

16 OCT 2009

BULK WATER SERVICE AGREEMENT

This Bulk Water Service Agreement ("the Agreement") is made this 16 day of October 2009 between Las Campanas Limited Partnership, a Delaware limited partnership, by and through Las Campanas Corporation, a New Mexico corporation, general partner of Las Campanas Limited Partnership, the Board of County Commissioners of Santa Fe County, and the Las Campanas Homeowners Water Cooperative.

RECITALS

WHEREAS, by an "Amendment of August 19, 1991, Agreement between Santa Fe County and Las Campanas Limited Partnership", dated January 22, 1993, by a "Master Plan Development Agreement" dated March 3, 1993, and by an Agreement dated May 18, 1994, the County required Las Campanas to acquire and allocate permanent water rights to meet the needs of the Las Campanas Project on a per-lot basis;

WHEREAS, the County and LCLP entered into an agreement dated May 18, 1994 ("the Replacement Delivery Facility Agreement") whereby, among other things, LCLP agreed to implement a replacement delivery facility to bring water to the Las Campanas community;

WHEREAS, at full build-out (anticipated to be 2030), Las Campanas will have allocated up to 568 acre-feet of water for residential uses, 84 acre-feet for commercial uses, and an assumed line loss of 52 acre-feet (8%);

568
84
52

704

WHEREAS, LCLP is now unable or unwilling to provide the replacement facilities described in the Replacement Facility Agreement and the Co-op desires to obtain water service from the County as a bulk water customer, and the County is willing to provide water service to the Co-op and not require construction of the replacement facilities so long as LCLP provides a substantial contribution to the required capital infrastructure and water rights to support the deliveries to the Co-op;

WHEREAS, the City of Santa Fe ("the City"), and the County are general partners in the Buckman Direct Diversion Project (the "BDD"), and the City, the County and LCLP (a limited partner in the BDD) are parties to the Facilities, Operations and Procedures Agreements ("the FOPA");

WHEREAS, under the FOPA (1) the City, County and LCLP will jointly fund the construction and fixed and variable operational expenses associated with the "Shared Facilities" of the Buckman Direct Diversion project, (2) LCLP will fund construction and fixed and variable operational expenses associated with the "Las Campanas Separate Facilities," described in Exhibit A to the FOPA;

WHEREAS, LCLP is willing to meet its obligations under the FOPA as described in the previous paragraph, but may, if acceptable to the parties, assign its obligations to the Co-op;

69.8055
639.6536

709,4591

WHEREAS, LCLP is the owner of, and in the process of transferring the point of diversion for, 69.8055 acre-feet per annum of water rights from the Middle Rio Grande Valley to the BDD for use on the Las Campanas Project which shall be deeded to the Co-op upon issuance of a State Engineer permit;

WHEREAS, the Co-op is the owner of 639.6536 acre-feet per annum of water rights whose point of diversion is the City's Buckman Well Field;

WHEREAS, the Co-op has the responsibility as established by private contract to serve as the water utility for the Las Campanas Project pursuant to the Water Supply Agreement between LCLP and the Co-op dated January 22, 1993;

WHEREAS, LCLP intends to convey all of the necessary assets, contracts and agreements to make the Co-op the permanent water provider pursuant to an "Agreement to Construct and Transfer Water Improvements," dated January 22, 1993, in a manner and on terms acceptable to the Co-op;

WHEREAS, pursuant to Exhibit A, Article VIII of Resolution No. 2006-57 of the Board of County Commissioners (the "Santa Fe County Water Resources Department Line Extension and Water Service Policy" or "Resolution No. 2006-57") the County may provide bulk water deliveries to a community water system, mutual domestic water association, Cooperative water association, water and sanitation district, or other similar entity on a bulk service basis pursuant to an appropriate agreement and based on schedules provided by the County;

WHEREAS, the County had not intended to provide water service to the Las Campanas Development on account of LCLP's obligations under the Replacement Facility Agreement to provide all necessary infrastructure itself, and the County had therefore not planned for the substantial capital expenditures that will be required to serve the Development;

WHEREAS, to meet a portion, but not all, of its obligations under the Replacement Facility Agreement, LCLP will pay the construction costs of the Las Campanas Potable Water Tank and Chlorination Facility, a specified portion of the construction costs of the 24" County water line between Booster Station 3 and Booster Station 4/Las Campanas Service Connection to be constructed, and a specified portion of the construction costs of other items necessary for the County to provide bulk water to the Co-op as described in this Agreement; and

WHEREAS, the parties desire to set forth herein their mutual obligations and covenants with respect to the bulk water service.

