

**UTILITY SERVICES AGREEMENT
FOR CONSTRUCTION AND ACCEPTANCE OF SYSTEM
AND RETAIL PUBLIC WATER UTILITY SERVICE**

This Utility Service Agreement for Construction and Acceptance of System and Retail Public Water Utility Service (the "**AGREEMENT**") is entered into as of the ____ day of _____, 200_ (the "**EFFECTIVE DATE**"), between **BEXAR METROPOLITAN WATER DISTRICT**, a political subdivision of the State of Texas ("**BEXARMET**"), and _____, a Texas _____ (corporation/partnership/other) ("**DEVELOPER**").

RECITALS

WHEREAS, Developer is in the process of developing, and intends to have developed or caused to be developed, over the next ____ () years, an approximate ____ acre(s), more or less, tract of land known as the "_____" (the "**Development**") in ____ County, Texas, as more particularly described by metes and bounds and in the accompanying Master Development Plan or acceptable substitute, attached hereto as Exhibit "A" (which is subject to revisions from time to time as required by the Developer or, if applicable, the City of San Antonio), incorporating a development plan of _____ (i.e., *mixed, single family, multi-family*) land uses in general accordance with the Master Development Plan Master Development Plan or acceptable substitute thereof submitted by Developer (and, if applicable, to be hereinafter approved by the City of San Antonio), the Development being situated in ____ County at a location _____, and projected to utilize up to ____ () Equivalency Dwelling Units ("**EDUS**") of water service within BexarMet's service area.

WHEREAS, Developer desires to obtain timely retail public water utility service for the Development through a state-approved public water system in accordance with the Master Water Plan, attached hereto as Exhibit "B".

WHEREAS, BexarMet, as an agency, political subdivision and governmental entity of the State of Texas, authorized and obligated by a Certificate of Convenience and Necessity ("**CCN**") and other approvals issued by the Texas Commission on Environmental Quality ("**TCEQ**") desires to provide said retail public water utility service to the Development pursuant to its fees, rates and tariffs.

WHEREAS, Developer desires to ensure that the various units or phases of the Development hereafter by the Developer (the "**Phases**") are served timely by a reliable potable water supply and to dedicate, if requested by BexarMet, certain necessary sites housing any proposed Water Production Facilities and/or easements to BexarMet.

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providing potable water service to the _____ EDUs proposed for the Development pursuant to the time specified in the growth projections set forth in Exhibit "D".

1.02 Developer agrees that it will pay BexarMet Impact Fees for the Development. Said Impact Fees shall be paid to BexarMet at the Impact Fee rate per EDU that is in effect at the time BexarMet approves the setting of the water meter for a Particular Phase or Phases of the Development. Developer acknowledges that BexarMet's Impact Fees have been approved by the TCEQ and are adjusted by BexarMet's Board of Directors from time to time in accordance with TCEQ requirements and are subject to change at any time without notice.

ARTICLE II.

DEVELOPER'S SYSTEM CONSTRUCTION, DEDICATION OBLIGATIONS AND PAYMENT OF WATER SUPPLY DEVELOPMENT FEE

2.01 Developer contracts and agrees that at Developer's sole cost and expense, Developer will design, engineer and construct the transmission lines, distribution system and the approach mains or mains for the Development (also referred to herein as the "System") as depicted in the Master Water Plan attached hereto as Exhibit "B" and the Water Mains as described in Exhibit "C".

2.02 Developer will construct the System to meet or exceed all TCEQ, BexarMet and other appropriate governmental regulatory requirements, procedures, and standards applicable at the time that construction begins, and in accordance with final plans and specifications ("Final Plans") that have been prepared by the Developer's Engineer and that have been approved by BexarMet in accordance with BexarMet's then existing applicable standards, requirements and procedures, BexarMet's WSR and the UDC, which approval shall not be unreasonably withheld or delayed.

2.03 In the event the Development requires additional potable water service above _____ EDUs, by more than one-hundred (100) EDUs, if appropriate and confirmed by BexarMet, Developer further covenants and agrees that, at Developer's sole cost and expense, Developer will design, engineer and construct, Additional Water Mains and/or Production Facilities, Storage Facilities, Additional Wells and the System and fire protection system and obtain TCEQ approval for the Development in adequate capacities to serve the Development in accordance with BexarMet's then existing applicable standards, requirements and procedures, BexarMet's Water Service Regulations ("WSR") and the City of San Antonio's Unified Development Code ("UDC") and if necessary provide additional sites for said Wells and facilities.

