



**ACTION SHEET**  
**PUBLIC UTILITES COMMITTEE MEETING OF 11/4/15**

**ISSUE NO. 13**

Request for approval of one (1) Toilet Retrofit Credit buy back contract totaling 54,325.00 acre-fee of water. (Andrew Erdmann)

a) Request for approval of a Budget Adjustment Request.

Finance Committee – 11/2/15  
 Public Utilities Committee – 11/4/15  
 City Council – 11/10/15

**PUBLIC UTILITES COMMITTEE ACTION: Approved to forward to 11/10/15 City Council.**

**SPECIAL CONDITIONS OR AMENDMENTS:**

**STAFF FOLLOW UP:**

<b>VOTE:</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR MAESTAS	X		
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	Excused		
COUNCILOR IVES	X		

**ACTION SHEET  
ITEM FROM FINANCE COMMITTEE MEETING OF 11/02/15  
FOR CITY COUNCIL MEETING OF 11/10/15**

**ISSUE:**

13. Request for Approval of Toilet Retrofit Purchase Agreement – Two (2) Toilet Retrofit Credit Buy Backs for Water Division; Murtagh Nevada, LLC and Approval of Budget Increase in the Amount of \$651,900. (Andrew Erdmann)

**FINANCE COMMITTEE ACTION:**

Approved as Discussion item.

**FUNDING SOURCE: various funds**

**SPECIAL CONDITIONS OR AMENDMENTS**

Approved one credit buy back instead of two.

**STAFF FOLLOW-UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

# City of Santa Fe, New Mexico

# memo

**Date:** 10.23.2015  
**To:** Public Utilities / Finance Committee  
**Via:** Nick Schiavo, Public Utilities Dept. & Water Div. Director *NSA*  
**Fr:** Andrew Erdmann, Water Resources Coordinator *AE*  
**RE:** Approval of Contract for the Purchase of 2,173 Toilet Retrofit Credits; Approval of a Budget Increase BAR

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## **ITEM AND ISSUE:**

The purpose of this memo is to seek City Council approval for a contract and of a Budget Adjustment Request to cover the costs incurred by that contract. The contract is for the purchase of 2,173 Toilet Retrofit Credits (54.325 acre-feet) from Murtagh Nevada, LLC at a cost of \$300/Credit (\$12,000/acre-foot) for a total cost of \$651,900.00. The Budget Increase would transfer funds from Water Offsets Cash Balance to Water Rights Acquisition Expenditures.

## **BACKGROUND AND SUMMARY:**

The City of Santa Fe passed a Request for Approval to Implement the Toilet Retrofit Credit Buy Back Program at the September 9, 2015 City Council Meeting, a copy of this memo is attached. One condition of this program is that staff will bring all purchases above \$50,000 before the governing body for approval. This is the first contract being pursued under the program and the total is above \$50,000. Upon approval of the BAR, funding will be available under BU/LI # 52388.570190.

## **ACTION REQUESTED:**

Staff is requesting the approval of a Budget Increase and the purchase of 2173 Toilet Retrofit Credits from Murtagh Nevada, LLC.

**TOILET RETROFIT PURCHASE AGREEMENT BETWEEN  
THE CITY OF SANTA FE AND MURTAGH NEVADA, LLC.**

THIS AGREEMENT is made by and between Murtagh Nevada, LLC., 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 2,173 toilet retrofit credits in the City of Santa Fe Water Bank as established by Ordinance No. Ord. No. 2002-29 §§ 5-11, attached hereto as Exhibit A.
2. These credits are described more particularly by the attached letter between Amanda Encinias and the Seller, dated October 20, 2015, attached hereto as Exhibit B.

**AGREEMENT**

1. Toilet Retrofit Quantity and Price. The Seller is willing to sell all of the Seller's right, title, and interest in these toilet retrofits and the City is willing to buy all of the Seller's right, title, and interest in 54.325 AFY of toilet retrofit credits for twelve thousand dollars (\$12,000.00) per AFY.
2. Warranty of Title. The Seller warrants that the title it conveys to the City is good, and its transfer lawful; and that the toilet retrofit credits shall be delivered free from any security interest, lien, or other encumbrance.
3. City's Obligation to Purchase Toilet Retrofit Credits. In consideration for the Seller's title and interest in these toilet retrofit credits, the City shall pay to the Seller six hundred fifty one thousand and nine hundred (\$ 651,900.00) for 54.325 AFY. The City shall make its best efforts to pay the Seller within forty-five (45) days of the date that the Council approves the contract.
4. Method of Payment. The City shall pay for the toilet retrofit credits by check.
5. Breach. The Parties retain all available remedies under law and equity in the event of a breach of this agreement.
6. Duration and Termination of Contract Term. This agreement shall be in effect for one (1) year from the execution of the agreement. The agreement may be

extended by the agreement of both Parties. Such agreement shall be made in writing.

If the promised performance and payment occurs within one year, or longer if the Parties make an extension, this agreement terminates. The Parties may also agree to terminate this agreement. The City may terminate this agreement if the Seller cannot provide clear title the toilet retrofit credits. On termination all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

7. 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.

