



Control Number: 53299



Item Number: 1

53299

# Dorsett Johnson & Swift, LLP

Attorneys and Counselors at Law

Timothy R. MacGorman

Attorney

2022 MAR 1 AM 8:51  
tmacgorman@dorsettjohnson.com • www.dorsettjohnson.com  
407 Throckmorton Street, Suite 500, Fort Worth, Texas 76102  
Office: (817) 900-8202 • Fax: (817) 882-8526

February 22, 2022

***Via CMRRR***

Filing Clerk

Public Utility Commission of Texas

1701 North Congress Avenue

P.O. Box 13326

Austin, Texas 78711-3326

Re: Appeal of the Cost of Obtaining Service from a Water Supply Corporation –  
Crystal Bluff Goat Ranches, LLC

Dear Sirs or Madams:

Please find enclosed the Appeal of the Cost of Obtaining Service from a Water Supply Corporation for Crystal Bluff Goat Ranches, LLC (“CBGR”) as it pertains to Possum Kingdom Water Supply Corporation (“PKWSC”). As this appeal may be slightly unorthodox, this letter serves to explain the course of past dealings between the parties to aid your understanding.

In 2016, CBGR purchased an 18.070-acre tract of land which was platted into a subdivision of 12 lots intended for residential use, known as Hummingbird West. Along the east side of Hummingbird West is a utility easement for water. On June 6, 2017, CBGR received an email from PKWSC including a “Will Serve” letter stating that PKWSC was ready, willing, and able to provide Hummingbird West with retail public water utility service. PKWSC quoted CBGR \$2,300.00 to \$2,800.00 per lot in capital in aid of construction (“CIAC”) to provide said water service.

PKWSC sold CBGR a meter on Lot 7 of Hummingbird West in 2017 for \$1,850.00 plus a \$150.00 engineering survey. Then, on January 30, 2019, PKWSC sold CBGR a meter on Lot 5 for \$2,337.00 (it appears the engineering survey fee was included in this price). Finally, on February 15, 2019, PKWSC sold CBGR a meter on Lot 3 for \$2,337.00 plus a \$150.00 engineering survey (it appears CBGR was charged twice for the engineering survey on Lot 3). Subsequently, both Lots 5 and 7 have been sold and PKWSC transferred the meters to the new owners, who are now members of PKWSC. The owner of Lot 5 also purchased Lot 6 and does not require a water meter on Lot 6. As such, 3 lots in Hummingbird West already have a water meter and 1 does not require one, leaving only 8 lots in need of water meters.

In 2021, the newly elected board of directors of PKWSC hired a new General Manager. On May 11, 2021, PKWSC’s new General Manager wrote a letter to CBGR stating that the existing

00000

water treatment plant was at maximum capacity and the cost of additional capacity was estimated at \$10,400,145.00 which would enable an additional 777 meters to be added to the system. PKWSC proposed a Non-Standard Service Contract which stated that the CIAC amount would be \$13,385.00 per water meter for 10 lots to provide water service to Hummingbird West for a total of \$133,850.00, an exorbitant increase from the previously quoted CIAC of \$2,300.00 to \$2,800.00 per lot. Such an unprecedented and unreasonable increase in CIAC rendered the remaining lots in Hummingbird West unmarketable even during a strong real estate market, stifling development. Despite numerous attempts to negotiate a reasonable amount of CIAC for Hummingbird West, PKWSC has only increased their proposed CIAC amount. On September 29, 2021, PKWSC's General Manager sent a letter to our office stating that, as of that time, the contract covering Hummingbird West will include 12 meters, instead of 10, at \$13,385.00 per meter for a total of \$160,620.00, and stated that "[n]o water service will be provided without the contract in place."

Further attempts to negotiate were rejected by PKWSC, and on January 11, 2022, PKWSC's General Manager sent a letter to our office stating that PKWSC's previous September 29, 2021 offer was withdrawn, and that any future service contract will include meters and CIAC on all 12 lots, as "[t]he other two meters installed in 2019 were approved without the manager's knowledge of previous communications" and "[a]ny future owner of lot 6 may request water in the future..." PKWSC's new January 11, 2022 offer was "only presented for 30 days" and threatened to increase CIAC further if the offer was not accepted.

As PKWSC made clear, the January 11, 2022 letter was a new written estimate offered by PKWSC. As such, the January 11, 2022 letter constitutes "written notice" of PKWSC's decision relating to CBGR's initial request for water service in accordance with Texas Water Code § 13.043(g) and "written notice of the amount to be paid to obtain service" in accordance with Public Utility Commission Substantive Rule § 24.101(g). As such, we respectfully appeal the cost of obtaining water service for Hummingbird West stated by PKWSC in their January 11, 2022 letter.

Sincerely,

Timothy R. MacGorman, Esq.

Enclosures





## Appeal of the Cost of Obtaining Service from a Water Supply Corporation (WSC)

Docket No. **53299**

(this number will be assigned by the Public Utility Commission after your appeal is filed)

This appeal is pursuant to Texas Water Code §13.043(g) and Public Utility Commission's (PUC or commission) Substantive Rule §24.101(g)

### Water Service Provider

Name: Possum Kingdom Water Supply Corporation

<u>1170 Willow Road</u>	<u>Graford, Texas, 76449</u>	<u>940</u>
(Address)	City, State, Zip Code)	(Area Code/Number)

### Applicant

Name: Crystal Bluff Goat Ranches, LLC, by Gary Ray, Managing Member

<u>301 Commerce Street, Suite 2900</u>	<u>Fort Worth, Texas, 76102</u>	<u>817</u>
(Address)	City, State, Zip Code)	(Area Code/Number)

### Cost of Obtaining Service

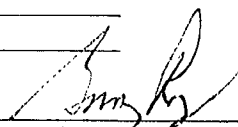
If a breakdown of the cost is available:

Membership Fee \$	<u>3,000.00</u>
Tap Fee \$	<u>                    </u>
Extension Charges \$	<u>                    </u>
Capital Contribution \$	<u>160,620.00</u>
Other Charges \$	<u>1,500.00</u>
Total Cost of Obtaining Service \$	<u>165,120.00</u>

### Additional Information

Date application for service submitted to WSC: 07/26/2017

Date written estimate of charges received: 01/12/2022

  
\_\_\_\_\_  
Signature of Applicant

2024



**Instructions for Appealing the Cost of Obtaining Service from a Water Supply Corporation pursuant to Texas Water Code §13.043(g) and Public Utility Commission's (PUC or commission) Substantive Rule §24.101(g)**

1. **Enclosures:**
  - Application for service submitted to WSC
  - Written estimate received from WSC.
  - Map showing exact location of the place of use.
  - All related correspondence.
2. To obtain service during the appeal process, you must pay the cost required by the WSC. If the commission sets a lower connection cost as a result of your appeal, you will be refunded the difference.

**Filing Deadlines**

3. Your appeal must be filed within 90 days of the date you receive a written estimate of the cost from the WSC, or
4. If you paid before receiving a written estimate, your appeal must be filed within 90 days of the date you paid.

**Filing Procedure**

5. Use the form attached to these instructions to provide basic information about your appeal and to see the types of enclosures you should send, if available.
6. After completing the form, make a copy for your records and for the WSC.
7. To file your appeal, send 10 copies of the completed form, and enclosures (per PUC Procedural Rule §22.71(c)(14)) to:

**Filing Clerk  
Public Utility Commission of Texas  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326**

8. Send a copy of your appeal to the WSC.

# Possum Kingdom Water Supply Corporation

## Service Application and Agreement

940-779-3100 Fax 940-779-3137 TDD 800-735-2989  
1170 Willow Road, Graford, Texas 76449

*Easement on  
left under brooks  
at Raydon*  
*656*

Please Print:

DATE

7-26-17

APPLICANT'S NAME

CBGR, LLC

CO-APPLICANT'S NAME

Chris Beeson &amp; Gary Ray

APPLICANT'S BILLING ADDRESS

6300 Ridglen Place #920

APPLICANT'S SERVICE ADDRESS

Hummingbird West Lot 7

Font Worth TX 76116

Graford TX 76449

PHONE NUMBER - Home

817-994-4617

Other

E-MAIL ADDRESS

GARY@MODCOINS.COM

PROOF OF OWNERSHIP PROVIDED BY: (Check applicable box) Lease ☐ Sub-Lease ☐ Warranty Deed ☒TYPE OF SERVICE: (Check applicable box) Single Family Residence ☒ Business ☐ Apt. Building ☐

LEGAL DESCRIPTION OF PROPERTY (Include subdivision with lot and block number from lease or warranty deed)

Lot 7 Hummingbird West Div.

