MOUNTAIN SPRINGS WATER SUPPLY CORPORATION
P.O. BOX 219 • 7131 E. FM 922 • VALLEY VIEW, TEXAS 76272
940-637-2219 • fax 940-637-2531

NON-STANDARD SERVICE CONTRACT

THE STATE OF TEXAS
COUNTY OF _____

THIS CONTRACT is made and entered into by and between_____ hereinafter referred to as "Applicant", and Mountain Springs Water Supply Corporation, hereinafter referred to as "WSC" or "Corporation".

WHEREAS, Applicant is engaged in developing that certain_____acres of land in _____, County, Texas, more particularly known as the _____ subdivision, according to the plat thereof recorded at Vol._, Page_____ of the Plat Records of _____County, Texas, said land being hereinafter referred to as "the Property"; and,

WHEREAS, WSC owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area; and,

WHEREAS, Applicant has requested WSC to provide such water service to the Property through an extension of WSC's water system, which includes all on-site and off-site service facilities to meet the level and manner of service requested by the Applicant, such extension being hereinafter referred to as "the Water 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, Applicant and WSC agree and contract as follows:

1. **Engineering and Design of the Water System Extension.**
   (a) The Water System Extension shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the WSC and all governmental agencies having jurisdiction. All plans and specifications must be reviewed and approved by WSC's consulting engineer prior to the issuance of any request for bids for the construction of the Water System Extension. After such approval of the plans and specifications by the WSC's consulting engineer, the plans and specifications shall become part of this Agreement by reference and shall more particularly define "the Water System Extension".
   (b) The Water System Extension must be sized to provide continuous and adequate water service to the Property based on plans for the development as provided to WSC by the Applicant. WSC may require the Water System Extension to be oversized in anticipation of the needs of other customers of the WSC, subject to the obligation to reimburse the Applicant for any such oversizing as provided below.

2. **Required Sites, Easements or Rights-of-Way.**

(a) Applicant shall be responsible for dedicating or acquiring any easements across privately owned land or sites (including off-site) which are necessary for the construction or operation of the Water System Extension and for obtaining any Governmental approvals necessary to construct the Water System Extension in public right-of-way.

(b) Any easements acquired by the Applicant shall be in a form approved by the WSC (see Form of Easement, attached to this Contract and made a part hereof) and shall be assigned to WSC upon proper completion of the construction of the Water System Extension.

(c) The validity of the legal instruments by which the Applicant acquires any such easements and by which Applicant assigns such easements to WSC must be approved by WSC's attorney.

3. **Construction of the Water System Extension**

(a) Applicant shall advertise for bids for the construction of the Water System Extension in accordance with generally accepted bidding practices and shall award the contract for the construction of the Water System Extension subject to the approval of the WSC. WSC may reject any bid.

(b) The Water System Extension shall be constructed in accordance with the approved plans and specifications. WSC shall have the right to inspect all phases of the construction of the Water System Extension. Applicant must give written notice to WSC of the date on which construction is scheduled to begin so that WSC may assign an inspector. WSC may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus 10% overhead.

4. **Dedication of Water System Extension to WSC.**

(a) Upon proper completion of construction of the Water System Extension and final inspection thereof by WSC, the Water System Extension shall become the property of the WSC. The Water System Extension shall thereafter be owned and maintained by WSC subject to the warranties required of Applicant under Subsection (b). Any connection of individual customers to the Water System Extension shall be made by the WSC.

(b) Upon the transfer of ownership of the Water System Extension to the District, the Applicant shall provide, or shall require the contractor(s) constructing the Water System Extension to provide, a maintenance bond in favor of the District, in a form and with a surety acceptable to the District, for a period of one (1) year following the date of such transfer pursuant to Section 5(c).

5. **Cost of the Water System Extension.**

(a) Applicant shall pay all costs associated with the Water System Extension as a contribution in aid of construction, including, without limitation, the cost of the following:

(1) engineering and design;
(2) easement or right -of-way acquisition;
(3) construction;
(4) inspection;
(5) attorneys' fees;
(6) capital contribution fee per tap, based on the current tariff rate and
(7) governmental or regulatory approvals required to lawfully provide service.
(8) Applicant shall indemnify WSC and hold WSC harmless from all of the foregoing costs.

