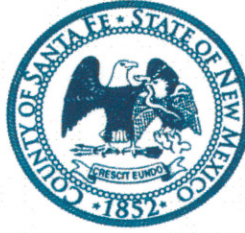


Harry B. Montoya  
*Commissioner, District 1*

Virginia Vigil  
*Commissioner, District 2*

Michael D. Anaya  
*Commissioner, District 3*



Kathy Holian  
*Commissioner, District 4*

Liz Stefanics  
*Commissioner, District 5*

## MEMORANDUM

Date: November 1, 2011

To: Board of County Commissioners

Via: Katherine Miller, County Manager

From: Patricio Guerrerortiz, PE, Utilities Director

Re: Raw Water Supply Customer Agreement with The Club at Las Campanas

### BACKGROUND

The County Utilities Department submitted to the BCC, a proposed agreement by which The Club at Las Campanas (TCLC) would be added to the Utilities' roster of customers. The proposal was tabled on September 13, 2011, and this constitutes a new submittal for the consideration of the Board. As previously requested by members of the BCC, additional talks were held with representatives of TCLC, regarding a 30-year life on this agreement. TCLC responded by proposing a reduction of the guaranteed minimum volume of use, from 300 afy to 250 afy. This reduction would result in lower revenues to the County in the amount of \$65,400.

Sales of raw water will be a very important source of utility revenue in the future, and an effective way of using resources the County already owns. The concept was first presented to the BCC back in May of this year, at the time the Service Rate Schedule was adopted via Resolution 2011-79. This schedule included the Wholesale-2 or WS-2 class of customer. In other words, the Utilities would make non-potable water available to, in full compliance with applicable regulatory requirements, and at a fair and equitable rate.

Serving WS-2 customers would be less expensive than providing customers with potable water, and will not negatively impact the County's ability to increase its customer base for potable water customers. Providing service to WS-2 customers would not require any capital expenses by the County, at this time, as the aspiring customer subject of this agreement will install the infrastructure necessary for the County to deliver water to it. Increasing our revenues will also make the utility fully viable in a relatively short period of time, which will

significantly improve our ability to leverage utility revenues to extend the system and serve more County residents.

TCLC is an organization that has been part of Santa Fe County for almost two decades. They own and operate private golf courses and other outdoor recreation facilities that require water for their upkeep. Upon BCC approval of the proposed customer agreement, they would use the raw water from the Rio Grande, plus Las Campanas Cooperative's Water Reclamation facility effluent for their irrigation purposes. Currently, their needs are met using a combination of potable water (~100 afy), from the City's distribution system, treated wastewater effluent (~450 afy), from the City's water reclamation plant, and treated wastewater effluent from Las Campanas Coop (~50 afy).

The total anticipated demand for raw water for the Club will be anywhere between 300 afy and 600 afy, the bulk of which would be provided by the County under the proposed customer agreement. Under normal and foreseeable drought conditions this approach would virtually eliminate the use of potable water for turf irrigation. However, under extreme conditions, and after all other resources have been exhausted, we anticipate some instances when the use of some potable water may be required.

To serve them the County would utilize 600 afy of diversionary capacity that the Club at Las Campanas owns at the Buckman Direct Diversion facilities, as a result of an agreement with the parent company, Las Campanas Limited Partnership (LCLP). The total diversionary capacity the LCLP owned before this transfer took place amounted to 1,800 afy. This capacity had been acquired by LCLP to serve all needs of Las Campanas residents, including the recreational facilities. As it is, the proposed agreement will not affect the 1,700 afy of diversionary capacity the County currently owns in the BDD facility, which will continue to be available to produce potable water for current and future customers.

Incidentally, if we assumed that the average use per customer is 0.20 afy (the average county customer uses 0.16 afy), the total number of individual customers the County can serve before any additional diversionary capacity is needed would be 7,500. Today, the County Utilities have 1,825 individual customers, plus one Wholesale-1 customer (Las Campanas Water Cooperative). The latter has been buying water from Santa Fe County since May of this year, at a volume equivalent to having 800 to 900 individual customers. Prior to May 1, the Coop was a City customer.

