

---

# **SALT LAKE CITY COUNCIL STAFF REPORT**

---

**DATE:** April 18, 2006

**SUBJECT:** Report to the City Council relating to the  
Quest for the Gift of Life Monument

**STAFF REPORT BY:** Gary Mumford

---

## **KEY ELEMENTS:**

As a result of a potential unfunded liability relating to a monument/fountain in the Library block, the City Council hired the City's financial auditors to determine whether the City or Library should take additional steps to add controls to their contracting or accounting systems. The accompanying document provides the results of a series of procedures the Council requested the CPA firm to perform. The following is a brief outline of some of the review results:

- a. The Quest for the Gift of Life Foundation approached the Mayor's Office with a proposal for a monument with the understanding that the Foundation would solicit and raise sufficient funds to pay for the monument.
  - b. The Mayor's Office approached the Library regarding a change order to an existing Library contract relating to other improvements to the east side of the Library block. Those involved in the monument project determined that the same company constructing the other improvements should also do the monument since the monument project would use the same utility and plumbing lines, the construction company was already on site, and any future warranty issues would be handled better with only one construction company. It could be easily argued that this was the correct decision and would not violate established policy.
  - c. The change order was signed on February 11, 2004 by the contractor, Foundation, Mayor's Office, and Library (executive director, Library's architect, Library's project manager).
  - d. Library officials understood that the funding for the monument would be managed by the City. Therefore, the project was not recorded on the Library's accounting records, and the Library did not request a separate budget for the project.
  - e. The City Engineer is the procurement officer for construction projects. The City Engineer did not sign this change order. It was signed by a representative of the Mayor's Office.
  - f. City policy requires donated funds to be "in hand" before initiating a project.
  - g. City policy requires a special revenue fund to be established for contributions for specific purposes and that a budget be set up.
  - h. The City has a policy and system in place to account for donated funds. Department personnel should be reminded of the City's established policies and procedures relating to undertaking projects that involve private money.
-

Council staff's understanding is that sufficient funds have now been raised to pay the obligation in full. *The Council may wish to confirm this with the Mayor or with a representative of the Mayor's Office.*

Effective January 3, 2006, the Administration issued a revised and updated policy regarding special revenue donation funds. The issuance of this revised policy also helped to remind city officials in each city department of the procedures and steps required for projects that involve donated funds. In March 2006, the City Council reduced the unspecified donation budget from \$400,000 to \$50,000, thereby requiring specific City Council involvement for any large projects funded with donations. *The Council may wish to ask a representative of the CPA firm whether there are any other recommended actions that the City Council, the Administration or the Library should take to prevent a similar potential obligation in the future.*

---

# HANSEN, BARNETT & MAXWELL

A Professional Corporation  
CERTIFIED PUBLIC ACCOUNTANTS

5 Triad Center, Suite 750  
Salt Lake City, UT 84180-1128  
Phone: (801) 532-2200  
Fax: (801) 532-7944  
www.hbmcpas.com

Registered with the Public Company  
Accounting Oversight Board



## INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

To the Members of the City Council  
Salt Lake City Corporation  
Salt Lake City, Utah

At your request, we have performed certain agreed-upon procedures, in the accompanying schedule, which were agreed to by the City Council, solely to assist the Council in evaluating whether the Quest for the Gift of Life Monument built on the Library Block was acquired and funded in accordance with the applicable, established and appropriate City and/or Library procedures and requirements. This engagement to apply agreed-upon procedures was performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the City Council. Consequently, we make no representation regarding the sufficiency of the procedures described in the accompanying schedule either for the purpose for which this report has been requested, or for any other purpose.

The Council has requested we perform these specific procedures which we have agreed to perform. This report is intended solely for the use of the Council as the Council specified the procedures to be performed without, necessarily, considering the needs of any other party. This report is not intended to be used by any other party, however, it is understood that the report may be a public document. The needs or interests of other parties may vary widely from those of the Council, and, therefore, the nature, timing and extent of other agreed-upon procedures that would be of interest to any other party may also vary widely from those specified by the Council.

Our procedures, which included interviews, observations, discussions and inspection of certain City and Library documents, do not constitute an examination or audit and we express no opinion. The specific procedures you have requested we perform and the results of performing those procedures are included in the accompanying schedule. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the members of the City Council of Salt Lake City Corporation, and is not intended to be used by anyone other than this specified party.

A handwritten signature in black ink that reads "Hansen, Barnett &amp; Maxwell".

