

SECTION F.
DEVELOPER, SUBDIVISION AND NON-STANDARD SERVICE REQUIREMENTS

Part I. General Requirements.

This section details the requirements for all types of nonstandard service requests.

1. **District's Limitations.** All applicants shall recognize that the District must comply with local, state, and federal rules and regulations as promulgated from time to time, and with covenants of current indebtedness. The District is not required to extend retail utility service to an applicant in a subdivision where the responsible party (applicant/developer) of the applicable property (subdivision) has failed to comply with the terms of this policy. Section 13.2502 of the Texas Water Code requires that notice be given herein or by publication (see Miscellaneous Transaction Forms) or by alternative means to the developers/applicants. (Also see Section F.11.)
2. **Purpose.** It is the purpose of this section to define the process by which the specific terms and conditions for all kinds of nonstandard service, including specifically for nonstandard service to subdivisions and the respective developers and sub dividers, are determined, including the nonstandard service applicant's and the District's respective costs.

For purposes of the section, the term "applicant" shall refer to the individual or entity that desires to secure nonstandard 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 nonstandard service will be furnished to the property. In most cases, the applicant shall be the owner of real property for which nonstandard 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 nonstandard service on behalf of such owner, or that it otherwise has authority to request nonstandard service for the real property.

3. **Application of Rules.** This section sets forth the terms and conditions pursuant to which the District will process nonstandard service requests. This section is applicable to subdivisions, additions to subdivisions, developments, or whatever 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 and meters larger than $5/8 \times 3/4$ ". For the purposes of this service policy, applications subject to this section shall be defined as nonstandard. This section may be altered or suspended for planned facility expansions when the District extends its indebtedness. The board of directors of the District 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. Nonstandard service to subdivisions is governed by this section.

This section sets forth the general terms and conditions pursuant to which the District will process nonstandard service request. The specific terms and conditions pursuant to which the District will provide non-standard service in response to any request 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.

4. **Nonstandard Service Application.** The Applicant shall meet the following requirements prior to the initiation of nonstandard service or the execution of a nonstandard service contract by the District:
- a. The applicant shall provide the district a completed nonstandard service application (see section I of this service policy) The applicant shall specify any special service needs, such as larger meter size, size of subdivision or multi-use facility, or the required level of fire protection requested, including the flow and pressure requirements (not always available in rural areas) and specific infrastructure needs such as line size and system capacity.
 - b. The applicant must be authorized to enter into a contract with the District setting forth terms and conditions pursuant to which nonstandard service will be furnished to a property or subdivision. The specific terms and conditions pursuant to which the District will provide nonstandard service in response to any request 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. A nonstandard service contract may not contain any terms or conditions that conflict with this section.
 - c. A plat acceptable to the District must accompany the application 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. Applications 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.
 - d. A nonstandard service Investigation Fee shall be paid to the District in accordance with the requirements of Section G 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 reasonable expenses incurred by the District, the Applicant shall pay to the District all remaining expenses that have been, or will be incurred by the District and District shall have no obligation to complete processing of the request until all remaining expenses have been paid.
 - e. 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 (CCN); 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 reasonable costs incurred by District amending its CCN, including but not limited to engineering and professional fees. If the service location is contiguous to or within one-fourth (1/4) mile of District's Certificate of Convenience and Necessity, District may extend service prior to completing the amendment to its CCN, but will do so upon applicant's legally enforceable agreement to fully support such amendment (including but not limited to payment of all professional fee, including legal, surveying and engineering fees incurred by District in securing the amendment).

5. **Design.** Upon receipt of a complete nonstandard service application and Investigation Fee, the District shall study the design requirements of the applicant's required facilities prior to installation of a nonstandard service contract by adopting the following schedule:
 - a. The District's consulting engineer shall design, or review and approve plans for, all on-site and off-site service facilities for the applicant's requested level and manner of service within the District's specifications, incorporating any applicable municipal or other governmental codes and specifications.
 - b. The consulting engineer's fees shall be paid out of the nonstandard service Investigation Fee under Section 4.
 - c. The consulting 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 are of proper size and type to meet the level and manner of service specified in the nonstandard service application. 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 and directly allocable to the applicant's facility requirements.

