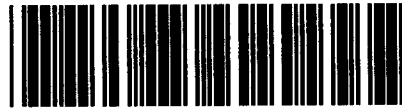




Control Number: 43990



Item Number: 58

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

NON-STANDARD SERVICE AGREEMENT RECEIVED

2014 DEC 19 AM 8:32

THE STATE OF TEXAS

PUBLIC UTILITY COMMISSION
FILING CLERK

COUNTY OF KENDALL

THIS AGREEMENT is made and entered into by and between CDS International Holdings, Inc., hereinafter referred to as the "Developer" and Tapatio Springs Service Company, Inc., hereinafter referred to as the "Utility Company".

WHEREAS, the Developer is engaged in developing that certain 5,000 acres of land (more or less) in Kendall County, Texas, a legal description of the land being attached as Exhibit 1 and a location map being attached as Exhibit 2, said land being hereinafter referred to as "Property"; and

WHEREAS, the Utility Company owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area and owns and operates a wastewater collection and treatment system that serves customers located within its service area; and,

WHEREAS, the Developer has requested the Utility Company to provide water and wastewater service to no more than 1,700 future customers within the Property through an extension of the Utility Company's water system and wastewater system, such extension hereinafter referred to as "the Extension."

NOW THEREFORE KNOW ALL MEN BY THESE PRESENT:

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, the Developer and the Utility Company agree as follows:

1. Engineering and Design of the Extension.
 - a. Prior to preparing any detail design of any portion of the Extension, Developer shall cause a Texas Registered Professional Engineer to prepare an engineering report showing the proposed Extensions, considering both the cost of construction and operation of the various components, and such report shall be submitted to Utility Company for approval. Within thirty days after receipt of the report Utility Company shall either approve the report or describe in detail the changes that must be made to obtain the approval by the Utility Company. Absent objections, within the time allowed, the report will be deemed approved by the Utility Company.
 - b. The Extension shall be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the

EXHIBIT 1

Utility Company and all governmental agencies having jurisdiction Developer will retain the Utility Company's Consulting Engineer to perform all required work on the Extension. After completion of the plans and specifications by the Consulting Engineer, the plans, and specifications shall become part of this Agreement by reference and shall more particularly define the "Extension". Developer and Utility Company each consent to the employment of the Consulting Engineer and waive any conflict of interest inherent to the relationship.

- c. The Extension must be sized to provide continuous and adequate water service to the Property based on plans for the development of the Property provided to the Utility Company by the Developer. The Utility Company may require the Extension to be oversized in anticipation of the needs of other customers of the Utility Company, subject to the obligation to reimburse the Developer for any such over sizing as provided below.
- d. For a period of sixty (60) days following the date of completion of the plans and specifications of the Extension, the Developer may give notice of termination of this Agreement to the Utility Company. All costs of the preparation of those plans and specifications are to be borne by the Developer.

2. Required Sites, Easements or Right-of-Ways.

- a. Developer shall be responsible for dedicating or acquiring any sites on and easements across the Property, which are necessary for the construction of the Extension. Utility Company will be responsible for acquiring any easements or rights of way necessary for the Extension outside the Property and for obtaining any governmental approvals necessary to construct the Extension in public right-of-ways. Since acquisition of right-of-way, easements, and crossing permits is not subject to control by the Utility Company, the Utility Company's obligation to serve the Property, or any portion of the Property, is subject to Utility Company acquiring the right-of-way, easements, and permits required for the Extension.
- b. Any sites, easements, and rights of way acquired by the Developer shall be assigned to the Utility Company upon proper completion of the construction of the Extension. The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to the Utility Company must be approved by the Utility Company's attorney.

3. Construction of the Extension.

- a. The Developer shall cause the Extension to be constructed by a contractor acceptable to the Utility Company in accordance with the approved plans and specifications. The Consulting Engineer shall also be responsible for

the inspection of all phases of the construction of the Extension. The Developer will be responsible for the payment of all costs related to the inspections. The Contractor shall warranty the work and material for a term of twelve months after substantial completion of the Extension.

- b. The contractor(s) constructing or installing the Extension shall execute performance and payment bonds for the total projected cost of the contractor(s)' portion of the work and the performance bond shall include the twelve month warranty on the work and material, and shall provide insurance for the typical coverage for the work being performed, such insurance naming the Developer and Utility Company as additional insured for the work performed by the contractor on the Extension.

4. Dedication of Extension to the Utility Company.

Upon proper completion of construction of the Extension and final inspection and testing thereof by the Utility Company, the Extension shall be dedicated to the Utility Company by an appropriate legal instrument approved by the Utility Company's attorney. The Extension shall thereafter be owned and maintained by the Utility Company, subject to the Contractor's warranty obligations.

