

**FIRST AMENDMENT
TO THE FACILITY OPERATIONS AND PROCEDURES AGREEMENT
FOR THE BUCKMAN DIRECT DIVERSION PROJECT**

This FIRST AMENDMENT TO THE FACILITY OPERATIONS AND PROCEDURES AGREEMENT FOR THE BUCKMAN DIRECT DIVERSION PROJECT BETWEEN the CITY OF SANTA FE, SANTA FE COUNTY and LAS CAMPANAS L.P. (hereinafter referred to as "First Amendment") is entered into by and between the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico, the City of Santa Fe (hereinafter referred to as "the City"), a municipal corporation of the State of New Mexico, the Las Campanas Water and Sewer Cooperative, a New Mexico cooperative association (hereinafter referred to as "the Cooperative"), and the Club at Las Campanas, a New Mexico not for profit association (hereinafter referred to as "the Club"), effective as of July 1, 2016.

RECITALS

WHEREAS, the City, the County and Las Campanas, L.P. entered into the Facilities Operations and Procedures Agreement (hereinafter referred to as the "FOPA") with an effective date of October 16, 2006 to address facility operations as partners in the Buckman Direct Diversion Project (hereinafter referred to as "the BDD Project" or "BDD");

WHEREAS, all terms defined in the FOPA have the same meaning in this First Amendment unless otherwise indicated;

WHEREAS, the FOPA addresses the peak day diversion capacity of the BDD for the BDD Partners and the allocation of certain costs for the BDD Partners based on the allocation of peak day diversion capacity of the Shared Facilities as defined in the FOPA and amended here;

WHEREAS, by three separate assignments recorded on April 19, 2012 with the Santa Fe County Clerk, Las Campanas, L.P. assigned its entire peak day diversion capacity expressed as a percentage of the BDD's total peak day capacity, as follows: to the Las Campanas Homeowners Water Cooperative, 6.93%; to the Club, 5.37%; and to a related company, Arizona Rights LLC 5.28%;

WHEREAS, the Las Campanas Homeowners Water Cooperative subsequently merged with the Las Campanas Sewer Cooperative;

WHEREAS, the County thereafter acquired 5.28% of the BDD's total peak day diversion capacity from Arizona Rights, LLC, increasing its total peak day diversion capacity under the FOPA from 20.33% to 25.61%;

WHEREAS, the parties to this First Amendment wish to reflect the assignments made by Las Campanas, L.P. and to reflect the currently existing peak day diversion capacities; and

WHEREAS, the City, the County, the Cooperative and the Club have agreed upon the characterization and appropriate allocation methodology for certain fixed costs that have been and will continue to be incurred by the BDD.

AGREEMENT

NOW, THEREFORE, upon the consideration described in this First Amendment, including the covenants and promises contained herein, the adequacy of which is acknowledged by the parties, the City, the County, the Cooperative, and the Club agree to amend the FOPA as follows:

1. Paragraphs 4, 12, and 20 of the “Definitions” section of the FOPA are deleted entirely and replaced with the following:

4. **BDD Partners** means the City, the County, the Cooperative, and the Club.

12. **Club Separate Facilities** means those portions of the BDD Project described in the FOPA as the Club Separate Facilities, including pumping equipment in booster station 2A and the raw water pipeline extending from booster station 2A, providing water only to the Club, as shown on Exhibit A of this Agreement.

20. [previously 19] **Shared Facilities** means that portion of the BDD Project that provides raw water to all BDD Partners, as shown on Exhibit A of this Agreement, including all portions of booster station 2A, except for the pumping equipment in booster station 2A that is part of the Club Separate Facilities or the City/County Separate Facilities.

2. Paragraph 19 of the “Definitions” section of the FOPA is deleted entirely and replaced with the following:

19. **Project Wide Costs** means costs of the BDD Project that cannot be classified as costs of the Shared Facilities or the City/County Separate Facilities as established in accordance with Paragraph 39.

3. Paragraph 20 [**WRA**] of the “Definitions” section of the FOPA is renumbered as 21.

4. The last sentence of paragraph 2 of the “Agreement” section of the FOPA [**Ownership of the Project**] is deleted and replaced with the following:

“The Club owns the Club Separate Facilities.”

5. Paragraph 7 of the “Agreement” section of the FOPA [**BDD Project Facility**

Capacity Allocation]is deleted entirely and replaced with the following:

7. **BDD Project Facility Capacity Allocation.** The peak day diversion capacities are:

City: 62.09% (approx. 11.30 mgd allocation of 18.2 mgd total capacity)

County: 25.61% (approx. 4.66 mgd allocation of 18.2 mgd total capacity)

Cooperative: 6.93% (approx. 1.26 mgd allocation of 18.2 mgd total capacity)

Club: 5.37% (approx. 0.98 mgd allocation of 18.2 mgd total capacity)

A BDD Partner may use another BDD Partner's unused peak day diversion capacity. Consent for one BDD Partner to utilize another BDD Partner's unused peak day diversion capacity shall not be unreasonably withheld and the cost to use that capacity shall be calculated as set forth in a separate agreement.

