

**RESOLUTION NO. 2018-0718A**

A RESOLUTION OF THE BOARD OF DIRECTORS OF DESERT WATER SUPPLY CORPORATION, COLLIN COUNTY, GRAYSON COUNTY AND FANNIN COUNTY, TEXAS, AMENDING AND RESTATING SECTION F OF THE TARIFF RELATING TO THE DEVELOPER, SUBDIVISION AND NON-STANDARD SERVICE REQUIREMENTS OF DESERT WATER SUPPLY CORPORATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Desert Water Supply Corporation (the "Corporation") is a nonprofit, member-owned water supply corporation organized under Article 1434a, Vernon's Texas Civil Statutes, and operating pursuant to Chapter 67 of the Texas Water Code;

WHEREAS, Texas Water Code § 13.136(c) requires a water supply corporation to adopt and file a tariff with the Public Utility Commission of Texas (the "Commission") showing all effective rates, rules and regulations relating to or affecting the retail water utility service furnished by the Corporation to the public;

WHEREAS, the Board of Directors of the Corporation adopted a Tariff on August 15, 2005, and the same has subsequently been amended from time to time;

WHEREAS, the Board of Directors of the Corporation finds that it in the best interests of the Corporation and its members to comprehensively amend and restate Section F of the Tariff relating to the developer, subdivision and non-standard service requirements of the Corporation as set forth below.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF DESERT WATER SUPPLY CORPORATION THAT:

SECTION 1.     Findings Incorporated. The above findings and recitals are incorporated into the body of this Resolution for all purposes as if set forth herein verbatim.

SECTION 2.     Amending and Restating Section F of Tariff. Section F of the Tariff relating to the developer, subdivision and non-standard service requirements of the Corporation is hereby amended and restated in its entirety to read as set forth in Exhibit "A" attached to this Resolution and incorporated herein by reference for all purposes.

SECTION 3.     Savings/Conflicts. The Tariff adopted by the Board on August 15, 2005, shall remain in full force and effect except as amended by this Resolution or any other resolution. All resolutions or the provisions of any resolution in conflict with this Resolution are hereby repealed and any remaining portions of such resolutions shall remain in full force and effect.

SECTION 4.     Severability. Should any section, subsection, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid by a court of competent jurisdiction, it is

expressly provided that any and all remaining portions of this Resolution shall remain in full force and effect. The Corporation hereby declares that it would have passed this Resolution, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5.     State Filing Directive. The General Manager of the Corporation is hereby directed to file a copy of this amended and restated Section F of the Tariff with the Public Utility Commission of Texas in accordance with its rules and regulations.

SECTION 6.     Effective Date. This Resolution shall become effective from and after its passage and adoption by the Board of Directors.

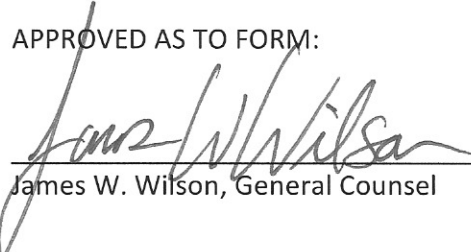
PASSED and ADOPTED on the 18<sup>th</sup> day of July, 2018, by the Board of Directors of Desert Water Supply Corporation.

  
\_\_\_\_\_  
Adam Baugh, President

ATTEST:

  
\_\_\_\_\_  
Rodney Nicely, Secretary-Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
James W. Wilson, General Counsel

**EXHIBIT "A"**  
**TO**  
**RESOLUTION 2018-0718A**

*(8 pages)*

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

1. **Corporation Limitations.** All applicants shall recognize that the Corporation must comply with state and federal laws and regulations as promulgated from time-to-time, and with covenants of current indebtedness. The Corporation is not required to extend water utility service to any applicant requesting standard service to a lot or tract in a subdivision where the non-standard service applicant or developer responsible for developing the subdivision has failed to comply with the requirements of the Corporation's subdivision service extension policies or non-standard service requirements set forth in Section F.

2. **Purpose.**

(a) It is the purpose of Section F to define the process by which the specific terms and conditions for service to subdivisions and other kinds of non-standard service are determined, including the non-standard service applicant's and the Corporation's respective costs.

(b) For purposes of Section F, the term "applicant" shall refer to a developer or person who submits an application for non-standard service to 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 non-standard service will be furnished to the property. In most cases, the applicant will be the owner of the property for which non-standard service is sought. An applicant other than the property owner must furnish evidence to the Corporation that the applicant has authority to request non-standard service on behalf the owner, or that it otherwise has authority to request non-standard service for the property.