5. Cost of the Extension.

- a. Developer shall pay all costs associated with the Extension as a contribution in aid of construction, including without limitation the cost of the following:
 - 1. engineering and design;
 - 2. easements or right-of-ways acquisition;
 - 3. construction;
 - 4. inspection;
 - 5. engineering and attorney's fees and expenses;
 - 6. governmental or regulatory approvals required to lawfully provide service;
 - 7. procurement of water allotments(increased reservation of GBRA water).
- b. Developer shall indemnify the Utility Company and hold the Utility Company harmless from all of the foregoing costs.

- c. Provided, however, nothing herein shall be construed as obligating the Developer to maintain the Extension subsequent to its dedication and acceptance for maintenance by the Utility Company.
- d. If the Utility Company has required the Extension to be oversized in anticipation of the needs of the other customers of the Utility Company, the Utility Company shall reimburse Developer for the additional costs of construction attributable to the over sizing, as determined by the Utility Company's Consulting Engineer.
- e. The Developer's cost including the total of its contributions in aid of construction and its direct expenditures for the portion of the Extension which is not located on the Developer's Property shall not exceed a total of \$1,500,000.00. All other costs of the Extension as approved by the Utility Company shall be borne by the Utility Company. The Consulting Engineer shall divide the estimated cost of the Extension between the portion on the Property and off the Property in all proposals, plans and specifications prepared for the Extension. If the costs of the Extension not located on Developer's Property exceed \$1,500,000 and Developer chooses not to fund the excess, the Utility Company is under no obligation to fund any portion of the Developer's share of the costs of the Extension and Utility Company is under no obligation to furnish water service to the Property or any portion of the Property.

6. Service From the Extension

- a. After proper completion and dedication of the Extension to the Utility Company and payment by the Developer of all costs in accordance with this Agreement, the Utility Company shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of the Utility Company and the payment of all standard rates, fees, and charges as reflected in the Utility Company's approved tariff
- a. It is understood and agreed by the parties that the obligation of the Utility Company to provide water service in the manner contemplated by this Agreement is subject to:
 - 1. 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.
 - 2. The approval by the GBRA of a contract to supply an additional 250 acre-feet of water per year to the Utility Company and approval by GBRA to Utility Company supplying water to the Property.

- c. Unless the prior approval of the Utility Company is obtained, the Developer shall not:
 - 1. Construct or install additional water lines or facilities to service areas outside the Property;
 - 2. Add any additional water lines or facilities to service areas outside the Property.
 - 3. Connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.
- d. Nothing in this Agreement is intended to grant, nor shall any provision be interpreted to grant, Developer or any Utility Company customer located within the Property any preferential right to service or preferential fees in relation to other similarly situated customers of the Utility Company. The Utility Company's tariff and policies for service shall apply to all service offered or provided by Utility Company within the Property.

7. Service Area Issues.

Developer and Utility Company acknowledge and agree that the Property is not located within Utility Company's service area under the certificates of convenience and necessity issued to the Utility Company. Developer shall pay all costs associated with Utility Company obtaining regulatory authority to provide service to all or any part of the Property if Utility Company is required by law or the rules of the applicable regulatory authorities to obtain such approval prior to providing retail service within the Property.

8. GBRA issues:

- a. Developer and Utility Company acknowledge and agree that Utility Company may not supply water under its contract with the Guadalupe Blanco River Authority ("GBRA") to the Property without the prior consent of the GBRA. Developer shall pay all costs associated with Utility Company obtaining GBRA consent to supply water to all or any part of the Property.
- b. Section 5.4 of the contract between Utility Company and GBRA states as follows:

Customer agrees that the supply of water to Customer under this Agreement for use on any lands within a CCN in Kendall County shall be conditioned, to the extent allowed by law, on compliance, in the design, construction and operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with all federal, state and local

laws, rules and regulations relating to (i) protection of the quality of groundwaters or surface waters; (ii) recharge of aquifers; or (iii) drainage and flood control. Customer further agrees that, to the extent allowed by law, it will not supply any water supplied to Customer under this Agreement for use on any lands if and for so long as there is any material non-compliance, in the design, construction or operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with any such laws, rules or regulations. At GBRA's request from time to time, Customer shall demonstrate to GBRA its compliance with the requirements of this Section 5.4. If Customer fails to comply with the requirements of this Section 5.4 with respect to Customer's supply of water for use on any lands, GBRA shall have available all remedies allowed by law including, without limitation, termination of this Agreement, or suspension or reduction of the supply of treated water under this Agreement until Customer demonstrates that compliance has been achieved; provided, however, GBRA will notify Customer of the violation and provide Customer a reasonable time to cure the violation. Customer will not be obligated to implement any requirement that GBRA does not require all other Project customers or participants to implement.

Developer will not take any action that will cause Utility Company to violate this provision and will fully cooperate with Utility Company in performing its obligations under this section.

