



DATA SHEET
Agenda Item No. 22. A.

Meeting Date: December 1, 2017

Agenda Item:

Consider actions related to the District giving consent for requested assignment to Mustang Special Utility District of Participating Customer Systems and contracts with Denton County Fresh Water Supply District No. 10 (FWSD).

- A. Resolution consenting to a partial assumption of existing regional water and wastewater contracts with FWSD, and to the assignment and conveyance of an agreed portion of FWSD's retail water and wastewater systems.

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

Background:

Denton County Fresh Water Supply District No. 10 ("FWSD") entered into contracts with the District to participate in both the Regional Treated Water System and the Northeast Regional Water Reclamation System, to enable FWSD to provide retail water and wastewater services to its customers in its service areas. FWSD has a subscribed capacity (Demand) of 2.4 MGD in the Regional Treated Water System. Regarding the Northeast Regional Water Reclamation System, FWSD has subscribed capacity of 0.5475 MGD and 0.135 MGD in the Riverbend Plant and the Doe Branch Plant, respectively.

Mustang Special Utility District also has entered into contracts with the District to participate in the Regional Treated Water System (2.9 MGD of Demand) and the Northeast Regional Water Reclamation System (0.81 MGD of subscribed capacity in the Riverbend Plant and 0.20 MGD in the Doe Branch Plant).

FWSD currently holds a Certificate of Convenience and Necessity (CCN) to provide retail water and wastewater services to the Savannah, Arrowbrooke and Artesia communities; portions of which overlap with Mustang's existing CCN. It has been a matter of long-term intent for FWSD to transfer ownership and operation of a portion (Savannah and Arrowbrooke) of FWSD's retail water and wastewater systems to Mustang when timely.

FWSD and Mustang have entered into an Interlocal Agreement for Property Transfer and Allocation of Water and Wastewater Service Areas ("Transfer Agreement") whereby both Mustang and FWSD have agreed that FWSD will assign to Mustang an agreed portion of its benefits and obligations under FWSD's water and wastewater contracts with the District. Also, FWSD will assign and convey a portion of FWSD's retail water and wastewater systems to Mustang, specifically for the Savannah and Arrowbrooke communities. The Transfer Agreement provides for FWSD to retain the right to continue to provide retail water and wastewater service to the Artesia community. After the transfer, Mustang will become the sole certified provider of retail water and wastewater service to the Savannah and Arrowbrooke communities, subject to the terms and conditions set out in the Transfer Agreement.

FWSD desires to transfer and assign 1.58 MGD of Demand in the Regional Treated Water System to Mustang, retaining 0.82 MGD to serve Artesia. Likewise, FWSD desires to transfer 0.5265 MGD of subscribed capacity in the Northeast Regional Water Reclamation System to Mustang, retaining 0.156 MGD for service to Artesia.

The District's Bond Counsel has reviewed the Transfer Agreement and has determine that such transfer and assignment of a portion of FWSD's contracts to Mustang and the conveyance of a portion of FWSD's

retail water and wastewater systems will not affect the tax exempt status of the District's Bonds. The enclosed Resolution provides for the District's consent to the proposed transfer, assignment and assumption of a portion of FWSD's contracts to Mustang; and, approves the conveyance of a portion of FWSD's retail water and wastewater systems to Mustang, subject to certain terms and conditions are fulfilled by the respective parties. Before the Transfer Agreement may become effective, the respective parties must execute mutually agreed amendments to FWSD's and Mustang's water and wastewater contracts with the District.

Financial:

There is no significant cost impact on the District; the District will be kept whole.

Mustang will assume the specified water and wastewater subscriptions and will make the applicable payments directly to the District.

Recommendation: With concurrence of the District's Bond Counsel, staff recommends the Board adopt the enclosed Resolution, subject to the terms and conditions set forth therein being fully satisfied.

Enclosure:

Resolution to Consent to the Partial Assumption by Mustang Special Utility District of Existing Regional Water and Wastewater contracts between FWSD and the District, and the assignment and conveyance of an agreed portion of FWSD's retail water and wastewater system to Mustang.

Submitted By: 

Jason L. Pierce, Manager of Customer Contracts & Support Services

Date: December 1, 2017



RESOLUTION

RESOLUTION # 2017- ____.

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER TRINITY REGIONAL WATER DISTRICT TO CONSENT TO THE PARTIAL ASSUMPTION BY MUSTANG SPECIAL UTILITY DISTRICT OF EXISTING REGIONAL WATER AND WASTEWATER CONTRACTS BETWEEN THE DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10 AND UPPER TRINITY, AND THE ASSIGNMENT AND CONVEYANCE OF AN AGREED PORTION OF FWSD'S RETAIL WATER AND WASTEWATER SYSTEMS TO MUSTANG.

