



DATA SHEET
Agenda Item No. 22.C.

Meeting Date: December 7, 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).

- C. Amendments to existing regional water and wastewater contracts with Mustang acknowledging partial transfer and assignment of the FWSD contracts for Mustang to provide retail water and wastewater service to the Savannah and Arrowbrook communities.

Placement: <input checked="" type="checkbox"/> Consent <input 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 (“FWSD”) and Mustang Special Utility District (“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 a portion of its benefits and obligations under FWSD’s water and wastewater contracts with the District to Mustang, and will assign and convey a portion of FWSD’s retail water and wastewater systems to Mustang, specifically for the Savannah and Arrowbrooke communities.

Following are the major components of the proposed amendments to Mustang’s water and wastewater contracts with the District.

- Transfers 1.58 MGD of Demand in the Regional Treated Water System to Mustang (for a total of 4.48 MGD in the System). Likewise, transfers 0.5265 MGD of subscribed capacity in the Northeast Regional Water Reclamation System to Mustang (total of 1.3365 MGD in Riverbend Plant and 0.20 MGD in the Doe Branch Plant).
- Adjusts the pro rata share of the jointly owned and operated pump station (Temple Dane Pump Station) and water transmission pipeline to 45% District and 55% Mustang - - since a portion of the FWSD’s water contract was assigned to Mustang (previous pro rata share was 65% District and 35% Mustang).
- Regarding wastewater service, Mustang will need to install a meter and related instrumentation, and make any necessary repairs to the metering manhole on the south side of US Hwy 380 (FWSD’s previous Point of Entry) to allow the District to reliably operate Mustang’s Point of Entry and to reasonably meter the amount of wastewater through said entry point.

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:

Mustang's Board of Directors will consider the amendments at a future Board meeting. Staff recommends approval of the proposed contract amendments with Mustang Special Utility District regarding the transfer and assumption of a portion of the FWSDs water and wastewater systems and contracts by Mustang, subject to any non-substantive changes that may be mutually agreed by the parties.

Enclosure:

1. Draft Amendment to Regional Treated Water Contract with Mustang Special Utility District.
2. Draft Amendment to Northeast Regional Water Reclamation System Contract with Mustang Special Utility District

Submitted By: 

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

Date: December 1, 2017

**UPPER TRINITY REGIONAL WATER DISTRICT
REGIONAL TREATED WATER SYSTEM**

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

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

This **AMENDMENT** (the "Amendment") to the **REGIONAL TREATED WATER SYSTEM CONTRACT** is made and entered into this _____ day of _____, 2017, ("Effective Date"), by and between **UPPER TRINITY REGIONAL WATER DISTRICT** (the "District") and **MUSTANG SPECIAL UTILITY DISTRICT** ("Mustang") to amend the Participating Member Contract dated February 6, 2003, as amended (the "Contract"), which Contract provides for Mustang to participate in the District's Regional Treated Water System (herein "System").

WITNESSETH

WHEREAS, Mustang entered into the Contract to purchase treated water on a wholesale basis from the District to enable service to retail customers within Mustang's service area; and

WHEREAS, the Contract specifies in Exhibit B a subscribed capacity (Demand) of 2.9 MGD of treated water for FWSD; and

WHEREAS, Denton County Fresh Water Supply District No. 10 ("FWSD") has also entered into a Regional Treated Water System Contract dated August 29, 2001, as amended, ("FWSD Contract") to participate in the District's System and has a subscribed capacity (Demand) of 2.4 MGD in the System to serve retail customers in Savannah, Arrowbrooke, and Artesia Communities; and

WHEREAS, it has been a matter of the long-term intent for Mustang to assume the ownership and operation of an agreed portion of FWSD's retail water and wastewater systems 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 Contract to Mustang, that Mustang will assume and perform said assignment and Mustang will be 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 its 2.4 MGD Demand to Mustang for retail service to the Savannah and Arrowbrooke communities; and

WHEREAS, Mustang and the District have jointly constructed and operate a joint pump station at Mustang's Point of Delivery No. 1, and a joint transmission pipeline from the joint pump station to a connection with the District's water transmission main on FM 1385 at Byron Road (herein "Joint Facilities"); and

WHEREAS, the District and Mustang share in the costs of the Joint Facilities based on relative benefit, which pro rata share is currently 65% for the District and 35% for Mustang; and

WHEREAS, the District uses its pro rata share of the Joint Facilities to serve FWSD and other Customers; and

WHEREAS, each party's share of the Joint Facilities will need to be updated to account for the transfer and assignment of a portion of the FWSD Contract to Mustang; and

WHEREAS, based on the Transfer Agreement, Mustang and FWSD have requested the District to approve the transfer and assignment of a portion of the FWSD Contract to Mustang; and

WHEREAS, the District's Board of Directors has considered Mustang and FWSD'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, both Mustang and the District desire to amend the Contract to acknowledge the transfer and assumption of a portion of the FWSD Contract by Mustang and to update each party's share of the Joint Facilities based on relative benefit.