NOW, THEREFORE, upon the mutual consideration described by this Agreement, including the covenants and promises contained herein, the receipt and sufficiency of which is acknowledged by the Parties, the County, LCLP and the Co-op agree as follows:

I. Definitions.

1. "Afy" means acre feet per year.

2. "Agreement" means this Bulk Water Service Agreement.
3. "Application" means the form used by Applicants to apply for New Water Deliveries from the Santa Fe County Water Resources Department pursuant to Resolution No. 2006-57.
4. "BDD" means the Buckman Direct Diversion Project.
5. "BDD Partners" refers to the City, the County, and LCLP.
6. "BDD Project" or "BDD" means the Buckman Direct Diversion Project which, through its diversion, treatment, transmission and related works, will divert up to 8,730 afy from the Rio Grande at Buckman as described in the draft Environmental Impact Statement for the Buckman Direct Diversion Project.
7. "Board" means the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico.
8. "City" means the City of Santa Fe, a municipal corporation organized and existing under the Laws of the State of New Mexico.
9. "City/County Separate Facilities" shall have the meaning assigned to that phrase by the FOPA.
10. "Co-op" means the Las Campanas Homeowners Water Cooperative, a water Cooperative association organized and existing under the Laws of the State of New Mexico.
11. "County" means the Board of County Commissioners of Santa Fe County, New Mexico, a political subdivision of the State of New Mexico.
12. "Department" means the Santa Fe County Water Resources Division, a Division of the Growth Management Department, Santa Fe County.
13. "FOPA" means the Facility Operations and Procedures Agreement for the Buckman Direct Diversion Project between the City of Santa Fe, Santa Fe County and LCLP.
14. "LCLP" means Las Campanas Limited Partnership, a Delaware limited partnership, whose general partner is Las Campanas Corporation, a New Mexico corporation.
15. "Las Campanas Potable Water Tank" is the tank to be constructed to hold water under pressure that is delivered by the County to the Co-op pursuant to this Agreement.
16. "Las Campanas Project" means the residential structures and commercial uses in the Las Campanas development served or to be served by the Co-op, but excluding the golf course.

17. "Las Campanas Separate Facilities" shall have the meaning assigned to that phrase by the FOPA.

18. "Las Campanas Service Connection" means the point where the Co-op currently receives deliveries of water from the City of Santa Fe.

19. "Resolution No. 2006-57" means Resolution No. 2006-57 of the Board of County Commissioners (the "Santa Fe County Water Resources Department Line Extension and Water Service Policy" or "Resolution No. 2006-57") and Exhibit A thereto, or any successor resolution, ordinance or policy that governs water service provided by the County, or a regional successor entity.

20. "Shared Facilities" shall have the meaning assigned to that phrase by the FOPA.

II. General Water Service Terms.

A. The County shall deliver to the Co-op water in bulk in amounts requested by the Co-op as set forth under the terms of this Agreement. The water deliveries shall be pursuant to, and subject to, the terms of Resolution No. 2006-57.

B. The County shall provide a backup water supply when the BDD is not in operation.

C. The bulk water shall be delivered to the Las Campanas Service Connection or other point of delivery or points of delivery established by the parties. Each point of delivery established pursuant to this Agreement shall be based upon an engineering study approved by the Buckman Direct Diversion Board ("BDDB") and, as applicable, the City.

D. Once deliveries pursuant to this Agreement have been placed on the County's annual schedule of water deliveries pursuant to Article IV(B) of Resolution No. 2006-57, and so long as LCLP and the Co-op have fulfilled all of their obligations as set forth herein, then, for so long as LCLP and the Co-op comply with such obligations, the County shall provide bulk water service to the Co-op.

E. In the event of a shortage of water supply or an interruption of water supply due to operational constraints, insufficient water rights, or a lack of physical water, the County may curtail usage or customers in accordance with Resolution No. 2006-57 or emergency ordinance. The County shall have no liability for any reduction in bulk water deliveries due to water supply shortages or an interruption of water supply due to operational constraints.

F. Bulk water service is conditioned upon: (1) the contributions of LCLP towards the infrastructure being made, (2) all the infrastructure necessary to deliver water to the Las Campanas Service Connection being constructed, and (3) the transfer of ownership of the water rights to the County being completed.

G. The County and the Co-op shall enter into an Operating Agreement implementing the provisions of this Agreement.

III. Service Area Boundary Extension.

The water service area boundary of Santa Fe County is hereby extended to include the area served by the Co-op, which will provide local distribution of water within those areas, excepting Estates I and II (served by the City), as shown on the attached map (Exhibit B).

