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City Manager

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VENTURA COUNTY SUPERIOR COURT
VENTURA COUNTY GRAND JURY

August 25, 2004

AUG 23 2004

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

OFFICE OF THE
PRESIDING JUDGE

Subject: Response to 2004 Grand Jury Report – City of Oxnard: River Ridge Revisited

Dear Judge Clark:

This letter and the enclosed responses to the findings and recommendations of the Grand Jury Report of June 2, 2004, 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 this opportunity to fully and publicly respond to the Grand Jury's allegations regarding the River Ridge Golf Club.

Unfortunately, the City cannot concur with the majority of the Grand Jury's findings. The Grand Jury is mistaken in its assertion that the accountability for and security of public monies is at risk under the City's agreement with High Tide and Green Grass, Inc., (High Tide) and that this risk can only be mitigated by implementing the Grand Jury's recommendations as laid out in its June 2, 2004, report. Furthermore, it is clear from the Grand Jury's choice of words that it has abandoned objectivity and speaks instead from a biased viewpoint, as evidenced in its unwarranted use of the terms "reputed," "purported," "charade," and "sophistry" as well as its use of unattributed insinuations such as "the appearance to some that it is a 'sweetheart' agreement."

The Grand Jury's finding that other public golf course agreements may be structured differently from the agreement which governs the operation and management of River Ridge Golf Club constitutes evidence of differing approaches, not evidence that the City of Oxnard has failed in any way to protect public funds. Despite the zeal displayed by the Grand Jury in its lengthy review of River Ridge Golf Club and its willingness to opine of "likely" impropriety in the City's stewardship of Golf Club funds, it is notable that the Grand Jury has yet to cite a single statutory violation relating to the City's fiscal practices and contractual relationship with High Tide.

In fact, the City has acted wholly in compliance with California law.

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The City remains satisfied with High Tide's quality of service provided to the public, reported fiscal information, and standard of care exercised in its responsibilities for the long-term physical condition of River Ridge Golf Club. At this time the City declines to implement the Grand Jury's latest recommendations.

The City has been completely forthcoming in its comprehensive responses to the 2003 and 2004 Grand Jury reports on River Ridge Golf Club and has provided clean audit results as performed by independent Certified Public Accountant Moreland and Associates, Inc. in November 2003.

The City prefers to cooperatively bring this issue to a mutually satisfactory conclusion. Should the Grand Jury desire to pursue this matter further, it is invited to commission an independent audit or on-site analysis. The City is confident that any objective study will lay to rest any remaining misperceptions about the River Ridge Golf Club agreement.

Again, thank you for this opportunity to respond.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edmund F. Setelo', with a long horizontal line extending to the right.

Edmund F. Setelo
City Manager

Attachment

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

Findings:

Contract Confusion

In order to assist the Grand Jury in understanding the following responses to the 2004 Grand Jury Report related to the 1993 agreement, the City defines the terminology used as follows:

- The “Correct Agreement” referenced in the City’s responses is the version that was approved in 1993 and utilized by the parties to the agreement, the City and High Tide and Green Grass, Inc. (“High Tide”), in the operation and management of River Ridge Golf Club. The Correct Agreement was ratified by the City Council on January 6, 2004, and is referred to by the 2004 Grand Jury as the “Different Agreement.”
- Through a clerical error the City Clerk provided an incorrect version of the agreement. This incorrect version, which was not used by the City or High Tide in the operation and management of River Ridge Golf Club, is referred to by the 2004 Grand Jury as the “Original Agreement.”

F-01. Upon request, the City clerk provided the 2003 Jury with the “Agreement for Operation, Maintenance and Management of the River Ridge Golf Club,” effective on December 1, 1993 (the “Original Agreement”).

Disagree

The City Clerk provided the Grand Jury with an incorrect version of the 1993 agreement with High Tide and Green Grass, Inc. (“High Tide”). There was and is only one version of the 1993 agreement that governed the contractual relationship between High Tide and the City. On January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

F-02. The Original Agreement provided by the City clerk was produced from the official archives of the City.

