



**WESTON WATER SUPPLY CORPORATION
NON-STANDARD SERVICE APPLICATION & AGREEMENT**

THE STATE OF TEXAS
COUNTY OF _____

THIS NON-STANDARD SERVICE APPLICATION & AGREEMENT (“Agreement”) is made and entered into by and between, _____ hereinafter referred to as “Developer,” and Weston Water Supply Corporation, hereinafter referred to as “WSC” or “Corporation.”

WHEREAS, Developer is engaged in developing that certain _____ acres of land in Collin County, Texas, more particularly known as the _____ subdivision, according to the plat thereof recorded at Volume ____, Page ____ of the Plat Records of Collin County, Texas, said land being hereinafter referred to as “the Property”; and

WHEREAS, WSC owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area; and

WHEREAS, Developer has requested the WSC to provide such water service to the Property through an extension of WSC’s water system, such extension being hereinafter referred to as “the Water System Extension.”

NOW THEREFORE in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and WSC agree and contract as follows:

1. Engineering and Design of the Water System Extension.

- (a) The Water System Extension shall be engineered and approved by WSC’s consulting engineer at Developer’s expense in accordance with the applicable specifications of the WSC and all governmental agencies having jurisdiction prior to the construction of the Water System Extension and the commencement of any utility system construction on the Property. After completion and approval of the plans and specifications, the plans and specifications shall become part of this Agreement by being attached hereto as EXHIBIT A, and shall more particularly define “the Water System Extension.”
- (b) The Water System Extension must be sized to provide continuous and adequate water service to the Property based on plans for the development of the Property. If the Property is to be developed in phases and the Developer desires the water system to be constructed in corresponding phases and such phased construction is deemed desirable and acceptable to WSC at its sole discretion, Developer shall be required to execute a

separate Non-Standard Service Agreement for each development and construction phase. The execution of one or more separate Non- Standard Service Agreement(s) will not provide to or vest in the Developer any capacity reservations or service rights for any property not expressly covered by the executed agreements(s). The Property to be covered and served under each agreement shall be clearly designated in a plat reviewed and approved by the WSC's consulting engineer and the Board of Directors to be appended to the agreement and incorporated therein for all purposes.

- (c) WSC may require the Water System Extension to be oversized in anticipation of the needs of other customers of the WSC, subject to the obligation to reimburse the Developer for any such oversizing as provided below. If WSC has required the Water System Extension to be oversized in anticipation of the needs of the other customers of WSC, WSC shall reimburse Developer for the additional costs of construction attributable to the oversizing, as determined by the WSC's consulting engineer, in three (3) annual installments without interest beginning one year after dedication of the Water System Extension to WSC. Developer agrees that WSC shall not be required to reimburse Developer for any oversizing required by another entity with jurisdiction over the activities of Developer, including but not limited to the City of Weston.

2. Required Sites, Easements or Rights-of-Way.

- (a) Developer shall be responsible for dedicating or acquiring any easements across privately owned land or sites (including off-site) which are necessary for the construction or operation of the Water System Extension and for obtaining any Governmental approvals necessary to construct the Water System Extension in public right-of-way. WSC prohibits the placement of any water lines or other infrastructure to be dedicated to WSC in the public right-of-way. The Water System Extension, or any portion thereof, shall therefore not be constructed in the public right-of-way without prior written consent of WSC.
- (b) Any easements acquired by the Developer shall be in a form approved by the WSC, and shall be assigned to WSC upon proper completion of the construction of the Water System Extension.
- (c) The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to WSC must be approved by WSC's attorney.

3. Construction of the Water System Extension.

- (a) Developer may choose whether to: (i) advertise for bids for the construction of the Water System Extension in accordance with state law and thereby award the contract for the construction of the Water System Extension, subject to the approval of the WSC's Board of Directors; or (ii) select a qualified contractor. The WSC may reject any bid, contractor or subcontractor selected by Developer.
- (b) No construction will commence until plans and specifications for the Water System Extension have been submitted to and approved by the Texas Commission on Environmental Quality and any other required regulatory agency, if required by law. WSC shall have no liability of any kind to Developer occasioned by delays or difficulties in obtaining any required governmental approvals, permits, licenses or

certificates.

