

**NON-STANDARD WATER SERVICE AGREEMENT
BETWEEN SOUTH RAINS SPECIAL UTILITY DISTRICT**

AND _____.

THE STATE OF TEXAS

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COUNTY OF RAINS

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This Non-Standard Water Service Agreement by and among South Rains Special Utility District and _____ (this "Agreement") is entered into as of _____, _____, by and among the South Rains Special Utility District, a conservation and reclamation district created and functioning under Chapters 49 and 65 of the Texas Water Code (the "District") and _____ ("Developer").

Recitals

A. WHEREAS, the District is a political subdivision of the State of Texas and the owner of certain water facilities that it utilizes to provide water service to its wholesale and retail customers; and

B. WHEREAS, Developer is the owner of that certain tract of real property located in Rains County, Texas being more particularly described in Exhibit "A" attached hereto (the "Property") known as _____, a subdivision within Rains County more particularly described by plat instrument recorded at Volume _____, Page _____ of the Real Property Records of Rains County, Texas; and

C. WHEREAS, Developer desires to obtain water service from the District for _____ single family residential lots within the Property; and

D. WHEREAS, the provision of water service to the Property will require the construction of facilities to extend service to the Property from the District's existing water system and will require the construction of internal water distribution facilities within the Property; and

E. WHEREAS, the Developer is willing to pay the District for the costs of construction of offsite facilities necessary to extend the District's water system to the Property, and Developer has agreed to construct the internal subdivision infrastructure required to receive potable water from the District's water system and to distribute the water internally within the Property;

D. WHEREAS, the parties desire to enter into this Agreement in order to set forth the terms and conditions pursuant to which the District will provide retail water service within the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

I. DEFINITIONS

When used in this Agreement, the following terms will have the meanings set forth below:

- 1.1 "Agreement" means this Non-Standard Water Services Agreement.
- 1.2 "Closing" means the execution and delivery by the District and Developer of all documents conveying, selling, transferring, or assigning the interests and property of Developer in any Interests to be Acquired to the District, and the performance of all acts necessary to complete such execution and delivery.
- 1.3 "Closing Date" means the date on which a Closing occurs.
- 1.4 "District System" means the water system now owned or to be acquired by District to serve the District's service territory, and any expansions, improvements, enlargements, additions and replacements thereto, including the Internal Facilities and the Offsite Facilities.
- 1.5 "Effective Date" means the last day of execution of this Agreement by all parties hereto.
- 1.6 "Interests to be Acquired" means the Internal Facilities, and all easements required for the Internal Facilities, and all other interests that Developer is required to convey to the District under this Agreement.
- 1.7 "Internal Facilities" means the water subdivision infrastructure within the Property to be constructed by the Developer at its sole cost and expense, and dedicated to the District, for the provision of retail water service to customers within the Property, and to connect such facilities to the Offsite Facilities.
- 1.8 "Living Unit Equivalent" or "LUE" means the quantity of water service furnished to one single-family residential unit through a standard 5/8-inch meter, or its equivalent calculated at the rate of 350 gallons of potable water per day, determined on an average daily basis over a thirty day period.
- 1.9 "Offsite Facilities" means the extension of water transmission line and related improvements, equipment and appurtenances to be constructed by the District at Developer's sole cost and expense in order to extend the District System to the Internal Facilities.
- 1.10 "Property" means that certain real property in Rains County, Texas more particularly described in Exhibit "A" attached hereto.
- 1.11 "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.

II. WATER SERVICES

2.12 **Service Commitment.**

(a) The District agrees to provide retail water service to customers within the Property in a quantity not to exceed ____ total LUEs.

(b) The District's obligation to serve the Property is expressly contingent on Developer's compliance with its obligations under this Agreement and the District's rules, regulations and policies.

(c) The District shall have no obligation to provide water service to any portion of the Property until all of the following conditions precedent have been satisfied:

- (i) the lands to be furnished water service have been final platted by all governmental entities with jurisdiction;
- (ii) the Internal Facilities have been completed by the Developer, are operational, and have been accepted by the District;
- (iii) the Offsite Facilities have been completed by the District, are operational, and are accepted by the District;
- (iv) all necessary easements and other real property interests have been dedicated to the District, including easements for the Internal Facilities;
- (v) all required fees and charges have been paid to the District by the Developer and customers within the Property; and
- (vi) the District has received all necessary governmental approvals for the provision of service to the Property.

2.13 **Service.** The District shall provide retail water service to customers in the Property in accordance with its standard rules and policies.

2.14 **Minimum Pressure.** The District will deliver potable water to customers within the Property at a minimum pressure of 35 pounds per square inch at each retail customer meter, or as may otherwise be required by the applicable rules of TCEQ.

