



City of Albuquerque

P.O. Box 1293, Albuquerque, NM 87103

Internal Audit **Interoffice Memorandum**

June 18, 2003

Ref: 03-02-135F

To: Sandy Doyle, Director, Department of Finance and Administrative Services

From: Debra Yoshimura, Internal Audit Officer, Office of Internal Audit

Subject: FOLLOW-UP OF AUDIT REPORT NO. 03-02-135F, DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICE, RISK MANAGEMENT DIVISION LAND ACQUISITION.

Internal Audit completed a follow-up review of Audit No. 03-02-135F, Department of Finance and Administrative Service (DFAS), Risk Management Division Land Acquisition. The report was issued on September 19, 2002. The purpose of our review was to determine whether the audit recommendations had been implemented. We determined the following:

RECOMMENDATION NO. 1:

In 1984 the City of Albuquerque (the City) closed a landfill on the north side of the City known as the Los Angeles landfill. In 1995 the City's Environmental Health Department (EHD) was notified that methane gas was polluting privately owned property adjacent to the landfill. On September 3, 1999 the City was notified that a real estate developer (the developer) who owned property adjacent to the Los Angeles landfill had filed a claim against the City for damages as a result of methane contamination to his property.

In November of 1999 the City entered into a settlement agreement with the developer related to damages from methane contamination of land adjacent to the City's Los Angeles Landfill. The settlement agreement called for the City to pay the developer quarterly easement payments from February of 2000 to April of 2001 to delay development of the property while the City attempted to remediate the property. Total easement payments for this period of time totaled \$707,045. If the City could not remediate the property within the allotted time, the settlement agreement allowed the City to purchase the property from the developer at its fair market value without the contamination. In June 2001, the City purchased the property from the developer for \$3,375,351.

At the time of the audit, DFAS management had recorded the land as an asset in the Risk Management Fund for \$3,375,351. The land should have been recorded at the appraised value with the contamination of \$1,930,000. In addition, a footnote disclosing the potential liabilities

associated with the remediation of the property had not been included in the Comprehensive Annual Financial Report (CAFR).

We recommended the following:

- DFAS management should follow GAAP
- A footnote should be added to the CAFR disclosing the potential liabilities associated with the remediation of the property.
- DFAS management should obtain a legal opinion as to the legality of holding land without any intended use in accordance with Article VIII, Section 4 of the New Mexico Constitution.
- DFAS management should consider increasing the funding to the Risk Management Fund or reclassifying the settlement expense to another appropriate fund.

ACTION TAKEN

The recommendation has been partially implemented. DFAS restated the FY2001 land and fund balance accounts. The restatement of \$1,445,351 increased the deficit fund balance of the Risk Management Fund and decreased the booked value of the property.

Since the property was contaminated by a City landfill, remediation and settlement charges of approximately \$800,000 have been assessed against the Solid Waste Department's Refuse Disposal Fund. This assessment will be fully paid by the end of FY2004. In addition, the Solid Waste Department's Refuse Disposal Fund will also be assessed \$300,000 each year until the impairment costs of \$1,445,351 (\$3,375,351 uncontaminated appraised value less \$1,930,000 contaminated appraised value) have been fully recovered. Also, the Administration is attempting to sell some of the unused lots. The proceeds from any sale of the land will go to reduce the deficit in the Risk Management Fund.

The Administration is negotiating an agreement to develop the property as a baseball field with Alameda Little League. Since the property now has an intended use, no legal opinion is necessary regarding holding land without an intended use.

Finally, DFAS management did not include an appropriate footnote disclosing the potential remediation liability in the Contingent Liabilities section of the City's FY2002 CAFR. EHD continues to monitor methane levels at the Alameda Business Park. Methane gas readings taken in April 2003 reveal that although methane levels are decreasing overall, the methane readings at deeper levels still show 100% of the lower explosive limit. The methane gases continue to migrate outside the west and south side boundaries of the Los Angeles Landfill. As a result of the continuing methane contamination, the risk should be properly disclosed in the CAFR. DFAS management reports that not including a contingent liability footnote relating to the Los Angeles Landfill was an oversight and will include a footnote in the FY2003 CAFR.

RECOMMENDATION

DFAS should properly disclose, as a contingent liability footnote in the City's CAFR, the possible future remediation costs associated with the Los Angeles Landfill.

EXECUTIVE RESPONSE FROM DFAS

“DFAS concurs. Due to an oversight, the contingent liability was not disclosed in the City’s CAFR for June 30, 2002. DFAS financial reporting will include the disclosure in the notes to the financial statement in the CAFR for June 30, 2003.”

OTHER ITEMS NOTED DURING THE FOLLOW-UP AUDIT

This additional item was noted during the follow-up audit.

A. The City of Albuquerque Legal Department Should Document the Consideration Given In Lieu of Cash Payment

The City is negotiating a contract with a little league organization for the use of the Alameda Business Park at no charge. According to the City of Albuquerque Legal Department, the City has multiple property leases with various little league organizations with similar terms. Section 14 of the New Mexico State Constitution states, “Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, nor make any donation to or in aid of any person, association or public or private corporation...” The State Constitution requires that consideration must be given in return for the use of the property. If cash payment is not received from the little league, the City must receive other consideration equivalent to the lease value of the property. Based on our examination of the proposed lease with the little league, it does not appear that an analysis was made by the City to determine if adequate consideration will be provided. For this lease and other similar leases, the Legal Department should perform an analysis to determine if the City is in compliance with the anti-donation clause of the New Mexico State Constitution.