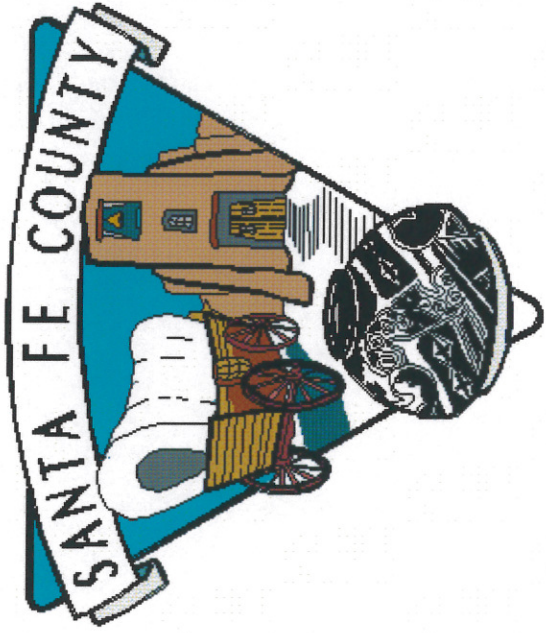
There would be significant benefits for both parties, the Club as well as the County when the Club joins as a utility customer. However, I believe that the majority of the foreseeable benefits would be for the entire customer base. Some of these benefits would include:

- The Club at Las Campanas will benefit from the reliance principle applied by the Utilities to all its customers. In other words, as long as they meet their commitments listed in the contract, the Utilities will provide them service, as a Wholesale-2 customer in perpetuity.

- Anticipated revenues resulting from their payment of rates (estimated to be between 326,800 and \$719,000 per year) will be equivalent to having between 770 and 1,380 new individual customers, each paying an average \$49 a month. In other words, at the minimum the customer base would be increased to approximately 3,400 customers.
- If TCLC buys water up to the limit stimulated in the proposed agreement, our customer would grow to 4,200 residential equivalents. In the worst case scenario, we would be about 1,300 customers shy of our calculated critical mass.
- Having an expanded customer base would improve the Utilities ability to maintain reasonable and affordable rates for all classes of service. This is primarily thanks to the benefits derived from economies of scale.
- Being a customer of the utility would bring the Club closer to the community, consequently making them also responsible for meeting the same requirements for water supply other customers must meet.

#### REQUESTED ACTION

The Utilities Department respectfully requests that the Board of County Commissioners approve the agreement between the County and The Club at Las Campanas, for the latter to become the County's Wholesale-2 (WS-2) water utility customer in perpetuity. The term limit is not recommended given the other party's counterproposal.



# SANTA FE COUNTY UTILITIES

# **M I S S I O N**

- **To maximize the benefits of safe and reliable potable water services for the people in Santa Fe County**

# HISTORY SFC WATER UTILITY

- 7-1996 : SFC Water Utility Created
- 8-2001: Valle Vista W/WW Systems Adopted
- 9-2003: Customer Base at 990
- 10-2011: Customer Base at 2,627  
(equivalents)

# HISTORY SFC SEWER UTILITY

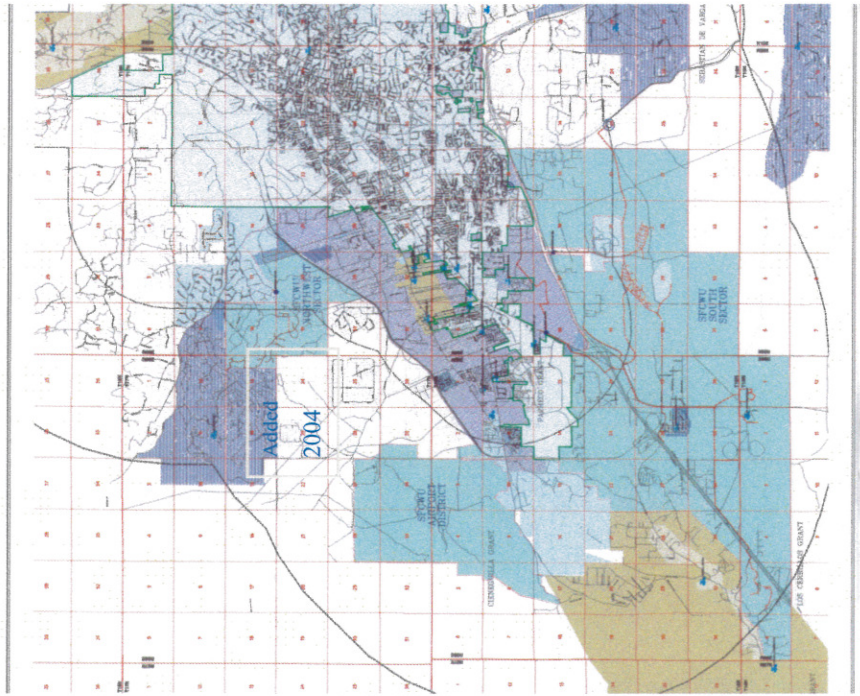
- 7-1998: Lease Agreement with GSD for Quill Plant (State Pen Wastewater Treatment Facility)
- 8-2001: Valle Vista WW Collection and Treatment
- 9-2003: Customer Base at 296
- 4-2011: Customer base at 317



# WATER CUSTOMER GROWTH

- 1996 – 3 Customers • 2005 – 1,210 Customers
- 2000 – 238 Customers • 2010 – 1,782 Customers

