

NON-STANDARD SERVICE AGREEMENT

THE STATE OF TEXAS

COUNTY OF MEDINA

THIS AGREEMENT is made and entered into by and between _____ hereinafter referred to as "Developer", and Yancey Water Supply Corporation, hereinafter referred to as "YWSC".

Developer is engaged in developing that certain _____ acres of land in Medina, County, Texas, according to the plat recorded at Vol. _____, Page _____ of the Plat Records of Medina County, Texas, or which is attached hereto as Addendum 1, referred to in this agreement as "the Property"; and,

WHEREAS, YWSC 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 YWSC to provide such water service to the Property through an extension of YWSC, 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 YWSC agree as follows:

1. **Engineering and Design of the Water System Extension.**

- (a) The Water System Extension shall be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of YWSC and all governmental agencies having jurisdiction. All plans and specifications must be reviewed and approved by YWSC's consulting engineer prior to the issuance of any request for bids for the construction of the Water System Extension. Upon such approval of the plans and specifications by the YWSC's consulting engineer, 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 of sufficient size to provide continuous and adequate water service to the property as outlined in the Developer's plans which are to be provided to YWSC. YWSC may require the Water System Extension to be oversized in anticipation of the needs of other current and future YWSC customers. NOTE: The Developer shall be reimbursed by YWSC for any such oversizing.

2. **Required Easements or Rights-of-Way.**

- (a) Developer shall be responsible for: (1) dedicating or acquiring any easements across privately owned land which are necessary for the construction of the Water System Extension and (2) 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 assigned to YWSC upon proper completion of the construction of the Water System Extension. The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to YWSC must be approved by YWSC's attorney.

3. **Construction of the Water System Extension.**

- (a) Developer 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 construction of the Water System Extension subject to the approval of the YWSC. YWSC may reject any and all bids.
- (b) The Water System Extension shall be constructed as prescribed in the approved plans and specifications. YWSC shall have the right to inspect all phases of the construction of the Water System Extension. Developer must give written notice to YWSC of the date on which construction is scheduled to begin so that YWSC may assign an inspector. YWSC may charge reasonable 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 YWSC.**

Upon proper completion of construction of the Water System Extension and final inspection and approval thereof by YWSC, the Water System Extension shall be dedicated to the YWSC by an appropriate legal instrument approved by YWSC's Attorney. The Water System Extension shall thereafter be owned and maintained by YWSC.

5. **Cost of the Water System Extension.**

- (a) Developer shall pay all costs associated with the Water System Extension. Such costs shall include without limitation, the following:
 - (1) engineering and design;
 - (2) easement or right-of-way acquisition;
 - (3) construction;
 - (4) inspection;
 - (5) attorney's fees;
 - (6) governmental or regulatory approvals required to lawfully provide service.

- (b) Developer shall indemnify YWSC, it's officers, directors, employees and agents and hold YWSC harmless from all of the foregoing costs as well as any claims for personal injury, breaches of contract, or damage to property, tangible or intangible arising directly or indirectly from the construction of the Water System Extension. NOTE: Nothing herein shall be construed as obligating the Developer to maintain the Water System Extension subsequent to its dedication and acceptance for maintenance by YWSC.
- (c) If YWSC has required the Water System Extension to be oversized in anticipation of the needs of the other customers of YWSC, YWSC shall reimburse Developer for the additional costs of construction attributable to the over sizing, as determined by the YWSC's consulting engineer, in three annual installments without interest beginning one year after dedication of the Water System Extension to YWSC.

6. **Securing of Water Allotments / Permits / Water Acquisition Fees.**

- (a) Normally Developers will acquire sufficient water rights to serve the proposed subdivision and deed those rights to YWSC (see paragraph E., page 4 of Section F.). When there are a limited number of lots, and at the discretion of the YWSC Board of Directors, the Developer may pay a water acquisition fee for each connection. The Board of Directors of the YWSC will determine the amount of water acquisition fee based on current market prices and projected future costs of water required to service current and future members. The water acquisition fee for each connection shall be paid to the YWSC prior to the installation of the water system on any part of the property. A water acquisition fee for each connection is required for a sub-division which is developed in units or phases prior to final approval of the plat by the Commissioner's Court of Medina County.

