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Report of Investigation

FILE NO: 23-0018-C

SUBJECT MATTER: Potential violations of the Occupational Health and Safety Act and nonfeasance by employees related to the City’s demolition and remodeling of the Gibson Health Hub facility creating a threat to the health of anyone in the facility.

STATUS: Final

INVESTIGATOR: Office of Inspector General Staff

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May 1, 2023
Date of Approval

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EXECUTIVE SUMMARY

According to City Ordinance 2-17-2, the Inspector General's goals are to: (1) Conduct investigations in an efficient, impartial, equitable, and objective manner; (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to ensure taxpayers' dollars are spent in a manner consistent with the highest standards of local governments.

On March 2, 2023, the Office of Inspector General (OIG) received multiple complaints subject to the Whistleblower Protection Act. The complaints alleged violations of the Occupational Safety and Health Act (OSHA) and nonfeasance by City of Albuquerque (City) employees related to the City's demolition and remodeling of the Gibson Health Hub (GHH) facility creating a threat to the health of anyone in the facility. The OIG conducted an onsite visit on March 2, 2023, noting construction on the 2nd floor of the main building at the GHH and found sufficient evidence to justify an OIG fact-finding investigation. The purpose of the investigation was to determine, through the collection of additional evidence, whether the allegations of an OSHA violation and nonfeasance by City employees related to the City's demolition and remodeling of the GHH facility could be substantiated.

During our fact-finding investigation, the OIG identified a subsequent matter of abuse by some City employees through improper governmental actions and conducted additional fact-finding included in this investigative report.

As a result of the investigation, the OIG was provided sufficient evidence to substantiate the allegations of potential violations of the Occupational Health and Safety Act and nonfeasance by City employees related to the City's demolition and remodeling of the GHH facility, which created a threat to the health of anyone in the facility. The OIG was provided sufficient evidence to substantiate the subsequent matter of abuse by some City employees.

****Note**** The detailed interviews have not been included in this report due to the fears of some of those interviewed concerning retaliation by City officials or employees.

ABBREVIATIONS

A1:	City Administrator
A2:	City Administrator
A3:	City Administrator
A4:	City Administrator
ACM:	Asbestos-containing materials
ACBM:	Asbestos-containing building materials
City:	City of Albuquerque
D1:	City Director
D2:	City Director
D3:	City Director
D4:	City Director
D5:	City Director
DMD:	Department of Municipal Development
E13:	City Employee
E17:	City Legal
E19:	City Deputy Director
E20:	City Legal
EHD:	Environmental Health Department
FCS:	Family and Community Services Department
GC:	General Contractor
GHH:	Gibson Health Hub
GSD:	General Services Department
NESHAP:	National Emission Standards for Hazardous Air Pollutants
OIG:	Office of Inspector General
OSHA:	Occupational Safety and Health Act
OSHB:	Occupational Safety and Health Bureau
PM1:	City Employee
RACM:	Regulated asbestos-containing materials
REC:	Recognized Environmental Condition
RM:	Risk Management
T1:	GHH Tenant
T2:	GHH Tenant

INTRODUCTION

The City Inspector General's office is responsible for promoting a culture of integrity, accountability, and transparency throughout the City of Albuquerque to safeguard and preserve public trust. This is done through oversight of the ethical and legal conduct of City departments and employees and ensuring that all activities are conducted in compliance with relevant laws and regulations. As part of its mandate, the Inspector General's office is launching an investigation into the effects of not remediating asbestos in a building before commencing construction activities.

This investigation will examine the potential health implications of non-compliance with safety regulations, as well as assess the extent of any violations. The Inspector General's Office takes this matter very seriously and is committed to ensuring that all city activities are conducted in a safe and ethical manner. The investigation will identify instances of non-compliance and

recommend appropriate actions to prevent such violations from occurring in the future. Ultimately, the goal is to ensure the safety and well-being of all citizens.

Complaint

Allegations of violations of the Occupational Safety and Health Act and nonfeasance related to the City's demolition and remodeling of the Gibson Health Hub facility creating a threat to the health of anyone in the facility.

Background

The City purchased the Gibson Medical Center located at 5400 Gibson Boulevard in Southeast Albuquerque, NM 87108 in April 2021. The City planned to renovate the Gibson Medical Center into a one-stop center for services for the unsheltered, also referred to as the Gateway Center.

The GHH consists of eight buildings, including a five-story hospital building (plus a basement) in the central portion of the 20.8-acre site. The main hospital building alone has approximately 559,054 square feet of aggregate floor space. The property includes seven (7) other buildings. All buildings were constructed between 1951 and 1999. Due to the periods in which these buildings were built, it is suspected they contain hazardous materials which must be tested for and if present, abated, according to OSHA.

The City leases out space in the GHH to tenants. The location is currently the primary business location of seven (7) private organizations, including a 24-7 hospital that houses patients. In addition, there are offices for employees of two (2) City departments located within this facility.

Construction of a women's shelter is underway during Phase I and will include restrooms, shower facilities, a sobering center, and a medical respite center.

The use of asbestos in building construction has been linked to numerous health risks, including lung cancer and mesothelioma. As a result, it is critical that any building containing asbestos undergoes proper remediation before any construction activities commence. Unfortunately, in some cases, construction has proceeded without proper asbestos remediations, which can lead to the release of asbestos fibers into the air and pose a significant health risk to workers in the area.

Given the potential health implication of not remediating asbestos before construction, the City has launched an investigation into the effects of such non-compliance. The investigation aims to assess the extent of any health risks associated with not remediating asbestos, as well as identify any instances of non-compliance with the safety regulations. The City is committed to ensuring the safety and well-being of its citizens, and this investigation is an important step in ensuring that all construction activities in the city are conducted with the utmost regard for public health and safety.

SCOPE AND METHODOLOGY

Scope: Phase I Construction at GHH

The methodology consisted of:

- Assess complaint allegation
- Prepare an investigation work plan
- Review OIG ordinance
- Review OSHA regulations
- Review AI 8-5 Safety Policy
- Review the Code of conduct
- Obtain and review limited asbestos surveys prepared for GHH
- Obtain and review lead-based paint surveys prepared for GHH
- Request and review all reports on abatement completed at GHH
- Obtain and review emails related to the GHH construction
- Request and review certifications of contractors
- Request and review all notifications required to be sent out before the commencement of construction
- Research employee information for those identified
- Site visit of GHH
- Conduct interviews of witnesses
- Interviewed Project Manager during the site visit
- Request the report from the NM Occupational Safety Bureau's site visit
- Review the Construction Contract

This report was developed based on information from interviews, inspections, observations, and the OIG's review of selected documentation and records. The OIG's analysis is limited to the evidence provided.

ANALYSES AND CONCLUSIONS

In conjunction with the twenty-four (24) interviews conducted by the OIG, the OIG considered the following during its analysis of the evidence.

Authority: Occupational Health and Safety Act 1926.1101 Asbestos
29 USC 654 SEC.5.Duties
Administrative Instruction 8-5 Safety Policy
Article 17: Inspector General Ordinance
Article 7: Whistleblower Policy
301. Code of Conduct

Evidence: Interview statements made by witnesses
Correction notice issued by Planning Department
Limited Asbestos Survey dated October 5, 2020
Limited Lead-based Survey dated October 5, 2020
Limited Asbestos Survey dated April 8, 2022
Limited Asbestos Survey dated March 10, 2023
Lead-based Paint Survey dated March 10, 2023

Memos issued by the Risk Management (RM) Division
Emails
OIG site visit
RM Division site visit
City of Albuquerque Environmental Health Department site visit and memo
Photographs of the second floor at the GHH
Construction Contract

Allegation 1: Potential violations of the Occupational Health and Safety Act (OSHA) related to the City's demolition and remodeling of the Gibson Health Hub (GHH) facility creating a threat to the health of anyone in the facility.

Allegation 1 Analysis:

The OIG reviewed 29 USC § 654 sections a and b, the Occupational Safety and Health Act (OSHA) 1926, and 40 CFR Protection of Environment section 6 Subpart M (Appendix A). 29 USC § 654 outlines the duties of employers and employees with regard to OSHA. OSHA 1926 regulates Toxic and Hazardous substances and 1926.1101 address asbestos during construction. 40 CFR Protection of Environment section 6 Subpart M regulates National Emission Standards for asbestos. The OIG considered the evidence contained in the limited surveys and in the interviews conducted and determined the evidence is consistent with concluding OSHA regulations 29 CFR §§ 1926.1101(g)(8)(i)(A), 1926.1101(g)(8)(i)(E), 1926.1101(g)(8)(i)(I) may have been violated. Additionally, the evidence is consistent with concluding 40 CFR §§ 61.145 standards for demolition and renovation along with §§61.150 standards for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations may have been violated given that demolition of the GHH site commenced without testing of suspect materials and manifest documentation for the disposal of those materials was not available. Additionally, the same evidence which is consistent with concluding there was a violation of these regulations is also consistent with concluding there was a violation of 29 USC §§ 654.

