course; and that the title of the account should be the name of Operator "as agent for River Ridge Golf Club or River Ridge Golf Course."

Money derived from the operation of the golf course, collected by Operator and deposited in Operator's golf course bank accounts was not at that point money to which the City was entitled. Section 10 of the agreements required the City to pay Operator for Operator's services. As the Grand Jury noted (e.g., F-46, F-47 and F-70), Operator deducted payments for Operator's services from money that Operator collected from golf course operations and deposited in Operator's golf course bank accounts. Annually, Operator paid the City as called for in the agreements, by writing a check to the City on Operator's golf course bank accounts. The City Treasurer deposited that check in City bank accounts, to which Operator was not a party.

Based on the foregoing background, the City disagrees with statements in C-11, C-12, C-15, C-16, C-17 and C-18 that characterize money in Operator's golf course bank accounts as "City money" or "City funds" and revenue from golf course operations as "City revenue." For the same reasons, the City disagrees with the statement in C-14 (see also the City's response to F-56).

Further, based on the foregoing background, the City disagrees with statements and implications in C-12, C-15, C-16, C-17, C-18, C-19 and C-20 that the City violated sections of the Government Code set out in Attachments C and D to the Grand Jury report and sections of the Financial Code that the Grand Jury did not identify. The Government Code sections concern money collected, received, possessed, in the hands of, or deposited by officers or employees of the City, including the City Treasurer. With regard to the agreements in question, such statutes do not apply to money derived from golf course operations while such money is in the hands of Operator, which is not a City officer or employee. When Operator makes the annual payment to the City pursuant to the agreements, that payment comes into the hands of the City Treasurer and is subject to the statutes in question.

If the conclusions under discussion also rely on the provision of the California Constitution set out in Attachment B to the Grand Jury report, the City has previously commented (see response to F-57) that such provision is a restriction on the powers of the State Legislature, not on the powers of local agencies, and does not prohibit the financial arrangements between the City and Operator contained in the Agreements.

C-21. Public bond financing of River Ridge, though not improper, has been presented to the public in such a way as to obscure the true cost of River Ridge. (F-69, 77-80)

C-21 The City disagrees with the Grand Jury's conclusion. The bonds have been refunded and refinanced on occasion to take advantage of favorable interest rates and markets and have been considered and approved by the City Council during duly noticed public meetings.

C-22. Profit accounting processes and the City's presentation of them to the public mislead the public with respect to the "profitability" of River Ridge. (F-69, 77-80)

C-22 The City disagrees with the Grand Jury's conclusion. The primary purpose of the River Ridge Golf Club is to serve as a community recreational asset, not to make a profit. Operator's annual presentation to the City Council is a status report on the River Ridge Golf Club and includes an account of the net operating revenues from the River Ridge Golf Club. In addition, information regarding the financial operations and bonded indebtedness related to the golf course are available in the annual budgets for the City and the Comprehensive Annual Financial Report (CAFR).

C-23. The City's and High Tide's divergent statements with respect to the disposition of amounts resulting from budget under-runs further indicates that neither the City nor High Tide understands or adequately controls the revenue stream. (F-23, 52, 53)

C-23 The City disagrees with the conclusion of the Grand Jury. The City believes that through the independent audit, option to review bank statements, approval of the River Ridge Golf Club budget, Operator's books and records, and the City's procedural controls, the City's interest in the revenue stream is adequately protected. The divergent statements derive from the reference to the Original Agreement and the Second Agreement. Under the Original Agreement, Operator agreed to add budget under-runs to the profit share formula even though Operator was not obliged to do so. This practice was discussed during negotiation of the Second Agreement and both parties understood that Operator would no longer add budget under-runs to the profit share.

C-24. The Agreement to manage River Ridge is severely contractually deficient in many respects. (F-84-91)

C-24 The City disagrees with the Grand Jury conclusion for reasons previously stated.

C-25. The Agreement to manage River Ridge lacks a Termination for Convenience Article. (F-10, 87)

C-25 The City agrees with the Grand Jury's conclusion. The City decided during the development of the Second Agreement to eliminate the Termination for Convenience provision. In the City's and Operator's judgment, a termination for convenience provision was unnecessary. Further, the City has several other provisions in the Second Agreement that would allow the City to terminate the Agreement with Operator for cause. Those provisions protect the City should the City desire to remove Operator for poor performance.