IV. Charges and Fees for Water Service.

The Co-op shall pay fees and charges associated with bulk water service as set forth in schedules promulgated from time to time by the County and approved by the Board. The County may assess standby fees, meter fees, impact fees, connection fees, inspection fees and engineering fees, as applicable. The current bulk water service rates are attached for informational purposes as Exhibit C. Increases in bulk water service rates may be made by the County from time to time, using the methodology deemed appropriate by the County (which in most cases will utilize a cost of service study or annual indexed increase).

V. Infrastructure.

A. The following infrastructure is necessary for the County to provide water to LCLP/Co-op under this Agreement, and shall be constructed as set forth below:

1. Chlorination Facility. LCLP has constructed, and will further improve at its own expense, the chlorination facility and other necessary infrastructure at a point between the Las Campanas Service Connection and customers of the Co-op.

2. Master Meter. LCLP shall supply a master meter at the Las Campanas Service Connection. The master meter, once accepted by the County, shall become the property of the County, and the County shall have responsibility for operating the master future thereafter.

3. Las Campanas Potable Water Tank. LCLP shall provide a new potable water tank with 500,000 gallon capacity, at a point past the present Las Campanas Service Connection and the chlorination facility. The potable water tank will be utilized to store water to be supplied to the Co-op and to provide necessary pressure. The design and construction of the potable water tank shall be approved by the County in advance of any construction. LCLP shall pay for all costs associated with construction of the potable water tank, estimated at \$1,200,000.00. The Co-op shall be responsible for operation of the potable water tank and for operation and maintenance of the tank. The County shall not be responsible for any of the capital costs of constructing the Potable Water Tank, or for the costs of operating, maintaining or improving the Potable Water Tank.

4. Connection, Meters, Pumps, Telemetry. LCLP shall install, and the Co-op shall own, maintain and operate, all necessary meters, valves and controls within the service area of the Co-op. LCLP/Co-op will coordinate with the County to ensure that its SCADA system is

compatible with the County's and the BDD's system, as appropriate. LCLP shall pay all costs associated with the meters, valves and controls. The County shall not be responsible for any of the capital costs of constructing the meters, valves, pumps and telemetry, or for the costs of operating, maintaining or improving the meters, valves, pumps or telemetry.

5. 24" Supply Line. The County will construct a 24" supply line between Booster Station 3 and Booster Station 4/Las Campanas Service Connection, from which water shall be supplied by the County to LCLP/Co-op. LCLP shall pay 40% of construction costs estimated at \$ 2,405,000.00 as its share of the cost of constructing the 24" line, and the County shall pay the remaining costs of constructing the line, which will be owned, operated and maintained by the County. The County may invoice LCLP monthly for its 40% share of construction costs as construction progresses, and LCLP shall make payments on the invoices within thirty (30) days of the date of the invoice.

B. General Construction Standards. LCLP and the County shall plan, design and construct the projects described in subsections V(A)(1) through (5) of this Agreement in accordance with Resolution No. 2006-57 and all applicable County building codes and regulations, and standards established by the American Water Works Association (AWWA). Prior to commencing construction, engineering plans shall be prepared and certified by a Licensed Professional Engineer in the State of New Mexico and submitted to the County for review and approval. The County may disapprove any engineering plans that do not comply with Resolution No. 2006-57 and the standards set forth herein. The improvements described herein may be phased, but each phase must independently comply with this Agreement and Resolution No. 2006-57. Construction may commence only after the County has issued its written approval of the engineering plans. Construction of the project must conform to the approved plans, and shall meet all applicable standards, and shall be performed in a workmanlike manner consistent with standards existing within the County. Personnel of the County shall be permitted reasonable access to the construction site during periods when construction is taking place, and shall be permitted to inspect the project and to issue relevant orders relating to the project, including stop work orders for work that does not conform to the approved plans, requiring that work be constructed according to the approved plans, and requiring that work meet all applicable codes and standards.

C. Necessary Easements and Rights-of-Way. LCLP/Co-op shall be responsible for obtaining all relevant easements and rights-of-way necessary to construct the improvements described in this Section. All easements and rights-of-way necessary to implement this Agreement, upon completion and acceptance, shall be granted to the County, without charge, including any and all permanent easements and rights-of-way over and across LCLP's/Co-op's property on which the improvements, and any components thereof, are located. Such grant shall be made through the appropriate plat dedication or instrument, and shall be recorded in the office of the Santa Fe County Clerk. The easements and rights-of-way may be located, to the extent possible considering cost and engineering feasibility, in a manner that avoids unreasonable interference with the LCLP/Co-op's contemplated uses of its property, in a way that complements the contemplated uses, and in accordance with sound construction and engineering standards and practices. In the event that easements and rights-of-way must be acquired from third parties who are not parties to this Agreement in order to complete the line extension

project, acquisition of such easements and rights-of-way shall be the sole responsibility of the LCLP.

