

MARILEE SPECIAL UTILITY DISTRICT
P.O. Box 1017
Celina, Texas 75009
Tel: (972) 382-3222 | Fax: (972) 382-4264

NON-STANDARD SERVICE APPLICATION

Name of Development: _____
Maximum Number of Lots: _____ Average Lot Size: _____ Total Acreage: _____

Name of Applicant: _____
Name & Title of Person Completing Application: _____
Mailing Address: _____
Phone: _____ Fax: _____ E-mail: _____

Name of Property Owner: _____
Mailing Address: _____
Phone: _____ Fax: _____ E-mail: _____

Responsible Engineer: _____ **Firm:** _____
Mailing Address: _____
Phone: _____ Fax: _____ E-mail: _____

Property description: *(State legal description or attach copy of deed)* _____

Describe all intended land uses in the Development: *(Attach additional sheets if necessary)*
 Residential Subdivision Apartments Manufactured Home Park RV Park
 Commercial or other uses: _____

Special service needs: _____

All information provided to the District under an application for non-standard service shall be considered public information and will be made available for inspection and copying. Any person who submits information in conjunction with this application consents to the inspection and copying of that information.

Additional information required to determine level and manner of service: *(Initial those items submitted with this application)*

- _____ Four (4) plats signed and sealed by a licensed surveyor or registered professional engineer.
- _____ General location map of the development.
- _____ Description of improvements the Applicant proposes to build.
- _____ A proposed calendar of the design, plat approval, construction phasing and initial occupancy.
- _____ Applicant's projected demand for water service when the development is fully built-out and occupied.
- _____ A projected schedule of the build-out and of associated water demand during the build-out.
- _____ For development in phases, a map depicting the currently estimated location of each phase.
- _____ For development in phases, the Applicant must specify the level and manner of service and estimated time frame for each phase.

This application must be completed by the undersigned Applicant only. The District will take no action related to the development until this application is complete. A complete application will be signed by the Applicant and include: (1) all of the additional information required to determine the level and manner of service for the development; and (2) a valid check in the amount of the estimated Service Investigation Fee. Please contact the General Manager to obtain the estimated fee amount.

I HEREBY CERTIFY, AS THE APPLICANT OR AS AN AUTHORIZED REPRESENTATIVE ON BEHALF OF THE APPLICANT, THAT THE FOREGOING REPRESENTATIONS CONTAINED IN THIS APPLICATION ARE TRUE AND CORRECT.

Signed: _____ Date: _____, 20____.

Print Name: _____

Title: _____

SIGNED APPLICATION RECEIVED BY DISTRICT on _____, 20____, by _____

FOR DISTRICT USE

Service Investigation Fee: Amount: \$ _____ Check #: _____ Date Received: _____

List service information or documents not submitted with application:

_____	Date Received: _____	By: _____
_____	Date Received: _____	By: _____
_____	Date Received: _____	By: _____

(SAMPLE)

**NON-STANDARD SERVICE CONTRACT
BY AND BETWEEN
MARILEE SPECIAL UTILITY DISTRICT
AND**

This Non-standard Service Contract ("Contract") is entered into by and between Marilee Special Utility District (the "District") and _____ ("Developer"), a Texas _____.

WHEREAS, Developer is engaged in developing a _____ ± acre tract of land out of the _____ Survey (Abstract No. _____) in _____ County, Texas, and more particularly described or shown in Exhibit "A" attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Developer intends to develop a residential subdivision on the Property known as _____, an addition to the City of _____, _____ County, Texas (the "Development"), in accordance with plans and specifications submitted to the District for review and approval;

WHEREAS, the Property is located with the District's service area where the District owns and operates a retail public water system under Certificate of Convenience and Necessity No. 10150 supplying potable water for human consumption and domestic use;

WHEREAS, Developer has requested the District to provide water service to the Property through an extension of the District's water supply system, such extension being hereinafter referred to as the "Off-Site Facilities;"

WHEREAS, Developer intends to construct water distribution facilities on the Property through which the District will provide water service to a maximum of _____ residential service connections or meters in the Development, such facilities being hereinafter referred to as the "On-Site Facilities;"

WHEREAS, the Off-Site Facilities and On-Site Facilities shall be hereinafter collectively referred to as the "Utility Service Improvements;"

WHEREAS, the District declares the Development a "High Density Development" pursuant to its Rate Order;

WHEREAS, the District has agreed to take the actions necessary to make water available and to serve the Property pursuant to the terms and conditions of this Contract.

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 Off-Site Facilities.

- A. The Off-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the District and all governmental agencies having jurisdiction. All plans and specifications for the Off-Site Facilities must be reviewed and approved by the District's consulting engineer prior to the issuance of any invitation for bids for construction of the Off-Site Facilities. Upon approval of the plans and specifications by the District's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define the "Off-Site Facilities."
- B. The Off-Site Facilities must be sized to provide continuous and adequate water service to the Property based on plats and plans for the Development submitted to the District by Developer. The District may require the Off-Site Facilities to be upsized in anticipation of the needs of other or future customers of the District, subject to an obligation by the District to reimburse Developer for the additional cost of such upsizing as provided for herein below. Notwithstanding anything herein to the contrary, the District shall have no obligation to reimburse Developer for any Off-Site Facilities that utilize up to an eight inch (8") internal diameter pipe.