6. **Nonstandard Service Contract.** Applicants requiring nonstandard service may be required to execute a nonstandard service contract, drawn up by the District's attorney, in addition to submitting the District's service application and agreement. Service to any subdivision shall require a nonstandard service contract. Said contract shall define the terms, including the level and manner of service and the date for commencing service, prior to construction of any service facilities. The nonstandard service contract may include, but is not limited to:
 - a. Specifying the costs for contract administration, the design, construction, and inspection of facilities, securing additional water supply 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.
 - c. Terms by which service capacity adequate to the level and manner of service requested shall be reserved for the applicant following construction of facilities and duration of reserved service taking into consideration the impact the applicant's service demand will have upon the District's overall system capacity to meet other service requests, as well as assessment of any service availability charges following construction of facilities (if applicable).
 - d. 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) Requirements for executing the nonstandard service agreement;
 - 4) Selection of a qualified bidder for construction;
 - 5) Dispensing funds advanced prior to initiation of construction;
 - 6) Inspecting facilities following construction; and
 - 7) Testing facilities and closing the project.
 - e. Terms by which the Applicant shall indemnify the District from all third party claims or lawsuits in connection with the project.
 - f. Terms by which the applicant shall convey facilities to the District and by which the District shall assume operation and maintenance responsibility, including any enforcement of warranties in connection with construction of the applicant's project.
 - g. Terms by which the applicant shall grant title or easements for use of property during construction and for ongoing service thereafter.

- h. Terms by which the board of directors shall review and approve the nonstandard service contract pursuant to current rules, regulations, and bylaws.
- i. Agreement to enforce remedies in the event applicant fails to comply with a contract obligations, including specific performance.

The District and the applicant must execute a nonstandard service contract prior to the initiation of construction of facilities by the applicant. In the event that the applicant undertakes any construction of any such facilities prior to execution of a nonstandard contract with the District, the District may refuse to provide service to the applicant or to any portion of the applicant's property (or require payment of all costs for replacing/repairing any facilities constructed without prior execution of a contract from any person requesting service within the applicant's service area, such as a person buying a lot or home within the subdivision), 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, or take any other lawful action determined appropriate by the board of directors of the District.

- 7. **Property and Right-of-Way Acquisition.** With regard to construction and subsequent maintenance and operation of facilities, the District shall require exclusive easements or title to property as appropriate:
 - a. If the District determines that easements or facility sites outside the applicant's property are required, the applicant shall secure such easements or title to facility sites exclusively for the District. All right-of-way easements and property titles shall be researched, validated, and files by the District at the expense of the applicant. (See Sample Application Packet RUS Form 442-8 or 442-9.)
 - b. In the event the applicant is unable to secure any easements or title to any sites required by the District, and the District determines to acquire such easements or title by eminent domain, all reasonable costs incurred by the District shall be paid by the Applicant, including legal fees, appraisal fees, court costs and condemnation award.
 - c. The District shall require exclusive dedicated easements on the Applicant's property as appropriate for the level and manner of service requested by the Applicant and system wide service by the District. All such easements shall be adequate to authorize the District to construct, install, maintain, replace, upgrade, inspect, or test any facility necessary for service to the applicant as well as system-wide service within the District generally. Easements for subdivisions also must be sufficient for service throughout the subdivision when the subdivision is fully occupied. Title to any portion of applicant's property is required for on-site facilities will be provided and exclusive to the District.
 - d. Easements and facilities sites shall be prepared for the construction of all District facilities in accordance with the District's requirements and at the expense of the applicant.
- 8. **Dedication of Water System Extention/Improvements to District.**
 - a. Upon proper completion of construction of all on-site and off-site service facilities (the "Facilities") to meet the level and manner of service requested by the applicant, the facilities shall become the property of the District. The facilities shall thereafter be owned and maintained by the District subject to the warranties required of applicant under subsection (b). Any connection of individual customers to the facilities shall be made by the District.
 - 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.

9. **Bids for Construction.**

The District's consulting engineer shall solicit or shall advertise for bids for the construction of the applicant's proposed facilities in accordance with law and generally accept practices. Plans and specifications shall be made available, with or without charge, 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 and best bidder in accordance with the following criteria:

- a. The applicant shall execute the nonstandard service contract evidencing 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;
- f. The contractor shall provide adequate certificates of insurance as required by the District.

10. **Pre-Payment for Construction and Other Costs.**

As a general rule, applicant shall be required to pay all anticipated costs of construction, easement and title acquisition, legal and engineering fees, and other costs associated with extending nonstandard service prior to these costs being incurred by District. District shall promptly remit any and all unexpected prepaid funds, without interest, upon completion of the nonstandard service extension and commencement of service. While the District will make every reasonable effort to work with applicant, prepayment of costs shall be provided in a manner acceptable to District.

