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City Manager

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September 26, 2005

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VENTURA COUNTY GRAND JURY

Honorable John R. Smiley, Presiding Judge
Superior Court of California, Ventura County
Ventura County Hall of Justice
800 South Victoria Avenue
Ventura, California 93009

Subject: Response to 2005 Grand Jury Report – City of Oxnard Golf Course
Management

Dear Judge Smiley:

This letter and the enclosed responses to the findings and recommendations of the Grand Jury Report of June 29, 2005, are respectfully submitted on behalf of the City of Oxnard; the Oxnard City Council; Dr. Thomas E. Holden, Mayor; and Dale Belcher, City Treasurer. On behalf of these entities and persons, I am again responding to the Grand Jury's findings and recommendations regarding the operation and management of the River Ridge Golf Club.

This represents the third consecutive year that the Grand Jury has produced a report on this topic. The City has been entirely forthcoming in its comprehensive responses to the 2003 and 2004 Grand Jury reports on River Ridge Golf Club, provided clean audit results as performed by an independent Certified Public Accountant, Moreland and Associates, Inc., in November 2003, furnished to the Grand Jury information requested in March 2005, and personally met with members of the 2005 Grand Jury.

Despite repeated investigations, the Grand Jury has yet to cite a single statutory violation relating to the City's fiscal practices and contractual relationship with High Tide and Green Grass, the operator of the River ridge Golf Club.

Over time, successive versions of the agreement for the operation and management of River Ridge Golf Club have been modified to reflect actual practice. The City Council approved the current agreement on October 19, 2004, a copy of which was furnished to the Grand Jury upon request on March 30, 2005. Upon review of the current agreement, the City finds there are no material discrepancies between the agreement language and current practices.

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Simply stated, the City and High Tide and Green Grass comply with the terms of the agreement. The City thanks the Grand Jury for its suggestions and notes that each of the four formal recommendations has been addressed by the City.

In addition, I am pleased that the 2005 Grand Jury Report does not include the harsh and accusatory rhetoric of prior years. While we cannot concur with all of the findings presented in the 2005 report, the more balanced, reasonable, and thorough approach displayed by the 2005 Grand Jury is greatly appreciated.

Further, the City appreciates the Grand Jury's formal acknowledgement of the City's responsiveness to requests for meetings and information. The City continues its willingness to cooperate with the Grand Jury to bring this issue to a mutually satisfactory conclusion.

Sincerely,

Handwritten signature of Karen R. Bruvrum in cursive script.

Edmund F. Sotelo
City Manager

Attachment

c: Dr. Thomas E. Holden, Mayor
Oxnard City Council
Dale Belcher, City Treasurer

Findings

Background

F-01. The City constructed the River Ridge Golf Club, a hotel and a [sic] NFL football training facility on the site of the former Santa Clara Landfill in the northwestern edge of the City.

Concur with Comment. The hotel and training facility are not constructed on the landfill. Part, but not all, of River Ridge Golf Club is constructed on the landfill. The City did not construct the hotel.

F-02. There are typically two methods by which municipal golf courses are managed. One method is a turnkey operation where the contractor is paid a fee to run the golf course on behalf of a city, without a great deal of city oversight. The other is a city-run option where staff is hired and the city manages all operations with city employees.

Disagree. There are a multitude of ways to manage, operate, and maintain a municipal golf course.

F-03. By 1993, the City had experienced several years of unsuccessful operations with a turnkey contractor. River Ridge was losing money and the facilities had begun to fall into disrepair. The City acted to develop a more effective and profitable method of managing River Ridge.

Disagree. The City did not have a “turnkey” operation: The City had a small staff and contracted out the golf course maintenance, the golf professional services, and the food and beverage concession from 1986 until 1993. The operation was not completely unsuccessful, but the City believed the operation was not meeting its potential. By 1993, the facility was not in disrepair, nor was it in today’s fine condition. The City did act to develop a more effective and more profitable method of managing River Ridge Golf Club.

F-04. Even though the City recognized the disadvantages of contracting out the management in a turnkey operation, they did not wish to take on the administrative burden of managing the day-to-day operation of a golf course.

Concur with Comment. The City weighed the relative advantages and disadvantages of retaining an outside entity to operate, manage, and maintain the River Ridge Golf Club. The City’s agreement with High Tide and Green Grass (“Operator”) does not call for a “turnkey” operation.

F-05. The City contracted with HTGG to manage the River Ridge operations based on a unique agreement crafted from the specific requirements of the City. Under their agreement, the City still exercises a measure of control and oversight over the contractor. The contractor shares in the profits of a well-run operation. The City refers to their arrangement as a public-private partnership.