2.15 **Wastewater, Drainage and Other Services.** The District will have no obligation with regard to the construction, ownership, operation or maintenance of wastewater, drainage, water quality or other non-water service facilities.

2.16 **District Operations.** Subject to the terms of this Agreement, the District will be responsible for operating and maintaining its water facilities in good working order; for making all needed replacements, additions and improvements as required for the operation of the facilities; for reading meters, billing and collecting from all customers; and for performing all other usual and customary services and administrative functions associated with water utility systems.

2.17 **Source of Water Supply.** The District shall have sole discretion in determining the source of water supply to be used for the provision of retail water service to the Property.

2.18 **Service Subject to State and Local Approvals.** Notwithstanding other provisions in this Agreement, the District will not provide water services in the manner described in this Agreement unless Developer obtains at its sole cost and expense all necessary permits, certificates, and approvals for the Property from all local, state, or federal government bodies to which it is subject.

2.19 **Water Conservation.** The District may curtail service to the Property in times of high system demand or drought, or as may be required by the District's Water Conservation Plan or Drought Contingency Plan, by other regulatory authorities with jurisdiction, and by entities from whom to the District purchases water supplies.

2.20 **Fire Flows.** The District does not guarantee the delivery or availability of water for fire protection purposes and will not be responsible for meeting local, county, state or federal standards pertaining to fire protection. The District agrees that fire hydrants may be installed within the Property by the Developer as part of the Internal Facilities, but any such installation shall not be construed to require the District to furnish a water supply adequate for fire suppression purposes. In the event any such fire hydrants are misused, tampered with, or disabled in any way, then the District shall have the right to remove and dispose of the fire hydrants in its sole discretion without compensation or liability to Developer or any other person.

III. RATES, FEES, AND CHARGES

3.1 **Rates.** All retail water customers within the Property will pay District's standard fees, charges and rates for water service, as set forth in the District's rules, orders, and/or tariff, as amended from time to time.

3.2 **Connection Fees.** Developer will not be required to pay any impact fees, capital recovery fees or similar fees or charges for service hereunder.

3.3 **Engineering Fees.** Within ten (10) days after execution of this Agreement and as a condition precedent to performance by the District under this Agreement, Developer agrees to pay to the District the nonrefundable sum of \$1000 for engineering fees to be incurred by the District in connection with this Agreement. Payment under this section is nonrefundable. If payment is not timely received by the District, then this Agreement shall terminate for all purposes.

IV. INTERNAL FACILITIES

4.1 **General.** Developer will construct or cause the construction of all Internal Facilities required to extend retail water services to the customers within the Property from the District System, including all facilities and equipment required to connect the Internal Facilities to the District System. Upon completion of construction of the Internal Facilities, Developer will provide the District with a certificate of completion from Developer's engineers certifying that the Internal Facilities have been completed in accordance with the approved plans and specifications. The date upon which the certificate of completion is provided to the District shall be the "Completion Date." Commencing upon the Completion Date, the District will accept the completed facilities for operation. Within thirty (30) days thereafter, the District and Developer will conduct a Closing in accordance with the procedures set forth in Article VII, at which Developer will convey the completed Internal Facilities to the District.

4.2 **Design of the Internal Facilities.** All physical facilities to be constructed or acquired as a part of the Internal Facilities will be designed by a qualified registered professional engineer selected by Developer and approved by the District. The design will be subject to the approval of the District and all governmental agencies with jurisdiction. The Internal Facilities shall be designed so as to provide continuous and adequate service within the Property and so as to ensure their compatibility with the District System. Any variance to the plans or specifications approved by the District or specified in this Agreement must be submitted in writing to the District and is subject to the District's sole discretion and approval. If the Internal Facilities as constructed by Developer are not in compliance with the agreed specifications approved by the District, then the District may pursue any remedy provided in this Agreement or may require the facilities to be replaced or restored so that they are in compliance with the approved plans and specifications.

4.3 **Construction of Internal Facilities.**

(a) The Internal Facilities will be constructed, and all related easements, equipment, materials and supplies will be acquired by Developer, and all construction contracts and other agreements will contain provisions to the effect that any contractor, materialman or other party thereto will look solely to Developer for payment of all sums coming due thereunder and that the District will have no obligation whatsoever to any such party.

(b) The construction contract and all change orders for the Internal Facilities will be subject to review and approval by the District.

(c) The construction contracts for the Internal Facilities, including the bid tabulation and recommended award, will be submitted to the District for review and approval prior to execution.