The parties acknowledge and agree that their peak day diversion capacities may increase or decrease among themselves through the conveyance of peak day diversion capacity by one BDD Partner to another. In that instance, the parties to the transaction shall timely notify all other BDD Partners and the BDD Facilities Manager by giving notice in accordance with *FOPA Section 38, Notices*, which notice shall include a copy of the conveyance document and a revised chart reflecting the peak day diversion capacities after the conveyance. Further amendment of the FOPA in that instance shall not be required and the following provisions shall apply. First, notwithstanding any provisions of the FOPA allocating costs based upon the capacity allocations shown in *FOPA Section 7, BDD Project Facility Capacity Allocation*, the revised peak day diversion capacity allocation shall be used beginning with the effective date of the conveyance and be reflected in the BDD annual budget. Second, any provision of the FOPA referencing the capacity allocations shown or set forth in *FOPA Section 7, BDD Project Facility Capacity Allocation*, shall be interpreted to mean the revised capacity allocations as opposed to the allocations set forth above.

6. Paragraph 22 of the "Agreement" section of the "FOPA" [**Cost Sharing. Fixed and Variable OMR&R Costs of the Las Campanas Separate Facilities**] is deleted entirely and replaced with the following:

22. **Cost Sharing. Fixed and Variable OMR&R Costs of the Club Separate Facilities.** The Club shall pay the full amount of the Fixed and Variable OMR&R costs of the Club Separate Facilities.

7. Paragraph 23 of the "Agreement" section of the FOPA [**Cost Sharing. Fixed and Variable OMR&R Costs of the City/County Separate Facilities**] is hereby amended by replacing "24.6%" with "24.67%" and "75.3%" with "75.33%";

8. Paragraph 38 of the "Agreement" section of the FOPA [**Notices**] is amended to delete entirely the addresses relating to Las Campanas, L.P. and insertion of the following:

To the Cooperative: General Manager
Las Campanas Water and Sewer Cooperative
366 Las Campanas Drive
Santa Fe, NM 87506
Phone: (505) 204-7824
Fax: (505) 820-7116

With a copy to: Seth R. Fullerton
Attorney at Law
Stein & Brockmann, P.A.
P.O. Box 2067
Santa Fe, NM 87504-2067
Phone: (505) 983-3880
Fax: (505) 983-3880 (same as phone)

To the Club: General Manager
The Club at Las Campanas
132 Clubhouse Drive
Santa Fe, New Mexico 87506
Phone: (505) 995-3604
Fax: (505)995-1032

9. The following new paragraph 39 is hereby added to the "Agreement" section of the FOPA:

39. Project Wide Cost Determination. Project Wide Costs consist of those costs designated as "PW" in the BDD Chart of Accounts Manual, a copy of which has been provided to the BDD Partners, plus any and all litigation fees and expenses (commencing with such fees and expenses incurred on or after November 5, 2015). The BDD Partners may, from time to time, make changes to Project Wide Costs; provided, however, that any proposed change shall first be reviewed by a study group consisting of representatives from each of the BDD Partners. The BDD Partners shall review the Project Wide Costs every five (5) years beginning the fifth year after the First Amendment is fully executed.

10. The following new paragraph 40 is hereby added to the “Agreement” section of the FOPA:

40. Cost Sharing. Project Wide Costs. Project Wide Costs shall be apportioned annually among the City, the County, the Cooperative, and the Club based on their percentage share (if any) of actual water deliveries during the fiscal year; *provided*, however, that the County’s share of Project Wide Costs shall not exceed 30% in any fiscal year regardless of the County’s actual water deliveries. In the event that the County’s share of Project Wide Costs would exceed 30% in any fiscal year based on the BDD Partners’ percentage share of actual water deliveries, the City shall pay the difference of the total Project Wide Costs for the fiscal year regardless of the City’s actual water deliveries, if any, less the contributions of the Club and the Cooperative, if any, based upon actual water deliveries to the Club and the Cooperative. BDD staff will bill the BDD Partners for Project Wide Costs based on the BDD’s working capital and billing policy. In addition, BDD staff will reconcile the cost allocation of Project Wide Costs annually within 90 days of the end of the fiscal year.

11. The following new paragraph is hereby added to the “Agreement” section of the FOPA:

41. Assignments. Except for peak day diversion capacity conveyed to another BDD Partner, as allowed by *FOPA Section 7, BDD Project Facility Capacity Allocation*, no BDD Partner may assign their BDD capacity or other rights and obligations under the FOPA without the written consent of the BDD Partners and the BDD Board, which consent shall not be unreasonably withheld.

12. The following paragraphs of the “Agreement” section of the FOPA are amended by replacing “Las Campanas” with “the Cooperative and the Club” wherever the entity, “Las Campanas,” is referred to in the section and by amending the tense of any associated verb as necessary: *Section 4, Relationship of the Parties; Paragraph 20, Cost Sharing. Fixed OMR&R Costs for the Shared Facilities; Section 21, Cost Sharing. Variable OMR&R Costs of the Shared Facilities; Section 25, The BDD Partners and the BDD Board.*

13. The FOPA is amended by replacing “Las Campanas Separate Facilities” with the “Club Separate Facilities” everywhere that the former phrase appears in the FOPA.