Limited Surveys

The OIG reviewed the Phase I Environmental Site Assessment dated June 16, 2020. The purpose of this report is to assess whether the subject property has the potential to contain Recognized Environmental Conditions (RECs), Controlled RECs, or Historical RECs. The report concluded that the assessment revealed no evidence of a REC in connection with the subject property but did include the following Business Environmental Risks:

- Radon concentrations appear to be low to moderate in the zip code area of the subject property. A radon survey can be performed at the request of the client.
- Based on the construction dates of the complex, there is an elevated potential for asbestos-containing materials (ACBMs) to be present. However, the current owners did not provide information regarding previous asbestos sampling and remediation. It is recommended

that the current owners provide documentation to the City of Albuquerque for all historical asbestos surveys and asbestos remediation projects. If comprehensive ACBM information is not provided, then a thorough asbestos survey is warranted.

- Based on the construction dates of the hospital complex, there is an elevated potential for lead-based paint (LBP) to be present. The current owners did not provide information regarding previous LBP sampling or mitigation reports. It is recommended that current owners provide documentation to the City of Albuquerque for all historical LBP surveys and LBP remediation projects. If comprehensive LBP information is not provided, then a thorough LBP survey is warranted.
- One of the tenants at the subject property, AMG Specialty Hospital, is an active Resource Conservation and Recovery Act (RCRA) hazardous wastes generator and one tenant, Quest Diagnostics, was a former RCRA hazardous wastes generator. Sendero Environmental was not provided information concerning the RCRA permits. Sendero Environmental recommends that RCRA hazardous wastes generator status should be verified with occupants if the City of Albuquerque acquires the subject property.
- According to the current owners, lead-in-water sampling is done annually at the subject property. However, the owners did not provide access to the reports and findings of the sampling. It is recommended that the current ownership provide all documentation of lead-in-water sampling to the City of Albuquerque.
- There are multiple customer-owned transformers located on-site. Sendero Environmental recommends that all wet-type customer-owned transformers should be sampled for polychlorinated biphenyls.
- Oily staining was present around the trash compactor. Sendero Environmental recommends that the equipment should be repaired so that it stops leaking.

The OIG reviewed the Limited Asbestos Survey completed by Sendero Environmental on October 5, 2020. This report states that this limited Phase II environmental assessment was performed to assess whether ACBMs are present. The presence of ACBMs in the building may present potential health risks, impact renovation costs, and present concerns to construction workers and building occupants. The report stated that sample testing had been conducted on seventy-five (75) samples and that ACBMs were identified in the main hospital. This report recommended that the TSI “hard” joints receive priority consideration, the asbestos-containing floor tile and mastic should receive secondary consideration, and the asbestos-containing roofing tars which are exterior material have a very low potential for exposure to asbestos fibers, so they may be addressed last. The report concludes the following:

- “All ACBMs should be removed and disposed of properly if they will be disturbed during demolition or significant renovation of the main hospital building.”
- “A General Contractor can remove non-friable ACBMs; however, all National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations must be followed. Sendero Environmental recommends that the identified ACBMS should only be removed by a licensed abatement contractor.”

- “ACMBs that are removed must be disposed of at a Special Wastes Landfill.”
- “If the ACBMs are not abated then an Asbestos Operations and Maintenance (O&M) Program should be developed for ACBMS that are managed in place.”

The OIG noted that the report contained the following paragraph which addresses future testing.

No additional sampling for asbestos is recommended in the building at this time. Conclusions made about the locations of ACBMs were based on the number of samples collected and the selective locations of those samples. It is possible that ACBMs are present in areas that were not sampled (Locked rooms, deeper layers of the building materials, inside walls, etc.). If an area is questionable, then additional samples can be collected. If an unsampled material is identified at a later date, then it may be assumed to contain asbestos, or it can be sampled and analyzed.

The OIG reviewed a letter dated October 8, 2020, and a lead-based paint survey conducted by DC Environmental Consulting and Training Services, dated August 21, 2020, which reflects that lead-based paint was identified in the following materials:

Main Hospital Building

- Fifth floor-Ceramic floor and wall tile in rooms, restrooms and kitchenette; White paint in Nurses station; Green paint on plaster in Room 5-1; Blue paint on gypsum in Room 5-64; White paint in Room 5-54.
- Fourth floor-Ceramic floor tile in restrooms; Pink paint in Room 4-25; Purple paint in Room 4-26.
- Third floor-Ceramic floor tile in restrooms.
- Second floor-Ceramic floor tile in restrooms; Beige paint in Room 2-22.
- First Floor-Gray paint on exterior vents.
- Basement: Yellow floor stripe on concrete.
- Power Plant: Yellow paint on the concrete floor.
- Exterior: Yellow paint striping on concrete; Red paint striping for Fire Zone.

The report states:

In general, the interior lead-based paint may present more of a concern (potential for exposure) than the exterior lead-based paint. However, the exterior lead-based paint is generally more weathered. Lead in ceramic tile glazes should present a minor exposure risk unless the tiles are damaged.

Sendero Environmental recommends that the identified Lead-based paint surfaces should be compared to the unsampled surfaces in the occupied tenant spaces (predominantly the west wing and central portion of the hospital). If a similar paint is identified in the occupied tenant spaces, then it should also be considered lead-based paint. Alternatively, additional sampling can be performed to confirm additional lead-based paint surfaces in the tenant spaces.

The lead-based paint does not warrant abatement at this time. It may be managed with a lead-based paint Operations and Maintenance (O&M) Program. The lead-based paint O&M Program may include marking the lead-based paint surfaces and notifying tenants, custodial staff, maintenance staff, and contractors. If the Gibson Medical Center becomes a child-occupied facility in the future, then identified lead-based paint should be appropriately managed. Since relatively minor quantities of lead-based paint were identified, it may be more prudent to abate the lead-based paint rather than manage it in place with an O&M Program.

Federal regulations require that personnel working with Lead-based paint material received training to reduce exposure risks. Contractors abating the lead-based paint should therefore have appropriate training and OSHA may require them to have medical monitoring. Abatement should be performed within the health and safety guidelines established by OSHA for occupational exposure to lead-based paint.

Since Lead-based paint was identified in interior paints, if the City of Albuquerque acquires the subject property, it may be prudent to perform lead-based paint sampling in those occupied areas that were not sampled during the September 2020 sampling effort. However, since those locations were renovated for the current tenants, no additional lead-based paint may be identified.

A third report from Havona Environmental for limited asbestos sampling at ABQ GHH (2nd Floor B), dated April 8, 2022 was obtained and reviewed by the OIG. The OIG noted that this report was specific to the 2nd floor B. The report states that nine (9) bulk samples of sheet vinyl flooring and vinyl floor tile/mastic were collected. The results state:

Of the materials sampled, one was identified to be asbestos-containing materials (ACM). The material identified to be ACM is the vinyl floor tile black mastic. The report further states that the vinyl floor tile mastic is a non-friable, miscellaneous material that was in fair condition at the time of sampling. Removal of the ACM is classified by OSHA as Class II work and categorized by NESHAP as Category II, non-friable. Category II non-friable ACM is any material, excluding Category I that contains more than 1% asbestos and is non-friable.

Regulated Asbestos Containing Material (RACM) is friable asbestos material. Category I ACM that has become friable, Category I that will be disturbed and

become friable, and Category II ACM that has a possibility of becoming friable in the course of demolition or renovation operations.

Per NESHAP regulations, prior to the commencement of any demolition or renovation activity in the structure, all RACM must be removed from that structure if the construction activity would break, dislodge, or disturb these materials. NESHAP addresses not only friable ACM, but also those non-friable ACMs that could become friable as a result of demolition or renovation.

On March 10, 2023, the OIG received and reviewed the Tetra Tech Limited asbestos survey and the results from the testing conducted on March 1, 2023. The survey consisted of the collection of seventy-five (75) bulk samples. The report states that the purpose of the survey was to identify, locate, and quantify suspect ACMs, if any, which may have been disturbed during the demolition or renovation activities. The report provides a description of the inspected area and states:

This inspection at the Gibson Medical Center was limited to the 2nd Floor Gateway Phase I area of the building. A mechanical room, offices, corridors, electrical rooms, storage areas, and restrooms were observed. Building materials tested included concrete masonry unit (CMU) wall texture, concrete wall texture, gypsum wallboard, insulations, sealants, caulking, and mastics. Floor finishes consisted of carpeting, linoleum, flooring materials, and resilient floor tile on concrete floors. Please note that at the time of the inspection ceiling and walls had been demolished. The flooring materials have been disturbed along with the other building materials. In addition, the installation of new building materials was in progress. The laboratory results indicate asbestos greater than 1% in the CMU Wall Texture, the Concrete wall texture, the Gray ceiling sealant, the Black Carpet Mastic, the 12” Beige Floor Tile Mastic (on wall edges) and the Black Flooring Mastic.

Additionally, Tetra Tech issued a report on lead-based paint testing for the 2nd floor that was reviewed by the OIG. The OIG noted that none (0) of the thirty (30) samples tested contained at least 1.0mg/cm or greater of lead resulting in the conclusion that lead-based paint was not identified in the areas tested.