Concur with Comment. The City exercises a great deal of control and oversight of the Operator. As stated in the response to Finding F-04 above, the City weighed the relative advantages and disadvantages of retaining an outside entity to operate, manage, and maintain the River Ridge Golf Club before deciding upon the current arrangement.

F-06. The City's stated primary purpose in contracting with HTGG is to have a first class golf course and to maintain an excellent product at an excellent price. There are incentives for HTGG designed into the contract with the effect that, when the golf course is well-maintained and well-operated revenues are greater, thereby increasing profits.

Concur.

F-07. The City states that their arrangement with High Tide and Green Grass, Inc. fully meets the City's objectives. The City receives tangible financial benefits from the golf course and there are intangible benefits to the surrounding community.

Concur.

Funds and Terms of the Agreement

F-08. The original contract between the City and HTGG was approved by the City Council and effective on December 1, 1993. Modifications to the agreement were approved as follows:

The Second Agreement approved 12/15/98

The First Amendment to the Second Agreement approved 12/9/03

The "Different Agreement" approved 1/6/04

The Second Amendment to the Second Agreement approved 10/19/04

The most recent agreement of 10/19/04 is the subject of the remaining findings.

Concur with Comment. The City refers to the agreement ratified by the City Council on January 6, 2004, as the "Correct Agreement," rather than the "Different Agreement."

The agreement currently governing the operation and management of the River Ridge Golf Club is the Second Amendment to the Second Agreement, which was approved by the City Council on October 19, 2004, and constitutes a restatement of the entire agreement, superceding all prior agreements. A copy of the current agreement was furnished to the Grand Jury on March 30, 2005, upon its request.

As the Grand Jury has confined its remaining findings to the current agreement, the City will likewise confine its remaining responses to the current agreement, unless otherwise stated.

F-09. Exhibit C-1 of the agreement provides for the City's payment to HTGG of a minimum amount provided for in the Business Plan, plus a percentage of Base Revenue achieved in excess of the Minimum Base Revenue for each period, using a declining sliding scale of 50% to 25%. In fact, this is not done during each period but annually, and the payment is made from HTGG to the City instead of from the City to HTGG.

Disagree. The Operator receives two forms of payment. The first is the monthly budgeted amount as outlined in Sections 9a and 9b of the agreement. The second form of payment is the percentage of annual gross receipts as outlined in Section 9c and in Exhibit C-1 of the agreement. The period for this second form of payment is annual.

Sections 9a through 9c of the agreement state:

9a. Operator shall collect all revenues from the operation of the Golf Course and deposit such revenues in an account established jointly by the City and Operator, as set out in Section 22 of this Second Amendment. At the end of each calendar month that this Second Amendment is in effect, Operator shall pay itself from the account established jointly the minimum monthly payment provided for in Section 9b, from which Operator shall pay all expenses incurred to operate the Golf Course.

9b. During each full fiscal year that this Second Amendment is in effect, City agrees to pay Operator for operating, maintaining and managing the Golf Course, the minimum yearly amount, in minimum monthly payments, provided for in the Business Plan, as such Business Plan is approved by the City Council for each such fiscal year. In any fiscal year in which this Second Amendment is not in effect throughout the year, City agrees to make such minimum monthly payments to Operator for the

period that this Second Amendment is in effect, but not for the months that the Second Amendment is not in effect.

9c. City also agrees to pay Operator a percentage of annual gross receipts derived from Golf Course operations, as described in Exhibit C-1, attached hereto and incorporated herein by this reference. If this Second Amendment is not in effect throughout any period on which such percentage of annual gross receipts is calculated, City agrees to pay Operator the portion of such percentage representing the period during which this Second Amendment was in effect.

Paragraph 5 of Exhibit C-1 states:

In addition to the payment to Operator of the minimum period amount provided for in the Business Plan, City agrees to pay Operator the following percentages of Base Revenue achieved in excess of the Minimum Base Revenue for each period: a. \$1 to \$300,000 – fifty percent (50%), b. \$300,001 to \$400,000 – forty percent (40%), c. \$400,001 and above – twenty-five percent (25%). Notwithstanding the above percentages, the additional payment to Operator shall not exceed the minimum period amount provided for in the Business Plan.

F-10 Payments to HTGG are not made in accordance with the agreement. The agreement states that the City is making the payments to HTGG, when in fact HTGG reimburses itself from the funds still under its control.

Disagree. Please refer to the City's response to Finding F-09, above.

F-11. Financial Statements submitted to the City by High Tide are not prepared in accordance with the terms of the contract.

