

NON-STANDARD SERVICE AGREEMENT

THE STATE OF TEXAS
COUNTY OF KAUFMAN

THIS AGREEMENT is made and entered into by and between _____, hereinafter referred to as “**Developer**”, and **Markout Water Supply Corporation**, hereinafter referred to as “**WSC**” or “**Corporation**”.

WHEREAS, Developer is engaged in developing that certain _____ acres of land in Kaufman County, Texas, more particularly known as the _____ subdivision, according to the plat thereof recorded at Cabinet _____, Envelope _____ of the Plat Records of Kaufman County, Texas and attached herewith as “**Exhibit A**”; 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 the WSC’s water system, such extension being hereinafter referred to as “the Water System Extension”; NOW THEREFORE:

KNOW ALL MEN BY THESE PRESENTS:

THAT for and 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 the WSC’s consulting engineer in accordance with the applicable specifications of the WSC and all governmental agencies having jurisdiction prior to the issuance of any request for bids for 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 reference 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 Extension to be constructed in corresponding phases and such phased construction is deemed desirable and acceptable to the 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 agreement(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. The 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.

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.
- b. Any easements acquired by the Developer shall be in a form approved by WSC (see “Exhibit B - Form of Easement” attached to this Agreement and made a part hereof) 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 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. WSC’s consulting engineer, at Developer’s expense, shall advertise for bids for the construction of the Water System Extension in accordance with generally accepted bidding practices and shall award the contract for the construction of the Water System Extension subject to the approval of the WSC’s Board of Directors. WSC may reject any bid, contractor or subcontractor. No construction will commence until plans and specifications for the Water System Extension have been submitted to and approved by the Texas Commission for Environmental Quality and any other required regulatory agency, as may be 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.
- b. The Water System Extension shall be constructed in accordance with the approved plans and specifications. 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 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 10% overhead.

4. Dedication of Water System Extension to WSC.

- a. Upon proper completion of construction of the Water System Extension and final inspection thereof by 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. WSC shall have the sole decision of when the Water System Extension is acceptable. The Water System Extension shall thereafter be owned and maintained by WSC; 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.

- a. 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 and utility regulations.

6. Cost of the Water System Extension.

- a. Developer shall pay all costs associated with the Water System Extension as a contribution in aid of construction, including, without limitation, the cost of the following:
 - i. engineering and design;
 - ii. easement or right-of-way acquisition;
 - iii. construction;
 - iv. inspection;
 - v. attorney's fees;
 - vi. governmental or regulatory approvals required to lawfully provide service, including all costs of amending WSC's Certificate of Convenience and Necessity;
 - vii. 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 in question; however, no credit shall be provided for distribution lines, valves, taps, services, flush vales, and appurtenances thereto (together the "distribution system infrastructure") constructed at Developer's expense and the total offset credit received shall never exceeded the total amount of WSC's prescribed impact or capital improvement fee (by anticipated meter size) and/or capacity reservation charge which would otherwise be collected.
- b. Developer shall indemnify WSC and hold WSC harmless from all of the foregoing costs.
- c. Payment of Contribution in Aid of Construction:
 - i. A Non-Standard Service Investigation Fee in an amount set by the WSC's Board of Directors, in consultation with the WSC's consulting engineer and counsel, shall be paid by cashier's check payable to the WSC at the time of initial application for service.
 - ii. The WSC's Capital Improvement Fee, as defined by the WSC's approved rate schedule in effect at the time payment is made shall be paid by cashier's check payable to the WSC within ninety (90) days of the letter of approval of the consulting engineer's plans for the Service Extension by the WSC or the Texas Commission for Environmental Quality. Failure to deliver the funds to the WSC's offices within the ninety (90) day period shall void the application for non-standard service and the Developer shall have to reapply and replay all applicable Non-Standard Service Investigation Fees. Upon timely payment of the Capital Improvement Fee, WSC's consulting engineer shall proceed with issuing proposals for bids for construction.
 - iii. All funds required for the Water System Extension construction shall be escrowed in an interest bearing, federally insured, account in a state chartered

bank located in Kaufman County, Texas within ninety (90) days of the acceptance of construction bid(s) by WSC. The account shall be in the name of and under the sole control of the WSC. Interest accrued thereon shall be retained in the account for the benefit of the Developer. All escrow and other charges associated with the creation and maintenance of this account shall be borne by the Developer. If the amount of the funds to be escrowed exceeds \$100,000.00, the bank shall provide suitable collateral in the form of United States or State of Texas treasury bonds, bill or certificates of obligation suitable as collateral under the Texas Public Funds Investment Act and said collateral is to be held by an agent that is acceptable to WSC. Developer shall be required to maintain the level of funds in said escrow account at no less than ten percent (10%) of the total estimated cost of the Water System Extension. If phased development and construction under multiple Non-Standard Service Agreements will be followed, the parties may establish and utilize a single escrow account. All funds remaining in the escrow account at the expiration of the Developer's one-year warranty for the Water System Extension (or the final warranty year if phased development and construction is followed) shall be refunded to Developer. Developer-paid impact or capital recovery fees or capacity reservation charges shall be paid directly to WSC at execution of this Agreement and shall not be subject to escrow but shall be the unrestricted funds of WSC. Failure to deliver the funds to the WSC's business offices within the ninety (90) day period shall void the Application for Non-Standard Service and the Developer shall have to reapply and repay all applicable Non-Standard Service Investigation Fees. Upon timely delivery of these funds to the selected bank, WSC shall authorize construction to commence.

- d. Except for the one-year warranty provided in the 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.
- e. 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 annual installments without interest beginning one year after dedication of the Water System Extension to WSC.
- f. If the Developer requests WSC to install meters at service location 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, WSC shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of WSC and the payment of the following:
 - i. all standard rates, fees and charges as reflected in WSC's approved tariff;
 - ii. any Equity Buy-in Fees adopted by WSC;
- b. It is understood and agreed by the parties that the obligation of WSC to provide water service in the manner contemplated by this Contract is subject to the issuance by the Texas Commission on Environmental Quality or Public Utility Commission and all

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

- c. Unless the prior approval of WSC is obtained, the Developer shall not:
 - i. construct or install additional water lines or facilities to service areas outside the Property; or
 - ii. add any additional lands to the Property for which water service is to be provided pursuant to this Agreement; or
 - iii. connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity; or
- 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 Agreement, 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, lightening, 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 or 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 affected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address 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:

MARKOUT WATER SUPPLY CORP.
PO Box 907
Forney, TX 75126
Phone: (972) 564-1250
Fax: (972) 552-2777

With a copy to:
James W. Wilson, Attorney at Law
Gay, McCall, Isaacks, & Roberts, P.C.
777 East 15th Street
Plano, TX 75074

Any notice mailed to Developer shall be addressed to:

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 the 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 Agreement, shall be entitled to recover court costs and reasonable attorney's 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 Agreement.

17. Multiple Originals.

This Agreement may be executed in multiple originals, any copy of which shall be considered to be an original.

18. Authority.

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

19. 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.

20. 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.

21. 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.

22. 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 in Kaufman County, Texas.

23. Venue.

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

24. Successors and Assigns.

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

25. Assignability.

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

26. Effective Date.

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

27. Expiration Date.

This Agreement shall expire with the first of either the completion of all development described herein or the end of the sixth year after the Effective Date. If this Agreement expires prior to the completion of all development, a new Non-Standard Service Agreement must be executed.

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.

CORPORATION

By: _____
Name: _____
Title: _____
Date: _____

DEVELOPER