Disagree

As stated in the City's response to F-01, the City Clerk provided the Grand Jury with an incorrect version of the 1993 agreement with High Tide and Green Grass, Inc. ("High Tide"). However, on January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

F-03. In the course of litigation in connection with a legal dispute between a former employee of the City and the City, it was discovered that a slightly different version of the Original Agreement (the "Different Agreement") existed and had been the version used by both the City and High Tide in the management of River Ridge.

Disagree

As stated in the City's response to F-01, the City Clerk provided the Grand Jury with an incorrect version of the 1993 agreement with High Tide and Green Grass, Inc. ("High Tide"). However, on January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

F-04. The Different Agreement is said to have been in the possession of the City attorney, the City finance director and High Tide.

Disagree

The Correct Agreement has been in the possession of the City Attorney, Finance Director and High Tide.

As stated in the City's response to F-01, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

F-05. The difference between the Original Agreement and the Different Agreement is that the Original Agreement required High Tide to submit to the City an annual financial statement showing in reasonably accurate detail the financial activities of High Tide certified by an independent auditor which had to include a statement that the *financial statements* were completed in compliance with generally accepted accounting principles (GAAP), whereas the Different Agreement had a lesser requirement.

Disagree

As stated in the City's response to F-01, on January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

Having said that, the "Different Agreement" and original intent of the City and High Tide was to have only the annual revenues audited. While this requirement is different than a full financial audit, it is not necessarily "a lesser requirement." The City does not require a full financial audit because as part of the budget process, the City's Budget Team and the City Council review budget appropriations for River Ridge Golf Club. The Parks and Facilities Superintendent, as the administrator of the agreement, manages, reviews and evaluates expenses on a regular basis. Furthermore, the Finance Department regularly reviews and evaluates expenses of River Ridge Golf Club.

F-06. The Different Agreement required that High Tide need only submit to the City an annual financial statement showing, in reasonably accurate detail, the financial activities of High Tide certified by an independent auditor that only the *annual revenues* are in compliance with GAAP.

Disagree

As stated in the City's response to F-01, on January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

The City's intent has always been to have the revenues audited. In addition, as part of the budget process, the City's Budget Team and the City Council review budget appropriations for River Ridge Golf Club. The Parks and Facilities Superintendent, as the administrator of the agreement, manages, reviews and evaluates expenses on a regular basis. Furthermore, the Finance Department regularly reviews and evaluates River Ridge Golf Club expenses.

F-07. The difference in these requirements is that under the Original Agreement the audit and certification applied to both High Tide *revenues and expenditures*, whereas in the Different Agreement the language required the audit and certification of only *revenues*.

Disagree

As stated in the City's response to F-01, on January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

As part of the budget process, the City's Budget Team and the City Council review budget appropriations for River Ridge Golf Club. The Parks and Facilities Superintendent, as the administrator of the agreement, manages, reviews and evaluates expenses on a regular basis. Furthermore, the Finance Department regularly reviews and evaluates River Ridge Golf Club expenses.

F-08. In practice, the City relies solely on pre-expenditure budget approvals in lieu of audit or review of actual authorized expenditures of City money. There is no requirement for supplying to the City reconciliations of the River Ridge accounts to budget.

Disagree

Paragraph 21 of the agreement requires High Tide to provide monthly financial statements "for the previous month and the fiscal year to date with a comparison of the results of operations against the budgets and Business Plan."

The City provides management review and evaluation of River Ridge Golf Club expenses on an ongoing basis as outlined in the response to F-05.

F-09. City officials, in responding publicly to the 2003 Jury report, have repeatedly referred to its right to look deeper into the reconciliation of those accounts, though it has never done so over the entire 11-year history of the agreements to date.