RECOMMENDATION

For leases in which no cash payments or nominal payments are received by the City, the Legal Department should perform an analysis to determine if the City is in compliance with the anti-donation clause of the New Mexico State Constitution. The analysis and all assumptions made, should be documented.

EXECUTIVE RESPONSE FROM LEGAL

“The Internal Audit Officer has asked whether the Alameda Little League Ball Park Agreement (“Agreement”) violates Article IX, Section 14 of the New Mexico Constitution which prohibits the City from making any donation to or in aid of any person, association or public or private corporation. A donation is an allocation or appropriation of something of value without consideration. The Constitution requires that the City receive adequate consideration for the use of its property. The City does not have to receive a dollar for dollar value of consideration.

“The Agreement provides that Alameda Little League (“League”) has the exclusive use of Lots 19, 20, 21, 22, 23, 24, 25, 26, 27, 32, 33, 34, 35, 36, 37, and 38 of Alameda Business Park (“Property”), Bernalillo County, New Mexico during the little league season. At other times, except during the two weeks of the annual Albuquerque International Balloon Fiesta event, the League has the right to enter the Property to maintain the League’s improvements on the Property. During the Albuquerque International Balloon Fiesta event, the League must suspend all of its activities on the Property. Except during the little league season, the City may use the Property and may allow others to use the Property.

“The term of the Agreement is 25 years.

“The Agreement does not require the League to pay the City any cash consideration for the use of the Property.

“The City provides an extensive recreational program for youths and adults. The City encourages the operation of little league programs at various sites in the City by private little league organizations and the City provides the land and other assistance for such uses. It is evident that it is City policy that little league programs should be available to the youth of the City and that the little league programs should be conducted, with the assistance of the City, by private organizations.

“As consideration for the use of the Property, the League is obligated under the Agreement to give the City the following consideration at the League’s cost and expense:

- 1. The League is obligated to provide and operate a little league program.*
- 2. The League is obligated to install and construct all improvements on the Property necessary to conduct the little league program. Upon the expiration or earlier termination of the term of the Agreement, the permanent improvements placed on the Property by the League become the property of the City.*
- 3. The League is obligated to maintain all improvements on the Property and to provide all utilities that it uses on the Property.*

“The Agreement recognizes that the Property is and is subject to contamination by migration of methane gas from the Los Angeles landfill. The League is obligated under the Agreement to take measures in the development and use of the Property to minimize the affects of any potential migration of methane onto the Property. John F. Howden, MAI, who appraised the Property for the City, recognized that the significant factor affecting the market value of the Property is the stigma of the contamination. Although he recognized that the stigma was not permanent, he did determine that the stigma of contamination would last beyond the time the methane gas concentrations within the Property had been mitigated or remediated and would continue to adversely impact the market value of the Property.

“Mr. Howden appraised the Property, as contaminated property, at a fair market value of \$1,749,000. A fair rental value of property is 10% of fair market value. The fair rental value of the Property is \$174,900 per year or \$14,575 per month.

“The little league season is from March 1 through July 15 or 6.5 months. The League will have the exclusive use of the Property for 6.5 months. The annual fair rental value of the property for the exclusive use of the Property during the little league season is \$94,738 (6.5 x \$14,575).

“If the City were to provide the little league program, the City would have to expend the following funds (the following analysis is based on information provided by the Parks and Recreation Department):

- 1. The annual cost to operate the program, including staff salaries and utilities, would be approximately \$32,666.*
- 2. The City would have to purchase maintenance equipment at a cost of approximately \$21,000 which, amortized over the term of the Agreement, would be an annual cost of \$840.*
- 3. The League will construct or install permanent improvement, including a concession stand, 6 landscaped fields, and parking, at a cost of approximately \$2 million which, amortized over the term of the Agreement, would be an annual cost of \$80,000.*
- 4. The annual cost to maintain the improved Property is approximately \$6,500 per acre. The Property consists of 666,906 square feet or 15.31 acres. The annual cost to maintain the improved Property is \$99,515.*

“If the City were to operate the little league program, the annual cost to the City would be approximately \$213,021. The fair rental value for the use of the Property is \$94,738. Based upon this analysis, it is the opinion of the City that the City will receive adequate consideration for the City’s agreement to permit the League to use the Property for little league purposes.”

xc: Mayor Chavez
Jay Czar, CAO
Internal Audit Committee
City Councilors
Gail Reese, CFO
Bob White, Director, Legal Department
Peter Bateman, Risk Manager, DFAS



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Attached is a preliminary draft of the follow-up review memo that we have prepared. Our follow-up review procedures are initiated several months after the release of an audit report, and the purpose is to determine whether our recommendations have been implemented.

Our follow-up review procedures indicated that you have not fully implemented the recommendations for the following finding. You are requested to submit a written response to the memo as soon as possible, but no later than June 10, 2003. Your response should delineate your plans to implement the recommendations, including a timetable of the anticipated completion dates for its implementation.

Your response will be included in the final follow-up report. The report is sent to the Internal Audit Committee, Mayor, the Chief Administrative Officer, City Council and your department.

DDY/njt
Enclosure