



DATA SHEET
Agenda Item No. 16. A. & B.

Meeting Date: December 6, 2018

Agenda Item:

Consider actions related to the District giving consent for requested assignment to Mustang Special Utility District of Participating Member Contract and a portion of the retail system of City of Aubrey.

- A. Resolution consenting to assumption of existing regional wastewater contract with Aubrey, and to the assignment and conveyance of a portion of Aubrey's retail wastewater system (related to the Winn Ridge Development); and, the District's acceptance of certain facilities previously constructed by Aubrey.

- B. Amendment to existing regional wastewater contract with Mustang acknowledging transfer and assignment of the Aubrey Contract for Mustang to provide retail wastewater service to the Winn Ridge Development.

Placement: <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Individual Consideration <input type="checkbox"/> Executive Session
Vote: <input type="checkbox"/> Non-Weighted <input checked="" type="checkbox"/> Weighted Capital
Recommending Department: Administration

Background:

In November 2015, the District and the City of Aubrey entered into a contract for participation in the District's Northeast Regional Water Reclamation System (Riverbend Plant) ("Aubrey Contract") to enable the City to provide retail wastewater service, initially to a 300-acre development near the intersection of FM 1385 and Byron Road in northeast Denton County, a development known as Winn Ridge. The District is proceeding with a project to expand the treatment capacity of the Riverbend Plant to 4.0 MGD, of which Aubrey has contracted for 0.28 MGD of capacity. In addition, Aubrey has completed construction of certain facilities needed by both Aubrey and the District in order for Aubrey to transport its wastewater to the Riverbend Plant, including a District trunk main, interceptor and lift station.

Mustang Special Utility District has also entered into a similar contract with the District for participation in the Riverbend Plant ("Mustang Contract"). Mustang's subscribed capacity in the Riverbend Plant is 1.3365 MGD, of which 0.625 MGD is part of the project to expand the Riverbend Plant.

Aubrey and Mustang entered into a Transfer and Service Agreement in March 2017 regarding the Winn Ridge development ("Transfer Agreement"). Under the Transfer Agreement, both Aubrey and Mustang agreed that Aubrey will assign its benefits and obligations under the Aubrey Contract to Mustang. Also, Mustang will be the sole certified provider of retail water and wastewater service to Winn Ridge, subject to the terms and conditions of the Transfer Agreement being fully satisfied by the parties. Aubrey and Mustang have requested the District approve the proposed transfer and assignment of the Aubrey Contract to Mustang.

Under the Aubrey Contract, the City was to pay its pro rata share of costs to expand the treatment capacity of the Riverbend Plant (estimated to be \$4,480,000) in two parts - - a portion to be paid up-front and a portion to be financed by the District. Aubrey paid one installment (\$1,120,000) of its required up-front payment, and a portion remains unpaid. Mustang has requested that the District finance the unpaid portion of Aubrey's up-front amount plus the amount being financed by the District (a total of \$3,360,000 to be financed by the District).

The District's Bond Counsel has reviewed Aubrey's and Mustang's request, and has determined that such transfer and assignment of the Aubrey contract to Mustang will not impact the tax exempt status of the

District's Bonds. After the transfer and assignment of the Aubrey Contract to Mustang, Mustang's total subscribed capacity in the Riverbend Plant will increase to 1.6165 MGD.

The enclosed Resolution provides for the District's consent to the proposed transfer, assignment and assumption of the Aubrey Contract, approves the conveyance of a portion of Aubrey's retail wastewater system to Mustang, and accepts for ownership and maintenance of the completed trunk main, interceptor and lift station facilities constructed by Aubrey.

The enclosed proposed amendment to Mustang's Contract provides for:

- the transfer and assignment of the benefits and obligations of the Aubrey Contract to Mustang,
- an increase in Mustang's total subscribed capacity in the Riverbend Plant to 1.6165 MGD average daily flow,
- the financing of the unpaid portion of Aubrey's up-front amount plus the amount being financed by the District (a total of \$3,360,000) for its pro rata share of costs to expand the treatment capacity of the Riverbend Plant; and,
- the transfer to Mustang of ownership, operation and maintenance of the facilities previously constructed by Aubrey (trunk main, interceptor and lift station).

