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Via Regular Mail and Email: sbcgj@sbcourts.org

Presiding Judge Pauline Maxwell
1100 Anacapa Street
P.O. Box 21107
Santa Barbara, CA 93121-1107

Re: City of Lompoc's Response to the Findings and Recommendations in the Santa Barbara County Grand Jury Report on "Lompoc Tourism Improvement District Management Agreement 2019-2028"

Dear Presiding Judge Maxwell:

The Santa Barbara County Grand Jury recently released its report entitled *Lompoc Tourism Improvement District Management Agreement 2019-2028*. The City of Lompoc (Lompoc) is named as an affected agency and is required to respond to applicable findings and recommendations within 90 days of receipt of the report, by June 16, 2024.

The following are Lompoc's responses to the individual applicable findings and recommendations in accordance with California Penal Code Sections 933 and 933.05.

Finding 1: Lompoc City Council has not directed Visit Lompoc to request, conduct, or complete an independent audit of its Annual Reports.

Lompoc's Response to Finding 1: Agree.

Recommendation 1a: Lompoc City Council shall instruct Visit Lompoc to have an independent audit performed of their Annual Reports and present the findings to the Council no later than mid-2024.

City of Lompoc's Response to Recommendation 1: Will not be implemented.

Given the fact that, due to the subjective and qualitative nature of annual *reports*, it is not customary nor recommended for annual *reports* to be independently audited, and based on the fact that Lompoc serves solely as a passthrough administrator for Visit Lompoc, Inc. (VLI) and does not have any authority over VLI to instruct or require VLI to undergo an independent financial audit, Lompoc disagrees with the Grand Jury's recommendation. Furthermore, there is nothing in the law or in Lompoc-VLI agreement (Agreement) or in the Management District Plan (MDP) that *allows* Lompoc to require it.

Finding 2: Lompoc City Council has not directed Visit Lompoc to request, conduct, or complete an independent audit of its Financial Statements.

Lompoc’s Response to Finding 2: Agree.

Recommendation 2a: Lompoc City Council shall instruct Visit Lompoc to have an independent audit performed of their financial records and present the findings to the Council no later than mid-2024.

Lompoc’s Response to Recommendation 2: Will not be implemented.

Similar to the response to Recommendation 1, Lompoc disagrees with the Grand Jury’s recommendation based on the fact that Lompoc does not hold any legal or contractual authority over VLI to instruct or require VLI to undergo an independent financial audit. The City serves solely as a passthrough administrator for VLI’s collection of TBID collections. Furthermore, there is nothing in the law or in the Agreement or in the MDP that *allows* Lompoc to require it. The City does support VLI if VLI chooses to utilize TBID funds budgeted for administrative costs to commission an independent financial audit of its financial statements.

Finding 3: For the time period 2018 through 2022 the analysis conducted by Lompoc and Visit Lompoc’s accountants of the Visit Lompoc’s financial records confirmed the >\$500,000 discrepancy in unspent funds versus reported carryover values.

Lompoc’s Response to Finding 3: Disagree partially.

Lompoc confirmed that there was a difference in reporting of >\$500,000, however this difference was not a discrepancy, but instead the difference between reporting 1-year data on an acceptable but non-standard 1-year report versus reporting cumulative data on a standardized balance sheet, which VLI is not required to do. The use of the term “discrepancy” in regard to the >\$500,000 is misleading. The City did discover one discrepancy that the City was not able to reconcile in the amount of \$9,450.

Because VLI is not required to, and does not issue financial statements under generally accepted accounting principles (GAAP), and because, as stated in the report, “VLI is not required to provide Lompoc with its financial statements,” VLI’s annual report does not contain or present GAAP financial statements. Instead, VLI’s annual report uses tables to compare budgeted and actual costs, and references terms such as collections, expenses, contingency, and carryover. These presentations and terms are not GAAP-defined, and as such, the use of them instead of GAAP-standard presentation and terminology can lead to confusion for readers when interpreting the non-standardized data presented. However, after a thorough review of all documents available, Lompoc has identified that the underlying issue between the VLI annual reports and the findings

of the Grand Jury is one of different meanings being assigned to the term “carryover.” VLI used the term “carryover” as a synonym of “net income (loss),” which is reported on an income statement, whereas the Grand Jury interpreted the use of the term “carryover” as a synonym of “equity” or “fund balance,” which is reported on a balance sheet. Neither of these definitions of the term “carryover” is intrinsically wrong, since the term “carryover” is not a term defined under GAAP, and therefore could mean any number of things. What leads to confusion, though, is that one definition (the one used by VLI) is specific to one period of time, whereas the other definition (the one used by the Grand Jury), reports a cumulative total over multiple periods of time.