(d) During construction, any change orders will be subject to review and approval by the District.

(e) The Internal Facilities will be constructed in a good and workmanlike manner and all material used in such construction will be substantially free from defects and fit for their intended purpose. The District may (but is not required to) have an on-site inspector to inspect and approve the construction. Developer shall not cover or allow to be covered any portion of the Internal Facilities until the District has the opportunity to inspect the facilities. Inspections by the District shall be conducted in a reasonably timely manner and shall not unreasonably delay construction. The District shall notify Developer of any construction defects that come to the District's attention as soon as practicable.

(f) Upon completion of construction of each phase of the Internal Facilities, Developer agrees to furnish the District with electronic files of the as-built or record drawings of each facility promptly upon completion thereof, in a format selected by the District.

(g) The District agrees to furnish to Developer such information as may be reasonably necessary to confirm that the Internal Facilities will be dedicated to the District and used for a governmental purpose. The Developer may use such information for purposes of qualifying for a sales tax exemption, but the District makes no representation or guarantee that Developer is entitled to any tax exemption.

4.4 **Cost of Internal Facilities to be Funded by Developer.** Developer will promptly pay or cause to be paid the costs of the Internal Facilities as they become due, including, without limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with the Internal Facilities; all payments arising under any contracts entered into by Developer for the construction of the Internal Facilities; all costs incurred by Developer in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, or sites required as a part of the construction of the Internal Facilities; and all out-of-pocket expenses incurred in connection with the construction of the Internal Facilities. The District will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with in connection with the construction of the Internal Facilities.

4.5 **Duty to Repair and Warranty.** Developer agrees to repair all defects in materials, equipment or workmanship for the Internal Facilities appearing within **one (1) year** from the Completion Date to comply with the approved plans and specifications for the Internal Facilities. Upon receipt of written notice from the District of the discovery of any defects, Developer shall promptly and at its own cost remedy the defects and replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to the District or its customers, or if Developer, after notice, fails to proceed promptly toward such remedy within ten (10) days or within another period of time which has been agreed to in writing, the District may have defects in the Internal Facilities corrected in compliance with the terms of this warranty and

guarantee, and Developer shall pay for all costs and expenses incurred by the District in so doing within thirty (30) days of receipt of a request for payment by the District.

4.6 **Assignment of Warranty Obligations.** In addition to Developer's duty to repair, as set forth above, Developer expressly assumes all warranty obligations required by the District under the approved plans and specifications for specific components, materials, equipment or workmanship. Developer may satisfy its duty to repair and warranty by obtaining and assigning to the District, by written instrument in a form approved by counsel for the District, a complying warranty from a manufacturer, supplier, or contractor. Where an assigned warranty is tendered and accepted by the District that does not fully comply with the requirements of the agreed specifications, Developer shall remain liable to the District on all elements of the required warranty that are not provided by the assigned warranty.

4.7 **Insurance.** Developer shall require that all workers involved with the installation and construction of the Internal Facilities are covered by workers' compensation insurance as required by the laws of the State of Texas. Developer shall also procure and maintain, at its own cost, or require that its contractors procure and maintain, comprehensive general liability insurance insuring against the risk of bodily injury, property damage, and personal injury liability occurring from, or arising out of, construction of the Internal Facilities, with such insurance in the amount of a combined single limit of liability of at least \$1,000,000 and a general aggregate limit of at least \$1,000,000. Such insurance coverage shall be maintained in force at least until the completion, inspection and acceptance of the Internal Facilities by the District. The District shall be named as an additional insured on all such insurance coverages.

4.8 **Operation and Maintenance.** Upon conveyance of the Internal Facilities to the District, the District shall be solely responsible for the ownership, operation and maintenance thereof. Developer agrees that the District shall have no obligation to operate or maintain private water service lines or equipment located on the customer's side of a service meter.

V. OFFSITE FACILITIES

5.1 **Offsite Facilities.** Subject to all terms, conditions and requirements of this Agreement, including payment by Developer as set forth below, the District will construct all Offsite Facilities required to extend retail water services to the customers within the Property from the District System, at the sole cost and expense of Developer. The Developer agrees that it will bear all costs associated with the design and construction of the Offsite Facilities and will have no right of reimbursement from the District in connection therewith.

5.2 **Design of the Offsite Facilities.** The District shall utilize its consulting engineer to design all physical facilities to be constructed or acquired as a part of the Offsite Facilities. The design shall comply with the District's water design criteria, and the applicable standards imposed by any governmental entity with jurisdiction, if any.