The OIG noted that the October 2020 reports indicate testing in another portion of the facility, not attributable to the current construction. These reports are relevant because they reflect that asbestos-containing building materials and lead-based paint were identified in the facility and the reports state additional testing should be done in other areas, and if no testing was done, then it may be assumed that these hazardous materials are present. Additionally, the report states “If demolition or renovation will disturb the ACBMs, then they should be abated and disposed properly.” The April 2022 report indicates testing completed in an area adjacent to the current construction project revealed the presence of asbestos-containing building materials. The April 2022 report also explicitly recommends following NESHAP regulations prior to any demolition or construction of the structure. The March 2023 report tested the area under construction and

found the presence of asbestos-containing materials while also noting that demolition and construction were already underway.

OIG Site Visit

On March 2, 2023, the Inspector General and the Lead Investigator arrived at the GHH to inspect the construction site predicated by multiple complaints to the OIG. Upon our arrival, we requested to speak to PM1. We were advised by an employee at the GHH that PM1 was not at the facility. The employee agreed to take us to the construction site. The OIG staff was led upstairs to the 2nd floor of the GHH where construction was underway. The employee provided information on the layout and walked us through the common lounge area, the women's wing, the women's bathroom, and an electrical room. In several of the rooms, construction workers were working. Of the many contractors present, most were not wearing protective gear. Only two contractors had protective masks on, one had a hard hat and two had on safety glasses. The OIG witnessed some contractors using grinders on the floor, some contractors were on ladders working on the ceiling, some contractors were working on electrical, and some using brooms and sweeping up the dust on the floor. The specific work of other contractors seen at the site could not be determined. The OIG noticed debris on the floor throughout the construction site, and trash bins located throughout. The OIG also observed that some flooring had been removed, portions of walls and ceiling also had been removed and it appeared that framing attached to the ceiling had been put in, potentially disturbing the spray-applied fireproofing.

Upon PM1's arrival at the site, the OIG conducted a brief interview and then followed PM1 on a tour of the construction site. PM1 took the OIG staff up the escalators to sections B and C on the 2nd floor where construction was underway. The OIG walked through the construction site observing workers and taking pictures of the site. In addition to taking the OIG through the previously explored area, PM1 led the OIG into areas where no workers were present. The OIG noted areas where tile remained on the floor that were met with areas of flooring where tile had been removed. The OIG noted black areas in certain areas of the floor. Where the contractors were grinding, the OIG only noted fine gray dust. PM1 addressed the work in the ceiling stating that the construction workers were not affecting the fireproofing that was previously questioned by the Planning Department as potentially containing asbestos.

During our tour, the OIG took pictures of the fire suppression spray located in the ceilings and walls where the material appeared to have been cut to affix other structures, tiles on the floor, and of tiles that had been removed and sanded, walls that had been constructed and, in some cases, where walls had been removed.

The OIG considered our physical inspection of the site as it reflected the work in progress at the GHH construction site and allowed the OIG to observe the grinding and sanding of the floors mentioned in the investigation complaint. The OIG did not see evidence of the materials being removed, leading the OIG to believe they had been disposed of. The OIG requested manifests for the disposal of the materials but did not receive them, causing concern that the required disposal

procedures for OSHA or under CFR 40 61.150 had not been followed and that any hazardous materials may have been transferred to a landfill that does not accept hazardous material.

Finding regarding Allegation 1: The evidence obtained was consistent with concluding the alleged violations of the OSHA described in the complaint occurred and created a threat to the health of anyone in the facility.

Recommendations: Construction at the GHH should cease until abatement of the hazardous materials have been conducted following OSHA standards.

The City should follow OSHA standards and properly notify all individuals who may have been exposed to hazardous materials and if necessary establish monitoring of those individuals.

The City should hire a licensed asbestos abatement contractor: The removal of asbestos should only be performed by a licensed asbestos abatement contractor who has the appropriate training and equipment to safely and effectively remove the hazardous materials.

The City should develop and implement an asbestos management plan: A comprehensive plan should be developed and implemented to manage the asbestos removal process, including the proper notification and training of all workers involved in the project.

The City should conduct regular inspections and air monitoring: Inspections and air monitoring should be conducted regularly to ensure that all asbestos has been removed and that the air is free from asbestos fibers.

The City should develop a plan to dispose of asbestos waste: Asbestos waste should be properly disposed of in accordance with state and federal regulations.

By following these recommendations, non-compliance with asbestos removal regulations can be addressed, and steps can be taken to ensure that future building projects adhere to safety protocols and protect the health and safety of workers and citizens.

Management's response: Construction in the concerned area, roughly 4,000 sq. ft. of the 560,000 sq ft of floor space on the 20.8-acre site, ceased once asbestos was found to be present. The City stopped work in the concerned area, contracted with a licensed asbestos abatement contractor to test, abate, properly dispose of all removed materials, and retest the area for asbestos causing materials (ACM). That abatement, removal, and testing is complete. The City will continue to test all areas to be reconstructed prior to construction. The City commits to properly following all federal, state and local regulations.

Allegation 2: Nonfeasance by employees related to the City’s demolition and remodeling of the GHH facility creating a threat to the health of anyone in the facility.

Allegation 2 Analysis:

I. Disregard of notifications regarding the presence of asbestos-containing material at the GHH and the recommended need for additional testing and potential abatement

Emails

The OIG reviewed emails regarding the limited testing for asbestos and lead-based testing dated between April 12, 2021 and April 20, 2021 related to a separate construction project at the GHH. The OIG noted that PM1 was not included on these emails. The emails state: “The presence of asbestos requires that we follow OSHA regulations to protect our employees.” Additionally, these emails reflect that a meeting was set up to go over the findings and to determine a path forward.

Risk Management report

The OIG reviewed a report on the GHH titled Safety Inspection Lead/Asbestos, prepared by the Loss Prevention Manager on May 12, 2021. The report stated that Loss Prevention walked the building to inspect each area DC Environmental Consulting and Training Services tested for lead and indicated a positive result. The report included pictures of issues identified during their walkthrough. The report also identified areas of concern for asbestos, noting that warning signs for asbestos were placed at all entries to the basement. The report concluded the following:

- Any lead paint that exhibits major peeling (indicated on the report) must be abated.
- All friable asbestos identified in the report from October located in the basement of the main building must be abated.
- Tiles that were identified to contain lead in the October report that are broken must be abated.
- Any lead paint found intact identified in the October report must be encapsulated with encapsulation paint.
- The substance wrapped around the pipes in the boiler room is suspect asbestos. It can either be tested or just abated.
- The tiles that are broken in the basement main building found to contain asbestos in the October report must be abated.
- Any other areas that were identified in the October report containing lead or asbestos that will not be abated, must be left intact.
- All abatements must be done by a contracted professional.
- Work performed in areas identified as containing lead and asbestos must be done in a manner that does not disturb either substance.

Disturbance

OSHA has added a definition for “disturbance” to all three standards to distinguish it from removal. In this definition, disturbance means any contact with ACM or Potential Asbestos Containing Material (PACM) which releases fibers or which alters its position or arrangement. It also includes operations which disrupt the matrix or render it friable or which generate visible debris from it. A quantitative cutoff of disturbance is given – the amount of ACM/PACM so disturbed may not exceed the amount that can be contained within one standard sized glove bag or waste bag. OSHA believes that certain jobs, e.g., repairing leaking valves, often require asbestos to be cut away to gain access to a component. If the amount of asbestos so “disturbed” is contained in one bag, Class I precautions are not necessary.

Per the Risk Management report, the following cannot be done by a City employee in the areas identified as containing lead paint:

- Abrasive blasting
- Welding, cutting, or burning on steel structures
- Lead burning
- Using lead-containing mortar
- Power tool cleaning without dust collection systems
- Rivet busting
- Cleanup activities where dry expendable abrasives are used
- Movement and removal of abrasive blasting enclosures
- Manual dry scraping and sanding
- Manual demolition of structures
- Heat-gun applications
- Power tool cleaning with dust collection systems

The OIG considered the relevance of the issuance of RM’s report as it was prepared and presented in May 2021. Issuance of this report put the GHH and Facilities staff on notice that future testing would be required and that specific types of demolition or construction were prohibited. Interviews indicated that PM1 attended the presentation by RM.

Abatement of Asbestos

The City abated asbestos in the basement of the main building in June 2021. In April 2022, the UNM suite renovated under the direction of the Family and Community Services Department was abated for asbestos. The UNM space was connected to the current construction project by a door in a common hallway.

The OIG considered the previous abatements as evidence that the City was aware of asbestos-containing materials suspected throughout the facility and the need for testing and potential abatement.

Planning Department's Notice of Correction

On February 10, 2023, a Building Inspector with the Planning Department issued a correction notice to the GHH indicating "wallboard and RFI-asbestos report for fireproofing SFRM spray-applied coating."

On February 17, 2023, a representative of GC provided the City Inspector with the Environmental Site assessment dated June 16, 2020, the limited asbestos survey dated October 5, 2020, and the limited lead-based paint survey dated August 21, 2020. The email also included the statement "FYI- the dust you are seeing in the air is due to sheetrock work that is currently taking place." The Inspector stated the limited asbestos survey dated October 5, 2020, indicated no asbestos was present in the spray-applied fireproofing for two items tested. The notice of correction was resolved.

The OIG considered this notice relevant to the investigation as it appears to have been the catalyst for concern in the facility and the notice is indicative of PM1 being advised of potentially hazardous materials in the construction site.