# SERVICE AREA



# DEMAND PROJECTIONS (AFY)

FY	SOUTH SECTOR	LAS CAMPAN	N.W. SECTOR	Raw Water	TOTAL
2012	313	306	57	125	<b>801</b>
2014	357	325	129	450	<b>1,261</b>
2016	410	344	151	550	<b>1,455</b>

# Water Rights Inventory 2011

DESCRIPTION	AVAILABLE CONSUMPTIVE (AFY)	CURRENT USE TO DATE (AFY)	TOTAL ANTICIPATED USE BY FY 2016 (AFY)	COMMENTS
RIO GRANDE/NATIVE	1271	280	236	Includes Eldorado, Canoncito and TCLC. Not private developers
CITY OF SANTA FE	500.0		500	Based on Water Resources Agreement
SAN JUAN CHAMA	375		375	When Annex Agrmt. Fully Implemented
LAS CAMPANAS	709	306	344	Las Campanas Water Cooperative Customers
DEVELOPER BASED	411		69	Existing Water Services Agreements
<b>TOTAL</b>	3266	586	1358	<b>Total Availability at beginning of FY 2016: 1,524 AFY</b>

# RESOURCE MANAGEMENT CRITERIA

- Develop and maintain a sustainable water supply
  - Expand existing and install new facilities AS NECESSARY to provide safe and reliable supply
  - Maintain total system capacity to meet the daily peak demand, and the average day demand during periods when the largest supply source is out of service.

# WATER MANAGEMENT STRATEGIES

- Establish aquifer recharge and storage facilities to be the source of supply during prolonged periods of drought
- Establish long term water use optimization incentives for all users to be applied on:
  - Landscape Irrigation
  - Small Agricultural

## RESOURCE MANAGEMENT... (Cont'd.)

- Integrate water and wastewater services into a single enterprise fund
- Establish rural County Utilities to reach more customers by integrating existing Water and Wastewater Associations
- Continue to improve operational efficiency by increasing O&M automation as applicable

# RESOURCE MANAGEMENT...

- Review Service Rates not Less Often than Every Two years to Verify They Remain Fair and Equitable While Addressing Actual O&M Costs
- Provide Incentives for Potential Customers to Switch from Domestic Well Use to Utility Service



# CURRENT CHALLENGES

- Maintaining safe and efficient field operations in the context of severe understaffing
- Reducing competition in the water rights market
- Adequately funding Capital Improvement Plan
- Maximizing utility revenue bonding capacity and funding source diversity

## CURRENT CHALLENGES...

- Reaching customer base “critical mass” by FY 2016
- Eliminating dependence on environmental gross receipts tax and reserve fund to cover O&M costs by 2016
- Maintaining fair and equitable service rates in the context of increasing costs
- Adopting fair and competitive pay plans for utility staff

## **RAW WATER SUPPLY AGREEMENT**

This Raw Water Supply Agreement (“Agreement”) is made this \_\_\_ day of November, 2011 (“Effective Date”) between The Club at Las Campanas, Inc., (the “Club”), a New Mexico non-profit corporation, and the Board of County Commissioners of Santa Fe County (the “County”) (collectively the “Parties”).

### **RECITALS**

**WHEREAS**, the Club desires to obtain water for the Club’s golf facilities, and the County desires to provide such water, as provided in this Agreement;

**WHEREAS**, the Buckman Direct Diversion Project is a joint project of the City of Santa Fe, Santa Fe County and Las Campanas Limited Partnership to divert water from the Rio Grande;

**WHEREAS**, the County is a general partner in the Buckman Direct Diversion Project;

**WHEREAS**, the Club owns up to 600 acre-feet per year of river diversion capacity (Raw Water) in the Buckman Direct Diversion Project with a delivery point at Booster Station 2A;

**WHEREAS**, Las Campanas is desirous of contracting with the County for it to deliver Raw Water that will serve its golf course, and the County is amenable to supplying such water to the Club; and

**WHEREAS**, the Parties desire to set forth herein their mutual obligations and covenants with respect to the Raw Water to be supplied pursuant to this Agreement.

**WHEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to enter into a Raw Water Supply Agreement whereby the County will supply the Club with up to 600 afy of Raw Water and the Club will pay for water taken as a "Wholesale-2" rate class customer, pursuant to the following terms and conditions.

#### **I. Definitions**

- A. “Afy” means acre-feet per year.
- B. “Agreement” means this Raw Water Supply Agreement.
- C. “BDD” means the Buckman Direct Diversion Project which, through its diversion, treatment, transmission and related works, will divert water from the Rio Grande at Buckman as described in the draft Environmental Impact Statement for the Buckman Direct Diversion Project.
- D. “BDD Fixed Operating Costs” means those fixed OMR&R costs as defined in the FOPA.