3. **Application of Rules.**

(a) Section F is applicable to subdivisions, additions to subdivisions, commercial, industrial and governmental developments, and any situation where additional service facilities are required to serve a single tract of property. Examples of non-standard service to a single tract of land include, without limitation, service requests that require road bores, extensions to the Corporation's water distribution system, service lines exceeding one inch (1") internal diameter in size, service lines exceeding twenty feet (20') in length, or service needs that require a one-inch (1") meter or larger. Most non-residential service applications will be considered non-standard by the Corporation at its sole discretion. For purposes of this Tariff, applications subject to Section F shall be defined as "non-standard." Section F does not apply to new or expanded facilities constructed by the Corporation at its expense. The Corporation's General Manager shall interpret, on an individual basis, whether or not an

applicant's service request shall be subject to all or part of the conditions of Section F. For purposes of Section F, the term "project" includes subdivisions, additions to subdivisions, and commercial, industrial and governmental developments.

(b) Section F sets forth the general terms and conditions pursuant to which the Corporation will process non-standard service requests. The specific terms and conditions pursuant to which the Corporation 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 non-standard service contract to be entered into by and between the Corporation and applicant.

4. **Non-standard Service Application.** The applicant shall meet the following requirements prior to entering into a Non-standard Service Contract with the Corporation:

(a) The applicant shall complete and submit three (3) copies of a Non-standard Service Application to the Corporation, while giving special attention to that item entitled "*SPECIAL SERVICE NEEDS OF THE APPLICANT.*"

(b) Simultaneous with submission of the Non-standard Service Application, the applicant must submit three (3) copies of the proposed final plat and water plans showing the area to be served for approval by the Corporation. ***The proposed final plat and water plans must also be submitted in PDF format on a CD-Rom or by email.*** The final plat must be approved by all governmental authorities exercising jurisdiction over platting or subdivision infrastructure. Plans, specifications, and special requirements of such governmental authorities shall be submitted to the Corporation with the final plat. Applicants for single taps that require an extension or over-sizing of Corporation facilities shall be required to submit maps or plans detailing the location of the requested extension and the applicant's demand requirements.

(c) The applicant shall pay a Service Investigation Fee to the Corporation in accordance with the requirements of Section G.1 for purposes of paying the Corporation's administrative, legal and engineering fees. In the event such a fee is not sufficient to pay all expenses incurred by the Corporation, the applicant shall pay to the Corporation all remaining expenses that have been or will be incurred by the Corporation, and the Corporation shall have no obligation to complete processing of the request until all remaining expenses have been paid.

(d) If after completing its service investigation the Corporation determines that the applicant's service request is for property located wholly or partially outside the Corporation's certificated service area, the Corporation may still extend service provided that:

(1) the requested service area is not in an area receiving similar service from another retail public utility;

(2) the requested service area is not within another retail public utility's certificated service area; and

(3) the Corporation's CCN shall be amended at the PUC to include the entirety of the applicant's property for which service is requested and the applicant shall pay all costs incurred by the Corporation in amending its CCN including surveying, engineering and legal fees. If the service location is contiguous to or within one-quarter ( $\frac{1}{4}$ ) of a mile of the Corporation's certificated service area, the 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 including payment of all surveying, engineering and legal fees incurred by the Corporation in securing the amendment.

## **5. Facilities Design and Approval.**

(a) Design Requirements. Upon receipt of a completed Non-standard Service Application and Service Investigation Fee, the Corporation shall study the design requirements of the applicant's required facilities before preparing a Non-standard Service Contract in accordance with the following:

(1) The Corporation's consulting engineer shall either design or review and approve the plats and plans for all on-site and off-site service facilities for the applicant's requested service in accordance with the Corporation's specifications and any applicable municipal or other governmental codes and specifications. The engineer shall notify the applicant in writing of any required changes to applicant's proposed plats or plans. Allow a minimum of thirty (30) days for the review process.

(2) The Corporation's engineer shall ensure facilities are designed to meet the service demands requested by the applicant and/or as indicated by the plat or plans submitted by the applicant. The Corporation's engineer will also determine the fire-flow design requirements for non-standard service requests based on density, type of structure(s) and other applicable factors. The Corporation reserves the right to require an applicant to upgrade or upsize planned service facilities to meet future system demands provided the applicant is reimbursed the added expense of such upgrading or upsizing in excess of the applicant's facility requirements.

