ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING OF 7/1/15

ISSUE NO. 13

Request for approval of a Water Rights Purchase from Luis Luna for up to 18.417 acre feet at $13,500.00 per acre foot. (Andrew Erdmann)

Public Utilities Committee – 7/1/15
Finance Committee – 7/13/15
City Council – 7/29/15

PUBLIC UTILITES COMMITTEE ACTION: Approved

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR			
COUNCILOR MAESTAS	x		
COUNCILOR BUSHEE	x		
COUNCILOR DIMAS	x		
COUNCILOR IVES	x		

City of Santa Fe, New Mexico

memo

Date: June 19, 2015

To: Public Utilities Committee / Finance Committee / City Council

From: Andrew Erdmann, Water Resources Coordinator AE

Via: Rick Carpenter, Water Resources and Conservation Manager

Via: Nick Schiavo, Public Utilities Department Director NSA

RE: Request for Approval of a Water Rights Purchase from Luis Luna for up to 18.417 acre-feet at $13,500 per acre foot

ITEM AND ISSUE:

The Water Division requests approval of the purchase of up to 18.417 acre-feet of pre-1907 Middle Rio Grande water rights at a price of $13,500 per acre-foot for a potential total cost of $248,629.50.

BACKGROUND AND SUMMARY:

The City of Santa Fe has offset obligations related to the permitting of the Buckman well field which require the acquisition of pre-1907 Middle Rio Grande water rights. These rights provide a secondary benefit because they can be used to support the purchase of water rights from the water bank or to offset the additional demand created by City projects.

The particular rights in question belong to Mr. Louis Luna of Belen, NM who contacted the City of Santa Fe to inquire about our interest in these rights. Analysis conducted by the City is consistent with Mr. Luna's claimed water rights, and the transferrable amount is estimated at 18.417, although this is subject to Office of the State Engineer approval.

The budget is available in the FY 15/16 approved budget under the following two business units: 52300.570190 & 52388.570190

RECOMMENDATION:

The Water Division recommends approval of this purchase as it will improve the City's Middle Rio Grande offset portfolio and provide additional rights for use by the City of Santa Fe either for City projects or for sale through the Water Budget Accounting Office.

WATER RIGHTS PURCHASE AGREEMENT BETWEEN THE CITY OF SANTA FE AND LUIS LUNA

THIS AGREEMENT is made on 2015 by and between Luis J. Luna, 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 Middle Rio Grande Conservancy District ("MRGCD"), identified in the New Mexico Office of the State Engineer ("OSE") File No. SD-07783 hereinafter referred to as the "Water Rights." These Water Rights are appurtenant to 8.77 acres of land, and are described more particularly by the attached declaration filed with the OSE.

2. The declaration under file SD-07783 indicates that there are 18.417 acre-feet per year ("AFY") of pre-1907 water rights. The Seller desires to sell all of the declared rights under SD-07783 and the City desires to buy valid pre-1907 water rights owned by the Seller; and

3. The amount that the City will purchase will depend upon the quantity that the OSE approves for transfer.

AGREEMENT

1. Water Rights Quantity and Price. The Seller is willing to sell all of the Seller's right, title, and interest in these water rights and the City is willing to buy all of the Seller's right, title, and interest for up to 18.417 AFY of water rights for thirteen thousand five hundred dollars ($13,500.00) per AFY.

2. Transfers. The transferable amount of water rights refers to the amount of consumptive use water rights that the City can put to beneficial use at the move-to location, as approved by the OSE.

3. Application to the State Engineer. The City shall be responsible for filing an application with the OSE to transfer these water rights to the City. The Seller and the City shall be co-applicants on the application. The Seller agrees to assist the City with any information, documentation, and interaction with the OSE that will facilitate the application for transfer.

4. Protest & Appeals. The Seller acknowledges that the application to transfer the Water Rights may be protested. In the event that one or more protests are filed, the

Parties agree that an administrative hearing to resolve the protest(s) will require the combination and cooperation of both Parties.