NOTE: FORM MUST BE COMPLETED BY APPLICANT ONLY.

By execution hereof, the Applicant agrees that non-compliance with the terms of this agreement, pages two through four, by said Applicant shall constitute denial or discontinuance of service until such time as the violation is corrected to the satisfaction of the Corporation.

Any misrepresentation of the facts by the Applicant on any of the four pages of this agreement shall result in discontinuance of service pursuant to the terms and conditions of the Corporation's tariff.

Initial to confirm receipt of pages 2-4 \_\_\_\_\_

*Sam Carter*

Approved and Accepted by PKWSC

Applicant Signature

*Gary Ray*

7-26-17

PKWSC Date Approved

## TERMS AND CONDITIONS

**AGREEMENT** made on approval date between Possum Kingdom Water Supply Corporation, a corporation organized under the laws of the State of Texas (hereinafter called the Corporation) and the Applicant and/or Co-Applicant.

Witnesseth:

The Corporation shall sell and deliver water and/or wastewater service to the Applicant and the Applicant shall purchase, receive, and/or reserve service from the Corporation in accordance with the by-laws and tariff of the Corporation as amended from time to time by the Board of Directors of the Corporation. Upon compliance with said policies, including payment of a Membership Fee, the Applicant qualifies for Membership as a new applicant or continued Membership as a transferee and thereby may hereinafter be called a Member.

The Member shall pay the Corporation for service hereunder as determined by the Corporation's tariff and upon the terms and conditions set forth therein, a copy of which has been provided as an information packet, for which Member acknowledges receipt hereof by execution of this agreement. A copy of this agreement shall be executed before service may be provided to the Applicant.

The Board of Directors shall have the authority to discontinue service and cancel the Membership of any Member not complying with any policy or not paying any utility fees or charges as required by the Corporation's published rates, fees, and conditions of service. At any time service is discontinued, terminated or suspended, the Corporation shall not re-establish service unless it has a current, signed copy of this agreement.

If this agreement is completed for the purpose of assigning utility service as a part of a rural domestic water and/or wastewater system loan project contemplated with the Rural Development, an Applicant shall pay an Indication of Interest Fee in lieu of a Membership Fee for the purposes of determining:

- a) The number of taps to be considered in the design and
- b) The number of potential ratepayers considered in determining the financial feasibility of constructing
  - 1) A new water system or
  - 2) Expanding the facilities of an existing water system.

The Applicant hereby agrees to obtain, utilize, and/or reserve service as soon as it is available. Applicant, upon qualification for service under the terms of the Corporation's policies, shall further qualify as a Member and the Indication of Interest Fee shall then be converted by the Corporation to a Membership Fee. Applicant further agrees to pay, upon becoming a Member, the monthly charges for such service as prescribed in the Corporation's tariff. Any breach of this agreement shall give cause for the Corporation to liquidate, as damages, the fees previously paid as an indication of interest. In addition to any Indication of Interest Fees forfeited, the Corporation may assess a lump sum of \$300.00 as liquidated damages to defray any losses incurred by the Corporation. If delivery of service to said location is deemed infeasible by the Corporation and the Indication of Interest Fee, less expenses, shall be refunded. The Membership in the Corporation and the Indication of Interest Fee, less expenses shall be refunded. The Applicant may re-apply for service at a later date under the terms and conditions of the Corporation's policies. For the purposes of this agreement, an Indication of Interest Fee shall be of an amount equal to the Corporation's Membership Fee.

All water shall be metered by meters to be furnished and installed by the Corporation. The meter and/or wastewater connection is for the sole use of the Member or customer and is to provide service to only one (1) 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.

The Corporation shall have the right to locate a water service meter and the pipe necessary to connect the meter on the Member's property at a point to be chosen by the Corporation, and shall have access to its property and equipment located upon Member'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 Corporation shall have the right to remove any of its equipment from the Member's property. The Member shall install, at their own expense, any customer service isolation valves, backflow prevention devices, clean-outs, and other equipment as may be specified by the Corporation. The Corporation shall also have access to the Member's property for the purpose of inspecting for possible cross-connections, potential contamination hazards, and illegal lead materials.

The Corporation is responsible for protecting the drinking water supply from contamination or pollution which could result from improper plumbing practices. This service agreement serves as notice to each customer of the plumbing restrictions which are in place to provide this protection. The Corporation 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 water 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 certified 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 8.0 % lead may be used for the installation or repair of plumbing on or after July 1, 1988, 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 plumbing on or after July 1, 1988, at any connection which provides water for human consumption.

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

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

In the event the total water supply is insufficient to meet all of the Members, or in the event there is a shortage of water, the Corporation may initiate the Emergency Rationing Program as specified in the Corporation's Tariff. By execution of this agreement, the Applicant hereby shall comply with the terms of said program.

By execution hereof, the Applicant shall hold the Corporation harmless from any and all claims for damages caused by service interruptions due to waterline breaks by utility or like contractors, tampering by other Member/users of the Corporation, normal failures of the system, or other events beyond the Corporation's control.

The Member shall grant to the Corporation, now or in the future, any easements of right-of-way for the purpose of installing, maintaining, and operating such pipelines, meters, valves, and any other equipment which may be deemed necessary by the Corporation to extend or improve service for existing for future Members, on such forms as are required by the Corporation.

By execution hereof, the Applicant shall guarantee payment of all other rates, fees, and charges due on any account for which said Applicant owns a Membership Certificate. Said guarantee shall pledge any and all Membership Fees against any balance due the Corporation. Liquidation of said Membership Fees shall give rise to discontinuance of service under the terms and conditions of the Corporation's tariff.

The following information is requested by the Federal Government in order to monitor compliance with Federal laws prohibiting discrimination against applicants seeking to participate in this program. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, we are required to note the race/national origin of individual applicants on the basis of visual observation or surname.

☐ White, Not of Hispanic Origin    
 ☐ Black, Not of Hispanic Origin    
 ☐ American Indian or Alaskan Native    
 ☐ Hispanic    
 ☐ Asian or Pacific Islander    
 ☐ Other (Specify)    
 ☐ Male    
 ☐ Female





August 2, 2017

Possum Kingdom Water Supply Corporation  
1170 Willow Road  
Graford, Texas 76449  
Attn: Cathy Pearson

**Re: Meter Request Evaluation**

Dear Cathy:

We have performed a meter request evaluation for the new service meter request worksheets provided by PKWSC. Based on that analysis, the following meter **is approved** for addition to the PKWSC system:

1. Glover, Larry & Shirley, 2281 Sage Circle, Lot 1-D, 1 Meter, Phase 1
2. **CBGR, LLC, Lot 7 Hummingbird West, 1 Meter, Phase 1**

I appreciate the opportunity to be of service to the PKWSC. Please do not hesitate to call me at (325) 698-5560 if you have any questions.

Sincerely,

Enprotec / Hibbs & Todd, Inc.

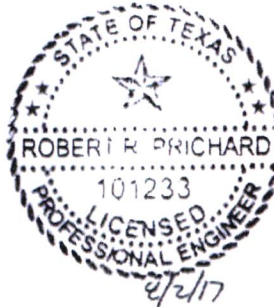
A handwritten signature in black ink, appearing to read 'BJ Prichard'.