(b) Provided, however, nothing herein shall be construed as obligating the Applicant to maintain the Water System Extension subsequent to its dedication and acceptance for maintenance by WSC.

(c) Prior to acceptance of the Water System Extension by District, Applicant shall provide District with a one (1) year maintenance bond to cover and warrant all aspects of the Water System Extension, in an amount not less than 100 percent of the total construction cost of the Water System Extension. Review and approval of the maintenance bond is a condition precedent to acceptance of facilities by the District.

(d) If WSC has required the Water System Extension to be oversized in anticipation of the needs of the other customers of WSC, WSC shall reimburse Applicant for the additional costs of construction attributable to the oversizing, as determined by the WSC's consulting engineer, in three annual installments without interest beginning one year after dedication of the Water System Extension to WSC.

6. <u>Service From the Water System Extension</u>.

(a) After proper completion and dedication of the Water System Extension to WSC, WSC shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of WSC and the payment of the following:
   (1) All standard rates, fees and charges as reflected in WSC's approved tariff;
   (2) Any applicable Equity Buy-In fee adopted by WSC;

(b) It is understood and agreed by the parties that the obligation of WSC to provide water service in the manner contemplated by this Contract is subject to the issuance by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service.

(c) Unless the prior approval of WSC is obtained, the Applicant shall not:
   (1) construct or install additional water lines or facilities to service areas outside the Property;
   (2) add any additional lands to the Property for which water service is to be provided pursuant to this Agreement; or
   (3) connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.

7. <u>Effect of Force Majeure</u>.

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Contract, 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 inability's 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 or 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 WSC shall be addressed:

Mountain Springs Water Supply Corp.

P.O. Box 219

Valley View, Texas 76272

Any notice mailed to Applicant shall be addressed:

_____

_____

_____

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

9. Breach of Contract and Remedies.

(a) If either party breaches any term or condition of this Contract, the non- breaching party may, at its sole option, provide the breaching party with a notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon notice of breach, the breaching party shall have sixty (60) days to cure the breach. If the breaching party does not cure the breach within the sixty (60) days, the non-breaching party, below, shall have all rights at law and in equity including the right to enforce specific performance of this Contract by the breaching party, the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith.

(b) In the event of termination of this Contract by a non-breaching party, such action shall not affect any previous conveyance.

(c) The rights and remedies of the parties provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law and under this Contract.

10. Third Parties.

It is the express intention of the parties that the terms and conditions of this Contract may be enforced by either party but not by any third party or alleged third- party beneficiary.

11. Captions.

Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Contract, the text shall control.

12. Context.

Whenever the context requires, the gender of all words herein shall include the masculine

, feminine, and neuter, and the number of all words shall include the singular and the plural.

13. Mediation. [Optional]

Prior to the institution of legal action by either party related to any dispute arising under this Contract, said dispute shall be referred to mediation by an independent mediator mutually agreed upon by both parties. The cost of the mediator shall be shared equally by both parties.

14. **Litigation Expenses**.

Either party to this Contract who is the prevailing party in any legal proceeding against the other party, brought in relation to this Contract, shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

15. Intent.

The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Contract.

16. **Multiple Originals.**

This Contract may be executed in multiple originals, any copy of which shall be considered to be an original.

17. Authority.

The signatories hereto represent and affirm that they are authorized to execute this Contract on behalf of the respective parties hereto.

18. 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.

19. 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.

20. 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 WSC and the Applicant, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

21. 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 _____County, Texas.

22. Venue.

Any action at law or in equity brought to enforce or interpret any provision of this

Contract shall be brought in a state court of competent jurisdiction with venue in _____County, Texas.

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

24. Assignability.
The rights and obligations of the Applicant hereunder may not be assigned without the prior written consent of the WSC.

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

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.

Mountain Springs Water Supply Corporation	APPLICANT
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date: :_____