Disagree

A complete audit of the River Ridge Golf Club for two years covering FY 2001-02 and FY 2002-03 was conducted by Moreland and Associates, Inc. The result of this audit was an unqualified opinion that "the financial statements ... present fairly, in all material respects, the financial position of High Tide & Green Grass, Inc ... and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America."

On a monthly basis, the City reviews and evaluates the expenses of River Ridge Golf Club operations and reconciles expenses to the budget.

F-10. The River Ridge golf course management agreement is the only business of High Tide.

Concur

F-11. The City clerk has stated that the Different Agreement “has been determined by staff to be the correct agreement....”

Disagree

As stated in the City’s response to F-01, there was only one version of the 1993 agreement that governed the contractual relationship between High Tide and the City. On January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. The agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Course and the Correct Agreement ratified by the City Council on January 6, 2004, are one and the same.

F-12. The determination that the Different Agreement “has been determined by staff to be the correct agreement...” is reported to have been based on the recollection of the City attorney, the reputed drafter of the Original Agreement.

Concur with Comment

The City Attorney is the actual drafter of the Correct Agreement.

As stated in the City’s response to F-01, there was only one version of the 1993 agreement that governed the contractual relationship between High Tide and the City. On January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk.

F-13. The drafter of the Original Agreement maintains that the requirement for only a revenue audit was the “original intent.”

Concur with Comment

As stated in the City’s response to F-01, on January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk.

The City Attorney, drafter of the Correct Agreement, concurs that a revenue audit was the original intent of the City and High Tide.

F-14. The expired Different Agreement, which had been superseded on December 15, 1998, was submitted to City council on January 6, 2004 and approved formally as having been the “correct” agreement.

Disagree

As stated in the City’s response to F-01, there was only one version of the 1993 agreement that governed the contractual relationship between High Tide and the City. On January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

F-15. Responsible City officials have described the presence of two differing official versions of the River Ridge agreement as “rare,” “curious,” “astonishing” and “quite rare.”

No Comment

The Grand Jury did not identify the City officials referenced. The City lacks sufficient information to respond to this finding.

F-16. The City official responsible for overseeing the contracting process in the High Tide instance attributes the discrepancy to inadvertence, mistake or negligence.

Disagree

The Parks and Facilities Superintendent is the individual responsible for managing the agreement with High Tide. He does not recall making such comments.

F-17. The City manager has stated that the discrepant versions resulted from clerical error.

Concur

F-18. The comparable audit language in the “Second Agreement for Operation, Maintenance and Management of the River Ridge Golf Club,” effective on December 15, 1998, (the “Second Agreement,” or “Present Agreement”) is identical to that contained in the Original Agreement requiring an audit of the financial statements (revenues and expenditures) of High Tide in accordance with GAAP.

Disagree

As stated in the City’s response to F-01, there was only one version of the 1993 agreement that governed the contractual relationship between High Tide and the City. On January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

F-19. The language characterized as the “original intent” contained in the Different Agreement did not appear in the subsequent Second Agreement.

Disagree

As stated in the City’s response to F-01, there was only one version of the 1993 agreement that governed the contractual relationship between High Tide and the City. On January 6, 2004, the City Council ratified the version of the agreement that had been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club. The City Council designated such agreement as the official version to be maintained on file with the City Clerk. Thus, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

F-20. The Second Agreement was amended by the City council by a First Amendment on December 9, 2003.

Concur

F-21. The Second Agreement was amended to change, inter alia, the requirement for a certified independent GAAP audit of financial statements (revenues and expenditures) as required in the Original Agreement, to the lesser requirement for a certified independent GAAP audit of only the revenues, as reflected in the Different Agreement.

Disagree

The "Different Agreement" and original intent of the City and High Tide were to have the annual revenues audited (see the City's responses to F-05 and F-06). While this requirement is different, it is not necessarily a "lesser requirement."

As stated in the City's response to F-01, the 1993 agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Course and the Correct Agreement ratified by the City Council on January 6, 2004, are one and the same.