BJ Prichard, P.E.

BJP/jd

Enclosure: Invoice

c: Project File # 06-3651B



P:\Projects\Possum Kingdom\Meter Requests\2017 Meter Requests\20170802\_Meter Response Letter (Glover-CBGR).docx

*Environmental, Civil & Geotechnical Engineers*

**Abilene Office**  
402 Cedar  
Abilene, Texas 79601  
P.O. Box 3097  
Abilene, Texas 79604  
325.698.5560 | 325.691.0058 fax

**Lubbock Office**  
6310 Genoa Avenue, Suite E  
Lubbock, Texas 79424  
806.794.1100 | 806.794.0778 fax  
[www.e-hi.com](http://www.e-hi.com)

**Granbury Office**  
2901 Glen Rose Hwy, Suite 107  
Granbury, Texas 76048  
817.579.6791 | 817.579.8491 fax  
PE Firm Registration No. 1151  
PG Firm Registration No. 50103  
RPLS Firm Registration Nos. 10011900 & 10007300



# Possum Kingdom Water Supply Corporation

## New Service Request

The Possum Kingdom Water Supply Corporation is a member owned, not for profit, public water provider. The regional system is being funded through Federal and State loans and grants. Bidding for the construction of the system was based upon the scope of the project as determined by the number of members who had joined as of August 31, 2002. Any system improvements for members wishing to be served by the system and who joined after that date are not included in the Federal and State funding.

In order for the PKWSC to determine whether a prospective member may be served by the system, a Service Investigation must be conducted by the Corporation's engineer. The Service Investigation will take into account whether a water distribution line is present to serve a particular site and whether an existing water line is of sufficient capacity to serve an additional connection. This will also identify costs associated with providing an additional water service line. Refer to the current rate chart for a detail of fees for a standard installation for new service. In addition, the new member must pay all costs to construct any improvements to serve a new connection. To initiate a Service Investigation, please fill out the form and return it along with a check for \$150.00 to the PKWSC. This cost is included in the total cost referenced on the rate sheet and is non-refundable.

Name Gary Ray (CBGR, LLC)  
Billing Address 6300 Ridgela Place <sup>#920</sup> Phone (817) 994-4617  
City, State, Zip Code Ft Worth, TX 76116  
Service Address Hummingbird West Lot 7  
Legal Description of Property (Include name of road, subdivision with lot and block number)  
Lot 7 Hummingbird West Div

Note: Form must be completed by applicant only. A map of service location request must be attached.

Please mail this form with a check for \$150.00 to:

Possum Kingdom Water Supply Corporation  
1170 Willow Road  
Possum Kingdom Lake  
Graford, TX 76449

940-779-3100 Fax 940-779-3137 TDD 800-735-2989



January 11, 2022

Timothy R. MacGorman, Esq.  
407 Throckmorton St.  
Suite 500  
Fort Worth, TX 76102

Re: Crystal Bluff Goat Ranch, LLC – Proposed Non-Standard Contract Terms  
File No.: 4612-0001

Dear Mr. MacGorman:

This letter is in response to your correspondence dated January 6, 2022, regarding the information provided in Possum Kingdom Water Supply Corporation's letter of September 29, 2021.

It appears the current issue is the "exorbitant increase of nearly 500% over amounts previously quoted". The prices quoted began in 2017 and have increased over the past 5 years as expansion projects have been completed. The latest expansion is currently under construction and no additional capacity is available in this upgrade.

Possum Kingdom Water Supply Corporation is a member-owned, non-profit water supply. The corporation cannot financially support additional requirements of developments and that cost must be passed.

The next plant expansion was estimated on January 21, 2021, and approved by the Board of Directors as the estimated cost for any developer contract put in place after that date. Attached is a copy of the estimate from our engineer that would allow additional capacity for 777 meters. This estimate was prior to the approximate 10% to 15% increase in material and labor inflation prevalent in 2021. A new estimate will be requested in the next 30 days that will probably increase this cost that will be passed on in current and future contracts. The price of \$13,385.00 is only presented for 30 days, with no guarantee that future requests would be at this price.


Previous correspondence with Mr. Ray has clearly detailed the requirements for a developer contract. The contract is to cover the entire platted development of 12 meters. Any future owner of lot 6 may request water in the future and this must be taken into account in the contract. The request for the first meter in 2017 was approved with the caveat that any additional meters would require a contract and CIAC. The other two meters installed in 2019 were approved without the manager's knowledge of previous communications.

The board made a concession in the May, 2021 letter to Mr. Ray for a payment of ten (10) water capacities. No response was received; thus, this offer was withdrawn. Several attempts have been made to resolve this over the years but Mr. Ray has not responded.

The cost is \$13,385.00 per meter or \$160,620.00 for this development. Previous contracts have been prepared and presented, and once Mr. Ray understands the financial requirement, a new contract will be prepared.

If you have questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sue Cathey". The signature is fluid and cursive, with the first name "Sue" and last name "Cathey" clearly distinguishable.

Sue Cathey  
General Manager  
Possum Kingdom Water Supply

c: Monty Jasper  
Gary Ray

Attachment

## PRELIMINARY

Possum Kingdom Water Supply Corporation						
0.5 MGD WTP Expansion at Existing WTP						
Item Description	Qty.	Unit	Unit Cost	% Mark-Up	Line Total	Subtotals
<b>Raw Water Pump Station and Pipeline</b>						
Additional Raw Water Pump	1	LS	\$160,000	20%	\$216,000	
Piping, Valves, Appurtenances	1	LS	\$40,000		\$40,000	
New Pipeline to WTP in original easement (if allowed)	8500	FT	\$150	20%	\$1,530,000	
Category Total						\$ 1,786,000
<b>MF System</b>						
New AP-6X Skid	1	LS	\$980,000	20%	\$980,000	
Piping and Valves	1	LS	\$40,000		\$40,000	
Misc. Metals Fabrication	1	LS	\$15,000		\$15,000	
Category Total						\$ 1,015,000
<b>New RO System</b>						
New RO System	1	LS	\$980,000	20%	\$980,000	
Piping and Valves	1	LS	\$50,000		\$50,000	
Misc. Metals Fabrication	1	LS	\$15,000		\$15,000	
Category Total						\$ 1,025,000
<b>New MF Blend Pump Station</b>						
New Pumps	1	LS	\$160,000	20%	\$180,000	
Piping, valves, appurtenances	1	LS	\$20,000		\$20,000	
Category Total						\$ 200,000
<b>New Waste Processing Basin</b>						
New Pumps	1	LS	\$100,000	20%	\$120,000	
Mixer	1	LS	\$20,000	20%	\$24,000	
Piping, valves, appurtenances	1	LS	\$15,000		\$15,000	
Category Total						\$ 159,000
<b>New Building Addition</b>						
150' long x 30' wide	4300	SF	\$250		\$1,125,000	
HVAC	1	LS	\$200,000		\$200,000	
Blend Pump Station Structure	1	LS	\$100,000		\$100,000	
Waste Processing Structure	1	LS	\$100,000		\$100,000	
Chemical/Plant Water System Upgrade	1	LS	\$20,000	20%	\$24,000	
Category Total						\$ 1,549,000
<b>Chemical Systems Modifications</b>						
Upgrade ClO <sub>2</sub> Generator - Retrofit to Increase Capacity	1	LS	\$30,000	20%	\$36,000	
Upgrade NaClO <sub>2</sub> System - Additional Storage Tote, Piping	1	LS	\$30,000	20%	\$36,000	
Upgrade Cl <sub>2</sub> Gas Systems - Cylinders, Scales, Eductors,	1	LS	\$30,000	20%	\$36,000	
Upgrade LAS System - Tanks & Pumps	1	LS	\$35,000	20%	\$42,000	
Upgrade NaOH System - Tanks & Pumps	1	LS	\$20,000	20%	\$24,000	
Upgrade FeCl <sub>3</sub> Coagulant System - Tanks & Pumps	1	LS	\$20,000	20%	\$24,000	
Category Total						\$ 198,000
<b>Yard Piping</b>						
	1	LS	\$5,932,000	7%	\$415,240	
Category Total						\$ 415,000
<b>Protective Coatings</b>						
	1	LS	\$6,347,000	1%	\$63,470	
Category Total						\$ 63,000
<b>Site Work, Paving, SWPPP</b>						
Site work, Paving, & SWPPP	1	LS	\$6,410,000	3%	\$160,000	
Category Total						\$ 160,000
<b>Electrical and SCADA Controls</b>						
	1	LS	\$9,570,000	25%	\$1,042,500	
Category Total						\$ 1,843,000
<b>Mobilization, Bonds &amp; Insurance, OHP</b>						
	10%	JOB	\$8,213,000		\$821,300	\$ 821,000
<b>BASE SUBTOTAL</b>						
						\$ 9,034,000
<b>CONTINGENCY</b>						
				15.0%		\$ 1,356,000
<b>CONSTRUCTION SUBTOTAL</b>						
						\$ 10,390,000
DISCLAIMER: This opinion of probable project cost is released under the authority of Jordan S. Hibbs, Texas PE license number 115729, on January 12, 2021, and represents the design professional's best judgment. Enprotec / Hibbs & Todd, Inc. has no control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding or market and industry conditions. Accordingly, Enprotec / Hibbs & Todd, Inc. cannot and does not guarantee that bids will not vary from this cost estimate.						