Financial:

Aubrey's pro rata share of the capital costs to expand the treatment capacity of the Riverbend Plant is to be provided in part by up-front payment, and in part using funds from the District's financing with the Texas Water Development Board. Aubrey has paid to the District one installment of its up-front payment (\$1,120,000). Mustang has requested the District finance the remainder of the up-front payment as part of the District's financing. Mustang will be responsible for the annual debt service payment (as an individual capital charge) for the total amount owed for assuming Aubrey's capacity in the Riverbend Plant (approximately \$3,360,000), in addition to the amount already subscribed by Mustang.

The proposed amendment with Mustang also provides for the reimbursement of the security deposit previously made by Aubrey (\$62,500) to the District. In addition, Mustang is to reimburse the District for certain costs it incurred in the design and construction of the trunk main, interceptor and lift station (\$62,500). With such offsetting payments, essentially there will be no impact on the District's budgets.

Recommendation:

Staff recommends approval of the enclosed Resolution consenting to the proposed transfer, assignment and assumption of the Aubrey's Northeast Regional Water Reclamation System Contract to Mustang Special Utility District, and to the assignment and conveyance of an agreed portion of Aubrey's retail wastewater system to Mustang; and, the District's acceptance (for separate conveyance to Mustang) of certain facilities previously constructed by Aubrey.

It's anticipated that Mustang's Board of Directors will consider the proposed contract amendment at its next meeting. The contract amendment provides for the District to convey to Mustang the major wastewater facilities (trunk main, interceptor and lift station) that the District separately had accepted from Aubrey. Therefore, Staff recommends approval of the proposed amendment to Mustang's Contract, subject to any non-substantive changes that may be mutually agreed by the parties.

Enclosures:

1. Proposed Resolution consenting to the proposed transfer, assignment and assumption of the Aubrey's Northeast Regional Water Reclamation System Contract to Mustang Special Utility District, and to the assignment and conveyance of an agreed portion of Aubrey's retail wastewater system to Mustang; and, the District's acceptance of certain facilities previously constructed by Aubrey.
2. Draft Amendment to Mustang's Northeast Regional Water Reclamation System Contract.

Submitted By:


Jason Pierce, Manager of Watershed I Contract Services

Date: December 6, 2018



RESOLUTION

RESOLUTION # 2018- _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER TRINITY REGIONAL WATER DISTRICT TO CONSENT TO THE ASSUMPTION BY MUSTANG SPECIAL UTILITY DISTRICT OF AN EXISTING REGIONAL WASTEWATER CONTRACT BETWEEN THE CITY OF AUBREY, TEXAS AND UPPER TRINITY, AND THE ASSIGNMENT AND CONVEYANCE OF AN AGREED PORTION OF AUBREY'S RETAIL WASTEWATER COLLECTION SYSTEM TO MUSATNG; AND, THE DISTRICT'S ACCEPTANCE OF CERTAIN FACILIITES PREVIOUSLY CONSTRUCTED BY AUBREY.

WHEREAS, Upper Trinity Regional Water District ("Upper Trinity") is a political subdivision of the State of Texas created by the Texas Legislature in 1989 by the passage of HB 3112 Chapter 1053, Acts of the 71st Legislature of Texas Regular Session 1989 (the Act), as a conservation and reclamation district under Article 16 Section 59 of the Texas Constitution; and

WHEREAS, Upper Trinity has proceeded to carry out its legislative purposes of establishing water and wastewater systems on a regional wholesale basis in Denton County and its environs, for members and other entities who provide water utility services on a retail basis; and

WHEREAS, Upper Trinity has the power conferred by Chapter 54 of the Texas Water Code and the Act to enable it to carry out its purposes; and

WHEREAS, the Act provides legal authority for Upper Trinity to acquire, construct, improve, maintain and operate wholesale water and wastewater systems and treatment works necessary to provide such services to Upper Trinity's members and other customers; and