F-22. In processing the First Amendment to the Second Agreement ambiguous presentations supporting and urging the amendments may have led City Council members to believe erroneously that the proposed amendments were compatible with the recommendations of the 2003 Jury's report.

Disagree

The report, which was included on the City Council's agenda for December 9, 2003, was factual and neither erroneous nor ambiguous. City staff had no intention of misleading the City Council or public.

F-23. In the city council hearing on December 9, 2003, presenting Amendment Number One to the High Tide contract for approval, the City's River Ridge program manager responded "Yes" to a council member's question, "This is per the Grand Jury recommendations?"

Concur

F-24. The city council had also been informed in an agenda item memorandum dated 12/09/03 that, “During the process of responding to a recent Grand Jury report relating to the management of [River Ridge], [City] staff identified several provisions of the current agreement...that require update.... Another amendment properly describes the scope of the independent audit of the Operator’s operations as a certified audit of ‘annual revenues as indicated in the financial statement’ and not an audit of the financial statement.”

Concur

The Account Established Jointly

F-25. The language of the Original, the Different and the Second Agreements, before recent amendments, required that, “Operator shall establish in the name of the City and Operator, jointly, such bank accounts as required for the operation, maintenance and management of the Golf Course....”

Concur with Comment

The language of the Correct Agreement and the Second Agreement state: “Operator shall establish in the name of City and Operator, jointly, such bank accounts as required for the operation, maintenance and management of the Golf Course....”

F-26. The language of the Original, the Different and the Second Agreements, before recent amendment, in discussing payment to High Tide used the term “joint account” three times in each agreement.

No Comment

The agreements speak for themselves with regard to the frequency of usage of the term “joint account.”

F-27. The City in its response to the 2003 Jury, quite accurately stated, “There never was a joint account.”

Concur with Comment

As stated in the City’s response to Item F-32 of the 2003 Grand Jury Report:

“There never was 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.”

F-28. The 2004 Jury agrees with the 2003 Jury report’s Conclusion 13, that a “joint account” under the circumstances of the River Ridge agreement would have been improper.

No Comment

F-29. Contrary to the provisions of the Original, the Different and the Second Agreements, High Tide established private corporate accounts and deposited City revenues collected by it into these private corporate accounts.

Disagree

As stated in the City’s response to F-01, the Correct Agreement ratified by the City Council on January 6, 2004, is the same agreement whose provisions have been utilized by both the City and High Tide in the operation and management of River Ridge Golf Club.

As stated in the City’s response to item C-20 of the 2003 Grand Jury Report: “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.”

The City disagrees with the characterization of the River Ridge Golf Club revenues collected by High Tide as “City revenues.” As stated in the City’s response to Items C-11 through C-20 of the 2003 Grand Jury Report:

“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.’”

F-30. Apparently in response to the 2003 Jury’s report, the City staff informed the City council that “staff identified several portions of the current agreement [the Second Agreement]... that require update.”

Concur with Comment

The agenda report of December 9, 2003, to the City Council states: “ ... staff identified several *provisions* of the current agreement [the Second Agreement] ... that require ... update.” [emphasis added]

F-31. The council was then informed “One amendment concerns properly describing the account with a financial institution for the deposit of Golf Course revenues.”

Concur with Comment

The agenda report of December 9, 2003, to the City Council states: “One amendment concerns properly describing the account with a financial institution for *receipt* of Golf Course revenues.” [emphasis added]

F-32. To “properly describe” the account for receipt of City golf course revenues, the Second Agreement was amended to read “City and Operator will establish such bank accounts, jointly...” rather than having High Tide establish such accounts “in the name of the City and Operator, jointly....”

Concur

F-33. Though the language discussed above was substituted in the Second Agreement, the character and operation of these accounts has not changed in any way from the prior operation of these accounts. The accounts remain sole commercial accounts in the name of High Tide.

