



City of Santa Fe, New Mexico

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Memorandum

To: Members of the Governing Body

From: Brian Snyder, City Manager *BS*
Kelley Brennan, Interim City Attorney *KAB*

Re: Chronology – Railyard Development

Date: April 9, 2014

In accordance with the request of the Mayor at the March 26, 2014 meeting of the Governing Body, the City Manager and the City Attorney will make a summary report at the Governing Body's April 9, 2014 meeting on the development of the Railyard; the construction of the underground parking structure (UPS), the Market Station building and adjacent infrastructure; and the settlements with Thos. S. Byrne, Ltd. (TSB), the construction contractor for the garage, and with Railyard Company LLC (RYCO). The chronology of key events that follows will guide our report.

January 31, 2001 – Council approves Resolution 2001-13 directing staff to pursue and implement non-profit management of the Railyard.

January 31, 2001, January 16, 2002 and February 13, 2002 – Council approves long-term land leases and building leases with existing tenants for existing leaseholds in the Railyard.

February 13, 2002 – Council approves Resolution 2001-13 adopting the Railyard Master Plan.

February 27, 2002 – City and the non-profit Santa Fe Railyard Community Corporation (SFRCC) sign a Lease and Management Agreement (L&M) to implement the Master Plan. City leases Railyard property to SFRCC for SFRCC to lease to other entities and manage said leases in accordance with the Master Plan.

September 1, 2005 – SFRCC and the developer RYCO enter into a lease for the Market Station parcels (M-1, M-2, M-3, M-4 and G).

April 27, 2005 – City enters into a professional services agreement with RYCO and Lloyd & Associates Architects (A/E) for design of the UPS.

April 28, 2005 – The City and RYCO enter into the Parking Garage Development Agreement for the development of the UPS and defining City’s right to revenues and maintenance duties and RYCO’s duty to cause UPS to be constructed.

January 25, 2006 – PGDA Amendment 1

August 8, 2007 – PGDA Amendment 2

December 26, 2005 – Project Contracting Plan defining the contracting process for UPS

March 8, 2006 –RYCO enters into a contract with TSB for construction of the UPS.

May 18, 2006 – Letter from Leonard Katz, attorney for RYCO, to City, countersigned on May 19, 2008 by then City Manager Asenath Kepler stating the RYCO will waive certain Conditions to the PGDA as amended if the City agrees it will be responsible for, among other matters, “all additional costs and expenses incurred by [RYCO] under the Construction Contract arising from such claim, impairment, interference, interruption, responsibilities and liabilities.”

October 28, 2009 – Council passes Resolution 2009-104 directing the City Manager to initiate discussions with RYCO and others to explore options for completing the development of the public and private spaces within the Railyard in accordance with the Master Plan.

April 27, 2010 – CAO memo to Council on process since Resolution 2009-104.

April 29, 2010 – Letter from Attorney Katz to City Attorney Geno Zamora threatening to sue the City for \$13,662,354.19 based upon the signature of Ms. Kepler on May 18, 2006 letter which Mr. Katz refers to as an “Indemnification Agreement”.

December 8, 2010 – Council votes to settle with TSB on vote following executive session.

February 1, 2011 – City, TSB and RYCO sign Compromise Settlement Agreement and Mutual Release whereby City pays TSB \$300,000 to settle all claims by TSB against RYCO and TSB against the City regarding TSB’s construction of the UPS. RYCO and the City did not settle any claims against each other.

April 28, 2011 – Council approves a contingent settlement agreement between City, SFRCC and RYCO, and approves a contingent 15 year sublease between RYCO and City for Suite 200, Market Station. Both the lease and the settlement are contingent upon RYCO securing \$1.4 million in funds to make the City’s tenant improvements. Settlement agreement proposes that RYCO shall terminate its sublease with SFRCC for the theatre parcels Tract G and M6 within 2 years if RYCO does not have signed development agreement for the design and construction of the theatre parcels. Three months were given to accomplish contingencies.

August 29, 2011 – Council grants an additional three month extension for RYCO to secure financing for the tenant improvements and to complete April 2011 settlement.

November 2011 – Council grants an additional six months, until May 1, 2012, to accomplish contingencies. RYCO agrees, for the first time, as a revision to the settlement, to amend its sublease with SFRCC to immediately relinquish rights to theatre parcels Tract G and M6.

April 11, 2012 – Council agenda item for executive session: “Discussion of the Purchase, Acquisition or Disposal of Real Property by the City of Santa Fe, Office Space Purchase Agreement, 5000 market Street, Suite 200 at the Railyard, with [RYCO]...” and discussion of threatened litigation.

April 25, 2012 – Council approves settlement agreement whereby RYCO agrees to amend its sublease with SFRCC to immediately relinquish rights to theatre parcels Tract G and M6 in return for the City purchasing, for \$3.6 million, a condominium interest of 21,464 square feet in the market station condominium, created simultaneous with the settlement.