D. Infrastructure a Condition Precedent to Water Deliveries. After completion of the infrastructure improvements described in this Section, LCLP/Co-op shall be entitled to receive water service, so long as all other conditions of this Agreement have been met. All such service must be scheduled pursuant to Resolution No. 2006-57 (Exhibit A, Section IV (B) (1)), or any successor ordinance, resolution or policy of the County governing water service.

E. Changes. If the County desires that the infrastructure provided pursuant to this Section be modified to accommodate other reasonably anticipated County needs, the County may require amendments to this Agreement. Any such amendments shall be the subject of a separate written amendment by and between the County and LCLP/Co-op. Oral instructions to modify a line extension project to benefit the County shall not be valid in the absence of a valid written contract.

VI. Scope.

The County will not supply water to the Las Campanas golf courses under this Agreement. Water delivered to the Co-op pursuant to this Agreement shall not be used for the golf courses under any circumstances.

VII. Invoicing.

The County will provide a monthly invoice to the Co-op that describes the amount of bulk water supplied to the Co-op through the master meter, the cost of water, and the total cost of water delivered. The Co-op will pay the invoice within thirty days of receipt. Reasonable late charges for late payments may be assessed by the County consistent with its then effective rate schedule and general practices.

VIII. Quantity of Water to be Delivered.

A. This Agreement anticipates bulk water deliveries to the Co-op not to exceed 709.4591 afy of water upon completion of the Las Campanas development. It is not expected that deliveries will reach this volume for decades after inception of this Agreement.

B. At the inception of this Agreement, the County will deliver bulk water to the Co-op not to exceed 332 afy, so long as all conditions precedent to water delivery have been satisfied. The Co-op shall transfer to the County an equal amount of water rights (332 afy) to support these deliveries but the County shall exercise no control over water rights not deeded to the County.

C. If additional bulk water deliveries are desired, the Co-op (or LCLP) shall notify the County pursuant to Resolution No. 2006-57 of the need for additional water, shall schedule the increased deliveries through the County's normal process, and shall transfer additional water rights to support the additional deliveries, as provided in the following paragraphs. The amount of potable water that shall be delivered by the County shall be determined by the Co-op from

time to time and the Co-op shall provide advance notice of its need for additional water as provided in Resolution No. 2006-57. The Co-op shall cooperate with the County in its annual estimating of water needed in the upcoming year from the BDD pursuant to the FOPA.

D. Nothing in this Agreement shall modify "Amendment of August 19, 1991, Agreement between Santa Fe County and Las Campanas Limited Partnership", dated January 22, 1993, "Master Plan Development Agreement" dated March 3, 1993, and Agreement dated May 18, 1994.

E. Prior to any deliveries pursuant to this Agreement, the Co-op or LCLP (as appropriate) shall be required to deposit with the County water rights (or the cash equivalent) to support deliveries pursuant to this Agreement. All water rights proposed for transfer must be acceptable to the County. All transfers shall be by deed and shall be transferred in advance of water service. Such deed shall contain a provision providing for automatic reversion to the Co-op if this Agreement is terminated. This clause shall replace the reverter clause presently in the deeds providing for reversion to LCLP. The Co-op shall be co-applicant with the County on transfers between the Buckman well field and the BDD. Using a dedication form provided by the County, the Co-op or LCLP, as appropriate, may deposit water rights with the County at any time that are intended to support water deliveries in future years or to satisfy requirements under the Land Development Code, with the understanding that deposit of said water rights does not create a delivery obligation on the part of the County to delivery water in subsequent years other than as set forth in this Agreement and the annual schedules issued by the County pursuant Article IV(B) of Resolution No. 2006-57. If the Co-op or the LCLP, as appropriate, elects to make a cash deposit in lieu of water rights, deliveries will not be scheduled until the County has obtained water rights to match against scheduled deliveries.

F. The costs of providing offsets for previous pumping at the Buckman Well Field shall be paid for by LCLP/Co-op. The County shall have no responsibility for paying the costs, or making offsets, of the previous pumping at the Buckman Well Field.