E. "BDD Variable Operating Costs" means those variable OMR&R costs as defined in the FOPA.

F. "Booster Station 2A" or "BS2A" means that booster station identified as such on Exhibit A to the FOPA.

G. "County" means the Board of County Commissioners of Santa Fe County, New Mexico, a political subdivision of the State of New Mexico.

H. "FOPA" means the Facilities and Operating Procedures Agreement for the Buckman Direct Diversion Project between the City of Santa Fe, Santa Fe County, and Las Campanas LP, effective October 16, 2006.

I. "Pipeline" means the pipeline and any related facilities constructed or to be constructed by the Club for the purpose of transporting the Raw Water from Booster Station 2A to the Club's golf facilities.

J. "Rate Schedule" means the published price of various water and wastewater products and services available through the County's water utility rates (or successor entity).

K. "Raw Water" means untreated surface water diverted from the Rio Grande through the BDD.

## **II. Representations and Warranties**

### A. Of the County:

1. The County owns or controls, and shall maintain, sufficient water rights or contract rights to water to fulfill its obligations under this Agreement.
2. There is no legal impediment to the County's entering into this Agreement.
3. The County has authority to enter into this Agreement and the Undersigned has authority to bind the County to its obligations under this Agreement.

### B. Of the Club:

1. There is no legal impediment to the Club's entering into this Agreement.
2. The Club has authority to enter into this Agreement and the Undersigned has authority to bind the Club to its obligations under this Agreement.

### **III. Obligations of the County**

A. Upon completion of the Pipeline, the County shall make available for purchase by the Club up to 600 afy of Raw Water from the BDD.

B. The County, at its own cost and through the BDD, shall deliver the Raw Water to the Club at Booster Station 2A ("BS2A"), at which point the Club will be obligated, at its sole cost and expense, to deliver the Raw Water to the point of end use. The County will pay all of the BDD Variable Operating Costs associated with deliveries from the BDD pursuant to this Agreement, but shall not pay the BDD Fixed Operating Costs in connection with delivery of up to 600 afy owned by the Club unless the County utilizes the Club's capacity in the BDD to deliver Raw Water to the Club pursuant to Article IV(B) of this Agreement; if, in any given year, the County utilizes the Club's capacity pursuant to Article IV(B), then the County will pay the BDD Fixed Operating Costs on that capacity.

C. The County will provide a right-of-way across private property between BS2A and the property boundary of Las Campanas at the-then fair market value of said right-of-way to facilitate construction of the Pipeline.

D. The County shall deliver to BS2A sufficient Raw Water to meet the monthly amount requested by the Club as provided for in this Agreement.

E. The County, in consultation with the Club, shall use its best efforts to develop a backup water supply and to provide said backup water in the event of curtailment of deliveries from the BDD to BS2A.

F. The County shall provide all water rights necessary to make the deliveries of Raw Water that are the subject of this Agreement.

G. All deliveries of Raw Water pursuant to this Agreement shall be made pursuant to the County's then-applicable Rate Schedules, water policies, resolutions or ordinances.

H. The County shall specify a flow meter which shall be purchased and installed by the Club at BS2A.

I. At its sole cost, the County shall read, repair, maintain, and provide for replacement as necessary of the flow meter at BS2A.

J. The County shall be responsible for any required reporting to the New Mexico Office of State Engineer ("OSE"), BDD, or other authority in connection with the delivery of Raw Water to the Club. The County may delegate this responsibility to the BDD as appropriate.

K. The County shall invoice the Club by the 20th of each month for the previous month's deliveries. Invoices shall be mailed to the following address:

The Club at Las Campanas  
ATTN: Golf Course Superintendent  
437 Las Campanas Drive  
Santa Fe, NM 87506

**IV. Obligations of the Club**

A. The Club shall take or pay a minimum of 300 afy of Raw Water each year, which amount shall be prorated for the year 2012.

B. Upon request by the County, the Club shall make its capacity in the BDD available to the County if necessary for use in fulfilling the County's obligations under this Agreement. The Club shall continue to pay all BDD Fixed Operating Costs associated with the Club's capacity.

C. The Club shall, at its own cost, construct the Pipeline from Booster Station 2A and any related facilities necessary to transport the Raw Water from BS2A to the Club's golf facilities.

D. The Club shall purchase and install a meter, which is suitable for measuring pipeline water flows and approved by the County.

E. The Club shall own and, at its own cost, operate, insure, and maintain the Pipeline. If the Raw Water pipeline is not repaired promptly, the pipeline may be shut down until repairs are completed to the satisfaction of the County.

F. The Club shall pay the County a one-time meter connection fee according to the Rate Schedule for a commercial connection fee based on the meter diameter. Any and all future costs associated with the metering, including but not limited to repair, replacement, and any infrastructure asset replenishment, shall be exclusively borne by the County.

