



WEST CENTRAL TEXAS MUNICIPAL WATER DISTRICT

410 Hickory Street, Abilene TX 79601

Phone (325) 673-8254 / Fax (325) 673-8272 / www.wctmwd.org

PIPELINE CUSTOMER SERVICE AGREEMENT

Customer: _____	Delivery Point _____
Mailing Address: _____	Station _____
Telephone: _____	Meter # _____

District and Customer, in consideration of the mutual covenants set forth in this Pipeline Customer Service Agreement (the "Agreement"), agree as follows:

1. Delivery of Water. District agrees to deliver water to Customer at the Delivery Point under the terms of this Agreement. Customer does not acquire any water rights under this Agreement beyond the right to take water when it is made available at the Delivery Point. District's delivery of water to Customer under this Agreement shall be governed by the rules, regulations, policies, and procedures adopted by District from time to time. Water made available under this Agreement shall not be transferred or used outside the Brazos River Basin without the District's express prior written consent; and Customer, prior to any such proposed transfer or use, shall have obtained all required environmental approvals.

2. Quality and Quantity of Water. Customer acknowledges and agrees that: (a) all water delivered by District is raw, untreated, non-potable, and delivered on an AS IS, WHERE IS, and WITH ALL FAULTS basis; (b) all water delivered by District is not suitable for human consumption; (c) District makes no warranties or representations as to the quality of water delivered by District; and (d) District will not be liable for any injuries or damage to person or property resulting from the use of water delivered by District. District has no obligation to maintain any specific minimum water pressure at the Delivery Point, and District will not be liable for any losses sustained by Customer due to low water pressure, water pressure fluctuations, or interruptions in service. Customer agrees that the quantity of water made available to Customer under this Agreement is subject to both local and system-wide availability. Customer acknowledges and agrees that delivery of water under this Agreement may be curtailed by District in accordance with policies adopted by District's Board of Directors, including when water is curtailed by District to a member city as set forth in District's member city contracts.

3. Metering Equipment. District will install, operate, and maintain meters, flow control valves, and/or other related equipment (the "Metering Equipment") that District deems necessary or appropriate to measure the quantity of water delivered to Customer. District will own all Metering Equipment, and Customer grants District a license at all times to access land owned by Customer for the purposes of inspecting, testing, repairing, replacing, or calibrating the Metering Equipment and/or the pipeline that transports water to Customer under this Agreement (the "Pipeline"). If installation of Metering Equipment requires a new tap on the Pipeline, Customer agrees to pay the fees associated with tapping the Pipeline, as set by the District's Board of Directors.

4. Repairs, Tests and Calibration of Metering Equipment. Customer will immediately call the District if Customer becomes aware of any damage to the Metering Equipment and/or the Pipeline. District will repair any damaged Metering Equipment at District's expense, unless such damage is caused in whole or in part by Customer, in which case such expense shall be borne by Customer. Upon a written request by Customer, District will test or calibrate the Metering Equipment, but District will not be required to do so more than once in any 36-month period. District and Customer agree that no adjustments to District's billing under this Agreement shall be made unless the Metering Equipment is found by District to be inaccurate by more than five percent (5%) of the actual flow. In such circumstances, District will estimate in good faith the quantity of water delivered to Customer during the period of inaccuracy, and Customer agrees to abide by such estimate.

5. Payment for Water. Customer will pay to District an amount equal to the quantity of water delivered to Customer multiplied by the applicable Rate, plus any applicable fees as established from time to time by District's Board of Directors. The Rate shall be just, reasonable, and non-discriminatory. The quantity of water delivered to Customer will be determined by a monthly reading by District of the Metering Equipment at the Delivery Point. The Rate and Rate structure are subject to change by District's Board of Directors. District will provide an invoice to Customer each month, and Customer will pay the invoiced amount to District on or before the 15th day after the invoice date. All payments made under this Agreement will be made to District's Mailing Address, or in person at the District Office in Abilene, Texas.

6. Conservation of Water. It is the intent of the parties to this Agreement to provide, to the maximum extent practicable, for the conservation of water. Customer agrees that it is a condition of this Agreement that Customer maintain and operate its facilities in a manner that will prevent unnecessary waste of water. District, in accordance with applicable laws and regulations, may from time to time adopt reasonable rules and regulations relating to water conservation, and reserves the right to suspend service to Customer in the circumstance that unnecessary waste of water is taking place.

7. Indemnification. CUSTOMER AGREES TO RELEASE, HOLD HARMLESS, AND INDEMNIFY DISTRICT AND DISTRICT'S DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES IN CONSEQUENCE OF THIS AGREEMENT OR FOR ANY NEGLIGENT ACT OR OMISSION OF THE CUSTOMER, ITS EMPLOYEES, AGENTS AND/OR CONTRACTORS RELATED IN WHOLE OR IN PART TO THE PROVISION OF WATER MADE AVAILABLE UNDER THIS AGREEMENT.

8. Limitation of Liability. Neither party shall be liable for any indirect, incidental, special, consequential or punitive damages, including loss of profits, revenue or use, incurred by the other party, whether in action of contract or tort, even if the party has been advised of the possibility of such damages.

9. Defaults and Remedies. Customer defaults under this Agreement if Customer: (a) fails to make any payment to District when due under this Agreement; or (b) breaches any other provision of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach from District. If Customer defaults under this Agreement, then District may: (c) immediately discontinue providing water to Customer for so long as such default continues; (d) terminate this Agreement by written notice to Customer; and/or (e) pursue any remedy available to District at law or in equity. If District breaches any provision of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach from Customer, then Customer may terminate this Agreement by written notice to District. Notwithstanding the foregoing, District may extend the cure period beyond thirty (30) days if reasonably necessary.

10. Force Majeure. Notwithstanding anything else in this Agreement to the contrary, no party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's control, including, without limitation: (a) acts of God; (b) flood, drought, fire, earthquake, tornado, hurricane, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (i) other events beyond the control of the affected party. The party suffering a force majeure event will give notice to the other party, stating the period of time the occurrence is expected to continue and will use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized.

11. Termination. Customer may discontinue service by written notice to District in which case District will discontinue delivering water to Customer. This Agreement shall continue in force indefinitely until either party provides written notice to the other party of its intent to terminate the Agreement.

12. Miscellaneous.

(a) **Notice.** All notices under this Agreement shall be in writing and addressed to Customer's Mailing Address or District's Mailing Address, as applicable. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Either party's address may change such party's mailing address under this Agreement by providing written notice to the other party.

(b) **Governing Law and Venue.** This Agreement is subject to all applicable federal, state, and local laws, ordinances, rules, orders, and regulations. This Agreement shall be construed under and in accordance with the laws of the State of Texas. Any suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in any United States federal court or state court located in Taylor County, Texas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

- (c) ***Amendment and Assignment.*** This Agreement may be amended by District upon providing Customer with written notice at least 30 days prior to the effective date of any change. The Customer may immediately terminate this Agreement without penalty within the notice period if Customer does not accept the proposed amendment(s). If Customer does not terminate the Agreement within the specified notice period, Customer will be deemed to have accepted the amendments and will be bound by them. Customer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of District.
- (d) ***Entire Agreement.*** This Agreement and any other documents incorporated herein by reference constitute the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. If for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, then this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement. This Agreement is only effective upon the acceptance by a District representative on the signature page of this Agreement.
- (e) ***Counterparts.*** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Executed to be effective upon the date of acceptance by District.

CUSTOMER:

Printed Name

Signature

Date

ACCEPTED:

District Representative

Signature

Date