

**ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING OF 3/2/16**

ISSUE NO. 14

Request for approval of one (1) Toilet Retrofit Credit buy back contract with Aldea, LLC totaling 26.475 acre-feet of water for the amount of \$317,000.00. (Andrew Erdmann)

Request for approval of a Budget Adjustment Request for the amount of \$150,000.00.

Public Utilities Committee – 3/2/2015

Finance Committee - 3/21/2016

City Council – 3/30/2016

PUBLIC UTILITES COMMITTEE ACTION: Approved to forward to 3/21/2016 Finance Committee.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

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

City of Santa Fe, New Mexico

memo

Date: 2.22.16
To: Public Utilities/Finance Committee
Via: Nick Schiavo, Public Utilities Dept. & Water Division Director *NSM*
From: Andrew Erdmann, Water Resources Specialist *AE*
Re: Approval of Contract for the Purchase of 1,059 Toilet Retrofit Credits;
Approval of a Budget Increase BAR

ITEM AND ISSUE:

The purpose of this memo is to seek City Council approval for a contract and for a Budget Adjustment Request to cover the costs incurred by that contract. The contract is for the purchase of 1,059 Toilet Retrofit Credits (326.475 acre-feet) from Aldea, LLC at a cost of \$300/Credit (\$12,000/acre-foot) for a total cost of \$317,700.00. 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. 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 1,059 Toilet Retrofit Credits from Aldea, LLC.

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

THIS AGREEMENT is made by and between Aldea, 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 1,059 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 from Amanda Encinias to Andrew Erdmann, dated December 29, 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 26.475 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 three hundred seventeen thousand seven hundred (\$ 317,700.00) for 26.475 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 govern 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:

Arthur Fields
18 Camino de Vecinos
Santa Fe, NM
87507

Notice to the City shall be to:

City of Santa Fe

a7

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:

Arthur Fields 1/29/16
Seller MANAGING MEMBER Date
 ALORA LLC

For the City:

Mayor Javier M. Gonzales
City of Santa Fe

Date

Attest:

Yolanda Y. Vigil, City Clerk

Date

Approved as to Form:

MDM

City Attorney

2/12/16

Date

Finance Director

Date

af



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 Aldea, LLC

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$50,000.00

Termination Date: 1 year from contract execution

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: \$ 50,000



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.

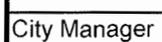
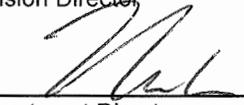
Comments:

City of Santa Fe, New Mexico

BUDGET ADJUSTMENT REQUEST (BAR)

DEPARTMENT / DIVISION / SECTION / UNIT NAME				DATE		
PUD/Water				02/22/2016		
ITEM DESCRIPTION	BU / LINE ITEM	<--(Finance Dept Use Only)-->		INCREASE	DECREASE	
		SUBLEDGER / SUBSIDIARY	DR / (CR)			
Water Offsets Cash	52343.700150	5316		50,000		
Water Revenue	51316.600150	5353		(50,000)		
Water Rights Acquisition	52388.570190			50,000		
JUSTIFICATION: (use additional page if needed) --Attach supporting documentation/memo				TOTAL	\$ 50,000	\$ -

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.

 Prepared By _____ Date _____	CITY COUNCIL APPROVAL City Council Approval Required <input type="checkbox"/> City Council Approval Date _____ Agenda Item #: _____	 Budget Officer _____ Date 3/8/2016  Finance Director _____ Date 3-10-2016  City Manager _____ Date _____
 Division Director _____ Date _____	 Department Director _____ Date 2/25/16	