NOW, THEREFORE, the District and Mustang, in consideration of the terms, conditions and covenants contained in this Amendment, agree as follows:

Section 1. Adoption of Preamble. 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 though fully set forth in their entirety herein.

Section 2. Definitions. Capitalized terms not otherwise defined herein shall have the same meaning as those set forth in the Contract.

Section 3. Transfer and Assignment. With explicit reliance on the representations and warranties from Mustang and FWSD provided in the Transfer Agreement, and subject to the provisions of this Amendment, District hereby consents to the transfer and assignment to Mustang of a portion of the FWSD Contract between the District and FWSD related to the Savannah and Arrowbrooke communities, including the assignment and conveyance of an agreed portion of FWSD's retail water and wastewater systems to Mustang.

Section 4. Subscribed Capacity. As provided in the Transfer Agreement, a portion of FWSD's subscribed capacity (Demand) in the System is to be transferred to Mustang. Exhibit B of the Contract is hereby amended to reflect Mustang's new Demand of 4.48 MGD in the System. A Revised Exhibit B is attached hereto and is hereby incorporated into the Contract as if fully set forth therein.

Section 5. Adjustment in Pro Rata Share of Joint Facilities. The District and Mustang jointly constructed and currently operate a joint pump station at Mustang's Point of Delivery No. 1, and a joint water transmission pipeline from Mustang's delivery point to the District's water transmission pipeline on FM 1385 and Byron Road. The cost of the Joint Facilities are shared on a pro rata basis between the District and Mustang based on relative benefit (usage). The current (prior to the Effective Date) pro rata share of the Joint Facilities is 65% for the District and 35% for Mustang.

The District uses its share of the Joint Facilities to serve FWSD and other Customers along US Hwy 380. Since a portion of the FWSD Contract is being transferred and assigned to Mustang, the parties hereby agree to adjust their respective pro rata share of the Joint Facilities. As of the Effective Date of this Amendment, the District's pro rata share of the Joint Facilities shall be 45% and Mustang's shall be 55%, subject to further change from time to time. The pro rata share of costs, both capital and operating, will be adjusted to reflect the updated relative percentages of the Joint Facilities. It is the intent of both the District and Mustang to review the actual usage data annually (based on a Water Year) and make further adjustment as warranted the relative benefit percentages effective the beginning of each fiscal year (October 1), or at such other time as mutually agreed.

Section 6. Existing FWSD Meters. Previously, the District had established four (4) "delivery points" for FWSD, including associated metering instrumentation, for service to the Savannah and Arrowbrooke communities. With the transfer of a portion of the FWSD Contract to Mustang related to Savannah and Arrowbrooke, these "delivery points" and metering stations are no longer needed by the District for wholesale service. The District hereby agrees that the ownership of the facilities described herein shall also transfer to Mustang as of the Effective Date of this Amendment for Mustang's use within its retail water system. Thereafter, Mustang will be responsible for the ownership, operation and maintenance of the previously used "delivery points" and meters for FWSD. District specifically reserves to itself any metering facilities and "delivery points" related to continuance of service to FWSD for the Artesia community.

Section 7. Contract Provisions. All other provisions of 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 above written, which is 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:

