

WALSTON SPRINGS WATER SUPPLY CORPORATION
NON-STANDARD SERVICE CONTRACT

THE STATE OF TEXAS

COUNTY OF ANDERSON

THIS CONTRACT is made and entered into by and between _____

And its successors and assigns, as applicable, hereinafter referred to as "Developer," and WALSTON SPRINGS WATER SUPPLY CORPORATION, hereinafter referred to as "WSC".

WHEREAS, Developer is engaged in developing that certain _____ acres of land in Anderson County, Texas, more particularly described in Exhibit "A", attached hereto and made a part of hereof for all purposes, 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 certificated service area; and

WHEREAS, Developer has requested WSC to provide such water service to the Property through an extension and or upgrade of the WSC's water system, such extension and or upgrade being hereinafter referred to as "the Water System Extension and or Upgrade"; and

WHEREAS, the WSC's Tariff duly adopted by the WSC Board of Directors requires Developer to enter into a Non-Standard Service Contract with WSC related to the engineering, construction and acceptance requirements of the WSC; and

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 designed and engineered by the Developer and approved by 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. The preliminary design of the Water System Extension is attached hereto as Exhibit "B". After completion and approval of the plans and specifications, such plans and specifications shall replace the preliminary design and shall become part of this Contract by being attached hereto as Exhibit "C", 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.

All aspects of the Water System Extension must be designed and completed in accordance with the WSC's Tariff.

- (c) 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 Contract for each development and construction phase. The execution of one or more separate Non-Standard Service Contracts(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 contracts(s). The Property to be covered and served under each contract shall be clearly designated in a plat reviewed and approved by the WSC's consulting engineer to be incorporated into the applicable contract for all purposes.
- (d) 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 certain oversizing; provided, however, that the WSC shall not be required to reimburse Developer for any line size of 12 inches diameter or less. If the WSC has required the Water System Extension to be oversized in anticipation of the needs of the other customers of the WSC over 12 inches diameter in line size, the 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 (1) year after dedication of the Water System Extension to the WSC. Developer agrees that the WSC shall not be required to reimburse Developer for any oversizing required by another entity with jurisdiction over the activities of Developer.

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. The Water System Extension, or any portion thereof, shall not be constructed in the public right of way without prior written consent of the WSC.
- (b) Any easements acquired by the Developer shall be in a form approved by the WSC, and shall be assigned to the 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 the WSC's attorney.

3. Construction of the Water System Extension.

- (a) Developer shall be responsible for acquiring or otherwise bidding, as deemed

necessary in Developer's discretion, for the construction of the Water System Extension. No construction will commence until plans and specifications for the Water System Extension have been submitted to and approved by the Texas Commission of Environmental Quality or any other required regulatory agency, if required by law. The 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. The WSC will provide Developer with a "Will-Serve" letter upon execution of this Contract and if requested by Developer in order for Developer to demonstrate to state regulatory agencies that the WSC will provide water service to the property in accordance with the laws applicable to the WSC's provision of water service.

- (b) The Water System Extension shall be constructed in accordance with the approved plans and specifications and all requirements of the WSC's Tariff. 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 the WSC of the date on which construction is scheduled to begin so that WSC may advise its consulting engineer. The WSC may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses, plus 15% 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. 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.
- (b) If the Water System Extension is designed and constructed in accordance with this Contract, the WSC's Tariff, and the plans and specifications approved by the WSC, as determined by the WSC, the WSC shall accept the Water System Extension. Upon acceptance of the Water System Extension, WSC shall send written notification of such acceptance to Developer to satisfy the acceptance provisions of this Contract and the WSC's Tariff.
- (c) Upon acceptance by the WSC, the Water System Extension shall thereafter be owned and maintained by WSC; provided, however, Developer shall, either directly or by requiring the contractor(s) constructing the Water System Extension to provide a two (2) year maintenance bond in the name of the WSC pursuant to Section 6(c).