Emails

March 2, 2023, an email was sent from RM to A3 and D4 advising them of anonymous calls regarding construction work at the GHH. The email further indicated that there were concerns that the work was being conducted without testing for asbestos in areas where the presence of asbestos was highly due to when the buildings were built. The email stated that RM had advised PM1 that construction must be halted and testing completed prior to any disturbance of the suspected asbestos. Construction had not been halted and there are people at the facility who may be exposed to asbestos-past and present. The email explained that RM has done everything to inform GSD about the potential danger and the OSHA protocols on the project but that their advice is being ignored. The email also expressed concern that there is major work going on to remove the materials RM is investigating.

NM Department of Health site visit

The NM Department of Health visited the GHH site on March 10, 2023, as documented Appendix C, and conducted air quality monitoring in T1's space, based on coring by the construction workers into T1's space. Interviews with the OIG provided confirmation for the NM Department of Health visit and monitoring. Interviews indicated that the air quality monitoring came back negative for asbestos in T1's space. The interviews also reflected that T2 is requesting the City conduct asbestos testing in their space or reimburse T2 for the cost of asbestos testing incurred by T2.

The evidence indicates that the City and PM1 initiated construction at the GHH before conducting testing in the construction area to determine if ACBM's were present, despite reports indicating

sources of asbestos and lead-based paint had been previously identified and were suspected in other parts of the facility.

Evidence and interviews revealed that other employees raised the issue of testing for hazardous materials on more than one occasion but that PM1 countered any suggestions by stating “No. I don’t have to,” and “My contractors know what it looks like, they will stop.” Interviews also revealed that employees at the GHH were concerned that construction began prior to testing for asbestos. Employees felt that construction should have been stopped until testing had been completed and the results of the test had been provided to the City. Additionally, an interview statement of “That is, I believe a violation” was made regarding the lack of testing. It was also acknowledged that demolishing may have removed asbestos-containing materials that had not been tested.

Interviews indicate that D1 and D2 did not pursue recommendations to test for hazardous materials despite knowing that parts of the building had previously tested positive for asbestos and lead-based paint.

Interviews and a lack of evidence of notification to EHD indicate that there was no notification of demolition to EHD as required by the Code of Federal Regulations. D5 stated there was no evidence of asbestos-containing materials present at the inspection conducted by EHD. Despite not conducting testing during the inspection or having the results from the limited asbestos testing conducted by Tetra Tech, D5 permitted the construction to continue.

II. Disregard of construction shut-down notices and restarting construction without test results

Emails

The OIG reviewed an email dated February 28, 2023 from RM, advising PM1 that all work in the areas must cease until an asbestos test has been performed and the results come back. A walk-through of the GHH was scheduled for March 3, 2023, but was subsequently declined by PM1.

March 1, 2023, an email was sent from RM to D4 referencing “Gateway Center- construction may have exposed many to asbestos.”

Additionally, emails dated March 9, 2023, March 16, 2023, March 23, 2023, March 30, 2023, and April 6, 2023 referenced the GHH exposure concerns.

March 2, 2023, an email was sent from RM to A3 and D4 advising them of anonymous calls regarding construction work at the GHH. The email further indicated that there were concerns that the work was being conducted without testing for asbestos in areas suspected to contain asbestos due to when the buildings were built. The email stated that RM had advised PM1 that construction must be halted and testing completed prior to any disturbance of the suspected asbestos.

Construction had not been halted and people at the facility, past and present, may be exposed to asbestos. The email explained that RM has done everything to inform GSD about the potential danger and the OSHA protocols on the project but that their advice is being ignored. The email also expressed concern that there is “major work going on to remove the materials RM is investigating.”

March 3, 2023, an email was sent from the RM Division to D4 in response to a meeting held that morning. The purpose of the email was to provide additional information regarding the GHH, indicating that EHD is now attending meetings and it outlines observations made during the site visit. The email also states that the RM Division has not been provided with any testing results from the GHH since October 5, 2020. Additionally, the email contained references to Federal and State Statutes as well as City policies and Administrative Instructions relating to the RM Division’s responsibilities.

On March 3, 2023, the OIG issued the following email notice to A1, A2, and A4 stating:

“The OIG has received an anonymous complaint that construction work at the Gibson Health Hub may pose a risk of liability to the City, Contractors, and any other individuals accessing those facilities. Based on a physical inspection of the location, a review of the Environmental Site assessments, the limited asbestos study, and the limited lead-based paint study prepared by Sendero Environmental, LLC, emails, City Ordinances, Administrative Instructions, and Federal regulations, the OIG believes the risk of liability to all stakeholders is too great and that Administration should put the project on hold, temporarily, until the latest test results are received. PM1 indicated that the testing results are expected within two weeks. If the results of the test indicate no hazards, the project can and should resume allowing the City to move forward on the Gibson Health Hub. If the results of the tests indicate hazards, then the City will need to follow OSHA regulations for proper abatement and regarding properly notifying all affected parties.

I am attaching copies of the Sendero Environmental, LLC reports indicating the presence of asbestos and lead-based paint and recommendations that further testing or abatement be done prior to remodeling or demolition.”

March 10, 2023 an email was sent to RM from D5, carbon copying D4, A2, E17, and E13 stating:

“Black mastic was found on the last report in about 4500 square feet that will not be disturbed. It’s difficult to homogenize the entire building and assume that it all had the same mastic because only certain areas had it and not all the flooring in general. The area that was disturbed and is in question had no survey done, so we do not know without any samples, but it is now clean and if it had asbestos it’s all gone, but again we do not that it have asbestos. Even if it had it, when we talk about asbestos there are two types: ACBM (Asbestos Containing Building

Material) which is not regulated and RACM (Regulated Asbestos Containing Material). That latter is friable and former is not and it is what mastic, tiles and flooring have. Not regulated can be removed utilizing general tools and will not become friable and does not require a negative air pressure type containment. Removing mastic doesn't make the asbestos in it friable unless you specifically grind or sand it out. Mastic can be removed with a spade, typically solvent is used and scraped and bagged. With the exception of sanding, the typical methods for removing non-regulated asbestos do not make it friable. Also, when we talk about Regulated Asbestos Material there is a quantity threshold that kicks in the regulation; 260 linear feet, 160 square feet or one cubic meter of the friable material (that can be pulverized with finger pressure). Asbestos in older buildings is very common and we are all exposed to it, and almost all of it falls under the Non Regulated type of asbestos. Most people either walk on top of it or under it every day. Asbestosis, which is the chronic disease caused by prolonged (years) of inhaling friable asbestos takes about 10 to 40 years for symptoms to occur. The mere exposure to tiles containing asbestos doesn't equate to a dose equivalency that correlates to respiratory problems. We probably walk over many tiles here at City hall that contain non regulated asbestos which doesn't become friable, thus why it falls under the non regulated category. I know just the term asbestos causes concerns, as does the term radioactive material or nuclear material, but we expose our selves to both daily. Every smoke detector in this building has a small piece of Americium 241, which is an Alpha Radiation Emitter which senses the smoke to create the alarm. I just say this in hopes that it can put everyone at ease and understand that we have a good handle on the issue and will address any potential violations once we complete our review of the issues and documentation concerning this case. I hope this helps, please let me know if you have further questions."

RM and D5 exchanged emails between March 10, 2023 through March 13, 2023 discussing the need to create a list of City employees who were exposed and notify them. An email from D5 to RM states:

"I fully agree with notifying those that worked around the area in question. It's the only area that was not surveyed and while it's not far fetch to attempt to homogenized the building, without a survey I don't think that anybody knows for sure what was abated. We are trying to get a final report out by the 15th or this Wednesday. We will send it out as soon as it's completed."

The OIG considered these emails to be an integral part of the communication timelines regarding the concerns at the GHH between PM1, Directors, and Administrators. The email evidence reveals that PM1, Directors, and Administrators were advised of the potential for asbestos in the building, the requirement for testing prior to demolition or remodeling, and the concerns of employees. This

evidence also indicates this information was not timely acted on which potentially harmed anyone in the GHH facility during demolition.

RM site visit

On March 2, 2023, a Risk Management Safety Compliance Specialist was sent to inspect the construction crew at the GHH working on flooring that was possibly disturbed and creating asbestos exposure. The Specialist arrived at the GHH and was escorted to wing B on the second floor. The Specialist observed black mastic located on the concrete flooring where the flooring had been removed. The construction crew was drilling into the ground with a flathead type of drill where black mastic was present. The Specialist observed flooring in wing B with black mastic that was visible. Even with black mastic present, the Specialist heard the supervisor speaking to the construction crew and saying they were going to start grinding the flooring. The Specialist took pictures showing the visible black mastic and the construction crew working on the floor in wing B.

The OIG considered this site visit relevant to the investigation due to the observations of the Safety Compliance Specialist and the fact that work had commenced before any asbestos test results for the area were available.

City of Albuquerque Environmental Health Department site visit and memo

On March 3, 2023, the City's Environmental Health Department conducted a site visit and walk-through of the construction area. A memo was issued on March 6, 2023, stating:

“During our inspection of the second floor in areas titled Women's Getaway area and Sobering Section we observed that all flooring had been removed, portions or walls and ceiling also had been removed. Based on this, no potential asbestos-containing material was noted due to it not being on site.

