



## Hidalgo County Head Start Program Policy Council Agenda

**DATE:** March 26, 2013

**SUBJECT:** Discussion/Approval on Request to Enter into a Non-Standard Service Agreement between Hidalgo County Head Start Program and AGUA Special Utility District, a sole provider, in the amount of \$9,869.48, to install pipes, lines, meters and valves for water service at the relocated Palmview I Head Start Center

**RATIONALE/NEED:** There is a need to obtain water service at the relocated Palmview I Head Start building which was moved to County property at 1208 Paula Drive, Palmview, TX.

**RECOMMENDATION:** Administration recommends approval.

**COST:** Head Start Funds are available.  
19-5156-20-10034-505  
\$9,869.48

**RELATED INFORMATION INCLUDED:** Contract

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**INITIATED BY:** Ambrosio Tovar, Procurement Director

**REVIEWED BY:** Mr. Edmundo Garcia, Assistant Director

**PROGRAM DIRECTOR'S APPROVAL:**

*A. Tovar*  
*Edmundo Garcia*  
*[Signature]*

## **NON-STANDARD SERVICE AGREEMENT**

This Non-Standard Service Agreement (Agreement) is made and entered into by and between Agua Special Utility District (“the SUD”), a special utility district created and operating under Chapter 7201 of the Special District Local Laws Code and under Chapter 67 of the Texas Water Code and Hidalgo County, Texas (APPLICANT) located in Hidalgo County, Texas.

### **RECITALS**

The SUD and APPLICANT desire to enter into an agreement at the request of APPLICANT to address water service from the SUD to APPLICANT. APPLICANT intends to build the Hidalgo County Headstart Palmview 1, which is within the SUD’s Certificate of Convenience and Necessity (CCN). APPLICANT has requested service and the SUD has investigated service requirements for APPLICANT. This Agreement sets forth the requirements for the design, bidding, construction and inspection of facilities and the acquisition of easements necessary to provide water to APPLICANT.

In consideration of the foregoing, of the mutual benefits, covenants and agreements expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the SUD and APPLICANT agree as follows:

### **PROJECT DESCRIPTION**

1.01. The Project includes all water pipes, lines, meters, valves, facilities, easements and other infrastructure (water infrastructure and facilities) to provide water service to APPLICANT. APPLICANT will construct at its cost all water infrastructure and facilities and obtain all easements that are required and reasonably necessary to serve the Hidalgo County Headstart Palmview 1. APPLICANT will pay the cost of construction

for improvements to the SUD's production, treatment and storage facilities necessary to provide service to APPLICANT's project.

- 1.02. The Project is a commercial institutional development consisting of one (1) lot on 4.12 acres of land out of Lot 20, Block 3, Mission Groves Estates, Hidalgo Texas according to the plat thereof recorded in Volume 5, Page 21, Map Records, Hidalgo County, Texas. For water distribution, APPLICANT shall connect to an existing 8-inch waterline located along the south property line. APPLICANT will install a single 2 ½-inch single service connection. For sanitary sewer facilities, APPLICANT will connect to an existing 8-inch sanitary sewer line located along the west and north of this property line. APPLICANT will extend a single 4-inch sanitary sewer service. The existing sanitary sewer system is located within the SUD but is treated by the City of Mission, Texas. APPLICANT is required to comply with all requirements set out in paragraph 6 of the Service Investigation Report attached hereto and incorporated herein for all purposes. No fire hydrants shall be installed within this development. All water mains shall be C-900 DR-18 as required by the SUD Standard Manual or approved equal subject to review and approval by the SUD's District Manager and District Engineer. All lots will be serviced with single service water connections and 1-inch waterlines. All water service lines located under roadway pavement shall be encased with 2-inch diameter PVC (SCH-40) pipe.
- 1.03. The Project is located within Hidalgo County Precinct 3 within the City of Mission extraterritorial jurisdiction along Mile 1 Road South between Schuerbach Road and Moorfield Road.

