

NON-STANDARD SERVICE CONTRACT

THE STATE OF TEXAS
COUNTY OF COLLIN

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

WHEREAS, Developer is engaged in developing that certain _____ acres of land in _____, County, Texas, more particularly known as the _____ subdivision, according to the plat thereof recorded at Vol. _____, Page _____ of the Plat Records of _____ County, Texas, said land being hereinafter referred to as "the Subdivision"; and,

WHEREAS, CORPORATION is a political subdivision of the State of Texas, as authorized by Article XVI, Section 89 of the Texas Constitution and the laws of the state, and owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its defined service area; and,

WHEREAS, Developer has requested CORPORATION to provide such water service to the Subdivision through an extension of CORPORATION's water system, such extension being hereinafter referred to as "Off-Site Facilities";

WHEREAS, Developer intends to construct water distribution facilities on the Property through which the Corporation will provide water service to a maximum of _____ standard/residential water service connections (i.e. 5/8" x 3/4" meters) in the Development, such facilities being hereinafter referred to as the "On-Site Facilities";

WHEREAS, the Off-Site Facilities and On-Site Facilities shall be hereinafter collectively referred to as the Water Utility Improvements";

WHEREAS, the Corporation declares the Development a "High Density Development" pursuant to its Tariff;

WHEREAS, the Corporation has agreed to take the actions necessary to make water available and to serve the Property pursuant to the terms and conditions of this Contract; 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 the Corporation agree and contract as follows:

1. **Engineering and Design of the Off-Site Facilities.**

- (a) The Off-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the CORPORATION and all governmental agencies having jurisdiction. All plans and specifications must be reviewed and approved by the CORPORATION's consulting engineer prior to the issuance of any request for bids for the construction of the Off-Site Facilities. After such approval of the plans and specifications by the CORPORATION's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define "Off-Site Facilities".
- (b) The Off-Site Facilities must be sized to provide continuous and adequate water service to the Property based on plans for the development of the subdivision provided to the CORPORATION by the Developer. The CORPORATION may require the Off-Site Facilities to be oversized in anticipation of the needs of other customers of the CORPORATION, subject to the obligation to reimburse the

Developer for any such oversizing as provided below. Notwithstanding anything herein to the contrary, the Corporation shall have no obligation to reimburse Developer for any Off-Site Facilities that utilize up to an eight inch (8") internal diameter pipe.

2. **Engineering and Design of the On-Site Facilities.**

The On-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the Corporation and all governmental agencies having jurisdiction. All plans and specifications for the On-Site Facilities must be reviewed and approved by the Corporation's consulting engineer prior to the issuance of any invitation for bids for construction of the On-Site Facilities. After such approval of the plans and specifications by the Corporation's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define the "On-Site Facilities".

3. **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 locations) which are necessary for the construction or operation of the Water Utility Improvements and for obtaining any governmental approvals necessary to construct the Water Utility Improvements in public right-of-way.
- (b) Any easements dedicated or acquired by the Developer shall be in a form approved by the Corporation's Attorney (see Form of Easement, attached to this Contract and made a part hereof) and shall be assigned to CORPORATION upon proper completion of the construction of the Water Utility Improvements. .
- (c) The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to CORPORATION must be approved by CORPORATION's attorney.

4. **Construction of the Water Utility Improvements**

- (a) Developer shall advertise for bids for the construction of the Water Utility Improvements in accordance with generally accepted bidding practices and shall award the contract for the construction of the Water Utility Improvements subject to the approval of the CORPORATION. The CORPORATION may reject any bid.
- (b) Upon the selection and approval of a contractor, Developer shall prepare and submit a construction contract to the Corporation for its review and approval.
- (c) The contractor shall obtain and tender payment and completion bonds in the full amount of the contract price. The bond forms and the underwriters are subject to the Corporation's approval.
- (d) Upon execution of the approved construction contract, Developer shall escrow the full amount of the contract price with the Corporation or execute a Three-Way Contract approved by the Corporation's attorney. If the contract price is escrowed with the Corporation by Developer, the Corporation shall pay the contractor's pay requests pursuant to the terms and conditions of the construction contract.
- (e) The Water Utility Improvements shall be constructed in accordance with the approved plans and specifications. The CORPORATION shall have the right to

inspect all phases of the construction of the Water Utility Improvements. Developer must give written notice to the CORPORATION of the date on which construction is scheduled to begin so that the CORPORATION may assign an inspector. The CORPORATION may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus 10% overhead.

6. Dedication of Water Utility Improvements to the CORPORATION.

- (a) Upon proper completion of construction of the Water Utility Improvements and final inspection thereof by CORPORATION, the Water Utility Improvements shall be dedicated to the CORPORATION by an appropriate legal instrument approved by the CORPORATION's Attorney. The Water Utility Improvements shall thereafter be owned and maintained by the CORPORATION subject to the Developer's maintenance bond in an amount of not less than twenty percent (20%) of the total construction cost of the Water Utility Improvements and for a term of not less than two (2) years. Developer's maintenance bond is subject to the approval of the Corporation's attorney. Any connection of individual customers or members to the Water Utilities Improvements shall be made by the CORPORATION.

