

SECTION F. DEVELOPER, SUBDIVISION AND NONSTANDARD SERVICE REQUIREMENTS

Part I. General Requirements. This section details the requirements for all types of Nonstandard Service requests.

1. ***Purpose.*** The purpose of this Section is to define and set forth the process by which the specific terms, conditions, and requirements for requesting service to Subdivisions and other types of Nonstandard Service are determined, including the respective costs to the Nonstandard Service Applicant and to the Corporation.

For purposes of this Section, the term “Nonstandard Service Applicant” shall refer to the individual or entity that desires to secure Nonstandard Service from the Corporation. The Applicant must be the same person or entity that is authorized to enter into a contract with the Corporation setting forth the terms and conditions pursuant to which Nonstandard Service will be furnished to real property. In most cases, the Applicant shall be the owner of the real property for which Nonstandard Service is sought. In the event that the Applicant is other than the owner of the real property, the Applicant must furnish evidence to the Corporation that he/it is authorized to request Nonstandard Service on behalf of such owner, or that he/it otherwise has authority to request Nonstandard Service for the real property.

2. ***Application of Rules.*** This Section is applicable to subdivisions, additions to subdivisions, developments, or additional service facilities which are required for a single tract of real property. Examples of Nonstandard Services for a single tract of land can include, but are not limited to, road bores, extensions to the distribution system, and service lines exceeding 3/4” diameter. Nonresidential or residential Service Applications requiring a larger sized meter will typically be considered Nonstandard Service. For the purposes of this Tariff, an application pursuant to and/or subject to this Section shall be referred to as a “Nonstandard Service Application.” This Section may be altered or suspended for planned facility expansions when the Corporation extends its indebtedness. The Board of Directors of the Corporation or its designee shall interpret on an individual basis whether or not an Applicant’s service request as detailed in the Nonstandard Service Application, shall be subject to all or part of the conditions of this Section.

This Section sets forth the general terms and conditions pursuant to which the Corporation will process requests for Nonstandard Service. The specific terms and conditions pursuant to which the Corporation will provide Nonstandard Service in response to any Nonstandard Service Application will depend upon the nature of such request and will be set forth in a legally enforceable contractual agreement to be entered into by and between the Corporation and the Applicant. For purposes of this Section, such agreement is referred to as a “Nonstandard Service Contract.” The Nonstandard Service Contract may not contain any terms or conditions that conflict with this Section.

3. ***Nonstandard Service Application.*** The Applicant shall meet the following requirements prior to the initiation of a Nonstandard Service Contract by the Corporation:

- a. The Applicant shall provide to the Corporation a completed Nonstandard Service Application which sets forth in detail any special service needs, such as large meter size, size of Subdivision, Development, or multi-use facility.
- b. A Final Plat (See [Section C of this Tariff.](#)) must accompany the Nonstandard Service Application showing the Applicant's requested service area. The Final Plat must be approved by all governmental authorities exercising jurisdiction over lot size, sewage control, drainage, right-of-way, and other service facilities. Plans, specifications, and special requirements of such governmental authorities shall be submitted with the Final Plat. An Applicant for a single tap 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.

NOTE: It is the responsibility of the Applicant to secure all necessary approvals of the Subdivision once a Nonstandard Service Contract is in place between the Corporation and the Applicant.

- c. A Service Investigation Fee for any Nonstandard Service request shall be paid to the Corporation in accordance with the requirements of [Section G26b of this tariff](#) for purposes of paying initial administrative, legal, engineering, and other fees to be incurred by the Corporation. The Corporation shall refund any balance that remains after it has completed its service investigation which includes, but is not limited to, all legal and engineering services associated with processing a request. In the event that the fee is not sufficient to pay all expenses incurred by the Corporation, the Applicant shall pay to the Corporation upon the Corporation's request, all additional expenses that have been or will be incurred by the Corporation. The Corporation shall have no obligation to complete processing of the Nonstandard Service Application until all remaining expenses have been paid.
- d. If after the service investigation has been completed, the Corporation determines that the Applicant's service request is for real property located, in whole or in part, outside the area described in the Corporation's Certificate of Convenience and Necessity (A Certificate of Convenience and Necessity is hereinafter referred to as a "CCN), service may be extended provided that:
 - 1) The service location is not in an area receiving similar service from another retail corporation;
 - 2) The service location is not within the CCN of another retail corporation; and
 - 3) The Corporation's CCN shall be amended to include the entirety of Applicant's retail property for which service is requested. Applicant shall pay all costs incurred by Corporation in amending its CCN, including but not limited to engineering and professional fees. If the service location is contiguous to or within one-fourth (1/4) mile of Corporation's CCN, Corporation 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 (and commitment to pay all professional fees, including administrative, legal, surveying and engineering fees incurred by Corporation in securing the amendment).