(3) The size and location of waterlines and other service facilities will be determined by the Corporation's engineer, whose determination is final. In all new installations, the Corporation's waterlines

shall be installed on the opposite side of the road as the franchise utilities except where that may not be possible as determined by the Corporation's engineer. Where it is not possible to install waterlines and franchise utilities on opposite sides of the road, a minimum of ten feet of separation shall be maintained.

(4) All water line material fittings shall conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI but not less than DR18 C900.

(5) Any waterline extensions constructed by a developer must completely cross (property line to property line) the side of the subdivision or development that is contiguous and adjacent to the road or street on which the main entrance to the project is located.

(6) The water system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end waterlines less than two inches (2") in diameter will not require flush valves if they end at a customer service connection. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged in a manner so the ends ultimately connect to provide circulation. [See 30 TAC § 290.44(d)(6)].

6. **Non-standard Service Contract.** Applicants requesting or requiring non-standard service shall be required to execute a written Non-standard Service Contract prepared by the Corporation's attorney. The contract shall define the terms of service prior to construction of required service facilities for a project. The Non-standard Service Contract may include, without limitation, provisions for the following:

(a) payment of all costs associated with required administration, design, construction and inspection of facilities for water service to the project;

(b) payment of Equity Buy-in Fees (a/k/a Front-end Capital Contributions) required by the Corporation in addition to the other costs required under Section F;

(c) procedures by which the applicant shall accept or deny a contractor's bid, thereby committing to continue or discontinue the project;

(d) terms by which the applicant shall indemnify the Corporation from all third party claims or lawsuits arising from or related to the project;

(e) payment of monthly Reserved Service Charges as applicable to the service request;

(f) terms by which service capacity shall be reserved for the applicant and duration of reserved service with respect to the impact the applicant's stated service demand will have upon the Corporation's system capability to meet other service requests;

(g) terms by which the applicant shall (i) grant or convey easements for waterline extensions to the Corporation, (ii) convey title to the Corporation for rights-of-way, constructed service facilities or service facility sites, and/or (iii) terms by which the applicant shall acquire required easements and service facility sites for the Corporation's use;

(h) terms by which the Corporation may administer the applicant's project with respect to inspecting the facilities during construction and then testing and accepting the facilities to close the project; and

(i) terms by which the applicant shall dedicate and convey all constructed service facilities to the Corporation and by which the Corporation shall assume operation and maintenance responsibility, including enforcement of maintenance bonds or warranties related to the completed service facilities.

The Corporation and applicant must execute a Non-standard Service Contract before commencing construction of service facilities for a project. In the event that an applicant commences construction of any water service facilities prior to execution of the contract, the Corporation may refuse to provide service to the applicant (or require full costs of replacing or repairing any facilities constructed without prior execution of the contract from any person buying a lot or home from applicant), require that all facilities be uncovered by the applicant for inspection by the Corporation, require that any service facilities not approved by the Corporation be replaced, or take any other lawful action determined appropriate by the Board of Directors.

**7. Property and Right-of-Way Acquisition.** With regard to construction of service facilities, the Corporation shall require private right-of-way easements on private property under 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 title to the right-of-way or facility sites in behalf of the Corporation. All right-of-way easements and property titles shall be researched, validated, and recorded by the Corporation at the expense of the applicant.

(b) All costs associated with service facilities that must be installed in public right-of-ways on behalf of the applicant, due to the inability of the applicant to acquire private right-of-way easements, shall be paid by the applicant. Alternatively, applicant shall pay all costs, including legal and other professional fees, and the condemnation award in the event Corporation acquires necessary private easements or facility sites through eminent domain proceedings. Any



request of applicant to the Corporation to commence eminent domain proceedings shall be made in writing. The Corporation reserves the right to secure right-of-way easements or facility sites by eminent domain on its own initiative.

(c) The Corporation shall require an exclusive dedicated right-of-way on the applicant's property for water distribution lines and appurtenances, and title to any portion of the property required for other on-site facilities.

(d) Easements and facility sites shall be prepared for construction of the Corporation's mains, service lines and service facilities in accordance with the Corporation's requirements and at the expense of the applicant.

