

## **SECTION F.**

### **DEVELOPER, SUBDIVISION, AND NON-STANDARD SERVICE REQUIREMENTS**

**Part I. General Requirements** This section details the requirements for all types of non-standard service requests.

1. **Purpose.** It is the purpose of this Section to define the process by which the specific terms and conditions for service to subdivisions and other kinds of Non-Standard Service are determined, including the Non-Standard Service Applicant's and the District's respective costs.

For the purposes of the Section, the term "Applicant" shall refer to the individual or entity that desires to secure Non-Standard Service from the District. The Applicant must be the same person or entity that is authorized to enter into a contract with the District setting for the terms and conditions pursuant to which Non-Standard Service will be furnished to the property. In most cases, the Applicant shall be the owner of real property for which Non-Standard Service is sought. In the event that the Applicant is other than the owner of real property, the Applicant must furnish evidence to the District that it is authorized to request Non-Standard Service on behalf of such owner, or that it otherwise has authority to request Non-Standard Service for the real property.

2. **Application of Rules.** This Section is applicable to subdivisions, additions to subdivisions, developments, or whenever additional service facilities are required for a single tract of property. Examples of non-standard services for a single tract of land can include, but are not limited to, road bores, extensions to the distribution system, service lines exceeding  $\frac{3}{4}$ " diameter and any and all extension of District service lines. Non-residential or residential service applications requiring a larger sized meter typically will be considered non-standard. For the purposes of this Service Policies, Applications subject to this Section shall be defined as Non-Standard. This Section may be altered or suspended for planned facility expansions when the District extends its indebtedness. The Board of Directors of the District or their designee shall interpret on an individual basis whether or not the Applicant's service request shall be subject to all or part of the conditions of this Section.

This Section sets forth the general terms and conditions pursuant to which the District will process Non-Standard Service Requests. The specific terms and conditions pursuant to which the District will provide non-standard service in response to any requests will depend upon the nature of such request and may be set forth in a legally enforceable, contractual agreement to be entered into by the District and the service Applicant. The agreement may not contain any terms or conditions that conflict with this Section.

3. **Non-Standard Service Application.** The Applicant shall meet the following requirements prior to the initiation of a Non-Standard Service or the execution of a Non-Standard Service Contract by the District:
  - a. The Applicant shall provide the District a completed Non-Standard Service Application and Agreement Form. (See Section E this Service Policies). The Applicant shall specify any Special Service Needs, such as large meter size, size of subdivision or multi-use facility.
  - b. A final plat (See Service Policies Definition-Final Plat) approved by the District must accompany the Applicant showing the Applicant's requested service area. The plat must be approved by all governmental authorities exercising jurisdiction over lot sizes, sewage control, drainage, right-of-way, and other service facilities. Plans, specifications, and special requirements of such governmental authorities shall be submitted with the plat. Applicants for single taps involving extension or upsizing of facilities shall be required to submit maps or plans detailing the location of the requested extension and details of demand

requirements.

**NOTE:** It is the responsibility of the Applicant to secure all necessary approvals of the subdivision once an Agreement is in place between the District and the Applicant.

- c. A Non-Standard Service Investigation Fee shall be paid to the District in accordance with the requirements of Section G of this Service Policies for purposes of paying initial administrative, legal, and engineering fees. The District shall refund any balance that remains after it has completed its service investigation, and has completed all legal and engineering services associated with processing a request. In the event such a fee is not sufficient to pay all expenses incurred by the District, the Applicant shall pay to the District upon the District's request all additional expenses that have been, or will be incurred by the District and District shall have no obligation to complete processing of the Application until all remaining expenses have been paid.
- d. If after the service investigation has been completed, the District determines that the Applicant's service request is for property located, in whole or in part, outside the area described in the District's Certificate of Convenience and Necessity, service may be extended provided that:
  - 1) The service location is not in an area receiving similar service from another retail public utility;
  - 2) The service location is not within another retail public utility's Certificate of Convenience and Necessity; and
  - 3) The District's Certificate of Convenience and Necessity shall be amended to include the entirety of Applicant's property for which service is requested. Applicant shall pay all costs incurred by District in amending its CCN, including but not limited to engineering and professional fees. If the service locations is contiguous to or within one-fourth (1/4) mile of the District's Certificate of Convenience and Necessity, District may extend service prior to completing the amendment to its CCN, but will do so only upon Applicant's legally enforceable agreement to fully support such amendment (including but not limited to payment of all professional fees, including legal, surveying and engineering fees incurred by District in securing the amendment). If the District determines to annex the property, the Applicant shall secure written requests for annexation from all ownership interests in the property to be annexed, and shall pay all costs, including engineering and professional fees for the annexation.

