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Memorandum

City of Las Vegas
Office of the City Attorney

To: BRAD JERBIC
From: JOHN REDLEIN
CC:
Date: JULY 22, 2005
Re: IRREGULARITIES IN DEVELOPMENT OF LINKS GOLF COURSE

You have asked for a summary of the events I was involved in regarding the development of this land in 1997 and 1998.

On November 5th of 1996 the City received an unsolicited proposal from Rick Kohlman to develop some of the buffer land West and North of our wastewater treatment plant into a golf course. Dick Goecke, Public Works Director, was selected by management to be part of the team receiving and evaluating the proposal from Kohlman. The conclusion was reached by that team that the concept was interesting, but that it might be more advantageous for the City to put the concept out for an RFP, to see whether other developers, through competition, would make a more attractive offer on the development. Public Works was directed to prepare the Request for Proposals, to be mailed out to potential golf course developers. The fundamental premise of any competitive bid or RFP circumstance is that the proposition must offer a level playing field to those who would respond and that there can be no secret information given to one competitor.

On November 18, 1996, after the decision to put the matter to RFP had been made, Dick Goecke personally ordered a comprehensive soils and geotechnical feasibility report on the site from Kleinfelder, a private engineering firm. The City paid the \$2,000 fee for the Kleinfelder study and City equipment was utilized to perform the excavation work necessary for the preparation of this report.

On December 5, 1996 Goecke met at the site with Billy Walters and several of his development staff (including Walters' builder, a Mr. Breslin and Perry Dye, Walter's golf course designer). Goecke had CLV staff member Larry Haugsness bring all the utility maps for the site and there was an on-site meeting regarding feasibility and construction obstacles which was never conducted for any other competitors.

On December 11, 1996 the Kleinfelder geotechnical report on the site was completed, and at Goecke's direction, a copy of the report was delivered by Kleinfelder directly to Billy Walters. The report encompasses details which any developer would need before undertaking construction on the site and is some forty pages long.

On December 12, 1996 the RFP documentation was completed and I believe it was published on December 13, 1996 by being mailed to approximately three dozen potential golf course developers,

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including, of course, Rick Kohlman and Billy Walters. The RFP specifies that *"no soils analysis of the Site has been conducted and any such analysis would be the responsibility of the Developer"*. That assertion is repeated in the RFP: *"It shall be the sole responsibility of the Developer, at its expense, to investigate and determine the soil conditions of the Site."* Further, as is relevant to subsequent events, the RFP also advises that *"The City will not be participating in the acquisition of water service to the Vegas valley/Stephanie Site."* The publication of the RFP resulted in two responses and proposals for development, from Rick Kohlman and from Billy Walters. I was informed that, at the time of the subsequent oral presentations, Walters displayed an impressive command of the landscaping, soils and construction issues at the site.

On January 24, 1997 Rick Kohlman was in the lobby of the City Hall 10th floor on unrelated business, and a woman whom he did not know approached him and said words which were later related to me as being something to the effect of: "You might be interested in this", dropped a few pages of paper in his lap and then walked away without saying anything more. The papers were the cover sheet, index and some text from the Kleinfelder geotechnical report on the golf course site. Most notably to Kohlman, she had also included a fax cover sheet which showed the report completed and delivered to Billy Walters at Dick Goecke's specific direction, on a date which preceded the publication of the RFP, in which Goecke claimed there was no such report.

Kohlman subsequently contacted Assistant City Manager Lynette Boggs with this news. She delivered a copy of the paperwork Kohlman had been given to me. After consultation with City Manager Larry Barton, he asked this office to conduct an investigation and that assignment was given to me. When initially asked for an explanation by his immediate supervisor, Assistant City Manager Lynn Macy, Goecke lied and said he had not ordered the soils report, that it had been done by our Parks Department. When I confirmed that the Director of the Parks Department did not know anything about the report or how his Department might have gone about getting such a thing, Goecke admitted that he had caused it to be done it simply because Billy Walters had asked for it. He also admitted that "instinctively" he knew that this interfered with the necessary balance of information on an RFP process, but he offered no excuse for his conduct. The findings were all reported to the City Manager.

The advice given to the City Manager was to cancel the golf course RFP and republish the competition with the Kleinfelder report being supplied to all. The RFP was republished, with the geotechnical report attached, on April 21, 1997.