LAYOUT OF "HUMMINGBIRD WEST"

B.B.B. & C. RR. CO.  
SURVEY  
ABSTRACT NO. 104

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 9

LOT 10

LOT 11

LOT 12

J.D. ALSTON SURVEY  
ABSTRACT NO. 2

CRYSTAL BLUFF GOAT  
RANCHES, LLC  
18.070 ACRES  
V. 2131, P. 30

6.65 ACRES

E.R. HARRIS SURVEY  
ABSTRACT NO. 234

FORUM CIRCLE

PARK ROAD 36

GREENBELT AREA



JN17206











**From:** [Sue Cathey](#)  
**To:** [Gary Ray](#)  
**Subject:** Humming West  
**Date:** Tuesday, June 6, 2017 11:10:44 AM  
**Attachments:** [Sue Cathey.vcf](#)  
[Non-Standard Svc Contract NEW.doc](#)  
[Ray Will Serve June 2017.PDF](#)  
[Developer Notice.doc](#)

---

Gary, attached is the boiler plate of the contract that we need to put in place. I have attached the will serve letter so you can plat the property.

Review the contract and we can get it approved at the June 21st board meeting. The existing water treatment plant will need to be expanded to accommodate any development and right now we are estimating that it will be about \$2,300 to \$2,800 per lot without having to do brick and mortar construction. That is considered "capital in aid of construction". The other fees for meter installation would be billed as meters are required excluding the equity-buy in fee. No monthly fees would be billed until a meter is installed.

Review all of this and let me know. I know this is somewhat confusing.

Sue Cathey





June 6, 2017

Gary Ray  
6300 Ridglea Place  
Suite 930  
Fort Worth, TX 76116

Re: Retail Public Water Utility Service  
to Property Located at: Hummingbird West Development

Dear Mr. Ray:

You have inquired whether Possum Kingdom Water Supply Corporation (PKWSC) will/can provide retail public water utility service to your property located at: Hummingbird West Development ("the Property"). The Property is within PKWSC's state-certificated service area of convenience and necessity (CCN) No.1820076.

Since the Property is within the PKWSC service area, PKWSC is obligated to provide continuous and adequate potable water service to meet the retail public water utility needs of the Property. [Texas Water Code §13.250] Retail public water utility service is that level of potable water necessary to meet ordinary local domestic water requirements plus reasonable outside water uses under Chapter 341 of the Texas Health & Safety Code, Chapter 13 of the Texas Water Code, TCEQ Rules Chapter 290 and TCEQ Rules Chapter 291. Retail public water utility service does not include fire fighting water or fire flows. [See: *Application of WSC-Maha Water Supply Corporation to Amend CCN No. 10229 in Travis and Hays Counties*, SOAH Docket No. 582-00-0546, TCEQ Docket No. 2000-0018-UCR, *Application of Creedmoor-Maha Water Supply Corporation to Amend CCN No. 10229 in Travis and Hays Counties*, November 6, 2002; motion for reconsideration granted to correct mapping error only July 23, 2003.]

PKWSC is ready, willing and able to provide the Property with retail public water utility service whenever requested upon compliance with the conditions precedent in PKWSC's tariff and the TCEQ's Chapters 290 and 291 rules. It will be your obligation to make formal application for service and to provide the water demand information per the non-standard service sections of PKWSC's tariff. Service will be provided within the time periods prescribed in 30 TAC §291.85(b).

If you have any questions, please contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sue Cathey".

Sue Cathey  
Business Operations Manager  
Possum Kingdom Water Supply

# Dorsett Johnson & Swift, LLP

Attorneys and Counselors at Law

Joseph Modric  
Attorney

jmodric@dorsettjohnson.com • www.dorsettjohnson.com  
407 Throckmorton Street, Suite 500, Fort Worth, Texas 76102  
Office: (817) 900-8202 • Fax: (817) 882-8526

September 21, 2021

***Via CMRRR and First-Class Mail***

Possum Kingdom Water Supply Corporation  
1170 Willow Road  
Possum Kingdom Lake  
Graford, TX 76449

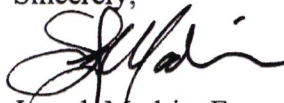
Re: Crystal Bluff Goat Ranch, LLC – Proposed Non-Standard Contract Terms  
Our File No.: 4612-00001

Dear Sirs or Madams:

Our office has the pleasure of representing Crystal Bluff Goat Ranch, LLC, in the above-referenced matter involving your proposed Non-Standard Service Contract to provide water to our client's land development consisting of 12 residential lots located in Graford, Palo Pinto County, Texas. As part of our representation, we are in receipt of your letter, dated May 11, 2021, wherein you proposed a "negotiated and mutually agreeable" contribution in aid of construction ("CIAC") payment which you now deem necessary for your company's continued delivery of residential water services to the subject property. Your proposed CIAC payment in the amount of \$13,385.00 per lot is unacceptable as it represents a nearly 500% increase over the amounts previously quoted to our client and based on the course of dealing by and between the parties over the past four years. Our client has reasonably relied upon such course of dealing while developing the remaining lots on the property.

In an effort to resolve this matter without the need for costly and unnecessary litigation, please provide the authority upon which you base this unprecedented fee increase or propose a CIAC payment more in line with the past course of dealing and trade between the parties. To this end, we suggest that you begin by reviewing the enclosed prior correspondence sent to our client in June 2017.

Sincerely,



Joseph Modric, Esq.

Cc: Client  
Enclosure



September 29, 2021

Joseph Modric, Esq.  
407 Throckmorton St.  
Suite 500  
Fort Worth, TX 76102

Re: Crystal Bluff Goat Ranch, LLC – Proposed Non-Standard Contract Terms  
File No.: 4612-0001

Dear Mr. Modric:

This letter is in response to your correspondence and request for information dated September 21, 2021.

**Capital in Aid of Construction (CIAC):**

In order to support a development over time, the developer must pay for water capacity based on the cost of the available capacity or capacity to be built. This is directed by the Public Utility Commission of Texas. Paragraph 5. "Cost of the Water System Extension" of the Non-Standard Contract details the developer's costs. Water Treatment Plant expansion is listed in paragraph 5. (a) and the CIAC is paragraph 6. (a).