C-26. The Dispute Resolution Procedure Article is deficient in that the method set forth may not be effective because there is no explicit authority for the Superior Court to appoint an arbitrator or arbitrators except on petition under certain defined statutory circumstances and then in accordance with procedural rules set forth at Code Civ. Proc., Section 1281.6. (F-88)

C-26 The City disagrees with the Grand Jury's conclusion. The dispute resolution procedure conforms to standard and customary practice in agreements of this kind and adequately protects the City.

C-27. The Dispute Resolution Procedure Article also is deficient in that contrary to good contracting practice it does not provide guidance with respect to what procedural rules will be used in any arbitration nor does it prescribe the venue for resolution of the dispute. (F-88)

C-27 The City disagrees with the Grand Jury's conclusion. The dispute resolution procedure article conforms to standard and customary practice in agreements of this kind and adequately protects the City.

Recommendations:

R-1. That the City immediately retains Outside Counsel expert in government contracting and procurement to assist it in reforming and renegotiating the present Agreement to ensure that it is in conformity with California law and good business practice.

R-1 Except as noted in the City's responses to F-15 and F-32, the City is satisfied with the Second Agreement. The City is also satisfied with the performance of Operator under the Second Agreement. The City disagrees that either the Original Agreement or the Second Agreement violates California law (see responses to C-11 through C-20) or good business practices.

R-2. That the City Treasurer, pending reforming of the River Ridge Agreement, take immediate action to close the "Joint Accounts" and set policies to collect and preserve City revenue in according with California Law.

R-2 There was never a joint account (see response to F-32). Neither the Original Agreement nor the Second Agreement violates California law (see responses to C-11 through C-20).

R-3. That the City initiate discussions with High Tide & Green Grass, Inc. with a view to reforming the River Ridge management contract.

R-3 The City and Operator intend to amend the Second Agreement as stated in the City's comments to F-15 and F-23.

R-4. That the City review and revise its representation to the public of River Ridge Golf Course as a profitable City venture and disclose to the public, in understandable terms, the true cost of the Golf Course to include bond debt service attributable to the construction of the Golf Course.

R-4 The City Council on many occasions at public meetings have received staff reports that accurately reflect that operational revenues exceed operational expenses for the golf course. City staff has also on several occasions at public meetings, reported to City Council the bonded indebtedness on the golf course and will continue until 2016. Information regarding the financial operations and bonded indebtedness related to the

golf course are also available to the public in the annual budgets for the City and the Comprehensive Annual Financial Report (CAFR).

At City Council direction, staff will prepare a comprehensive report for presentation at a public meeting clarifying the issues relating to the golf course revenues and bond indebtedness.

R-5. That the City Manager assign a highly qualified and experienced Contract Administrator as Project Manager to oversee the administration of the River Ridge Agreement and any successor agreement.

R-5 The Second Agreement is managed by the City's Superintendent of Parks and Facilities. He is knowledgeable regarding the care, maintenance, and operation of all of the City parks and River Ridge Golf Club. He has seventeen years of experience in golf course operations in Oxnard and Chicago. His undergraduate degree is in Forestry and Wildlife Management, and his master's degree is in Forestry. Additionally, he is a Class A member of the Golf Course Superintendents of America. Through that organization, he maintains his expertise in the dynamic field of golf course management. Further, he is a Certified Parks and Recreational Professional through the National Recreation and Parks Association. The City is confident that he is both qualified and experienced to manage the agreements with Operator. The City will continue to ensure that the Second Agreement and any successor agreements will be overseen and managed by such a qualified individual.

R-6. That the City only proceed with its ongoing plan to expand the River Ridge Golf Course after full disclosure to the public of the probable true cost of the venture including consideration of the affect of increased local competition and falling public participation in the sport.

R-6 The City has commissioned several feasibility analyses that concluded that an expansion of the River Ridge Golf Club was financially viable.