2.04 In the event the Development requires additional potable water service above _____ EDUs as provided in Section 2.03 above, and if additional facilities are necessary to support the increase in EDUs, Developer will construct all Water Production Facilities, Additional Wells, Additional Production Facilities, Storage Facilities and the System to meet or exceed all TCEQ, BexarMet and other appropriate governmental regulatory requirements, procedures, and standards applicable at the time that construction begins, and in accordance with final plans and specifications ("Final Plans") that have been prepared by the Engineer and that

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have been approved by BexarMet in accordance with BexarMet's then existing applicable standards, requirements and procedures, BexarMet's WSR and the UDC.

2.05 Developer will cause the Development and the System to comply with the platting requirements of BexarMet, as those requirements exist on the date of submission of the Developer's Water Utility Plans for BexarMet's approval, and the governmental authority or authorities having platting jurisdiction over the Development as those requirements exist on the date of submission of Developer's Water Utility Plans for BexarMet's approval. Without further compensation, reimbursement or consideration and concurrently with BexarMet's acceptance of the System, Developer will dedicate the System to BexarMet, free and clear of liens, encumbrances, reservations and/or restrictions.

2.06 Developer will grant and convey to BexarMet, in fee simple, free and clear of liens, encumbrances, reservations and/or restrictions, any easements, tank sites, Well sites, pump sites, booster pump sites, sanitary easements and right-of-ways within the Development as specified in the BexarMet approved Final Plans. Also, without further compensation, reimbursement or consideration and concurrently with BexarMet's acceptance of the Final Plans, Developer will likewise dedicate and convey, in fee simple, free and clear of all liens, encumbrances, reservations, and/or restrictions, any site(s) in the Development for the purpose of any intended construction of future water production facilities.

2.07 The dedications required herein shall be made by dedication on a recorded plat and that any well/tank site required for Additional Water Production Facilities will be conveyed by Special Warranty Deed.

2.08 The Developer hereby agrees to submit the following documents prior to or contemporaneously with the execution of this Agreement: Master Development Plan or acceptable substitute (Exhibit "A"), Master Water Plan (Exhibit "B"), Description of Proposed Water Mains (Exhibit "C"), and Proposed Development Water Service Growth Projections (Exhibit "D"). The parties agree that such documents are included instruments to this Agreement and are incorporated herein by reference. The submittal of such documents is a condition precedent to plat recordation and initial utility service. Developer shall modify such documents as may be reasonably required by BexarMet.

2.09 The Developer shall submit a Master Water Plan, attached hereto as Exhibit "B", or any amendments thereto, for the entire Development, to BexarMet for its review and approval, which shall not be unreasonably withheld or delayed. The final Master Water Plan shall be submitted before the first construction phase is submitted for plat approval. The Master Water Plan (Proposed and final) shall show the location of all water mains, development Phases or units including the sequence and a timetable for build-out. The Developer shall also provide BexarMet with a digital version of the proposed recorded plat for each Phase of the Development, as submitted for plat recordation in a format acceptable to BexarMet.

2.10 Upon the Effective Date of this Agreement, the Developer has thirty-six (36) months to thereafter finalize the Master Water Plan and to start construction. Developer understands and agrees that if Developer fails to perform these requirements within the thirty-six (36) month period, this Agreement shall expire and a request for a new agreement must be

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submitted to BexarMet. Provided however that, if Developer has submitted the Preliminary Master Water Plan for approval or amendment within the thirty-six (36) month period and BexarMet has failed to approve such plan as the Final Master Water Plan, the thirty-six (36) month period shall be extended an additional day for each day that BexarMet has not approved the Master Water Plan. BexarMet may enter into a new Utility Service Agreement based on then-current regulations. In the event Developer meets this requirement, this Agreement shall remain in effect for _____ (__) years from the Effective Date.