14. This First Amendment may be executed and delivered by the parties in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

15. Exhibit A to the FOPA is deleted and replaced with Exhibit A to this First Amendment.

IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, the County of Santa Fe, New Mexico, the Las Campanas Water and Sewer Cooperative and the Club at Las Campanas have caused this First Amendment to be executed by its duly authorized representatives as of the dates specified below.

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

By: _____
Miguel M. Chavez, Chair

Date: _____

ATTEST:

Geraldine Salazar, County Clerk

Approved as to form:

Gregory S. Shaffer, County Attorney

CITY OF SANTA FE

Javier Gonzales
Mayor, City of Santa Fe

Date

Approved as to form

City of Santa Fe Attorney

Date

City of Santa Fe Clerk

Date

City of Santa Fe Finance

**THE LAS CAMPANAS WATER AND
SEWER COOPERATIVE**

By: Eugene J. Mroz
Its: President

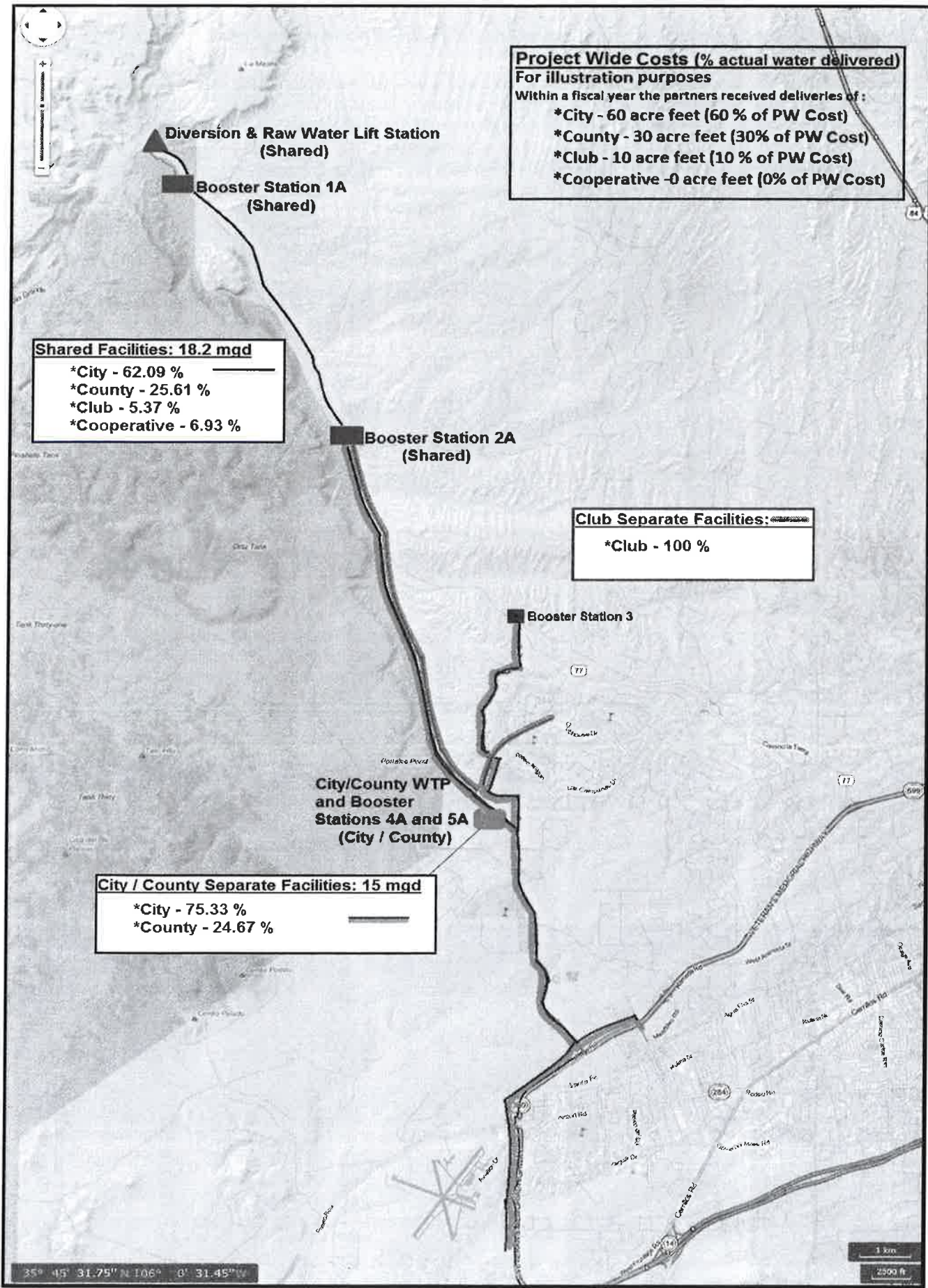
22 Dec 2016
Date

THE CLUB AT LAS CAMPANAS

By: _____

Its: _____

Date



Facility Operations and Procedures Agreement
 Exhibit A