During our walk-through inspection of the portion of the 2nd floor that was being demolished/renovated, no construction or building debris was observed on-site or being stored. Because there were no debris piles on site, there is no concrete evidence that asbestos-containing material had been present. If debris pile were present, the Program would have requested that sample be taken and testing for asbestos.

No active operation was observed during the time of inspection. Based on what was observed, the Program did not require that the project be shutdown.

An additional Asbestos Survey has been conducted and samples have been sent to a lab for analysis and should be complete in 7 to 10 days from 3/3/2023. We have requested a copy of the survey to be sent to the EHD Air Quality Program

(Program). Upon receipt of the Asbestos survey report and the analysis of samples taken will determine whether the materials is or is not asbestos-containing and will determine the next course of action.

We requested site plans of the affected areas at the time of inspection and these were received by the Program on 3/6/2023.

The Program was able to review the Asbestos surveys that were completed on 10/5/20 and 4/8/2022, showed that neither survey included the areas that are currently under renovation.

The Program has a meeting scheduled tomorrow, March 7th, with PM1, to discuss our findings and advise *the individual* of proper notification and procedures required regarding demo/reno and asbestos NESHAP notifications.”

The OIG’s consideration of this report was limited because the Environmental Health Department did not conduct Air Quality testing of the site at the time of inspection as indicated in the second paragraph of EHD’s report. The OIG questions whether it was appropriate to rely on the conclusions offered in this report as they were not derived from the testing of any samples.

The following is an excerpt from the GHH Asbestos Timeline (Appendix C) prepared by Administration and Public Information Officers:

- February 28, 2023 [REDACTED] from risk asked for site to be shut down due to asbestos concerns. There was no pause in construction site because Risk does not have jurisdiction to shut down construction sites.
- March 1, 2023- Keers came out and took sampling of 75 spots; [REDACTED] from Risk came to the construction site to observe that floor work was occurring
- March 2, 2023 – Albuquerque Bernalillo County Air Quality was notified of an asbestos concern
- March 3 – 7, 2023 – Per CAO, 4:53 PM on March 3rd Construction paused. Construction resumed on March 7th.
- March 3, 2023 – Albuquerque Bernalillo County Air Quality sent a supervisor and inspector out to conduct a survey. They did not walk into the engagement center area but did walk the other areas. They suspected non-friable asbestos may be present but none was being disturbed at that time and thus posed no health risks to current site workers or tenants.
- March 6, 2023 – Albuquerque Bernalillo County Air Quality provided an initial report allowing project to continue as there were no health risk identified.
- March 9, 2023 – Keers testing came back with 7 positive results out of 75 tests.

OSHB site visit

The OIG was notified the NM Occupational Safety and Health Bureau (OSHB) had conducted site visits on March 9, 2023, March 14, 2023, and again on March 17, 2023. The OIG contacted the OSHB Inspector to request the report once completed and to inquire about any citations that may have been issued. The OSHB Inspector agreed to provide the report when completed and stated no citations were issued during the site visits, but indicated citations could be issued upon completion of OSHB's investigation. On March 29, 2023, OSHB issued an email to the City to inform the City "of the nature and scale of the problems identified" at the GHH.

Interviews indicated that OSHB visited the GHH site on multiple occasions, OSHB conducted an inspection where they took photographs, conducted interviews, and had a meeting that included a sharing of information where OSHB was told by the EHD Director that asbestos regulation fell within the purview of the EHD.

OIG's review of the asbestos timeline along with interviews raise concerns that the Environmental Health Department may have misled the public by: claiming total authority over asbestos; issuing a memo stating there were no concerns of asbestos based on their inspection; minimizing the asbestos issue at the GHH in meetings, timelines, and public statements without adequate evidentiary support and despite the fact such minimization was inconsistent with other available evidence; delaying the issuance of their final report; and attempting to withhold information from the OSHB Inspectors and the public.

The evidence obtained and reviewed in conjunction with the interviews indicates that City employees including PM1, Directors, and Administrators did not shut down the site despite being notified of concerns and notification to shut down the site by RM. Interviews indicated there was a discussion between Administrators and Directors to discuss RM's authority to shut down a work site. Interviews revealed that it was stated that the authority over asbestos in the City had been formally delegated to Environmental Health Department's Air Quality Division by the Federal government. Other interviews indicated comments were made by PM1, and D3 regarding RM having no authority over OSHA matters and that RM had no authority to shut down the construction site. Interviews indicate E20 reiterated that RM had the authority under the Administrative Instruction to shut down the site. The OIG's review of Administrative Instruction 8-5 on Safety revealed that the Risk Manager or his/her designee has the authority to stop work at the City worksite when a condition that poses an imminent threat to life or health exists.

III. Code of Conduct violations

§ 301.1 Duty to the Public states:

"The City of Albuquerque is a public service institution. In carrying out their assigned duties and responsibilities, employees must always remember their first

obligation is to the general public's safety and well-being. This obligation must be carried out within the framework of federal, state, and local laws.”

§ 301.3 Standards of Conduct states:

“Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of coworkers and the community.”

The evidence outlined above reflects that City employees, Directors, and Administrators did not comply with the City's Code of Conduct regarding their Duty to the Public or Standards of Conduct. Violations of regulations may have put the safety of city employees, tenants, and some members of the general public in danger through exposure to asbestos.

§ 301.8 Safety states:

“Employees are responsible for performing assigned duties in the safest possible manner, using all available safety measures and devices to prevent injury to themselves, coworkers or the general public and to report unsafe equipment, materials, or conditions to their supervisor and the Risk Management Division.”

The evidence indicates PM1 did not comply with Section 301.8 of the City's Code of Conduct regarding safety. Interviews indicated PM1 had forty (40) projects through August 2022 at which time the number of projects was reduced to five (5). The OIG obtained an email indicating PM1 requested a quote for limited asbestos testing in mid-February 2023 but did not wait for the testing prior to construction. The request for a quote is evidence PM1 knew of the testing requirement. Interviews revealed that GC commenced with the demolition of flooring which occurred prior to the limited asbestos tests being conducted. Additionally, interviews and photographs show that the grinding and sanding of the concrete started the day after the Safety Compliance Officer went out on leave. The fact no evidence of a manifest for disposal of the asbestos-containing materials has been presented causes concerns about improper disposal of such material potentially not compliant with OSHA or CFR 40 61.150.

The evidence shows that Administrators, Directors, and key employees disregarded instructions by RM to shut down the site due to possible asbestos exposure to City employees, tenants, contractors, and visitors. Although the OIG acknowledges the Chief Administrative Officer has the authority to override an Administrative Instruction, the OIG found no documented support for an exemption of AI-8-5, which would be a best practice to mitigate concerns regarding the validity of an approved exemption.

§ 301.9 False Statements/Fraud states:

“No employee shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or investigation, or in any manner commit any fraud, conceal any wrongdoing or knowingly withhold

information about wrongdoing in connection with employment with the City or in connection with the work-related conduct of any City employee.”

Evidence and interviews contrasted with statements made by PM1. Additionally, PM1 provided reports irrelevant to the area under construction to satisfy concerns from other departments regarding the safety of the Phase I construction area. The evidence suggests D1, D2, D4, D5, and E13 did not provide all relevant emails to the OIG when those emails were requested. Emails provided to the OIG by witnesses corroborate that some emails were withheld, which the OIG believes constitutes a violation of Section 301.9 of the City’s Code of Conduct regarding False Statements/Fraud.

The evidence obtained and reviewed by the OIG indicates that City Employees, Directors, and Administrators did not meet the standards outlined in the City’s Code of Conduct. Even when clearly notified of the problem, City Employees, Directors, and Administrators did not maintain their conduct at the highest personal and professional standards to promote public confidence. City Employees, Directors, and Administrators did not meet their obligations to ensure the safety and well-being of City employees, contractors, and visitors of the GHH facility as evidenced by the disregard for OSHA standards.

Finding regarding Allegation 2: The evidence obtained is consistent with concluding there is a sufficient factual basis to substantiate the allegation of nonfeasance by employees related to the City’s demolition and remodeling of the GHH facility creating a threat to the health of anyone in the facility.

Recommendation: The appropriate City Officials should review the actions of City employees under the Merit system and determine what action, if any, should be taken against employees whose actions resulted in violations of Federal regulations and City ordinances, policies, and administrative instructions.

Management’s response: The City agrees it did not properly follow the steps required to notify the proper regulatory authorities prior to undertaking work in the concerned 4,000 sq. ft. area. Demolition and reconstruction in the area was performed. Once the City was made aware of the oversight, appropriate action was taken to ensure all necessary remediation and abatement occurred.

However, the City does not agree, respectfully, that this oversight created “*a threat to the health of anyone in the facility*”. This statement is speculative, inflammatory and irresponsible and should be known to be untrue with even the simplest measure of sincerity. The City continues to explore the manner in which exposure may have occurred in this small section of the 20 acre campus and will continue researching and working with those individuals that have potentially been exposed to ensure all necessary health follow-ups are completed.

