

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: JOHN REDLEIN

SUBJECT: LINKS GOLF COURSE DEVELOPMENT

COPY TO: BRAD JERBIC

**CHRONOLOGY**

1. Developer group named Evening Sun originates unsolicited proposal for development of golf course on City land at Vegas Valley and Stephanie. After presentation of their concept, Evening Sun is informed that the City would prefer to circulate a Request for Proposals (RFP), soliciting competitive development proposals. [11-5-96]
2. City staff meets with Walters' design-build team at the Vegas Valley and Stephanie site to discuss feasibility of golf course development. No such access was given to other potential developers. [12-5-96]
3. A Comprehensive Geotechnical Feasibility Study by Kleinfelder Engineering, paid for by the City, was completed and delivered to Walters. It was not shared with any other competitors for the project. The report covers all aspects of soil conditions at the site. [12-11-96]
4. The RFP for development of a golf course at the site is published. The RFP specifies that *"No soil analysis of the site has been conducted and any such analysis would be the responsibility of the Developer"*. [12-12-96]
5. Upon advice of City Attorney, the first RFP process is abandoned because of release of the Kleinfelder report to only one competitor. [4-97] A second, accelerated, RFP process gives other competitors 14 days to submit proposals, utilizing the Kleinfelder report Walters had the use of for 5 months. [4-97]
6. Evening Sun withdraws from the RFP process with the explanation that the City appears determined to award the bid to Walters and that they have no faith they will be treated fairly. The President of Evening Sun mentions contacting "press" & "proper authorities". [5-97]
7. American Golf withdraws from the RFP process and Walters becomes their consultant in negotiating the new Municipal Golf Course concession contract. [5-97]

CONTRACT DETAILS

8. City Council awards project to Walters with specific provision requiring that the developer is responsible for bringing all water to the site. [7-97] City subsequently agrees to modify this condition and supply effluent to the golf course from the Wastewater Treatment Facility. [12-97]
9. Walters' Development Proposal specified that he would construct lakes and ponds on the golf course. City's Lease and Management Agreement specifies that the land is being leased solely for the construction of a facility "*as described in the Development Proposal*".
10. The Water Provision Agreement requires that Walters complete construction of "retention basins, storage tanks, reservoirs and other storage facilities which are sufficient to store the effluent sold to Nevada Links....upon the Leased Property" by 7-1-98. The City obligation is to provide water to those storage facilities by construction of a "lift pumping station". The Water Provision Agreement may not be changed or modified except in writing.
11. City Council approves contract modification of nitrification construction project previously awarded to Western Summit at Wastewater Treatment Facility by adding 1.6 million dollars for construction of high pressure water delivery system to Links golf course. This high pressure system costs approximately four times the amount necessary to construct a lift pumping station. City Attorney advises Manager's office that a water delivery system is not proper for a contract modification and must, as a separate project, be put to competitive bidding. [1-98]
12. Walters requests 25 acre expansion of the project by use of additional land within the Wastewater Treatment Facility. [12-97] City Attorney advises staff that this is a modification of the original proposal which should be avoided. [1-98] No City Council action is taken to expand the scope of the project.
13. The pre-construction schedule set forth in Walters' Lease and Management Agreement is based upon the occurrence of the following events, in the following sequence:
 - I. Mutual written agreement upon a "Commencement Date" which requires that all of the following have occurred: 1) The City provides a policy of title insurance; 2) No notice has been received from Walters that he expects problems in obtaining necessary permits and approvals to proceed; 3) Walters has provided the City with an environmental assessment report on the site which is satisfactory to the City; 4) The City Council has reviewed and approved all aspects of Walter's financing for the project; 5) All appropriate zoning has been received.

It was expected that the Commencement Date would occur within 180 days

after execution of the Agreement. [by 12-97] The Commencement Date must be memorialized by the signing of a formal document, the form for which was attached to the Agreement.

