

## **SECTION F: DEVELOPER, SUBDIVISION AND NON-STANDARD SERVICE REQUIREMENTS**

### ***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.

### ***2. Purpose.***

It is the purpose of this section to define the process by which the specific terms and conditions for all kinds of non-standard service, including specifically for non-standard service to subdivisions and the respective developers and subdividers, are determined, including the non-standard service application and the District's respective costs.

### ***3. Application of Rules.***

This section sets forth the terms and conditions pursuant to which the District will process non-standard service requests. This section is applicable to subdivisions, additions to subdivisions, developments, or whenever additional service facilities are required for a single tract of property. Examples of non-standard services for a single tract of property include, but are not limited to, road bores, extensions to the distribution system, meters larger than 5/8" X 3/4", and water service lines exceeding 3/4" diameter. For the purposes of this service policy, applications subject to this section shall be defined as non-standard. In cases of service to a single tract, the board of directors shall determine whether or not an applicant's service request shall be subject to all or part of the conditions of this section. Non-standard service to subdivisions is governed by this section.

### ***4. Non-Standard Service Application.***

The applicant shall meet the following requirements prior to the initiation of non-standard service or the execution of a non-standard service contract by the District:

- a. The applicant shall provide the District a completed Service Application and Agreement. The applicant shall specify any special service needs, such as large meter size, size of subdivision or multi-use facility, or the required level of fire protection requested, including the flow and pressure requirements 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 non-standard service will be furnished to a property or subdivision. 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. A non-standard 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. Applicants 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 non-standard 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 defined service area, service may be extended provided that:
    - i. The service location is not in an area receiving similar service from another retail public utility;
    - ii. The service location is not within another retail public utility's Certificate of Convenience and Necessity; and
    - iii. The District's defined service area 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 for annexation or for amending its CCN, including but not limited to engineering and professional fees. The District may extend service prior to completing the amendment to its CCN, but will do so only upon applicant's legally enforceable agreement to fully support such amendment (including but not limited to payment of all professional fees, including legal, surveying and engineering fees incurred by District in securing the amendment). If the District determines to annex the property, the applicant shall secure written requests for annexation from all ownership interests in the property to be annexed, and shall pay all costs, including engineering and professional fees for the annexation.

### **5. Design.**

Upon receipt of a complete non-standard service application and Investigation Fee, the District shall study the design requirements of the applicant's required facilities prior to initiation of a non-standard 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 non-standard 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 non-standard 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. *Non-Standard Service Contract.***

Applicants requiring non-standard service may be required to execute a non-standard 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 non-standard 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 facilities. The non-standard 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 capability to meet other service requests, as well as assessment of any base rate following construction of facilities (if applicable).
- d. Terms by which the District shall administer the applicant's project with respect to:
  - i. Design of the on-site and off-site facilities;
  - ii. Securing and qualifying bids;
  - iii. Requirements for executing the non-standard service agreement;
  - iv. Selection of a qualified bidder for construction;
  - v. Dispensing funds advanced prior to initiation of construction;
  - vi. Inspecting facilities following construction; and
  - vii. 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 non-standard service contract pursuant to current rules, regulations, and bylaws.
- i. Agreement to enforceable remedies in the event applicant fails to comply with all contract obligations, including specific performance.

In the event that the applicant undertakes any construction of any such facilities prior to execution of a non-standard 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 any 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 easements and property titles shall be researched, validated, and filed 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 the 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 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 Extension to District.***

- a. Upon proper completion of construction of all on-site and off-site service facilities to meet the level and manner of service requested by the applicant (the "Facilities"), the facilities shall become the property of the District. The facilities shall thereafter be owned and maintained by 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 accepted 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 non-standard 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; and
- 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 non-standard service prior to these costs being incurred by District. District shall promptly remit any and all unexpended prepaid funds, without interest, upon completion of the non-standard 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 of applicant's facilities during construction.
- 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.

**12. *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 that subdivision. The applicant developer is responsible for paying for all costs necessary for non-standard 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 these costs, the District has 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 is 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 non-standard 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.

***13. Service to Subdivisions of 50 acres or greater***

- a. For service to subdivisions involving tracts of fifty (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:
  - i. Map and description of the area to be served complying with the map requirements of 30 TAC section 291.105(a)(2)(A)-(G) of the TCEQ’s Rules.
  - ii. Time frame for:
    - a. Initiation of service; and
    - b. Service to each additional phase following the initial service.
  - iii. Level of service (quantity and quality) for:
    - a. Initial service; and
    - b. 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.
  - iv. Manner of service for:
    - a. Initial needs; and
    - b. Phased and final needs and the projected land uses that support the requested level of service for each phase.
  - v. Copies of all required approvals, reports and studies done by or for the applicant developer to support the viability of the proposed subdivision.
  - vi. The proposed improvements to be constructed by the applicant developer including time lines for the construction of these improvements.
  - vii. A map or plat of the subdivision depicting each phase and signed and sealed by a licensed surveyor or registered professional engineer.
  - viii. Intended land use of the development, including detailed information concerning types of land use proposed;
  - ix. 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;
  - x. A schedule of events leading up to the anticipated date upon which service from the District will first be needed; and



## Santo Special Utility District

standard service for all purposes, including the times specified herein for processing.

- iv. Following ninety (90) days and final approval by the District and acceptance of the District's terms for service by the applicant, a non-standard service contract will be executed and the District shall provide service according to the conditions contained in the non-standard service contract.