### **DESIGN OF FACILITIES**

- 2.01. APPLICANT's engineer will prepare the design, construction, plans and specifications, and supporting documentation for the water infrastructure and facilities associated with the Project in consultation and coordination with the SUD's engineer, and subject to the SUD's review and approval. APPLICANT will provide the SUD three sets of preliminary design plans. The SUD will review and comment on the plans and APPLICANT will amend the plans at the request and to the satisfaction of the SUD. All improvements shall be designed and constructed in accordance with the SUD and TCEQ standards. All facilities and infrastructure will comply with TCEQ rules and regulations. No construction shall commence until the SUD has reviewed and approved plans.
- 2.02. APPLICANT will use the plans approved by the SUD to develop construction-ready plans which will be submitted to the SUD for final review, revision and approval. Once the preliminary plans have been reviewed and approved, APPLICANT will provide four sets of construction ready plans.
- 2.03. If it is necessary for the SUD to upgrade or add to its production, treatment, storage or transmission facilities to serve the Project, the SUD's engineers will be responsible for the design of such improvements.
- 2.04. If the APPLICANT's Project is to be built within a subdivision, the subdivision's final plat must be approved by all regulatory authorities having jurisdiction over the subdivision, and the SUD must be presented or have been presented with a certificate as required by Texas Local Government Code §§ 212.012 and 232.029.

### **BIDS FOR CONSTRUCTION**

- 3.01. For facilities to be constructed by the APPLICANT, to the extent required by and in accordance with applicable law, APPLICANT shall advertise for bids for construction of

the proposed water infrastructure and facilities in consultation with the SUD engineer. If requested by the APPLICANT, the SUD's engineer shall advertise for bids for construction of the facilities to be constructed by the SUD in accordance with generally accepted practices. APPLICANT's engineer will make recommendation to the SUD engineers as to the lowest and best qualified bidder. The SUD may reject any and all bids but generally will accept the lowest and best qualified bid in accordance with the following criteria:

- a. The contractor shall provide an adequate bid bond under terms acceptable to the SUD;
  - b. The contractor shall secure adequate performance and payment bonding for the project under terms acceptable to the SUD;
  - c. The contractor shall supply favorable references acceptable to the SUD;
  - d. The contractor shall qualify with the SUD as competent to complete the work;
- and
- e. The contractor shall provide adequate certificates of insurance as required by the SUD.

3.02. For facilities to be constructed by the APPLICANT, the contract for construction shall be subject to review and approval by the SUD.

#### **EASEMENTS**

4.01. The water facilities and infrastructure shall be located in existing SUD easements or private rights-of-way or in private easements or rights-of-way acquired by APPLICANT in locations acceptable and approved by the SUD.

- 4.02. The APPLICANT shall bear the cost of obtaining right-of-way easements necessary to connect the APPLICANT'S Project to the SUD's transmission facilities, whether or not the easements are located within the APPLICANT'S Project. If the SUD determines that utility easements or facility sites outside the APPLICANT'S Project are required, the APPLICANT shall secure easements or title to facility sites on behalf of the SUD.
- 4.03. APPLICANT shall bear the cost of acquiring all easements and clearing and chipping the entire width of all easements.
- 4.04. All rights-of-way and easements and property titles shall be researched, validated and filed at the expense of APPLICANT.
- 4.05. All facilities required to be installed in public rights-of-way on behalf of the SUD, 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, plus the estimated cost of future relocation to private rights-of-way or subject to the cost of installation under state condemnation procedures, whichever is most desired by APPLICANT.
- 4.06. The SUD shall require exclusive dedicated right-of-way easements on the APPLICANT'S property or within APPLICANT'S Project (as required by the size of the planned facilities and as determined by the SUD) and title to property required for such on-site facilities. In locations where the commissioner's court or municipal governing body has approved specific utility location assignments within Public Utility Easement (PUE), water lines internal to the APPLICANT'S Project shall be installed within the PUE at the location assigned for utility service. Where specific utility location assignments are not applicable, every easement internal to the APPLICANT'S Project

shall have a minimum width of 15 feet. All water line easements within a subdivision shall be shown on the final recorded plat of the subdivision.