2.11 The Developer agrees to review preliminary System designs and growth projections annually with BexarMet.

2.12 Developer agrees that at Developer's sole cost and expense, Developer will extend _____
(description of proposed water main to connect to BexarMet's water main) as indicated on Exhibit "B".

2.13 In the event the Developer has completed these requirements prior to expiration of the _____ (__) -year term, the following conditions will survive termination of this Agreement:

- (i) BexarMet's recognition of the EDUs of capacity for the Development, which is the subject of the Agreement as, guaranteed capacity.
- (ii) BexarMet's and its successor's continued furnishing of the utility services subject to the Agreement to retail customers located in the Development, so long as such customers pay for the services and comply with BexarMet's regulations applicable to individual customers.

2.14 Developer shall be required to pay a Water Supply Development Fee per each EDU for each Phase and the whole of the Development in the amount approved and adopted by the BexarMet Board of Directors as such Water Supply Development Fee exists and is in effect at the time BexarMet approves the Developer's Water Utility Plans for that Phase of the Development (a/k/a as plat approval by BexarMet).

ARTICLE III.

BEXARMET'S OBLIGATIONS DURING DEVELOPER CONSTRUCTION

3.01 BexarMet agrees that it will closely coordinate with the Developer's Engineer during the design of the System to provide appropriate and timely reviews and approvals of submitted plans, permit requests, and related matters to facilitate construction, which reviews and approvals will not be unreasonably withheld or delayed.

3.02 BexarMet agrees that it will inspect the construction of the Water Mains and the System and the material used therein so as to aid the Developer in constructing such improvements in accordance with the standards required by this Agreement.

ARTICLE IV.

BEXARMET'S CONSTRUCTION OBLIGATIONS

4.01 BexarMet will properly monitor and maintain the water improvements serving each Phase in the Development as construction is completed and upon approval and acceptance of the System by BexarMet.

ARTICLE V.

EACH PARTIES REGULATORY OBLIGATIONS

5.01 Each party agrees to timely apply for, and diligently pursue, procure and maintain, all licenses, permits, authorizations, certificates and approvals required by any other appropriate governmental and/or regulatory bodies having jurisdiction over any part of the obligations of that party herein and that party's ability or authority to perform same.

ARTICLE VI.

BEXARMET'S ACCEPTANCE AND SERVICE OBLIGATIONS

6.01 Subject to the Developer's performance of the terms, stipulations and conditions hereof, especially including, but not by way of limitation, those matters contained in Articles I and II hereof, BexarMet contracts and agrees to accept the ownership of the completed Water Mains within the scope and purview hereof, and to provide the Development with potable water and fire protection service in accordance with applicable provisions of the *Texas Water Code*, TCEQ requirements, BexarMet's CCN and the standards stated in this Agreement; SAVE AND EXCEPT, however, BexarMet shall not have the obligation to accept and/or serve any Phase of the Development unless all Impact Fees attributable to that Phase or unit are paid and received by BexarMet prior to the approval of the first meter being set and Water Supply Development Fees attributable to that Phase or unit are paid and received by BexarMet at the time the Developer's Water Utility Plans of that Phase is approved by BexarMet, by cash payment.

6.02 Developer understands that any capacity in water facilities resulting from this Agreement for the Development may be utilized by BexarMet for other tracts outside the boundaries of the Development receiving service from BexarMet. BexarMet shall keep accurate records regarding the Developer's capacity; either reserved capacity or guaranteed capacity, pursuant to the Agreement for the Development. Developer or its assigns will not be denied capacity as a result of BexarMet's utilization of such capacity for another tract outside the boundaries of the Development.

ARTICLE VII.

BEXARMET BOARD'S APPROVAL

7.01 This Agreement is subject to approval by the Board of Directors of BexarMet.

ARTICLE VIII.

MISCELLANEOUS

8.01 This Agreement and the rights, obligations and liabilities created hereunder shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto, but no rights, obligations or liabilities hereunder shall be assignable or delegable by the Developer without the prior written consent of BexarMet. BexarMet may assign or delegate the rights, obligations or liabilities created hereunder to its successor in interest without the consent of the Developer.

8.02 Notwithstanding anything to the contrary contained in this Agreement, this Agreement is not intended to, and shall not, create any rights in or confer any benefits upon any person other than the parties hereto, and it shall not be construed to be a contract for the benefit of a third party.