The expansion affecting the Crystal Bluff Goat Ranch, LLC, is currently estimated to cost \$10,400,145.00 and will support 777 meters, thus the cost of \$13,385.00 per meter. Should the total cost of the expansion be less than what was approved by the board, it will be refunded on a proportional basis. Should there be additional costs it will be passed on to the developer on the same proportional basis.

This expansion, unlike previous expansions, will require extensive "brick and mortar" additions to the water treatment plant building. Additionally, it will require land acquisition, major electrical components at the plant and intake station with a 2 ½ mile pipeline from the lake to the plant. Previous upgrades or expansions have been within the footprint of the existing building and the cost has been substantially less. There is no additional capacity available under those expansions and any current contract will be supported by the upgrade explained above.

June 6, 2017, I provided Mr. Ray with a "Will-Serve" letter, copy attached, that clearly states in the third paragraph, "It will be your obligation to make formal application for service and to provide the water demand information per the non-standard service sections of PKWSC's tariff". Attached was a sample copy of the Non-Standard Contract that was in place at that time. Mr. Ray

did not act on this obligation that offered the capacity at \$2,300 to \$2,800 which was in effect four (4) years ago.


Various attempts have been made over time to reach Mr. Ray in order to provide the service required for the sale of the lots, but we have not been able to bring this to a successful conclusion for him. In actuality it is Mr. Ray's responsibility to contact the water supply to provide the necessary information to obtain water for the lots to be sold.

May 11, 2021, a letter was sent to Mr. Ray, copy attached, stating the current cost was \$13,385.00 per meter with a concession of applying it to only 10 meters instead of 12 with a 90-day response parameter. No action was taken by Mr. Ray within the 90 day window and your letter is the first correspondence received by this office. The contract for Mr. Ray will now include 12 meters at \$13,385.00 per meter or a total of \$160,620.00. No water service will be provided without the contract in place.

Hopefully this will provide the information you need. If you have questions, please do not hesitate to contact me.

Sincerely,

Sue Cathey  
General Manager  
Possum Kingdom Water Supply

  
c: Rosendo Ferrer  
Monty Jasper  
Gary Ray

Attachments



Junc 6, 2017

Gary Ray  
6300 Ridglea Place  
Suite 930  
Fort Worth, TX 76116

Re: Retail Public Water Utility Service  
to Property Located at: Hummingbird West Development

Dear Mr. Ray:

You have inquired whether Possum Kingdom Water Supply Corporation (PKWSC) will/can provide retail public water utility service to your property located at: Hummingbird West Development ("the Property"). The Property is within PKWSC's state-certificated service area of convenience and necessity (CCN) No. 1820076.

Since the Property is within the PKWSC service area, PKWSC is obligated to provide continuous and adequate potable water service to meet the retail public water utility needs of the Property. [Texas Water Code §13.250] Retail public water utility service is that level of potable water necessary to meet ordinary local domestic water requirements plus reasonable outside water uses under Chapter 341 of the Texas Health & Safety Code, Chapter 13 of the Texas Water Code, TCEQ Rules Chapter 290 and TCEQ Rules Chapter 291. Retail public water utility service does not include fire fighting water or fire flows. [See: *Application of WSC-Maha Water Supply Corporation to Amend CCN No. 10229 in Travis and Hays Counties*, SOAH Docket No. 582-00-0546, TCEQ Docket No. 2000-0018-UCR, *Application of Creedmoor-Maha Water Supply Corporation to Amend CCN No. 10229 in Travis and Hays Counties*, November 6, 2002; motion for reconsideration granted to correct mapping error only July 23, 2003.]

PKWSC is ready, willing and able to provide the Property with retail public water utility service whenever requested upon compliance with the conditions precedent in PKWSC's tariff and the TCEQ's Chapters 290 and 291 rules. It will be your obligation to make formal application for service and to provide the water demand information per the non-standard service sections of PKWSC's tariff. Service will be provided within the time periods prescribed in 30 TAC §291.85(b).

If you have any questions, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Sue Cathey".

Sue Cathey  
Business Operations Manager  
Possum Kingdom Water Supply

## **Sue Cathey**

---

**From:** "Gary Ray" <gary@modcoins.com>  
**Date:** Wednesday, July 19, 2017 3:18 PM  
**To:** "Sue Cathey" <sue@pkwsc.com>  
**Subject:** RE: Non-Standard Agreement

Sue- Timing is everything as we are just getting bids on construction cost on lot 7.. All the property is owned by & the construction is actually being done under Crystal Bluff Goat Ranches, LLC, (CBGR,LLC) which is owned Chris Beeson & Gary Ray. Does PKWSC need a copy of the survey of Hummingbird West? Thanks GR

**CONFIDENTIALITY NOTICE:** This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is **STRICTLY PROHIBITED**. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to [Gary@modcoins.com](mailto:Gary@modcoins.com) or by telephone to (817) 546-1955, and destroy the original transmission and its attachments. Thank you.

---

**From:** Sue Cathey [mailto:sue@pkwsc.com]  
**Sent:** Wednesday, July 19, 2017 2:58 PM  
**To:** Gary Ray  
**Subject:** Non-Standard Agreement

Gary, attached the draft of the non-standard agreement for the water to Hummingbird West. The cost is estimated to be \$2,300 per lot, but a firm number will be put in. Nothing beyond the \$2,300 per lot will be billed until the purchaser of the property requires a meter. That person will then pay membership, administration, meter installation and inspection.

Review this and let me know your thoughts on this contract.

Sue Cathey

7/19/2017



May 11, 2021

Mr. Gary Ray  
Crystal Bluff Goat Ranch, LLC  
6300 Ridglea Place  
Suite 920  
Fort Worth, TX 76116

Dear Mr. Ray;

Attached is a draft Non-Standard Contract to enable potable water to be delivered to your development on Hummingbird Lane. The Texas Environmental Quality Commission declares any person that sub-divides property into more than two properties is considered a developer and, as such, is subject to the Non-Standard Contract for water service and must pay Capital in Aid of Construction (CIAC) to obtain or reserve water to the properties.

Possum Kingdom Water Supply Corporation (PKWSC) is a non-profit member owned organization. Developers pay CIAC to PKWSC to enable plant expansion to supply potable water to the development or to reserve water in the current available supply. The price is based on the cost of that portion of the available water to PKWSC or the cost to build additional capacity. The existing plant is at maximum capacity at this time and the cost for additional capacity is estimated at \$10,400,145.00 which will enable an additional 777 meters to be added to the system.

Your original development was for 12 lots. Two lot owners have paid for meters to be installed and they are members of the corporation. We will grandfather these meters and only apply the CIAC to the additional 10 lots on an exception basis and will not apply to any additional development you may have. This contract must have approval by the Board of Directors and be put in place within the next 90 days to insure potable water is available for the lots in your development. No additional meters will be installed until this transaction is completed.

Please review the contract and add the required information on the draft copy and return to my office for an original contract to be created in 90 days. We will also need a copy of the final plat and engineering drawings for our engineers to review and potentially approve.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Neal".

Bob Neal  
General Manager  
Possum Kingdom Water Supply Corporation

Attachment: 12 page Non-Standard Contract



May 11, 2021

Mr. Gary Ray  
Crystal Bluff Goat Ranch, LLC  
6300 Ridglea Place  
Suite 920  
Fort Worth, TX 76116

Dear Mr. Ray;

Attached is a draft Non-Standard Contract to enable potable water to be delivered to your development on Hummingbird Lane. The Texas Environmental Quality Commission declares any person that sub-divides property into more than two properties is considered a developer and, as such, is subject to the Non-Standard Contract for water service and must pay Capital in Aid of Construction (CIAC) to obtain or reserve water to the properties.

