

**NON-STANDARD WATER AND/OR WASTEWATER
SUBDIVISION SERVICE AGREEMENT**

STATE OF TEXAS §
 §
COUNTY OF SMITH §

_____ Water
_____ Wastewater

THIS AGREEMENT is made and entered into by and between _____, hereinafter referred to as “Developer”, and Emerald Bay Municipal Utility District, hereinafter referred to as “the District”.

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

WHEREAS, the District owns and operates a water/wastewater system which supplies service to customers within its service area; and

WHEREAS, Developer has requested the District to provide such water/wastewater service to the Property through an extension of the District’s system, such extension being hereinafter referred to as “the System Extension”;

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 District agree as follows:

1. Engineering and Design of the System Extension.

- a. The System Extension shall be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the District and all governmental agencies having jurisdiction. All plans and specifications must be reviewed and approved by the District's consulting engineer prior to the issuance of any request for bids for the construction of the System Extension. After such approval of the plans and specifications by the District's consulting engineer, the plans and specifications shall become part of this Agreement by reference and shall more particularly define "the System Extension".
 - b. The System Extension must be sized to provide continuous and adequate water and/or wastewater service to the property based on plans for the development of the Property provided to the District by the Developer. The District may require the System Extension to be oversized in anticipation of the needs of other customers of the District subject to the obligation to reimburse the Developer for any such oversizing as provided above.
2. Required Easements or Rights-of-Way.
- a. Developer shall be responsible for dedicating or acquiring any easements across privately owned land which are necessary for the construction of the System Extension and for obtaining any governmental approvals necessary to construct the System Extension in public right-of-way.
 - b. Any easements acquired by the Developer shall be assigned to the district upon proper completion of the construction of the System Extension. The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to the District must be approved by the District's attorney.

3. Construction of the System Extension.

- a. Developer shall advertise for bids for the construction of the System Extension in accordance with generally accepted bidding practices and shall award the contract for the construction of the System Extension subject to the approval of the District. The District may reject any bid.
- b. The System Extension shall be constructed in accordance with the approved plans and specifications. The District shall have the right to conduct site visits relative to all phases of the construction of the System Extension. Developer must give written notice to the District of the date on which construction is scheduled to begin so that the District may be present. The District may charge reasonable fees for site visits based on the actual costs of labor, travel and incidental expenses of the inspectors, plus 15% overhead.

4. Dedication of System Extension to the District.

Upon proper completion of construction of the System Extension and final inspection thereof by the District, the System Extension shall be dedicated to the District by an appropriate legal instrument approved by the District's Attorney. The System Extension shall thereafter be owned and maintained by the District.

5. Cost of the System Extension.

- a. Developer shall pay all costs associated with the System Extension as a contribution in aid of construction, including without limitation to the cost of the following:
 - 1) Engineering and design;

- 2) Easement or right-of-way acquisition;
- 3) Construction;
- 4) Inspection;
- 5) Attorneys' fees;
- 6) Governmental or regulatory approvals required to lawfully provide service.

b. Developer shall indemnify the District and hold the District harmless from all of the foregoing costs.

c. Nothing herein shall be construed as obligating the Developer to maintain the System Extension subsequent to its dedication and acceptance for maintenance by the District.

d. If the District has required the System Extension to be oversized in anticipation of the needs of the other customers of the District, the District shall reimburse Developer for the additional costs of construction attributable to the oversizing, as determined by the District's consulting engineer, in terms that are to be mutually agreed to in the final Contract. Interest shall not commence earlier than one year after dedication of the System Extension to the District.

6. Service From the System Extension.

a. After proper completion and dedication of the System Extension to the District, the District shall provide continuous and adequate water and/or wastewater service to the Property, subject to all duly adopted rules and regulations of the District and the payment of the following:

- 1) All standard rates, fees and charges as reflected in the District's approved tariff;

- 2) Any applicable impact fee adopted by the District;
 - 3) Any applicable reserved service charge adopted by the District.
- b. It is understood and agreed by the parties that the obligation of the District to provide water and/or wastewater service in the manner contemplated by this Agreement is subject to the issuance by agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service.
- c. Unless the prior approval of the District is obtained, the Developer shall not:
- 1) Construct or install additional water and/or wastewater lines or facilities to service areas outside the Property;
 - 2) Add any additional lands to the Property for which water and/or wastewater service is to be provided pursuant to this agreement; or
 - 3) Connect or serve any person or entity who, in turn, sells water and/or wastewater service directly or indirectly to another person or entity.

7. Effect of Force Majeure.

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, 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 incapacities 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 of 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.

8. 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 District shall be addressed:

Emerald Bay Municipal Utility District
155 LaSalle Drive
Bullard, Texas 75757

Any notice mailed to Developer shall be addressed:

Either party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

9. Severability.

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

10. Entire Agreement.

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

11. Amendment.

No amendment of this Agreement 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 District and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

12. Governing Law.

This Agreement 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 Smith County, Texas.

13. Venue.

Venue for any suit arising hereunder shall be in Smith County, Texas.

14. Successors and Assigns.

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

15. Assignability.

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the District.

16. Effective Date.

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

NOTWITHSTANDING ANYTHING HEREIN OR OTHERWISE TO THE CONTRARY, UNDER NO CIRCUMSTANCES IS THE DISTRICT RESPONSIBLE FOR PAYMENT OF ANY COSTS OR FEES ASSOCIATED WITH NON-STANDARD SERVICE AND/OR PROVIDING NEW SERVICE TO A SUBDIVISION. THERE SHALL BE NO VERBAL AGREEMENTS AND THE DISTRICT'S PROCEDURES SHALL BE FOLLOWED WITH NO DEVIATION.

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

Emerald Bay Municipal Utility District

DEVELOPER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____