7. **Service From the Water System Extension.**

- (a) After proper completion and dedication of the Water System Extension to YWSC, YWSC shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of YWSC and the payment of the following:
 - (1) All standard rates, fees and charges as reflected in YWSC's approved tariff;
 - (2) Any applicable reserved service charge adopted by YWSC; (See Section G., paragraph 6b)
- (b) It is understood and agreed by the parties that the obligation of YWSC to provide water service in the manner contemplated by this Agreement is subject to the issuance by the Texas Commission on Environmental Quality 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 YWSC 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; or
 - (3) connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.

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, order 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 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 effected 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 YWSC office shall be addressed:

Yancey Water Supply Corp.
P. O. Box 127 / 150 County Road 743
Yancey, Texas 78886

Tel (830) 741-5264
Fax (830) 741-8009
e-mail yanceywater@devtex.net

Any notice mailed to Developer shall be addressed:

Tel () _____
Fax () _____
e-mail _____

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

10. **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.

11. **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.

12. **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 YWSC and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

13. **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 Medina County, Texas.

14. **Venue.**

Venue for any suit arising hereunder shall be in Medina County, Texas.

15. **Successors and Assigns.**

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

16. **Assignability.**

17. **Effective Date.**

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

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.

“YWSC”

By: Yancey Water Supply Corporation

Name: _____

Title: General Manager

Date: _____

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF _____ }
}

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____ known to me to be the person(s) whose name(s) subscribed to the foregoing instrument, and acknowledged to me that he (she) (they) executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE _____ day of _____, 20 _____.

(seal)

Notary Public in and for

County, Texas

DEVELOPER

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGEMENT

STATE OF TEXAS }
COUNTY OF _____ }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____ known to me to be the person(s) whose name(s) subscribed to the foregoing instrument, and acknowledged to me that he (she) (they) executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE _____ day of _____, 20 _____.

(seal)

Notary Public in and for

County, Texas

**YANCEY WATER SUPPLY CORPORATION
EQUIPMENT AND LINE DEDICATION AGREEMENT**

I, _____ (Transferor – Name of person, entity, corp., or other), having complied with the Yancey Water Supply Corporation’s Developer, Subdivision, and Non-Standard Service Requirements Policy, do hereby dedicate, transfer and assign to the Yancey Water Supply Corporation all rights and privileges to and ownership of said equipment and or line(s) installed as a condition of service this equipment and or line(s) installed as a condition of service this equipment and or line(s) being described in the Non-Standard Service Agreement between the Corporation and Transferor and the Non-Standard Service Contract of _____

_____ (date) including any amendments thereto and being further described as follows:
(or see Attachments) _____

The Yancey Water Supply Corporation through its designated representative having agreed to accept the equipment and or line(s) as previously described on the _____ day of _____, 20 __. The Corporation shall hold harmless, _____ (name of person, entity etc.) from this day forward any costs for repairs or maintenance of said equipment and or line(s), notwithstanding any warranty or bond for said repairs as per the Non-Standard Service Contract/Agreement.

This agreement entered into on the _____ day of _____ in the year of _____ by: Yancey Water Supply Corporation.

Transferor Signature

Signed by Corporation Representative

Address

City Zip

City Zip

THE STATE OF TEXAS, COUNTY OF _____
IN WITNESS WHEREOF the said Transferor and the Corporation Representative have executed this instrument this _____ day of _____, 20 __.

BEFORE ME, the undersigned, a Notary Public in and for said County and State of Texas, on this day personally appeared _____ and _____

known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, 20 __.

Signature of Notary Public