- (c) The Water System Extension shall be constructed in accordance with the approved plans and specifications. The WSC shall have the right to inspect all phases of the construction of the Water System Extension at Developer's expense. Developer must give written notice to WSC of the date on which construction is scheduled to begin so that the WSC may advise its consulting engineer. The WSC's consulting engineer may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus ten percent (10%) overhead.

4. Dedication of Water System Extension to WSC.

Upon proper completion of construction of the Water System Extension and final inspection thereof by the WSC, the Water System Extension shall be dedicated to the WSC by an appropriate legal instrument approved by WSC's Attorney. Any costs of remediation or rehabilitation necessary to bring the Water System Extension into compliance with all state, federal and WSC standards prior to acceptance by the WSC shall be borne by Developer. The WSC shall have the sole decision of when the Water System Extension may be accepted. The Water System Extension shall thereafter be owned and maintained by the WSC upon acceptance; however, Developer shall warrant the construction and suitability of the same for a period of one (1) calendar year and shall bear all costs of repairs and improvements during this warranty period.

5. Subdivision Restrictions.

Developer shall create and enforce permanent and irrevocable subdivision deed, plat or other restrictions and/or covenants running with the land which shall prohibit the construction of private potable water systems or water wells within the subdivision. These prohibitions need not apply to non-potable water sources used for irrigation purposes only if they do not encroach on or in any way hazard the WSC's source of water. No interconnection between a private water supply and the WSC's water supply may be constructed or maintained except in strict conformance with applicable state or federal health, safety, environmental or utility regulations.

6. Cost of the Water System Extension.

- (a) Developer shall pay all costs associated with the Water System Extension, including, without limitation, the cost of the following:
- 1) engineering and design;
 - 2) easement acquisition;
 - 3) construction;
 - 4) inspection;
 - 5) attorneys' fees;
 - 6) governmental or regulatory approvals required to lawfully provide service, including all costs of amending the WSC's certificate of convenience and necessity, if necessary;
 - 7) WSC's prescribed capital improvement (impact) fee (by anticipated meter size) and/or capacity reservation charge for each lot and/or service connection for which the Water System Extension is designed to serve less credit for any production,

treatment, storage, pressure and transmission facilities added to WSC's utility system at Developer's expense to serve the Property; however, no credit shall be provided for distribution lines, valves, taps, services, flush valves and appurtenances thereto (together the "distribution system infrastructure") constructed at Developer's expense and the total offset credit received shall never exceed the total amount of WSC's prescribed impact or capital improvement fee (by anticipated meter size) and/or capacity reservation charge ("Reserve Monthly Minimum Fee") which would otherwise be collected; and

- 8) the Non-Standard Service Investigation Fee, in consultation with the WSC's consulting engineer and legal counsel, shall be paid by cashier's check payable to the WSC in order for the WSC to proceed in reviewing the application for non-standard service. Such Non-Standard Service Investigation Fee shall be paid prior to any review by WSC. The Non-Standard Service Investigation Fee is an estimate of the amount of costs involved in the initial review, and Developer shall be responsible for any remaining balances based upon the actual costs of the service investigation.
- (b) Developer shall indemnify WSC and hold WSC harmless from all of the foregoing costs.
- (c) Except for the one-year warranty provided in this Agreement, nothing herein shall be construed as obligating the Developer to maintain the Water System Extension subsequent to its dedication and acceptance for maintenance by WSC and the expiration of the warranty period.
- (d) If the Developer requests WSC to install meters at one or more service locations during the construction of the distribution system infrastructure, Developer shall pay the normal installation fees and monthly service rates for each meter beginning with the date of installation.

