

22 JAN 1993

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CONTINGENT WATER SYSTEM TRANSFER AGREEMENT

LAS CAMPANAS HOMEOWNERS WATER COOPERATIVE, a New Mexico cooperative association, incorporated pursuant to N.M.S.A. 1978 §§ 53-4-1 et seq. ("Co-op"), and the COUNTY OF SANTA FE (the "County"), for the mutual promises herein and other valuable consideration, agree:

1. Recitals.

A. Co-op is a cooperative association engaged in the business of distributing water to its members, who are located exclusively within the Las Campanas de Santa Fe Residential Community consisting of approximately 3,500 acres, the area of which is more specifically described in Exhibit "A" (the "Property"). Co-op and Las Campanas Limited Partnership ("Las Campanas"), the developer of the Property, have entered an "Agreement to Construct and Transfer Water Improvements" whereby Co-op will own, operate and maintain water transmission and distribution infrastructure ("Improvements"), all easements and rights of way necessary for provision of water services, as well as the rights of ingress and egress including for the purpose of reading meters and the right of excavation as required for construction, operation, installation, maintenance, repair or replacement for any of the Improvements (hereinafter collectively, the "Co-op Water System"), as designed to provide water service to its members within the Property.

B. Las Campanas holds a valid lease with Sangre De Cristo Water Company, a division of the Public Service Company of New Mexico, a New Mexico corporation ("SDCW"). That lease, titled "Lease of Water Facilities Agreement dated August 5, 1987" (the "Facilities Lease"), allocates to Developer use of a portion of the capacity of

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certain wells located in Santa Fe County, New Mexico, commonly known as Buckman Wells 3, 4, 5 and 6, along with use of a portion of the capacity of the pipeline pumps, booster stations and other transmission facilities used in connection with the Buckman Wells ("Buckman Facilities"). Under a separate "Water Supply Agreement," Las Campanas has agreed to supply Co-op with a physical supply of water delivered at or near SDCW's Booster Station No. 4, or such other location as agreed by the parties, located in Santa Fe County, New Mexico, as needed by Co-op to service Co-op members up to a maximum of 650 acre feet per year, under the terms and conditions and in accordance with all the provisions described therein and all the terms of the Facilities Lease. The Facilities Lease has an initial Lease term that expires on December 31, 2012. Las Campanas has the option to renew the Facilities Lease for three (3) additional consecutive five (5) year periods.

C. Co-op believes that its members would benefit in the long term if water service were eventually provided to the Property under the auspices of a water utility owned and operated by the County.

D. The County intends to form a water utility, pursuant to statutory authority.

E. Subject to the terms and conditions described herein, and to all the terms and conditions of the Facilities Lease between Las Campanas and SDCW, Co-op grants the County an option to purchase the Co-op Water System provided, however, that this purchase option is conditioned on the County having first formed a water utility duly authorized by law and the County's exercise of its option to purchase within twenty (20)

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years from the date of this Agreement or at full build-out of the Las Campanas Project Water System, whichever is later (hereinafter "option period").

F. In consideration of this purchase option the County agrees to grant necessary approvals to Las Campanas and Co-op to proceed with development of the Property and begin providing water service to Co-op members within the Property.

G. Nothing contained in this agreement violates the terms of the Facilities Lease.

2. Grant of Purchase Option.

A. Co-op grants the County an option to purchase the Co-op Water System and integrate it into a County owned and operated water system at any time during the option period provided that the County has first formed a water utility duly authorized by law, and all approvals required by law have been obtained and any legislative and/or administrative impediments to such action have been removed.

B. Co-op agrees to hold all right, title, and interest in the Co-op Water System until this Agreement expires, or until the Co-op Water System is acquired by the County. At such time that the County exercises its option to acquire the Water System, Co-op will transfer to the County all non-cash assets of Co-op, including all the water rights that Co-op owns. The water rights so transferred will be irrevocably committed to serve this Project, irrespective of ownership, provided that any surplus permanent water rights could be made available to Santa Fe County for other uses as permitted by New Mexico law, contracts relating to the water rights and permits, and principles of beneficial use.

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If the County exercises its option to acquire the Co-op, then it will not abrogate any lease of water rights then in effect, and the lease will be allowed to expire according to its terms.

C. Upon exercising this purchase option, the County agrees to provide quality water service to the Property pursuant to the County-owned water utility's lowest applicable tariffs and shall assume full responsibility for the operation, maintenance and upkeep of the Co-op Water System. If the County so acquires the assets of Co-op, then the County shall assume all rights, duties and responsibilities of Co-op in the Water Supply Agreement and the Agreement to Construct and Transfer, and in particular the County shall assume the duties to pay Las Campanas for the bulk water supply, to provide water to former Co-op members, and to inspect and accept Improvements.

D. Co-op agrees that the County's commitment to own, operate and maintain the Co-op Water System and provide quality water service to the Property, and the payment of \$1.00, shall constitute full and good consideration for Co-op's conveyance of the Co-op Water System to the County pursuant to this purchase option.

3. Assignment or Conveyance. Any assignment or conveyance of the Co-op Water System by Co-op to a third party during the option period shall be subject to the terms and conditions in this Agreement.

4. Termination. This Agreement shall terminate and the parties' rights and duties hereunder shall cease upon the occurrence of any of the following circumstances:

- (1) Upon the expiration of the option period if the County has not exercised its rights herein.

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- (2) At the option of the non-breaching party, if a breach of a material term of this Agreement occurs.
- (3) The appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against, Co-op.

5. No Third-Party Beneficiary. Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person or entities other than the parties to it, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party or person to any party to this Agreement.