G. The Club shall also pay the County a monthly fee according to the Rate Schedule for the installed meter diameter.

H. Five (5) days before the first day of each month, the Club shall notify the County or the County's designee of the amount of Raw Water requested by the Club for the following month. The Club shall provide additional details as requested by the County.

I. The Club shall cooperate with the County and the BDD in the annual process whereby annual water deliveries from the BDD are established and budgeted.

J. The Club shall be assigned to rate class "Wholesale-2" and shall pay for water delivered by the County at BS2A at the price set forth in the Rate Schedule and as set forth in the following table below. This price shall be adjusted every five (5) years proportional to any increase in the average of the annual values of CPI-U during the previous five years.

K. From time to time, the County may, by emergency ordinance or through some other appropriate means, establish conservation rules or stages to conserve water during times of drought. Deliveries to the Club pursuant to this Agreement shall be subject to those rules, so long as such ordinances, resolutions or rules are applied to all customers of the County.

L. The Club shall pay any applicable gross receipts taxes on the amounts due from the Club under this Agreement. The Club shall not be responsible for any other taxes, fees, or surcharges.

M. The Club shall pay the amount of the invoice within thirty (30) days of receipt of the invoice. Late payments shall be assessed interest at the rate of one and one-half percent per month on the unpaid balance. The County may discontinue delivery of water for failure to remain current on payments.

**V. Joint Obligations of the Parties**

A. Representatives of the Parties shall meet annually to review the deliveries and operations of the previous year, plan for anticipated deliveries and issues that may arise in the upcoming year, and discuss and make a good faith effort to resolve any issues that may arise with respect to this Agreement.

B. The Parties shall cooperate to allow any inspections, subject to appropriate notice, of data, documents, pipeline, infrastructure, or other equipment related to the supply of Raw Water under this Agreement.

C. Each party shall provide any and all documents, data or other information necessary or convenient for operations under this Agreement as requested by the other party.

**VI. Term and Duration of this Agreement**

The obligations to deliver Raw Water and to make payments under this Agreement shall commence upon the earlier of completion of the Pipeline or January 1, 2012, and this Agreement shall continue in perpetuity unless and until terminated as provided herein.

**VII. Amendments and Termination**

This Agreement may be amended, in writing, upon written consent by the Parties. This Agreement may be terminated by the County upon failure to the Club to make payments required by this Agreement; otherwise, termination may only occur by agreement of the Parties.

**VIII. Severability Clause**

In the event that any provision of this Agreement is determined to be contrary to law or otherwise legally invalid, the provision shall be severed from this Agreement, and the remaining provisions of this Agreement shall remain valid and binding on the parties.

**IX. Dispute Resolution**

The Parties agree to use the following dispute resolution methods to resolve any conflicts arising under this Agreement. Disputes shall first be discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. Unless otherwise agreed, if the parties are unable to resolve the dispute through informal mechanisms within thirty (30) days of the occurrence of the event or circumstances giving rise to the dispute, the parties may jointly submit the dispute to a mediator, the expenses of which shall be shared equally by the Parties.

Unless otherwise agreed, if the parties are unable to resolve the dispute through mediation within ninety (90) days of the occurrence of the event or circumstances giving rise to the dispute, each party may pursue any and all remedies available in law or equity. Any lawsuit arising out of this Agreement shall be filed in the First Judicial District of the State of New Mexico.

**X. Entire Agreement**

This Agreement contains the Entire Agreement between the Parties with regard to the matters set forth herein.

**XI. Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns.



**XII. Other Documents**

The Parties agree to execute such further and other agreements as reasonably may be required from time to time to carry out the provisions of this Agreement.

**XIII. Law**

The laws of the State of New Mexico shall govern this Agreement.

**XIV. Counsel**

The Parties acknowledge that they have freely entered into this Agreement with the advice of their respective legal counsel.

**XV. Execution in Counterparts**

This Agreement may be executed in counterparts with separate signature pages in the format shown below.

**XVI. Notices**

Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered, or faxed as follows, except as otherwise provided:

To the County:           Utility Division Director  
Santa Fe County  
424 NM 599/P.O. Box 276  
Santa Fe, New Mexico 87504  
505-992-9870  
505-992-3028

With a copy to:       County Manager  
Santa Fe County  
102 Grant Ave./P.O. Box 276  
Santa Fe, New Mexico 87504  
505-986-6200 [Phone]  
505-995-2740 [Fax]

and

County Attorney  
Santa Fe County  
102 Grant Ave./P.O. Box 276  
Santa Fe, New Mexico 87504  
505-986-6279 [Phone]  
505-986-6362 [Fax]

]

