

**ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING OF 1/15/14**

ISSUE NO. 14

Request for approval of City purchase of certain water rights from The Club at Las Campanas. (Rick Carpenter and Marcos Martinez)

Public Utilities Committee – 1/15/14
Finance Committee – 2/3/14
City Council – 2/12/14

PUBLIC UTILITES COMMITTEE ACTION: Approved.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR CALVERT, CHAIR	X		
COUNCILOR TRUJILLO	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR DIMAS	Absent		
COUNCILOR RIVERA	X		

MEMORANDUM

TO: Public Utilities Committee

FROM: Rick Carpenter, Water Resources and Conservation Manager *RC*
Marcos Martinez, Assistant City Attorney

VIA: Nick Schiavo, Acting Public Utilities Department and Water Division *NSA*
Director

DATE: January 06, 2014

SUBJECT: Purchase of 20.278 Acre-Foot of Water Rights from The Club at Las Campanas

The Club at Las Campanas holds 20.278 acre-feet of pre-1907 water rights within the Nambé-Pojoaque-Tesuque (NPT) river system. Acquisition of these water rights would be advantageous to the City of Santa, as these rights would diversify and make more flexible the over water rights portfolio of the City, and they would likely be quite helpful with regard to permit compliance for existing and/or future City water wells. The City has negotiated a price of \$16,000 per acre foot, for a total cost of \$324,448. Funds are available for this purchase in the existing budget that has been created for the expressed purpose of water rights acquisition.

RECOMMENDATION

Staff recommends executing this water rights purchase agreement.

**WATER RIGHTS PURCHASE AGREEMENT BETWEEN THE CITY OF SANTA FE AND THE
CLUB AT LAS CAMPANAS**

THIS AGREEMENT, effective as of the date of the last signature, by and between The Club at Las Campanas hereinafter referred to as the "Seller", and the City of Santa Fe, hereinafter referred to as the "City". The Seller and the City are hereinafter referred to as the "Parties."

RECITALS

1. The Seller owns pre-1907 water rights within the Nambe, Pojoaque, and Tesuque ("NPT") stream system, identified by the New Mexico Office of the State Engineer ("OSE") File Nos. SD-0951-9AA, SD-01665-10A, SD-01682-1A, SD-01682-22B, SD-02091-22A, and SD-02091-27A into RG-20516 et al., hereinafter referred to as the "Water Rights."
2. These Water Rights have the following sub-file orders in the Aamodt Adjudication: 27.57, 29.9, 6.54, 6.33, 7.48, and 7.54-B of cause no. 6639;
3. The permits and sub-file orders under SD-0951-9AA, SD-01665-10A, SD-01682-1A, SD-01682-22B, SD-02091-22A, and SD-02091-27A indicates that there are 20.278 acre-feet per year ("AFY") of pre-1907 water rights. The Seller desires to sell and the City desires to purchase all of the permitted and adjudicated rights under SD-0951-9AA, SD-01665-10A, SD-01682-1A, SD-01682-22B, SD-02091-22A, and SD-02091-27A; and
4. The Parties entered into an *Agreement to Lease Abiquiu Reservoir Storage Space Between the Club at Las Campanas and the City of Santa Fe* on June 27, 2013 in which the Club Agreed to sell and the City committed "to purchase some or all of CLCI's Nambe/Pojoaque/Tesuque NPT water rights..." for \$16,000.00 per acre foot/year ("AFY").

AGREEMENT

1. Water Rights Quantity and Price. The City shall pay Seller \$16,000 per AFY of water rights multiplied by 20.278 AFY of consumptive water rights, for a total of \$324,448.
2. Copies of Subfile Orders, Deeds, and Changes of Ownership. The Seller agrees to provide the City with copies of all subfile orders regarding the Water Rights. In addition, the Seller agrees to provide the City with copies of all deeds conveying title to any and all of the Water Rights from the owners named in the subfile orders to any intervening owners up to and including the Sellers. Finally, the Seller agrees to provide Change of Ownership forms filed with the OSE regarding any and all of these Water Rights. If the OSE requires additional Change of Ownership Forms for prior owners, the Seller agrees

to provide such additional forms to the OSE and to file any necessary paperwork with the Santa Fe County Clerk.

3. City's Obligation to Purchase Water Rights. In consideration for the Seller's title and interest in these water rights, the City shall pay to the Seller three hundred twenty four thousand, four hundred and forty eight dollars (\$324,448) for twenty point two seven eight (20.278) AFY of water rights. Such water rights must be free from any mortgage or other encumbrance.

4. Closing. The closing of the sale will be on or before March 31, 2014, or within two weeks after objections to any title defects in the water rights have been cured, whichever date is later. The closing date may be extended by the consent of both Parties. Such consent shall be made in writing.

At closing, the Seller shall sign and deliver a Change of Ownership form and a Special Warranty Deed conveying the water rights to the City.

The City shall pay for the transferable amount by wire transfer to the account of the Seller at the closing. For a wire transfer, the City will need: 1) the name of financial institution receiving the wire transfer; 2) the financial institution's address, including city and state and zip code; and 3) the financial institution's ABA or transit and routing number.

5. Change of Ownership & Warranty Deed. The City shall file the Change of Ownership Forms with the OSE and with the Clerk of Santa Fe County.

6. Breach and Termination. If either party fails to comply with this agreement or makes a false representation in this agreement, the non-complying party is in default, and the party which is not in default may (a) seek such relief as may be provided at law or in equity, provided that neither party shall be entitled to specific performance; or (b) terminate this agreement, thereby releasing both parties from this agreement. The parties may mutually agree to terminate this agreement. If this agreement is terminated pursuant to any provision of this agreement, the terminating party shall give notice of termination to the other party and this agreement shall be null and void, and the parties will have no further rights, obligations, or liabilities to each other except as otherwise specifically stated in this agreement.

7. No Warranty. The City acknowledges that its acquisition of the water rights under this agreement is based on the City's own review, investigation, and inspection. Nothing in this agreement constitutes a warranty, express or implied, of the validity of the water rights or their fitness for a particular purpose.

8. Final Agreement and Modifications to be in Writing. The Parties intend that the terms set forth in this agreement represent a final expression of their agreement, and

may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement. Any modifications to this agreement shall be in writing, signed by both Parties.

9. Assignment of Rights. All rights of either the Seller or the City can be assigned except where the assignment would materially change the duty of the other party or increase materially the burden or risk imposed on him by his contract or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise. The Parties will give notice of any assignment of rights within three (3) business days of the assignment.

10. Choice of Law Clause. The Parties agree that the law of the State of New Mexico govern this agreement and its interpretation.

11. Binding Effect. All of the agreements between the parties shall be binding upon and inure to the benefit of the parties, their successors, court appointed Trustees, personal representatives, heirs or assigns.

12. Captions. The captions of any articles, paragraphs or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

13. Notice. Notice to either party under this agreement shall be by United States Mail, first class, certified, return receipt requested.

Notice to the Seller shall be to:

General Manager
The Club at las Campanas
132 Clubhouse Drive
Santa Fe, NM 87506

Notice to the City shall be to:

City of Santa Fe
City Attorney's Office
P.O. Box 909
200 Lincoln Ave
Santa Fe, NM 87504

14. Signature of Parties. This agreement is effective upon the signature of all the Parties.

For the Seller:

Seller

Date

For the City:

Mayor
City of Santa Fe

Date

Attest:

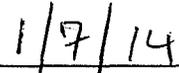
Yolanda Y. Vigil, City Clerk

Date

Approved as to Form:



Kelley A. Brennan, Interim City Attorney



Date

Marcos A. Tapia, Finance Director

Date