WHEREAS, Upper Trinity Regional Water District ("Upper Trinity" or "District") 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, Denton County Fresh Water Supply District No. 10 ("FWSD") is a special district and political subdivision of the State of Texas, created and organized pursuant to the Texas Water Code Chapters 49, 51 and 53, maintaining and controlling facilities for providing retail potable water and sewer service; 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, FWSD entered into a Regional Treated Water System Contract dated August 29, 2001, as amended ("FWSD Water Contract"), to participate in the District's Regional Treated Water System and has a subscribed capacity (Demand) of 2.4 MGD in said system; and

WHEREAS, FWSD also entered into a Regional Wastewater Treatment Services Contract dated May 1, 2003, as amended (“FWSD Wastewater Contract”), to participate in the District’s Northeast Regional Water Reclamation System and has subscribed to certain capacity in the Riverbend Plant (0.5475 MGD average daily flow) and the Doe Branch Plant (0.135 MGD average daily flow); and

WHEREAS, FWSD currently holds a Certificate of Convenience and Necessity (“CCN”) to provide retail water and wastewater services to the Savannah, Arrowbrooke and Artesia communities; and

WHEREAS, on behalf of the District, FWSD has constructed certain facilities, including but not limited to interceptors, trunk mains and a lift station, to transport FWSD’s Wastewater to the Riverbend Plant and to the Doe Branch Plant; and

WHEREAS, Mustang has entered into a Regional Wastewater Treatment Services Contract dated June 1, 2006, as amended, (“Mustang Wastewater Contract”) to participate in the District’s Northeast Regional Water Reclamation System and has subscribed to certain capacity in the Riverbend Plant (0.81 MGD average daily flow) and the Doe Branch Plant (0.20 MGD average daily flow); and

WHEREAS, Mustang has also entered into a Regional Treated Water System Contract dated February 6, 2003, as amended, (“Mustang Water Contract”) to participate in the District’s Regional Treated Water System and has a Demand of 2.9 MGD in said system; and

WHEREAS, it has been a matter of long-term intent for FWSD to transfer the ownership and operation of FWSD’s retail water and wastewater systems to Mustang when timely; and

WHEREAS, FWSD and Mustang have entered into an Interlocal Agreement for Property Transfer and Allocation of Water and Wastewater Service Areas (herein “Transfer Agreement”) whereby both FWSD and Mustang have agreed that FWSD will assign a portion of its benefits and obligations under the FWSD Water Contract and the FWSD Wastewater Contract to Mustang, and will assign and convey an agreed portion of FWSD’s retail water and wastewater systems to Mustang; and

WHEREAS, Mustang will assume and perform said assignment, and Mustang will become the sole certified provider of retail water and wastewater service to the Savannah and Arrowbrooke communities, subject to the terms and conditions set out in the Transfer Agreement; and

WHEREAS, FWSD desires to transfer and assign 1.58 MGD of Demand in the Regional Treated Water System and 0.5265 MGD of subscribed capacity in the Northeast Regional Water Reclamation System to Mustang for retail service to the Savannah and Arrowbrooke communities; and

WHEREAS, FWSD desires to retain 0.82 MGD Demand in the Regional Treated Water System and 0.156 MGD average daily flow in the Northeast Regional Water Reclamation System to serve the Artesia community within FWSD; and

WHEREAS, FWSD and Mustang do represent to Upper Trinity that both parties desire that the Public Utility Commission of Texas (“PUC”) dissolve FWSD’s CCN for the Savannah and Arrowbrooke communities so that Mustang may become the sole retail provider of water and wastewater services to said communities; 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 FWSD and Mustang in the assignment, transfer and assumption of portions of the FWSD Water Contract and the FWSD 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 FWSD and Mustang of a portion of the FWSD Water Contract and a portion of the FWSD Wastewater Contract between Upper Trinity and FWSD, and the assignment and conveyance of an agreed portion of FWSD's retail water and wastewater systems to Mustang; and, the Board of Directors does hereby consent to said assignment, transfer and assumption, subject to terms and conditions set forth herein being fully satisfied, fulfilled and performed by the respective parties.

SECTION 3. That the Board of Directors does hereby set forth the following referenced terms and conditions for Upper Trinity's approval and consent for said Transfer Agreement by and between FWSD and Mustang. As provided in the Transfer Agreement, certain specified Terms and Conditions set forth therein must be satisfied, fulfilled and performed by the respective parties prior to the transfer and assignment of a portion of the FWSD Water Contract and a portion of the FWSD Wastewater Contract to Mustang. Further, before said Transfer Agreement may become effective, the respective parties must execute mutually agreed amendments to the FWSD Water Contract, FWSD Wastewater Contract, Mustang Water Contract and the Mustang Wastewater Contract, including provisions for FWSD to retain certain subscribed capacity in the Regional Treated Water System and the Northeast Regional Water Reclamation System for retail service to the Artesia community.

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

DULY PASSED AND APPROVED THIS 7TH DAY OF December, 2017

Recommended:


Thomas E Taylor, Executive Director

Executed:

Kevin Mercer, President

Attest:

Mike Fairfield, Secretary