2. Engineering and Design of On-Site Facilities.

The On-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the District and all governmental agencies having jurisdiction. All plans and specifications for the Off-Site Facilities must be reviewed and approved by the District's consulting engineer prior to the issuance of any invitation for bids for construction of the On-Site Facilities. After such approval of the plans and specifications by the District's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define the "On-Site Facilities."

3. Required Easements or Rights-of-Way.

- A. Developer shall be responsible for dedicating or acquiring any easements across privately owned land or sites (including off-site) which the District determines are necessary for the construction or operation of the Utility Service Improvements and for obtaining any governmental approvals necessary to construct the Utility Service Improvements in public right-of-ways.
- B. Any easements acquired by Developer shall be in a form approved by the District's attorney and shall be assigned to the District upon proper completion of the construction of the Utility Service Improvements. The legal instruments by which Developer will acquire, assign or dedicate any such easements to the to the District must be approved by the District's attorney prior to the acquisition of such easements by Developer.

4. Construction of Utility Service Improvements.

- A. To construct the Utility Service Improvements, Developer shall select a qualified contractor subject to the District's approval or advertise for bids for construction of the Utility Service Improvements, in accordance with generally accepted bidding practices, and shall award the contract for construction subject to the District's approval. The District may reject any bid.
- B. Upon the selection and approval of a contractor, Developer shall prepare and submit a construction contract to the District for its review and approval.
- C. The contractor shall obtain and tender payment and completion bonds in the full amount of the contract price. The bond forms and the underwriters are subject to the District's approval.
- D. Upon execution of the approved construction contract, Developer shall escrow the full amount of the contract price with the District or execute a Three-Way Contract approved by the District's attorney. If the contract price is escrowed with the District by Developer, the District shall pay the contractor's pay requests pursuant to the terms and conditions of the construction contract.
- E. The Utility Service Improvements shall be constructed in accordance with the approved plans and specifications and the District's tariff, rate order, rules and regulations. The District shall have the right to inspect and approve all phases of the construction of the Utility Service Improvements. Developer must give written notice to the District of the date on which construction is scheduled to commence so that the District may assign an inspector. The District may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus ten percent (10%) overhead.

5. Dedication of Utility Service Improvements.

Upon proper completion of construction of the Utility Service Improvements, and final inspection and approval thereof by the District, Developer shall dedicate the Utility Service Improvements to the District by plat recorded in the county land records or by separate legal instrument approved by the District's attorney. The Utility Service Improvements shall thereafter be owned by the District subject to Developer's maintenance bond in an amount of not less than twenty percent (20%) of the total construction cost of the Utility Service Improvements and for a term of not less than two (2) years. Developer's maintenance bond is subject to the approval of the District's attorney. Any connection of individual customers or members to the Utility Service Improvements shall be made by the District.

6. Cost of Utility Service Improvements.

- A. Developer shall pay or reimburse the District for all costs associated with the Utility Service Improvements as a contribution in aid of construction including, without limitation, the cost of the following:

- (1) engineering and design;
 - (2) easement and right-of-way acquisitions;
 - (3) construction;
 - (4) inspections;
 - (5) attorney's fees;
 - (6) insurance and bond premiums; and
 - (7) 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. As reflected in the approved plans and specifications for the Off-Site Facilities, the District has required Developer to oversize all or a portion of the Off-Site Facilities in anticipation of the needs of other customers of the District. The District shall reimburse Developer pro rata for the additional costs of construction attributable to oversizing the Off-Site Facilities, as determined by the District's consulting engineer, in accordance with paragraph 7 below.

7. Pro Rata Reimbursement.

- A. For a period not to exceed ten (10) years following the acceptance date of the Off-Site Facilities constructed pursuant to this Contract, the District will collect from any applicant that connects or desires to connect to the Off-Site Facilities a pro-rata fee that is determined in accordance with the formula set forth in Exhibit "B" attached hereto and incorporated herein by reference.
- B. The District will tender pro-rata reimbursements only to Developer at the address set forth in paragraph 12 below. It will be the duty of Developer to notify the District in writing of any change of address in accordance with paragraph 12.
- C. The District may assess a five percent (5%) administrative fee for the administration of pro-rata reimbursements which shall be deducted from all pro-rata fees collected by the District before remittance to Developer.

8. Service Investigation Fee.

- A. Simultaneous with Developer's execution and delivery of this Contract to the District, Developer shall pay a Service Investigation Fee of \$_____ to the District plus any additional sums required by the District to cover administrative, legal and engineering fee that will be incurred by the District to investigate the District's ability to provide water service to the Property and

Development including, without limitation, fees incurred for:

- (1) reviewing and approving plats, plans and specifications;
- (2) obtaining or determining cost estimates for construction;
- (3) advertising and accepting bids for construction;
- (4) preparing a non-standard service contract between the District and Developer; and
- (5) obtaining or providing other services as required by the District for such investigation.