- c. Developer and Utility Company will fully cooperate with each other in the efforts by Utility Company to amend the GBRA contract to increase the amount of the raw water reservation by an additional 250 acre-feet of water and to relocate the point of delivery. If GBRA refuses to increase the amount of the raw water reservation by 250 acre-feet or lesser amount acceptable to Utility Company, Utility Company may cancel this Agreement upon thirty days notice to Developer. Based upon the information currently known to Utility Company, GBRA is willing to increase the amount of the reservation by 250 acre-feet and has submitted a contract to that effect to Utility Company.

9. Special Conditions.

Utility Company and Developer agree that the following special conditions shall apply and in the event of any inconsistency between these special conditions and the other parts of this Agreement, these special conditions shall apply:

- a. The Extension must include a means to receive water delivered by GBRA to Utility Company under the contract with GBRA, such delivery point being at

the City of Boerne's facilities on Cascade Caverns Road, and the means of storing and pumping the water from such point of delivery to existing Utility Company facilities, such as the ground storage tank on Johns Road, and/or new facilities constructed as part of the Extension. Developer and Utility Customer will cooperate with each other and GBRA to change the point of delivery and to install the necessary facilities at the point of delivery to receive and pump the water. Developer will pay all costs of connecting the Utility Company system to the GBRA system in accordance with section 3.2 of the GBRA contract, provided, however, if the facilities are oversized to allow Utility Company to serve territory located outside of the Property, Developer and Utility Company will pay the GBRA connection costs proportionately based upon the capacity of such connection facilities.

- b. The Extension will include all facilities and improvements required to serve customers within the Property.
- c. The Extension must be sized to accommodate Developer's projected maximum demand equivalent to 1700 residential connections within the Property, but the actual demand will be determined later.
- d. The Extension will include two water wells and related facilities (including storage tank(s), pressure tank(s), and disinfection equipment on two different tracts of land located within the Property, together with the drilling, production, and sanitary control easements required by state and local regulatory authorities, and all easements and utilities to drill and operate the wells and unrestricted access easements. In the event that additional easements or rights of way are required outside of property, Utility Company agrees to cooperate in the acquisition of such rights, including facilitating the use of public rights of way outside the Property.
- e. Upon acknowledgment by GBRA of the reservation of the additional 250 acre feet of water, Developer will pay Utility Company on a monthly basis the raw water component of the monthly charges paid by Utility Company to GBRA for the 250 acre-feet of water, such monthly charge being determined in accordance with section 6.5 of the GBRA contract (such amount being estimated at approximately \$1,800 per month) (the "Reservation Payment") for so long as the Developer's planned project requires the acquisition of this additional water capacity. If Developer's planned project requires less than 250 acre-feet of water, then Utility Company may ask GBRA to amend the contract to reduce the reservation, but absent agreement by GBRA, Developer shall continue to pay such charge until Utility Company obtains GBRA's consent, or another person needs the water and is willing to take over Developer's obligation under this section of the agreement. Payment by Developer of the Reservation Payment will continue until there are at least 500 active connections (homes occupied by the end-user) within the

Property.

- f. In the event Developers plans are revised to decrease the required number of connections all contributions in aid of construction which are variable or no longer required will be proportionately reduced or terminated if such costs are not required to serve the Developer's property.
- g. In order for Utility Company to have required access to and for facilities, Developer will grant a right of way for a service road within the Property for Utility Company's use to all its service facilities and as an easement for installation of water and wastewater facilities, such service road right of way being at the general location shown on the map attached as Exhibit 3 and being at least 30 feet with a temporary easement during the original construction of an additional 30 feet in width. Developer and Utility Company will determine who will pay the cost of constructing the roadway.
- h. Developer desires to install a wastewater collection and treatment system, Utility Company will apply for the necessary permits and Developer will pay the costs of obtaining such permits. The treatment plant will be owned and operated by Utility Company once construction of the treatment plant is completed. The Extensions may include a lift station and force main to the Utility Company's existing plant if necessary to provide limited, temporary service while such permit is being obtained and the treatment plant is being constructed. Nothing in this Agreement prevents Developer, or the ultimate customer, from installing a septic tank on certain lots within the Property, subject to local laws that may require abandonment of septic tanks if a wastewater collection system is within a certain distance. Developer will be responsible for obtaining permits for the wastewater treatment facility and paying the costs of obtaining the permits. Once the permits are final and non-appealable, Developer will assign, transfer, or amend the permits so that Utility Company will be the permittee.
- i. No funds paid by the Developer to the Utility Company will be used to defray any costs other than those directly related to providing services to the Property or the acquisition of water necessary to provide service to the Property or obtaining the consents and approvals required to serve the area . Any funds paid to the Utility Company in anticipation of service to a greater number or capacity of connections than finally constructed will be reimbursed to the Developer; provided, however, if Utility Company does not have a means to recover the costs of such excess capacity from other users (not including its retail customers) Developer will continue to pay the costs until another such user agrees to assume the costs.
- j. If a portion of the Extension is oversized, Utility Company and Developer will cooperate with each other regarding the time of construction and funding of same, but if either needs the portion of the Extension before the other party

desires to fund same, the oversized portion of the Extension will be funded within sixty days after either party gives written notice to the other stating that the party desires to proceed with the construction of the oversized portion of the Extension.

