

## CHAPTER 7 – STATEMENT OF POLICY FOR DEVELOPERS, SUBDIVISIONS AND NON-STANDARD WATER AND/OR WASTEWATER SERVICE REQUIREMENTS

### Sec. 7.01 District's Limitations

All applicants shall recognize that the District must comply with a local, state and federal rules and regulations as promulgated from time to time, and by covenants of current indebtedness. The District is not required to extend retail utility water and/or wastewater service to an applicant in a subdivision where the responsible party (applicant/developer) of the applicable property (subdivision) has failed to comply with the terms of this policy. Chapter 13.2502 of the Texas Water Code requires that notice be given herein or by publication or by alternative means to the applicant/developer.

### Sec. 7.02 Purpose

This section is applicable to all subdivisions, additions to subdivisions, developments, or whenever additional water and/or wastewater service facilities are required. For the purpose of this Statement of Policy, applications subject to this section shall be defined as non-standard.

### Sec. 7.03 Definition

As used in these regulations, the term *subdivision* expressly includes, as an example, offering to sell or transfer or selling or transferring, by contract, deed, devise or any other method of sale or transfer, a tract or parcel of land which is adjacent to another tract or parcel owned or held in the name of the same person who is offering to sell or transfer the tract or parcel, even if approval of a subdivision plat is not required by the county commissioners court or the governing body of any city prior to such intended or actual sale or transfer.

### Sec. 7.04 Application of Rules

The Board of Directors of the District shall interpret on an individual basis whether or not the applicant's water and/or wastewater service request shall be subject to all or part of the conditions of this Chapter 7.

### Sec. 7.05 Non-Standard Water and/or Wastewater Service Applications

*(Amended effective December 17, 2007)*

The applicant shall meet the following requirements prior to the initiation of a Water and/or Wastewater Service Contract by the District:

(a) The applicant shall provide the District a completed Preliminary Application for Non-Standard Water and/or Wastewater Subdivision Service (**Appendix 1A – Off-Site Development or Appendix 1B – Interior Development**) and Non-Standard Water and/or Wastewater Subdivision Service Agreement.

(b) A final plat approved by the Smith County Commissioners Court must accompany the application showing the applicant's requested water and/or wastewater service area. The plat must be approved by all regulatory authorities having jurisdiction over lot sizes, sewage control, drainage, right-of-way, and other service facilities. Plans, specifications and special requirements of such regulatory authorities shall be submitted with the plat. Applicants for single taps involving extensions or upsizing of facilities shall be required to submit maps or plans detailing the location of the requested extension and details of demand requirements.

- (1) Any subdivision with two (2) or more lots or connections **that meets the guidelines in Schedule "B" (Off-Site Development) may** be required to provide sufficient groundwater and well facilities to serve the subdivision.

(c) At the time the applicant submits the application, a Non-Standard Service Investigation Fee, which is the total of the initial administrative, legal and engineering fees, shall be paid to the District. Any additional expenses incurred as a result of efforts by the District to study water and/or wastewater service requirements of the applicant shall be paid by the applicant.

(d) If after the service investigation has been completed, the District determines that the applicant's water and/or wastewater service request is for property **outside** the area dedicated in the District's Certificate of Convenience and Necessity, service may be extended provided that:

- (1) The service location is contiguous to or within one-fourth (1/4) mile of the District's Certified Service Area;
- (2) The service location is not in an area receiving similar service from another utility;
- (3) The service location is not within another utility's Certificate of Convenience and Necessity; and
- (4) The Developer provides, at his cost, sufficient water rights and facilities, subject to the District and its Engineer's approval as set forth herein, to the District to serve the subdivision.

#### Sec. 7.06 Design

*(Amended effective December 17, 2007)*

The District shall study the design requirements of the applicant's required facilities prior to initiation of a Service Agreement by adopting the following schedule:

(a) The District's consulting engineer shall review and approve designs for all service facilities prepared by the applicant's consulting engineer with regard to requested water and/or wastewater service. All designs shall be in compliance with the District's specifications or within certain codes and specifications of neighboring facilities for all applications for Non-Standard Water and/or Wastewater Subdivision Service that lie within a five (5) mile margin around the boundaries of municipalities with a population greater than five thousand (5,000).