6. Assignment. This Agreement shall not be assigned without the prior written consent of Co-op and Las Campanas.

7. Notices. For purposes of giving formal written notice, including notice of change of address, Developer's and Co-op's addresses are:

Las Campanas Limited Partnership  
c/o V.P. Operations  
218 Camino La Tierra  
Santa Fe, New Mexico 87501

copy to: Luis G. Stelzner  
Sheehan, Sheehan & Stelzner, P.A.  
Post Office Box 271  
Albuquerque, New Mexico 87103

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- and: The Las Campanas Homeowners Water Cooperative  
Attn: John Nye  
218 Camino La Tierra  
Santa Fe, New Mexico 87501
- copy to: Erik E. Filsinger  
Suite C-226, 7373 N. Scottsdale Road  
Scottsdale, Arizona 85253
- and Santa Fe County Board of Commissioners  
Attn: Raymond Chavez, Chairperson  
Post Office Box 276  
Santa Fe, New Mexico 87504
- copy to: Terrance Brennen, Esq.  
County Attorney  
Santa Fe County  
Post Office Box 276  
Santa Fe, New Mexico 87504

Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within three days after the notice is mailed if there is no actual evidence of receipt.

8. Entire Agreement. This Agreement contains the entire Agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

9. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

10. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

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DATE: January 22, 1993

LAS CAMPANAS HOMEOWNERS WATER  
COOPERATIVE,  
a New Mexico cooperative association

By: John Nye  
JOHN NYE, President

COUNTY OF SANTA FE, NEW MEXICO  
a political subdivision of the  
State of New Mexico

By: Raymond M. Chavez  
RAYMOND CHAVEZ, Chairperson

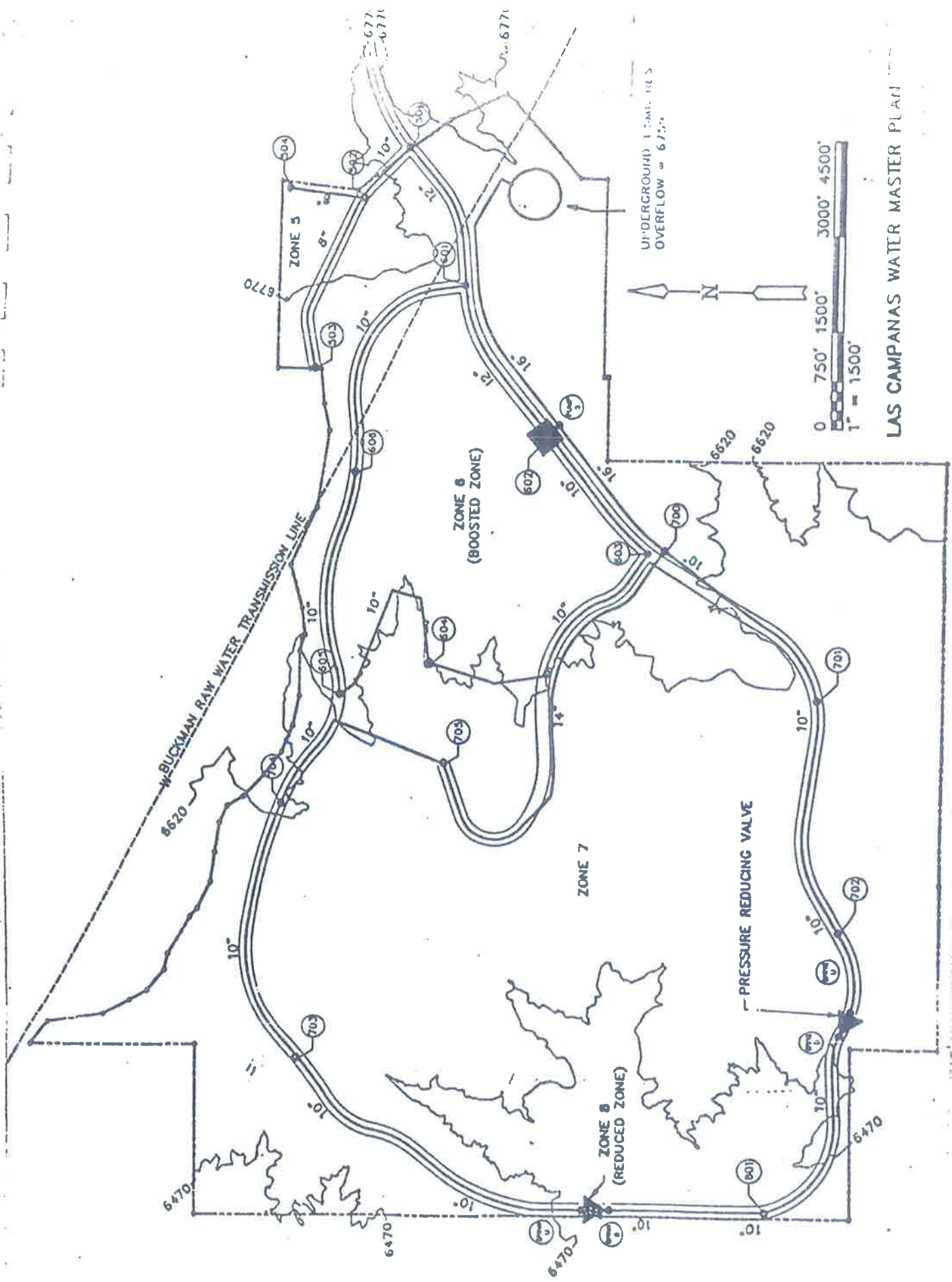
Attest:

Jona Armijo  
Jona Armijo, County Clerk



Terrance Brennen  
Terrance Brennen, County Attorney

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LAS CAMPANAS WATER MASTER PLAN

Exhibit A