To the Club: General Manager, The Club at Las Campanas, Inc.  
437 Las Campanas Drive  
Santa Fe, NM 87506  
505-995-3604 [Phone]  
505-995-1032 [Fax]

With a copy to: Montgomery & Andrews, P.A.  
P.O. Box 2307  
Santa Fe, NM 87504-2307  
(505) 986-2525  
(505) 982-4289

**IN WITNESS WHEREOF**, the County of Santa Fe, New Mexico, and The Club at Las Campanas, Inc. have caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below:

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Virginia Vigil, Chair

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**Approved as to form:**

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney

**THE CLUB AT LAS CAMPANAS, INC.**

By: \_\_\_\_\_

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Secretary

## RAW WATER SUPPLY AGREEMENT

This Raw Water Supply Agreement (“Agreement”) is made this \_\_\_ day of ~~November~~ June, 2011 (“Effective Date”) between The Club at Las Campanas, Inc., (the “Club”), a New Mexico non-profit corporation, and the Board of County Commissioners of Santa Fe County (the “County”) (collectively the “Parties”).

### RECITALS

**WHEREAS**, the Club desires to obtain water for the Club’s golf facilities, and the County desires to provide such water, as provided in this Agreement;

**WHEREAS**, the Buckman Direct Diversion Project is a joint project of the City of Santa Fe, Santa Fe County and Las Campanas Limited Partnership to divert water from the Rio Grande;

**WHEREAS**, the County is a general partner in the Buckman Direct Diversion Project;

**WHEREAS**, the Club owns up to 600 acre-feet per year of river diversion capacity (Raw Water) in the Buckman Direct Diversion Project with a delivery point at Booster Station 2A;

**WHEREAS**, Las Campanas is desirous of contracting with the County for it to deliver Raw Water that will serve its golf course, and the County is amenable to supplying such water to the Club; and

**WHEREAS**, the Parties desire to set forth herein their mutual obligations and covenants with respect to the Raw Water to be supplied pursuant to this Agreement.

**WHEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to enter into a Raw Water Supply Agreement whereby the County will supply the Club with up to 600 afy of Raw Water and the Club will pay for water taken as a "Wholesale-2" rate class customer, pursuant to the following terms and conditions.

#### **I. Definitions**

- A. “Afy” means acre-feet per year.
- B. “Agreement” means this Raw Water Supply Agreement.
- C. “BDD” means the Buckman Direct Diversion Project which, through its diversion, treatment, transmission and related works, will divert water from the Rio Grande at Buckman as described in the draft Environmental Impact Statement for the Buckman Direct Diversion Project.
- D. “BDD Fixed Operating Costs” means those fixed OMR&R costs as defined in the FOPA.

E. "BDD Variable Operating Costs" means those variable OMR&R costs as defined in the FOPA.

F. "Booster Station 2A" or "BS2A" means that booster station identified as such on Exhibit A to the FOPA.

G. "County" means the Board of County Commissioners of Santa Fe County, New Mexico, a political subdivision of the State of New Mexico.

~~H. "Consumer Price Index" or "CPI-U" means the Consumer Price Index for All Urban Consumers "All items less food" as published by the United States Bureau of Labor Statistics' in its monthly CPI Detailed Report under "Special indexes" in "Table 1" Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, by expenditure category and commodity and service group" or successor index using the same or reasonably similar methodology. See, e.g. <http://www.bls.gov/cpi/epid1101.pdf>, at p. 26.~~

~~H.H. "FOPA" means the Facilities and Operating Procedures Agreement for the Buckman Direct Diversion Project between the City of Santa Fe, Santa Fe County, and Las Campanas LP, effective October 16, 2006.~~

~~H.I. "Pipeline" means the pipeline and any related facilities constructed or to be constructed by the Club for the purpose of transporting the Raw Water from Booster Station 2A to the Club's golf facilities.~~

~~H.J. "Rate Schedule" means the published price of various water and wastewater products and services available through the County's water utility rates (or successor entity).~~

~~H.K. "Raw Water" means untreated surface water diverted from the Rio Grande through the BDD.~~

## **II. Representations and Warranties**

A. Of the County:

1. The County owns or controls, and shall maintain, sufficient water rights or contract rights to water to fulfill its obligations under this Agreement.
2. There is no legal impediment to the County's entering into this Agreement.
3. The County has authority to enter into this Agreement and the Undersigned has authority to bind the County to its obligations under this Agreement.

B. Of the Club:

1. There is no legal impediment to the Club's entering into this Agreement.
2. The Club has authority to enter into this Agreement and the Undersigned has authority to bind the Club to its obligations under this Agreement.

**III. Obligations of the County**

A. Upon completion of the Pipeline, the County shall make available for purchase by the Club up to 600 afy of Raw Water from the BDD.