Further, in the discussion and conclusions found in this allegation the OIG (Office) consistently and subjectively alludes to third party accusations in a manner that assumes they are true. In fact, many of the statements referred to in this report are not true.

Subsequent Matter: Improper governmental actions by some City employees for withholding information, abuse of authority, or a violation of a federal, state, or local government law or rule.

Subsequent Matter Analysis:

The OIG obtained an email, dated April 5, 2023, from NM OSHB, indicating that City employees have been less than forthcoming with the data requested by the OSHA Inspector. The OSHB Inspector provided an additional twenty (20) days to comply with the requests.

The OIG learned that an Inspection of Public Records (IPRA) request for documentation related to the GHH was preliminarily denied under the auspice of an ongoing departmental investigation and the fact that the IPRA request went to multiple departments. The department had responsive documents but E13 did not want to comply, expecting other departments to provide the requested documents. After many emails and inquiries, the department did provide documentation provided by another department employee to the City Clerk's Office. The actions that precipitated the delivery of the responsive documents to the City Clerk's Office may be interpreted as a withholding of documents from the public.

The OIG is unaware of an exemption to produce public records due to an ongoing investigation other than litigation or criminal investigations by the Albuquerque Police Department or in limited circumstances Albuquerque Fire Rescue. Additionally, the OIG is afforded a limited exemption status for an ongoing investigation.

Article 17 Inspector General Ordinance

In accordance with the OIG Ordinance § 2-17-12 (B) (Appendix B), the OIG requested emails, policies, and other relevant documents and information from those interviewed for use in the investigation. Relevant emails and other requested items, including a signed contract between the City and GC and the site-specific safety plan, were never provided to the OIG. The OIG did receive the employee safety manual for GC. The OIG did notice that the withholding of relevant emails appeared to be more prevalent among the Directors. One of the Directors interviewed revealed that emails with attachments of photographs were submitted to the City Attorney's Office for a determination of whether the submitted documents constituted materials protected by the attorney-client privilege. The OIG questioned this assertion and was told, "I don't know, I am not a lawyer". The OIG was able to obtain emails from other sources that included D1, D2, D3, D4, D5, and PM1 that were not provided to the OIG by those specified employees.

The OIG requested a contract signed by both parties for this project from multiple City departments, including DFAS, DMD, FCS, and GSD but did not receive the requested document. Having not been provided with the contract raised concerns about whether a signed contract exists between the City and GC.

Article 7 Whistleblower Policy

The OIG reviewed and considered the application of the definition of improper governmental action in the Whistleblower Ordinance (Appendix B) as referenced in the Inspector General Ordinance. Improper governmental action is defined as:

any action by a city employee, an appointed member of a board, commission, or committee, or an elected official of the city that is undertaken in the performance of such person's duties with the city in violation of a federal, state or local government law or rule, an abuse of authority, of substantial and specific danger to the public health or safety, or a gross waste of public funds that is in violation of city policy or rules. The action need not be within the scope of the employee's, elected official's or board, commission, or committee member's official duties to be subject to a claim of improper governmental action. Improper governmental action does not include city personnel actions, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining agreements or the merit system ordinance, §§ 3-1-1 et seq. ROA 1994.

Evidence and interview statements revealed that a decision was made by A1 to pause/close the construction down for two days and then resume construction before the City received the results of the limited asbestos testing, which revealed the existence of asbestos-containing materials at the construction site. Previous reports indicated the potential for hazardous materials and the need for further testing upon demolition and renovation, but these reports were not acted on by some City employees and Administrators. The timeline and interviews revealed that the decision to re-open was made based on the report prepared by EHD. Considering the totality of the evidence available and included in this report, EHD's report appeared to be insufficient to justify the re-opening of the construction site on March 7, 2023. A1's announcement to resume construction based on statements made by D5 and PM1, with a very limited factual basis, appears to have created a substantial and specific danger to public health or safety.

Interviews revealed that Administrators and Directors have been actively seeking to find out who reported this matter. Interviews indicated that inappropriate comments were made by Administrators and Directors about employees raising concerns. Interviews suggested that many individuals who had roles in the meetings for the project have been pushed out in an attempt to control who has specific information regarding the project. Specifically, D1, D2, D5, E19, E13, and PM1 were identified through interviews as those attempting to exclude employees who were previously included in GHH discussions and meetings.

Interviews also indicated D2 engaged in intimidation or harassment of employees during meetings whereby D2 dismissed employees' concerns regarding the exposure to asbestos and made

demeaning comments to employees including “I wish _____ would shut the f*** up” and “Do we need to step out in the hall to discuss this?” Additionally, interviews also revealed that employees felt harassed by E19 for requiring a move to a location where there are not enough offices for the staff being relocated. There is no confirmation of whether door badges work properly in the new location and additionally, some doors do not close. There is no doorbell, no place to safely meet with the public, there is no peephole in the wood door, there are insufficient data ports and emails regarding these concerns have been ignored.

Subsequent Matter finding: The evidence obtained was consistent with concluding there was abuse through improper governmental actions.

Recommendation: The appropriate City Officials should review the actions of the City employees engaging in improper governmental actions. On a case-by-case basis, determine whether any other personnel actions are warranted, or if a referral to the Ethics Board is necessary.

Management’s response: City Officials agree to review the actions of all employees and take appropriate action as necessary. Though it is not clear from the report which specific emails/communication were supposedly withheld, it must be noted that some of the emails requested were withheld under Attorney-Client Privilege, which is a standard practice when Risk Management claims are anticipated. It is the City’s fiduciary duty to protect the taxpayers’ monies as they relate to the Risk Self-Insurance funds. Distribution of attorney-client privileged information without legal discovery would put the City at a serious disadvantage for defending such claims.

GENERAL OBSERVATIONS AND RECOMMENDATIONS

Observation 1: Many individuals may have been exposed to hazardous materials during Phase I of the construction project at the GHH.

Recommendation: Following OSHA requirements, the City should identify and notify all individuals who were potentially exposed to hazardous materials. The City should implement a monitoring program for exposed individuals that complies with OSHA requirements.

Management Response: The City has been in communication with OSHA representatives and agrees to follow the OSHA requirements and has begun and will continue to appropriately notify all individuals who were potentially exposed to hazardous materials.

The City will continue researching and working with those individuals that have potentially been exposed to ensure all necessary health follow-ups are completed.

Observation 2: The evidence obtained during this investigation could be used to identify potential health and safety liabilities, worker's compensation liabilities, and potential pollution liability for the City.

Recommendation: City Officials and the Risk Management Division should work with the City Attorney's Office to conduct a review of the potential legal implications for the City and determine any necessary action to address any liability identified.

Management Response: The appropriate City departments are already working on and will continue working in conjunction with the Risk Management Division of the Department of Finance Administrative Services and City Attorney's Office to determine any potential legal implications and necessary actions to address any liabilities.

Observation 3: The Environmental Health Department Air Quality Program does not have a mechanism in place to identify instances of non-compliance concerning notifications. Currently, the department becomes knowledgeable of construction when proper notification is filed. If no notification is filed, the department is unaware of construction and does not conduct inspections resulting in possible citable events going undetected and unmonitored.

Recommendation: The Environmental Health Department should reach out to similar departments in other cities to determine how each addresses issues of non-compliance concerning notification and select a best practice that suits the needs of the department. The Environmental Health Department Air Quality Program should perform a risk assessment to identify internal control deficiencies. Internal control deficiencies should be thoroughly contemplated and recommendations for improvement should be developed and implemented.

Management Response: Projects initiated by City departments have the same responsibility of ensuring that proper processes for notifications, etc. are followed as private contractors. No matter the contractor performing the construction, if a violation is noted after the fact, the Environmental Health Department (EHD) acts accordingly. EHD works with all City departments – Planning, GSD and DMD, etc. – to ensure that if any permits for construction or demolition of commercial buildings are issued, compliance with procedures is followed.

The City questions how any program might have the ability to determine non-compliance for projects they are unaware of at the time the project is active. If EHD becomes aware of potential violations prior to, during, or after the fact, the Department has the responsibility and does act accordingly.

Observation 4: PM1 stated that the project was put out for bid and also referenced a State Pricing Agreement. The OIG was provided a State Pricing Agreement for on-call construction services to contract with the contractor. The State Pricing Agreement was amended by the State of New Mexico on April 29, 2022 to remove pricing limitations for the contract in total and cumulatively for each contractor. A1 issued a signed memo on September 7, 2022, indicating the attached State Pricing Agreement was to be used for the GHH Project Phase I. There was no indication of acceptance by the contractor. Interviews and evidence reveal that the City did not use a competitive bid process for this project, instead, the City piggybacked on a State Pricing Agreement. Interviews described that the City is separating Phase 1 of the construction project into three subsections for the purpose of procurement. Two of the subsections have separate contracts with the same contractor. The medical respite center will be required to go out to bid as federal ARPA monies will be funding this portion of the project.

Recommendation: The Office of Internal Audit should conduct an audit of the procurement of contractors for the GHH project to determine if the process was properly applied.