4. **Design.** The Corporation shall approve the design requirements of the Applicant's required on-site and off-site service facilities (hereinafter collectively referred to as the "Facilities") prior to initiation of a Nonstandard Service Contract in accordance with the following schedule:
 - a. The Corporation's engineer shall design, or review and approve plans for all Facilities for the Applicant's requested service within the Corporation's specifications, incorporating any applicable municipal or other governmental codes and specifications;
 - b. The fees, charged or to be charged by the Corporation's engineer, shall be paid out of the Service Investigation Fee under Section F3 of this Tariff;
 - c. A set of detailed plans, specifications, and cost estimates for the project shall be submitted by the engineer of the Facilities to the Corporation;
 - d. The Corporation's engineer shall ensure that all Facilities for an Applicant meet the demand for service as platted and/or requested in the plans or plat submitted in the Nonstandard Service Application. The Corporation reserves the right to upgrade design of service Facilities to meet future demands provided however, that the Corporation shall pay the expense of such upgrading in excess of that which is reasonably allocable to the level and manner of service requested by the Applicant; and
 - e. The Corporation's engineer will determine the fire flow design for any Nonstandard Service request, including new Subdivisions, based on density, type of structure, and other factors.
5. **Nonstandard Service Contract.** An Applicant requesting Nonstandard Service **will** be required to execute a written contract (hereinafter referred to as the "Nonstandard Service Contract"), prepared by the Corporation's Attorney (see example Section I of this tariff, Sample Forms), in addition to submitting the Corporation's Nonstandard Service Application. Said Nonstandard Service Contract shall define the terms of service prior to construction of required service Facilities. The Nonstandard Service Contract may include, but is not limited to:
 - a. All costs associated with required administration, design, construction, and inspection of Facilities for water/sewer service to the Applicant's service area and terms by which these costs are to be paid;
 - b. Procedures by which the Corporation shall accept or deny a contractor's bid, thereby committing to continue or discontinue the project;

- c. Terms by which service capacity shall be reserved for the Applicant and duration of reserved service with respect to the demand which the level and manner of the service will have upon the Corporation's system facilities;
- d. Terms by which the Corporation shall administer the Applicant's project with respect to:
 - (1) Design/Engineering of the Applicant's service Facilities;
 - (2) Securing and qualifying bids;
 - (3) Execution of the Nonstandard Service Contract;
 - (4) Selection of a qualified bidder for construction;
 - (5) Dispensing advanced funds for construction of Facilities required for the Applicant's service;
 - (6) Inspecting construction of Facilities; and
 - (7) Testing Facilities and closing the project.
- e. Terms by which the Applicant shall indemnify the Corporation from all third-party claims and/or lawsuits in connection with the Facilities and/or project.
- f. Terms by which the Applicant shall dedicate, assign and convey to the Corporation all constructed Facilities and related rights (including contracts, easements, rights-of-way, deeds, warranties, and so forth) by which the Corporation shall assume operation and maintenance responsibility for the Applicant's project. The Applicant shall also provide reproducible as-built drawings of all constructed Facilities. The as-built drawings must verify that all Facilities have been properly located within the easements conveyed to the Corporation.; and
- g. Terms by which the Board of Directors shall review and approve the Nonstandard Service Contract pursuant to current rules, regulations, and bylaws.

6. *Construction of Facilities by Applicant Prior to Execution of Nonstandard Service Contract.*

The Corporation and the Applicant must execute a Nonstandard Service Contract prior to the purchase of supplies and materials or initiation of construction of Facilities by the Applicant. In the event that the Applicant commences construction of any such Facilities prior to execution of a Nonstandard Service Contract with the Corporation, then the Corporation, in its sole discretion, may refuse to provide service to the Applicant or, in a subdivision, to any person purchasing a lot or home from the Applicant. Alternatively, the Corporation may require full costs of replacing/repairing any Facilities constructed without prior execution of a Nonstandard Service Contract from any person buying a lot or home from Applicant. At a minimum, the Corporation will require that all Facilities be uncovered by the Applicant for inspection by the Corporation and require that any facilities not approved by the Corporation be replaced. In addition, Corporation may take any other lawful action determined appropriate by the Board of Directors of the Corporation.