II. Preliminary plans of the features Walters "proposes" to construct must be delivered to the City's Real Estate and Asset Management Office within 90 days of the Commencement Date. The City Manager shall review the preliminary plans.

III. Final Plans in accordance with the preliminary drawings must then be delivered to the City's Real Estate and Asset Management Office. The City has 14 days to review and if more time is necessary, that additional time shall be added to the construction schedule which follows. Only after the City Manager has approved the final plans may construction of any part of the facility proceed.

IV. Walters must provide notice of intent to proceed with construction not less than 30 days before he starts any work.

V. Not less than 15 days before commencement of construction, Walters must provide the City with a performance bond and a completion bond, each in an amount equal to the full costs of construction.

None of items I, II, III or IV above have occurred.

14. The construction schedule, *once commenced*, has the following time line for completion:

90 days	-----clearing and grubbing
210 days	-----grading
300 days	-----sprinklers and electrical for driving range
420 days	-----foundation and floor of clubhouse maintenance compound
450 days	----- frame, walls, rough electrical and mechanical on clubhouse
520 days	-----landscaping, cart storage area, clubhouse finish work
550 days	-----open for business

RECENT DEVELOPMENTS

15. The first plans, in what appear to be final form, were delivered to the City Manager on March 6, 1998. They incorporate *all golf course parking*, as well as the Vegas Valley overpass connecting the primary parcels, on temporary use parcel number three, which was to be reserved for possible Wastewater Treatment Facility expansion in 40 years (Walters' original Development Proposal showed this third parcel being used only for the driving range and maintenance facilities, which could be eliminated if future expansion of the Treatment Facility became

necessary). Further, the plans include four permanent holes on the fourth parcel, which Walters has never been given permission to use. Recently vacated Stephanie Street is also shown as now being incorporated into the golf course. All four parcels and Stephanie Street have already been graded by Walters, despite the fact that the predicates for a Commencement Date, and therefore the start of construction, have not occurred. Finally, the plans show no intent to construct lakes, ponds or reservoirs capable of being supplied with water by a low pressure, lift pumping station—explaining Walter's request for the City to build the more expensive high pressure system.

16. The Manager and Walters have negotiated a temporary solution which will be brought before the Real Estate Committee and the City Council for approval. The essential elements of the bargain are as follows:

A. Walters constructs the high pressure system upon the Wastewater Treatment Facility. That system becomes the property of the City. The City repays Walters for the cost of installation by future credits for water delivery.

B. Walters pays for the electricity to operate, as well as all future maintenance and repair of the high pressure system.

C. Walters acquires a 50 year lease on the additional 26 acres within the Wastewater Treatment Facility as well as on the recently vacated 3 acres of Stephanie Street to add to the scope of the project. The lease payment to the City is to be an extra 10% added to the already contracted for lease payments.

ANALYSIS

Construction is well underway, even though necessary predicate events such as: environmental reporting, posting of performance and completion bonds, City Council review of financing and plan review/approval by City staff have not occurred.

Walters has planned and proceeded with *permanent* improvements upon property which was to be *temporarily* included in this development.

The proposed solution contemplates the City paying for a very expensive water delivery system when we contracted to pay for a relatively inexpensive system. This presents two problems—one political and one legal. 1) There is no real benefit being received by the City for this expenditure of City resources. 2) The construction of the high pressure water system represents the acquisition by the City of a \$1,600,000 public work which has never been competitively bid, in violation of the Nevada statutes.

Construction has been proceeding on City property which Walters has no right to enter, yet has unilaterally incorporated in his development. The solution to amend the lease to include the additional land presents two problems—one political and one legal. 1) The additional land is worth ten times the proposed

additional lease payment. 2) The addition of 20% more land to a competitively bid development project constitutes such a substantial change in the terms of the original proposal that it can fairly be said to be a different project than the one competing developers bid upon. The case law generally forbids such modifications to competitively bid projects after they have been awarded.

For the legal reasons set forth above, The Office of the City Attorney does not recommend the solutions which have been presented to the City Council.