B. The County, at its own cost and through the BDD, shall deliver the Raw Water to the Club at Booster Station 2A ("BS2A"), at which point the Club will be obligated, at its sole cost and expense, to deliver the Raw Water to the point of end use. The County will pay all of the BDD Variable Operating Costs associated with deliveries from the BDD pursuant to this Agreement, but shall not pay the BDD Fixed Operating Costs in connection with delivery of up to 600 afy owned by the Club unless the County utilizes the Club's capacity in the BDD to deliver Raw Water to the Club pursuant to Article IV(B) of this Agreement; if, in any given year, the County utilizes the Club's capacity pursuant to Article IV(B), then the County will pay the BDD Fixed Operating Costs on that capacity.

C. The County will provide a right-of-way across private property between BS2A and the property boundary of Las Campanas at the-then fair market value of said right-of-way to facilitate construction of the Pipeline.

D. The County shall deliver to BS2A sufficient Raw Water to meet the monthly amount requested by the Club as provided for in this Agreement.

E. The County, in consultation with the Club, shall use its best efforts to develop a backup water supply and to provide said backup water in the event of curtailment of deliveries from the BDD to BS2A.

F. The County shall provide all water rights necessary to make the deliveries of Raw Water that are the subject of this Agreement.

G. All deliveries of Raw Water pursuant to this Agreement shall be made pursuant to the County's then-applicable Rate Schedules, water policies, resolutions or ordinances.

H. The County shall specify a flow meter which shall be purchased and installed by the Club at BS2A.

I. At its sole cost, the County shall read, repair, maintain, and provide for replacement as necessary of the flow meter at BS2A.

J. The County shall be responsible for any required reporting to the New Mexico Office of State Engineer (“OSE”), BDD, or other authority in connection with the delivery of Raw Water to the Club. The County may delegate this responsibility to the BDD as appropriate.

K. The County shall invoice the Club by the 20th of each month for the previous month’s deliveries. Invoices shall be mailed to the following address:

The Club at Las Campanas  
ATTN: Golf Course Superintendent  
437 Las Campanas Drive  
Santa Fe, NM 87506

**IV. Obligations of the Club**

A. The Club shall take or pay a minimum of 300 afy of Raw Water each year, which amount shall be prorated for the year 2012.

B. Upon request by the County, the Club shall make its capacity in the BDD available to the County if necessary for use in fulfilling the County’s obligations under this Agreement. The Club shall continue to pay all BDD Fixed Operating Costs associated with the Club’s capacity.

C. The Club shall, at its own cost, construct the Pipeline from Booster Station 2A and any related facilities necessary to transport the Raw Water from BS2A to the Club’s golf facilities.

D. The Club shall purchase and install a meter, which is suitable for measuring pipeline water flows and approved by the County.

E. The Club shall own and, at its own cost, operate, insure, and maintain the Pipeline. ~~If the County determines that the Raw Water pipeline is in need of repair, the County will notify the Club immediately and the Club shall immediately make necessary repairs. The Club may delegate to the County the responsibility to make a particular repair, but if it does so, the Club shall reimburse the County the actual cost of such repair.~~ If the Raw Water pipeline is not repaired promptly, the pipeline may be shut down until repairs are completed to the satisfaction of the County.

F. The Club shall pay the County a one-time meter connection fee according to the Rate Schedule for a commercial connection fee based on the meter diameter. Any and all future costs associated with the metering, including but not limited to repair, replacement, and any infrastructure asset replenishment, shall be exclusively borne by the County.

G. The Club shall also pay the County a monthly fee according to the Rate Schedule for the installed meter diameter.

H. Five (5) days before the first day of each month, the Club shall notify the County or the County's designee of the amount of Raw Water requested by the Club for the following month. The Club shall provide additional details as requested by the County.

I. The Club shall cooperate with the County and the BDD in the annual process whereby annual water deliveries from the BDD are established and budgeted.

J. The Club shall be assigned to rate class "Wholesale-2" and shall pay for water delivered by the County at BS2A at the price set forth in the Rate Schedule and as set forth in the following table below. This price shall be adjusted every five (5) years proportional to any increase in the average of the annual values of CPI-U during the previous five years.

<b>1st 100 Af</b>	<b>2nd 100 Af</b>	<b>3rd 100 Af</b>	<b>4th 100 Af</b>	<b>5th 100 Af</b>	<b>6th 100 Af</b>
\$4.00 per 1000 gal	\$4.00 per 1000 gal	\$4.00 per 1000 gal	\$3.50 per 1000 gal	\$3.50 per 1000 gal	\$3.50 per 1000 gal

K. From time to time, the County may, by emergency ordinance or through some other appropriate means, establish conservation rules or stages to conserve water during times of drought. Deliveries to the Club pursuant to this Agreement shall be subject to those rules, so long as such ordinances, resolutions or rules are applied to all customers of the County.