8. 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.

9. New Mexico Tort Claims Act. Any liability incurred by the City in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30.

10. Bateman Act. This Agreement shall comply with the Bateman Act, NMSA 1978, § 6-6-11.

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

12. 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:

John Murtagh  
2219 Chatsworth Ct  
Henderson, NV  
89074

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015

For the Seller:

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Date

For the City:

\_\_\_\_\_  
Mayor Javier M. Gonzales  
City of Santa Fe

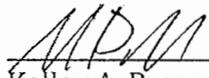
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Date

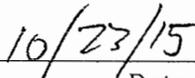
Attest:

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

\_\_\_\_\_  
Date

Approved as to Form:

  
\_\_\_\_\_  
Kelley A. Brennan, City Attorney

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Oscar Rodriguez, Finance Director

\_\_\_\_\_  
Date



**City of Santa Fe  
Summary of Contracts, Agreements, & Amendments**

**Section to be completed by department for each contract or contract amendment**

1 FOR: ORIGINAL CONTRACT  or CONTRACT AMENDMENT

2 Name of Contractor Murtagh Nevada

3 Complete information requested  Plus GRT  
 Inclusive of GRT

Original Contract Amount: \$651,900.00

Termination Date: 45 days from approval

Approved by Council Date: Pending

or by City Manager Date: \_\_\_\_\_

Contract is for: toilet retrofit credits

Amendment # \_\_\_\_\_ to the Original Contract# \_\_\_\_\_

Increase/(Decrease) Amount \$ \_\_\_\_\_

Extend Termination Date to: \_\_\_\_\_

Approved by Council Date: \_\_\_\_\_

or by City Manager Date: \_\_\_\_\_

Amendment is for: \_\_\_\_\_

4 History of Contract & Amendments: (option: attach spreadsheet if multiple amendments)  Plus GRT

Inclusive of GRT

Amount \$ \_\_\_\_\_ of original Contract# \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Total of Original Contract plus all amendments: \$ 651,900



City of Santa Fe
Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# \_\_\_\_\_ Date: \_\_\_\_\_
RFQ [ ] \_\_\_\_\_ Date: \_\_\_\_\_
Sole Source [ ] \_\_\_\_\_ Date: \_\_\_\_\_
Other \_\_\_\_\_

6 Procurement History: \_\_\_\_\_
example: (First year of 4 year contract)

7 Funding Source: \_\_\_\_\_ BU/Line Item: \_\_\_\_\_ 52388.57019

8 Any out-of-the ordinary or unusual issues or concerns:
none
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Maya Martinez
Phone # 955-4271

10 Certificate of Insurance attached. (if original Contract) [ ]

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review
and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # \_\_\_\_\_

Date of contract Executed (i.e., signed by all parties): \_\_\_\_\_

Note: If further information needs to be included, attach a separate memo.

Comments:

[Empty box for comments]

15. no. 005. P4

# \_\_\_\_\_

# City of Santa Fe, New Mexico

## BUDGET ADJUSTMENT REQUEST (BAR)

DEPARTMENT / DIVISION / SECTION / UNIT NAME PUD/Water				DATE 10/23/2015		
ITEM DESCRIPTION	BU / LINE ITEM	<--(Finance Dept Use Only)-->		INCREASE	DECREASE	
		SUBLEDGER / SUBSIDIARY	DR / (CR)			
Water Offsets Cash	52343.700100	5363		651,900		
Water Revenue	51316.600100	5316		651,900		
Water Rights Acquisition	52388.570190	5316		651,900		
<b>JUSTIFICATION:</b> <i>(use additional page if needed)</i> <i>--Attach supporting documentation/memo</i>				<b>TOTAL</b>	\$ 1,955,700	\$ -

Increase from cash in Water Offsets Fund to Revenue and Expenditure in Water Rights Acquisition fund  
for the purchase or water rights as described in attached memo.

<p><i>Maya Martinez</i> 10/23/15 Prepared By Date</p> <p><i>[Signature]</i> Division Director Date</p> <p><i>[Signature]</i> 10/23/15 Department Director Date</p>	<p><b>CITY COUNCIL APPROVAL</b></p> <p>City Council Approval Required <input type="checkbox"/></p> <p>City Council Approval Date <input type="text"/></p> <p>Agenda Item #: <input type="text"/></p>	<p><i>All for C.P.</i> 10/22/15 Budget Officer Date</p> <p><i>[Signature]</i> 10-29-2015 Finance Director Date</p> <p>City Manager Date</p>
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MURTAGH NEVADA, LLC  
3077 E. WARM SPRINGS ROAD  
LAS VEGAS, NV 89120

October 20, 2015

Amanda Martinez  
City of Santa Fe  
Planning and Land Use Department  
PO Box 909  
Santa Fe, NM 87504

Dear Amanda;

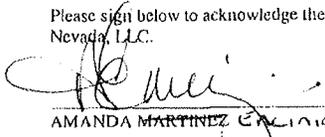
This is a letter to confirm the amount of available toilet credits belonging to Murtagh Nevada, LLC as of 10/20/15.