, Counsel for Mustang SUD

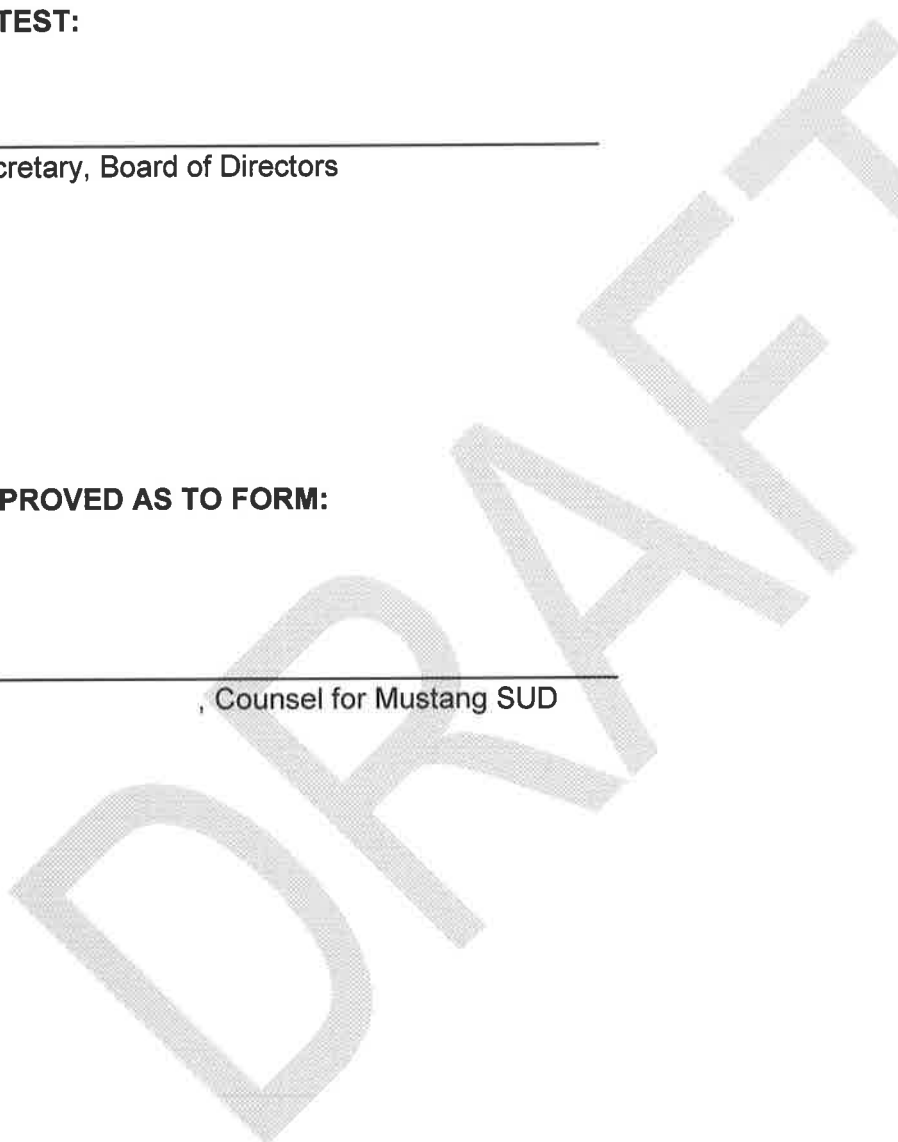


EXHIBIT B

MINIMUM AMOUNT OF SYSTEM CAPACITY (DEMAND) BEING COMMITTED FOR MUSTANG SPECIAL UTILITY DISTRICT IN ACCORDANCE WITH SECTION 4.04 OF CONTRACT

The provisions of this Exhibit B form a part of the Contract and are applicable to the District and to Mustang Special Utility District (Mustang) as if set forth in its entirety in the body of the Contract.

Participating Member
Mustang Special Utility District

Minimum Demand
4.48 MGD

DRAFT

**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 **REGIONAL WASTEWATER TREATMENT SERVICES CONTRACT** is made and entered into this _____ day of _____, _____ ("Effective Date"), by and between **UPPER TRINITY REGIONAL WATER DISTRICT** (the "District") and **MUSTANG SPECIAL UTILITY DISTRICT** ("Mustang") to amend the Participating Member Contract dated June 1, 2006, as amended (the "Contract"), which Contract provides for Mustang to participate in the District's Northeast Regional Water Reclamation System, including the Doe Branch Water Reclamation Plant ("Doe Branch Plant") and the Riverbend Water Reclamation Plant ("Riverbend Plant").

WITNESSETH

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

WHEREAS, the District has constructed and operates the Riverbend Plant and the Doe Branch Plant as part of the Northeast Regional Water Reclamation System ("System") to serve Mustang and others; and

WHEREAS, Mustang has subscribed to certain capacity in the Riverbend Plant (0.81 MGD average daily flow) and in the Doe Branch Plant (0.20 MGD average daily flow); and

WHEREAS, Denton County Fresh Water Supply District No 10 ("FWSD") has also entered into a Regional Wastewater Treatment Services Contract dated May 1, 2003, as amended, ("FWSD Contract") to participate in the District's System and has subscribed to certain capacity (0.6825 MGD) in the Riverbend Plant and the Doe Branch Plant; and

WHEREAS, it has been a matter of long-term intent for FWSD to transfer the ownership and operation of an agreed portion 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 Contract to Mustang, that Mustang will assume and perform said assignment, and Mustang will be 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, under the Transfer Agreement, Mustang will become the sole retail water and wastewater provider for the Savannah and Arrowbrooke communities; and