8.03 Notwithstanding anything herein to the contrary implied, BexarMet's Impact Fees have been approved by the TCEQ and are adjusted by BexarMet's Board of Directors from time to time and are subject to change by the TCEQ and/or BexarMet's Board of Directors at any time without notice.

8.04 Notwithstanding anything herein to the contrary implied, BexarMet's Water Supply Development Fee is approved and adopted by the BexarMet Board of Directors and is adjusted by the BexarMet Board of Directors from time to time and is subject to change at any time without notice and is due at the time BexarMet approves the Developer's Water Utility Plans for that Phase of the Development.

8.05 All attachments, appendices, schedules and exhibits to this Agreement constitute integral parts of this Agreement and are incorporated into and made a part of this Agreement by this reference for all purposes.

8.06 This Agreement will be governed by and construed in accordance with the laws of the State of Texas. Proper venue for any dispute or litigation shall be only in Bexar County, Texas.

8.07 Nothing contained in this Agreement is intended by the parties to create any form of joint venture or partnership, and any implication to the contrary is hereby expressly disavowed by both parties. It is understood and agreed that this Agreement does not create a joint enterprise of any kind.

8.08 This Agreement between these parties constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreement.

8.09 Both parties agree that if either party should default on any of the conditions and covenants hereunder or should threaten to do so or if it be necessary for any reason for either to hire or retain an attorney to represent it in connection with this Agreement, the party found to be

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responsible for said default agrees to pay to the prevailing party a reasonable amount for the prevailing party's reasonable costs, litigation expenses and attorney's fees.

8.10 Notwithstanding anything herein to the contrary contained, it is understood and agreed (i) that the level of standards required by BexarMet for the construction of the System are strictly for the benefit of BexarMet only, and the Developer is free, at Developer's sole cost and expense, to design and construct the System to a higher standard, and (ii) that all BexarMet approvals of the Developer's and the Developer's registered professional engineer's plans and specifications, and all inspections done by BexarMet of the plans, specifications and construction of the System are strictly for the benefit of BexarMet, and such inspections are not to be expressly or impliedly relied upon by Developer, Developer's Engineer, or any of Developer's contractors or subcontractors for any purpose whatsoever.

8.11 The Proposed Development Estimated Growth Projections are shown on Exhibit "D" attached hereto. Such numbers are estimated projections only and are subject to change. If Developer changes its projections after the effective date of this Agreement, Developer shall allow BexarMet additional time, as determined by mutual agreement, to provide potable water service to Developer's revised growth projections.

8.12 Developer must pay for all mains and other water facilities needed to serve the Development. BexarMet may require the installation of oversized water mains and related facilities and BexarMet's requirements for oversizing are included in the Special Conditions to this Agreement (if applicable). BexarMet will execute a trilateral contract with Developer and a contractor for the construction of all oversized facilities. All oversized facilities must be competitively bid in coordination with BexarMet. BexarMet will reimburse the Developer for the oversize construction cost differential upon completion of the approved facility installation and BexarMet's acceptance of such facility. BexarMet will provide, upon BexarMet's discretion, such reimbursement in the form of a cash reimbursement and/or applicable impact fee credits. All oversizing shall be done in accordance with BexarMet's applicable standards, requirements, procedures and WSR.

8.13 Developer shall be responsible to BexarMet for any unauthorized straight connects in the Development, unless Developer assigns this responsibility to Developer's assignee(s). For the purposes of this Agreement, an "unauthorized straight connect" shall mean any person or entity (to include builders and contractors) connecting into BexarMet's water system without obtaining the appropriate authorization and paying the applicable fees. Developer or if assigned, then Developer's assignee(s) agree to pay BexarMet all fees and/or penalties to be assessed against it for any unauthorized straight connects in the Development as those fees and/or penalties exist at the time that BexarMet is made aware of the violation. Developer, or Developer's assignee(s), shall pay BexarMet within ten (10) business days after the notice of violation and/or bill is sent to Developer or Developer's assignee(s). Developer shall notify Developer's assignee(s) in writing that Developer is assigning this straight connect provision to said assignee(s). BexarMet shall waive payment of the fees and penalties assessed against Developer if Developer produces the written notification of this provision given to assignee(s) and cooperates with BexarMet in the collection of said fees and penalties and, if necessary, prosecution of the violator(s).