7. Cost of the Water Utilities Improvements.

- (a) Developer shall pay all costs associated with the Water Utility Improvements as a contribution in aid of construction, including, without limitation, the cost of the following:
- (1) engineering and design;
 - (2) easement or right -of-way acquisition;
 - (3) construction;
 - (4) inspections;
 - (5) attorneys' fees;
 - (6) insurance and bond premiums; and
 - (7) governmental or regulatory approvals required to lawfully provide service.
- (b) Developer shall indemnify the CORPORATION and hold the CORPORATION harmless from all of the foregoing costs.

8. Non-Standard Service Investigation Fee.

- (a) Simultaneous with Developer's execution and delivery of this Contract to the Corporation, Developer shall pay a Service Investigation Fee of \$_____ to the Corporation plus any additional sums required by the Corporation to cover administrative, legal and engineering fee that will be incurred by the Corporation to investigate the Corporation's ability to provide water service to the Property and Development including, without limitation, fees incurred for:
- (1.) Reviewing and approving plats, plans and specifications;
 - (2.) Obtaining or determining cost estimates for construction;
 - (3.) Advertising and accepting bids for construction;
 - (4.) Preparing a non-standard service contract between the Corporation and Developer; and
 - (5.) Obtaining or providing other services as required by the Corporation for such investigation.

(b.) The Corporation shall refund the remaining balance of the fee, if any, upon completing its service investigation, including the completion of all legal and engineering services associated with processing Developer's non-standard service request. If the fee paid by Developer is not sufficient to pay all expenses incurred or to be incurred by the Corporation in performing the service investigation, Developer shall pay or reimburse the Corporation for such expenses upon written request, and the Corporation shall have no obligation to complete processing Developer's non-standard service request until the requested payment or reimbursement has been paid.

9. Service Installation Fees.

- A. The Corporation's current service installation fee is \$_____ for a 5/8" x 3/4" meter. The service installation fee excludes the Membership Fee but includes all other fees and charges required for a residential customer to obtain a meter and receive water service from the Corporation including the Equity Buy-In Fee. Developer shall pay to the Corporation a total service installation fee of \$_____ for all _____ connections in the Development according to the following schedule:
- (1.) Payment 1: Developer shall pay the sum of \$_____ to the Corporation for _____ connections upon execution of this Contract and prior to commencing construction of the Water Utility Improvements.
 - (2.) Payment 2: Developer shall pay the sum of \$_____ to the Corporation for _____ connections prior to the Corporation accepting dedication of the Water Utility Improvements.
- B. Against the Connection Fees to be paid by Developer to the Corporation, the Corporation will credit Developer for the reasonable costs incurred and paid by Developer for construction of the Off-Site Facilities to provide water service to the Property as determined by the Corporation's consulting engineer.

10. Service from the Water Utility Improvements

- (a.) After proper completion and dedication of the Water Utility Improvements to the Corporation, the Corporation shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of the Corporation and payment of the following:
- (1) All standard rates, fees and charges adopted by the Corporation;
 - (2) All service investigation fees; and
 - (3) All connection fees.
- (b) It is understood and agreed by the parties that the obligation of the Corporation 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 all permits, certificates or approvals required to lawfully provide such service.
- (c) Unless the prior approval of the Corporation is obtained, the Developer shall not:
- (1) construct or install additional water lines or facilities to service areas outside the Subdivision;
 - (2) add any additional lands to the Subdivision for which water service is to be provided pursuant to this Contract; or
 - (3) connect or serve any person or entity who, in turn, sells water service directly

or indirectly to another person or entity.

- (4) **By execution of this Contract, Developer acknowledges that the Corporation's water distribution system provides potable water for domestic consumption only and does not provide "fire flows" as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.**

11. Effect of Force Majeure.

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. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, 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 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 inability.

12. Notices.

Any notice to be given hereunder by either party to the other party shall be in writing and may be affected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the Corporation shall be addressed:

Altoga Water Supply Corporation
Attention: General Manager
P.O. Box 547
4365 FM 75
Princeton, TX 75407
Fax: 972-736-6550

Any notice mailed to Developer shall be addressed:

Attention: _____

Fax: _____

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.

13. **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, and the right to perform the obligation in question and to seek restitution for all costs and damages incurred in connection therewith including court costs and any attorney fees or other professional fees.
- (b) In the event of termination of this Contract by a non-breaching party, such action shall not affect any prior 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

14. **Indemnity.**

Developer shall indemnify and save harmless the Corporation and its officers, agents, representatives and employees from all suits, actions, losses, damages, claims or liability of any character, type or description, including without limiting the generality of the foregoing all expenses of litigation, court costs and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by the acts of Developer or its agents, representatives or employees in connection with or related to the Development, the Water Utility Improvements or execution or performance of this Contract.

15. **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.

16. **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.

17. **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.

18. **Mediation.** [Optional]

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.

19. **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.

20. **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.

21. **Multiple Originals.**

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

22. **Authority.**

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

23. **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.

24. **Entire Contract.**

This Contract, including any exhibits attached hereto and made a part hereof, constitutes the entire Contract between the parties relative to the subject matter of this Contract. All prior Contracts, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

25. **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 CORPORATION and the Developer, respectively, which amendment shall incorporate this Contract in every particular not otherwise changed by the amendment.

26. **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 in Collin County, Texas.

27. **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.

28. **Successors and Assigns.**

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

29. **Assignability.**

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the CORPORATION. The rights and obligations of the CORPORATION hereunder may be assigned to the United States Department of Agriculture, Rural Development, or any other successor agency without the prior consent of the Developer.

30. **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.

ALTOGA WATER SUPPLY CORPORATION

DEVELOPER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____