WHEREAS, FWSD desires to transfer and assign 0.5265 MGD of subscribed capacity in the System to Mustang for retail service to the Savannah and Arrowbrooke communities; and

WHEREAS, FWSD desires to retain certain wastewater treatment capacity (0.156 MGD) in the System to serve the Artesia community within FWSD; and

WHEREAS, FWSD has advanced certain funds to the District for its share of construction costs for the Riverbend Plant, the Doe Branch Plant, and certain other facilities, portions of which are eligible to be reimbursed to FWSD and to Mustang; and

WHEREAS, after the pending transfer, the District will continue to collect a Building Activity Fee from Mustang when new connections are made in the Savannah and Arrowbrooke communities as provided in the Contract; and

WHEREAS, based on the Transfer Agreement, FWSD and Mustang have requested the District to approve the transfer and assignment of a portion of the FWSD Contract to Mustang related to the Savannah and Arrowbrooke communities; and

WHEREAS, the District's Board of Directors has considered Mustang and FWSD'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, both Mustang and the District desire to amend the Contract to acknowledge the transfer and assumption of a portion of the FWSD Contract by Mustang and the continuation of wastewater service by the District to FWSD for the Artesia community.

NOW, THEREFORE, the District and Mustang, in consideration of the terms, conditions and covenants contained in this Amendment, agree as follows:

Section 1. Adoption of Preamble. 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 though fully set forth in their entirety herein.

Section 2. Definitions. Capitalized terms not otherwise defined herein shall have the same meaning as those set forth in the Contract.

Section 3. Transfer and Assignment. With explicit reliance on the representations and warranties from FWSD and Mustang provided in the Transfer Agreement, District hereby consents to the transfer and assignment by Mustang of that portion of the Contract between the District and FWSD related to the Savannah and Arrowbrooke communities, including the assignment and conveyance of an agreed portion of FWSD's retail water and wastewater systems to Mustang.

Section 4. Point of Entry.

- A. The District agrees to provide wastewater treatment service to Mustang for the Savannah and Arrowbrooke communities, and other areas within its service area, through the designated Point of Entry as provided in the Revised Exhibit A of this Amendment. The Revised Exhibit A is hereby adopted, and, in all aspects shall supersede and be substituted for the existing "Exhibit A" incorporated in the Contract.

- B. A metering manhole was previously installed on the south side of U.S. Hwy 380 just upstream of the Doe Branch lift station to measure Wastewater from the Savannah and Arrowbrooke communities and from Mustang's retail wastewater customers along U.S. Hwy 380. However, the necessary meter, associated equipment and appurtenances were not installed with the metering manhole. Mustang agrees to coordinate with the District to install, according to District specifications, the necessary meter, equipment and associated appurtenances to enable the District to measure the Wastewater flow from Mustang entering the Point of Entry. Mustang agrees to complete the necessary improvements, at its sole cost, within twelve (12) months of the Effective Date of this Amendment. Mustang also agrees to make repairs to the metering manhole and internal structure, if any, to allow the District to reliably operate the Point of Entry.

Section 5. Subscribed Capacity. As provided in the Transfer Agreement, a portion of FWSD's subscribed capacity in the System is agreed to be transferred to Mustang. Exhibit B of the Contract is hereby amended to reflect Mustang's updated capacity in the System, which is agreed to be 1.5365 MGD average daily flow. A Revised Exhibit B is attached hereto and is hereby incorporated into the Contract as if fully set forth therein.

Section 6. Reimbursement of Costs Advanced for Permanent Facilities. Under the FWSD Contract, as amended, FWSD is eligible for reimbursement of certain funds it advanced for easements and for the design and construction of certain permanent facilities to transport and treat FWSD's wastewater at the Riverbend Plant and the Doe Branch Plant. By action of the Transfer Agreement, reimbursement of the costs advanced by FWSD shall be limited and shall be made in accordance with the FWSD Contract, as amended. Subject to the terms of the Transfer Agreement, Mustang may be eligible for certain reimbursements in the future for costs advanced by FWSD, which reimbursement shall be determined by the District; and further, shall be limited to the applicable costs FWSD paid to extend wastewater service to the Savannah and Arrowbrooke communities.

Section 7. Contract Provisions. All other provisions of 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:

, Counsel for Mustang

EXHIBIT A

UPPER TRINITY REGIONAL WATER DISTRICT NORTHEAST REGIONAL WATER RECLAMATION SYSTEM

PARTICIPATING MEMBER CONTRACT MUSTANG SPECIAL UTILITY DISTRICT

Boundary Map and Point of Entry for FWSD

The map attached hereto shows Mustang's retail service area and the approved Points of Entry and the location of the Point of Entry for the Savannah and Arrowbrooke communities, and Mustang's area south of U.S. Highway 380.