HANSEN, BARNETT & MAXWELL

March 23, 2006  
Salt Lake City, Utah

**Procedures Performed by HBM  
And  
Report to the Salt Lake City Council  
Relating to the  
“Quest for the Gift of Life Monument”  
Constructed on the East Side of the Library Block by  
Big D Construction  
Which was completed in May 2004**

- 1. Identify what financial controls, City policies, City ordinances or State Statutes are in place to address contracting for the Library or City.**

Library

The Library has established its own financial controls, and policies to address contracting, which are separate from the City's. Details of these controls and procedures are included in the Library's Policy and Procedure Manual. The Library, however, does not utilize a specific construction management accounting system for construction projects. Accounting for large construction projects is contracted to a project management firm hired for that specific project. The Library utilizes a general accounting system that meets the needs of budgeting and accounting for its principal operation; operating the Library system. The Library budgets for and monitors contracting projects and costs through this general accounting system. The detail accounting for specific construction projects is contracted out to a project management firm.

The Library Board proposes the Library's overall budget. It is then submitted to the City Council for approval and inclusion in the City's overall budget.

The Library's budget is adopted for each line item, but control of budget appropriations is exercised, under state law, at the Library level. The Library administration and the Library Board work together on all matters affecting the budget. The Library Board can move appropriations from one line item to another, and can decrease appropriations, but cannot increase overall appropriations. Appropriations can be increased by the City Council, and only after a public hearing. In practice, minor variations may occur to budget line items due to unexpected events or revenue shortfalls, but no significant changes are made without City Council approval.

Regarding Library construction projects paid for from City bond proceeds, requests for payments are prepared by the construction company and reviewed and verified by the architect and project management firm. After the architect and project management firm sign off that billed work has actually been completed, the Library director reviews and approves the request for payment and forwards those bills to the Library Business Manager who enters them into the general accounting system for payment. The Library Board then reviews and approves them for payment and a request is sent to the City Treasurer for payment from the bond proceeds.

When donated money is received by the Library for a particular purpose, the practice is to establish a restricted fund to ensure that the wishes of the donor are met when the money is spent. The restricted fund would be monitored for budget purposes similar to other Library

funds to give assurance that the fund is kept within its budget.

#### City

The City uses a budgetary system and budgets are prepared for each fund. Management can move budgeted amounts from one line item to another within a department or decrease appropriations. The City Council can increase appropriations after holding a public hearing.

The City is involved in many construction projects which usually involve the Airport, Public Works, and Engineering. The City utilizes a system called CAMP to manage the projects, including payments. Information relating to the scope of the contract is an integral part of the CAMP system.

When a project involves donated funds, the City's policy regarding "trust funds" is followed (2.01.07, "Trust Funds", effective date of July 8, 1996 and updated by "Special Revenue Donation Funds", effective date of January 3, 2006. References in this document generally refer to *Policy 2.10.07* which was in effect during the period of the Monument construction, except for #10, which relates to the future). The City uses trust funds in order to assure proper use and accounting for donated funds used for public purposes. A trust fund is established through a Trust Fund Agreement which defines, among other things, the specific purpose of the trust and the allowable uses of the trust funds. Trust funds are accounted for by the City's established accounting system as a Special Revenue Fund which requires a budget.

## **2. Identify what procurement code and procedures the Library follows. Identify the differences between the Library and City procurement codes and procedures.**

#### Library

The Library's Policy and Procedure Manual at section B3, "Procurement", states, "The library complies with general purchasing requirements for supplies, equipment, services, and construction items in accordance with the Utah Procurement Code". This section of the manual provides details for "purchasing requirements", "competitive bidding", and "contracts". A procurement officer is responsible for purchases and following the procedures prescribed in the Utah Procurement Code.

#### City

Controls for contracting by the City are included in the procurement section of *Administrative Rules*. Chapter 2 of *Procurement in Administrative Rules* relates to who is authorized to handle procurement functions for the City. According to Section 2.2 the City Engineer or his appointed delegate has the procurement authority for construction related supplies and services for the City. According to Section 2.6, the City Engineer also has authority to review all actions taken by the City with respect to procurement of construction related supplies and services. According to Section 2.5 and 2.6 the Chief Procurement Officer and the City Engineer individually have the authority to inquire about any procurement action taken by the city and consult each other, the city attorney or others. Chapter 9 of *Procurement in Administrative Rules* relates to Contracts. Chapter 16 specifies rules relating to contracting for construction and construction management. Chapter 9 provides guidance on selecting types of contracts and making contract modifications. According to Section 9.5 Parts A – G a city procurement official may make modifications to

the term, scope, and/or price of a contract as long as the modification complies with Salt Lake City Code Title 3 Chapter 25. Chapter 16 of *Procurement in Administrative Rules* indicates instances when state and federal law for obtaining bids must be followed in construction contracts, and it provides guidance for selection of construction management.