The reissued RFP again advised that the City would be uninvolved in supplying water to the site. The original site we advertised as available for development was rather small for a proper golf course. It was two separate parcels of land, separated by Vegas Valley Road, constituting approximately 112 acres. In the second RFP we proposed the possibility of adding a third parcel, known as the "option parcel" or parcel #3, constituting approximately 20 additional acres. It was made known that the option parcel, if utilized, might need to be cut out of the development in the event of future expansion of the wastewater treatment plant.

By the May 7, 1997 deadline for reply to the revised RFP, Billy Walters again responded and American Golf also submitted a proposal for development. I was on the team reviewing the proposals and I seem to recall that by the time the presentations were to be made in late May of 1997, Kohlman's company had dropped out. He told me that it was too expensive to remain in the

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competition when the "fix was in" for one contender and he specifically mentioned that he was considering going to the FBI with his complaints of unfair treatment. Only two formal presentations were made on the second RFP. Within weeks of making an attractive presentation for development of the property, American Golf also dropped out and left Walters as the only candidate for the project.

Negotiations were conducted between Walters and City staff on details and on July 14, 1997 a Lease and Management Agreement was approved by the City Council. The agreement gave Walters use of parcels #1 and #2 for fifty years, use of parcel #3 for forty years and did not change the position taken in the RFP that he would be responsible for the provision of all water to the site. Eventually the site became known by the name Walters selected, "The Links".

Within a few months, Dick Goecke was advocating that we provide wastewater effluent from our plant for the irrigation of the yet to be constructed golf course. This constituted a very substantial change from the advertised conditions (which required all RFP respondents to purchase potable water) and in the structure of any competitively let contract, significant changes in the scope or terms of the project *after* an award are so disapproved of by law that they can void the contract. Goecke argued that this would be profitable for the City and it was decided by management to support the water proposition. On December 8, 1997 the City Council approved an Agreement to provide the relatively inexpensive reclaimed water to the site for golf course water features and landscape irrigation purposes. The prominent feature of the contract which is relevant to future events is that the City committed to construct only a conveyance system to fill the "retention basins, storage tanks, reservoirs and other storage facilities" which would be the obligation of Walters to construct. In other words, he was to build ponds or tanks on the golf course which we were to fill from a pump or lift station on our property.

The Walters development proposal included specific provision for the construction of "ponds" on the golf course. Our design engineer assured me that if those ponds and lakes were well-placed, that no pumps would be needed and that we could keep those reservoirs perpetually filled with a lift-gate system which could be constructed for under \$30,000. At this point in time, no construction had commenced on the property. Subsequent to this water provision agreement with the City Council, Walters decided on a golf course design which included no tanks, reservoirs or water features.

In March of 1998 I learned that Walters had commenced construction on the site. This was distinctly contrary to the schedule in his lease, which required prior submission of plans for City review to insure that the design and construction he proposed would be in harmony with his proposal and the lease. I was further informed by City staff that Walters had obtained no building permits from the County for this construction. When City management scheduled a meeting and Walters brought his plans, he was already well underway with grading at the site. The plans revealed the golf course had expanded onto an extra 29 acres of City land which had never been part of the RFPs, the proposals or the lease with Walters.

When questioned by me on these points, Walters simply said that Dick Goecke had decided—after the RFP and after the contract award—that he would not need parcel #3 back for plant expansion, that the adjacent 29 acres which had never been included in the bargain (subsequently referred to as parcel #4) could conveniently be added to the golf course and so Goecke had told Walters

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that he could use them and incorporate them into the project. I have no reason to believe that the City Manager or the City Council, which had made the written bargain with Walters, knew anything of these changes. Goecke had given Walters ten extra years on parcel #3 and had added 29 acres of land to the golf course after the competitively let arrangement had been committed to a 50 year lease agreement which had been adopted by the City Council eight months before. Aside from the same competitive bidding concerns which existed with the Kleinfelder missteps, it now became plain that Goecke was willing to give away public property and commit to transfers of interest in City land, all of which was unlawful and greatly in excess of his authority. It was very plain in our discussions that Walters did not expect to have to pay for these enhancements to the project.