The available credits are:

Certificate 573 -- 55 credits  
Certificate 575 -- 98 credits  
Certificate 577 -- 92 credits  
Certificate 579 -- 11 credits  
Certificate 580 -- 92 credits  
Certificate 581 -- 8 credits  
Certificate 582 -- 98 credits  
Certificate 583 -- 96 credits  
Certificate 584 -- 238 credits  
Certificate 585 -- 18 credits  
Certificate 586 -- 62 credits  
Certificate 1027 -- 141 credits  
Certificate 1029 -- 85 credits  
Certificate 1030 -- 59 credits  
Certificate 1031 -- 72 credits  
Certificate 1032 -- 16 credits  
Certificate 1034 -- 81 credits  
Certificate 1035 -- 62 credits  
Certificate 1036 -- 61 credits  
Certificate 1037 -- 56 credits  
Certificate 1038 -- 8 credits  
Certificate 1039 -- 27 credits  
Certificate 1040 -- 21 credits  
Certificate 1041 -- 20 credits  
Certificate 1042 -- 29 credits  
Certificate 1043 -- 92 credits  
Certificate 1044 -- 12 credits  
Certificate 1045 -- 100 credits  
Certificate 1046 -- 100 credits  
Certificate 1047 -- 100 credits  
Certificate 1048 -- 100 credits  
Certificate 1049 -- 56 credits  
Certificate 174 -- 7 credits

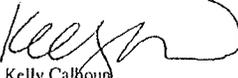
The remaining amount of credits on above certificates total 2173.

Please sign below to acknowledge the City of Santa Fe's agreement to the current total of 2173 toilet credits belonging to Murtagh Nevada, LLC.

  
AMANDA MARTINEZ CALHOUN

10/20/15  
DATE

Sincerely,

  
Kelly Calhoun

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CITY OF SANTA FE  
ORDINANCE NO. 2002-29

AN ORDINANCE

**CREATING A NEW SECTION 14-8.13 SFCC 1987 AND AMENDING SECTIONS 14-2.3 AND 14-3.1 SFCC 1987 RELATING TO THE EFFECTIVE AND RESPONSIBLE MANAGEMENT OF SANTA FE'S WATER RESOURCES THROUGH THE ESTABLISHMENT OF AN ANNUAL WATER BUDGET WHICH ALLOCATES WATER FOR NEW RESIDENTIAL AND NON-RESIDENTIAL DEVELOPMENT CONNECTING TO THE CITY OF SANTA FE WATER SYSTEM AND BALANCES WATER DEMANDS WITH THE WATER SUPPLIES.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

**Section 1. Section 14-2.3(C)(5) (being ordained as Ord. #2001-38) is amended to read:**

**(5) Appeals** The Planning Commission is the principal City administrative board reviewing and granting or denying appeals from decisions of:

- (a)** The Summary Committee;
- (b)** City staff regarding the zoning regulations set forth in all areas except the Historical Districts and the Archaeological Review Districts, and the subdivision regulations set forth in Article 14-9, provided that the request is also part of a development plan or subdivision request requiring the Planning Commission's approval;
- (c)** City staff regarding the terrain management regulations (§14-8.2) and the

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Escarpment Overlay District (§14-5.6); and

(d) The Water Budget Administrative Committee regarding allocations of the Annual Water Budget (§14-8.13).

**Section 2. Section 14-3.1(C) (being ordained as Ord. #2001-38) is amended to**

**read:**

**(C) Form of Application; Schedule of Fees, Charges and Expense**

- (1) Applications required under this chapter shall be submitted in a form and in such number as required by the official responsible for accepting the application.
- (2) The Governing Body shall establish by resolution a schedule of all applicable fees, charges, and expenses and a collection procedure for building permits. This schedule of fees shall be posted in the Planning and Land Use Department and may be altered or amended only by the Governing Body. No permit or approval required under this chapter shall be issued or granted unless and until such costs, charges, fees or expenses have been paid in full.
- (3) The Governing Body shall establish by resolution the Water Budget Administrative Procedures, which shall at a minimum provide for and establish individual water budgets, and the type, number, amount of allowable Demand Offsets, the procedure for appealing decisions under the Annual Water Budget Ordinance by officials, boards, committees and other administrative bodies of the City of Santa Fe.

**Section 3. Section 14-3.1(D) SFCC 1987 (being ordained as Ord. #2001-38) is**

1 repealed.

2 Section 4. A new section 14-3.1(D) ~~of~~ **CC 1987** is ordained to read:

3 (D) **[NEW MATERIAL] New Building Permit Applications; Exceptions;**  
4 **New Development Approvals Other than Building Permits**

5 (1) **New Building Permits**

6 (a) Beginning on September 11, 2002, all building permit  
7 applications for the construction or placement of new multi-  
8 family residences, new single family residences, or any non-  
9 residential structure which after completion will require  
10 water service from the Sangre de Cristo Water Division shall  
11 comply with the annual water budget provisions set forth in  
12 §14-8.13.