4. ***Design.*** The District shall approve the design requirements of the Applicant's required facilities prior to initiation of a Non-Service Contract in accordance with the following schedule:
  - a. The District's Engineer shall design, or review and approve plans for, all on-site and off-site service facilities for the Applicant's requested service within the District's specifications, incorporating any applicable municipal or other governmental codes and specifications.
  - b. The Engineer's fees shall be paid out of the Non-Standard Service Investigation Fee, under Service Policies Section F. 3.
  - c. The Engineer shall submit to the District a set of detailed plans, specifications, and cost estimates for the project.
  - d. The District's Engineer shall ensure all facilities for any Applicant meet the demand for service as platted and/or requested in the plans or plat submitted in the application for service. The District reserves the right to upgrade design of service facilities to meet future demands provided however, that the District shall pay the expense of such upgrading in excess of what is reasonably allocable to the level and manner of service requested by the Applicant.

5. ***Non-Standard Service Contract.*** Applicants requesting or requiring Non-Standard Service *may* be

requested to execute a written contract, drawn up by the District's Attorney, in addition to submitting the District's Non-Standard Service Application. Said contract shall define the terms of service prior to construction of required service facilities. The service contract may include, but is not limited to:

- a. All costs associated with required administration, design, construction, and inspection of facilities for water service to the Applicant's service area and terms by which these costs are to be paid.
- b. Procedures by which the Applicant shall accept or deny a contractor's bid, thereby committing to continue or discontinue the project.
- e. Terms by which service capacity shall be reserved for the Applicant and duration of reserved service with respect to the demand which the level and manner of the service will have upon the District's system facilities.
- f. Terms by which the Applicant shall be reimbursed or compensated for fees duplicated in assessments for monthly rates and Capital Contribution Fees.
- g. Terms by which the District shall administer the Applicant's project with respect to:
  - 1) Design of the Applicant's service facilities;
  - 2) Securing and qualifying bids;
  - 3) Execution of the Service Contract;
  - 4) Selection of a qualified bidder for construction;
  - 5) Dispensing advanced funds for construction of facilities required for the Applicant's service;
  - 6) Inspecting construction of facilities; and
  - 7) Testing facilities and closing the project.
- h. Terms by which the Applicant shall indemnify the District from all third party claims or lawsuits in connection with the project.
- i. Terms by which the Applicant shall dedicate, assign and convey to the District all constructed facilities and related rights (including contracts, easements, rights-of-way, deeds, warranties, and so forth) by which the District shall assume operation and maintenance responsibility for the Applicant's project. The Applicant shall also provide reproducible as-built drawings of all constructed facilities. The as-built drawings must verify that all facilities have been properly located within the easements conveyed to the District.
- j. Terms by which the Board of Directors shall review and approve the Service Contract pursuant to current rules, regulations, and bylaws.

**6. *Construction of Facilities by Applicant Prior to Execution of Service Contract.*** The District and the Applicant must execute a Non-Standard Service Contract prior to the purchase of supplies and materials or initiation of construction of facilities by the Applicant. In the event that the Applicant commences construction of any such facilities prior to execution of a Contract with the District, the District may refuse to provide service to the Applicant or, in a subdivision, to any person purchasing a lot or home from the Applicant. Alternatively the District may require full costs of replacing/repairing any facilities constructed without prior execution of a contract from any person buying a lot or home from Applicant. At a minimum, the District will require that all facilities be uncovered by the Applicant for inspection by the District, require that all facilities not approved by the District be replaced, and take any other lawful action determined appropriate by the Board of Directors of the District.

**7. Dedication of Water System Extension to SUD.**

- a. Upon proper completion of construction of all on-site and off-site facilities to meet the level and manner of service requested by the Applicant (the "Facilities"), the Facilities shall become the property of the SUD. The Facilities shall thereafter be owned and

- maintained by the SUD subject to warranties required of Applicant under Subsection (b). Any connection of individual customers to the Facilities shall be made by the SUD.
- b. Upon transfer of ownership of the Facilities, Applicant shall warrant materials and performance of the Facilities constructed by Applicant for (12) months following the date of the transfer of ownership.