Concur

F-34. Paragraph 10a. of the Second Agreement provides that “at the end of each calendar month..., [High Tide] shall pay itself from the account established jointly the minimum monthly payment provided for in...this Section 10, from which [High Tide] shall pay all expenses incurred to operate the Golf Course.”

Concur

F-35. High Tide does not pay itself the minimum monthly payment from the account established jointly, but pays its operating expenses directly from that account as those expenses arise and become due.

Disagree

High Tide does pay itself a minimum monthly fee from the account established jointly, consisting of the expenses that arise and become due. Such expenses fluctuate month to month.

As stated in the City’s response to F-42 of the 2003 Grand Jury Report:

“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.”

F-36. The public money character of the funds deposited in the High Tide River Ridge accounts, that is, public money collected by High Tide as the agent of the City treasurer, does not change until it is withdrawn by High Tide when disbursed for its own purposes to satisfy High Tide's, not the City's, obligations.

Disagree

The City disagrees with the characterization of River Ridge Golf Club revenues collected by High Tide as “public money,” and disagrees with the statement that High Tide collects such revenues as the agent of the City Treasurer.

As stated in the City's response to Items C-11 through C-20 of the 2003 Grand Jury Report:

“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.’”

The City Treasurer's Care of Public Monies

F-37. The 2003 Jury found that the City treasurer by letter dated February 7, 1994, appointed High Tide an agent for the City for the limited purpose of operating River Ridge.

Disagree

In its 2003 Report, the Grand Jury did indicate such a finding; however, the City disagreed with that finding.

As stated in the City's response to Items C-11 through C-20 of the 2003 Grand Jury Report:

“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.’”

F-38. The treasurer's letter of February 7, 1994, specifically extended the agency appointment to the collection of money in the name of a City-owned facility.

Concur with Comment

As stated in the City's response to Items C-11 through C-20 of the 2003 Grand Jury Report:

“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.’”

F-39. The power granted in the treasurer's letter of February 7, 1994, has never been revoked or modified.

Concur

F-40. Paragraph 10a. of the Second Agreement, amended on December 9, 2003, requires High Tide to “collect all revenues from the operation of the Golf Course and deposit such revenues in an account established jointly [as contrasted with a ‘joint account’] by the City and Operator....”

Concur

F-41. The City treasurer analogizes the collection of City revenues by her fiduciary agent, High Tide, to rents paid by sub-lessees as rent to a lessee of the City.

Disagree

Appearing before the 2004 Grand Jury, the City Treasurer stated that the arrangement whereby High Tide collects revenues from River Ridge Golf Club operations and pays the City at the end of the fiscal year is not unique. The City Treasurer noted that if the lease of a City-owned building permitted subleasing, the lessee would collect rent from sub-lessees but would owe the City only the rent called for in the lease, which could be more or less than the rent the lessee collected from sub-lessees.

F-42. Rents paid by sub-lessees to a lessee are the property of the lessor with whom the sub-lessee contracted, not the property of the prime lessor.

No Comment

The ownership of rents paid by sub-lessees to a lessee depend on the contractual arrangement among the lessor, the lessee and the sub-lessees.

F-43. No lease agreement exists in connection with High Tide’s relationship with the City for the management of River Ridge.

Concur

F-44. High Tide is not in a tenant-landlord relationship with the City.

Concur

F-45. Though the City has no power to draw on the High Tide River Ridge accounts, the City treasurer believes the City has merely a possessory right in the nature of a lien to its money in those High Tide accounts.

Disagree

Appearing before the 2004 Grand Jury, the City Treasurer was asked whether the City has “a possessory right in the nature of a lien” to money in High Tide’s bank accounts. The City Treasurer replied that she would not so characterize the issue.

F-46. The 2003 Jury found that High Tide collected money at River Ridge as an agent for the City.

Disagree

In its 2003 Report, the Grand Jury did indicate such a finding; however, the City disagreed with the finding.

As stated in the City’s response to Items C-11 through C-20 of the 2003 Grand Jury Report:

“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.’”