(b) The cost for the District's consulting engineer's review of system design and/or modifications shall be in accordance with the currently applicable hourly rate published by the District's consulting engineer plus a ten percent (10%) override.

(c) Applicant shall submit construction plans and specifications for requisite improvements to connect the system's infrastructure to a proposed "off-site" development **(See Schedule "B") or an interior development (See Schedule "C")** bearing the seal and signature of a professional engineer licensed in the state of Texas in sufficient detail to be reviewed and approved or disapproved by the District and/or its engineer. The submittal to the District shall include a cost estimate for completion of the project.

(d) The District reserves the right to upgrade design of service facilities to meet future demands of customers other than applicant. The District may reimburse the developer for the expense of such upgrading above the applicant's facility requirements through future fees.

(e) Solely at the District's option, the District may choose to design and construct all facilities for any applicant that will meet the demand for water and/or wastewater service as platted and/or requested by applicant. Applicant shall be responsible for payment of all design and construction charges.

#### Sec. 7.07 Non-Standard Water and/or Wastewater Service Contract

All applicants requesting or requiring water and/or wastewater non-standard service shall enter into a written contract, drawn up by the District's attorney, to be specific to the terms agreed to be each developer and the District, in addition to submitting the District's Application for Non-Standard Water and/or Wastewater Service and the District's Non-Standard Water and/or Wastewater Subdivision Service Agreement. Said contract shall define the terms of service prior to construction of required service facilities. Guidelines for the service contract may include, but are not limited to:

(a) All costs associated with required administration, design, construction, and inspection of facilities for water and/or wastewater service to the applicant's service area and terms by which these costs are to be paid;

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

(c) Monthly base service charges/flat rates, as applicable to the service request;

(d) Terms by which reserved service shall be provided to the applicant and duration of reserved service with respect to the impact the applicant's service request will have upon the District's system capability to meet other service requests;

(e) Terms by which the applicant shall be reimbursed or compensated for fees duplicated in assessments for monthly rates;

(f) Terms by which the District shall administer the applicant's project with respect to:

- (1) Design of the applicant's service facilities;
- (2) Securing and qualifying bids;

- (3) Execution of the service agreement;
- (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.

(g) Terms by which the applicant shall indemnify the District from all third- party claims or lawsuits in connection with the project contemplated;

(h) Terms by which the applicant shall deed all construction facilities to the District and by which the District shall assume operation and maintenance responsibility, including any enforcement of warranties in connection with construction of the applicant's project;

(i) Terms by which the applicant shall grant title or easement for rights-of-way, constructed facilities and facility sites and/or terms by which the applicant shall provide for the securing rights-of-way and sites;

(j) Terms by which the Board of Directors shall review and approve the service contract pursuant to current rules, regulations and by-laws;

(k) All legal fees associated with drafting, revising and completing the contract shall be borne by the applicant.

#### Sec. 7.08 Property and Right-of-Way Acquisition

With regard to construction of facilities, the District requires private right-of-way easements on private property as per the following conditions:

(a) If the District determines that right-of-way easements or facility sites outside the applicant's property are required, the District shall require the applicant to make good faith efforts to secure easements or title to facility sites on behalf of the District. All right-of-way easements and property titles shall be researched, validated and filed by the District at the expense of the applicant;

(b) The District reserves the right to require that all facilities required to be installed in public right-of-way on behalf of the applicant, due to inability to secure private right-of-way easements, shall be subject to costs equal to the original cost of facility installation for those facilities in public rights-of-way;

(c) The District shall require an exclusive dedicated right-of-way on the applicant's property (as required by the size of the planned facilities and as determined by the District) and title to property required for the on-site facilities;

(d) Easements and facilities sites shall be prepared for the construction of the District's pipeline and facility installations in accordance with the District's requirements and at the expense of the applicant.