8. ***Property and Right-of-Way Acquisition.*** With regard to construction and subsequent maintenance and operation of facilities, the District shall require exclusive private right-of-way easements or title to property as per the following conditions:

If the District determines that right-of-way easements or facility sites outside the Applicant's property are required, the Applicant shall secure such easements or else title to facility sites in behalf of the District. All right-of-way easements and property titles shall be researched, validated, and filed by the District at the expense of the Applicant. (See Sample Application Packet RUS Form 442-8 or 442-9 (Rev. 6-06))

- a. All additional costs associated with facilities that must be installed in public right-of-way on behalf of the Applicant, due to the inability of the Applicant to secure private right-of-way easements, such as including road bores and TxDOT approvals shall be paid by the Applicant. Alternatively, Applicant shall pay all costs, including legal and other professional fees and the condemnation award in the event District secures such private easements or facility sites through eminent domain proceedings.
- b. The District shall require exclusive dedicated Right-of-Way on the Applicant's property (as required by the size of the planned facilities and as determined by the District) and title to property required for other on-site and off-site facilities.
- c. Easements and facilities sites shall be prepared for the construction of the District's pipelines and facility installations in accordance with the District's requirements and at the expense of the Applicant.

9. ***Bids for Construction.*** The District's Consulting Engineer shall advertise for bids for the construction of the Applicant's proposed facilities in accordance with generally accepted practices. Plans and specifications shall be made available, with or without charge (as per Engineer's determination), to prospective bidders. Although the District reserves the right to reject any bid or contractor, the District shall generally award the contract to the lowest qualified bidder in accordance with the following criteria:

- a. The Applicant shall sign the Service Contract noting willingness to proceed with the project and shall pay all costs in advance of construction associated with the project;
- b. The Contractor shall provide an adequate bid bond under terms acceptable to the District;
- c. The Contractor shall secure adequate performance and payment bonding for the project under terms acceptable to the District;
- d. The Contractor shall supply favorable references acceptable to the District;
- e. The Contractor shall qualify with the District as competent to complete the work (including but not limited to current water license, OSHA competent person training, and other licenses/certificates as required to complete the project); and
- f. The Contractor shall provide adequate certificates of insurance as required by the District.

10. ***Pre-Payment for Construction and Service.*** After the Applicant has executed the Service Agreement, the Applicant shall pay to the District all costs necessary for completion of the project prior to construction and in accordance with the terms of the Non-Standard Service Contract.

11. ***Construction.***

- a. All roadwork pursuant to state, county and/or municipal standards (as applicable) shall be completed prior to facility construction to avoid future problems resulting from road

right-of-way completion and excavation. Subject to approval of the requisite authority, approved road sleeves/casings may be installed prior to road construction to avoid road damage during construction of Applicant's facilities.

- b. The District shall, at the expense of the Applicant, inspect the facilities to ensure compliance with District standards.
- c. Construction plans and specifications shall be strictly adhered to, but the District reserves the right to issue change-orders of any specifications, due to unforeseen circumstances during the design phase, to better facilitate construction or operation of the Applicant's facility. All change-order amounts shall be charged to the Applicant.

## **PART II. Request for Service to Subdivided Property**

This section contains additional requirements for applicants that are developers as defined in Section C Definitions.