13 (b) Building permit applications requesting authority to construct  
14 additions or to remodel existing structures shall not be  
15 subject to the water provisions set forth in §14-8.13 unless  
16 such an addition or remodel shall result in increased water  
17 use or an additional dwelling unit but shall, as a condition to  
18 the issuance of such permit to construct additions or to  
19 remodel, provide that all existing plumbing fixtures within  
20 the existing structure shall be replaced with water saving  
21 fixtures. All additions or remodels that result in additional  
22 water use shall retrofit enough fixtures to completely offset  
23 their increased water use. In cases where a remodel or  
24 addition results in additional dwelling unit(s), the applicant  
25 shall retrofit to the level prescribed in §14-8.13(F)(4).

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(c) Applications filed after September 11, 2002, for subdivision approvals under Article 14-9 (except subdivisions considered by the Summary Committee of the Planning Commission and Inheritance or Family Transfer Subdivisions under §14-9.4 and for development proposals requiring a development plan approval under §14-3.8(A)1 through 4, shall comply with the annual water budget provisions of § 14-8.13.

(d) As of September 11, 2002, and subject to legal review, applicants who have received a building permit in the 12 months prior to September 11, 2002, shall be subject to the following regulations:

(i) Building permits for which there has been no work done within six months of issuance shall expire. For purposes of this section, placing a water meter on the property shall not constitute work having been done.

(ii) Holders of building permits shall not be allowed to seek administrative approval of substantial changes, unless such changes are deemed by the director of the Planning and Land Use Department as being caused by unforeseen and unpreventable circumstances.

(iii) If a building permit for a project that has already acquired a water hookup expires, water service to that property shall be discontinued and any new request for a water hookup shall be subject to requirements of §14-8.13.

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Section 5. A new section 14-8.13 SFCC 1987 is ordained to read:

14-8.13 [NEW MATERIAL] ANNUAL WATER BUDGET

Section 6. A new Section 14-8.13(A) SFCC 1987 is ordained to read:

(A) [NEW MATERIAL] Authority

(1) Section 14-8.13 shall be known as the Annual Water Budget Ordinance and is enacted pursuant to the express statutory authority conferred upon municipalities to enact ordinances pursuant to its police power (N.M. Stat. Ann. §3-17-1 B (1978)). It is also adopted pursuant to the City of Santa Fe's powers under its municipal charter, adopted effective March 15, 1998, pursuant to the Municipal Charter Act, sections 3-15-1 to 3-15-16 NMSA 1978, and Article 10, §6 of the Constitution of New Mexico.

(2) The City of Santa Fe is a charter municipality, empowered to make and enforce all laws concerning municipal affairs, subject to limitations of the City charter and the constitution and laws of the state of New Mexico. A reasonable exercise of municipal authority includes planning for the operation and growth of the municipal water utility, and planning for orderly urban development. Such planning includes the regulation of the amount and types of uses of water from the City's system to ensure that a reliable source of water exists to meet water requirements of the existing customers and that additional supplies of water in the system are allocated in a manner consistent with priorities established by the Governing Body. Establishing an annual amount of water to be budgeted for all users including additional development requesting connection to the City

1 water system is a reasonable exercise of municipal authority to plan  
2 for the operation and growth of the municipal water utility as well as  
3 to plan for urban development, in furtherance of the public health,  
4 safety and welfare.

5 **Section 7. A new section 14-8.13(B) SFCC 1987 is ordained to read:**

6 **(B) [NEW MATERIAL] Legislative Findings, Purpose and Intent**

7 **(1) The City has limited water supplies. Much of the City's water**  
8 **supply is dependent on annual precipitation, and in times of**  
9 **shortage or drought, this dependence can create significant**  
10 **variability in the seasonal and annual water supply available to the**  
11 **City and its water customers.**

12 **(2) The Governing Body recognizes the need to aggressively pursue**  
13 **available avenues for increasing the City's water supply. These**  
14 **include, but are not limited to the:**

15 **(a) Construction of a direct diversion from the Rio Grande to**  
16 **make use of the City's rights to water under that certain**  
17 **Lease Agreement with the Bureau of Reclamation for waters**  
18 **from the San Juan Diversion Project;**

19 **(b) Increase in conservation efforts, including the mandating of**  
20 **water catchments, cisterns, drip irrigation and other water**  
21 **saving strategies;**

22 **(c) Purchase of additional water and or water rights;**

23 **(d) Use of "return flow credits" (if available);**

24 **(e) Adoption of individual water customer budgets for all**  
25 **existing and new customers;**

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- (f) Rehabilitation and improvement of existing infrastructure and building new infrastructure for water delivery and effluent distribution;
- (g) Adoption and implementation of regulation for the use of "gray water" (when allowed by law); and
- (h) Maintenance of existing infrastructure and resources to maximize their potential.