7. *Dedication of Water System Extension/Improvements to Corporation.*

- a. Upon proper completion of construction of all Facilities to meet the level and manner of service requested by the Applicant, the Facilities shall become the property of BBWSC.

The Facilities shall thereafter be owned and maintained by BBWSC subject to the warranties required of Applicant under Subsection b. Any connection of individual customers to the Facilities shall be made by BBWSC.

- b. Upon transfer of ownership of the Facilities, Applicant shall warrant materials and performance of the Facilities constructed by Applicant for one (1) year following the date of the transfer.

8. *Property and Right-of-Way Acquisition.* With regard to construction of Facilities, the Corporation shall require private right-of-way easements or purchase of private property as per the following conditions:

- a. If the Corporation determines that right-of-way easements or Facility sites outside the Applicant's property are required, the Applicant shall secure easements or else title to Facility sites on behalf of the Corporation. All right-of-way easements and property titles shall be researched and validated by a duly authorized title insurance company, and recorded among the real property records of Kleberg County, Texas by the Corporation at the expense of the Applicant. (See Sample Application Packet [RUS Form 442-8](#) or [442-9](#) (Rev. 6-06));
- b. All additional costs associated with Facilities that must be installed in public rights-of-way on behalf of the Applicant, due to the inability of the Applicant to secure private right-of-way easements, such as road bores and TxDOT approvals shall be paid by the Applicant. Alternatively, Applicant shall pay all costs, including administrative, legal and other professional fees and the condemnation award in the event Corporation secures such private easements or facility sites through eminent domain proceedings;
- c. The Corporation shall require an exclusive dedicated right-of-way easement on the Applicant's property as required by the size of the planned Facilities and as determined by the Corporation); as well as title to property required for other on-site and off-site Facilities.
- d. Easements and Facilities sites shall be prepared for the construction of the Corporation's pipelines and Facility installations in accordance with the Corporation's requirements at the expense of the Applicant.

9. *Bids for Construction.* The Corporation's engineer shall advertise for bids for the construction of the Applicant's proposed Facilities in accordance with generally accepted practices. Plans and specifications shall be made available, with or without charge, as per Engineer's determination, to prospective bidders. Although the Corporation reserves the right to reject any bid or contractor, the Corporation shall generally award the contract to the lowest qualified bidder in accordance with the following criteria:

- a. The Applicant shall execute the Nonstandard 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

Corporation;

- c. The Contractor shall secure adequate performance and payment bonding for the project under terms acceptable to the Corporation;
- d. The Contractor shall supply favorable references acceptable to the Corporation;
- e. The Contractor shall qualify with the Corporation as competent to complete the work, including but not limited to current water license, OSHA competent person training, and other licenses/certificates as required to complete the project; and
- f. The Contractor shall provide adequate certificates of insurance as required by the Corporation.

10. *Pre-Payment for Construction and Service.* After the Applicant has executed the Nonstandard Service Contract, the Applicant shall pay to the Corporation all costs necessary for completion of the project prior to construction and in accordance with the terms of the Nonstandard Service Contract.

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, approved road sleeves/casings may be installed prior to road construction to avoid road damage during construction of Applicant's Facilities.
- b. The Corporation shall, at the expense of the Applicant, inspect the Facilities to ensure compliance with Corporation standards.
- c. Construction plans and specifications shall be strictly adhered to, but the Corporation reserves the right to issue change-orders of any specifications, due to unforeseen circumstances during the design and construction phases, to better facilitate construction or operation of the Applicant's facility. All change-order amounts shall be charged to the Applicant.

PART II. Request for Service to Subdivided Property

This section contains additional requirements for Applicants classified as Developers and/or Subdividers pursuant to Section C Definitions of this Tariff.

- 1. *Sufficient Information.*** Applicant shall provide the Corporation sufficient information describing the level and manner of service requested and the time line for initiation of this service. The following is the minimum information needed for an engineering evaluation of the requested service to the property described in the Nonstandard Service Application:

- a. Completion of requirements described in [Section F. Part I.](#), including completion of the Nonstandard Service Application;
- b. Applicant shall provide the Corporation with details concerning access to the property during evaluation of the Nonstandard Service Application
- c. Map and legal description of the area to be served using map criteria in [16 TAC 24.233\(a\)\(2\)\(A-G\)](#);
- d. Time frame for:
 - (a) Initiation of service; and
 - (b) Service to each additional or projected phase following the initial service;
- e. Detailed description of the nature and scope of the project/development for:
 - (a) Initial needs; and
 - (b) Phased and final needs, including a map showing each phase, and the projected land uses that support the requested level of service for each phase;
- f. Flow and pressure for anticipated level of fire protection requested, including line size and capacity;
- g. Specific infrastructure needs for anticipated level of fire protection requested, including line size and capacity;
- h. Copies of all required approvals, reports and studies done by or on behalf of the Applicant to support the viability of the proposed development; and
- i. Any additional information requested by the Corporation necessary to determine the capacity and the costs for providing the requested service.