When donated funds are used for public purposes, the City's policy 2.01.07, "Trust Funds" is followed, as stated in #1 above. The Library has a practice it follows with regard to the receipt and use of donations, which is also mentioned in #1 above.

Both the City and the Library have detailed and extensive procurement requirements and procedures with appropriate and proven checks and balances. The Utah Procurement Code is utilized by the State of Utah and many other public organizations such as the Library. The City's Procurement rules, practices and procedures have been utilized, upgraded and modified by the City for many years.

3. **Determine if the contract was recorded on the City's system. Determine whether or not the Management Services employees (department director, deputy director, finance director, recorder's office, contracting section) were aware of the contract's outstanding amount and if so why it wasn't raised in a budget opening.**

The Library is not required to record construction contracts on the City's system. During the construction of the library, change orders were requested either by the contractor or architect. Each change order was reviewed and signed by the contractor, project manager, architect and the Library. No other review was necessary and all change orders were made within budget. As the Library project was a multi-year project, the budget was adjusted each year. The project stayed on budget throughout the project life and therefore, no budget openings were necessary.

The Quest for the Gift of Life monument was not its own contract. It was created by a change order to the Library construction project. The change order was not recorded on the system maintained by the City. This is appropriate since the contract was with the Library and not the City. A change order was prepared and signed by representatives of 1) Big-D Construction, 2) Moshe Safdie & Associates (VCBO Architects), 3) Construction Control Corporation, 4) Salt Lake City Library, 5) The Quest for the Gift of Life Foundation, and 6) The Mayor's Office (for Salt Lake City). The City's Management Services employees were not directly involved.

The City's engineering division had very little involvement with the Library construction project or the construction of the monument. The Library construction project was a Library contract and not a City contract. The Library hired a construction management firm to oversee the Library construction project. The involvement by the City's engineering division with the Library construction was limited to reporting to the construction management firm the expenditures made on the project, and in reviewing applications for and issuing the required permits from the City. The construction management firm was not asked by the Library to manage the Quest for Life monument. The Library did not modify the Library construction contract to include the monument project.

In 2002, the City, with council approval, appropriated additional funds for improvements to the east side of the Library block, referred to as "East Park", or "Library Commons". The City proposed that this upgrade be added to the library contract prior to any discussion of the

monument. As the East Park improvements were proposed by the City, a representative from the Mayor's Office became involved on decisions related to this area. From this point on, the representative from the Mayor's Office was included in change order reviews as the projects were developed and constructed. That involvement was limited to proposing projects and monitoring the projects status.

**4. Determine if the contract was recorded on the Library's system.**

The change order was not recorded on the Library's accounting system. The Monument change order was to have been fully paid for by The Quest for the Gift of Life Foundation. Invoices for the monument project were sent to the Foundation for payment. It is the Library administration's position that they assumed the monument was another City project to be paid from City funds set aside for "East Park" projects, and was, therefore, included on a change order. It was not until later that they learned the contractor was billing the Foundation directly.

**5. Identify any violations of City ordinances or State statutes discovered during your procedures.**

As a result of the procedures Hansen, Barnett & Maxwell ("HBM") was asked to perform, there appear to be at least three issues to consider regarding non-compliance with established policy; 1) acceptance and accounting for donated or "trust funds" for a City owned project, 2) the Mayor's office being a signer to a construction change order, and 3) whether the monument project should have been subject to competitive bid. Our observations relating to these issues are as follows:

The City's Policy regarding donations for City owned projects

When a project involves donated funds, the City's policy regarding "trust funds" is followed (2.01.07, "Trust Funds", effective date of July 8, 1996). The City uses trust funds in order to assure proper use and accounting for donated funds used for public purposes. A trust fund is established through a Trust Fund Agreement which defines, among other things, the specific purpose of the trust and the allowable uses of the trust funds. Trust funds are accounted for by the City's established accounting system as a Special Revenue Fund which requires a budget. The monument was to have been paid for using donated funds. HBM observed that no Trust Fund Agreement was entered into as required, no fund was established, the donations were not recorded on the City's accounting system, and the project was not budgeted, and thereby monitored, as required for a Special Revenue Fund.