- B. The District shall refund the remaining balance of the fee, if any, upon completing its service investigation, including the completion of all legal and engineering services associated with processing Developer's non-standard service request. If the fee paid by Developer is not sufficient to pay all expenses incurred or to be incurred by the District in performing the service investigation, Developer shall pay or reimburse the District for such expenses upon written request, and the District shall have no obligation to complete processing Developer's non-standard service request until the requested payment or reimbursement has been paid.

9. Service Connection Fees.

- A. The District's current Connection Fee for a standard 5/8" x 3/4" water meter and service connection is \$_____. The Connection Fee includes all fees and charges required for a residential customer to obtain a meter and receive water service from the District, except for Deposit. Developer shall pay to the District a total Connection Fee of \$_____ for all _____ connections in the Development according to the following schedule:
- (1) Developer shall pay the sum of \$_____ to the District for _____ connections prior to commencing construction of the Utility Service Improvements for the Development.
 - (2) Developer shall pay the remaining sum of \$_____ to the District for connections before the District accepts dedication of the Utility Service Improvements for the Development.
- B. Against the Connection Fees to be paid by Developer to the District, the District will credit Developer for the reasonable costs incurred and paid by Developer for construction of the Off-Site Facilities to provide water service to the Property as determined by the District's consulting engineer.

10. Service from Utility Service Improvements.

- A. After proper completion and dedication of the Utility Service Improvements to the District, the District shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of the District and payment of the following:
- (1) all standard rates, fees and charges adopted by the District;
 - (2) all service investigation fees; and
 - (3) all connection fees.
- B. It is understood and agreed by the parties that the obligation of the District to provide water service in the manner contemplated by this Contract is subject to the issuance of all permits, certificates, or approvals required to lawfully provide retail water service by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction.
- C. Without the prior approval of the District, the Developer 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 Contract; or
 - (3) connect or serve any person or entity who, in turn, sells water service directly or indirectly to any other person or entity.
 - (4) **By execution of this Contract, Developer acknowledges that the District's water distribution system provides potable water for domestic consumption only and does not provide "fire flows" as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.**

11. Effect of Force Majeure.

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, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, 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 inabilities' 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 in the judgment of the party having the difficulty.

12. Notices.

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by delivery in person or by facsimile, or by sending said notices by certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given by mail when deposited with the United States Postal Service with sufficient postage affixed.

To District: Marilee Special Utility District
Attn: General Manager
P.O. Box 1017
Celina, Texas 75009
Fax: 972-382-4264

To Developer: _____
Attn: _____

Fax: _____

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.

13. 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 notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon its receipt of a 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 shall have all rights and remedies at law and in equity including, without limitation, the right to enforce specific performance of this Contract by the breaching party and the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith.

- B. Termination of this Contract by either party shall not affect any previous conveyance.
- C. The rights and remedies granted in this Contract to the parties in the event of default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Contract.

14. Indemnity.

Developer shall indemnify and save harmless the District and its officers, agents, representatives and employees from all suits, actions, losses, damages, claims or liability of any character, type or description, including without limiting the generality of the foregoing all expenses of litigation, court costs and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of Developer or its agents, representatives or employees in connection with or related to the Development, the Utility Service Improvements or execution or performance of this Contract.

15. No Third Party Beneficiaries.

This Contract is solely for the benefit of the parties hereto, and no other person has any right, interest or claim under this Contract.

16. 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 singular and plural.

17. 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.

18. 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.

19. Authority.

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

20. Severability.

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

21. Entire Agreement.

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

22. Amendment.

No amendment of this Contract 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 Contract in every particular not otherwise changed by the amendment.

23. Governing Law.

This Contract 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 Collin County, Texas.

24. 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 Collin County, Texas.

25. Successors and Assigns.

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

26. Assignability.

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

27. Effective Date.

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

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

EXECUTED on this the ____ day of _____, 20____.

DEVELOPER

By: _____

Name: _____

Title: _____

EXECUTED on this the ____ day of _____, 20____.

MARILEE SPECIAL UTILITY DISTRICT

By: _____

President

ATTEST:

Secretary

**EXHIBIT "A"
TO
NON-STANDARD SERVICE CONTRACT**

(_____)

PROPERTY DESCRIPTION

**EXHIBIT "B"
TO
NON-STANDARD SERVICE CONTRACT**

(_____)

PRO-RATA FEE FORMULA

Acres in connecting applicant's
development.

Total potential acres served by the Off-Site Facilities constructed by Developer.	(x)	Actual cost of the Off-Site Facilities	(=)	Pro-Rata Fee
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(less)

Total acres in the Development.

EXAMPLE:

<u>100(a)</u>	(x)	\$50,000.00(d)	(=)	\$12,500.00(e)
500(b) (-) 100(c)				

Where:

- (a) = Acres in connecting applicant's new development.
- (b) = Total potential acres served by the Off-Site Facilities constructed by Developer as determined by the District's engineer.
- (c) = Total acres in the Development.
- (d) = Actual cost of the Off-Site Facilities.
- (e) = Pro-rata fee to be collected from any water service applicant that connects or desires to connect to the Off-Site Facilities.