**(3)** The Governing Body also recognizes that it is in the best interest of the health, safety and welfare of all citizens of Santa Fe that the City immediately take the steps necessary to accurately determine the level of Total System Demand to ensure that (a) the legal obligations of the City in operating the City Water system are being and will continue to be met, (b) Total System Supply exceeds Total System Demand, and (c) the future water needs and priorities of the City and its citizens are met. It is recognized that the water usage levels of current water customers as of August 2002 have been artificially lowered by heroic conservation efforts, and any further attempt to quantify Total System Demand must take into account the pent-up water demand of current water company customers.

**(4)** As of August 26, 2002, the City's water supply is obtained from three sources that have been integrated into the City's water system: (a) 5040 acre feet of permitted surface water rights and water supplies available from the Santa Fe River Canyon and the City's reservoirs ("Permitted Santa Fe River Water"), (b) 3500 acre feet of permitted ground water rights and water supplies available from

1 the City wells within the city limits, the St. Michael's Well, and the  
2 Northwest Well, within the Santa Fe Basin ("Permitted Santa Fe  
3 Well Water"), and (c) 10,000 acre feet of permitted ground water  
4 rights and water supplies available from the Buckman well field  
5 ("Permitted Buckman Well Water").

6 (5) The annual, historic supplies available from Permitted Santa Fe  
7 River Water depend upon annual precipitation. The actual historic  
8 supplies available from Permitted Santa Fe River Water range from  
9 700 acre feet per annum in times of drought, to 5264 acre feet per  
10 annum in years of "above average precipitation." For purposes of  
11 effective and responsible management of the use of the Permitted  
12 Santa Fe River Water, the Governing Body has relied upon the most  
13 low end of this range.

14 (6) The annual, historic supplies available from Permitted Santa Fe Well  
15 Water depend in large part upon the limitations upon the permits for  
16 Permitted Santa Fe Well Waters and the production capacity of the  
17 City's wells within the Santa Fe Basin. The actual historic supplies  
18 available from Permitted Basin Water range from 1924 acre feet per  
19 annum as of August 31, 2002, and with the City's Northwest Well  
20 producing approximately 900 acre feet per year.

21 (7) The annual, historic supplies available from Permitted Buckman  
22 Well Water are limited by the offset requirements on the permits for  
23 the Permitted Buckman Well Water and the production capacity of  
24 the Buckman Wells, transmission, storage and treatment facilities.  
25 The actual historic supplies available from Permitted Buckman

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Water are approximately 5200 acre feet per annum in times when the City's wells in the Buckman well field are operating efficiently and at capacity with no additional offset requirements.

(8) The City's current total, historic water supplies available on an annual basis range from 9,700 acre feet (in times of shortage or drought) to 13,210 acre feet (in years of average precipitation when the City's wells, transmission, storage and treatment facilities are operating efficiently and at capacity) (all of which supplies are the "Total System Supply").

(9) The actual and anticipated demands upon and uses of the City's water service include existing customers actually receiving metered water service and existing customers who have meters but have not begun to use water from the system ("Existing Customers"), required reserved capacity and emergency reserves and uses ("Reserve and Emergency Uses"), municipal uses (i.e., parks, recreation, municipal landscaping, public institutional uses) ("Municipal Uses"), projects that have a building permit or water hook-up, or have begun the process for either, or have other agreements ("Potential Customers"), the County of Santa Fe under the Agreement dated August 10, 1994 (the "Wheeling Agreement"), and system losses on both the City's and Existing Customers' side of the meter ("System Losses") (all of which demands and uses are the "Total System Demand").

(10) It is in the best interest of the health, safety and welfare of all citizens of Santa Fe that the City immediately take the steps

1 necessary to accurately determine the level of Total System Demand.

2 (11) It is the express purpose of the Annual Water Budget Ordinance to  
3 promote the following principles:

4 (a) That new demands on the City's water system will not  
5 increase Total System Demand beyond Total System Supply,  
6 as determined on a semi-annual basis by the Governing  
7 Body;

8 (b) That establishes an Annual Water Budget as provided in §14-  
9 8.13(D) of this Ordinance that assumes, but does not find,  
10 Total System Supply as of September 11, 2002 is committed  
11 to Total System Demand, until such time as the Governing  
12 Body otherwise finds based upon complete and accurate data  
13 gathered and presented in accordance with the Annual Water  
14 Budget Administrative Regulations and Procedures;

15 (c) That provides for the efficient use of existing Total System  
16 Supply;

17 (d) That accurate, reliable figures for Total System Demand and  
18 Supply are developed and utilized by the City in its water  
19 planning;

20 (e) That the budgeting of the City's water resources is based  
21 upon reliable figures, reflect the priorities of the community  
22 with respect to the growth of the City of Santa Fe, and  
23 provide for a stable and predictable water supply; and

24 (f) That provides for Annual Water Allocations which recognize  
25 the priorities of the City in affordable housing, employment

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opportunities and the need for a healthy and stable economy,  
while maintaining the City's ability to provide existing  
residents with an adequate water supply.

