



# City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909  
www.santafenm.gov

*Javier M. Gonzales, Mayor*

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## Memorandum

To: Finance Committee

From: Brian K. Snyder *BKS*  
City Manager

Re: Supplement to  
Final Accounting Report  
Pursuant to Resolution 2015-50

Date: July 22, 2015 for the July 27, 2015 Finance Committee Meeting

Finance Committee Chair Dominguez has asked that staff respond as part of the Final Accounting Report (FAR) to the following<sup>1</sup>:

1. Please identify the people staff spoke to in preparing the FAR dated July 8, 2015 for the July 13, 2015 Finance Committee Meeting, who initiated contact, and what they were asked.

In preparing the Physical Inventory referenced in the FAR, Public Works Director Ike Pino spoke to Fabian Chavez and Ben Gurule, both former Parks Division Directors, Frank Archuleta, former Project Administrator for the Bond park projects and Richard Lopez, who managed the the Bond parks projects "locals crew"; Robert Romero, former City Manager; and Jackie Gonzales, former Contract Analyst. All are now retired. With the exception of Jackie Gonzales, who provided information relating to timekeeping for laborers performing 2008 Bond work at City parks, they were asked to address specific questions about various parks, e.g., whether they recalled how the Sun Mountain Community Trail trailhead improvements were funded. Mr. Pino initiated contact with Mr. Chavez, Mr. Gurule, Mr. Archuleta and Mr. Lopez; Ms. Gonzales and Mr. Romero initiated contact with him.

Prior to seeking Governing Body approval to waive the attorney-client privilege with respect to the Amer Memo, City Attorney Kelley Brennan contacted Judith Amer, former Assistant City Attorney, to advise her that she intended to seek the waiver and to ask Ms. Amer if she had

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<sup>1</sup> References used in this Supplemental Memorandum are the same as those used in the Final Accounting Report.

consulted the City's bond counsel on the question addressed in the Amer Memo. Ms. Brennan also spoke to former City Attorney Geno Zamora to ask if he recalled opining on the subject matter of the Amer Memo.

Staff also spoke to current Parks Division, Finance Department and Public Works Department staff with specific questions.

2. Can staff say that the public trust was not betrayed?

Staff does not believe that the public trust was betrayed. However, we cannot say with absolute certainty that there was no misapplication or misappropriation of Bond funds, or explain fully every expenditure of Bond funds. Our belief that the public trust was not betrayed is based on the following:

As indicated in the Physical Inventory, work listed in the Implementation Plan<sup>2</sup>, with certain noted exceptions, has been completed. In most cases, those exceptions are explained in the Physical Inventory and/or the FAR. Where they are not explained, we note that we have not been able to identify information that would explain why work was not performed or why tasks other than or in addition to those specified in the Implementation Plan were undertaken. A significant amount of work in addition to the work specified in the Implementation Plan was undertaken and completed. Generally, this work was called for in the 2007 MP, which was the foundation document for the Implementation Plan, or identified by adjacent neighborhoods as desirable.

Staff has stated in the FAR that "...all expenditures of Bond funds are shown in the Accounting Reports. If a project or other activity is not shown in those reports, then staff has assumed that it was not funded with Bond proceeds." We have found no evidence to indicate that these expenditures, which include both capital and labor costs, were spent on anything other than improving City parks and trails consistent with the statement of the City Attorney Zamora at the time and with the opinion expressed in the Amer Memo.

While staff is aware of allegations that Bond funds were misapplied or misappropriated, we have not found or been provided with any evidence in support of those allegations. As stated in the FAR:

Concerns have been expressed that individual park expenditures may have benefited non-Bond projects or that items purchased for a park may have been misappropriated. While staff is aware of these allegations, without specifics, staff does not have the means to conduct an inquiry to determine if conduct occurred that must be reported to appropriate authorities for further investigation and disposition. In accordance with the Resolution, we urge individuals with specific allegations to utilize the Fraud, Waste and Abuse Hotline at 844.356.8009 to provide that information to the City's Internal Auditor for follow-up.

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<sup>2</sup> As noted in the Staff Review, the Public Works, CIP and Land Use Committee and the Finance Committee approved modifications to Implementation Plan on November 16, 2009 and November 30, 2009 respectively.