The City in January 2002 entered into an agreement with the developer of the Northwest Community (the expansion of the River Ridge Golf Club). The terms of the agreement, the development itself, and all costs for the financing of the expansion of River Ridge Golf Club were subject to a number of noticed public meetings. During those hearings, a number of citizens participated by giving testimony, pro and con, for the items under discussion. Oxnard's residents are knowledgeable, intelligent and participate in such discussions with interest and concern for their community.

R-7. That the City only proceed with its ongoing plan to expand the River Ridge Golf Course after opening the venture up to competition from other potential managers in addition to High Tide.

R-7 The Second Agreement already has a provision as to how the potential manager of the expanded River Ridge Golf Club is determined. The expansion will result initially in a 27-hole golf course and potentially a 36-hole golf course. The City believes that it is neither practical nor cost effective to manage the existing River Ridge Golf Club as one operation under a management team and the new expansion under another agreement and a new management team. At the end of June 30, 2009, the City has the option, with the concurrence of Operator, to renew the Second Agreement for another 10 years. At that time the City will determine whether to extend the Second Agreement or seek another operator.

R-8. That the City Council require a separate budget presentation to it for its consideration of award of any follow-on River Ridge Golf Course management contract.

R-8 City staff will submit a fiscal impact statement to City Council prior to its consideration of any new River Ridge Golf Club management agreement.

R-9. That the City Council require a separate budget presentation to it for its consideration of all budget approvals for River Ridge Golf Course operations.

R-9 A review of the River Ridge Golf Club operations is included in the annual budget adoption process. As deemed appropriate by the City Council, staff will present a separate budget presentation for the River Ridge Golf Club enterprise fund.

R-10. That the City Council require open competition for award of any follow-on River Ridge Golf Course management contract.

R-10 When the Second Agreement term expires in June, 2009, City Council will evaluate the alternatives available: renew the existing agreement for another ten years; renew the existing agreement for another ten years with renegotiated amendments; or select another Operator through a competitive award process. The City desires to have the best and most cost effective management arrangement for the River Ridge Golf Club that meets the needs of the public.

R-11. That in any contract for management of the River Ridge Golf Course the Operator be made accountable for the budgets presented to the City.

R-11 The City has and will continue to hold Operator to satisfactorily account for the budgets presented to the City.

R-12. That the mechanisms for calculation of profit be reformed so that, for example, profit to whatever entity manages the Golf Course reflects incentive based, fixed and scaled percentages of the net profit of Golf Course operations.

R-12 The Second Agreement calls for a percentage of revenues as outlined in Schedule C.

R-13. That Golf Course audits be thoroughly and rigorously applied.

R-13 The City agrees that the River Ridge Golf Club audits be thoroughly and rigorously applied as in current practice.

R-14. That as a separate and urgent matter the City procure a thorough independent audit of River Ridge operations and accounting to bring the accounting of River Ridge and the City into compliance with GAAP.

R-14 The City complies in all respects with Generally Accepted Accounting Principles (GAAP), and Government Accounting Standards Board (GASB) pronouncements as evidenced by an unqualified opinion ("clean audit") by its auditor KPMG LLP on the City's financial statements. Further, the City has received numerous awards for financial reporting from both the Government Finance Officer's Association (GFOA) and the California Society of Municipal Finance Officers (CSMFO). The City's independent auditors have found no deviations from GAAP with River Ridge Golf Club accounting practices. The City is concerned that, notwithstanding the "clean audit" by the City's auditor, negative perceptions may have been created by the Grand Jury inquiry. The City will conduct, through an independent auditor other than KPMG LLP and any auditor used by Operator, an independent financial audit.

R-15. That any audit performed as recommended at Recommendation R-14 be performed for the City by an auditor other than High Tide's outside auditor in order to avoid any possibility of conflict of interests or the appearance of a conflict of interests.

R-15 The City concurs with this recommendation as outlined in response to R-14.

R-16. In addition to any audit performed as recommended at Recommendation R-14, that the City initiate a thorough review and test of the system of internal controls at High Tide.

R-16 The City concurs with this recommendation as outlined in response to R-14.

Required responses:
Mayor, City of Oxnard (R-1, 3, 4, 6-10, 13-16)
City Council (R-1, 3, 4, 6-10, 13-16)
City Treasurer (R-2, 13-16)
City Manager (R-1, 3, 5, 11, 12-16)