### **CONSTRUCTION**

- 5.01. APPLICANT will schedule a preconstruction meeting with participation by the SUD.
- 5.02. All road work shall be performed pursuant to applicable state, county or municipal standards and shall be completed prior to water facility and infrastructure construction to avoid future problems resulting from road right-of-way completion and excavation. Subject to approval of the requisite authority, road sleeves may be installed prior to road construction to avoid road damage during construction of facilities.
- 5.03. Construction plans and specifications shall be strictly adhered to, but the SUD reserves the right to change and order any specifications due to unforeseen circumstances to better facilitate operation of the water line or SUD facilities. All change and order amounts shall be charged to APPLICANT.
- 5.04. APPLICANT shall bear all costs and expenses for land acquisition, construction, water lines, facilities and infrastructure including, but not limited to, engineering fees, permitting fees and construction costs.
- 5.05. The SUD shall, at the expense of APPLICANT, inspect the facilities to ensure the SUD's standards are achieved.
- 5.06. APPLICANT shall provide sufficient notice to the SUD to allow the SUD to observe critical elements of construction:
  - a. water line and facility installation;
  - b. connection to existing mains;
  - c. pressure testing; and

- d. testing of all facilities.

If APPLICANT fails to comply with the above, the SUD may require APPLICANT to have the construction facilities uncovered and exposed for the SUD's inspection. In any event, the integrity of the facilities is the responsibility of APPLICANT.

#### **APPROVAL BY GOVERNMENTAL BODY**

6.01. In addition to review and approval of plans, specifications and construction drawings by the SUD, approval is required, if needed, by:

- a. Hidalgo County;
- b. governing body of any city within whose corporate limits or ETJ the water lines are located;
- c. United States Fish and Wildlife Service and/or Texas Parks and Wildlife Department;
- d. Texas Historical Commission; and
- e. any other political subdivision whose approval will be required before the SUD can provide service to APPLICANT.

6.02. APPLICANT recognizes that the SUD must comply with United States Department of Agriculture-Rural Development rules and regulations as promulgated from time to time as those rules apply to the service, rates and capacity addition of the SUD.

6.03. An APPLICANT who is an owner of land or an authorized agent thereof proposing to divide land so as to constitute a subdivision must enter into the written agreement as required by 31 Texas Administrative Code section 364.32(a)(1) and in the form as set out in that section of the Texas Administrative Code.

#### **INSPECTION AND DEDICATION**

- 7.01. Upon completion of all facilities and other appurtenances constructed for the provision of water service to the Project, the water infrastructure and facilities shall be inspected and certified by the SUD's engineer. SUD inspection will be to ensure water infrastructure and facilities are built in accordance with design plans and specifications. The costs for the SUD's inspection will be borne by APPLICANT.
- 7.02. APPLICANT will provide the SUD two sets of as-built plans and receipts of all costs. APPLICANT will secure a warranty from the construction contractor for one year guarantee of workmanship and serviceability.
- 7.03. Upon completion of the water facilities and infrastructure and certification by the SUD's engineer, all infrastructure, facilities, permits, as built drawings, easements, real property and other property acquired in the design and construction of the water facilities and infrastructure shall be dedicated to and deemed to be owned by the SUD and title and ownership shall automatically vest in the SUD. APPLICANT shall confirm or verify such ownership, conveyance, and title by the execution and delivery of appropriate bills of sale, transfer, assignment, or other instruments of conveyance in form acceptable to the SUD, free and clear of all liens and encumbrances.
- 7.04. After ownership and title of the water infrastructure vests in the SUD as set forth above, all responsibility for repair and maintenance shall be born by the SUD, provided that the SUD shall not, by this Agreement, waive or otherwise diminish its rights and remedies under any performance bond, warranty or other guarantee of performance regarding infrastructure provided under this Agreement.