NOTE: Upon mutual agreement of FWSD and that District, an updated or corrected Exhibit A may be substituted for this Exhibit A.

EXHIBIT B

UPPER TRINITY REGIONAL WATER DISTRICT NORTHEAST REGIONAL WATER RECLAMATION SYSTEM

PARTICIPATING MEMBER CONTRACT MUSTANG SPECIAL UTILITY DISTRICT

Subscribed Capacity and Average Flow According to Article II of the Contract

The provisions of this Exhibit B form a part of the Contract and are applicable to the District and to FWSD as if set forth in their entirety in the body of the Contract. The following quantities are mutually agreed to for the purposes noted.

	Minimum Flow (MGD) for Financial Purposes	Average Daily Flow (MGD) for Subscribed Capacity
Riverbend Plant (existing)	0.08 MGD	0.81 MGD
Riverbend Plant (Future*)	0.01 MGD	0.125 MGD
Riverbend Plant (transfer from FWSD)	0.053 MGD	0.5265 MGD
Doe Branch Plant (existing)	0.02 MGD	0.20 MGD
Total Subscribed Capacity	0.166 MGD	1.6615MGD
<i>Mustang's assigned share of the Phase 2 Doe Branch trunk line is 40%</i>		

* The "Future" portion of the subscribed capacity in the Riverbend Plant will become effective five (5) years from the completion of the project to expand the treatment capacity of the Riverbend Plant to 4.0 MGD, or at any earlier time when and if the monthly average quantity of Wastewater received at Mustang's Points of Entry exceeds ninety percent (90%) of the then subscribed capacity (1.3365 MGD), whichever event occurs first. At such time, all applicable charges for subscribed capacity shall apply, including the required settle-up for the Common-to-All capacity being subscribed.

Phased Construction. Expansion of the existing Riverbend Plant and the Doe Branch Plant are expected to be accomplished in phases. When Mustang desires additional capacity to provide for future growth requirements, Mustang shall give appropriate notice to the District to allow adequate time for coordination with other participants in the System and for financing, design and construction. The District then will use such increased capacity as the new subscribed capacity for allocation of cost to Mustang as provided in the Contract as amended. It is mutually agreed that other Members and Customers may participate in the System to allow the District to fulfill its responsibility of providing adequate service to the region.

Doe Branch Trunk Line. A portion of the trunk line that will serve Mustang and others has been constructed from the existing lift station to Fishtrap Road ("Phase 1"). However, to enable Mustang to have wastewater service available at its Point of Entry, the Phase 1 trunk line must be extended from Fishtrap Road to Parvin Road and a Point of Entry constructed for Mustang ("Phase 2"), collectively herein referred to as the "Doe Branch Trunk Line". Phase 1 of the Doe Branch Trunk Line has been oversized to accommodate future wastewater needs. Phase 2 also is being designed to accommodate future wastewater needs. The capacity of Phase 2 of the Doe Branch Trunk Line shall be allocated between the benefiting parties based on a projection of future needs, with Mustang's share noted in the table above. Pursuant to the provisions of this

Contract, Mustang has paid certain prior costs associated with the Phase 1 trunk line based on initial subscribed capacity in the Plant. Subscribed capacity in the System by Mustang and other participants may change in the future. The cost of the Phase 1 trunk line shall be allocated as a Common-To-All cost among the benefiting parties in accordance with Exhibit D based on the then respective subscribed capacity in the Doe Branch Plant; however, it is recognized that Denton County Fresh Water Supply District No. 10, at the time of initial construction, paid their pro rata share of the Phase 1 trunk line based on expected build-out needs.

Coordination Between Plants. Both the Riverbend Plant and the Doe Branch Plant are being planned to serve certain portions of the service area of Mustang. To enable the District to make orderly plans for adequate capacity in each plant, Mustang agrees to subscribe to a specific capacity in each plant. However, in providing service to Mustang pursuant to the Contract, the District may use either or both plants to whatever degree the District determines, in its sole discretion to be prudent in providing for the treatment of the Wastewater delivered by Mustang to the System. Notwithstanding the foregoing provision, at all times following completion of the Doe Branch Plant save and except times of operational curtailment due unforeseen temporary mechanical malfunctions, Mustang will have and enjoy full utilization of its subscribed capacity as stated herein. Further, regardless which plant the District selects for treatment of Wastewater delivered by Mustang to the System, such selection by the District will not have a negative economic impact on Mustang due to a difference in treatment rates among the District's plants.