Disagree. Sections 20a through 20c of the agreement state:

20a. Operator shall submit to the City Manager on or before the twentieth day following each month, a financial statement showing in reasonably accurate detail the financial activities of Operator for the previous month and the fiscal year to date with a comparison of the results of operations against the budgets and Business Plan.

20b. Operator shall submit to the City Manager within sixty days after the close of each City fiscal year, a financial statement for the fiscal year then ended. The annual revenues as indicated in the financial statement of the financial activities of Operator shall

be certified by an independent auditor and shall include a statement that the financial statements were prepared in compliance with generally accepted accounting principles.

20c. On an annual basis, City shall commission a comprehensive independent financial audit of Operator's financial statements. Such audit shall include a statement that Operator's financial statements were prepared in conformance with generally accepted accounting principles, and shall include a presentation of Operator's balance sheet, statement of revenues and expenses, and statement of cash flows, along with accompanying notes to the financial statements.

The Operator complies with the above terms.

F-12. Financial statements submitted to the City mayor may or may not be subject to an independent audit.

Concur with Comment. Please refer to the City's response to Finding F-11, above. The agreement states that two independent audits shall be conducted annually.

The City assumes that there is a typographical error in the Grand Jury's finding ("Mayor" meant to be "may or"). If this is not a typographical error, please note that Sections 20a and 20b of the agreement call for Operator to submit financial statements to the City Manager, not the Mayor.

F-13. The City described to the Grand Jury a method of doing business that evolved over time as a practical refinement of the contract. The Grand Jury asked if there would be a different result if the City followed the exact terms of the contract. The City replied that it would not be good business to follow the contract as written and it would "probably be worse" if they did.

Disagree. The City complies with the terms of the agreement.

F-14. Prior Grand Jury reports identify the golf course monies collected by HTGG to be City money. The City and HTGG reported to the Grand Jury that these funds are private, not city money. There is a "city interest in the money," but the funds remain private until turned over to the City.

Concur with Comment. As stated in the City's response to Finding F-32 of the 2003 Grand Jury Report:

There was never a joint account between the City and the 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.

The City’s response to Conclusion C-20 of the 2003 Grand Jury Report states:

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.

- F-15. The agreement also specifies that in any fiscal year, if the sum of the budgeted operating expenses and cost of goods sold identified in the Business Plan exceeds the Minimum Base Revenue, the Operator and the City, in determining the amounts to be paid to each other, shall subtract from the amount otherwise allocable under the agreement, a sum equal to 50% of the amount by which such budgeted operating expenses and cost of goods sold exceed Minimum Base Revenue for each year.**

Concur with Comment. Exhibit C-1, Paragraph 5d of the agreement states:

For Fiscal Years 2004-2009, if the sum of budgeted operating expenses and cost of goods sold identified in the Business Plan approved by the City Manager exceeds the Minimum Base Revenue for such fiscal year set forth in Exhibit C-1 for any such fiscal year, City and Operator will, in determining amounts to be paid to each pursuant to Paragraph 5 of this Exhibit C-1, deduct from the amount otherwise allocable to each under such Paragraph 5, a sum equal to 50% of the amount by which such budgeted operating expenses and cost of goods sold exceeds Minimum Base Revenue for such fiscal year.

F-16. In 1998 and 1999, HTGG revised the treatment of cost of goods sold by including it both in revenue and expenses and for the calculation of the City's profit share and net cash. It is not clear if the City ever specifically approved this change or focused on the impact to the profit-sharing calculation, which may reduce the City's share.

Disagree. On the advice of the Finance Director, the Project Manager approved the change with the understanding that it would not materially affect the profit-sharing calculation.

F-17. The City publishes the number of rounds of golf played and projected as well as the current fees per round of golf. The simple math of rounds multiplied by fees gives the impression that HTGG has more revenue than it reports.

Disagree. Operator reports to the City on a monthly basis the number of rounds of golf played. A simple multiplication does not work because the number of rounds played includes a multitude of different fees from the junior fee of \$6 to the weekend prime fee of \$40. There are also resident fees, senior fees, and compensated rounds included in the report.

F-18. The City offers many financial incentives to enable community residents to use the facilities. There are discounts for children, families, seniors and special groups. A significant number of rounds are played at discounted rates.

Concur. Please refer to the City's response to Finding F-17, above.

Project Management

F-19. The prior Grand Jury recommended 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.

Concur.

F-20. The City responded to that Grand Jury that the current Project Manager is highly qualified in golf course management and they are satisfied with his performance.

Concur.