F-47. The City responded that High Tide was not an agent for the City, but “is an agent for the River Ridge Golf Club, which is owned by the City.”

Concur with Comment

As stated in the City’s response to the 2003 Grand Jury Report: “Operator is not an agent of the City. Operator is an agent for the River Ridge Golf Club, which is owned by the City.”

F-48. The City treasurer’s and the City’s only power with respect to the corporate High Tide River Ridge accounts “established jointly” is that granted by High Tide to the bank by letter dated November 30, 1993, and confirmed to the City by the bank as recently as June 20, 2002.

Concur

F-49. The power granted to the City by High Tide is to permit the City “complete access to any and all activity involving our corporate accounts...” and “to suspend financial activity on our accounts.”

Concur

F-50. City money deposited in the River Ridge High Tide corporate accounts remains City money until spent by High Tide directly for operations or is returned to City custody at the end of the fiscal year.

Disagree

The City disagrees with the characterization of River Ridge Golf Club revenues collected by High Tide as “City money.”

As stated in the City’s response to Items C-11 through C-20 of the 2003 Grand Jury Report:

“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 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.’”

F-51. Interest accruing from the City money in these accounts becomes part of the base revenue amount to be divided between the City and High Tide rather than being segregated as accruing to the City, i.e., the City shares with High Tide the passive interest accruing on its money.

Disagree

No interest accrues on money in High Tide’s bank accounts.

The City disagrees with the characterization of River Ridge Golf Club revenues in High Tide’s bank accounts as “City money.” As stated in the City’s response to Items C-11 through C-20 of the 2003 Grand Jury Report:

“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.’

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“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.’”

F-52. Payment of City money to High Tide for operating, maintaining, and managing River Ridge, as provided for in all iterations of the agreement, is from High Tide to High Tide.

Disagree

The City disagrees with the characterization of River Ridge Golf Club's revenues collected by High Tide as "City money." As stated in the City's response to Items C-11 through C-20 of the 2003 Grand Jury Report:

"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.'"

F-53. California Government Code sections 41001 through 41007 set forth the detailed duties of the treasurer, which include, inter alia, “receive and safely keep all money coming into his hands as treasurer....”

Concur with Comment

Money from River Ridge Golf Club operations is not received by the City Treasurer’s Office until High Tide pays the City at the end of each fiscal year.

F-54. California Government Code section 53630 et seq., make the treasurer responsible for investing City money.

Disagree

Government Code section 53630 et seq. impose a variety of duties on a variety of public officers and employees, not just the City Treasurer. Some of the statutes, such as section 53684, concern investment of money. The City Treasurer complies with such statutes.

F-55. Several interviewed city and county officials charged with the duties of collection, care and accountability for public money, while expressing no opinion with respect to the lawfulness of circumstances present in this case, uniformly expressed surprise and doubt with respect to the appropriateness of such an arrangement for the custody and accountability of public funds.

No Comment

The City has been provided insufficient information to comment.

Comparative Golf Course Management

F-56. Five of the seven publicly owned golf courses in Ventura County examined by the Jury are managed under management agreements leasing the property to the lessee/manager (“Five Public Courses”).

No Comment

The City has been provided insufficient information to comment.

F-57. Management of the Five Public Courses collect revenue for themselves as lessees, pay the public entity lessor monthly or yearly rent, and monthly pay additional income to the public entity lessors as provided for in the contracts.

No Comment

The City has been provided insufficient information to comment.

F-58. One of the Five Public Courses, in addition to collecting revenue for itself as lessee, collects specified revenue for the public entity lessor and daily deposits that revenue into a designated public entity account.

No Comment

The City has been provided insufficient information to comment.

F-59. Of the seven publicly owned golf courses examined, two under a single contract have a management contract without a leasing agreement.

No Comment

The City has been provided insufficient information to comment.

F-60. The management-only golf course agreement provides for the collection of revenue for the public entity owner and deposit into contractor accounts.