Possum Kingdom Water Supply Corporation (PKWSC) is a non-profit member owned organization. Developers pay CIAC to PKWSC to enable plant expansion to supply potable water to the development or to reserve water in the current available supply. The price is based on the cost of that portion of the available water to PKWSC or the cost to build additional capacity. The existing plant is at maximum capacity at this time and the cost for additional capacity is estimated at \$10,400,145.00 which will enable an additional 777 meters to be added to the system.

Your original development was for 12 lots. Two lot owners have paid for meters to be installed and they are members of the corporation. We will grandfather these meters and only apply the CIAC to the additional 10 lots on an exception basis and will not apply to any additional development you may have. This contract must have approval by the Board of Directors and be put in place within the next 90 days to insure potable water is available for the lots in your development. No additional meters will be installed until this transaction is completed.

Please review the contract and add the required information on the draft copy and return to my office for an original contract to be created in 90 days. We will also need a copy of the final plat and engineering drawings for our engineers to review and potentially approve.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Neal", is written over the printed name.

Bob Neal  
General Manager  
Possum Kingdom Water Supply Corporation

Attachment: 12 page Non-Standard Contract



## NON-STANDARD SERVICE CONTRACT

THE STATE OF TEXAS  
COUNTY OF PALO PINTO

THIS CONTRACT is made and entered into by and between **Crystal Bluff Goat Ranch, LLC** hereinafter referred to as "Developer", and Possum Kingdom Water Supply Corporation, hereinafter referred to as "PKWSC" or "Corporation".

WHEREAS, Developer is engaged in developing that certain \_\_\_\_\_ acres in Palo Pinto, County, Texas, more particularly known as the \_\_\_\_\_ subdivision, according to the plat thereof recorded at Vol. \_\_\_\_, Page \_\_\_\_ of the Plat Records of Palo Pinto County, Texas, said land being hereinafter referred to as "the Property"; and,

WHEREAS, PKWSC owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area; and,

WHEREAS, the Property is located within PKWSC's state-certificated service area which obligates PKWSC to provide it with retail public water utility service subject to the terms and conditions of PKWSC's lawful tariff and the regulations of the Texas Commission on Environmental Quality ("TCEQ"); and,

WHEREAS, Developer has requested PKWSC to provide such water service to the Property through an extension of PKWSC's water system, such extension being hereinafter referred to as "the Water System Extension"; 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 PKWSC agree and contract as follows:

**1. Engineering and Design of the Water System Extension.**

- (a) The Water System Extension shall be engineered and designed by a Texas Licensed Professional Engineer at Developer's expense and in accordance with the applicable specifications of PKWSC and all governmental agencies having jurisdiction. All plans and specifications must be reviewed and approved by PKWSC's consulting engineer, at Developer's expense, prior to the issuance of any request for bids for the construction of the Water System Extension. After such approval of the plans and specifications by PKWSC's consulting engineer, the plans and specifications shall become part of this Agreement by reference and shall more particularly define "the Water System Extension".
- (b) The Water System Extension must be sized to provide continuous and adequate water service to the Property based on plans for the development of the provided to PKWSC by the Developer. PKWSC may require the Water System Extension to be oversized in anticipation of the needs of other customers of PKWSC, subject to the obligation to reimburse the Developer for any such oversizing as provided below. If the Water System Extension proves to be insufficient for the long-term retail public water utility service demands of the Property, PKWSC shall have the continuing option, and Developer shall be under the continuing obligation, to construct such additional service capacities as may be needed to meet TCEQ Chapter 290 regulations plus meeting the local demands of the Property. PKWSC's right to seek additional capital contribution and/or physical retail water utility facilities from Developer shall commence on the date the original Water System Extension is placed into commercial operation and shall expire seven (7) calendar years



thereafter. This right to collect additional capital contributions shall be separate and apart from the obligation to pay contribution in aid of construction ("CIAC") as set forth in Section 6 below.

**2. Required Sites, 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 are necessary for the construction or operation of the Water System Extension and for obtaining any Governmental approvals necessary to construct the Water System Extension in public right-of-way. Public rights-of-way may be used only when private rights-of-way are not available or are necessitated by public roadway crossings. If private easements are not otherwise available, PKWSC agrees to exercise its powers of eminent domain to acquire such easements subject to Developer paying all expenses incurred in such actions.
- (b) Any easements acquired by the Developer shall be in a form approved by PKWSC's attorney (see Form of Easement, attached to this Contract and made a part hereof) and shall be assigned to PKWSC upon proper completion of the construction of the Water System Extension.
- (c) The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to PKWSC must be approved by PKWSC's attorney.

**3. Construction of the Water System Extension**

- (a) Developer shall advertise for bids for the construction of the Water System Extension in accordance with such generally accepted bidding practices as maybe required by the United States Department of Agriculture, Rural Development and shall award the contract for the construction of the Water System Extension subject to the approval of PKWSC. PKWSC may reject any bid.
- (b) The Water System Extension shall be constructed in accordance with the approved plans and specifications. PKWSC shall have the right to inspect, at Developer's expense, all phases of the construction of the Water System Extension. Developer must give written notice to PKWSC of the date on which construction is scheduled to begin so that PKWSC may assign an inspector. PKWSC may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus 10% overhead.

**4. Dedication of Water System Extension to PKWSC.**

- (a) Upon proper completion of construction of the Water System Extension and final inspection and testing thereof by PKWSC, the Water System Extension shall be dedicated to PKWSC by an appropriate legal instrument approved by PKWSC's Attorney. The Water System Extension shall thereafter be owned and maintained by PKWSC subject to the warranties required of Applicant under Subsection (b). Any connection of individual customers to the Water System Extension shall be made by PKWSC.
- (b) Excepting only Developer's continuing obligation to guarantee adequate service capacities set forth in Section 1(b) above, upon dedication of the Water System Extension, Applicant shall warrant materials and performance of the Water System Extension constructed by Applicant for twelve (12) months following the date of dedication.



**5. Cost of the Water System Extension.**

- (a) Developer shall pay all costs associated with the Water System Extension as CIAC, including, without limitation, the cost of the following:
- (1) engineering and design at cost plus 10%;
  - (2) easement or right -of-way acquisition, including, if necessary, condemnation costs;
  - (3) construction;
  - (4) inspection at cost plus 10%;
  - (5) attorneys' fees at cost plus 10%; and
  - (6) Water Treatment Plant expansion
  - (7) Governmental or regulatory approvals required to lawfully provide service.
  - (8) Developer shall indemnify PKWSC and hold PKWSC harmless from all of the foregoing costs.
- (b) Provided, however, nothing herein shall be construed as obligating the Developer to maintain the Water System Extension subsequent to its dedication and acceptance for maintenance by PKWSC.
- (c) If PKWSC has required the Water System Extension to be oversized in anticipation of the needs of the other customers of PKWSC, PKWSC shall reimburse Developer for the additional costs of construction attributable to the oversizing, as determined by PKWSC's consulting engineer. As new PKWSC customers outside of the Property are connected to and served from the oversized facilities funded by Developer, PKWSC shall collect CIAC from each such customer equal to the cost of the surplus capacities that customer will use as determined by PKWSC's consulting engineer. This CIAC shall be paid to Developer within thirty (30) days of collection by PKWSC. This obligation to charge and this right to receive CIAC for the Developer-funded CIAC shall terminate at the earlier of:
- (1) Developer's recovery of all costs incurred for the oversized utility facilities; or,
  - (2) five (5) calendar years of the placement of said facilities into commercial operation.