The Library's practice regarding donated funds

HBM observed that the Library's established practice regarding donated funds was not followed. A restricted fund was not set up. It was the Library administration's understanding that the monument project was another of the City's "East Park" projects to be paid from City funds. According to the Library administration, they were not aware that the City representative and the Foundation had worked out the funding for the project and invoices were to be sent directly to the Foundation for payment.

Mayor's Office being a signatory to the project and thereby indirectly obligating the City

HBM observed that a Library change order for construction of the monument was prepared and signed by representatives of 1) the construction company, 2) the architects, 3) the

construction management firm, 4) Salt Lake City Library, 5) The Quest for the Gift of Life Foundation, and 6) the Mayor's Office (for Salt Lake City). The City's Management Services employees were not directly involved. Normal procedures dictated that change orders to the Library's construction project were to be approved by the contractor, construction management company, architect and the Library. The Foundation had committed to pay for the project and, therefore, signed the change order. The Mayor's office also signed the Library change order, and indirectly, it could be argued, obligated the City. The City Engineer is the procurement officer for construction related supplies and services, per Chapter 2 of Administrative Rules, Procurement, 2.2, but did not sign the change order. Per City procurement policies, the Mayor's office does not have the authority to obligate the City for construction projects.

#### Competitive Bid for the Monument project

The Library's procurement policies allow for no bidding on a project, Per B3.4.3, "If there is only one source for the required supply, equipment, service, or construction item, a contract may be awarded without competition". Those involved in the monument project determined that the same company constructing the Library should also do the monument; the monument would use the same utility and plumbing lines of the Library construction, the construction company was already on site and prepared to do the work, and any future warranty issues would be handled better with only one construction company instead of potentially two. Based on the fact the construction company was already on site and prepared to do the project, and because of the warranty concerns issue, the parties involved decided not to competitively bid the project. Per HBM review of the Library procurement policy it could be easily argued that this was the correct decision and would not violate established policy.

- 6. Identify what process or procedures are in place for obligating the City / Library. Identify who can formally obligate the City / Library. Identify any variances from the established processes and procedures in obligating the City / Library in connection with the Library Monument contract noted as a result of your procedures.**

#### City

Chapter 2 of Procurement in Administrative Rules relates to who is authorized to handle procurement functions for the City. According to Section 2.2 the City Engineer or his appointed delegate has the procurement authority for construction related supplies and services for the City. According to Section 2.6, the City Engineer also has authority to review all actions taken by the City with respect to procurement of construction related supplies and services. According to Section 2.5 and 2.6 the Chief Procurement Officer and the City Engineer individually have the authority to inquire about any procurement action taken by the city and consult each other, the city attorney or others.

#### Library

The Library can only obligate itself as allowed for by its established and approved budget. Obligations are for projects for which money has been appropriated or budgeted for. The Director has responsibility for the overall implementation of the Library's purchasing practices.

#### Variances from established procedures

Both the City and Library have established policies and procedures to obligate their



respective organizations regarding construction projects. HBM observed that variances from the established policies and procedures include: 1) The Mayor's office, rather than the City's engineering division, signing a contract change order, 2) the Mayor's office not having the donated funds "in hand" before initiating the project if the Foundation was committed to pay for the project, or if the City was to participate in the project, having the money appropriated/budgeted before committing the City, 3) not establishing the special revenue fund on the City's system to appropriately budget and account for the project from receipt of donation to payment of invoices, 4) the Library allowing the project to be included as a change order to its contract when the project included donated funds and was not to be paid for from funds available to the Library; the bond proceeds or other City appropriated money, 5) if the project was anticipated to be a Library project, the donated money was not accounted in a restricted fund per the Library's policy, 6) the donated funds were not accounted for on either the City's or the Library's systems per policy.

**7. Identify what steps were followed, and how those steps compare to the City's and the Library's requirements.**

The monument project was proposed to the Library administration by the Mayor's office which had been approached by the Quest for the Gift of Life Foundation ("Foundation"). It was determined among the parties that the appropriate way to handle the project would be as a change order to the original contract. The parties had agreed that the Foundation was to pay for the monument, and not the Library or City. The change order which approved the monument project was signed by six parties: the construction company, the architect, the project management firm, the Library, the Foundation, and the City (Mayor's office).

The Library construction project was with the Library and not the City. The Library can sign for a change order. Representatives of the Foundation and the City do not have that authority.

Library construction project requirements

If the project was a Library project, a restricted fund would have been established to receive and account for the donation of money. The Library board would have approved the project. The construction would have commenced once the money had been received. The construction management firm would oversee the project and report to the Library administration.