WHEREAS, Upper Trinity's Board of Directors consists' of individual representatives appointed by member towns, cities and utilities, plus Denton County; and

WHEREAS, the City of Aubrey ("Aubrey") is a duly incorporated political subdivision of the State of Texas; a Type A General Law Municipality operating, maintaining and controlling facilities for providing retail potable water and sewer service; and, is a participating member of Upper Trinity; and

WHEREAS, Mustang Special Utility District ("Mustang") is a political subdivision of the State of Texas; a retail public utility operating, maintaining, and controlling facilities for providing potable water service and sewer service; and, is a participating member of Upper Trinity; and

WHEREAS, Aubrey entered into a Regional Wastewater Treatment Services Contract dated November 5, 2015 ("2015 Wastewater Contract") to participate in the District's Northeast Regional Water Reclamation System and has subscribed to certain capacity in the Riverbend Plant (0.28 MGD average daily flow) to treat Aubrey's wastewater, initially from an approximately 300-acre

development annexed into Aubrey's corporate limits, which development is located near the intersection of FM 1385 and Byron Road in northeast Denton County (herein "Winn Ridge"); and

WHEREAS, Aubrey has completed construction of certain facilities needed by both Aubrey and the District in order for Aubrey to transport its Wastewater to the Riverbend Plant, including a District trunk main, interceptor and lift station; and

WHEREAS, Mustang entered into a Regional Wastewater Treatment Service Contract dated June 1, 2006, as amended ("Mustang's Wastewater Contract") with Upper Trinity to participate in the project to expand the Riverbend Plant to 4.0 mgd; and

WHEREAS, Upper Trinity is proceeding with construction of a project to expand the treatment capacity of the Riverbend Plant to 4.0 mgd, of which Aubrey has contracted for 0.28 mgd of subscribed capacity; and

WHEREAS, the 2015 Wastewater Contract stipulates that Aubrey will provide upfront payment to Upper Trinity for a specified portion of its share of costs for said project to expand the treatment capacity of the Riverbend Plant, with a separate portion of said project being financed by Upper Trinity for Aubrey and others; and

WHEREAS, Aubrey and Mustang have entered into a Transfer and Service Agreement dated March 27, 2017 (herein "Transfer Agreement") whereby both Aubrey and Mustang have agreed that Aubrey will assign its benefits and obligations under the 2015 Wastewater Contract to Mustang, and will assign and convey an agreed portion of Aubrey's retail wastewater system to Mustang; and

WHEREAS, Mustang will assume and perform said assignment, and Mustang will be the sole certified provider of retail water and wastewater service to Winn Ridge, subject to the terms and conditions set out in the Transfer Agreement being fully satisfied by Mustang; and

WHEREAS, Aubrey desires to transfer and assign 0.28 MGD of subscribed capacity in the Northeast Regional Water Reclamation System to Mustang for retail service to Winn Ridge; and

WHEREAS, the Public Utility Commission of Texas ("PUC") has transferred Aubrey's CCN for Winn Ridge to Mustang so that Mustang can receive, transmit, and treat wastewater for current and future retail customers within the territory encompassed by Aubrey's said CCN; and

WHEREAS, Upper Trinity has determined that the assignment and transfer to Mustang will not affect the tax exempt status of Upper Trinity's Bonds: and

WHEREAS, the Upper Trinity Board of Directors desire to accommodate Aubrey and Mustang in the assignment, transfer and assumption of the 2015 Wastewater Contract, subject to reasonable terms and conditions set forth herein as deemed necessary to protect the best interest of Upper Trinity.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE UPPER TRINITY REGIONAL WATER DISTRICT:

SECTION 1. That all matters stated in the preamble are found to be true and correct and are hereby incorporated into the body of this resolution as if copied in their entirety.

SECTION 2. That the Upper Trinity Board of Directors has reviewed the proposed assignment, transfer and assumption by and between Aubrey and Mustang of the 2015 Wastewater Contract



between Upper Trinity and Aubrey, and the assignment and conveyance of an agreed portion of Aubrey's retail wastewater system to Mustang; and, the Board of Directors does hereby consent to said assignment, transfer and assumption, subject the execution of a mutually agreed amendment to Mustang's Wastewater Contract, including provisions for Upper Trinity to finance the remainder of up-front costs pending and owed by Aubrey for capacity in the Riverbend Plant.