5. Subdivision Restrictions.

To the extent permitted by applicable law, 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 as a contribution in aid of construction, including, without limitation, the cost of the following:
- 1) engineering and design, including service investigation fees;
 - 2) easement acquisition;
 - 3) construction;
 - 4) inspection;
 - 5) attorneys' fees;
 - 6) governmental or regulatory approvals required to lawfully provide service, including costs for amending the WSC's certificate of convenience and necessity, if any/applicable; and
 - 7) All fees required under the WSC's Tariff.
- (b) Developer shall INDEMNIFY WSC AND HOLD WSC HARMLESS from all of the foregoing costs. In the event any deposits or upfront fees are required of Developer, Developer shall be responsible for any remaining balances based upon the actual costs, which shall be paid prior to acceptance of the facilities by WSC.
- (c) Prior to acceptance of the Water System Extension by WSC, Developer shall provide WSC with a two (2) year maintenance bond to cover and warrant all aspects of the Water System Extension, in an amount not less than 100 percent of the total construction cost of the Water System Extension. Review and approval of the maintenance bond is a condition precedent to acceptance of facilities by WSC.
- (d) If the Developer requests WSC to install meters at a service location during construction, 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 and acceptance of the Water System Extension to WSC, 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 for Environmental Quality and all duly adopted rules, regulations and WSC's Tariff. Payment of all required standard rates, fees and charges as reflected in WSC's Tariff in effect at the time payment is made is required in order to obtain and maintain such water service from the WSC.
- (b) It is understood and agreed 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 and all other governmental agencies having jurisdiction of any 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 Contract;
 - 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 any reserve monthly minimum fees or any other fees that apply based upon such phased development. Any minimum monthly charges (the "Base Rate") set forth in the WSC's Tariff shall not be due by Developer until such time as a meter has been installed at a particular lot and connected to the WSC's system.

8. Effect of Force Majeure.

- (a) 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.
- (b) The cause of any force majeure, 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 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 WSC shall be addressed:

Any notice mailed to the WSC shall be addressed:

Walston Springs Water Supply Corporation
Attn: General Manager

Any notice mailed to 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 Contract, 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 Contract 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 Contract by a non-breaching party, such action shall not affect any previous conveyance.
- (c) The rights and remedies of the parties provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law and

under this Contract.

11. INDEMNIFICATION.

DEVELOPER HEREBY AGREES TO INDEMNIFY, SAVE, AND HOLD WSC HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, OR LIABILITY THEREFORE, LOSS, COSTS, CHARGES, REASONABLE ATTORNEYS' FEES, AND/OR EXPENSES OF WHATSOEVER KIND OR CHARACTER WHICH THE WSC SHALL OR MAY, AT ANY TIME SUFFER, SUSTAIN, OR INCUR BY REASON OF OR IN CONSEQUENCE OF ANY ACTIONS OF THE DEVELOPER, OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, IN CONNECTION WITH ANY OF THE PROVISIONS OF THIS CONTRACT. DEVELOPER HEREBY ASSUMES RESPONSIBILITY AND LIABILITY FOR THE INJURY OR DEATH OF ANY PERSON, OR LOSS OF DAMAGE TO ANY PROPERTY CONTRIBUTED TO OR CAUSED BY THE NEGLIGENCE OF DEVELOPER, OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS, IN THE EXECUTION OF ANY WORK IN CONNECTION WITH THIS CONTRACT, NOT INVOLVING ANY NEGLIGENCE OF THE WSC OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS. IN CASE OF ANY SUIT OR OTHER PROCEEDING SHALL BE BROUGHT ON ACCOUNT OF ANY MATTER COVERED BY THE INDEMNIFICATION SPECIFIED IN THIS SECTION, DEVELOPER WILL ASSUME THE WSC'S DEFENSE AT DEVELOPER'S EXPENSE AND WILL PAY ALL FINAL JUDGMENTS RENDERED THEREON.

12. Third Parties.

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

13. Captions.

Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Contract, the text shall control.

14. 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.

15. Mediation.

Prior to the institution of legal action by either party related to any dispute arising under this Contract, 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.

16. Litigation Expenses.

Either party to this Contract 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.

17. 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.

18. Authority.

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

19. Severability.

The provisions of this Contract are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Contract 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 Contract and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Contract to other persons or circumstances shall not be affected thereby and this Contract shall be construed as if such invalid or unconstitutional portion had never been contained therein.

20. Entire Agreement.

This Contract, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Contract.

21. Amendment.

No amendment of this Contract 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 Contract in every particular not otherwise changed by the amendment.

22. Governing Law.

This Contract 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.

23. 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.

24. Successors and Assigns.

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

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

Walston Springs WATER SUPPLY CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

DEVELOPER

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A" TO NON-STANDARD SERVICE CONTRACT
The Property

EXHIBIT "B" TO NON-STANDARD SERVICE CONTRACT
Preliminary Design