City construction project requirements

If the Library construction project had been a City contract, the special revenue fund (Trust Fund) would have been established, the project would have been budgeted for, an agreement with the Foundation would have been signed, and the applicable and established departments of the City would have been involved in approving, monitoring, and accounting for the change order and overseeing the construction.

**8. Since the City Council has budget authority over both the Library and the City, identify how the transactions were handled if they were handled without a budget.**

During the construction of the library, change orders were normally requested either by the contractor or architect. Each change order was reviewed and signed by contractor, project management firm, architect and owner. No other review was necessary and all change orders

were made within budget. As the Library was a multi-year project, the budget was adjusted each year. The Library construction project stayed on budget throughout the project life and therefore, no budget openings, or amendments were necessary.

A brief history of the Library construction project and the surrounding area

On January 9, 1999, the Library entered into a contract with the project management firm, to construct the new main library, parking structure and plaza. On November 22, 2000, the library contracted with the construction company.

In 2002, the City, with council approval, set aside approximately \$1 million of bond proceeds as well as approximately \$3 million from CIP for landscaping and other improvements to the east side of the block, referred to as “East Park”, or “Library Commons”. The City proposed that this upgrade, be added to the library contract, prior to any discussion of the Monument. As the East Park improvements were proposed by the City, a representative from the Mayor’s Office, representing the City, became involved in decisions related to this area. From this point on, the City’s representative was included in discussions regarding various proposals, communicating the Mayor’s ideas and proposals, and monitoring the various East Park projects.

On February 11, 2004, the change order involving the Foundation monument was signed. This project was to have been paid for by the Foundation. The bond money or the additional money appropriated by the City was not planned to be used to pay for the project. The change order went through the same procedures and documentation as other East Park projects. From a budgeting perspective, the Foundation Monument was included in the overall East Park budget even though bond or City money was not expected to be used to pay for it.

- 9. Inquire of the prior auditor, who audited the City’s June 30, 2004 financial statements, whether they were aware of the liability to the construction company. Inquire as to whether the prior auditor requested and received a confirmation from the contractor regarding the outstanding contract balance as of June 30, 2004.**

HBM contacted the engagement partner at the City’s prior audit firm. He was aware of the construction on the Library, but the change order for the monument was immaterial to the audit of the City as a whole. Accordingly, no confirmation was obtained from the contractor during the June 30, 2004 audit.

- 10. Based on your procedures, identify additional controls to assist in avoiding any similar problem in the future. Specifically, controls that would include routinely identifying any unrecorded or unfunded liabilities.**

Based solely on the procedures performed by HBM and the information gathered as a result of those procedures, the following summary observations are made regarding four specific areas, including unrecorded or unfunded liabilities:

Construction projects in general – The City has the divisions, systems, and personnel to handle construction projects. These resources should normally be used in all construction projects. The need to hire a separate construction management firm to handle any construction project, whether for the City or for one of its component units (such as the

Library), should be carefully considered. If it is determined that a construction management firm should be involved, that firm should not supplant, in most respects, the role of the City's designated divisions. In other words, the City's designated divisions should be integral to all City related construction projects undertaken by the City and by its component units. The Library is a component unit of the City.

When project funding involves donations -- When a private entity separate from the City and its component units is involved financially in a project owned or to be owned by the City or one of its component units, City policy 2.01.07, "Special Revenue Donation Funds" (effective January 3, 2006) should be followed. Because a budget is required for Special Revenue Funds, the City Council is involved with that project. A Special Revenue Fund is established when only private money is used, and also when both City and private money is used for a particular project.

The City's policy stipulates, among other things, that a Special Revenue Donation Fund is established through an agreement, a City designated employee is responsible for day-to-day oversight of the fund, and expenditures are limited to cash on hand.

If the project and its funding are accounted for through the City's established systems, there does not appear to be any need for additional controls or procedures.

Contracting – Where private donations are used for a project that needs to be contracted out, and a Special Revenue Donation fund has been established, the City's established Management Services divisions are involved. When the City's established divisions are involved, there does not appear to be a need for any additional systems or procedures. There is a policy in place.

#### Unrecorded or Unfunded Liabilities

By adherence to the established policy, a project using donated funds is accounted for in the City's Special Revenue Fund. In addition, the City's budget system is designed control the expenditures which, in turn, provide assurance that there are no unfunded liabilities associated with a particular project.

The City has a policy and system in place to account for donated funds. Division and departmental personnel, and appointed and elected officials should be reminded of the City's established policies and procedures relative to undertaking and funding projects that involve private, or private and public money.