5.3 **Payment of Construction Costs by Developer.** Within ten (10) days after execution of this Agreement by the parties, the Developer must provide payment to the District in the amount of _____ in cash or other immediately available funds to pay for the estimated costs to be incurred by the District in connection with the construction of the Offsite Facilities. Upon receipt of payment, the District will cause the construction of the Offsite Facilities with

reasonable diligence in accordance with the terms and conditions of this Agreement. In the event the actual costs incurred or to be incurred by the District exceed the amount paid by the Developer, then the Developer shall provide payment to the District within ten days of receipt of a request for payment. The District agrees to provide reasonable evidence and support for any request for payment. In the event the Developer fails to provide timely payment in response to any request by the District, then the District may terminate this Agreement and shall be under no obligation to provide service to the Property. In the event of such termination, the District will only refund and pay to Developer those sums that remain after payment of all costs and expenses incurred by the District.

5.4 **Operation and Maintenance.** Upon completion of construction and acceptance of the Offsite Facilities, the District shall be solely responsible for the ownership, operation and maintenance thereof.

VI. REAL PROPERTY ACQUISITION

6.1 Easements.

(a) All Internal Facilities located within the Property shall be constructed within public right of way or within easements conveyed by Developer to the District, as determined by the District, at no cost to the District. The Developer shall also convey any other easements within the Property or other real property owned by the Developer required for the District to construct, operate and maintain the Internal Facilities or Offsite Facilities. The District shall determine the physical location of water lines within public rights-of-way and public utility easements to prevent conflicts with other utilities, road improvements, drainage improvements, or other utilities. All water lines that will be utilized by the District to deliver water to adjacent properties in the future, as determined by the District, shall be located within an exclusive and perpetual easement dedicated to the District. Permanent easements shall be not less than 20-feet in width, with ingress and egress across the adjacent Property.

(b) The District will be responsible for securing, at the sole cost and expense of the Developer, all easements not located within the Property or other real property owned by Developer required for the Offsite Facilities. The District may acquire such easements by negotiation and agreement with a property owner, or by condemnation in the event no such agreement can be reached.

(c) The Developer shall provide the District with a survey of all real property or easements located within the Property to be transferred to the District under this Agreement.

(d) All easements to be conveyed by Developer to the District shall be in a form provided by the District.

**VII.
CONVEYANCE AND CLOSING.**

7.1 **Interests to be Acquired.** Subject to the conditions set out in this Agreement, the Developer agrees to dedicate to, and without payment from, the District the following, which are collectively referred to as the "Interests to be Acquired":

(a) the Internal Facilities, or any portions thereof, when they are finally constructed by Developer and accepted by the District;

(b) all easements required to be conveyed by the Developer to the District under this Agreement;

(c) all maps, drawings, engineering records, and office records in the possession of Developer or Developer relating to the Internal Facilities; and,

(d) all of the contracts, leases, warranties, bonds, permits, franchises, and licenses in the possession of Developer related to or arising out of the acquisition, construction and operation of the Interests to be Acquired (the "Contracts").

7.2 **Manner of Transfer.**

(a) Any personal property to be transferred shall be dedicated to the District by Bill of Sale and Assignment free of liens and encumbrances, with a covenant on the part of Developer that it is the lawful owner and has a lawful right to transfer and deliver such property.

(b) All easements to be conveyed by Developer to the District at each Closing shall be in a form approved by counsel to the District.

(c) All of Developer's and the Developer's rights, title and interest in and to any Contract(s) included within the Interests to be Acquired shall be transferred to the District by assignment in a form approved by counsel to the District.

7.3 **Risks Pending Closing.** Developer agrees that, until each Closing, it will maintain insurance in such amounts as are reasonable and prudent, based on the nature of the facilities, on those components of the Interests to be Acquired that have not already been conveyed to the District. If, between the Effective Date and any Closing, any part, whether substantial or minor, of the Interests to be Acquired to be conveyed are destroyed or rendered useless by fire, flood, wind, or other casualty, the District will not be released from its obligations hereunder; however, as to any portion of the Interests to be Acquired so damaged or destroyed, Developer will make repairs and replacements to restore the Interests to be Acquired to their prior condition regardless of whether the insurance obtained by Developer covers such repair or replacement

**VIII.
CONDITIONS, REPRESENTATIONS AND WARRANTIES**

8.1 **Indemnification.** DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DISTRICT, ITS OFFICERS, DIRECTORS, EMPLOYEES AND

AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DEBTS, SUITS, CAUSES OF ACTION, LOSSES, DAMAGES, JUDGMENTS, FINES, PENALTIES, LIABILITIES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS INCURRED BY THE DISTRICT ARISING OUT OF OR RELATING TO: A) THE BREACH OF ANY WARRANTY OR REPRESENTATION OR OTHER OBLIGATION OF DEVELOPER UNDER THIS AGREEMENT; OR B) DEVELOPERS' NONCOMPLIANCE WITH APPLICABLE LAWS, ORDINANCES AND REGULATIONS AND/OR FAILURE TO OBTAIN REQUIRED PERMIT(S) AND APPROVAL(S) GOVERNING DEVELOPMENT OF THE PROPERTY OR PERTAINING TO THIS AGREEMENT, EXCEPTING ONLY THOSE DAMAGES, LIABILITIES, OR COSTS ATTRIBUTABLE TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DISTRICT. This indemnity shall survive the termination of this Agreement and shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and assigns

8.2 **Representations of Developer.** Developer acknowledges, represents and agrees that:

(a) It is a Texas Limited Partnership qualified in all respects to enter into this Agreement and to conduct business within the State of Texas; and

(b) Execution of this Agreement and the consummation of the transactions contemplated hereunder will not constitute an event of default under any contract, covenant or agreement binding upon it.

IX. REMEDIES

9.1 **District Remedies.** If Developer fails or refuses to timely comply with its obligations hereunder, the District will have the right to refuse the provision of retail water service to the Property, may terminate this Agreement, or may enforce this Agreement by any remedy at law or in equity to which it may be entitled.

9.2 **Developer Remedies.** If the District fails or refuses to timely comply with its obligations hereunder, Developer will have the right to terminate this Agreement or enforce this Agreement by any remedy in equity to which it may be entitled.

9.3 **Default in Payments.** All amounts due and owing by Developer to District shall, if not paid when due, bear interest at the Texas post-judgment interest rate as set out in Tex. Rev. Civ. Stat. Ann. Art. 5069-1.05 (Vernon 2000), or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law. If any amount due and owing by Developer to the District is placed with an attorney for collection, the prevailing party in any litigation or arbitration involving the collection shall be paid its costs and attorneys' fees by the non-prevailing party, and such payments shall be in addition to all other payments provided for by this Agreement, including interest.

9.4 **Disputed Payment.** If Developer at any time disputes the amount to be paid by it to the District, Developer shall nevertheless promptly make the disputed payment or payments, but Developer shall thereafter have the right to seek a determination whether the amount charged by the District is in accordance with the terms of this Agreement.

9.5 **Subdivision Extension Policies.** Developer agrees that any failure by Developer to comply with the terms of this Agreement shall be considered a failure to comply with the District's subdivision extension policies for purposes of Section 13.2502, Texas Water Code.

X. NOTICES

10.1 **Addresses.** All notices hereunder from Developer or Developer to the District will be sufficient if sent by certified mail or facsimile transmission with confirmation of delivery, addressed to the District to the attention of General Manager, South Rains Special Utility District, N Dunbar Ln, P.O. Box 95, Emory, Texas 75440, Facsimile (903) 474-1302. All notices hereunder from the District to Developer will be sufficiently given if sent by certified mail or facsimile transmission with confirmation of delivery to Developer to the attention of

XI. MISCELLANEOUS

11.1 **Execution.** This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and, will constitute one and the same instrument.

11.2 **Costs and Expenses.** Except as otherwise expressly provided herein, each party will be responsible for all costs and expenses incurred by such party in connection with the transactions contemplated by this Agreement.

11.3 **Governing Law.** This Agreement will be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and Statutes of the United States of America.

11.4 **Successors and Assigns.** The assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent will not be unreasonably withheld. All of the respective covenants, undertakings, and obligations of each of the parties will bind that party and will apply to and bind any successors or assigns of that party.

11.5 **Headings.** The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

11.6 **Partial Invalidity.** If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

11.7 **Waiver.** Any waiver by any party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

11.8 **Amendments.** This Agreement may be amended or modified only by written agreement duly authorized by the governing body of the District and executed by the duly authorized representatives of both Parties.

11.9 **Cooperation.** Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

11.10 **Venue.** All obligations of the parties are performable in Rains County, Texas and venue for any action arising hereunder will be in Rains County.

11.11 **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties, any rights, benefits, or remedies under or by reason of this Agreement.

11.12 **Representations.** Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing.

11.13 **Exhibits.** All exhibits attached to this Agreement, if any, are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.

11.14 **Entire Agreement.** This Agreement, including the attached exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous communications, representations, or agreements, either verbal or written, between the parties with respect to such matters.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

SOUTH RAINS SPECIAL UTILITY DISTRICT

By: _____
Rachel Webb, General Manager

By: _____
Name: _____
Title: President/Owner