

## RAW WATER SUPPLY AGREEMENT

This Raw Water Supply Agreement ("Agreement") is made this 15 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.

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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:

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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.

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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.

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**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.

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**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:

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

By: *Virginia Vigil*  
Virginia Vigil, Chair

Date: 11-8-2011

Attest:  
*Valerie Espinoza*  
Valerie Espinoza, County Clerk



Approved as to form:  
*Stephen C. Ross*  
Stephen C. Ross, County Attorney

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

By: *P. H. GEORGE*  
P. H. GEORGE  
President  
Title

Date: 11-15-11

Attest:  
NA  
Secretary

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss WATER AGREEMENT (NC)  
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I Hereby Certify That This Instrument Was Filed for  
Record On The 15TH Day Of November, 2011 at 03:24:22 PM  
And Was Duly Recorded as Instrument # 1651255  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
*Valerie Espinoza*  
Deputy County Clerk, Santa Fe, NM



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