8. **Contractor Selection and Qualification.** Applicants shall select a qualified contractor to construct water facilities required by the Corporation to serve a subdivision or development. The Corporation reserves the right to reject any contractor selected by the applicant. Alternatively, the Corporation may agree to construct the service facilities provided the applicant pays the total estimated cost of construction in advance.

9. **Construction.**

(a) All road work shall be completed in accordance with applicable state, county or municipal standards prior to construction of project water service facilities to avoid future problems resulting from road right-of-way excavation and completion. Subject to approval of the requisite authority, road sleeves may be installed prior to road construction to avoid road damage during construction of applicant's service facilities.

(b) The Corporation shall, at the expense of the applicant, inspect the service facilities to ensure compliance with Corporation standards.

(c) Construction plans and specifications shall be strictly adhered to, but the Corporation reserves the right to amend approved plans or specifications by change-order due to unforeseen circumstances or to better facilitate construction or operation of the service facilities following completion and acceptance. All change-order amounts shall be charged to the applicant.

(d) After completing construction of the water service facilities, the applicant shall deliver to the Corporation three (3) copies of as-built drawings plus one copy in PDF electronic format. The as-built drawings shall verify that all facilities have been properly located within the easements or rights-of-way conveyed or dedicated to the Corporation. The Corporation's receipt of the as-built drawings shall be a condition of acceptance of the service facilities.

10. **Filling Non-potable Water Tanks.** A developer or contractor must adhere to the following procedures to take or use water for the purpose of filling non-potable water tanks from any location other than an existing metered service:

(a) At least two (2) working days prior to the requested service date: (i) submit a written application on a Corporation approved form, (ii) execute a Hydrant Meter Service Agreement, and (iii) pay a \$1,500 hydrant meter deposit.

(b) A Corporation employee will connect a hydrant meter equipped with a back-flow prevention device to a hydrant on the water system located as near to the applicant's proposed location as is practicable. The employee will also inspect the equipment that the applicant intends to connect to the hydrant meter.

(c) Corporation employees will read the hydrant meter on at least a monthly basis.

(d) No more than one hydrant meter per subdivision or development is permitted without prior approval from the Corporation's Board of Directors.

11. **Dedication of Service Facilities.** Upon proper completion of construction of a project's on-site and off-site service facilities, final inspection and approval thereof by the Corporation, and applicant's payment to the Corporation of all required fees and charges in connection therewith, the applicant shall dedicate the service facilities to the Corporation by an appropriate legal instrument approved by the Corporation's attorney, and the Corporation shall accept the dedication. The Corporation shall thereafter own the water service facilities subject to applicant's maintenance bond in an amount of not less than twenty percent (20%) of the total construction cost of the service facilities and for a term of not less than two (2) years.

12. **Service Inside Subdivisions.** The Corporation's objective to provide service to any customer located within a subdivision governed by Section F is strictly limited to the non-standard service specifically requested by an applicant. The applicant is responsible for paying for all costs necessary to provide non-standard service to a subdivision as determined by the Corporation under the provisions of this Tariff, and in particular, the provisions of Section F. Should the applicant fail 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 within such subdivision before the Corporation is obligated to provide water service to the subdivision. In addition, the Corporation may elect to pursue any remedies provided by the Non-standard Service Contract and the laws of Texas.

13. **Pro-rata Reimbursement.** The Corporation may from time to time negotiate and enter into a pro-rata reimbursement agreement with a project applicant on condition that the following factors must be present:

(a) the project applicant (or "constructing applicant") must construct off-site service facilities to the Corporation's water system;

(b) the constructing applicant must comply with a Corporation requirement to oversize the off-site service facilities to service future growth not generated by the constructing applicant's project;

(c) the Corporation shall assess a five percent (5%) administrative fee for the administration of pro-rata fees collected by the Corporation from subsequent connecting applicants, which shall be deducted from pro-rata reimbursements before remittance to the constructing applicant; and

(d) the pro-rata reimbursement agreement shall contain the following items:

(1) the term of the agreement shall not exceed ten (10) years;

(2) reimbursement shall not be for more than eighty percent (80%) of the actual cost of the off-site improvement constructed; and

(3) the amount due to the constructing applicant from a future connecting applicant shall be based on a formula agreed upon by the Corporation and applicant or developer.

14. **Minimum Waterline Size.** All new waterlines installed and connected to the Corporation's water system in areas the Corporation has designated corridor or future development areas must have a minimum internal diameter of six (6) inches unless smaller diameter pipe is recommended by the Corporation's engineer and approved by the Corporation's General Manager.