SECTION 3. That the Board of Directors does hereby accept for ownership and maintenance the trunk main, interceptor and lift station facilities constructed by Aubrey to transport its Wastewater to the Riverbend Plant as provided in paragraph 12 of Section D of the 2015 Wastewater Contract - - with said facilities to be conveyed by District to Mustang.

SECTION 4. That this Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED THIS 6TH DAY OF DECEMBER, 2018.

Recommended:



Larry N. Patterson, Executive Director

Executed:

Kevin Mercer, President

Attest:

Mike Fairfield, Secretary



**UPPER TRINITY REGIONAL WATER DISTRICT
NORTHEAST REGIONAL WATER RECLAMATION SYSTEM**

**AMENDMENT TO
PARTICIPATING MEMBER CONTRACT
WITH
MUSTANG SPECIAL UTILITY DISTRICT**

**THE STATE OF TEXAS §
 §
COUNTY OF DENTON §**

This **AMENDMENT** (the "Amendment") to the **NORTHEAST REGIONAL WATER RECLAMATION SYSTEM CONTRACT** is made and entered into this _____ day of _____, 2018 ("Effective Date"), by and between **UPPER TRINITY REGIONAL WATER DISTRICT** ("the District"), a conservation and, reclamation district created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas, and **MUSTANG SPECIAL UTILITY DISTRICT** ("Mustang"), a special district and political subdivision of the State of Texas, to amend the Participating Member Contract dated June 1, 2006, including prior amendments thereto (the "Contract"), which contract as amended provides for Mustang to participate in the District's Riverbend Water Reclamation Plant ("Riverbend Plant") of the Northeast Regional Water Reclamation System ("System").

WITNESSETH:

WHEREAS, Mustang entered into the Contract for wastewater treatment service for the service area for which it holds a Certificate of Convenience and Necessity ("CCN") issued by the Texas Commission on Environmental Quality; and

WHEREAS, Mustang is participating in the Riverbend Plant and has subscribed to 1.3365 MGD of Riverbend Plant capacity, which subscription includes 0.7115 MGD of current subscription and 0.625 MGD associated with the District's project to expand the treatment capacity of the Riverbend Plant; and

WHEREAS, Mustang also has subscription in the District's Doe Branch Water Reclamation Plant, which is also part of the System; and

WHEREAS, on November 5, 2015, the District and the City of Aubrey ("Aubrey") entered into a Regional Wastewater Treatment Services Contract ("Aubrey Contract") whereby Aubrey engaged the District to receive, transmit and treat Aubrey's wastewater, initially from an approximately 300 acre development annexed into Aubrey's corporate limits, which development is located near the intersection of FM 1385 and Byron Road in northeast Denton County (herein "Winn Ridge"); and

WHEREAS, Upper Trinity is proceeding with the construction of a project to expand the treatment capacity of the Riverbend Plant to 4.0 MGD (herein the "Project"), of which Aubrey has subscribed to 0.28 MGD; and

WHEREAS, Aubrey and Mustang have entered into a Transfer and Service Agreement dated March 27, 2017 (herein "Transfer Agreement") whereby both Aubrey and Mustang have agreed that Aubrey will assign its benefits and obligations under the Aubrey Contract to Mustang, and will assign and convey to Mustang certain retail water and wastewater systems serving Winn Ridge; and

WHEREAS, under the Transfer Agreement, Mustang will become the retail water and wastewater provider for the Winn Ridge development; and

WHEREAS, Mustang currently holds a Certificate of Convenience and Necessity ("CCN") to provide retail wastewater service within Winn Ridge development; and

WHEREAS, Mustang has requested the District approve the transfer and assignment of the Aubrey Contract to Mustang which assignment would increase Mustang's total subscription in the Riverbend Plant to 1.6165 MGD; and