- k. Beginning the first month following GBRA approval of the reservation of 250 acre-feet of water, or a lesser or greater amount acceptable to Utility Company, Developer will pay Utility Company on a monthly basis an amount equal to the Utility Company's monthly payment to GBRA, less the customer's raw water component, such payment being calculated in accordance with article VI of the GBRA contract. The amount of the monthly payment paid by Developer will be calculated as follows:

Monthly GBRA charge (minus Raw water component for 250 acre-feet) multiplied by a factor equal to 0.333 (250/750), unless GBRA contract is amended to reserve more or less than the 250 acre-feet currently anticipated to be reserved).

The payment by Developer will continue until there are at least 500 active connections within the Property (an active connection meaning a home occupied by the end-user.)

- l. Under no circumstances is Utility Company obligated to use any portion of the 500 acre-feet currently reserved under the GBRA contract to provide water service to the Property or any portion of the Property. Under no circumstances is Utility Company obligated to use the groundwater supply facilities that it owns and operates on the effective date of this Agreement to supply water to the Property or any portion of the Property, or to use capacity in its wastewater treatment facilities that it owns on the effective date of this Agreement to supply the Property or any portion of the Property. If Utility Company determines that it may have capacity in either its groundwater supply facilities or wastewater treatment facilities in excess of the requirements for Utility Company's then-existing actual and projected demand within its service area as of the date of this Agreement and Utility Company chooses to use such excess capacity to provide service within the Property for the temporary period of time required to construct the Extension described in this Agreement, then Utility Company will notify Developer of that determination and the two parties will cooperate on developing a plan for the temporary use of such capacity.

However, to the extent of any conflict between the terms of this Agreement (including the special conditions) and the Utility Company's tariff in effect on the date this agreement is approved by the Utility Company, the Utility Company's tariff shall apply, but Utility Company will grant exceptions or variances to the tariff, to conform to this agreement and, if necessary, obtain regulatory

approval or any required changes to the tariff.

10. General Provisions.

- i. **Effect of Force Majeure.** In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement (other than Developer's obligations to pay costs as described in this Agreement), 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 disturbance, 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, arrests, restraints of government and civil disturbance, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failures of water supply, and any other incapacities 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 to it in the judgment of the party having the difficulty.
- ii. **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 Utility Company shall be addressed:

Any notice mailed to the Utility Company shall be addressed:

Tapatio Springs Service Company, Inc.
P.O. Box 550
Boerne, Texas 78006

Any notice mailed to the Developer shall be addressed:

CDS International Holdings, Inc.
95 Northeast 4th Ave.
Delray Beach, Florida 33483

with copy to:

Grady B. Jolley
Nunley, Davis, Jolley & Hill, L.L.P.
1580 S. Main Street, Suite 200
Boerne, Texas 78006

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

- iii. Severability. The provisions of this agreement are severable, and if any work, 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 circumstance shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.
- iv. 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; provided, however, Developer's request for service and the Utility Company's tariff in effect on the date this Agreement is approved are incorporated by reference into this agreement for all intents and purposes.
- v. Amendments. No amendments 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 Utility Company and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.
- vi. 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 Kendall County, Texas.

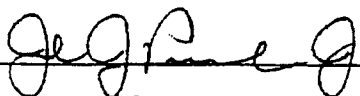
- vii. Venue. Venue for any suit arising hereunder shall be in Kendall County, Texas.
- viii. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.
- ix. Assignability. The rights and obligations of the Developer hereunder may be assigned without the prior written consent of the Utility Company, however, no such assignment shall relieve the Developer, its successors or assigns of any obligation under this Agreement.

11. Effective Date and term.

This Agreement shall be effective from and after the date of the execution by all parties. This agreement shall expire and be null and void if work on the Extension does not begin within twenty-four months after approval of this Agreement and shall be in effect for a term ending four years and one day after Developer fully performs the obligations under this Agreement; provided, however, if any claim or suit is filed relating to this Agreement or the Extension prior to the termination of this Agreement, this Agreement shall continue in effect until such claim or suit is finally resolved.

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.

UTILITY COMPANY

By: 

Title: Vice President

Date: 8-31-04

DEVELOPER

BY: *W. H. Milnes*

Name: *W. H. Milnes*

Title: *Treasurer*

Date: *9/9/01*