#### **WATER SERVICE**

8.01. Upon determination by the SUD and certified by the SUD's engineer that the water line and all water infrastructure and facilities have been properly constructed, installed and cleared for service in accordance with approved plans and specifications, potable water service will be initiated by the SUD provided APPLICANT has performed and fulfilled all its obligations imposed upon APPLICANT under the terms of this Agreement, relevant laws, rules, regulations and ordinances, including but not limited to:

- a. APPLICANT has paid all fees and amounts owed to the SUD under this Agreement;
- b. All water infrastructure improvements described herein have been completed onsite of the property or Project in accordance with the construction standards of the SUD and the plans and specifications approved by the SUD's engineers and the SUD has inspected and approved the facilities;
- c. All water infrastructure improvements described herein that are located offsite of the property or Project that were to be constructed by the developer have been completed in accordance with the construction standards of the SUD and the plans and specifications approved by the SUD's engineers and the SUD has inspected and approved the facilities;
- d. All water infrastructure improvements described herein that are located offsite of the property or Project that were to be constructed by the SUD have been completed;
- e. All water infrastructure improvements described herein, and which have been inspected and approved by the SUD, have been dedicated to and accepted by the SUD;

- f. APPLICANT has submitted documentation of a satisfactory bacteriological test;  
and
  - g. Subdivision plat approval, if required, has been obtained by APPLICANT, and the SUD has been presented with a certificate as required by Texas Local Government Code sections 212.012 or 232.029.
- 8.02. The SUD shall sell and deliver water service to APPLICANT. APPLICANT shall purchase, receive, and/or reserve service from the SUD in accordance and in compliance with the bylaws and tariff of the SUD as amended from time to time by the Board of Directors of the SUD.
- 8.03. The APPLICANT shall pay the SUD for service as determined by the tariff and upon the terms and conditions set forth therein, a copy of which has been provided as an information packet, for which APPLICANT acknowledges receipt by execution of this Agreement.
- 8.04. The Board of Directors shall have the authority to discontinue service of APPLICANT for non-compliance with any policy or for failure to pay any utility fees or charges as required by the SUD's published rates, fees, and condition of service.
- 8.05. All water shall be metered by a 3/4-inch meter to be furnished and installed by the SUD. The meter is for the sole use of APPLICANT and is to provide service to only one dwelling or one (1) business. Extension of pipe(s) to transfer utility service from one property to another, to share, resell, or sub-meter water to any other persons, dwellings, businesses, or property, etc., is prohibited.
- 8.06. The SUD shall have the right to locate a water service meter and the pipe necessary to connect the meter on APPLICANT's property at a point to be chosen by the SUD, and

shall have access to its property and equipment located upon APPLICANT's premises at all reasonable and necessary times for any purpose connected with or in the furtherance of its business operations, and upon discontinuance of service the SUD shall have the right to remove any of its equipment from the APPLICANT's property. APPLICANT will install, at its own expense, any necessary service lines from the SUD's facilities and equipment to the point of use including any APPLICANT service isolation valves, backflow prevention devices, clean-outs, and equipment as may be specified by the SUD. The SUD shall also have access to APPLICANT's property for the purpose of inspecting for possible cross-connections, potential contamination hazards, and illegal lead materials.

- 8.07. The SUD is responsible for protecting the drinking water supply from contamination or pollution which could result from improper practices. This Agreement serves as notice to APPLICANT of its restrictions which are in place to provide this protection. The SUD shall enforce these restrictions to ensure the public health and welfare. The following undesirable practices are prohibited by state regulations:
- a. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public system by an air gap or an appropriate backflow prevention assembly in accordance with state regulations.
  - b. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the proper installation of an air gap or a reduced pressure-zone backflow prevention assembly and a service

agreement must exist for annual inspection and testing by a backflow prevention device tester.

- c. No connection which allows condensing, cooling, or industrial process water to be returned to the public drinking water supply is permitted.
- d. No pipe or pipe fitting which contains more than 8% lead may be used for the installation or repair of plumbing at any connection which provides water for human consumption.
- e. No solder or flux which contains more than 0.2% lead may be used for the installation or repair of plumbing at any connection which provides water for human consumption.

8.08. The SUD shall maintain a copy of this Agreement as long as APPLICANT is connected to the public water system. APPLICANT shall allow its property to be inspected for possible cross-connections, potential contamination hazards, and illegal lead materials. These inspections shall be conducted by the SUD or its designated agent prior to initiating service and periodically thereafter. The inspections shall be conducted during the SUD's normal business hours.