Applicant must provide reasonably sufficient information, in writing, to allow the Corporation to determine whether the level and manner of service specified by the Applicant can be provided within the time frame specified by the Applicant and to generally determine what capital improvements, including expansion of capacity of the Corporation's production, treatment and/or storage facilities and/or general transmission facilities properly allocable directly to the service request are needed. If the Applicant proposes Development or Subdivision in phases, the Applicant should specify the level and manner of service and the estimated time frame within which that service must be provided for each phase. The Applicant must also depict the currently estimated location of each phase on the maps required under [16 TAC Section 24.233\(a\)\(2\)\(A-G\)](#). It is important that the Applicant's written request be complete. A complete Nonstandard Service Application by the Applicant should include:

- The proposed improvements to be constructed by the Applicant;
- A map or plat signed and sealed by a licensed surveyor or registered professional engineer;
- The intended land use of the Development or Subdivision, including detailed information concerning the types of land uses proposed;

- The projected water demand of the Development or Subdivision when fully built out and occupied, the anticipated water demands for each type of land use, and a projected schedule of build-out;
- A schedule of events leading up to the anticipated date upon which service from BBWSC will first be needed; and
- A proposed calendar of events, including design, plat approval, construction phasing and initial occupancy.
- Applicant must establish that current and projected service demands justify the level and manner of service being requested.

2. ***Service within Subdivisions.*** The Corporation'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 Nonstandard Service specified by the Applicant. The Applicant is responsible for paying for all costs necessary for Nonstandard Service to a Subdivision as determined by the Corporation under the provisions of this Tariff and specifically the provisions of this Section. If the Applicant fails to pay these costs, the Corporation 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 Corporation is obligated to provide water service ([Texas Water Code Section 13.2502](#)). In addition, Corporation may elect to pursue any remedies provided by the Nonstandard Service Contract if one has been executed. Applicant is advised that purchasers of lots also may have legal recourse against the Applicant under Texas law, including but not limited to [Texas Water Code Section 13.257](#), and the [Texas Business and Commerce Code Chapter 17, Subchapter E Deceptive Trade Practices & Consumer Protection Act](#).

3. ***Written Response to Nonstandard Service Application.*** Upon payment of the Service Investigation Fee, pursuant to Section F, Part I,3(c) of this Tariff, the Corporation and Corporation's engineer shall review Applicant's Nonstandard Service Application. If no additional information is required from Applicant, the Corporation or Corporation's engineer will prepare a written report on Applicant's Nonstandard Service Application, subject to any final approval by the Corporation's governing body (if applicable) which must be completed within the 90 days from the date of submission of the Nonstandard Service Application and payment of the Service Investigation Fee or within 45 days from completion of the review conducted by Corporation's engineer, whichever shall last occur. The written report will state whether the requested service will be provided, whether the requested service can be provided with the time frame specified by the Applicant, and the costs for which the Applicant will be responsible (including capital improvements, easements or land acquisition costs, and professional fees).

In the event the Corporation's and/or the engineer's initial review of the Applicant's Nonstandard Service Application shows that additional information is needed, the Corporation will notify Applicant of the need for such additional information. Notice of the need for additional information will be made in writing within 45 days from the date the Corporation receives the Applicant's payment of the Service Investigation Fee. Applicant shall respond to the Corporation's request for additional information within 15 days of receipt of the Corporation's written request. The Corporation will provide the written report, including any final approval by the Corporation's Board within 90 days from the date of the receipt of the

written Nonstandard Service Application and payment of the Service Investigation Fee or within 45 days from completion of the review conducted by Corporation's engineer, whichever shall last occur.

By mutual written agreement, the Corporation and the Applicant may extend the time for review.

4. ***Final approval.*** (c) Upon final approval by the Corporation and acceptance of proposal for service by the Applicant, a Nonstandard Service Contract will be executed, and the Corporation shall provide service according to the conditions contained in the said Nonstandard Service Contract.

Applicant shall be notified in writing by the Corporation or designated representative the timeframe within which the requested service can be provided and the costs for which the applicant will be responsible, in accordance with the details described on the Applicant's Nonstandard Service Application.