7. Service From the Water System Extension.

- (a) After proper completion and dedication of the Water System Extension to WSC, the WSC shall provide continuous and adequate water service to the Property under the requirements of WSC's state-issued certificate of convenience and necessity, the regulations of the Texas Commission on Environmental Quality and Public Utility Commission of Texas, subject to all duly adopted rules and regulations of WSC and the payment of the following:
 - 1) All standard rates, fees and charges as reflected in WSC's Approved Rate Schedule in effect at the time payment is made;
 - 2) Any applicable Capital Improvement Fees adopted by WSC in its Approved Rate Schedule in effect at the time payment is made;
 - 3) Any Equity Buy-in Fees adopted by WSC in its Approved Rate Schedule in effect at the time payment is made;
 - 4) Any Membership Fees, Office Processing Fees or any required deposit adopted by WSC in its Approved Rate Schedule in effect at the time payment is made; and
 - 5) Any applicable reserve service charge adopted by WSC in its Approved Rate Schedule in effect at the time payment is made.
- (b) It is understood and agreed that the obligation of WSC to provide water service in the manner contemplated by this Agreement is subject to the issuance by the Texas Commission on Environmental Quality or Public Utility Commission of Texas and all

other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service.

- (c) Unless the prior written approval of WSC is obtained, the Developer shall not:
- 1) construct or install additional water lines or facilities to service areas outside the Property;
 - 2) add any additional lands to the Property for which water service is to be provided pursuant to this Agreement;
 - 3) connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity; or
 - 4) use more than 500,000 gallons of water per month from any single connection.
- (d) If the proposed development is to be installed in phases, both parties agree that the installation and construction of platted lots, streets, electrical and/or other utility connections within a confined and specified area shall be deemed to constitute a single completed “phase” thus making all lots contained therein subject to the Reserve Monthly Minimum Fee;

8. Effect of Force Majeure.

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Contract, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term “force majeure” includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability’s of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

9. Notices.

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the addresses set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any

notice mailed to the WSC shall be addressed:

WESTON WSC
406 Chicken Street
Weston, Texas 75097

With required copy to:

Fancher Legal, PLLC
6136 Frisco Square Blvd., Suite 400
Frisco, Texas 75034

Any notice mailed to Applicant/Developer shall be addressed:

Either party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this paragraph.

10. Breach of Contract and Remedies.

- (a) If either party breaches any term or condition of this Agreement, the non-breaching party may, at its sole option, provide the breaching party with a notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon notice of breach, the breaching party shall have sixty (60) days to cure the breach. If the breaching party does not cure the breach within the sixty (60) days, the non-breaching party, below, shall have all rights at law and in equity including the right to enforce specific performance of this Agreement by the breaching party, the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith.
- (b) In the event of termination of this Agreement by a non-breaching party, such action shall not affect any previous conveyance.
- (c) The rights and remedies of the parties provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law and under this Agreement.

11. Third Parties.

It is the express intention of the parties that the terms and conditions of this Agreement may be enforced by either party but not by any third party or alleged third party beneficiary.

12. Captions.

Captions are included solely for convenience of reference and if there is any conflict between

captions and the text of the Agreement, the text shall control.

13. Context.

Whenever the context requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and the plural.

14. Mediation.

Prior to the institution of legal action by either party related to any dispute arising under this Agreement, said dispute shall be referred to mediation by an independent mediator mutually agreed upon by both parties. The cost of the mediator shall be shared equally by both parties.

15. Litigation Expenses.

Either party to this Agreement who is the prevailing party in any legal proceeding against the other party, brought in relation to this Contract, shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

16. Intent.

The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Contract.

17. Authority.

The signatories hereto represent and affirm that they are authorized to execute this Contract on behalf of the respective parties hereto.

18. Severability.

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

19. Entire Agreement.

This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

20. Amendment.

No amendment of this Agreement shall be effective unless and until it is duly approved by

each party and reduced to a writing signed by the authorized representatives of the WSC and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

21. Governing Law.

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable within the state-certified area of the WSC.

22. Venue.

Any action at law or in equity brought to enforce or interpret any provision of this Contract shall be brought in a state court of competent jurisdiction with venue in Collin County, Texas.

23. Successors and Assigns.

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

24. Assignability.

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the WSC.