Management Response: City Officials agree to fully cooperate with the OIA for any reviews of the procurement process they may choose to undertake. To clarify, the City’s Public Purchases Ordinance Section 5-5-33 allows for “piggy-backing” on contracts with another public agency or cooperative agreements in lieu of competitive bid as follows:

“§ 5-5-33 PURCHASING FROM GOVERNMENT CONTRACTS.

Goods, services, including professional or technical services, or construction may be purchased from a business, or its authorized representative, under contract with a public agency or cooperative procurement agency at prices which are equal to or less than the prices of goods, services or construction meeting the same specifications or standards of those purchases, if the following conditions are met:

(A) Prices are from:

- (1) A nationally published federal price schedule or a "federal government price schedule" published by the business under contract with the federal government;

(2) A current contract which has been awarded after notice and publication and in accordance with the requirements of the New Mexico Procurement Code, §§ 13-1-28 et seq. NMSA1978; or

(3) A valid contract which has been awarded by any public agency or cooperative procurement agency after notice and publication and in accordance with the requirements of the procurement laws and regulations applicable to that agency.

(B) The quantity purchased shall not exceed the quantity which may be purchased under the applicable contract.

(C) The goods, services or construction shall be purchased at the best obtainable price.

(D) The terms and conditions of the contract shall not be modified for the city purchase, unless the change is agreed to by the contracting business and is more favorable to the city than the original terms and conditions.

(E) The purchase order for the goods, services or construction purchased shall adequately identify the contract relied upon.

(F) The Central Purchasing Office or CIP shall retain for public inspection and internal use, official documentation, as required by the Chief Procurement Officer or CIP Official, whichever applies.”

APPENDIX A

29 USC § 654

(a) Each employer –

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

Occupational Health and Safety Act

29 CFR § 1926.1101(g)(7)(iv)

All Class II asbestos work shall be performed using the work practices and requirements set out above in paragraph (g)(1) (i) through (g)(1)(iii) of this section.

29 CFR § 1926.1101(g)(8)

Additional Controls for Class II work. Class II asbestos work shall also be performed by complying with the work practices and controls designated for each type of asbestos work to be performed, set out in this paragraph. Where more than one control method may be used for a type of asbestos work, the employer may choose one or a combination of designated control methods. Class II work also may be performed using a method allowed for Class I work, except that glove bags and glove boxes are allowed if they fully enclose the Class II material to be removed.

29 CFR § 1926.1101(g)(8)(i)

For removing vinyl and asphalt flooring materials which contain ACM or for which in buildings constructed no later than 1980, the employer has not verified the absence of ACM pursuant to paragraph (g)(8)(i)(I) of this section. The employer shall ensure that employees comply with the following work practices and that employees are trained in these practices pursuant to paragraph (k)(9):

29 CFR § 1926.1101(g)(8)(i)(A)

Flooring or its backing shall not be sanded.

29 CFR § 1926.1101(g)(8)(i)(B)

Vacuums equipped with HEPA filter, disposable dust bag, and metal floor tool (no brush) shall be used to clean floors.

29 CFR § 1926.1101(g)(8)(i)I

Resilient sheeting shall be removed by cutting with wetting of the snip point and wetting during delamination. Rip-up of resilient sheet floor material is prohibited.

29 CFR § 1926.1101(g)(8)(i)(D)

All scraping of residual adhesive and/or backing shall be performed using wet methods.

29 CFR § 1926.1101(g)(8)(i)(E)

Dry sweeping is prohibited.

29 CFR § 1926.1101(g)(8)(i)(F)

Mechanical chipping is prohibited unless performed in a negative pressure enclosure that meets the requirements of paragraph (g)(5)(i) of this section.

29 CFR § 1926.1101(g)(8)(i)(G)

Tiles shall be removed intact, unless the employer demonstrates that intact removal is not possible.

29 CFR § 1926.1101(g)(8)(i)(H)

When tiles are heated and can be removed intact, wetting may be omitted.

29 CFR § 1926.1101(g)(8)(i)(I)

Resilient flooring material including associated mastic and backing shall be assumed to be asbestos-containing unless an industrial hygienist determines that it is asbestos-free using recognized analytical techniques.

§ 61.145 Standard for demolition and renovation.

(a) **Applicability.** To determine which requirements of [paragraphs \(a\), \(b\), and \(c\)](#) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of [paragraphs \(b\) and \(c\)](#) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(1) In a facility being demolished, all the requirements of [paragraphs \(b\) and \(c\)](#) of this section apply, except as provided in [paragraph \(a\)\(3\)](#) of this section, if the combined amount of RACM is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously.

(2) In a facility being demolished, only the notification requirements of [paragraphs \(b\)\(1\), \(2\), \(3\)\(i\) and \(iv\), and \(4\)\(i\) through \(vii\) and \(4\)\(ix\) and \(xvi\)](#) of this section apply, if the combined amount of RACM is

(i) Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, and

(ii) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(3) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(viii)), (b)(5), and (c)(4) through (c)(9) of this section apply.

(4) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of [paragraphs \(b\)](#) and [\(c\)](#) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(iii) To determine whether [paragraph \(a\)\(4\)](#) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed or stripped during a calendar year of January 1 through December 31.

(iv) To determine whether [paragraph \(a\)\(4\)](#) of this section applies to emergency renovation operations, estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(5) Owners or operators of demolition and renovation operations are exempt from the requirements of [§§ 61.05\(a\)](#), [61.07](#), and [61.09](#).

(b) Notification requirements. Each owner or operator of a demolition or renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and

(a)(4)(iv)) of this section. If the operation is as described in [paragraph \(a\)\(2\)](#) of this section, notification is required 10 working days before demolition begins.

(ii) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in [paragraph \(a\)\(4\)\(iii\)](#) of this section.

(iii) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to [paragraph \(a\)\(3\)](#) of this section or, if the operation is a renovation described in [paragraph \(a\)\(4\)\(iv\)](#) of this section.

(iv) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section, and for a demolition described in [paragraph \(a\)\(2\)](#) of this section, that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator as follows:

(A) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice,

(1) Notify the Administrator of the new start date by telephone as soon as possible before the original start date, and

(2) Provide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(B) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin on a date earlier than the original start date,

(1) Provide the Administrator with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins.

(2) For demolitions covered by [paragraph \(a\)\(2\)](#) of this section, provide the Administrator written notice of a new start date at least 10 working days before commencement of demolition. Delivery of updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(C) In no event shall an operation covered by this paragraph begin on a date other than the date contained in the written notice of the new start date.

(4) Include the following in the notice:

(i) An indication of whether the notice is the original or a revised notification.

(ii) Name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

(iii) Type of operation: demolition or renovation.

(iv) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.

(v) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(vi) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

(vii) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state, of the facility being demolished or renovated.

(viii) Scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition or renovation; planned renovation operations involving individual nonscheduled operations shall only include the beginning and ending dates of the report period as described in [paragraph \(a\)\(4\)\(iii\)](#) of this section.

(ix) Scheduled starting and completion dates of demolition or renovation.

(x) Description of planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.

(xi) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste-handling emission control procedures.

(xii) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(xiii) A certification that at least one person trained as required by [paragraph \(c\)\(8\)](#) of this section will supervise the stripping and removal described by this notification. This requirement shall become effective 1 year after promulgation of this regulation.

(xiv) For facilities described in [paragraph \(a\)\(3\)](#) of this section, the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

(xv) For emergency renovations described in [paragraph \(a\)\(4\)\(iv\)](#) of this section, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(xvi) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

(xvii) Name, address, and telephone number of the waste transporter.

(5) The information required in [paragraph \(b\)\(4\)](#) of this section must be reported using a form similar to that shown in Figure 3.

(c) ***Procedures for asbestos emission control.*** Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to [paragraph \(a\)](#) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(i) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(ii) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition; or

(iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(i) Adequately wet all RACM exposed during cutting or disjoining operations; and

(ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

(3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

(i) In renovation operations, wetting is not required if:

(A) The owner or operator has obtained prior written approval from the Administrator based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

(B) The owner or operator uses of the following emission control methods:

(1) A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in [§ 61.152](#).

(2) A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

(3) Leak-tight wrapping to contain all RACM prior to dismantlement.

(ii) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in [paragraph \(c\)\(3\)\(i\)](#) of this section cannot be used, another method may be used after obtaining written approval from the Administrator based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in [paragraph \(c\)\(3\)\(i\)](#) of this section.

(iii) A copy of the Administrator's written approval shall be kept at the worksite and made available for inspection.

(4) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to [paragraph \(c\)\(2\)](#) of this section, it shall be stripped or contained in leak-tight wrapping, except as described in [paragraph \(c\)\(5\)](#) of this section. If stripped, either:

(i) Adequately wet the RACM during stripping; or

(ii) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in [§ 61.152](#).

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with [paragraphs \(c\)\(2\)](#), [\(3\)](#), and [\(4\)](#) of this section), the RACM is not required to be stripped if the following requirements are met:

(i) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM.

(ii) The component is encased in a leak-tight wrapping.

(iii) The leak-tight wrapping is labeled according to [§ 61.149\(d\)\(1\)\(i\)](#), [\(ii\)](#), and [\(iii\)](#) during all loading and unloading operations and during storage.