The management decision was quickly made to mend Goecke's excesses by incorporating them into the bargain. In March of 1998, the Lease and Management Agreement was amended by the City Council to lift the 40 year limitation on parcel #3, add parcel #4 and increase Walters' lease payments by 10%.

Sometime around June of 1997 there was a competitively bid public works project awarded to a Colorado firm named Western Summit for construction of a nitrification system at our wastewater treatment plant. This system involved fabrication of ponds, tanks and pumps at a site well away from the golf course and was used to remove ammonia during the treatment process. It was a \$5.1 contract award, advertised and competitively bid for, which had nothing to do with the golf course or Walters' future water provision agreement, which was still some months away, at least as far as City management knew, from ever being considered. Remember that the City Council decision to supply effluent to Walters for irrigation was not approved until December of 1997.

In January of 1998 I was contacted by Assistant City Manager Lynn Macy who said she needed a legal consultation on a contract issue. When I responded to her office, she showed me a contract change order on the \$5.1 million dollar Western Summit nitrification project which was for approximately \$2.2 million. The change order authorization had been submitted to her for processing by Dick Goecke and the amount of the change, as a percentage of the whole contract, was the only issue of concern to her. I was asked to research whether a change order to a competitively bid contract which amounted to over 40% of the original contract could be done without a new public bid process. Neither of us had any knowledge that this change order request had anything to do with the golf course. I did a quick study of the law for the manager's office and reported back that the rule of thumb which would allow an unbid change order on a competitively bid contract award was that it needed to be 10% or less of the whole contract and that this one could not possibly be approved. In effect, the rule is that we could not lawfully advertise and competitively award a \$5.1 million contract and later change our mind and decide it should be expanded into a \$7.3 million contract....without a new bid process.

What happened next was reported to me by Lynn Macy. In conversation with Dick Goecke about the change order being excessive, he revealed that the \$2.2 million job had nothing to do with the nitrification basin and ammonia removal. It was a completely unrelated job which Western Summit—being on site for the original contract—simply happened to be capable of performing. The \$2.2 million dollar "change order" was actually intended to pay for the construction of an unrelated high-pressure pumping station on the opposite side of the wastewater facility which would supply all the water for the Links landscaping irrigation under high pressure. After our water

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provision agreement with Walters was approved by the City Council (that we would build a lift gate or pump powerful enough to fill Walters' ponds or tanks, which he would then use his own pumps and electricity to extract at pressure for his sprinklers), that he decided he did not want to build any such reservoirs and since he was not buying potable water under pressure from the Water District, he needed to pressurize the effluent in some other manner. Dick Goecke agreed to use taxpayer money to supply that pressure from the source.

Our outside engineer did calculations at my request and concluded that the true cost of this project for 50 years (using 1998 power expenses) was \$4.5 million. All of this was in distinct contradiction to the terms of the water provision agreement Walters entered into with the City Council in December of 1997. That agreement was to fill his reservoirs, which required little or no pressure or electricity. After the change order had been approved, the City Council rescinded it. I negotiated a new water agreement with Walters which was approved by the City Council on April 13, 1998.

The amended water provision agreement did little to change the terms of the original bargain insofar as expense to taxpayers. It merely worked around the absence of reservoirs in a far less costly manner. Effectively, we agreed to allow Walters to construct his pump station on our land adjacent to the pool from which his water would come. He assumed construction, maintenance and power expense responsibility, as well as liability for failure. He was granted access to our site for inspection and maintenance of his pump system.

Summarizing the list of violations of bidding or spending protocols for which I believe Dick Goecke was responsible, I can identify the following:

1. Organizing and participating in the site visit with staff on construction issues with only one contender for the project.
2. Producing the geotechnical report for only one contender for the project.
3. Informing all other contenders for the project that there was no geotechnical report.
4. Eliminating the use restriction on parcel #3 after the award.
5. Adding parcel #4 to the project after the award.
6. Adding water to the project after the award.
7. Attempting to effectuate modification of a \$5.1 million contract which was competitively bid.
8. Attempting to avoid bidding on a \$2.1 million public works contract which should have been competitively bid and involved interstate commerce.
9. Attempting to cause over \$2 million in taxpayer funds to be used to supply a service for private benefit which had been negotiated and agreed to have been the responsibility of a private party to supply.