G. If water deliveries are not made by the County pursuant to this Agreement for any reason for which water rights have been transferred as required by this Agreement, Co-op may demand that such unused water rights be transferred back to Co-op and, upon such demand, the County shall transfer the water rights to Co-op and the County's obligation to deliver bulk water with respect to the amount of water rights transferred shall be extinguished.

IX. Stranded Costs in the Shared Facilities.

The amount of fixed and variable costs of the Shared Facilities will continue to be the responsibility of LCLP pursuant to the FOPA, unless otherwise allocated by agreement of the parties to the FOPA or assigned by LCLP pursuant to the terms of the FOPA. LCLP will permit the County to use its peak day diversion capacity from time to time. The cost to the County for the assignment of LCLP's peak day diversion capacity when available, as that phrase is used in Section 7 of the FOPA, is the payment of a portion of LCLP's\Co-op's Fixed and Variable OMR&R Costs for the Shared Facilities, as required by Sections 20 and 21 of the FOPA, respectively. The County shall pay LCLP's annual Fixed OMR&R responsibility

multiplied by the number of the Co-op's Water Rights used for water pursuant to this Agreement divided by 1,800 (the total amount of Water Rights LCLP\Co-op is permitted to use at the BDD under the Biological Opinion). For purposes of calculating the County's Variable OMR&R costs under Section 21 of the FOPA, water delivered to LCLP under this Agreement will be allocated to the County in determining each BDD partner's responsibility.

X. LCLP's Payment Obligations

The County has received assurances from LCLP that it will promptly make payments towards the LCLP's contribution to the cost of infrastructure provided in this Agreement. The County will closely monitor payments under this Agreement and timely payments for construction costs incurred. Late payments, or the failure to make payments, by LCLP, may expose the LCLP to litigation by the remaining parties to compel performance with the covenants of this Agreement, for damages, or other remedies provided by Law. LCLP agrees to secure a letter of commitment directly from Lloyds Banking Group providing an unconditional guarantee by Lloyds of the payments to be made by LCLP under this Agreement, up to \$14 million.

XI. Prior Agreements

The County hereby relinquishes any option to purchase any portion of LCLP's/Co-op's assets for \$1 as described in the Replacement Delivery Facility Agreement.

XII. Amendments and Termination

This Agreement may be amended, in writing, upon written consent by both the County and the Co-op. Termination may only occur by agreement of both the County and the Co-op.

XIII. 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.

XIV. 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:

To the County: Santa Fe County Utilities Director
Santa Fe County
205 Montezuma
Santa Fe, New Mexico 87501
Phone: (505) 986-6210
Fax: (505) 992-8421

With a copy to: County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: (505) 986-6200
Fax: (505) 986-6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: (505) 986-6279
Fax: (505) 986-6362

To LCLP: Las Campanas Engineering
218 Camino La Tierra
Santa Fe, New Mexico 87506
Phone: (505) 986-8090
Fax: (505) 986-6076

With a copy to: Counsel for Las Campanas
Law & Resource Planning Associates
201 Third Street NW, Suite 1750
Albuquerque, New Mexico 87102
Phone: (505) 346-0998
Fax: (505) 346-0997

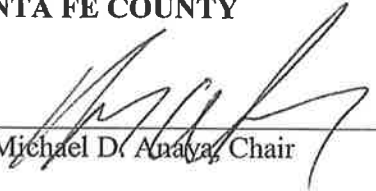
To the Co-op: President, Las Campanas Homeowners Water Cooperative
218 Camino La Tierra
Santa Fe, NM 87506
Phone: (505) 820-2669
Fax: (505) 629-1126

With a copy to: Gen. Mgr., Las Campanas Homeowners Water Cooperative
218 Camino La Tierra
Santa Fe, NM 87506
Phone: (505) 629-1129
Fax: (505) 629-1126

Counsel for Las Campanas Homeowners Water Cooperative
Stein & Brockmann, PA
PO Box 5250
Santa Fe, NM 87502-5250
Phone: (505) 983-3880
Fax: (505) 986-1028

IN WITNESS WHEREOF, each of the County of Santa Fe, New Mexico, the Co-op, and Las Campanas Limited Partnership, has 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: 
Michael D. Anaya, Chair

10-28-09
Date

ATTEST:

Valerie Espinoza, County Clerk

Approved as to form:


Stephen C. Ross, County Attorney

LAS CAMPANAS LIMITED PARTNERSHIP,

a Delaware limited partnership

By: Las Campanas Corporation, its General Partner

By: 

10/12/09

Date