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, road sleeves 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 change-order 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 requirement 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 *Nonstandard 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 developer for the subdivision. The applicant developer is responsible for paying for all costs necessary for nonstandard service to a subdivision as determined by the District under the provisions of this service policy and specifically the provisions of this section. If the applicant developer fails to pay this cost the District had 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 are obligated to provide retail utility service to any customer service applicant within the subdivision. In addition, District may elect to pursue any remedies provided by the nonstandard service contract if one has been executed. Applicant developer is advised that purchasers of lots also may have legal recourse to the applicant developer under Texas law, including but not limited to Section 13.257, Texas Water Code, and the Texas Deceptive Trade Practices-Consumer Protection Act, Chapter 17, Subchapter E, Business and Commerce Code.
- a. For service to subdivision involving tracts of 50 acres or greater, the applicant developer must provide all information otherwise required under this section and must ensure that the District has been provided complete information sufficient to determine whether the level and manner of service requested by the applicant developer can be provided within the time frame specified by the applicant developer and to determine what capital improvements including expansion of capacity of the District's production treatment and/or storage facilities and/or general transmission facilities properly and directly allocable to the requested level and manner of service, will be needed. At a minimum, and in addition to information otherwise required under this section, the applicant developer must provide:
 - 1) Map and description of the area to be served complying with the map requirements of PUC Rules, Chapter 24, Subsection G, Section 24.257(a)(1-4).
 - 2) Time Frame for:
 - i. Initiation of Service; and
 - ii. Service to each additional phase following the initial service.
 - 3) Detailed description of the nature and scope of the project/development for:
 - i. Initial Service; and
 - ii. If the applicant developer proposes development in phases, the level of service that must be provided for each phase and the estimated location of each phase depicted on the maps required under Section 12.a-i of this policy.
 - 4) Manner of service for,
 - a. Initial needs; and
 - b. Phased and final needs and the projected land uses that support the required level of service for each phase.
 - 5) Copies of all required approvals, reports and studies done by or for the applicant developer

- 6) The proposed improvements to be constructed by the applicant developer including time lines for the construction of these improvements.
 - 7) A map or plat of the subdivision depicting each phase and signed and sealed by a licensed surveyor or registered professional engineer.
 - 8) Intended land use of the development, including detailed information concerning types of land use proposed;
 - 9) The projected water demand of the development when fully built out and occupied, the anticipated water demands for each type of land use, and a projected schedule of build-out;
 - 10) A schedule of events leading up to the anticipated date upon which service from the District will first be needed, and
 - 11) A proposed calendar of events, including design, plat approval, construction phasing and initial occupancy; and
 - 12) Any additional information requested by the District necessary to determine the capacity and the costs for providing the requested service.
- b. Applicant developer must establish that current and projected service demands justify the level and manner of service being requested.
- c. The applicant developer must advise the District that he/she may request expedited decertification from the PUC.
- d. The Application will be processed on a time frame that should ensure final decision by the District within 90 days from the date of the nonstandard service application and the payment of all fees required by this Section.
- 1) Upon payment of all required fees, the District shall review applicant developer service request. If no additional information is required from applicant developer the District will prepare a written report on applicant developer'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 application and payment of the required fees. The District's written report will state whether the requested service will be provided within the time frame specified by the applicant developer, and the costs for which the applicant developer will be responsible (including capital improvements, acquisition of any additional water supply capacity, easements and land acquisition costs, and professional fees).
 - 2) In the event the District's initial review of the applicant developer's service application shows that additional information is needed, the District will notify applicant developer 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 developer's payment of the required fees and completed application for nonstandard service. Applicant developer 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.
 - 3) By mutual written agreement, the District and the applicant developer may extend the time for review beyond the 90 days provided for expedited petitions to the PUC. The applicant developer is advised that failure to timely provide the information required by this section, including this subsection, may cause the PUC to reject any subsequent petition for decertification of applicant developer's property. The applicant developer is

further advised that if the applicant developer makes any change in level of manner of service requested, the time frame for initiation of service, or the level or manner or time frame for any phase of service, the applicant developer's original application for nonstandard service will be deemed withdrawn and the change may be considered a new application for nonstandard service for all purposes, including the times specified herein for processing.

- 4) Following 90 days and final approval by the District and acceptance of the District terms for service by the applicant, a nonstandard service contract will be executed and the District shall provide service according to the conditions contained in the nonstandard service contract.