WHEREAS, the District's Board of Directors has considered Mustang's request and desires to accommodate both parties in accordance with this Amendment; and

WHEREAS, the District's Bond Counsel has determined that the proposed transfer and assignment will not impact the tax exempt status of the District's Bonds; and

WHEREAS, the Aubrey Contract provides for Aubrey to pay its pro rata share of costs of the Project, estimated to be \$4,480,000.00, a portion of which cost is required to be paid up-front (\$2,240,000) and a portion to be financed by the District (\$2,240,000); and

WHEREAS, of its required up-front portion Aubrey has paid one-half and one-half remains to be paid; and, Mustang has requested that the District finance the unpaid portion, together with the already agreed portion to be financed (total of \$3,360,000.00 to be financed); and

WHEREAS, Aubrey has participated in the construction of certain facilities needed by both Aubrey and the District in order for Aubrey to transport its wastewater to the Riverbend Plant, including a District trunk main and interceptor, and a lift station (herein "Facilities"); and

WHEREAS, in accordance with the Aubrey Contract, upon completion of construction and final acceptance by the District, Aubrey is to transfer said Facilities to District for ownership, operation and maintenance; however, Mustang desires to own and operate said Facilities to enable it to provide better service for its CCN area, including the Winn Ridge development; and

WHEREAS, upon completion of the Facilities by Aubrey; and, in conjunction with the transfer, and assumption of the Aubrey Contract by Mustang, the matter of potential disposition of the Facilities will be timely; and

WHEREAS, both parties desire to amend the Contract to acknowledge the transfer and assumption of the Aubrey Contract by Mustang and, to provide for the financing of the remaining amount owed for Aubrey's subscription in the Riverbend Plant, subject to certain terms and conditions herein.

NOW, THEREFORE, in consideration of mutual covenants and agreements herein contained, the District and Mustang agree to the following additional or amended provisions to the Contract, to wit:

Section 1. Definitions. Capitalized terms not otherwise defined herein shall have the same meanings as those set forth in the Contract.

Section 2. Preamble. The parties agree and represent that all of the matters stated in the preamble of this Amendment are true and correct and are hereby incorporated into the body of this Amendment as if fully set forth in their entirety herein.

Section 3. Transfer and Assignment. With explicit reliance on the representations and warranties from Aubrey and Mustang provided in the Transfer Agreement, District hereby

consents to the transfer and assignment of the Aubrey Contract to Mustang, including the assignment and conveyance of certain Aubrey retail wastewater collection systems as provided in said Transfer Agreement.

Section 4. Subscribed Capacity. Exhibit B of the Contract is hereby amended to reflect Mustang's subscribed capacity assumed from Aubrey (0.28 MGD), which additional subscription increases Mustang's total subscription in the Plant to 1.6165 MGD. A Revised Exhibit B is attached hereto and is hereby incorporated into the Contract as if fully set forth therein.

Section 5. Points of Entry. Exhibit A of the Contract, as amended, is hereby replaced with the attached Exhibit A, which depicts the authorized Points of Entry for Mustang, including a new Point of Entry on the District's existing trunk main from Navo Road to the Riverbend Plant to accept flow from the Winn Ridge development.

Section 6. Payment of Capital Costs. In general, capital cost of the Project will be allocated among the participants according to their respective subscriptions, and in conformance with the Contract, as amended. Funding is provided in part by the participants and in part by issuance of the District Bonds or use of other financial assistance that may be available through programs administered by TWDB. Mustang hereby agrees to make arrangements for payment of its pro rata share of costs, including the costs associated with the subscription assumed from Aubrey for the Project:

- a. Mustang has previously deposited with the District its pro rata share of the estimated cost of the Project based on its original share of the Riverbend Plant expansion (0.625 MGD), which estimated cost includes design, construction, project management and other overhead costs.
- b. Aubrey's pro rata share of the estimated cost of the Project is approximately \$4,480,000. As provided in the Aubrey Contract, Aubrey was to provide an up-front deposit with the District for one-half of its pro rata share of estimated costs (based on 0.28 MGD of subscription); and, the District was to finance the remaining half as part of its long-term financing. Aubrey has deposited one-half of its required up-front payment to the District. By assignment of the Aubrey Contract, Mustang agrees to assume all obligations to pay Aubrey's remaining share of costs of the Project. Said remaining share includes the unpaid portion of Aubrey's required up-front amount (\$1,120,000) plus the remainder amount that was previously agreed to be financed by the District (\$2,240,000).
- c. Mustang has requested, and the District hereby agrees to finance the remaining unpaid amount owed for Aubrey's subscription in the Project. In accordance with the Contract and this Amendment, Mustang hereby agrees to pay as part of its Annual Requirement the annual debt service payment (as an individual capital charge) for the total amount owed for assuming Aubrey's capacity in the Riverbend Plant (approximately \$3,360,000), in addition to the amount already subscribed by Mustang in its Contract as amended.
- d. As of the Effective Date of this Amendment, Mustang agrees to pay all charges associated with its total subscription of 1.6165 MGD in the Plant, notwithstanding any provisions in any other document related to assignment of the Aubrey Contract to Mustang.
- e. Upon completion of construction and when the Project is operational, the District will prepare and provide to Mustang an accounting of all applicable Project costs, and will conduct a settle-up for said costs. Any excess funds will be reimbursed on a pro rata

basis to participating parties who deposited said funds with the District. If there is a shortfall, Mustang and each participant agrees to promptly pay its pro rata share or to be otherwise responsible for said costs upon notice by the District.

Section 7. Security Deposit. Aubrey previously deposited \$62,500 with the District to be available as additional security for Aubrey's obligation under the Aubrey Contract. Reimbursement of Aubrey's security deposit by the District depended on Aubrey establishing wastewater flow into the Riverbend Plant and having a reliable pattern of regular payment of its obligations. As part of the Transfer Agreement, Mustang reimbursed to Aubrey the security deposit it had previously made with the District. As of the Effective Date, Mustang has an established stream of wastewater flow into the Riverbend Plant and has a reliable pattern of payments of its obligations to the District. Therefore, the District agrees to reimburse to Mustang the security deposit previously deposited by Aubrey with the District within sixty (60) days of the Effective Date of this Amendment.

Section 8. Transfer of Facilities.

- a. Construction of the Facilities needed to transport wastewater from Winn Ridge to the Riverbend Plant are substantially complete and are in operation. Remaining items to be finished include an ornamental fence and entry, and certain landscaping. In accordance with the Aubrey Contract, Aubrey is to transfer the ownership of said Facilities to the District upon completion and final acceptance by the District. However, the District will not need said Facilities and desires to transfer ownership to Mustang, including the appropriate easements. Such transfer shall be made by District on an "as is" basis with no representation or warranty. However, such transfer shall include an assignment of pre-existing performance bonds and contractor warranties which have not yet expired as of the date of such transfer. The District agrees to execute and deliver such documents or instruments necessary to effectuate the transfer of the Facilities to Mustang, including the associated easements. Mustang hereby accepts the Facilities as constructed by Aubrey; and, accordingly Mustang shall hereafter have full ownership and shall be responsible for the operation and maintenance of said Facilities.
- b. The District incurred certain costs related to the design and construction of the Facilities, which costs include engineering and inspection. Mustang agrees to reimburse to the District an amount equal to \$62,500 as reimbursement for said costs within sixty (60) days of the Effective Date of this Amendment.

Section 9. Contract Provisions. All other provisions of the Aubrey Contract and the Contract, as amended, shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Amendment to be fully executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Effective Date of this Amendment.

UPPER TRINITY REGIONAL WATER DISTRICT

By: _____
Kevin Mercer, President, Board of Directors

ATTEST:

Mike Fairfield, Secretary, Board of Directors

(DISTRICT SEAL)

APPROVED AS TO FORM:

John F. Boyle, Jr., Counsel for the District

MUSTANG SPECIAL UTILITY DISTRICT

By: _____
President, Board of Directors

ATTEST:

Secretary, Board of Directors

(MUSTANG SEAL)

APPROVED AS TO FORM:

General, Counsel for Mustang SUD