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with [§ 61.150](#); and

(ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(iv) RACM contained in leak-tight wrapping that has been removed in accordance with [paragraphs \(c\)\(4\)](#) and [\(c\)\(3\)\(i\)\(B\)\(3\)](#) of this section need not be wetted.

(7) When the temperature at the point of wetting is below 0 °C (32 °F):

(i) The owner or operator need not comply with paragraph (c)(2)(i) and the wetting provisions of [paragraph \(c\)\(3\)](#) of this section.

(ii) The owner or operator shall remove facility components containing, coated with, or covered with RACM as units or in sections to the maximum extent possible.

(iii) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least 2 years.

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. Every 2 years, the trained on-site individual shall receive refresher training in the provisions of this regulation. The required training shall include as a minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.

(9) For facilities described in [paragraph \(a\)\(3\)](#) of this section, adequately wet the portion of the facility that contains RACM during the wrecking operation.

(10) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

§ 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations

Each owner or operator of any source covered under the provisions of [§§ 61.144](#), [61.145](#), [61.146](#), and [61.147](#) shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in [paragraphs \(a\) \(1\) through \(4\)](#) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by [§ 61.152](#) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in [paragraph \(a\)\(1\)\(iii\)](#) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under [29 CFR 1910.1001\(j\)\(4\)](#) or [1926.1101\(k\)\(8\)](#). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by [§ 61.152](#) to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the RACM is not removed prior to demolition according to [§§ 61.145\(c\)\(1\) \(i\), \(ii\), \(iii\), and \(iv\)](#) or for facilities demolished according to [§ 61.145\(c\)\(9\)](#), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in [§ 61.149\(c\)\(2\)](#).

(5) As applied to demolition and renovation, the requirements of [paragraph \(a\)](#) of this section do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of [§ 61.154](#), or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of [§ 61.155](#).

(3) The requirements of [paragraph \(b\)](#) of this section do not apply to Category I nonfriable ACM that is not RACM.

(c) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must conform to the requirements of [§§ 61.149\(d\)\(1\) \(i\), \(ii\), and \(iii\)](#).

(d) For all asbestos-containing waste material transported off the facility site:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.

(iii) The approximate quantity in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record, described in [paragraph \(d\)\(1\)](#) of this section, to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(3) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(4) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(e) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

APPENDIX B

§2-17-12 Penalty: Cooperation: Retaliation Prohibited.

§ 2-17-12 (A) All city officials, employees, and contractors shall promptly notify the Inspector General of every instance of theft or other disappearance of cash, check, or property, of misfeasance or nonfeasance, defalcation, improper governmental actions as defined in the Whistleblower Ordinance and non-compliance with federal and state law, city ordinances and city regulations of which they are aware.

§ 2-17-12 (B) All city officials, employees, and contractors shall provide the Inspector General full and unrestricted access to all city offices, employees, records, information, data, reports, plans, projections, mattes, contracts, memoranda, correspondence, electronic data, property, equipment and facilities, and any other materials within their custody. At the Inspector General's request, an official employee or contractor shall prepare reports and provide interviews. If an official, employee, vendor, or contractor fails to produce the requested information, the Inspector General shall notify the Board and make a written request to A1 for his assistance in causing a search to be made and germane exhibits to be taken from any book, paper or record excepting personal property. A1 shall require the officials, employees, vendors, or contractors to produce the requested information.

§ 2-17-12 (C) Every city contract, bid, proposal, application, or solicitation for a city contract and every application for certification of eligibility for a city contract or program shall contain a statement that the individual understands and will abide by all provisions of the Inspector General Ordinance.

§ 2-17-12 (D) No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with, or assisting the Inspector General in the performance of his office.

§ 2-17-12 (E) Each and every violation of this article is a criminal violation subject to the provisions of § 1-1-99 ROA 1994.

§ 2-17-12 (F) Any official or employee who violates the Inspector General Ordinance may be subject to discipline as may be specified in the Merit System Ordinance or any applicable collective bargaining agreement.

Administrative Instruction 8-5 Safety Policy

It is the policy of the City of Albuquerque to ensure that safe and healthful working conditions exist for its employees, contractors, and the general public whose work involves the conducting of business in city-owned buildings, on city-owned properties, or in the course of normal business, with the aim of reducing damage to property and assuring that no person suffers diminished health functional capacity or life expectancy.

It is the responsibility of each employee to perform assigned job duties in the safest possible manner, using all available safety measures and devices to prevent injury to the employee, coworkers, or the general public, and to report unsafe equipment, materials, or conditions to the employee's supervisor.

It is the responsibility of each supervisor to assign duties and responsibilities to subordinates which are necessary in the course of business and to provide the necessary job-related safety devices and equipment, information, education, and training to ensure a safe and helpful working environment realizing that some occupations have unavoidable inherent dangers.

It is the responsibility of each department director to develop and promulgate rules, regulations and operating procedures specific to the safety of the department's employees to include training sessions, identification of safety hazards, formation of safety committees, the adoption and enforcement of appropriate safety recommendations, and to establish and maintain an accountability system for all employees which holds each employee accountable for accident prevention.

It is the responsibility of the Risk Manager to coordinate all City and departmental activities relating to this policy to include, but not limited to, the identification, investigation, and inspection of all safety-related concerns and issues and recommendations of potential solutions to operating departments. The Risk Manager or his/her designee has the authority to stop work at the City worksite when a condition that poses an imminent threat to life or health exists.

Realizing the separate but dependent responsibilities and rights of the aforementioned, it is the shared, corporate responsibility to work in unison toward the development of a safe and harmonious working environment through the development of goals, directives, standards, rules, and regulations designed to minimize work-related illness and injury through the administration and enforcement of all conditions consistent with, and pursuant to, the intent and application of this policy.

APPENDIX C

Asbestos Timeline Edited by Directors and Administration

- 10 /5/2020 – An environmental assessment survey was conducted as part of the City’s purchase of the building. This survey identified some areas of non-friable asbestos, as well as laid out guidelines for performing environmental testing on all areas where demolition and renovation occur.
- 6/9/2021 –Friable asbestos was found in basement and abated properly.
- 4/21/2022 -- Contractor, with sub-contractor Floortech, began demoing UNM suite and identified second layer of floor materials which were tested for Asbestos Containing Material (ACM). Report was completed by Keers and abatement done by Havana Notification. Both provided to Environmental Health.
- May and August 2022 –Demo of all tile and carpeting occurred on May 24 and 25 and August 10 and 11. Tile was removed by ride along scraper peeling tile up, chiseling it and someone with broom swept material into piles for removal. We had noise complaints from T1 because floor removal was aggressive. Scraper blade oscillates in a back-and-forth motion. An asbestos survey (inspection) was not conducted and Albuquerque Bernalillo County Air Quality Program was not notified.
- February 10, 2023 City planning was doing their routine plumbing checks, noticed fireproofing had been disturbed and asked if asbestos testing was conducted. The limited asbestos survey, dated 10/5/2020 was sent to them.
- February 28, 2023 from risk asked for site to be shut down due to asbestos concerns. There was no pause in construction site because Risk does not have jurisdiction to shut down construction sites.
- March 1, 2023- Keers came out and took sampling of 75 spots; from Risk came to the construction site to observe that floor work was occurring
- March 2, 2023 – Albuquerque Bernalillo County Air Quality was notified of an asbestos concern
- March 3 – 7, 2023 – Per CAO, 4:53 PM on March 3rd Construction paused. Construction resumed on March 7th.
- March 3· 2023 – Albuquerque Bernalillo County Air Quality sent a supervisor and inspector out to conduct a survey. They did not walk into the engagement center area but did walk the other areas. They suspected non-friable asbestos may be present but none was being disturbed at that time and thus posed no health risks to current site workers or tenants.
- March 6, 2023 – Albuquerque Bernalillo County Air Quality provided an initial report allowing project to continue as there were no health risk identified.
- March 9, 2023 – Keers testing came back with 7 positive results out of 75 tests.
- March 9, 2023 – The Occupational Health and Safety Bureau (OSHA) of the State of New Mexico Environment Department visited the building and met with Albuquerque Bernalillo Air Quality. OSHA identified minor job site infractions to be corrected, but did not shut down the site. Where they identified the asbestos containing materials, contractor needs to follow proper protocol for abatement. They were aware of the test results.
- March 10, 2023 – Keers report was sent to T1 because they were concerned about dust in their space as a result of the coring. NM Department of Health arrived on site in the evening and were concerned about the presence of ACM in T1. They conducted air quality testing including airborne asbestos test conducted in T1.

- March 14, 2023 – OSHA visited the site again in continue their investigation and interviewed both City employees and contractors at the site.
- March 14, 2023—T1 allowed Consolidated to go back into the space to continue construction.
- March 15, 2023 – Albuquerque Bernalillo County Air Quality released their first report and are submitting a PIN (post inspection notification) to project manager, who has until the 17th to respond.
- March 17, 2023- OSHA visited site again and performed air-quality testing for 4 hours, both inside the construction zone and in fixed locations around the building. Tests were sent to a lab in Utah to be analyzed. The current turn-around time is 5 weeks.
- March 21, 2023 Other tenants adjacent to the construction site were notified that asbestos containing material was found in 4,500 square feet out of the 50,000 square foot construction zone.