- (12) Any development meeting the definition of a type A development as defined in the Housing Opportunity Program or individual unit that meets the U.S. Department of Housing and Urban Development's definition of an Affordable Home shall be reimbursed by the City of Santa Fe's Conservation Fund for costs incurred for retrofitting the required number of units as proposed in this ordinance. This is to ensure that these additional costs do not impact the affordability of the home.

**Section 8. A new section 14-8.13(C) SFCC 1987 is ordained to read:**

**(C) [NEW MATERIAL] Administrative Procedures**

- (1) The Annual Water Budget Ordinance shall be administered by the City as set forth in the Annual Water Budget Administrative Procedures adopted separately by resolution of the Governing Body. The administrative procedures set forth responsibilities, procedures and standards for administrative actions necessary to implement the Annual Water Budget Ordinance.
- (2) All changes to the administrative procedures shall be approved by resolution of the Governing Body.

**Section 9. A new section 14-8.13(D) SFCC 1987 is ordained to read:**

**(D) [NEW MATERIAL] Annual Water Budget; Semi-Annual Budget**

**Review**

- (1) Annual Water Budget

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There is hereby established the City of Santa Fe Annual Water Budget (the "Annual Water Budget"):

- (a) Comprised of Total System Supply and Total System Demand, as the same are determined on a semi-annual basis by the Governing Body in accordance with this §14-8.13;
- (b) Effective for the twelve month period between March 1 to February 28, unless modified by the Governing Body in October of any given year; and
- (c) Adopted annually by the Governing Body through an ordinance at the Council meeting on the last Wednesday in February and subject to review and amendment semi-annually at the Council meeting on the last Wednesday in October.

**(2) 2002 Annual Water Budget**

As of September 11, 2002 and due to the current state of a water emergency in the City of Santa Fe, the Annual Water Budget for the twelve month period March 1, 2002 to February 28, 2003 is assumed to be fully allocated, meaning that it is assumed that Total System Supply is already committed to Total System Demand.

**(3) Semi-Annual Review and Revision of Water Allocation**

The Governing Body shall, at its first public meeting in October and March of each year, review the information obtained and gathered for the determination of Total System Supply and Total System Demand. If the Governing Body determines at the October meeting that Annual Water Budget and the Annual Water Allocation as

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provided in §14-8.13(E) of this Chapter for the current twelve-month period can be modified to provide for an increase in the Annual Water Allocations, then the Governing Body at such meeting shall make such modifications. Because the supplemental Buckman Wells have been permitted to provide drought relief and an emergency cushion by the customers of the Sangre de Cristo Water Division, any increased water supply brought on by such wells shall be available only for existing customers and reserve and emergency uses.

**(4) Review of Annual Water Budget Ordinance and Procedures**

At least once annually at the first Wednesday in March, the Governing Body shall review at a public hearing the effectiveness of the Annual Water Budget Ordinance and the Annual Water Budget Procedures in achieving its purposes, the effect the Annual Water Budget Ordinance is having on the economy, the effect the Annual Water Budget Ordinance is having on efficient and effective operation of the development approval process and review the possible amendments to the Annual Water Budget Ordinance.

**Section 10. A new section 14-8.13(E) SFCC 1987 is ordained to read:**

**(E) [NEW MATERIAL] Annual Water Allocations**

**(1)** At such times as the Governing Body determines that Total System Supply exceeds by any amount Total System Demand, the Governing Body shall recalculate and reallocate the Annual Water Budget and make an allocation of the amount of water of the Total System Supply which exceeds Total System Demand (the "Annual

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**Water Allocation” or “Water Allocation”)** for the City’s system as follows:

(a) All previous Water Allocations provided for in the Annual Water Budget for the preceding twelve-month period shall be included within the Total System Demand and shall be accounted for and honored prior to any new Water Allocation.

(b) The Annual Water Allocation established shall specify the specific amount of water made available on the City’s system, the date when it may be utilized in a request for service as part of a building permit application or development proposal subject to this §14-8.13, and the Annual Water Allocation shall give priority to residential development in which the average sales price or rent of at least 70 percent of all units for sale or for rent are affordable to households with incomes at or below 80 percent of the area median income, using a four person household for homebuyers and a three person household for renters. Developers shall give first priority in the sale of the homes or rent of the units to households earning no greater than 80 percent of the area median household income. All building permit applications for the construction of new multi-family residences, new single family residences and any non-residential structure which after completion will require water service from the Sangre de Cristo Water Division shall

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only be issued in accordance with the 2002 Water Budget Administrative Procedures.

(c) After the Governing Body has determined and made (or revised) the Annual Water Allocation, then the Water Allocation shall be assigned and administered (**“Administrative Allocation Assignment”**) to specific applications for building permits and other development proposals subject to §14-8.13, in accordance with directions of the Governing Body in making the Water Allocation and in accordance with the Annual Water Budget Procedures by the City Manager and his designees.