Lompoc concludes that there is no misrepresentation in the VLI annual reports, but there is a difference in usage of the word “carryover.” One uses the term to report “an annual amount to carry over” – specifically the surplus or deficit available to include with the budget for the following year; whereas the other uses the term to report “a cumulative amount carried over and added to equity.” It is a subtle but distinct difference, and one that results in a misperceived discrepancy of over \$500,000.

Said another way, VLI reports each year’s carryover without reporting a cumulative total, and the Grand Jury report assumes that “carryover” must mean “cumulative.” The term carryover is likely derived from California Streets & Highways Code section 36650(b), which states:

“(b)The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information: ... (5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.”

This usage of the term carryover by the code does not state or imply a cumulative nature of carryover, it merely directs that surplus or deficit from the previous fiscal year be reported.

Recommendation 3: Lompoc City Council shall address the accounting discrepancies by amending the Agreement and holding Visit Lompoc accountable for reporting all funds (including any excess) or mandating that all excess funds (less an approved contingency amount) be utilized for purposes related to enhancing tourism.

Lompoc’s Response to Recommendation 3: Will not be implemented.

- First, Lompoc disagrees that a discrepancy of \$9,450 from 2019 warrants amending an agreement to begin with. Second, State law and the VLI Agreement already require VLI to report the estimated amount of any surplus or deficit

revenues to be carried over from a previous fiscal year. (Streets & Highways Code section 36650(b)(5); VLI Agreement section 2.10.) Also, the Agreement already mandates that all excess funds (less an approved contingency and administrative amount) be utilized for purposes related to enhancing tourism. (VLI Agreement sections 2.3 and 2.1 and Recital D; Management District Plan pages 5 to 6.) There is no need to amend the Agreement for either of those outcomes.

Finding 4: Lompoc does not have an adequate system of checks and balances to confirm that Visit Lompoc’s accounting methods are accurate and complete.

Lompoc’s Response to Finding 4: Disagree partially

While it is correct that Lompoc does not impose a system of checks and balances to confirm that VLI’s accounting methods are accurate and complete, there is nothing in the law or in the Agreement or in the MDP that *allows* Lompoc to impose such a system over VLI. Lompoc is allowed to receive the required annual report and confirm that the collections reported by VLI match the disbursements made by Lompoc, which Lompoc already performs.

Recommendation 4: Lompoc City Council shall formally establish a review process to ensure there is no inaccurate or incomplete reporting on behalf of Visit Lompoc before the submittal of the 2024 annual report.

Lompoc’s Response to Recommendation 4: Will not be implemented.

As stated in response to the finding, there is nothing in the law or in the Agreement or in the MDP that *allows* Lompoc to impose such a system over VLI. Lompoc is allowed to receive the required annual report and confirm that the collections reported by VLI match the disbursements made by Lompoc, which Lompoc already performs.

Finding 5: Other than the reference in the Agreement to the Resolution and District Management Plan there are no specific guidelines concerning how Visit Lompoc LLC shall expend its funds.

Lompoc’s Response to Finding 5: Disagree partially

Under state law Lompoc has elected to have an owners’ association determine how to spend the assessment funds, provided the expenditures serve the approved purposes listed in the MDP pages 5 to 6, and Lompoc has entered a 10-year contract with VLI for that purpose. (St & Hwy Code 36651; Mgmt Dist Plan page 2.)

Recommendation 5a: By the end of 2024, Lompoc City Council shall re-evaluate the terms of the Agreement to ascertain whether the 3% fee assessed on hotel customers is achieving its intended objectives.

Lompoc’s Response to Recommendation 5a: Will not be implemented.

As stated above, under state law Lompoc has elected to have an owners’ association determine how to spend the assessment funds, provided the expenditures serve the approved purposes listed in the MDP pages 5 to 6, and Lompoc has entered a 10-year contract with VLI for that purpose. (St & Hwy Code 36651; Mgmt Dist Plan page 2.) Therefore, it is not within Lompoc’s purview to ascertain whether the 3% fee assessed on hotel customers is achieving its intended objectives. This evaluation is the responsibility of the owner’s association. Because Lompoc does not agree with the unsubstantiated allegations, Lompoc does not believe that a reevaluation of the terms of the Agreement is warranted at this time.