We are not aware of any specific information that would trigger an internal inquiry or a referral to the District Attorney (DA). However, we understand that current employees may be reluctant to contact management, even via the Fraud, Waste and Abuse Hotline (Hotline), for fear of retaliation. It is possible that the Internal Auditor has received one or more complaints relating to Bond expenditures via the Hotline, but has not yet reported on the complaint or outcome, as she has independent authority to act under the enabling ordinance. It is also possible that the DA has received and is investigating a complaint, although we are not aware of any. We continue to encourage staff with any information about wrongdoing to contact the Hotline, the DA, or the City Attorney with that information.

We have noted that timesheets for City workers performing Bond parks work show the parks at which they worked during each pay period, and the number of hours spent at those parks, but do not specify the task on which they were working. It is therefore possible that they worked on non-Bond projects at those parks during those times. We have corrected this problem and now require that timesheets include tasks performed.

We understand that some members of the public may not have understood that City staff would be performing some portion of the Bond tasks, or that Bond expenditures might include the kinds of things we identify in the FAR, like ball cups and flags for the Golf Course. However, we have addressed in the FAR and, prior to that, in the Staff Review, the use of City staff to complete the Bond parks work.

3. Can staff say that the authority of the Governing Body was not usurped?

“Usurpation” implies illegality, or encroachment, and suggests intent. The question thus asks if City staff at the time knowingly misled the Governing Body.

Staff cannot say with absolute certainty that the Governing Body was kept fully informed of Bond parks and trails project tasks throughout the Bond implementation period. However, we have found no basis on the record to conclude that any such failure was the result of an intent to mislead. We cannot guess at the motives of City staff in making the choices they made at the time they made them.

We have noted in the FAR and in the prior Staff Review, that the Governing Body created POSAC to make recommendations on priorities for funding parks and open space improvements identified in the 2007 MP in anticipation of the Bond initiative, as well as to provide ongoing advice on parks and open space related issues, including acquisition, dedication, planning, development, construction, operation and maintenance. In accordance with this delegation, POSAC played a significant role throughout the Bond implementation period in working with City staff as the work proceeded. As noted in the Staff Review:

Based upon the foregoing, 2009 ended with a revised Plan recommended by POSAC and approved by Public Works and Finance. In addition, some “ground rules” had been established, including (1) that individual parks and trails project funds could be shifted within districts, but not across districts, (2) that the shift in work could be by direction to staff, (3) that Governing Body approval for revisions to the Plan was not needed except

when changes were made to some of the dollar amounts (presumably referring to the reallocation of \$1.74 million in funds from the canceled Santa Fe Community College Trail to the Cerrillos – St. Francis pedestrian crossing and the inclusion in the Project of a number of NWQ projects adding approximately \$3 million to the Project), and (4) that any reallocation of unexpended funds would not occur until all the work of the Project had been completed.

It appears that Project funds were allocated within districts within and among the individual parks and trails projects to address changes in the work approved and/or directed by Finance and/or Public Works. It also appears that staff attempted to stay within the established budget for the individual parks and trails projects, even when the work changed due to things like terrain (e.g., at Pueblos del Sol) or in response to neighborhood wishes (e.g., at the MRC). These distributions appear to be consistent with the ground rules identified above. We note that any project of the scale of the Project, with 62 individual parks and trails projects of varying complexity distributed throughout the City, will experience changes that will affect cost.

As noted in the FAR, on November 30, 2011, the Governing Body was provided with and approved an “Update on Parks Bond and Request for Approval of Reallocation of Bond Funds.”

Changes in Governing Body membership and the retirement of a number of critical City staff over the Bond implementation period may have led to breakdowns in communications, with staff continuing to provide detailed reports to POSAC, without taking that same information up to the Governing Body. At the same time, the delegation by the Governing Body of significant powers to POSAC and the “ground rules” established by the Finance Committee, may have led staff at the time to conclude that the Governing Body did not require regular updates on the Bond project work and expenditures.

We do believe that City staff should work with the Governing Body to establish a system of reporting that will assure that the Governing Body receives on a regular basis the information that it needs to exercise its authority in a clear and concise format.