If either Party chooses not to proceed with the administrative process to resolve the protest(s), that Party must notify the other Party as provided below. Upon the receipt of such notice, this contract shall be considered null and void, and neither party shall have any claims against the other related to this contract.

If the Parties choose to proceed with the administrative resolution of the protest(s), the City will prosecute the application for the limited purpose of resolving the protest(s) in the administrative hearing and any settlement discussions. The Seller may hire independent counsel if the Seller chooses. The City does not represent the Seller in an administrative or judicial proceeding.

If the Parties resolve the protest(s) through the administrative process and the state appeals to the District Court, both Parties must agree to proceed with any appeal.

If the Parties agree to proceed with the administrative process and the Seller thereafter desires to terminate this agreement, then, upon demand by the City, the Seller shall pay to the City one-half of the actual expenses incurred by the City in the administrative matter.

5. Approval, Partial Approval, or Denial by OSE. The OSE will determine the transferable amount of water rights. If the Seller disputes the OSE's determination, the Seller at his or her own expense may seek a reconsideration or aggrieval of the determination by the OSE. If the Seller does not seek a reconsideration or aggrieval of the OSE's determination, the Seller acknowledges the transferable amount as the amount of consumptive use water rights that the OSE approves for transfer.

6. Warranty of Title. The Seller warrants that the title it conveys to the City is good, and its transfer lawful; and that the water right shall be delivered free from any mortgage or encumbrance.

7. Title Search Performed. If the OSE approves all or part of the application to transfer water rights to the City, the Seller shall have a title search performed on the land to which the water rights are appurtenant within four (4) weeks of the approval or partial approval by the OSE. The title search shall demonstrate that no mortgage or other encumbrance affects or gives any security interest to any other party for these water rights. The Seller shall provide a copy of the title search to the City as soon as is practicable.

If there is a mortgage or encumbrance affecting the water rights, the Seller shall 1) notify the City within two (2) business days of the results of the title search, and 2) have any mortgage or encumbrance released within six (6) weeks of the results of the title search. If the Seller cannot clear the title of the water rights in this time, the City may terminate this agreement.

8. 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 up to two-hundred and

forty eight thousand six hundred and twenty nine dollars and fifty cents ($ 249,629.50) for up to 18.417 AFY of water rights that the OSE determines is transferable to the City. Such water rights must be free from any mortgage or other encumbrance. If the OSE approves a transferable amount that is less than the amount for which the Parties applied, the City shall buy the transferable amount for thirteen thousand five hundred dollars ($13,500.00) per AFY.

9. Closing. Closing shall be within six (6) weeks from the date that the City receives the results of the title search, or two (2) weeks from the cure to any defects in the title to the water rights.

If the OSE approves all or part of this application to transfer water rights to the City, and the title search demonstrates no other interests in the water rights, the Seller shall sign and deliver a Change of Ownership form and a Special Warranty Deed at the closing.

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.

10. 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.

11. Breach. The Parties retain all available remedies under law and equity in the event of a breach of this agreement.

12. Duration and Termination of Contract Term. This agreement shall be in effect for three (3) years 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 three years, 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 water rights. On termination all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

13. 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.

14. 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.

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

16. 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:

Luis J. Luna and Martha Luna
P.O. Box 58
Bosque, NM 87006

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

17. 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 City of Santa Fe d/b/a Sangre de Cristo Water Division	Date

Attest:

Yolanda Y. Vigil, City Clerk	Date

Approved as to Form:

MDM City Attorney	6/18/15 Date
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 Luis J Luna

3 Complete information requested ☐ Plus GRT ☑ Inclusive of GRT

Original Contract Amount: $248,629.50

Termination Date: na

☑ Approved by Council Date: Pending

☐ or by City Manager Date: _____

Contract is for: water rights purchase

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: _____

☐ Approved by Council Date: _____

☐ or by City Manager Date: _____

Amendment is for:

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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: $ 248,630

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 Lease of space

6 **Procurement History:** _____
example: (First year of 4 year contract)

7 **Funding Source:** Water Division **BU/Line Item:** 52388 & 52300 LI#570190

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:
Going to committee for approval for FY 10/11 budget.

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