(d) No new allocations of water can be made until such time as 50% of the projects permitted by the building permits that are open as of September 11, 2002 have been completed.

(2) An Administrative Allocation Assignment creates no right to approval for the requested number of lots, units or commercial development, or commercial buildings, building permits or water meters proposed in the allocation application or as granted. The actual number of lots or units, or the amount and type of commercial development or the number of building permits or water meters that may be approved shall be determined by the appropriate development, permit or meter application review process.

(3) Administrative Allocation Assignments may not be sold, traded, transferred or exchanged in any way between applicants or allocation holders of different developments, building permits or water hook-

1 ups or between different developments, building permits or water  
2 hook-ups having the same owner or applicant. Administrative  
3 Allocation Assignments are granted for specific developments,  
4 building permits or water hook-ups and specific geographic sites and  
5 they may not be moved.

6 (4) Nothing in §14-8.13(E) shall prohibit the City Manager or the  
7 Governing Body from suspending Water Allocations, in accordance  
8 with §25-5 (Emergency Water Regulations Ordinance) for  
9 applications subject to §14-8.3 either inside or outside the City limits  
10 that are connected or intend to connect to the City water system.

11 (5) Once an Administrative Allocation Assignment has been made in  
12 accordance with §14-8.13 and the Annual Water Budget Procedures,  
13 it shall be a permanent portion of Total System Demand calculations,  
14 unless it shall expire or terminate as provided in the Annual Water  
15 Budget Procedures. Upon such expiration or termination, an  
16 Administrative Allocation Assignment shall be reassigned in  
17 accordance with the Annual Water Budget Procedures.

18 **Section 11. A new section 14-8.13(F) SFCC 1987 is ordained to read:**

19 (F) **[NEW MATERIAL] Requirement for Approvals; Building Permits,**  
20 **Water Hook-ups and Development Proposals; Applicability**

21 (1) **New Building Permits and Water Hook-ups**

22 Except as provided below in §14-8.13(F)(3), all building permit  
23 applications for the construction or placement of new multi-family  
24 residences, new single family residences, or any non-residential  
25 structure which after completion will require water service (whether

1 or not a meter for service has been previously installed) from the  
2 Sangre de Cristo Water Division, or applications for water service  
3 from any project that is described in this section shall only be issued  
4 when the applicant has received an Administrative Allocation  
5 Assignment and complied with the conditions thereof.

6 **(2) Specified Development Approvals**

7 Except as provided below in §14-8.13(F)(3), all applications filed  
8 after September 11, 2002 for subdivision approvals under Article 14-  
9 9 (except subdivisions considered by the Summary Committee of the  
10 Planning Commission and Inheritance or Family Transfer  
11 Subdivisions under §14-9.4) and for development proposals  
12 requiring a development plan approval under §14-3.8(A)1 through 4,  
13 shall only be granted final approval when the applicant has received  
14 an Administrative Allocation Assignment for the proposed project  
15 and complied with the conditions thereof.

16 **(3) Offsets**

17 Any building permit or water hook-up shall be issued or granted only  
18 if it is in compliance with all sections of Chapter 14 and when the  
19 applicant demonstrates that the water demands created by the use of  
20 the structures for which the building permit, water hook-up or  
21 development approval is sought will be entirely offset ("**Project**  
22 **Water Offset**") in accordance with the Annual Water Budget  
23 Procedures and §14-8.13(F). An applicant may demonstrate Project  
24 Water Offset through the following methods and in compliance with  
25 the submittal requirements of the Annual Water Budget Procedures:

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(a) By actually replacing the total number of Required Retrofits and supplying the documentary evidence required by Annual Water Budget Procedures.

(4) The Annual Water Budget Procedures shall require replacement water fixtures for residential and non-residential construction subject to §14-8.13 as follows:

(a) Residential Uses:

(i) For a "DWELLING UNIT, LOW WATER USE" as defined herein, the applicant shall retrofit eight fixtures for each new fixture installed;

(ii) For a "DWELLING UNIT, MEDIUM USE" as defined herein, the applicant shall retrofit ten fixtures for each new fixture installed; and

(iii) For a "DWELLING UNIT, HIGH WATER USE" as defined herein, the applicant shall retrofit twelve fixtures for each new fixture installed.

(b) Non-residential Uses. The applicant shall retrofit the number of fixtures in accordance with the Annual Water Budget Procedures. In all cases, the amount of water offset by retrofits shall be equal to or greater than the estimated water usage of the proposed building as determined by the Annual Water Budget Procedures.

(c) The City shall monitor water use in all retrofitted buildings and shall report such use to the public in the semi-annual water use and supply review.

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(d) Any fixture that is obtained for free or which has received a rebate from any City water conservation program is not eligible to be counted as an eligible retrofit.