Recommendation 5b: By the end of 2024, Lompoc City Council shall determine whether it should have a greater ability to direct unused funds for tourism enhancement projects.

Lompoc’s Response to Recommendation 5b: Will not be implemented.

As stated above, under state law Lompoc has elected to have an owners’ association determine how to spend the assessment funds, provided the expenditures serve the approved purposes listed in the MDP pages 5 to 6, and Lompoc has entered a 10-year contract with VLI for that purpose. (St & Hwy Code 36651; Mgmt Dist Plan page 2.) Lompoc City Council and private citizens and business owners can always provide input and suggest to VLI possible projects to utilize any excess funds for the approved purposes. But for Lompoc or any ad hoc to have binding control over what projects are implemented with the funds (within the approved purposes), an amendment to the Agreement and/or the MDP would be needed to remove that control from VLI. VLI would need to agree to any amendment to the Agreement, and state law provides that the MDP can be amended “upon the written request of the owners’ association”. (St & Hwy Code 36636(a).) However, because Lompoc does not agree with the unsubstantiated allegations, Lompoc does not believe that a re-evaluation of the terms of the Agreement is warranted at this time.

Recommendation 5c: By the end of 2024, Lompoc City Council and Visit Lompoc shall create a joint ad hoc committee potentially including private citizens and other business owners within Lompoc to develop and implement projects utilizing excess funds to further enhance tourism in Lompoc.

Lompoc’s Response to Recommendation 5c: Will not be implemented.

As stated above, Lompoc City Council and private citizens and business owners can always provide input and suggest to VLI possible projects to utilize any excess funds for the approved purposes. But for Lompoc or any ad hoc to have binding

control over what projects are implemented with the funds (within the approved purposes), an amendment to the Agreement and/or the MDP would be needed to remove that control from VLI. VLI would need to agree to any amendment to the Agreement, and state law provides that the MDP can be amended “upon the written request of the owners’ association”. (St & Hwy Code 36636(a).) However, because Lompoc does not agree with the unsubstantiated allegations, Lompoc does not believe that a reevaluation of the terms of the Agreement is warranted at this time.

Finding 6: The Annual Reports submitted by Visit Lompoc to the City of Lompoc did not include all amounts that should be publicly disclosed.

Lompoc’s Response to Finding 6: Disagree partially

The Annual Reports submitted by VLI to Lompoc did not include all amounts that *could* be publicly disclosed. Specifically, the annual reports did not include cumulative equity/fund balance totals. There is no requirement under law or agreement that VLI report cumulative totals.

Recommendation 6: Lompoc City Council shall mandate Visit Lompoc to account for all Lompoc-provided funds under its control via its required annual reports beginning with the submittal of the 2024 annual report (i.e., zero-based budgeting methodology).

Lompoc’s Response to Recommendation 6: Will not be implemented.

First and foremost, it is important to recognize that none of the funds disbursed from Lompoc to VLI are “Lompoc-provided funds.” All the funding disbursed to VLI is revenue reportable by VLI alone. Lompoc serves as a passthrough agent and does not have any legal authority, claim, or control over the funds it administers. Secondly, Lompoc already requires VLI to account for all the funding that it disburses by submitting annual reports that report annual revenue which Lompoc confirms match the amounts disbursed by Lompoc to VLI. Finally, the example provided in Recommendation 6 of “zero-based budgeting methodology” is misleading and unsuitable in this situation. All discussion in this report has been in relationship to annual reporting of actual revenues and expenditures, actual assets, and historical accounting. Budgeting is the practice of forecasting and planning ahead, and zero-based budgeting is a type of budgeting, not financial reporting.

Lompoc does, however, recommend to VLI to consider including in its upcoming annual reports a basic income statement and balance sheet for each upcoming reporting year. Adding those financial statements to the reports will provide the public and other stakeholders with the desired transparency and level of reporting to alleviate concerns of any misconduct. Alternatively, or in conjunction, VLI could

(Date)

Grand Jury Report – “Lompoc Tourism Improvement District Management Agreement 2019-2028”

Page 7 of 7

also opt to list the details of its annual expenditures, so that any interested parties could verify that the TBID funds are being spent as specified in the Agreement.

This concludes Lompoc’s responses to the individual applicable findings and recommendations in accordance with California Penal Code Sections 933 and 933.05.

Sincerely,

Jenelle Osborne, Mayor
City of Lompoc

cc: Santa Barbara County Grand Jury
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cc: Honorable Mayor Pro Tem and City Council Members
Dean Albro, City Manger