1. **Sufficient Information – Applicants** shall provide the District sufficient information describing the level and manner of service requested and the timeline for initiation of this service. The following is the minimum information needed for an engineering evaluation of the requested service to the property described in the application.
  - a. Completion of requirements described in **Section F. Part I. including completing the Non-Standard Service Application.**
  - b. Applicant shall provide the District with details concerning access to the property during evaluation of application.
  - c. Applicant shall be notified in writing by the District or designated representative the timeframe within which the requested service can be provided and the costs for which the applicant will be responsible, in accordance with the details described on the Applicant's request for service.
2. **Service within Subdivisions** -- The District's obligation to provide service to any customer located within a subdivision governed by this Section is strictly limited to the level and manner of the service specified by the Applicant. The Applicant is responsible for paying for all costs necessary for non-standard service to a subdivision as determined by the District under the provisions of this Service Policies and specifically the provisions of this Section; if the Applicant fails to pay these costs, the District has the right to require payment of these costs by any one or more of the persons purchasing lots or homes within such subdivision before the District is obligated to provide water service (Texas Water Code Section 13.2502). In addition, District may elect to pursue any remedies provided by the Non-Standard Service Contract if one has been executed. Applicant is advised that purchasers of lots also may have legal recourse to the Applicant under Texas law, including but not limited to Texas Water Code Section 13.257, and the Texas Business and Commerce Code Chapter 17 Subchapter E Deceptive Trade Practices- & Consumer Protection Act.
  - a) The Applicant must provide the following in addition to all other information otherwise required by this Section:
    - i. Map and legal description of the area to be served using map criteria in 30 TAC Section 291.105(a)(2)(A-G).
    - ii. Time frame for:
      - a. Initiation of service
      - b. Service to each additional or projected phase following the initial service.
    - iii. Detailed description of the nature and scope of the project/development for:
      - a. Initial needs
      - b. Phased and final needs, including a map showing each phase, and the projected land uses that support the requested level of service for each phase.

- iv. Any additional information requested by the District necessary to determine the capacity and the costs for providing the requested service.
- v. Copies of all required approvals, reports and studies done by or for the Applicant to support the viability of the proposed development.

Applicant must provide reasonably sufficient information, in writing, to allow the District to determine whether the level and manner of service specified by the Applicant can be provided within the time frame specified by the Applicant and to generally determine what capital improvements, including expansion of capacity of the District's production, treatment and/or storage facilities and/or general transmission facilities properly allocable directly to the service request are needed. If the Applicant proposes development in phases, the Applicant should specify the level and manner of service and the estimated time frame within which that service must be provided for each phase, and the Applicant must depict the currently estimated location of each phase on the maps required under 30 TAC Section 291.105(a)(2)(A-G). It is important that the Applicant's written request be complete. A complete application by the Applicant should include:

- a) The proposed improvements to be constructed by the Applicant;
- b) A map or plat signed and sealed by a licensed surveyor or registered professional engineer;
- c) The intended land use of the development, including detailed information concerning types of land uses proposed;
- d) The projected water and/or sewer demand of the development when fully built out and occupied, the anticipated water/sewer demands for each type of land use, and a projected schedule of build-out;
- e) A schedule of events leading up to the anticipated date upon which service from the CCN holder will first be needed; and
- f) A proposed calendar of events, including design, plat approval, construction phasing and initial occupancy; and
- g) Any additional information requested by the District necessary to determine the capacity and the costs for providing the requested service.

Applicant must establish that current and projected service demands justify the level and manner of service being requested. In making his/her written request for service, the Applicant must advise the District that he/she may request expedited decertification from the TCEQ.

Upon payment of all required fees, the District shall review Applicant's service request. If no additional information is required from Applicant, the District will prepare a written report on Applicant's service request, subject to any final approval by the District's governing body (if applicable) which must be completed within the 90 days from the date of receipt of application and payment of the required fees. The District's written report will state whether the requested service will be provided, whether the requested service can be provided within the time frame specified by the Applicant, and the costs for which the Applicant will be responsible (including capital improvements, easement or land acquisition costs, and professional fees).

In the event the District's initial review of the Applicant's service shows that additional information is needed, the District will notify Applicant of the need for such additional information. Notice of the need for additional information will be made in writing within 30 days of the date the District receives the Applicant's payment of the required fees. Applicant should respond to the District's request for additional information within 15 days of receipt of

the District's written request. In any case, the District will provide the written report, including any final approval by the District's Board (if applicable) within 90 days from the date of the **initial** written application and payment of all required fees.

By mutual written agreement, the District and the Applicant may extend the time for review beyond the 90 days provided for expedited petitions to the TCEQ. The Applicant is advised that failure to timely provide the information required by this Section, including this Subsection, may cause the TCEQ to reject any subsequent petition for decertification of Applicant's property. The Applicant is further advised that if the Applicant makes any change in level or manner or time frame for any phase of service, the Applicant's original Application for Non-Standard Service will be deemed withdrawn, and the change may be considered a new Application for Non-Standard Service for all purposes, including the times specified herein for processing.

4. **Final Approval** – Upon final approval by the District and acceptance of proposal for service by the Applicant, a Non-Standard Service Contract will be executed and the District shall provide service according to the conditions contained in the Non-Standard Service Contract.