No Comment

The City has been provided insufficient information to comment.

F-61. The management-only golf course agreement requires that the manager monthly pay the public entity owner “all net operating income” collected.

No Comment

The City has been provided insufficient information to comment.

F-62. “Net operating income” is defined in the agreement as all revenue received except golf course lessons, if paid directly to manager staff, less “Expenses and Approved Capital Expenditures....”

No Comment

The City has been provided insufficient information to comment.

F-63. The management-only golf course agreement calls for monthly financial statements that include, inter alia, “income statements and bank reconciliations reflecting all financial records including payroll, maintenance and operational expenses and revenues.... Bank statements will be included as source documents to bank reconciliations.”

No Comment

The City has been provided insufficient information to comment.

F-64. The agreements of all seven publicly owned golf courses examined by the Jury required point-of-sale or service accountability to include unlimited access to that data by the public entity concerned.

No Comment

The City has been provided insufficient information to comment.

Contract Provisions

F-65. Though High Tide is required to submit budgets and operate within them, with certain provisions for change and review, the Original, the Different and the Second Agreements state that High Tide “shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the budgets. City acknowledges that the budgets are intended only to be reasonable estimates.”

Concur with Comment

As stated in the City response to F-49 in the 2003 Grand Jury report: “... these budgets (as in all budgets prepared in government or the private sector) represent, in the best judgment of the Operator (preparer) and the City (reviewer), a reasonable and considered estimate of expenses and revenues for the future.”

F-66. Review of the Second Agreement, as amended, reveals that the recommendations of the 2003 Jury for correction of deficiencies regarding, inter alia, High Tide's being specifically absolved of accountability for its budget and the question of disposition of under-runs from the budget, the defective disputes article and the lack of a termination for convenience article (considering the lack of capital investment by High Tide in the enterprise) were not implemented.

Disagree

As stated in the City's response to the 2003 Grand Jury Report under F-53:

"Operator recalls stating to the Grand Jury the 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."

The City disagrees that the dispute resolution procedure is defective or that a termination for convenience article is necessary. As stated in the City's responses to Items C-24 through C-27 of the 2003 Grand Jury report:

".... 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.

".... The dispute resolution procedure conforms to standard and customary practice in agreements of this kind and adequately protects the City."

F-67. There is no provision in the contract requiring monthly reconciliation of the High Tide corporate bank accounts to include reporting the results of that reconciliation to the City with the reconciliation extending to the actual expenditures related to budget authority and the provision of the bank statements to the City as source documents.

Concur with Comments

As stated in the City's response to F-05, the Parks and Facilities Superintendent, as the administrator of the agreement, manages, reviews and evaluates expenses of the River Ridge Golf Club on a regular basis. Furthermore, the Finance Department regularly reviews and evaluates expenses. While actual reconciliation extending to the actual expenses related to budget authority and cross-referenced by bank statements is not required, City maintains the ability to make such reconciliation with 15 days' notice.

To satisfy the 2003 Grand Jury, the City had a complete audit for two years covering FY 2001-02 and FY 2002-03 conducted by Moreland and Associates, Inc. The result of this audit was an unqualified opinion that "the financial statements ... present fairly, in all material respects, the financial position of High Tide & Green Grass, Inc ... and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America."

Recommendations:

Contract Confusion

R-01. The City establish a written policy or ordinance clearly fixing responsibility on a given individual position or function for assuring and certifying to the City clerk that any contractual documents submitted to the City clerk are the final council approved documents.

Will Not Be Implemented

No new policy or ordinance is required. Government Code section 40801 requires the City Clerk “to keep an accurate record of the proceeding of the legislative body.” The City’s class specifications for the position of City Clerk impose “responsibility for all City Clerk’s Office activities and services including activities associated with the production, publication and maintenance of City records, agendas, and minutes relating to City Council ... activities....” and require the City Clerk to certify the authenticity of documents, including agreements.