L. The Club shall pay any applicable gross receipts taxes on the amounts due from the Club under this Agreement. The Club shall not be responsible for any other taxes, fees, or surcharges.

M. The Club shall pay the amount of the invoice within thirty (30) days of receipt of the invoice. Late payments shall be assessed interest at the rate of one and one-half percent per month on the unpaid balance. The County may discontinue delivery of water for failure to remain current on payments.

**V. Joint Obligations of the Parties**

A. Representatives of the Parties shall meet annually to review the deliveries and operations of the previous year, plan for anticipated deliveries and issues that may arise in the upcoming year, and discuss and make a good faith effort to resolve any issues that may arise with respect to this Agreement.

B. The Parties shall cooperate to allow any inspections, subject to appropriate notice, of data, documents, pipeline, infrastructure, or other equipment related to the supply of Raw Water under this Agreement.

C. Each party shall provide any and all documents, data or other information necessary or convenient for operations under this Agreement as requested by the other party.



**VI. Term and Duration of this Agreement**

The obligations to deliver Raw Water and to make payments under this Agreement shall commence upon the earlier of completion of the Pipeline or ~~January~~ May-1, 2012, and this Agreement shall continue in perpetuity unless and until terminated as provided herein.

**VII. Amendments and Termination**

This Agreement may be amended, in writing, upon written consent by the Parties. This Agreement may be terminated by the County upon failure to the Club to make payments required by this Agreement; otherwise, tTermination may only occur by agreement of the Parties.

**VIII. Severability Clause**

In the event that any provision of this Agreement is determined to be contrary to law or otherwise legally invalid, the provision shall be severed from this Agreement, and the remaining provisions of this Agreement shall remain valid and binding on the parties.

**IX. Dispute Resolution**

The Parties agree to use the following dispute resolution methods to resolve any conflicts arising under this Agreement. Disputes shall first be discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. Unless otherwise agreed, if the parties are unable to resolve the dispute through informal mechanisms within thirty (30) days of the occurrence of the event or circumstances giving rise to the dispute, the parties may jointly submit the dispute to a mediator, the expenses of which shall be shared equally by the Parties.

Unless otherwise agreed, if the parties are unable to resolve the dispute through mediation within ninety (90) days of the occurrence of the event or circumstances giving rise to the dispute, each party may pursue any and all remedies available in law or equity. Any lawsuit arising out of this Agreement shall be filed in the First Judicial District of the State of New Mexico.

**X. Entire Agreement**

This Agreement contains the Entire Agreement between the Parties with regard to the matters set forth herein.

**XI. Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns.

**XII. Other Documents**

The Parties agree to execute such further and other agreements as reasonably may be required from time to time to carry out the provisions of this Agreement.

**XIII. Law**

The laws of the State of New Mexico shall govern this Agreement.

**XIV. Counsel**

The Parties acknowledge that they have freely entered into this Agreement with the advice of their respective legal counsel.

**XV. Execution in Counterparts**

This Agreement may be executed in counterparts with separate signature pages in the format shown below.

**XVI. Notices**

Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered, or faxed as follows, except as otherwise provided:

To the County:           Utility Division Director  
                                  Santa Fe County  
                                  424 NM 599/P.O. Box 276  
                                  Santa Fe, New Mexico 87504  
                                  505-992-9870  
                                  505-992-3028

With a copy to:           County Manager  
                                  Santa Fe County  
                                  102 Grant Ave./P.O. Box 276  
                                  Santa Fe, New Mexico 87504  
                                  505-986-6200 [Phone]  
                                  505-995-2740 [Fax]

and

County Attorney  
Santa Fe County  
102 Grant Ave./P.O. Box 276  
Santa Fe, New Mexico 87504  
505-986-6279 [Phone]  
505-986-6362 [Fax]

]

To the Club: General Manager, The Club at Las Campanas, Inc.  
437 Las Campanas Drive  
Santa Fe, NM 87506  
505-995-3604 [Phone]  
505-995-1032 [Fax]

With a copy to: Montgomery & Andrews, P.A.  
P.O. Box 2307  
Santa Fe, NM 87504-2307  
(505) 986-2525  
(505) 982-4289

**IN WITNESS WHEREOF**, the County of Santa Fe, New Mexico, and The Club at Las Campanas, Inc. have caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below:

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Virginia Vigil, Chair

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**Approved as to form:**

\_\_\_\_\_  
Stephen C. Ross, County Attorney

**THE CLUB AT LAS CAMPANAS, INC.**

By: \_\_\_\_\_

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Secretary

**NO PACKET MATERIAL FOR THIS  
ITEM**

**Presentation of Projects and Facilities Division  
Personnel and Upcoming Goals and Objectives**