8.09. The SUD shall notify APPLICANT in writing of any cross-connections or other undesirable practices which have been identified during the initial or subsequent inspection. APPLICANT shall immediately correct any undesirable practice on its premises. APPLICANT shall, at its expense, properly install, test, and maintain any backflow prevention device required by the SUD. Copies of all testing and maintenance records shall be provided to the SUD as required. Failure to comply with the terms of this Agreement shall cause the SUD to either terminate service or properly install, test,

and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this Agreement shall be billed to and paid by APPLICANT.

8.10. In the event the total water supply is insufficient to meet all of the SUD's customers, or in the event there is a shortage of water, the SUD may initiate the Emergency Rationing Program as specified in the SUD's tariff. By execution of this Agreement, APPLICANT hereby agrees that it shall comply with the terms of said program.

8.11. By execution hereof, APPLICANT shall guarantee payment of all other rates, fees, and charges done on any account for which APPLICANT receives service from the SUD. Said guarantee shall pledge any and all deposit fees against any balance due the SUD. Liquidation of said deposit fees shall give rise to discontinuance of service under the terms and conditions of the SUD's tariff.

#### **FEES**

9.01. The following fees shall be paid on or before the execution of this Agreement by APPLICANT:

- a. Service Investigation Fee: \$1,000.00 which is an amount sufficient to cover all administrative, legal and engineering fees associated with investigation of the SUD's ability to deliver service to APPLICANT, including but not limited to all actions undertaken by the SUD under this Agreement;
- b. Service Inspection Fee: \$20.00 which is \$20.00 for inspection of connections;
- c. Meter Installation Fee: \$475.00 which is an amount sufficient to cover cost and installation of 3/4 -inch meter(s) as specified by meter size in the SUD's tariff;

- d. Water Rights Acquisition Fee: \$4,636.00 which is \$1,900.00 (per LUE meter rate) x 2.44 LUEs or NONE if APPLICANT supplies Lower Rio Grande municipal water rights to the SUD in amounts the SUD determines is adequate for the number of LUEs for which service is requested;
  - e. Construction Investigation Fee: 5% of total cost of construction which covers the labor costs associated with the inspection of the APPLICANT-constructed facilities;
  - f. Reserved Service Charge: None because APPLICANT has no meters for which service has been requested but delayed; and
  - g. Impact Fee: \$4,616.48 which is \$1,892.00 x the number of LUEs associated with the Project (2.44). This fee is for the purpose of acquiring capital to defray the costs of expanding the system facilities to meet customer growth needs of the corporation.
  - h. Customer Deposit. \$122.00 which is \$50 for each LUE associated with the Project (2.44).
- 9.02. APPLICANT agrees to pay a monthly charge for metered water service which includes a base rate and a volumetric rate as specified in the SUD's tariff. APPLICANT understands that these monthly rates will be periodically revised by the SUD.

**DEFAULT**

- 10.01. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) working days

without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

### **FORCE MAJEURE**

- 11.01. The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
- 11.02. If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- 11.03. 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 above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

### **NOTICES**

- 12.01. Any notice to be given hereunder by any party to another party shall be in writing and may be affected 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 SUD shall be addressed:

Agua Special Utility District  
P.O. Box 4379  
Mission, Texas 78573

Attn: District Manager

Any notice mailed to the APPLICANT shall be addressed:

Hidalgo County, Texas  
724 North Breyfogle  
Mission, Texas 78572

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

#### **ENTIRE AGREEMENT**

13.01. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties hereto, and may not be amended except by a writing signed by all Parties and dated subsequent to the date hereof.

#### **EFFECTIVE DATE**

14.01. This Agreement shall be effective as of the date of the complete execution hereof by all Parties as indicated below.

#### **TEXAS LAW GOVERNS**

15.01. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hidalgo County, Texas. Venue shall lie exclusively in Hidalgo County, Texas.

#### **TIME OF THE ESSENCE AND TERM**

16.01. It is acknowledged and agreed by the Parties that time if of the essence in the performance of this Agreement.

16.02. This Agreement will remain in effect so long as APPLICANT is receiving service from the SUD.

EXECUTED in multiple originals and effective as of the 21 day of March, 2013.

AGUA SPECIAL UTILITY DISTRICT

By:   
MARIO CHAPA, President of the Board

HIDALGO COUNTY, TEXAS, APPLICANT

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_