### Sec. 7.09 Bids for Construction

The applicant shall advertise for bids for the construction of the proposed facilities in accordance with generally accepted practices. Plans and specifications shall be made available, with or without, charge to prospective bidders. Although the District reserves the right to reject any bid or contractor, the applicant shall generally award the contract to the lowest and best bidder in accordance with the following criteria:

(a) The applicant shall sign the Non-Standard Water and/or Wastewater Subdivision Service Agreement, noting willingness to proceed with the project and shall pay all costs in advance of construction associated with the project. The District, applicant and contractor shall sign a three-way contract for construction of the project;

(b) The contractor shall provide an adequate bid bond under terms acceptable to the District;

(c) The contractor shall secure adequate performance and payment bonding for the project under terms acceptable to the District;

(d) The contractor shall supply favorable references acceptable to the District;

(e) The contractor shall qualify with the District as competent to complete the work; and

(f) The contractor shall provide adequate certificates of insurances as required by the District.

### Sec. 7.10 Pre-Payment for Construction and Service

Prior to the start of construction, the applicant shall execute the Non-Standard Water and/or Wastewater Subdivision Service Agreement and pay any and all costs that the District shall incur to complete the project, up to and including the award of the construction contract, and including but not limited to all engineering and legal fees.

### Sec. 7.11 Construction

(a) All preliminary roadwork pursuant to county and/or municipal standards (if 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, road sleeves and/or casing bores may be installed prior to road construction to avoid road damage during construction of the applicant's facilities.

(b) The District shall, at the expense of the applicant, follow the construction of the requisite facilities to ensure general compliance with the District's standards.

(c) Construction plans and specifications shall be strictly adhered to, but the District reserves the right to change-order any specifications, due to unforeseen circumstances during

the design phase, to better facilitate operation of the applicant's facility. All change-order amounts shall be charged to the applicant.

#### Sec. 7.12 Water and/or Wastewater Service Within Subdivision

The District's objective to provide water and/or wastewater service to any customer located within a subdivision governed by this section is strictly limited to the non-standard water and/or wastewater service specified by the applicant. The purchaser of any lots who does not receive service because this service has not been specified or paid for by the applicant shall have no recourse to the District but may have recourse to the applicant/developer.

#### Sec. 7.13 Exception

Any division of land of one (1) acre or larger, arising from the transfer or partition of the land between the owner and members of the owner's family within the first (1<sup>st</sup>) degree of consanguinity, will be exempt so long as:

(a) Each lot has frontage and direct physical access onto an existing street or road or the District is provided with an easement from the existing street or road to the tract of land requesting service; and

(b) The division is not part of a larger planned development or sham, or a contrivance to avoid these regulations.

#### Sec. 7.14 Variances/Amendments

*(Effective May 7, 2007)*

Without exception, there shall be no variances, waivers or exceptions to the rules and policies of the District. Any amendments to the rules and policies must be requested in writing, reviewed and approved by the District's engineer and the District's legal counsel with any recommendations submitted to the District in writing. If approved by the District, such amendment must be published and adopted in accordance with the state regulations then in effect. Anyone requesting an amendment to the rules or policies of the District must submit a written request explaining in detail:

(a) The purpose and need for the amendment;

(b) The anticipated cost to the District to implement the amendment if the amendment is adopted; and

(c) A \$1,500 fee to cover the costs associated with the review of the amendment.

**NOTWITHSTANDING ANYTHING HEREIN OR OTHERWISE TO THE CONTRARY, UNDER NO CIRCUMSTANCES IS THE DISTRICT RESPONSIBLE FOR PAYMENT OF ANY COSTS OR FEES ASSOCIATED WITH NON-STANDARD SERVICE AND/OR PROVIDING NEW SERVICE TO A SUBDIVISION. THERE SHALL BE NO VERBAL AGREEMENTS AND THESE PROCEDURES SHALL BE FOLLOWED WITH NO DEVIATION.**