8.14 Developer shall give written notification to any contractor or builder who is constructing homes or commercial properties in the Development to install Pressure Reducing Valves on customer's side of the meter where static pressures exceed eighty (80) psi.

8.15 Developer shall ensure that no meter boxes or fire hydrants in the Development are set in driveways or sidewalks. Developer shall give written notification to any contractor or builder of this provision. Any meters or fire hydrants set in driveways or sidewalks will be relocated at Developer's, contractor's and/or builder's expense.

8.16 BexarMet and Developer agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to an alternate dispute resolution process before filing a suit concerning this Agreement.

8.17 This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Agreement or any portion thereof.

8.18 Notwithstanding anything to the contrary herein contained or referred to, BexarMet will not require recordation of a restrictive covenant covering the Development regarding enforcement of the City of San Antonio's Industrial Waste Ordinance.

8.19 Any notice, demand, or other communication required to be given or to be served upon any party under this Agreement shall be in writing and delivered to the person to whom the notice is directed, either: (i) in person with confirmation; (ii) by United States Mail, as a registered or certified item with return receipt required; (iii) delivered by delivery service (including any express mail or overnight delivery service); or (iv) by confirmed facsimile. Notices, demands, or other communications delivered by mail shall be deemed given and received when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper, addressed properly, with proper postage affixed. Any notice, demand, or other communication given other than by certified or registered mail, return receipt requested, shall be deemed to have been given and received when delivered to the address of the party to whom it is addressed as stated below:

IF TO BEXARMET:

Bexar Metropolitan Water District
P.O. Box 245994
San Antonio, Texas 78224-5994
Attn: Mr. F. Gilbert Olivares, General Manager
Facsimile No. (210) 922-5152

WITH A CONTEMPORANEOUS COPY TO:

Adolfo Ruiz, General Counsel

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Bexar Metropolitan Water District
P.O. Box 245994
San Antonio, Texas 78224-5994
Facsimile No. (210) 922-5152

IF TO DEVELOPER:

WITH A CONTEMPORANEOUS COPY TO: (*ENGINEER*)

Any party hereto may change its address or facsimile number for notice by giving the other parties three (3) days' advance written notice of such change of address or facsimile number.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE]

Signed and entered into as of the ___ day of _____, 2008 (the "EFFECTIVE DATE").

BEXARMET:

BEXAR METROPOLITAN WATER DISTRICT

By: _____
Name: F. Gilbert Olivares
Title: General Manager
As per Board Approval _____, 2008

APPROVED AS TO LEGAL FORM:

BEXAR METROPOLITAN WATER DISTRICT

By: _____

DEVELOPER:

_____, a Texas

(corporation/partnership/other)

By: _____
Name: _____
Title: _____

[ACKNOWLEDGMENT PAGE FOLLOWS]

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on _____, 2008, by F. Gilbert Olivares, General Manager of the BEXAR METROPOLITAN WATER DISTRICT, a water conservation district, municipal corporation, a body politic created by special act of the Legislature, pursuant to Article 8280-1256 of the Texas Revised Civil Statutes.

Bertha T. Bryan
Notary Public, State of Texas

My Commission Expires:
June 28, 2011

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2008, by _____ (person authorized to sign on behalf of entity), _____ (title) of _____, a _____ (State) _____ (corporation/partnership/other), on behalf of said entity.

Notary Public, State of _____

My Commission Expires:

EXHIBIT "A"
MASTER DEVELOPMENT PLAN
(APPROXIMATELY ____ ACRES)

TEMPLATE

EXHIBIT "A-1"
METES & BOUNDS

TEMPLATE

EXHIBIT "B"
MASTER WATER PLAN

TEMPLATE

EXHIBIT "C"
DESCRIPTION OF PROPOSED WATER MAINS

TEMPLATE

EXHIBIT "D"
PROPOSED DEVELOPMENT WATER SERVICE GROWTH PROJECTIONS

DATE/YEAR	ESTIMATED NUMBER OF CONNECTIONS
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Total

TEMPLATE