25. Effective Date.

This Agreement shall be effective from and after the date of due execution by all parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

WESTON WATER SUPPLY CORPORATION

DEVELOPER/APPLICANT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A TO NON-STANDARD SERVICE APPLICATION & AGREEMENT

**COPY OF APPROVED WATER SYSTEM EXTENSION PLANS AND
SPECIFICATIONS**

EXHIBIT B TO NON-STANDARD SERVICE APPLICATION & AGREEMENT

APPLICATION FOR NON-STANDARD SERVICE – INFORMATION TO INITIATE INVESTIGATION FOR SERVICE

SERVICE INVESTIGATION FEE REQUIRED: \$2,500.00

By signing and submitting this application for non-standard retail water utility service, Applicant declares that he/she/it is the owner of the Property in question or a developer with legal contractual rights to develop the Property. If the Applicant is not the landowner or developer, he/she/it must have written legal authority to make this application and to bind the landowner/developer to the terms of any resulting service contract. The information solicited below shall be the minimum information the Applicant shall be required to initiate non-standard service to the Property in question. Applicant shall also be required to timely provide any additional information required by the WSC and/or its designated consulting engineer to evaluate the service request, its affects on the WSC's existing water system and customers, and any additional service capacities that might need to be developed to fulfill this request.

1. Applicant

Legal name: _____

Designated contact: _____

Physical address: _____

Mailing address: _____

Telephone: _____ Fax: _____

Email: _____

If the Applicant is not the landowner or developer, he/she/it must have written legal authority to make this application and to bind the landowner/developer to the terms of any resulting service contract.

2. Landowner/Developer

Legal name: _____

Designated contact: _____

Physical address: _____

Mailing address: _____

Telephone: _____ Fax: _____

Email: _____

Is the Landowner the same as the Developer? Yes ____ No ____

If No, please describe which entity will be responsible for the Water System Extension:

3. Responsible Engineer

Name: _____

Firm: _____

Mailing address: _____

Telephone: _____ Fax: _____

Email: _____

4. Property

General Description of Location: _____

Attach county/city plat or map showing location of property.

Number of acres: _____

Attach a map and description of the area to be served.

Is application being made for entire property? Yes ____ No ____

If no, will there be phased development? Yes ____ No ____

Number of Phases _____

Provide detail on the number of service connections per each phase: _____

Number of phases for which service is being requested in this application: _____

Attach plat of entire property with all phases clearly delineated on it. Plat must indicate where individual service locations are anticipated. If a location will require service at more than 10 gpm through a 5/8 x 3/4-inch meter, designate the location, type of water usage and AWWA flow capacity of all large meters that will be needed.

Water volume and pressure requirements:

Gallons: annual _____ peak/day _____

Flow in gpm: average daily _____ coincident peak: _____

Pressures required in psi: low ____ average ____ high ____

Special service needs. Type: _____

Quantity: _____

Expected date of use/need: _____

5. Specification of Needs; Time Table

Type of permanent water utility service being requested (check all applicable):

Residential Subdivision _____ Apartments _____

Manufactured Home Park _____ RV Park _____

Commercial or other uses: _____

Number of requested service connections (by anticipated meter size):

5/8 x 3/4 - inch _____ 3/4-inch _____

1-inch _____ 1 1/2 - inch _____

2-inch _____ 3-inch _____

4-inch _____ 6-inch _____

other _____ size/type _____

Other desired domestic public water utility service needs:

Additional reserved water capacities for other purposes are being requested? yes _____ no _____

If yes, the following capacities are needed: _____

Commencement of construction on the property: _____

Commencement of construction on each phase:

6. Other terms unique to this non-standard service request:

I CERTIFY, AS THE APPLICANT OR AS AN AUTHORIZED REPRESENTATIVE ON BEHALF OF THE APPLICANT, THAT THE FOREGOING REPRESENTATIONS CONTAINED IN THIS APPLICATION ARE HEREBY TRUE AND CORRECT.

APPLICANT/DEVELOPER:

Signature

Printed Name

Title

Date

<p>INTERNAL/WSC USE ONLY</p> <p>Date Received: _____</p> <p>Total Service Investigation Deposit Amount: _____</p> <p>Date Deposit Received: _____</p>