(5) The following development approvals shall not be subject to the provisions of §14-8.13:

- (a) Applications for General Plan amendments, annexations, master plans, master plan amendments, or rezonings where the rezoning does not require a development plan as part of the application;
- (b) Applications for preliminary subdivision plat and plan approval, subdivisions approved by the Summary Committee of the Planning Commission, subdivisions created by Inheritance or Family Transfer;
- (c) Government development that connects to the City water system but is not subject to City development plan and building permit procedures; provided, however, the water demand of all such developments shall be calculated and charged against the Total System Demand; and
- (d) Applications where the purpose is to create tracts of land according to an approved master plan, and where additional subdivision of land or a more detailed development plan within the various tracts is still necessary to construct dwelling units and other buildings according to that master plan.

Section 12. Article 14-12 SFCC 1987 (being Ordinance #2001-38 as amended) is

1 amended to read:

2 Article 14-12: **[NEW MATERIAL] DEFINITIONS.** As used in the Annual Water  
3 Budget Ordinance, the terms which have been capitalized and defined therein shall have the  
4 meanings given to them, and the following terms and definitions shall apply:

5 **ALLOCATION, DEVELOPMENT**

6 An approval needed per proposed individual residential lot, dwelling unit or commercial  
7 building in order to proceed with a subdivision or development plan or in the case of a  
8 proposed development located outside city limits, an approval needed prior to initiating  
9 water service with the city, or physically connecting a water line to the city water system.

10 **ALLOCATION, PERMIT**

11 An approval needed to proceed with a building permit application as required by the city  
12 or, in the case of a development located outside city limits, an approval needed prior to  
13 requesting a water meter and actual water from the city for each individual dwelling unit,  
14 residential lot or commercial building.

15 **ALLOCATION PERIOD, PERMIT**

16 The calendar year divided into the following four quarters: January-March, April-June,  
17 July-September, October-December.

18 **ALLOTMENT, WATER**

19 An amount of water approved for a specific applicant from the water budget that is used in  
20 calculating and determining development, permit and water hook-up allocations. A water  
21 allotment does not guarantee a right to water but is only a measurement used in dividing  
22 the water budget among various applicants for the purpose of processing water budget  
23 allocation requests.

24 **COMMERCIAL DEVELOPMENT**

25 For the purpose of the annual water budget (14-8.13), a building or buildings constructed

1 for the purpose of activities that are non-residential. Commercial development includes but  
2 is not limited to hotels, motels, offices, stores and other retail establishments, industrial or  
3 manufacturing activities, wholesaling and warehousing activities.

4 **DWELLING UNIT, LOW WATER USE**

5 A dwelling unit expected to use, on average, .20 acre feet of water per year (afy) or less,  
6 according to the city's water use table included in the annual water budget administrative  
7 procedures.

8 **DWELLING UNIT, MEDIUM WATER USE**

9 A dwelling unit expected to use, on average, .21 to .25 acre feet of water per year (afy),  
10 according to the city's water use table included in the annual water budget administrative  
11 procedures.

12 **DWELLING UNIT, HIGH WATER USE**

13 A dwelling unit expected to use, on average, more than .25 acre feet of water per year (afy),  
14 according to the city's water use table included in the annual water budget administrative  
15 procedures.

16 **FIXTURE**

17 For purposes of §14-8.13, a fixture or water fixture, whether new or replacement, is defined  
18 as a toilet.

19 **GOVERNMENT DEVELOPMENT**

20 For the purpose of the annual water budget (14-8.13), the construction of a building serving  
21 a public function where the land and building are owned by a government agency, such as  
22 the city, the county, the state, the federal government, or a public school district. The term  
23 does not include governmentally assisted private development or private development in  
24 partnership with or on land purchased or leased from a government agency. Nor does the  
25 term refer to private development where the land and or building are leased to a

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government agency.

**PUBLIC USE**

For the purpose of the annual water budget, outdoor water use for public facilities, such as sports and playing fields, parks, schools, Santa Fe River ecosystem, and the like.

**RANDOM SELECTION**

For the purpose of the annual water budget (14-8.13), a selection from a group based upon chance.

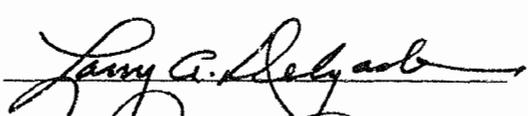
**RESERVE USE**

Emergency reserve of available reliable supply or such purposes as basic living, basic sanitation and fire suppression.

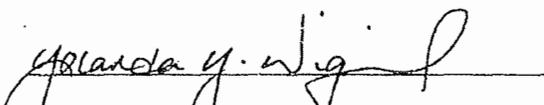
**TOURIST LODGING**

For the purpose of the annual water budget (14-8.13), a *bed and breakfast, hotel or motel* as those terms are defined in 14-12.

PASSED, APPROVED and ADOPTED this 26<sup>th</sup> day of August, 2002.

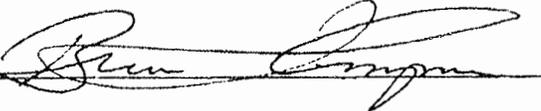
  
LARRY A. DEGALDO, MAYOR

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:



BRUCE THOMPSON, CITY ATTORNEY