**6. Contribution-in-aid-of-Construction.**

- (a) The parties recognize the Developer's obligation to compensate PKWSC for service capacities that will be dedicated to serve the Property. The Developer and PKWSC have negotiated a mutually agreeable CIAC payment for the Developer to reimburse PKWSC for that portion of its existing service capacities being reserved for the Property plus increased capacity to be created by an upgrade(s) to the Water Treatment Plant ("WTP") to increase production in .5 MGD increments, a portion of which will be dedicated to the Developer's service area. The agreed CIAC amount is **\$13,385.00** per lot. This CIAC payment scale will only cover the first **10 (ten)** lots for which capacity the Developer will pay **\$133,850.00** with the execution of this agreement. Future requests for service capacity will only be accepted in 100-lot increment or phases. The cost of future expansions to PKWSC's WTP and distribution system will be apportioned between the Developer and PKWSC in proportion to the amount of the new service capacities that will be dedicated to each, and at construction costs then current to be determined by PKWSC at the time of the new expansion.
- (b) Additional service requests for future 100-lot phases shall be made not less than twelve (12) months before the time the Developer wants to commence accepting delivery of the additional water. PKWSC shall complete any necessary improvements and provide service within twelve (12) months after receiving a



timely request and payment of the applicable CIAC. If the Developer does not make a request for additional water at least twelve (12) months in advance, PKWSC shall make reasonable efforts to provide additional service capacity when requested but PKWSC makes no guarantee or covenant that such additional water will be available on the date requested.

- (c) No additional fees shall be paid except as stated in Sections 1(b), 7(a) and 7(b). As provided in PKWSC's lawful tariff, the owner of individual lots or tracts connected to or able to receive service from the Water System Extension within the Property with the installation of a properly sized meter will pay monthly service or reserve service fees effective on the closing date of the sale from the Developer to the buyer. These fees will be based on the rates in effect from the corporation's Tariff at the time of closing and will include the following fees: Membership, Administration, Meter Installation and Inspection of Meter Connection.
- (d) Water service to be used by the Developer will be subject to monthly service fees based on the rates in effect from the corporation's Tariff at the time that water service is available to the specified property. Developer shall not be entitled to a membership in PKWSC for any connection serving property owned or being developed for resale to the public. Developer may obtain and hold memberships for service connections to be held permanently by Developer, i.e., to sales offices, common area irrigation meters, and Property maintenance buildings.

**7. Service from the Water System Extension.**

- (a) After proper completion and dedication of the Water System Extension to PKWSC, PKWSC shall provide continuous and adequate water service to the Property for the initial 10 (ten) lots subject to all duly tariffed rules and regulations and bylaws of PKWSC. Any increase of service capacity beyond the 10 (ten) initial minimum shall be contingent upon the Developer paying CIAC for such additional service capacity.
- (b) Service Capacity Reservation. PKWSC's agreement to provide long-term water service capacity to the Developer and the cost to be paid for such capacity of materially conditioned upon the Developer's projections of the service area's demands. It is agreed that if the Developer is not taking and paying for at least 50% of the water capacity contracted for herein at the end of the first five (5) years of this Agreement, the parties shall renegotiate the terms of the Agreement or, at its option, the Developer shall surrender all unused reserved water service capacity so PKWSC may use it to serve other customers, wholesale or retail. The Developer shall not be reimbursed for any surrendered service capacity. Surrendering that capacity will only release the Developer from the continued payment of monthly reservation
- (c) The existing WTP and distribution lines of PKWSC do not support fire flow. "Fire hydrants" installed within PKWSC's water distribution system are provided at the convenience of PKWSC and do not imply any responsibility on the part of PKWSC to meet fire flow requirements of local, county, state, or federal governmental agencies. Such fire hydrants are support facilities only meant to be used as flush and control valves in the public drinking water system. State public health and safety regulations require public drinking water systems to be flushed on a routine basis and metallic flush valves (commonly referred to a "fire hydrant") are a preferred manner of complying with these regulations. PKWSC makes no representation that it is offering fire protection or fire flows under any fire code or firefighting standard. PKWSC has no obligation at law to provide water for fire related activities because this is not a public water PKWSC or potable domestic



water service as defined by the Texas Water Code and/or the Texas Health and Safety Code.

PKWSC, at its sole option, may permit local area fire departments to use water from its public drinking water system on an "AS IS, AS AVAILABLE" basis and will in no manner be liable for damages caused by its inability to supply sufficient water for the prevention or suppression of fire. Any fire department or other person using PKWSC's water system to take water for firefighting purposes shall be liable to PKWSC for damage caused to PKWSC's plant and equipment during such use, especially for, but not limited to, damage to pumps caused by improperly opening and closing hydrants/valves under pressure or damage for driving heavy vehicles over water lines. PKWSC reserves the right to remove any fire hydrant (metallic flush valve), due to improper use or detriment to the system as determined by PKWSC, at any time without notice, refund, or compensation to the contributors. Any water taken from PKWSC's water system for any purpose, including firefighting, without prior knowledge and consent of the Board of Directors and/or the General Manager shall be deemed to be theft and shall be prosecuted. Fire Departments may obtain advanced consent for emergency usage on an "AS IS, AS AVAILABLE" basis.

It is understood that the Developer anticipates providing fire flow service within the development. PKWSC does not accept liability for fire-related injuries or damages to persons or property caused or aggravated by the availability (or lack thereof) of water or water pressure (or lack thereof) during fire emergencies. PKWSC agree to contract with Developer to provide water service capacities to the Property in excess of the TCEQ's domestic water system regulations so that such water volumes and pressures may be used by the customer/applicant or local fire department (at their sole election and responsibility) for firefighting purposes. Such additional water service capacities shall be provided only in response to and according to design criteria and/or plans prepared by the Developer's consulting engineer.

Notwithstanding any understanding or intent of Developer for the use of such excess water service capacity, PKWSC does not profess, state, warrant, guarantee, or imply that such additional water service capacity is, or shall ever be, adequate or sufficient for firefighting. PKWSC neither possesses nor claims to possess knowledge or expertise in firefighting or the requirements of firefighting. No statement or action of PKWSC shall ever be implied or meant to suggest that any facilities of PKWSC comply with any state or local fire code. On-site storage of water reserved for firefighting shall preferably be accomplished through elevated storage; however, if permitted to achieve Developer's desired ISO rating, reserved water may be stored in ground storage tanks with an emergency backup generator(s) if such water can be injected into the public drinking supply without contamination or significant degradation of drinking water quality during mixing.

- (d) It is understood and agreed by the parties that the obligation of PKWSC to provide water service in the manner contemplated by this Contract is subject to 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.
- (e) Unless the prior approval of PKWSC 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 lands to the Property for which water service is to be provided pursuant to this Agreement; or
- (3) Connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.

**8. 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, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, 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 inability's 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 or 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.

**9. Notices.**

Any notice to be given hereunder by either party to the other 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 PKWSC shall be addressed:

Possum Kingdom Water Supply Corporation  
1170 Willow Road  
Graford, TX 76449

Any notice mailed to Applicant shall be addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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

**10. 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 a notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon 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, below, shall have all rights at law and in equity including the right to enforce specific performance of this Contract by the breaching party, the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith. It should be noted that PKWSC's willingness to enter into this contract is expressly and materially dependent upon Developer's timely and full payments of all sums due hereunder. Developer's failure to perform under this agreement shall expressly be grounds for PKWSC to exercise its statutory right to refuse water utility service to the Property as provided by Texas Water Code §13.2502. Such an election by PKWSC shall not deprive it of any other rights or remedies it may have at law or in equity.
- (b) In the event of termination of this Contract by a non-breaching party, such action shall not affect any previous conveyance unless PKWSC has the statutory right to refuse service to such conveyed property under Texas Water Code §13.2502.
- (c) The rights and remedies of the parties provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law and under this Contract.

**11. Third Parties.**

It is the express intention of the parties that the terms and conditions of this Contract may be enforced by either party but not by any third party or alleged third-party beneficiary.

**12. Captions.**

Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Contract, the text shall control.

**13. 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 the singular and the plural.

**14. Mediation. (optional)**

Prior to the institution of legal action by either party related to any dispute arising under this Contract, said dispute shall be referred to non-binding mediation by an independent mediator mutually agreed upon by both parties. The cost of the mediator shall be shared equally by both parties.