F-21. Prior Grand Jury reports refer to misstatements by the Project Manager as one source for the appearance of impropriety. The Project Manager has made the following statements to the current Grand Jury: On the subject of financial oversight, he stated, "I have no clue" on what it all means. On the subject of the contract, he stated, "Nobody can read and understand a contract," and finally, "If we followed the contract as it is written on paper, we would probably be worse."

Disagree. The Project Manager does not recall stating on the subject of financial oversight, "I have no clue." On the subject of the contract, he did say "Nobody can read and understand a contract," but merely in jest. The statement "If we followed the contract as it is written on paper, we would probably be worse," referred to a version of the agreement which was superceded by the current agreement.

F-22. There has been much made of the term "account created jointly" and its confusion with the term, "joint account." The term "joint account" implies private access to public funds and a significant lack of control.

Disagree. The term "joint account" does not imply a significant lack of control. Please refer to the City's response to Finding F-14, above.

F-23. The term "account created jointly" represents public access to private financial records. This provision is a significant addition to the overall control environment and oversight function on behalf of the City.

Concur with Comment. Please refer to the City's response to Finding F-14, above.

F-24. As recently as this year, the Project Manager still used the term "joint account" to the Grand Jury to refer to the banking arrangement.

Disagree. The Project Manager does not recall making that comment.

F-25. The Project Manager pointed out to the Grand Jury the fact that the City has not been required to increase the budget over the past few years as evidence that they are not over-budgeting the golf course operation.

Disagree. As outlined in Paragraph 18 of the agreement: “City agrees that annual operating and capital improvements budgets are intended to be reasonable estimates.” The Projects Manager’s comments were that the actual expenses are very close to the budget every year and that the Operator has not requested an increase in the budgeted amounts. In fact, the Operator’s actual expenses exceeded budgeted (and paid) expenses in Fiscal Year 2004-05. A comparison of actual to budgeted expenses over the life of the agreement shows that the two are indeed very close.

Grand Jury Oversight

F-26. The City, in a letter dated March 30, 2005, from the Director of Public Works, states, “the City’s agreement with High Tide conforms to State law.” He further states, “There is more than one legitimate approach to structuring an agreement for public golf course management and operation. Our approach not only meets the City’s needs, but also the needs of our many satisfied River Ridge Golf Club patrons.”

Concur.

F-27. The Director of Public Works went on to state in his letter, “because government oversight is a critical Grand Jury function, the public has the right to expect that inquiries will be carried out in a responsible and even-handed manner. If this oversight is less than objective, the Grand Jury should recognize that public confidence in its ability to perform this critical role may diminish over time.”

Concur.

F-28. In meetings with the City, the Grand Jury learned more of their frustration that one or two citizens will complain repeatedly about the River Ridge operations, and they believe that the Grand Jury should not initiate an investigation on a small number of complaining citizens. In addition, the City expressed that meeting with the Grand Jury and explaining why events have to be the way they are and how the City benefits from the arrangement should be sufficient to resolve the issue once and for all.

Disagree. The Grand Jury's characterization of the City's comments is not accurate.

F-29. Each year on July 1, a new Grand Jury is impaneled. Although it may have a limited number of carry-over jurors from the prior year (jurors cannot serve more than two consecutive years), the body is new and cannot carry over conclusions from the prior year. Even if a prior Grand Jury investigated the same complaint, each new Grand Jury must conduct its own independent investigation.

Neither Concur Nor Disagree. The City has no comment with respect to the duties of the Grand Jury.

F-30. In accepting or rejecting a citizen complaint, the Grand Jury considers many factors. It looks at the facts presented in the complaint to determine if they are fairly represented. If there has been a previous Grand Jury report on the same topic, the Grand Jury will read that report and review the responses provided by the affected agencies. Additionally, the Grand Jury will review its priorities and determine if the inquiry can be conducted in the available time.

Neither Concur Nor Disagree. This is the Grand Jury's statement of its own procedures.

F-31. In the case of River Ridge, the new complaints repeated the concerns of prior complaints to earlier Grand Juries. In addition, the responses from the City of Oxnard to those past reports did not indicate to the Grand Jury that those issues had been adequately resolved.

Neither Concur Nor Disagree. The City accepts the Grand Jury's finding that new complaints are repetitions of earlier concerns. The City believes that it has adequately addressed the concerns of this and earlier Grand Juries and appreciates the commendation from this Grand Jury as to the staff time and courtesy afforded by the City with respect to River Ridge Golf Club management issues.