The Account Established Jointly

R-02. The City amend the Present Agreement to provide that all River Ridge revenue collected for the City be deposited daily in a City account set up by the City treasurer for the purpose of receiving those revenues.

Will Not Be Implemented

The current agreement has adequate provisions for the collection and deposit of revenues for River Ridge Golf Club and these provisions comply with California law.

R-03. The City authorize the City treasurer to monthly pay High Tide from such an account the “minimum monthly payment,” out of which High Tide is required under the Present Agreement to operate River Ridge.

Will Not Be Implemented

The “minimum monthly payment” consists of the expenses that arise and become due. Such expenses fluctuate month to month.

R-04. The City delete the charade of “the accounts established jointly” from the Present Agreement as well as other provisions that relate to it.

Will Not Be Implemented

The City takes exception to the Grand Jury’s use of the biased word “charade.”

The current agreement, including the provisions that relate to the account established jointly, complies with California law.

The City Treasurer’s Care of Public Monies

R-05. The city treasurer establish a City account for the sole purpose of receiving and accounting for City revenue from River Ridge and require the daily deposit in that account of all River Ridge revenue collected by the City’s agent, High Tide.

Will Not Be Implemented

The current agreement has adequate provisions for the collection and deposit of revenues for River Ridge Golf Club, and these provisions comply with California law.

As stated in the City’s response to the 2003 Grand Jury Report:

“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.’”

R-06. Should the City refuse to amend the Present Agreement to require the daily deposits of River Ridge revenue into a separate City account for that purpose, the City require a monthly financial statement from High Tide to include unaudited balance sheets, income statements and bank reconciliations (of all High Tide River Ridge accounts) reflecting all financial records including payroll, maintenance and operational expenses and revenues; bank statements to be submitted as source documents to the bank reconciliations.

Will Not Be Implemented

The City declines to amend the current agreement to require daily deposits of River Ridge Golf Club revenues into a separate City account. High Tide already provides unaudited balance sheets and income statements of all High Tide River Ridge Golf Club accounts reflecting all financial records including payroll, maintenance and operational expenses and revenues to the City monthly. The City retains the option to review bank reconciliation and bank statements with 15 days' notice. All of these measures are appropriate and adequate for the management and oversight of the River Ridge Golf Club agreement.

Comparative Golf Course Management

R-07. The City, considering the importance to the City of the River Ridge operation, the length of the term of the present management agreement, the anticompetitive restrictions in it called out in the 2003 Jury's report, and the appearance to some that it is a "sweetheart" agreement, revoke the Present Agreement and open the operation of River Ridge to competitive bidding.

Will Not Be Implemented

The City takes exception to the Grand Jury's use of the prejudicial and biased term "sweetheart agreement" and further wishes to note that the Grand Jury has not indicated the identities or motivations of the "some" who are making this characterization.

As stated in the City's response to Item R-10 of the 2003 Grand Jury Report:

"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 negotiated 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."

Contract Provisions

R-08. Correct the contractual deficiencies called out in the 2003 Jury's report.

Will Not Be Implemented

The City does not find that there are contractual deficiencies that require correction.

As stated in the City's response to Item R-1 of the 2003 Grand Jury Report:

“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-09. Require the finance department to review monthly, and if necessary question, the relationship between expenditures and budget authority assuring that the relationship is recorded with reasonable accuracy and clearly reflects the transaction as stated, i.e., the terminology used establishes a clear, detailed and unambiguous connection between the expenditure and the authority for it.

Not Applicable

The City's practice since agreement implementation in 1993 has been for the agreement administrator and the Finance Department to review expenses on a monthly basis.

R-10. Amend the Present Agreement to require contractually, whether such a practice presently exists or not, point-of-sale recordation and reporting and unlimited City access to the data so created.

Will Not Be Implemented

Point-of-sale recordation and reporting and unlimited City access to the data are current City practice and in line with the agreement. The City does not find that the current agreement requires an amendment to include these requirements.