**15. 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.

**16. 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.

**17. Multiple Originals.**

This Contract may be executed in multiple originals, any copy of which shall be considered to be an original.

**18. Authority.**

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

**19. Severability.**

The provisions of this Agreement are severable, and if any word, 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 circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

**20. 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.

**21. Amendment.**

No amendment 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 PKWSC and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

**22. 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 Palo Pinto County, Texas.

**23. Venue.**

Any civil 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 Palo Pinto County, Texas. Any administrative action shall be brought before the TCEQ and the courts of competent jurisdiction in Travis County, Texas.

**24. Successors and Assigns.**



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

**25. Assignability.**

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

**26. Effective Date.**

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

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.

Possum Kingdom Water Supply Corporation

DEVELOPER

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

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

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

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

Title: President, Board of Directors

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## RIGHT OF WAY EASEMENT (General Type Easement)

KNOW ALL MEN BY THESE PRESENTS, that **Crystal Bluff Goat Ranch**, (hereinafter called "Grantors"), in consideration of one dollar (\$1.00) and other good and valuable consideration paid by Possum Kingdom Water Supply Corporation, (hereinafter called "Grantee"), the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell, transfer, and convey to said Grantee, its successors, and assigns, a perpetual exclusive easement with the right to erect, construct, install, and lay and thereafter access and use, operate, inspect, repair, maintain, replace, upgrade, parallel and remove water distribution lines and appurtenances and any other facilities necessary to serve Grantors' property [including that property's water meter(s) if the easement is located at or near the property line] as well as the Grantee's current and future system-wide customers, under, over and across \_\_\_\_\_ acres of land, more particularly described in instrument recorded in Vol. \_\_\_\_\_, Page \_\_\_\_\_, Deed Records, Palo Pinto County, Texas, together with the right of ingress and egress over Grantor's adjacent lands for the purpose for which the above mentioned rights are granted. The easement hereby granted shall not exceed twenty feet (20') in width, and Grantee is hereby authorized to designate the course of the easement herein conveyed except that when the pipeline(s) is installed, the easement herein granted shall be limited to a strip of land 20' in width the center line thereof being the pipeline as installed.

During the period of construction of the water pipeline, the easement shall be extended an additional twenty feet (20') in width as shown on Exhibit A for a total of forty feet (40'). Upon conclusion of all construction and the restoration of the surface to its pre-construction condition, the construction easement (the extra 20') shall revert to Grantor and shall not be available to Grantee without future consent of Grantor, which consent shall not be unreasonably withheld if the easement is needed for future construction on the water utility facilities.

Grantee shall have such other rights and benefits necessary and/or convenient for the full enjoyment and use of the rights herein granted, including without limitation, (1) the reasonable right of ingress and egress over and across lands owned by Grantor which are contiguous to the easement for the purpose of accessing the easement in the most efficient and effective manner but not to use Grantor's contiguous property for other purposes; (2) the reasonable right from time to time to remove any and all paving, undergrowth and other obstructions that may injure Grantee's facilities and appurtenances or interfere with the construction, maintenance, inspection, operation, protection, repair, alteration, testing, replacement, upgrading, paralleling, relocation (as above limited), substitution or removal thereof; and (3) the right to abandon-in-place any and all water supply lines, service lines and associated appurtenances, such that Grantee shall have no obligation or liability to Grantor or their successors or assigns to move or remove any such abandoned lines or appurtenances.

In the event the easement hereby granted abuts on a public road and the county or state hereafter widens or relocates the public road so as to require the relocation of this water line as installed, Grantor further grants to Grantee an additional easement over and across the land described above for the purpose of laterally relocating said water line as may be necessary to clear the road improvements, which easement hereby granted shall be limited to a strip of land 20' in width the center line thereof being the pipeline as relocated.

Grantor shall have the right to construct and maintain a driveway across the easement so long as it crosses the easement at an approximate ninety-degree (90°) angle and does not cover the easement for a protracted or unreasonable distance. Grantor takes this action with the full knowledge and understanding that Grantee may, at some unknown date, without or without advance notice, have to excavate its water line for maintenance or repair. Thereafter, Grantee shall be charged only with a reasonable duty to restore the drive to a working condition without guarantee or warranty of aesthetic or pre-existing condition.

Grantor shall have the right to erect a fence(s) across the easement for the purpose of containing livestock and domesticated animals. However, if Grantor erects a fence(s), Grantor shall install a gate at each end of the easement (if the total easement exceeds 300 feet or if it crosses a watercourse). These gates may be locked but the locking combinations must be given to the Grantee and not changed without its prior knowledge. The Grantor's water meter shall be located in proximity to a gate for ease of reading if maintained behind the fence. One gate



County, Texas.  
(Notary Public in and for)

**RIGHT OF WAY EASEMENT  
(General Type Easement)**

"Exhibit A"

**[CHECK APPROPRIATE DESCRIPTION]**

1. \_\_\_\_\_ The easement shall be located parallel to and within the first twenty (20) feet of the property line of the encumbered tract based upon that side of the tract fronting \_\_\_\_\_ Road/Drive/Street/Lane.

or

2. \_\_\_\_\_ The easement shall be located across the encumbered tract based upon the following surveyed metes and bounds and attached sealed drawing prepared by \_\_\_\_\_:

Metes and Bounds Description:

# Dorsett Johnson & Swift, LLP

Attorneys and Counselors at Law

Timothy R. MacGorman

Attorney

tmacgorman@dorsettjohnson.com • www.dorsettjohnson.com

407 Throckmorton Street, Suite 500, Fort Worth, Texas 76102

Office: (817) 900-8211 • Fax: (817) 882-8526

January 6, 2022

***Via CMRRR and First-Class Mail***

Possum Kingdom Water Supply Corporation  
1170 Willow Road  
Possum Kingdom Lake  
Graford, TX 76449

Re: Crystal Bluff Goat Ranch, LLC – Proposed Non-Standard Contract  
Our File No.: 4612-00001

Dear Ms. Cathey:

As you know, our office represents Crystal Bluff Goat Ranch, LLC, in the above-referenced matter involving your proposed Non-Standard Service Contract to provide water to our client's land development consisting of 12 residential lots located in Graford, Palo Pinto County, Texas. We are in receipt of your letter, dated September 29, 2021, wherein you proposed a contribution in aid of construction ("CIAC") payment which you now deem necessary for your company's continued delivery of residential water services to the subject property. Your proposed CIAC payment is in the amount of \$13,385.00 per meter (per lot) for 12 meters. As mentioned in prior correspondence, this represents an unprecedented and exorbitant increase of nearly 500% over the amounts previously quoted to our client and is inconsistent with the past course of dealings by and between the parties. Furthermore, as you know, Possum Kingdom Water Supply Corporation ("PKWSC") sold our client meters for Lot 7 (June 2017), Lot 5 (January 2019), and Lot 3 (February 2019). Thereafter, Lots 5 and 7 were sold to new owners and PKWSC transferred the meters to said new owners who are now members of PKWSC. The buyer of Lot 5 also bought Lot 6 and does not require a water meter on Lot 6. As such, only 8 lots currently require water meters to be installed. To reiterate our position, it is unreasonable and unfair to require our client to pay such a substantial increase per meter based on your estimate of the CIAC. Moreover, it is egregious to now demand that our client pay CIAC for meters which have already been installed or are unnecessary in the case of Lot 6.

After consulting with the Texas Public Utility Commission, we request that you provide a new proposed Non-Standard Service Contract for our review along with the Consulting Engineer's plans, specifications, and itemized cost estimations which justify the proposed CIAC payment under PKWSC's tariff. Please understand, I am writing this letter in an effort to avoid unnecessary

Possum Kingdom Water Supply Corporation

January 6, 2022

Page 2

and costly litigation. However, we will take any and all legal action necessary to protect our client's interests.

Sincerely,

Timothy R. MacGorman, Esq.

Cc: Client