- F-32. Once a complaint is accepted for investigation, the Grand Jury is required to remain independent and objective. In carrying out an investigation or inquiry, each Grand Jury reviews all the available evidence and reaches its own conclusions. In the interest of a completely objective evaluation, the Grand Jury cannot adopt as its own the opinions of either the complainant or the agency without its own independent verification.**

Neither Concur Nor Disagree. This is the Grand Jury's statement of its own procedures.

- F-33. Penal Code Section 939.9 states,**

A grand jury shall make no report, declaration, or recommendation on any matter except on the basis of its own investigation of the matter made by such grand jury. A grand jury shall not adopt as its own the recommendation of another grand jury unless the grand jury adopting such recommendation does so after its own investigation of the matter as to which the recommendation is made, as required by this section.

Concur.

- F-34. As acknowledged by the City and HTGG, there are substantial differences in the contract as written and in the actual practice of the parties to the contract. Those differences might lead reasonable people to conclude there is something questionable about the arrangement.**

Disagree. The City and the Operator comply with the terms of the agreement.

- F-35. Overcoming the first impression of wrongdoing is a long exercise of document reviews and interviews with all parties to the contract. The Grand Jury has expended considerable time to unravel and understand the information presented by the City.**

Neither Concur Nor Disagree. This is the Grand Jury's statement of its own process.

- F-36. There have been improvements in the River Ridge oversight over the past two years. The Project Manager has been provided a financial analyst and the City has included a full annual audit as part of their oversight function, increasing the flow of daily operational and in depth financial information.**

Concur with Comment. The City strives to improve all of its operations on an ongoing basis. A management analyst, whose responsibilities entail River Ridge Golf Club financial oversight and many other duties, was hired by the Parks and

Facilities Division, effective May 10, 2004. In addition, the Second Amendment to and Restatement of Second Agreement for Operation, Maintenance and Management of the River Ridge Golf Club, which was approved by the Oxnard City Council on October 19, 2004, contains provisions for the City to commission a comprehensive independent financial audit of the Operator's financial statements on an annual basis.

Recommendations

The City thanks the Grand Jury for its suggestions and notes that each of the four formal recommendations has been addressed by the City.

- R-01. Thoroughly review the written agreement to reconcile differences in policy (the contract) and practice with the ultimate objective of modifying the contract to match the practices in effect. (C-01, C-02, C-04 thru C-07, C-09, C-12 thru C-15, C-17, C-18, C-19, C-22)**

Implemented Prior to This Report. There is no material discrepancy between the current agreement language and current practice.

Over time, successive versions of the agreement for the operation, maintenance and management of River Ridge Golf Club have been modified to reflect actual practice. Section 2d of the current agreement, which was approved October 19, 2004, provides the opportunity to review and amend the agreement within the next year. At that time, the parties to the agreement will further elaborate on Section 9 to further clarify how payments are made to the Operator and the City. As with past revisions, every effort will be made to ensure alignment between practice and policy.

- R-02. The contract should reflect the nature of the relationship between the City and HTGG as a public-private partnership, specifically delineating the process by which the City has monthly oversight over HTGG revenue, income, and budget. (C-01, C-02, C-04 thru C-07, C-09, C-12 thru C-15, C-17, C-18, C-19, C-22)**

Implemented Prior to This Report. Sections 20a through 20c of the agreement state:

20a. Operator shall submit to the City Manager on or before the twentieth day following each month, a financial statement showing in reasonably accurate detail the financial activities of Operator for the previous month and the fiscal year to date with a comparison of the results of operations against the budgets and Business Plan.

20b. Operator shall submit to the City Manager within sixty days after the close of each City fiscal year, a financial statement for the fiscal year then ended. The annual revenues as indicated in the financial statement of the financial activities of Operator shall be certified by an independent auditor and shall include a statement that the financial statements were prepared in compliance with generally accepted accounting principles.

20c. On an annual basis, City shall commission a comprehensive independent financial audit of Operator's financial statements. Such audit shall include a statement that Operator's financial statements were prepared in conformance with generally accepted accounting principles, and shall include a presentation of Operator's balance sheet, statement of revenues and expenses, and statement of cash flows, along with accompanying notes to the financial statements.

R-03. The contract should reflect the addition of a revenue and expense audit of HTGG on behalf of the City. (C-10, C-11, C-20)

Implemented Prior to This Report. Please refer to Section 20c of the agreement as set out in the City's response to Recommendation R-02, above.

R-04. Supplement the existing Project Manager with contract oversight skills, either through intensive training or by adding additional personnel. (C-06, C-10, C-11)

Will Not Be Implemented. The City has already stated that the Project Manager is highly qualified in golf course management and the City remains satisfied with his performance (please refer to the City's response to Finding F-20, above). All City staff are encouraged to continuously update their skills and knowledge.